

JUNE 17, 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, June 17, 2008.

1. Roll call showed:

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

Absent - Commissioner Gary Eliopoulos

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

2. The opening prayer was delivered by Reverend Kathleen Gannon with St. Paul's Episcopal Church.

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

4. **AGENDA APPROVAL.**

Mayor Ellis noted the addition of Item 9.M., **Hiring of Outside Counsel in the case of Stacey Lewis v. Chris McMurray and City of Delray Beach** and Item 9.N., **Hiring of Outside Counsel in the Case of Robert Hauptfuhrer v. City of Delray Beach, et al** to the Regular Agenda by addendum.

The City Manager stated **Item 10.B., Comprehensive Plan Amendment 2008-1** has been continued at the Planning and Zoning Board level and would assume that the Commission would want to continue it as well pending receipt of their report on it.

Mr. McDuffie moved to approve the Agenda as amended, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

5. **APPROVAL OF MINUTES:**

None.

6. **PROCLAMATIONS:**

6.A. **NONE**

7. **PRESENTATIONS:**

7.A. **Special Recognition Awards – Sasha Bernard and Michael Dunbar**

Mayor Ellis read and presented a Special Recognition Award to Sasha Bernard and Michael Dunbar for their hard work and accomplishments.

Alberta Gaum-Rickard, Project Coordinator/Parks and Recreation, introduced Zerlean and Curtis Williams who have volunteered for over 14 years with the Delray Beach Travel and Recreation Basketball League.

Zerlean Williams recognized her husband Curtis Williams and Coach Chris Blake. Mrs. Williams introduced the following two players because of their academics, sports, and national recognition: **Sasha Bernard** and **Michael Dunbar**. Mrs. Williams stated Sasha Bernard maintains a GPA of 3.90, during her Sophomore year she became captain of the Atlantic High School Girl's Varsity Basketball Team and still remains their leader, has well over 1,800 volunteer hours of community service, and was currently ranked the #6 player in Florida's 2009 graduating class rated by Breakdown Magazine (a national magazine for sports for students). Mrs. Williams stated Collegiate Girls Basketball Report ranked Sasha among the top 100 players in the country and as of May 14th her ranking was number 68 in the country. Florida Girls Basketball currently ranked Sasha in the top 100 in the State of Florida and through hard work and determination Sasha has emerged as one of the top recruits in the State and in the country. Her scholarship offers have come from the top women's basketball program including The University of Miami, The University of South Florida, and many more. Mrs. Williams stated within this past week Sasha (Junior) signed her letter of intent for Indiana University.

Mrs. Williams stated Michael Dunbar came to her program in the 2005/2006 school year. Michael has maintained a GPA in excess 3.60, has accumulated more than 2,000 volunteer hours before his senior year. He is a member and captain of the Palm Beach Central Cross Country Team and has won many awards. He graduated from Palm Beach Central during the 2006/2007 school year and after graduating he found he was one of 273 students selected in the country and has won the highest award given to a student in the country for the Congressional Award Gold Medal for Students. This award is given to young people that demonstrate excellence in four areas: (1) public service, (2) physical fitness, (3) personal development, and (4) inspiration. Mrs. Williams stated Michael has just completed his freshman year at Purdue University studying electrical engineering technology (on a full scholarship).

At this point, Mrs. Williams introduced Sasha Bernard and Michael Dunbar.

Michael Dunbar and Sasha Bernard came forward to accept their awards and Michael Dunbar gave a few brief comments.

Mayor Ellis thanked the families of these two remarkable young students that we have in our community.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. REQUEST FOR SIDEWALK DEFERRAL/245 N.E. 8th AVENUE: Approve a request to defer the installation of a sidewalk in front of 245 N.E. 8th Avenue.

8.B. CHANGE ORDER (C.O. 1)/WEST CONSTRUCTION, INC./S.W. 2ND AVENUE STREETSCAPE PROJECT: Approve a Change Order (C.O. No. 1) in the amount of \$17,943.38 to West Construction, Inc. for additional work required to correct a drainage deficiency for the S.W. 2nd Avenue Streetscape Project. Funding is available from 448-5461-538-65.87 (Storm Water Utility Fund/Other Improvements/SW 2nd Av-SW 1st St to West Atlantic Avenue).

8.C. AGREEMENT/CSX TRANSPORTATION, INC.: Approve an agreement with CSX Transportation, Inc. in an estimated amount of \$7,000.00 for preliminary engineering to extend the length of the gate arms at S.W. 10th Street and Lake Ida Road to meet Federal Railroad Administration (FRA) Quiet Zone requirements. Funding is available from 001-2911-519-31.30 (General Fund/Professional Engineering/Architectural Services).

8.D. PALM BEACH COUNTY GRANT/EMERGENCY MEDICAL SERVICES/RESOLUTION NO. 19-08: Approve the application for a non-matching grant to the Palm Beach County Department of Emergency Medical Services in an estimated amount of \$43,932.00 to purchase four (4) GlideScope Rangers; and approve Resolution No. 19-08.

The caption of Resolution No. 19-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REQUESTING FUNDS FROM THE PALM BEACH COUNTY EMERGENCY MEDICAL SERVICES GRANT AWARD PROGRAM FOR FY 2007/2008.

(The official copy of Resolution No. 19-08 is on file in the City Clerk's office.)

8.E. PALM BEACH COUNTY GRANT/EMERGENCY MEDICAL SERVICES/RESOLUTION NO. 21-08: Approve the application for a non-matching grant to the Palm Beach County Department of Emergency Medical Services in an estimated amount of \$15,000.00 to purchase four (4) Masimo RAD 57-C carbon monoxide detectors; and approve Resolution No. 21-08.

The caption of Resolution No. 21-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA REQUESTING FUNDS FROM THE PALM BEACH COUNTY EMERGENCY MEDICAL SERVICES GRANT AWARD PROGRAM FOR FY 2007/2008.

(The official copy of Resolution No. 19-08 is on file in the City Clerk's office.)

8.F. GRANT APPLICATION/LAW ENFORCEMENT GRANTS PROGRAM/ TARGET: Authorize staff to submit a law enforcement grant application to Target for funding in the amount of \$4,500.00 to purchase 50 textbooks for the Police Department's Criminal Justice Academy at Atlantic Community High School.

8.G. GRANT APPLICATION/EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) FOR FY 2008: Approve a grant application for the Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$21,228.00 which will provide funding for the Police Department's Holiday Task Force Overtime.

8.H. FREQUENCY RECONFIGURATION AGREEMENT/NEXTEL: Approve an agreement between the City and Nextel which provides that Nextel shall fund the frequency reconfiguration to relocate the City's public safety communications system from its existing channels in the 800 MHz range to other licensed channels not located in the 800 MHz range.

8.I. FREQUENCY RECONFIGURATION IMPLEMENTATION PHASE AGREEMENT/MOTOROLA: Approve an agreement between the City and Motorola which provides that Motorola shall perform the frequency reconfiguration to relocate the City's public safety communications system from its existing channels in the 800 MHz range to other licensed channels not located in the 800 MHz range.

8.J. SPECIAL EVENT REQUEST/PRO-MOTIONS SPORTS MARKETING VOLLEYBALL TOURNAMENT: Approve a request from Pro-Motions Sports Marketing to host a Volleyball Tournament to be held at the municipal beach adjacent to Sandoway Park on June 21 and 22, 2008 contingent upon receipt of a revised insurance certificate.

8.K. SPECIAL EVENT REQUEST/SPADY LIVING HERITAGE DAY:
Approve a special event request to endorse the 3rd Annual Spady Heritage Day to be held on September 6, 2008 from 10:00 a.m. to 10:00 p.m., to grant a temporary use permit per LDR's Section 2.4.6(F) for the closure of N.W. 5th Avenue from Martin Luther King Blvd. to N.W. 1st Street; to authorize staff support for security, clean up, City generator use, barricading; set up/use of the new large mobile stage with event signage to be put up no earlier than ten (10) days prior to the event; contingent upon receipt of a proper certificate of liability insurance and a hold harmless agreement.

8.L. SPECIAL EVENT REQUEST/ART AND JAZZ ON THE AVENUE:
Approve a special event request to endorse the next Art and Jazz on the Avenue to be held on August 14, 2008 from 6:00 p.m. to 10:00 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the closure of Atlantic Avenue from Swinton to the west side of N.E./S.E. 7th Avenue, Railroad Avenue from Atlantic north to the north side of the east/west alley, and to the alleys north and south of Atlantic on N.E./S.E. 1st Avenue, N.E./S.E. 2nd Avenue, S.E. 3rd Avenue, N.E./S.E. 4th Avenue; to authorize staff support for security, traffic control, banner hanging and removal, barricade set up and removal, trash removal and clean up and EMS assistance; contingent upon receipt of a hold harmless agreement.

8.M. GENERAL RULES OF PROCEDURE OF THE CODE ENFORCEMENT BOARD: Approve the revised Code Enforcement Board Rules to include the Quasi- Judicial Procedures, and to provide that the order of business at hearings shall be set by the Board.

8.N. SERVICE AUTHORIZATION NO. 3.2/KIMLEY-HORN AND ASSOCIATES, INC.: Approve Service Authorization No. 3.2 in the amount of \$29,620.00 to Kimley-Horn and Associates, Inc. for provision of supplemental consultant services Tasks 1.0 and 2.0 for the Miller Park Improvement Project. Funding is available from 334-4173-572-63.90 (General Construction Fund/Improvements Other/Other Improvements).

8.O. AMENDMENT NO. 1/MATCH POINT, INC.: Consider approval of Amendment No. 1 to the agreement between the City and Match Point, Inc. to allow the Chris Evert Charity Event to be held in the months of November and December without being in violation of the Match Point Agreement.

8.P. PROPOSED CHANGE TO CREATIVE CITY COLLABORATIVE CULTURAL PLAN: Consider a proposed change submitted by Old School Square to the Creative City Collaborative recommendations to the Cultural Plan.

8.Q. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period June 2, 2008 through June 13, 2008.

8.R.

