

OCTOBER 18, 2011

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, October 18, 2011.

1. Roll call showed:

Present - Commissioner Tom Carney
Commissioner Jay Alperin
Commissioner Adam Frankel
Commissioner Angeleta E. 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 Nancy Norman with Unity Church of Delray Beach.

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.A., Presentation for USA Netball Association, Inc. Tournament** and **Item 9.F., Bid Award/Randolph and Dewdney Construction, Inc.** by addendum.

The City Attorney stated the applicant has requested that **Item 9.C., Consideration of an Appeal/Historic Preservation Board's Decision/Class III Site Plan Modification** and **Item 9.C.1., Consideration of an Appeal/Historic Preservation Board's Decision/Waiver Request** be postponed.

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

5. APPROVAL OF MINUTES:

Mrs. Gray moved to approve the Minutes of the Workshop Meeting of September 13, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

Dr. Alperin moved to approve the Minutes of the Regular Meeting of October 4, 2011, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

A. None

7. PRESENTATIONS:

7.A. USA Netball Association, Inc. Tournament – Carole Hokrein (ADDENDUM)

Carole Hokrein, Administrator for the USA Netball Association, gave a brief PowerPoint presentation of Netball and showed a video clip. Ms. Hokrein stated Netball is a sport for mainly women and girls but boys and men do play as well. She stated over 18 countries around the world play this game. Ms. Hokrein stated America has been represented at World Championships since 1995 and finished as high as 9th and we are the only country that fundraises their own way there.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. REQUEST FOR SIDEWALK DEFERRAL/1001 LEWIS COVE:
Approve a request to defer the installation of sidewalk along Lewis Cove for property located at 1001 Lewis Cove.

8.B. REQUEST FOR SIDEWALK DEFERRAL/975 BANYAN DRIVE:
Approve a request to defer the installation of a sidewalk along Banyan Drive for property located at 975 Banyan Drive.

8.C. FINAL SUBDIVISION PLAT APPROVAL/LITTLE WOOD ESTATES: Approve the final subdivision plat for Little Wood Estates, located at the south end of N.W. 1st Avenue, between Woods Lane and Trinity Lutheran Church.

8.D. AMENDMENT NO. 1 TO THE AGREEMENT/PALM BEACH COUNTY: Approve Amendment No. 1 to the Agreement with Palm Beach County to extend the deadline to October 21, 2012 for completing improvements comprising the Auburn Avenue project.

8.E. INTERLOCAL AGREEMENT/PALM BEACH COUNTY DROWNING PREVENTION COALITION (DPC): Approve an Interlocal Agreement with Palm Beach County for payment of swimming lesson fees not to exceed \$50.00 per class for the Learn to Swim Program at Pompey Park and the Delray Swim and Tennis Center through the Drowning Prevention Coalition of Palm Beach County.

8.F. HOUSING REHABILITATION GRANT/CONTRACT AWARD: Award one (1) Housing Rehabilitation contract through the Community Development Block Grant (CDBG) and Residential Construction Mitigation Program (RCMP) to the lowest responsive bidder for 316 N.W. 6th Avenue to Raymond Graeve & Sons Construction, Inc. in the amount of \$28,090.46. Funding is available from 118-1963-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation) and 118-1936-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).

8.G. HOUSING REHABILITATION GRANT/CONTRACT AWARD: Award one (1) Housing Rehabilitation contract to the selected contractor for Neighborhood Stabilization Program, All Phase Roofing & Construction, in the amount of \$39,018.00 for 212 N.W. 14th Avenue. Funding is available from 118-1935-554-62.12 (Neighborhood Services: Capital Outlay/Acquisition Rehabilitation).

8.H. CHANGE FUNDING SOURCE FROM DISASTER RECOVERY INITIATIVE (DRI) TO COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)/HOUSING REHABILITATION CONTRACT AWARD: Approval to change the funding source from Disaster Recovery Initiative (DRI) to Community Development Block Grant (CDBG) for the Housing Rehabilitation contract award for 354 N.W. 6th Avenue; and approval to exceed the maximum housing rehabilitation cost, established at \$37,000.00 for an individual property under the Department's approved Policies and Procedures to accommodate the total bid award of \$37,875.95. Funding is available from 118-1963-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).

8.I. GRANT APPLICATION: WALMART - HOLIDAY TOY PROGRAM: Provide authorization for submission of a grant application to Walmart in the amount of \$5,000.00 to support a Holiday Toy program for disadvantaged youth in collaboration with local Law Enforcement Officers.

8.J. SPECIAL EVENT REQUEST/HOLIDAY PAGEANT PARADE: Approve a special event request to endorse the Annual Holiday Pageant Parade co-sponsored by the Parks and Recreation Department and the Chamber of Commerce to be held on December 10, 2011 beginning at approximately 6:00 p.m. to 9:00 p.m., grant a temporary use permit per LDR Section 2.4.6(F) for the closure and use of Atlantic Avenue from A-1-A to N.W. 5th Avenue for the parade route and set up from approximately 4:00 p.m. to 6:00 p.m., and approve staff support for traffic control, security, EMS assistance, barricading, trash removal, clean up, and event signage.

8.K. SPECIAL EVENT REQUEST/HOWARD ALAN 23RD ANNUAL DELRAY BEACH FESTIVAL OF THE ARTS: Approve a special event request for the 23rd Annual Delray Beach Festival of the Arts sponsored by Howard Alan Events, Ltd. to be held on January 21-22, 2012 from 10:00 a.m. to 5:00 p.m., granting a temporary use permit per LDR Section 2.4.6(F) for use of City rights-of-way on Atlantic Avenue from the east side of N.E. 6th Avenue to Bronson, and the Gladiola lot (S.E. 6th Avenue) for vendor parking; authorize staff support for security and traffic control, barricade assistance, EMS assistance, fire inspection services, and permit an event sign to be erected on Atlantic Avenue just east of I-95 fourteen (14) days prior to the event with the sponsor paying all overtime costs.

