

May 17, 2011

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, May 17, 2011.

1. Roll call showed:

Present - Commissioner Tom Carney
Commissioner Fred B. Fetzer
Commissioner Adam Frankel
Commissioner Angeleta E. Gray
Mayor Nelson S. McDuffie

Absent - None

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

2. The opening prayer was delivered by Reverend Ron Arflin, Director of Pastoral Services at Abbey Delray South.

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

4. AGENDA APPROVAL.

Mayor McDuffie stated with regard to **Item 8.G., Special Event Request/Spady Living Heritage Day** the date should read August 20, 2011 not August 27, 2011. Also, with regard to **Item 8.I.1., Purchase Award to Island Air Conditioning**, Mayor McDuffie disclosed that his son is an employee of Island Air Conditioning.

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

5. APPROVAL OF MINUTES:

Mrs. Gray moved to approve the Minutes of the Regular Meeting of May 3, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Gray moved to approve the Minutes of the Workshop Meeting of May 10, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. Downtown Development Authority's 40th Anniversary – May 22, 2011

Mayor McDuffie read and presented a proclamation hereby proclaiming May 22, 2011 as Downtown Development Authority's 40th Year Anniversary. Mayor McDuffie stated those invited to the meeting tonight is everyone who has been a member of the Downtown Development Authority in the last 40 years.

6.B. National Safe Boating Week – May 21-27, 2011

Mayor McDuffie read and presented a proclamation hereby proclaiming May 21-27, 2011 as National Safe Boating Week. Art Zimmerman came forward to accept the proclamation.

6.C. Recognizing Juneteenth – June 19, 2011

Mayor McDuffie read and presented a proclamation hereby proclaiming June 19, 2011 as Juneteenth. Barbara Haider came forward to accept the proclamation.

6.D. National Kids to Parks Day – May 21, 2011

Mayor McDuffie read a proclamation hereby proclaiming May 21, 2011 as National Kids to Parks Day and noted this will be mailed.

6.E. National Missing Children's Day – May 25, 2011

Mayor McDuffie read a proclamation hereby proclaiming May 25, 2011 as National Missing Children's Day and noted this will be mailed.

7. PRESENTATIONS:

7.A. RESOLUTION NO. 18-11: Approve Resolution No. 18-11 recognizing and commending Dolores Egan for 30 years of dedicated service to the City of Delray Beach.

The caption of Resolution No. 18-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, RECOGNIZING AND COMMENDING **DOLORES EGAN** FOR THIRTY YEARS OF DEDICATED SERVICE TO THE CITY OF DELRAY BEACH.

(The official copy of Resolution No. 18-11 is on file in the City Clerk's office.)

Mr. Carney moved to approve Resolution No. 18-11, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

7.B. Update on the Legislative Session - Representative Bill Hager

Mr. Bill Hager, State Representative, gave a brief update on the Legislative Session. Mr. Hager stated revenue was down \$4 billion at the State level and their responsibility is to reduce expenditures by \$4 billion. He stated in addition to a balanced budget they passed a “pill mill” Bill and noted he took account of the resolution coming from this City Commission which requested that a database be placed into the Bill. Mr. Hager stated he is on the Judiciary Committee and voted against the Bill because it did not have a database. Mr. Hager stated the database is critical because there are about 100 physicians who write an unlimited number of prescriptions typically for oxycontin, a drug that if abused, is extremely addictive and the addicts take them to pharmacy after pharmacy. However, Mr. Hager stated with the database they can shut that down. Mr. Hager stated the Bill that passed included the database and as it passed the House, the Governor, and the Attorney General was present. He stated another Bill he voted for is growth management and a Bill that he sponsored that received support and was promoted by a high number of people was the authority given to School Districts which bans smoking.

Mayor McDuffie stated the 50 largest prescribing physicians of oxycodone in the United States live in Palm Beach, Dade, and Broward Counties.

7.C. Historic Preservation Board Recognition Awards

Dan Sloan (local architect) member of the Historic Preservation Board since 2008 and has served as Chairperson since August 2009, presented the following winners of the 6th Annual Award Recognition Program with Historic Preservation Board Recognition Awards in the following design categories:

NEW SIGNAGE

44 East Atlantic Avenue, Old School Square Historic District

MURAL

St. Paul's Episcopal Church, Paul's Place, Old School Square Historic District

EXTERIOR ALTERATIONS

222 SE 7th Avenue, Marina Square Historic District

255 North Swinton Avenue, Old School Square Historic District

RESIDENTIAL ADDITIONS, RENOVATIONS, AND RESTORATIONS

138 NE 1st Avenue, Old School Square Historic District
702 SE 2nd Street (fka 200 Marine Way), Marina Historic District

MULTI-FAMILY/COMMERCIAL ADDITIONS, RENOVATIONS, AND RESTORATIONS

135 NE 1st Avenue, Old School Square Historic District
44 East Atlantic Avenue, Old School Square Historic District

SINGLE FAMILY RESIDENTIAL NEW CONSTRUCTION

704 SE 2nd Street, Marina Historic District

COMMERCIAL NEW CONSTRUCTION

251 Dixie Boulevard, Del-Ida Park Historic District

PRESERVE DELRAY AWARD

In 2009, the Historic Preservation Board (HPB) added an additional award category, "Preserve Delray Award", in response to the City's recent designation as a Preserve America Community. This category will annually recognize property owners who continually preserve their significant piece of Delray Beach history. The award is divided into residential and multi-family/commercial categories.

