

City of Delray Beach

Regular Commission Meeting

*****AGENDA RESULTS*****



RULES FOR PUBLIC PARTICIPATION

1. PUBLIC COMMENT: The public is encouraged to offer comments with the order of presentation being as follows: City Staff, public comments, Commission discussion and official action. City Commission meetings are business meetings and the right to limit discussion rests with the Commission. **Generally, remarks by an individual will be limited to three minutes or less.** The Mayor or presiding officer has discretion to adjust the amount of time allocated.

Tuesday February 17, 2009

Regular Meeting 6:00 p.m.
Public Hearings 7:00 p.m.
Commission Chambers
Delray Beach City Hall

- A.** Public Hearings: Any citizen is entitled to speak on items under this section.
- B.** Comments and Inquiries on Non-Agenda Items from the Public: Any citizen is entitled to be heard concerning any matter within the scope of jurisdiction of the Commission under this section. The Commission may withhold comment or direct the City Manager to take action on requests or comments.
- C.** Regular Agenda and First Reading Items: Public input on agendaed items, other than those that are specifically set for a formal public hearing, shall be allowed when agreed by consensus of the City Commission.

2. SIGN IN SHEET: Prior to the start of the Commission Meeting, individuals wishing to address public hearing or non-agendaed items should sign in on the sheet located on the right side of the dais. If you are not able to do so prior to the start of the meeting, you may still address the Commission on an appropriate item. The primary purpose of the sign-in sheet is to assist staff with record keeping. Therefore, when you come up to the podium to speak, please complete the sign-in sheet if you have not already done so.

3. ADDRESSING THE COMMISSION: At the appropriate time, please step up to the podium and state your name and address for the record. All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Commission shall be barred by the presiding officer from speaking further, unless permission to continue or again address the Commission is granted by a majority vote of the Commission members present.

APPELLATE PROCEDURES

Please be advised that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record includes the testimony and evidence upon which the appeal is based. The City neither provides nor prepares such record.

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The City will furnish auxiliary aids and services to afford an individual with a disability an opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the City. Contact Doug Smith at 243-7010, 24 hours prior to the event in order for the City to accommodate your request. Adaptive listening devices are available for meetings in the Commission Chambers.

1. **ROLL CALL.**
2. **INVOCATION.**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG.**
4. **AGENDA APPROVAL.** (Mayor Ellis noted Additional information for Item 9.D., Atlantic Plaza II/Abandonment and Relocation of N.E. 7th Avenue and Abandonment of Alleyways; Staff requested to move Item 9.E., Bid Protest/Westway Towing Inc., to Regular Agenda as Item 9.A.A.; Item 9.E.1., Contract award to Beck's Towing & Recovery, Inc., was added to Regular Agenda by addendum and became Item 9.A.A.A.; Item 8.L., Review of Appealable Land Development Board Actions, Historic Preservation Board Item #2, was moved to the Regular Agenda as Item 9.A.A.A.A. Approved as amended, 5-0).
5. **APPROVAL OF MINUTES:**
 - A. January 27, 2009 – Annual Citizen's Roundtable Meeting (Approved, 5-0)
 - B. February 3, 2009 – Regular Meeting (Approved, 5-0)
 - C. February 10, 2009 – Special/Workshop Meeting (Approved, 5-0)
6. **PROCLAMATIONS:**
 - A. None
7. **PRESENTATIONS:**
 - A. Site Plan Review and Appearance Board (SPRAB) Awards
8. **CONSENT AGENDA:** City Manager Recommends Approval. (Approved as amended, 5-0)
 - A. **CONTRACT CLOSEOUT (C.O. NO. 1/FINAL) McCABE BROTHERS CONSTRUCTION, INC./ATLANTIC DUNES PARK BOARDWALK REHABILITATION:** Approve a Contract Closeout (Change Order No. 1/Final) in the amount of a \$3,205.00 decrease and final payment in the amount of \$19,677.10 to McCabe Brothers Construction, Inc. for completion of the Atlantic Dunes Park Boardwalk Rehabilitation Project. Funding is available from 334-4170-572-63.48 (General Construction Fund/Improvements Other/Atlantic Dunes Boardwalk).
 - B. **AMENDMENT TO PARKING LICENSE AGREEMENT/CAFFE LUNA ROSA:** Approve an amendment to the Parking License Agreement between the City and Caffe Luna Rosa, Inc. reducing the number of parking spaces from forty (40) to twenty (20) and reassigning the associated parking lots.
 - C. **APPROVAL OF POLL WORKERS FOR THE FIRST NONPARTISAN ELECTION:** Approve the poll workers for the First Nonpartisan Election to be held on March 10, 2009.

