

JULY 1, 2008

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Rita Ellis in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, July 1, 2008.

1. Roll call showed:

Present - Commissioner Gary P. Eliopoulos
Commissioner Fred B. Fetzer
Commissioner Woodie McDuffie
Commissioner Brenda B. Montague
Mayor Rita Ellis

Absent - None

Also present were - David T. Harden, City Manager
Brian Shutt, Assistant City Attorney
Susan A. Ruby, City Attorney
Lanelda D. Gaskins, Acting Deputy City Clerk

2. The opening prayer was delivered by Dr. Gary Guerrier with the First Baptist Church.

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

4. **AGENDA APPROVAL.**

Mayor Ellis stated there is additional information for **Item 9.N., Appointment to the Green Task Force.** She noted the addition of **Item 6.C., A Proclamation Recognizing Sister Cities Ambassadors – Ngozi and Rhonda Mensah** and **Item 9.O., Status Report and Direction/Old School Square Retail Space** by addendum.

The City Attorney requested that **Item 9.G., Contract/Preferred Seating, Inc.** be removed from the Agenda because there has been a filing and bankruptcy and staff cannot take any action in this particular matter.

Mr. Fetzer moved to approve the Agenda as amended, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – 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 Regular Meeting of June 8, 2008, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

Mr. McDuffie moved to approve the Minutes of the Special/Workshop Meeting of June 10, 2008, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Montague moved to approve the Minutes of the Regular Meeting of June 17, 2008, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. Recognizing Pompey Park Travel Basketball Team and Coaches

Mayor Ellis read and presented a proclamation hereby recognizing and commending **The 11 and under team coaches: Head Coach Kevin Huggins and Assistant Coach Lorenzo Penn; the 12 and under team coaches: Head Coach Mark Roseme, Assistant Coach Steve Rifkin, Assistant Coach Jason Floyd; and the players for both teams.** The Travel Basketball Team came forward to accept the proclamations.

6.B. Parks and Recreation Month – July 2008

Mayor Ellis read and presented a proclamation hereby proclaiming **July 2008** as “**Parks and Recreation Month**” in Delray Beach. Danielle Beardsley came forward to accept the proclamation.

6.C. Recognizing Sister Cities Ambassadors – Ngozi and Rhonda Mensah (ADDENDUM)

Mayor Ellis read and presented a proclamation hereby recognizing Ngozi Mensah and Rhonda Mensah as Sister Cities Ambassadors representing the City of Delray Beach. Ngozi and Rhonda Mensah came forward to accept the proclamation.

7. PRESENTATIONS:

7.A. Swearing-In Ceremony of Police Chief Anthony Strianese

Lanelda Gaskins, Acting Deputy City Clerk, sworn in the new Police Chief Anthony Strianese. Chief Strianese came forward and gave a few brief comments.

7.B. Life Safety Educator of the Year Award – Lieutenant Patricia Dunkelmann

Chief David James presented the Life Safety Educator of the Year Award to Lieutenant Patricia Dunkelmann and gave a few brief comments.

7.C. American Legion Milton Myers, Post 65 – Scott Schley

Scott Schley, American Legion Milton Myers Post 65, stated they have been working for approximately 1½ years on presentations for this sculpture and provided the Commission with a handout of a sculpture. Mr. Schley stated that statue will be cast in bronze and placed at Veteran's Park and they plan on using private money for this project. Mr. Schley stated he understands the project cost will cost \$80,000.00 and reiterated that the statue will be done in bronze, concrete, and granite. He introduced 4141 VFW Commander Roberts and they have sat in on all the development regarding Veteran's Park and feel the moving of any monuments and giving up any parking would not be good for Veteran's Park. Mr. Schley stated he has been to the park on Sundays watching children play in the playground after church and it seems to be working pretty good the way it is. He stated there is a way they can raise more money by holding chili cook-offs at the park against the Fire Department, the American Legion and the Police Department. In addition, Mr. Schley stated he believes that Boynton Beach has a soft ice cream coach with hot dogs and hamburgers. He suggested that something be done at the adult center which is right at Veteran's Park and feels there is something that we can do to keep from losing that parking and changing the park around. Mr. Schley stated this monument is donated to the City of Delray Beach by American Legion Post 65 to commemorate all wars and people who have lost their lives at sea and feels this would be a great asset to Veteran's Park.

Mayor Ellis stated we do hope to have Veteran's Park become a part of the Parks and Recreation Capital Campaign. She stated this park is called Veteran's Park which makes it a significant tribute to all Veterans. Mayor Ellis stated the veteran aspect will always be a part of the park and thanked Mr. Schley and Mr. Roberts for attending this evening.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. REQUEST FOR SIDEWALK DEFERRAL/1033 SEASAGE DRIVE: Approve a request to defer the installation of a sidewalk along Seasage Drive and Poinsettia Road for 1033 Seasage Drive.

8.B. MEMORANDUM OF UNDERSTANDING/UNITED STATES MARSHALS SERVICE/DISTRICT FUGITIVE TASK FORCE: Approve a Memorandum of Understanding with the United States Marshals Service which establishes fugitive apprehension task forces under the Presidential Threat Protection Act

for the purpose of locating and detaining fugitives.

8.C. LETTER OF SUPPORT/JUSTICE ASSISTANCE GRANT (JAG)

FUND: Approve the Mayor's submission of a letter in support of the Countywide Justice Assistance Grant funds (JAG) for FY 2008 to support the Drug Court Treatment Program.

8.D. ACCOUNT NUMBER CORRECTION/WAL-MART/CHILD PASSENGER SAFETY PROGRAM:

Approval of correction to the account number for the purchase award to Wal-Mart in the amount of \$29,989.20 for the purchase of 670 Evenflo Discovery Infant Car Seats for the Child Passenger Safety Program. Funding is available from 001-2317-522-52.20 (General Fund/Fire Safety/General Operating Supplies).

8.E. REQUEST FOR FUNDING/COMMUNITY NEIGHBORHOOD HELPING, INC.:

Approve a request from Community Neighborhood Helping, Inc. to provide \$12,500.00 in seed money, which will be reimbursed to the City through Palm Beach County grants, for the Glory Awards 2008 to be held on August 29, 2008 at 6:30 p.m. to 10:00 p.m. at Old School Square.