RESIDENTIAL

19 Andrews Avenue, The Scott House, Individually Designated

MULTI-FAMILY/COMMERCIAL

401 NE 2nd Avenue, Del-Ida Park Historic District

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. HOLD HARMLESS AGREEMENT/FLORANDA MHP, LLC AND NEW CENTURY EXECUTIVE QUARTERS, LLC/FRANKLIN AT DELRAY BEACH: Approve a Hold Harmless Agreement with Floranda MHP, LLC and New Century Executive Quarters, LLC to install a water main within the Florida Department of Transportation right-of-way for Franklin at Delray Beach located on the west side of S.E. 5th Avenue (South Federal Highway).

8.B. REVISION TO THE CITY'S SPECIAL EVENTS POLICIES AND PROCEDURES: Approve revisions to the City's Special Events Policies and Procedures.

8.C. INTERLOCAL AGREEMENT/COMMUNITY REDEVELOPMENT AGENCY (CRA): HILLTOPPER STADIUM: Approve an Interlocal Agreement with the Community Redevelopment Agency (CRA) to provide funding for resodding of Hilltopper Stadium.

8.D. SERVICE AUTHORIZATION NO. 19/SPATIAL FOCUS, INC.:
Approve Service Authorization No. 19 with Spatial Focus, Inc. in the amount of \$24,775.00 for completing addressing work related to the public safety software implementation and for setting up an Address Reference System, maintenance database, and associated documentation/training. Funding is available from 441-5161-536-31.90 (Water and Sewer Fund: Water and Sewer Fund: Professional Services/Other Professional Services) and 334-2111-521-31.90 (General Construction Fund: Professional Services/Other Professional Services).

8.E. MODIFICATION TO THE SUB-GRANT AGREEMENT/DIVISION OF EMERGENCY MANAGEMENT/OLD SCHOOL SQUARE WINDOW REPLACEMENT: Approve a Modification to the Subgrant Agreement with the Division of Emergency Management for the installation of 227 impact resistant glass windows at Old School Square to extend the deadline to June 10, 2012.

8.F. CONSULTING SERVICE AUTHORIZATION/PALM BEACH COUNTY PUBLIC ART ADMINISTRATION: Approve a Consulting Service Authorization with Palm Beach County Public Art Administration in the amount of \$14,880.00 for administrative support in updating the 2004 City of Delray Beach Public Art Master Plan. Funding is available from 115-1702-579-31.90 (Special Projects Fund: Professional Services/Other Professional Services).

8.G. SPECIAL EVENT REQUEST/SPADY LIVING HERITAGE DAY:
Approve a special event request to endorse the 6th Annual Spady Heritage Day to be held on August 20, 2011 from noon to 10:00 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the closure of N.W. 5th Avenue from Atlantic Avenue to N.W. 1st Street and S.W. 5th Avenue from Atlantic Avenue to S.W. 1st Street; to authorize staff support for security, EMS assistance, fire inspection, clean up, barricading, City generator use, set up and use of the large mobile stage, and event signage and banners; contingent upon the receipt of a Certificate of Liability Insurance, receipt of letters authorizing use of private property and a hold harmless agreement two (2) weeks prior to the event.

8.H. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period May 2, 2011 through May 13, 2011.

8.I. AWARD OF BIDS AND CONTRACTS:

- 1.** Purchase award to Island Air Conditioning in the amount of \$17,900.00 for the replacement of two (2) air conditioning units at the Community Center. Funding is available from 334-4125-572-64.90 (General Construction Fund: Machinery/Equipment/Other Machinery/Equipment).
- 2.** Contract award to Ovivo USA, LLC in the amount of \$29,456.00 for removing and replacing the gear motor unit on Clarifier #2 at

the Water Treatment Plant. Funding is available from 442-5178-536-64.90 (Water & Sewer Renewal & Replacement Fund: Machinery/Equipment/Other Machinery/Equipment).

3. Contract award to Line-Tec, Inc. in the amount of \$49,699.00 for the installation of water services at the following locations: S.W. 1st Street, S.W. 3rd Avenue, S.W. 6th Avenue and S.W. 3rd Street for a Water Main Improvement project. Funding is available from 442-5178-536-68.62 (Water & Sewer Renewal & Replacement Fund: Improvements Other/S.W. 3rd Street & 6th Avenue WM Upgrade).
4. Bid award to Simply the Best Charter, Inc. in the annual estimated amount of \$35,530.00 for Bus Rental and Driver Service for the Parks and Recreation Department for Youth Football Program, Summer Day Camp, Holiday Day Camp, Special Events and Sport & Dance Competition. Funding is available from multiple Parks and Recreation Department accounts.

