

**DECEMBER 8, 2009**

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, December 8, 2009.

**1.** Roll call showed:

Present - Commissioner Gary P. Eliopoulos  
Commissioner Fred B. Fetzer  
Commissioner Adam Frankel  
Commissioner Angeleta Gray  
Mayor Nelson S. McDuffie

Absent - None

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

**2.** The opening prayer was delivered by Reverend Linda Mobley with Cason United Methodist Church.

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

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

Mayor McDuffie noted the addition of **Item 7.B., XPE Sports Presentation by addendum.**

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

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

None.

**6.** **PROCLAMATIONS:**

**6.A.** **Delray Medical Center Day – December 8, 2009**

Mayor McDuffie read and presented a proclamation to Chief David James, Assistant Chief of Administration Danielle Connor, and Division Chief/EMS Victor

Williams proclaiming December 8, 2009 as Delray Medical Center Day.

**6.B. Calling for the First Non-Partisan Election to be held on March 9, 2010**

Mayor McDuffie read and presented a proclamation to Chevelle D. Nubin, City Clerk, hereby calling for the First Nonpartisan Election to be held on Tuesday, March 9, 2010 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. RESOLUTION NO. 60-09:** Approve Resolution No. 60-09 recognizing and commending Marc Woods for 30 years of dedicated service to the City of Delray Beach.

The caption of Resolution No. 60-09 is as follows:

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

(The official copy of Resolution No. 60-09 is on file in the City Clerk's office.)

Mayor McDuffie read and presented Resolution No. 60-09 to Marc Woods.

Mr. Frankel moved to approve Resolution No. 60-09, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

**7.B. XPE Sports Presentation on the proposed use of the Seacrest Soccer Complex (Addendum)**

**Tavarius "TJ" Jackson, President of XPE Sports – South Florida,** stated he and his partners are trying to bring a program to the City of Delray Beach that benefits the kids as well as the entire community.

**Tony Villani, founder of XPE Sports – Atlanta,** stated he lived in South Florida for approximately three years working with some professional athletes and he met TJ when he was in college trying to make his dream of playing in the National Football League (NFL) and he was the Palm Beach County Player of the Year and graduated from Virginia Tech. Mr. Villani stated Mr. Jackson then moved to Atlanta, GA and trained

with him because it did not work out for him in the NFL. TJ Jackson came back to South Florida and opened up a non-profit company and started coaching. Mr. Villani stated they held a weeklong camp for anybody that needed to be mentored and the week was filled with SAT, ACT prep, how to balance a check book, and life skills. He stated every Saturday he would bring some pro athletes for the life skills preparation. Mr. Villani stated they did it this past year with some help from some people in the city and they had about 20 NFL players in town and worked with approximately 250 kids for free on Saturday. Mr. Villani stated he saw the impact that TJ was having here being a local resident and he wanted to get back down to South Florida. He stated it is their goal to use the sports training of the pro athletes and the pro athletes themselves as a nugget to attract the kids to train with them for free as long as they complete their proper school work and stay out of trouble. Mr. Villani stated they are working with a couple of lieutenants in the Police Department that helped them select about two dozen kids. They can and training will start in January 2010 on Tuesdays, Thursdays and Saturdays. Mr. Villani stated they don't make Tuesday, Thursday, Saturday if they do not complete their Monday and Wednesday school work. He stated they want to attract the athletic kids. They can get a scholarship but if they do not have the grades to get into college, it is over for them. Mr. Villani stated they have an indoor facility, that being the inside Level 5 fitness gym, and they provide training for pro athletes down to high school kids. He stated they would like to have a year-round camp.

Mr. Eliopoulos asked how the training works. Mr. Villani stated the training is not just made for NFL football players but it is made for anybody who is trying to become more athletic. He stated they are doing a soccer camp for the Haitian community for free so with the piece of turf at the soccer complex they have an area to keep doing camps and never have to run on the grass. Mr. Villani stated their goal is to have 24 kids by the time school starts in January 2010.

Mr. Eliopoulos asked if the AstroTurf gets hot. Mr. Villani stated AstroTurf does get hot but the new kind of AstroTurf that is like glass does not really have a life limit on it. He explained that if you are in sneakers the old school turf when you used to stop it was almost like stopping on carpet when it would grab your foot and you would twist your ankle and tear up your knees. Mr. Villani stated this is the new type of turf that they are putting in domes and outside fields. He stated Boca High's field has the new turf as well as Florida Atlantic University (FAU). Mr. Villani stated they are currently working on bids.

Mrs. Gray asked where they will be tutoring. Mr. Villani stated they talked to a few City officials about that and possibly the library but they are still working on getting that component set up. He stated if there is not a place for these kids to study after school on Monday or Wednesday, they can't go home and he wants them to have a place to stay.

Mayor McDuffie asked what size of turf area they need. Mr. Villani stated the size of the training turf is going to be about 15 x 25 yards and that is enough room to train at least 24 athletes at a time and off of that piece it is going to have an

extension that is an additional 40 yards long. Mr. Villani stated they are lucky enough to be funded by a few pro athletes and one of them has been down here countless times and helps out kids more than anyone. Mr. Villani stated this pro athlete is going to help them fund a speed and agility training center that sits on that turf. He stated they want to teach the soccer, Lacrosse, the Delray Rocks and all the coaches how to use it.

Mr. Frankel stated he has heard a lot about the program and he thinks it is great. He stated his dad was a former agent so he grew up seeing many athletes who got the big money picture, etc. and unfortunately they played a few years and situations changed. Mr. Frankel stated it is nice to hear not only are they going to get the greatest athletic guidance but they are going to know the real life picture and be made to hit the books in order to participate.

The City Manager stated the City Attorney's office is in the process of negotiating an agreement for the use of facilities at the soccer complex and staff may bring this before the Commission if they meet later in the month. The City Manager stated staff wanted the Commission to have a little more background so that when it comes before the Commission they will know more about what it involves.

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

**8.A. CONTRACT ADDITION (C.O. NO. 7) WEST CONSTRUCTION, INC./MILLER PARK IMPROVEMENTS:** Approve a Contract Addition (C.O. No. 7) in the amount of \$8,824.00 to West Construction, Inc., for the infield surface replacement and warning track extension at Little Fenway. Funding is available from 334-4173-572-63.90 (General Construction Fund/Improvements Other/Other Improvements).

**8.B. PURCHASE ORDER INCREASE/NUTTING ENGINEERS OF FLORIDA:** Approve an increase of \$3,250.00 to Nutting Engineers of Florida, Inc. for additional testing services for the Miller Park Improvements Project. Funding is available from 334-4173-572-63.90 (General Construction Fund/Improvements Other/Other Improvements).

**8.C. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) SUB-RECIPIENT FUNDING AGREEMENT/ACHIEVEMENT CENTERS FOR CHILDREN AND FAMILIES:** Approve and authorize execution of a sub-recipient funding agreement with the Achievement Centers for Children and Families under the Community Development Block Grant (CDBG) program for FY 2009-2010, with total funding in the amount of \$80,000.00. Funding is available from 118-1966-554-82.09 (Neighborhood Services/Other Grants and Aids).

**8.D. GRANT APPLICATION/2009 STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER):** Provide authorization for submission of a grant application to the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) for ARRA funding to hire four (4) additional Firefighter/Paramedics to complete the staffing at Station #2.