8.F. SPECIAL EVENT REQUEST/31ST ANNUAL ROOTS CULTURAL FESTIVAL/YOUTH AND ADULT BASKETBALL TOURNAMENTS:

Approve a special event request from the Roots Cultural Festival, Inc. for a Youth Basketball Tournament proposed to be held from 7:00 p.m. – 10:00 p.m. on July 18, 2008, 8:00 a.m. – 8:00 p.m. on July 19, 2008 and 9:00 a.m. – 4:00 p.m. on July 20, 2008 and the Adult Basketball Tournament proposed to be held from 7:00 p.m. – 11:00 p.m. on August 1, 2008, 9:00 a.m. – 10:00 p.m. on August 2, 2008 and from 10:00 a.m. – 8:00 p.m. on August 3, 2008; and authorize staff support for security for both tournaments, event signage which is to be installed no earlier than ten (10) days prior to the event, and waiver of facility rental fee for City facilities (Pompey Park Gym and the Community Center) for both tournaments; contingent upon sponsor providing a liability insurance certificate and a hold harmless agreement at least one week prior to each tournament.

8.G. SPECIAL EVENT REQUEST/3RD ANNUAL WALK FOR LUPUS

NOW: Approve a special event request to endorse the Walk for Lupus Now sponsored by the Lupus Foundation of America South East Chapter proposed to be held on October 4, 2008 from 8:00 a.m. until 1:00 p.m., with site set up to begin at 6:00 a.m., including granting a temporary use permit per the LDR Section 2.4.6(F) for the use of Anchor Park as a staging area and the use of sidewalks along A-1-A from Casuarina to the north end of the beach, to waive parking fees in Anchor Park; and authorize staff support for security and traffic control, barricading, clean up and trash removal, use/set up of the small stage, and special event signage; contingent on sponsor providing a hold harmless agreement and a certificate of event liability insurance no later than two (2) weeks before the event; the event sponsor being responsible for site clean up; and signage installation occurring no earlier than ten (10) days prior to the event with banners allowed only on the stage and in Anchor Park.

8.H. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD

ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period June 16, 2008 through June 27, 2008.

8.I. AWARD OF BIDS AND CONTRACTS:

- 1.** Bid award to Green Construction Technologies, Inc. in the amount of \$168,586.00 for the construction of the 2008 Swale Improvement Project. Funding is available from 448-5461-538-65.41 (Stormwater Utility Fund/Other Improvements/Swale Reconstruction).
- 2.** Contract award to Statewide Enterprise, Inc. in the amount of \$15,022.00 for security services at Pompey Park. Funding is available from 001-4127-572-31.90 (General Fund/Professional Services/Other Professional Services).
- 3.** Contract award to ConServ Building Services in the amount of \$35,998.00 for City Hall HVAC control systems upgrade. Funding is available from 334-6112-519-46.10 (General Construction Fund/Building Maintenance).
- 4.** Lease award to Mears Motor Leasing for 36 months in the total amount of \$75,057.84 for the lease of nine (9) vehicles for the Police Department's Volunteer Program through the Florida Sheriffs Association's Municipal Lease Program. Funding is available from 001-2111-521-44.40 (General Fund/Vehicles).
- 5.** Purchase award to Line-Tec, Inc. in an estimated amount of \$20,000.00 for the replacement of defective radio read transponders and meters via the City of Boynton Beach Bid #027-2821-07/JA, and for replacement of registers. Funding is available from 442-5178-536-52.31 (Water/Sewer Renewal & Replacement Fund/Water Meter Replacement Under \$750).
- 6.** Purchase award to Wesco Turf Supply, Inc. in the amount of \$16,013.30 for one (1) Toro Groundsmaster 7200 Heavy Duty Zero Turn Mower Model # 30361, per Florida State Contract #515-630-06-1. Funding is available from 001-4131-572-64.90 (General Fund/Machinery/Other Machinery/Equipment).

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

9. REGULAR AGENDA:

9.A. REQUEST FOR IN-LIEU PARKING SPACES/SHORE RESTAURANT: Consider a request from Shore Restaurant for the purchase of four (4) in-lieu parking spaces in the amount of \$72,800.00. Shore Restaurant is located at 6 South Ocean Boulevard. (*Quasi-Judicial Hearing*)

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

Lanelda Gaskins, Acting Deputy City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor Ellis asked the Commission to disclose their ex parte communications. Mr. McDuffie stated he had no ex parte communications to disclose. Mrs. Montague stated she had a meeting with the applicant as well as Mr. Fran Marincola. Mayor Ellis stated she had no ex parte communications to disclose. Mr. Eliopoulos stated he received an email from Mr. Fran Marincola and he did see the presentation at the Community Redevelopment Agency (CRA) and at the Parking Management Advisory Board (PMAB) Meeting. Mr. Fetzer stated he received the same email from Mr. Fran Marincola.

Scott Aronson, Parking Management Specialist, stated this is an in-lieu request for four (4) in-lieu parking spaces located at 6 South Ocean Boulevard. The applicant has submitted a Class III site plan modification. Mr. Aronson stated the original request was for the purchase of eleven (11) spaces. He stated the four (4) in-lieu parking spaces is for an enclosure of 538 square feet for a kitchen/service area and includes no customer service area. The original plan was for 11 parking spaces and included 798 square feet plus a rooftop deck of 998 square feet which would be the customer service area. The applicant has decided to scale back that project to the current in-lieu request before the Commission of four spaces for the total of 538 square feet. The applicant has eliminated the rooftop deck and the 798 foot reduction is based on a 205 square foot cooler that was already approved in 2004 and those spaces were paid for and then there is a portion of a building that sits in a setback that is going to be removed which reduces it down to the 538 square feet. Mr. Aronson stated based on the six (6) spaces per 1,000 square feet required for restaurant parking that comes to 3.23 spaces ($0.538 \times 6 = 3.23$ which rounds up to 4 spaces). The subject property is located in Area 1 at \$18,200 per space totaling \$72,800.00. Land Development Regulation Section 4.6.9(E)(3)(d) requires the fee to be paid in full upon issuance of the building permit as the applicant is the tenant of the property. Mr. Aronson stated the Marriott Hotel has a public parking lot of 29 spaces on the north side, the Sandoway Parking Lot with 136 of approximately 1,500 feet to the south of this property. The Marriott Hotel has a parking garage in the basement of the hotel and usually allows the public to park there if it pays the prevailing rate and the on-street parking up and down Ocean Boulevard with the meters and Atlantic Avenue is metered as well. With respect to other means of getting to the beach, there is the shuttle bus which now has three buses and one runs until 10:30

p.m. Mr. Aronson stated people in the downtown core area might frequent this restaurant would park in the garages or in the downtown and might take the shuttle now that it runs on ten minute headways between noon and 8:00 p.m. He stated this is not a name chain restaurant and is not one of those destination restaurants that people will be looking for but it might turn into the type of restaurant where people going to beach might frequent it but is not the type of name where people will be looking for this restaurant and come to Delray Beach for. Staff supports the request for the four (4) in-lieu spaces and the Comprehensive Plan talks about ways to entice development in the downtown areas and the in-lieu program helps to expand those developments and redevelopments. Mr. Aronson stated the Land Development Regulations support the in-lieu program as well.