- D. **FUNDING AGREEMENT/COMMUNITY REDEVELOPMENT AGENCY (CRA)/ECONOMIC DEVELOPMENT DIRECTOR:** Approve a Funding Agreement between the City and the CRA for funding of the Economic Development Director position. Funding is available from 001-6311-559-82.01 (General Fund/Aid to Private Organization/Economic Development Support).
- E. **AGREEMENT/PALM BEACH COUNTY/DELRAY ROCKS FOOTBALL AND CHEERLEADING ANNUAL TRIP:** Approve an Agreement with Palm Beach County for reimbursable funding, not-to-exceed \$3,600.00, through the Recreation Assistance Program (RAP) for the Delray Rocks football and cheerleaders annual end of the year trip.
- F. **INTERLOCAL AGREEMENT/COMMUNITY REDEVELOPMENT AGENCY (CRA)/COMPREHENSIVE PARKING STUDY:** Approve an Interlocal Agreement between the City and Community Redevelopment Agency (CRA) for funding of a Comprehensive Parking Study to review and analyze parking lot utilization and public parking inventories within the City; Community Redevelopment Agency (CRA) will fund 75% or \$100,000.00 of the cost, whichever is less, and the City will pay the balance.
- G. **LICENSE AGREEMENT/EASTER SUNRISE SERVICE:** Approve a license agreement with St. John Primitive Baptist Church for use of the Tennis Stadium and Tennis Center site for an Easter Sunrise Service to be held on Sunday, April 12, 2009 from 6:00 a.m. to 9:00 a.m.; and waiver of the site rental fee, contingent on the receipt of a hold harmless agreement.
- H. **REQUEST FOR SUBORDINATION/JOAN A. JOHNSON:** Authorize and approve a request for the City to subordinate its second mortgage position in the amount of \$17,000 to allow Joan A. Johnson to refinance her mortgage and to waive the current subordination policy to allow refinancing.
- I. **DISASTER RECOVERY INITIATIVE (DRI)/HOUSING REHABILITATION GRANT/CONTRACT AWARDS:** Approve two (2) Housing Rehabilitation grant awards to the lowest responsive bidders for the following projects: 915 S.W. 2nd Avenue to South Florida Construction Services in the amount of \$34,764.20 and 228 S.W. 1st Avenue to Haywood Construction in the amount of \$38,684.55. Funding is available from 118-1960-554-49.19 (Neighborhood Services/Other Current Charges/Housing Rehabilitation).
- J. **CONTRACT ADDITION (C.O. NO. 1)/WEST CONSTRUCTION, INC./MILLER PARK IMPROVEMENTS:** Approve Contract Addition (C.O. No. 1) in the amount of \$4,326.84 to West Construction, Inc. for the removal and relocation of fifteen (15) parrot nests from the sports lighting poles at Miller Park, for the Miller Park Improvements. Funding is available from 334-4173-572-63.90 (General Construction Fund/Improvements Other/Other Improvements).

K. **PROJECT AGREEMENT AMENDMENT/F.I.N.D./DELRAY INTRACOASTAL PARK:** Approve a Project Agreement Amendment between the City and Florida Inland Navigation District (F.I.N.D.) to amend Exhibit B of the Project Agreement for Mangrove Park.