**8.E. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period December 1, 2009 through December 4, 2009.

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

- 1.** Bid award to Shenandoah Construction in the amount of \$15,300.00 for the maintenance of 1,450 lineal feet of storm water pipe which includes cleaning and televising of the Thomas Street Pump Station drainage system. Funding is available from 448-5416-538-46.90 (Storm Water Utility Fund/Repair and Maintenance Service/Other Repair /Maintenance Cost).
- 2.** Purchase award to Equipment Experts in the amount of \$35,000.00 for the purchase of one (1) used 350 gallon spray rig, one (1) used John Deere fairway mower and one (1) Toro triplex tee mower. Funding is available from 445-4761-572-64.90 (D B Municipal Golf Course/Machinery/Equipment/Other Machinery/Equipment).
- 3.** Purchase award to Tanner Industries at an estimated cost of \$28,000.00 via the City of St. Augustine, Florida Bid #PW2007-05 for the purchase of anhydrous ammonia. Funding is available from 441-5122-536-52.21 (Water and Sewer Fund/Operating Supplies/Chemicals).

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

**9. REGULAR AGENDA:**

**9.A. WAIVER REQUEST/103 NW 3<sup>RD</sup> AVENUE:** Consider a waiver request to Land Development Regulations (LDR) Section 4.5.1(E)(3)(a)(1)(c), “Fences and Walls”, which prohibits fences and walls over four feet (4’) high located within front or side street setback; for a fence measuring approximately 6’ in height proposed within the side street setback, and an arbor, measuring approximately 7’ in height within the front setback. (*Quasi-Judicial Hearing*)

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

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

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

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2010-013 into the record.

Mr. Dorling stated this is a waiver request to LDR Section 4.5.1.(E)(3)(a)(1)(c), Fences and Walls, which prohibits fences and walls over four feet (4') high to be located within front or side street setbacks. A waiver has been requested for a fence measuring approximately 6 feet in height proposed within the side street setback, and an arbor, approximately 7' in height within the front setback. Mr. Dorling stated this went before the City Commission previously.

At its meeting of December 2, 2009, the Historic Preservation Board (HPB) considered a Certificate of Appropriateness (COA) and the waiver requests. The HPB approved the COA and recommended approval of the waiver requests.

Mr. Dorling stated the aesthetic issues are not one that apply to this and staff recommends approval of these waivers subject to positive findings to LDR Section 2.4.7(B)(5) that is contained in the backup material.

**Bryce Newell, Applicant/Owner, 103 N.W. 3<sup>rd</sup> Avenue, Delray Beach, FL 33444,** stated the main reason for this is for safety and security as well as not seeing some of the unsightly things that have been happening in his yard. Mr. Newell stated for a long time his home was abandoned and became a place for people to hang out and do various activities.

There was no cross-examination or rebuttal.

Mayor McDuffie stated if anyone from the public would like to speak in favor or in opposition of the waiver request, to please come forward at this time. There being no one from the public who wished to give public testimony on this item, the public hearing was closed.

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

Mr. Fetzer moved to adopt the Board Order (approving the waiver requests), seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

**9.B. BONUS PAYMENT TO JCD SPORTS GROUP, INC.:** Consider approval of FY 2009 bonus payment to JCD Sports Group, Inc. for both golf operations in the amount of \$15,498.00 and for Tennis Center operations in the amount of \$5,992.50. Funding is available from 445-4711-572-34.90 (Delray Beach Municipal Golf Course Fund/Other Contractual Service), 446-4711-572-34.90 (Lakeview Golf Course/Other Contractual Service), 001-4215-575-34.90 (General Fund/Operating

Expenses- Miscellaneous/Other Contractual Service) and 001-4210-575-34.90 (General Fund/Operating Expenses-Misc/Other Contractual Service).

Robert A. Barcinski, Assistant City Manager, stated the Commission is requested to consider bonus payments to JCD Sports Group for fiscal year 2008-09 in the amount of \$15,498.00 for the golf operations and \$5,992.50 for tennis operations. Mr. Barcinski stated this request is in accordance with the contract which allows up to 15% of the base fee and is based on performance measures that Commission approves on an annual basis. Staff has reviewed the performance measures and point totals and agrees with the request.

Mr. Frankel moved to approve the bonus payments to JCD Sports Group for the golf and tennis operations, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

**9.C. AGREEMENT/AMERICAN TRAFFIC SOLUTIONS (ATS):**  
Consider a proposed agreement between the approved vendor, American Traffic Solutions (ATS), and the City for the implementation of a Red Light Enforcement Program.

Sharon L'Herrou, Administrative Manager, stated this is a proposed contract between American Traffic Solutions (ATS) and the City for the implementation of a Red Light Enforcement Program. Mrs. L'Herrou has already been brought before the Commission at its various stages first when the Commission approved the ordinance last November followed by discussion of the RFP and then selection of the vendor. She stated if approved tonight the contract still does not become official until after favorable legislation has been passed and staff issues a notice to proceed. Mrs. L'Herrou stated the reason staff is bringing this to the Commission at this stage is it would allow the project to move forward without any real risk to the City at this time. She stated following approval tonight, the vendor would move forward with selection of the intersections, surveys of the intersections, preliminary permitting, etc. Mrs. L'Herrou stated the contract term was revised from five years to three years because they wanted the 90-day out which is a provision for termination for any reason with or without clause. She noted that the vendor did not agree to that provision and therefore this is why the contract term has been reduced and staff also included some items to protect the City including that termination with cause will include things such as changes in legislation or unfavorable court decisions. Mrs. L'Herrou stated this contract guarantees that the City will not expend more in vendor fees than is collected from the project. She stated the City negotiated an option to change the compensation pricing annually. Mrs. L'Herrou stated the City Attorney had expressed some reservations over the indemnification. She stated ATS is working with over 60 cities throughout the state and when the RFP process was done the City had three submissions and ATS were the only viable vendor that bid. One vendor withdrew and the other was not able to demonstrate that they had completed a similar project. Mrs. L'Herrou stated staff has been negotiating this contract with ATS for six months.

Mr. Eliopoulos asked what the positives are for the City going with this contract right now pending the outcome. The City Manager stated either there will be a court decision saying using the code enforcement process is legally okay or there will be legislation that will authorize under the State's traffic code the utilization of this process. He stated when one of those happens staff would like to be in the position to immediately implement the system. However, the City Manager stated there is preparatory work that has to be done in order to implement and by having this all in place if the legislation has a grandfather clause in it then the City would be grandfathered in with regard to terms of how the fines are split between the City and the state. Mr. Eliopoulos asked for an example of where the City has done this before. The City Attorney stated the City has not done this with a private entity and most of the time the City does contracts with this language there is an abundance of bidders out there. Mr. Eliopoulos expressed concern over the indemnification clause.

Mr. Fetzer expressed concern over the indemnification clause as well.

Mr. Frankel asked with the other municipalities that have come to agreement with this vendor, if it is all the same contract or are there different indemnification clauses for each municipality. The City Attorney stated it has been a work in progress and as you enter into these agreements and over the time period likewise some of their requirements have changed because of some of the headlines and lawsuits that have filed. Therefore, the City Attorney stated staff has been trying to get other language in our agreement where those lawsuits would not be an issue for us. Mr. Frankel stated he does not see any court cases being decided anytime soon and would rather be cautious and understands the City Manager and the Police wanting to approve it tonight. He feels that we need to do more due diligence and find out a little more about this issue.

Mayor McDuffie stated he concurs with the Commission about being cautious.