AWARD OF BIDS AND CONTRACTS:

- 1.** Bid award to various vendors at an estimated annual cost of \$240,203.50 for pipe fittings and accessories for Construction, Water/Sewer and the City's Warehouse. Funding is available from various departmental operating budgets and construction projects.
- 2.** Bid award to Jani King Commercial Cleaning Services in the amount of \$36,120.00 for janitorial services at the Delray Beach Golf Course. Funding is available from 445-4711-572-34.90 (Delray Beach Municipal Golf Course/Other Contractual Service/Other Contractual Service).
- 3.** Contract award to Total Golf Construction, Inc. in the amount of \$276,129.00 for the Lakeview Golf Course Greens Renovation Project. Funding is available from 441-5181-536-65.96 (Water/Sewer Fund/Other Improvements/Reclaim Water Transmission).

Mr. Fetzer moved to approve the Consent Agenda, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

9.

REGULAR AGENDA:

9.A. **WAIVER REQUEST/114 N.E. 1st AVENUE:** Consider a request to waive Land Development Regulations (LDR) Sections 4.3.3(Q), "Guest Cottage", to permit a guest cottage to exceed the required 700 square feet and contain 787 square feet, for the property located at 114 N.E. 1st Avenue within the Old School Square Historic District. (*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. The Commission had no ex parte communications to disclose.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2998-156 into the record.

Mr. Dorling stated this is a waiver from LDR Section 4.33.3(Q), Guest Cottages, which requires that a guest cottage shall not occupy more than 1/20th of the lot area and in no case shall exceed a floor area of 700 square feet. The structure to be converted to a guest cottage is less than 1/20th of the site; however, it contains

approximately 787 square feet. The waiver findings are noted in staff's memorandum.

At its meeting of June 4, 2008, the Historic Preservation Board (HPB) approved the Certificate of Appropriateness (COA) request associated with the conversion of three single-family structures into a duplex and guest cottage. The Board recommended approval upon positive findings of LDR Section 2.4.7(B)(5).

The applicant has also agreed to remove the kitchen from the structure which helps qualify it as a guest cottage and the guest cottages are limited exclusively for housing members that occupy the principal dwelling or their non-paying guests or persons employed for service on the premises. The applicant has indicated that this is his intent. Staff recommends approval of this waiver request.

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.

Marsha Miller, 1906 North Swinton Avenue, Delray Beach, inquired if this is the property where three small historic houses are located.

Mayor Ellis asked about the notification letters that go out to the public. Mr. Dorling stated it is notification within 500 feet of the property and this is an effort to reuse those houses and to occupy them as they exist today and not to tear them down.

There being no one else from the public who would like to address the Commission regarding the waiver request, the public hearing was closed.

There was no cross-examination or rebuttal.

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

Mrs. Montague moved to adopt the Board Order as presented, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 4 to 0 vote.

9.B. CHRIS EVERT PRO-CELEBRITY TENNIS CLASSIC: Consider approval of an agreement between the City and Chris Evert Charities, Inc. for the Chris Evert Pro-Celebrity Tennis Classic to be held at the Delray Beach Tennis Center for the years 2008 through 2012; the City will contribute to Chris Evert Charities, Inc. \$43,600.00 in 2008, increasing to \$49,000.00 in 2012, with half of the payment going to the Drug Abuse Foundation. Funding is available from 001-4210-575-55.43 (General Fund/Chris Evert Classic Tournament).

Robert A. Barcinski, Assistant City Manager, stated staff recommends approval of a five year agreement with Chris Evert Charities, Inc. for the Chris Evert Pro Celebrity Tennis Championships scheduled to be held the first weekend in November 2008. He stated the term of this agreement shall be for a period of 5 years versus the prior agreement's term of 3 years; the City will be allowed to charge and retain revenues for valet parking and parking in the parking garage; previously Charities was required to contribute a maximum of \$20,000, of the payment made by the City to Charities, and to the Drug Abuse Foundation of Palm Beach County. Charities will now contribute 50% of the total payment to the Drug Abuse Foundation. Payment for 2008 is \$43,600 with increases for each year; Charities shall not be require to use the City's exclusive vendor for soft drinks as the City has a certain number of days, for events, that shall not be required to use its exclusive vendor.

Mr. Fetzer moved to approve the Agreement between the City of Delray Beach and Chris Evert Charities, Inc. for the Chris Evert Pro-Celebrity Tennis Classic to be held at the Delray Beach Tennis Center for the years 2008 through 2012, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

9.C. INTERLOCAL AGREEMENT/COMMUNITY REDEVELOPMENT AGENCY (CRA)/REMOVAL OF UNDEGROUND TANK: Consider approval of an Interlocal Agreement between the City and the Community Redevelopment Agency (CRA) for the removal of an underground tank on the City-owned parking lot behind the old library. The Community Redevelopment Agency (CRA) has agreed to pay up to \$20,000.00 for removal and remediation; and if the amount exceeds \$20,000.00 the City and the CRA may renegotiate the cost, or the City may convey the property to the CRA at their request, or the City may cancel the Tri-Party Interlocal Agreement which requires the City to convey the property.

The City Attorney stated this is an Interlocal Agreement between the City of Delray Beach and the Community Redevelopment Agency (CRA) where the CRA will reimburse the City for the removal of an underground tank on the old library site parking lot area. The CRA will pay up to \$20,000 for removal and remediation and if it exceeds that amount the City can renegotiate the cost, cancel the contract or convey the property to the CRA as is.

Mrs. Montague asked that once this is dug up will they enclose the area. The City Manager stated it depends on what they find. He stated if they find soil contamination then they will have to remedy that; if they do not find any then they will just fill the hole in.

Mr. McDuffie questioned if it is a fuel tank. The City Attorney stated it is described that way at this point.

Mr. McDuffie moved to approve the Interlocal Agreement between the City of Delray Beach and the Community Redevelopment Agency (CRA) for the removal of an underground tank on the City-owned parking lot behind the old library, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

9.D. CONTRACT AWARD/NUTTING ENVIRONMENTAL OF FLORIDA, INC.: Consider approval of a contract award to Nutting Environmental of Florida, Inc. in the amount of \$13,660.00 for the removal and disposal of one 1250 gallon underground storage tank located at the former City of Delray Beach Library Parking Lot. Funding for this expense will be provided by the Community Redevelopment Agency (CRA).

Richard Hasko, Director of Environmental Services, stated this is the actual set of quotes to do the work for removal and disposal of the underground storage tank. He stated the quotes were not initially submitted to the City; some were submitted to the Community Redevelopment Agency (CRA). Mr. Hasko stated staff contacted all three vendors and they guaranteed their numbers to the City directly. The lowest quote is Nutting Environmental of Florida, Inc. for \$13,660 for removal and disposal of the underground storage tank. He stated Nutting Environmental of Florida, Inc. will do soil sampling and ground water sampling. Mr. Hasko stated hopefully they will not find any residual contamination but they will not know if there is any additional work to be done until they do that work.

The City Attorney stated for clarification on staff's backup it shows a contract that is not the City's standard contract and the Commission is not approving that Nutting Environmental of Florida, Inc. contract. However, the Commission is approving a bid under the City's standard contract.

Mrs. Montague moved to approve a Contract Award to Nutting Environmental of Florida, Inc. in the amount of \$13,660.00, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

9.E. BID AWARD/MANUFACTURERS APPLIED RENOVATION SYSTEMS, INC./POMPEY PARK BLEACHER REPAIR: Consider approval of a bid award to Manufacturers Applied Renovation Systems, Inc. second low bidder, in the amount of \$53,672.00 for repair and service of bleachers for Pompey Park. Funding is available from 334-4127-572-46.15 (General Construction Fund/Repair & Maintenance Services/Improvement-Other Repair & Maintenance).

Tim Simmons, Acting Director of Parks and Recreation, stated this is a request to approve the second low bidder and the reason that City staff chose Manufacturers Applied Renovation Systems, Inc. is the structure, warranty, and guarantee for the stability of the bleachers. He stated these bleachers will be electronic

and will go out half way and fully.

Mrs. Montague asked why staff is considering repairing these bleachers at this time. In response, Mr. Simmons stated the bleachers are too unsafe for the kids to be on and if too many bodies are on it at one time it sags and staff is afraid it is going to collapse.

The City Manager stated why does staff want to repair the bleachers instead of taking Hufcor's bid to replace them with new bleachers. Mr. Simmons stated after going through the recommendations and the referrals this was the company staff felt would have the warranty and guarantee on the stability of that structure.

Mrs. Montague stated she would not be willing to spend \$53,672.00 to repair existing bleachers. She stated in the past the Commission discussed replacing the bleachers and not to repair the existing bleachers. Mrs. Montague stated she would support the bid of \$67,530.00 and have brand new bleachers.

Mayor Ellis asked how long the warranty is. Mr. Simmons stated he believes the warranty is for ten years for Manufacturers Applied Renovation Systems, Inc. (MARS). The City Attorney asked if there is a warranty from Hufcor Florida Group. Mr. Simmons stated there is no warranty for the stability from Hufcor Florida Group. He stated some of the children tend to jump up and down on the bleachers and staff was concerned with the way the bleachers continue to sag. Mr. Simmons stated MARS guaranteed that would not happen with the structure.

Mrs. Montague stated she feels the Commission is looking for everything to be new and noted that this is the most used park and recreation site in the city. She stated everyone has waited for this for a long time and wants to give the community the best that they can. Mrs. Montague stated she would support the higher bid to have new bleachers.

The City Manager suggested that staff delay this and examine the warranty's and see exactly what the difference might be and bring this back to the Commission on July 1, 2008.

Mr. McDuffie moved to postpone to July 1, 2008, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 4 to 0 vote.

9.F. PROPOSED CONTRACT/EVERGREEN SOLUTIONS, LLC:
Consider approval of a proposed Consulting Service Agreement with Evergreen Solutions, LLC to conduct a Compensation and Classification Study in the amount of \$18,000.00. Funding is available from 001-1311-512-34.90 (General Fund/Human Resources/Other Contractual Services).

Bruce Koeser, Human Resources Director, stated Human Resources staff has been planning to do Compensation and Analysis Classification Study for non-bargaining positions. Mr. Koeser stated staff requested three quotes and Evergreen Solutions, LLC came back with the best referrals. The plan would include a communications plan, focus groups with employees, focus groups with department heads, management input, benchmarking studies, and market studies. Staff requested approval to move forward on this.

