

**APRIL 1, 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, April 1, 2008.

**1.** Roll call showed:

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

Absent - None

Also present were - David T. Harden, City Manager  
Robert A. Barcinski, Assistant City Manager  
Susan A. Ruby, City Attorney  
Lanelda Gaskins, Executive Asst./Agenda Coordinator

**2.** The opening prayer was delivered by Dr. Gary D. Guerrier with First Baptist Church.

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

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

Mayor Ellis stated there is additional information for **Item 9.A., Redevelopment Proposal for South County Administrative Complex**. She noted a revised Board Order for **Item 9.B., Conditional Use Request for Villages at Delray**. Mayor Ellis stated the applicant has requested to postpone **Item 9.C., Appeal of the Historic Preservation Board Decision** to May 6, 2008. Also, she noted there is a revised **Board Order for Item 9.D., there is a request to postpone Item 9.E. until April 15, 2008**. Mayor Ellis noted the addition of **Item 9.H., Reconsideration of a Special Action Request for Office Depot and the CVS Pharmacy Building** to the Regular Agenda by addendum.

Mr. Fetzer moved to approve the Agenda as amended, 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.

**5. APPROVAL OF MINUTES:**

Mr. Eliopoulos moved to approve the Minutes of the Regular Meeting of March 18, 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.

Mrs. Montague moved to approve the Minutes of the Annual Organizational Meeting of March 27, 2008, seconded by Mr. McDuffie. 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. Young Child Week – April 13-19, 2008**

Mayor Ellis read and presented a proclamation hereby proclaiming the week of April 13-19, 2008 as Young Child Week in the City of Delray Beach. Sallie Laws, Vice President of Family Central, Inc. in Palm Beach County came forward to accept the proclamation.

**6.B. Housing America Month – April 2008**

Mayor Ellis read and presented a proclamation hereby proclaiming the month of April 2008 as Housing America Month in the City of Delray Beach. Dorothy Ellington, Florida Coordinator for this campaign, came forward to accept the proclamation and on behalf of the National Association of Housing and Redevelopment Officials and Florida Association of Housing and Redevelopment Officials, she thanked the City of Delray Beach.

**6.C. Library Appreciation Month – April 2008**

Mayor Ellis read and presented a proclamation hereby proclaiming the month of April 2008 as Library Appreciation Week in the City of Delray Beach. Robert Currie came forward to accept the proclamation and gave a few brief comments.

**6.D. Water Conservation Month – April 2008**

Mayor Ellis read and presented a proclamation hereby proclaiming the month of April 2008 as Water Conservation Month in Delray Beach, Florida. Richard Hasko, Director of Environmental Services, came forward to accept the proclamation and gave a few brief comments.

**7. PRESENTATIONS:**

**7.A. 19th Annual Delaire/Delray Citizens for Delray Police Charity Golf Tournament Presentation to Police and Fire-Rescue - Perry DonFrancisco**

**Perry DonFrancisco, President of Delray Citizens for Delray Police Charity Golf Tournament**, briefly reviewed the history and significance of the Annual Delaire Charity Golf Tournament that supports the Fire-Rescue and Police Departments. Mr. DonFrancisco stated the residents of Delaire have made a profound statement and that is that their generosity and concern will not waiver and they will continue to give for the benefit of all the people of the City of Delray Beach. He stated Delaire's lifesaving and crime fighting equipment purchases have saved lives in Delray Beach and has kept the community safe. Mr. DonFrancisco stated tonight's proceeds total approximately \$275,000.00 per department and noted that is \$550,000.00 this community net and raised for the City of Delray Beach to have this equipment.

Harvey Lurrie gave a few brief comments and thanked the Commissioners and Fire-Rescue Chief James and Police Chief Schroeder for coming to Delaire and making a presentation a few weeks ago. Mr. Lurrie stated Mr. DonFrancisco in particular made this possible beginning 20 years ago and has made this charity.

Mr. Lurrie introduced Buddy Magod, new President of Delaire and David Gray, Co-Chairman, who presented checks to Fire-Rescue Chief David James and Major Craig Hartman of the Police Department. On behalf of the Delray Beach Fire-Rescue Department, Chief James stated they appreciate all the support of Delaire and noted that technology changes constantly and it does not always coincide with the budget process and donations such as these from Delaire help them to address those issues in a timely manner. Major Craig Hartman, Delray Beach Police Department, thanked everyone from Delaire for their continued support and generosity year after year.

Mr. DonFrancisco presented the Fire-Rescue Department and the Police Department with checks in the amount of \$18,750.00 each.

Mayor Ellis stated the ceremony at Delaire a few weeks ago was the City's way of saying thank you to Delaire for doing this for nearly 20 years. She stated the City issued a proclamation that was mounted and the Fire-Rescue Chief as well as the Police Chief had their original badges mounted on that as well. Mayor Ellis stated the ceremony was very well attended and everyone had a wonderful time. Mayor Ellis thanked Mr. DonFrancisco and the Delaire community for its continued support.

**7.B. RESOLUTION NO. 13-08:** Approve Resolution No. 13-08 Recognizing and commending **Barbara Flynn** for 30 years of dedicated service to the City of Delray Beach.

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

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, RECOGNIZING AND COMMENDING BARBARA J. FLYNN FOR THIRTY YEARS OF DEDICATED SERVICE TO THE CITY OF DELRAY BEACH.

(The official copy of Resolution No. 13-08 is on file in the City Clerk's office.)

Mayor Ellis presented Resolution No. 13-08 to **Barbara Flynn** for 30 years of dedicated service to the City of Delray Beach.

Mr. Eliopoulos moved to approve Resolution No. 13-08, 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.

Mayor Ellis also presented **Barbara Flynn** with a Distinguished Service Award in grateful appreciation of her invaluable and distinguished service to the Finance Department for the past thirty (30) years.

Joseph Safford, Finance Director, stated Ms. Flynn is just getting her second wind and noted she rides motorcycles, rides competition horses and she is a pilot with 100 flight hours. Mr. Safford stated he expects Ms. Flynn will be around for several more years. Barbara Flynn came forward to accept the proclamation and the award and gave a few brief comments.

**7.C. "Neighborhood Pride Grant" – Neighborhood Services Division**

Elizabeth Alpert, Neighborhood Services Administrator, stated she is fortunate to work under the direction of Lula Butler, Director of Community Improvement, and commented that they are always progressively working towards improving their neighborhoods. Ms. Alpert stated a new program was implemented last year called "Neighborhood Pride Grant" and was conceptualized by Commissioner Montague. Ms. Alpert stated this is a great program because it is designed for the neighborhoods and actively participating and getting involved and including the neighborhoods. She stated instead of providing grant dollars for community improvement this program engages the neighborhoods to get actively involved in the form of a cash contribution, volunteering or going out and getting donations of the materials. Ms. Alpert stated the City allows the neighborhoods to get creative and noted that during fiscal year 2006-2007 there were 16 applicants and out of those 16 applicants, the Neighborhood Advisory Council (NAC) formed a sub-committee to vote and rate the applicants. The City of Delray Beach awarded three (3) Neighborhood Pride Grants during fiscal year 2006-2007 to the following recipients: (1) Woods of Southridge, (2) Paradise Heights, and (3) Delray Estates.

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

**8.A.**                    **ACCEPTANCE OF EASEMENT DEED/EBENEZER WESLEYAN METHODIST CHURCH:** Approve and accept an easement deed from Ebenezer Wesleyan Methodist Church to accommodate the existing overhead power lines that traverse the property, located on the east and west side of S.W. 6<sup>th</sup> Avenue, north of S.W. 2<sup>nd</sup> Street.

**8.B.**                    **SERVICE AUTHORIZATION NO. 01-23.1/HELLER-WEAVER AND SHEREMETA, INC.:** Approve a Service Authorization to Heller-Weaver and Sheremeta, Inc. in the amount of \$6,500.00 for supplemental survey work related to preparation of condominium documents for the retail space on the first level of the Old School Square Parking Garage. Funding is available from 380-4150-572-63.29 (G.O. Bond/Old School Square Parking Garage).

**8.C.**                    **SERVICE AUTHORIZATION NO. 32.2/DAVID MILLER AND ASSOCIATES, P.A.:** Approve Service Authorization No. 32.2 to David Miller and Associates, P.A. in the amount of \$10,000.00 for construction administration services regarding both the new Information Technology Building and North Wing City Hall Renovations Phase IV and V. Funding is available from 334-6112-519-62.85 (General Construction Fund/City Hall Exp IT Building) and 334-6112-519-62.86 (General Construction Fund/City Hall-N Wing Chamber).

**8.D.**                    **LOCAL AGENCY PROGRAM AGREEMENT (LAP)/FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)/BIKE LANES:** Approve a Local Agency Program (LAP) Agreement with the Florida Department of Transportation (FDOT) for the installation of bike lanes along Homewood Boulevard between Lawson and West Atlantic. Costs will be paid from a Federal Enhancement Grant of \$500,000.00 plus approximately \$98,000.00 in City funds. Funding is available from 334-3162-541-68.46 (General Construction Fund/Other Improvement/Homewood Boulevard Bikepaths).

**8.E.**                    **RESOLUTION NO. 12-08:** Approve and adopt Resolution No. 12-08 establishing an Affordable Housing Advisory Committee as required by state statute to recommend incentives for affordable housing.

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

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR THE CREATION OF AN AFFORDABLE HOUSING ADVISORY COMMITTEE TO RECOMMEND INCENTIVES FOR AFFORDABLE HOUSING; PROVIDING AN EFFECTIVE DATE.

(The official copy of Resolution No. 12-08 is on file in the City Clerk's office.)

