

JUNE 19, 2007

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 19, 2007.

1. Roll call showed:

Present - Commissioner Fred Fetzer
Commissioner Woodie McDuffie
Commissioner Brenda 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
Chevelle D. Nubin, City Clerk

2. The opening prayer was delivered by Dr. William Quick with Federation of Christian Ministries.

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

4. **AGENDA APPROVAL.**

The City Attorney requested that **Item 9.D., Resolution No. 37-07/Contract for Sale and Purchase of Property/Community Redevelopment Agency/Interlocal Agreement/Multiple Parking Lot Properties** be moved to the Public Hearing section as **Item 10.A.A.**

Mayor Ellis noted the addition of **Item 9.M., Review of Lobbyists Contracts** to the Regular Agenda by addendum.

Mr. Fetzer moved to approve the Agenda as amended, 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.

5. **APPROVAL OF MINUTES:**

Mrs. Montague moved to approve the Minutes of the Regular Meeting of June 4, 2007, 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.

Mr. McDuffie moved to approve the Minutes of the Workshop Meeting of June 12, 2007, 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.

6. PROCLAMATIONS:

6.A. Recognizing Bahamian Independence Day

Mayor Ellis read and presented a proclamation hereby proclaiming July 14, 2007 as Bahamian Independence Day in Delray Beach, Florida. John Dassi came forward to accept the proclamation and gave a few brief comments.

7. PRESENTATIONS:

7.A. Government Finance Officers Association – Distinguished Budget Award Presentation

Mayor Ellis read the press release into the record and presented the award to Joseph Safford, Finance Director. Joseph Safford, Finance Director, came forward to accept the proclamation and stated this is the 21st consecutive year that the City of Delray Beach has been awarded this plaque.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. FINAL PLAT APPROVAL/YACHT CLUB AT DELRAY BEACH:
Approve the final plat for the Yacht Club at Delray Beach plat, located on the west side of MacFarlane Drive, between Ingraham Avenue and Miramar Drive.

8.B. ACCEPTANCE OF RIGHT-OF-WAY DEEDS/133 AND 135 NW 5TH AVENUE: Approve and accept the right-of-way deeds for the dedication of the right-of-way from N.W. 5th Avenue and the alley parallel to NW 5th Avenue at 133 and 135 NW 5th Avenue.

8.C. REQUEST FOR SIDEWALK DEFERRAL/25 NW 16TH STREET:
Approve a request to defer the installation of a sidewalk in front of 25 NW 16th Street. Staff recommends approval.

8.D. REQUEST FOR SIDEWALK DEFERRAL/902 NW 2ND AVENUE:
Approve a request to defer the installation of a sidewalk in front of 902 NW 2nd Avenue. Staff recommends approval.

8.E. REQUEST FOR SIDEWALK DEFERRAL/906 NW 2ND AVENUE:
Approve a request to defer the installation of a sidewalk in front of 906 NW 2nd Avenue. Staff recommends approval.

8.F. REQUEST FOR SIDEWALK DEFERRAL/912 NW 2ND AVENUE:
Approve a request to defer the installation of a sidewalk in front of 912 NW 2nd Avenue.
Staff recommends approval.

8.G. CONTRACT ADDITION (C.O. NO. 2)/BLOCK 64 DRAINAGE AND WATER MAIN IMPROVEMENT PROJECT/CHAZ EQUIPMENT COMPANY, INC.: Approve Contract Addition (C.O. No. 2) to the Block 64 Drainage and Water Main Improvements Project in the amount of \$69,540.00 to Chaz Equipment Company, Inc. for the replacement of a collapsed Sanitary Sewer Main located between SW 3rd Street and SW 4th Street. Funding is available from 442-5178-536-65.33 (Water/Sewer Renewal & Replacement Fund/Block 64 Improvements) after budget transfer.

8.H. CONTRACT CLOSEOUT (C.O. NO. 2/FINAL)/CHAZ EQUIPMENT COMPANY, INC.: Approve a Contract Closeout (C. O. No. 2/Final) in the amount of a \$65,124.34 decrease and final payment in the amount of \$35,428.19 to Chaz Equipment Company, Inc. for the completion of the A-1-A Water Main Upgrade Project. Funding is available from 442-5178-536-65.27 (Water/Sewer Renewal & Replacement Fund/Other Improvements/SR A-1-A/East Atlantic Avenue/Pelican).

