

MARCH 18, 2008

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., Tuesday, March 18, 2008.

1. Roll call showed:

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

Absent - None

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 "Dr." William Quick with the Delray Beach Clergy Association.

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

4. **AGENDA APPROVAL.**

Mayor Ellis noted the addition of a Presentation **Item 7.A., South County Administrative Complex – Audrey Wolf, Palm Beach County Facilities Development and Operations**, by addendum. Also, Mayor Ellis noted that **Items 8.P.1. – 8.P.8.** are now **Items 8.Q.1. – 8.Q.9.** She stated **Item 8.Q.9., Purchase Award to SunGard** was added to the Agenda by addendum.

Also, Mayor Ellis noted that **Item 12.A., Ordinance No. 08-08 (First Reading)** will be removed from the Agenda and noted that **Item 9.D., Preliminary and Final Plat/Midtown Delray is a Quasi-Judicial Hearing.**

Mr. Fetzer moved to approve the Agenda as amended, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

5. APPROVAL OF MINUTES:

Mrs. Montague moved to approve the Minutes of the Regular Meeting of March 3, 2008, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

Mr. McDuffie moved to approve the Minutes of the Special/Workshop Meeting of March 13, 2008, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. Delray Medical Center Day – March 18, 2008

Mayor Ellis read and presented a proclamation hereby proclaiming March 18, 2008 as Delray Medical Center Day. Robert Krieger, CEO with Delray Medical Center gave a few brief comments.

6.B. Commending multiple medal winners - Delray Beach 2008 Senior Games

Mayor Ellis read and presented a proclamation hereby proclaiming that **Raymond Bowles, Chris Burt, Herbert Furash, Lorig “Snag” Holmes, Raymond Lebowitz, Thomas Phillips, Ed Rangel, Rodger Ribeiro, and Abe Ulanoff** are to be commended for their many triumphs in this competition, and for their spirit and enthusiasm. Abe Ulanoff came forward to accept the proclamation and gave a few brief comments.

6.C. Child Abuse Prevention Month – April 2008

Mayor Ellis read and presented a proclamation hereby proclaiming April 2008 as Child Abuse Prevention Month. Sergio Rosario, Delray Beach Administrator of Child Welfare, Department of Children and Families came forward and gave a few brief comments. Mr. Rosario stated Palm Beach County has 82 child abuse investigators.

7. PRESENTATIONS:

7.A. South County Administrative Complex Redevelopment Study - Audrey Wolf, Palm Beach County Facilities Development & Operations

Audrey Wolf, Director of Facilities Development & Operations/Palm Beach County, stated this is a very exciting continuation to the County and City's past efforts for joint planning and redevelopment. In the 80's, the City and the County entered into an agreement to relocate the County's Court functions onto West Atlantic Avenue and provide sufficient land to ensure that this will remain the regional headquarters in the south end. She stated it has been very successful with starting the

redevelopment to the west and they are looking forward to doing the same thing on the redevelopment of Congress Avenue. Ms. Wolf stated the County shares the City's vision for the redevelopment of Congress Avenue and instead of proceeding with renovations to the buildings which were already funded, they have undertaken an analysis to determine if the existing and proposed facilities for the South County Government complex could be redeveloped in a manner more compact, urban, and more in line with the City's vision for the corridor on less property so that residual property can be made available for either lease or sale for redevelopment. This report which was jointly commissioned by both the County and the City of Delray Beach seeks to determine the types of uses, the minimum building area, the density/intensity on the residual property that must be achieved in order to maximize the revenue that they can get from the sale of the residual property which also speaks directly to how financially feasible it will be for governments to take the lead in redeveloping the property. Ms. Wolf gave a brief overview of the report for the South County Administrative Complex ("Study") and reviewed the following five (5) key action items for the City Commission: (1) Choose a preferred concept plan, (2) confirm the County's interpretation of any code interpretation assumptions that are critical to the redevelopment or that will need to be defined in the Request for Proposal (RFP), (3) consider likely funding requirements and sources for parking structures for non-County government uses, (4) identify any other City sponsored financial assistance and/or programs that can be included in the RFP, (5) identify the City's desired involvement in the County RFP.

The City Manager stated he informed Ms. Wolf that the presentation would be this evening and if the Commission has questions or things to discuss, now is a good time to do that. Furthermore, the City Manager stated then this will be brought back to the Commission on April 1, 2008 to vote on these five items that the County has asked the Commission for action on.

Brief discussion between Ms. Wolf and the Commission continued.

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

8.A. **FINAL SUBDIVISION PLAT APPROVAL/OCEAN TERRACES OF DELRAY:** Approve a final subdivision plat for Ocean Terraces of Delray, a six (6) lot townhouse development, located on the west side of Palm Trail, approximately 180' north of Bond Way.

8.B. **ACCEPTANCE OF EASEMENT DEED/CONGRESS PARK OWNER'S ASSOCIATION, INC.:** Approve and accept an easement deed between the City and Congress Park Owner's Association, Inc. for the installation of water and sewer mains outside the property lines of the Alta Congress Development.

8.C. **CHANGE ORDER NO. 1/CHAZ EQUIPMENT COMPANY, INC./WEST ATLANTIC AVENUE WATER MAIN PROJECT:** Approve Change Order No. 1 in the amount of \$30,057.50 to Chaz Equipment Company, Inc. for modifications to the asphalt trench restoration as required by the Florida Department of Transportation (FDOT) for the West Atlantic Water Main Project. Funding is available

from 441-5161-536-65.84 (Water/Sewer Fund/Other Improvements/W. Atlantic Ave. Phase III).

8.D. SERVICE AUTHORIZATION NO. 07-04/MATHEWS CONSULTING, INC./AREAS 11 AND 12 RECLAIMED WATER SYSTEMS: Approve Service Authorization No. 07-04 in the amount of \$32,087.00 to Mathews Consulting, Inc. for professional engineering services in the design of Areas 11 and 12 Reclaimed Water Systems. Funding is available from 441-5181-536-65.96 (Water/Sewer Fund/Other Improvements/Reclaimed Water Transmission).

8.E. SERVICE AUTHORIZATION NO. 07-05/MATHEWS CONSULTING, INC./ALTERNATIVE WATER SUPPLY GRANT APPLICATION: Approve Service Authorization No. 07-05 in the amount of \$5,034.00 to Mathews Consulting, Inc. for preparation and submittal of an Alternative Water Supply Grant application to the South Florida Water Management District (SFWMD). Funding is available from 441-5181-536-31.90 (Water/Sewer Fund/Professional Services/Other Professional Services).

8.F. RESOLUTION NO. 09-08/FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)/MAINTENANCE MEMORANDUM OF AGREEMENT (MMOA): Approve and adopt Resolution No. 09-08 authorizing execution of a Maintenance Memorandum of Agreement (MMOA) with the Florida Department of Transportation (FDOT) for the installation of public art and landscaping under the Atlantic Avenue Bridge.

The caption of Resolution No. 09-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A MAINTENANCE MEMORANDUM OF AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE BY THE CITY OF A PORTION OF STATE ROUTE 806 LOCATED WITHIN THE CITY OF DELRAY BEACH; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

(The official copy of Resolution No. 09-08 is on file in the City Clerk's office.)

8.G. DEVELOPER REIMBURSEMENT AGREEMENT/ALTA CONGRESS OWNER, LLC: Approve and authorize the Mayor to execute the Developer Reimbursement Agreement between the City and Alta Congress Owner, LLC for reimbursement in the amount of \$16,550.00 to cover the costs of increased capacity of the proposed sanitary system to handle future development. Funding is available from 442-5178-536.83-01 (Water/Sewer Renewal and Replacement Fund/Other Grants and

Aids).

8.H. RESOLUTION NO. 08-08/ABANDONMENT OF RIGHT-OF-WAY:

Approve and adopt Resolution No. 08-08 abandoning a 0.29 acre portion of Old Germantown Road ROW in conjunction with a proposed plat for a mixed-use residential and medical office development named Midtown Delray, located at the southwest corner of Linton Boulevard and Old Germantown Road, west of Park Access Road.

The caption of Resolution No. 08-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH FLORIDA VACATING AND ABANDONING A PORTION OF THE OLD GERMANTOWN ROAD RIGHT OF WAY LOCATED AT THE SOUTHWEST CORNER OF LINTON BOULEVARD AND OLD GERMANTOWN ROAD, WEST OF PARK ACCESS ROAD AS MORE PARTICULARLY DESCRIBED HEREIN BUT RESERVING AND RETAINING TO THE CITY A GENERAL UTILITY EASEMENT OVER THE ENTIRE AREA THEREOF AS MORE PARTICULARLY DESCRIBED HEREIN.

(The official copy of Resolution No. 08-08 is on file in the City Clerk's office.)