Mrs. Gray asked what an issue would be with regard to the indemnification. The City Attorney stated say that they comply with all of the manufacturer's requirements, and comply with everything and their building permit process but for some reason the pole falls down and nobody knows why. The City Attorney stated the City would then be looking at the vendor; however, under the terms and the indemnification under this agreement they could stand by their defense that they built it in accordance with the manufacturer's specs and the City's building permit process and state that they do not know why it fell down but it did. The City Attorney stated we don't even get that far and would just say that it happened, you did it, it is your responsibility and you take care of it and this way the City would not have to go through trying to prove that the vendor did something wrong, etc.

It was the consensus of the Commission to direct staff to work with the vendor and try to work out some more things regarding the indemnification clause.

**9.D. SERVICE AUTHORIZATION NO. 06-08/CURRIE SOWARDS AGUILA ARCHITECTS:** Consider approval of Service Authorization No. 06-08 in the amount of \$20,500.00 to Currie Sowards Aguila Architects for professional design services regarding replacement of the concession stand and press box building at Little Fenway. Funding is available from 334-4173-572-63.90 (General Construction Fund/Improvements Other/Other Improvements).

Richard Hasko, Director of Environmental Services, stated this item is a proposal from Currie Sowards Aguila Architects for the design and consulting services for replacement of the concession building at Little Fenway. Mr. Hasko stated this is a complete scope of services from programming the facility, to design, to permitting and to construction administration through a CO (Certificate of Occupancy). The Commission gave staff direction last week to go back to the consultant and see if staff could renegotiate a lower fee which they have done. Mr. Hasko stated when staff came before the Commission the first time and the total fee was \$26,750.00 and the total fee, now including a \$500.00 reimbursable cost, is \$20,500.00.

Mrs. Gray asked with the price decrease have we lost anything or is it still the same project. Mr. Hasko stated it is still the same scope.

Mr. Eliopoulos asked what the upset fee was. Mr. Hasko stated there is a \$500.00 reimbursable cap and noted it was \$750.00 last time. Mr. Eliopoulos stated he appreciates what the consultant did.

Mr. Eliopoulos moved to approve Service Authorization No. 06-08 to Currie Sowards Aguila Architects in the amount of \$20,500.00 for professional design services for a new Little Fenway Concession building at Miller Park, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

**9.E. APPOINTMENTS TO THE POLICE ADVISORY BOARD:** Appoint four (4) regular members to the Police Advisory Board for two (2) year terms ending July 31, 2011 and one (1) regular member to serve an unexpired term ending July 31, 2010. Based upon the rotation system, the appointments will be made by Commissioner Frankel (Seat #3), Commissioner Gray (Seat #4), Mayor McDuffie (Seat #5) and Commissioner Eliopoulos (Seat #1) for four (4) regular members to serve two (2) year terms ending July 31, 2011, and Commissioner Fetzer (Seat #2) for one (1) regular member to serve an unexpired term ending July 31, 2010.

Mr. Frankel stated he would like to defer his appointment to the next regular meeting of January 5, 2010.

Mrs. Gray moved to reappoint Joseph Ingram as a regular member to the Police Advisory Board (PAB) to serve a two (2) year term ending July 31, 2011, seconded by Mr. Eliopoulos.

Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes.

Mayor McDuffie stated he wished to appoint Matthew Hartley as a regular member to the Police Advisory Board (PAB) to serve a two (2) year term ending July 31, 2011. Mr. Frankel so moved, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

Mr. Eliopoulos moved to reappoint Walter Earley as a regular member to the Police Advisory Board (PAB) to serve a two (2) year term ending July 31, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

Mr. Fetzer stated he would like to defer his appointment to the next regular meeting of January 5, 2010.

**9.F. APPOINTMENT TO THE NEIGHBORHOOD ADVISORY COUNCIL:** Appoint one (1) regular member from Zone 2 to the Neighborhood Advisory Council to serve an unexpired term ending July 31, 2010. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray moved to appoint Laura Reines as a regular member from Zone 2 to the Neighborhood Advisory Council (NAC) to serve an unexpired term ending July 31, 2010, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 6:55 p.m., the Commission moved to **Item 12, First Readings.**

**12. FIRST READINGS:**

**12.A. ORDINANCE NO. 61-09:** Consider a city-initiated amendment to Chapter 53, Sanitary Sewers, to comply with the new local discharge limits that were approved by the Florida Department of Environmental Protection (FDEP) for the South Central Regional Wastewater Treatment Plant (SCRWTP). If passed, a public hearing will be held on January 5, 2009.

The caption of Ordinance No. 61-09 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF  
THE CITY OF DELRAY BEACH, FLORIDA,  
AMENDING CHAPTER 53, "SANITARY SEWERS" OF  
THE CODE OF ORDINANCES BY AMENDING

SECTION 53.004, "ABBREVIATIONS; DEFINITIONS", TO CLARIFY CERTAIN TERMS; AMENDING SECTION 53.051, "PROHIBITED DISCHARGES TO SEWERS", PROVIDING A CHANGE IN CERTAIN DISCHARGE LIMITS AND ADDING A PROVISION FOR AFFIRMATIVE DEFENSES; ENACTING SECTION 53.068, "NOTICE OF VIOLATION/REPEAT SAMPLING AND REPORTING", TO PROVIDE FOR A NOTICE OF VIOLATION AND A REPEAT SAMPLING PROCEDURE; AMENDING SECTION 53.084, "ANALYTICAL REQUIREMENTS" TO ADD REFERENCES TO THE FLORIDA ADMINISTRATIVE CODE; AMENDING SECTION 53.130, "USER CHARGES; WHOLESALE SEWER RATES; CALCULATION OF SEWER SURCHARGE", SUBSECTION (G), "CALCULATION OF SEWER SURCHARGE", TO MODIFY THE LOCAL LIMITS; AMENDING SECTION 53.150, "NOTIFICATION OF VIOLATIONS; CONSENT ORDERS" BY ENACTING SUBSECTION (C), "COMPLIANCE ORDERS", AND SUBSECTION (D), "CEASE AND DESIST ORDERS"; AMENDING SECTION 53.155, "AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATION", BY ENACTING SUBSECTION (C), "PROHIBITED DISCHARGE STANDARDS", IN ORDER TO COMPLY WITH CHANGES IN STATE AND FEDERAL LAW; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 61-09 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Richard Hasko, Director of Environmental Services, stated the Florida Department of Environmental Protection (FDEP) for the South Central Regional Wastewater Treatment Plant (SCRWTP) does program audits of the industrial pre-treatment program which involves the plant but the ordinances and programs from both cities. Mr. Hasko stated this year the City ends up with an adjustment to the limits on this laundry list of contaminants that are regulated into the sewer flow. He stated there is a lot of housekeeping going on in terms of bringing our ordinance as well as Boynton's ordinance into compliance with some of the latest terms of the model ordinance for the State. Mr. Hasko stated many of the limits have actually increased with this audit primarily because of our switch from the ocean outfall to the deep well discharge. He stated the requirements for the discharge and the deep well are somewhat less stringent as it relates to these contaminants.

Mayor McDuffie asked if this would be the reason why some seem to be removed altogether. Mr. Hasko stated that this is because of the change in the disposal to deep well.

