

**JUNE 4, 2007**

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Rita Ellis in the Commission Chambers at City Hall at 6:00 p.m., Monday, June 4, 2007.

**1.** Roll call showed:

Present - Commissioner Gary Eliopoulos  
Commissioner Fred Fetzer  
Commissioner Woodie McDuffie  
Mayor Rita Ellis

Absent - Commissioner Brenda Montague

Also present were - David T. Harden, City Manager  
Susan A. Ruby, City Attorney  
Chevelle D. Nubin, City Clerk

**2.** The opening prayer was delivered by Reverend Ron Arflin, Chaplain with Abbey Delray South.

**3.** The Pledge of Allegiance to the flag of the United States of America was given.

**4.** **AGENDA APPROVAL.**

Mr. Eliopoulos requested that **Item 8.I., Subdivision Improvement Agreement/Cannery Row, LLC** be moved to the Regular Agenda as **Item 9.A.A.** and **Item 8.V.1., Bid Award to Conco Horticultural, Inc.** be moved to the Regular Agenda as **Item 9.A.A.A.**

Mr. McDuffie moved to approve the Agenda as amended, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

**5.** **APPROVAL OF MINUTES:**

Mr. Fetzer moved to approve the Minutes of the Regular Meeting of May 15, 2007, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

**6. PROCLAMATIONS:**

**6.A. National Clean Beaches Week – June 29 - July 5, 2007**

Mayor Ellis stated this proclamation will be mailed.

**6.B. Parks and Recreation Month – July 2007**

Mayor Ellis read and presented a proclamation hereby proclaiming July, 2007, as “Parks and Recreation Month” in Delray Beach. Danielle Beardsley, Recreation Supervisor III (Marketing)/Parks and Recreation Department, came forward to accept the proclamation.

**6.C. Recognizing and Commending Ed Noon, Mike Gaylord, Conor Gorman, Luigi Pratt and Scott Moore - Ocean Rescue Division**

Mayor Ellis read and presented a proclamation hereby recognizing and commending Ocean Rescue Officer Ed Noon, EMT, Ocean Rescue Officer Mike Gaylord, EMT, Ocean Rescue Officer Conor Gorman, EMT, Ocean Rescue Officer Luigi Pratt, EMT, Ocean Rescue Officer Trainee Scott Moore for their immediate and appropriate action in an emergency. Ed Noon, Luigi Pratt, Scott Moore and Bob Taylor came forward and gave a few brief comments.

**6.D. National HIV Testing Day – June 27, 2007**

Mayor Ellis read and presented a proclamation hereby proclaiming June 27, 2007 as National HIV Testing Day. Cory Bozovsky came forward to accept the proclamation and gave a few brief comments.

**7. PRESENTATIONS:**

**7.A. NONE**

**8. CONSENT AGENDA: City Manager Recommends Approval.**

**8.A. FINAL BOUNDARY PLAT APPROVAL/MORSE DELRAY TOYOTA RE-PLAT:** Approve the final boundary plat for the Morse Delray Toyota Re-Plat, located between US 1 and Old Dixie Highway, just north and south of LaMat Avenue.

**8.B. ACCEPTANCE OF EASEMENT DEED/4999 WEST ATLANTIC AVENUE:** Approve and accept an easement deed for the installation of a fire hydrant to serve the proposed new Walgreens located at the northeast corner of West Atlantic Avenue and Military Trail (Store #5489).

**8.C. ACCEPTANCE OF RIGHT-OF-WAY DEDICATION/334 N.E. 3<sup>rd</sup> AVENUE:** Approve and accept a right-of-way deed between the City and Kilbourne & Zeitz, Inc., for the property located at 334 N.E. 3<sup>rd</sup> Avenue.

**8.D. HOLD HARMLESS AGREEMENT/855 SOUTH OCEAN BOULEVARD:** Approve and accept a hold harmless agreement between the City and Mark Timothy, Inc. to allow the property owner to connect to the utilities on the Florida Department of Transportation (FDOT) right-of-way, located at 855 South Ocean Boulevard.

**8.E. HOLD HARMLESS AGREEMENT/SEAGATE HOTEL:** Approve and accept a hold harmless agreement between the City and HHC Atlantic, LLC associated with the Seagate Hotel project for the installation and maintenance of the wall mounted light fixtures that extend within the Atlantic Avenue right-of-way, located on the south side of East Atlantic Avenue, between Venetian Drive and Gleason Street.

**8.F. CONTRACT ADDITION (C.O. NO. 4)/CHAZ EQUIPMENT COMPANY, INC.:** Approve a Contract Addition (C.O. No. 4) in the amount of \$410,227.80 to Chaz Equipment Company, Inc. for the additional work required for the S.E./N.E. 1<sup>st</sup> Street One Way Pair Project. Funding is available from 448-5461-538-65.88 (Storm Water Utility Fund/Other Improvements/S.E./N.E. 1<sup>st</sup> Street One Way Pair) and 334-3162-541-65.88 (General Construction Fund/Capital Outlay/S.E./N.E. 1<sup>st</sup> Street One Way Pair).

**8.G. SERVICE AUTHORIZATION NO. 9/KIMLEY-HORN AND ASSOCIATES, INC.:** Approve Service Authorization No. 9 in the amount of \$22,500.00 to Kimley-Horn and Associates, Inc. for the design process of the temporary modifications to US 1 between S.E. 10<sup>th</sup> Street and George Bush Boulevard. Funding is available from 334-4141-572-65.99 (General Construction Fund/S.E./N.E. 5<sup>th</sup> and 6<sup>th</sup> Avenues) after transfer from the Community Redevelopment Agency (CRA).

**8.H. INTERLOCAL AGREEMENT/PALM BEACH COUNTY:** Approve and authorize an interlocal agreement between the City and Palm Beach County for the transfer of Barwick Road jurisdictional responsibility from Palm Beach County including the payment of \$134,000.00 to the City for resurfacing and the installation of a traffic separator at the intersection of Barwick Road and West Atlantic Avenue.

**8.I. MOVED TO THE REGULAR AGENDA AS ITEM 9.A.A.**

**8.J. EARLY HISTORY OF DELRAY BEACH/ZION STUDY CIRCLE:** Approve and authorize the adoption of the Early History of Delray Beach and its use and dissemination; and approve the use of the City of Delray Beach Logo on the Early History Timeline.

**8.K. SPECIAL EVENT REQUEST/ART & JAZZ:** Approve a request to endorse the Art & Jazz on the Avenue scheduled for June 28, 2007 from 6:00 p.m. to 10:00 p.m.; to grant a temporary use permit per LDR Section 2.4.6(F) for the closure of

Atlantic Avenue from Swinton Avenue to the west side of N.E./S.E. 7<sup>th</sup> Avenue, Railroad Drive from Atlantic Avenue north to the north side of the east/west alley and to the alleys north and south of Atlantic on N.E./S.E. 1<sup>st</sup> Avenue, N.E./S.E. 2<sup>nd</sup> Avenue, S.E. 3<sup>rd</sup> Avenue, N.E./S.E. 4<sup>th</sup> Avenue, and the Tennis Center parking lot; and authorize staff support for security and traffic control, EMS assistance, banner hanging and removal, barricade set up and removal, trash removal and clean up.

