

**AUGUST 16, 2011**

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, August 16, 2011.

**1.** Roll call showed:

Present - Commissioner Tom Carney  
Commissioner Adam Frankel  
Commissioner Angeleta E. Gray  
Mayor Nelson S. McDuffie

Absent - None

Also present were - David T. Harden, City Manager  
Brian Shutt, City Attorney  
Chevelle D. Nubin, City Clerk

**2.** The opening prayer was delivered by Reverend Nancy Norman with Unity Church of Delray Beach.

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

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

Mr. Frankel moved to approve the Agenda, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

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

Mr. Carney moved to approve the Special/Workshop Meeting Minutes of August 8, 2011, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Frankel – Yes. Said motion passed with a 4 to 0 vote.

Mrs. Gray moved to approve the Special Meeting of August 9, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 4 to 0 vote.

Mr. Frankel moved to approve the Workshop Meeting of August 9, 2011, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 4 to 0 vote.

**6. PROCLAMATIONS:**

**6.A.** None

**6.A. Fire Fighter Appreciation Month – August 2011**

Mayor McDuffie read and presented a proclamation hereby proclaiming the month of August 2011 as Fire Fighter Appreciation Month in Delray Beach, Florida. Brandy Miller stated the Muscular Dystrophy Association cannot thank the City of Delray Beach Fire-Rescue Department for their support and last year they raised over \$92,000.00.

**7. PRESENTATIONS:**

**7.A. Oath of Office administered to Newly-Appointed City Commission Member: Dr. Jay Alperin**

At this point, the City Clerk swore in Dr. Jay Alperin as the newly-appointed City Commission member.

**7.B. S.P.I.R.I.T. (Service, Performance, Integrity, Responsibility, Innovation, Teamwork) Committee Quarterly Awards Presentation**

The item before the City Commission is the recognition of three (3) quarterly winners chosen by the SPIRIT Committee for their service, performance, integrity, responsibility, innovation, and teamwork.

**Amy Alvarez, SPIRIT Co-Chairperson,** stated the first award is for Jasmin Allen, Planner in the Planning and Zoning Department, who has worked for the City for 27 years and constantly demonstrated S.P.I.R.I.T and has a history of exemplary City service and has positively impacted the City, the Community, and the general public.

**Patricia Rashkind, SPIRIT Committee Member,** stated in June the Police Department switched over to a completely new computer system called OSSI. Ms. Rashkind stated everyone was trained on it but when it became live everyone was overwhelmed and confused. Rhea Gerstenkorn came from another department and had already worked on that system. Ms. Rashkind stated they work in the records department and Ms. Gerstenkorn was always willing to help with whatever anyone needed help with on the new computer system with a smile.

**Detective Gina Gallina, SPIRIT Committee Member**, stated a few weeks ago Detective Casey Thume received a case on her case which involved an elderly victim whose only source of financial income was her once a month social security deposit. Ms. Gallina stated an unknown suspect took money out of her account unauthorized and drained her account. Detective Thume called to check on the victim she found out that the victim had no money and was in desperate need for food and medication. Detective Thume bought groceries with her own money and delivered them to the victim and has since called the victim several times to check up on her and twice bought food for her again.

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

**8.A. REQUEST FOR SIDEWALK DEFERRAL/15 N.W. 16<sup>TH</sup> STREET:**  
Approve a request to defer the installation of a sidewalk along N.W. 16th Street for the property located at 15 N.W. 16th Street.

**8.B. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)/HOUSING REHABILITATION CONTRACT AWARDS:** Approve two (2) Housing Rehabilitation contract awards for 905 S.W. 11th Terrace and 702 S.W. 1st Street to Abisett Corporation, *the lowest responsive bidder*, in the amount of \$60,815.85 for housing rehabilitation grants under the Community Development Block Grant (CDBG). Funding is available from 118-1963-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).

**8.C. RESOLUTION NO. 32-11:** Approve Resolution No. 32-11 assessing costs for abatement action required to remove nuisances on three (3) properties throughout the City.

The caption of Resolution No. 32-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PURSUANT TO CHAPTER 100 OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, ASSESSING COSTS FOR ABATING NUISANCES UPON CERTAIN LAND(S) LOCATED WITHIN THE CITY OF DELRAY BEACH AND PROVIDING THAT A NOTICE OF LIEN SHALL ACCOMPANY THE NOTICE OF ASSESSMENT; SETTING OUT ACTUAL COSTS INCURRED BY THE CITY TO ACCOMPLISH SUCH ABATEMENT AND LEVYING THE COST OF SUCH ABATEMENT OF NUISANCES; PROVIDING FOR AN EFFECTIVE DATE AND FOR A DUE DATE AND INTEREST ON ASSESSMENTS; PROVIDING FOR THE RECORDING OF THIS RESOLUTION, AND DECLARING SAID LEVY TO BE A LIEN UPON THE SUBJECT PROPERTY FOR UNPAID ASSESSMENTS.

(The official copy of Resolution No. 32-11 is on file in the City Clerk's office.)

**8.D. BID AWARD/MURRAY LOGAN CONSTRUCTION, INC.:** Approve a bid award to Murray Logan Construction, Inc. in the amount of \$194,510.00 for modifications to the Mangrove Park Boat Ramps. Funding is available from 334-4174-572-63.90 (General Construction Fund: Improvements Other/Other Improvements).