Mr. Frankel moved to approve Ordinance No. 61-09 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 6:59 p.m., the Commission moved to **Item 11, City Manager's response to public comments and inquiries from the City Manager and the public.**

**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. Gerry Franciosa, 939 Eve Street, Delray Beach, FL 33483 (speaking on behalf of himself and no organizations),** expressed concern over the holiday symbols at Old School Square. Mr. Franciosa stated he has spoken to quite a number of people in the past couple of months about religious symbols that are missing at Old School Square. He stated he intended to get an organization behind it and work on it for next year. However, Mr. Franciosa stated he read a letter today on the Sun-Sentinel blog written by the City Manager and he was appalled by his comments. Mr. Franciosa stated this is an extraordinary city and that is the way it should be and suggested that all the cultures be included. Mr. Franciosa stated the menorah is a religious symbol of the Jewish faith and noted that there are a lot of Jewish people in Delray Beach. He commented about the holiday tree and noted that it is a symbol to people of Christmas and since Christmas and Hanukkah fall at the same time that the City should have symbols for both religions and does not see why a menorah should be excluded from Old School Square. Mr. Franciosa stated if the issue is a lack of money he is sure people would be willing to donate a Menorah. He stated the Downtown Development Authority (DDA) informed him that they have plaques that describe other religions (i.e. Kwanzaa, Hanukkah, etc.). Mr. Franciosa stated in his opinion the City lacks sensitivity with not approaching other cultures. He urged the City to place a menorah at Old School Square and be sensitive to other cultures that live in the city.

**11.B.2. Victor Kirson, 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of Tierra Verde),** stated he is Jewish and feels that by the City not showing a symbol of Judaism and only a symbol of Christianity his rights are being violated.

**11.B.3. Alice Finst, 707 Place Tavant, Delray Beach, FL 33445,** stated Kwanzaa is also celebrated during this time.

**11.B.4. Ronald Platt (resident of Lighthouse Point in Broward County)**, stated he initiated this conversation regarding the menorah in an email he sent to Commissioner Frankel. Mr. Platt stated in the small city of Lighthouse Point they have a small tree lighting ceremony the day before Delray Beach does and the City of Lighthouse Point has a very tall Christmas Tree, an 8-10 foot menorah, and has a nativity scene. He stated the City of Coral Springs has the same as well as the City of Sunrise and the City of Plantation. Mr. Platt stated the City of Delray Beach should also have the same by displaying a tree, the menorah, and a nativity scene. He stated people should not be concerned with what is politically correct or what can keep us out of litigation but that we should be concerned with doing the right thing. Mr. Platt stated we want to be an inclusive community not an exclusive community and enhance the ceremony at Old School Square. He stated it does not need to be done for this year but perhaps a study group could be formed to see how it could be implemented for next year.

**11.B.5. Elizabeth Wonlford, 801 Bond Way, Delray Beach, FL 33483**, expressed concern over three rental units that are servicing drug rehabilitation people in a two block radius of their house and stated they are concerned that two more two-story buildings could be added to that on the corner of Bond Way which they just started renovating and Palm Trail and 1000 N.E. 9<sup>th</sup> Avenue which they just finished renovating. Ms. Wonlford stated there are also two facilities that either counsel or provide services for people in drug rehabilitation within two blocks of their house. She stated one is the Palm Partners building located at 816 Palm Trail which is a block away from St. Vincent's School and another building called New Beginnings at 705-B Bond Way. Ms. Wonlford stated she understands that drug addiction is considered a disability and believes they have a right to get help. However, Ms. Wonlford stated it seems that these people are not monitored or they wonder around the streets all day and at least three times a week the police are called to one of these current rehab rentals. She stated last week the Fire-Rescue Department was called due to an incident at 1247 N.E. 8<sup>th</sup> Avenue where someone was building a fire pit that got out of control. Ms. Wonlford stated two prostitutes are constantly being dropped off at the corner of Bond Way and N.E. 8<sup>th</sup> Avenue who also frequent one of the apartments at 1211 N.E. 8<sup>th</sup> Avenue. She stated the police were called last week because people were fighting in the street and the property owner escorted the police into the apartment and crack paraphernalia was found. Ms. Wonlford stated she and her neighbor witnessed drug dealing on the corner of Bond Way and 9<sup>th</sup>. Ms. Wonlford stated this facility is being run by a registered sex offender. She stated her garage was broken into and her son's bicycle was stolen and her neighbor had her banking information stolen out of her mailbox two weeks ago and they are robbed at least twice a year. Ms. Wonlford stated she feels that they are losing their nice quiet and safe community. She urged the Commission to help with this problem because she feels it is out of control.

**11.B.6. Vicky Rose, 290 N.E. 2<sup>nd</sup> Avenue, Delray Beach, FL 33444 (Pineapple Grove)**, stated she feels that her neighborhood is being high jacked by crime and she is the only house on N.E. 2<sup>nd</sup> Avenue. Ms. Rose stated she has called the police 2-3 times a week because unsavory characters are roaming the streets after nightfall. She stated the business next door to her has had two robberies in the past month and a lot of rehabbers

are walking around and it is very unsafe. Ms. Rose stated she would like to lodge a formal complaint and noted at the art fair that happened the weekend after Thanksgiving there were tents on N.E. 2<sup>nd</sup> Avenue because it is a commercial street. She stated she posted a sign stating "Please Do Not Block the Driveway" and the organizer (Darren Allen) of the event put a tent in the middle of her driveway. Ms. Rose stated before the art fair started they could not get their vehicles out of the driveway. She stated if any other events are happening in Pineapple Grove that the Commission directs them not to put a tent in the middle of her driveway.

Also, Ms. Rose stated she heard about the menorah issue on the radio today and wanted to point out that Delray Beach has been voted an All-America City in 1993 and 2001. She stated she would like to see some correct measures taken in regards to the menorah.

**11.B.7. Janice Young, 915 Bond Way, Delray Beach, FL 33483 (has lived in her home for 47 years across from the 12-unit apartment building that is being rehabilitated)**, stated in her yard she has found beer bottles, wine glasses, and trash. In addition, Ms. Young stated someone runs through her yard anywhere from 12:00-2:30 a.m. and there are people walking up and down Palm Trail and Bond Way in the middle of the night talking. She stated she is not certain that they are coming from the rehab houses but this has started recently and more frequently. Ms. Young stated her yard has been run through with cars and motorcycles and she has called the police twice in the last 1 ½ weeks. She stated it appears that it has gotten very much out of control in that neighborhood. Ms. Young stated there is a house that is on the corner of Bond Way and 9<sup>th</sup> Street that she understands has 14 people living in it. She stated the yard is in disarray, the house is in disarray, the cars are a mess, and the people that frequent this house are disgusting. She stated this has always been a very nice middle class to upper middle class neighborhood and it is falling down and urged the Commission to look into this for the sake of their neighborhood before it deteriorates into a low class neighborhood.

**11.B.8. Clifford Guest, 906 Bond Way, Delray Beach, FL 33483**, stated he has the people from the rehabilitation centers that are changing their neighborhood. Mr. Guest stated he pays outrageous taxes so it comes down to not only the neighborhood changing but moved in and are willing to pay those taxes for what the neighborhood represented then and it is becoming something else now. He stated his neighborhood is not what it used to be and he is considering moving.

**11.B.9. Robert Spicer, owner of one of the rehab houses that is being discussed**, stated there are claims that he is operating a drug rehab house and this is totally untrue. He stated he bought this property a little over four years ago and spent a lot of money remodeling it. Mr. Spicer stated he has evicted over a dozen people and noted he consulted with the City and was informed that unless it is lack of payment of rent he has to catch these people in the act of something illegal and take them to court which is a long process. He stated recently he went into an apartment and found drug paraphernalia with a police officer and told the person to get out immediately then he

would have to file criminal charges against him. Mr. Spicer stated this person stated he was leaving the next day. He stated he has had good tenants for six months and then all of sudden he is suspicious but according to what he has been told he cannot kick these people out unless you can prove it.