8.L. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period October 3, 2011 through October 14, 2011.

8.M. AWARD OF BIDS AND CONTRACTS:

- 1.** Bid award to LV Superior Landscaping, Inc. in the estimated annual amount of \$33,049.36 for landscape maintenance of Stormwater Retention Areas. Funding is available from 448-5416-538.34-90 (Stormwater Utility Fund: Other Operating/Other Contractual Services).
- 2.** Bid awards to LV Superior Landscaping, Inc. in the amount of \$19,696.94 for Landscape Maintenance of Lake Ida Road Medians, South Federal Highway and Congress Avenue. Funding is available from 119-4144-572-46.40 (Beautification Trust Fund: Repair & Maintenance Services/Beautification Maintenance).
- 3.** Contract award to Intercounty Engineering, Inc. in the amount of \$237,142.00 for construction of a water main upgrade on S.W. 10th Avenue from S.W. 2nd Street to West Atlantic Avenue. Funding is available from 442-5178-536-68.76 (Water & Sewer Renewal & Replacement Fund: Improvements Other/S.W. 10th Avenue Water Main).
- 4.** Contract award to Line-Tec, Inc. in the amount of \$70,681.00 for relocating water services as part of the Osceola Neighborhood Redevelopment Plan. Funding is available from 442-5178-536-65.85 (Water & Sewer Renewal & Replacement Fund: Other Improvements; Osceola Park).
- 5.** Purchase award to Airgas in the amount of \$107,000.00 for delivery of Liquid Carbon Dioxide (CO2) to be ordered "as needed". Funding is available from 441-5122-536-52.21 (Water and Sewer Fund: Operating Supplies/Chemicals).
- 6.** Purchase award to Otto Waste Systems, as a sole source provider, in the amount of \$50,000.00 for purchase of hot stamped garbage carts, lids and wheels to be ordered "as needed". Funding is

available from 433-3711-534-49.35 (Sanitation Fund: Other Current Charges/Cart Renewal & Replacement).

7. Purchase award to Dumont Company, Inc. in the amount of \$51,200.00 for the purchase and delivery of Sodium Hypochlorite on an "as needed" basis to remote booster station locations. Funding is available from 441-5123-536-52.21 (Water and Sewer Fund: Operating Supplies/Chemicals).
8. Purchase award to CDW-Government in the amount of \$346,873.44 and to Emergency Vehicle Supply (EVS) in the amount of \$23,460 for the purchase and installation of sixty-eight (68) In-Car video systems in police vehicles. Funding is available from 334-2111-521-64.90 (General Construction Fund: Machinery/Equipment/Other Machinery/Equipment) and 115-2112-521-64.90 (Special Projects Fund: Machinery/Equipment/Other Machinery/Equipment).

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

9. **REGULAR AGENDA:**

9.A. **CONDITIONAL USE REQUEST/THE ELECTRIC EXPERIENCE:** Consider a conditional use request to allow the sale of Segways and Segway tours along designated routes for The Electric Experience located at 1047 East Atlantic Avenue. (*Quasi-Judicial Hearing*)

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

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on this item and all subsequent Quasi-Judicial items.

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Frankel, Mrs. Gray and Mayor McDuffie stated they had no ex parte communications to disclose. Mr. Carney stated he had a brief conversation with Attorney David Schmidt.

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-186 into the record.

Mr. Dorling stated this is a conditional use request to establish a Segway tours and sales facility known as The Electric Experience. The tours will be operated solely on the barrier island and extend primarily south of Atlantic Avenue. The hours of

operation would be from 9:00 a.m. – 6:00 p.m. Monday through Sunday. Mr. Dorling stated the training is proposed to occur in the parking lot to the rear and briefly described the tour routes.

At its meeting of September 19, 2011, the Planning and Zoning Board recommended approval with a 6 to 0 vote. The Board expressed concerns over homeowner privacy with respect to tour segments through neighborhoods particular East Road and Vista Del Mar Drive. Mr. Dorling stated it is noted that those areas have been removed from the tours as these tour routes have been modified to address that specific concern. He stated the Board also had some concern that the businesses that utilize the parking area along the north side of the site be notified that the proposed use would provide training in that parking lot which may conflict with the parking that the lot is there for. The applicant provided notice to all the affected businesses regarding the proposed use and training within this parking lot. Mr. Dorling stated those conditions proposed by the Planning and Zoning Board are no longer conditions of approval because they have been addressed.

At its meeting of September 8, 2011, the Community Redevelopment Agency (CRA) reviewed the conditional use request and recommended approval. At its meeting of September 12, 2011, the Downtown Development Authority (DDA) reviewed the conditional use request and recommended approval. Staff recommends approval subject to the five conditions listed on page two of the City Commission documentation.

David Schmidt, Attorney representing the applicant, stated they do not have any issues with the staff recommendation or the conditions that would be imposed.

Mr. Carney noted that the parking lot is being used and asked what would happen if the applicant were to develop that parking lot. Mr. Schmidt stated his client primarily does the training in the building or the breezeway and he is trying to avoid using the parking area if they can.

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

Dr. Alperin stated one of the conditions of approval is that the Segways be walked across Atlantic Avenue. Mr. Dorling stated they are not allowed to go parallel along Atlantic Avenue whether they are part of a tour or privately owned. Dr. Alperin asked what the logic is that a Segway must be walked across Atlantic Avenue. Mr. Dorling stated it stems with respect to concerns conflicting with other activity on the Avenue (i.e. seating, sidewalk cafes, etc.).

Mrs. Gray stated the first time she rode a Segway it was difficult for her to maneuver and believes it is easier to handle by walking it across the street.