**8.L. SPECIAL EVENT REQUEST/PRO-MOTIONS SPORTS MARKETING VOLLEYBALL TOURNAMENT:** Approve a request from Pro-Motions Sports Marketing to host a Volleyball Tournament to be held at the municipal beach on June 23 and 24, 2007.

**8.M. AGREEMENT/PALM BEACH COUNTY/NEIGHBORHOOD RESOURCE CENTER (NRC) SHUTTERING PROJECT:** Approve an agreement between the City and Palm Beach County regarding the implementation of the Neighborhood Resource Center (NRC) Shuttering Project through the Disaster Recovery Initiative (DRI) Program.

**8.N. AGREEMENT/PALM BEACH COUNTY/EXTENSION OF MANGO DRIVE AND S.W. 7<sup>th</sup> AVENUE:** Approve an agreement between the City and Palm Beach County regarding the implementation of the extension of Mango Drive and S.W. 7<sup>th</sup> Avenue through the Disaster Recovery Initiative (DRI) Program.

**8.O. AGREEMENT/CORDOBA CONSTRUCTION/AMERICAN LEGION HALL:** Approve an agreement between the City, Cordoba Construction and the American Legion Hall for the re-roofing project at 196 N.W. 8<sup>th</sup> Avenue. The City shall pay Cordoba Construction \$16,900.00 for the re-roofing project. Funding is available from 118-1963-554-49.19 (Community Development Fund/Housing Rehabilitation).

**8.P. ROADWAY TRANSFER AGREEMENT/FLORIDA DEPARTMENT OF TRANSPORTATION:** Approve an agreement between the City and the Florida Department of Transportation (FDOT) that provides for FDOT to transfer Depot Road from N.W. 2<sup>nd</sup> Avenue to Lake Ida to the City; and that the City shall accept the responsibility for the operation and maintenance of the road.

**8.Q. RECONFIGURATION PLANNING PHASE AGREEMENT/MOTOROLA:** Approve an agreement between the City and Motorola that Motorola shall start the reconfiguration planning phase of relocating the City's public safety communications system from its existing channels, in the 800 MHz range, to other licensed channels not located in the 800 MHz range.

**8.R. RECONFIGURATION PLANNING PHASE AGREEMENT/NEXTEL:** Approve an agreement between the City and Nextel that Nextel shall fund the reconfiguration planning phase of relocating the City's public safety communications system from its existing channels, in the 800 MHz range, to other licensed channels not located in the 800 MHz range.

**8.S. DISTRIBUTION OF FY 2008 JUSTICE ASSISTANCE GRANT**

**FUND:** Approve the distribution of FY 2008 Justice Assistance Grant funds (JAG) formerly known as Byrne funds in the amount of \$564,568.00 as recommended by the Criminal Justice Commission; and authorize the Mayor to send a letter agreeing to the allocation of these funds.

**8.T. MULTIPLE AGREEMENTS/BLOCK 77 DEVELOPMENT GROUP, L.C./TRANSFER OF THE BLOCK 69 PARKING GARAGE:**

Approve the following agreements related to the transfer of the Block 69 Parking Garage to the City from the Block 77 Development Group, L.C.: Limited Parking License Agreement, Indemnification and Hold Harmless Agreement, Assignment and Assumption of Parking Space Lease, Agreement Between Adjoining Landowners, Memorandum of Understanding, Third Amendment to Parking Space Lease, Memorandum of Lease, Second Amendment to Release of Parking Easement, Guaranty Agreement, Sump Pump Installation Warranty Agreement and Mutual Estoppel Certificate.

**8.U. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD**

**ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period May 14, 2007 through June 1, 2007.

**8.V. AWARD OF BIDS AND CONTRACTS:**

- 1. MOVED TO THE REGULAR AGENDA AS ITEM 9.A.A.A.**
- 2.** Purchase award to Dell Incorporated in the amount of \$448,086.02 per State Contract No. 250-000-03-01 for the purchase of the SAN Mirroring with VMware Virtualization Solution. Funding is available from 334-6111-521-64.11 (General Construction Fund/Computer Equipment).
- 3.** Purchase award to Emergency Vehicle Supply LLC in the amount of \$79,483.20 for the purchase of equipment for ten (10) police vehicles added to the fleet earlier this year. Funding is available from 001-2117-521-64.20, 001-2119-521-64.20 (General Fund/Automotive) and 001-2219-521-521-46.31, 001-2121-521-46.31 (General Fund/Vehicle Maintenance/Other).
- 4.** Purchase award to Fisher Scientific Company of Tampa in the amount of \$49,123.20 for the purchase of 119 Fire Fighter Rescue Escape Devices (FFRED) to be mounted on our existing self contained breathing apparatus for the Fire-Rescue Department. Funding is available from 115-2311-522-49.90 (Special Projects Fund/Other Current Charges).

Mr. Fetzer moved to approve the Consent Agenda as amended, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

**9. REGULAR AGENDA:**

**9.A.A. SUBDIVISION IMPROVEMENT AGREEMENT/CANNERY ROW,**

**LLC:** Approve and authorize a Subdivision Improvement Agreement between the City and Cannery Row, LLC for improvements to the intersection of N.E. 1<sup>st</sup> Avenue and N.E. 3<sup>rd</sup> Street. Cannery Row, LLC shall pay the City in the amount of \$5,625.00 for the improvements to the intersection.

Mr. Eliopoulos declared a conflict of interest and stepped down from the dais.

Dick Hasko, Director of Environmental Services, stated there is a directional error and noted the entire reference should be N.E. 3<sup>rd</sup> Street and N.E. 1<sup>st</sup> Avenue and under the "background" paragraph it is listed as "S.E."

Mr. Fetzer moved to approve, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 3 to 0 vote.

**9.A.A.A. BID AWARD TO CONCO HORTICULTURIST, INC:** Bid Award to Conco Horticulturist, Inc. in the amount of \$50,050.00 for the removal of seven (7) Royal Palm Tree Stumps and the purchase of eight (8) 30' Royal Palms for Old School Square and along Seabreeze Avenue. Funding is available from 119-4144-572-46.40 (Beautification Trust Fund/Parks and Recreation).

Mr. Eliopoulos stated he would like to make sure in the future that the low bidder proposal is blank and basically says they are going to do the work for a certain amount and the next bidder that was a little higher had it thoroughly explained what they were going to do. He stated he would like to make sure that the low bidder understands the scope of services.

Joe Weldon, Director of Parks and Recreation, stated staff will have him update that so that everyone is happy with what he is telling us he is going to do.

Mayor Ellis suggested moving forward assuming that the full scope of services will be part of his bid.