**1. CHANGE ORDER NO. 1/MURRAY LOGAN CONSTRUCTION, INC.:** Approve Change Order No. 1 with Murray Logan Construction, Inc. to decrease the total contract amount to \$188,240.00 for modifications to the Mangrove Park Boat Ramps. Funding is available from 334-4174-572-63.90 (General Construction Fund: Improvements Other/Other Improvements).

**8.E. PROPOSED MILLAGE RATE/DOWNTOWN DEVELOPMENT AUTHORITY:** Approve the Downtown Development Authority's *proposed* millage rate for FY 2012.

**8.F. REQUEST FOR AN ALCOHOLIC BEVERAGE LICENSE/OLD SCHOOL SQUARE:** Approve a request from Old School Square Inc., to allow them to obtain an alcoholic beverage license for the Old School Square site.

**8.G. SPECIAL EVENT REQUEST/17<sup>TH</sup> ANNUAL DOWNTOWN DELRAY BEACH CRAFT FESTIVAL:** Approve a special event request to endorse the 17th Annual Downtown Delray Beach Craft Festival sponsored by Howard Alan Events, Ltd. to be held October 1-2, 2011 from 10:00 a.m. to 5:00 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for use of N.E. 4th Avenue from Atlantic Avenue to N.E. 1st Street and from Atlantic Avenue to S.E. 1st Street to utilize the north end of the Hand's Parking Lot for vendor parking and to provide staff support for traffic control, security and fire inspection services.

**8.H. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period August 1, 2011 through August 12, 2011.

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

**1.** Purchase award to Island Air Conditioning in the amount of \$18,500.00 for the replacement of two (2) air-conditioning units at the Community Center. Funding is available from 334-4125-572-64.90 (General Construction Fund: Machinery & Equipment, Other Machinery & Equipment).

Mr. Frankel moved to approve the Consent Agenda as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

**9. REGULAR AGENDA:**

**9.A. WAIVER REQUESTS/BLOCK 11:** Consider approval of two (2) waivers to Land Development Regulations (LDR) Section 4.6.14(B)(6), "Sight Visibility", to reduce the forty foot (40') sight visibility triangle to 22.59' at the intersection of S.E. 5th Avenue and 6th Street, and to 32.21' at the intersection of S.E. 6th Avenue and 7th Street; and four (4) waivers to Land Development Regulations (LDR) Section 4.6.9(D)(3)(c)(2), "Stacking Distance", to allow reduction of the stacking distance from the required fifty feet (50') for parking lots with 51 or more spaces to 27.95' along S.E. 5th Avenue, 32.56' along S.E. 7th Street, 43.5' along S.E. 6th Street and 32.57' along S.E. 6th Avenue for Block 11. *(Quasi-Judicial Hearing)*

Mayor McDuffie read the City of Delray Beach Quasi-Judicial rules into the record for this item and all subsequent items.

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

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

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-057 into the record.

Mr. Dorling stated this item is for six (6) waivers from two (2) sections of the Code in association with a Class V approval for Block 11 located between southbound and northbound Federal Highway south of S.E. 6<sup>th</sup> Street. He stated it is currently vacant with the exception of a salon. Mr. Dorling stated the Class V site plan that was approved for this includes 18,590 square feet of retail, 2,751 square feet of mezzanine, and a future 5,022 square feet bank. The first two waivers relate to site visibility triangles which are required to be 40 feet and the request is for reduction to 22 feet and 32 feet. Mr. Dorling stated given the one-way traffic staff believes these waivers are supportable. Mr. Dorling stated the required findings are made to LDR Section 2.4.7(B)(5). He stated the other four waivers relate to a requirement for stacking and there is a minimum 50 foot stacking when you have more than 21 parking spaces within a parking lot that is usually associated with a single entry or exit point. Mr. Dorling stated given the multiple entrances and exits staff also recommends support of these waiver reductions from 50 to 27.95 to 32.56 to 32.57 and 43.5 feet. These six (6) waivers were considered by the Site Plan Review and Appearance Board (SPRAB) as part of the Class V site plan approval and the Board recommended approval of all six (6) waivers.

**Mike Covelli (Applicant)**, stated they meet the standards for granting the waivers.

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

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. Carney moved to adopt the Board Order as presented, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

**9.B. WAIVER REQUEST/THE OFFICE:** Consider approval of a waiver request to Land Development Regulations (LDR) Section 6.3.3(F)(2), “Regulations Governing the Use, Design, and Maintenance of a Sidewalk Café”, relating to the placement of sidewalk furniture adjacent to a street for The Office located at 201 East Atlantic Avenue. (*Quasi-Judicial Hearing*)

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

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Frankel stated he has not had any new discussions other than the ones he disclosed at the August 2, 2011 meeting and he emailed Mrs. Butler since the August 2, 2011 meeting and Mr. Al Berg replied to the email. Mrs. Gray stated she has not have had any new conversations other than the ones she had at the last meeting and also spoke to Mrs. Butler. Mayor McDuffie stated he had a discussion with Attorney Jeffrey Lynne. Mr. Carney stated he had a discussion with Attorney Jeffrey Lynne briefly after his meeting with staff regarding his waiver request and spoke with Mrs. Butler. Dr. Alperin stated he had communication with Attorney Jeffrey Lynne, the City Attorney and the City Manager.

