

**JANUARY 3, 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 6:02 p.m., Thursday, January 3, 2008.

**1.** Roll call showed:

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

Absent - Commissioner Brenda Montague

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

**2.** The opening prayer was delivered by Representative Patrick Archer with the First Church of Christ Scientist.

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

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

Mayor Ellis requested to move **Item 8.B., Ratification of a Sidewalk Easement, Sidewalk Construction and Maintenance Agreement/Block 77 Development Group**, from the Consent Agenda to the Regular Agenda as **Item 9.A.A.**

Also, Mayor Ellis stated **Item 12.A., Ordinance No. 03-08 will become Item 10.D. (First Reading/First Public Hearing) and Item 12.D., Ordinance No. 04-08 will become Item 10.E. (First Reading/First Public Hearing).**

Mr. Eliopoulos requested that **Item 8.A., Agreement/Langton Associates, Inc./Grant Writing Services** of the Consent Agenda be moved to the Regular Agenda as **Item 9.A.A.A.** and **Item 8.N.2.**, be moved to the Regular Agenda as **Item 9.A.A.A.A.**

The City Attorney stated she would like to clarify the vote on **Item 8.N.4.** and stated the vote the Commission is taking is the vote to make the award in the amount stated but also to waive the bonding requirement because the City's policies require a waiver by the City Commission for \$100,000.00 and \$200,000.00. She stated it would be to award and also grant the waiver. The City Attorney stated for **Item 8.N.5.** the language should read "that the amount should not exceed \$16,140.00" because it could be

less and also because the contract is not totally complete on the Agenda it should be subject to the City Attorney's office review of the lease agreement.

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

**5. APPROVAL OF MINUTES:**

Mr. McDuffie moved to approve the Minutes of the Regular Meeting of December 11, 2007, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

Mr. Eliopoulos moved to approve the Minutes of the Regular Meeting of December 18, 2007, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

**6. PROCLAMATIONS:**

**6.A. Calling for the First-Non-Partisan Election to be held on March 11, 2008**

Mayor Ellis read and presented a proclamation to Chevelle D. Nubin, City Clerk hereby calling for the First Nonpartisan Election to be held on **Tuesday, March 11, 2008, between the hours of 7:00 a.m. and 7:00 p.m.**, at all the precincts and polling places in the City of Delray Beach as designated by the Supervisor of Elections.

**7. PRESENTATIONS:**

**7.A. "Spotlight on Neighborhoods" – Arthur Brown, Chair of Neighborhood Advisory Council**

This item has been removed from the Agenda by the Community Improvement Department.

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

**8.A. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 9.A.A.A.**

**8.B. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 9.A.A.**

**8.C. AUTHORIZATION FOR SUPERVISOR OF ELECTIONS TO HANDLE/ CANVASS ABSENTEE/PROVISIONAL BALLOTS AND REPRESENT THE CITY AT LOGIC AND ACCURACY TESTS FOR THE FIRST NON-PARTISAN ELECTION:** Authorize the Palm Beach County Supervisor of Elections to handle and canvass the City's absentee and provisional ballots for the March 11, 2008 First Non-Partisan Election, and represent the City at the requisite Logic and Accuracy tests.

**8.D. AGREEMENT/PALM BEACH COUNTY/DISASTER RECOVERY INITIATIVE (DRI) PROGRAM:** Approve an agreement between the City and Palm Beach County for funding in the amount of \$980,000.00 for the implementation of the Housing Rehabilitation Program funded under the Disaster Recovery Initiative (DRI) Program.

**8.E. AGREEMENT/PALM BEACH COUNTY/DELRAY BEACH ROCKS YOUTH ORGANIZATION:** Approve an agreement between the City and Palm Beach County Recreation Assistance Program (RAP) District 7 for funding in an amount not to exceed \$3,000.00 to help offset costs for the Delray Beach Rocks Youth Organization trip to the Sports Network Football Championships, which was held on November 21 – 27, 2007 in Daytona Beach, Florida.

**8.F. INTERLOCAL AGREEMENT/COMMUNITY REDEVELOPMENT AGENCY/CURB APPEAL PROGRAM:** Approve an agreement between the City and the Community Redevelopment Agency (CRA) in the amount of \$50,000.00 for FY 2007 – 2008 for the implementation of the Curb Appeal Program within the CRA area.

**8.G. INTERLOCAL AGREEMENT/COMMUNITY REDEVELOPMENT AGENCY/135 NW 5<sup>th</sup> AVENUE:** Approve an agreement between the City and Community Redevelopment Agency (CRA) for management and funding of the construction/rehabilitation of the CRA owned mixed-use building located at 135 NW 5<sup>th</sup> Avenue. The CRA will cover the full cost of the rehabilitation work and the City will be paid an administrative fee for handling the project equal to two percent (2%) of the total job cost, not to exceed \$20,000.00.

**8.H. SPECIAL EVENT REQUEST/DELRAY AFFAIR:** Approve a special event request from the Chamber of Commerce to endorse the 46<sup>th</sup> Annual Delray Affair to be held on March 28 – 30, 2008; including a temporary use permit per LDR Section 2.4.6 (F) for use of City property and rights-of-way as required, to waive LDR Section 4.6.7 (E)(3)(c) to allow signage to be installed more than one (1) week prior to the event, banner hanging within the site area, vendor permits to be assigned and approved by the Chamber of Commerce, this is the only event to be held on the above-mentioned dates in the City, to allow reserved parking for entertainment and exhibitors as requested; contingent upon receipt of a certificate of general liability insurance, liquor liability insurance, and a hold harmless agreement.

**8.I. SPECIAL EVENT REQUEST/HOWARD ALAN 11<sup>th</sup> ANNUAL WINTER STREET CRAFT FESTIVAL:** Approve a special event request to endorse the 11<sup>th</sup> Annual Delray Beach Winter Street Craft Festival to be held on February 23 - 24, 2008 from 10:00 a.m. - 5:00 p.m.; including a temporary use permit per LDR Section 2.4.6(F) for use of NE/SE 4<sup>th</sup> Avenue, one block north/south of Atlantic Avenue as well as the north end of Hand's parking lot for vendor parking; and to authorize staff support for security and traffic control with the event sponsor paying all overtime costs, and to permit an event sign to be erected on Atlantic Avenue just east of I-95, 10 days prior to the event per City Code contingent upon receipt of a hold harmless agreement.

**8.J. SPECIAL EVENT REQUEST/3<sup>rd</sup> ANNUAL LYMPHOMATHON 5K WALK:** Approve a special event request to endorse the 3<sup>rd</sup> Annual Lymphomathon 5K Walk to be held on Sunday, March 2, 2008 from 7:30 a.m. until approximately 10:00 a.m., with set up at 5:30 a.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the use of Anchor Park and the sidewalks along A-1-A, to authorize staff support for traffic control and to waive parking fees in the Anchor Park lot from 7:00 a.m. to approximately 10:00 a.m., authorize staff assistance for providing traffic control, barricading, signage, clean up and stage set up and use; contingent on the sponsor providing the required liability insurance.

**8.K. RENEWAL/RAILROAD LIABILITY INSURANCE POLICY:** Approve a request to renew the current Railroad Liability Insurance Policy required by the City as outlined in the contract with Florida East Coast (FEC) Railroad.

**8.L. RESOLUTION NO. 01-08:** Approve Resolution No. 01-08 urging members of the Florida Legislature to support municipal issues during the 2008 Legislative Session.

The caption of Resolution No. 01-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF DELRAY BEACH, FLORIDA, URGING  
MEMBERS OF THE FLORIDA LEGISLATURE TO  
SUPPORT THE FOLLOWING ISSUES DURING THE  
2008 LEGISLATIVE SESSION.

(The official copy of Resolution No. 01-08 is on file in the City Clerk's office.)

**8.M. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period December 10, 2007 through December 28, 2007.

**8.N.**

**AWARD OF BIDS AND CONTRACTS:**

- 1.** Bid award to Devland Site Development, Inc., in the amount of \$164,700.00 for hauling and disposal of lime sludge from the Water Treatment Plant. Funding is available from 441-5122-536-34.90 (Water and Sewer Fund/Other Contractual Services).
- 2.** **THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 9.A.A.A.**
- 3.** Contract award to Rosso Paving & Drainage, Inc. in the amount of \$266,920.00 for the Rainberry Woods Neighborhood Improvements Project. Funding is available from 334-6130-541-63.20 (General Construction Fund/Landscaping/Beautification).
- 4.** Purchase award to Insituform Technologies, Inc. in the amount of \$149,429.50 for the annual Sanitary Sewer Main Rehabilitation Program piggybacking on Manatee County, Florida (RFP #04-3794 FL). Funding is available from 442-5178-536-63.51 (Water/Sewer Renewal and Replacement/Sewer Mains).
- 5.** Lease award to American Honda Finance not to exceed \$16,140.00 annually over a three (3) year period for five (5) vehicles for the Police Department. Funding is available from 001-2115-521-44.40 (General Fund/Vehicles).