Mr. Frankel stated the other operator had specific conditions such as they had to wear reflective vests and other safety things and asked why that was not made part of this request. Mr. Dorling stated those are conditions in the overall ordinance that was previously adopted. Mr. Frankel stated the Commission had discussed having the tour guide at all times with the tourists and noted that he sees the group going all the time and has seen a father and son going back to the shop. Mr. Frankel asked how this is being enforced.

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).

Dr. Alperin moved to adopt the Board Order as presented, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.B. WAIVER REQUESTS/BOUERI MIXED-USE BUILDING: Consider approval of six (6) waiver requests to Land Development Regulations (LDR) Section 4.4.13(F)(3) and Section 4.4.13(F)(4), “Principle Uses and Structures Permitted”, regarding the required building frontage and front setback along S.E. 1st Avenue and along S.E. 1st Street; Land Development Regulations (LDR) Section 4.6.18 (B)(14)(iv)(2), “Windows and Doors”, to reduce the required 75% transparency surface to 49% in the building elevation along S.E. 1st Avenue and to 43% along S.E. 1st Street; Land Development Regulations (LDR) Section 5.3.1(D)(3), “Corner Clip”, to reduce the required corner clip at the intersection of S.E. 1st Street and S.E. 1st Avenue from 20’ by 20’ to 12’-11” by 12’-11””; Land Development Regulations (LDR) Section 6.1.3(b), “Additional Paving”, to reduce the required 8’ wide sidewalk along S.E. 1st Avenue and S.E. 1st Street to 5’ for Boueri Mixed-use Building, located at 104 S.E. 1st Street. *(Quasi-Judicial Hearing)*

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

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-159 into the record.

Mr. Dorling stated this is a request for six waivers for an office building that is proposed at the corner of S.E. 1st Avenue and S.E. 1st Street. He stated two of the waivers relate to required setbacks that are part of the design guidelines. Mr. Dorling stated another waiver is to the requirement for transparency or windows along the streetscape, a waiver for a reduced corner clip, and two waivers for the sidewalk along 1st Avenue and 1st Street. Mr. Dorling stated the waivers are outlined in the staff report and there are required portions of the building that are required to be at 10 foot and 15 foot as

you go up. He stated the first request is to allow an increase of the required front setback at ten feet from 64.8 feet to 67 feet and to allow a decrease in the remaining portion of the building at 15 feet from 7.2 feet to 5 feet. Mr. Dorling stated the Design Guidelines require ins and outs on the building below 25 feet and above 25 feet and these waivers relate to doing that and represent minimum deviations in those setbacks. Mr. Dorling stated the third waiver relates to the window coverage along 1st Street and 1st Avenue and there is a related reduction along 1st Avenue is from 75% required to 49% and 1st Street is from 75% to 43%. The intent of the transparency is to provide window shopping opportunities. Mr. Dorling stated the other piece is a request for a reduction in the corner clip from 20 feet to 12 feet 11 inches and the fifth and sixth waiver are a reduction in the sidewalks. Mr. Dorling stated the Central Business District (CBD) requires 8 foot sidewalks and those are appropriate widths and are certain high pedestrian streets but in other areas it may be appropriate to reduce those to 5 feet.

Mr. Dorling stated these waivers went before the Review Boards and in each case those Boards recommended approval of the waivers being requested this evening.

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

There was no cross-examination or rebuttal.

Dr. Alperin expressed concern over the impact of this variance.

Mr. Carney stated he likes the looks of the building and feels we need people to start developing these types of things south of Atlantic Avenue. Mr. Carney stated he does not see this as problematic.

The City Manager stated according to the site plan there is a clear 20 foot by 20 foot site triangle but we are only requiring a 12 foot by 12 foot dedication on the corner clip. Mr. Dorling stated the 20 foot by 20 foot site triangle is maintained and the corner clip is being reduced to 12 feet 11 inches and the setbacks are then measured from the property line. The building is set to provide the clear 20 foot by 20 foot but the dedication allows for the five foot to occur from the 12 foot 11 inch dedication.

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. Frankel moved to adopt the Board Order as presented, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

9.C. CONSIDERATION OF AN APPEAL/HISTORIC PRESERVATION BOARD'S DECISION/CLASS III SITE PLAN MODIFICATION: Consider an appeal of the Historic Preservation Board's denial of the Class III site plan modification request for 85 S.E. 6th Avenue. (*Quasi-Judicial Hearing*)

9.C.1. CONSIDERATION OF AN APPEAL/ HISTORIC PRESERVATION BOARD'S DECISION/WAIVER REQUEST: Consider a waiver request to Land Development Regulations (LDR) Section 4.5.1(E)(3)(b)(2), "Parking", for six required parking spaces for 85 S.E. 6th Avenue. (*Quasi-Judicial Hearing*)

Dr. Alperin requested that **Item 9.C.** and **Item 9.C.1.** not be postponed to November 1, 2011 because he will not be present to discuss his concerns on this issue.

Mr. Dorling stated he received a telephone call from the Attorney for the applicant and their intent was to meet with staff on November 14, 2011 in anticipation of resolving some of these issues before the November 15th meeting.

9.D. REQUEST TO CHALLENGE THE FUNDING MECHANISM PERTAINING TO PALM BEACH COUNTY'S INSPECTOR GENERAL PROGRAM: Request authorization to allow the City Attorney to join Delray Beach with other municipalities in a lawsuit challenging the funding mechanism pertaining to Palm Beach County's Inspector General Program.

The City Attorney stated this item is in front of the Commission to allow the City Attorney's office to join a lawsuit with other municipalities to challenge the funding mechanism for the Inspector General Program. The City Attorney stated staff believes there are certain fallacies in that funding mechanism and will therefore the City will be bringing suit against Palm Beach County.