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

9. REGULAR AGENDA:

9.A. FINAL SUBDIVISION PLAT APPROVAL AND WAIVER REQUEST/SEASIDE: Consider approval of a final plat and a waiver to the Land Development Regulations (LDR) Section 4.3.4 (K), “Development Standards Matrix”, minimum lot depth requirement in conjunction with the creation of a four-lot single family subdivision known as Seaside, located on the north side of Lowry Street, west of Andrews Avenue. (*Quasi-Judicial Hearing*)

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

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

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

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-093 into the record.

Mr. Dorling stated this item is approval of a final plat and an associated waiver for a 1.34 acre four lot subdivision off Lowry Street (northwest corner of Andrews Avenue and Lowry Street). He stated there is an existing house on the western lot and the eastern lot is currently vacant. Mr. Dorling stated the current LDRs require the lot depth to be measured from the center of the lot which is approximately 85 feet and the lot depth is required by the LDRs to be 100 foot. He stated if you take the larger portion and the smaller portion there is an average lot depth of 104 feet; however, because the LDRs require it to be measured in this location this is only 85 feet hence the need for the waiver. Mr. Dorling stated the required findings are made in the staff report and in the Planning and Zoning documentation and staff recommends approval of the waiver given the average lot depth of 104 feet.

At its meeting of April 25, 2011, the Planning and Zoning Board reviewed the Plat and Waiver request and recommended approval of the final plat and the associated waiver with a 6 to 0 vote.

Gary Eliopoulos, GE Architecture, 205 George Bush Boulevard, Delray Beach, FL 33444, stated they concur with staff's findings.

Mayor McDuffie stated if anyone from the public would like to speak in favor or in opposition of the final subdivision plat approval and waiver request, to please come forward at this time.

There being no one from the public who wished to address the Commission regarding the final subdivision plat approval and waiver request, the public hearing was closed.

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

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

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

9.B. DISTRICT OFFICE LEASE AGREEMENT/CONGRESSMAN ALCEE HASTINGS: Consider approval of a District Office Lease Agreement with the Honorable Alcee Hastings for approximately 689 square feet at City Hall for office space.

Robert A. Barcinski, Assistant City Manager, stated this item is for the Commission to consider approval of a lease for approximately 689 square feet at City Hall with the Honorable Alcee Hastings for his local office. Mr. Barcinski stated the lease has been reviewed and the City Attorney's office as well as Congressman Hastings office is fine with the changes. Mr. Barcinski stated the term of the lease is from June 15, 2011 to January 2, 2013 and the proposed lease amount is \$300.00 and can be terminated by either party with 60 days written notice. He stated the City would assume the electric/water costs and Congressman's Hastings office will take care of phone/computer line costs.

Mrs. Gray moved to approve a District Lease Agreement with the Honorable Alcee Hastings for approximately 689 square feet at City Hall for office space, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

9.C. RESCIND DONATION AGREEMENT AND ACCEPT AN ART EXHIBITION AND RIGHT TO PURCHASE AGREEMENT WITH WILLIAM DEBILZAN: Consider rescinding the Donation Agreement and approving an Art Exhibition and Right to Purchase Agreement with William DeBilzan for a sculpture to be installed in Worthing Park. Funding is available from 115-1702-579-31.90 (Special Projects Fund: Professional Services/Other Professional Services).

Randal Krejcarek, City Engineer, stated last September the City Commission approved the agreement for donations from Artist William DeBilzan and as the Public Art Advisory Board has been working through the process of getting the sculpture finalized it is going to be completed as part of the park project in Worthing Park. Mr. Krejcarek stated the Board has had several discussions throughout the course of the year and some concerns expressed by the Board are that the location of Worthing Park is a prime location and there should be the ability to rotate the art at this location versus just placing one piece of art there. He stated another concern of the Board is the long-term maintenance of this art piece because this is a unique piece of art and is the first time that this artist has done a work of art to the outdoors. Mr. Krejcarek stated the City hired the County Art Administrator to help coordinate the installation of this art piece and after discussions the Board decided that they wanted to go back to the artist to see if he would be willing to loan the piece on a five year basis to the city. Mr. Krejcarek stated the artist agreed and thus the reason for the agreement. Mr. Krejcarek stated the Public Art Advisory Board recommends rescinding the donation agreement and entering into the art agreement. Mr. Krejcarek expressed concern over the \$2,500.00 fee in the loan agreement to put the art in the park and a \$2,500.00 fee to the artist to remove the art after the five years. The art piece is currently valued at \$130,000.00.

