

**MAY 3, 2011**

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Vice-Mayor Angeleta E. Gray in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, May 3, 2011.

**1.** Roll call showed:

Present - Commissioner Tom Carney  
Commissioner Fred B. Fetzer  
Commissioner Adam Frankel  
Vice-Mayor Angeleta E. Gray

Absent - Mayor Nelson S. McDuffie

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

**2.** The opening prayer was delivered by Reverend Michael McClure with West Park Baptist Church.

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

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

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

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

Mr. Frankel moved to approve the Minutes of the Workshop Meeting of April 12, 2011, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Vice-Mayor Gray – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

Mr. Carney moved to approve the Minutes of the Regular Meeting of April 21, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Vice-Mayor Gray – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 4 to 0 vote.

**6. PROCLAMATIONS:**

**6.A. National Preservation Month – May 2011**

Vice Mayor Gray read and presented a proclamation hereby proclaiming May 2011 as National Preservation Month and call upon the people of Delray Beach, Florida, to join their fellow citizens across the United States in recognizing and participating in this special observance. Roy Simon, Secretary of the original Board of Directors for the Delray Beach Historic Society, and Joann Peart, President of the Delray Beach Preservation Trust, came forward to accept the proclamation and gave a few brief comments.

**6.B. Knights of Pythagoras Mentoring Network's Ladies of Distinction Day – May 7, 2011**

Vice-Mayor Gray read and presented a proclamation hereby proclaiming May 7, 2011 as Knights of Pythagoras Mentoring Network's Ladies of Distinction Day. C. Ron Allen came forward to accept the proclamation and invited the Commission and public to a picnic on Saturday, May 7, 2011 from 2:00-4:00 p.m.

**6.C. Travel and Tourism Week – May 7-15, 2011**

Vice-Mayor Gray read and presented a proclamation hereby proclaiming May 7-15, 2011 as Travel and Tourism Week. Sarah Martin came forward to accept the proclamation and gave a few brief comments.

**6.D. National Emergency Medical Services Week – May 15-21, 2011**

Vice-Mayor Gray read and presented a proclamation hereby proclaiming May 15-21, 2011 as National Emergency Medical Services Week in Delray Beach. Chief Steven Anderson came forward to accept the proclamation and gave a few brief comments.

**6.E. National Public Works Week – May 15-21, 2011**

Vice-Mayor Gray read and presented a proclamation hereby proclaiming the week of May 15-21, 2011 as National Public Works Week. Richard Hasko, Director of Environmental Services, came forward to accept the proclamation.

**6.F. Water Reuse Week – May 15-21, 2011**

Vice-Mayor Gray read and presented a proclamation hereby proclaiming the week of May 15-21, 2011 as Water Reuse Week. Richard Hasko, Director of Environmental Services, came forward to accept the proclamation.

**7. PRESENTATIONS:**

**7.A. Recognizing and Commending Dale Medeiros for her multitude of volunteer service hours with the City, local and national organizations**

Sarah Martin recognized and commended Dale Medeiros for volunteering over 12,000 volunteer service hours with the City of Delray Beach as well as local and national organizations.

On behalf of the City of Delray Beach, Vice-Mayor Gray presented a Special Recognition Award to Dale Medeiros for the multitude of volunteer service hours. Dale Medeiros came forward to accept the award and gave a few brief comments.

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

**8.A. RESOLUTION NO. 19-11: ABANDONMENT OF A UTILITY EASEMENT/1110 WATERWAY LANE:** Approve abandonment of a 5' x 100' utility easement on the property located at 1110 Waterway Lane.

The caption of Resolution No. 19-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, VACATING AND ABANDONING A UTILITY EASEMENT LOCATED ON THE PROPERTY AT 1110 WATERWAY LANE, DELRAY BEACH, FLORIDA, AND AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A".

(The official copy of Resolution No. 19-11 is on file in the City Clerk's office.)

**8.B. TRANSPORTATION ENHANCEMENT PROGRAM GRANT PROPOSAL/ PALM BEACH METROPOLITAN PLANNING ORGANIZATION (MPO):** Authorize submitting a Transportation Enhancement Program Grant Proposal to the Palm Beach Metropolitan Planning Organization (MPO) for beautification improvements along N.E. 2nd Avenue within the Del-Ida Park Historic District.

**8.C. CONTRACT CLOSEOUT (CHANGE ORDER NO. 1/FINAL)/B & O CONSTRUCTORS, INC.:** Approve Contract Closeout (Change Order No. 1/Final) to B & O Constructors, Inc. in the amount of a \$1,225.21 decrease and a final payment amount of \$8,550.31 for completion of the Munnings/Williams House Rehabilitation Project. Funding is available from 334-4851-575-62.89 (General Construction Fund: Buildings; Munnings/Williams Rehabilitation).

**8.D. SERVICE AUTHORIZATION 07-05/WANTMAN GROUP/S.W. 10TH AVENUE WATER MAIN UPGRADES:** Approve Service Authorization No. 07-05 with Wantman Group in the amount of \$48,846.00 for design of a water main

upgrade on S.W. 10th Avenue from S.W. 2nd Street to West Atlantic Avenue. Funding is available from 442-5178-536-68.76 (Water & Sewer Renewal & Replacement Fund: Improvements Other/S.W. 10th Avenue WM).

**8.E. AMENDMENT NO. 1 TO THE ALTERNATIVE WATER SUPPLY GRANT/SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD):** Approve Amendment No. 1 to the Alternative Water Supply Grant with South Florida Water Management District (SFWMD) to reduce funding from \$210,900.00 to \$154,800.00 for the Area 11B Reclaimed Water System expansion. Funding due to the grant reduction is available from 441-5181-536-65.96 (Water & Sewer Fund: Other Improvements/Reclaim Water Transmission).

**8.F. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)/HOUSING REHABILITATION CONTRACT AWARDS:** Approve two (2) Housing Rehabilitation contract awards for 1414 N.W. 2nd Avenue and 1417 S.W. 4th Street to Citywide Construction Services, Inc., the lowest responsive bidder, in the amount of \$58,476.45 for housing rehabilitation grants under the Community Development Block Grant (CDBG). Funding is available from 118-1963-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).

**8.G. HOUSING REHABILITATION BID AWARDS FOR NEIGHBORHOOD STABILIZATION PROGRAM (NSP):** Award three (3) NSP Housing Rehabilitation projects through the Community Development Division to CJ Contracting, LLC. in the amount of \$34,431.60 for 2216 N.E. 3rd Avenue; All Phase Roofing & Construction, Inc. in the amount of \$27,120.45 for 125 N.W. 12th Avenue and to Haywood Construction in the amount of \$43,097.25 for 1505 S.W. 3rd Court. Funding is available from 118-1935-554-62.12 (Neighborhood Services: Capital Outlay/Acquisition Rehabilitation).