Mr. Frankel complimented the City Attorney on the information Assistant City Attorney Terrill Pyburn provided to the Commission. Mr. Frankel stated when this was on the ballot it was not clear that individual City taxpayers were going to pay for it. Mr. Frankel stated he supports the lawsuit.

Dr. Alperin stated it was not made clear but the Commission was sold on the idea that it was not going to cost anything.

Mr. Frankel asked how many other municipalities will join Delray Beach in this lawsuit. The City Attorney stated approximately 10 or 11 municipalities will join Delray Beach in the lawsuit.

Mr. Carney stated he agrees wholeheartedly with comments expressed by Mr. Frankel and Dr. Alperin.

Mayor McDuffie stated this was not represented fairly to the Commission or the public when this was on the ballot. He supports the lawsuit as well.

Mr. Frankel moved to approve the request to challenge the funding mechanism pertaining to Palm Beach County's Inspector General Program, seconded by Mr. Carney. Upon roll the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

9.E. SPECIAL EVENT REQUEST/TWILIGHT BICYCLE RACE AND WELLNESS FESTIVAL: Consider approval and endorsement of a new event, Delray Beach Twilight Bicycle Race and Wellness Festival, sponsored by RAC Event Productions/Swaggerolls to be held on March 9, 2012 from 9:00 a.m. to 11:00 p.m., and March 10, 2012 from 8:00 a.m. to 11:00 p.m.; grant a temporary use permit per LDR Section 2.4.6(F) for closure and use of Atlantic Avenue from Swinton to Railroad Way, Railroad Way from Atlantic to N.E. 1st Street, N.E. 1st Street from Railroad Way to Swinton and N.E. 1st Avenue from Old School Square grounds to Atlantic from approximately 4:00 p.m. to 10:00 p.m. on Saturday, March 10, 2012 for the bike races; and authorize staff support for traffic control and security, EMS assistance, trash removal and cleanup, trash boxes and event signage; contingent upon receipt of a non-refundable deposit in the amount of \$2,000.00, copies of signed rental agreements with Old School Square and the City for use of Old School Square Park, receipt of a signed and notarized Hold Harmless Agreement and receipt of a Certificate of Event Liability and Alcohol Liability Insurance by the dates outlined in the staff report.

Robert A. Barcinski, Assistant City Manager, stated this item is a request for the Commission to approve a Special Event Permit Request for an event called the Delray Beach Twilight Bicycle Race and Wellness Festival held March 9, 2012 from 9:00 a.m. to 11:00 p.m. and March 10, 2012 from 8:00 a.m. to 11:00 p.m. produced by Swaggerolls. Mr. Barcinski stated the Commission is also requested to approve a temporary use permit for the closure and use of Atlantic Avenue from Swinton Avenue to Railroad Way, Railroad Way from Atlantic Avenue to N.E. 1st Street, N.E. 1st Street from Railroad Way to Swinton Avenue and N.E. 1st Avenue from the Old School Square grounds to Atlantic Avenue from approximately 4:00 p.m. to 10:00 p.m. on Saturday, March 10, 2012 and authorize staff support for traffic control and security, EMS assistance, trash removal and cleanup, trash boxes and event signage. He stated most of the Wellness Festival is on the site of Old School Square and the park would be used for bicycle staging. Mr. Barcinski stated there will be a food court, beer garden, health/wellness vendors, and entertainment. He stated the City has met with the event producers, City staff, and the DDA staff to talk about this event and how it might benefit the City and to work out various issues. The DDA expressed concern over the street closure on a Saturday but then staff discussed promotional things that the event producer would do with the restaurants and other businesses. The estimated cost for overtime is \$14,700.00; \$250.00 for signage; \$350.00 for trash boxes; \$2,000.00 for the Old School Square Park rental for a total of \$17,300.00. Mr. Barcinski stated the event producer is responsible for payment of 100% of all of these costs. Staff recommends approval subject to the following conditions: (1) receipt of a non-refundable deposit in the amount of \$2,000 by February 7, 2012, (2) receipt of a Certificate of Event Liability and Alcohol Liability Insurance by February 19, 2012, (3) Receipt of a signed and notarized Hold

Harmless Agreement by February 19, 2012, (4) Copies of signed rental agreements with Old School Square and the City for use of Old School Square Park by February 25, 2012. Mr. Barcinski stated in the schedule of events there is mention of a 5K race that is not part of this approval.

Chelsea Midlarsky, Delray Beach resident and Event Requestor, stated there are other cities that have held this event and feels this will help showcase Delray Beach. Ms. Midlarsky stated this is a national series and there is going to be real professional cyclists that are going to have their kick-off event in Delray Beach. She stated they will give all the hotels and restaurants packets explaining how they can maximize their revenue on that day.

Mr. Frankel stated anything with health/wellness and sports is great and asked if the Downtown Development Authority has any concerns. Mr. Barcinski stated originally there was a concern about moving the event until after the Delray Affair but this was worked out.

Mrs. Gray asked if this event could extend past Swinton Avenue in front of Doc's and Nature's Way Café. Ms. Midlarsky stated this is exactly 1K and they have looked at all the other locations and that was the best one.

Mr. Carney stated we have a lot of active cyclists in this County and he feels this is a great event that will also help promote other events.

Dr. Alperin expressed concern over the closing of the streets.

Mayor McDuffie stated this sounds like a great idea.

Mr. Carney moved to approve the special event permit subject to the four (4) conditions set forth on page two of the City Commission memo, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

9.F. BID AWARD/RANDOLPH AND DEWDNEY CONSTRUCTION, INC.: Consider approval of a bid award to Randolph and Dewdney Construction, Inc., in the amount of \$456,710.00 for renovations to the Pompey Park Concession Stand. Funding is available from 334-4127-572-62.10 (General Construction Fund/ Pompey Park Concession Stand). (***ADDENDUM***)

Mr. Carney moved to approve to postpone indefinitely, seconded by Mr. Frankel.