L. **(MOVED TO ITEM 9.A.A.A. ON THE REGULAR AGENDA)**

M. **AWARD OF BIDS AND CONTRACTS:**

1. Bid award to Close Construction, Inc. in the amount of \$633,527.00 for construction of the Beach Area Reclaimed Water In-Line Booster Station project. Funding is available from 441-5181-536-65.96 (Water and Sewer Fund/Other Improvements/Reclaimed Water Transmission).
2. Bid award to multiple vendors for the purchase of road construction materials for the City via a Co-op Bid in an estimated annual cost of \$250,000.00. Funding is available from various departments' operating expense budgets and capital project accounts.
3. Bid award to multiple vendors (lowest responsive bidders) for the purchase of medical and drug supplies for the Fire Department via a Co-op Bid in an estimated annual cost of \$160,000.00. Funding is available from 001-2315-526-52.20 (General Fund/Operating Supplies/General Operation Supplies).
4. Contract award to Chaz Equipment Company, Inc. in the amount of \$130,175.00 for the emergency repair of sanitary Lift Station #56-A, located in the Hamlet Subdivision off West Atlantic Avenue. Funding is available from 442-5178-536-63.51 (Water and Sewer Renewal and Replacement Fund/Improvements Other/Sewer Mains).
5. Lease award to Enterprise Leasing Company in the total annual amount of \$51,408.00 for a twelve (12) month lease of six (6) vehicles for the Vice, Intelligence, and Narcotics (VIN) Unit of the Police Department. Funding is available from 001-2115-521-44.40 (General Fund/Vehicles).

9. **REGULAR AGENDA:**

A.A. **BID PROTEST/WESTWAY TOWING INC.:** Consider a bid protest filed by Westway Towing Inc. regarding wrecker/towing services for the Police Department; Request for Proposal (RFP) No. 2009-06. ***(Quasi-Judicial Hearing)*** ***(Motion to approve; Approved, 3-2; Commissioner Bernard and Commissioner McDuffie dissenting)***

A.A.A. Contract award to Beck's Towing & Recovery, Inc. with annual franchise fees to be paid to the City in the amount of \$162,400.00 for wrecker/towing services for the Police Department. ***(Addendum)*** ***(Quasi-Judicial Hearing)*** ***(Motion to approve; Approved, 4-1; Commissioner Bernard dissenting)***

- A.A.A.A. **REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period February 2, 2009 through February 13, 2009. (Commissioner Eliopoulos declared that he was previously the architect for 238 S.E. 7th Avenue under Historic Preservation Board (HPB) Item #2. Motion to receive and file report; Approved, 5-0)
- A. **WAIVER REQUESTS/TASTE RESTAURANT:** Consider two (2) waiver requests, one to Land Development Regulation (LDR) Section 4.6.16(H)(3)(J), “New Multiple Family, Commercial, and Industrial Development”, which requires a five (5) foot wide landscape island at the end of a ten (10) space parking row, and the other to Land Development Regulation (LDR) Section 4.6.14(A)(1), “Visibility at Intersections”, which requires that a 20’ sight triangle is provided at the intersection of the handicap parking space and the east alley driveway in association with the Taste Restaurant located at 169-171 N.E. 2nd Avenue. (*Quasi-Judicial Hearing*) (Motion to adopt Board Order as presented; Approved, 5-0)
- B. **WAIVER REQUEST/LAKE DELRAY ELDERLY APARTMENTS:** Consider a waiver request to Land Development Regulations (LDR) Section 4.3.3(OO)(1)(F), “Generators”, to allow generator operation for not less than two (2) hours instead of not less than 120 hours for five (5) generators to be located within the Lake Delray Elderly Apartments complex located at 600 Lindell Boulevard. (*Quasi-Judicial Hearing*) (**WITHDRAWN** due to a request from the applicant)
- C. **WAIVER REQUEST/SAVOR THE AVENUE:** Consider a waiver request to Land Development Regulations (LDR) Section 4.6.7(F)(3)(f), “Special Event Non-Roadway Banner Signing”, to allow banners to be hung more than fourteen (14) days prior to Savor the Avenue being held March 26, 2009. (*Quasi-Judicial Hearing*) (Motion to adopt Board Order as presented; Approved, 5-0)
- D. **ATLANTIC PLAZA II/ABANDONMENT AND RELOCATION OF N.E. 7TH AVENUE AND ABANDONMENT OF ALLEYWAYS:** Consider approval of the attached agreements and easements regarding the abandonments and relocation of N.E. 7th Avenue between N.E. 1st Street and East Atlantic Avenue and the east-west and north-south alleyways lying east of N.E. 6th Avenue and north of East Atlantic Avenue. (*Quasi-Judicial Hearing*)
1. **AGREEMENTS FOR THE ABANDONMENT AND RELOCATION OF N.E. 7TH AVENUE:** Consider approval of the Agreement for the Abandonment and Relocation of N.E. 7th Avenue related to the Atlantic Plaza II project. The abandonment agreement provides for an easement for public access to the City over the existing 7th Avenue as well as an easement for public access over a relocated 7th Avenue as well as other agreements setting forth the rights of the City and Owner. (Motion to approve, Approved 5-0) (Motion to approve as stated by City Attorney; Approved, 5-0)