Mr. Eliopoulos moved to approve the bid award subject to appropriate work items that are acceptable to Mr. Weldon, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 6:25 p.m., the Commission moved to **Item 9.A. of the Regular Agenda.**

**9.A. APPEAL OF THE HISTORIC PRESERVATION BOARD'S DECISION/706 SOUTHEAST 2<sup>ND</sup> STREET:** Appeal of the Historic Preservation Board's decision approving a Certificate of Appropriateness (COA) for construction of a new single-family residence at 706 Southeast 2<sup>nd</sup> Street, located in the Marina Historic District. (*Quasi-Judicial Hearing*)

For the record, the City Attorney noted that a letter was received from the law offices of Shubin & Bass, P.A. today and was delivered to the City Commission as well as put in the file. The City Attorney stated what staff planned to do before receiving this letter was to reopen the public hearing so that there is a full ability to look at the plan and for all sides to comment on it as due process requires. Also, the City Attorney stated when the Commission discloses their ex parte communications to please make sure they tell a little bit of the substance of what that was and this is one of the requirements of law. The City Attorney stated there were issues raised dealing with the composition of the Historic Preservation Board and for the record she noted that there are named professionals that are required on the Board but one of them is a preservationist. She stated the applicants and people filling those positions do meet the definition of preservationist.

Mayor Ellis read into the record the City of Delray Beach procedures for a Quasi-Judicial Hearing for this item and all subsequent Quasi-Judicial items.

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor Ellis asked the Commission to disclose their ex parte communications. Mr. McDuffie stated he spoke to the Attorney for the applicant to discuss that a protest had been filed. Mr. Eliopoulos stated he spoke with the architect and had seen the proposed changes and that was the first communication with this applicant. Mayor Ellis stated she had no ex parte communications to disclose. Mr. Fetzer stated he previously disclosed that he had met with the developer, his architect, and his attorney and at that time he reviewed the initial proposed plans, basically what was described at the last Commission meeting. Mr. Fetzer stated he has not had any additional ex parte communications since that time.

Mark McDonnell, AICP, Assistant Planning and Zoning Director, entered the Planning and Zoning Department project file #2007-070 into the record.

Mr. McDonnell stated the requested action is for the City Commission to consider an appeal to the Historic Preservation Board's (HPB) decision made on March 21, 2007. The HPB approved a Certificate of Appropriateness (COA) for the new construction of a single-family residence located at 706 S.E. 2<sup>nd</sup> Street (Marina Historic District). He stated the two appellants listed as Claudia Willis and Cheryl Jones filed an appeal on April 4, 2007. On May 1, 2007, the City Commission continued the public hearing to May 15, 2007, with the instructions to the applicant that they reduce the scale and revise the application in accordance with what they had offered at that hearing. On

May 14, 2007 revised plans were submitted and on May 15, 2007, the City Commission postponed the item to tonight's meeting (June 4, 2007) because staff did not have enough time to fully evaluate those revised plans. Mr. McDonnell stated the Planning and Zoning staff report date May 30, 2007 also provides an analysis between the previous proposal and that which is currently being considered. He stated Amy Alvarez has indicated that the proposal remains non-compatible with regard to scale and mass. Staff recommends that the City Commission approve the appeal.

The City Attorney stated all previous testimony and evidence presented at the prior hearing is part of this record.

**Elaine D. Walters, Shubin & Bass, P.A., 46 S.W. 1<sup>st</sup> Street, 3<sup>rd</sup> Floor, Miami, FL 33130 (representing the appellants Claudia Willis and Cheryl Jones who both live within 500 feet of the proposed construction)**, stated their major concern is that the City is failing to follow its own laws and regulations considering the construction in the historic districts in the City of Delray Beach. She stated one of the primary concerns is that new construction is compatible with the contributing structures and meet the City's regulations. Ms. Walters stated based on the plans that have been filed, while the applicants have taken some measures to come more into line with the regulations, they have still not accomplished that goal. Ms. Walters stated that this has made this proposed construction inconsistent with the City's Comprehensive Plan, the Land Development Regulations, and the Guidelines for Historic Preservation and Development. She stated the other legal issues they were concerned with the City Attorney did address on the record.

**Warren Adams, entered his credentials into the record**, and stated with regard to the appeal against the proposed project for 706 S.E. 2<sup>nd</sup> Street he stated at the May 1, 2007 City Commission meeting the applicants agreed to make a number of revisions to the original plans. He stated while some of the revisions have appeared to have been made, staff has pointed out in the Historic Preservation Planner's report a number were not made. Mr. Adams stated the ones that appear to not have been made are: (1) the removal of the covered gallery, (2) the removal of the south loggia, (3) the removal of the roof over the master covered terrace. Staff recommends that the City Commission approve the appeal. Mr. Adams stated LDR Section 4.5.1(E)(7) states "the construction of new buildings or structures within a designated historic district shall meet the same compatibility standards as any material change in the exterior appearance of an existing non-contributing building. Any material change shall be generally compatible with the form, proportion, mass, configuration, building material, texture, color and location of historic buildings, structures or sites adjoining or reasonably approximate." He stated you cannot use recent construction to compare what is appropriate for historic districts. Mr. Adams commented about a statement that was made at the last meeting that the Secretary of Interior Standards cannot be applied to new construction in historic districts and that it is merely for alterations or additions. Mr. Adams stated this is incorrect and is a misinterpretation of historic preservation and the standards the City should be using. Mr. Adams stated the City's LDR's recommend that any changes must be compatible with the standards. He stated the revised plans that have been submitted

show a total floor area of 9,464 square foot (FAR of 42%); the under air floor area is 7,060 square feet (FAR of 31%). Mr. Adams stated the massing is also a concern in particular the east and most visible elevation which faces onto the Intracoastal Waterway. Mr. Adams suggested that consideration be given to reducing the massing of this elevation by reducing the façade length of the frontage and removing some of the second story elements. Mr. Adams stated the application is inconsistent with the Land Development Regulations, the Delray Beach Design Guidelines, the Secretary of Interior Standards and the Comprehensive Plan.

Ms. Walters stated the City has done a wonderful job of setting up the historic districts and a great job with setting up a Historic Preservation Board (HPB) and hiring a Historic Planner. She urged the Commission to listen to the laws and the recommendations of the professionals and those laypeople that have been hired to help develop those standards. She stated this particular application is not consistent with the laws and is not compatible with the surrounding structures.

**Mark Krall (Agent for the Applicant)**, stated Francisco Perez-Azua (Architect) will give a brief PowerPoint presentation regarding the changes. For the record, Mr. Krall stated everything that they stated at the prior meeting they would like to re-instate today. He stated this hearing was continued and the reason for the continuance was so that they could provide something in the alternative.

**Francisco Perez-Azua, Architect for the project**, briefly reviewed the architectural elevations and the revised plans.

