

**MARCH 1, 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, March 1, 2011.

**1.** Roll call showed:

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

Absent - None

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

**2.** The opening prayer was delivered by Reverend Greg Fitch, Chief Chaplain for the Delray Beach Police and Fire-Rescue Department.

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

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

Mayor McDuffie stated there is updated information for **Item 9.B., Final Subdivision Plat Approval/CDS Delray Redevelopment (Atlantic Plaza II)** and **Item 9.C., Grant Agreement/Palm Beach County/Expanding and Preserving Our Cultural Heritage, Inc. (EPOCH)/C. Spencer Pompey Amphitheater.** Also, Mayor McDuffie stated with regard to Item 9.C., there is an error in paragraph 4 under background, it should read "The City's funds would have to be obligated in the 2011/2012 Capital Improvement Plan (CIP), making them available on October 1, 2011."

Mr. Frankel moved to approve the Agenda, 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.

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

Mr. Eliopoulos moved to approve the Minutes of the Workshop Meeting of February 8, 2011, seconded by Mrs. Gray. 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.

Mrs. Gray moved to approve the Minutes of the Regular Meeting of February 15, 2011, 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.

**6. PROCLAMATIONS:**

**6.A. Recognize Church of the Palms 50<sup>th</sup> Year Anniversary – March 5, 2011**

Mayor McDuffie read and presented a proclamation hereby proclaiming March 5, 2011 as Church of the Palms Day. Reverend Dr. Roger P. Richardson came forward to accept the proclamation and gave a few brief comments.

**6.B. All People's Day ® – March 22, 2011**

Mayor McDuffie read and presented a proclamation hereby proclaiming March 22, 2011 as All People's Day. Susan Berkowitz Schwartz thanked the Commission and invited them to the All People's Day Diversity Festival on March 27, 2011 at Pompey Park.

At this point, the City Manager introduced the new Finance Director David Boyd.

**7. PRESENTATIONS:**

A. None

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

**8.A. REQUEST FOR SIDEWALK DEFERRAL/921 SOUTH OCEAN BOULEVARD:** Approve a request to defer the installation of a sidewalk along Ocean Boulevard for the property located at 921 South Ocean Boulevard.

**8.B. RESOLUTION NO. 09-11:** Approve Resolution No. 09-11 to support continuance of the prescription drug monitoring program authorized by Section 893.055 of the Florida Statutes.

The caption of Resolution No. 09-11 is as follows:

A RESOLUTION SUPPORTING THE CONTINUANCE  
OF THE PRESCRIPTION DRUG MONITORING  
PROGRAM IMPLEMENTED IN SECTION 893.055,

FLORIDA STATUTES; PROVIDING FOR AN EFFECTIVE DATE.

(The official copy of Resolution No. 09-11 is on file in the City Clerk's office.)

**8.C. AMENDMENT NO. 1 TO THE ACQUISITION AGREEMENT/PUBLIC SERVICE CORPORATION/CRYWOLF ALARM SOFTWARE:** Approve Amendment No. 1 to the Acquisition Agreement with Public Safety Corporation (PSC) for the CryWolf alarm software providing for reductions to software licensing costs.

**8.D. AMENDMENT NO. 2 TO THE AGREEMENT/SUNGARD:** Approve Amendment No. 2 to the Agreement with SunGard Public Sector, Inc. in the amount of \$34,300.00 for a public safety software system to add purchase of CryWolf alarm software and FireHouse Inspection iPad module. Funding is available from 334-2111-521-66.10 (General Construction Fund: Books/Publications/Software).

**8.E. TRIPARTITE INTERLOCAL AGREEMENT BETWEEN CITY OF DELRAY BEACH, PALM BEACH COUNTY SCHOOL DISTRICT AND ACHIEVEMENT CENTERS FOR CHILDREN AND FAMILIES:** Approve an Interlocal Agreement between the City of Delray Beach, Palm Beach County School District and the Achievement Centers for Children and Families for shared use of the Village Academy facilities.