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

**9.**

**REGULAR AGENDA:**

**9.A.A: RATIFICATION OF A SIDEWALK EASEMENT, SIDEWALK CONSTRUCTION AND MAINTENANCE AGREEMENT/BLOCK 77 DEVELOPMENT GROUP:** Approve and ratify a sidewalk easement, sidewalk construction and maintenance agreement allowing Block 77 Development Group to construct and maintain a sidewalk over a small portion of City property located on the south side of Worthing Park; and the proposed sidewalk easement area starting at SE 2<sup>nd</sup> Avenue and extending approximately 140' west along the south side of Worthing Park.

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

Paul Dorling, Director of Planning and Zoning, stated this was part of the site plan approval process. He stated the building was very close to Worthing Park and the sidewalk associated with its approval extended on the City's property thus requiring this easement.

Mayor Ellis stated this will remain a public sidewalk for use by the public. Mr. Dorling stated the property will stay in the City's ownership but will just have an easement for a public sidewalk over it.

Mr. McDuffie moved to approve the ratification of a sidewalk easement, sidewalk construction and maintenance agreement/Block 77 Development Group, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 3 to 0 vote.

**9.A.A.A. AGREEMENT/LANGTON ASSOCIATES, INC./GRANT WRITING SERVICES:** Consider approval of a Consulting Agreement between the City and Langton Associates in the amount of \$2,500.00 per month for grant writing services. Funding is available from 001-1111-511-34.90 (General Fund/Other Contractual Services).

Doug Smith, Assistant City Manager, stated the City has had agreements with Langton Associates, Inc. in the past and most recently the year 2000 in which they were also a bidder for Palm Beach Gardens. The Commission at that time looked at the other companies that also bid on Palm Beach Gardens and decided to retain their services with Langton Associates, Inc.

Mr. Eliopoulos asked if the City has looked at other potential companies that maybe should have been considered.

The City Manager stated Langton Associates, Inc. has assisted the City of Delray Beach in applying for a number of Florida Recreation Development Assistance Program Grant (FRDAP) grants and have received them for several different parks.

Mr. Fetzer stated this is for a ten month agreement with a one year renewal and asked if the City has a cancellation option for less than ten months. He stated he concurs with Commission Eliopoulos and feels that we need to look at all options before we commit ourselves long-term. Mr. Smith stated the City currently has a thirty day notice without cause.

Mr. Eliopoulos moved to approve the consulting agreement between the City of Delray Beach and Langton Associates in the amount of \$2,500.00 per month for grant writing services, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

**9.A.A.A.A. Contract award to All-Rite Paving Contractors, Inc. in the amount of \$113,500.00 for the S.W. 8<sup>th</sup> Avenue Roadway Improvements Project. Funding is available from 334-3162-541-65.34 (General Construction Fund/SW 8<sup>th</sup> Avenue-SW 11<sup>th</sup> Street-SW 10<sup>th</sup>) and 448-5461-538-65.34 (Stormwater Utility Fund/SW 8<sup>th</sup> Avenue-SW 11<sup>th</sup> Street-SW 10<sup>th</sup>).**

Richard Hasko, Director of Environmental Services, stated this is a recommendation for a contract award for construction of S.W. 8<sup>th</sup> Avenue Roadway Improvement Project. The City had a number of bidders on this project and the apparent low bidder was considered non-responsive and his bid indicated that he was going to sub-grade the asphalt and the concrete work which amounts to 82% of the total contract value. The City's standard specifications allow a maximum of 40% subcontracting and on that basis the City had to consider him non-responsive. Therefore, the City went to the lowest responsive bidder which is All-Rite Paving Contractors, Inc.

Mr. McDuffie moved to approve the Contract Award to All-Rite Paving Contractors, Inc. (lowest responsive bidder), seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

**9.A. RECONSIDERATION OF ONE CONDITION OF THE CONDITIONAL USE APPROVAL/EBENEZER WESLEYAN METHODIST CHURCH:** Consider an amendment of a condition required within the conditional use approval for Ebenezer Wesleyan Methodist Church. (*Quasi-Judicial Hearing*)

The City Attorney made a clarification to the Agenda and stated this item should read "modification/amendment" because it is technically not a reconsideration under Roberts Rules.

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

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

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

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2005-100 into the record.

Mr. Dorling stated this is an amendment to a condition required with the original conditional use approval for Ebenezer Wesleyan Methodist Church. The proposed church will be located on Lots 1 with an offsite parking facility on Lot 2. The current church is located on parcel 3. As part of that, it was acknowledged that the existing facility now utilizes parcel 2 for its off-site parking and there was a concern about developing this and then this going to a separate entity with the elimination of the

spaces that they partially use for parking creating an overflow situation in the neighborhood. Mr. Dorling stated the condition stated "That the existing church facility be retained as a support facility to the Ebenezer Wesleyan Methodist Church, for a period not less than six (6) months from the date of the issuance of the certificate of occupancy of the new facility".

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

**Reverend R.L. Howard, Pastor with Ebenezer Wesleyan Methodist Church,** stated he went to the Planning and Zoning Department because he is having problems with securing a bank loan to construct the new church facility. He urged the Commission to support the modification so that they can move forward with this project.

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.

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

**9.B. WAIVER REQUEST/La CIGALE RESTAURANT:** Consider a request for waiver of Land Development Regulations (LDR) Sections 4.6.7 (H)(3)(a)(2), "Flags", pursuant to the request by the agent for the La Cigale Restaurant, located at 253 SE 5<sup>th</sup> Avenue. (*Quasi-Judicial Hearing*)

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

Mayor Ellis asked the Commission to disclose their ex parte communications. Mr. McDuffie stated he received a telephone call from the applicant's Attorney. Mayor Ellis stated she receive a telephone call from the applicant's Attorney as well. Mr. Eliopoulos stated he too received a telephone call from the applicant's Attorney and also saw the presentation at the Site Plan Review and Appearance Board. Mr. Fetzer stated he received a telephone call from the applicant's Attorney as well.

Lula Butler, Director of Community Improvement, stated this is a waiver to Land Development Regulations Section 4.6.7(H)(3)(a)(2), pursuant to the request by the agent for the La Cigale Restaurant, located at 253 S.E. 5<sup>th</sup> Avenue. La Cigale recently completed a renovation expanding their parking lot to provide access from S.E. 6<sup>th</sup> Avenue. The restaurant has three (3) flag poles at the main entrance of S.E. 5<sup>th</sup>

Avenue. Two poles are 20-ft high and one is 25 feet high; they are made of aluminum and are located behind the free standing sign.

On November 14, 2007, the applicant requested Site Plan Review & Appearance Board (SPRAB) consideration for waiver to the Sign Code LDR Section 4.6.7(H)(3)(a)(2), which limits the number of flags to no more than three (3) for any parcel or development less than one acre in size zoned and used for non-residential purposes. The agent is requesting approval to erect three (3) additional flag poles on the S.E. 6<sup>th</sup> Avenue access to duplicate the visual appearance in place on the S.E. 5<sup>th</sup> Avenue access. Their position is that additional flags will result in a more symmetrical appearance to the property; only three (3) flags will be visible at any time as the property faces two one-way streets, and that the location is unique and out of the ordinary. SPRAB supported their request; however, staff is having a difficult time supporting this request because there are a number of businesses that are similarly located and have two accesses between the Federal Highway pairs and businesses along Federal Highway and Dixie Boulevard that may come to the Commission with the same waiver request. Mrs. Butler stated in this instance, the parking lot was built separately and they tied it together by Unity of Title and had they not done that it could have been a stand alone parking lot and they could have tied it with an off-site parking agreement and therefore entitled to have the flags. She stated if the Commission supports this then they may require that the agent eliminate the Unity of Title and do an off-site parking agreement. Mrs. Butler stated Section 2.4.7(B)(5) of the Land Development Regulations allows the City Commission to grant waivers to this code, which governs signs, providing that the Commission shall make a finding of fact based on one of the following: (1) the granting of a waiver shall not adversely affect the neighboring area, (2) shall not significantly diminish the provision of public facilities, (3) shall not create an unsafe situation, and (4) does not result in the granting of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner. Staff urged the Commission to consider the option that has been proposed.

**Jason Mankoff, Attorney with Weiner & Aronson, P.A., 102 North Swinton Avenue, Delray Beach,** stated initially this was shown as a variance on the staff report and explained that this is only a waiver and not a variance to allow three (3) additional flags for the La Cigale Restaurant. He stated they do believe that a hardship does exist in this case. Mr. Mankoff stated they have four requirements that must be met: (1) the granting of a waiver shall not adversely affect the neighboring area, (2) shall not significantly diminish the provision of public facilities, (3) shall not create an unsafe situation, (4) does not result in the granting of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner. Mr. Mankoff stated these flags tell customers what kind of cuisine and food will be served and noted the flags are also symbols that provide a method of communication. He stated the restaurant is unique because they are located on such a narrow lot with narrow frontage. Mr. Mankoff stated SPRAB voted 5 to 1 in favor of this waiver and they felt the flags were aesthetically pleasing and looked good. He stated the flags serve as a point of reference or a landmark which makes the street safer especially at night when drivers can look for the flags versus trying to read dark street signs especially on such a narrow street. Mr. Mankoff urged the Commission to approve this waiver and

support SPRAB's recommendation in this case.

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.