Mr. Fetzer asked if this study includes benefits. In response, Mr. Koeser stated this study does not address benefits at all and noted that this is strictly compensation and classification to make sure City employees are lined up where others would be according to market.

Mayor Ellis commented that these are non-bargaining positions and the study will compare wages with the public sector. Mr. Koeser clarified that these are primarily comparable jobs in other similar size municipalities in the South Florida area.

Mr. McDuffie asked when staff can expect results from Evergreen Solutions, LLC. In response, Mr. Koeser stated staff is looking at 120 days from inception. Mr. Koeser stated the study should begin the first part of July and expects the results the first part of November. He stated staff is trying to get this done around fiscal year time because that is around the time staff would be making changes. Mr. Koeser stated Evergreen Solutions, LLC has assured staff that wrap up time will be around that time and they will have recommendations to the Commission in September if staff needs to get anything done October 1st.

Mrs. Montague moved to approve the proposed Consulting Service Agreement with Evergreen Solutions, LLC in the amount of \$18,000.00, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

9.G. PROPOSAL FOR SETTLEMENT OFFER IN PEGGY USEM v. CITY OF DELRAY BEACH: Consider a Settlement Offer in the amount of \$45,000.00. Staff recommends denial of the Settlement Offer; and approval of a counteroffer in the total amount of \$19,500.00 in Peggy Usem v. City of Delray Beach.

Mr. Fetzer moved to approve the Settlement Offer in the amount of \$19,500.00 as a counteroffer in Peggy Usem v. City of Delray Beach, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

9.H. 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).

Commissioner Eliopoulos' appointment has been deferred to the next regular meeting of July 1, 2008.

9.I. APPOINTMENTS TO THE CODE ENFORCEMENT BOARD: Appoint two (2) alternate members to the Code Enforcement Board to serve unexpired terms ending January 14, 2010. Based upon the rotation system, the appointments will be made by Commissioner Montague (Seat #4) and Mayor Ellis (Seat #5).

Mrs. Montague moved to appoint Albert Richwagen as an alternate member to the Code Enforcement Board to serve an expired term ending January 14, 2010, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mayor Ellis moved to appoint Shannon Dawson as an alternate member to the Code Enforcement Board to serve an unexpired term ending January 14, 2010, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 4 to 0 vote.

9.J. APPOINTMENTS TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE: Appoint five (5) regular members to the Affordable Housing Advisory Committee to serve one (1) year terms ending June 17, 2009, and six (6) regular members to serve (2) years terms ending June 17, 2010. Based upon the rotation system, the appointments will be made by Commissioner Eliopoulos (Seat #1), Commissioner Fetzer (Seat #2), Commissioner McDuffie (Seat #3), Commissioner Montague (Seat #4), and Mayor Ellis (Seat #5).

Commissioner Eliopoulos' appointment (Item a) will be deferred to the next regular meeting of July 1, 2008.

Mr. Fetzer moved to appoint Wanda Gadson as a regular member to the Affordable Housing Advisory Committee to serve a one (1) year term ending June 17, 2009, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to appoint William Hatcher as a regular member to the Affordable Housing Advisory Committee to serve a one (1) year term ending June 17, 2009, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said

motion passed with a 4 to 0 vote.

Mrs. Montague moved to appoint Dorothy Ellington as a regular member to the Affordable Housing Authority Committee to serve a one (1) year term ending June 17, 2009, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mayor Ellis moved to appoint Connie Staundinger as a regular member to the Affordable Housing Authority Committee to serve a one (1) year term ending June 17, 2009, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 4 to 0 vote.

Commissioner Eliopoulos' appointment (Item f) will be deferred to the next regular meeting of July 1, 2008.

Mr. Fetzer moved to appoint Alberta McCarthy as a regular member to the Affordable Housing Authority Committee to serve a one (1) year term ending June 17, 2009, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to appoint Charles Halberg as a regular member to the Affordable Housing Authority Committee to serve a one (1) year term ending June 17, 2009, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

Mrs. Montague moved to appoint Carmelita Smith as a regular member to the Affordable Housing Authority Committee to serve a one (1) year term ending June 17, 2009, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

Mayor Ellis moved to appoint Sandra Weatherspoon as a regular member to the Affordable Housing Authority Committee to serve a one (1) year term ending June 17, 2009, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 4 to 0 vote.

Commissioner Eliopoulos' appointment (Item k) will be deferred to the next regular meeting of July 1, 2008.

9.K. APPOINTMENTS TO THE CIVIL SERVICE BOARD: Appoint two (2) regular members and one (1) alternate member to the Civil Service Board to serve two (2) year terms ending July 1, 2010. Based upon the rotation system, the appointments will be made by Commissioner Fetzer (Seat #2), Commissioner McDuffie (Seat #3) and Commissioner Montague (Seat #4).

Mr. Fetzer moved to reappoint Emily Dobard as a regular member to the Civil Service Board to serve a two (2) year term ending July 1, 2010, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to reappoint Elaine Calabrese as a regular member to the Civil Service Board to serve a two (2) year term ending July 1, 2010, seconded by Mr. Fetzer.

At this point, Commissioner Montague stated she checked and Ms. Calabrese only wants to be an alternate. Mr. McDuffie withdrew his motion.

Mr. McDuffie moved to appoint Sidney Grossman as a regular member to the Civil Service Board to serve a two (2) year term ending July 1, 2010, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

Mrs. Montague moved to reappoint Elaine Calabrese as an alternate member to the Civil Service Board to serve a two (2) year term ending July 1, 2010, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

9.L. 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 stated he would like to defer his appointment to the next regular meeting of July 1, 2008.

9.M. HIRING OF OUTSIDE COUNSEL IN THE CASE OF STACEY LEWIS V. CHRIS MCMURRAY AND CITY OF DELRAY BEACH: Consider hiring Attorney Fred Gelston to act as outside trial counsel in the case of Stacey Lewis v. Chris McMurray and City of Delray Beach.

The City Attorney stated staff recommends appointment of outside counsel in this case and Fred Gelston's rate is \$125.00 per hour.

Mr. Fetzer moved to approve hiring Attorney Fred Gelston to act as outside counsel in the case of Stacey Lewis v. Chris McMurray and City of Delray Beach, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 4 to 0 vote.

9.N. HIRING OF OUTSIDE COUNSEL IN THE CASE OF ROBERT HAUPTFUHRER V. CITY OF DELRAY BEACH, ET AL: Consider hiring Attorney Fred Gelston to act as outside counsel in the case of Robert Hauptfuhrer v. City of Delray Beach, et al.

The City Attorney stated this is a case brought to the Commission several times. She stated they have now filed suit and staff recommends appointment of outside counsel in this case and Fred Gelston’s rate is \$125.00 per hour.

Mr. McDuffie moved to approve hiring Attorney Fred Gelston to act as outside counsel in the case of Robert Hauptfuhrer v. City of Delray Beach, et al, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:00 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 24-08 (SECOND READING/SECOND PUBLIC HEARING): A City initiated amendment to the Land Development Regulations (LDR) amending Article 4.3, “District Regulations, General Provisions”, by amending Section 4.4.3, “Single Family Residential (R-1) District”, Subsection (F) “Development Standards”, to provide standards for the Lake Ida Neighborhood Overlay District”; Article 4.5, “Overlay and Environmental Management Districts”, by enacting a new Section 4.5.16, “Lake Ida Neighborhood Overlay District”, to create a new overlay district for the Lake Ida Neighborhood; and amending Appendix “A” “Definitions”, to enact a new definition for “Floor Area Ratio”. The boundaries of the proposed overlay district are generally described as N.W. 22nd Street on the north, Swinton Avenue to the east, Lake Ida Road to the south, and Interstate 95 on the west for the Single Family Residential properties that are zoned R-1-AA , R-1-AAA , and R-1-AAAB.

The caption of Ordinance No. 24-08 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 OF
THE CITY OF DELRAY BEACH, FLORIDA, BY

AMENDING ARTICLE 4.3, "DISTRICT REGULATIONS, GENERAL PROVISIONS", BY AMENDING SECTION 4.4.3, "SINGLE FAMILY RESIDENTIAL (R-1) DISTRICT", BY AMENDING SUBSECTION (F), "DEVELOPMENT STANDARDS", TO PROVIDE DEVELOPMENT STANDARDS FOR THE LAKE IDA NEIGHBORHOOD OVERLAY DISTRICT; AMENDING ARTICLE 4.5, "OVERLAY AND ENVIRONMENTAL MANAGEMENT DISTRICTS", BY ENACTING A NEW SECTION 4.5.16, "LAKE IDA NEIGHBORHOOD OVERLAY DISTRICT", TO CREATE A NEW OVERLAY DISTRICT FOR THE LAKE IDA NEIGHBORHOOD; AMENDING APPENDIX "A", "DEFINITIONS", TO ENACT A NEW DEFINITION FOR "FLOOR AREA RATIO"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

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

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

Paul Dorling, Director of Planning and Zoning, stated this is a text amendment to Land Development Regulations Section 4.4.3(F) which is the single family Residential (R-1) District – Development Standards and Article 4.5 (Overlay and Environmental Management Districts) to establish the Lake Ida Neighborhood Overlay District and associated design guidelines. The boundaries of the overlay district are generally described as N.W. 22nd Street on the north, Lake Ida Road to the south, Swinton Avenue to the east, and Interstate 95 to the west. This area is commonly known as the Lake Ida neighborhood. The purpose of the overlay district and associated design guidelines is to encourage new houses and building additions that are compatible with the character of the neighborhood. The City of Delray Beach received a letter dated March 6, 2008 from the Lake Ida Neighborhood Task Force that identifies the requested changes to the development regulations within the proposed Lake Ida Neighborhood Overlay District. The changes involve the following topic areas: (1) maximum lot coverage, (2) maximum floor area ratio (FAR), (3) maximum percentage FAR for 2nd floors, (4) modify front and rear yard setbacks for 2-story homes, (5) propose a definition for "floor area ratio", and (6) introduce landscape requirements.

At its meeting of April 21, 2008, the Planning and Zoning Board considered and approved the initiation of the amendment to the Land Development Regulations to establish the Lake Ida Neighborhood Overlay District and associated guidelines. The Planning and Zoning Board conducted the workshop on May 12, 2008.