Mr. Carney stated traditionally when other sources of funds are going to be used by the City as a component to the City spending money we have waited until the secondary funding source has already signed their Interlocal Agreement with the City. He stated the City initially established that we would pay for Phase I together with the

windows and that if Phase II was going to happen it would be paid for by the CRA. Mr. Carney stated the CRA considered it at their last meeting and came back with a sum certain of up to \$200,000.00 that they would pay. Mr. Carney stated that means there is a shortfall under the Phase I dollars already and it does not address any change orders that may occur because the CRA is capped at their \$200,000.00. Mr. Carney suggested that if the Commission is going to support this, that they wait until they have the agreement in place defining that in fact the City is paying for Phase I and the CRA is paying for Phase II, and if there are change orders related to Phase II, that is their obligation to pay and not the City's. Mr. Carney stated if the Commission passes this tonight then they have agreed to pay the \$456,000.00 and if the CRA only gives the City \$200,000.00 the City now has the burden for all of those additional costs.

Dr. Alperin stated the Commission was looking for assistance from the CRA to complete the project not to fund the entire Phase II. Dr. Alperin stated he never agreed to phase it and feels the reason for the delay was to see if the CRA would come up with some assistance to help the City. Dr. Alperin stated the Commission did not ask for Phase II but his understanding is that the Commission asked the CRA to come up with \$200,000.00. Dr. Alperin stated he does not support any further delay with this project because he feels it should be completed. He stated delaying the project will not make change orders go away but may make them more expensive.

Mrs. Gray concurs with Dr. Alperin that this project is well overdue and supports moving forward with this project.

Mr. Frankel concurs with comments expressed by the rest of the Commission. He stated the initial budget was \$218,000.00 and we have a low bid of \$456,710.00. Mr. Frankel stated this is not close to the original budget but is over double the original budget amount. He stated he agrees that improvements have to be made; however, he is concerned that the amount is over double the original budget because with change orders it could be \$500,000.00 by the time it is done.

Mrs. Gray stated the City budgeted \$218,000.00 in fiscal year 2010-2011 budget and staff will be looking at Phase II in the 2011-2012 budget; those dollars have been found.

Mr. Carney stated the understanding was that the City was going to pay for Phase I to pay for the bathrooms, kitchen, windows, and roof and the estimate was \$233,000.00 excluding the windows. Mr. Carney stated the additional costs were solely attributable to the enhancement and enlargement of the existing second floor area and the construction of an ADA compliant elevator. He stated the bathrooms need to be redone and the question is whether or not the second floor needs to be redone to the extent of expanding it. Mr. Carney stated his motion had to do with Phase I and sending it back to the CRA to see if they wanted to be responsible for the costs associated with Phase II. Mr. Carney stated he was not asking the CRA for assistance but he was asking the CRA to pay for it.

Brief discussion followed between Commissioner Gray and Commissioner Carney.

The City Manager stated with impact windows Phase I would be \$248,000.00.

Richard Hasko, Director of Environmental Services, clarified that the \$200,000.00 represented the CRA's budget for those two parks projects going back to the first time we asked them.

At this point, Mr. Carney withdrew his first motion.

Mr. Carney moved to approve the bid award with Dewdney Construction, Inc. subject to entering into an Interlocal Agreement providing funds of up to \$200,000.00 with the Community Redevelopment Agency (CRA), seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – No; Mrs. Gray – Yes. Said motion passed with a 4 to 1 vote, Commissioner Frankel dissenting.

At this point, the time being 7:17 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 36-11 (SECOND READING/SECOND PUBLIC HEARING): Consider a privately initiated amendment to the Land Development Regulations (LDR) Section 4.4.9. (B), "Principle Uses and Structures Permitted", and Section 4.4.13 (B), "Principal Uses and Structures Permitted", to clarify that bicycles with an electric helper motor are the only motorized equipment permitted in the "rental of sporting goods and equipment" use category.

The caption of Ordinance No. 36-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.9 "GENERAL COMMERCIAL (GC) DISTRICT", SUBSECTION 4.4.9(B), "PRINCIPAL USES AND STRUCTURES PERMITTED"; AND SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(B), "PRINCIPAL USES AND STRUCTURES PERMITTED"; TO CLARIFY THAT BICYCLES WITH AN ELECTRIC-HELPER MOTOR ARE THE ONLY MOTORIZED EQUIPMENT PERMITTED IN THE "RENTAL OF

SPORTING GOODS AND EQUIPMENT" USE
CATEGORY WITHIN THE GC AND CBD ZONING
DISTRICTS; PROVIDING A SAVING CLAUSE, A
GENERAL REPEALER CLAUSE, AND AN EFFECTIVE
DATE.

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, AICP, Director of Planning and Zoning, stated this is a privately-initiated text amendment to the GC (General Commercial) and CBD (Central Business District) zoning districts to clarify that bicycles with an electric helper motor are the only motorized equipment permitted in the "rental of sporting goods equipment" use category. The proposed text amendment is related to the establishment of the electric experience at 1047 East Atlantic Avenue. Mr. Dorling stated this business wants to rent bicycles that have electric helper motors to the general public at this site. The current rental of sporting goods and equipment category is limited to non-motorized goods and equipment. Therefore, Mr. Dorling stated the rental of motorized sporting goods is not currently allowed in the GC or CBD. This applicant is proposing this amendment to allow motorized bicycles to be rented as part of that category. There is a subsequent modification to the Code of Ordinances definition of "bicycle" to also amend it to include the electric helper motor version of bicycles that is consistent with State Statute.

At its meeting of September 8, 2011, the Community Redevelopment Agency (CRA) reviewed this item and recommended approval; at its meeting of September 12, 2011, the Downtown Development Authority (DDA) recommended approval; and, at its meeting of September 13, 2011, the West Atlantic Redevelopment Coalition (WARC) recommended approval; at its meeting of September 19, 2011, the Planning and Zoning Board recommended approval with a 6 to 1 vote; at its meeting of October 4, 2011, the City Commission considered this ordinance and recommended approval to move it to second reading.