At its meeting of June 9, 2008, the Downtown Development Authority (DDA) was presented the original site plan modification for 11 spaces to accommodate the 798 square foot enclosure and rooftop deck to be completed as a phased project. There was some contention from the condominiums next door and their concerns were noise and activity on the rooftop which is immediately adjacent to their condominium. Mr. Aronson stated he believes that was one of the reasons for the scaling back of the project at this point in time. The Board recommended approval of the purchase of five (5) in-lieu parking spaces to accommodate the 798 square foot enclosure and they did not support the rooftop deck at that time. At their meeting of June 12, 2008, the Community Redevelopment Agency (CRA) recommended approval of the request for four (4) in-lieu spaces and at its meeting of June 24, 2008, the Parking Management Advisory Board (PMAB) recommended approval of the applicant's request.

Jess Sowards, Architect with Currie Sowards Aguila Architects (speaking on behalf of the applicant), stated the key component for the four spaces is that it is a service area only. He stated the existing restaurant has an open courtyard in the west section of the building that is being used for storage (outside storage). Mr. Sowards stated this is more like a Houston's theatre kitchen and utilizes more kitchen area than typical restaurants. He stated it is not additional seating that they are looking for but it is additional back of house which is actually being utilized now but they are just enclosing it.

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

There was no cross-examination or rebuttal.

Mayor Ellis stated the Downtown Development Authority (DDA) did not approve the actual deck to be above these spaces and asked Mr. Aronson if he expects that will change once these parking sites are approved. Mr. Aronson stated the applicant would have the right to come back with a request for additional spaces if they wanted to pursue the deck at a later date. Mr. Aronson stated the applicant would have the right to come back with a request for additional spaces if they wanted to pursue the deck at a later date it would have to come back before all of the Boards once again (i.e. DDA, CRA, and

the City Commission).

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

Mr. Fetzer moved to adopt the Board Order as presented subject to the condition it is to be paid in full upon issuance of a building permit, seconded Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

9.B. AMENDMENT NO. 3 TO THE SOLID WASTE AND RECYCLING COLLECTION FRANCHISE AGREEMENT/WASTE MANAGEMENT: Consider approval of Amendment No. 3 to the Solid Waste and Recycling Collection Franchise Agreement to extend the agreement another five (5) years effective October 1, 2008 through September 30, 2013.

Lula Butler, Director of Community Improvement, stated this item is for consideration of a revised Amendment No. 3 to the Solid Waste and Recycling Collection Franchise Agreement dated September 20, 2001 between the City of Delray Beach and Waste Management, Inc. of Florida. The amendment extends the agreement another five (5) years effective October 1, 2008-September 30, 2013.

Mrs. Butler stated staff presented the initial Amendment No. 3 as proposed by Waste Management to the Commission at the regular scheduled Workshop Meeting of June 10, 2008. The direction of the Commission was for staff to prepare a Request for Proposal (RFP) to bid out these services. At the end of the last regular meeting on June 17, 2008, the Commission asked that staff continue to negotiate with Waste Management while staff continues to work on the RFP and bring back a revised amendment to the Commission which will be considered this evening. Mrs. Butler stated staff has submitted two types of revised amendments. One with Waste Management continuing to have an exclusive on the C& D roll-off services and the second one is the fee structure with them having a non-exclusive on the roll-off services. She stated at the Commission Meeting the Commission also asked staff to verify the recycling of the C&D collections Staff visited Sun Recycling facility several months ago to observe their operation and the types of materials recycled. Staff also conducted a site visit to Delta Recycling in Pompano Beach. Mrs. Butler stated staff looked at their receipts for the last quarter and made copies for the month of June and has verified that most of what comes out of Delray is delivered to one of those two sites. The plant manager indicated to staff that approximately 70% of what goes out of there is recycled. Mrs. Butler stated staff amended the agreements and took out the automatic five year renewal option, revised the language under Section 20 as it governs Natural Disasters, and revised the fuel surcharge starting with a baseline price as current as of today (\$4.69/gallon) and revised language that clarifies the methodology for calculating both the CPI and the fuel charge. The Consumer Price Index (CPI) is calculated separately and it is a fee that is compounded

annually. The fuel charges will always be based on the 2008 individual fees. Staff has attached Schedule I and Schedule II that gives information on the current contracts that are held by Waste Management and the second is a chart that Waste Management provided to the City of Delray Beach that staff verified their numbers that gives the Commission information on the contracts that have been awarded between 2005 and 2008 by a number of municipalities and county areas.

The City Attorney stated there was a small change to the non-exclusive contract where C&D would not be part of the contract and a wording change on page 4 so that it would be made more clear that C&D construction/demolition debris is not included in the contract. She stated staff changed the language in paragraph 8 and also clarified in Exhibit 1A on page 6 that the roll-off rate that they have quoted there does not include C&D because that is not part of the contract.

Mrs. Montague asked if staff has checked with our neighboring cities and how they have handled those that have non-exclusive contracts. In response, Mrs. Butler stated staff has looked at the City of Boca Raton because they just did a whole new ordinance on that and staff believes this would be a very good model to follow. In addition, staff has looked at the County's model and a couple of other smaller cities.

Mr. Eliopoulos asked if this would be a money revenue source for the City. In response, Mrs. Butler stated it comes with an application fee, a franchise fee, and a percentage of their collections. Mrs. Montague asked how staff can maintain a high level of quality if the City chooses to go with a non-exclusive. Mrs. Butler stated most cities do that in the form of performance standards. Mr. Fetzer asked if staff has looked at a fee structure on a non-exclusive basis that would off-set the difference in the rates for residential and commercial. Mrs. Butler stated staff would most likely recommend that the City of Delray Beach follow the Boca Raton model and they looked at the revenues that is generating for them and why it is doing that and believes that it is consistent with the revenues that have been collected from Waste Management over the years. Mr. McDuffie commented that the City of Delray Beach will not get that much revenue enhancement and it is essentially a wash. Mrs. Butler stated there will be some revenue but not a lot.

Mr. Eliopoulos commented that the Commission is looking at this contract and based on the way it was written and the way the changes have been made from the Workshop Meeting if the Commission votes in favor of the contract would we be going out to bid as well or if the Commission accepts the contract then we would not be going out to bid. The City Attorney stated if the Commission accepts this contract then the City will not go out to bid.