2. **AGREEMENTS FOR THE ABANDONMENT OF THE ALLEYS:** Consider approval of the Agreement for the Abandonment of the north/south and east/west alleys related to the Atlantic Plaza II project. The abandonment agreement provides for an easement for public access and utilities to the City over the existing alleys for a period of time until the existing utilities located in the alleys are relocated and access through the alleys are no longer necessary. (Motion to approve as stated by the City Attorney, Approved 5-0)
 3. **RESOLUTION NO. 08-09/ATLANTIC PLAZA II/RIGHT OF ABANDONMENT:** Consider approval of a Right of Abandonment of a 0.55 acre rectangular shaped portion of N.E. 7th Avenue and two alleys totaling 0.27 acres within Block 116 (Town of Linton Plat) in conjunction with the Atlantic Plaza II development, located between Atlantic Avenue and N.E. 1st Street, east of N.E. 6th Avenue (Northbound Federal Highway) and consideration of a waiver to the minimum street-jog offset distance as specified in LDR Section 6.1.2(C)(2)(d). (Motion to approve Resolution No. 08-09 based on making findings regarding the requirement of abandonments and subject to Conditions 1-5 in staff memo; Approved, 5-0)
- E. **(MOVED TO ITEM 9.A.A. ON THE REGULAR AGENDA)**
1. **(MOVED TO ITEM 9.A.A.A. ON THE REGULAR AGENDA)**
- F. **STATE LEGISLATIVE PRIORITIES FOR 2009:** Consider the proposed 2009 State Legislative Priorities for the City. (Consensus of Commission to accept priorities as listed by staff)
- G. **HOFFERT v. CITY OF DELRAY BEACH/OFFER OF PAYMENT OF COURT COSTS:** Consider approval of a payment by the City in the amount of \$15,000.00 in Hoffert v. City of Delray Beach for court costs and final resolution of the case upon the conditions of dismissal of the appeal and the receipt of appropriate releases. (Approved subject to staff recommendations, 5-0)
- H. **PROPOSAL FOR SETTLEMENT IN HEATHER LEITCH v. CITY OF DELRAY BEACH:** Consider a Proposal for Settlement in the amount of \$35,000.00 in Heather Leitch v. City of Delray Beach. Staff recommends denial of the proposal for settlement. (Motion to approve; Denied, 5-0)
- I. **NOTICE OF CLAIM FILED/DORIS NYDELL v. CITY OF DELRAY BEACH:** Consider a Notice of Claim in the amount of \$50,000.00 filed by Doris Nydell v. City of Delray Beach and Florida East Coast Railway (FEC); and authorize the City to work with Florida East Coast Railway (FEC) to install sidewalks on N.E. 2nd Avenue and Atlantic Avenue. Staff recommends denial of claim. (Motion to approve; Denied, 5-0)