**8.F. FIRE ACT GRANT APPLICATION FOR FY 2008/2009:** Approve a Fire Act Grant Application in the amount of \$203,000.00 for the purchase of five (5) exhaust removal systems for five (5) of the Fire Stations. Funding for match funds available from 115-2311-522-64.90 (Special Projects Fund/Machinery Equipment/Other Mach/Equipment).

**8.G. SECOND AMENDMENT/2002 PALM BEACH COUNTY RECREATION AND CULTURAL FACILITIES BOND/INTRACOASTAL WATERWAY PARK:** Approve a Second Amendment to the Interlocal Agreement between Palm Beach County and the City of Delray Beach to extend the project completion date to December 31, 2008 for the Delray Intracoastal Park (Mangrove Park).

**8.H. SPECIAL EVENT REQUEST/ART AND JAZZ ON THE AVENUE:** Approve a special event request for the Art and Jazz on the Avenue to be held on May 8, 2008, from 6:00 p.m. to 10:00 p.m., granting a temporary use permit per LDR Section 2.4.6(F) for the closure of Atlantic Avenue from Swinton to the west side of NE/SE 7<sup>th</sup> Avenue, Railroad Avenue from Atlantic north to north side of the east/west alley, and to the alleys north and south of Atlantic on NE/SE 1<sup>st</sup> Avenue, NE/SE 2<sup>nd</sup> Avenue, SE 3<sup>rd</sup> Avenue, NE/SE 4<sup>th</sup> Avenue, and the Tennis Center Parking lot and to authorize staff support for security and traffic control, EMS assistance, banner hanging and removal, barricade set up and removal, trash removal and clean up; contingent upon receipt of a hold harmless agreement.

**8.I. SPECIAL EVENT REQUEST/DELRAY BEACH FILM FESTIVAL:** Approve a request to endorse the 3<sup>rd</sup> Annual Delray Beach Film Festival proposed to be held from May 6 through May 11, 2008; to grant a temporary use permit per LDR Section 2.4.6(F) for the closure of N.W. 1<sup>st</sup> Street on May 6, 2008 from 9:00 p.m. – midnight, for the event party at DaDa's; to approve the reservation of thirty (30) tee times at the Municipal Golf Course on May 8, 2008 beginning at 9:00 a.m. for a golf outing; to approve the use of the south end of the beach on May 10, 2008 from 8:00 a.m. to noon for a surfing demonstration and contest; to approve the use of Worthing Park to show films on the wall of the Blue Fish Restaurant; to authorize the street closure, event signage, and staff support for barricading for traffic control; contingent on the receipt of a hold harmless agreement, certificate of liability insurance and an executed copy of a rental agreement with Old School Square.

**8.J. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period March 17, 2008 through March 28, 2008.

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

- 1.** Bid award to Complete Property Services of South Florida, Inc. in the annual estimated amount of \$43,274.00 for landscape maintenance of Stormwater Retention Areas and Improved Water Retention Areas. Funding is available from 448-5416-538-34.90 (Stormwater Utility Fund/Other Contractual Services).

2. Bid award to Southland Painting Corporation in the amount of \$65,640.00 for sandblasting, paint preparation, and painting of internal steel components of Clarifier No. 2 at the Water Treatment Plant as part of the Clarifier Rehabilitation Project. Funding is available from 442-5178-536-64.90 (Water/Sewer Renewal and Replacement Fund/Other Machinery and Equipment).
3. Purchase award to Contract Connection, Inc., in the amount of \$19,933.15 for the purchase of seven (7) Shelter/Benches for replacement of benches located on the sea wall at Veteran's Park. Funding is available from 001-4131-572-63.40 (General Fund/Improvements Other/Recreational Improvements).
4. Purchase award to Duval Ford in the amount of \$121,325.00 for the purchase of five (5) 2008 Ford Crown Victoria Police Interceptors with options and warranty via the Florida Sheriff's Association Contract #07-15-0827, Specification #1 and to Emergency Vehicle Supply in the amount of \$43,156.71 for the police car preparation package. Funding is available from 501-3312-591-64.20 (Central Garage Fund/Automotive).
5. Purchase award to Insight Public Sector in the amount of \$35,759.00 for the purchase of seven (7) Vista laptops for the Fire-Rescue Department. Funding is available from 334-6112-522-64.90 (General Construction Fund/Machinery Equipment/Other Machinery/Equipment).
6. Purchase award to On-Site Equipment, d/b/a Triptow Enterprises in the amount of \$18,287.00 for the purchase of an upgraded replacement wheel alignment machine with the attachments for the City garage. Funding is available from 501-3311-591-64.90 (Central Garage Fund/Machinery/Equipment/Other Machinery/Equipment).
7. Contract award to EIMCO Water Technologies in the amount of \$88,812.00 for removing and rebuilding the drive motor assembly on Clarifier No. 2 at the Water Treatment Plant Project. Funding is available from 442-5178-536-64.90 (Water/Sewer Renewal and Replacement Fund/Other Machinery and Equipment).
8. Contract award to Randolph & Dewdney Construction, Inc. in the amount of \$97,536.00 for the demolition and renovation of the City of Delray Beach Engineering Division former offices. Funding is available from 442-5178-536-62.10 (W & S Renewal & Replacement Fund/Buildings).

Mr. McDuffie moved to approve the Consent Agenda, 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.

**9. REGULAR AGENDA:**

**9.A. SOUTH COUNTY ADMINISTRATIVE COMPLEX REDEVELOPMENT PLAN DIRECTION:** Provide direction regarding a response to Palm Beach County on action items for the South County Administrative Complex Redevelopment Plan.

The City Manager stated at the March 18, 2008 City Commission Meeting there was a presentation made by Palm Beach County staff Audrey Wolf concerning the subject project. The City Manager stated the City Commission previously received a lengthy report compiled by Kilday and Associates with assistance from Catalfumo, Ltd. He noted the five points the County requested City Commission action on: (1) Choose a preferred concept plan, (2) Confirm County's interpretation of any code 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 structure 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 City's desired involvement in the County RFP.

Mr. Fetzer moved to approve the City Manager's recommendations with the higher density option, 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 passed with a 5 to 0 vote.

**9.B. CONDITIONAL USE REQUEST/VILLAGES AT DELRAY:** Consider a conditional use request to allow a density in excess of 12 units per acre (24 dwelling units per acre is proposed) in accordance with the provisions of the City's Family Workforce Housing Ordinance for the Villages at Delray, (formerly a portion of Auburn Trace), a 264 unit residential development located on the east side of Auburn Avenue, south of S.W. 4<sup>th</sup> Street. (*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.

Lanelda Gaskins, Agenda Coordinator/Executive Assistant, 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 a telephone from Mr. Weiner asking if he had any questions on the project and noted he has none. Mrs. Montague stated she received a call and spoke with Mr. Weiner as well as Mr. Cito Beguristain and Dorothy Ellington. Mayor Ellis stated she spoke with Mr. Weiner on a couple occasions. Mr. Eliopoulos stated he spoke with Mr. Weiner with regards to the general layout of the project. Mr. Fetzer stated he spoke to Mr. Weiner as well.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-40 into the record.

Mr. Dorling stated this is a conditional use request for Villages at Delray to provide a density in excess of 12 units per acre (24 du/ac is proposed) in accordance with a provision of the City's Family Workforce Housing Ordinances for the Villages at Delray, a 264-unit residential development located on the east side of Auburn Avenue south of S.W. 4<sup>th</sup> Street. The property totals 1.03 acres and is zoned RM (Medium Density Residential). The site previously contained sixteen (16) one and two-story multiple family structures which were built in 1981 and are being demolished. Multiple family residential developments may exceed twelve (12) units per acre up to a maximum of twenty-four (24) units per acre within the Carver Estates Overlay District, subject to compliance of Section 4.4.6(I), (Performance Standards), Article 4.7, (Workforce Housing) and based upon the development's conformance with the applicable standards and criteria described within the adopted Southwest Area Neighborhood Redevelopment Plan.

At its meeting of February 25, 2008, the Planning and Zoning Board held a public hearing in conjunction with the conditional use request and recommended approval with a vote of 4 to 0.

Mr. Dorling stated the site plan will be going before the Site Plan Review and Appearance Board (SPRAB) and this is just the conditional use for the density. The Delray Beach Housing Authority is solving some additional issues which may prevent the site plan going before SPRAB for a couple of weeks. The City Attorney stated for clarification that the conditional use request is up to 24 dwelling units per acre depending on the site plan.

**Michael Weiner, Attorney with Weiner and Aronson, P.A., 10 S.E. 1<sup>st</sup> Avenue, Delray Beach (representing the Applicant),** stated each and every one of the conditions under the Land Development Regulations, Comprehensive Plan, Compatibility and Consistency, and Concurrency have been met with respect to this project. He stated the Planning and Zoning Board went through this particular conditional use request and there were some added changes to the conditions that have been addressed.

**Steve Myott, JMWA Architects (Architects for the project),** briefly reviewed the architectural elevations for this project.

**Cito Berguristain, speaking on behalf of the Applicant,** thanked the City Commission for their continued support. He stated the last time he was before the Commission they were in a rush to get the CWHIP (Community Workforce Housing Innovation Program) Grant to the State. Mr. Berguristain stated they received their initial comments back from the State for things to address. He noted that on April 18, 2008 they should receive some responses to what they had to submit and hopes that they will be able to win the grant.

Mr. Weiner stated the City Attorney has prepared an appropriate Board Order and the Commission will find that the staff report covers the Comprehensive Plan on pages 4-5, the Concurrency is covered on pages 2-3 of the staff report, the LDR requirements 2.4.5(E) are covered on pages 12-13 of the staff report and the Required Findings are covered on pages 5-12 and go through all the Performance Standards including 4.7.4 and 4.4.6(B)(3). Therefore, Mr. Weiner stated substantial competent evidence has been offered based on the Planning and Zoning Department staff report.