Mr. Frankel stated he was under the impression that the artist was going to give the City the art and asked what happened. Mr. Krejcarek stated when the artist first came to the Board and said that he would like to donate a piece of art to the City one of his requirements was that he would like it in a very visible location. He stated at the time

staff was starting the process of Worthing Park and that was the location that was picked. Mr. Krejcarek stated since that time the Board has had a lot of discussion about citing art and finding the right location for the right piece of art, the long-term effects of art in certain locations, and the fact that if we have certain locations that are prime locations for public art they wanted just one piece of art there. The Board came to the decision that in this location of Worthing Park they would really like to rotate the art in this location and that is the reason for the change.

Mayor McDuffie asked if the artist agrees with this. Mr. Krejcarek stated the artist is in agreement.

Mr. Fetzer stated he has been involved with the Public Art Advisory Board on this project and supports the Board's recommendation. Mr. Fetzer stated the value of the donation far exceeds this cost and he supports what is being proposed.

Mrs. Gray stated she is in support of the Board's recommendation and is also in favor that in five years maybe the opportunity could be given to another artist so that there would be different type of artwork.

Mr. Carney asked if the artist retains the ownership of the item. Mr. Krejcarek stated at the end of the five years it reverts back to the artist. Mr. Carney asked if the piece of art is vandalized or destroyed is the City responsible for the reimbursement to the artist for the value of the piece. Mr. Carney stated he does not want the City to pick up any expense should it be destroyed somehow either intentionally or unintentionally. Mr. Carney expressed concern over the reverter provision in the agreement and stated he wants to make sure there is no liability to the City or claim a diminution in value when the artist gets it back based on anything that may have occurred to that piece of art as it stood in public space. Mr. Krejcarek stated that value placed on the art is if the City so chooses at the end of the five years to purchase it that is what the City would pay for it. Mr. Carney reiterated that he wants to ensure that there is no possibility for the City to be responsible for any damages to the artist because of the reverter provision.

The City Attorney stated staff can attach that as a condition to this agreement.

Mr. Carney asked if it is site specific where the art piece will go in Worthing Place. Mr. Krejcarek stated the location of the art is still going to be approximately in the center of the park and it may change by a couple of feet.

Mr. Frankel made reference to #7 of the Artist Exhibition and Right to Purchase Agreement which states: "The **CITY** shall not be responsible to the **ARTIST** in the event that the **ARTWORK** is lost, stolen or damaged by third parties." The City Attorney stated staff will clarify that to add "and shall not claim any further diminution in value from the artwork sitting out whether it is weathering or whatever."

Mr. Frankel moved to approve **Item 9.C.** with the condition as outlined by the City Attorney and it also includes both sections of the rescission of the first agreement and the adoption of this agreement as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie - Yes; Mr. Carney - Yes; Mr. Fetzer - Yes; Mr. Frankel - Yes; Mrs. Gray - Yes. Said motion passed with a 5 to 0 vote.

9.D. APPOINTMENTS TO THE FINANCIAL REVIEW BOARD: Appoint one (1) regular member to serve an unexpired term ending July 31, 2012 and one (1) alternate member to serve an unexpired term ending July 31, 2011 to the Financial Review Board. Based on the rotation system, the appointments will be made by Commissioner Gray (Seat #4) for one (1) regular member and Mayor McDuffie (Seat #5) for one (1) alternate member.

Mrs. Gray moved to appoint Warren Trilling as a regular member to the Financial Review Board to serve an unexpired term ending July 31, 2012, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Carney - Yes; Mr. Fetzer - Yes; Mr. Frankel - Yes; Mrs. Gray - Yes; Mayor McDuffie - Yes. Said motion passed with a 5 to 0 vote.

Mayor McDuffie stated he wished to defer his appointment to the next regular meeting.

9.E. APPOINTMENT TO THE BOARD OF ADJUSTMENT: Appoint one (1) regular member to the Board of Adjustment for an unexpired term ending August 31, 2012. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray moved to reappoint Allen Kilik as a regular member to the Board of Adjustment for an unexpired term ending August 31, 2012, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Fetzer - Yes; Mr. Frankel - Yes; Mrs. Gray - Yes; Mayor McDuffie - Yes; Mr. Carney - Yes. Said motion passed with a 5 to 0 vote.

9.F. APPOINTMENT TO THE CODE ENFORCEMENT BOARD: Appoint one (1) alternate member to serve an unexpired term ending January 14, 2013 on the Code Enforcement Board. Based upon the rotation system, the appointment will be made by Commissioner Fetzer (Seat #2).

Mr. Fetzer moved to appoint Kurt Lehmann as an alternate member to the Code Enforcement Board to serve an unexpired term ending January 14, 2013, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel - Yes; Mrs. Gray - Yes; Mayor McDuffie - Yes; Mr. Carney - Yes; Mr. Fetzer - 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. 12-11 (FIRST READING/FIRST PUBLIC HEARING): Consider a city initiated amendment to the Land Development Regulations (LDR) Article 4.4 to add community gardens as a principal use and amending Section 4.3.3, "Special Requirements for Specific Uses", to establish specific regulations pertaining to the development of community gardens. If passed, a second public hearing will be held on June 7, 2011.