Mrs. Montague stated staff has done quite a bit of homework in terms of comparable numbers with surrounding cities and noted she would be prepared to vote tonight.

Mayor Ellis concurred with comments expressed by Commissioner Montague.

Mr. Fetzer stated he mentioned at the Workshop Meeting that he was concerned about evaluating the service quality of a low bidder on this and he believes that staff and residents are very satisfied with the service that Waste Management is providing and feels this is a very important factor when considering this. Mr. Fetzer stated when looking at the RFP's and the prices that have been granted on recent RFP's he thinks we are still getting a very good deal for our residents and he is in favor of extending the contract with the non-exclusive on the roll-off.

Mr. McDuffie stated the feedback from the community has been that essentially the residential portion of this is that everyone is happy with the quality of service and the timely service. Mr. McDuffie stated he too would be in favor of extending the contract with a non-exclusive roll-off.

Mrs. Montague stated we do have a very satisfied community in terms of the quality of service with Waste Management but to bring balance to this and to be fair to the businesses, she would look at the non-exclusive contract. However, Mrs. Montague stated she would look very closely at the performance standards if the City is going to bring others in (for C&D Collections).

Mrs. Montague moved to approve of Amendment No. 3 for the non-exclusive contract version as modified, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

9.C. RESOLUTION NO. 23-08: Consider approval of Resolution No. 23-08 amending Resolution No. 63-07 which created a Budget Task Force in order to provide an extension of time to July 31, 2009.

The caption of Resolution No. 23-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING RESOLUTION NO. 63-07, WHICH CREATED A BUDGET TASK FORCE IN ORDER TO PROVIDE FOR AN EXTENSION OF TIME; PROVIDING AN EFFECTIVE DATE.

(The official copy of Resolution No. 23-08 is on file in the City Clerk's office.)

The City Attorney stated this is a resolution that extends the Budget Task Force until July 31, 2009.

Mayor Ellis stated originally the Budget Task Force was set up for six months. The Commission felt like when they received feedback felt that they could use some more feedback.

Mr. Fetzer stated he is very happy with what this group is doing and is happy that they are willing to continue to serve. He fully supports the extension of the Budget Task Force to July 31, 2009.

Mr. Eliopoulos stated this was a challenge for the Budget Task Force and supports the extension.

Mayor Ellis stated she too supports the extension.

Mr. McDuffie stated he would assume that the existing Task Force members are willing to stay for that length of time. In response, the City Manager stated a couple of the members have indicated that they will not be able to continue to serve so some new appointments will have to be made. Mr. McDuffie stated he is overwhelming pleased with the result the City has received from the Budget Task Force in such a short time and looks forward to the results of their future work.

Joseph Safford, Finance Director and Liaison for the Budget Task Force, stated there are two individuals from the Budget Task Force who indicated that they cannot continue for the next year. He stated when they talked at their meeting today they mentioned that to slow things down a little bit we may go from a biweekly meeting to a monthly meeting so that the Task Force can do more research and not have to be concerned with the minutes coming up every two weeks. Mr. Safford stated one of those individuals is now interested in staying on the Task Force. He stated in the six month timeframe it took approximately two months just to get started and start handing out the data that was mentioned in their last meeting. Mr. Safford stated the Budget Task Force will be entertaining the Commission with a second interim report at the next Workshop Meeting. He stated at the first the report was 19 pages and they are not at 62 pages and the research is coming together and they are coming up with a lot more conclusions. Mr. Safford stated there is items such as fleet, insurance, etc. which will need a lot of research to come up with recommendations. He stated in talking with the Budget Task Force today they are requesting a year extension to July 31, 2009 and that it not exceed one year. He stated the Task Force is looking to get a final report complete in less time (i.e. possibly six months) but they should not have to exceed the one year.

Mr. McDuffie asked if the Budget Task Force will have the final report complete before the budget hearings. In response, Mr. Safford stated this report will not be complete before the budget hearings and this is one of the reasons the Budget Task Force is coming forward now with the second interim report because they want to get as much of their research in the hands of the City Commission and the City Manager prior to not only the budget hearings and union negotiations.

Mr. McDuffie moved to approve Resolution No. 23-08, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.D. BID AWARD/HUFCOR FLORIDA GROUP/POMPEY PARK BLEACHER REPLACEMENT: Consider approval of a bid award to Hufcor Florida Group low bidder for bleacher replacement, in the amount of \$67,530.00 for the bleachers at Pompey Park. Funding is available from 334-4127-572-46.15 (General Construction Fund/Repair & Maintenance Services/Improvement-Other Repair & Maintenance).

Tim Simmons, Parks Superintendent, stated there were two bidders out of four that bid to do a total replacement. Therefore, staff went back and suggested that we go with the lowest bidder of those two for a total replacement of the bleachers.

Mr. Eliopoulos inquired about repairs versus replacement and asked if these bleachers are beyond repair.

David Ricks, Recreation Supervisor IV, stated Manufacturers Applied Renovation Systems, Inc. (MARS) was mostly dealing with the understructure and replacing the damaged seating and bringing the bleachers up to ADA compliance. Mr. Ricks stated most of the work was going to be done on the understructure to eliminate the sagging that happens with the bleachers.

The City Manager stated another way of looking at it is that it is only a \$14,000.00 difference. For that difference he suggested to replace the bleachers rather than repairing something that is approximately 30 years old.

Mayor Ellis asked if the ADA compliance was included in the proposal that was brought to the City Commission at the June 17, 2008 meeting. Mr. Ricks stated this was included in their proposal.

Mr. McDuffie asked if there is a warranty included with the new bleachers. In response, Mr. Simmons stated there is a ten year warranty with a two year guarantee.

Mrs. Montague moved to approve the bid award to Hufcor Florida Group for bleacher replacement at Pompey Park in the amount of \$67,530.00, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

9.E. RJ HEISENBOTTLE ARCHITECTS/CONSULTANT TO RESURVEY FOUR (4) DESIGNATED HISTORIC DISTRICTS: Consider approval of an agreement with RJ Heisenbottle Architects to conduct the resurvey of four (4) designated historic districts: Del-Ida Park, Nassau Park, Old School Square, and West Settlers Historic Districts in the proposed amount of \$34,660.00. Funding is available from 001-2511-515-31.90 (General Fund/Other Professional Services).