**Michael Singer** stated he has a procedural question of both the Attorney and the City Commission. Mr. Singer commented about the Commission disclosing that they had conversation with the applicant's Attorney prior to them hearing the item. Mr. Singer expressed concern that if he had a case before the City Commission that he can call the Commission and talk to them about it and perhaps lobby the Commission in favor of his point of view privately and then the Commission ends up voting on this case. Mr. Singer stated it would be helpful for him and the public to understand that position. Mr. Singer stated he would like to know what the telephone conversations consisted of.

The City Attorney stated the City Commission is allowed to have ex parte communications with anyone and when they do so during a Quasi-Judicial Hearing the Commission discloses on the record that they did have these conversations. The City Attorney stated because Mr. Singer inquired she advised each Commissioner to briefly explain about what was said.

Mr. Mankoff stated he actually just spoke with Mr. Eliopoulos and noted that he believes that most of the Commissioners meant they spoke with Attorney Michael Weiner. Mr. McDuffie stated the comments are typical for someone wishing for the Commission to take a close look at the situation and ask for their consideration. Mr. McDuffie stated his conversation lasted approximately 30-45 seconds. Mayor Ellis stated they explained their position on this item and her response was that she would give it due consideration. Mr. Eliopoulos stated his conversation had nothing to do with this item in the sense of how he was voting but it was that Mr. Mankoff wanted to attend a football game this evening and did not want Mr. Eliopoulos to pull a lot of items off the Consent Agenda (and moved to the Regular Agenda) to stretch out the night. Mr. Fetzer stated he spoke with Attorney Michael Weiner today and basically covered him on some of the highlights of what Mr. Mankoff was going to present this evening. Mr. Fetzer stated he has a policy of not making any commitment whether someone is for or against an item as far as how he is going to vote. Mr. Fetzer stated he listens and welcomes input from both sides and that was strictly the extent of his conversation with the Attorney.

At this point, Chevelle D. Nubin, City Clerk, swore in the following individual:

**Kevin Warner, 248 Venetian Drive, Delray Beach**, stated many drivers do not know where the restaurant is located; however, he does not feel that more flags or larger flags will help motorists find the restaurant more easily because it is approximately 300 feet from Venetian Drive. He encouraged the applicant to work within the confines of the existing Land Development Regulations to come up with some way to improve the signs or the access drivers would have if they do not know where to go.

Mayor Ellis informed Mr. Warner that this item is related to La Cigale Restaurant on South Federal Highway and believes he is speaking on the incorrect item.

**Pauline Moody, 609 S.W. 8<sup>th</sup> Avenue, Delray Beach,** stated when you go to a restaurant you do not care about the flags but you want to know what is going to be on the menu and if it is going to be pleasing to people. Ms. Moody stated she is confused as to why the Commission needs to vote over how many flags to hang in the restaurant. She is not in favor of any flag being put up and suggested that a nice sign with the name of the business be put up and make sure people go in the right direction.

There was no cross-examination.

The following individual gave a brief rebuttal:

Mrs. Butler clarified that the City's sign code does provide for flags on all commercial properties and the number of flags is based on the size of the parcel. Therefore, she stated if someone is over one acre they are allowed additional flags.

Mr. Mankoff apologized for not having a PowerPoint presentation and noted the flags are proposed to be on the outside of the restaurant not the inside. Mr. Mankoff read a letter into the record from the General Manager of La Cigale Restaurant.

The City Attorney stated the condition of Unity of Title was imposed previously in 2005 by the City. She stated the off-site parking agreement would almost do the same thing as the Unity of Title; however, it would take a modification from the Site Plan Review and Appearance Board to modify that condition to let go of the Unity of Title requirement and grant an off-site parking agreement. The City Attorney suggested not putting that condition and leave it as a Unity of Title but recognizing that it is really a form over substance. The City Attorney stated it is really how it is currently titled that is causing the issue. The City Attorney recommended that the Commission not change the condition and look at requirements of LDR Section 2.4.7(B)(5).

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

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

**9.C. RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT & MEMORANDUM OF AGREEMENT/POLICE BENEVOLENT ASSOCIATION:** Ratify and approve the Collective Bargaining Agreement and Memorandum of Agreement between the City and the Police Benevolent Association (Police Officers and Sergeants) from the date of ratification through September 30, 2008.

Bruce Koeser, Human Resources Director, stated the City of Delray Beach has reached an agreement with the Police Benevolent Association (PBA) Collective Bargaining Agreement. He stated highlights include a step plan of five percent (5%) increments, a small change to the Article on take-home cars, and a good increase to starting pay which will help the City with recruiting. Mr. Koeser thanked Sergeant Rosenthal and his negotiating team, Major Hartman, and Shirley McKennon, Assistant Human Resources Director. Mr. Koeser stated the total cost is approximately \$270,000.00 for the year and about 3 ½ percent.

Mayor Ellis thanked everyone for their hard work.

Mr. Fetzer moved to approve the ratification of the Collective Bargaining Agreement and Memorandum of Agreement between the City of Delray Beach and the Police Benevolent Association (Police and Sergeants) from the date of ratification through September 30, 2008, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

**9.D. PROPOSALS/VIRTUAL TOURS:** Consider proposals from Sound Investments by J.W., Inc. d/b/a Pro DVD Makers and the City's Information Technology Department (IT) regarding the Virtual Tours on the City's website.

The City Attorney stated this is a proposal by J.W., Inc. for virtual tours for \$24,000.00 and they would also sell the City the Domain Name ([www.theCityofDelrayBeach.com](http://www.theCityofDelrayBeach.com)). The City's IT Department has come forward with an idea of their own so there are competing proposals. The City Attorney stated the IT Department stated they believe they can host the City's website for a cost of \$5,000.00 (cost of the camera equipment) and they believe the quality of the picture would be very good. The City Attorney stated there are three options: (1) purchase the virtual tours and Domain Name ([www.theCityofDelrayBeach.com](http://www.theCityofDelrayBeach.com)) as James Arena with J.W., Inc. has proposed, (2) let the City's IT Department do it for \$5,000.00 or (3) let the existing virtual tours expire and do nothing.

After brief discussion, it was the consensus of the Commission to place this on the January 8, 2008 Special/Workshop Meeting in order to hear the proposal from the IT Department.

At this point, the time being 7:08 p.m., the Commission moved to the duly advertised Public Hearings.

**10. PUBLIC HEARINGS:**

**10.A. ORDINANCE NO. 38-07 (FIRST READING/FIRST PUBLIC HEARING):** City initiated amendments to the Land Development Regulations (LDR) which intend to clarify the current regulations, provide parameters, and define compatible development within the City's five (5) historic districts and individually designated properties. If passed, a second public hearing will be scheduled for January 15, 2008.

The caption of Ordinance No. 38-07 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 2.4.6, "PROCEDURES FOR OBTAINING PERMITS", SUBSECTION 2.4.6(H), "CERTIFICATE OF APPROPRIATENESS FOR HISTORIC STRUCTURES, SITES, AND IN HISTORIC DISTRICTS", PROVIDING CLARIFICATION OF THE REQUIREMENTS AND PROCEDURES FOR OBTAINING A CERTIFICATE OF APPROPRIATENESS; AMENDING SECTION 3.2.4, "STANDARDS FOR SPECIFIC AREAS OR PURPOSES", SUBSECTION 3.2.4(E), "HISTORIC DISTRICTS AND SITES", PROVIDING FOR AND INCORPORATING THE DELRAY BEACH HISTORIC PRESERVATION DESIGN GUIDELINES AND THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION; AMENDING SECTION 4.1.4, "USE OF LOTS OF RECORD", TO PROVIDE FOR VARIANCES; AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", SUBSECTION 4.3.3(Q), "GUEST COTTAGE", TO PROVIDE THAT HEIGHT SHALL NOT EXCEED THAT OF THE MAIN STRUCTURE IN HISTORIC DISTRICTS; AMENDING SECTION 4.4.17, "RESIDENTIAL OFFICE (RO) DISTRICT", SUBSECTIONS 4.4.17(A), "PURPOSE AND INTENT", AND 4.4.17(G), "SUPPLEMENTAL DISTRICT REGULATIONS", PROVIDING PARKING REQUIREMENTS FOR CONVERSION OF RESIDENTIAL STRUCTURES INTO OFFICE USE IN HISTORIC DISTRICTS; AMENDING SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)", SUBSECTIONS 4.4.24(D), "CONDITIONAL USES AND STRUCTURES ALLOWED" AND 4.4.24(H), "SPECIAL DISTRICT REGULATIONS", CLARIFYING THAT PARKING LOTS NOT ASSOCIATED WITH A USE MUST BE PUBLIC AND CLARIFYING SPECIAL DISTRICT REGULATIONS; AMENDING SECTION 4.5.1, "HISTORIC PRESERVATION SITES AND DISTRICTS", SUBSECTIONS 4.5.1(B), "CRITERIA FOR DESIGNATION OF HISTORIC SITES OR DISTRICTS", 4.5.1(E), "DEVELOPMENT

STANDARDS”, AND 4.5.1(L), “DESIGNATION OF HISTORIC DISTRICTS”, BY CLARIFYING THE APPLICATION OF DEVELOPMENT STANDARDS WITH RESPECT TO USE, ZONING DISTRICT AND HISTORIC CLASSIFICATION; AND AMENDING APPENDIX “A”, “DEFINITIONS”, TO PROVIDE A NEW DEFINITION FOR “HARDSCAPE”, AND TO PROVIDE AMENDED DEFINITIONS RELATED TO HISTORIC PRESERVATION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 38-07 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 there is revised information regarding Ordinance No. 38-07 because there have been some very small changes that correct dates and other grammatical things. She stated this is the ordinance that the Commission will be voting on.