At this point, the time being 7:22 p.m., the Commission briefly discussed the menorah issue.

The City Manager stated if you look at the email by itself it is out of context and it was written in the context of an attachment of the City Attorney's opinion that was written in 2006 when a synagogue wanted to place a menorah on the grounds of Old School Square. He stated the synagogue was allowed to place the menorah there for two years. The City Manager stated the City had a meeting between the City Attorney's office, the Chairman of Old School Square, and the Mayor at the time and hashed it out in great detail and subsequently the City Attorney's office wrote that memo. The City Manager stated the first paragraph refers to the Supreme Court decision where the Supreme Court determined that a Christmas tree is not a religious symbol in the eyes of the Supreme Court. The City Manager stated the second paragraph talks about a case where a State government allowed a Christmas tree and a menorah to be placed on State property. Subsequently, the City Manager stated they got a request from the Ku Klux Klan to put an exhibit there and they turned them down. The Supreme Court stated because they had the Christmas tree and the menorah there they had to allow the Klan to put their exhibit there. He stated that is the quandary the Commission faces and if it is a public forum and we can allow that then you have to open it up to all kinds of different viewpoints. The City Manager stated you may have some viewpoints that they would rather not have on the Old School Square grounds. The City Manager stated in Washington State there was a city that had an exhibit like this and they had an atheist group in town that put up an exhibit debunking Christianity and all religion and they had to allow it because it was a public forum. The City Manager stated staff has been following the direction that has been set by the Commission in 2006 and if the Commission wishes to handle it differently now then staff will follow Commission's direction on these issues. He stated staff provided the Commission with a write up that came through the Palm Beach Post website that discusses some of the controversy that has been dealt with in Port St. Lucie, Wellington, Palm Beach, and Boca Raton over holiday exhibits. The City Manager stated if the City of Delray Beach goes this route we may end up with that kind of controversy. The City Manager stated personally he would be very happy to see the Christmas tree, the menorah, the manger scene, and whatever would be appropriate for Kwanzaa but we just need to be aware of what may be the end result.

Mr. Frankel recognized Marjorie Ferrer and her staff for the Thursday evening tree lighting ceremony and stated it was a huge success. He stated this came to his attention when Ronald Platt who is a sponsor of the Christmas tree spoke to him after the ceremony asking about the menorah. Mr. Frankel stated Mr. Platt emailed him and he forwarded it to the City Manager and copied the rest of the Commission. Mr. Frankel stated in his view a menorah is not a religious symbol and the Supreme Court agrees. He

stated he is originally from Toledo, Ohio which has a much smaller Jewish population but they have a menorah. Mr. Frankel stated on every television station you see a menorah and if he goes to many of the restaurants in South Florida there is a menorah and it shows him as a Jewish resident a level of respect. He stated Delray Beach goes to great lengths to recognize its cultural differences and inquired when a Rabbi will be coming in to give the invocation. Mr. Frankel stated since January 2009 there was a prayer breakfast where a Rabbi gave a prayer but he has not seen a Rabbi give an invocation. Mr. Frankel stated tonight the Reverend addressed a prayer to Jesus Christ and he respects everyone we bring in for the invocations. Mr. Frankel stated the elimination of the menorah at Old School Square is inconsistent of our city view of embracing our differences and is inconsistent with the general Christmas spirit and holiday spirit. He stated he knows someone who is willing to purchase a menorah to place at Old School Square and Mr. Gillie has no problem with it. Mr. Frankel stated he also feels we need to do something to recognize Kwanzaa and he does not know what displays are appropriate.

Mr. Fetzer concurs with comments expressed by Mr. Platt about not just doing the politically correct thing but to do the right thing for the city. He stated the City of Delray Beach has had menorahs by the Christmas tree that were donated by a local synagogue. Mr. Fetzer stated he does not feel that we should prevent a menorah from being placed there again and if Mr. Frankel can find someone to do that he feels that is great. Mr. Fetzer stated the Supreme Court has ruled that the Christmas tree is not a religious symbol and it should not be depicted that way. He stated he believes in doing the right thing for the city and supports placing a menorah at Old School Square.

Mr. Eliopoulos stated he did not read the blog and did not see what has transpired in the news. He stated although he is not the most religious person he has no problem with anyone else's religion. Mr. Eliopoulos stated he supports the Commission with placing a menorah at Old School Square.

Mrs. Gray invited the Commission to the R.A.C.E. Relations Meeting at Old School Square at 6:45 p.m. and she believes we can work together with all religious groups and supports the menorah, Kwanzaa and the nativity scene.

Mayor McDuffie stated the Commission is not allowed to speak to each other unless they are in a public meeting that has been announced to the press. He stated when the Commission communicates via email they put an explicit tag on the end of the email that says "Do Not Respond" because the Commission cannot have two-way communications. Mayor McDuffie stated an email went out from him shortly after the Christmas tree was lit and he walked the grounds of Old School Square and found that there were no other religious symbols there. He stated he worked with the people on the dais somewhere between a few months and three years and has found everyone to be of the highest character and no one on the dais wishes to insult anyone on behalf of their race, creed, or color. Mayor McDuffie stated we have a 2006 ruling from the City Attorney and that is what ruled the celebration and what was displayed at the celebration this year. Mayor McDuffie stated the Commission has come to terms tonight with the

fact that we might want to revise and revisit that 2006 City Attorney's position on what the City does for our celebration of the holidays in Delray Beach. He stated Delray Beach has always striven to include everyone in everything that we do and noted that the Commission possibly should have held a meeting about this and discussed the holiday display. Mayor McDuffie stated the Commission will revisit this issue and do what is right for the community of Delray Beach. He stated he expresses his sincere apologies for anyone that may have been insulted or felt that they were left out but emphasized it was not intentional on anyone's behalf.

At this point, the time being 7:37 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

**10. PUBLIC HEARINGS:**

**10.A. ORDINANCE NO. 60-09:** Consider a city-initiated amendment to the Land Development Regulations that will create the Chatelaine Local Government Neighborhood Improvement District.

The caption of Ordinance No. 60-09 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AUTHORIZING THE CREATION OF THE CHATELAINE LOCAL GOVERNMENT NEIGHBORHOOD IMPROVEMENT DISTRICT, IN ACCORDANCE WITH SECTION 163.506, FLORIDA STATUTES; ESTABLISHING THE BOUNDARIES OF THE DISTRICT; DESIGNATING THE DELRAY BEACH CITY COMMISSION AS THE BOARD OF DIRECTORS OF THE DISTRICT; PROVIDING AUTHORIZATION FOR THE DISTRICT TO LEVY AN AD VALOREM TAX ON REAL AND PERSONAL PROPERTY OF UP TO ONE MILL ANNUALLY; PROVIDING AUTHORIZATION FOR DISTRICT USE OF SPECIAL ASSESSMENTS PURSUANT TO SECTION 163.514, FLORIDA STATUTES; PROVIDING FOR THE DISSOLUTION OF THE DISTRICT BY THE CITY COMMISSION BY RESCINDING THE ORDINANCE; PROVIDING FOR THE CODIFICATION OF SECTION 2 OF THIS ORDINANCE AS A NEW ARTICLE 8.7, "CHATELAINE LOCAL GOVERNMENT NEIGHBORHOOD IMPROVEMENT DISTRICT"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 60-09 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. The City Attorney stated this public hearing is actually a continuation of the public hearing that was held on December 1, 2009.