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

**Dr. Joseph Provenzano, 1921 S.W. 36<sup>th</sup> Avenue, Delray Beach,** stated he really likes this project because it has a clubhouse with impact glass and an emergency generator. He stated he would like see this done with more development in this town because post storms it is a major problem with heat and expressed concern that it is only 4,500 square feet 264 units and there will probably be 3-4 people per unit and expressed concern whether or not the building will be able to sustain 1,000 people according to the Fire Marshall. Dr. Provenzano stated in the medical profession he sees many people getting admitted to the hospital post hurricanes because of the fact of the heat. He feels that overall this is great idea to have emergency backup generators and feels it would be nice to see this more throughout the City in developments with more than 50 homes.

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

The following individual gave a brief rebuttal:

Mr. Dorling stated after the last set of hurricanes the City did pass a new regulation that require all clubhouses for new communities to have backup generators for the purposes that Dr. Provenzano mentioned.

Mr. Eliopoulos stated this is a great project; however, he expressed concern with the reduction in the guest parking spaces from 62 spaces to 14 spaces. He stated he understands the perception but by looking at the studies on low-income housing the odds are that they will not have as many cars. Mr. Eliopoulos stated he is looking at this as a project that we want to set the mark and set the tone for how workforce housing and low-income housing can be done. Mr. Eliopoulos stated with the workforce housing we are making the assumption on these cars and although he did see on the site plan how staff is encouraging to have parking on sod, he did not see a lot of green. He stated he is looking at this from a density standpoint and not about the people that are going to be there. He feels that a lot of people will use their garages for other things and down the road he does not want to see this project looking like a project that being a lot of cars in the street because they do not have anywhere to park.

Mr. Weiner stated they will keep this in mind and they made extensive studies of use of the parking in the area prior to this of actual parking usage. Also, the daycare center has been designed and will be closed at night which is an extra 24 spaces. Mr. Weiner stated they are aware of the concerns expressed by Mr. Eliopoulos.

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).

Mrs. Montague moved to adopt the Board Order as presented, 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.

At this point, the time being 7:22 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

**10. PUBLIC HEARINGS:**

**10.A. ORDINANCE NO. 13-08 (SECOND READING/SECOND 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”.

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 this ordinance is to deal with temporary signs and its intent is to help facilitate the merger of the two Little Leagues by allowing sponsorship signs and the money generated from that to support the

League. These signs will be placed on the inside of the outfield during the Little League seasons. The first public hearing at the March 18, 2008 meeting had two alternatives and the City Commission recommended the alternative version (which is before the Commission this evening) as well as the Planning and Zoning Board. Mr. Dorling stated the alternate version requires the signs to be taken down only during the months of September through December. He stated this minimum time helps this signage to fall in the category as "temporary signage" and staff recommends approval.

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 moved to adopt Ordinance No. 13-08 on Second Reading/Second Public Hearing, 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.

**10.B. ORDINANCE NO. 20-08 (FIRST READING/FIRST PUBLIC HEARING):** City initiated amendment to the Land Development Regulations (LDR) pertaining to Assisted Living Facilities, Continuing Care Facilities and Nursing Homes. If passed, a public hearing will be scheduled for April 15, 2008.

The caption of Ordinance No. 20-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY REPEALING SECTIONS 4.3.3(C), "ADULT CONGREGATE LIVING FACILITY" AND 4.3.3(G), "CONTINUING CARE FACILITIES", AND AMENDING SECTION 4.3.3(H), "CONVALESCENT HOMES, HOMES FOR THE AGED, NURSING HOMES, REST HOMES", IN ORDER TO PROVIDE FOR UPDATED REGULATIONS REGARDING SAME; AMENDING SECTIONS 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT", 4.4.13, "CENTRAL BUSINESS DISTRICT (CBD)", 4.4.21, "COMMUNITY FACILITIES (CF) DISTRICT", 4.4.28, "CENTRAL BUSINESS DISTRICT – RAILROAD CORRIDOR (CBD-RC)", AND 4.4.29, "MIXED RESIDENTIAL OFFICE AND COMMERCIAL (MROC) DISTRICT", IN ORDER TO ALLOW ASSISTED LIVING AND CONTINUING CARE FACILITIES AS PERMITTED USES IN THESE ZONING DISTRICTS; AMENDING SECTION 4.4.9, "GENERAL COMMERCIAL (GC) DISTRICT", IN ORDER TO ALLOW ASSISTED LIVING AND CONTINUING CARE FACILITIES AS

CONDITIONAL USES IN THIS ZONING DISTRICT; AMENDING SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)", TO REMOVE ASSISTED CONGREGATE LIVING AND CONTINUING CARE FACILITIES FROM THE LIST OF CONDITIONAL USES IN THIS ZONING DISTRICT; AMENDING APPENDIX "A" TO REPEAL THE DEFINITIONS OF "ADULT CONGREGATE LIVING FACILITY" AND "CONVALESCENT HOMES, HOMES FOR THE AGED, NURSING HOMES, OR REST HOMES" AND ENACTING A DEFINITION OF "ASSISTED LIVING FACILITY" AND "NURSING HOME" AND PROVIDING AN UPDATED DEFINITION OF "CONTINUING CARE FACILITY"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 20-08 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 renames the current term Adult Congregate Living Facility and replaces it with Assisted Living Facility and amends the definition of the term Continuing Care Facility to be in compliance with the Federal Fair Housing Law. It also adds both the Assisted Living Facility and Continuing Care Facilities as a permitted use in those zoning districts which currently allow Medium Density Residential (RM) as permitted uses and it adds them as conditional uses in the same zoning districts that allow Medium Density Residential (RM) as a conditional use. He stated it treats this type of use as multi-family use which staff believes is necessary to be compliant with Federal Fair Housing Law.

At its meeting of March 17, 2008, the Planning and Zoning Board considered the text amendment and recommended approval with a 5 to 0 vote.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 20-08, the public hearing was closed.

Mr. Eliopoulos moved to approve Ordinance No. 20-08 on First Reading/First Public Hearing, 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.

**10.C.            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", to set maximum benefits as required by Section 415 of the Internal Revenue Code.

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, BY AMENDING SECTION 33.62, "BENEFIT AMOUNTS AND ELIGIBILITY"; PROVIDING A GENERAL REPEALER CLAUSE; A SAVINGS CLAUSE; AND 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. 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.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 15-08, the public hearing was closed.

Mr. Fetzer moved to adopt Ordinance No. 15-08 on Second Reading/Second Public Hearing, 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.

**10.D.            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", to set maximum benefits as required by Section 415 of the Internal Revenue Code.

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, 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. 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.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 16-08, the public hearing was closed.

Mr. Eliopoulos moved to adopt Ordinance No. 16-08 on Second and FINAL Reading, 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.E.**        **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.

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, 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; A GENERAL REPEALER CLAUSE; A SAVINGS 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. 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.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 18-08, the public hearing was closed.

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

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

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

**11.B.1. Alice Finst, 707 Place Tavant, Delray Beach,** stated she spoke to the City Commission recently about the Historic Depot Square and requested that the City see if there was some way that they could get a Congress Avenue connection to that property. Mrs. Finst stated she was told at that time that this was not something that could be done. Since that time, Mrs. Finst stated she attended another meeting on Historic Depot Square where they presented a number of items which she considers safety issues. She stated one safety issue is the traffic feeding onto Lake Ida Road from their project, Crossroads and Spady Elementary School, etc. This has been brought to the County and the traffic study is going to require them to put in one or more lanes to the Depot Road exit and possibly a traffic light because of the traffic there. Mrs. Finst asked that the City consider opening a lane across the tracks from Congress Avenue at Dr. Carroll Kroll Way or anywhere along there (vacant properties that can connect Congress Avenue). She stated this would help eliminate the heavy traffic from being dumped onto Lake Ida Road. Mrs. Finst also expressed concern that there will be students from Atlantic High School on that property and she does not see them walking down to Lake Ida Road and going west to Congress Avenue and then finding their way over to Davis Road. She stated she feels they will go over the berm around the property and go across the railroad tracks. A sign has been recently posted on Lake Ida Road that said that there are no train whistles. Mrs. Finst stated this is an opportunity that will fix the safety problem because these students will probably go across the tracks and hook up to the short cut that runs from Congress Avenue to Davis Road that is there and is being used. She stated she sees this turning into a horrible disaster of traffic on Lake Ida Road and someone being hurt and urged the Commission to look into this matter.

The City Manager stated the State Department of Transportation and the Federal Railway Administration will not allow any more railroad crossings.

**11.B.2.** **Dr. Joseph Provenzano, 1921 S.W. 36<sup>th</sup> Avenue, Delray Beach,** stated he understands that Midtown Delray was postponed at the last City Commission Meeting of March 18, 2008. He asked if an applicant is bringing a project to the Planning and Zoning Department and indicates that this is going to be a medical office building is he obliged to make that a medical office building. Dr. Provenzano stated there is now a sign on the property that says "medical offices and professional" which is a totally different project than what we were told it was going to be and what is defined as "professional".

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

With regard to a prior concern expressed by Dr. Provenzano about the condition of the buildings on the Blood's Grove property, the City Manager stated staff has been working with the owners of that property since then and even early last week the property was still pretty much a mess but they have been actively working on it and it is boarded up at this point and cleaned up. Staff is monitoring it closely to be sure that it remains that way.