Paul Dorling, Director of Planning and Zoning, stated staff has been working on this for quite some time. This began on April 16, 2006 with a six month moratorium from the City Commission and the hiring of REG and Urban Design Studios to come up with some LDR recommendations and design guidelines. Those were done in a six month period and the LDRs were drafted. The Historic Preservation Board (HPB) considered these at their November 1, 2006 meeting and recommended approval. At its meeting of November 20, 2006, the Planning and Zoning Board considered it and also recommended approval. Mr. Dorling stated there were some subsequent changes that were made and it went back to the Planning and Zoning Board for their February 26, 2007 meeting and this failed with a 0 to 6 vote. At its meeting of March 20, 2007, the City Commission recommended denial with a 3 to 1 vote. At that meeting, he stated there was direction given to staff to meet with the development community and have a Charrette to discuss these issues. The Charrette was held in May 2007 when approximately ten (10) local design professionals participated in a design exercise to apply the proposed guidelines to specific properties located within the historic districts. Out of that Charrette there was a new ordinance created in August 2007 and was recommended by the Historic Preservation Board (HPB) for approval. At its meeting of August 20, 2007, the Planning and Zoning Board considered the revised ordinance and recommended denial with a 7 to 0 vote. A City Commission Workshop was held on October 4, 2007, to discuss the status of the amendments and staff’s approach to addressing the concerns of the Planning and Zoning Board and the Historic Preservation Board and then staff would bring back an ordinance to the Commission in that form. As

staff went through the process the ordinance that the Commission has before them was actually supported by both Boards and therefore staff did not have the significant change that they had anticipated. Mr. Dorling stated staff discussed this at a Planning and Zoning Workshop Meeting in November and at a Historic Preservation Board Workshop Meeting in November. On December 3, 2007, the Planning and Zoning Board held a Special Meeting and a Regular Meeting for the Historic Preservation Board on December 6, 2007. On December 17, 2007, staff went back to the Planning and Zoning Board at which time they recommended with a vote 7 to 0 approval of the ordinance the Commission has before them.

At its meeting of December 10, 2007, the Downtown Development Authority (DDA) reviewed the amendments and recommended approval; at its meeting of December 12, 2007, the West Atlantic Redevelopment Coalition (WARC) reviewed the amendments and recommended approval; and at its meeting of December 13, 2007, the Community Redevelopment Agency (CRA) reviewed the amendments and recommended approval.

Mr. Dorling stated the major differences between this and the ordinance that received the recommendation of denial by these Boards previously, was the elimination of references to Type "A" and Type "B". He stated the ordinance was made much clearer and easier to understand. There were also some modifications to the regulatory tools that were proposed particularly the angle of vision and the side setbacks. Staff found that the angle of vision that was initially recommended for approval in affect really achieved very little with respect to providing mandatory offsets in the front. Mr. Dorling stated at that time the required setback was a five foot additional side setback that created issues from a building point of view when you are trying to get the second floor. He stated another significant change was the elimination of the survey area and concerns that it treated similar size lots differently within a district and it did not defer between districts given the individual characteristics of those districts. He stated that was a tool that was suggested for compatibility and it still needs to be addressed. The approach in the new ordinance is a district wide approach. Staff has performed an analysis on the average lot coverage and the average floor of every structure within the district and then applied those individual districts into criteria that are in the ordinance. The ordinance requires that all minor and major development is subject to compatibility contained in Section 4.5.1 and additionally all major development has to meet additional criteria.

Mayor Ellis declared the public hearing open.

**Livia Landry, 701 North Swinton Avenue, Delray Beach (President of the Delray Beach Preservation Trust)**, stated they have serious concerns regarding the proposed amendment changes to the historic preservation ordinance although many of the changes do clarify the regulations. The section which refers to the "Visual Compatibility Standards" Section 4.5.1(E)(8) which was reviewed by Historic Preservation professionals seems to non-compatible with the preservation principles that are consistent with the National Standards and which are practiced by cities and towns nationwide. Ms.

Landry stated it has been the position of the Trust that the obvious course of action would be to consult with Historic Preservation professionals to evaluate these Visual Compatibility Standards, changes, and their impact on the future preservation of the historic districts and the ongoing development that takes place within them. The Trust has sought the expert opinion of two professionals neither of which could be here this evening; however, there will be people from the public who will be submitting letters into the record. Mrs. Landry stated their concerns will show that true preservation principles are not being utilized and we can conclude that more work needs to be done to come up with appropriate standards and regulations. She urged the Commission that consideration be given to the expert opinions and recommendations and the passing of any changes to Section 4.5.1(E)(8) and indirectly Section 4.5.1(E)(9) be postponed until further evaluations are done by Historic Preservation professionals. Mrs. Landry stated another concern is the CLG (Certified Local Government) status and whether not this status is being jeopardized.

**Ann Margo Peart, 710 ½ Claremore Drive, West Palm Beach (speaking on behalf of Ellen Uguccioni)**, stated she grew up in Delray Beach and currently lives in a historic district (Flamingo Park), entered a letter into the record written by Ellen.

**Robert Hickok, 14292 Gallagher Road, Delray Beach**, entered into the record a letter written by Tom Stanley on behalf of the Preservation Trust and noted that he is commenting specifically on Sections 8.M. and 8.N. of the "Visual Compatibility Standards".

**Bunny Elrod, President of Progressive Residents of Delray (P.R.O.D.), 302 S.W. 1<sup>st</sup> Avenue, Delray Beach**, stated P.R.O.D. is very concerned about the future of the City's historic districts if Section 4.5.1(E)(8) is passed. She stated the historic districts provide an overall atmosphere representing what Delray Beach was like when these houses were built. She stated it is not a matter of keeping a few old houses but is an aura of history that these areas provide which is part of what Delray means to many people. Mrs. Elrod stated PROD feels strongly that if the City Commission meetings were televised many more residents armed with the knowledge from this easy accessibility would come forward in time to have an affect on decisions being made without their knowledge. She inquired as to why all the neighboring cities can afford televised coverage of Commission Meetings while Delray cannot.

**Carolyn Patton, 1020 Tamarind Road, Delray Beach (also owns property at 60 Marine Way in the Marina Historic District)**, read a statement into the record and stated no Preservation Planner has worked on this ordinance and she feels the ordinance is flawed in Section 8. Ms. Patton stated under these regulations no other city uses this percentage in their historic districts and asked why the City of Delray Beach would want to. She stated the rest of the ordinance is great but she feels that Section 8 needs to be removed and either table the ordinance for further study by a Preservation Planner or pass it tonight excluding Section 8.

**Lynda Kidd, 246 North Swinton Avenue, Delray Beach,** stated she purchased her property not as an investment but as her home and has spent ten years restoring it and maintaining it. She stated her home is approximately 900 square feet on a corner lot and if something that is two stories is placed next door to her home it will cover the whole place up and her home would be destroyed. Ms. Kidd urged the Commission to reconsider and get professional guidance in the historic preservation of Delray Beach.

**Kevin Warner, 248 Venetian Drive, Delray Beach,** stated the Nassau Historic District is across the street from where he lives and with the exception of three properties it is almost entirely the bungalow type small cottages built 40-50 years ago. He stated Nassau Street is beautiful and in no way would the properties allowed under Section 8 be compatible. Mr. Warner stated historic preservation means preserving, saving and enhancing the qualities of an area. He urged the Commission to take his comments and comments from others into serious consideration this evening.

**Joe Snider, 1010 N.E. 8<sup>th</sup> Avenue, Delray Beach (Historic Preservation professional with a Masters Degree in both Architecture and Historic Preservation),** stated there have been many changes to the proposed Land Development Regulations that were not reviewed by Mr. Gonzales who was previously contracted with the City and he has not seen any comments by a qualified historic preservation professional who has reviewed these post Gonzales revisions. He stated this lack of professional input is of concern. Mr. Snider urged the Commission to table Section 8 & 9 of the Land Development Regulations for further review by a qualified preservation professional.

**Dan Sloan, 106 S.E. 7<sup>th</sup> Avenue, Delray Beach (has a Masters Degree in Historic Preservation and a Masters Degree in Architecture),** supports the proposition that the LDR changes spelled out in Ordinance No. 38-07 should be approved with the exception of Section 8 dealing with "Visual Compatibility Standards" which begins on page 16 of the draft ordinance. He stated the adoption of Section 8 should be tabled pending a review of specific percentages that have been proposed therein. He stated the proposed percentage for lot coverage are based on an analysis where all structures in the district were averaged not just the contributing historic structures and feels if this is the case he feels it is poor methodology. He stated the contributing historic structures are reflective of the character and massing one is trying to preserve and thus should be the basis for the percentages to be analyzed. Mr. Sloan urged the Commission to delay the adoption of Section 8 until the updates of the historic site surveys are completed and this valuable information can inform the decision making process.