Paul Dorling, Director of Planning and Zoning, stated this is an ordinance authorizing the creation of a local government neighborhood improvement district as identified under Florida Statute 163.506. The creation of a neighborhood improvement district is proposed to address a unique situation currently experienced by the Chatelaine subdivision as it relates to improvements that were done that are now their maintenance obligation and the ability to fund those. Mr. Dorling stated they have had difficulty raising money and this is an alternative mechanism. He stated the Commission passed this ordinance on first reading on November 17, 2009 and at the December 1, 2009 meeting the City Commission tabled this item and asked the neighborhood to seek some input from the neighbors. This ordinance is now being heard on second reading. Mr. Dorling stated there is a letter from the Chatelaine homeowners association breaking down the maintenance cost for landscaping, electricity, and water which would relate to less than 0.5 mills. He stated there is also information relating to numbers only funding the irrigation and electric costs. Staff recommends approval.

The City Manager the estimated annual budget for electricity and water is \$2,820.00 and if you were to finance that through a millage it would be a little over a tenth of a mill.

Mayor McDuffie declared the public hearing open.

**Jayne King, 3400 Place Valencay, Delray Beach, FL 33445 (President of the Chatelaine Homeowners Association)**, made reference to a sign on the wall that talked about the City's goals and one of the goals was to have quality neighborhoods where people want to live. Ms. King stated she agrees with and wanted to respond to Commissioner Fetzer's comments that this is a community problem. She stated with regard to Commissioner Eliopoulos' comments last week about this being more work, it is actually going to be less work for the city because everyone has a buy into it, less Code Enforcement, no worry about the place deteriorating, and then there is a vehicle in place for dealing with other neighborhoods. Ms. King thanked Mr. Zacks and stated he was an important catalyst. She stated she does not always agree with how the tax dollars are spent but feels it is something that is earmarked specifically for a purpose of up keeping the neighborhood. Ms. King urged the Commission to vote in favor of this ordinance.

**Gilbert Fritts, Jr., 3536 Avenue Montresor, Delray Beach, FL 33445 (Chatelaine)**, asked why this is not addressed as a non-ad valorem payment rather than an ad valorem. Mr. Fritts thanked Lula Butler, staff, and all the other people who were involved for what they have done for Chatelaine. However, the one mill seems a little lopsided because for him it would be \$52.00 a year and his neighbor across the street

would pay \$116.00 a year. Mr. Fritts stated he agrees that residents should pay for the upkeep because the association cannot but it would be fairer if we took \$50.00, \$55.00, or \$60.00 and had it as a non-ad valorem payment each year.

The City Attorney stated there are certain steps that would have to be taken such as it might involve a referendum and other issues dealing with the Chatelaine community that might be more cost prohibitive in trying to get the payment made that way not to say that the City may not be able to do that but it would be a more onerous process in trying to set up a non-ad valorem assessment considering the fact that the material has already been installed and we are just looking at a maintenance feature right now. Mr. Fritts stated he feels it should be looked at more in that direction because it would be more equitable to everyone.

Mayor McDuffie stated this is not necessarily going to be one mill but would basically be the taxable value of the entire community divided into the amount of tax that we need to raise to fund the maintenance. He stated electricity and water for the community would drop this down to essentially a tenth of a mill instead of one mill. Mayor McDuffie stated the one mill that was thrown out was the cap and it could not go higher than one mill. He stated there is a possibility to do it as a non-ad valorem district but it will not be done in this coming year because the deadline will pass.

**Paul Zacks, 748 Place Chateau, Delray Beach, FL 33445 (has lived in Chatelaine for 29 years)**, stated the Planning and Zoning Board took up this matter several times both when it was in the concept stage and when it was in the specific Chatelaine stage. Mr. Zacks stated the Planning and Zoning Board strongly felt that the Chatelaine Board of Directors should not be involved in homeowners' league issues. He stated at last week's meeting there was great dissatisfaction in our community with this homeowners association. Mr. Zacks stated he discussed with Ms. King at length steps he felt the homeowners' league should be taking to repair the image of itself and the community and the particular problem that is being discussed. Mr. Zacks stated for years the neighborhood did positive things for the neighborhood and in return got a lot of membership and now no one wants to have anything to do with the homeowners' association and that is why the membership is down. Mr. Zacks urged the Commission to give the Board an opportunity to rectify years of damage that it has done to the neighborhood by presenting a positive image and suggested getting the people who own lawn maintenance companies to volunteer their time if they feel that the neighborhood is treating them fairly. He urged the Commission to let the neighborhood fix its own problems.

**Clifford Durden, 702 Chatelaine Boulevard East, Delray Beach, FL 33445 (has lived in Chatelaine since 1972)**, stated he has seen the neighborhood deteriorate. Mr. Durden stated he would like to hear from those people who made statements about specific information about what has been negative about the homeowners' association. He stated the homeowners association has tried to maintain the standards of Chatelaine and people have gotten a negative idea about it because they do not want to get involved to help the neighborhood maintain what it is. Mr. Durden

stated when the neighborhood first began most of the people who lived in Chatelaine worked at IBM at that time and the neighborhood has changed a great deal since then. He stated when the homeowners' association would ask people to come out and work with the upkeep of the land no one would come out. He stated most of the time only four people come out and sometimes it is just himself. Mr. Durden stated he bought a lawnmower and a hedger to do the landscaping himself. He stated when Chatelaine ran out of dues money he paid the light bill and the water bill out of his pocket to keep the neighborhood from going down. Also, Mr. Durden stated the lights were turned off and he had to pay the funds so that they could get lights turned back on. He stated this year he was going to put up Christmas lights but after last week he decided not to do that because he was going to take money out of his pocket. Mr. Durden stated if there are people who live in the neighborhood who do not want to assist in keeping the neighborhood up he does not think we should do that as well. He stated if this does not pass the Commission will be hearing from Chatelaine residents within the next couple of years with the same complaints and the reason that Chatelaine is in the condition that it is now is because of mainly the few people who get involved and tried to keep the neighborhood to this point. Lula Butler, Director of Community Improvement, stated there were approximately 15-20 meetings regarding the issues in Chatelaine. Mr. Durden stated people in Chatelaine had the opportunity to get involved but very few did.

**Alice Finst, 707 Place Tavant, Delray Beach, FL 33445 (Chatelaine),** stated she is the Editor of the newsletter and it is put out about five times a year. She stated the association puts up a sign before every association meeting and noted it is open to the public. Mrs. Finst stated the newsletters go out and are delivered and urged the Commission to vote for this ordinance.

**Gerry Franciosa, 939 Eve Street, Delray Beach, FL 33483,** supports the ordinance and stated he lives in Tropic Isle and they have a voluntary civic organization and out of about 450 homes about 250 people belong to the association. Mr. Franciosa stated they charge \$40.00 a year in dues and it is very difficult to maintain the neighborhood with that type of dues. He stated Tropic Isles put in plantings about 2-3 years ago which the City decided to maintain for them but he is starting to see a little bit of deterioration. Mr. Franciosa stated Chatelaine looks nice and since the City put money into it then it should be kept up. He stated he does not feel that \$60.00 is a lot of money to keep the community looking nice but there has to be a way to collect the money. He stated this would set a precedent and give us an example in the future of what to do. Mr. Franciosa urged the Commission to support this ordinance.

**Yveline Menard, 719 Avenue Chaumont, Delray Beach, FL 33445 (has lived in Chatelaine since 2005),** stated no one ever told her that there is a fee to pay and last week her neighborhood came to her to inform her about a meeting regarding this issue. Ms. Menard stated she received a letter but it was a short notice with her schedule and she could not make it last Tuesday. She feels that before this is passed everyone in the community should be aware of what is going on.