**8.F. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period February 14, 2011 through February 25, 2011.

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

- 1.** Bid award to Duval Ford in the amount of \$149,112.00 for the purchase of six (6) Ford Crown Victoria Police Interceptors pursuant to Florida Sheriffs Association Contract # 10-18-0907. Funding is available from 501-3312-591-64.20 (Garage Fund: Machinery/Equipment/Automotive).
- 2.** Purchase award to Emergency Vehicle Supply in the amount of \$61,314.36 for the installation and complete set up of six (6) Police Cruisers. Funding is available from 501-3312-591-64.20 (Garage Fund: Machinery/Equipment/Automotive).
- 3.** Bid award to Intercounty Engineering Corporation in the amount of \$1,408,505.93 for construction of the Area 11B Reclaimed Water System Project. Funding is available from 441-5181-536-65.96 (Water and Sewer Fund: Other Improvements/Reclaim Water Transmission), 448-5461-538-63.90 (Storm Water Utility Fund: Improvements Other/Other Improvements) and 442-5178-

536-63.90 (Water & Sewer Renewal & Replacement Fund: Improvements Other/Other Improvements).

4. Purchase award to Pierce Manufacturing, Inc. in the amount of \$547,724.29 after pre-payment discount utilizing the Florida Sheriffs Association Bid# 10-09-0907, Specification #15 for one (1) Pierce Velocity HDR Pumper. Funding is available from 501-3312-591-64.25 (Garage Fund: Machinery/Equipment/Heavy Equipment).

Mr. Frankel moved to approve the Consent Agenda, 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. REGULAR AGENDA:**

**9.A. RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT WITH PROFESSIONAL FIREFIGHTERS/PARAMEDICS OF PALM BEACH COUNTY, INC. IAFF LOCAL 2928:** Consider ratification of the Collective Bargaining Agreement with Professional Firefighters/Paramedics of Palm Beach County, Inc. IAFF Local 2928.

Bruce Koeser, Director of Human Resources, stated the labor agreement is a three year agreement with the Professional Firefighters Paramedics of Palm Beach County, IAFF Local 2928, Inc. The union ratified this agreement and the amended 2008-2011 labor agreement because there are some changes that are going to take effect right now. The agreement duration is from October 1, 2011-September 30, 2014, and provides changes in the following areas: (1) provides for a wage freeze for three years with a re-opener in years two and three; (2) eliminates two paid holidays; (3) the employee contribution to the Delray Beach Police and Fire Retirement System will increase by three percent (3%). A re-opener in year two would allow negotiation of pension benefit changes for employees hired after October 1, 2012. In addition, Mr. Koeser stated regarding the Retiree Health Insurance Fund (VEBA), it changes the 3.3% payroll contribution that the City currently makes to a contribution covering current retirees which is approximately 1-1.2%. Mr. Koeser thanked the union's leadership and staff recommends ratification of the Collective Bargaining Agreement with the Professional Firefighters/Paramedics of Palm Beach County, Local 2928, IAFF, Inc.

Mr. Eliopoulos extended his gratitude to the union and the Fire-Rescue Department. He stated this was a major step in the right direction to help the City get back on track.

Mr. Fetzer extended his gratitude and stated he appreciates the cooperation with the Fire union. He stated these are not easy times for anyone and for us to seek compromise on some of these issues are very admirable.

Mrs. Gray thanked staff because when they started this the Commission said that everyone would have to participate and everyone is doing that.

Mr. Frankel thanked Mr. Tabeek, Mr. Koeser, and the new counsel and extended kudos to everyone. Mr. Frankel pointed out that this agreement is for three years.

Mayor McDuffie thanked Mr. Tabeek, the Fire-Rescue Department, Mr. Koeser, staff, and the new counsel. Mayor McDuffie thanked everyone for recognizing that we did have a monetary problem and stated we still have another negotiation to go.

Mr. Frankel moved to approve the ratification of the Collective Bargaining Agreement with Professional Firefighters/Paramedics of Palm Beach County, Inc., IAFF Local 2928, 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.B. FINAL SUBDIVISION PLAT APPROVAL/CDS DELRAY REDEVELOPMENT (ATLANTIC PLAZA II):** Consider approval of the final plat for an 8.65 acre mixed-use development known as CDS Delray Redevelopment (Atlantic Plaza II), located north of East Atlantic Avenue, between N.E. 6th Avenue and Veterans Park.

Paul Dorling, Director of Planning and Zoning, stated this is approval of a preliminary plat and certification of a final plat for an 8.65 acre proposed mixed-use redevelopment project to be platted as “CDS Delray Redevelopment” also known as Atlantic Plaza. On December 8, 2008, the City Commission reviewed a conditional use application for Atlantic Plaza II. On February 17, 2009, the City Commission also approved some subsequent abandonments and realignments of N.E. 7<sup>th</sup> Avenue. On March 11, 2009, the Site Plan Review and Appearance Board approved a Class V site plan for Atlantic Plaza II, containing 98,765 square feet of retail floor area, 32,921 square feet of restaurant floor area, 106,006 square feet of office floor area, and 197 dwelling units. The proposal also included a total of 1,059 parking spaces, provided via sub-grade parking, an above-grade parking garage, parallel on-street parking, and individual two car garages for the townhomes. Staff recommends approval.