Lula Butler, Director of Community Improvement, stated this item is consideration of a request from the Office Restaurant pursuant to LDR Section 2.4.7(B)(2) for a waiver to Section 6.3.3(F)(2) relating to the placement of sidewalk furniture adjacent to a street. Mrs. Butler stated the applicant requests a waiver to the requirements to Section 6.3.3(F)(2) that governs the tables and chairs related to furniture and requiring a two (2) foot setback from the curb when it is adjacent to a travel lane adjacent to a street. She stated the sidewalk ordinance was modified in 2010 to include this provision. Mrs. Butler stated if the Commission chooses to grant the request staff recommends that the owner be required to use 2 seat tables for a minimum of 80% of the seats that will be assigned and that no more than 20% of those seats be 4 seat tables to minimize the encroachment into the required two foot setback from the curb and ensure the five foot pedestrian access. Staff recommends approval of the waiver request to LDR Section 6.3.3.(F)(2) with the condition that the tables used along Pineapple Grove are limited to 80% small 2 seat tables, 20% 4

seaters and that the five foot pedestrian access be strictly maintained.

**Jeffrey Lynne, Attorney with Weiner and Lynne, P.A., 10 S.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444 (representing the Applicant)**, stated the applicant agrees to the conditions set forth in the staff report and believes they have met all the standards for the waiver.

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

**Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach and member of the Alliance)**, stated this intersection was already hit with an accident and others have been hit with an accident so by putting 2 seaters where they are still the same amount of distance away from the car bumpers does not really do anything to solve the problem. Dr. Kirson stated a minor adjustment is not an excuse for people's life to be put in jeopardy.

There being no one else from the public who wished to address the Commission regarding the waiver request, the public hearing was closed.

Mr. Lynne stated there has never been an accident at this intersection; however, there was an incident coming off Atlantic Avenue and Swinton Avenue where the speeds are much higher. He stated he reviewed the historical records of all incidents at this location and the only incidents have been people hitting each other's bumpers and those were submitted as part of the record. Mr. Lynne stated there has never been a single safety incident at this intersection. Mr. Lynne stated Mr. Manero spends his own money and time to have an employee to do nothing but police the sidewalk on 2<sup>nd</sup> Avenue to make sure the five foot clear zone is maintained. Mr. Lynne stated there is no safety issue and does not accept the factual representation contrary to the record.

Mr. Frankel stated he reviewed the applicant's letter dated August 5, 2011 and attached are numerous traffic accident reports with accidents right in this area. He stated he walks past this area a couple times a day and witnesses cars speeding through the intersection and has been out on the corner of Atlantic Avenue and Swinton Avenue on two occasions and have seen cars go up on the curb. Mr. Frankel stated he disagrees with the five foot zone always being maintained because on Friday and Saturday night around 9:00/10:00 p.m. there is a lot of people in that area and does not believe that is always done. Mr. Frankel stated while he appreciates the fact that the tables have been reduced so the number of people are not as plentiful in this area all it takes is one car to go up over the curb and people can be injured and the City could be held liable. Mr. Frankel stated he cannot support the waiver because LDR Section 2.4.7(B)(5)(c).

Mrs. Gray stated she supports the waiver and staff's recommendation. She stated the two feet setback is a help and feels they have been doing a better job with the five foot pedestrian access. Mrs. Gray stated with the seating being smaller helps and also

feels that if there is going to be an accident there it will not matter about the two feet because someone is still going to get hurt and suggested that the speed limit in this area be addressed.

Mr. Carney stated he was out on Taste on the Avenue and noted that the area was passable and noticed that there had already been an effort made in the table configuration. In his opinion, Mr. Carney stated they were able to preserve the passageway and supports the waiver request.

Dr. Alperin expressed concern over precedent setting and stated with regard to the findings LDR Section 2.4.7(B)(5)(d) states "does not result in the grant of special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner." Therefore, Dr. Alperin stated this is specific to this piece of property and does not entitle anyone else this specific waiver and he is comfortable with supporting the waiver because of that.

Mayor McDuffie stated we need to look at the entire Avenue and stated if the City wants to make a safety standard we need to start taking a look at bollards on the edge of the sidewalks up and down Atlantic Avenue and up and down Pineapple Grove that have the ability to stop an automobile. He stated once a car turns off one of the streets nothing is going to stop it from going into the tables and patrons and suggested that this be looked at all over the City.

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. Carney moved to adopt the Board Order subject to the conditions, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – No. Said motion passed with a 4 to 1 vote, Commissioner Frankel dissenting.

**9.C. NON-EXCLUSIVE LICENSE AGREEMENT/DELRAY BEACH ATHLETIC CLUB, INC.:** Consider approval of a Non-Exclusive License Agreement between the City and the Delray Beach Athletic Club, Inc. for use of the Seacrest Soccer Complex and Hilltopper Stadium.

Mayor McDuffie introduced George Linley, Executive Director of the Palm Beach County Sports Commission.

**George Linley, Executive Director of the Palm Beach County Sports Commission,** stated over the last year the City of Delray Beach Parks and Recreation Department have been a great partner for the Palm Beach County Sports Commission and appreciates the City's partnership in helping them grow sports tourism and economic development. Mr. Linley stated they have a lot of good sporting events planned for this coming year in Delray Beach.