**Patricia Duncan, 3632 Avenue De Gien, Delray Beach, FL 33445 (has lived in Chatelaine for almost ten years)**, stated she sees the letters and the signs at the gate about the meetings but she is very busy. Ms. Duncan stated she likes the entranceway into the development but everyone she talks to has a problem with the homeowners' association meetings. She stated there are many different cultures of people who live in Chatelaine and they speak and talk different. Ms. Duncan stated in order to handle this type of difference the City has to recognize that it exists and feels we are not communicating with each other.

**Amos Dieujuste, 3631 Avenue Montessor, Delray Beach, FL 33445 (has lived in Chatelaine since 1993)**, stated there are many Haitians who live in this community who do not speak English but believes that they would be willing to pay \$60.00 for the maintenance. Mr. Dieujuste stated a lot needs to be done and asked that the City bring the community together.

There being no one else from the public who wished to address the Commission regarding Ordinance No. 60-09, the public hearing was closed.

Mr. Fetzer asked how many volunteer homeowner associations we have in Delray Beach. In response, Mrs. Butler stated there are approximately 80. He stated that Mr. Franciosa stated that by passing this it would set a precedent on being able to do this for other homeowner associations and this is one of the primary reasons he opposes this. Mr. Fetzer stated if the City takes this approach in Chatelaine it opens it up for 80 homeowner associations that would face a similar problem. He stated he does not believe this is the City's responsibility but is a homeowner association responsibility and therefore he cannot support this.

Mr. Eliopoulos stated the environment has changed and believes that when the previous Commission did this and worked with the residents and the volunteers' times were different. He stated there were a lot of good comments made this evening. Mr. Eliopoulos stated the issue is the way this ordinance is written. He does not want this Commission to be responsible to actually point a Board of the Chatelaine community where the Commission does not know all the people and all of sudden the City is going to be responsible for that. He clarified that type of work he does not want and does not think it is the City's responsibility. Mr. Eliopoulos stated if the community has a Board it should be that individual community that appoints that Board not the City Commission. He stated he does not want to set the precedent to start doing this for every community out there because he does not feel this is the Commission's responsibility. Mr. Eliopoulos stated the previous Commission did the right thing and the community stepped in but it was under the intentions that this community would take over that maintenance.

Mrs. Gray stated last week she stated that maybe we needed to get a little more time to get the homeowners' association together and thinks it is an association issue and not really a City issue. However, she feels it is difficult to receive help volunteering with cutting grass, mowing, etc. and it is difficult to collect monies from

residents. Mrs. Gray states she supports staff's recommendation but hopes that the neighborhood will come together to help the community.

Mr. Frankel thanked the residents of Chatelaine both this week and last week because he thinks it is important that the residents continue their involvement even though they have a diverse neighborhood they are one neighborhood and they have to stick together. He stated it is difficult because you want to balance Chatelaine in maintaining a beautiful community versus the fact that they do not want the Commission telling them what to do. Mr. Frankel concurs with comments expressed by Commissioner Fetzer and Commissioner Eliopoulos and therefore he will not support this ordinance.

Mayor McDuffie stated the timing on this is such that if this does not pass tonight there will be nothing done in the next calendar year because this would have to be done and this ordinance into the Property Appraiser's Office by January 1<sup>st</sup>. If the Commission votes this down tonight, there will be no opportunity whatsoever to do anything for the upcoming year for maintenance of the community except that Chatelaine does it on their own. He stated non-ad valorem can be a flat rate and can be a number of dollars per front foot of your lot or a number of dollars per square foot of your lot. Mayor McDuffie stated he does the tax roll for Palm Beach County so non-ad valorem districts can be done as well as ad valorem districts. He stated this ends up being a small miniscule percentage of the taxable value but can be done either way. Mayor McDuffie stated he has mixed emotions because he was part of working in the Chatelaine community for quite some time to bring about ½ million dollars worth of improvements to Chatelaine and he hates to see ½ million worth of improvements to Chatelaine decline if they are not maintained. Mayor McDuffie stated last week a resident mentioned something about circulating a petition and he expressed concern that there are 201 homeowners' and there are only 20 present this evening.

The City Manager stated staff made the commitment that we would maintain it through the end of the current fiscal year (September 30, 2009) because staff knew that there would be no money coming in until the next year anyway. He stated if the Commission wishes we can still do that and in the interim the association can get better organized and be in a position to pick up the costs themselves or come up with another solution.

Mayor McDuffie stated the City has an investment of ½ million dollars and has an investment in wanting to help Chatelaine be a more beautiful place to live. He stated there was no motivation to stick the residents of Chatelaine with some erroneous tax and the only amount of the tax if this comes to pass will provide the amount of money required to maintain the neighborhood.

Mr. Eliopoulos moved to adopt Ordinance No. 60-09 on Second and FINAL Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – No; Mrs. Gray – Yes; Mayor McDuffie – No; Mr. Eliopoulos – No; Mr. Fetzer – No. Said motion was **DENIED** with a 4 to 1 vote, Commission Gray

dissenting.

At this point, the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items from the City Manager, City Attorney, and the City Commission.**

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

**13.A. City Manager**

The City Manager handed out plaques to the Commission that the City received for the three Young People's Tennis Tournaments that the City hosts over the course of the year.

Secondly, he stated Chatelaine is one of only a few common areas that need to be maintained. The City Manager stated most of the associations (i.e. Lake Ida association) do not have any such landscaped areas that need to be maintained. He stated there are a number of others but most of them do not have that. The City Manager stated the section of the Florida Statutes that this ordinance was brought up under actually provides four or five different ways to create these associations. The other ways other than this one require petitions from the neighborhood and they elect their own Board that has the power to levy taxes. The City Manager stated he and the City Attorney talked about on Swinton Avenue between 2<sup>nd</sup> and Lake Ida Road the City bills the abutting residences \$7.50 a month on their water bill for the maintenance of the landscaping and irrigation. He stated this is a little different situation because the City Code has a requirement in it that you have to maintain out to the edge of the pavement where it abuts your property. The City Manager stated staff talked about whether you can do a similar approach in Chatelaine or other neighborhoods and there is no specific statutory authority for doing that. He stated the City has been doing it on Swinton Avenue since 1994 and no one has challenged it and it has worked well. The City Manager stated he discussed the approval of the Chatelaine plan with Mrs. Butler and she said at the meeting where the plan was actually approved there were 86 people in attendance.

Lastly, the City Manager stated his email about the menorah was misinterpreted. He stated he has no objection of placing a menorah at Old School Square and just wants the Commission to be fully informed about the controversy that has taken place within other communities.

Chevelle Nubin, City Clerk, stated with regard to the Clergy list, the City Clerk's office has a list from the Delray Beach Clergy Association that we use and rotate those people. Ms. Nubin stated staff calls everyone including Rabbi's but it depends on their schedule as to whether or not they can make it to the meeting. She stated staff tries to plan it out at least 3-4 months in advance and she will check the list to see where we are. Ms. Nubin stated staff also sends a letter of confirmation and ask that everyone does a non-denominational generic prayer.

The City Manager announced that the City Clerk informed him this afternoon that Ken Ellingsworth's wife passed away and the service will be held Thursday, December 10, 2009 at 2:00 p.m.