**Steve Harsnett, 405 S.E. 7<sup>th</sup> Avenue, Delray Beach**, stated he appreciates the aesthetic content of the Marina Historic District and commented that there are many properties that are aesthetically contributing to the neighborhood and many that are not. He stated in the context of the neighborhood this project appears to be high in quality and aesthetic content but also could very easily become one of those proud structures of the Marina Historic District and not one of the many blighted structures that are there that do not seem to be getting the recognition that this house gets.

**Carolyn Patton, 1020 Tamarind Road, Delray Beach (also owns property at 60 Marine Way in the Marina Historic District)**, stated there is not a lot of blight and noted one or two things need to be improved. She stated Palm Square and parts of 7<sup>th</sup> Avenue are one of the most pristine historic areas we have in Delray Beach. The house is extremely visible from 213 S.E. 7<sup>th</sup> Avenue, 209 S.E. 7<sup>th</sup> Avenue, 201 S.E. 7<sup>th</sup> Avenue from the Intracoastal Waterway and from 200 Marine Way directly north. She stated the house is on the Intracoastal; however, it is part of a historic district. Ms. Patton stated actor Tom Cruise recently built a 10,000 square foot house in California as his dream house and noted the square footage on this home is 9,462. She stated a movie star mansion in Beverly Hills is not compatible with the Marina Historic District. She feels there are things that could be done to bring the home more in line. Ms. Patton stated for the last approval for demolition of a historic structure on this lot the owners agreed to meet strict historic preservation guidelines when they rebuild and would like it explained

to her how this house meets strict historic preservation guidelines.

There was no cross-examination.

Ms. Walters stated the presentation of the applicant proves their point and commented about the chart that was shown that compared all of the housing around the property and noted it was not distinguishing of historic structures but displayed every house in the area. Ms. Walters stated this is not the comparison that should be made and the 40% FAR is not compatible with the contributing structures with 30% as the maximum of the historic buildings and the average is much less than that (20% or less). She stated this is not about what the Commission has approved in the past or any other structure but is about starting fresh and approving only structures that are compatible with the historic structures. Ms. Walters stated nothing in the LDR's or the Code says that a property can be treated differently if it cannot be seen from the roadway. She stated it is not just from the roadway that we need to be concerned with but there are neighbors that will be able to see the structure and they know it is not compatible. She stated the guidelines discussed by the applicant are the guidelines that are proposed and not approved yet. Ms. Walters stated this structure does not meet the current guidelines, the current LDR's and the current Code.

Mr. Perez-Azua stated they understand that REG's guidelines are not required but they are stricter than the current guidelines. He stated at the previous City Commission meeting they submitted letters of every single resident closest to this home in support of this project. He stated those who can see this house are very happy with the project. In addition, Mr. Perez-Azua stated one of the public members indicated that he was including this in the calculations and the indication that they are including that is not correct. He stated it is shown on the map geographically because he cannot chop off the Intracoastal or the streets as much as he can chop off the right-of-way.

Mr. Krall stated he differs with the appellants and feels this does have to do with what has been done in the past. He stated this developer built the house in 2004 on 327 S.E. 7<sup>th</sup> Avenue and distributed a copy of the staff report. Mr. Krall noted on page two there is a reference made about construction of a 7,782 square foot residence (5,991 under air) and stated the lot being discussed this evening is twice as big. Mr. Krall made reference to LDR Section 4.5.1.(E)(8)(J) regarding massing where it is analyzed in the staff report and the Commission passed it and in their conclusion it states "the increase in square footage and lot coverage reflects the increasing trend in the neighborhood based on rising property values. Evidence of these larger houses can be seen on the adjacent lot to the south and on several lots to the north of this property on the east side of S.E. 7<sup>th</sup> Avenue."

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

The City Attorney stated the applicant has indicated that they are willing to make certain concessions which become conditions of approval. Therefore, the City Attorney stated the Commission should be looking at the revised plans and make their determination as to whether or not it follows the LDR's.

Mayor Ellis stated she would support staff's recommendation which is the revised plan with the two conditions of approval (1) that the east elevation is broken up to provide a less massive appearance with one and two-story elements by adding these as conditions of approval; and proposes that the Commission pass this application with those conditions.

Mr. Perez-Azua stated they have already addressed these conditions in the revised plans.

Mayor Ellis asked if these two conditions were addressed in the revised plans. Mr. Adams stated he believes the applicant made an attempt; however, he does not feel it goes far enough back.

Amy Alvarez, Historic Preservation Planner, stated there have been no additions as far as breaking up the two-story elements into a one-story and a two-story further setting back the second story. She stated one can see a comparison of the plans that were reviewed by staff and prepared the report for the Historic Preservation Board review and then the revised plans. Mrs. Alvarez stated the applicant has not addressed those two items that staff originally recommended in the HPB report in March 2007.

Mr. Eliopoulos stated he feels the applicant has done what has been asked of him.

Mr. Perez-Azua briefly reviewed the architectural elevations for the Commission.

Mr. Fetzer moved to adopt the Board Order as presented, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – No; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion **DENIED** the appeal and upheld the decision of the Historic Preservation Board to approve the Certification of Appropriateness (COA) and accepts the revised plan passed with a 3 to 1 vote, Mayor Ellis dissenting.

The City Attorney stated the revised plan has been approved.

At this point, the time being 7:35 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

**10. PUBLIC HEARINGS:**

**10.A. ORDINANCE NO. 21-07 (FIRST READING/FIRST PUBLIC HEARING):** Community Redevelopment Agency (CRA) initiated amendment to the Land Development Regulations (LDR), amending Section 4.4.13, "Central Business District (CBD)," Subsection 4.4.13(H)(1), to provide an exemption to the prohibition of office uses on the ground floor of buildings on East Atlantic Avenue. If passed, a second public hearing will be scheduled for June 19, 2007.

The caption of Ordinance No. 21-07 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(H)(1), TO PROVIDE AN EXEMPTION TO THE PROHIBITION OF OFFICE USES ON THE GROUND FLOOR OF BUILDINGS ON ATLANTIC AVENUE, EXTENDING FROM SWINTON AVENUE TO OCEAN BOULEVARD, UNDER CERTAIN CIRCUMSTANCES; PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 21-07 is on file at the City Clerk's Office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Jeff Costello, Community Redevelopment Agency (CRA), 20 N. Swinton Avenue, Delray Beach, stated on October 3, 2006, the City Commission approved an amendment to the Land Development Regulations (LDRs) relating to office uses on the ground floor of buildings on Atlantic Avenue, extending from I-95 to Ocean Boulevard. Subsequent to the adoption, there were situations brought up by various property owners where their properties are not very conducive to retail type uses. He stated their buildings are set back a minimum of 28 feet up to 53 feet and there are a limited number of properties where this would apply. Mr. Costello stated this creates a hardship for these buildings and properties. He stated in the Cluster Study that was provided a couple of years ago, it did mention the fact that the ability for these properties to continue to lease these bays short term until they can get the pedestrian oriented design, is critical for the overall appearance of the Avenue. Therefore, this amendment is being proposed to provide an exemption to the current regulation when at least 80% of the building frontage

is setback 25 feet or greater. Staff requests the support of the Commission of this change.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Mr. Eliopoulos moved to approve Ordinance No. 21-07 on First Reading/First Public Hearing, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

At this point, the Commission moved to **Item 11, Comments and Inquiries on Non-Agenda Items from the City Manager and the Public.**

**11.A. City Manager's response to prior public comments and inquiries.**

The City Manager stated at the last meeting Pauline Moody came before the Commission expressing concern about construction sites behind the library and the courthouse. He stated an inspection was made of those sites. It was determined that both sites have active construction but the sites are not cluttered with debris or other materials that are not common to construction sites. The City Manager stated the only nuisance that needed to be addressed was some litter that had accumulated around the perimeter fences and that should have been cleaned up by now.