Linda Karch, Director of Parks and Recreation, stated this item is a non-exclusive license agreement between the City of Delray Beach and the Delray Beach Athletic Club for use of the Seacrest Soccer Complex and Hilltopper Stadium for five (5) years. Ms. Karch stated under terms of this agreement the City will allow the Athletic Club to have non-exclusive use of the Soccer Complex, the concession building, storage and bathrooms as well as the non-exclusive use of Hilltopper Stadium subject to the City's Lease Agreement with the School Board for same. The Athletic Club will indemnify the City and provide liability insurance on a certificate listing the City as additional insured, provide coaches for soccer/lacrosse, clean up after each use, and coordinate the use of the Soccer Complex and Hilltopper Stadium with the City's Park and Recreation Director in advance of each season.

Terrill Pyburn, Assistant City Attorney, stated she is present for any questions the Commission may have.

Mr. Carney stated the amount of use that will be a result of this agreement. He asked who pays for the wear and tear. Ms. Karch stated the City maintains the fields. Mr. Carney stated there is a private entity that is going to be using the facility and asked if there should be some type of restitution for expense the City incurs for maintaining the facility.

The City Manager stated the Little League is exactly the same structure.

Ms. Pyburn noted for clarification that the School Board also has the use of this field as well as St. Vincent Ferrer Catholic Church and occasionally the Delray Rocks. In addition, Ms. Pyburn stated XPE (a/k/a Prep and Sports) uses a small portion of the field and they have a separate license agreement.

Ms. Karch stated this does not increase the usage of the field put is just putting in writing what has actually been going on for several years. She stated last year a proposal came before the Commission to charge a per head fee for the different organizations and that was tabled for several reasons. However, Ms. Karch stated this is being considered to bring back before the Commission at a later date.

Mr. Carney stated he likes user fees because someone who does not use an athletic field a portion of their tax dollars are going towards something they never use although he understands it is good for the community at large. The City Manager stated another way to look at is that these organizations provide these sports for the youth in the community unlike basketball and Rocks football where the City is providing it through the Parks and Recreation Department at a considerable additional expense. The City not only maintains the facility but is also staffing the program. Mr. Carney stated he thinks these are great programs but suggested that we find additional revenue sources to defray some of the costs if possible.

Mrs. Gray expressed concern over the scheduling of the field and stated in the past there were some scheduling conflicts with other organizations. She stated the soccer and lacrosse will be using the field 10 or 11 months out of the year and asked how this will affect the City with having other organizations come in and do programs. Ms. Karch stated the programs are scheduled through the recreation office so even though one organization would have the field usage for a certain period of time that if there are events the City works it out with the sports provider and noted the Spring Fling is scheduled to come in the Spring and staff has already discussed this with the Delray Beach Athletic Club about setting out those dates so there will not be a conflict. Mrs. Gray stated the City shuts down the field a certain amount of time out of the year and asked if staff can make sure that is included in the contract and asked if Prep and Sports contract is similar to this contract. Ms. Pyburn stated staff provided that the Parks and Recreation Director has final say with regards to scheduling and referenced page 3, Section 4.e., which states "Athletic Club shall be responsible for coordinating use of the Soccer Complex and Hilltopper Stadium with the Parks Director in advance of each season. Athletic Club shall notify the Parks Director or his/her designee at least five (5) days prior to any schedule change. The City Parks Director shall have the final say regarding scheduling for both the Soccer Complex and Hilltopper Stadium."

Mrs. Gray stated last year there was a problem where Prep and Sports was there and the Delray Athletic Club needed to use the field and there were conflicts with times. Furthermore, Mrs. Gray stated if this is put in one contract then it needs to be in the other as well. Ms. Pyburn stated there are specific times listed in the contract with Prep and Sports; however, their contract is up for renewal in March 2012.

The City Attorney stated if fees come back in front of the Commission they may want to have a clause in the agreement that if the City enacts a city-wide fee that applies to all participates in sports that likewise that it would apply to any participants that are part of the Soccer Complex.

Mrs. Gray stated she hopes that Parks and Recreation takes on the responsibility to make sure that the City is scheduling appropriately for everyone because the soccer group felt they were in charge of the scheduling. Mr. Carney concurred with comments expressed by Mrs. Gray and commented about the equipment being stored on-site and wants to make sure that the City has no liability should anything happen to that equipment. Ms. Karch stated she believes the agreement states that the City is not responsible for their equipment.

Brief discussion followed between the City Attorney, Assistant City Attorney, and the City Commission.

Mrs. Gray stated she supports the user fees for everyone but feels we need to generate more revenue for our programs and maintenance.

Dr. Alperin stated there are certain facilities that you provide to its citizenship and feels you cannot charge for everything.

Mayor McDuffie supports staff's recommendation and thanked them for all their work.

Mr. Frankel moved to approve a Non-Exclusive License Agreement between the City and the Delray Beach Athletic Club, Inc. for the use of the Seacrest Soccer Complex and Hilltopper Stadium as amended, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:00 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

**10. PUBLIC HEARINGS:**

**10.A. PUBLIC COMMENTS/FY 2012 PROPOSED BUDGET:** The City Commission will hear public comments, if any, regarding the FY 2012 Proposed Budget at this time.

None.

At this point, the time being 7:02 p.m., the Commission moved back to **Item 9.D. of the Regular Agenda.**

**9.D. UMBRELLA AGREEMENT FOR BANKING SERVICES/BANK OF AMERICA:** Consider approval of an umbrella agreement with Bank of America to provide government banking services through September 30, 2014.