At its meeting of March 15, 2010, the Planning and Zoning Board made a recommendation of approval to the City Commission for the combined preliminary/final plat for “The Village at Atlantic Plaza”, now known as “CDS Delray Redevelopment”. At its meeting of March 15, 2010, the Planning and Zoning Board made a recommendation of approval to the City Commission for the combined preliminary/final plat for “The Villages at Atlantic Plaza”, now known as “CDS Delray Redevelopment”.

The proposed plat consists of 6 tracts with 3 tracts (Tracts A, B, and C) corresponding to the 3 development parcels, two tracts (Tracts D and E) for private streets with public ingress/egress easements and one is an additional dedication along West Atlantic Avenue.

Mr. Eliopoulos moved to approve the final subdivision plat for CDS Delray Redevelopment (Atlantic Plaza II), 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.C. GRANT AGREEMENT/PALM BEACH COUNTY/EXPANDING AND PRESERVING OUR CULTURAL HERITAGE, INC. (EPOCH)/ C. SPENCER POMPEY AMPHITHEATER:** Consider approval of a Grant Agreement between Palm Beach County, the City, and EPOCH; and a commitment to provide supplemental funding in the amount of \$310,000.00 for redesign and construction of the proposed C. Spencer Pompey Amphitheater on the Spady Cultural Heritage Museum grounds. Funding to be programmed in the 2011/2012 Capital Improvement Plan.

Richard Hasko, Director of Environmental Services, stated this is a request for the Commission to consider approval of a tripartite agreement for a \$250,000.00 grant between Palm Beach County, Expanding and Preserving Our Cultural Heritage, Inc. (EPOCH), and the City of Delray Beach to provide partial funding for the C. Spencer Pompey Amphitheater on the Spady Museum grounds. Also, for the balance of the funding, there is a request for City participation in the amount of \$310,000.00 and to help offset that, there is also a request for direction to approach the Community Redevelopment Agency (CRA) for a contribution of half that amount. Mr. Hasko stated the agreement is a 30 year term and there is language in the agreement that states that in the event that EPOCH fails to maintain or does not provide public access for its intended use of the amphitheater at any point in time if we terminate the agreement then that responsibility inherits to the City. Mr. Hasko stated this is a 30 year term; however, the City's lease with EPOCH only has 20 years left on it. The City Attorney stated staff will bring this back to the Commission at the next meeting and suggested that the Commission extend that term so both agreements match.

Mr. Eliopoulos expressed concern when the Commission is asked to direct the CRA to contribute and/or give money. Mr. Eliopoulos stated he has tried to be consistent with every organization especially the non-profits and believes we need to be looking at where the money is going and at becoming more sustainable.

**Daisy Fulton, Executive Director of the Spady Museum,** thanked the Commission for their ongoing support and recognized the EPOCH Board members. Ms. Fulton stated the last two years have been extremely tough financially because of the economy; however, in their effort to better the times is that they have been given a IMLS (Institute of Museum and Library Services) Grant from the Federal Government for capacity building and with this grant EPOCH is moving forward with the strategic planning session.

Mr. Eliopoulos stated he appreciates what Ms. Fulton is saying and doing and feels if the numbers are increasing then this is what should be documented along with the programs EPOCH has and what they have done. Mr. Eliopoulos stated this Commission needs to get educated so that they can educate the public and make this a stronger commitment. He reiterated that he is looking for all the stats and the future of how they are doing it. Ms. Fulton stated they are going through an exercise now as to how they can better report based upon the number of clients and the dollar value to each client. Ms. Fulton thanked Mr. Hasko and the City staff who has worked with them over the last several days to try and execute the necessary language that is needed in the agreement.