At that meeting a representative from the Lake Ida Property Owner's Association (LIPOA) described the amendment and provided a detailed analysis of the four mentioned development regulations. At that point, there were some regulations proposed by staff which talked about some things that staff felt logistically achieved the goals of that Task Force and that was not covered. Mr. Dorling stated those included changing references from second story to upper story because staff needed to adopt standards which would apply not only to second stories but third stories. He stated there was the thought that third stories could not be accommodated but there is a 35 foot height limit so theoretically three stories could be accomplished and that needed to be addressed. Mr. Dorling stated staff also suggested some appropriate clarifications to the FAR definitions, the front and rear setbacks (five foot less in the front and greater in the back) and did not accommodate certain areas within a district zoned R-1-AAA and R-1- AAAB. He stated in the changes that staff suggested maintained that five foot offset on those two zoning districts as well. Staff also provided a definition of first floors and second floors providing maximum heights so that you did not get somebody qualifying a first floor of 35 feet because that has a mass greater than a first floor. He stated those changes were discussed by the Task Force and endorsed as recommendations that made sense. There was also a recommendation that there be an increase in the FAR to the lots on Lake Ida to .40 rather than .35 with acknowledgement that greater development is more appropriate on those lots. Staff also suggested that a 75% limit of the second floor as it relates to the first floor be extended to 100% on those lake lots. Mr. Dorling stated those changes were incorporated in the ordinance that the Commission adopted on first reading on June 3, 2008. Mr. Dorling stated under the current regulations on a 7,200 square foot lot someone could build a 9,900 square foot house and on a 8,800 square foot lot someone could build 13,000 square foot house, on a 14,500 square foot lot someone could build a 22,000 square foot house, on a 16,000 square foot lot someone could build a 27,000 square foot house. Mr. Dorling stated houses of those sizes are not keeping in the character with what is in the neighborhood. Staff supports the recommendations of the Task Force in achieving that compatibility.

Mayor Ellis stated if anyone would like to speak in favor or in opposition of Ordinance No. 24-08, to please come forward at this time.

Michael Weiner, Attorney with Weiner and Aronson, P.A., 10 S.E. 1st Avenue, Delray Beach, stated he represents individuals and companies who own land directly or through companies in the proposed Lake Ida District and he placed these names into the record. He stated all of these individuals and entities declare that they are aggrieved substantially effective parties as defined in the applicable State Statutes and local ordinances. Mr. Weiner stated any mention of any ordinance or Statute in his writings or comments by him are only examples. All rights are reserved including all rights under any Section of Chapter 163 by way of example. Mr. Weiner complimented the Planning and Zoning staff and the City Attorney's office and those who have participated in professionally addressing his office. He stated they have made other statements concerning the Comprehensive Plan, procedures, and other substantive and procedural issues which are all part of the public record. Mr. Weiner stated the issue that concerns them is the issue of the Planning and Zoning Board sitting as the local planning

agency. He stated the second point concerns Objective A-1 of the Housing Element and Policy A-3.1. Mr. Weiner stated the Neighborhood Association has to have official representation and failure to identify who was the official representative is a critical failure and flaw with respect to the review by the Planning and Zoning Board. He stated there never was a determination as to official representation. Mr. Weiner stated these are two policies that are clearly not met and there are other goals, objectives, and policies which are also not looked at. Mr. Weiner stated for these reasons he urged the Commission to turn this ordinance down and restart this particular matter.

Sam Shannon, 1500 North Swinton Avenue, Delray Beach (Chairman of the Task Force and have developed the recommendations that are before the Commission tonight), stated at the meeting of June 3, 2008, he indicated that the overriding concern of the Task Force was to preserve the existing character of the Lake Ida neighborhood and the preservation of that character was directly related to the size and the scale of development being compatible with the existing lots and the scale of adjacent homes in the area. Mr. Shannon urged the Commission to adopt the Lake Ida overlay district to help preserve the basic character of the neighborhood and maintain the neighborhood feel that brought so many of us to call Lake Ida our home. He understands that a new issue has come up and that is the possibility of placing the overlay up for a straw ballot. He stated using the ballot box for land use issues is the approach that is being taken by the backers of hometown democracy amendment to the State constitution and does not believe it is the type of thing the City of Delray Beach wants to be associated with. Mr. Shannon cautioned the Commission that a decision to use the ballot box to make planning and land use decisions could put the City in a slippery slope. He stated if this is the way the City wants to conduct its business then they may want to think about what the situation would have been in other cases. For example, why was there not a vote for the residents in Breezy Ridge when the City wanted to relocate Atlantic High School into that neighborhood, why not a vote of the Sherwood Park neighborhood when the church wanted to sell parts of its land, and why not a vote of the people along Old Germantown Road to decide the intensity of neighboring development. Mr. Shannon stated elections are often greatly influenced by those who can throw the most money at an issue or candidate and not necessarily on the merit of the issue. He stated the recommendations before the Commission this evening were developed by a Task Force that had significant professional involvement and experience. He stated the Task Force consisted of planners, realtors, designer, artists, and people who deeply care about their neighborhood and includes the support of City staff and the Planning and Zoning Board. Mr. Shannon stated based on the history of the development of it and the support it has received that the Commission adopt the Overlay District for the Lake Ida neighborhood.

Kirk Burns, 2005 N.W. 4th Avenue, Delray Beach, stated he lives in the Lake Ida neighborhood and supports this initiative. He urged the Commission to support these guidelines as well. Mr. Burns stated this neighborhood is unique in character and feels that it should be preserved. He stated it has been experience that guidelines like these actually serve to increase property values and urged the Commission to vote in favor.

Paul Schmitt, 945 Hibiscus Lane, Delray Beach, stated these guidelines are for mass and size to preserve the type of community in Lake Ida that everyone has appreciated. He feels that people have been poorly informed about values of property dropping as a result of these guidelines being passed. Mr. Schmitt stated across from his house is 925 Hibiscus Lane and the house was purchased several years ago and the buyer told the seller that he was interested in raising his family there. Mr. Schmitt stated the first thing that happened was that two lots were sold off on the lake then another lot was built upon and the buyer moved into that property and finally found someone to buy the property across the street. Mr. Schmitt stated there were four lots divided up into one. He stated the same thing is happening with a home at the end of the street. He stated there are ethics, honesty, truthfulness, fairness and compatibility. Mr. Schmitt stated some of these other things you cannot fix and commented that there is dishonesty that go on. He stated if the people who are against the restrictions did not know any of that then they should. Mr. Schmitt stated staff explained what someone can build and cannot build versus the guidelines then people probably learned from it because he feels that people are not going to hear from those people who are financially going to make out in this deal. Mr. Schmitt thanked the Commission for their work.

Mr. Burke, lives on Lake Drive, Delray Beach, stated he is hard to understand that there is a neighborhood association that was created by a few people in the neighborhood and not the entire neighborhood. Mr. Burke stated if there are more people who are against the guidelines then he feels people should be able to vote on it and if there are more people who support the guidelines then he feels people should be able to vote on it. He inquired about whether or not there is a minimum requirement for a home with regard to square footage. Mr. Burke state he is against the guidelines.

Dick Schmitt (brother of Paul Schmitt), stated he is for speed limits and stop signs; however, he does not believe that we need to vote on how fast people should be able to drive in their area. Mr. Schmitt stated the people elected the Commission and feels it is in their hands. He supports the guidelines.

Phil Colnon, 680 N.W. 11th Street, Delray Beach, stated there was a courtesy notice sent out by the City of Delray Beach to all the residents affected by the amendment area and the last line reads "if you cannot attend these meetings but would like to be heard on the project you may submit your comments as follows: by fax, by email, by regular mail." Mr. Colnon stated he reviewed 1,187 pages of documents received by Michael Weiner and there ends up being 74 total email addresses sent to the Commission. Mr. Colnon stated of those 74 emails 45 people are against and 29 are for. Mr. Colnon stated they submitted a petition that was hand delivered and was also faxed into the City. He stated the petition has 132 signatures on it and those were all against. Mr. Colnon stated there are 16 letters written to the Commission and 13 of those 16 people are against and 3 are for. Mr. Colnon stated they do not want an overlay district and noted that he made suggestions that would stop all these cookie cutters and made suggestions about the privacy. Mr. Colnon stated all this was ignored by the Task Force and when he did attend the Task Force Meetings he was actually asked to not return because he was disruptive. Mr. Colnon stated the Task Force was trying to design

guidelines and he did not want guidelines but wanted building adjustments for things so that title information, architect, bank information and the builder and if those were lined up then they could have a neighborhood advisory group that the builder would have to go to. Mr. Colnon stated he feels this would stop the cookie cutter. He urged the Commission to vote with the people.

Gary Anzalone, 608 North Swinton Avenue, Delray Beach, stated he is against the restrictions and noted at the last meeting there were many people who spoke against this proposal. Mr. Anzalone stated the City needs to vote because this is an All-American City that is built on democracy. He stated this is a very serious issue and the people in the neighborhood need to have a voice in this situation. Mr. Anzalone stated if there are going to be guidelines then first let's agree that there is going to be guidelines and then let the people who are against it have a voice coming in and defining these guidelines. He stated these guidelines are not ready to pass as they are and feels there are problems with the guidelines. For example, to say that somebody lives on the lake and has the right to do 100% on an upper floor and inquired as to why should they have more square footage. Mr. Anzalone feels that he should have the same opportunity as someone who lives on the lake. He stated to say that it should be 75% of the lower level who is basing decisions on what is aesthetically pleasing and what is not. He stated there is an issue with privacy and feels there are ways to give privacy without these restrictions (i.e. increase the landscaping). Mr. Anzalone stated everyone needs to have a little bit of input going forward.