At this point, the time being 7:36 p.m., the Commission moved back to **Item 9.C. of the Regular Agenda.**

**9.C.** **THIS ITEM HAS BEEN POSTPONED DUE TO THE APPLICANT'S REQUEST.**

**9.D.** **CONDITIONAL USE REQUEST/CHEZ MIKA RESTAURANT:** Consider a conditional use request to establish a 24-hour or late night business for Chez Mika Restaurant, located at 1005 South Congress Avenue in the Sherwood Plaza. (*Quasi-Judicial Hearing*)

Lanelda Gaskins, Executive Assistant/Agenda Coordinator, swore in those individuals who wished to give testimony on this item.

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

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-075 into the record.

Mr. Dorling stated this is a conditional use request to establish a 24-hour late night business for Chez Mika Restaurant located at 1005 South Congress Avenue. This is a 3.02 acre parcel and contains a 32,000 square foot shopping center with a service station out parcel. The site was originally constructed in 1964 and is occupied with retail, office and restaurant uses. The applicant wishes to extend the current operating hours from midnight to 2:00 a.m. The applicant has agreed to have a security guard on staff as well as a patrolling police car for the parking lot during the late night operating hours from 11:00 p.m. to 3:00 a.m. Security will also be available to walk patrons to their car when needed. In addition to the eight security cameras currently installed on site, two additional exterior

security cameras are proposed to monitor the parking lot areas in front of and across from the Chez Mika restaurant. The applicant also understands that significant improvements to the existing lighting and landscaping islands are needed and has agreed to install the required upgrades as part of this request.

Mr. Dorling stated as part of this request is a waiver request to allow an increase in lighting. The maximum foot candle is 4.0 per the City Code and the applicant is requesting an increase to that as high as 9.0 at the rear entrance to the building.

At its meeting of March 17, 2008, the Planning and Zoning Board considered the request. The Board actually considered this item a month before the March 17<sup>th</sup> meeting and at that time the request was actually to allow the facility to stay open until 5:00 a.m. and the applicant revised this to 2:00 a.m. and returned on March 17, 2008. The Board deliberated for quite some time and had testimony from the Police Department and the Board recommended denial of the conditional use request with a 3 to 2 vote. The Police Department expressed their reservations based upon concerns of increased crime and alcohol consumption after hours. Mr. Dorling stated there have been a number of instances where the police have been called, however, those have not been a direct result of this restaurant. Staff recommends that the Commission take testimony and decide whether or not the applicant should be allowed to stay open until 2:00 a.m. If the Commission allows them to stay open until 2:00 a.m. then staff requests that this be conditioned on the security plan and all the conditions that were identified in the staff report by the Planning and Zoning Board and that the waiver also is granted to provide greater security.

**Mackenson Bernard, 2605 W. Atlantic Avenue, #D-202, Delray Beach, (speaking on behalf of the Applicant)**, stated there are several issues that were addressed at the Planning and Zoning Board Meeting with a 3 to 2 denial. He stated they agreed that there were certain things they were going to do in order to meet what the Planning and Zoning Board requested.

Mayor Ellis stated if anyone from the public would like to address the Commission regarding the conditional use request, to please come forward at this time.

**Christina Grand, 6742 Forest Hill Boulevard, West Palm Beach (Executive Director of New Business Support and Resource Program for the Palm Beach County area)**, stated they help with the broken economic development of owner operated businesses and Chez Mika Restaurant and the owners are members of their program and they have been helping her with the application to assist with the extending of the hours so that way she can be profitable and stay in business. Ms. Grand stated in the Haitian culture it is very common to eat during later hours especially on the weekends. Ms. Grand stated for cultural purposes the owners would like the two extra hours during the weekends for what is normal to them for their celebrations and they put their children to sleep and the mother and father go out and enjoy a late evening meal and this is very common in the Haitian culture.

Mr. Bernard stated at the last Planning and Zoning Board Meeting the key issue is safety. He stated in order for Chez Mika Restaurant to be profitable they need to be open until 2:00 a.m. In terms of increased crimes, Mr. Bernard stated the previous owner (Dave's Bar & Grill) stayed open late as well and since Chez Mika Restaurant has been open since September 2007 there have been no crimes associated with her restaurant. Mr. Bernard stated at the Planning and Zoning Meeting the police officer had stated it was not a restaurant and the owner was trying to have a club there. He stated Chez Mika has invested a great deal of her money in changing the restaurant and with the change in the Southwest Development area this restaurant would provide a different atmosphere especially for the Haitian community. He stated the majority of the Haitian restaurants in Delray Beach are typically where there is no where to sit down and you just come in and get your food. However, Chez Mika Restaurant will provide something different that one would find in the Haitian restaurants in Miami because of the community there. Mr. Bernard stated they have addressed most of the issues in terms of security anytime the restaurant is opened between 12:00 p.m. - 2:00 a.m. and they have agreed to do so. Also, he stated the Police Department wanted to be involved in terms of selecting a security guard that would be on-site and they have agreed to do so. Mr. Bernard by allowing the restaurant to be open until 2:00 a.m. would keep the business viable and profitable.

Ms. Grand stated Chez Mika Restaurant is a monumental addition to the community and noted there is a large Haitian population in Delray Beach. She stated this is a fine dining Haitian restaurant and there is only two in the entire State of Florida. Ms. Grand urged the Commission to approve the conditional use.

**Lieutenant Marc Woods, Delray Beach Police Department,** stated he supports Chez Mika Restaurant and noted Chez Mika did a wonderful job fixing the building and it is a dramatic improvement to the shopping center compared to the old bar that was in there. Lieutenant Woods stated the objections that were referred to by Christina Grand were the initial application to make it a night club and have it open until 5:00 a.m. even though the liquor license is only good until 2:00 a.m. Lieutenant Woods stated they objected to that for multiple reasons. However, with the most recent agreement to not have live music and close at 2:00 a.m. there are really no objections from the Police Department just support. As far as the detail officer, Lieutenant Woods does not want anyone to think that a business is contingent upon hiring an off-duty police officer. The concerns that were expressed at the two Planning and Zoning Board Meetings concerned just the physical design of the shopping center. Lieutenant Woods stated behind it is I-95 and there is a very large driveway back there which was convenient for trucks but also convenient for thugs, punks, and getaway cars and the concerns expressed by the Police Department were that anyone that wanted to do the wrong thing could park behind the restaurant and run around creating a real hazard for the people working in the restaurant and also the patrons. Lieutenant Woods stated the lighting in the shopping center is dreadful and if the applicant is asking for an increase in lighting it will not really impact anyone except Abbey Delray North which is across Congress Avenue so if they direct the lighting in the right direction that would be a bonus and actually make the entire shopping center safer at night and increase security. Lieutenant Woods stated as long as the conditional use request is rescindable for over use or stretching the live music conditions

then the Police Department will support it.

Mr. Eliopoulos stated he is not concerned with what is actually going on in the restaurant but he is concerned when patrons leave the restaurant.

Mr. Fetzner stated if the Commission was to approve the conditional use request this evening what conditions for adequate security would be recommended. In response, Lieutenant Woods stated the conditional use articulates improving the lighting in the shopping center. He stated currently it is dangerous for the restaurant to close at midnight with the lighting the way it is. Lieutenant Woods stated it would be very important to have an active uniformed security guard watching over the parking lot with a careful closing (i.e. the security guard walking the entire staff out of the restaurant at the same time after closing).

Mayor Ellis stated in the staff report they recommend that an officer be there from 11:00 p.m. until 3:00 a.m. Lieutenant Woods stated this would be adequate and would allow time for the staff to clean up.

There was brief discussion between Lieutenant Woods and the City Commission regarding the cameras. Ms. Grand explained that the cameras do record at night.

Mr. McDuffie stated Mr. Dorling talked about the 4.0 maximum foot candle level requirement and increasing that to 9.0 at the rear entrance along the railroad tracks. Mr. Dorling stated the increase is up to 9.0 and the highest point is to the rear of the building by the rear access point which would be 9.0 and there is some fluctuation between that and 4.0 and the balance of the site. Mr. McDuffie stated Lieutenant indicated that there are lighting problems throughout the entire shopping center and asked if we are expecting this tenant to address the lighting needs in all of that area.

Ms. Grand stated Code Enforcement stated regardless of their application the lighting needs to be improved and they (the landlord) have to do it.

Mrs. Montague asked if they are improving the entire site or are they improving just that area. Ms. Grand stated the entire plaza is getting redone. Mr. McDuffie stated he wanted to make certain that the City had some way to control that the lighting was improved in the entire plaza and not just the proximity of the restaurant. Mrs. Montague asked what is located south of this site. Lieutenant Woods stated it is a mini storage facility that has a wall down the entire length of the property and the railroad tracks are behind this property. Mrs. Montague asked what types of businesses are north of the restaurant. Lieutenant Woods stated there is a furniture store, a convenience store/check cashing market and the immediate suite north of the restaurant is currently empty. Lieutenant Woods stated the only other thing in the out building to the southwest is a coin laundry business which stays open until 11:00 p.m. Mrs. Montague asked if there are any many restaurants that stay open after 12:00 midnight. In response, Mr. Dorling stated in the City there are many restaurants that are open after 12:00 midnight. Mrs. Montague

asked if the security issues vary from site to site. Mr. Dorling stated it varies from site to site and what is being proposed with Chez Mika restaurant is a comprehensive security plan much more so than a lot of other restaurants are subject to or provide. Mrs. Montague asked if food is being served until 2:00 a.m. Mr. Dorling stated it is the understanding that food is being served until 2:00 a.m. Mr. Dorling stated to qualify as a restaurant they need to serve meals at all times they are open.