Mrs. Gray stated a couple of weeks ago they had to pull up history on one of the first African-American City Commissioners and Spady Museum had the information. Mrs. Gray asked Ms. Fulton to explain the amphitheater and how the other buildings that EPOCH is trying to have built on the campus are going to help EPOCH in the future as far as income is concerned and more programs. She stated the amphitheater is part of the growth aspect of the SPADY complex. Ms. Fulton stated it is going to provide an opportunity for them to increase their number of students. For example, Ms. Fulton stated next week they are scheduled to have 72 children from Palm Beach County schools to visit SPADY and they will break them up into groups and they will have outside activities and events that are centered around the exhibits on display and talks about the cultural educational aspect of what they do. Ms. Fulton stated that would be a prime time to have the amphitheater there. She commended the CRA and the City for the effort of moving forward with the reconstruction of the Munnings/Williams House that is going to be the housing for the Kids Cultural Club which will be fully utilized; but a capacity extension of that is going to be the utilization of the amphitheater. Mrs. Gray thanked Ms. Fulton for having the grant writer continue to look for grants and other funding opportunities.

Mr. Frankel stated staff's recommendation in the memo states that the City Commission formally requests that the CRA provide at least half (\$155,000.00) of the additional funds needed. Mr. Hasko stated there have been no formal requests made at this point; staff has had informal conversation with Ms. Colonna.

**Diane Colonna, Executive Director of the CRA,** stated this particular request has not gone to the Board yet and some of the Board's concerns have been in the past that they want to see Spady succeed and they have been very supportive over time. The concern is that as they expand what is the plan for funding future operations because with these expansions there is going to be a need for additional staff because this will be an additional expense. Ms. Colonna stated the CRA Board has asked the Spady Museum to do a strategic plan to really lay out what the costs are going to be and what the revenue sources are projected to be. She stated the process that Ms. Fulton referred to going through the CRA with the non-profits work is with all the non-profits including Old School Square, Spady Museum, Community Land Trust (CLT), and the library. The CRA is working with the consulting firm Non-Profits First which works with United Way to come up with more specific criteria for providing funding and measuring their

success in terms of meeting objectives. Ms. Colonna stated the CRA Board has established that they do not want the CRA funding to comprise more than 25% of an organization's operating expenses and over the years the CRA funding has been as high as 75% of the Spady Museum's operating revenues. Ms. Colonna stated the Board would like the CRA to gradually reduce that contribution for operating expenses which means they would have to be getting revenue from other sources.

Mrs. Gray asked if she agrees that if they have these buildings in place that they will be able to offer more programs and be able to receive more dollars that way. Ms. Colonna stated she understands that is the plan but the CRA has not seen a forecast of the numbers; however, the intent is to try and increase revenues by having more activities at the facility. Ms. Colonna stated as Ms. Fulton mentioned Spady just received another grant that helped this year for the operating revenues.

Mr. Eliopoulos commented about the re-design fee of \$50,000.00 and asked if we have a handle on what we are building. He expressed concern with how the monies are being spent and who is looking at everything. Mr. Hasko stated staff does not have a contract for this specific re-design and therefore has not had the opportunity to discuss the fee structure with the architect and discuss the overall scope. Mr. Hasko stated based on what was formally proposed they understand the revisions that need to be made to make it work. Mr. Eliopoulos stated we need to make sure that we make sure that we get good guidance for EPOCH and professionals that are going to give them numbers that we can live with.

**Clifford Durden, 702 East Chatelaine Boulevard, Delray Beach, FL 33445**, stated a couple of months ago EPOCH gave the Commission a report indicating the strategies and also the ways and means that they were using to substantiate the financial situation with EPOCH. Mr. Durden stated the Commission seemed to be very satisfied with that information and that EPOCH was on the right track. He stated what bothers him is seemingly an underlying concern about whether EPOCH is able to carry out the functions the way that the Commission sees they ought to after they have demonstrated that they are capable of doing that.

Mayor McDuffie stated as he understands it to preserve the \$250,000.00 the Commission needs to commit to the \$310,000.00. Mr. Hasko stated a total of \$310,000.00 must be provided to supplement that. Mayor McDuffie asked when does the grant expire if the City does not come up with \$310,000.00. Mr. Hasko stated the grant terms require a contract for construction be awarded 12 months from the date of execution by the County and that the construction is complete and the facility opens for its intended purpose in 24 months after that date. Mayor McDuffie asked if the contract has been executed by the County. Mr. Hasko stated the contract has not been executed by the County. Mayor McDuffie expressed concern that there is \$250,000.00 in grant money that is sitting there with an expiration date and if the City does not move on this very quickly that we could lose that money. In addition, Mayor McDuffie expressed concern about the fact that we are looking at \$310,000.00 which represents about half of what we negotiated with the Fire-Rescue Department in savings. He stated there is also

concern on behalf of the CRA for their \$155,000.00 and believes it is all contingent upon a business plan. Mayor McDuffie stated he would like to see the business plan and many of things that were mentioned by the CRA.