**11.B. From the Public.**

None.

**12. FIRST READINGS:**

**12.A. ORDINANCE NO. 20-07:** City initiated amendment to the Land Development Regulations (LDR), amending Section 4.4.25, "Special Activities District (SAD)", Subsection 4.4.25(C) to shift the authority for approval of site plans, landscape plans, and architectural elevations from the Planning and Zoning Board to the Site Plan Review and Appearance Board for projects located in the Special Activities District (SAD). If passed, a public hearing will be scheduled for June 19, 2007.

The caption of Ordinance No. 20-07 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF CODE OF ORDINANCES, BY AMENDING SECTION 4.4.25, "SPECIAL ACTIVITIES DISTRICT (SAD)", SUBSECTION 4.4.25(C), "REVIEW AND APPROVAL PROCESS", TO PROVIDE FOR THE REVIEW AND APPROVAL OF PLANS BY THE SITE PLAN REVIEW AND

APPEARANCE BOARD AND NOT THE PLANNING AND ZONING BOARD; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 20-07 is on file at the City Clerk's Office.)

The City Attorney read the caption of the ordinance.

Mark McDonnell, AICP, Assistant Planning and Zoning Director, stated this is a City-initiated amendment to the Land Development Regulations (LDRs) to shift the authority for approval of site plans, landscape plans, and architectural elevations from the Planning and Zoning Board to the Site Plan Review and Appearance Board for projects located in Special Activities Districts (SADs). Staff recommends shifting the authority to approve plans located in the SAD (Special Activities District) from the Planning and Zoning Board to the Site Plan Review and Appearance Board.

Mr. McDuffie moved to approve Ordinance No. 20-07 on FIRST Reading, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 7:44 p.m., the Commission moved back to the Regular Agenda (Item 9.B.).

**9.B. WAIVER REQUEST/LAST RESORT SALOON:** Consider a request for waiver of Land Development Regulations (LDR) Section 2.4.7(B)(1)(b)(i) "Special Power to the City Commission", and Section 4.3.3(V)(2)(a) "Prohibitions by Frequency", to waive the prohibition against seeking a waiver for use of land or structures regulations and to allow a reduction in the required separation distance from 750 feet to 200 feet when measured from lot line to lot line for the Last Resort Saloon, Inc., a proposed stand alone bar to be located within the Pelican Harbor Shoppes. (*Quasi-Judicial Hearing*)

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor Ellis asked the Commission to disclose their ex parte communications. Mr. McDuffie, Mr. Eliopoulos, and Mayor Ellis had no ex parte communications to disclose. Mr. Fetzer stated he had a telephone conversation with Joe Riello (owner of Who's Restaurant and Lounge).

Mark McDonnell, AICP, Assistant Planning and Zoning Director, entered the Planning and Zoning Department project file #2007-221 into the record.

Mark McDonnell, AICP, Assistant Planning and Zoning Director, stated this is for two waiver requests from the applicant one being for the City Commission to

waive the prohibition considering waivers relating to use of land or structures. The second waiver request is to waive the 750 foot separation requirement between stand alone bars. The LDR's require a separation distance for stand alone bars 750 feet be measured from parcel line to parcel line. Mr. McDonnell stated the LDR was put in place for properties along Atlantic Avenue and really did not envision these large plaza type developments. In reviewing the request, it was discovered that the surveyor measured from bar to bar versus from lot line to lot line as required by the LDRs. In one case, the minimum separation is met (985 square feet) and in the other it is not (200 square feet). The applicant is seeking relief from the City Commission via these waiver requests.

**Beverly Storey, Owner of Last Resort Saloon, Inc. (Applicant)**, stated they have owned and operated the Last Resort Salon, Inc. for the last 12 ½ years and are attempting to relocate. She stated they are a stand alone bar and made reference to LDR Section 4.3.3(V)(2)(a) "Prohibition by Frequency". Mrs. Storey stated she believes that the intent of that was to prevent proliferation of cocktail lounges and bars into any given area throughout the city. She stated with this being site specific if you go north, south, east, or west 750 feet disregarding the 200 foot lot line to lot line, there can be no possible proliferation in this area. Mrs. Storey stated this is mainly covered by the car dealerships and retail spaces. She stated she has reviewed the Comprehensive Plan and the LDR requirements and feels they have fulfilled all of those because they are consistent and compatible with the area. Mrs. Storey urged the Commission to waive the 200 foot lot line to lot line because she does not feel it applies here and they have exceeded the 750 foot separation requirement by over 30% to 985 feet.

Mayor Ellis stated if anyone from the public would like to speak in favor or in opposition of the request, to please come forward at this time.

There was no cross-examination or rebuttal.

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

Mr. McDuffie moved to approve the Board Order as presented, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

**9.C. WAIVER REQUEST/HAMMOCK HOUSE:** Consider a request for waiver of Land Development Regulations (LDR) Section 1.3.8(B) "Reconstruction Necessitated by Acts of God", which requires applicants seeking building permits to submit within one (1) year of the date on which the "Act of God" event occurred and that all reconstruction be completed within three (3) years from the date of the event for the Hammock House located at 1000 N.E. 9<sup>th</sup> Avenue. (*Quasi-Judicial Hearing*)

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor Ellis asked the Commission to disclose their ex parte communications. The Commission had no ex parte communications to disclose.

Mark McDonnell, AICP, Assistant Planning and Zoning Director, entered the Planning and Zoning project file #2007-217 into the record.

Mr. McDonnell stated this is a request to waive LDR Section 1.3.8(A) which deals with destruction that occurs to a property or structures by an Act of God. In October 2005, Hurricane Wilma went through the Hammock House and suffered hurricane damage. However, at the time, the prior owner was in an insurance litigation with Citizens. Therefore, the current owner could not apply for a building permit in the one year timeframe for that waiver and the other waiver is that they be allowed to complete those improvements beyond three years from the date of the event (October 2005). Mr. McDonnell stated due to the extenuating circumstances that are listed in the applicant's request letter, staff supports the request for both waivers (one year to apply for the building permit and the three years to finish the work).