**Anne Gannon, 236 Dixie Boulevard, Delray Beach,** stated she owns a structure that was built in 1930 and it is 1,200 square foot house with a 600 square foot garage. She commented about the 5% factor and asked if the maximum house that could be built would be 4,100 square feet in a lot that is 60 feet x 150 feet. Ron Hoggard, Principal Planner, stated in Del-Ida Park with a 9,000 square foot lot the maximum size house that could be built could be 4,147. Ms. Gannon stated that means the lot next to her, which is potentially going to be for sale, the buyer could actually put a house that is

4,100 square feet on that lot. She stated if you apply the 2.5% factor then you could put a 3,600 square foot house there and stated this is out of character with the neighborhood. Ms. Gannon stated under Florida law and the Florida Private Property Rights Act it actually devalues her house by building a structure that large on that piece of property. She urged the City to look into this because she believes it is an actionable cause under that law.

**Chuck Key, 321 S.E. 7<sup>th</sup> Avenue, Delray Beach,** distributed pictures to the Commission and stated restrictions are being placed on him when there are no historic houses in his block. He stated a survey has not been done in 20 years and there were some historic houses on the Intracoastal that have been torn down. Mr. Key stated he has talked to Planning and Zoning and they have indicated that they would support them getting out and feels that there is some language that can be revised to exclude the 300 block.

**Ellen Key, 321 S.E. 7<sup>th</sup> Avenue, Delray Beach,** stated she is concerned about a mathematical error that has been made on the averages of the Intracoastal number of stories. She stated instead of 1.14 averages for an Intracoastal house using the City's numbers it is 1.233. Mrs. Key stated her other concern about the mechanics of the mathematics of the calculations of the Intracoastal houses is that staff is not counting volume ceilings. She urged the City to apply a sound judgment theory to this and if the City is going to build and restrict a house based on ceiling heights that are over 12 feet that the same criteria is used when coming up with the average number of stories for the Intracoastal homes.

**Bibi Rogers, 328 Palm Trail, Delray Beach,** stated she is a retired General Surgeon and a mother. She urged the Commission to think of the environmental impact that all of this building and demolishing of houses is having on us and well as public health.

**Michael Singer, stated he is an Eminent Scholar at Florida Atlantic University/School of Education, School of Engineering, School of Planning & Architecture, School of Business,** stated his assignment at the school is to create and understand the cross interest between these separate fields of study. He stated there is a need to address the facts and the truth regarding the environmental crisis. Mr. Singer asked who needs to live in 4,000 square foot house (or larger) and feels this is an important question to maximizing size, scale, and scope of a project and is it human nature to have to live in the larger scale of anything.

**Matthew Graham, 350 S.E. 7<sup>th</sup> Avenue, Delray Beach,** briefly discussed some comments from the Planning and Zoning Board regarding finding the money to update the surveys and there should be a mechanism where people in the 300 block can actually petition stating that they would like to be released from the historic district.

**Steve Harsnett, 405 S.E. 7<sup>th</sup> Avenue, Delray Beach**, stated this has been an arduous task over the last couple of years. He stated that the Commission, HPB, and Planning and Zoning Board (current and past) have undertaken a huge task. He stated he feels it is absurd that a previous speaker indicated that people who live in larger homes are consuming more of the resources unnecessarily. Mr. Harsnett stated economics also dictates when the property land value is valued at a certain rate that it is going to cause people to build homes to meet that land value and thus the 300 block along the Intracoastal Waterway has developed. He stated thus people that have to live with a four-story condominium towering over their houses with as little as ten feet of setback, have to address their own property needs in a home that allows them the privacy that people in the smaller homes in the true historic neighborhoods are wanting to keep. Mr. Harsnett urged everyone to take the differences into consideration.

**Lois Brezinski, 110 N.E. 7<sup>th</sup> Street, Delray Beach (Del-Ida Park Historic District)**, briefly discussed her house and the past appeal regarding Andy Spangler.

**Claudia Willis, 160 Marine Way, Delray Beach**, read a brief statement into the record and stated initially the City hired REG to help clarify the Design Guidelines for historic districts. After two years, REG's recommendations such as the survey area are no longer in the guidelines and within the last few weeks there have been finite ratios determined by all existing buildings within a district. She stated there have been no historic preservation professionals involved in these recent additions nor has there been a review of the recommendations before the Commission tonight. Ms. Willis' briefly commented about the percentages, ratios, and the methodology used.

**Eugenia Deponte, 24 Marine Way, Delray Beach**, finished reading Ms. Willis' statement into the record and she urged the Commission to perform due diligence.

**Mabel McDonough, 345 S.E. 7<sup>th</sup> Avenue, Delray Beach**, stated about 15 years ago she and her husband decided to rebuild her home after receiving advice from an architect that it would be less expensive to rebuild than to remodel their existing home. She stated if they want to sell their home they would not be able to get the value of the property because they own one of the largest lots on the Intracoastal. Mrs. McDonough stated in the mail she received a picture of a home that was sold two doors down from their property for \$5,350,000.00. She stated they would like to get out of the 300 block because there are no historical houses there.

**Paul Schmitt, 945 Hibiscus Lane, Delray Beach**, briefly discussed a historic home that was torn down on Hibiscus Lane (formerly Dr. Cason's home). Mr. Schmitt stated he lives in the home next door to this one and it was the home of Dr. Cason's daughter. He stated if Section 8 is not taken out of the ordinance then it could be a problem.

**Eric Price, 340 S.E. 7<sup>th</sup> Avenue, Delray Beach**, stated he lives at the south end of the Marina Historic District and it is not a historic house. He stated he feels

the City was wrong for not surveying the districts after 20 years and does not understand how an ordinance could be passed without taking a look at each of the five (5) districts to determine what is and what is not historic. Mr. Price stated each district is different and urged the Commission to consider allowing the 300 block to secede from the Marina District based on the lack of historic fabric.

**Jo Ann Peart, 107 N.W. 9<sup>th</sup> Street, Delray Beach,** stated there are 32 people that are here this evening that do not want Section 8 and along with people from the south end of the Marina Historic District do not want Section 8 either. She urged the Commission to take the word of the people and not include Section 8.

There being no one else from the public who wished to address the Commission regarding Ordinance No. 38-07, the public hearing was closed.

The City Manager stated the 300 block of the Marina District is a great example of the pressures that develop and what happens to a historic district when you start allowing a number of really large house to be built. He feels there is good grounds for taking the 300 block out because this is an area that has been allowed not with any malice but not thinking about the consequences to develop in such a way that it really does not fit any longer.

Mayor Ellis concurred with comments expressed by the City Manager. She stated over the last 20 years the Historic Preservation Board (HPB) did not adhere to the Historic Preservation Guidelines and let whatever was proposed be built if it looked good. Mayor Ellis stated we must protect out historic districts and believes the City must take the 300 block out of the historic district in order to save the rest of the Marina District. She stated it is one of the most charming beautiful districts the City has. Mayor Ellis stated she supports taking out Section 8 and having further discussion on this and she does not support the extra 5% lot coverage.

Mr. Fetzer commented about the surveys that have been done so far and asked at this point what has actually been done regarding the surveys. Mr. Dorling stated all of the areas have been surveyed and they are all out of date. Mr. Dorling stated an inventory has been done, listed, and recorded with the State with respect to contributing and non-contributing structures within periods of significance within all districts. He stated these are outdated and they differ in how much they are outdated. He stated Old School Square was done last, in 2005 OSSHAD was done, and the average for the other surveys are approximately 15-20 years. Mr. Dorling stated there are structures that were contributing that have been lost and there are also structures that were non-contributing when initially surveyed that now are. He stated he is not sure of the status of the 300 block and noted that there may be no structures left that were originally classified as historic but there may in fact with a resurvey be some structures that are (particularly on the west side). Mr. Dorling stated before we take it out he feels we need to verify in fact that there is nothing there with a new survey.

Mr. Fetzer asked what has to be done to update these surveys and get this all brought up to date. In response, Mr. Dorling stated staff would have to go out for a Request for Proposal (RFP) and the City has asked for money from the state but they have not given a final answer as of yet although they have been very generous in the past. Staff estimated the cost is approximately \$50,000.00 (could be more or less) and this was a 50/50 match. Mr. Fetzer asked when staff expects to hear back from the state. Mr. Dorling stated staff's presentation to Tallahassee is in February or March 2008 then it is awarded in June 2008 and the grant would have to be spent within one year.

Mr. Fetzer stated he feels there are special problems with the 300 block that the Commission needs to address. He feels before moving ahead with approving Section 8 & 9 that they get input from some preservation experts to make sure that we are doing the right thing.

Mr. Eliopoulos stated thanked everyone for the emails and noted that they were all well written. He stated REG started out with the City because they needed to have an inventory done on all historic districts. Mr. Eliopoulos stated originally he was against the 11 house survey and also felt that we should not treat all five districts the same. He stated the historic districts are all unique and different and by doing this survey a lot of that information will come out and be much clearer. He commented about the percentages and stated he has no problem with taking out Section 8 & 9 and noted that a lot of this is subjective. He thanked staff, the Historic Preservation Board, and the Planning and Zoning Board. He stated he has no problem excluding some of the items this evening.