**8.H. ADOPTION OF DELRAY BEACH PEDESTRIAN/BICYCLE TASK TEAM FINAL REPORT:** Approve formal adoption of the Delray Beach Pedestrian/Bicycle Task Team Final Report.

**8.I. SPECIAL EVENT REQUEST/AVDA 5K WALK/RUN:** Approve a special event request to endorse the 14th Annual Aid to Victims of Domestic Abuse, Inc. (AVDA) 5K Walk/Run to be held on Saturday, October 15, 2011 from 7:30 a.m. until approximately noon, with set up at 5:00 a.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the use of Anchor Park and the City right-of-way along Ocean Boulevard from Bucida Road to George Bush Boulevard, to waive parking meter fees in the Anchor Park and Sandoway lots from 5:00 a.m. to 11:00 a.m., and to authorize staff assistance for providing traffic control, barricading, signage, trash clean up and removal, City generator use, and set up and use of the small stage.

**8.J. SPECIAL EVENT REQUEST/4th OF JULY FESTIVITIES:** Approve a special event request for the 4th of July Festivities, including granting a temporary use permit per LDR Section 2.4.6(F) for the closure of Atlantic Avenue from the east side of N.E./S.E. 7th Avenue to Ocean Boulevard, and from the

south side of Thomas Street to the north side of Miramar on Ocean Boulevard from 2:00 p.m. to midnight; to waive Code of Ordinances Sections 101.25 "Commercial Enterprises" and 101.32 "Assemblies" to allow assembly on the beach and vendors; to allow all beach parking lots to remain open until approximately midnight; and to approve staff support for security and traffic control, street barricading and banner hanging, large stage set up and use, EMS support, use of City generator, signage, and clean up and trash removal.

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

**ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period April 18, 2011 through April 29, 2011.

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

- 1.** Contract award to Spearhead Development Group, Inc. in the amount of \$102,999.80 for the construction of several sidewalk improvements associated with the Community Improvement Sidewalk Phase II project. Funding is available from 118-1965-554-63.11 (Neighborhood Services: Improvements – Other/Bikepaths/Sidewalks).
- 2.** Purchase award to Sensus USA, Inc. in the amount of \$241,500.00 for the purchase of 2,000 one inch and 3/4 inch water meters. Funding is available from 442-5178-536-61.81 (Water & Sewer Renewal & Replacement Fund: Land/Water Meter Replacement Program).
- 3.** Contract award to Foster Marine Contractor's, Inc. in the amount of \$1,586,019.82 for the construction of improvements on S.W. 12<sup>th</sup> Avenue/Auburn Avenue/S.W. 14<sup>th</sup> Avenue from S.W. 10<sup>th</sup> Street to West Atlantic Avenue. Funding is available from 334-3162-541-68.04 (General Construction Fund: Other Improvement/S.W. 12<sup>th</sup> Avenue/Auburn/14<sup>th</sup> Avenue), 448-5461-538-68.04 (Storm Water Utility Fund: Other Improvement/ S.W. 12<sup>th</sup> Avenue/Auburn/14<sup>th</sup> Avenue) and 442-5178-536.68-04 (Water & Sewer Renewal & Replacement Fund: Improvements Other/ S.W. 12<sup>th</sup> Avenue/Auburn/14<sup>th</sup> Avenue).

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

**9. REGULAR AGENDA:**

**9.A. CONDITIONAL USE REQUEST/VETERANS OF FOREIGN**

**WARS (POST 4141):** Consider approval of a conditional use request to allow the Veterans of Foreign Wars (VFW) Post 4141 to establish a fraternal lodge within an

existing 2,783 sq. ft. commercial building in the GC (General Commercial) zoning district, located at 802 S.E. 5th Avenue. (*Quasi-Judicial Hearing*)

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

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on **Items 9.A. & 9.B.**

Vice-Mayor Gray asked the Commission to disclose their ex parte communications. Mr. Frankel, Mr. Carney, Mr. Fetzer, and Vice-Mayor Gray had no ex parte communications to disclose.

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-095 into the record.

Mr. Dorling stated this is a conditional use request to establish a fraternal lodge for Veterans of Foreign Wars (VFW) Post 4141 within an existing 2,783 square foot commercial building in the GC (General Commercial) Zoning District pursuant to LDR Section 2.4.5(E). The property is located on the southwest corner of S.E. 8<sup>th</sup> Street and 5<sup>th</sup> Avenue and contains a commercial building with 43 existing parking spaces and associated landscaping. This was developed in 1976 and has been a commercial restaurant use until late November 2010. Mr. Dorling stated the Post has bought the property and proposes to open a fraternal club that was previously located at S.E. 2<sup>nd</sup> Avenue and East Atlantic Avenue. The hours of operation are proposed to be 11:00 a.m. – 11:00 p.m. seven days a week and the existing seating capacity is approximately 75 persons and the proposed interior seating modifications will increase the seating capacity to 115 persons. The restaurant will be open to the general public for Sunday brunch and Wednesday night dinner. On-site beverage sales will include beer, wine, liquors and sodas. Other on-site activities will include semi-annual thrift sales of donated items, occasional bingo games and other fundraising activities as deemed necessary to provide for the welfare of veterans. The social hall will be rented for special events as needed by the general public.

At its meeting of April 25, 2011, the Planning and Zoning Board recommended approval subject to the following conditions: (1) that all activities occur indoors, including but not limited to the semi-annual thrift sale, (2) that either the parking reduction be approved or other alternative parking options be pursued, (3) that any deteriorated landscaping, irrigation systems and landscape island curbing shall be reinstalled to comply with the approved landscape plan for the site. Staff recommends approval.

**David Schmidt, representing the VFW Post (Applicant)**, stated they have no problems with the conditions suggested to be imposed by the Planning and Zoning Board and urged the Commission to support the parking reduction. Mr. Schmidt stated for 65 years the VFW has operated downtown with no parking so this is a

significant improvement to their situation.

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

There was no cross-examination or rebuttal.

Mr. Carney asked if the Commission can limit this to this application and not create a parking issue down the road if someone wants to use 100% of the facility. Mr. Dorling stated if significant internal changes were made then staff could revisit that.

Mr. Fetzer stated this has been a difficult location for some restaurants that have tried to operate there and he welcomes the change.

Mr. Frankel wished the applicant good luck.

Mrs. Gray concurs with the rest of the Commission.