8.I. CONTRACT CLOSEOUT (C.O. NO. 2/FINAL)/HORSEPOWER ELECTRIC, INC.: Approve a Contract Closeout (C.O. No. 2/Final) in the amount of an \$11,047.50 decrease and final payment in the amount of \$16,132.23 to Horsepower Electric, Inc. for the completion of the US 1 at Tropic Boulevard Signalization Project. Funding is available from 334-3162-541-65.68 (General Construction Fund/US 1 at Tropic Boulevard).

8.J. CONTRACT CLOSEOUT (C.O. NO. 2/FINAL)/ROSSO PAVING & DRAINAGE, INC.: Approve a Contract Closeout (C.O. No. 2/Final) in the amount of \$19,167.10 and final payment in the amount of \$83,345.24 to Rosso Paving & Drainage, Inc. for completion of the Eagle Park Project. Funding is available from 380-4150-572-63.23 (2004 G.O. Bond/Other Improvements/Neighborhood Parks).

8.K. PALM BEACH COUNTY GRANT/EMERGENCY MEDICAL SERVICES/RESOLUTION NO. 36-07: Approve the application for a non-matching grant to the Palm Beach County Department of Emergency Medical Services in an estimated amount of \$46,340.00 to purchase five (5) Stryker Model 6500 Power-Pro Ambulance Patient Stretchers; and approve Resolution No. 36-07.

The caption of Resolution No. 36-07 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. 36-07 is on file at the City Clerk's office.)

8.L. SPECIAL EVENT REQUEST/30th ANNUAL ROOTS CULTURAL FESTIVAL/YOUTH AND ADULT BASKETBALL TOURNAMENTS: Consider approval of a special event request from the Roots Cultural Festival, Inc. for a Youth Basketball Tournament proposed to be held from 6:00 p.m. – 11:00 p.m. on July 20, 2007, 9:00 a.m. – 11:00 p.m. on July 21, 2007 and 9:00 a.m. – 6:00 p.m. on July 22, 2007 and the Adult Basketball Tournament proposed to be held from 6:00 p.m. – 11:00 p.m. on August 3, 2007, 9:00 a.m. – 11:00 p.m. on August 4, 2007 and from 9:00 a.m. – 6:00 p.m. on August 5, 2007; authorize staff support for security and signage; waiver of facility rental fee for City facilities and event signage to be installed no earlier than ten (10) days prior to the event; contingent upon sponsor providing a liability insurance certificate, and a hold harmless agreement.

8.M. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period June 4, 2007 through June 15, 2007.

8.N. AWARD OF BIDS AND CONTRACTS:

- 1.** Contract award to Caler, Donten, Levine, Druker, Porter & Veil, P.A. for professional audit services for FY 2007 in the amount of \$105,800.00; FY 2008 in the amount of \$112,150.00; and FY 2009 in the amount of \$118,900.00. Funding is available from various departmental operating budgets.
- 2.** Contract award to the Florida Coca-Cola Bottling Company for a three (3) year contract with the option to extend the contract for one (1) three (3) year period for beverage vending services and fountain services.

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

9.A. REQUEST FOR REFUND OF CODE ENFORCEMENT BOARD LIEN: Consider a request to refund \$2,500.00 of a \$3,000.00 Code Board Lien paid in January by Michael Lefebvre. Staff recommends denial.

Al Berg, Assistant Director of Community Improvement, stated this is a request for a refund in the amount of \$2,500.00 of a \$3,000.00 Code Enforcement lien paid in January. The property owner was cited for a dilapidated wooden fence at rental property he owns at 3301 Spanish Wells Drive in April 2006. Notices were posted on the

property and were sent to the address in New Hampshire and were returned "Not Deliverable, Attempted - Not Known, Unable to Forward." The Code Enforcement Board held a hearing on the case in July 2006 and found the property owner guilty. The Board allowed 30 days to fix the fence and imposed a fine of \$50 per day for non-compliance. The owner was not present at the hearing. In October, the City filed a lien for \$3,000.00 which was owed at that time. The property was not brought into compliance until January 10, 2007 because the property was being refinanced and the lien was discovered. The owner appeared before the Code Enforcement Board on April 10, 2007 and claimed he was never served notice by the Board and asked the Board to reduce the fine and refund \$2,500.00. The City Attorney advised that they did not have that authority and recommended that the matter be reviewed by the City Commission. Mr. Berg stated there was a note in the file that the property owner called on May 18, 2007 and stated they would have the property fixed and repaired. However, this is the only contact staff had with the property owner. Staff recommends that the property owner not be refunded \$2,500.00.