Ms. Fulton stated this bond referendum and facility bond that EPOCH was honored with was in 2002. From 2002 until October of this past year, the County has been working with EPOCH to ensure that they are in a position to execute the \$250,000.00. Ms. Fulton stated they have been extremely patient with them to go through the process and was excited about the fact that the City was making strong considerations as far as moving forward the \$310,000.00 and \$250,000.00 to guarantee. She stated what she has done in working with their existing architect was to ensure that whatever amount of dollars is needed in order to construct this new construction of the C. Spencer Pompey amphitheater that they cannot exceed one penny over the \$560,000.00 for the project.

Mrs. Gray stated one of the County Commissioners contacted her to ask her about this project and they are waiting to get a response for the City and making sure that the City is going to be moving forward. Mrs. Gray stated as Ms. Fulton stated they are looking to give the dollars to someone else if something is not decided soon.

Mayor McDuffie stated typically the City gets a date on a grant that says if you do not do this by this time you are going to lose this grant not something that says hurry up because we are not going to hold it much longer. Mayor McDuffie reiterated that he does not understand why we do not have a date certain from the County that says this grant is good for this period of time and if you do not achieve these goals by that period of time then we are going to take the grant away from you. Mr. Hasko stated the original \$250,000.00 grant expired in October 2010 and at the time the County would have been within their rights to reallocate that money to other requesters. However, Mr. Hasko stated they have been working with EPOCH since before that time to try and bring the project to a point where the required funding would come together. Mr. Hasko stated EPOCH has been working with the County to re-establish the grant so that baseline that dictates what those timeframes are would start when it goes back to the County and they approve it and from that point it is a two-year period the first year of which the City would have to have the contract for construction awarded and then the second year of which we would have to have construction built.

Mayor McDuffie stated if the Commission approves this tonight they have approved the fact that the City is going to spend \$310,000.00. If the Commission approves this at such time that the consulting work is done and the business plan is done, Ms. Colonna has indicated that the CRA may kick in \$155,000.00 or half of that; however, the City does not have any assurance of that tonight. Mayor McDuffie asked how much time does the City need to allot for the consulting work and the business plan to get done so that at such time the City has information that satisfies the requirements of the CRA and information that satisfies the City that the business plan is there and the revenue streams are there to support it.

**Mark Reingold, 107 MacFarlane Drive #204, Delray Beach, FL 33483 (EPOCH Board member)**, stated the property is City owned and whatever improvements are made on that property will belong to the City and is managed by the Spady Museum. Mr. Reingold stated the County bond was given to EPOCH so they must be the party to the agreement to produce the \$250,000.00 that is sitting there waiting to be spent. However, Mr. Reingold stated EPOCH does not have to be the party that puts this deal together; EPOCH can stick to the business of running a museum and programs.

Mayor McDuffie stated ownership is not the issue but from what he sees there is a good plan sitting there and all the City is asking is to bring the results that they get from working the plan back to the City so that everyone has the information to base spending the money. Mayor McDuffie stated he would love to see this built and supports the project.

Mr. Frankel stated he needs to see more information.

Mrs. Gray asked when the strategic planning will begin. Ms. Fulton stated the strategic planning workshops will start next month; however, the consultants work is not complete until July.

Mr. Fetzer stated he is a strong supporter of EPOCH; however, there are some unanswered questions.

Mr. Eliopoulos stated the City needs to have a procedure in place so it does not appear that the Commission is being selective. He stated this is about being consistent and being able to say this is why we support something and informing people to fill out the criteria that staff asks every organization to complete.

Mr. Eliopoulos moved to table this item to March 15, 2011, seconded by Mr. Frankel. 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.

At this point, the time being 7:16 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

**10. PUBLIC HEARINGS:**

**10.A. ORDINANCE NO. 03-11:** Privately initiated rezoning from Agricultural (A) District to Professional and Office (POD) District for a 2.09 acre vacant parcel of land located on the north side of West Atlantic Avenue, west of High Point Boulevard and the Delray Garden Center. (*Quasi-Judicial Hearing*)

The caption of Ordinance No. 03-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND PLACING LAND PRESENTLY ZONED AGRICULTURAL (A) DISTRICT TO PROFESSIONAL AND OFFICE (POD) DISTRICT; SAID LAND BEING A PARCEL LOCATED ON THE NORTH SIDE OF WEST ATLANTIC AVENUE APPROXIMATELY 360 FEET WEST OF HIGH POINT BOULEVARD, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "ZONING MAP OF DELRAY BEACH, FLORIDA, OCTOBER 2009"; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 03-11 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.