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

Mr. Carney moved to approve the Board Order (approving the conditional use request subject to the conditions), seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Vice-Mayor Gray – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

**9.B. WAIVER REQUESTS/ FRANKLIN AT DELRAY BEACH:** Consider approval of four (4) waiver requests associated with the Franklin at Delray Beach development, located on the west side of South Federal Highway, south of S.W. 10th Street and north of the Plaza at Delray, including waivers to Land Development Regulations (LDR) Section 4.3.4 (H)(6)(b), “Special Landscape Setbacks”, which requires a 25’ special landscape setback along Federal Highway; Section 4.6.9(D)(3)(c)(1), “Stacking Distance”, which requires a 50’ stacking distance for all driveway connections; Section 6.1.3(B), “Sidewalk Design Requirements”, which requires a minimum width of 5’ for the internal sidewalks and Section 4.6.2(B), “Distance between Residential Buildings”, which requires a building separation of 79.78’ between buildings #6 and #7. (*Quasi-Judicial Hearing*)

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

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Frankel stated he met with the applicant and the attorney for

Franklin at Delray. Vice-Mayor Gray stated she met with the applicant and the attorney. Mr. Carney stated he met with the attorney. Mr. Fetzer stated he met with the attorney and the applicant.

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-017 into the record.

Mr. Dorling stated the three waivers and an internal adjustment for distance between buildings for the Franklin project which was a multi-family development was approved on April 13, 2011 by the Site Plan Review and Appearance Board (SPRAB) as part of a Class V application. SPRAB also considered the waivers and the internal adjustment and recommended approval of two of those waivers and the internal adjustment they did not support and recommended denial of the sidewalk waiver. Staff recommends denial of that waiver; the other two waivers and the internal adjustment staff supports. Mr. Dorling stated the project will be located on Federal Highway. The proposal is to demolish the office building and remove the trailers at the Floranda Mobile Home Park and construct a 180 multi-family dwelling unit apartment complex. He stated there are some single family homes and those would be provided with public access. Mr. Dorling stated the first waiver is to LDR Section 4.3.4(H)(6)(b) which requires a 25-foot special landscape setback along Federal Highway and the applicant has provided that 25 foot but the LDRs do not allow encroachment of any physical improvements within that area and the applicant is proposing a decorative picket fence design with an overall height of seven feet located approximately 16 feet from Federal Highway. Staff believes that feature will accentuate the landscaped improvements that they are proposing and feels it is appropriate to allow that encroachment. Mr. Dorling stated the second waiver is to LDR Section 4.6.9(D)(3)(c)(1) which requires a 50-foot stacking distance for all driveway connections including S.E. 12<sup>th</sup> Road and Federal Highway. He stated in this location the applicant is providing 40 feet versus 50 feet and where there are parking banks internal to the project they are providing approximately 5-6 feet before they have related parking and conflicts. Mr. Dorling stated they have provided rationale that this road is an internal road and it will function with low speeds and conflicts are not anticipated going into these individual parking rows and staff agrees with that. Mr. Dorling stated FDOT requires a 40 foot minimum and the applicant has complied with that but not the City's regulation for 50 feet. Staff supports those waivers for five driveway locations. Mr. Dorling stated staff does not support the waiver which requires a minimum width of 5 feet for the internal sidewalks from 5 feet to 4 feet. Mr. Dorling stated staff feels it would set a precedent because the 5 foot requirement in the LDRs is appropriate. The Site Plan Review and Appearance Board (SPRAB) did not support this waiver and staff does not as well. Mr. Dorling stated the last waiver is regarding an internal adjustment to LDR Section 4.6.2(B) which requires a building separation of 79.78 feet between buildings #6 and #7. Staff recommends approval of two of the waivers, the internal adjustment, and denial of the waiver for reduction in sidewalk width.

**Michael Weiner, Weiner & Lynne, P.A., 10 S.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444 (representing New Century)**, stated this project is the old trailer park in Silver Terrace and it is also the old Executive Quarters. Mr. Weiner stated they are asking for three waivers and an internal adjustment with staff approval on two of those waivers and one of the internal adjustments. Mr. Weiner stated they had a series of designs and one of them was considered too intense because of the commercial component and that one got eliminated along the way and another one was put forward and that one had some difficulties with the placement of the amenities. Mr. Weiner stated it was four stories in height and everyone preferred three stories in height. He stated the site plan did get approved along with the elevations and the landscaping by the Site Plan Review and Appearance Board. Mr. Weiner displayed the site plan, the renderings of the elevations that were approved, and the landscaping that was approved. He stated these have been updated because SPRAB had differences in the roofline, etc. Mr. Weiner stated they have difficulties with respect to the size of the sidewalks. Mr. Weiner stated staff would like a good pedestrian circulation system and they could not accommodate 5 foot sidewalks everywhere. He stated when they tried to do the additional sidewalks they lost opportunities for landscaping. Mr. Weiner stated they meet all the open space requirements but if they tried to make all of these sidewalks 5 feet the opportunities for plantings behind and in front of the buildings would be lost. Mr. Weiner stated under those circumstances they believe it is a superior project to have the 4 foot sidewalks in the areas that they are talking about. He stated 80% of the sidewalks are 4 foot and they went back since the time of the SPRAB meeting; they have increased the five footers and six footers since the time of SPRAB approval and noted the plans will be changed. Mr. Weiner stated it is important to note that you can walk from the most westerly part of the project all the way to the clubhouse and you will be on any major thoroughfare (S.E. 12<sup>th</sup> Road) on a 6 foot sidewalk and you will be able to make it from the east to the west on a 5 foot sidewalk. Mr. Weiner stated with respect to the four elements they have met them with respect to this particular request for a waiver. Mr. Weiner reiterated they have reduced the number of 4 foot sidewalks and the only places they remain is where it means a sacrifice to the aesthetics of the buildings and a sacrifice to this particular project to be able to work in terms of the approvals that have been granted for it. Mr. Weiner urged the Commission to approve the Board Order.

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

**Aisha Colon, 307 S.E. 12<sup>th</sup> Road, Delray Beach, FL 33483**, stated when there are building and zoning laws implemented there is a lot of research that goes behind it so when developers come in and ask for special waivers there is a compromise that is being made. Ms. Colon stated as the cars turn in their lights will be shining into her home as well as others if they are granted the right to put plastic or aluminum fencing and not mason walls. She stated these should be 6-8 foot mason walls so that their quality of life is not compromised (i.e. lights from the cars, noise and pollution). On behalf of the tenants of the Floranda Mobile Home Park, Ms. Colon stated they informed her that they were granted notices to leave by the end of May 30<sup>th</sup> written by Robert Matthias and is dated for the month of November. Ms. Colon stated there is a law in Florida which states

that notice cannot go out until the land use development has been granted which was not done until the meeting in January. Ms. Colon stated it would be better for the end of June so that their children can complete their schooling cycle.

**Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach)**, stated this is a great project and the City could use \$400,000.00.

**Denise Smeriglio, 1206 South Federal Highway, Delray Beach, FL (representing her stepmother who could not be present this evening)**, expressed concern that this notice was handed out too soon and stated it was in January when they actually received official approval for this project. Ms. Smeriglio stated everyone should have been re-informed and handed out proper notices through the legal system so that if anyone wanted to oppose or to research the laws they have time to do so. She stated they did not receive proper notice and for the children's sake June 30<sup>th</sup> would be a more sufficient enough time for the kids to finish school, pack and move. Ms. Smeriglio stated she objects to the fencing going up along Federal Highway and supports the landscaping versus the fencing.