8.I. RESOLUTION NO. 11-08/FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)/MAINTENANCE MEMORANDUM OF AGREEMENT (MMOA):

Approve and adopt Resolution No. 11-08 authorizing execution of a Maintenance Memorandum of Agreement (MMOA) with the Florida Department of Transportation (FDOT) for the City requested improvements for Sunshine Neighborhood Park located at S.W. 15th Avenue and S.W. 2nd Street.

The caption of Resolution No. 11-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A MAINTENANCE MEMORANDUM OF AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR CERTAIN LANDSCAPE AND HARDSCAPE IMPROVEMENTS TO THE SUNSHINE NEIGHBORHOOD PARK; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

(The official copy of Resolution No. 11-08 is on file in the City Clerk's office.)

8.J. RESCIND BID AWARD/STUART AND SHELBY DEVELOPMENT/135 N.W. 5TH AVENUE REHABILITATION PROJECT:

Approve rescinding the original bid award to Stuart and Shelby Development in the amount of \$554,323.00 for the rehabilitation of 135 N.W. 5th Avenue and authorize staff to re-bid the project.

8.K. REQUEST FOR SUBORDINATION/ELAINE COLEMAN:

Authorize and approve the City transferring its mortgage position from second to first and grant a waiver of the current subordination policy to allow Elaine Coleman to refinance her mortgage.

8.L. INVESTMENT POLICY FOR THE GENERAL EMPLOYEES PENSION BOARD:

Consider approval of the revision to the City of Delray Beach General Employees Retirement Plan Pension Fund Investment Policy.

8.M. AMENDMENT NO. 1/AGREEMENT/LEGAL SERVICES/HEARING OFFICER:

Approve Amendment No. 1 for renewal of the agreement between the City and David W. Schmidt for provision of legal services to the City as a Hearing Officer, extending the term for an additional two (2) years. Funding is available from 001-2741-524-34.90 (General Fund/Other Contractual Services).

8.N. SPECIAL EVENT REQUEST/AVDA 5K WALK/RUN:

Approve a special event request to endorse the 11th Annual Aid to Victims of Domestic Abuse, Inc. (AVDA) 5K Walk/Run to be held on Sunday, October 11, 2008 from 7:30 a.m. until approximately noon, with set up at 5:00 a.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the use of Anchor Park and the City right-of-way along Ocean Boulevard from Casuarina to George Bush Boulevard, to waive parking meter fees in Anchor Park and Sandoway lots, and to authorize staff assistance for providing traffic control, barricading, signage, trash pick up and removal, and set up and use of half of the small stage; contingent on the sponsor providing the required liability insurance and hold harmless agreement.

8.O. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:

Accept the actions and decisions made by the Land Development Boards for the period March 3, 2008 through March 14, 2008.

8.P. AGREEMENT/MUNICIPAL SOLUTIONS:

Approve an agreement between the City and Municipal Solutions in an amount not to exceed \$20,000.00 for an organizational, finance and performance assessment.

8.Q. AWARD OF BIDS AND CONTRACTS:

- 1.** Bid award to West Construction, Inc. in the amount of \$267,454.11 for the construction on S.W. 2nd Avenue Streetscape/Infrastructure

Improvements. Funding is available from 334-3162-541-65.87 (General Construction Fund/Capital Outlay/S.W. 2nd Avenue-S.W. 1st Street/West Atlantic) and 448-5461-538-65.87 (Stormwater Utility Fund/Capital Outlay/S.W. 2nd Avenue-S.W. 1st Street/West Atlantic).

2. Contract award to Chaz Equipment Company, Inc. in the amount of \$39,525.00 for emergency repair of a deteriorated sanitary sewer manhole and connecting line segments on Bluebird Lane in the Country Manors Community. Funding is available from 442-5178-536-63.51 (Water and Sewer Renewal and Replacement Fund/Improvements Other/Sewer Mains).
3. Contract award to Hulett Environmental Services in the total estimated amount of \$1,213.00 per housing unit for exterminating services for FY 2007 - 2008 and FY 2008 - 2009 to provide termite inspections and treatment for households participating in the City's Housing Rehabilitation Program. Funding is available from 118-1960-554-49.19 (Community Development Fund/Housing Rehabilitation).
4. Contract award to Tierra Consulting Group for lead based paint testing services for FY 2007 - 2008 and FY 2008 - 2009 as needed for households built prior to 1978 participating in the City's Housing Rehabilitation Program. Funding is available from 118-1960-554-49.19 and 118-1963-554-49.19 (Community Development Fund/Housing Rehabilitation).
5. Contract award to Shenandoah Construction in the amount of \$24,705.00 for the stormwater collection system maintenance as required by the City's National Pollutant Discharge Elimination System (NPDES) permit. Funding is available from 448-5461-538-46.90 (Stormwater Utility Fund/Beautification Maintenance).
6. Purchase award to Fort Lauderdale Harley Davidson via the Florida Sheriff's Association Contract #07-15-0827; Specification #1 for the purchase of three (3) 2008 Harley Davidson Road King Florida Highway Patrol (FLHP) motorcycles for the Police Department. Funding is available from 501-3312-591-64.20 (Central Garage Fund/Automotive).
7. Purchase award to HTE in the amount of \$35,310.00 for the installation of the Click2Gov Business Tax Receipts program and software to provide a web-based on-line enhanced level of customer services. Funding is available from 001-2721-524-66.10 and 001-1311-512-66.10 (General Fund/Software).
8. Purchase award to multiple vendors in the total cost of \$360,408.00 for the purchase of twenty-one (21) 2008 replacement/additional cars, trucks, lawn mowers, utility vehicles

and an asphalt roller for various departments. Funding is available from 119-4144-572-64.20 (Beautification Trust Fund/Automotive) and 501-3312-591-64-20.

- 9.** Purchase award to SunGard HTE in an amount not to exceed \$55,000.00 for purchase, installation and training for Human Resources software programs. Funding is available from 001-1311-512-66.10 (General Fund/Software).

Mr. Eliopoulos moved to approve the Consent Agenda as amended, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 6:53 p.m., the Commission moved to **Item 9.E. of the Regular Agenda.**

9. REGULAR AGENDA:

9.E. LEASE AGREEMENT/PALM BEACH COUNTY/NEW HEAD START FACILITY: Consider approval of the Lease Agreement between the City and Palm Beach County for the new Head Start Facility to be located on a portion of the Catherine Strong Park lands.

The City Attorney stated this is a lease for land on Tract “B” a portion that the City of Delray Beach purchased from Auburn Trace. She stated on part of the property there is drainage not only for the current Auburn Trace facility but for others as well. The City Attorney stated part of the area (referred to Sketch 1) is the Head Start Facility the City is hoping to locate there. She stated the reason the Lease Agreement is before the City Commission is in hopes that they will approve it because otherwise the Head Start Facility would have been on the other side of I-95 at one point which would make it difficult for the children who need this the most to get there safely. The lease is a long-term lease but the City expects the County to start the facility much earlier and once that is complete, they will convey the land to them. The City Attorney stated the City will receive \$340,631.24 and there is estimated fill costs that will be deducted from the cost so the City should expect \$249,169.44 per acre.

Mr. McDuffie moved to approve the Lease Agreement between the City of Delray Beach and Palm Beach County for the Head Start Facility, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 6:53 p.m., the Commission moved back to **Item 9.A. of the Regular Agenda.**

9.A. APPEAL OF SITE PLAN REVIEW AND APPEARANCE BOARD DECISION/DELRAY MAZDA: Consider an appeal of the Site Plan Review and Appearance Board's decision regarding the denial of a waiver request to Land Development Regulations (LDR) Section 4.4.10(G)(5)(B), "Use and Operating Restrictions", to allow an elevated vehicle display within the showroom of Delray Mazda, located at 700 N.E. 6th Avenue. (*Quasi-Judicial Hearing*)

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 Hearings.

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 applicant's attorney. Mrs. Montague stated she had no ex parte communications to disclose. Mrs. Ellis stated she spoke to the applicant's attorney. Mr. Eliopoulos stated he had no ex parte communications to disclose. Mr. Fetzer stated he spoke with the attorney for the applicant and Kelli Freeman, the President of Tropic Isle Homeowners Association, and received some emails from Tropic Isle residents which he will forward to the City Clerk.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-093 into the record.

Mr. Dorling stated this is an appeal a denial of a waiver request to LDR Section 4.4.10(G)(5)(b) which talks about elevated vehicle displays and the vehicle display area that is requested would be in the showroom for the new Delray Mazda. The site is approximately 1,100 feet south of Linton Boulevard and the Site Plan Review and Appearance Board's action was taken on February 27, 2008 and was appealed by the applicant's attorney on March 6, 2008. The site is zoned for auto commercial use and back in September the dealership came forward for a Class II Site Plan modification which involved the demolition of an existing 1,285 square foot show room that was damaged by Hurricane Wilma and reconstruction of that showroom with approximately 1,178 square foot show room area as well as a vehicle service write-up area. As part of the showroom it included a two-story glass display area that was visible from Federal Highway and included an elevated car within that showroom area.