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

The City Attorney stated we have the 2006 opinion and the case law is essentially the same and it basically says that there are cases out there that say the Christmas tree is secular and not religious. He stated there are also cases that a menorah standing by itself was deemed to be religious; however, when you group it with a Christmas tree as well as other things such as a nativity scene when it is around the Christmas tree it is deemed to be secular and in those cases it would be allowed. The City Attorney stated if the Commission wishes to that it would have to be placed in the vicinity of the Christmas tree and if someone else comes forward with something other than a nativity scene or menorah the Commission would probably have to consider that as well.

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

**13.C.1.**        **Mr. Fetzer**

Mr. Fetzer stated he sent some emails out regarding the holiday parade scheduled for Saturday, December 12, 2009 asking why it is starting at 4:00 p.m. He stated the City has traditionally held the parade later in the evening and enjoyed the lights on the floats which he does not think will be seen very well. Mr. Fetzer stated he received an explanation that it was for safety concerns. He stated after the parade is over if the rest of the Commission agrees he asked if could we get some feedback as to how this change worked and if there was any significant reasons that we needed to do that. Mr. Fetzer requested that we re-evaluate it after this year.

Mayor McDuffie stated this is being based on one unfortunate incident from last year and he believes there are ways to avoid that.

Mr. Fetzer stated the memorial service that was held on Saturday for Mrs. Pompey was amazing. He stated everyone is going to miss her and it was a wonderful tribute to her.

Lastly, Mr. Fetzer wished everyone a happy holiday.

**13.C.2.**        **Mr. Eliopoulos**

Mr. Eliopoulos stated Mayor McDuffie spoke Friday night at the wake for Mrs. Pompey and also at the funeral on Saturday. Mr. Eliopoulos stated former Mayor Jeff Perlman spoke and did an excellent job as well. He stated it was a great tribute to an incredible woman and family to Delray Beach.

Secondly, Mr. Eliopoulos commented about an email regarding the Pro Bowl (held in Hawaii for the last 30 years) coming to Delray Beach and feels we need to take advantage of this and be proactive. He stated XPE Sports are trying to bring in approximately 10-15 NFL players that are going to be in the Delray area for a week and there will be events held at Old School Square where the players will be interacting with children. He hopes everyone can pull together to make this happen.

Lastly, he wished everyone a happy holiday.

**13.C.3.**        **Mrs. Gray**

Mrs. Gray thanked Delaire for the fundraiser for the Fire-Rescue Department and the Police Department and also the groundbreaking.

Secondly, she asked if the City receives a budget or a financial report from the Community Redevelopment Agency (CRA) as well as a project update from them. The City Manager stated the City Commission approves their budget but there are no reports through the course of the year. He stated project updates are sporadic and the City used to have a joint meeting with the CRA at least once a year. The City Manager stated he can ask the CRA to provide this information to the City. Mrs. Gray stated she would like this information more often.

**13.C.4.**        **Mr. Frankel**

Mr. Frankel stated the opening of Johnnie Brown's last night was fun.

Secondly, he stated Perry DonFrancisco and the residents of Delaire did an amazing job at Delaire event and they were very nice to host us.

Mr. Frankel stated Marjorie Ferrer, her staff, and the volunteers did a great job with the tree lighting.

He commented about the menorah issue and stated it shows a negative effect of the Sunshine Law. Mr. Frankel stated he appreciates the sensitivity and support.

**13.C.5.**        **Mayor McDuffie**

Mayor McDuffie stated with regard to the menorah issue it was not intentional and it is either inclusion or exclusion and Delray Beach prides itself on inclusion. He stated it was a great night and noted he walked through Phase 1 of the Old School Square Park which has turned out well.

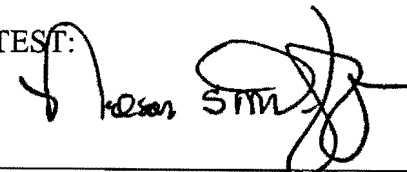
Secondly, Mayor McDuffie stated Mrs. Pompey was the Pinnacle of Elegance and a lovely lady. He stated they celebrated her life with the service lasting for 2 hours and 45 minutes. Mayor McDuffie stated many people got up and spoke and former Mayor Perlman did an awesome job.

Mayor McDuffie stated he had a meeting with Mr. DeSantis and a number of his staff members, Congressman Klein and a couple of his staff members. Mayor McDuffie stated there was an offer from Congressman Klein to loan the City of Delray Beach a staffer to take a look at grants that the City might be able to get for infrastructure work that we may need to do to relocate things for Atlantic Plaza and for any other grants the City is working on Congressman Klein offered a staffer. Mayor McDuffie stated on Friday, December 11, 2009 at 11:00 a.m. a representative from Mr. DeSantis' office and a staffer from Congressman Klein's office are coming in to meet with Rich Reade, Public Information Officer, to see how to approach this. In addition, Mayor McDuffie stated he received a telephone call from the Delray Beach Housing Authority (DBHA) and they expressed concern about their \$10 million and that HUD implied to them that they may not fund a \$10 million grant they have already received. Mayor McDuffie stated he has talked to Congressman Hastings, Congressman Klein, and he is awaiting a call back from Senator Nelson's office and all of them have jumped right in to see if they can make certain that the DBHA's grant was also fulfilled and that the \$10 million stays with us for the western communities.

Lastly, Mayor McDuffie wished everyone a happy holiday and stated it is a pleasure serving with the entire Commission.

There being no further business, Mayor McDuffie declared the meeting adjourned at 8:49 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 December 8, 2009, which Minutes were formally approved and adopted by the City Commission on January 5, 2010.

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

**NOTE TO READER:**

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

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

**WAIVER REQUEST FOR 211 NW 1<sup>st</sup> Street/103 NW 3<sup>rd</sup> Avenue**

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

1. These waiver requests are to allow a six foot (6') fence to be placed within the side street setback and a seven foot (7') arbor to be placed within the front setback have come before the City Commission on December 8, 2009.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver request for the 211 NW 1<sup>st</sup> Street/103 NW 3<sup>rd</sup> Avenue. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

**I. WAIVER:**

Pursuant to LDR Section 4.5.1(E)(3)(a)1.c. states that, "fences and walls over four feet (4') shall not be allowed in front or side street setbacks. Therefore, a waiver to the four foot (4') height limitation is requested.

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

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

a. **Would the waiver of Section 4.5.1(E)(3)(a)1.c. to allow a six foot (6') fence to be located within the side street setback comply with the requirements of 2.4.7(B)(5)?**

Yes  No

b. Would the waiver of Section 4.5.1(E)(3)(a)1.c. to allow a seven foot (7') arbor to be located within the front setback comply with the requirements of 2.4.7(B)(5)?

Yes ✓

No       


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

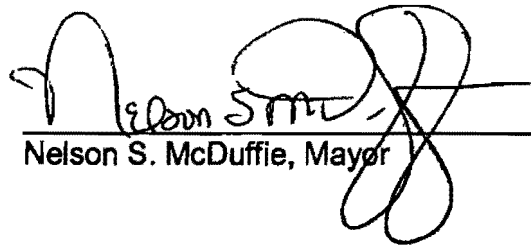
4. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses supporting these findings.

5. Based on the entire record before it, the City Commission approves ✓ denies        the waiver requests to LDR Section 4.6.9(E)(3)(a)1.c.

6. Based on the entire record before it, the City Commission hereby adopts this Order this 8th day of December, 2009, by a vote of 5 in favor and 0 opposed.

ATTEST:

  
Chevelle Nubin, City Clerk

  
Nelson S. McDuffie, Mayor