The caption of Ordinance No. 12-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY ENACTING A NEW SECTION 4.3.3(D), "COMMUNITY GARDENS", TO PROVIDE STANDARDS FOR SAME; AMENDING SECTIONS 4.4.3, "SINGLE FAMILY RESIDENTIAL (R-1) DISTRICTS", SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED", 4.4.5, "LOW DENSITY RESIDENTIAL (RL) DISTRICT", SUBSECTIONS (B), "PRINCIPAL USES AND STRUCTURES PERMITTED" AND (C), "ACCESSORY USES AND STRUCTURES PERMITTED", 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT", SUBSECTIONS (B), "PRINCIPAL USES AND STRUCTURES PERMITTED" AND (C), "ACCESSORY USES AND STRUCTURES PERMITTED"; TO ADD COMMUNITY GARDENS TO THE LIST OF PERMITTED USES, AND AS ACCESSORY USES TO AN APPROVED MULTI-FAMILY DEVELOPMENT; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 12-11 is on file in the City Clerk's office.)

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

Paul Dorling, AICP, Director of Planning and Zoning, stated this is to add a new use of "community gardens" to specific zoning districts as both permitted uses and accessory uses subject to certain regulations. Mr. Dorling stated community gardens are green spaces that are communally cultivated and cared for and may consist of individually-worked plots, communally-tended areas and sitting areas. He stated the

intent of the permitting community gardens is to allow a group of residents to grow produce and horticultural plants for their consumption and the gardens are not intended to be commercial enterprises so the sale of produce and plants that are produced on the site is prohibited. Mr. Dorling stated the use is anticipated to be a temporary use to primarily occupy infill lots and are noted as permitted uses in R-1 (Single Family Districts), RL (Low Density Residential Districts), and RM (Medium Density Residential Districts). In both the RL and the RM Districts they will also be allowed as accessory uses to approve multi-family developments. Mr. Dorling stated the regulations will deal with maintenance responsibility, hours of operation, required approval processes, and prohibitions on sale of produce on site, and the utilization of synthetic chemicals. He stated there are also some special regulations which limit the overall size, provide required setbacks, and identify types of material and activities that are allowed on the site as well as aesthetic concerns which would include perimeter hedging and fencing.

At its meeting of April 28, 2011, the Community Redevelopment Agency (CRA) recommended approval and suggested that regular inspections be provided to ensure compliance including those restricting chemical pesticides. At its meeting of May 10, 2011, the West Atlantic Redevelopment Coalition recommended approval and had discussion that greater specificity with regard to allowable (i.e. legal) plantings be made. Staff noted these are going to be high visibility sites and do not believe that it will be an issue. At its meeting of April 25, 2011, the Planning and Zoning Board recommended approval although they had significant discussion about the aesthetic requirements.

Mrs. Gray thanked staff for getting this done and asked who would be responsible for the insurance on these properties. Mr. Dorling stated the private property owner is responsible for all activities that occur on this site. The City will have initial approval and layout of the site but it is ultimately the responsibility of the property owner. Lula Butler, Director of Community Improvement, stated the application for a community garden requires that the property owner sign off on an application that they are allowing it to be used.

Mr. Carney expressed concern over the definition of "food crop". Mr. Dorling stated if staff runs into some issues the ordinance can be tweaked but at this time they do not feel it is necessary.

Mayor McDuffie commented about synthetic chemicals and asked if the State of Florida has a list of prohibited chemicals. Mr. Dorling stated this would include any insecticides and would limit it to things like manure and organic fertilizers. Mayor McDuffie stated aesthetically some of these community gardens are attractive and some are an eyesore. Mr. Dorling stated this ordinance tends to address that with the fencing and perimeter hedging requirements and the setback requirements.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 12-11, the public hearing was closed.

Mrs. Gray asked if the City is charging for the plots. Mr. Dorling stated there would not be a City charge except with a multi-family there is a Class I application fee and if there were any fee from the Community Improvement division it would be a small fee.

Mr. Fetzer moved to approve Ordinance No. 12-11 on First Reading/First Public Hearing, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

10.B. RESOLUTION NO. 20-11/CONTRACT FOR SALE AND PURCHASE/5175 N.W. 6TH STREET: Consider approval of Resolution No. 20-11, a contract for sale and purchase, authorizing the City to sell Neighborhood Stabilization Program property located at 5175 N.W. 6th Street to Nicaisse Eloi for the amount of \$102,000.00 and provide a subsidy of up to \$20,000.00 secured by a promissory note and second mortgage.

The caption of Resolution No. 20-11 is as follows:

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

(The official copy of Resolution No. 20-11 is on file in the City Clerk's office.)