**Jim Smith, 1225 South Ocean Boulevard #202, Delray Beach, FL, 33483**, stated he is Chairman of S.A.F.E. an organization dedicated to the safety of pedestrians and bicyclists. Mr. Smith stated a 4 foot wide sidewalk is not wide enough. He stated when you have two people walking on a 4 foot sidewalk and someone is coming in the other direction that is riding a bicycle, someone on rollerblades, a mother pushing a baby carriage, a bicyclist coming behind pedestrians that are walking and emphasized that there is not room enough for public safety. Mr. Smith stated the City Engineer has considered a 6 foot minimum wide sidewalk and urged the Commission to consider a 5 foot wide sidewalk and public safety.

**Alice Finst, 707 Place Tavant, Delray Beach, FL 33445**, urged the Commission to consider something other than a picket fence and stated it does not seem appropriate for this area. She suggested that a wall or a hedge be put there versus a picket fence so that it will block the lights and the noise of what will be the main road into the subdivision. Mrs. Finst stated you need more space to put up a wall than you do a picket fence and that should be considered into the waiver.

Chevell D. Nubin, City Clerk, swore in the following individual who wished to give testimony on this item.

**Sonya Woodward, 501 N.W. 4<sup>th</sup> Avenue, Delray Beach, FL 33444**, stated she walks every morning in the City of Delray Beach and it is very tight on the sidewalk when it is being occupied by bicyclists and people walking their dogs. Ms. Woodward stated many people are out early and urged the Commission to consider 5 or 6 foot sidewalks.

Chevelle D. Nubin, City Clerk, swore in the following individual who wished to give testimony on this item.

**Robert E. Wells, 111 N.W. 11<sup>th</sup> Avenue, Delray Beach, FL 33444,** asked if they will be hiring anyone from the City of Delray Beach for this project.

The following individuals gave brief rebuttals:

Mr. Dorling stated staff feels that a 5 foot sidewalk is appropriate and that it will provide a safe pedestrian area at the 5 foot dimension. Mr. Dorling stated the Americans with Disabilities Act (ADA) requires that if you have sidewalks less than 5 feet per 200 linear feet that there is a requirement that they provide areas of increased dimensions to provide for the ability for people with wheelchairs, etc. to pass each other.

Mr. Weiner stated if they could eliminate this particular waiver and put in the extra one foot of concrete they would do it in a moment.

**Robert Mathias, New Century,** stated they have an attorney that specializes in mobile home law and they have done everything that they should do. He stated he will have to talk to them regarding the June date and is not sure what can be done. He stated they have done everything possible in regards to the sidewalk.

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

Mr. Frankel asked how many will live in buildings #4, #5, and #6. Mr. Weiner stated there are 20 units per building and approximately 60 units between the three buildings. Mr. Frankel asked if this is granting a special privilege and noted he has seen other communities with a 4 foot sidewalk. Mr. Dorling stated there were limited 4 foot sidewalks and he does not know the details of the waiver that was granted. Mr. Dorling stated staff does not support reduction in sidewalks. Mr. Frankel asked if it would be better to have a 4 foot sidewalk or no sidewalk. Mr. Dorling stated the applicant is required to have sidewalks because it is in the Code and where it is provided staff believes it should be provided at a sufficient width that it functions appropriately. Mr. Frankel stated there are numerous sidewalks within our city that public safety is much worse than three sidewalks where 20 units each would service. Mr. Frankel stated there are only 20 units so it is not a lot of pedestrian travel and does not believe there will be a lot of activity between buildings #4 and #5. Mr. Frankel stated he does not see this as granting a special privilege, does not feel it is unsafe or diminishes the project, and it does not adversely affects the neighboring area.

Mr. Carney asked if this had been a true PUD (Planned Unit Development) does the City sometimes look at those circumstances for a reduction in the widths of roads and sidewalks. Mr. Dorling stated they look at reductions in PUD's and it is usually in lot size or setbacks but he is not aware of pedestrian systems being reduced similarly. Mr. Carney concurred with Commissioner Frankel that they are

looking at the extremities coming into the thoroughfare and as they reach the thoroughfare the sidewalks are larger and get even larger. He stated he is a walker and likes the larger sidewalks; however, whether you have to move fractionally to let someone pass by does not bother him. Mr. Carney stated if this were in the middle of the project he would have a different feeling. He asked if the pedestrian traffic would be greater in the center of the project towards the recreation office, etc. than it is on the extremities. Mr. Dorling stated these areas where they provided the additional sidewalks are going to be the heavier traveled areas.

Brief discussion between Commissioner Carney, Mr. Mathias, and Mr. Weiner followed.

Further discussion followed between Mr. Carney and Mr. Dorling regarding why a 5 foot sidewalk versus a 4 foot sidewalk could not be provided.

Mr. Fetzer stated he has been a supporter of this project over the last few years. He stated this is a blighted area that needs redevelopment. Mr. Fetzer concurred with SPRAB and Mr. Dorling that we have a design standard that we have set and we need to stick to it. Mr. Fetzer stated this will set a bad precedent to vary from that and he will not support the waiver for the 4 foot sidewalk.

Vice-Mayor Gray stated she is big supporter of sidewalks and asked Mr. Weiner to point out which sidewalks have been changed. Mr. Weiner stated approximately 80% of the sidewalks was 4 foot.

Mr. Carney stated this needs to be built and it is going to add a good tax base but at the same time the City has Land Development Regulations and waivers for a reason. Mr. Carney asked if there is a way that they can encroach on some of the landscaping buffers if they did not have to go through the entire hearing process. Mr. Carney stated he does not want to delay the applicant for another 3 months for the 4 foot sidewalk. Mr. Dorling stated to provide the 5 foot sidewalks it is a condition of the development approval and does not require the applicant to go through an additional process or additional hearings.

Brief discussion followed between Mr. Weiner, staff and the City Commission. Mr. Weiner stated Michael Covelli will meet with Paul Dorling and discuss increasing the sidewalk width to 5 feet for building #6.

For the record, the City Attorney stated it is the consensus of the Commission to have an extra condition on the west side of building #6 that if a 5 foot sidewalk could be provided between staff and the developer then be it so provided.

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

Mr. Carney moved to adopt the Board Order subject to the five (5) conditions, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Vice-Mayor Gray – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 7:38 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

**10. PUBLIC HEARINGS:**

**10.A. RESOLUTION NO. 12-11: TRANSFER OF PROPERTY AT ZEDER AVENUE:** Consider approval of Resolution No. 12-11 authorizing the City to transfer a vacant property located at Southridge Lot 20 Block 10 (Zeder Avenue) to the Community Land Trust (CLT) for affordable housing.