David Boyd, Finance Director, stated staff requests approval of a banking agreement with Bank of America and noted Bank of America is currently the City's banking partner but this agreement includes the following key improvements: (1) enhanced fraud protection, (2) on-line treasury management, (3) improved checking depository services (primarily for the utility administration). Mr. Boyd stated utility administration currently receives a little over 15,000 checks per month and all of those are manually processed, deposited, and reconciled. Mr. Boyd stated this agreement will give staff the capability to deposit those checks electronically which will greatly improve the efficiency of utility administration and internal control. The cost is approximately \$66,000.00 at today's volume and is included in the 2012 budget.

Mr. Carney moved to approve the Umbrella Agreement for banking services between Bank of America and the City of Delray Beach to provide government banking services through September 30, 2014, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

**9.E. STATE INFRASTRUCTURE BANK (SIB) APPLICATION/FLORIDA DEPARTMENT OF TRANSPORTATION:** Consider approval of an application to the State Infrastructure Bank (SIB), Florida Department of Transportation (FDOT) for a loan in the amount of \$1,856,708.00 to provide the balance of funding needed for the US 1 Beautification project from just south of S.E. 10th Street to just north of George Bush Boulevard.

Randal Krejcarek, City Engineer, stated staff requests approval of this item for a Department of Transportation State Infrastructure Bank (SIB) revolving loan application that staff would like to submit and the deadline is August 31, 2011. Mr. Krejcarek stated this is for the US-1 Beautification Project just south of S.E. 10<sup>th</sup> Street to just north of George Bush Boulevard on both northbound and southbound US-1. Mr. Krejcarek stated the total project is estimated to be around \$9.1 million and the City has approximately \$7.2 million committed from the State and Federal grants and received \$178,000.00 from developers along the corridor as part of their contribution to the project. Mr. Krejcarek stated there is also approximately \$625,000.00 that is going to come out of the Water and Sewer Fund and the Stormwater Fund combined going toward this project which will leave the City approximately \$1.8 million short of the estimated cost. Mr. Krejcarek stated the State found out about this loan application process and stated that the project is a perfect fit for it. Mr. Krejcarek stated Diane Colonna, Executive Director of the Community Redevelopment Agency (CRA), took this to the CRA Board last Thursday and they approved the loan. Staff proposes a five year loan for the \$1.8 million over five years at 2.5% and the interest rate is negotiable.

Dr. Alperin moved to approve to authorize staff to submit the applicant to the State Infrastructure Bank (SIB), seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

**9.F. OFFER OF SETTLEMENT IN DEMETRIA BRIDGETT V. CITY OF DELRAY BEACH:** Consider an Offer of Settlement in the total amount of \$20,000.00 in Demetria Bridgett v. City of Delray Beach. Staff recommends approval.

The City Attorney stated this item came before the City Commission several meetings ago the settlement offer was \$55,000.00 and the Commission was not in favor of that amount. At this point, the City Attorney stated the settlement offer is for \$20,000.00 and staff recommends approval of this provided staff receives the appropriate releases from the plaintiff.

Dr. Alperin moved to approve the Offer of Settlement in the total amount of \$20,000.00 in Demetria Bridgett v. City of Delray Beach, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

**9.G. APPOINTMENTS TO THE PLANNING & ZONING BOARD:** Appoint three (3) regular members to the Planning & Zoning Board to serve two (2) year terms ending August 31, 2013. Based upon the rotation system, the appointments will be made by Commissioner Frankel (Seat #3), Commissioner Gray (Seat #4) and Mayor McDuffie (Seat #5).

Mr. Frankel moved to appoint Gerald Franciosa as a regular member to the Planning and Zoning Board to serve a two (2) year term ending August 31, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Gray moved to reappoint Alson Jacquet as a regular member to the Planning and Zoning Board to serve a two (2) year term ending August 31, 2013, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

Mayor McDuffie stated he wished to reappoint Connor Lynch as a regular member to the Planning and Zoning Board to serve a two (2) year term ending August 13, 2013. Mr. Frankel so moved, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

**9.H. APPOINTMENTS TO THE SITE PLAN REVIEW AND APPEARANCE BOARD:** Appoint one (1) regular member to serve an unexpired term ending August 31, 2012 and two (2) regular members to serve two (2) year terms ending August 31, 2013 to the Site Plan Review & Appearance Board. Based upon the rotation system, the appointments will be made by Commissioner Gray (Seat #4), Mayor McDuffie (Seat #5), and Commissioner Carney (Seat #1).

Mrs. Gray moved to appoint Shannon Dawson as a regular member to the Site Plan Review and Appearance Board to serve an unexpired term ending August 31, 2012, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

Mayor McDuffie stated he wished to reappoint Scott Porten as a regular member to the Site Plan Review and Appearance Board to serve a two (2) year term ending August 31, 2013. Mr. Frankel so moved, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

Mr. Carney moved to appoint Sigurdur Hardester as a regular member to the Site Plan Review and Appearance Board to serve a two (2) year term ending August 31, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes.

Said motion passed with a 5 to 0 vote.

**9.I. APPOINTMENTS TO THE HISTORIC PRESERVATION BOARD:**

Appoint one (1) regular member to serve an unexpired term ending August 31, 2012 and three (3) regular members to serve two (2) year terms ending August 31, 2013 to the Historic Preservation Board. Based upon the rotation system, the appointments will be made by Commissioner Carney (Seat #1), Commissioner Frankel (Seat #3), Commissioner Gray (Seat #4) and Mayor McDuffie (Seat #5).