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

Lula Butler, Director of Community Improvement, stated this item is the approval to sell one of the City's properties purchased under the Neighborhood Stabilization Program (NSP) located at 5175 N.W. 6th Street to Nicaisse Eloi for \$102,000.00 and the City will hold a \$20,000.00 secured promissory note on the property. This property is located within the Rainberry Woods subdivision.

Mr. Frankel asked if they have made a profit. Mrs. Butler stated they have made a little over \$236,000.00 with the properties they have sold.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Resolution No. 20-11, the public hearing was closed.

Mr. Frankel moved to approve Resolution No. 20-11, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

10.C. ORDINANCE NO. 16-11: Consider a city-initiated amendment to the Land Development Regulations (LDR) Section 4.3.3 (I), “Community Residential Homes and Group Homes”, to remove an out-of-date reference to Section 4.3.3(D), “Residential and Non-Residential Licensed Services Provider Facilities”.

The caption of Ordinance No. 16-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 4.3.3(I), “COMMUNITY RESIDENTIAL HOMES AND GROUP HOMES”; TO REMOVE AN OUT-OF-DATE REFERENCE; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 16-11 is on file in the City Clerk’s office.)

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

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a city-initiated amendment to LDR Section 4.3.3(I), “Community Residential Homes and Group Homes”, to remove an out-of-date reference to Section 4.3.3(D), “Residential and Non-Residential Licensed Services Provider Facilities”. At its meeting of April 5, 2011, the City Commission eliminated the majority of the references to this section in conjunction with the medical arts district.

At its meeting of April 25, 2011, the Planning and Zoning Board recommended approval with a 6 to 0 vote and at its meeting of May 3, 2011, the City Commission recommended approval.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 16-11, the public hearing was closed.

Mr. Frankel moved to adopt Ordinance No. 16-11 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

10.D. ORDINANCE NO. 17-11: Consider a city initiated amendment to Land Development Regulations (LDR) Section 4.4.29, “Mixed Residential Office and Commercial (MROC) District”, to clarify allowable densities.

The caption of Ordinance No. 17-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.29, “MIXED RESIDENTIAL, OFFICE AND COMMERCIAL (MROC) DISTRICT”; TO CLARIFY THE MAXIMUM PERMITTED DENSITIES IN THE MROC ZONING DISTRICT; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 17-11 is on file in the City Clerk’s office.)

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

Paul Dorling, AICP, Director of Planning and Zoning, stated that the LDRs currently state that densities are allowed between 40 and 50 in the Congress Avenue corridor and is the maximum densities allowed as it relates to the properties’ location to the tri-rail station. Mr. Dorling stated this is a verbiage change to clarify that densities lower than 40 and 50 are also allowed should they desire to be.

At its meeting of April 25, 2011, the Planning and Zoning Board recommended approval with a 6 to 0 vote.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 17-11, the public hearing was closed.

Mrs. Gray moved to adopt Ordinance No. 17-11 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 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.

The City Manager had no response to prior public comments and inquiries.

11.B. From the Public.

11.B.1. Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach), stated he was present two weeks ago when the City Manager presented to the Commission a request from the "Village Elders" and that they have a private audience with the entire Commission to address their grievances. Dr. Kirson stated Tierra Verde has issues and would like to have a private audience with the Commission as well.

Mayor McDuffie stated you cannot have a private audience with the City Commission. It must be announced as a public meeting and there is no such thing as a private audience with all five Commission members; meeting with one Commission member at a time is acceptable otherwise they have to announce it and anyone and everyone is welcome at that meeting.

11.B.2. David Armstrong, 321 N. Swinton Avenue, Delray Beach, FL 33444, stated he would like to propose a family clothing optional beach on the north end of Delray Beach (the recreational area) and asked how he can go about getting the citizens of Delray Beach to take a vote on it. Mr. Armstrong stated if naturists come to the area they will spend over \$300.00 a day on hotels, motels, restaurants and entertainment venues and believes this would keep the city prosperous year round. He stated there are over 55 million naturists and nudists worldwide. Mr. Armstrong displayed signs that they would post. Mr. Armstrong stated there is a nude beach in North Miami (44 miles south of Delray Beach) and the revenue from that beach is \$1,770,000.00 alone in parking and the other money is from businesses, shops, restaurants and entertainment venues.

Mayor McDuffie suggested that Mr. Armstrong contact Chevelle Nubin, City Clerk or Susan Bucher, Supervisor of Elections. Mayor McDuffie stated there will not be another city election until next March.

12. FIRST READINGS:

A. None

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager stated staff met with the "Village Elders" and discussed ongoing projects and how we interact with that community and work with them. The City Manager stated the discussion lasted a couple of hours and they will be back in touch.