The City Attorney asked if the City had notice of any other address. In response, Mr. Berg stated on January 10, 2007 the property owner provided the City with an address in New Hampshire well after the lien was filed.

Mr. McDuffie stated the addresses in the Property Appraiser's database are processed through a contract service to the United States Postal Service (USPS) called NCOA (National Change of Address) every 180 days otherwise they lose their mass mailing and bulk mailing discounts. He stated if that move had been filed with USPS it would have been picked up because they run in May and November.

Mr. Fetzer moved to approve the request for refund of a Code Enforcement Board lien, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie - No; Mrs. Montague - No; Mayor Ellis - No; Mr. Fetzer - No. Said motion was **DENIED** with a 4 to 0 vote.

9.B. CANCEL AND RE-WRITE OF EXCESS PROPERTY INSURANCE PROGRAM: Consider a request for approval to cancel and re-write current excess property insurance program to take advantage of "pre-hurricane" season current low insurance rates.

Bruce Koeser stated due to the uneventful hurricane season last year rates are down. Therefore, the City has a chance to cancel and re-write excess property and liability coverage and this is a chance to save approximately \$411,000.00. Mr. Koeser stated we would have to cancel what is in place right now, sign up effective tomorrow with new carriers and noted there is an additional \$10,000,000.00 in coverage per property.

Lisa Rodriguez gave a brief overview of the City's insurance.

Mrs. Montague moved to approve to cancel and re-write the City's current excess property insurance program, 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.C. LAKEVIEW GOLF COURSE RECLAIMED WATER MAIN:
Consider a request to authorize staff to proceed with design Option #2 for providing reclaimed water to the Lakeview Golf Course, which includes modifying an existing lake for receiving and re-pumping of water in conjunction with the construction of approximately 3,025 linear feet of reclaimed water main at an estimated cost of \$358,600.00.

Richard Hasko, Director of Environmental Services, stated this involves extending reclaimed water to the Lakeview Golf Course. He stated when the City gets into the construction phase of this staff is going to be recommending the more expensive of the two options that has been presented from the consultants. Mr. Hasko stated with the reclaimed areas 2 and 3 systems staff brought reclaimed water lines down Lawson Boulevard to service the Hamlet and also extended down to Dover Road and left a stub for service to the Lakeview Golf Course. He stated staff needs to get a line from Dover Road to the existing pump station on the golf course. The cost for Option #1 is \$265,100.00 which involves extending a line through the golf course and constructing a small booster pump station because the pressure that is required in the larger irrigation system for the golf course is much higher than is available in the line coming from the plant. This would tie into the irrigation system for the golf course and the existing system would remain as a backup source. Mr. Hasko stated for a user of this magnitude of flow if you do not have on-site storage and if there is a pump connected to the transmission system and it is sucking directly out of the pipe directly from the plant that puts a very heavy flow on the plant. He stated if there are many users doing that at one time, it stresses out the transmission system. Mr. Hasko stated staff has so far been successful with the municipal golf course, the Hamlet, and Delaire by creating on-site storage in the form of a lake. Therefore, the reclaimed product is pumped directly into the lake all day at a much slower rate so when the golf courses who irrigate at night turn their systems on then they get the water from the lake so that they are not all coming out at one time and placing the demand on the transmission system. Mr. Hasko stated the only option to that is to spend million of dollars to put more storage tanks at the wastewater plant. He stated Option #2 is \$358,600.00 which includes modifying an existing lake for receiving and re-pumping of reclaimed water in conjunction with the construction. He stated the increased cost differential is \$93,500.00 and is recommended for large users given that the on-site storage capacity offers flexibility in receiving reclaimed water during off-peak times.

Mrs. Montague inquired about the expansion of the existing lake and asked if there is flexibility in the dollar amount. In response, Mr. Hasko stated these are estimates because staff has not done any engineering on this yet. Mr. Hasko stated staff is pretty certain how much per foot a line will cost and staff has put some inflationary factors in to accommodate for that. Staff is comfortable with this figure; however, it

could vary when staff gets into the final design stage. He stated the cost will be funded from the Water and Sewer Fund.

Mrs. Montague moved to approve to authorize staff to proceed with design Option #2 for providing reclaimed water to the Lakeview Golf Course, 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.D. THIS ITEM HAS BEEN MOVED TO THE PUBLIC HEARINGS PORTION OF THE AGENDA AS ITEM 10.A.A.