Mr. Carney moved to appoint Ana Maria Aponte as a regular member to the Historic Preservation Board to serve a two (2) year term ending August 31, 2012, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

Mr. Frankel moved to appoint Iris McDonald as a regular member to the Historic Preservation Board to serve a two (2) year term ending August 31, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Gray stated she would like to defer her appointment to the next regular meeting of September 6, 2011.

Mayor McDuffie stated he wished to appoint Ron Brito as a regular member to the Historic Preservation Board to serve a two (2) year term ending August 31, 2013. Mr. Frankel so moved, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

**9.J. APPOINTMENTS TO THE FINANCIAL REVIEW BOARD:**

Appoint one (1) regular member to serve an unexpired term ending July 31, 2012 and one (1) alternate member to serve a two (2) year term ending July 31, 2013 to the Financial Review Board. Based upon the rotation system, the appointments will be made by Mayor McDuffie (Seat #5) and Commissioner Carney (Seat #1).

Mayor McDuffie stated he wished to appoint Bradley Winney as a regular member to the Financial Review Board to serve an unexpired term ending July 31, 2012. Mr. Frankel so moved, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

Mr. Carney moved to appoint Sharon Roth as an alternate member to the Financial Review Board to serve a two (2) year term ending July 31, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion

passed with a 5 to 0 vote.

**9.K. APPOINTMENT TO THE GREEN IMPLEMENTATION ADVANCEMENT BOARD:** Appoint one (1) alternate member to serve a two (2) year term ending July 31, 2013 to the Green Implementation Advancement Board. Based upon the rotation system, the appointment will be made by Commissioner Frankel (Seat #3).

Mr. Frankel moved to appoint Laura Reines as an alternate member to the Green Implementation Advancement Board to serve a two (2) year term ending July 31, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

**9.L. APPOINTMENTS TO THE BOARD OF ADJUSTMENT:** Appoint two (2) regular members and two (2) alternate members to the Board of Adjustment to serve two (2) year terms ending August 31, 2013. Based upon the rotation system, the appointments will be made by Commissioner Carney (Seat #1), Commissioner Frankel (Seat #3), Commissioner Gray (Seat #4) and Mayor McDuffie (Seat #5).

Mr. Carney moved to appoint Harvey Starin as a regular member to the Board of Adjustment to serve a two (2) year term ending August 31, 2013, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

Mr. Frankel moved to reappoint Michael Park as a regular member to the Board of Adjustment to serve a two (2) year term ending August 31, 2013, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Gray moved to reappoint Isabelle Alarie as an alternate member to the Board of Adjustment to serve a two (2) year term ending August 31, 2013, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

Mayor McDuffie stated he wished to appoint Dale Miller as an alternate member to the Board of Adjustment to serve a two (2) year term ending August 31, 2013. Dr. Alperin so moved, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

**9.M. APPOINTMENTS TO THE POLICE ADVISORY BOARD:** Appoint two (2) regular members to the Police Advisory Board to serve unexpired terms ending July 31, 2012. Based upon the rotation system, the appointments will be made by

Commissioner Gray (Seat #4) and Mayor McDuffie (Seat #5).

Mrs. Gray stated she would like to defer her appointment to the next regular meeting of September 6, 2011.

Mayor McDuffie stated he wished to appoint Wyana Claxton as a regular member to the Police Advisory Board to serve an unexpired term ending July 31, 2012. Mr. Carney so moved, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

**9.N. APPOINTMENTS TO THE KIDS AND COPS COMMITTEE:**  
Appoint three (3) At-Large-Representatives and one (1) Citizen-At-Large-Representative to the Kids and Cops Committee to serve two (2) year terms ending July 31, 2013. Based upon the rotation system, the appointments will be made by Commissioner Frankel (Seat #3), Commissioner Gray (Seat #4), Mayor McDuffie (Seat #5) and Commissioner Carney (Seat #1).

Mr. Frankel moved to reappoint Francis Moschette (At-Large Representative) to the Kids and Cops Committee to serve an unexpired term ending July 31, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Gray stated she wished to defer her appointment to the next regular meeting of September 6, 2011. Mrs. Gray asked why Village Academy has not had a representative for the past two years. The City Clerk stated this is the school's choice and staff can contact the school to find out.

Mayor McDuffie stated he wished to appoint Kenneth Zeno (At-Large Representative) to the Kids and Cops Committee to serve a two (2) year term ending July 31, 2013. Mr. Frankel so moved, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

Mr. Carney moved to reappoint Cory Cassidy (Citizen-at-Large) to the Kids and Cops Committee to serve a two (2) year term ending July 31, 2013, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

**9.O. RECONSIDERATION OF A VOTE FOR ORDINANCE NO. 20-11:**  
Consider a request to reconsider the vote for Ordinance No. 20-11 made at the August 2, 2011 Regular Commission Meeting.

The City Attorney stated the Commission will be discussing whether or not they would like to reconsider Ordinance No. 20-11 and that ordinance was voted down on second reading on the August 2, 2011 City Commission meeting. The City Attorney stated if the City Commission votes to reconsider the ordinance then it would come before them again on September 6, 2011 for a first reading and September 20, 2011 for a second reading provided that it passes on first reading on September 6, 2011 if the Commission votes to reconsider it.

Mr. Carney stated the Commission needs to reconsider staff's recommendation for this ordinance.