At its meeting of September 13, 2006, the Site Plan Review and Appearance Board (SPRAB) recommended approval of the modifications with the exception of the elevated element and suggested that it be eliminated from the request or they would seek denial of the request. SPRAB mentioned at that time some issues with respect to its impact visually on surrounding properties and some concern over the item being a distraction for drivers on Federal Highway. Mr. Dorling stated the applicant went to construction on the site and then came forward to seek a specific waiver to the LDR Requirement that says vehicles shall not be elevated off the ground in any way. SPRAB considered that and recommended denial of the waiver citing concerns over the lighting

of the elevated vehicle and its potential to create distractions for passing motorists and also potential safety issues with respect to the car itself creating a distraction in the elevated condition and concerns over the aesthetic impact over the display on all neighboring properties. Mr. Dorling stated there is also a reference to the required findings under LDR Section 2.4.7(B)(5) and it does not adversely affect the neighboring area, does not diminish public facilities, does not create unsafe situations and would not result in a special privilege. He stated that SPRAB felt differently and were concerned about the distraction this could potentially cause. Mr. Dorling stated the applicant will put forward arguments that it will not distract people passing by; however, he stated if it is advertising and it is affective it would catch somebody's eye when they are driving by on the roadway. He stated this has not been approved in other dealerships throughout the city and that the creation of the regulations dealing with this were really created to address the kind of garish advertising that was being undertaken by some of these dealerships (i.e. flags, open hoods, elevated vehicles that were used to attract the passerby's attention). Staff does not feel they meet the required findings in a waiver as did SPRAB and believes it will create the distraction and the Code does not limit it to outside only. Staff recommends that the Commission uphold SPRAB's decision to deny the waiver request because of the issues stated.

Michael Weiner, Attorney with Weiner & Aronson, P.A., 10 S.E. 1st Avenue, Delray Beach, stated SPRAB tied with a 3 to 3 vote with respect to this particular matter and they did so because one member was missing and the tie (3 to 3) was with two conditions: (1) that the lift be painted a darker color or black so it was not obtrusive and (2) that the photo metrics be met with respect to any lighting. He stated they do not have problems with those conditions before SPRAB and they do not have problems with those conditions this evening. He stated this is the dealership located at 2001 South Federal Highway and this is a site plan modification pursuant to LDR Section 2.4.5. Mr. Weiner stated one important component is the jewel box which is a vehicle display inside the dealership. The jewel box is an unobtrusive lift enclosed within the building which takes the vehicle above the floor. He stated the jewel box offers a perspective customer a unique view of the vehicles undercarriage. Mr. Weiner stated consumer confidence in a vehicle is of the greatest importance and there is an emphasis on safety and fuel economy. More and more buyers want to know what is in the car and underneath the car and not what is outside of the car and that is what the jewel box does. He stated if the Commission denies the jewel box they are actually denying the general public the ability to make an informed consumer choice about an important product they wish to buy. Mr. Weiner referenced LDR Section 4.4.10(G)(5)(b) states that "no vehicle shall be parked with its hood or trunk open, nor elevated off the ground in any way." Mr. Weiner stated staff has interpreted this particular provision to mean not only ground but also to mean floor that is the interior of a building as well as the exterior of the building. He stated the most preferred definitions for "ground" do not have anything to do with floors. The most accepted definition is the surface of the earth or the earth or the soil. Mr. Weiner stated the Planning and Zoning staff's interpretation would mean that there would have been continuing violations in Delray Beach for many years. For example, scooters are not on the ground but they are on the floor and have been there for years and are vehicles in a dealership. Mr. Weiner stated in all the years that the motorcycle

dealerships have been open it has never been considered a violation. The reason for this is that they are not elevated off the ground but they are elevated off the floor and given these set of facts the waiver should not have to be considered. He stated the ordinance was intended to stop the lifting of vehicles in parking lots and this has been stopped. Mr. Weiner stated they meet every requirement for granting a waiver. Mr. Weiner stated the file contains a letter from Simmons & White, Inc., Traffic Engineers and this letter shows that these kinds of situations have been studied based upon the University of Nottingham and their Accident Research Unit and the letter notes that the road is 80 feet back and is highly unlikely to be a distraction. Mr. Weiner stated in their professional judgment Simmons & White feels that this does not create an unsafe situation. He stated elevated vehicles have existed in showrooms for years and the ordinance itself only applies to the ground (the parking lot). Mr. Weiner stated there is no special privilege granted when a waiver is sought for an ordinance that should not have been applied for. He stated with respect to the four criteria they are not affecting the surrounding neighborhood, you cannot see it from the residential area, it is similar with what is across the street with respect to two-story buildings and lighting, they have nothing to do with diminishing public facilities, they are not creating an unsafe situation and it does not result in the granting of a special privilege for an ordinance that does not apply when there are vehicles lifted off the floor and there are variances granted in the area and there are other two-story buildings. Mr. Weiner stated they believe they have met the burden of proof for substantial competent evidence on both grounds.

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

Dr. Joseph Provenzano, 1921 S.W. 36th Avenue, Delray Beach (Tropic Isle) stated the rules regarding not putting the cars up is to avoid the circus act and stated his family lives behind Delray Mazda in multi-million dollar homes and they should be respected. He stated across the street is Delray Lincoln Mercury and what is to stop them from pulling out their chandlers and put all their cars up there to be shown. Dr. Provenzano stated the idea is to maintain a sense of decency to the car lots and supports staff's recommendation.

Josh Bressler, 2235 Rabbit Hollow Circle, Delray Beach, urged the Commission to narrowly construe the word "ground" and would hate to see vehicles suspended outdoors and the distinction that Mr. Weiner has drawn is overbroad. Mr. Bressler stated he would not put too much stock in the use of the word "ground" in the ordinance or other authority as opposed to the word "floor".

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

There was no cross-examination.

The following individual gave a brief rebuttal:

Mr. Dorling stated the reference to lighting being similar to an elevated car is a stretch. He stated one would expect lighting to be seen in the air versus a car in an elevated condition and the fact that the car is allegedly not going to attract attention would make one wonder as to why this element has the level of visibility to Federal Highway that is being proposed.

Mr. Weiner stated roof displays and laying out linoleum are in the City Code under "Other Provisions". He stated scooters can be seen from the street. With respect to Lincoln Mercury, Mr. Weiner stated they could probably improve the look of their dealership with something on the second floor. As far as a car being less distracting or more distracting, at night lit chandlers that can be seen from the street are more distracting than just an automobile. Mr. Weiner stated once one drives into the parking lot the dealership is 80 feet away from the street and they want to make an inviting manner for people to come into the dealership and observe what it is that they will be purchasing. Mr. Weiner stated they are giving an opportunity to the consumer to make an informed decision and have an inviting dealership once someone comes in and parks. He stated overwhelmingly after review of the Simmons & White, Inc. letter it shows that the applicant is not creating an unsafe situation. Mr. Weiner reiterated that they have met the burden of proof for substantial competent evidence on both grounds.

Mr. Fetzer asked if he understood staff correctly that this has been applied for in other dealerships in the City that were not granted. Mr. Dorling stated this scenario has not been granted to other dealerships or to his knowledge the City has not had a request to do such a thing.

Mr. Eliopoulos agreed with the City Manager's memo and when dealing with ground area versus floor area, floor area is always considered interior space and does not matter what the material is. Once you are outside of an enclosed space, then it would be considered ground. Mr. Eliopoulos concurs with the applicant that they meet this.

Mr. McDuffie asked the City Manager how he arrived at his interpretation. The City Manager stated part of it is based on the history of this. He stated we have had displays like the one Mr. Weiner showed in Deerfield or further south that have car dealerships where they have some type of device in the parking lot where they can raise the vehicle up either at an angle or ten feet in the air. The City Manager stated this was written to prevent that type of display and was not contemplated to prevent what a dealership does inside a building. He thinks it is consistent with all the City's Codes and the City does not try to regulate the inside of a building as far as the way merchandise is displayed.

Mrs. Montague stated she discussed this with the City Attorney that the LDRs apply to the exterior space and she concurs with the applicant.

Mayor Ellis stated she does not find this offensive.

Mr. Fetzer stated he too discussed this with the City Attorney as well and noted that this would not apply to the interior of the dealerships. He stated there are always a lot of issues when there is automotive zoning next to residential areas. Mr. Fetzer stated he supports the appeal.

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). It was the consensus of the Commission that the City's LDRs do not prohibit this use and therefore a waiver is not needed.

Mr. Weiner stated procedurally the site plan modification was not approved that evening and suggested that the Commission remand this back to the Site Plan Review and Appearance Board (SPRAB) with this particular motion. Mr. Weiner stated once they are back before SPRAB they would be complying with all photo metric's and painting the lift an appropriate color so it would not be less obtrusive.