9.E. AUTHORIZATION TO PARTICIPATE IN CLASS ACTION LAWSUIT AGAINST ARTHUR J. GALLAGHER ENTITIES: Consider a request for authorization to participate in the Class Action Lawsuit regarding insurance brokerage and employee benefit insurance antitrust litigation against Arthur J. Gallagher Entities.

The City Attorney stated this is a common scenario where a Class Action lawsuit is filed all over the country and in this case not just with Arthur J. Gallagher Entities but with other entities where someone thought a fee was too high. She stated Arthur J. Gallagher settled this lawsuit to avoid the increased cost of litigation. The City Attorney stated the City of Delray Beach has used Arthur J. Gallagher successfully; however, with regard to this issue, the City would like to benefit from recouping any fees that we would be entitled to. The City Attorney recommends participating in the Class Action lawsuit against Arthur J. Gallagher Entities.

Mr. McDuffie moved to approve that the City of Delray Beach participate in the Class Action Lawsuit against Arthur J. Gallagher Entities, 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.

9.F. AUTHORIZATION TO FILE APPEAL/MARGEUNE ST. JUSTE V. CITY OF DELRAY BEACH: Consider a request for authorization to file an appeal to the Fourth District Court of Appeals in the case of Margeune St. Juste v. the City of Delray Beach.

The City Attorney stated the City has a motion pending before the court to set aside the judgment. The hearing for the City is set for July; however, staff is requesting that the Commission authorize an appeal should we need one and see how staff does with the post verdict motions. The City Attorney stated if the post verdict motions do not go in favor of the City then staff would like authorization to file an appeal in the case of Margenune St. Juste v. the City of Delray Beach. In addition, the City Attorney stated the City would also like to seek advanced authorization to solicit Amicus Briefs from the Palm Beach County League of Cities, etc.

Mrs. Montague moved to approve to file an appeal to the Fourth District Court of Appeals in the case of Margeune St. Juste v. the City of Delray Beach subject to the results of the post verdict motions and permission to seek Amicus briefs should it be necessary, 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.G. REJECTION OF BIDS/RFP 2006-057: Consider rejection of all bids received in response to RFP 2006-057 regarding parking meters.

The City Manager stated at the Workshop meeting the City Commission discussed parking meter replacement and we have agreed on a course of action. He stated the responses the City received from the previous Request for Proposal (RFP) did not allow staff to adequately evaluate the prices. Staff recommends rejection of all bids and put out a new RFP.

Mr. McDuffie moved to reject all responses to Bid #2006-057, 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.H. NON-RENEWAL OF AGREEMENT/PREARRANGEMENTS OF DELRAY, INC. Consider a request regarding the non-renewal of the contract between the City and Prearrangements of Delray, Inc.; and authorize staff to send a Notice of Non-Renewal to the same.

The City Attorney stated this is a request from Parks and Recreation to not seek a renewal of the agreement with Prearrangements of Delray, Inc. She stated the City of Delray Beach has a 20 year agreement that is expiring; however, there is a ten year renewal period. The contract requires notification of non-renewal 180 days prior to the end of the current term or renewal period or no later than July 1, 2007.

Joe Weldon, Director of Parks and Recreation, stated the City of Delray Beach entered into this agreement 20 years ago and at that time the City Commission wanted to see if the City could get a mausoleum complex built at the cemetery. In that time, one mausoleum has been built that is half full. He stated Prearrangements of Delray, Inc. is selling cemetery plots for the City of Delray Beach and receiving half the income. Mr. Weldon suggested that the City of Delray Beach assume the duties that were being performed by Prearrangements of Delray, Inc.

Mr. Fetzer moved to approve the *non-renewal* of the contract between the City of Delray Beach and Prearrangements of Delray, Inc. and authorize staff to send a Notice of Non-Renewal to Prearrangements of Delray, Inc., 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.I. APPOINTMENT TO THE COMMUNITY REDEVELOPMENT AGENCY: Appoint one (1) regular member to the Community Redevelopment Agency (CRA) for a four (4) year term ending July 1, 2011. Based upon the rotation system, the appointment will be made by Mayor Ellis (Seat #5).

Mayor Ellis stated she wished to reappoint Tom Carney as a regular member to the Community Redevelopment Agency (CRA) for a four year term ending July 1, 2011. Mrs. Montague so moved, 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.J. APPOINTMENT TO THE DOWNTOWN DEVELOPMENT AUTHORITY: Appoint one (1) regular member to the Downtown Development Authority (DDA) for a three (3) year term ending July 1, 2010. Based upon the rotation system, the appointment will be made by Mayor Ellis (Seat #5).