Peter Goodridge, 1075 Hibiscus Lane, Delray Beach, supports the Design Guidelines recommended by the City's Planning and Zoning staff, the Planning and Zoning Board, and the Lake Ida Property Owners Association. He stated he did a Google search using Neighborhood Design Guidelines and it gives 202,000 results and most of those results are cities that have implemented neighborhood design guidelines. He stated there was an article in The Palm Beach Post this week about Old School Square and how its renovation got off the ground 20 years ago. Mr. Goodridge stated Frances Bourque, Doak Campbell and others were able to convince the City and the City Commission to renovate the property even though a lot of people wanted to tear it down. He stated today it is credited as one of the cornerstones that fuel the downtown resurgence. Mr. Goodridge stated the Planning and Zoning staff and Board has recommended this and the Lake Ida Property Owners Association has recommended this. Mr. Goodridge urged the Commission to support.

Cathy Silk, 601 N.W. 11th Street, Delray Beach, lived in Lake Ida for 16 years, stated over the course of two years she has been notified by the Task Force through newsletters, mailings, and phone calls and believes it is also on their website. She supports the guidelines.

Lannie Lewis, 1098 Hibiscus Lane, Delray Beach, stated she was on the Task Force and worked on this for 2 ½ years and noted that Mr. Colnon was never thrown out of the Task Force Meetings. She stated she has lived in the neighborhood for 30 years and supports the guidelines.

Sydney Wildes, 717 N.W. 3rd Avenue, Delray Beach (lived in Delray Beach since 1952), stated there are 750 houses in Lake Ida and no two are alike and feels this is fabulous. She stated she would hate there to be homes that resemble one another so closely that our identity becomes lost. She distributed a handout to the Commission for the record.

Cary Glickstein, 1118 Waterway Lane, Delray Beach, stated he was involved in the Beach Overlay District and pointed out that their process started out exactly like Lake Ida's. He stated unlike Lake Ida's process theirs ended at City Hall with an empty Chamber and no one speaking against the proposed regulations. Mr. Glickstein stated the Beach Property Owners had a knowledgeable third party (Urban Design Studios) that guided them through the process and at the same time allay the concerns of those that were opposed. He stated the guidelines were successful because they were objective unlike the polarizing process in Lake Ida but more importantly they had truth and fact on their side which ultimately convinced the opposition that this was a good thing. Mr. Glickstein stated evidence on a national level overwhelmingly supports the correlation between neighborhood design and building regulations and higher property values and thus sustain a higher quality of life. He stated preserving the quality of life in our neighborhoods should be of paramount importance to this Commission and every Commission and passage of these regulations is forward thinking.

Roy Simon, 201 N.W. 11th Street, Delray Beach (Architect and served on the Task Force), stated he feels the Task Force came up with something that concerned everybody at both meetings and that was the scale and proportion of the neighbor, the affect of a building on the neighbor, and on that piece of property. Mr. Simon urged the Commission to support the guidelines.

Julie Schmidt, 945 Hibiscus Lane, Delray Beach, stated she has attended a few of the meetings and supports the Design Guidelines. She stated there are a lot of people that can be here that are here and there are a lot of people that would like to be here that cannot. She asked those people who are for the Design Guidelines to stand.

James Scott McOwen, 302 N.W. 18th Street, Delray Beach, supports the guidelines to stabilize and understand what we are doing in a community. He stated everyone has come together and hopefully can continue that process as we work through different guidelines. Mr. McOwen stated he hopes the Commission will contemplate this for the best of the community.

Dr. Joseph Ferrer, 1420 North Swinton Avenue, Delray Beach, stated approximately 14 years ago when he and his wife considered to move to Delray Beach people loved Lake Ida the way it was. He stated maybe the property values were not what they were then as they are now but people loved Delray Beach the way it was. Mr. Ferrer stated this is about the next 20 years and if we are going to enjoy the community in Lake Ida we are all going to have to continue to work together on other issues they will be facing. Dr. Ferrer stated it has been a great community and he supports the guidelines.

Andrea Harden, 516 North Swinton Avenue, Delray Beach, strongly supports the Design Guidelines and she loves Lake Ida. She stated she has watched in dismay as the rhythm, scale and even some of the charm of her block was lost to a massive new house and behind her home a Glenn Wright house was built that in her opinion has no charm and is still unsold. Mrs. Harden stated with regard to property rights and stated none of us have absolute rights anymore. As far as zoning that was decided about 50 years ago when most metropolitan areas adopted zoning ordinances. Mrs. Harden stated people want to max out their living space on their lot and made reference to a 10,000 foot house on a 10,000 square foot lot in Tropic Isle that she feels is appalling. She stated the Commission needs to consider the balance between those who want to live in Lake Ida versus those who are making a living off of Lake Ida. She stated those who have lived here many years and have shown a commitment to the neighborhood and the city versus those who have moved in fairly recently and their commitment is yet to be seen. She stated those who live in the community versus those who own property and rent it out and the extreme example by the week for vacation homes or sober houses. Mrs. Harden stated in her opinion, the Floor Area Ratio (FAR) is extremely important to mass and scale because these are the elements that have upset so many people and have to do in part with the relation of the size of the house to the size of the lot. Mrs. Harden stated if this is not passed one of the ramifications will be the loss of diversity in Lake Ida. She stated one of its charms is the different architecture rare in a community in South Florida and if the City continues to allow large homes to be built on small lots then the City is aiding in the gentrification of the area and if the City continues to allow larger and larger Floor Area Ratio (FAR) on smaller lots, it will continue the encouragement of demolition of smaller homes.

Ann Margo Peart, West Palm Beach 710 ½ Claremore Drive, West Palm Beach (grew up at 107 N.W. 9th Street, Delray Beach), stated her family has been in this area for a long time and one of her fondest memories as a child growing up in Del Ida and in Lake Ida was outside playing in their big yards. She stated one day she would like to move back to this area to raise a family. If these Design Guidelines are not passed we are letting developers come in to tear down homes, subdivide the lots, and build oversized houses for sale. Ms. Peart stated despite the fact that it was publicly inferred in one of many unsolicited mass emails to the entire Lake Ida Neighborhood Association that her mother was a liar and noted that she has talked to her every day for the past 30 years and she never ever caught her in one single white lie.

Sally Wheeler, 2001 N.W. 4th Avenue, Delray Beach, stated it is not so much the guidelines that everyone is against but it is the overlay district that they are not very happy about. She stated that if a Glenn Wright home is still not sold how many more are going to be built and commented about recent immigrants to Lake Ida that have been treated as lesser beings just because they have not been here very long.

Dennis DeFranceschi, 212 N.W. 17th Street, Delray Beach, stated he is strongly opposed to these restrictions because it devaluates the property between 15th and 18th Street, and in the area of Dale Lane and Pine Lane. He stated the lots are very small and it restricts what a person can do with that piece of property. Mr. DeFranceschi stated

if the City would like to make a restriction or an amendment to the order that a small lot does not have to abide by these new restrictions then that is okay. However, he stated people with large lots who are not being affected by these new rules that they want to put into place some of the people with smaller lots are very much being affected by it. Mr. DeFranceschi stated he does not see why people with large lots feel they have the right to restrict people with smaller lots from doing what they want on their property. He stated he has lived in the neighborhood for 37 years and moved to Delray Beach in 1959 and is not a newcomer.

Kevin McNally, 624 Gardenia Terrace, Delray Beach, urged the Commission to vote for these design guidelines and stated his name was tossed about in an email today by the opposition to the guidelines and reaffirmed his support for the guidelines. Mr. McNally asked the Commission to not give an exception to the lakefront homes and stated since they are part of the neighborhood they should be held to the same standards as the rest of the neighborhood with the guidelines.

Joann Peart, 107 N.W. 9th Street, Delray Beach, stated at the last meeting she was talking about the process and ended at the end of the third meeting where everyone met at the Chambers. She stated at the second meeting the television station was there and at the third meeting there was a large group of people in attendance. Mrs. Peart urged those individuals living in Lake Ida to join this Task Force and explained there is no nomination, election or appointment.

Shelly Petrolia, 2002 N.W. 4th Avenue, Delray Beach, stated she is against the restrictions and this is a question based on what we should do based on the next 20 years and is so important to get it right. She stated these restrictions or the overlay district is at a point where it should go forward. Mrs. Petrolia suggested that the Commission should table this and allow this community to come together and discuss it. She stated she knows that the Task Force has indicated that there have been a lot of notifications and notices sent through the mail but she reads her mail and she did not receive one. Mrs. Petrolia stated she did see the placards on the street about a Design Task Force Guidelines Meeting. She stated she did not realize that this was something that was going to come to the City level and thought it was just a group of suggestions. Mrs. Petrolia stated she believes there is a solution but she does not believe it lies in the overlay and these specific guidelines. She stated with these guidelines she could build on her property 15 feet from the back straight up and make a huge fishbowl to her neighbor's house. Mrs. Petrolia stated these guidelines are not going to stop anything that everyone is complaining about and is not really directly addressing the issues before the Commission. Mrs. Petrolia stated she would have liked to have been involved but she just did not understand it and that it was going to be restriction changes or an overlay district as she does now. She urged the Commission to table this item for further discussion.

Barbara Tack, 1095 Hibiscus Lane, Delray Beach, commented about 27 houses in the Lake Ida neighborhood had been built 2-story homes and were quite different from what she came into the neighborhood looking at. She stated she wandered

around the neighborhood and noted that it is interesting to see where the neighborhood has come in just five years. Mrs. Tack read quote into the record and stated without rules and guidelines there will be a lot more problems in the neighborhood and the property values will also decrease. She supports the restrictions.

Cathy Degan, 1009 N.W. 4th Avenue, Delray Beach (next to Cornell Park behind the three big houses that were built on the Cornell Property), stated she has lived in this house for 18 years and they have a lot of friends. She stated she hopes they do not have a lot of enemies that have come out of this whole situation that she believes has happened because of those three houses that were built on the Cornell Property. Mrs. Degan stated she looks at these three houses every day out her backyard and when she walks in the park. She stated she does not like seeing those houses sitting there empty but questioned who allowed that to happen. Mrs. Degan stated this issue is huge and out of 700 homes in the Lake Ida neighborhood we have approximately 100 people coming out to speak (50/50 maybe) and asked how this Commission can even consider moving forward with the guidelines when that few people have been involved. She stated she does not believe the Commission can make a decision about this issue lightly and feels we need way more than 100 people to make this decision.