The City Attorney stated based on that, the Commission approves the appeal finding that the LDR does not apply and staff will remand it back to SPRAB for further site plan consideration for lighting, etc.

Mr. Fetzer moved to adopt the Board Order as presented, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:25 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 13-08 (FIRST READING/FIRST PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) Section 4.6.7, "Signs", Subsection 4.6.7 (H), "Exempt Signs", in order to include "Sponsorship Signs", as a new category of "Temporary Signs". If passed, a public hearing will be scheduled for April 1, 2008.

The caption of Ordinance No. 13-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING SECTION 4.6.7, "SIGNS", SUBSECTION 4.6.7(H), "EXEMPT SIGNS", IN ORDER TO INCLUDE SPONSORSHIP SIGNS AS A NEW CATEGORY OF "TEMPORARY SIGNS" ALLOWED WITHIN THE CITY OF DELRAY BEACH; PROVIDING A SAVING CLAUSE, A GENERAL

REPEALER CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 13-08 is on file in 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.

Paul Dorling, Director of Planning and Zoning, stated historically the City of Delray Beach has had two separate Little League organizations and recently they have decided to merge into one organization. During the related discussions, there was some discussion about difficulties of maintaining adequate funding for associated budgets and one of things that were brought to light was the advertising opportunities at ball fields are an opportunity the City needs to explore to generate revenue. These proposed amendments to the sign code will provide this option while being sufficiently restrictive to prevent wholesale sign clutter in the City.

This amendment was considered by the Planning and Zoning Board on February 25, 2008, and Board recommended approval of the alternate ordinance with a vote of 7 to 0 and they suggested an alternate ordinance to allow temporary sponsorship signs on ball fields during specific times of the year. Mr. Dorling stated the original amendment requires them to be taken down in two specific time periods. The alternate requirement removes the option of taking the signs down between July 31st and September 1st; however, retains the requirement that the signs come down between December 1st and March 1st each year to allow this type of advertising to fit into the category of "temporary signs".

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 13-08, the public hearing was closed.

Mr. McDuffie stated the alternate ordinance would have the signs taken down during the closed season. The period of June through September is essentially tournament play at which time there are more games played than there are in the regular season.

Mr. Eliopoulos moved to approve Alternate Ordinance No. 13-08 on First Reading/First Public Hearing, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

10.B. **ORDINANCE NO. 11-08:** An ordinance adopting the Community Redevelopment Agency (CRA) Plan Amendment.

The caption of Ordinance No. 11-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, MODIFYING THE COMMUNITY REDEVELOPMENT PLAN FOR THE CITY OF DELRAY BEACH; FINDING THAT THE MODIFICATIONS CONFORM TO THE COMMUNITY REDEVELOPMENT ACT OF 1969, AS AMENDED; FINDING THAT THE MODIFICATIONS ARE CONSISTENT WITH THE CITY OF DELRAY BEACH'S COMPREHENSIVE PLAN, AND MAKING FURTHER FINDINGS PURSUANT TO THE APPLICABLE REQUIREMENTS OF FLORIDA STATUTE 163.360; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 11-08 is on file in 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.

Paul Dorling, Director of Planning and Zoning, stated the Community Redevelopment Agency (CRA) establishes projects and programs that are undertaken by the CRA in upcoming years. The first plan was adopted in 1986 and has been amended several times since. The last amendment was adopted in 2005 and this latest amendment plan is proposed to replace the current redevelopment plan in its entirety. The major changes were found by the Planning and Zoning Board to be consistent with the Comprehensive Plan and a positive finding was made to that affect.

At its meeting of February 6, 2008, the Pineapple Grove Main Street Executive Board reviewed the amendments and recommended approval; at its meeting of February 11, 2008, the Downtown Development Authority (DDA) reviewed the amendments and recommended approval; at its meeting of February 13, 2008, the West Atlantic Avenue Redevelopment Coalition (WARC) reviewed the amendments and recommended approval; and at its meeting of February 25, 2008, the Planning and Zoning Board considered the amendments and recommended approval with a 4 to 0 vote (Chuck Halberg, Joe Pike, and Francisco Perez stepped down).

Diane Colonna, Executive Director of the Community Redevelopment Agency (CRA), gave a brief PowerPoint presentation of the CRA Plan.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 11-08, the public hearing was closed.

Mr. Fetzer moved to adopt Ordinance No. 11-08 on Second and FINAL Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

10.C. ORDINANCE NO. 12-08: An ordinance amending Chapter 110, “Local Business Taxes Generally”, Section 110.15, “Local Business Tax Schedule”, of the City Code of Ordinances to provide for a five (5) percent increase in all business tax fees.

The caption of Ordinance No. 12-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 110, “LOCAL BUSINESS TAXES GENERALLY” OF THE CODE OF ORDINANCES BY AMENDING SECTION 110.15, “LOCAL BUSINESS TAX SCHEDULE”, TO PROVIDE FOR AN INCREASE IN THE LOCAL BUSINESS TAX SCHEDULE; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 12-08 is on file in 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.

Al Berg, Assistant Director of Community Improvement, stated this ordinance proposes a five (5%) percent increase to all business tax fees. The fees will increase from \$142.00 to \$149.10 and will raise revenues by approximately \$30,000.00.

Mayor Ellis declared the public hearing open.

A Representative (did not sign in) from the Realtors Association of the Palm Beaches, 1296 10th Avenue North, stated she is opposed to the City Commission increasing the local business tax and feels the ordinance has the potential to further hurt the revitalization activities of the economy and damage the real estate business in its entirety. She urged the Commission to not increase the business tax fees.

Nancy Hogan, 37 Hibiscus Way, Ocean Ridge, stated she is speaking as Chair of the Realtors Association of the Palm Beaches Government Affairs Committee and expressed concern over the proposed increase of all business tax fees by five percent (5%). She urged the Commission to be careful when they are shifting this burden to fees on people who are in economic stress and the first ones in the City’s food chain because when they sell a house the City’s revenue goes up.

Mr. Fetzer inquired about the impact of this increase. In response, Mr. Berg stated the fee is currently \$142.00 and is proposed to increase to \$149.10 for realtors, accountants, and any typical professional business.

Mrs. Montague disclosed for the record that she is a member of the Realtors Association of the Palm Beaches. The City Attorney informed Mrs. Montague that she has no conflict because there is no special gain or loss to her.

The City Manager stated the last time these fees were increased was 2004 and is about a 1½ percent per year increase overall.

Mr. Fetzer stated he is very sympathetic to comments expressed by Ms. Hogan of the Realtors Association and noted it appears to be a minimal increase that has not been raised since 2004. Therefore, Mr. Fetzer stated he supports the increase.

Mr. Eliopoulos concurred with comments expressed by Mr. Fetzer and stated he too supports the increase.

There being no one else from the public who wished to address the Commission regarding Ordinance No. 12-08, the public hearing was closed.

Mr. Eliopoulos moved to adopt Ordinance No. 12-08 on Second and FINAL Reading, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

10.D. ORDINANCE NO. 06-08: Consideration of a City initiated amendment to the Land Development Regulations (LDR) Section 6.2.1(D), “Street and Alley Construction Standards”, to provide updated standards regarding street and alley construction.

The caption of Ordinance No. 06-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING SECTION 6.2.1(D), “STREET AND ALLEY CONSTRUCTION STANDARDS”, IN ORDER TO PROVIDE UPDATED STANDARDS REGARDING STREET AND ALLEY CONSTRUCTION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 06-08 is on file in 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.

Paul Dorling, Director of Planning and Zoning, stated this ordinance amends Chapter 6 of the LDRs and sets forth and updates the construction standards for streets and alleys within the City.

At its meeting of February 25, 2008, the Planning and Zoning Board considered the text amendment and recommended approval with a 7 to 0 vote.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to give testimony on this item, the public hearing was closed.

Mr. Fetzer moved to adopt Ordinance No. 06-08 on Second and FINAL Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

10.E. **ORDINANCE NO. 14-08:** An ordinance amending Chapter 96, “Fire Safety and Emergency Services”, Section 96.16, “Certain Codes Adopted By Reference”, of the Code of Ordinances by repealing Subsection (B)(5).

The caption of Ordinance No. 14-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 96.16, “CERTAIN CODES ADOPTED BY REFERENCE”, BY REPEALING SUBSECTION (B)(5) IN ORDER TO PROVIDE UPDATED REFERENCES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 14-08 is on file in 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.

John Tomaszewski, Assistant Fire Chief/Fire Marshall, stated the ordinance used to require that third party certification for fire alarm systems in the city only are done by underwriter laboratories. He stated there are other nationally recognized

testing laboratories and the City received a request from one of the alarm contractors that we consider other nationally recognized testing laboratories. Mr. Tomaszewski stated they are just removing the one specific reference to underwriter laboratory from this ordinance.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 14-08, the public hearing was closed.