The caption of Resolution No. 12-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AUTHORIZING THE CITY TO TRANSFER REAL PROPERTY IN PALM BEACH COUNTY, FLORIDA, AS DESCRIBED HEREIN, HEREBY INCORPORATING AND ACCEPTING THE CONTRACT STATING THE TERMS AND CONDITIONS FOR THE SALE AND PURCHASE BETWEEN THE BUYER AND THE CITY OF DELRAY BEACH, FLORIDA.

(The official copy of Resolution No. 12-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the resolution. 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.

Lula Butler, Director of Community Improvement, stated this item is a request to transfer a vacant lot purchased by the City to the Delray Beach Community Land Trust (CLT). Mrs. Butler stated the City completed its 30 day advertisement of their intent to sell this to them and attached the appropriate contracts and agreements for closing that will need to be executed. The requirement is that the CLT would then have to make this lot a new home available to an eligible household whose income does not exceed 120% of the median income. Staff's recommendation is to approve the agreement to transfer the property to the Delray Beach CLT for the amount of \$10.00.

Vice-Mayor Gray declared the public hearing open. There being no one from the public who wished to address the Commission regarding Resolution No. 12-11, the public hearing was closed.

Mr. Carney moved to approve to transfer property at Zeder Avenue to the Delray Beach Community Land Trust (CLT) in the amount of \$10.00, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Vice-Mayor Gray – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 4 to 0 vote.

**10.B. ORDINANCE NO. 15-11:** Consider amending Chapter 33, “Police and Fire-Rescue Departments”; Section 33.62, “Benefit Amounts and Eligibility”, Subsection (E), “Disability Retirement Provisions”, Sub-Subsection (5), “Disability Retirement Benefits”, to increase the minimum service incurred disability benefit for firefighters; and amending Section 33.64, “Contributions”, Subsection (A), “Member Contributions”, to increase member contributions for firefighters.

The caption of Ordinance No. 15-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 33, “POLICE AND FIRE-RESCUE DEPARTMENTS” OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH; SECTION 33.62, “BENEFIT AMOUNTS AND ELIGIBILITY”, SUBSECTION (E), “DISABILITY RETIREMENT PROVISIONS”, SUBSUBSECTION (5), “DISABILITY RETIREMENT BENEFITS”, TO INCREASE THE MINIMUM SERVICE INCURRED DISABILITY BENEFIT FOR FIREFIGHTERS AND AMENDING SECTION 33.64, “CONTRIBUTIONS”, SUBSECTION (A), “MEMBER CONTRIBUTIONS”, TO INCREASE MEMBER CONTRIBUTIONS FOR FIREFIGHTERS; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 15-11 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.

The City Attorney stated this item was tabled at the last meeting because staff needed to send the proposed ordinance along with the actuarial impact statement to the Division of Retirement and it is his understanding that we have gotten as much of an approval from them as we can possibly get. The City Attorney recommended that staff approve this ordinance.

Vice-Mayor Gray declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 15-11, the public hearing was closed.

Mr. Frankel moved to adopt Ordinance No. 15-11 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Vice-Mayor Gray – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 7:42 p.m., the Commission moved to **Item 11.A., the City Manager's response to the prior public comments and inquiries.**

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

The City Manager stated at the last meeting Mr. Randolph expressed some concern about some things going on in his neighborhood particularly with motorcycles. On the next day, the Police Chief and Sergeant Weatherspoon and Sergeant Scott were briefed on his concerns and met with Mr. Randolph; and since then on the 26<sup>th</sup>, two individuals were detained for operating off road vehicles on a public roadway and both are from S.W. 10<sup>th</sup> in our city. The officers are also looking into a suspected drug house in the area. All officers were told to be more visible in the area and reminded to address quality of life issues in addition to criminal activity.

The City Manager stated we also got a complaint again about noise from vehicle radios and we have reminded community patrol officers to enforce vehicle noise statutes which are very difficult to enforce since most people lower their volume upon seeing a marked police unit. We will post some signs again although their effectiveness is questionable; and we will also post a message on the Police Department's Facebook and website and continue with traditional enforcement.

In addition, Mr. Sclier had a concern about litter across from D & B Tile. We have inspected this area. There is extensive litter on the site; the area's recipient has a lot of trash thrown out of the window by customers of area merchants. The delivery wrappings and refuse from the business on the east side of Congress. The trash is blown west across the avenue and gets stuck in the fence and landscaping. We will be contacting the businesses in the area to ask their cooperation in trying to keep their properties free of litter and debris and we will get this area cleaned up.

Also, Ms. Christina Morrison Pearce had concerns about Worthing Park and what we were going to do there. She and some others had gotten the impression from the newspaper coverage that the city was giving away portion of the park. We have clarified with all those that we knew of that had questions about this that the city has approved a plan that would allow for brick pavers across the 22 foot wide section on the south end of the park and 5 feet of that would remain open as a public sidewalk area. The remainder would be available as sidewalk café space to adjoining restaurants and they would pay the normal fee. The city is not giving anything away.

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

**11.B.1. Mr. Jim Smith, 1225 South Ocean Boulevard, Delray Beach, FL 33444,** stated after eight years (8) years since presenting its report, the city's pedestrian bicycle task team had given up hope that its plan would be adopted, but tonight the Commission approved it. He thanked the Commission and asked them to not stop there and to establish a permanent pedestrian bike committee. He stated the Metropolitan Planning Organization (MPO) may give double weight to the Pineapple Grove grant application if we have a plan and the Commission has established a committee and urged the Commission to do this. He further discussed implementation of the plan.

**11.B.2. Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach),** stated three (3) months ago he spoke about the Palm Beach County Property Appraiser's office stating that they estimate a 5% decrease in property values. Last week, according to the Sun-Sentinel, it was re-estimated as a 1-2% decrease. With this amount, we can get by with no increases to taxes and with this decrease and the fact that it is estimated in 2013 that we will begin to take in money again, Commission should stop pushing for a \$1.4 million take back from the Sergeants and Police Officers.

At this point, the time being 7:50 p.m., the Commission moved to **Item 12, First Readings.**

**12. FIRST READINGS:**

**12.A. ORDINANCE NO. 16-11:** Consider a city-initiated amendment to the Land Development Regulations (LDR) Section 4.3.3 (I), "Community Residential Homes and Group Homes", to remove an out-of-date reference to Section 4.3.3(D), "Residential and Non-Residential Licensed Services Provider Facilities". If passed, a public hearing will be held on May 17, 2011.

The caption of Ordinance No. 16-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 4.3.3(I), "COMMUNITY RESIDENTIAL HOMES AND GROUP HOMES"; TO REMOVE AN OUT-OF-DATE REFERENCE; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 16-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

At this point, Mr. Fetzer left the dais.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a city-initiated amendment to the LDRs to remove an out of date reference to LDR Section 4.3.3(D) which was repealed by the City Commission on April 5, 2011 via Ordinance No. 10-11. Mr. Dorling stated since the section does not exist anymore pursuant to the actions of the City Commission staff needs to remove this reference.