Carolyn Wathey-Lee, 325 N.W. 15th Street, Delray Beach, stated there are several issues she feels are important motive and intent. She stated she worked on a Masters and researched benchmarks around the United States on what made a community and worked with someone on trying to detail what made a community and a town important. She stated she grew up in Connecticut received an unsolicited email today at work and it was Georgia University's definition of an overlay district. She stated after reading that and realizing how that saved everyone in Connecticut. She commended the Task Force and commented that she was personally not involved until the signs went up. Ms. Wathey-Lee stated she loves her community and her neighbors and urged the Commission to support the guidelines.

Sue Heglin, 2012 N.W. 2nd Avenue, Delray Beach, urged the Commission to vote in favor of these Design Guidelines and stated she feels these guidelines will be very good for the community. She has lived in her home since 1999 and likes the eclectic aspect of Lake Ida and believes the guidelines will be good for the community and the City of Delray Beach as a whole.

Deb Sullivan, 1002 Lakeshore Drive, Delray Beach, opposes the restrictions and feels blessed to live in a neighborhood like Lake Ida. She stated the personal attacks on both sides need to stop and urged the Commission to hold off on voting for this tonight and try again to come together and heal the differences.

Charlotte Lees, 110 Wood Lane, Delray Beach (behind Trinity Church), strongly supports the Design Guidelines and stated the reasons the Commission gave at the last meeting for their votes were excellent especially Mr. McDuffie who noted that from his experience in the Property Appraiser's office that guidelines did maintain or enhance the property values in areas. She stated we hear a lot of representation and

whether or not people did or did not answer their mail. Mrs. Lees stated only 6% of the residents of Delray Beach came out to vote in the last City Commission Meeting and noted it is very difficult to overcome apathy and very difficult to get people out to vote.

Karen Premock, 740 Lake Shore Drive, Delray Beach, supports the Design Guidelines and stated why uninterested and uninformed parties should have the right to veto this proposal. She stated we already know that 6% of the Delray Beach voters voted in the last City Election and yet the City Commission has the power to represent the citizens.

Martin Burke, 720 Lake Shore Drive, Delray Beach, stated everyone is here after all this time due to the efforts of the Lake Ida Property Owners Association years ago whose efforts were in response to an on slot of construction that was oversized with regard to the size of their lot. Mr. Burke stated it was never about restrictions but was about preservation of neighbors and property rights as well. Mr. Burke commented about Mr. McOwen's observation about the phone book from the 1950's and noted that back then no one would be having this discussion and does not believe anyone even needed a permit back then with a population of 6,000. He stated there is going to be more of this and not less. He stated it is a good thing and is necessary and will help slow down the inevitable transformation of Lake Ida.

Mayor Ellis stated there being no one else from the public who wished to address the Commission regarding Ordinance No. 24-08, the public hearing was closed.

Mr. Fetzer stated he is adamantly opposed to the suggestion that was made about possibly putting this issue on a ballot and having a vote. He stated as an elected official the people elected him to make decisions like this and there are so many controversial issues that come before the Commission particularly related to Planning and Zoning issues and some are very emotional issues. Mr. Fetzer stated that was why the people elected him to represent the people and he would be avoiding his responsibility to say we are going to have a referendum on issues like this. Mr. Fetzer stated he opposed to a referendum and is also opposed to the Hometown Democracy movement and noted that there was a petition drive that was trying to get that issue on the ballot which would require that we hold election on all types of Planning and Zoning issues like this and it failed to get on the ballot due to the number of signatures that were not obtained.

Mrs. Montague stated this is not the first time she has gone through this process and sat in on committees. She stated the City has a redevelopment plan for the southwest section where it was very similar to what we are going through. Mrs. Montague stated there were some people who lived there and still live there 40 and 50 years and others born here who wanted to maintain the flavor of that neighborhood and had to figure out how to do it. She stated there were a number of people that came together, representatives within the community, representatives from the Community Redevelopment Agency (CRA) Board that came up with a plan on how to continue the redevelopment of the area and preserve the history and the character of that area and thus the redevelopment plan. Mrs. Montague stated there were some changes that were made

in the City's zoning ordinances in order to have that happen and what people will see will be an incredible evolution in that redevelopment process. Mrs. Montague stated the people in Lake Ida have gone through the same thing. She stated neighborhoods and cities do change and evolve and feels it is the job of the Commission to figure out how we do that equitably although it does not make everyone happy. Mrs. Montague stated since we have all been through this process before everyone will have to trust that the Commission will make the right decisions that ultimately will be good for the Lake Ida neighborhood and for this city. Mrs. Montague stated she approves the process that the Task Force went through and will support the guidelines this evening.

Mr. McDuffie echoed comments from Commission Fetzer about putting this issue to referendum or straw vote because he feels the precedent would essentially grind the city to a halt. Mr. McDuffie read the following quote in the record: "We don't inherit this planet from our ancestors; we borrow it from our grandchildren." Mr. McDuffie stated restrictions and planning are all a part of what the Commission has to do and without restrictions comes chaos. Mr. McDuffie thanked everyone for coming tonight and reiterated that he believes in control. He stated there are water restrictions going on right now and cover up the permeable area of this city we have no aquifer recharge left as well. Mr. McDuffie stated we as Americans need to stop building the biggest houses on the globe and start taking a look at what we are doing for our grandchildren and feels that some modicum of control is appropriate for that.

Mayor Ellis thanked everyone for being present this evening and stated she is a big lover of the Lake Ida neighborhood. She stated she lived in Lake Ida for 18 years of her life and she moved into a neighborhood that needed design guidelines in the worst possible way and the neighborhood was experiencing the very worst of what can happen if you do not have design guidelines in place. Mayor Ellis stated the thing that is really striking to her is the number of people that have got involved when this is over as like with the Beach Design Guidelines were over with it was over and people went back to being friends and neighbors. Mayor Ellis stated we do not need a referendum and at some meetings there are only 2 or 3 people in the audience and the Commission is making very important decisions about the city. She stated the Commission does not enact law based on the number of people; it has to be about law, the Comprehensive Plan, and the City's Land Development Regulations. She applauded the people who came out this evening to speak on this issue.

Mr. Fetzer moved to adopt Ordinance No. 24-08 on Second Reading/Second Public Hearing, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

10.B. ORDINANCE NO. 17-08 (FIRST READING/TRANSMITTAL HEARING FOR COMPREHENSIVE PLAN AMENDMENT 2008-1): Consider on first reading an ordinance adopting Comprehensive Plan Amendment 2008-1 and associated Future Land Use Map (FLUM) amendments, and authorize transmittal to the State Department of Community Affairs. Amendment 2008-1 includes:

1. Text Amendments:

- i. Update Introduction and support data throughout all the Elements of the Comprehensive Plan as appropriate to reflect current conditions; update all maps as appropriate to reflect current city boundaries; update all maps and tables as appropriate; and, update the Goals, Objectives and Policies as required to modify partially completed or eliminate completed initiatives and to incorporate appropriate changes to goals and objectives gleaned from the EAR public hearing processes.
- ii. Future Land Use Element - Update existing land use and population data, including supporting maps and tables.
 - a. Future Land Use Element -Update vacant land analysis.
 - b. Future Land Use Element-Update Redevelopment Analysis section to reflect completion of all Redevelopment Plans.
 - c. Future Land Use Element - Update descriptions for all land use categories to include intensities and densities.
 - d. Future Land Use Element - Add new policies to achieve an appropriate mix of uses, direct resources to infrastructure improvements downtown, and explore additional downtown open space opportunities.
 - e. Future Land Use Element - Add policies to affirm the City's continued commitment to workforce housing.
 - f. Future Land Use Element - Add policies to develop design guidelines for the North Federal Highway area and evaluate the need for guidelines in the Congress Avenue Corridor and Four Corners Area.
 - g. Future Land Use Element - Amendment to the Land Use Designation/Zoning Matrix table to add SAD, OS and OSR zoning districts to be consistent with additional Future Land Use categories.
 - h. Transportation Element -Add new policy to designate the railroad parking lot, north of East Atlantic Avenue as a potential railroad stop for future passenger service on the FEC Railroad.
 - i. Housing Element -Update Affordable Housing section to reflect new City initiatives.

- j. Housing Element Add new policies to affirm the City's continued commitment to workforce housing.
- k. Public Schools Facilities Element - Update element to reflect changes related to the second amendment to the Interlocal Agreement.

2. Future Land Use Amendments Map:

- i. City initiated Future Land Use Map amendment from County INST/18 (Institutional, with an underlying High Residential 18 units per acre) to City CF (Community Facilities) for Fair Oaks Center, located approximately 650 feet south of Linton Boulevard, and on the east side of LWDD E-3 Canal.

The caption of Ordinance No. 17-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ADOPTING COMPREHENSIVE PLAN AMENDMENT 2008-1, PURSUANT TO THE PROVISIONS OF THE "LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATION ACT", FLORIDA STATUTES SECTION 163.3161 THROUGH 163.3243, INCLUSIVE; ALL AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ENTITLED "COMPREHENSIVE PLAN AMENDMENT 2008-1" AND INCORPORATED HEREIN BY REFERENCE; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 17-08 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.

Mr. McDuffie moved to *postpone Ordinance No. 17-08 (First Reading/Transmittal Hearing for Comprehensive Plan Amendment 2008-1) to July 15, 2008*, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

10.C. ORDINANCE NO. 26-08 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) amending Section 4.3.3, “Special Requirements for Specific Uses”, Subsection (S), “Telecommunications Towers and Antennas”, Paragraph (2), “Freestanding Telecommunication Towers” to add Barwick Park and Lakeview Golf Course properties to allow monopoles.

The caption of Ordinance No. 26-08 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 4.3.3, “SPECIAL REQUIREMENTS FOR SPECIFIC USES”, SUBSECTION (S), “TELECOMMUNICATION TOWERS AND ANTENNAS”, SUB-SUBSECTION (2), “FREESTANDING TELECOMMUNICATION TOWERS”, TO ADD BARWICK PARK AND LAKEVIEW GOLF COURSE PROPERTIES TO ALLOW MONOPOLES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 26-08 is on file in the City Clerk’s office.)