Secondly, the City Manager stated he met the week before last with the Director of the YMCA to discuss the property on Congress Avenue and he wants to put together some concepts of how we might develop a public/private partnership in building a community center and YMCA facility on that property. The City Manager stated they took the current floor plan and compared it to the YMCA's plans and based on their experience in working with different communities to give some recommendations on that. The City Manager stated he is very interested in what the YMCA will propose and the City has received agreements from 3-4 other cities in Florida that have partnerships with the YMCA and each one is structured a little differently.

Lastly, the City Manager stated Kurt Bressner resigned as City Manager for the City of Boynton Beach and he will be leaving the middle of June.

13.B. **City Attorney**

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

13.C. **City Commission**

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

Mr. Fetzer commented about the article in the Sun-Sentinel News about a Workshop Meeting in June with the "Village Elders". The City Manager stated that commitment has not been made and as he understood it if they had some specific questions staff could place those on our regular workshop agenda but we would not have any special workshop. Mr. Fetzer stated if we do have this on a regular workshop agenda that we do follow the rules for the workshops that we have set up but also that we have specific topics and proposals to discuss. Mr. Fetzer stated to talk about lack of communication is too broad and he would like to see specific issues that staff is going to discuss.

13.C.2. **Mr. Carney**

Mr. Carney stated it was disappointing to see the Atlantic Ocean Club closing down. Mr. Frankel stated they are reopening this weekend and announced that they have a new chef who was contingent on not having the former name and former menu. Mr. Carney stated we need to continue our efforts to keep business coming into this city and look at ways to increase retail along the vibrant corridor.

13.C.3. **Mrs. Gray**

Mrs. Gray stated the Village Academy will be having their first graduation on May 29, 2011 at 12:00 noon.

Secondly, Mrs. Gray stated she and Commissioner Carney attended the Dare to be Great Scholarship Program by Mr. Morgan Russell and they gave \$8,000-\$10,000 of scholarships to 9-10 kids from several of the schools in the area. Mrs. Gray stated one of the criteria was that they live in Delray Beach and they had to have over a 3.0 GPA. She stated former Mayor Jeff Perlman was instrumental in this effort along with others.

Mrs. Gray stated this Saturday from 9:00 a.m. - 2:00 p.m. Island Flair Straw Market will be having their first event at S.W. 5th Avenue and Atlantic Avenue Plaza.

Lastly, Mrs. Gray stated the Ribbon Cutting Ceremony for the Villages of Delray will be Friday at 1:00 p.m.

13.C.4. **Mr. Frankel**

Mr. Frankel stated he is on the Host Committee for the 2nd Annual Life Style Gala being held Thursday, May 19, 2011 at the Boca Hotel.

Secondly, Mr. Frankel stated with regard to Commissioner Fetzer's comments about the "Village Elders" and if the Commission is going to start hosting individual groups, he has been informed that two other groups would also like an audience with the Commission. Mr. Frankel stated the Commission needs to treat all groups on an equal basis and not have certain rules for certain groups.

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

Mayor McDuffie concurs with the rest of the Commission and stated the way Dr. Victor Kirson brought this up tonight the Commission cannot hold private meetings for individual groups. Mayor McDuffie stated everything the Commission does as a group has to be public and according to the Sunshine Law.

Secondly, Mayor McDuffie commented about the Digital Divide Project and stated he has spent approximately 2-3 hours with four people from Information System Services with the County. Mayor McDuffie stated there is some AT&T equipment down here that they want to remove because of the cost and as they remove that they are going to replace it with some of the radio equipment that the City had designated in the plan last time staff was working on the digital divide. Mayor McDuffie stated they are going to light up about a two block area from Swinton Avenue to Congress Avenue as a result of taking this AT&T equipment out. He stated the coverage area they were looking for in the grant was from Lake Ida to 10th after they get done that will require about 30 more radios/transceivers (sends and receives wireless) to get full

coverage in the area. Mayor McDuffie stated the cost is \$2,900.00 each which is a total of \$87,000.00 for the 30 radios and \$5,250.00 in recurring costs (pole mount and electricity); \$115.00 per pole per year from FPL to mount them and \$5.00 per pole per month for electricity. Mayor McDuffie stated he has talked to Dorothy Ellington at the Delray Beach Housing Authority, Auburn Development Group who will buy in as a partner, Diane Colonna and there is interest on the CRA's behalf, Janet Meeks, Seabron Smith, Shannon Larocque and Steve Abrams. Mayor McDuffie stated he is also going to speak to Lieutenant Governor Jennifer Carroll on Friday about this. Mayor McDuffie stated we need supporters throughout the community who will assist us in buying the remainder of these radios. The County is the only organization that has FPL's permission to mount these. In addition, Mayor McDuffie stated we have the computer lab at S.D. Spady, the computer lab at Atlantic High School and the computer lab at Village Academy that are now refurbishing PC's that can go into the community as soon as we get the wireless up. Mayor McDuffie stated we can look at Office Depot and some of the other organizations and see if anyone would like to become a partner with the City on this project.