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

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

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Frankel stated he is a patient of Dr. Craig Spodak and spoke to him. Mr. Eliopoulos, Mrs. Gray, Mayor McDuffie, and Mr. Fetzer had no ex parte communications to disclose.

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-035 into the record.

Mr. Dorling stated this is a privately sponsored rezoning from Agricultural (A) District to Professional and Office (POD) District for a 2.09 acre vacant parcel of land located on the north side of West Atlantic Avenue, west of High Point Boulevard and the Delray Garden Center. Mr. Dorling stated this is the new location of Spodak Dental office building.

At its meeting of January 24, 2011, the Planning and Zoning Board held a public hearing and no one from the public spoke and the Board recommended 4 to 0 in favor.

At its meeting of February 15, 2011 (first reading), the City Commission recommended approval.

Michael Weiner, Weiner & Lynne, P.A., 10 S.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444, speaking on behalf of the applicant, this rezoning meets the Code for the City of Delray Beach as well as the Comprehensive Plan with respect to a rezoning.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

There was no rebuttal or cross-examination.

Mr. Eliopoulos moved to adopt Ordinance No. 03-11 on Second and FINAL Reading, seconded by Mr. Frankel. 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.

At this point, Mr. Weiner complimented Estelio Breto, Paul Dorling, and Ashlee Vargo who did a nice job on moving this forward and making something happen on Atlantic Avenue in Delray Beach.

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

**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. Marie Victorin, 5195-I West Atlantic Avenue, Delray Beach, FL 33484, owner of Magic Beauty Hair and Dance d/b/a/ Hair/Spa Dance,** stated she submitted a plan for a small business and expressed concern that it took a month to obtain a permit to open the business.

Mayor McDuffie asked Ms. Victorin if she has applied for a building permit or a business license. Ms. Victorin stated she already has a business license for her business at the northwest corner of Atlantic Avenue and Military Trail. Ms. Victorin stated this building used to be a part of the County but last month she received a letter from her landlord telling her that the City of Delray Beach now owns the building.

**11.B.2. Christina Morrison Pearce, 2000 South Ocean Boulevard #307, Delray Beach, FL 33483,** distributed the Hometown Connection and referred to the pie charts regarding where the money comes from and where the money goes. Ms. Pearce thanked the Commission for doing a wonderful job in keeping the City's expenses low in this horrible economy. She stated the Parks and Recreation expense has increased yearly even while we are decreasing expenses for other vital services including public safety. In

addition, Ms. Pearce stated the 14% of the City budget that we do spend on Parks and Recreation does not reflect the loss of real estate tax revenue for these park areas since these properties are City owned and not tax generating. Ms. Pearce stated now there is a proposal being circulated for the City and CRA to buy more property along South Federal Highway for more parks. If this happens this would further shrink the City's tax base since these valuable properties would no longer be subject to real estate taxes the City's main source of revenue. Ms. Pearce stated the City needs to be finding new revenues not shrinking the tax base and increasing the City budget with new parks. Ms. Pearce stated if the City and/or the CRA have extra funds to buy parks or for new parks she suggested to spend those funds to beautify and improve our beach area. She stated the beach residents pay the highest amount of taxes per property in the City and feels the City should use the ideas that were recently submitted to the City by the Charrette that was done and really enhance the most valuable park, the beach, instead of spending money to reduce our tax base and adding more parks.

Mayor McDuffie stated there is a fundraiser at Old School Square on March 10, 2011 for the Beach Master Plan and the cost is \$100.00 a ticket.

At this point, the time being 7:39 p.m., the Commission moved to **Item 9.D.**

**9.D. RECONSIDERATION OF CREATIVE CITY COLLABORATIVE (CCC) REQUEST TO WAIVE COSTS:** Decide whether to reconsider a request from the Creative City Collaborative to waive reimbursement to the City for printing and mailing costs, estimated to be \$4,170.00 for three (3) quarters, to include a solicitation in utility bills for voluntary donations to cultural programs.

Mr. Eliopoulos stated the way this was presented at the last meeting was that the Creative City Collaborative (CCC) was not prepared to present last time and they had additional information that they wanted to bring to the Commission for review again.

The City Attorney stated the way this is presented on the Agenda we are only dealing with the reconsideration so if that passes tonight then the Commission could reconsider it at the next Commission meeting.