Mr. McDuffie moved to adopt Ordinance No. 14-08 on Second and FINAL Reading, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:58 p.m., the Commission moved to **Item 11, Comments and Inquiries on Non-Agenda Items from the Public and the City Manager.**

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

The City Manager had no response to prior public comments and inquiries.

11.B. From the Public.

11.B.1. Carolyn Zimmerman, 212 S.W. 2nd Avenue, Delray Beach, announced on March 29, 2008 from 8:00-9:00 p.m. all over the world everyone will be turning off their lights for "Turn Out Your Lights" and they want everyone in their homes to do the same as well. She stated other countries are doing this; however, in the United States only particular states are doing it. Miss Zimmerman suggested that this be on the internet to give information out and it will not cost anyone anything.

11.B.2. Dr. Provenzano, 1921 S.W. 36th Avenue, Delray Beach, asked if there are any rules in the City regarding derelict buildings and maintaining property. He expressed concern over the old Blood's site and stated there are derelict buildings, debris, people are doing drugs, and there is graffiti and gang signage. Dr. Provenzano stated the buildings should be torn down and the property should be maintained into the same quality as all the surrounding neighborhoods.

Mayor Ellis stated there are rules for this and the answer to his question will be provided at the next regular meeting and also suggested that he use the QAlert system on the City's website.

At this point, the time being 8:02 p.m., the Commission moved back to **Item 9.B. of the Regular Agenda.**

9.B. APPEAL OF SITE PLAN REVIEW AND APPEARANCE BOARD DECISION/OFFICE DEPOT/CVS PHARMACY BUILDING: Consider an appeal of the Site Plan Review and Appearance Board's decision regarding the approval of the special request to reduce the parking spaces by 62 spaces from (155 parking spaces required to the 93 parking spaces provided), for Office Depot/CVS Pharmacy, located at N.E. 6th 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. Mr. McDuffie stated he met with representatives from CVS and Office Depot discussing the restrictive covenant. Mrs. Montague stated she spoke with Mr. Weiner as well as the attorney and the applicant for CVS and Office Depot. Mayor Ellis stated she had no ex parte communications to disclose. Mr. Eliopoulos stated he was contacted but there was no communication. Mr. Fetzer stated he spoke to Bonnie Miskel, Attorney for the Applicant, the Developer, and also received a telephone call from Michael Weiner.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-017 into the record.

Mr. Dorling stated this is a 2.32 acre site located on the west side of N.E. 6th Avenue between N.E. 8th Street (George Bush Boulevard) and N.E. 7th Street (700 N.E. 6th Avenue). At its meeting of February 27, 2008, the Site Plan Review and Appearance Board (SPRAB) reviewed and approved the Class V site plan, landscape plan and architectural elevations associated with the construction of a 19,000 square foot Office Depot and a 15,281 square foot CVS Pharmacy. He stated that application also included three waivers to some site visibility triangles that the Commission will be considering as well as a special action relating to a parking reduction. This approval was appealed by the City Commission at the request of staff on March 3, 2008 and was primarily focused on the special action which reduced the parking requirements from 155 required at 4.5 per 1,000 of floor area to 93 on-site parking spaces.

The revised site plan includes landscape node improvements to the 20 on-street existing parking spaces along the west property line on the east side of N.E. 5th Avenue. An additional 6 new parking spaces are to be provided along N.E. 7th Street representing a total of 26 on-street parking spaces. However, only the 6 new parking spaces, pursuant to LDR Section 4.6.9(E)(2), can be counted towards the parking requirement for the proposed development. With these additional spaces the relief represents a 36% parking reduction. It is noted that while all of these on-street spaces may not represent new parking opportunities the existing 20 spaces are utilized by the existing departing auto use and most likely will be available for the proposed new uses.

Staff has met with the applicant and their attorneys and they have provided some additional information including a parking occupancy study. Mr. Dorling stated

staff did not have concerns that the proposed parking was inadequate for the specific uses out of an Office Depot and at Walgreen's because there are similar sites in the city including one on 10th that history shows really do not have a high occupancy for parking. He stated staff was concerned that if and when these uses were vacated, potential replacement uses could generate some parking impacts and given its location at 8th Street the ability to absorb that in the surrounding areas (i.e. location to public spaces was limited). In the discussion since the appeal the applicant has provided some additional information with respect to on-street parking, provided plans which show the installation of six new spaces along 7th as well as the utilization and improvements to spaces which exist although they are not delineated on the west side of southbound Federal Highway. He stated those spaces technically cannot be counted as spaces available to this use but in this case the spaces are currently utilized by the existing uses on the site. Staff recommends that in this case the Commission uphold SPRAB's decision to approve the reduction to parking spaces required pursuant to LDR Section 4.6.9(C)(3)(a), but modify the reduction to 56 spaces (from the 155 parking spaces required to the 99 parking spaces provided), and condition it subject to a voluntary deed restriction (requiring provision of parking or relief with a change of tenant) and the on-site restriction between uses contained in the CVS and Office Depot leases.

The City Attorney asked if it is still 99 parking spaces including the 6 spaces. Mr. Dorling stated it would be 99 parking spaces of the 155 that they are providing and the applicant may also utilize the 20 spaces as well.

Scott Backman, representing the Applicant, stated this issue being discussed is the parking waiver that was presented to SPRAB a couple of weeks ago. Mr. Backman stated they have provided significant documentation since the SPRAB meeting to the Planning and Zoning Department and the City Attorney's office in support of the parking waiver in particular the parking study that was referenced by Mr. Dorling. The lease restrictions that are in both the CVS and the Office Depot lease and the primary concern of both tenants as well as the underlining owner of the property would be not to place significant restrictions on the parking of one or the other users in the unlikely event that they were to vacate the property at some point in the future. Mr. Backman stated he has been working with the City Attorney's office on the Declaration of Restrictive Covenants which states if it is not an office supply use or a pharmacy use then any other use would have to come back for full review by the City as well as the City Commission to ensure that there is sufficient parking for the property.

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

Dr. Joseph Provenzano, 1921 S.W. 36th Avenue, Delray Beach, stated they are cutting the parking down by one-third going from 155 parking spaces to 99 parking spaces. In his opinion, Dr. Provenzano stated this is going to set another precedent throughout the City and feels if the City is going to make rules for parking, then these rules should be followed. He expressed concern over the traffic congestion on that road and stated US 1 will eventually be narrowed to two lanes northbound and

southbound and the increased traffic will create more stress on the road and there will not be sufficient parking. He urged the Commission to support and defend the rules of Delray Beach.

Alice Finst, 707 Place Tavant, Delray Beach, stated she attended the SPRAB Meeting and commented on the application that states "Development presentation before all Boards and City Commissions must be on either LCD projector, PowerPoint, or an overhead projector." Mrs. Finst stated the applicant presented sign boards and feels at that point the entire project should have been thrown out and they should have been told to come back so everyone could understand what was going on. She stated she sees this as being the worse possible scenario and then them back down to what they really wanted in the first place. Mrs. Finst feels the evaluation was pushed through on the design, that the parking spaces should be according to the City Code, and the fact that the buildings are 34 and 36 feet high. She asked if buildings of this size need to be air conditioned when one is only using the first floor of the building. Mrs. Finst stated these buildings are totally incompatible with the residential areas around them and they do not match up with the other buildings in the area and she sees this as a start to more and more buildings of this height and size. She urged the City Commission to review the City Code.

Art Taylor, 8911 Oakland Drive, Delray Beach (was O.C. Taylor Motors for 20 years), stated auto dealers like to be together and live off this dealership and the Acura dealership. He stated when this dealership goes away it will be difficult for the others to continue in business and this will be a catalyst to develop that end of town. Mr. Taylor stated the Acura dealership will look to relocate and is already looking for property to relocate and the body shops feed off the business from the dealership.

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

There was no cross-examination.

The following individual gave a brief rebuttal:

Mr. Backman stated there are rules for parking but at the same time the City Code has rules that allow applicants to apply for waivers. The reason for the waiver is to provide supporting documentation to establish in this case parking and is it necessary to the extent that is required by the Code. He stated they provided ITE studies as well as the parking study examining two very similar uses within two miles of this site that clearly establish that the parking being provided is more than sufficient to accommodate both uses. With regard to the future uses, that is essentially the reason they provided both the restrictions provided in the CVS and Office Depot lease and the Restrictive Covenant. Mr. Backman stated that these two uses have more than sufficient parking to accommodate was is being proposed on the property and the City has the right to review any future uses that are not one of these two uses. He stated at the moment when driving into the City and you see car dealers for 3-4 blocks and associated uses (i.e.

body shops and the like). Mr. Backman stated he believes this portion of the City along 5th and 6th north of Atlantic Avenue was included in the CBD (Central Business District) to encourage that new uses come in on these properties. This type of use and other retail and residential uses coming back in and occupying the properties that are currently these automobile uses which with the approval of the site plan it is clearly the catalyst for that to occur over the course of the next 5, 6 or 10 years in the City and rebuild the northern district of the CBD.