At its meeting of April 25, 2011, the Planning and Zoning Board recommended approval with a 6 to 0 vote (Glickstein absent).

Mr. Frankel moved to approve Ordinance No. 16-11 on FIRST Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Vice-Mayor Gray – Yes; Mr. Carney – Yes. Said motion passed with a 3 to 0 vote.

**12.B. ORDINANCE NO. 17-11:** Consider a city initiated amendment to Land Development Regulations (LDR) Section 4.4.29, “Mixed Residential Office and Commercial (MROC) District”, to clarify allowable densities. If passed, a public hearing will be held on May 17, 2011.

The caption of Ordinance No. 17-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.29, “MIXED RESIDENTIAL, OFFICE AND COMMERCIAL (MROC) DISTRICT”; TO CLARIFY THE MAXIMUM PERMITTED DENSITIES IN THE MROC ZONING DISTRICT; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 17-11 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this ordinance is a housekeeping matter and would clarify allowable densities in the Mixed Residential, Office and Commercial (MROC) zoning district. The introductory statement has been interpreted to mean only densities between 40 and 50 are allowed rather than maximum densities of 40 and 50 depending on the properties proximity to the Tri-Rail Station. Staff stated the current language is confusing and they are adding some language to indicate that these are maximum densities as it relates to the Tri-Rail Transit station.

At its meeting of April 25, 2011, the Planning and Zoning Board recommended approval with a 6 to 0 vote (Glickstein absent).

Mr. Frankel moved to approve Ordinance No. 17-11 on FIRST Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Vice-Mayor Gray – Yes; Mr. Carney – Yes. Said motion passed with a 3 to 0 vote.

At this point, Mr. Fetzer returned to the dais.

At this point, the time being 7:53 p.m., the Commission moved back to **Item 9.C. of the Regular Agenda.**

**9.C. TEMPORARY USE PERMIT/DAUGHTER OF ZION SEVENTH-DAY ADVENTIST CHURCH:** Consider a request for a temporary use permit by Daughter of Zion Seventh-Day Adventist Church to erect a tent on a vacant block owned by the Delray Beach Housing Authority (DBHA), located on SW 12th Avenue and 10th Street, from July 7, 2011 to August 13, 2011 to conduct six (6) weeks of nightly services from 7 p.m. to 9 p.m. and community outreach programs on Mondays and Wednesdays from 6 p.m. to 7 p.m.

Lula Butler, Director of Community Improvement, stated this is a continuation of the item that the Commission heard at their last regular meeting of a request from the Daughter of Zion Seventh-Day Adventist Church to erect a tent on a vacant lot owned by the Delray Beach Housing Authority located at S.W. 12<sup>th</sup> Avenue and 10<sup>th</sup> Street from July 7-August 13, 2011. Mrs. Butler stated the temporary use under the tent is to conduct a six week nightly service from 7:00-9:00 p.m. and community outreach programs on Mondays and Wednesdays from 6:00-7:00 p.m. She stated at the meeting the Commission heard from representatives of the church; however, asked staff to consider talking to the residents to see what they thought. Mrs. Butler stated staff conducted a survey of other municipalities to see how they handle such requests. Staff surveyed the cities of Boca Raton, Boynton Beach, Palm Beach Gardens, Deerfield Beach, and West Palm Beach and all these type of requests are done as special event requests. Mrs. Butler stated the exceptions were the City of West Palm Beach who allows a tent to go up for up to 180 days; the City of Deerfield Beach requires a principal structure to be on the lot in order to have a tent associated with it. Mrs. Butler stated staff did a generic survey of some HOA presidents and none of them opposed a tent; however, they thought the time requested was a little long and they said generally they are up for one week. Therefore, Mrs. Butler stated staff recommends considering this request but limiting it to a seven day period.

The City Manager stated the Police Department informed him that historically church events have been a non-issue for them and they do support the community outreach program. The Police Department stated once a decision is finalized by the City Commission they will provide extra patrol and spot vehicles or other assistance as needed.

Mr. Frankel stated he appreciates staff's efforts with regard to the survey and supports staff's recommendation to approve the Daughter of Zion request to erect a tent for one week.

Mr. Fetzer stated he too supports staff's recommendation to erect the tent for a period of one week.

Mr. Carney stated based on staff's analysis he supports staff's recommendation to erect the tent for a period of one week but concurs with Commissioner Fetzer that down the road the Commission look at these types of ministry outreach programs.

Vice-Mayor Gray stated she spoke to some of the residents and some were for it and some were against it. She stated she suggested a week long revival because that is what she has known a revival to actually be. Vice-Mayor Gray supports staff's recommendation to erect the tent for one week.

Mrs. Butler stated Dorothy Ellington is present this evening on behalf of the Delray Beach Housing Authority because she will have to modify the agreement for the nightly services. Mrs. Butler stated Ms. Ellington is willing to take the agreement back to her Board and the next Board meeting is scheduled for May 19, 2011.

Mr. Carney stated normally a permit is for the time of actual operation and does not include setup time. Mrs. Butler stated this is staff's recommendation.

Mr. Frankel moved to approve staff's recommendation for the Daughter of Zion request to erect a tent on the Delray Beach Housing Authority property for a period of one week, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Vice-Mayor Gray – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 4 to 0 vote.

**9.D. ASSIGNMENT OF VALET PARKING QUEUE ON N.E. 2<sup>ND</sup> AVENUE FORMERLY OPERATED BY KYOTO SUSHI:** Consider requests to assign the valet parking queue on N.E. 2<sup>nd</sup> Avenue formerly operated by Kyoto Sushi.

Scott Aronson, Parking Management Specialist, stated this is assignment of the valet parking queue on N.E. 2<sup>nd</sup> Avenue (Pineapple Grove Way) operated by Kyoto Sushi from the inception of the program until 2009 at which point they decided to not renew their valet parking application. Mr. Aronson stated the valet queue has been dormant since that time and staff recently received three requests and this is unprecedented in valet parking since he has been here. In 2009, Tramonti's came before the Commission for a request for a valet queue on East Atlantic Avenue in front of their restaurant. Mr. Aronson stated neither the Parking Management Advisory Board nor the City Commission supported additional valet queues on East Atlantic Avenue and offered the N.E. 2<sup>nd</sup> Avenue queue which at the time did not suit their purposes. Mr. Aronson stated Tramonti's came back to the City in February with a request to re-establish the

queue. He stated at that point there were two other interested parties and noted that Tramonti's was the first request received by staff and shortly after that La Solita (occupying the former Kyoto Sushi space) and a third application that was processed through Delray Parking Systems for City Oyster, Rita's, and a third restaurant to soon be proposed. Staff had the three applicants give presentations to the Parking Management Advisory Board (PMAB) at their April meeting which they selected Tramonti's. Subsequent to the Board's action, Ocean City Properties, owner of the center with several restaurants (La Solita, Bru's Room, House of Siam and a restaurant planned for the old Palm Beach Photographic building), has requested a modification to the application from La Solita for the valet queue to be in their name. Mr. Aronson stated there were long deliberations at the Parking Management Advisory Board meeting and concerns raised by the Board with respect to Global parking which was representing La Solita and they are using the old Crossroads parking lot. Mr. Aronson stated the Board expressed concern with people crossing the railroad tracks, the distance that they were traveling, and the route that the applicant was proposing in their application which was railroad avenue along that corridor behind Ocean City Properties where Bru's Room is located. He stated the Board felt that street was heavily pedestrian congested and was not appropriate. Mr. Aronson stated they are also proposing one of the alleys as a method to get back around the block which they also felt was inappropriate in that the alleys get congested, etc. He stated one of the main concerns with Tramonti's application were that twenty (20) parking spaces were what was being offered. The applicant responded that they will get more parking. Staff is seeking City Commission direction in this matter. Mr. Aronson briefly reviewed alternative actions that could be taken if the Commission desires.