**Marty Gerber, Property Manager representing the landlord,** stated the landlord is glad to have Chez Mika in the property on the terms that he originally signed the lease for and this is not what the lease was signed for. Mr. Gerber stated the landlord has some concerns and noted that the Police Department is aware that at the north end when he bought this property the Universal Supermarket has police protection three nights a week from 4:00-7:00 p.m. because of the conditions of the people who hang out in that shopping center. Mr. Gerber stated when he took it over he met with Officer Gregory Wesner and he changed the lighting as they saw it at that time. Mr. Gerber stated he received a letter from the Police Department congratulating them for trying to improve the shopping center. Mr. Gerber stated they are willing to improve the shopping center and noted they now have a Photometric Plan in place for the entire shopping center. Mr. Gerber stated the tenants pay CAM (Common Area Maintenance) charges with regard to the electric. He stated he is willing to foot the bill for all the electric lights the City of Delray Beach has requested for them. However, by law (provided this information from the City) they can turn down the lights to a certain degree after 11:00 p.m. Mr. Gerber stated if Chez Mika is willing to pay for the difference in the electricity used from the normal closing time until the time that she closes (2:00 a.m.) then he has no objection.

**Dr. Joseph Provenzano, 1921 S.W. 36<sup>th</sup> Avenue, Delray Beach,** stated he knows that Abbey Delray is directly across the street and noted he treats a lot of patients from there and is not sure if they know this is going on. He stated there will be bright lights and music going on until 2:00 a.m. Dr. Provenzano stated he does not like to be stereotypical but all the people from Abbey Delray South are going to be asleep and this is going to keep them awake. He would like to hear input from people living in Abbey Delray South. Also, Dr. Provenzano stated earlier in the meeting this evening, when Elizabeth Alpert presented the Neighborhood Pride Grant and she showed that Delray Estates had a problem and they had to change their fencing and are still having a continued crime problem there and noted this is less than a block away from the restaurant. He urged the Commission to think about the safety of the patrons who will be coming in and out of the restaurant and what type of parties may go on there (i.e. weddings, reunions, parties).

Mr. McDuffie stated for the record, Abbey Delray North was noticed.

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

There was no cross-examination.

The following individuals gave a brief rebuttal:

Mr. Dorling stated with respect to the comments expressed by Dr. Provenzano and residents were noticed within 300 feet and the City did not receive any comments from anyone. Mr. Dorling stated his understanding is that this is a restaurant use and does not include music. Mr. Dorling stated if the Commission approves the conditional use request, that all the improvements shown in the security plan as well as the lighting and the landscaping for the center should be in place prior to this business extending its hours of operation because he feels this is critical for the safety issues that have come up.

Ms. Grand stated when she originally submitted the application it said until 5:00 a.m. and staff informed her to go ahead and submit the application and see what the Board would approve. She stated the applicant never intended to stay open until 5:00 a.m. Ms. Grand stated it has never been considered nor did they even apply for it to be a nightclub and emphasized that this is only a restaurant. She stated music is being played is from the speakers as like with any other restaurant so that there is not dead silence in the restaurant.

Mr. Bernard stated his biggest concern with the addition of the security guard is that some of the other restaurants are not required to have security guards and are opened past 2:00 a.m. and in order for the applicant to get an agreement with the Planning and Zoning Department they agreed to do that. However, Mr. Bernard stated they would like the Commission to also address this issue. He stated it is just a restaurant where people eat and noted that they agreed to the lighting issue and to add the two additional cameras around the area because of the development of the Southwest area, the area will change in the next several years and he feels there will be better protection in that area.

Mrs. Montague stated the City regularly asks for additional security throughout the City.

Mr. McDuffie stated he would applaud anything that is done in that particular area to improve the life experiences of the people and the safety in that area. He stated improving the lighting in this shopping center would satisfy his requirements for the operation of the restaurant. Mr. McDuffie stated there is a leasing issue that needs to be worked out with the client, landlord and the tenant that the City does not have anything to do with. Mr. McDuffie reiterated that the City does require lighting and security officers even to Wal-mart who is about to improve their building out on Military Trail. Mr. McDuffie stated he supports the improvements although there is an issue with the landlord and the tenant that needs to be worked out.

After brief discussion, the City Attorney noted that one of the conditions added is that there is no live music in the extended hours and no outside speakers.

The City Attorney briefly reviewed the following conditions: (1) applicant must have a uniformed security guard on staff from 11:00 p.m. until 3:00 a.m., (2) security personnel will be available to walk patrons to their cars when needed, (3) two additional security cameras over the eight already provided and must be installed to monitor the

parking lot areas in front and across from Chez Mika restaurant and the cameras must record at night, (4) no live music in the extended hours, (5) no outside speakers during any time, (6) the lighting must be improved per the perimeters of the waiver that is going to be acted on next, (7) all improvements that are required must be in place prior to opening for the extended hours.

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).

Mrs. Montague moved to adopt the Board Order as presented with the conditions as outlined by the City Attorney, seconded by Mr. McDuffie. 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.

**9.D.1. WAIVER REQUEST/CHEZ MIKA RESTAURANT:** Consider a waiver request to Land Development Regulations (LDR) Section 4.6.8, "Lighting", to exceed the maximum 4.0 foot candle allowance for the Chez Mika Restaurant, located at 1005 South Congress Avenue in the Sherwood Plaza. *(Quasi-Judicial Hearing)*

Mayor Ellis stated anyone who was not sworn in for the previous item and would like to speak on this waiver request, to please come forward at this time.

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

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-075 into the record.

Mr. Dorling stated this waiver request is to allow a maximum foot candle up to 9.0 and the current Code maximum is 4.0. Staff recommends approval of this request to provide better security for the entire site.

The City Attorney stated the Photometric Plan should be a condition of the conditional use approval as submitted and noted the Board Order will be modified to include this additional condition.

**Mackenson Bernard, 2605 W. Atlantic Avenue, #D-202, Delray Beach,** *(speaking on behalf of the Applicant)*, stated he has already addressed this issue.

Mayor Ellis stated if anyone from the public would like to speak in favor or in opposition of the waiver request, to please come forward at this time. There being no one from the public who wished to address the Commission regarding the waiver request, the public hearing was closed.

There was no cross-examination or rebuttal.

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

Mr. Fetzer moved to adopt the Board Order as presented, seconded by Mr. 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.

At this point, the City Attorney suggested that the City Commission make another motion to include the requirement as a condition to comply with the Photometric Plan as submitted in the conditional use (Item 9.D.).

Mrs. Montague moved to approve the requirement as a condition (#8) to comply with the Photometric Plan as submitted in the conditional use, seconded by Mr. Eliopoulos. 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.

**9.E. THIS ITEM HAS BEEN POSTPONED TO A DATE CERTAIN OF APRIL 15, 2008.**

**9.F. SPONSORSHIP REQUEST/S.D. SPADY CULTURAL HERITAGE MUSEUM ANNUAL GALA:** Consider a request from S.D. Spady Cultural Heritage Museum to provide a table sponsorship in the amount of \$1,250.00 for the Annual Gala, Dancing with the Stars “Spady Style”, to be held on April 19, 2008. Funding could be transferred from 001-6111-519-99.03 (General Fund/Manager’s Contingency).

Robert A. Barcinski, Assistant City Manager, stated this is a request for the Commission to consider sponsoring a table for the Annual Gala Dancing with the Stars “Spady Style” to be held on April 19, 2008 at the Marriott in the amount of \$1,250.00. Mr. Barcinski stated funding would have to come from the City Manager’s Contingency Fund (001-6111-519-99.03). The City Commission did sponsor a table for \$1,000.00 in 2006. Staff recommends consideration of this request.

After brief discussion, it was the consensus of the Commission that although they support the S.D. Spady Cultural Heritage Museum Annual Gala, they will purchase their own ticket.

**9.G. APPOINTMENT TO THE BOARD OF ADJUSTMENT:** Appoint one (1) alternate member to the Board of Adjustment to serve an unexpired term ending August 31, 2009. Based upon the rotation system, the appointment will be made by Commissioner Montague (Seat #4).

Mrs. Montague moved to appoint Patricia Nyera as an alternate member to the Board of Adjustment to serve an unexpired term ending August 31, 2009, 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 passed with a 5 to 0 vote.

**9.H. RECONSIDERATION OF SPECIAL ACTION REQUEST/OFFICE DEPOT/CVS PHARMACY BUILDING:** Consider a request for reconsideration of the City Commission action to overturn the Site Plan Review and Appearance Board's approval of the special action request for the Office Depot/CVS Pharmacy, located at N.E. 6<sup>th</sup> Avenue. (ADDENDUM)

The City Attorney stated this is before the City Commission for reconsideration and under Robert's Rules of Order the Commission must decide if one of the prevailing Commissioners on the prevailing side agrees to vote at the next regular meeting on the previous vote if the Commission wants to reconsider that vote. The City Attorney stated this is an appeal that the Commission took on the special request dealing with the parking for the Office Depot/CVS Pharmacy project. She stated basically the City Commission approved the appeal which overturned the SPRAB decision which granted that special request. SPRAB is asking that the City Commission reconsider.

Mr. McDuffie moved to reconsider after review by the Site Plan Review and Appearance Board (SPRAB), seconded by Mr. Eliopoulos. 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 Commission moved to **Item 12, First Readings.**

**12. FIRST READINGS:**

**12.A. ORDINANCE NO. 22-08:** Consideration of a privately sponsored rezoning from GC (General Commercial) to AC (Automotive Commercial) for a 6.28 acre parcel located on the east side of Federal Highway (a.k.a. The Ralph Buick Dealership). If passed, a public hearing will be scheduled for April 15, 2008.