Mr. McDuffie stated when Commissioner Eliopoulos and he were on the Planning and Zoning Board this issue came up. He stated this was about the time Rick Gonzales started doing his work and at that time they discussed surveys in the districts. Mr. McDuffie stated at this point he is very uncomfortable with any funding coming from the state to do much of anything above and beyond what we are doing right now because of the referendum on the ballot January 29, 2008 for Tax Reform which is going to hit local government and the state themselves. Mr. McDuffie stated at the last legislative session the state was short a billion dollars. Mr. McDuffie supports doing something with the 300 block in the Marina District and if the City cannot find funding from the State of Florida to try to do something creative with the City's budget and try to find something to get these surveys done and to use properties that are like contributing properties to do the studies and the calculations with rather than co-mingling contributing and non-contributing structures.

Mr. Dorling stated right now people talk about it being human nature to max out and the fact that if the City sets these thresholds we are going to get maxed out. He stated the reality is there are no thresholds and the threshold is 35 feet high setback to setback, there is no floor area ratio, and there are no minimums or maximums. He stated we have not had something come in at the maximum and people come to the City wanting to build significantly large structures and then they go through the HPB process and have it dwindled down to make the structure smaller. Mr. Dorling stated if you look

at these thresholds as halving that bar and putting the cap there and not assuming that everyone is going to come in to max out that is another approach to take and would be a more realistic one. Mr. Dorling stated all of these items are what REG proposed with the exception of the number of stories.

The City Attorney stated Section 8 (begins on page 16 of the revised ordinance) and the "Visual Compatibility Standards" begin. She stated there is a lot of language regarding height, front façade, etc. The City Attorney stated Section 8.M. & 8.N. are the areas that deal with percentages, etc. (pages 22-24). The City Attorney stated staff could continue this with the direction to make changes eliminating 8.M. & 8.N. dealing with the 300 block and bring back as a First Reading/First Public Hearing on January 15, 2008 and a Second Reading/Second Public Hearing on February 5, 2008. The City Attorney stated we do not want to de-designate the 300 block but we want to leave them out of certain lot coverage. She stated the City needs to provide a provision in the ordinance for de-designation that applies to all historic districts or exclude lot coverage. The City Attorney suggested that the Commission continue Ordinance No. 38-07 for another first reading on January 15, 2008 and it would exclude 8.M. & 8.N. The City Attorney stated the Commission can also vote against this ordinance if they so choose.

Mr. Fetzer moved to approve to continue Ordinance No. 38-07 (First Reading/First Public Hearing) to a date certain of January 15, 2008 (with the 300 block to be taken out), seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

**10.B. ORDINANCE NO. 55-07 (FIRST READING/FIRST PUBLIC HEARING):** City initiated amendments to the Land Development Regulations (LDR) amending Section 1.4.3, "Enforcement"; Section 1.4.4, "Penalty", providing that neglect shall constitute a nuisance and providing for enforcement and penalties; Section 2.2.6(C), "Meeting and Quorum", providing for voting, 2.2.6(D), "Duties and Responsibilities", providing for express authority for the Historic Preservation Board to apply the Historic Compatibility Regulations; Section 4.5.1(E), "Development Standards", Subsection 4.5.1(E)(6), "Demolition", and 4.5.1(F), "Restrictions on Demolitions", providing requirements for the application and approval for demolition. If passed, a second public hearing will be scheduled for January 15, 2008.

The caption of Ordinance No. 55-07 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 SECTIONS 1.4.3, "ENFORCEMENT" AND 1.4.4, "PENALTY", PROVIDING THAT NEGLIGENCE SHALL CONSTITUTE A NUISANCE AND

PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING SECTION 2.2.6, "THE HISTORIC PRESERVATION BOARD", SUBSECTION 2.2.6(C), "MEETING AND QUORUM", PROVIDING FOR VOTING; AND AMENDING SUBSECTION 2.2.6(D), "DUTIES AND RESPONSIBILITIES", PROVIDING FOR EXPRESS AUTHORITY FOR THE HISTORIC PRESERVATION BOARD TO APPLY THE HISTORIC COMPATIBILITY REGULATIONS; SUBSECTION 4.5.1(E), "DEVELOPMENT STANDARDS", SUBSECTION 4.5.1(E)(6), "DEMOLITION", AND 4.5.1(F), "RESTRICTIONS ON DEMOLITIONS", PROVIDING REQUIREMENTS FOR THE APPLICATION AND APPROVAL FOR DEMOLITION; PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 55-07 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 there is a revised ordinance at the dais for the Commission and pointed out that the language on page 4, paragraph 4 was modified to include the zoning district regulations so that height could never exceed what is allowed in the zoning district regulations.

Paul Dorling, Director of Planning and Zoning, stated there was a significant concern that demolition by neglect was happening in the historic districts. This ordinance provides that neglect of individual designated structures or structures located within a district will constitute a nuisance and there is a penalty for such violation under the civil citation and notice provisions. Mr. Dorling stated there are additional changes with respect to applications for demolition and this was initially considered by the City Commission and continued and also considered by the Planning and Zoning Board. There was concern that the original language said that you had to have an approved set of plans come in prior to any resolution on whether or not you could demolish a property. He stated there was significant discussion about that and the expense associated with it. Mr. Dorling stated what eventually was endorsed by the Planning and Zoning Board is that you have to provide for a redevelopment plan eventually; however, you can first come and get resolve on the demolition. He stated it also states that you have to pull a building permit on the redevelopment plans prior to physically demolishing a structure so that we do not get empty lots in the districts. Mr. Dorling stated there was also some additional language requested by Commissioner Montague with respect to accommodating unsafe structures and allowing them to be

demolished with the consent of the Chief Building Official and that language is included in this ordinance.

At its meeting of November 7, 2007, Pineapple Grove Main Street reviewed the subject amendment and recommended approval; at its meeting of November 7, 2007, the Historic Preservation Board (HPB) considered the subject amendments and recommended approval by a vote of 5 to 2 (Lake and Kucera-Winney dissenting); at its meeting of November 8, 2007, the Community Redevelopment Agency (CRA) considered the subject amendments and recommended approval; at its meeting of November 12, 2007, the Downtown Development Authority (DDA) considered the subject amendments and recommended approval; at its meeting of November 14, 2007, the Planning and Zoning Board originally considered the subject amendments and the item was tabled to the Special Meeting of December 3, 2007 and the Board recommended approval with the modified language. Staff recommends approval on first reading at this time.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 55-07, the public hearing was closed.

Mr. McDuffie moved to approve Ordinance No. 55-07 on First Reading/First Public Hearing, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

**10.C. ORDINANCE NO. 57-07 (SECOND READING/SECOND PUBLIC HEARING):** City initiated amendment to Land Development Regulations (LDR) Section 4.4.24(B)(12), "Principal Uses and Structures", which specifies the accessory uses and structures permitted in the Old School Square Historic Arts District (OSSHAD), to add all of the accessory uses that are also currently permitted in the Central Business District (CBD).

The caption of Ordinance No. 57-07 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)", SUBSECTION 4.4.24(C), "ACCESSORY USES AND STRUCTURES PERMITTED", TO ALLOW THE CBD ACCESSORY USES IN THE SAME AREAS OF THE OSSHAD DISTRICT WHERE THE PERMITTED USES OF THE CBD ARE ALREADY ALLOWED; PROVIDING A SAVING CLAUSE, A

GENERAL REPEALER CLAUSE, AND AN  
EFFECTIVE DATE.

(The official copy of Ordinance No. 57-07 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 is a scrivener's error. He stated staff made some changes and forgot to include the accessory uses along with those uses that were added in some language associated with the addition of parking lifts.

At its meeting of November 7, 2007, Pineapple Grove Main Street (PGMS) reviewed the amendment and recommended approval; at its meeting of November 8, 2007, the Community Redevelopment Agency (CRA) reviewed the amendment and recommended approval; at its meeting of November 12, 2007, the Downtown Development Authority (DDA) reviewed the amendment and recommended approval; at its meeting of November 14, 2007, the West Atlantic Redevelopment Coalition (WARC) reviewed the amendment and recommended approval; at its meeting of November 19, 2007, the Planning and Zoning Board considered the subject LDR Amendment and voted 6 to 0 to recommend approval.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 57-07.

Mr. Fetzer moved to adopt Ordinance No. 57-07 on Second Reading/Second Public Hearing, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

**10.D. ORDINANCE NO. 03-08 (FIRST READING/FIRST PUBLIC HEARING):** Privately initiated amendment to the Land Development Regulations (LDR) Article 4.7 "Family/Workforce Housing", to expand the Carver Estates Overlay District. If passed, a public hearing will be scheduled for January 15, 2008.

The caption of Ordinance No. 03-08 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 ARTICLE 4.7, "FAMILY/WORKFORCE  
HOUSING", SECTION 4.7.1, "DEFINITIONS", BY  
REPEALING SUBSECTION 4.7.1(C), "CARVER

ESTATES OVERLAY DISTRICT” AND ENACTING A NEW SUBSECTION 4.7.1(C), “CARVER ESTATES OVERLAY DISTRICT”, AND AMENDING SUBSECTION 4.7.1(L), “INFILL WORKFORCE HOUSING AREA”, BY REPEALING MAP 2 AND ENACTING A NEW MAP 2, TO PROVIDE FOR EXPANSION OF THE CARVER ESTATES OVERLAY DISTRICT; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 03-08 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 is a text amendment in association with Comprehensive Plan Amendment 2007-2 that the Commission considered in November 2007. He stated this expands the overlay district northward to include the southern half of Auburn Trace associated with the higher density development that is part of the redevelopment plan.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 03-08.