Mr. Frankel asked who is running the valet queue for the Bru's Room private parking lot. Mr. Aronson stated Global Parking is running the valet queue through Ocean City Properties. Mr. Frankel supports the recommendation of the Parking Management Advisory Board (PMAB) to assign the valet parking queue to Tramonti's.

Mr. Fetzer supports the recommendation to assign the valet parking queue to Tramonti's since they were the first to request it and stated he would like to see the Parking Management Advisory Board come up with a policy with how to handle this in the future. Mr. Aronson stated staff has been working on advising the parking agreement to address those pricing issues, etc.

Mr. Carney stated he concurs with comments expressed by Commissioner Frankel and Commissioner Fetzer. Mr. Carney stated he supports the Parking Management Advisory Board's recommendation and prices of the valet queues will need to be addressed.

Mrs. Gray stated she too supports assigning the valet parking queue to Tramonti's since they were the first applicant to request it.

Mr. Frankel moved to approve to assign the valet parking queue to Tramonti's based on the condition that they charge the fees and do the letter as far as working with other restaurants as contained in the staff report, seconded by Mr. Carney.

Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Vice-Mayor Gray – Yes. Said motion passed with a 4 to 0 vote.

**9.E. APPOINTMENT TO THE GREEN IMPLEMENTATION ADVANCEMENT BOARD:** Appoint one (1) alternate member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2011. Based upon the rotation system, the appointment will be made by Commissioner Carney (Seat #1).

Mr. Carney moved to appoint Yalmaz Siddiqui as an alternate member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Vice-Mayor Gray – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 8:15 p.m., the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items from the City Manager, City Attorney, and the City Commission.**

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

**13.A. City Manager**

The City Manager stated at the last meeting a group came and requested a work session with the Commission calling themselves the “Village Elders”. He was contacted yesterday by Chuck Ridley and their preference is for a special work session to deal with one subject. The City Manager stated he would like to know how to respond and if the commission would like to do this and how to schedule it. He suggested May 24, 2011. He stated that is an open week. The City Manager stated Commission would need a longer time than the 15 minutes. He asked for direction from Commission.

Mr. Frankel stated if we do it for this group we would have to do the same for every group that asks. The City Manager stated they sent an email about what they want to talk about. He referenced the original invite from this group to Commission to attend a meeting set up by them. Mr. Carney asked if it is better to schedule this for a regular session. The City Manager stated this is a self appointed group. Mr. Fetzer stated we need to treat all groups equally and give them opportunity to speak with us. He stated he would like to see more involvement with staff on this Mr. Carney concurred. The City Manager stated that would be a reasonable approach to have them meet with staff first and if issues remain afterwards to schedule a meeting with Commission. Mrs. Gray stated maybe after that takes place they can be brought back to a regular workshop meeting and Commission will have time to ask questions. The City Manager stated we will take that approach and see where it leads.

**13.B.**            **City Attorney**

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

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

**13.C.1.**         **Mr. Fetzer**

Mr. Fetzer had no comments and inquiries on non-agenda items.

**13.C.2.**         **Mr. Carney**

Mr. Carney had no comments and inquiries on non-agenda items.

**13.C.3.**         **Mr. Frankel**

Mr. Frankel had no comments and inquiries on non-agenda items.

**13.C.4.**         **Vice – Mayor Gray**

Mrs. Gray thanked everyone who came out to the “Boys Today Men Tomorrow Mentoring Program” fundraiser. It was a success and approximately 96 people attended.

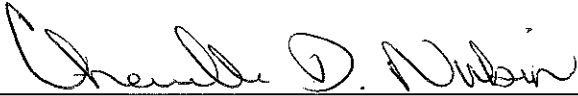
There being no further business, Vice-Mayor Gray declared the meeting adjourned at 8:19 p.m.

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

ATTEST:

  
\_\_\_\_\_  
VICE 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 May 3, 2011, which Minutes were formally approved and adopted by the City Commission on May 17, 2011.

  
\_\_\_\_\_  
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.

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

CONDITIONAL USE REQUEST TO ALLOW CONVERSION OF A 2,783 SQUARE  
FOOT RESTAURANT TO A FRATERNAL LODGE FOR VFW POST 4141 AT THE  
SOUTHWEST CORNER OF SE 8<sup>TH</sup> STREET AND SE 5<sup>TH</sup> AVENUE

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

1. This conditional use request has come before the City Commission on May 3, 2011. The conditional use request is to allow conversion of a 2,783 square foot restaurant to a fraternal lodge for VFW Post 4141 at the southwest corner of SE 8<sup>th</sup> Street and SE 5<sup>th</sup> Avenue.

2. The City staff, applicant, and other persons have presented documentary evidence and testimony to the City Commission pertaining to the conditional use request of VFW Post 4141. All of the evidence is a part of the record in this case. Required findings are made in Sections I and II below.

I. **COMPREHENSIVE PLAN**

A. **FUTURE LAND USE MAP:** The use or structures must be allowed in the zone district and the zoning district must be consistent with the land use designation.

The subject property has a Future Land Use Map (FLUM) designation of General Commercial (GC) and a zoning designation of General Commercial (GC), which are consistent with one another. Pursuant to LDR Section 4.4.9(D)(5), *Fraternal Lodges* are allowed as a conditional use within the GC zoning district.

**Are the requirements of the Future Land Use Map met?**

Yes   ✓   No           

B. **Concurrency:** Facilities which are provided by, or through, the City shall be provided to new development concurrent with issuance of a Certificate of Occupancy. These facilities shall be provided pursuant to levels of service established within the Comprehensive Plan.

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

Yes  No

C. Consistency: Compliance with performance standards set forth in Chapter Three and required findings in LDR Section 2.4.5(E) (5) for the Conditional Use request shall be the basis upon which a finding of overall consistency is to be made. Other objectives and policies found in the adopted Comprehensive Plan may be used in making a finding of overall consistency.