David Schmidt, Attorney representing the applicant, stated one of the concerns about this issue is proliferation of electric bikes being rented and that Delray Beach is going to be turned into Key West. Mr. Schmidt stated the City currently has a restriction in the CBD (Central Business District) under LDR Section 4.4.13(H)(8) which limits rental of sporting goods and equipment to no more than one business renting a specific category of item every 300 feet which is the same limitation the City has on Segways. He stated currently the definition includes mopeds. Mr. Schmidt stated the State Statute has a specific definition for moped which is different than the definition of bicycle. Mr. Schmidt stated there is also a concern about scooters and this really falls under the definition of a motorcycle and requires a plate, etc.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 36-11,

the public hearing was closed.

Dr. Alperin moved to adopt Ordinance No. 36-11 on Second and FINAL Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

10.B. ORDINANCE NO. 39-11: Consider an amendment to the Code of Ordinance Section 72.02, “Definitions,” to conform to the State Statute definition of a bicycle and to place further limitations on motorized bicycles.

The caption of Ordinance No. 39-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 72, “BICYCLES”, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 72.02, “DEFINITION”, TO CONFORM WITH STATE STATUTE DEFINITION OF BICYCLE AND TO PLACE FURTHER LIMITATIONS ON MOTORIZED BICYCLES; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 39-11 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a City-initiated text amendment to the City’s Code of Ordinances Section 72.02 to modify the current definition of bicycle to conform to the State Statutes bicycle definition which includes the electric helper motor version.

At its meeting of October 4, 2011, the City Commission considered the ordinance and recommended approval on first reading.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 39-11, the public hearing was closed.

Dr. Alperin stated we are still calling a bicycle a three wheeler or a tricycle a bicycle. Mr. Dorling stated the States definition of bicycle would incorporate

the tricycle.

Mr. Frankel moved to adopt Ordinance No. 39-11 on Second and FINAL Reading, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

10.C. RESOLUTION NO. 43-11/CONTRACT FOR SALE AND PURCHASE/2216 N.E. 3RD AVENUE: Consider approval of Resolution No. 46-11, a contract for sale and purchase, authorizing the City to transfer Neighborhood Stabilization Program property located at 2216 N.E. 3rd Avenue to the Delray Beach Community Land Trust for the amount of \$10.00.

The caption of Resolution No. 43-11 is as follows:

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

(The official copy of Resolution No. 43-11 is on file in the City Clerk's office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Lula Butler, Director of Community Improvement, stated Resolution No. 43-11 is the approval of the transfer of the sale of property to the Community Land Trust (CLT) and the property address is 2216 N.E. 3rd Avenue. She stated the City entered into an agreement with the CLT for disposition of properties acquired under the Neighborhood Stabilization Program (NSP) Program in July 2010. Mrs. Butler stated that agreement was amended again on September 21, 2010. The CLT is required to resell the unit and they keep the value of the land. The balance of the proceeds from the sale of the property comes back to the City to be reinvested into the NSP Program. Mrs. Butler stated based on the appraised value the City will make approximately \$95,000.00 from the sale of this house. Staff recommends approval of the transfer of the property address 2216 N.W. 3rd Avenue to the Delray Beach CLT under the NSP Program as required by the City's regulations.

Mayor McDuffie declared the public hearing open.

Christina Morrison, 2809 Florida Boulevard #207, Delray Beach, FL, 33483, stated not only does the sale of this property return approximately \$95,000.00 to the City it keeps the property on the tax roll. She stated there are over 4,000 properties in the City of Delray Beach that pay no real estate taxes. Ms. Morrison stated this is a great program and recommends that the Commission endorse it.

There being no one else from the public who wished to address the Commission regarding Resolution No. 43-11, the public hearing was closed.

Dr. Alperin moved to approve Resolution No. 43-11, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

10.D. RESOLUTION NO. 44-11/ CONTRACT FOR SALE AND PURCHASE/310 SOUTHRIDGE ROAD: Consider approval of Resolution No. 44-11, a contract for sale and purchase, authorizing the City to transfer Neighborhood Stabilization Program property located at 310 Southridge Road to the Delray Beach Community Land Trust for the amount of \$10.00.

The caption of Resolution No. 44-11 is as follows:

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

(The official copy of Resolution No. 44-11 is on file in the City Clerk's office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Lula Butler, Director of Community Improvement, stated this item is to transfer one property addressed as 310 Southridge Road to the Community Land Trust (CLT) under the same program. Mrs. Butler stated the CLT is required to sell this property to an eligible household whose income does not exceed 120% of the Area Median Income (AMI) as defined by HUD. Mrs. Butler stated the City expects approximately \$65,000.00 to be reinvested in the NSP Program. Staff recommends the sale and transfer of 310 Southridge Road to the CLT for the benefit of a local eligible household member.

Mayor McDuffie declared the public hearing open.

Christina Morrison, 2809 Florida Boulevard #207, Delray Beach, FL, 33483, stated not only does the sale of this property return approximately \$65,000.00 to the City it keeps the property on the tax roll. She stated there are over 4,000 properties in the City of Delray Beach that pay no real estate taxes. Ms. Morrison stated this is a great program and recommends that the Commission endorse it.

There being no one from the public who wished to address the Commission regarding Resolution No. 44-11, the public hearing was closed.

Mrs. Gray moved to approve Resolution No. 44-11, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

10.E. RESOLUTION NO. 45-11/ CONTRACT FOR SALE AND PURCHASE/518 S.W. 9TH COURT: Consider approval of Resolution No. 45-11, a contract for sale and purchase, authorizing the City to transfer Neighborhood Stabilization Program property located at 518 S.W. 9th Court to the Delray Beach Housing Group, Inc. for the amount of \$10.00.