Mr. Eliopoulos moved to reconsider hearing this request from the Creative City Collaborative (CCC) to a date certain of March 15, 2011, 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.E. APPOINTMENT TO THE PARKING MANAGEMENT ADVISORY BOARD:** Appoint one (1) Citizen-at-Large Representative to the Parking Management Advisory Board to serve an unexpired term ending July 31, 2011. Based upon the rotation system, the appointment will be made by Commissioner Fetzer (Seat #2).

Mr. Fetzer moved to appoint Mel Pollack as a Citizen-at-Large Representative on the Parking Management Advisory Board to serve an unexpired term ending July 31, 2011, seconded by Mr. Eliopoulos. 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.F. APPOINTMENT TO THE CODE ENFORCEMENT BOARD:** Appoint one (1) regular member to the Code Enforcement Board to serve an unexpired term ending January 14, 2012. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray moved to reappoint David Boone to the Code Enforcement Board as a regular member to the Code Enforcement Board to serve an unexpired term ending January 14, 2012, seconded by Mr. Frankel. 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 7:42 p.m., the Commission moved to **Item 12, First Readings.**

**12. FIRST READINGS:**

**12.A. ORDINANCE NO. 07-11:** Consider repealing Ordinance No. 40-10 regarding proposed revisions to the Charter of the City of Delray Beach. If passed, a public hearing will be held on March 15, 2011.

The caption of Ordinance No. 07-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REPEALING ORDINANCE 40-10 REGARDING PROPOSED CHANGES TO THE DELRAY BEACH CHARTER; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 07-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. The City Attorney stated the City Commission previously adopted Ordinance No. 40-10 that dealt with some changes to the Charter regarding term limits for Commissioners and due to the fact that the City did not have an election the Commission decided to not have that on the ballot. The City Attorney stated since that ordinance is out there we need to go ahead and repeal that and if they want this same issue to be placed on the ballot again then they can do that in the fall of this year as well.

Mr. Frankel moved to approve Ordinance No. 07-11 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Fetzner – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

**12.B. ORDINANCE NO. 08-11:** Consider approval to amend Chapter 112, “Alarm Systems”, by amending Sections 112.20, “Application For Alarm Registration; Reporting Changes To Required Information; Renewal”, and 112.21, “Alarm Registration Required; Penalty For Failure To Register”, to provide that renewals shall be filed by May 1st each year and to clarify registration requirements for fire alarms. If passed, a public hearing will be held on March 15, 2011.

The caption of Ordinance No. 08-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 112, “ALARM SYSTEMS”, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTIONS 112.20, “APPLICATION FOR ALARM REGISTRATION; REPORTING CHANGES TO REQUIRED INFORMATION; RENEWAL” AND 112.21, “ALARM REGISTRATION REQUIRED; PENALTY FOR FAILURE TO REGISTER” TO PROVIDE THAT RENEWALS SHALL BE FILED BY MAY 1 EACH YEAR AND TO CLARIFY REQUIREMENTS FOR BURGLAR/FIRE ALARMS; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 08-11 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance.

Lula Butler, Director of Community Improvement, stated on January 4, 2011, the City Commission approved Ordinance No. 44-10 and this is being brought before the Commission this evening because the Fire-Rescue Department wanted to clarify that with regard to fire alarms instead of having to register upon one false alarm they have to register upon notice from the Fire Department. Secondly, Mrs. Butler stated the renewal date for this year is changing from March 1<sup>st</sup> to May 1<sup>st</sup> because of the software delivery and when it is going to be ready. Staff recommends approval of the amendment to this ordinance.

Mr. Frankel moved to approve Ordinance No. 08-11 on FIRST Reading, 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.

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

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

**13.A. City Manager**

The City Manager stated the Palm Beach County League of Cities met last Wednesday and he signed an agreement to serve again on the Board if he is nominated for that as Large City representative. The Nominating Committee is Ken Schultz from Town of Hypoluxo, Dave Stuart from Town of Lantana, and Carmine Priore from Wellington. The School District asked for the League to set up an Academic Advisory Committee and Commissioner Peggy Cook from Mangonia Park was appointed to represent the League on that Committee. The City Manager stated the next League Meeting is in Wellington on Wednesday, March 30, 2011.