Mr. Eliopoulos moved to approve Ordinance No. 03-08 on First Reading/First Public Hearing, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

**10.E. ORDINANCE NO. 04-08 (FIRST READING/FIRST PUBLIC HEARING):** City initiated amendment to the Land Development Regulations (LDR) to clarify that residential uses within the Mixed Industrial and Commercial (MIC) zoning district are permitted only within the I-95/CSX Railroad Corridor Overlay District. If passed, a public hearing will be scheduled for January 15, 2008.

The caption of Ordinance No. 04-08 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 4.4.19, “MIXED INDUSTRIAL AND COMMERCIAL (MIC) DISTRICT”, SUBSECTION 4.4.19(A), “PURPOSE AND INTENT”, TO CLARIFY

THAT RESIDENTIAL USES ARE PERMITTED ONLY WITHIN THE I-95/CSX RAILROAD CORRIDOR OVERLAY DISTRICT; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 04-08 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 on March 20, 2007, the City Commission adopted Ordinance No. 10-07, amending the Land Development Regulations to expand the Family/Workforce Housing Program by creating an additional workforce housing overlay district. The new I-95/CSX Railroad Corridor Overlay District, located on Depot Road, between I-95 and CSX Railroad, allows residential uses up to 24 units per acre, subject to conditional use approval. The ordinance included modification of the "Purpose and Intent" section of the MIC zoning district to add residential uses within the district. However, since adoption of the amendment, there has been some confusion as to where residential uses may be located within the zoning district. The purpose of the proposed amendment is to clarify that they are permitted only within the I-95/CSX Railroad Corridor Overlay District.

At its meeting of December 17, 2007, 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. 04-08, the public hearing was closed.

Mr. McDuffie moved to approve Ordinance No. 04-08 on First Reading/First Public Hearing, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 9:12 p.m., the Commission moved to **Item 11, Comments and Inquiries on Non-Agenda Items.**

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

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

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

**11.B.1. Lois Brezinski, 110 N.E. 7<sup>th</sup> Street, Delray Beach (Del-Ida Park Historic District)**, stated crime is becoming a real problem in her neighborhood. She stated she has heard gunshots on many occasions within the last three weeks she has heard gunfire between 12:00 midnight and 2:00 a.m. She stated there was an armed holdup two blocks from her home on Christmas Eve and she went on the Police record and there have been an alarming number of break-ins and suspicious incidences. Ms. Brezinski stated she does not know if anything is being done and urged the Commission to look into this if they haven't already to find out what the problem is. She stated she did not move to Delray Beach to live in fear and commented that she came from a very quiet community in the Caribbean where she felt very safe and she does not feel safe now. Ms. Brezinski stated she is now parking in front of her house at night so she does not have to go around the back of her house. She stated this has been confirmed by the Police Department that there is gunfire at night and it is partially a result of gang violence in her neighborhood.

**11.B.2. Alice Finst, 707 Place Tavant, Delray Beach**, stated last weekend she attended the craft show at the Tennis Center and it was very busy. Mrs. Finst expressed concern that there were no crosswalks to get across from the Tennis Center to the parking garage. She stated there were approximately 20-25 people trying to cross the street throughout the day and there was no police officer to be seen. She stated people were making their own crosswalks and it was very unsafe. Mrs. Finst stated it would seem that part of a plan to have a show would require a police officer in the contract. She urged the Commission to look into this and noted that we need safety in the area.

Secondly, Mrs. Finst complimented whoever authorized the cleanup at the beach. She stated it is so wonderful to drive down A-1-A and know that the ocean is over there and actually be able to see it.

At this point, the time being 9:16 p.m., the Commission moved to **Item 12, First Readings.**

**12. FIRST READINGS:**

**12.A. ORDINANCE NO. 02-08:** City initiated amendment to the Land Development Regulations (LDR) to reduce the duration over which a single parcel must be vacant for its development to qualify as in-fill development. If passed, a public hearing will be scheduled for January 15, 2008.

The caption of Ordinance No. 02-08 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 APPENDIX "A", "DEFINITIONS", TO REDUCE THE DURATION OVER WHICH A SINGLE

PARCEL MUST BE VACANT FOR ITS DEVELOPMENT TO QUALIFY AS INFILL DEVELOPMENT FROM 5 YEARS TO 1 YEAR; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 02-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated the current definition of in-fill requires a single parcel on one street or two streets for a corner property to be vacant for five or more years to meet the definition of in-fill. He stated this ordinance changes that to one year. Mr. Dorling stated in researching what impact that has in-fill development can take advantage of in-lieu fees as well as the newly developed provision for parking lifts.

At its meeting of November 8, 2007, the Community Redevelopment Agency (CRA) considered this and recommended approval; the Downtown Development Authority (DDA) reviewed the amendment at their November 12, 2007 meeting and recommended approval; the West Atlantic Redevelopment Coalition reviewed the amendment at their November 14, 2007 meeting and recommended approval; and the Planning and Zoning Board considered the subject LDR Amendment at its meeting of November 19, 2007 and voted 6-0 to recommend approval.

Mr. Fetzer moved to table Ordinance No. 02-08 on First Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

**12.B. ORDINANCE NO. 01-08:** City initiated amendment to the Land Development Regulations (LDR) Section 2.4.3 "Submission Requirements" to specify the required scales to which various components of development plans must be prepared. If passed, a public hearing will be scheduled for January 15, 2008.

The caption of Ordinance No. 01-08 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 2.4.3, "SUBMISSION REQUIREMENTS", SUBSECTIONS (A), "STANDARD APPLICATION ITEMS", (B), "STANDARD PLAN ITEMS", (D), "PRELIMINARY ENGINEERING PLANS", AND (H), "SUBMISSIONS

(PLATTING) ITEMS” TO PROVIDE FOR UPDATED SUBMISSION REQUIREMENTS PERTAINING TO ENGINEERING ITEMS; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 01-08 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated this talks to required scales of development plans and provides some consistency and adds an additional scale. He stated it also requires that the dimension of plan sheets be 24”x 36” and vicinity maps will now be required to be prepared at a legible scale and include sufficient landmarks to allow quick identification of the proposed project’s location.

At its meeting of December 17, 2007, the Planning and Zoning Board considered these amendments and recommended approval with a 5 to 0 vote.

Mr. Eliopoulos asked for clarifications regarding the landmarks. Mr. Dorling stated this is really generated out of the Engineering Department and he will get more information regarding this by second reading. Mr. Dorling stated some of the maps are very tiny and non-readable so staff really needs to be able to read it.

Mr. Eliopoulos moved to approve Ordinance No. 01-08 on First Reading, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

At this point the time being 9:24 p.m., the Commission moved back to **Item 9.E. of the Regular Agenda.**

**9.E.**            **CHANGE ORDER NO. 2/WEST CONSTRUCTION, INC:** Approve a Change Order No. 2 in the amount of \$30,711.85 to West Construction, Inc. for design changes and increase in length of the seawall at the Boat Ramp as a result of structural review, for the Mangrove Park Project. Funding is available from 334-4174-572-63.90 (General Construction Fund/Intracoastal Park/Other Improvements).

Richard Hasko, Director of Environmental Services, stated this is a supplemental change order for West Construction, Inc. on the Mangrove Park Project. In September 2007, staff brought a change order to the City Commission that had to do with unforeseen conditions increasing the costs and one of the retaining seawalls that was planned on the site and another existing seawall that once staff got into construction and started doing some excavation it was in much poorer condition than staff originally thought. During the planning and engineering stages of the site staff did not have access to the appropriate investigations because of the mangroves, the sensitive areas, and the wetlands they were working in. At that time, the proposal staff had for West

Construction, Inc. that contained the new seawall was predicated on preliminary working drawings from the structural engineer. Mr. Hasko stated staff received the prices and the City's Structural Engineer and Consultants reviewed them and agreed these were good prices for the construction and staff had a level of comfort that it was going to be adequate to complete the additional work. Mr. Hasko stated at that point in time, the seawall work was critical path on the project for the contractor. Subsequently, staff had to complete the final structural drawings for the seawall which involved some geo-technical work which was part of the problem that caused the issue in the first place. The consultant's original preliminary designs for the new seawall were predicated on what he anticipated to find in there under similar circumstances. Mr. Hasko stated when the consultant saw the results of the actual geo-technical work in the specific areas the soil conditions were such that he had to make some changes, the piles had to get a little bit larger and a little bit deeper and a little bit closer together. Staff anticipates additional credits on the overall site.

Brief discussion between Mr. Hasko and the Commission.

Mr. McDuffie moved to approve Change Order No. 2 in the amount of \$30,711.85 to West Construction, Inc., seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

**9.F. APPOINTMENTS TO THE BUDGET TASK FORCE:** Appoint seven (7) regular members and two (2) alternate members to the Budget Task Force for six (6) month terms. Based upon the rotation system, the appointments will be made by Commissioner Eliopoulos (Seat #1), Commissioner Fetzer (Seat #2), Commissioner McDuffie (Seat #3), Commissioner Montague (Seat #4) and Mayor Ellis (Seat #5).