The caption of Resolution No. 45-11 is as follows:

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

(The official copy of Resolution No. 45-11 is on file in the City Clerk's office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Lula Butler, Director of Community Improvement, stated staff requests approval to donate one property acquired under the NSP Program and the address is located at 518 S.W. 9th Court to the Delray Housing Group which is a non-profit arm of the Delray Beach Housing Authority for the benefit and rental of the unit to a household at or below 50% of the Area Median Income (AMI). Mrs. Butler stated the City has entered into the agreement with the Delray Beach Housing Authority for rental housing

under the NSP Program. The NSP Program requires that \$500,000.00 of the \$1.9 million that was awarded to the City go back to the Delray Beach Housing Authority for the total value of properties to be rented for a period of twenty (20) years to eligible households. Staff recommends the transfer of this property to the Delray Beach Housing Group pursuant to the agreement.

Mayor McDuffie declared the public hearing open.

Christina Morrison, 2809 Florida Boulevard #207, Delray Beach, FL, 33483, asked if this takes the property off the tax roll and if it is going to be donated to the Delray Beach Housing Authority. Mrs. Butler stated this is correct. For the record, Ms. Morrison stated that removes approximately \$1,781 from the tax rolls in real estate taxes for the next 20 years and if it went into the Community Land Trust that would not happen.

There being no one from the public who wished to address the Commission regarding Resolution No. 45-11, the public hearing was closed.

Mayor McDuffie inquired if there is mandatory requirements that \$500,000.00 of that money has to go into rental property. Mayor McDuffie stated this is unfortunate for the tax receipts but mandatory. Mrs. Butler stated this is correct but what you do get is a 20 year affordable rental project for a very low income family in return. The proceeds of the rent go to the Housing Authority and they are required to report on any program income, responsible for the upkeep, managing and staffing of it.

Mrs. Gray moved to approve Resolution No. 45-11, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

10.F. RESOLUTION NO. 46-11/CONTRACT FOR SALE AND PURCHASE/1505 S.W. 3RD COURT: Consider approval of Resolution No. 46-11, a contract for sale and purchase, authorizing the City to transfer Neighborhood Stabilization Program property located at 1505 S.W. 3rd Court to the Delray Beach Housing Group, Inc. for the amount of \$10.00.

The caption of Resolution No. 46-11 is as follows:

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

OF DELRAY BEACH, FLORIDA.

(The official copy of Resolution No. 46-11 is on file in the City Clerk's office.)

A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Lula Butler, Director of Community Improvement, stated Resolution No. 46-11 is requesting permission to donate a property addressed at 1505 S.W. 3rd Court to the Delray Beach Housing Group a non-profit arm of the Delray Beach Housing Authority for the rental of a household whose income does not exceed 50% of the Area Median Income (AMI). Mrs. Butler stated this is going to be transferred to them and they have to maintain it as a rental unit for the next 20 years.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Resolution No. 46-11, the public hearing was closed.

Mr. Carney asked if we keep track of the values we give to the Delray Housing Group and how much of the \$500,000.00 have we contributed. In response, Mrs. Butler stated the City has contributed a little over \$400,000.00.

Dr. Alperin asked who owns this property and the previous property. Mrs. Butler stated the City owns these properties at this time.

Mr. Carney moved to approve Resolution No. 46-11, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – 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 7:33 p.m., the Commission moved to **Item 11, City Manager's response to prior public comments and inquiries.**

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

None.

11.B. From the Public.

11.B.1. Alice Finst, 707 Place Tavant, Delray Beach, FL, 33445, stated she sent the Commission an email about the parking at the Milagro Center. She expressed concern that the staff has five spaces against the sidewalk and these are permanent and are effectively blocking the sidewalk and the parent drop off is across from the drive isle. She stated when they get out of the car they have to walk around the car into the drive isle to get their child out of the car and then they have to walk across the drive isle to get

up to the sidewalk up to the building. Mrs. Finst suggested that the parent parking be up by the building by the sidewalk so when they get out of the car they walk around and they step on the sidewalk, get their child, close the car door and walk back onto the sidewalk. She stated it would be a much safer situation.

11.B.2. **Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach)**, thanked Commissioner Frankel for continually keeping in mind the sacrifices that the Police, Fire, and non-uniform employees made by giving up millions of dollars. Dr. Kirson stated for everyone to keep this in mind when spending taxpayers' dollars.

11.B.3. **Rose Hendrix, P.O. Box 6162, Delray Beach, FL 33482**, stated she was present on September 20, 2011 asking the City Manager to intervene on a situation where Tonya Smith filed a false police report on her indicating that Ms. Hendrix was upset that Ms. Smith had to discipline her child who was attending the Community Center Aftercare Program.

The City Manager stated this is a private dispute between Ms. Hendrix and Ms. Smith and they have to work it all through the legal system. The City Manager stated this does not involve the City.

At this point, the time being 7:41 p.m., the Commission moved to **Item 12, First Readings.**

12. **FIRST READINGS:**

12.A. **ORDINANCE NO. 37-11:** Consider a city initiated amendment to the Land Development Regulations (LDR) Section 4.5.3, "Flood Damage Control Districts", Subsection (D) "Construction Standards", to modify the section while maintaining compliance with State Statutes. If passed, a public hearing will be held on November 1, 2011.

The caption of Ordinance No. 37-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.5.3, "FLOOD DAMAGE CONTROL DISTRICTS", SUBSECTION (D) "CONSTRUCTION STANDARDS", TO MODIFY THE SECTION WHILE MAINTAINING COMPLIANCE WITH STATE STATUTES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 37-11 is on file in the City Clerk's office.)

Mayor McDuffie stated that staff requested that Item 12.A., Ordinance No. 37-11 be removed from the Agenda.