The caption of Ordinance No. 22-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND PLACING LAND PRESENTLY ZONED GENERAL COMMERCIAL (GC) DISTRICT TO AUTOMOTIVE COMMERCIAL (AC) DISTRICT; SAID LAND BEING A PARCEL LOCATED AT THE NORTHEAST CORNER OF SOUTH FEDERAL HIGHWAY (U.S. HIGHWAY NO. 1) AND FLADELL'S WAY (AVENUE "F"), AS MORE PARTICULARLY

DESCRIBED HEREIN; AMENDING "ZONING MAP  
OF DELRAY BEACH, FLORIDA, "APRIL 2007"  
PROVIDING A GENERAL REPEALER CLAUSE, A  
SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 22-08 is on file in the City Clerk's office.)

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

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated this is a privately initiated rezoning from GC (General Commercial) to AC (Automotive Commercial) for a 6.28 acre parcel located on the east side of Federal Highway. The Ralph Buick auto dealership occupied the site from 1972 to 2005. In 2005, a rezoning request was submitted by New Century Development Group for the rezoning and allowed for a mixed-use development consisting of 13,781 square feet of retail floor area, 13,900 square feet of office floor area, 16 condominium dwelling units, and 59 townhouse dwelling units. On January 3, 2006, the City Commission approved the rezoning of the property from AC to GC. A conditional use for the stand-alone town house component of the project was also approved by the City Commission on April 4, 2006. Mr. Dorling stated based on changes in the market this is now not a viable project.

At its meeting of November 20, 2006, the Planning and Zoning Board held a public hearing on the AC zoning request (its original zoning). There were two people from the public that spoke in support of the rezoning. At that time, this was put on hold and is now being reactivated. Mr. Dorling stated since the first reading was more than a year ago, it was suggested that a new ordinance be created and rescheduled for this first reading. At its meeting of December 5, 2006, the City Commission recommended approval.

Mr. McDuffie asked if the residents were re-noticed. The City Attorney stated this is an advertised first reading and does not require individual notices.

Mr. Fetzer stated at the last Workshop Meeting there was discussion about the South Federal Highway Corridor and what the City's conceptual plans related to the Comprehensive Plan were. He asked how this fits into that Plan. Mr. Dorling stated this would be inconsistent with it and noted that the direction talked about at the meeting was to encourage mixed-use on the east side of the road and straight commercial as a fall back position when these auto dealerships vacated the site. However, Mr. Dorling stated this rezoning is to accommodate a relocation of an auto dealership more particularly the jeep dealership which is where the CVS is proposed to relocate. The Plan is not to phase out auto use at this time but is to re-establish it here. Mr. Dorling stated it is inconsistent with the future direction. The Plan that was approved that is no longer viable from an economic point of view is the future direction for this side of Federal Highway.

Mr. Fetzer stated he would like to hear more public input at the public hearing regarding this item.

Mr. McDuffie moved to approve Ordinance No. 22-08 on FIRST Reading, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

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

**13.A. City Manager**

With regard to the complaints the City received regarding Lee's Crossing about the Boy's Market and the truck noise, the City Manager stated the Police Department has received two complaints in March 2008 and had not gotten anything previously until August 2007. The City Manager stated two police officers have been looking into this issue and believe that the noise may be coming from the Post Office and not from Boy's Market but they are trying to investigate it further to really determine what the source is.

**13.B. City Attorney**

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

**13.C. City Commission**

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

Mr. McDuffie stated this past weekend they had the opening ceremonies for the combined Delray American/Delray National Little League and he enjoyed seeing everyone there. On behalf of the Board of Directors of the Leagues, Commissioner McDuffie thanked everyone for their support and for the things the Commission has done in support of this. Mr. McDuffie stated this is thus far an overwhelming success and thanked reporters Diana (Palm Beach Post) and Maria (Sun-Sentinel) for their media coverage of the opening ceremonies.

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

Mrs. Montague briefly commented about the trip she and Mayor Ellis took to Tallahassee and noted things are tight and are going to continue to be tight. She stated the City Commission has some pretty tough decisions they are going to have to make not only this fiscal year but in the upcoming two or three years. Mrs. Montague commended the City Manager and staff particularly Doug Smith, Assistant City Manager, for putting together their talking points and noted they were excellent. Mrs. Montague stated they were very well received by the State Legislators and they distributed copies of the brochure for the record. She stated she is hoping those going to Washington have something similar to what Doug Smith has put together and extended kudos to him.

Mayor Ellis stated the Legislators were very appreciative to receive the brochure and it not only gave the City of Delray Beach's position but the League of Cities position on Bills that were in committees they served on. She stated the entire brochure was very helpful.

**13.C.3.      Mr. Fetzer**

Mr. Fetzer stated he is the liaison for the Commission to the Education Board and also to Carver Middle School. He stated he sat in discussions about some issues at Carver Middle School particularly related to discipline. Mr. Fetzer stated Carver is faced with a situation where due to the bus schedules classes do not start until 9:30 a.m. and they had a large number of their students showing up at 8:00 a.m. with nothing to do. The Education Board discussed whether or not the City could do something to help. Mr. Fetzer stated he went to the City Manager and asked if he could pull together a meeting with the Police Department and the Parks and Recreation Department and some representatives from the Education Board. Mr. Fetzer stated the City Manager did this and they continue to work on things that the City could do and this is a good example of how Delray Beach is pro-active with its schools. The Parks and Recreation Department has developed a before school program now and the Police Department is working toward implementing a Police Academy Program there. Due to resource constraints with the police, they cannot be there right at this time but they are starting to involve some police officers. Mr. Fetzer stated he is very pleased with how the City has pulled together with the Education Board to address some of these issues and thanked the City Manager for his leadership.

Secondly, Mr. Fetzer stated regarding the surveys for the historic districts that the City wants; he understands there is not going to be any funding. Mr. Dorling stated on the Marina District the City did a Request for Proposal (RFP) and received two responses. One was very high and one was more reasonable. Mr. Dorling stated in the next week staff will be getting ahold of that reasonable respondent and expediting that process which should occur in the next few weeks. The deadline is the end of April and this is in the budget. The other four were being ranked yesterday and staff will know on Wednesday; however, Mr. Dorling stated he feels confident that the City will be ranked fairly high. Initially they had concerns that they were going to get no money, however, this turned around yesterday and they now think they will get some money. He stated they received approximately \$2 million last year and they feel they will get about a half million or \$1 million. Mr. Dorling stated if they get ½ million, the City will get some of what we need and if they get \$1 million he is comfortable that we will get all that we need.

Mr. Fetzer commented about an article which appeared in Sun-Sentinel News on Friday, March 28, 2008. He stated with all due respect to Maria, the implications were that the prior Commission did not get along and did not work well together and that everything is wonderful now. Mr. Fetzer stated he, Commissioner Montague and Mayor Ellis were all members of that prior Commission and does not feel this was an accurate assessment. Mr. Fetzer stated the prior Commission did have a lot of differences of opinion at times but believes they acted professionally and they had a reputation of "getting things done". Mr. Fetzer stated the article portrayed the current Commission as "laid back"

and feels it is very important that the Commission act professionally and respect one another. He encouraged everyone to speak their mind and not necessarily agree with each other's position on every issue because it generates healthy debate. Mr. Fetzer stated he hopes that the present Commission will be independent from the influences of others and continue the tradition of making the most important thing getting things done for the City of Delray Beach.

**13.C.4.**        **Mr. Eliopoulos**

Mr. Eliopoulos stated any good reporter likes to get a reaction out of somebody. He echoed comments expressed by Commissioner Fetzer. Mr. Eliopoulos stated there have been plenty of Commissions in the past that have had problems or that run into issues where they did not agree. Mr. Fetzer stated three members on the current Commission were part of the last Commission and noted the last year was rough, however, that Commission got things done in their tenure and was one of the more productive Commissions that the City has had. Mr. Eliopoulos stated he relies on a lot of our previous Commissioners and Mayors. He stated he respects the previous Commission and thinks they did a great job.

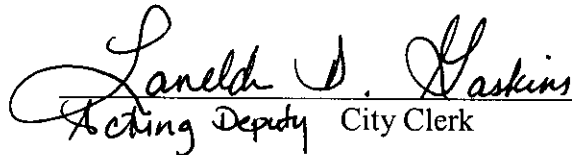
**13.C.5.**        **Mayor Ellis**

Mayor Ellis stated the Commission may not always agree but they do not usually leave with animosity.

Secondly, Mayor Ellis stated the opening ceremonies for the combined Delray American/Delray National Little League on Saturday were great. She also noted there were a couple of business ribbon cutting ceremonies over the last week and stated it is important for her to attend and let them know the City welcomes them to Delray Beach.

Lastly, Mayor Ellis stated she is looking forward to the Goal Setting Session and meeting with Lyle Sumek.

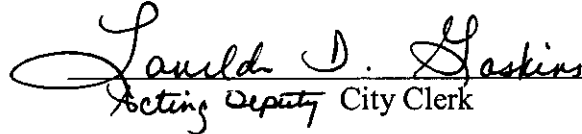
There being no further business, Mayor Ellis declared the meeting adjourned at 8:58 p.m.

  
\_\_\_\_\_  
Acting Deputy 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 April 1, 2008, which Minutes were formally approved and adopted by the City Commission on April 15, 2008.

  
Acting Deputy 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

**CONDITIONAL USE REQUEST FOR VILLAGES AT DELRAY**

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

1. This conditional use request has come before the City Commission on April 1, 2008. The Conditional Use Request is for density in excess of 12 units per acre, up to 24 dwelling units per acre.
2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the conditional use request for Villages at Delray. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsections I and II.

**I. COMPREHENSIVE PLAN**

A. Comprehensive Plan - Future Land Use Element Objective A-1/Future Land Use Map: Is the property developed/redeveloped so that the future use and intensity is appropriate in terms of soil, topographic, and other applicable physical considerations, is complementary to adjacent land uses, and fulfills remaining land use needs and is consistent with the Land Use Map?