Paul Dorling, Director of Planning and Zoning, stated staff went out for a Request for Proposal (RFP) and had six responses to conduct a resurvey of the four (4) designated historic districts (Del-Ida Park, Nassau Park, Old School Square, and West Settlers Historic District). He stated the bids ranged from \$33,500 to \$38,834 and there was an Evaluation Committee made up of the Historic Preservation Planner, the Assistant Director of Planning and Zoning, the Community Redevelopment Agency (CRA) Director, Paul Zacks of the Planning and Zoning Board, and an Architect and Historic Preservation Board member. Mr. Dorling stated they narrowed all the applications to two and in the final evaluation it was recommended that we offer the bid to RJ Heisenbottle Architects (*second lowest bidder*). He stated the RFP has a start date of July 15, 2008 and an end date of January 15, 2009. Mr. Dorling stated with respect to an update on the funding the City applied for a matching grant unfortunately staff was unable to get that. Mr. Dorling stated we do however have money set aside in the Planning and Zoning Department budget and staff recommends approval at this time.

Mrs. Montague asked how Heisenbottle Architects was selected over the others since it was not the lowest bidder. In response, Mr. Dorling stated there was a ranking by points and a ranking by the number one rankings from the people who ranked it and there was an overall ranking with respect to how they placed 1st - 6th with a group. Mr. Dorling stated Heisenbottle Architects was the overall highest ranked with a group and although they only received one number one ranking, they also received three number two rankings. Mr. Dorling stated the RFP called for extensive experience and expertise in South Florida architecture. He stated Environmental Services, Inc. did score very highly but they had some central Florida and did not have any specific South Florida.

Mr. Eliopoulos asked where GAI Consultants is located. Mr. Dorling stated GAI Consultants is out of Orlando. Mr. Eliopoulos stated his concern is someone out of Miami doing this, the gas alone is going to eat their fee. Mr. Dorling reiterated that GAI Consultants is out of Orlando and stated that Environmental Services, Inc. is out of Jupiter.

Mr. McDuffie stated back when the Commission began to discuss this the Marina Historic District survey was undertaken without going out for bid and we had members of the community in here who expressed being in favor of what was going on and members of the community who expressed being disappointed with the way we were handling that. Mr. McDuffie stated he recalls that at that time what the Commission said was that when they put this out for RFP whoever won this would be given the opportunity to accept or reject the data that was gathered for the Marina Historic District

and include that in this scope. Mr. Dorling stated after that discussion the Marina Historic District did go out for bid and there were two bids received; one was \$9,000 and one was \$48,000. He stated it was awarded to the low bidder who was given the opportunity to use that data. Mr. Dorling stated these are for the other four districts and does not include the Marina District or the information that was gathered for it.

Mr. Fetzer moved to approve a contract with RJ Jeisenbottle Architects, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

9.F. RESOLUTION NO. 24-08/BUDGET AMENDMENT: Consider approval of Resolution No. 24-08 amending Resolution No. 55-07 adopted September 18, 2007, and Resolution No. 16-08 adopted May 6, 2008 which made appropriations for necessary expenditures of the City for the FY 2007/2008, by setting forth the anticipated revenues and expenditures for the operating funds of the City for the fiscal year 2007/2008.

The caption of Resolution No. 24-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING RESOLUTION NO. 55-07 ADOPTED SEPTEMBER 18, 2007 AND RESOLUTION 16-08 ADOPTED MAY 6, 2008, WHICH MADE APPROPRIATIONS OF SUMS OF MONEY FOR ALL NECESSARY EXPENDITURES OF THE CITY OF DELRAY BEACH, FLORIDA, FOR THE FISCAL YEAR 2007/2008, BY SETTING FORTH THE ANTICIPATED REVENUES AND EXPENDITURES FOR THE OPERATING FUNDS OF THE CITY FOR THE FISCAL YEAR 2007/2008; REPEALING ALL RESOLUTIONS INCONSISTENT HEREWITH.

(The official copy of Resolution No. 24-08 is on file in the City Clerk's office.)

The City Manager stated this is a budget amendment that takes into account the additional funding the City has received from various sources. He stated the budget amendments include \$2,000 in public safety from funds by Rainberry Woods, approximately \$4,000 from United Way, some additional SHIP money; and the City is transferring utility tax bond interest to the Lakeview Golf Course Fund for its renovation project.

Mrs. Montague moved to approve Resolution No. 24-08, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said

motion passed with a 5 to 0 vote.

9.G. THIS ITEM HAS BEEN REMOVED FROM THE AGENDA DUE TO ACTIVE LITIGATION.

9.H. AMENDMENT NO. 1 TO AGREEMENT/ATC INTERNATIONAL, INC.: Consider approval of an amendment to the agreement between the City and ATC International, Inc. for an extension of the completion date and an increase in cost for the construction and installation of eleven (11) retractable towers at various points throughout the City. Funding is available from 551-1575-591-45.50 (Business Insurance Fund/Property Claims).

Brian Shutt, Assistant City Attorney, stated this is an amendment to an agreement that the Commission executed in February. This company was putting up eleven (11) retractable towers and FEMA wanted a backup system for the City. The original company was bought out by ATC International, Inc. (ATC) and they put up some of the towers; however, it failed to get some proper documentation. Mr. Shutt stated ATC International, Inc. has been working on that and is the reason for the request for the increase of \$26,000.00.

Commissioner Montague left the dais briefly and later returned.

Mr. Eliopoulos the original deal with JBE was a Purchase Order (P.O.). In response, Mr. Shutt stated it was a P.O. not a contract. The City Attorney stated when doing a construction contract a P.O. is not the way to do it and the City has standard contracts that when doing these kinds of things that really should be followed and for whatever reason that did not happen this time.

Mr. Eliopoulos stated he is fine with an extension and they should know what they are doing and know that they need Engineering. He clearly does not like to see that they are getting more money and noted the language in the agreement "for an increase in price of \$26,000.00 for the purchase and installation of the materials and an increase in price (crane rental), not to exceed \$4,000.00". Mr. Eliopoulos inquired as to how this occurred as far as when they took over this company and started working with the City and what was their mindset. Mr. Shutt stated the City got involved later when ATC got involved and when JBE Technology was issued a P.O. they performed some of the work and did not have the proper documentation at that time. He stated they were paid the majority of the funds then ATC International, Inc. came in and assumed control or bought out JBE Technology. Mr. Shutt stated he believes the City was having conversations with JBE Technology to complete the project and JBE Technology was unable to get the proper documentation. He stated the City had further conversations with ATC International, Inc. and once they realized ATC International, Inc. assumed control of JBE Technology which was no longer in existence then ATC International, Inc. said they could do this and here is what we believe it is going to take to do it. Mr. Shutt stated part of the problem is when a company is taking over another business they were not quite sure what JBE had done. Mr. Shutt stated it is his understanding that the

reason for the extra equipment is that the system may work but it would not interface with the City's system so this equipment is needed to make it interface with the City's system. The City Attorney stated this was not the equipment that was specked in the original P.O.