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

Paul Dorling, Director of Planning and Zoning, stated LDR Section 4.3.3(S) in the telecommunications towers and antennas include a section that lists specific public properties that are allowed to have monopole towers greater than 64 feet in height and those include: (1) Miller Park, (2) Delray Beach Municipal Golf Course, (3) Public Works Complex, (4) South Central Regional Wastewater Treatment Facility. This amendment would add Barwick Park and Lakeview Golf Course as the 5th and 6th properties to this list.

At its meeting of May 19, 2008, the Planning and Zoning Board considered the text amendment and recommended approval with a 7 to 0 vote to add Lakeview Golf Course only and not the Barwick Park site to the public properties list. One member of the public spoke on the issue and did not feel that another tower was justified in such close proximity to the tower currently located adjacent to Fire Station #4.

Mr. Dorling stated the Commission considered this at their meeting of May 20, 2008 and approved both sites on first reading.

Mayor Ellis declared the public hearing open.

Alice Finst, 707 Place Tavant, Delray Beach, stated the Planning and Zoning Board denied this application and asked why Barwick Park and where will this antenna end up. She asked how much revenue the City expects to receive by installing this stealth antenna in the middle of the park and is it worth it to break the views of the community with this alleged Palm Tree, Fir Tree, Pine Tree or flagpole. Mrs. Finst suggested that the antenna be installed in Bexley Park because there are bigger trees and a lot more room to hide a pole. She asked why not install the antenna at the senior center which has not been built as a notice that something will be going there. Mrs. Finst this will be the second antenna in Barwick Park and she does not feel this is fair to the community. She asked for an explanation as to why Barwick Park when the Planning and Zoning Board refused this and said "no" to this location and once this one goes in how many more can the residents expect should this pass. Mrs. Finst urged the Commission to deny this and come up with a different plan for an antenna in the western area.

There being no one else from the public who wished to address the Commission regarding Ordinance No. 26-08, the public hearing was closed.

The City Manager stated for clarification any proposal for an antenna would come to the Commission as a separate item to approve and the Commission would have to be satisfied with the design, height, collocation requirements, the amount of revenue, etc. and those issues would have to be addressed in an agreement. He stated there is a company that is interested in putting one there and they will be bringing a proposal forward.

Mr. McDuffie stated Mr. Barcinski was going to look into the matter and see if the City could get rid of the antenna the City owns. Mr. Dorling stated there was some discussion with the proposed interested party to collocate those facilities. Mr. Barcinski stated he did not receive the information back from the engineers.

Mr. McDuffie moved to adopt Ordinance No. 26-08 on Second and FINAL Reading, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 4 to 0 vote.

10.D. ORDINANCE NO. 25-08 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) amending Section 4.7.8, "Resale and Subsequent Rentals of Affordable Units", to expand the circumstances in which title may be transferred without restriction.

The caption of Ordinance No. 25-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF CODE OF ORDINANCES, BY AMENDING SECTION 4.7.8, "RESALE AND SUBSEQUENT RENTALS OF AFFORDABLE UNITS" TO EXPAND THE CIRCUMSTANCES IN WHICH TITLE MAY BE TRANSFERRED WITHOUT RESTRICTION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 25-08 is on file in the City Clerk's office.)

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

Paul Dorling, Director of Planning and Zoning, stated this ordinance simplifies language allowing transfer when an owner of a unit dies and removes references that are in the Code to spouses, offspring, or divorce.

At its meeting of May 19, 2008, the Planning and Zoning Board considered the text amendment and the Board recommended approval with a 7 to 0 vote. The City Commission recommended approval on first reading at their meeting of June 3, 2008.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 25-08, the public hearing was closed.

Mrs. Montague moved to adopt Ordinance No. 25-08 on Second Reading/Second Public Hearing, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

10.E. ORDINANCE NO. 27-08 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) amending Section 4.6.6, "Commercial and Industrial Uses to Operate Within A Building", Subsection "A", "Intent", in order to clarify that all commercial and industrial uses shall conduct business inside regardless of zoning district.

The caption of Ordinance No. 27-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING SECTION 4.6.6, "COMMERCIAL AND INDUSTRIAL USES TO OPERATE WITHIN A BUILDING", SUBSECTION "A", "INTENT", IN ORDER TO CLARIFY THAT ALL COMMERCIAL AND INDUSTRIAL USES SHALL CONDUCT BUSINESS INSIDE REGARDLESS OF ZONING DISTRICT; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 27-08 is on file in the City Clerk's office.)

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

Paul Dorling, Director of Planning and Zoning, stated this clarifies that commercial and industrial uses shall be conducted inside regardless of the zoning district. The current Code only references commercial, industrial, and mixed use zoning districts and it was thought at that time that would be the only situation we would have this commercial use being contemplated. However, he stated that could be accommodated in other zoning districts like Community Facilities (CF) on a limited basis. Staff felt it prudent to expand that and to make it *regardless of zoning district* this would apply and was the original intent. Mr. Dorling stated it also amends the Land Development Regulations to allow commercial industrial uses to be conducted outside on a temporary basis for special events under Section 2.4.6(F) and talks about circuses/carnivals, seasonal Farmer's Market, Construction Trailers and Compounds and Horse Drawn Carriages.

At its meeting of May 8, 2008, the Community Redevelopment Agency (CRA) unanimously recommended approval of the proposed text amendment; at its meeting of May 12, 2008, the Downtown Development Authority (DDA) unanimously recommended approval of the proposed text amendment; at its meeting of May 14, 2008, the West Atlantic Redevelopment Coalition (WARC) voted unanimously to recommend approval of the proposed text amendment; at its meeting of May 19, 2008, the Planning

and Zoning Board recommended unanimously for approval with a 7 to 0 vote; at its meeting of May 20, 2008, the City Commission approved the proposed text amendment.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 27-08, the public hearing was closed.

Mrs. Montague moved to adopt Ordinance No. 27-08 on Second Reading/Second Public Hearing seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

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

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

At the May 20, 2008 City Commission Meeting, Mrs. Finst again suggested that the City have alternate members on the Site Plan Review and Appearance Board (SPRAB) and also talked about the need of a sign professional. Over the last two years there has only been one meeting of the SPRAB that had to be cancelled due to a lack of a quorum. Given this infrequency, the need to require alternate members is not justified. The City Manager stated it would appear to require alternate members to read and be prepared for all the items for every meeting while there is only a very slight chance of being called to serve would be unduly demanding on them. With respect to the need to have a sign professional as a Board member this has long been recognized during the City Commission appointment process and is accommodated whenever possible. With respect to the need for a lighting professional, it is staff's observation that at present the Code is being re-written regarding lighting and many of the current issues that have been discussed at SPRAB stem from the desire of certain Board members to apply new standards which have not yet been officially adopted. They believe upon adoption of the new standards the Planning staff will be able to implement them similar to other Land Development Regulation development requirements.

The City Manager stated Michael Gosnell came before the Commission regarding a fence around 734 South Lake Avenue. Mr. Gosnell is a tenant on this property and the fence was built without a permit and the City has spent a lot of staff time trying to assist the property owner with the permit problem but we cannot approve a fence in the front yard which is over six feet tall. The City Manager stated this fence is 7 ½ feet. The rest of the fence can be permitted which is not in the front yard. The applicant will not reduce the height or remove the illegal section of the fence so that a permit could be issued to make it legal.

The City Manager stated Pauline Moody had raised questions about sober houses and whether the City of Delray Beach can regulate who moves into the area and under what circumstances. Stricter rules have been attempted to be enforced by the municipalities (Boca Raton to be specific) and the City is limited to the regulation of five

unrelated adults as constituting a family. Persons in recovery programs are part of every community in South Florida and are protected by the Americans with Disabilities Act.

11. From the Public.

11.B.1. Brad Bowman, 630 Curlew Road, Delray Beach, stated he would like to make the Commission aware that Airspan Networks out of Boca Raton, Florida has agreed to install a WiMax base station for demonstration purposes for the WiMax network. Mr. Bowman stated they are a world leader in the manufacturing of WiMax equipment and it would be a wonderful opportunity to really take advantage of this opportunity. He stated the group he has been involved with two foundations and they have stated that if this is what is going to happen in Delray they are going to pull funding. Mr. Bowman stated we need to readdress that for the digital divide inclusion literacy programs.

At this point, the time being 8:45 p.m. the Commission moved to **Item 12, First Readings.**

12. FIRST READINGS:

12.A. ORDINANCE NO. 29-08: An ordinance amending Chapter 117, "Landlord Permits", by amending Section 117.99, "Penalty", to provide for a waiver of the triple fees upon good cause shown to the Code Enforcement Board. If passed, a public hearing will be scheduled for July 1, 2008.

The caption of Ordinance No. 29-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING CHAPTER 117, "LANDLORD PERMITS", BY AMENDING CHAPTER 117.99, "PENALTY", TO PROVIDE FOR A WAIVER OF THE TRIPLE FEES UPON GOOD CAUSE SHOWN TO THE CODE ENFORCEMENT BOARD; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 29-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

The City Manager stated this ordinance came about because of one incidence where what is equivalent to jury nullification the Board voted 4 to 3 not to find someone guilty when they obviously were. He stated Code Enforcement staff feels pretty strongly that we should wait and see if the City has a continuing and not adopt this ordinance in reaction to one case. Staff is concerned with how the Board might use this discretion in future cases.

Mayor Ellis stated we cannot waive penalties for Code Enforcement because we sorry for someone nor has the Commission ever done that on any other Boards or hearings.

Prior to the vote, Mr. McDuffie stated he strongly agrees with the City Manager's comments. He stated he would not support this ordinance over one incident.

Mr. Fetzer stated he too agrees with the City Manager's comments. He stated he believes it is beyond the scope of what is expected of the Code Enforcement Board and would not be in favor of passing this.

Mr. McDuffie moved to approve Ordinance No. 29-08 on FIRST Reading, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – No; Mrs. Montague – No; Mayor Ellis – No; Mr. Fetzer – No. Said motion to approve Ordinance No. 29-08 was **DENIED** with a 4 to 0 vote.

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager stated staff has changed all the light fixtures in the Commission Chambers and noted that they are the T-8 lights with 2 tubes instead of the T-12's with 3 tubes. He stated the City is in the process of doing this as well in the lobby area and the conference room area which help to save energy. The City Manager stated all the flood lights have to be changed to something that is more energy efficient.