Mr. Frankel stated he would need more information on why this should be reconsidered because he feels the Commission has had full discussion regarding this. Mr. Frankel stated he was not convinced based upon the testimony of the public nor the information provided nor from the Commission's discussion that it was the right thing for our city.

Mrs. Gray stated she supports the reconsideration.

Dr. Alperin stated he does not feel the Commission had all the information and feels it should be reviewed one more time.

Mayor McDuffie stated if we increase the parking requirements for restaurants so that we can get retail in what is the plan. He stated the City has been anxiously awaiting the arrival of a new Economic Development Director for the community and that should be a job that should be placed in the hands of that man or lady when they arrive and have them take an inventory of the downtown and inform the Commission about the mix of businesses downtown and whether or not the City is in healthy shape or unhealthy shape. Mayor McDuffie stated he will not support rehearing it.

Mr. Carney moved to reconsider Ordinance No. 20-11 with the provision that it not be retroactive, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – No; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – No. Said motion passed with a 3 to 2 vote, Mayor McDuffie and Commissioner Frankel dissenting.

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.**

None.

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

**11.B.1. None.**

**12.**            **FIRST READINGS:**

A.     None

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

**13.A.**           **City Manager**

The City Manager stated he attended the Florida League of Cities Conference on Saturday and Commissioner Gray attended the entire conference. The City Manager stated the City of Delray Beach received the 2011 Florida Citizenship Award for connecting with the schools for the best civics education program in the State.

Secondly, the City Manager stated the City received an invitation from the ATP regarding a reception in London on November 21-22, 2011.

Lastly, the City Manager stated with regard to the research that is being done on the downtown parking up until 2001 if you converted from retail to restaurant you did not have to provide any additional parking. He stated conversions of use did not require additional parking and in 2001 it was amended so that if you convert to a restaurant you have to provide the six spaces; however, prior to that date, you only had to provide the six spaces per 1,000 square feet for new floor space but not for existing floor space.

**13.B.**           **City Attorney**

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

**13.C.**           **City Commission**

**13.C.1.**        **Dr. Alperin**

Dr. Alperin thanked the City Commission for the expression of confidence by selecting him and stated he plans to do his best to represent the interest of our citizenry.

**13.C.2.**        **Mr. Carney**

Mr. Carney stated he received some emails this week as it relates to the fire service contract with the Town of Gulf Stream and stated some of the comments he received related to the fact that there is going to be another development coming along down the road and this should be accounted for now even though the CO's on those projects are 2-3 years away. He suggested that a provision be put in the contracts regarding the percentages. Mr. Carney stated he wants to make sure that when the project has a CO (Certificate of Occupancy) and these new units are there, that we have some provision to be able to adjust the price accordingly.

The City Manager stated the whole contract is based on population not unit count. The City Manager stated for the last three agreements there was a base for a set

number of years and then there was a percentage increase each year. He stated this current contract is 5% a year or the Consumer Price Index whichever is greater and the thinking was that would cover any population growth that they have. Mr. Carney stated he does not want to leave the possibility that there could be within an annexed area a development of a magnitude of such that it could have some economic impact on our contract.

Dr. Alperin asked if the City of Delray Beach has Fire and Rescue responsibilities for this development whether there are residents in it or not. The City Manager stated it has been annexed and we have an amendment staff has prepared that will go before the Town Council of Gulf Stream in September to increase what we are charging based on the fact that they annexed 16 acres.

Secondly, Mr. Carney stated he received a couple of correspondences this week related to the perceived length of time in response to public information requests. Mr. Carney stated we should inform people who submit a public information request what the system is and how we go about it so that they know that if there is a delay the reasons are spelled out for them. He stated the responses are good but he does not think people understand why the responses are not as quick as they would like.

**13.C.3.**        **Mrs. Gray**

Mrs. Gray stated she attended the Florida League of Cities convention last weekend. She stated they talked about having balance in the city and when you develop the downtown to make sure that other areas of the city are being developed as well. Mrs. Gray stated they also talked about holding the legislators in Tallahassee responsible in making sure they remember where they come from and who their constituents are.

**13.C.4.**        **Mr. Frankel**

Mr. Frankel congratulated Dr. Alperin and thanked him for his willingness to serve. In addition, Mr. Frankel stated he is not sure if there was any correspondence sent out by the City thanking the other applicants but feels it is important to thank the other applicants as well.

Secondly, Mr. Frankel stated the Spirit Awards Banquet will be held on Friday, August 19, 2011 at the Delray Beach Golf Course and noted he has been selected as the emcee.

**13.C.5.**        **Mayor McDuffie**

Mayor McDuffie stated Tastemakers was a tremendous success and they sold 500 more tickets than last year and noted it was sold out the day before the event started. He stated downtown was packed and it was great event for the community.

Secondly, Mayor McDuffie stated he attended the Grand Opening of the VFW in their new location on South Federal Highway and noted that Congressman West showed up and the turnout was great.

Mayor McDuffie commented about the Office Depot backpack give-a-way and noted they give the Mayor's office about 500 backpacks and the City gets several hundred for other organizations around the community. Mayor McDuffie stated he was invited by one of the people who were there to come to their event at the Boys & Girls Club and the gymnasium was filled from one end to the other with school supplies. He stated he will bring the name of the sponsor to the next meeting but it was a tremendous event for the community. In addition, Mayor McDuffie stated Boca Raton Medical Center performed health screenings for the parents and kids that were there.

He stated he attended Family Fun Day at Pompey Park and noted this was a great event.