Mr. Eliopoulos stated are we 100% sure this is going to work. Mr. Shutt stated the City is not going to pay them anything until seven (7) days after the City is holding back \$40,000.00 from the original purchase order and this is going to be an extra \$26,000.00. He stated the City is not paying ATC International, Inc. anything until seven (7) days after we see the system is up and running. Then, if it is up and running to the City's satisfaction and sole discretion then the City will pay them 50% and then wait another seven (7) days to make sure that everything is still going along the way it should be going and then pay them the remainder at that point. Mr. Shutt stated it is his understanding from the IT staff is that once this is up and running and the testing is completed then the first several days they should know then and there if it is going to work or not.

Mr. McDuffie asked if the IT staff has re-specked everything out to be compatible with the City's network. In response, Mr. Shutt stated it is his understanding they have. Mr. McDuffie echoed comments of Mr. Eliopoulos and stated all of us read about FEMA funding being spent irresponsibly. Mr. McDuffie stated the City is essentially putting up a Wi-Fi network based on FEMA requirements and the Palm Beach County School District is putting in a Wi-Fi and there is another individual proposing a Wi-Max solution. Mr. McDuffie stated we are going to end up with three networks in this City. He expressed concern over the security on this network. Mr. McDuffie stated he would not pay them an ounce unless the IT staff is absolutely comfortable with the level of security. The City Attorney stated this system replaces a system that was in existence that we had before where towers were not retractable and they got destroyed during the storm. She stated the City had a wireless system before and is assuming that the security would be similar.

Mayor Ellis feels that staff should check this with the IT staff. Mr. Eliopoulos concurs with comments expressed by Mayor Ellis. Mr. McDuffie stated we need someone to examine this and make sure the City is locked down tight where nobody can get in.

The City Attorney recommended that the City Commission approve this amendment subject to having something in writing from the IT Department that the security is acceptable and that the new equipment should work.

Mr. McDuffie moved to approve the Amendment No. 1 to the Agreement between the City of Delray Beach and ATC International, Inc., subject to the approval by the City of Delray Beach IT Department that it meets the City's technical specifications and security specifications, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

9.I. APPOINTMENT TO THE COMMUNITY REDEVELOPMENT

AGENCY: Appoint one (1) regular member to the Community Redevelopment Agency (CRA) to serve a four (4) year term ending July 1, 2012. Based upon the rotation system, the appointment will be made by Commissioner Eliopoulos (Seat #1).

Mr. Eliopoulos moved to reappoint William Branning as a regular member to serve a four (4) year term ending July 1, 2012, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.J. APPOINTMENT TO THE DELRAY BEACH HOUSING

AUTHORITY: Appointment one (1) regular member to the Delray Beach Housing Authority to serve a four (4) year term ending July 14, 2012. Based on the rotation system, the recommendation/appointment will be made by Commissioner Fetzer (Seat #2).

Mr. Fetzer moved to reappoint Joseph Bernadel as a regular member to serve a four (4) year term ending July 14, 2012, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.K. APPOINTMENT TO THE POLICE ADVISORY BOARD:

Appoint one (1) regular member to the Police Advisory Board to serve an unexpired term ending December 13, 2008. Based upon the rotation system, the appointment will be made by Commissioner Fetzer (Seat #2).

Mr. Fetzer moved to appoint Samuel Menard as a regular member to the Police Advisory Board to serve an unexpired term ending December 13, 2008, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

9.L. APPOINTMENTS TO THE DOWNTOWN DEVELOPMENT

AUTHORITY: Appoint four (4) regular members to the Downtown Development Authority (DDA) to serve three (3) year terms ending July 1, 2011. Based upon the rotation system, the appointments will be made by Commissioner Fetzer (Seat #2), Commissioner McDuffie (Seat #3), Commissioner Montague (Seat #4) and Mayor Ellis (Seat #5).

Mr. Fetzer moved to appoint Michael Listick as a regular member to the Downtown Development Authority (DDA) to serve a three (3) year term ending July 1, 2011, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

Mr. McDuffie moved to appoint Harold Van Arnhem as a regular member to the Downtown Development Authority (DDA) to serve a three (3) year term ending July 1, 2011. Montague. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Montague moved to reappoint Nancy Stewart as a regular member to the Downtown Development Authority (DDA) to serve a three (3) year term ending July 1, 2011, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

Mayor Ellis stated she wished to reappoint David Beale as a regular member to the Downtown Development Authority (DDA) to serve a three (3) year term ending July 1, 2001. Mr. McDuffie so moved, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

9.M. APPOINTMENTS TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE: Appoint two (2) regular members to the Affordable Housing Advisory Committee to serve two (2) year terms ending June 17, 2010. Based upon the rotation system, the appointments will be made by Commissioner Eliopoulos (Seat #1).

Mr. Eliopoulos moved to appoint Evelyn Dobson as a regular member to the Affordable Housing Advisory Committee to serve a two (2) year term ending June 17, 2010, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

Mr. Eliopoulos moved to appoint Gerald Crocilla as a regular member to the Affordable Housing Advisory Committee to serve a two (2) year term ending June 17, 2010, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

9.N. APPOINTMENT TO THE GREEN TASK FORCE: Appoint one (1) regular member to the Green Task Force to serve an unexpired term ending August 27, 2008. Based upon the rotation system, the appointment will be made by Mayor Ellis (Seat #5).

Mayor Ellis stated she wished to appoint Sarah Martin as a regular member to the Green Task Force to serve an unexpired term ending August 27, 2008. Mr. Eliopoulos so moved, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

9.O. STATUS REPORT AND DIRECTION/OLD SCHOOL SQUARE GARAGE RETAIL SPACE: Consider a status report and provide direction regarding a draft Purchase and Sale Agreement for the Old School Square Garage Retail Space. **(ADDENDUM)**

The City Attorney stated the Letter of Intent that the Commission agreed to gave the interested party thirty (30) days to submit a contract. She stated they did submit a contract and they basically used a standard contract that the City put forward with some of their suggested changes which staff expected. However, the City Attorney stated they did submit the contract a day late and therefore the City would have to waive that. The City Attorney would like direction from the Commission whether staff should keep on negotiating and she believes there are things we need to negotiate. She stated there is a purchase price but it is subject to an appraisal. The City Attorney suggested that the appraisal be updated because it is a year old and name the appraiser in the contract instead of leaving that so open ended. She stated staff will then feel confident that we get a quality appraiser plus staff would negotiate things like if the price is more than this number as appraised then it would be expected to go up as well. The City Attorney stated there are additional items that need to be looked at as well. She stated she received an email from them indicating that they may be interested in 20 parking spaces versus 15 on the first floor. The City Attorney stated apparently there is 19 parking spaces on the first floor, two of which are handicapped so staff may need to make some adjustments there plus they have some interest in licensing some of the storage space which would be on a pro rate basis with the Chamber of Commerce based on square footage. The essential terms here would be a thirty (30) day inspection with a thirty (30) day thereafter closing but staff needs to work on some language because as a condition of closing it talks about all permits would be granted. The City Attorney stated one of the things they would have to do to fit into a gourmet market use for grease traps, etc. that require permits to hold up a closing.