Mr. Eliopoulos moved to appoint Howard Ellingsworth to the Budget Task Force as a regular member for a six (6) month term, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mr. Fetzer moved to appoint Vincent Dole as a regular member to the Budget Task Force for a six (6) month term, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to appoint Alexander Simon as a regular member to the Budget Task Force for a six (6) month term, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

Mayor Ellis stated she wished to appoint Frank Wheat to the Budget Task Force as a regular member for a six (6) month term. Mr. Fetzer so moved, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4

to 0 vote.

Mr. Eliopoulos moved to appoint Peter Arts to the Budget Task Force as a regular member for a six (6) month term, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mr. Fetzer moved to appoint Todd L'Herrou to the Budget Task Force as a regular member for a six (6) month term, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie stated he would like to defer his appointment until the next regular meeting of January 15, 2008.

Mayor Ellis noted that Mrs. Montague will have an alternate member and a regular member to appoint at the next regular meeting of January 15, 2008.

**9.G. APPOINTMENT TO THE CODE ENFORCEMENT BOARD:** Appoint one (1) regular member to the Code Enforcement Board for a three (3) year term ending January 14, 2011. Based upon the rotation system, the appointment will be made by Commissioner Eliopoulos (Seat #1).

Mr. Eliopoulos moved to reappoint Kelli Freeman as a regular member to the Code Enforcement Board for a three (3) year term ending January 14, 2011, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

**9.H. APPOINTMENTS TO THE EDUCATION BOARD:** Appoint one (1) regular member to the Education Board for an unexpired term ending July 31, 2009 and two (2) student members to serve partial terms ending July 31, 2009 and July 31, 2008. Based upon the rotation system, the appointments will be made by Commissioner McDuffie (Seat #3), Commissioner Montague (Seat #4), and Mayor Ellis (Seat #5).

Mr. McDuffie moved to appoint Peter Raycroft as a regular member to the Education Board for an unexpired term ending July 31, 2009, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

Mrs. Montague's appointment will be deferred to the next regular meeting of January 15, 2008.

Mayor Ellis stated she wished to appoint Sara Mejia as a student member to the Education Board to serve a partial term ending July 31, 2008. Mr. Eliopoulos so

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

**9.I. APPOINTMENTS TO THE GREEN TASK FORCE:** Appoint seven (7) regular members to the Green Task Force for six (6) month terms. Based upon the rotation system, the appointments will be made by Commissioner Eliopoulos (Seat #1), Commissioner Fetzer (Seat #2), Commissioner McDuffie (Seat #3), Commissioner Montague (Seat #4) and Mayor Ellis (Seat #5).

Mr. Eliopoulos moved to appoint Nancy Schneider as a regular member to the Green Task Force for a six (6) month term, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. Fetzer moved to appoint Ana DeMelo as a regular member to the Green Task Force for a six (6) month term, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to appoint Karla Vaillancourt as a regular member to the Green Task Force for a six (6) month term, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

Mayor Ellis moved to appoint Joseph Snider as a regular member to the Green Task Force for a six (6) month term, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mr. Eliopoulos moved to appoint Dan Sloan as a regular member to the Green Task Force for a six (6) month term, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. Fetzer moved to appoint John Koenig as a regular member to the Green Task Force for a six (6) month term, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

Mayor Ellis noted that Commissioner Montague's appointment will be deferred to the next regular meeting of January 15, 2008.

**9.J. APPOINTMENT TO THE PARKING MANAGEMENT ADVISORY BOARD:** Appoint one (1) regular member to the Parking Management Advisory Board for a two (2) year term ending January 31, 2010. Based upon the rotation system, the

appointment will be made by Mayor Ellis (Seat #5).

Mayor Ellis stated she wished to appoint Alan Kornblau as a regular member to the Parking Management Advisory Board (PMAB) for a two (2) year term ending January 31, 2010. Mr. McDuffie so moved, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

**9.K. APPOINTMENTS TO THE POLICE ADVISORY BOARD:** Appoint five (5) regular members and one (1) student member to the Police Advisory Board for two (2) year terms ending December 13, 2009. Based upon the rotation system, the appointments will be made by Commissioner Eliopoulos (Seat #1), Commissioner Fetzer (Seat #2), Commissioner McDuffie (Seat #3), Commissioner Montague (Seat #4) and Mayor Ellis (Seat #5).

Mr. Eliopoulos moved to reappoint Shelly Weil as a regular member to the Police Advisory Board for a two (2) year term ending December 13, 2009, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mr. Fetzer moved to reappoint Joseph Ferrer as a regular member to the Police Advisory Board for a two (2) year term ending December 13, 2009, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to appoint Walter Earley as a regular member to the Police Advisory Board for a two (2) year term ending December 13, 2009, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mayor Ellis moved to appoint Joseph Ingram as a regular member to the Police Advisory Board for a two (2) year term ending December 13, 2009, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

Mr. Eliopoulos moved to reappoint Vanessa Francois as a student member to the Police Advisory Board for a two (2) year term ending December 13, 2009, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

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

**13.A.**                    **City Manager**

The City Manager stated at the League of Cities last Board Meeting they adopted a resolution opposing the Hometown Democracy Initiative and they also agreed to file an “amicus brief” on behalf of the City of Lake Worth to try to get this overturned at the appeal level. He stated the City of Lake Worth annexed a single piece of property and rezoned it. The City of Lake Worth had a citizen group that filed suit against them and they wanted to have a referendum and the City of Lake Worth informed them they could not do that. The City Manager stated the State law states “an initiative or referendum process in regard to any development order or in regard to any local government Comprehensive Plan Amendment that affects five or fewer parcels of land is prohibited.” He stated the trial judge agreed with the Plaintiff that they were affected parcels because they were in some distance from it.

He stated all the incumbents were reappointed to the League seats on the Treasure Coast Regional Planning Council.

The City Manager stated Palm Beach County repealed their Sector Plan.

He stated the League has started sending youth delegates to the National League of Cities. The Palm Beach County League pays a registration fee and they have had good luck raising money to pay the other costs. The City Manager stated he hopes that the City of Delray Beach can send some of its youth because he feels it would be a good experience for them.

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

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

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

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

Mr. McDuffie stated he hopes everyone had a wonderful holiday season. He stated he was out of town for a while and sent the Commission some pictures of his trip.

Secondly, he stated he had another incredible cruise aboard the USS Enterprise. Mr. McDuffie stated it was an amazing experience and noted that he is proud of his son and the other 6,000 people on the ship.

Lastly, he stated First Night was enjoyable; however, he was a little disappointed in the grand finale but noted the fireworks were wonderful.

**13.C.2.**      **Mr. Fetzer**

Mr. Fetzer stated he was very pleased to see how many people volunteered for the Budget Task Force and the Green Task Force. He is looking forward to hearing their ideas.

Secondly, he attended First Night and is always proud of what they do. Mr. Fetzer congratulated Marjorie Ferrer and Robert Barcinski along with everyone else involved.

Lastly, Mr. Fetzer complimented Chevelle D. Nubin, City Clerk, for her work on the MuniAgenda. He stated the Commission will be receiving an enhancement where the City Commission can make notes, highlight, etc. on the MuniAgenda and he feels this is a real step forward in the right direction.

**13.C.3.**      **Mr. Eliopoulos**

Mr. Eliopoulos stated he feels like he is taking a little step backwards and noted that his situation is a little different in the sense that at home he has eliminated any computers except for one due to his children wandering on the internet. Mr. Eliopoulos stated although there is every single kind of control there can be they now have the computer in the main family room. Mr. Eliopoulos stated he would like to still receive the Agenda in the blue book binder.

Secondly, he wished everyone a "Happy New Year".

**13.C.4.**      **Mayor Ellis**

Mayor Ellis stated she will make the City Clerk proud with regard to the MuniAgenda.


Secondly, Mayor Ellis stated she performed a cousin's marriage ceremony in St. Petersburg on the beach and it was a neat experience.

Lastly, Mayor Ellis stated several months ago Carol Shetler, Regional Manager for the Palm Beach County School Board, stated because of the reduced revenue, sales tax, and reduced enrollment, that either Galaxy or Plumosa Elementary School would be closed. Mayor Ellis stated one of the first things she did was call five of our former Mayors who had some issues with the School Board while they were in term. She contacted the Principal of Plumosa and noted that Janet Meeks, Education Coordinator and Lula Butler, Director of Community Improvement were phenomenal in getting people together. Mayor Ellis stated a group of people attended the School Board meeting and it was voted to rebuild Plumosa on the old high school site which is now being referred to as the Seacrest site as a K-8 School of the Arts. Mayor Ellis stated the City of Boynton Beach somehow did not get the word out and there is a group of citizens who feel like this was handled behind their back so they have initiated a petition to ask

the School Board to reconsider this. Mayor Ellis stated she may be back asking for the Commission's support and will keep the Commission apprised of any changes.

The City Manager stated looking at the future of the Plumosa site he suggested that we may want to encourage the School Board to hold to it for a few years because they are not making any more land in the eastern part of the County. He stated he believes this enrollment decline will likely turnaround in the next 3-5 years.

There being no further business, Mayor Ellis declared the meeting adjourned at 10:08 p.m.

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

ATTEST:

  
\_\_\_\_\_  
MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on January 3, 2008, which Minutes were formally approved and adopted by the City Commission on February 5, 2008.

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

**NOTE TO READER:**

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