Jason Mankoff, Attorney with Weiner and Aronson, P.A., 102 North Swinton Avenue, Delray Beach, stated they adopt the findings in the staff report. Mr. Mankoff stated the same developer has three other projects and all have met the one year deadline. He stated there were issues concerning the purchase of the property.

The City Manager asked if there are some new timeframes that could be put into place. He expressed concern that people complain about a property that is not getting restored and staff would like to be able to tell them that the owner expects to get started in a certain timeframe.

Mayor Ellis stated if anyone from the public would to speak in favor or in opposition of the request, to please come forward at this time.

There was no cross-examination or rebuttal.

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

Mr. Eliopoulos moved to approve the Board Order amending Paragraph #4 with the condition that the building permit application is made one year from the date of the Board Order and all reconstruction must be completed within three (3) years from the date of the Board Order, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

**9.D. RESOLUTION NO. 35-07/S.W. 8<sup>th</sup> AVENUE:** Approve Resolution No. 35-07 declaring the necessity for public improvements for the S.W. 8<sup>th</sup> Avenue area and directing the establishment of a special assessment district to defray a part of the expense for the construction of a road.

The caption of Resolution No. 35-07 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, DECLARING THE NECESSITY FOR PUBLIC IMPROVEMENTS FOR THE SOUTHWEST 8<sup>TH</sup> AVENUE AREA AS SHOWN ON EXHIBIT "A", AND DIRECTING THE ESTABLISHMENT OF A SPECIAL ASSESSMENT DISTRICT TO DEFRAY A PART OF THE EXPENSE FOR THE CONSTRUCTION OF A ROAD; PROVIDING FOR THE ESTIMATED COST OF THE IMPROVEMENTS; PROVIDING FOR THE PREPARATION OF THE ASSESSMENT ROLL.

(The official copy of Resolution No. 35-07 is on file at the City Clerk's Office.)

The City Attorney read the caption of Resolution No. 35-07 and stated the actually cost is \$164.80.

Mr. McDuffie asked about the funding source being not applicable. The City Manager stated it is in the City's Capital Improvement Plan (CIP) for this year. The City Attorney stated the Commission is voting on a special assessment and will be approving and voting on the funds at a later date.

Mr. Fetzer moved to approve Resolution No. 35-07, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

The City Manager stated this is the road that goes alongside Jaime Ramirez's house.

**9.E. SPECIAL EVENT REQUEST/PALM BEACH FIESTAS PATRONALES AND BUSINESS EXPO:** Consider approval of a special event request to endorse the 2<sup>nd</sup> Palm Beach Fiestas Patronales and Business Expo sponsored by the Puerto Rican/Hispanic Chamber of Commerce for Palm Beach proposed to be held on August 3, 2007 and August 4, 2007 subject to the conditions outlined in the staff report.

Doug Smith, Assistant City Manager, stated this request is for the 2<sup>nd</sup> Palm Beach Fiestas Patronales and Business Expo proposed to be held at Old School Square August 3<sup>rd</sup> and August 4<sup>th</sup> from 6:00 p.m. until midnight. This will be a gated event held at Old School Square with an admission charge of \$10.00. Approval is also requested for

staff support for security and traffic control, the preparation of event signage and reserved parking at the Community Redevelopment Agency (CRA) lot off N.W. 1<sup>st</sup> Avenue for VIPS and entertainers. Staff recommends endorsement of the event with six (6) conditions as listed in the staff memorandum. Staff feels based on last year's experience that we should require EMS presence there although it was not requested by the applicant and there will be time needed for staff cleanup. The estimated overtime costs for the event is \$12,753 and signage is approximately \$250.00. Based on our current event policies and procedures, those would be waived since it is a second year event; however, staff recommends to authorize a change in the policy for this event and to charge a minimum of 30% of the cost which would be \$3,900.00 for the City cost for services for this event. In addition, the other items are listed in the memorandum under the "recommendation".

Mr. McDuffie moved to approve the Special Event request to endorse the 2<sup>nd</sup> Palm Beach Fiestas Patronales and Business Expo to be held on August 3-4, 2007 subject to the conditions listed in staff's memorandum and omitting condition #5, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer - Yes; Mr. McDuffie - Yes; Mayor Ellis - Yes; Mr. Eliopoulos - Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 8:05 p.m., the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items.**

**13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.**

**13.A. City Manager**

The City Manager stated he attended the general membership meeting with the Palm Beach County League of Cities and noted that County has an Economic Development Planning Committee. He stated Nancy Hogan from Ocean Ridge was appointed the League's representative on the Economic Development Planning Committee. Also, the League's Attorney brought to their attention something they had not noticed and stated the Legislature at the last session changed the date for issuing business tax receipts for professional licenses bills used to go out August 1<sup>st</sup> and they now have to go out July 1<sup>st</sup>.

Secondly, the City Manager stated he spent approximately 3 ½ hours on Saturday morning with department heads going through all the budgets and prioritizing their requests. He feels this is a useful tool and staff got a better appreciation as a group in what it means to look at the budget from a citywide perspective rather than their own department. The City Manager distributed a copy of the budget ranking to the Commission and noted he would like the input of the Commission.

**13.B. City Attorney**

The City Attorney had no comments or inquiries on non-agenda items.

**13.C. City Commission**

**13.C.1. Mr. Fetzer**

Mr. Fetzer stated he lives on one of the most exciting streets in Delray Beach (Evergreen Drive). He commented about Commissioner Levinson's home nearly burning down. He stated he was in Jacksonville on Saturday and his son called him about Delray Beach Police and Sheriff's cars parked up and down both sides of Evergreen Drive evidently because of the Picasso's robbery and shooting. Mr. Fetzer complimented the Delray Beach Police Department for doing a great job.

Secondly, he stated he met with the Education Board this evening and apparently the School Board is not going to fund the new middle school of the arts. Mr. Fetzer stated he is not sure if he will be able to attend the Workshop meeting next Wednesday. However, he stated he is going to contact Bob Kanjian of the Palm Beach County School Board and express his concern about this and feels the rest of the Commission should do the same.

**13.C.2. Mr. Eliopoulos**

Mr. Eliopoulos stated Commissioner Montague and he went to Florida Atlantic University (FAU) for the Gangs and Crime workshop. Mr. Eliopoulos complimented Chief Schroeder for a job well done.

Secondly, he attended the Palm Beach County League of Cities Workshop meeting a couple of weeks ago and some House Representatives attended. Mr. Eliopoulos stated he met with Representative Adam Hasner who clearly felt the City of Delray Beach is spending too much money. Mr. Eliopoulos feels we need to get more involved and speak about how it is going to affect us and what we are spending money on. Unfortunately, Mr. Eliopoulos stated this is how it is being presented at a state and local level.

Mr. Eliopoulos stated he attended a traffic light dedication at Tropic Isles.

He commented about the Spady Museum Groundbreaking Ceremony.