A review of the Objectives and Policies of the adopted Comprehensive Plan was conducted and no applicable Objectives or Policies were found.

Are the consistency requirements met such that the proposed project is complementary to and compatible with adjacent land uses and the beneficial aspects of the project outweigh the negative impact of identified points of conflict?

Yes  No

## II. LDR REQUIREMENTS

A. Section 2.4.5(E)(5) requires certain findings: 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  No

B. LDR Section 4.4.9(D)(5) – Fraternal Lodges: Pursuant to LDR Section 4.4.9(D)(5), *Fraternal Lodges* are allowed as conditional uses provided that the use does not exceed 3,500 sq. ft. of gross floor area. The proposed use will occupy 2,783 sq. ft. of gross floor area.

Are the requirements of Section 4.4.9(D)(5) met?

Yes  No

C. **LDR Section 4.4.9(H)(5) – Separation Requirement:** Pursuant to LDR Section 4.4.9(H)(5), no clubs and lodges (social, fraternal and recreational) or church or places of worship shall be located closer than seven hundred fifty feet (750') from another such facility measured from lot line to lot line boundary along a straight airline route. The location of the proposed fraternal lodge is not within 750' of another such facility.

Are the requirements of Section 4.4.9(H)(5) met?

Yes  No

D. **LDR Section 4.6.9(C)(6)(d) – Parking:** Pursuant to LDR Section 4.6.9(C)(6)(d), *Parking* for clubs and lodges shall be one (1) space for every four (4) seats or one (1) for every 50 sq. ft. of gross floor area, whichever is greater. Based upon a seating capacity of 115 persons, the parking requirement would be twenty-nine (29) spaces. Based upon the existing 2,783 sq. ft. of gross floor area, the parking requirement would be fifty-six (56) parking spaces. Since forty-three (43) spaces exist on-site, there would be a thirteen (13) space parking deficiency, if the greater of the calculations is utilized as indicated. The applicant is requesting a special action parking reduction consideration pursuant to LDR Section 4.6.9(F)(1). The applicant is requesting a reduction in parking based upon special documentation that demonstrates that a reduced number of parking spaces will accommodate the specific use. It is noted that the building layout has an inordinately high area of non-public space (non-meeting space) totaling approximately 50% (1,392 sq. ft.) of the gross floor area. If only the meeting space was assessed, the one (1) space per 50 sq. ft. requirement of twenty-eight (28) spaces would be similar to the alternative calculation of one (1) space for every four (4) seats (29 spaces). As the intent of the one (1) space per 50 sq. ft. calculation is to accommodate open assembly areas where chairs would be set up (rather than conventional seating arrangements as proposed), it is reasonable to apply either the fixed seating count of twenty-nine (29) spaces or the reduced sq. ft. of actual meeting area (27 spaces) in this scenario.

Are the requirements of Section 4.6.9(C)(6)(d) met?

Yes  No

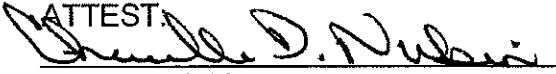
3. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the conditional use application was submitted.

4. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained

in the record including but not limited to the staff reports and testimony of witnesses supporting these findings.

5. Based on the entire record before it, the City Commission approves ✓ denies     the conditional use application subject to the conditions attached hereto in Exhibit "A" and hereby adopts this Order this 3rd day of May 2011, by a vote of   4   in favor and   0   opposed.

  
\_\_\_\_\_  
Angeleta Gray, Vice-Mayor

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

## **EXHIBIT "A"**

### **Conditions Related to VFW Post 4141**

1. That all activities occur indoors, including but not limited to the semi-annual thrift sale.
2. That either the parking reduction be approved or other alternative parking options be pursued.
3. That any deteriorated landscaping, irrigation systems and landscape island curbing shall be reinstalled to comply with the approved landscape plan for the site.

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

**WAIVER REQUESTS/INTERNAL ADJUSTMENT FOR  
FRANKLIN AT DELRAY BEACH PROJECT**

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

1. The waiver requests and internal adjustment regarding the Franklin at Delray Beach project have come before the City Commission on May 3, 2011.

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

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

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

**Special Landscape Setback.** Per LDR Section 4.3.4(H)(6)(b), a 25-foot special landscape setback is required along Federal Highway. Within this special landscape setbacks, no structures shall be altered, erected, or reconstructed; nor shall any paving be allowed except for driveways and sidewalks which lead to structures on, or provide access to, the site and then only when generally perpendicular to the frontage. The proposed decorative fence encroaches into this required special landscape setback.

**Should a waiver to Section 4.3.4(H)(6)(b) be granted to modify the special landscape setback?**

Yes   ✓   No

**Stacking Distance.** Per LDR Section 4.6.9(D)(3)(c)(1), a 50-foot stacking distance is required for all driveway connections including SE 12<sup>th</sup> Road and Federal Highway. The proposed stacking distance from Federal Highway is 40 feet. The proposed stacking distances along SE 12<sup>th</sup> Road are 5.75 feet, 5.85 feet, 6.65 feet, and 6.80 feet.

**Should a waiver to Section 4.6.9(D)(3)(c)(1) be granted to modify the stacking distance?**

Yes  No

**Sidewalk Width.** Per LDR Section 6.1.3(B), the minimum width of the sidewalks internal to the project is 5 feet and 4 feet is proposed. The applicant has requested a waiver from this requirement.

**Should a waiver to Section 6.1.3(B) be granted to modify the sidewalk width?**

Yes  No

II. **Internal Adjustment.** Pursuant to LDR Section 2.4.7(C)(5), prior to granting an internal adjustment, the approving body shall make a finding that the granting of the internal adjustment is consistent with the following:

"Concurrent with granting relief from a development standard or regulation, the granting body must find that such relief does not diminish the practical application of the affected regulation (requirement) and that by granting such relief a superior development product will result."

**Distance Between Residential Buildings.** Per LDR Section 4.6.2(B), the minimum required horizontal distance between buildings #6 and #7 is 79.78 feet and 56.75 feet is proposed. The purpose of this requirement is to provide for adequate distance between structures to allow for light, air, and open space. It is also intended to provide for aesthetically pleasing design relationships among buildings for townhouse, apartment, or condominium residential development.

Should an internal adjustment to Section 4.6.2(B) be granted to modify the distance between residential buildings?

Yes ✓ No         

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

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

5. Based on the entire record before it, the City Commission approves ✓ denies          the waiver requests, subject to the conditions listed in Exhibit "A", attached hereto, and hereby adopts this Order this 3rd day of May, 2011, by a vote of 4 in favor and 0 opposed.

ATTEST:

  
Chevelle Nubin, City Clerk

  
Angeleta Gray, Vice-Mayor

EXHIBIT "A"

1. That the sidewalk on the west side of Building #6 be increased from 4' to 5' in width if it can be accomplished as determined by City staff and the Developer.