Mrs. Montague stated there are a lot of major changes in this contract and asked how much time does staff really need before she thinks this is a contract that the City can move forward with. She stated their ability to assign is critical and commented that we want to know who we are selling to. The City Attorney stated she would need to meet with the Chamber of Commerce and discuss these items. She asked that the Commission give her time to bring back another status report as to where the City stands and if the Commission feels that it is sufficient process then good but if not the Commission can decide to do something else. The City Attorney stated staff will try to have a contract as soon as possible and noted the City is required to advertise it for a couple of weeks prior to the City Commission approving the contract. The City Attorney stated staff is asking for direction from the City Commission to keep going.

Mayor Ellis stated the Commission is agreeing to forgive the Chamber the one day late that they were.

Mr. Fetzer stated the one day late is not a major issue with him; however, he does feel the City needs to obtain an updated appraisal since the appraisal is one year old. Mayor Ellis concurred with comments expressed by Commissioner Fetzer regarding the appraisal.

Mr. Eliopoulos stated this Commission has to decide what they want in that space and do they want to sell it and get the highest dollar out there or do they want a market type place. He stated the Chamber has this idea floating around that they are going to get a tenant for the City but we do not know who that tenant is. Mr. Eliopoulos concurs that an updated appraisal is totally necessary and wants to make sure the City knows what the definition of a market is.

Mayor Ellis stated the one day late is not a big deal and recommends that the City Attorney's office continue to work on this.

Mr. McDuffie stated in supporting the re-appraisal, the market is down but the commercial is not down to the extent as the rest of the market is down and a competent appraiser will recognize that.

After discussion, it was the consensus of the Commission to direct the City Attorney to continue to work on this and provide an updated status report at the July 15, 2008 City Commission Meeting.

10. PUBLIC HEARINGS:

10.A. NONE.

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. From the Public.

None.

12. FIRST READINGS:

12.A. ORDINANCE NO. 28-08: Privately initiated amendments to the Land Development Regulations (LDR), by amending Section 2.2.6(D), "Duties, Powers, And Responsibilities"; Section 4.5.1(J), "Historic Preservation Board to Act on Variance Requests", to provide that appeals of decisions of the Historic Preservation Board regarding variances shall be to the City Commission. If passed, a public hearing will be scheduled for July 15, 2008.

The caption of Ordinance No. 28-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 2.2.6 (D), "DUTIES, POWERS, AND RESPONSIBILITIES"; SECTION 4.5.1(J), "HISTORIC PRESERVATION BOARD TO ACT ON VARIANCE REQUESTS", TO PROVIDE THAT APPEALS OF DECISIONS OF THE HISTORIC PRESERVATION BOARD REGARDING VARIANCES SHALL BE TO THE CITY COMMISSION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AN EFFECTIVE DATE.

(The official copy of Ordinance No. 28-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated this is a privately initiated amendment to LDR Sections 2.2.6(D)(6) and 4.5.1(J)(3), to specify that if the Historic Preservation Board (HPB) denies any variance request, the applicant and/or its agent may appeal such variance decision directly to the City Commission pursuant to the requirements of Section 2.4.7(E). In addition, variances are often utilized as a way of encouraging the retention of historic structures and providing additional flexibility in historic areas of the City. Given the different standards, findings, and goals of variance requests between the Historic Preservation Board (HPB) and the Board of Adjustment (BOA), it is reasonable to treat appeals of these variances differently. Appeals of variances considered by the BOA are appealed to Circuit Court whereas this amendment requests the appeal of HPB variances to the City Commission. The proposed amendment language is currently limited to appeals by the applicant and/or agent and to those variances which have been denied. Staff suggests that all variances approved or denied, be appealable by any applicant, agent, and/or aggrieved party to the City Commission. The ordinance also includes retroactive language which would be applicable to those variances acted upon by the HPB since January 1, 2008. He stated that would affect two variances. One dealt with La France Hotel and another associated with an office building which is now currently under appeal. The applicant of this ordinance is the applicant for that appeal.

At its meeting of June 5, 2008, HPB recommended approval but recommended that the retroactive language be removed. At its meeting of June 16, 2008, the Planning and Zoning Board recommended that the language being retroactive be included in that ordinance. Mr. Dorling stated the Planning and Zoning Board did consider adding language for variances that are approved or denied. Staff recommends approval on first reading of the ordinance with those two corrections.

Mr. McDuffie asked if the staff ordinance the same one that needs to be approved. Mr. Dorling stated there is a slight difference and staff did add "the aggrieved party" portion after the Planning and Zoning Board considered the ordinance.

Mr. Eliopoulos commented about the ordinance with regards to it becoming retroactive January 1st. The City Attorney clarified that staff is recommending that the Commission approve staff's version of the ordinance.

Mrs. Montague asked what the situation was with La France Hotel. Mr. Dorling stated it was a variance for the sign. He stated the Code talked about being a monument sign and it was a wall mounted sign consistent with the historic sign that was ultimately approved by a variance. Mrs. Montague asked if those are the only two incidences where we have had any of these issues. Mr. Dorling stated these are the only two incidences since January 2008.

Brief discussion followed between staff and the Commission.

Michael Weiner, Attorney with Weiner and Aronson, P.A., 10 S.E. 1st Avenue, Delray Beach, stated the important point is that the City is only given the opportunity to come back and talk about a variance. He stated he recognized an issue under the City's ordinance that really did not get recognized earlier. Mr. Weiner stated to think that they would have to go off in one direction for the variances decision and in another direction to Court for the variance decision and another direction for the Commission for the waivers and site plan for the historic district generally. Mr. Weiner stated if there are problems with the criteria put them in one court at one stop and this gives the Commission an opportunity to consider issues that will not interest a Court but instead they want to hear about other things that Board of Adjustments talk about. He stated the City Attorney recognized the fact that the City had all kinds of different criteria when someone is before the Historic Preservation Board and even though they are both called variances, probably they are similar to waivers. Mr. Weiner stated if, when they get back to the Commission, and it is all in one place and one jurisdiction and they do not like what they see and the City Manager would like to weigh in on that the Commission can listen to him at that time. Mr. Weiner stated the Commission is in control but cannot get there until this ordinance is passed.