Mr. Eliopoulos stated he met with Bexley Park Board Members and they want to get involved with the budget with regard to parks. He stated they have indicated that there is a lot that they can live without in order to help the city out and still be happy. Mr. Eliopoulos stated he also met with the Fire Department Union and they are getting creative on ways they can actually cut down on some spending.

Lastly, he stated the Blue Ribbon Task Force met and their recommendations will be presented at the Workshop Meeting.

**13.C.3.**      **Mr. McDuffie**

Mr. McDuffie stated he had the privilege to attend the Youth Vocational School Graduation with Commissioner Eliopoulos. He stated this was a very heartwarming event and is tremendous for the community.

Secondly, Mr. McDuffie stated he attended the Cinco de Mayo dinner and commented about the good things that come out of this event. He noted that in the follow-up banquet the children are rewarded with tuition for their college education. He stated as a result of that Cinco de Mayo is not only something that is enjoyable for the community but we are also rewarding the youth in this community from the funds that they reap from the dinner event. Mr. McDuffie suggested that the City get with representatives from Cinco de Mayo to find ways to bring their attendance up. He stated he was very excited to be there and it was a very rewarding experience.

Lastly, Mr. McDuffie stated he attended the League of Cities Gala to see the new President installed and had a wonderful time. He stated the Board of Directors is tremendous.

**13.C.4.**      **Mayor Ellis**

Mayor Ellis thanked the entire Commission for helping fill in for her over the last few weeks while she was recovering from foot surgery.

Secondly, Mayor Ellis commented on the Home Rule Initiative and stated one of the Palm Beach County Commissioners is actively lobbying against this Home Rule Initiative. She stated there are 11 municipalities (out of 38) who have not signed up for this and she reminded the Commission that when there are events that they are attending or speaking at to have petitions with them. She stated the Commission can let people know up front that they have those petitions and pick up the ones that are signed. She would really like for the organization that is heading this up to see petitions coming back from Delray Beach. Mayor Ellis stated the organization is still working with the County Commission to see if they can get this through the County Commission and not have to have the petitions. Mayor Ellis stated the Primary Election has been moved to January 29, 2008 and this would be the date for which these petitions would need to be completed. Mayor Ellis stated this is an important issue to Delray Beach and all of the other municipalities that have signed on.

She stated everyone is wondering what the State Legislature is going to do about property taxes and we have had some Town Hall meetings from our State Legislators, the Palm Beach County Commission, as well as the Governor. She stated in true Delray style she is proposing that we have our own summit with the citizens of Delray Beach so that they might let the Commission know where they feel like some of these cuts can be made. Mayor Ellis stated it would strictly be an open microphone comment type forum and everyone would have approximately 2-3 minutes to address the specific issues of reduced revenues and property taxes. She also suggested receiving

input from homeowners associations and people who are non-profits. Mayor Ellis stated the tentative date is Tuesday, June 12, 2007 from 7:00-8:30 p.m. She requested that this be advertised and encouraged our citizens to attend.

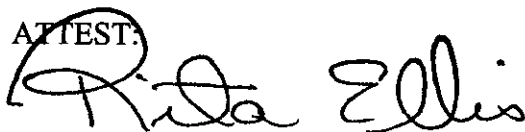
The City Manager stated the Workshop meeting can be held from 6:00-7:00 p.m. in the First Floor Conference Room of City Hall and the Public Input Meeting for the Budget can be held at Old School Square in the Crest Theatre from 7:00-8:30 p.m. Mayor Ellis stated she is going make sure that people who speak stay on point and that we have civility and a true dialog from our citizens on this issue. Mr. Eliopoulos suggested that staff give a presentation in laymen's terms regarding the City's budget. Mr. McDuffie suggested using the Finance Department's presentation from the Resident's Academy and stated this would be a great introduction. Mr. McDuffie expressed concern about whether or not staff can get the word out quickly because he stated this is awfully short notice. The City Manager stated staff can notify the homeowners' associations and the non-profits via letters or emails. Mr. McDuffie suggested that Ivan Ladizinsky, Public Information Officer send an email blast and/or a broadcast. The City Manager stated one of the reasons for suggesting that date is because of the special session and if anything comes out of the special session then the City of Delray Beach would need to communicate with the legislators in a timely matter. Alice Finst stated she understands there are facilities at Old School Square for live cable and maybe that would be an opportunity to broadcast the meeting. Mayor Ellis stated staff will check into this.

Mayor Ellis stated she attended the Spady event and it was well attended. She stated they are very excited about their Phase II and are moving on.

She apologized for missing the Vocational Charter School Graduation and thanked Commissioner McDuffie and Commissioner Eliopoulos for attending. Mayor Ellis stated she spoke with the Principal to let her know how proud she is that this is a facility of ours and truly good things are coming from it.

There being no further business, Mayor Ellis declared the meeting adjourned at 8:32 p.m.

  
\_\_\_\_\_  
City Clerk

ATTEST:  


\_\_\_\_\_  
MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on Monday, June 4, 2007, which Minutes were formally approved and adopted by the City Commission on June 19, 2007.

  
\_\_\_\_\_  
City Clerk

**NOTE TO READER:**

If the Minutes you have received are not completed as indicated above, this means they are not the official Minutes of the City Commission. They will become the official Minutes only after review and approval which may involve some amendments, additions or deletions as set forth above.

IN THE CITY COMMISSION  
CHAMBERS OF THE CITY OF  
DELRAY BEACH, FLORIDA

**ORDER OF THE CITY COMMISSION  
OF THE CITY OF DELRAY BEACH, FLORIDA**

1. This appeal of the approval of a Certificate of Appropriateness for the new construction of a single family residence located at 706 SE 2<sup>nd</sup> Street has come before the City Commission. Applicant has submitted a revised plan for review. The City Commission was the authority to add conditions to its determinators, per LDR Section 2.4.7(E)(4)(b). Thus, the order will be based on the revised plan which will be deemed to be a condition of this Board Order.

2. The Appellants, Appellee and City staff presented documentary evidence and testimony to the City Commission pertaining to the appeal of the approval of a Certificate of Appropriateness for the new construction of a single family residence located at 706 SE 2<sup>nd</sup> Street. All of the evidence is part of the record in this case. Required findings are made in accordance with Subsections I, II and III.

**I. LDR REQUIREMENTS**

a. LDR Section 4.5.1(E)(4), 4.5.1(E)(7) and 4.5.1(E)(8)(a-k), "Development Standards" provides guidelines in evaluating Certificates of Appropriateness for the alteration or addition of exterior architectural features

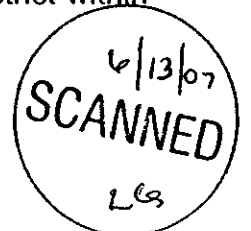
**Are these LDR Sections met?**

Yes 3 No 1

**II. DELRAY BEACH HISTORIC PRESERVATION DESIGN GUIDELINES:**

The Delray Beach Historic Preservation Design Guidelines suggest the following which apply with respect to the subject application:

- The relationship of new construction adjacent to significant historic resources can either enhance or detract from the historic setting of the district. It does not appear that the structure, as proposed, would enhance the historic district within which it is located.