Secondly, the City Manager stated he received a letter from the Budget Task Force formally requesting that they be extended through July 31, 2009 so staff will have an appropriate resolution prepared to bring back to the Commission to accomplish that.

Lastly, he stated there is a huge four page spread about the village-by-the-sea in Landscape Superintendent and Maintenance Professional which is a national magazine.

13.B. **City Attorney**

The City Attorney stated the City received releases from E-Path, Communications, Inc. and the City does not have to go through the grueling process of dispute resolutions. Therefore, she stated the City is finished with that.

13.C. **City Commission**

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

Mr. Fetzer stated he is the liaison to the Education Board and would like to make everyone aware of a very successful event they had this week. He stated the Education Board had the Visioning for the Future Session Workshop that they held at Old School Square and it was very well attended. Mr. Fetzer stated they broke up into round table groups and talked about a City of Character and is a parallel program that is going on with the School Board. Mr. Fetzer stated he was impressed with the participation and congratulated the Education Board.

13.C.2. **Mr. McDuffie**

Mr. McDuffie stated he had an opportunity this week to meet with Lieutenant Coleman, Sergeant Weatherspoon, numerous people from the Police Department, Chief James to meet with a group of people who were putting on a football camp at Plumosa Elementary School. He stated except for the weather on Saturday it was very successful. Mr. McDuffie stated he and Lieutenant Coleman discussed over the telephone many times prior to this that they would like to find a way to work this in to the fabric of the youth sports all over the city to be able to reach more kids then they are reaching. Mr. McDuffie stated The Palm Beach Post and the Sun-Sentinel News gave the City tremendous coverage over the success of the baseball programs this year. He stated he has heard back from a number of people how successful it was except for in one age group and noted that apparently in the eldest age group we need some more experienced volunteers for that group but otherwise the praise was overwhelming. He stated we need to be able to have an outreach method and a recruiting method particularly in the African-American communities but also in the other communities because youth sports in many cases are declining. He stated a few of them are prospering but many of the others are in decline right now and noted that they would like to leverage a very successful season by finding some ways to do some outreach. Mr. McDuffie stated as discussed in the Goal Setting Session they talked about putting the other 501C-3 to umbrella both of those organizations. He stated maybe the Education Board can get to these kids in the school places to have flyers sent home in their backpacks or something like that and apparently the local schools will not allow that without permission from the School Board. Mr. McDuffie stated he spoke to the ministerial association and asked them to embrace a concept like that and they agreed to support. He stated they are looking for these people to reach to their congregations to be able to get the word out to the kids in our community that these sports are available and help to bring these kids into the program. Mr. McDuffie stated the City has the volunteers and the facilities but now we need to improve

the recruitment and he is open for suggestions in that effort. He stated in the past the Little League stuck little signs (like political signs) in the ground and took them down before Opening Day and is not sure if that is permissible.

Mr. McDuffie stated there are a few initiatives that he has been looking at that he mentioned in the Goal Setting Session called Harlem RBI where their graduation rates and acceptance rates into college shot up like sky rockets and that three years in row for all the youth that were involved in that program there was not a single teen pregnancy among anyone involved in that program. Mr. McDuffie stated their stats are unbelievable and according to their website the foundations of endowments and sponsors that they have are staggering. He stated they have one baseball field and they support a girls softball and boys baseball program up to age 18 and they reach their facility capacity at approximately 800 kids and leverage the kids that they have there by introducing them to other education and mentoring programs. Mr. McDuffie stated he is very excited about the program and any help that they can get for this program he would appreciate it.

Lastly, Mr. McDuffie stated at the last Workshop Meeting the Commission seemed to have overloaded themselves with regard to the weight of all the items. He suggested that items of this magnitude be spread out a little more although he understands that sometimes it might be unavoidable. However, Mr. McDuffie stated there were so many items of so much magnitude to be discussed in that meeting that it was difficult to do it justice in all areas.

13.C.3. Mrs. Montague

Mrs. Montague stated when Waste Management gave their presentation at the Workshop Meeting she had a chance to think about what the Commission reviewed but she also had a discussion with two of Waste Management's representatives as well as Lula Butler, Director of Community Improvement. Mrs. Montague stated she understands the consensus was to move forward with a Request for Proposal (RFP) but expressed concern that if the Commission had really gone through all of the scenarios with Waste Management. Mrs. Montague stated she understands Mrs. Butler is working on the RFP but in the meantime the Commission had very specific issues that they could address with Waste Management. She asked if the Commission could move forward with discussing those concerns and then maybe bring it back. Mrs. Montague stated part of the discussion was if we would have the opportunity to not necessarily choose the low bidder because the City is pleased with Waste Management and since time is of the essence she would like the Commission to retain that relationship and they give the City what they want and have staff continue the discussion with them. She stated there was discussion about the C&D clause in the contract, the fuel surcharge, and the extension of the contract. Mrs. Montague suggested that the discussion be allowed to continue in conjunction with staff preparing the RFP.

13.C.4. Mayor Ellis

Mayor Ellis stated she apologizes for leaving the Workshop Meeting early; however, her pain threshold had hit its max at that time. She stated she likes to have competitive rates for the Commission to look at when making decisions and believes the City of Delray Beach has been receiving excellent service from Waste Management.

Lula Butler, Director of Community Improvement, stated there are a number of things that staff looks at while considering the contract and noted that she is working on the RFP now. She stated starting from the bid that was done in 2001, there were two amendments that the Commission had done subsequent to that and staff is looking at insuring that we have all of those things addressed in this contract so that we can get fair pricing. Mrs. Butler stated the services and relationship with Waste Management has been excellent. Mrs. Butler stated staff will do the RFP and it is a quick turnaround and she is concerned that if the Commission decides to not go with Waste Management there is the mobilization time for a new company to come in and get started and how we transition into that. Mrs. Montague stated it is not only a matter of just picking up the trash in a timely fashion it was a matter of the relationship with the community and the things that are not seen or not said that happen that Waste Management has supported. Mrs. Montague stated if Waste Management can satisfy the City's needs she would like to give them the opportunity to do that. She stated when you go for an RFP you are starting from scratch and you really do not know what you are going to end up with. Mrs. Montague stated it is easy to come up with a price and then find out later that there are all sorts of issues that Waste Management is fulfilling that the new company may not fulfill. Mrs. Montague stated if Waste Management can satisfy the City's needs she would like to give them the opportunity to do that.

Mr. Fetzer stated he was very torn over the service issue and had expressed concern over how we can take that into account in a bid. He feels that the service aspect and the relationship we have with Waste Management is very important. He stated he would be open to discussing this further and make sure the Commission has thought through all the ramifications both pro and con.

The City Manager stated if we take C&D out of the contract and make it non-exclusive what impact does that have on other rates and Waste Management was not able to give a definitive answer to that question. He stated there was a question raised about whether the escalator clause relating to fuel cost was really appropriately structured or not. He stated it was a percentage applied to the total cost and not necessarily just the fuel piece. The City Manager stated if Waste Management is willing to structure that differently so that we are not inflating costs that aren't really affected by the cost of fuel and if they can come back with some different numbers addressing those two issues then he feels the Commission would be in a position to perhaps reconsider whether or not to award it. In the meantime, the City Manager stated staff will continue to work on the RFP and if the Commission decides to stay with the RFP then it needs to be ready to go.

Mayor Ellis inquired about keeping it together the trash with the roll-offs for construction debris. The City Attorney stated she does not think there was enough information for them to just decide whether it would affect costs. Mr. Fetzer expressed concern about how this is going to impact the costs if we do that and stated there are some definite advantages for having a non-exclusive contractor to do that.

Mr. McDuffie stated that Waste Management has done a superlative job.

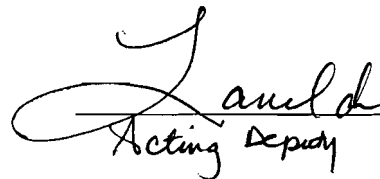
Mayor Ellis concurs with the City Manager regarding the Workshop discussion and suggested to try and get some answers to some of the other questions.


Mr. McDuffie stated some of the City's Advisory Boards were concerned about some recycling issues and would like to find out what is going on with this.

The City Attorney stated it is the consensus of the Commission to pursue talking to Waste Management in getting these items worked out and at the same time still work on the RFP in the event it is not worked out to the satisfaction of the Commission.

Mayor Ellis stated her family is back from Italy and they had a great time. She apologized for missing several events this past week but she is getting better every day.

There being no further business, Mayor Ellis declared the meeting adjourned at 9:13 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 June 17, 2008, which Minutes were formally approved and adopted by the City Commission on July 1, 2008.

Laund D. Gaskins
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 THE CITY COMMISSION
CHAMBERS OF THE CITY OF
DELRAY BEACH, FLORIDA

WAIVER REQUEST FOR 114 NE 1st AVENUE PROPERTY

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

1. The waiver request to allow a guest cottage, measuring 787 sq. ft., on the property described above has come before the City Commission on June 17, 2008.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver request from the property owner of 114 NE 1st Avenue. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. WAIVER:

LDR Section 4.3.3(Q) provides that a guest cottage shall not occupy more than 1/20th of the lot area and in no case shall exceed a floor area of 700 square feet. The Applicant has requested a wavier to this section to allow for a guest cottage containing 787 square feet.

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

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

Does the waiver request to Section 4.3.3(Q) meet all the requirements of 2.4.7(B)(5)?

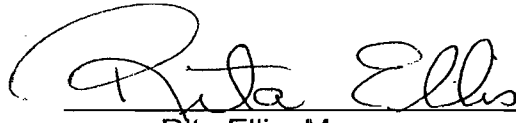
Yes 4 No 0

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

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

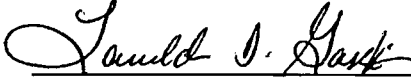
5. Based on the entire record before it, the City Commission approves X denies ___ the waiver request to LDR Section 4.3.3(Q).

6. Based on the entire record before it, the City Commission hereby adopts this Order this 17th day of June, 2008, by a vote of 4 in favor and 0 opposed.



Rita Ellis, Mayor

ATTEST:


Chevelle Nubin, City Clerk *on behalf of*
6/19/08