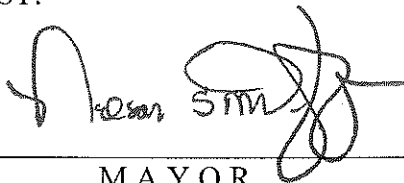
Lastly, Mayor McDuffie asked if the City of Delray Beach has an ordinance that regulates firearms in the city. The City Attorney stated staff is modifying the sections and this ordinance will be before the City Commission for first reading on September 6, 2011 and adopt it before October 1, 2011.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:53 p.m.



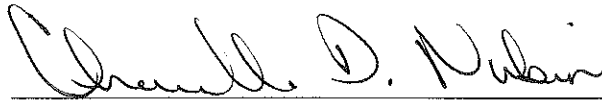
City Clerk

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 August 16, 2011, which Minutes were formally approved and adopted by the City Commission on September 6, 2011.



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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

**WAIVER REQUESTS FOR BLOCK 11**

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

1. The waiver requests regarding Block 11 have come before the City Commission on August 16, 2011.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver requests for Block 11. All of the evidence is a part of the record in this case.

I. **Waivers:** 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.

A. Pursuant to LDR Section 4.6.14(B)(6), a 40' sight visibility triangle is required to be provided at the intersection of two or more public rights-of-way. Thus, four (4) forty foot (40') sight visibility triangles are required to be met on-site. Two (2) of the intersecting rights-of-way do not meet the minimum requirement.

1. Specifically, at the intersection of SE 5<sup>th</sup> Avenue and SE 6<sup>th</sup> Street, a 22.59' sight visibility triangle is provided.

**Should this waiver be granted?**

Yes  No

2. Also, at the intersection of SE 6<sup>th</sup> Avenue and SE 7<sup>th</sup> Street, a 32.21' sight visibility triangle is provided.

**Should this waiver be granted?**

Yes  \_\_\_\_\_ No \_\_\_\_\_

B. Pursuant to LDR Section 4.6.9(D)(3)(c)(1), provisions must be made for stacking and transitioning of incoming traffic from a public street, such that traffic may not backup into the public street system. The minimum distance between a right-of-way and first parking space or aisle way in a parking lot that contains 51 or more spaces is fifty feet (50').

1. A waiver has been requested to reduce the stacking distance from the required fifty feet (50') for parking lots with 51 or more spaces to 27.95' along SE 5<sup>th</sup> Avenue.

**Should this waiver be granted?**

Yes  \_\_\_\_\_ No \_\_\_\_\_

2. A waiver has been requested to reduce the stacking distance from the required fifty feet (50') for parking lots with 51 or more spaces to 32.56' along SE 7<sup>th</sup> Street.

**Should this waiver be granted?**

Yes  \_\_\_\_\_ No \_\_\_\_\_

3. A waiver has been requested to reduce the stacking distance from the required fifty feet (50') for parking lots with 51 or more spaces to 43.5' along SE 6<sup>th</sup> Street.

**Should this waiver be granted?**

Yes  \_\_\_\_\_ No \_\_\_\_\_

4. A waiver has been requested to reduce the stacking distance from the required fifty feet (50') for parking lots with 51 or more spaces to 32.57' along SE 6<sup>th</sup> Avenue.

**Should this waiver be granted?**

Yes  \_\_\_\_\_ No \_\_\_\_\_

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

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 which supports the findings set forth in this Order.

5. Based on the entire record before it, the City Commission approves  denies \_\_\_ the waiver requests and hereby adopts this Order this 16th day of August, 2011, by a vote of 5 in favor and 0 opposed.

  
\_\_\_\_\_  
Nelson S. McDuffie, Mayor

ATTEST:

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



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

**WAIVER REQUEST FOR THE OFFICE**

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

1. The waiver request relating to the placement of sidewalk furniture adjacent to a street has come before the City Commission on August 16, 2011.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver requests for The Office. All of the evidence is a part of the record in this case.

I. **Waivers:** 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.

A. Pursuant to LDR Section 6.3.3(F)(2), tables, chairs, and related furniture shall be set back two (2) feet from the curb when it is adjacent to a travel lane of a street.

**Should the waiver to 6.3.3(F)(2) be granted?**

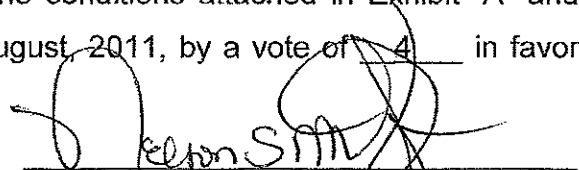
Yes   ✓   No       

3. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the annual sidewalk café license application.

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 which supports the findings set forth in this Order.

5. Based on the entire record before it, the City Commission approves ✓ denies     the waiver request subject to the conditions attached in Exhibit "A" and hereby adopts this Order this 16th day of August, 2011, by a vote of 4 in favor and 1 opposed.

  
\_\_\_\_\_  
Nelson S. McDuffie, Mayor

ATTEST:

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

## **EXHIBIT "A"**

### **Conditions of Approval of Waiver for The Office**

1. That The Office Restaurant owner shall be required to use a minimum of 80% small 2 seat tables and a maximum of 20% 4 seat tables to minimize the encroachment into the 2 foot setback from the curb and ensure the 5 foot pedestrian access is preserved.
2. That The Office Restaurant owner shall be required to submit a new site plan for review by staff.