Item 9.A

- All new construction should complement the historic architecture of the district. While the style may be appropriate, the large mass, scale, and volume is not complementary.
- The character of the massing should be compatible with the surrounding buildings. The mass of the proposed structure clearly outweighs that of the surrounding buildings, inclusive of the adjacent two-story structures located immediately to the north and south.

Have the overall objectives of the Delray Beach Historic Preservation Design Guidelines been met?

Yes   3   No   1  

**III. THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION:**

The Secretary of the Interior's Standards for Rehabilitation recommend:

New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment. (Standard 9)

Have the overall objectives of the Secretary of the Interior's Standards for Rehabilitation been met?

Yes   3   No   1  

3. The City Commission has applied the LDR requirements in existence at the time the original site plan was submitted.

4. This decision is consistent with the goals, policies and objectives of the City's Comprehensive Plan.

5. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses supporting these findings.


6. Based on the entire record before it, the City Commission approves \_\_\_\_\_ denies   x   the appeal and upholds the decision of the Historic Preservation Board to approve the Certificate of Appropriateness (COA) and accepts the revised plan as a binding condition on the decision of the Historic Preservation Board and hereby adopts

this Order this \_\_\_\_\_ day of June 4, 2007, by a vote of   3   in favor and   1   opposed.

ATTEST:



Chevelle Nubin  
City Clerk

  
Rita Ellis, Mayor



# FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

NAME—FIRST NAME—MIDDLE NAME Liopoulos, Gary P.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Delray Beach City Commission
HOME ADDRESS 205 George Bush Boulevard	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY COUNTY Delray Beach, Florida 33444 Palm Beach	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED June 4, 2007	NAME OF POLITICAL SUBDIVISION:  MY POSITION IS:
<input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

**PRIOR TO THE VOTE BEING TAKEN** by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

**WITHIN 15 DAYS AFTER THE VOTE OCCURS** by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

## APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

### IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

## DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Gary P. Eliopoulos, hereby disclose that on June 4, 2007:

(a) A measure came or will come before my agency which (check one)

inured to my special private gain or loss;

inured to the special gain or loss of my business associate, Kupi & Eliopoulos Architects, P.A.;

inured to the special gain or loss of my relative, \_\_\_\_\_;

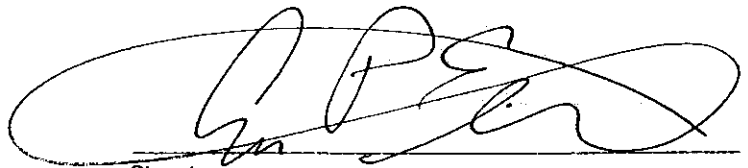
inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or

inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

The measure before my agency and the nature of my conflicting interest in the measure is as follows:

June 4, 2007

Date Filed



Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A FINE PENALTY NOT TO EXCEED \$10,000.

IN THE CITY COMMISSION  
CHAMBERS OF THE CITY OF  
DELRAY BEACH, FLORIDA

WAIVER REQUEST FOR LAST RESORT SALOON

ORDER OF THE CITY COMMISSION  
OF THE CITY OF DELRAY BEACH, FLORIDA

1. These waiver requests have come before the City Commission on June 4, 2007.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver requests by the Last Resort Saloon. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. WAIVERS:

LDR Section 2.4.7(B)(1)(b)(i) provides that the City Commission may not consider a waiver to matters which pertain to the use of land or structures, under this section.

LDR Section 4.3.3(V)(2)(a) requires a minimum separation of 750 feet from lot line to lot line between stand alone bars. The Applicant has requested a waiver to this section to allow for the relocation of the Last Resort Saloon.

Pursuant to LDR Section 2.4.7(B)(5), prior to granting a waiver, the approving body shall make a finding that the granting of the waiver:

- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;
- (c) Shall not create an unsafe situation; and,
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

Do the waivers requested meet all the requirements of 2.4.7(B)(5)?

Yes 4 No 0


3. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the application was submitted and finds that its determinations set forth in this Order are consistent with the Comprehensive Plan.



4. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses supporting these findings.

5. Based on the entire record before it, the City Commission approves  x  denies \_\_\_ the waiver requests to LDR Sections 2.4.7(B)(1(b)(i) and 4.3.3(V)(2)(a).

6. Based on the entire record before it, the City Commission hereby adopts this Order this 4th day of June, 2007, by a vote of  4  in favor and  0  opposed.

  
\_\_\_\_\_  
Rita Ellis, Mayor

ATTEST:

  
\_\_\_\_\_  
Chevelle Nubin, City Clerk

IN THE CITY COMMISSION  
CHAMBERS OF THE CITY OF  
DELRAY BEACH, FLORIDA

**ORDER OF THE CITY COMMISSION  
OF THE CITY OF DELRAY BEACH, FLORIDA  
WAIVER REQUESTED BY HAMMOCK HOUSE**

1. These waiver requests came before the City Commission on June 4, 2007.

2. The City staff, applicant, and other persons have presented documentary evidence and testimony to the City Commission pertaining to the waiver request of Hammock House. All of the evidence is part of the record in this case.

3. Waiver: Pursuant to LDR Section 2.4.7(B)(5), prior to granting a waiver, the approving body shall make a finding that the granting of the waiver:

- (a) shall not adversely affect the neighboring area;
- (b) shall not significantly diminish the provision of public facilities;
- (c) shall not create an unsafe situation; and
- (d) does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

4. Reconstruction Necessitated by Acts of God: Per LDR Section 1.3.8 (B), permits must be submitted within one (1) year of the date of which the "Act of God" occurred and all reconstruction must be completed within three (3) years from the date of the event. The Hammock House was damaged by Hurricane Wilma in October, 2005 and the applicant has just submitted for a permit.

Should the waiver be granted?

Yes 4 No 0

Subject to the conditions that applicant apply for a building permit within one year of the date of the Board Order and complete construction within three years of the Board Order.

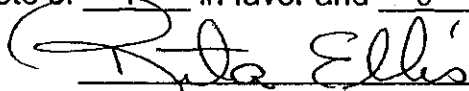


Item 9.C


5. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the original site plan was submitted.

6. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses which supports the findings set forth in this Order.

7. Based on the entire record before it, the City Commission finds consistency with the Comprehensive Plan and approves   x   denies      the waiver request subject to the conditions set forth in Paragraph no. 4, and hereby adopts this Order this      day of June, 2007, by a vote of   4   in favor and   0   opposed.

  
\_\_\_\_\_  
Rita Ellis, Mayor

ATTEST:

  
\_\_\_\_\_  
Chevelle Nubin  
City Clerk