Mr. Fetzer moved to approve staff's version of Ordinance No. 28-08 on FIRST Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – 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.**

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

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

13.B. **City Attorney**

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

13.C. **City Commission**

13.C.1. **Mr. Fetzer**

Mr. Fetzer had no comments and inquiries on non-agenda items.

13.C.2. **Mr. Eliopoulos**

Mr. Eliopoulos stated Item 9.G. on the Agenda was similar to Item 9.H. and this was a Purchase Order. He stated he does not want to get stuck into positions where the City has an inferior product out there and we have no control of it. Mr. Eliopoulos stated staff needs to definitely look into these things and have it going to the City Attorney's office. He stated he was very disappointed and does not want to see this happen again.

Secondly, Mr. McDuffie echoed comments expressed by Commissioner Eliopoulos and stated he does not know if in Item 9.G. the result would be any different if we had a contract since the firm is in bankruptcy. Mr. Eliopoulos stated there would have been more money on the table. Mr. McDuffie concurred with Mr. Eliopoulos in essence that we need to stop the purchase orders on issues like this. The City Attorney stated we could have had better warranties. Mr. Eliopoulos stated there could have been a strong legal fight. The City Attorney stated the purchase order is a contract because there are terms and conditions but it is not specific to some things especially when there is installation construction.

13.C.3. **Mr. McDuffie**

Mr. McDuffie stated this past weekend he observed the Changing of the Guard in the Police Department; he went over and took a ride on a Saturday morning. He stated his last ride was on a weekend night. Mr. McDuffie stated this time he had the opportunity to ride with several different officers and sit in on four briefings and got feedback from the officers. Mr. McDuffie stated it was a great experience and commented that he rode with one officer separately and in an unmarked car with three officers. He stated there is some good information that came from Officer Jeroloman. Mr. McDuffie stated Officer Jeroloman is looking out for ways to solve problems and find money that we otherwise might not have found. The City Manager stated he has an appointment with Officer Jeroloman to discuss this.

Mr. McDuffie wished the new Police Chief well and stated he is sorry to see Chief Schroeder leave.

He stated four navy airman and two marines from Paris Island who served with his son aboard the Enterprise will be here on July 4th. Mr. McDuffie stated the Downtown Marketing Cooperative asked him to invite them to the VIP suite, so there will be five or six navy and marine young men who just got back from deployment to the Persian Gulf.

13.C.4. Mrs. Montague

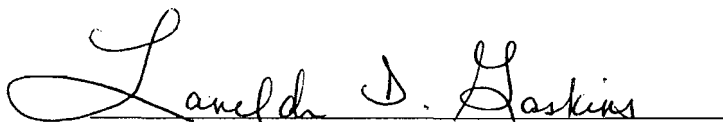
Mrs. Montague wished Commissioner McDuffie a Happy Birthday (July 3rd).

13.C.5. Mayor Ellis

Mayor Ellis stated she is honored again this year to be leading the Pledge of Alliance this July 4th on the beach before the fireworks start. She stated exactly a year ago on July 4th she had a toe amputated and she was also in a wheelchair doing the Pledge of Alliance and commented that that is over with. Mayor Ellis stated she is working her way out of the wheelchair onto a cane and hopes to be finished with it.

Secondly, she thanked everyone for being at Chief Schroeder's farewell party last night. Mayor Ellis stated Chief Schroeder stated it meant a great deal to him that the Commission, City Manager, and City Attorney were there. She stated Chief Schroeder talked about the support he has received from the Commission over his years in duty and stated it has been her experience being on the Commission and as Mayor that the way to deal with the Police Chief is to let him do his job. Mayor Ellis stated Chief Schroeder was always there to listen, react, and he had an amazing ability to understand criticism. She stated he was a remarkable man. Mayor Ellis stated we are starting a new year and Chief Strianese will be tested as they all have been and she looks forward in giving him the same support as the Commission gave to Chief Schroeder.

There being no further business, Mayor Ellis declared the meeting adjourned at 8:16 p.m.

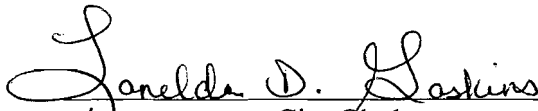

Acting Deputy City Clerk

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 July 1, 2008, which Minutes were formally approved and adopted by the City Commission on July 15, 2008.



Acting Deputy City Clerk

NOTE TO READER:

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

IN LIEU PARKING FEE REQUEST FOR SHORE RESTAURANT

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

1. This in lieu parking fee request for the purchase of 4 parking spaces in-lieu has come before the City Commission on July 1, 2008.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the in lieu parking fee request for the Shore Restaurant. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. IN LIEU PARKING FEE:

Pursuant to LDR Section 4.6.9(E)(3), when additional parking is required due to expansions of use to an existing building and it is impossible or inappropriate to provide such parking the City Commission may approve the payment of an in lieu fee rather than provide the required parking. In the case of expansions of use, no existing parking spaces may be eliminated.

Does the In Lieu Parking Fee request for the purchase of 4 parking spaces in-lieu meet the requirements of LDR Section 4.6.9(E)(3) and the conditions, if any, listed below?

At \$18,200.00 per space totaling \$72,800.00 on the condition it is to be paid in full
upon issuance of a building
permit.

Yes 5 No 0

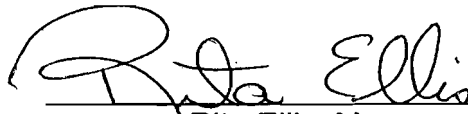
3. The City Commission hereby finds that the In Lieu Parking Fee Request meets the requirements of 4.6.9(E)(3) of the Land Development Regulations, with the conditions listed above, if any, and the City Commission has applied the Comprehensive Plan and finds that its determinations set forth in this Order are consistent with the Comprehensive Plan and Land Development Regulations.

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

5. Based on the entire record before it, the City Commission approves X denies the in lieu parking fee request as set forth above.

6. Based on the entire record before it, the City Commission hereby adopts this Order this 1st day of July, 2008, by a vote of 5 in favor and 0 opposed.

ATTEST:



Rita Ellis, Mayor



Lanelda D. Gaskins, Acting Deputy City Clerk