- J. **REQUEST FOR SIDEWALK DEFERRAL/200 MARINE WAY:** Consider approval of a request to defer the installation of a sidewalk in front of 200 Marine Way. (Commissioner Eliopoulos declared a Conflict of Interest and left dais. Approved, 4-0)
- K. **APPOINTMENT TO THE CODE ENFORCEMENT BOARD:** Appoint one (1) alternate member to the Code Enforcement Board to serve an unexpired term ending January 14, 2010. Based upon the rotation system, the appointment will be made by Commissioner Bernard (Seat #4). (Commissioner Bernard's appointment was DEFERRED to the March 3, 2009 Regular Commission Meeting)
- L. **APPOINTMENT TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE:** Appoint one (1) regular member to the Affordable Housing Advisory Committee to serve a partial term ending July 31, 2009. Based upon the rotation system, the appointment will be made by Commissioner Eliopoulos (Seat #1). (Appointed Perry Rohan and approved, 5-0)
- M. **APPOINTMENT TO THE DELRAY BEACH HOUSING AUTHORITY:** Appoint one (1) regular member to the Delray Beach Housing Authority to serve an unexpired term ending July 14, 2010. Based upon the rotation system, the appointment recommendation will be made by Commissioner Bernard (Seat #4). (Commissioner Bernard's appointment was DEFERRED to the March 3, 2009 Regular Commission Meeting)
10. **PUBLIC HEARINGS:**
- A. **ORDINANCE NO. 06-09 (FIRST READING/FIRST PUBLIC HEARING):** Consider an ordinance providing for the reclassification of twenty (20) properties in the Marina Historic District. If passed, a second public hearing will be held on March 3, 2009. (Motion to approve Ordinance No. 06-09 (Version 2) which is a denial of Version 1; Approved, 5-0)
- B. **ORDINANCE NO. 07-09 (FIRST READING/FIRST PUBLIC HEARING):** A city initiated amendment to the Land Development Regulations (LDR) Section 4.4.9 (G), "Supplemental District Regulations", and Section 4.4.13 (G) (1), "Central Core and Beach Area Supplemental Regulations", to change the parking requirements for business and professional offices within certain portions of these zoning districts. If passed, a second public hearing will be held on March 3, 2009. (Approved, 5-0)
- C. **ORDINANCE NO. 08-09:** City initiated amendment to the Land Development Regulations (LDR) Section 2.4.3(K)(1)(bb), "Single Family Overlay District Site Plan Review", to increase the application processing fee for Single Family Overlay District Site Plan Review Applications and associated renaming to North Beach/Seagate and Ocean Neighborhood Overlay District Review. (Approved, 5-0)

- D. **ORDINANCE NO. 09-09:** An ordinance amending Section 96.03, “Establishment of Limits In Which Bulk Storage Of Liquefied Petroleum Gases To Be Restricted”, Section 96.05, “Fire Hydrants”, Section 96.16, “Certain Codes Adopted By Reference”, and Section 96.46, “Above Ground Installation”, to update the City’s Code of Ordinances in order to reflect recent changes in the Fire Prevention Code Standards.
(Approved, 5-0)

11. **COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS FROM THE PUBLIC- IMMEDIATELY FOLLOWING PUBLIC HEARINGS.**

- A. City Manager's response to prior public comments and inquiries.
- B. From the Public.

12. **FIRST READINGS:**

- A. None

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

- A. City Manager
- B. City Attorney
- C. City Commission

POSTED: FEBRUARY 13, 2009

******* Meeting adjourned at 10:48 p.m. *******