Yes 5 No 0

B. Comprehensive Plan - Future Land Use Element Policy C-1.7: The Southwest Area Neighborhood Redevelopment Plan was adopted by the City Commission at its meeting of June 3, 2003. The Plan establishes a blueprint for the revitalization and stabilization of the area. The Southwest Area Neighborhood Redevelopment Plan is divided into five sub-areas based upon current and proposed land uses. The sub-areas serve to defined potential boundaries for the phased

Hem 9.B. 4/1/08

implementation of the various plan components. Future development in the area must be in accordance with the provisions of the Redevelopment Plan.

**Is this development consistent with the Redevelopment Plan?**

Yes   5   No   0  

C. **Comprehensive Plan – Housing Policy A-12.3:** In evaluating proposals for new development or redevelopment, the City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied.

**Does this project negatively impact adjacent residential areas?**

Yes   5   No   0  

D. **Concurrency:** Objective B-2 of the Land Use Element of the Comprehensive Plan requires that development not exceed the ability of the City to fund and provide, or to require the provision of, needed capital improvements for the following areas:

**Are the concurrency requirements met with respect to water, sewer, drainage, streets and traffic, parks, open space, solid waste and schools?**

Yes   5   No   0  

E. **Consistency:** Will the granting of the conditional use be consistent with and further the goals and policies of the Comprehensive Plan?

Yes   5   No   0  

**II. LDR REQUIREMENTS:**

A. **LDR Section 2.4.5(E) Required Findings: (Conditional Use):** Pursuant to Section 2.4.5(E)(5), in addition to provisions of Chapter 3, the conditional use will not:

1. Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;

2. Hinder development or redevelopment of nearby properties.

**Will Section 2.4.5(E)(5) be met?**

Yes   5   No   0  

**B. REQUIRED FINDINGS RELATING TO DENSITY INCREASE:**

LDR Section 4.4.6(B)(3) RM (Medium Density Residential) Zoning District and LDR Section 4.4.6(I) Performance Standards apply and are attached hereto to allow 264 rental units in 7 buildings.

**Are the performance standards in Sections 4.4.6(B)(3) met?**

Yes   5   No   0  

**Are the performance standards in Section 4.4.6(I) met?**

Yes   5   No   0  

**C. Required Findings Relating to Provision of Workforce Housing.**

**1. LDR Section 4.7.3 – Provision of Workforce Housing Units:**

Developers will be awarded density bonus units (additional market rate units), beyond the base number allowed per existing zoning ordinance after performance standards have been met, as an incentive to provide affordable housing units, subject to the limits and requirements of this chapter.

- a. Developers may earn bonus units by building housing for very low, low or moderate income families within the designated boundaries of the Overlay Districts.
- b. All development shall meet the requirements for units as specified in this chapter and meet all required Land Development Regulations.
- c. Workforce units shall include those units in a development, which are regulated in terms of:
  - i. Sales price or rent levels;
  - ii. Marketing and initial occupancy; and
  - iii. Continued requirements pertaining to resale or rent increases.

2. **Section 4.7.4 – Density Bonus Program for the Southwest Neighborhood Overlay District, Carver Estates Overlay District and the Infill Workforce Housing Area:** Developers of property in the Southwest Neighborhood Overlay District, the Carver Estates Overlay District, and the Infill Workforce Housing Area that meet the minimum standards will earn bonus units for building workforce housing for very low, low and moderate income families. The bonus allowances are set forth in Table 1 below.

TABLE 1 DENSITY BONUS ALLOCATIONS IN THE SOUTHWEST NEIGHBORHOOD OVERLAY DISTRICT, THE INFILL WORKFORCE HOUSING AREA AND THE CARVER ESTATES OVERLAY DISTRICT	
<b>OPTION – SALE</b>	<b>BONUS PER WORKFORCE UNIT</b>
<b>PROVIDED</b>	
VERY LOW 60%	4
LOW 80% - 61%	3
MODERATE 120% - 81%	2
<b>OPTION – RENT</b>	<b>BONUS PER WORKFORCE UNIT</b>
<b>PROVIDED</b>	
VERY LOW 60%	3
LOW 80% - 61%	2
MODERATE 120% - 81%	1
<b>LARGE HOME OPTION</b>	
4 + bedroom workforce housing units	0
Additional 0.5 bonus will be added to the bonus provided above in this chart	

There are 264 dwelling units proposed within the subject property (11.03 acres). This equates to an overall density of 24.0 dwelling units per acre (264 units / 11.03 acres = 23.93 du/ac). The density allowed is 12 du/ac which equates to a total of 132.36 residential units (11.03 acres x 12 du/ac = 132.36 units). The applicant is requesting an increase of 131.64 units above the 132.36 units allowed (264 – 132.36 = 131.64 units). To support the increased density, 65.82 moderate income bonus units are needed (131.64 units / 2 bonus per workforce unit provide = 65.82). Therefore, to obtain the increase density requested, at least 66 units of the 264 residential units proposed will be rental workforce housing units for low to moderate income families. It is noted that out of the 264 units proposed 198 units will be market rate rental units and the

remaining 66 units will be workforce rental units. Out of the 66 workforce housing units proposed, 6 will be one bedroom units, 30 units will be two bedroom units, and 30 more will be three bedroom units.

**Is this standard met?**

Yes   5   No   0  

3. The comments and notes set forth in the staff report are hereby incorporated herein


4. The City Commission has applied the most current Comprehensive Plan and LDR requirements to this development application and finds that its determinations as herein set forth are consistent with the Comprehensive Plan.

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

6. Based on the entire record before it, the City Commission approves   X   denies        the conditional use as requested subject to the conditions of the P&Z Staff Report (attached as Exhibit "B") and hereby adopts this Order this 1st day of April, 2008, by a vote of   5   in favor and   0   opposed.

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

ATTEST:

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

**Section 4.4.6 Medium Density Residential (RM) District:**

**(A) Purpose and Intent:** The Medium Density Residential (RM) District provides a residential zoning district with flexible densities having a base of six (6) units per acre and a maximum of twelve (12) units per acre, except within the Southwest Neighborhood Overlay District and the Carver Estates Overlay District where the maximum density is twenty-four (24) units per acre, and within the Infill Workforce Housing Area, where the maximum density is eighteen (18) units per acre. The actual density of a particular RM development is based upon its ability to achieve certain performance standards which are intended to mitigate the impacts of the increased density and ensure that the project is compatible with surrounding land uses. Within the Southwest Neighborhood Overlay District, the Southwest 10th Street Overlay District, and the Carver Estates Overlay District, and the Infill Workforce Housing Area, the actual density is also based upon the development's ability to comply with Article 4.7 (Family/Workforce Housing). Further, the Medium Density Residential District provides for implementation of those objectives and policies contained within the Housing Element of the Comprehensive Plan which call for accommodating a variety of housing types. [Amd. Ord. 24-07 8/21/07]; [Amd. Ord. 7-05 2/15/05]; [Amd. Ord. 42-97 10/7/97]

**(B) Principal Uses and Structures Permitted:** The following types of use are allowed within the (RM) District as a permitted use:

- (1) Single family detached dwellings.
- (2) Duplex structures.
- (3) Multiple family structures.
- (4) An abused spouse residence with twelve (12) or fewer residents.
- (5) Group Homes, Types 1 and 2, and Community Residential Homes, pursuant to restrictions set forth in Section 4.3.3(l). [Amd. Ord. 23-01 5/1/01]
- (6) Parking lots not associated with a use, pursuant to an adopted neighborhood or redevelopment plan. [Amd. Ord. 8-00 4/4/00]
- (7) Pocket parks. [Amd. Ord. 8-00 4/4/00]
- (8) Public educational facilities of The School District of Palm Beach County, pursuant to the regulations set forth in Section 4.3.3 (HH). [Amd. Ord. 24-02 7/16/02]

**(C) Accessory Uses and Structures Permitted:** The following uses are allowed when a part of, or accessory to, the principal use:

- (1) Uses and structures normally associated with residences such as: bird aviaries, boat docks, dog houses and dog runs, garages, greenhouses, playhouses,

## SECTION 4.4.6 (H) (6) (a)

- (a) **Southwest Neighborhood and Carver Estates Overlay Districts and Infill Workforce Housing Area**: Density bonuses above 12 units per acre may be granted as a Conditional Use to eligible properties within the Southwest Neighborhood and Carver Estates Overlay Districts, defined in Section 4.5.9 and 4.5.11, respectively, and within the Infill Workforce Housing Area, Section 4.5.12, subject to the regulations set forth in Chapter 4, "Zoning Regulations", and Article 4.7, "Family/Workforce Housing". [Amd. Ord. 17-06 4/4/06]; [Amd. Ord. 7-05 2/15/05]
- (b) **S.W. 10<sup>th</sup> Street Overlay District**: Within the S.W. 10<sup>th</sup> Street Overlay District defined in Section 4.5.10, in addition to the performance standards listed in Section 4.4.6(l), increases to a project's density beyond six (6) units per acre is subject to the regulations set forth in Chapter 4, "Zoning Regulations", "Family/Workforce Housing". [Amd. Ord. 17-06 4/4/06]; [Amd. Ord. 7-05 2/15/05]

(l) **Performance Standards**: [Amd. Ord 42-97 10/7/97];

(1) These standards shall apply to all site plans approved subsequent to October 7, 1997, and for modifications to existing developments which involve the creation of additional residential units. [Amd. Ord 42-97 10/7/97]