Mr. Eliopoulos stated he does not necessarily have an issue with the parking and is also fine with the City being protected down the road with regards to a change of use. He stated this site and this plan is not what is in the CBD Design Guidelines. He expressed concern regarding exiting onto George Bush Boulevard and stated this is a very dangerous section of road. Mr. Eliopoulos reported that at the intersections of southbound Federal Highway and George Bush Boulevard, there have been 25 accidents in the last 3 years and he will not support this site plan.

Mayor Ellis stated there is no other way to get out of the drive-thru except to exit on George Bush Boulevard. Mr. Eliopoulos confirmed that this is correct. Mr. Eliopoulos stated most people heading to the west are going to do a U-turn and would probably make an illegal turn if the median was not there. He stated he commends them for thinking that the median would solve this; however, cars are coming out and coming around the corner and most people will not want to force themselves to go east. Mr. Eliopoulos stated most people will be doing a U-turn and therefore be cutting over the lanes. Mr. Dorling stated that was a significant item of discussion and the installation of this was a fall back position of the Engineering Department.

Randal Krejcarek, City Engineer, stated when this first came through and staff looked at what was being proposed in engineering staff's first comment was "no" to the entrance on N.E. 8th Street for the exact same reasons that Commissioner Eliopoulos has stated (short distance). Mr. Krejcarek stated operationally he does not see that this will work. He stated the applicant came in and asked what they could do to make it work because this is the only layout of these two buildings that will allow us to get into this site what we need to get into this site. He stated two things came out of those discussions with the applicant one being the median down 8th Street and the drive-thru and they also had an exit for all the parking. Mr. Krejcarek stated staff asked the applicant to close that so the only people who would be able to exit would be those going through the drive-thru. He stated he too agrees that anyone going through the drive-thru that is going south is going to head south and make that U-turn (10 an hour is peak hour). He stated as a result of the discussions they had after their first comment of no exit that is how staff came to the idea of the median and also closing the other exit out of the parking lot and the only people who would be able to exit would be those going through the drive-thru. Mr. Krejcarek stated during peak hour (5,000 vehicles plus or minus) anybody trying to make that movement and go back south on Federal Highway is not going to be able to do it and will not be able to drive through the drive-thru during the peak hour and will find another way. With regards to making the U-turn, he stated it is not the safest U-turn; however, it is a signalized intersection so that does help although during rush hour even

with the two lanes they do back up. He stated as you head further north past the Plastridge building, there is a dedicated U-turn so if you do turn left and you go north on 8th and you would have to be in the north lane to go left and would have cross a lane to get into that left turn lane to be able to go north.

Mayor Ellis stated she travels George Bush Boulevard several times a day and feels this is going to create a dangerous situation and does not see how this will work.

Mrs. Montague asked for clarification regarding Mr. Krejcarek's comments that people would not make the left turn during certain times of day. Mr. Krejcarek stated it would be very difficult to do certain times of day because of the volumes but people will still try to make the left turn.

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 adopt the Board Order as presented (approving the appeal which overturns SPRAB's decision), seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion to approve the appeal overturning SPRAB's decision (denying the waiver) passed with a 5 to 0 vote.

9.C. WAIVER REQUESTS/OFFICE DEPOT/CVS PHARMACY BUILDING DEVELOPMENT PROPOSAL: Consider three (3) waiver requests to waive Land Development Regulations (LDR) Sections 4.6.14 (A)(1) and (2), "Visibility at Intersections", to reduce the required visibility triangle on the south side of the intersection of the driveway to N.E. 5th Avenue from 20' to 15'; and to reduce the required visibility triangles at the intersections of N.E. 5th Avenue and N.E. 8th Street and at N.E. 6th Avenue and N.E. 7th Street from 40' to 30'. (*Quasi-Judicial Hearing*)

The Applicant withdraws this waiver requests for the visibility triangles in light of the denial of the parking waivers (Item 9.B.).

9.D. PRELIMINARY AND FINAL PLAT/MIDTOWN DELRAY: Consider approval of a preliminary plat and certification of a final plat for a 9.85 acre mixed-use development containing 116 fee-simple townhouse lots and 29,571 square feet of medical office space to be platted as Midtown Delray, located at the southwest corner of Linton Boulevard and Old Germantown Road, west of Park Access Road.

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 received and responded to two emails from the neighborhood. Mrs. Montague stated she received emails and forwarded them to the City

Clerk. Mayor Ellis stated she has received emails and did not respond. Mr. Eliopoulos stated he received three emails and responded to them all and had a telephone conversation with Mr. Ezra M. Krieg. Mr. Fetzer stated he received three emails and will put these in the public record.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-069 and #2008-070 into the record.

Mr. Dorling stated at its meeting of December 11, 2007, the City Commission approved a rezoning request to modify the Blood's Grove SAD (Special Activities District) to accommodate a mixed use development which includes 116 townhouse units (32 of which would be workforce housing units) and a 29,571 square foot medical office. The final plat associated with that approval is now before the Commission for final approval. The final plat creates Tract "H" for the medical offices, 116 fee-simple townhouse lots and 3 tracts (Tract "E", "F", and "G") that are dedicated as common areas; a small 75 square foot portion of land to be dedicated as public right-of-way (Tract "A"); a lake management tract platted as Tract "D"; an internal access tract for the residential portion of the development (Tract "C"). Mr. Dorling stated concerns have been raised over the selling of Tract "H". Mr. Dorling stated the condition of the Planning and Zoning Board was a master association be created and that each component (residential and medical office) are to be members. This master association will deal with the business of ongoing maintenance of common elements of the development including but not limited to drainage, shared access, common landscape area maintenance, etc. He stated the applicant has provided the master association documents. At its meeting of March 17, 2008, the Planning and Zoning Board considered the plat and recommended approval with those conditions.

Mr. Dorling stated there has been some discussion about conditions of approval and the City Commission did provide and require that conditions of approval be met for the actual modification and those have not been finalized. He stated a couple of the important ones relate to the requirements for some modifications to the residential piece in the way of bedroom size and garage size which may impact the plat. The applicant has acknowledged that they intend to try to do that within the dimensions. If they cannot, then they acknowledge that they would have to come in and replat that residential portion to meet those conditions of approval. He stated there are seven conditions of approval in the Planning and Zoning staff report that were applied to the property last night and an eighth condition dealing with the master association. The applicant has addressed those so it is now before the Commission without any conditions other than a final review of those master association documents and appropriate references on the face of the plat.

Michael Weiner, Attorney with Weiner & Aronson, P.A., 10 S.E. 1st Avenue, Delray Beach, representing Midtown Delray, LLC (Applicant), thanked the staff for their efforts and commented how quickly Midtown has been responding. With respect to the comments made by Planning and Zoning in one day they came back and addressed those comments. He stated on behalf of his client they will be very happy

when they can demolish the buildings and the plat is one step in doing that. Mr. Weiner stated they have submitted the master association documents and they realize the common elements are important to this. He stated they do realize that the conditions of approval have to be met in ways that comply with the ordinances of the City of Delray Beach; however, he noted that this will not be this evening because this is not a site plan hearing. Mr. Weiner briefly explained an extensive report by the Planning and Zoning Department.

Mayor Ellis stated anyone from the public who would like to speak in favor or in opposition of the preliminary and final plat for Midtown Delray, to please come forward at this time.

Ezra M. Krieg, 6485 Bridlewood Circle, Delray Beach, stated Mr. Weiner has said several times in his testimony that he has met the conditions. However, Mr. Krieg stated the conditions that were set by the City Commission over objections from several residents was a number of conditions made in December 2007 about looking at the size of the bedrooms, etc. Those adjustments will affect the plat if the buildings have to be modified. Mr. Krieg urged the Commission to not approve the plat on the promise that they will come back sometime later and adjust it if it does not work out but instead do what the Commission asked the applicant to do. He urged the Commission to follow the City's rules.

Dr. Joseph Provenzano, 1921 S.W. 36th Avenue, Delray Beach, stated residents fought this project on the density and the applicant has managed to get all the waivers that they have wanted. He stated residents thought the applicant would try to keep the property clean but they have not. Dr. Provenzano stated on December 11, 2007 the City Commission placed conditions on the garages that are 16 feet wide and you cannot fit two cars into them but the two car garages are counted as two parking spaces. He stated you cannot fit two cars in those two car garages and feels everyone was misled and the driveways do not fit two cars either. Dr. Provenzano stated the conditions to make the garages larger to 18 feet and to make master bedrooms a little bit larger and feels if the applicant meets those conditions it is going to impact the entire design of the project. He stated before this project is subdivided up so they can sell off the medical part (now the sign says and "and offices" instead of "and medical") he feels the applicant should meet all the conditions to see how it will impact the whole thing as the Commission approved. Dr. Provenzano stated he has been periodically checking with the Building Department and there has not been a single plan or amendment or anything to come across the board in three months and he does not feel the applicant has been quick to act.