Mayor McDuffie stated regarding the beautification of Martin Luther King, Jr. Boulevard particularly with the palm trees is that these palm trees were just put in and they are already sticking into the oak trees. In addition, Mayor McDuffie stated some of the other palm trees are already rubbing against power lines particularly on the south side and asked that this be looked into.

Mayor McDuffie stated it has come to his attention from people especially in discussing the art that is now going to Worthing Place that most, if not all of the art in Pineapple Grove, is not mounted to State regulations and is bolted to pavers which in a hurricane would be missiles. He suggested that staff look into this matter.

Lastly, Mayor McDuffie stated he received a telephone call today from a public school wanting to know if they had to pay for registering their alarms or if the City is exempting the public schools. The City Manager stated staff will look into this.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:37 p.m.



City Clerk

ATTEST:



MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on May 17, 2011, which Minutes were formally approved and adopted by the City Commission on June 7, 2011.



City Clerk

NOTE TO READER:

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

IN THE CITY COMMISSION
CHAMBERS OF THE CITY OF
DELRAY BEACH, FLORIDA

WAIVER REQUEST FOR SEASIDE

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

1. The waiver request regarding the Seaside, 1.34 acre residential development has come before the City Commission on May 17, 2011.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver request for Seaside. All of the evidence is a part of the record in this case.

I. **Waiver:** 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.

Pursuant to LDR Section 4.3.1(D), lots or yards created after October 1, 1990 shall meet the minimum requirements established by Chapter 4, **unless the City Commission declares at the time of approval of an associated development application, that it is necessary and appropriate to create such nonconformity.** Pursuant to Section 4.3.4(D), lot depth is *"The distance measured from the midpoint of the front lot line to the midpoint of the opposite rear line of the lot. Other than at this point, the depth of a lot may be less than the minimum set forth in the matrix."* By this definition, the current lots have a depth of 314 feet and front on Lowry Street. With the replat, all four of the proposed lots in this subdivision will front on Sea Lane. The proposed plat meets all the LDR requirements except for Lot 2, which at only 85.58 feet deep, will be deficient with respect to lot depth. Pursuant to LDR Section 4.3.1(D), the applicant has requested a waiver to LDR Section 4.3.4(K) (Development Standards Matrix) to allow a reduction in the lot depth dimension below the minimum requirement for the newly created Lot 2.

The 85.58' proposed depth for Lot 2 is deficient by 14.42' (minimum requirement 100') as noted in the following table:

Lot Size	(Square Feet)	Lot Width Interior/Corne r	Lot Depth	Lot Frontage Interior/Corne r
Minimum Required	9,500	75/95	100	75/95 45' (cul-de-sac)
Existing Lots	29,057 29,218	92.50 93.0	314.13 314.17	92.50 93.0
Proposed Lot 1	12,859	95.00	135.50	95.77
Proposed Lot 2	10,493	115.00	85.58	105.92
Proposed Lot 3	11,811	127.00	162.00	48.32
Proposed Lot 4	9,566	85.74	112.50	70.70

The applicant has submitted the following justification statement:

"All proposed lots meet all the requirements within the R-1-AA with the exception of proposed Lot 2 and the required minimal lot depth of 100'-0". We are requesting relief from this requirement because proposed Lot 2 directly abuts a cul-de-sac and actually has an average lot depth of over the required minimum lot depth of a 100'-0". The proposed lot depth ranges from a minimum of 85'-7" to 135'-6", with the average lot depth of 104'-0". In addition, the developer is proposing a 100'-0" radius and is not seeking the minimal 90'-0" radius for the cul-de-sac dimension which has been allowed in similar developments in the past. For the above reasons, we feel that the reduced lot depth is appropriate and justified with regards to the Land Development Regulations Section 4.3.1(D)."

Should the waiver to Section 4.3.4(K) to reduce the lot depth for lot 2 be granted?

Yes No

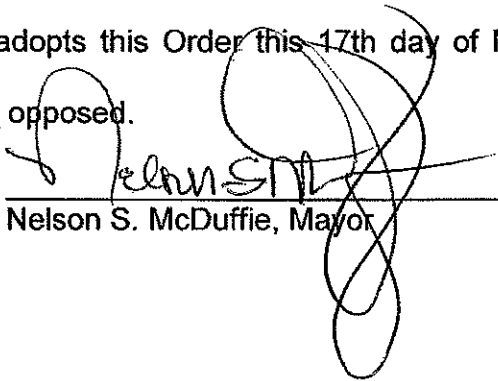
3. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the original site plan was submitted.

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 which supports the findings set forth in this Order.

5. Based on the entire record before it, the City Commission approves ✓
denies the waiver request and hereby adopts this Order this 17th day of May,
2011, by a vote of 5 in favor and 0 opposed.

ATTEST:


Chevelle Nubin, City Clerk


Nelson S. McDuffie, Mayor