In order to increase a project density beyond six (6) units per acre, the approving body must make a finding that the development substantially complies with the performance standards listed in this section. The intent of the standards is to mitigate the impacts of the additional density both internal and external to the site. The extent to which a project meets the standards will determine the number of units per acre that will be permitted. For example, if a project meets or exceeds all of the standards, and is otherwise consistent with applicable standards and policies of the City's Comprehensive Plan and Land Development Regulations, the maximum density is permitted. Projects which only partially achieve these standards will be permitted a correspondingly lower density. The performance standards are as follows: [Amd. Ord 42-97 10/7/97]

- (a) The traffic circulation system is designed to control speed and reduce volumes on the interior and exterior street network. This can be accomplished through the use of traffic calming devices; street networks consisting of loops and short segments; multiple entrances and exists into the development; and similar measures that are intended to minimize through traffic and keep speeds within the development at or below 20 m.p.h. [Amd. Ord 42-97 10/7/97]
- (b) Buildings are placed throughout the development in a manner that reduces the overall massing, and provides a feeling of open space. [Amd. Ord 42-97 10/7/97]

## SECTION 4.4.6 (I) (1) (c)

- (c) Where immediately adjacent to residential zoning districts having a lower density, building setbacks and landscape materials along those adjacent property lines are increased beyond the required minimums in order to provide a meaningful buffer to those lower density areas. Building setbacks are increased by at least 25% of the required minimum; at least one tree per 30 linear feet (or fraction thereof) is provided; trees exceed the required height at time of planting by 25% or more; and a hedge, wall or fence is provided as a visual buffer between the properties. [Amd. Ord 42-97 10/7/97]
  - (d) The development offers a varied streetscape and building design. For example, setbacks are staggered and offset, with varying roof heights (for multi-family buildings, the planes of the facades are offset to add interest and distinguish individual units). Building elevations incorporate diversity in window and door shapes and locations; features such as balconies, arches, porches, courtyards; and design elements such as shutters, window mullions, quoins, decorative tiles, etc. [Amd. Ord 42-97 10/7/97]
  - (e) A number of different unit types, sizes and floor plans are available within the development in order to accommodate households of various ages and sizes. Multi-family housing will at a minimum have a mix of one, two and three bedroom units with varying floor plans. Single family housing (attached and detached) will at a minimum offer a mix of three and four bedroom units with varying floor plans. [Amd. Ord 42-97 10/7/97]
  - (f) The development is designed to preserve and enhance existing natural areas and/or water bodies. Where no such areas exist, new areas which provide open space and native habitat are created and incorporated into the project. [Amd. Ord 42-97 10/7/97]
  - (g) The project provides a convenient and extensive bicycle/pedestrian network, and access to available transit. [Amd. Ord 42-97 10/7/97]
- (2) It is acknowledged that some of the above referenced standards may not be entirely applicable to small, infill type residential projects. For those types of projects, the ultimate density should be based upon the attainment of those standards which are applicable, as well as the development's ability to meet or exceed other minimum code requirements. [Amd. Ord 42-97 10/7/97]
- (3) For vacant property that is proposed for rezoning to RM with a density suffix, the approving body must make a finding that the proposed density is appropriate based upon the future land use map designations of surrounding property as well as the prevailing development pattern of the surrounding area. [Amd. Ord 42-97 10/7/97]

## **EXHIBIT "B"**

### ***List of Conditions For the***

### ***Conditional Use Request for Villages at Delray Dated April 1, 2008***

1. Approval of the site plan by SPRAB that is in general conformance to the submitted site plan and addresses the Exhibit "A" – Technical Items and conditions of approval attached in the staff report;
2. That if the workforce housing units are sold it should be done in accordance with Article 4.7;
3. That greater variety of floor plan designs for the one, two, and bedroom units shall be provided during the site plan review process;
4. That a plat must be processed and recorded prior to issuance of a building permit.
5. That a bus shelter easement(s) shall be provided on the east side of Auburn Avenue and that a bus shelter shall be installed and depicted on the site plan. The City Engineer will provide detail on the bus shelter.
6. That a workforce housing units are rented in accordance with Article 4.7;
7. That the applicant shall coordinate with the Community Improvement Department on renter/buyer eligibility and rent and housing prices;
8. That the applicant shall provide wheel stops and curbing within the overflow sodded parking areas when the City Engineer deems it necessary;
9. That a parking access agreement that allows the use of the Day Care parking area for overflow parking is signed and executed;
10. That an additional trash compactor location is provided on site;
11. That appropriate gates to allow pedestrian access from the Day Care parking area to the adjacent residential buildings are clearly labeled and depicted on the site plan;
12. That no amendments to the covenants shall be made unless by written instrument approved by the City; and
13. That a composite utility plan be provided with the site plan application.

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

**CONDITIONAL USE REQUEST FOR CHEZ MIKA RESTAURANT**

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

1. This conditional use requests has come before the City Commission on April 1, 2008 for a late night business extending the hours until 2:00 a.m.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the conditional use request for Chez Mika Restaurant. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsections I and II.

**I. COMPREHENSIVE PLAN**

a. **Comprehensive Plan - Future Land Use and Map**: Is the future use and intensity of the development consistent with the future land use map and comprehensive plan and is it appropriate in terms of soil, topographic, and other applicable physical considerations, is complementary to adjacent land uses, and fulfills remaining land use needs.

Yes   5   No   0  

Subject to the conditions listed in Exhibit "A".

b. **Concurrency**: Concurrency as defined pursuant to Objective B-2 of the Land Use Element of the Comprehensive Plan must be met and a determination made that the public facility needs of the requested land use and/or development application will not exceed the ability of the City to fund and provide, or to require the provision of, needed capital improvements for the following areas:

**Are the concurrency requirements met as respect to water, sewer, drainage, streets and traffic, parks, open space, solid waste and schools?**

Yes   5   No   0  

Subject to the conditions listed in Exhibit "A".

**II. LDR REQUIREMENTS:**

**LDR Section 2.4.5(E) Required Findings: (Conditional Use):** Pursuant to Section 2.4.5(E)(5), in addition to provisions of Chapter 3, the conditional use will not:

- i. Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;
- ii. Hinder development or redevelopment of nearby properties.

**Will Section 2.4.5(E)(5) be met?**

Yes   5   No   0  

Subject to the conditions listed in Exhibit "A".

3. The comments and notes set forth in the staff report are hereby incorporated herein.


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

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

6. Based on the entire record before it, the City Commission approves   X   denies        the conditional use request subject to the Conditions set forth in Exhibit A, attached hereto and made a part hereof, and hereby adopts this Order this 1<sup>st</sup> day of April, 2008, by a vote of   5   in favor of denial and   0   opposed.

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

ATTEST:

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

## **EXHIBIT "A" TO THE CONDITIONAL USE REQUEST FOR CHEZ MIKA**

### **CONDITIONS**

1. Applicant must have a uniformed security guard on staff during the hours of 11:00 p.m. and 3:00 a.m.
2. Security personnel will also be available to walk patrons to their cars when needed.
3. Two additional security cameras over the eight (8) currently present must be installed to monitor the parking lot areas in front of and across from the Chez Mika restaurant. The cameras must be able to record at night.
4. No live music in extended hours.
5. No outside speakers at any time.
6. Need to improve lighting in shopping center.
7. All improvements that are required must be in place prior to operating within the extended hours.
8. Must adhere to submitted photometric plan.

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

**WAIVER REQUEST FOR CHEZ MIKA RESTAURANT**

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

1. This waiver request has come before the City Commission on April 1, 2008 to use the waiver request as to exceed this requirement at the rear entrance, up to 9.0 foot candles and along the perimeter, up to 6.3 foot candles.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver request for the Chez Mika Restaurant. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

**I. WAIVERS:**

Pursuant to LDR 4.6.8(B)(3)(c) the maximum foot candle requirement is 4.0. The Applicant wishes to exceed this requirement at the rear entrance, up to 9.0 foot candles and along the perimeter, up to 6.3 foot candles.

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.

Would the waiver of Section 4.6.8(B)(3)(c) to exceed the maximum foot candle requirements comply with the requirements of 2.4.7(B)(5)?

Yes 5 No 0

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

Item 9.D.1  
4/1/08

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

5. Based on the entire record before it, the City Commission approves or denies the waiver request to LDR Section 4.6.8(B)(3)(c).

Approve	Deny
<u>X</u>	<u>      </u>

6. Based on the entire record before it, the City Commission hereby adopts this Order this 1<sup>st</sup> day of April, 2008, by a vote of 5 in favor and 0 opposed.

ATTEST:

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

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

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

LAST NAME—FIRST NAME—MIDDLE NAME Zliopoulos, Gary P.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Delray Beach City Commission
MAILING ADDRESS 205 George Bush Boulevard	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY COUNTY Delray Beach, Florida 33444 Palm Beach	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED April 1, 2008	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

## WHO MUST FILE FORM 8B

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

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

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

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

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

### ELECTED OFFICERS:

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

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

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

### APPOINTED OFFICERS:

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

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

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

Item 12.A

**APPOINTED OFFICERS (continued)**

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

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

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

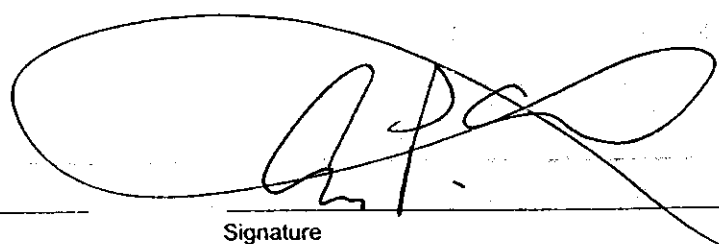
**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Gary P. Eliopoulos, hereby disclose that on April 1, 20 08:

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

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, Kupi & Eliopoulos Architects, P.A.;
- inured to the special gain or loss of my relative, \_\_\_\_\_;
- inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

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



4/1/08  
Date Filed

Signature

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