Josh Bressler, 2235 Rabbit Hollow Circle, Delray Beach (President of Rabbit Hollow Homeowners Association), stated both this development and the dilapidated condition of those buildings on the property continue to be sore subjects for the residents and is commonly discussed when the homeowners meet. Mr. Bressler urged the Commission to do the right thing and clean up the property.

There being no one else from the public who wished to address the Commission regarding the preliminary and final plat for Midtown Delray, the public hearing was closed.

There was no cross-examination.

The following individual gave a brief rebuttal:

Mr. Weiner stated the public much discussed this condition talking about the adjustment of the design of the units. He stated that these conditions were specifically added that evening within the footprint of the building and since the time of that particular condition there have been alternatives submitted concerning the layout of these buildings. For example, bedrooms have been increased by 9 foot 4 inches by 15 feet 6 inches to a more rectangular 12 foot 5 inches by 13 inches 4 feet and garages are more than 80 square foot larger as a result of some of these things. Mr. Weiner stated these meeting of the conditions of approval for site plan are in the City's process to go on through the staff. He stated to add additional conditions that have to do with vertical issues and site plans the City Commission has already passed would not be appropriate or within the laws applied to plats, and would not be consistent with the City's staff report. Mr. Weiner urged the Commission to let them proceed with the plat and then let them continue their discussions with staff.

Mrs. Montague asked if the change in the dimensions of the bedroom size and the garage size can affect the plat. In response, Mr. Dorling stated to meet the minimum requirements of garages he does not believe that can be accomplished appropriately within the dimensions shown on the plat.

The City Manager commented that many of the lots are 17 feet wide and asked if they are supposed to have two car garages on them. In response, Mr. Dorling stated the 17 foot lots are one car garages and the 22 foot dimensions are two car garages. Mr. Dorling stated in most of those cases there is also either a staircase or a hallway between the garages. Mr. Dorling stated there was a concern with all the garages and the dimensions and noted that all the dimensions for the two bedroom units have to be modified. He stated late last week staff received something that was an attempt to do it within the dimensions and those are not satisfactory and would not meet the condition. Also, Mr. Dorling stated there is no reference on the face of the plat to the master association or the elements that it would encompass.

Mr. Eliopoulos stated most plats are on the Consent Agenda and feels this one was special in that the Commission did place conditions on it and does not believe there has ever been a plat goes before the Planning and Zoning Board and the next evening go before the City Commission. Mr. Dorling stated he is not aware of any plats that go immediately to the City Commission normally because plats cannot come to the Commission with conditions and those conditions have to be addressed prior to going to Commission. Mr. Dorling stated it is unusual that if anybody had conditions that they would be able to address them all before it coming to the Commission. Mr. Eliopoulos

stated at the last meeting the applicant stated that they would work with staff and within the footprint of what the Commission is talking about. He feels the applicant has been given sufficient time to make this one happen and noted that the plat with the townhouse is directly related to the overall site plan. Mr. Eliopoulos stated he agrees with staff that this does not work with regards to the width of the two-car garages. Mr. Dorling stated the scheduling of this was done by the applicant last week to move it forward and it was made clear to him if he was not able to comply then he would not be assured approval at this point.

Brief discussion continued between the Commission and Mr. Weiner.

Mayor Ellis stated what the Commission is expecting back is proof that this plat will accommodate the conditions that were attached to the initial approval.

Mr. Eliopoulos moved to postpone the preliminary and final plat for Midtown Delray to a date certain of April 1, 2008, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 9:26 p.m., the Commission moved to **Item 12, First Readings.**

12. FIRST READINGS:

12.A. THIS ITEM HAS BEEN REMOVED FROM THE AGENDA.

12.B. ORDINANCE NO. 15-08: An ordinance amending Chapter 33, “Police and Fire Departments”, Subheading “Pensions”, of the Code of Ordinances by amending Section 33.62, “Benefit Amounts and Eligibility”. If passed, a public hearing will be scheduled for April 1, 2008.

The caption of Ordinance No. 15-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 33. “POLICE AND FIRE DEPARTMENTS”, SUBHEADING “PENSIONS”, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTIONS 33.62 “BENEFIT AMOUNTS AND ELIGIBILITY”; PROVIDING A GENERAL REPEALER CLAUSE; PROVIDING A SAVING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

(The official copy of Ordinance No. 15-08 is on file in the City Clerk’s

office.)

The City Attorney read the caption of the ordinance. She stated this ordinance regarding the Police and Fire Pension Plan puts the City of Delray Beach into compliance with Section 415 IRS Regulations and Federal law.

Mr. Fetzer moved to approve Ordinance No. 15-08 on FIRST Reading, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

12.C. ORDINANCE NO. 16-08: An ordinance amending Chapter 35, “Employees Policies and Benefits”, Subheading “Retirement Plan”, of the Code of Ordinances by amending Section 35.097, “Retirement Income; Basis, Amount, and Payment”. If passed, a public hearing will be scheduled for April 1, 2008.

The caption of Ordinance No. 16-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH , FLORIDA, AMENDING CHAPTER 35, “EMPLOYEES POLICIES AND BENEFITS”, SUBHEADING RETIREMENT PLAN”, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 35.097, “RETIREMENT INCOME; BASIS AMOUNT, AND PAYMENT”; PROVIDING A GENERAL REPEALER CLAUSE; A VALIDITY CLAUSE; AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 16-08 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance regarding the General Employees Pension Plan and stated this ordinance also puts the City of Delray Beach into compliance with Section 415 IRS Regulations and Federal law.

Mr. McDuffie moved to approve Ordinance No. 16-08 on FIRST Reading, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

12.D. ORDINANCE NO. 18-08: An ordinance amending Chapter 33, “Police and Fire Departments”, Subheading “Pensions”, of the Code of Ordinances by amending Section 33.65, “Administration”, to allow the Mayor to designate the Assistant City Manager to serve on the Board of Trustees in lieu of the Mayor; and amending Section 33.685, “Deferred Retirement Option Plan”, to provide for payment of DROP benefits in

monthly installments at the member's election. If passed, a public hearing will be scheduled for April 1, 2008.

The caption of Ordinance No. 18-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 33 "POLICE AND FIRE DEPARTMENTS", SUBHEADING "PENSIONS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 33.65, "ADMINISTRATION", TO ALLOW THE MAYOR TO DESIGNATE THE ASSISTANT CITY MANAGER TO SERVE ON THE BOARD OF TRUSTEES IN LIEU OF THE MAYOR; AMENDING SECTION 33.685, "DEFERRED RETIREMENT OPTION PLAN", TO PROVIDE FOR PAYMENT OF DROP BENEFITS IN MONTHLY INSTALLMENTS AT THE MEMBER'S ELECTION; PROVIDING A GENERAL REPEALER CLAUSE; A SAVING CLAUSE; AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 18-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance and stated typically on the City's local law plan the Mayor is part of that Board. Staff has had the City's Pension Board lawyer who assists the City in these technical matters as well as the lawyer representing the Police and Fire Pension Plan. This ordinance allows the Mayor to designate someone to serve on that Board in her place. The other part is the Deferred Retirement Option Plan distributions. She stated it currently allows quarterly or annual installments and did not have monthly installments; however, General Retirement Plan Employees Drop Plans are monthly and the Police and Fire wanted the same thing. The City Attorney stated this ordinance would accomplish those goals.

Mr. Eliopoulos moved to approve Ordinance No. 18-08 on FIRST Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 9:31 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 reported from the League of Cities Board of Directors Meeting that the League is tentatively planning their Installation Event this year as a luncheon instead of a dinner in order to reduce costs. The cost is expected to be \$50.00 per person instead of \$125.00 and is tentatively planned for Friday, May 23, 2008 at the Marriott (Okeechobee exit in West Palm Beach).

Secondly, he stated there is an opening on the County's Impact Fee Review Committee and there were several appointments made. The City Manager stated Lynn L. Hubbard from the City of Riviera Beach was appointed to the Overall Economic Development Program; Terry Brown from Town of Ocean Ridge to the Treasure Coast Regional Planning Council with Martha Webster from the Village of Royal Palm Beach as the alternate.

The City Manager announced that on Wednesday, April 23, 2008, there will be a training event for elected officials from 1:00-4:00 p.m. followed by a reception.

13.B. **City Attorney**

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

13.C. **City Commission**

13.C.1. **Mr. McDuffie**

Mr. McDuffie asked what the boundaries are for Clean and Safe. The City Manager stated roughly the Downtown Development Authority (DDA) boundaries.