Mr. Frankel moved to remove Ordinance No. 37-11 from the Agenda, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

12.B. **ORDINANCE NO. 38-11:** Consider an annexation (via the provisions of the executed Agreement for Water Service and Consent to Annexation) with initial City zoning of CF (Community Facilities) for Lago Vista, located at the southeast corner of Linton Boulevard and the LWDD E-3 Canal. If passed, a public hearing will be held on November 1, 2011.

The caption of Ordinance No. 38-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ANNEXING TO THE CITY OF DELRAY BEACH, A PARCEL OF LAND LOCATED AT THE SOUTHEAST CORNER OF LINTON BOULEVARD AND LWDD E-3 CANAL, AS THE SAME IS MORE PARTICULARLY DESCRIBED HEREIN, WHICH LAND IS CONTIGUOUS TO EXISTING MUNICIPAL LIMITS; REDEFINING THE BOUNDARIES OF THE CITY TO INCLUDE SAID LAND; PROVIDING FOR THE RIGHTS AND OBLIGATIONS OF SAID LAND; PROVIDING FOR THE ZONING THEREOF TO COMMUNITY FACILITIES (CF); PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 38-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this item is for the Commission to approve a City-initiated annexation (via the provisions of an executed Water Service Agreement) of the "Lago Vista" property and initial zoning of CF (Community Facilities) for a 6.12 acre site located on the south side of Linton Boulevard west of the Delray Medical Center (Delray Hospital) and east of Canal E-3. Mr. Dorling stated this contains a 44,514 square foot nursing home with 120 units built in 1984. The annexation agreement was part of a modified water service agreement that

was executed in March 1999 and that agreement covered the annexation of several parcels including the shopping center, the hospital and another piece. The associated land use amendment will be considered along with this ordinance when it comes to second reading.

At its meeting of July 18, 2011, the Planning and Zoning Board considered this item and recommended approval at that time. Staff recommends approval.

Dr. Alperin moved to approve Ordinance No. 38-11 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:45 p.m., the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items from the City Manager, City Attorney, and City Commission.**

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager stated the Florida League of Cities has voted to rebate 25% of their dues from last year.

Secondly, the City Manager stated he attended the Alliance For Innovation Big Ideas Conference and they discussed three different subjects; creating place both in the physical sense and in social places for people to interact, where the next generation of municipal employees will come from, what the new social contract will be between cities and their employees, and service delivery and what services people will expect in the future and how we might deliver them. The City Manager stated papers were prepared by different university professors about what may happen in the future to cities and it was very useful as well as the tidbits that we can implement in improving our own services.

Lastly, the City Manager stated there is a Resolution in Congress introduced by Representative Hastings, Representative West, and Representative Deutsch commemorating the City's 100th Centennial. The City Manager stated there was also an entry into the Congressional Record by Representative Hastings and this will be displayed in the appropriate location.

13.B. City Attorney

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

13.C. **City Commission**

13.C.1. **Mr. Frankel**

Mr. Frankel stated there was an event last Friday night at Old School Square where they had a concert and food trucks and he has received numerous compliments on this event. He stated it was well attended and greatly run.

Secondly, Mr. Frankel stated approximately a year ago the Commission had discussed the Elections and some of the topics were signatures that were required, a referendum on the ballot, and changing potentially a term from two years to three years saving a city-wide Election at a large cost every third year. Mr. Frankel suggested that the Commission place this on the November 8th Workshop Meeting.

13.C.2. **Mrs. Gray**

Mrs. Gray stated now that we are members of the National League of Cities again she would like an update on the prescription drug program.

Secondly, Mrs. Gray stated the Net Ball Competition at Pompey Park was a great success and there were teams from Jamaica, New Zealand, Texas, Fort Lauderdale, Miami and a group of local children. Mrs. Gray thanked Abbey Murrell and staff for all their hard work and stated over 200 people were in and out of Pompey Park all day and they also visited the downtown area.

Mrs. Gray thanked everyone for the reconsideration of the Pompey Park Concession Stand.

Lastly, Mrs. Gray stated she received a complaint about the fencing along the cemetery and Auburn Trace. She stated the fence is down and people are walking back and forth through the cemetery.

13.C.3. **Mr. Carney**

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

13.C.4. **Dr. Alperin**

Dr. Alperin stated he attended a few board meetings and feels we need to educate our Board members on what the term "All-America City" means so they do not misrepresent what we are and what it means. In addition, Dr. Alperin suggested that Roberts Rules be enforced at these meetings because he stated it would help the meetings to move a little quicker and stay on task.

13.C.5. Mayor McDuffie

Mayor McDuffie stated he attended the concert event at Old School Square and the food was excellent and it was a terrific event.

Secondly, Mayor McDuffie commented about the Net Ball Competition.

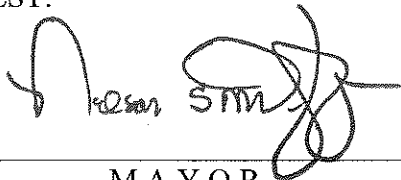
Mayor McDuffie stated he and Mr. Dorling attended a Roundtable with Congressman Allen West and the U.S. Army Corps of Engineers and the City's reimbursement from the Federal Government on Beach Renourishment (roughly \$5 million) is gone. Mayor McDuffie stated it will not be available to the City of Delray Beach this year and they are even questioning whether it will be available next year. He stated about 45% of the money comes from the State and County. Mayor McDuffie stated the Corps of Engineers got everybody from the top of Palm Beach County through Dade County and they are putting some of the port projects that they had in these ports through here on hold as well. He stated there was also some discussion about the Hubert Hoover Dike around Lake Okeechobee as well.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:57 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 October 18, 2011, which Minutes were formally approved and adopted by the City Commission on November 1, 2011.



City Clerk

NOTE TO READER:

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