**13.B. City Attorney**

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

**13.C. City Commission**

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

Mr. Frankel stated the Tennis Tournament was amazing and the record attendance was great. He commended Rosanne DeChicchio and Elizabeth Butler stating they spent countless hours manning the booth. Mr. Frankel stated whoever did the new television ads for the City of Delray Beach that ran on the tennis channel did a great job and it was a vast improvement over the ones he saw in previous years.

Secondly, Mr. Frankel asked what the status is with regard to the sidewalk cafés and noted that some of these sidewalk cafés are overstepping their bounds. He stated especially on a weekend where there was a lot of pedestrian activity downtown and it was difficult to maneuver around.

Lastly, Mr. Frankel stated he appreciates the condolences he received about his grandmother's passing away and apologized for missing the last meeting.

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

Mrs. Gray stated this morning she attended the Chamber's Breakfast – "Meet the new Commish" and it was very nice and well attended. She congratulated Mr. Carney for doing an awesome job with answering some hard questions.

Secondly, Mrs. Gray stated she attended the Tennis Tournament and it was great.

Mrs. Gray thanked the Creative City Collaborative (CCC) for their series on Black History Month this month at the new plaza on S.W. 5<sup>th</sup> Avenue and Atlantic Avenue.

Mrs. Gray stated she attended the Diaspora Awards this weekend given by Jane Tolliver and noted approximately 500 people were present. She stated the Delray Beach American Little League was honored along with Jazmin Tolliver from Village Academy.

Mrs. Gray thanked the City Manager for the blinking lights at Village Academy.

Lastly, Mrs. Gray asked if there is a reason that the public hearings have to be held at 7:00 p.m. The City Manager stated prior to 1990 Commission meetings started at 7:00 p.m. and frequently ran past midnight so when the new Commission was seated in 1990 and set the rules they decided to start the meetings at 6:00 p.m. The City Manager stated there was a lengthy discussion about whether working people could get here for a 6:00 p.m. hearing. Therefore, the City Manager stated they decided to start the meetings at 6:00 p.m. but not start public hearings until 7:00 p.m. so that people would have time to get off work and clean up and get here for the hearing.

The City Attorney stated in order to make a change the Commission would have to make a change to the local rules. The City Clerk stated the local rules is an item every year at the Organizational Meeting and this would be the time the Commission would discuss any changes.

**13.C.3.**      **Mr. Eliopoulos**

Mr. Eliopoulos concurred with his fellow Commissioners that the Tennis Tournament was quite successful and the weather was phenomenal. He stated it started out with the Creative City Collaborative (CCC) Arts Garage Opening at Old School Square and it was a great turnout.

Secondly, Mr. Eliopoulos commented on the tragedy in Delray Beach where we lost Sergeant Adam Rosenthal and stated thoughts and prayers are with the Rosenthal family.

**13.C.4.**      **Mr. Fetzer**

Mr. Fetzer expressed his condolences to Sergeant Rosenthal's Family.

**13.C.5. Mayor McDuffie**

Mayor McDuffie stated the reception that was held in the new arts garage for John McEnroe was a tremendous success and the press coverage was amazing this year. He stated the tennis in the street was a hoot. Mayor McDuffie stated there was a contingent of people from South America in the stands supporting tennis player Juan Martin del Potro. Mayor McDuffie stated this is the first time he has seen that level of support for anyone who has played in the tennis stadium.

Secondly, Mayor McDuffie stated someone complained to him about the new light that the City erected in front of Worthing Place.

Mayor McDuffie stated the noise issues at Deck 84 have gotten better but the people at Worthing Place are complaining about the noise from Johnnie Brown's.

The City Manager stated there are four establishments that are causing problems. He stated Code Enforcement and the Police Department had a meeting yesterday about how they want to approach them. The City Manager stated they will be giving out citations and taking some aggressive action to try and to get it solved.

Mayor McDuffie stated this morning there was a complimentary speech given to Mr. Eliopoulos from DELPAC (Political Action Committee). Mayor McDuffie stated the Commission is going to hate to see Mr. Eliopoulos go and thanked him for his service to this community and stated he has done a tremendous job.

Mayor McDuffie stated on Thursday, March 3, 2011, City Oyster will hold Celebrity Bartending Night from 5:30-7:30 p.m. to benefit the Juvenile Diabetes Research Foundation and he will be one of the celebrity bartenders. Mayor McDuffie stated Mr. Fetzer is doing a fundraiser for CROS Ministries the same evening at Old School Square.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:59 p.m.

  
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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 March 1, 2011, which Minutes were formally approved and adopted by the City Commission on March 15, 2011.



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City Clerk

**NOTE TO READER:**

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

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