Secondly, Mr. McDuffie stated he appreciates everyone's action and support on the ordinance to get signs for the Little League.

Mr. McDuffie thanked everyone for their kind words and support during his mother's illness and recent operation. He stated she responded amazingly well and recovered from the surgery.

Lastly, Mr. McDuffie stated land values across Palm Beach County have been reduced by 15%.

13.C.2. **Mrs. Montague**

Mrs. Montague congratulated Daisy Fulton who is one of the recipients this year for the African-American Achiever's Award Ceremony sponsored by JM Family. She stated unfortunately this does take place the evening of the Organizational Meeting so the Commission will not be able to attend. On behalf of the City Commission, Mrs. Montague extended congratulations to Ms. Fulton.

13.C.3. **Mr. Fetzer**

Mr. Fetzer congratulated Nancy Stewart and everyone who worked on the St. Patrick's Day Parade.

13.C.4. **Mr. Eliopoulos**

Mr. Eliopoulos stated the St. Patrick's Day Parade was great.

Secondly, he stated at the Special/Workshop Meeting of March 13, 2008 the City Manager presented the Commission with information from Municipal Solutions regarding the City of Daytona Beach and thanked him for this information. Mr. Eliopoulos stated he wants to make sure that these are the best people out there and noted he was surprised that some of the cities that Municipal Solutions has worked with have smaller budgets than the City of Delray Beach. He stated the City of Delray Beach actually has a larger budget but in general he thought it was great how Municipal Solutions went through everything. He would also encourage that they look at the levels in the budget and would like to keep this going forward.

13.C.5. **Mayor Ellis**

Mayor Ellis stated the St. Patrick's Day Parade was a lot of fun and she was amazed at all the people who showed up from all over.


Secondly, she attended the Relay for Life at Atlantic High School and made a few brief comments. Mayor Ellis stated there were some great organizations there and noted Terrill Barton, Assistant City Attorney, and Alberta Gaum-Rickard, Project Coordinator/Parks & Recreation and Gail Vanhove, Administrative Assistant/Parks & Recreation did a magnificent job. Mayor Ellis also commented that she saw many other City employees there and it was very rewarding.

Mayor Ellis stated she, the City Manager, Police Chief Schroeder, and one of the Battalion Chiefs from the Fire-Rescue Department presented Perry DonFrancisco and Delaire with a framed proclamation with both the Chief of Police and the Fire Chief's badges. The Police Department also presented Mr. DonFrancisco with a marble and bronze bust of an Eagle. Mayor Ellis stated the Fire-Rescue Department will present him with bronze bust of a fireman holding a child.

She stated Police Chief Schroeder spoke and made a comment about the 4:00 a.m. telephone call that one of his officers was seriously injured in a car crash on I-95 with a vehicle going the wrong way.

Lastly, Mayor Ellis stated she and Commissioner Montague are off to Tallahassee for the League's Legislative Action Days the last week of this month to represent the City of Delray Beach and the City Commission.

There being no further business, Mayor Ellis declared the meeting adjourned at 9:46 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 March 18, 2008, which Minutes were formally approved and adopted by the City Commission on April 1, 2008.



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
APPEAL OF 2/27/08 SPRAB DENIAL OF THE
WAIVER REQUEST BY DELRAY MAZDA**

1. This appeal of SPRAB's February 27, 2008 denial of the waiver request by Delray Mazda came before the City Commission on March 18, 2008.

2. The City staff, applicant, and other persons have presented documentary evidence and testimony to the City Commission pertaining to the appeal of the waiver requested for Delray Mazda. All of the evidence is part of the record in this case.

3. 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

4. Does 4.4.10(G)(5)(b) apply to the indoor display?

Yes 0 No 5

Therefore, no waiver is required.

5. Elevated Vehicle Display: Section 4.4.10(G)(5)(b) provides that "no vehicle shall be parked with its hood or trunk open, nor elevated off the ground in any way. Vehicles shall not be parked in any right-of-way or driveway." The applicant has requested to allow an elevated vehicle display within the showroom of Delray Mazda.

3/24/08
SCANNEL
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Hem 9.A.

Should the applicant's appeal of the decision by SPRAB denying the Applicant's waiver request for an elevated vehicle display within the showroom of Delray Mazda be granted?

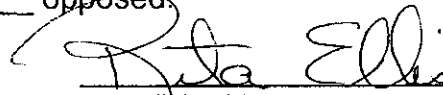
Yes N/A No N/A

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

7. 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.


8. Based on the entire record before it, the City Commission finds that a waiver is not required and the indoor display is not prohibited by the Land Development Regulations as currently adopted. The City Commission remands this matter to the SPRAB Board.

9. The City Commission hereby adopts this Order this 18th day of March, 2008, by a vote of 5 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
APPEAL OF THE 2/27/08 SPRAB APPROVAL OF THE
SPECIAL ACTION REQUESTED BY OFFICE DEPOT/CVS**

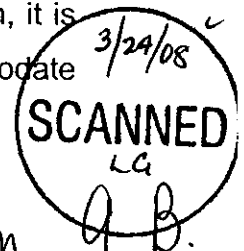
1. This appeal of SPRAB's February 27, 2008 approval of the special action request by Office Depot/CVS came before the City Commission on March 18, 2008.

2. The City staff, applicant, and other persons have presented documentary evidence and testimony to the City Commission pertaining to the special action request of Office Depot/CVS. All of the evidence is part of the record in this case.

3. 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.

4. Parking: Pursuant to LDR Section 4.6.9(C)(3)(a), "General Commercial Uses shall provide 4.5 spaces per 1,000 square feet of gross floor area which includes retail floor area, associated warehouse and storage floor area, and employee and management facilities." The applicant desires to reduce the parking spaces at the Office Depot/CVS building located at 700 NE 6th Avenue by 56 spaces (from 155 spaces to 99 spaces (93 on site and 6 on street spaces for a total of 99), which equates to a waiver of 31 spaces for the office supply use and a waiver of 25 spaces for the pharmacy use). The proposed Office Dept building contains 19,003 square feet and the proposed CVS building contains 15,281 square feet. Pursuant to Section 4.6.9(F)(1), "Reduction allowed, when, upon receipt and acceptance of special documentation, it is conclusively demonstrated that a reduced number of parking spaces will accommodate



Item

a specific use, the body which acts on the attendant site plan may reduce the parking requirements accordingly.”

Should the City’s appeal of the decision of SPRAB granting the Applicant’s Special Action Request to reduce the required parking spaces from 155 to 99 (93 on site and 6 on street spaces for a total of 99) be granted, subject to the following conditions as listed?

The Property shall be occupied and utilized by an office supply use and a pharmacy use (collectively referred to herein as the “Uses”) in accordance with the approved Application for the Project.

In the event one or both Uses vacate the Property, Centres, its successors and assigns, shall be restricted to leasing that portion of the Property so vacated to a permissible use that does not require additional parking demands over and above that which is currently required.

In the event any proposed new use on the Property creates a greater demand for parking than that which is currently required, Centres shall be required to submit any and all proposed new uses for review by the City in order to ensure that the City’s parking requirements are satisfied. In the event a waiver is required for any such proposed new use, Centres shall file an application for a parking waiver to demonstrate that the parking impacts of the proposed new use have been addressed. However, it is understood that the City may or may not grant the waiver.

The City Commission has agreed to waive the parking requirement for 56 parking spaces, Thus, based on prorated square footages, 55 of the 99 spaces provided, shall be allocated to office supply use(which is a waiver of 31 spaces) and 44 spaces to the pharmacy use(which is a waiver of 25 spaces). The offsite parking spaces shall be shared equally now and if a new use is established. In the event one of the Uses ceases, the remaining Use shall continue to operate with the spaces allocated subject to the City’s waiver and any new use shall be required to comply with the City’s current parking regulations, unless a waiver is granted. If both Uses cease then any new use shall be required to comply with the City’s current parking regulations, unless a waiver is obtained.

City shall have the right to approve, approve with conditions or deny any future proposed uses on the Property that does not meet the then current City parking requirements.

The conditions referenced above shall be effective upon approval of this order.

The Restrictive Covenant, including the aforementioned conditions, substantially in the form as Exhibit “A”, attached hereto, and as approved by the City Attorney’s office shall

be recorded upon the closing of the sale of the property to Centres Delray, LLC and no building permits shall be issued until such recording.

Yes 0

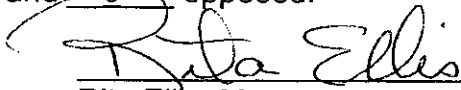
No 5

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 approves X denies the appeal and thus, overturns the SPRAB approval, the effect of which is a denial of the special action request.

8. The City Commission hereby adopts this Order this 18th day of March, 2008, by a vote of 5 in favor and 0 opposed.



Rita Ellis, Mayor

ATTEST:



Chevelle Nubin
City Clerk