Mayor Ellis stated she wished to reappoint Herman Stevens as a regular member to the Downtown Development Authority (DDA) for a three year term ending July 1, 2010. Mr. Fetzer so moved, 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.K. APPOINTMENTS TO THE POLICE ADVISORY BOARD: Appoint two (2) student members to the Police Advisory Board to serve unexpired terms ending December 13, 2007 and December 13, 2008. 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 Vanessa Francois as a student member to the Police Advisory Board to serve an unexpired term ending December 13, 2007, 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 stated she wished to appoint Grace Maybee as a student member to the Police Advisory board to serve an unexpired term ending December 13, 2008. Mr. McDuffie so moved, 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.L. APPOINTMENT TO THE PALM BEACH COUNTY HOMELESS ADVISORY BOARD: Consideration of the appointment of the City Commission to the Palm Beach County Homeless Advisory Board.

Mayor Ellis stated she thought at first that maybe there was a way where the Commission could utilize someone from the community in a non-profit organization that deals with these sorts of issues and ask that they be the appointee to this Board. However, the memo is asking for the Mayor or one of the Commissioners only and she knows everyone has all the Boards they can really handle.

The Commission stated they would like more information as to when the meetings are going to be, etc.

Mrs. Montague stated there are some people who are very active in the community and if allowed, to investigate something other than the Commission members, there may be more appropriate choices.

Mr. McDuffie suggested appointing Chief Schroeder or a representative from the Police Department to the Homeless Advisory Board because they are cognizant of what goes on in the community.

The City Manager stated he will obtain more information about when the meetings are going to be held, etc. and this will be brought back to the Commission at the next regular meeting of July 10, 2007.

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.A. RESOLUTION NO. 37-07/CONTRACT FOR SALE AND PURCHASE OF PROPERTY/COMMUNITY REDEVELOPMENT AGENCY/INTERLOCAL AGREEMENT/MULTIPLE PARKING LOT PROPERTIES:

Consider approval of Resolution No. 37-07 authorizing the City to purchase certain parking lots located in the Seacrest Neighborhood and on S.W. 4th Avenue for public parking; and approve Contract for Sale and Purchase between the City and the Community Redevelopment Agency (CRA) in the amount of \$10.00; and approve an Interlocal Agreement between the City and the Community Redevelopment Agency (CRA) for the transfer of the parking lots.

The caption of Resolution No. 37-07 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AUTHORIZING THE CITY TO PURCHASE FROM SELLER CERTAIN 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 SELLER AND THE CITY OF DELRAY
BEACH, FLORIDA.

(The official copy of Resolution No. 37-07 is on file at the City Clerk's office.)

The City Attorney stated this is for the Purchase and Sale and Interlocal Agreement that provides for the transfer of five parking lots located in the Seacrest neighborhood on S.W. 4th Avenue across from the Police Department to the City.

Mayor Ellis declared the public open. There being no one else from the public who wished to give testimony on this item, the public hearing was closed.

Mrs. Montague moved to approve Resolution No. 37-07 and approve the Contract for Sale and Purchase between the City and the Community Redevelopment Agency (CRA), 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.

10.A. ORDINANCE NO. 21-07 (SECOND READING/SECOND PUBLIC HEARING): Community Redevelopment Agency (CRA) initiated amendment to the Land Development Regulations (LDR), amending Section 4.4.13, "Central Business District (CBD)," Subsection 4.4.13(H)(1), to provide an exemption to the prohibition of office uses on the ground floor of buildings on East Atlantic Avenue.

The caption of Ordinance No. 21-07 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 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(H)(1), TO PROVIDE AN EXEMPTION TO THE PROHIBITION OF OFFICE USES ON THE GROUND FLOOR OF BUILDINGS ON ATLANTIC AVENUE, EXTENDING FROM SWINTON AVENUE TO OCEAN BOULEVARD, UNDER CERTAIN CIRCUMSTANCES; PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 21-07 is on file in the City Clerk's Office.)

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

Mayor Ellis declared the public hearing open.

Kathy Fazio, 1118 Harbor Drive, Delray Beach, (speaking on behalf of the Beach Property Owners Association), urged the Commission to consider the entire area of East Atlantic Avenue East of the Intracoastal area as an exemption to this ordinance. She stated the BPOA understands the objective of the ordinance is to help businesses along Atlantic Avenue and noted that West Atlantic Avenue was given special consideration to meet communities' overall needs and they support that approach. The amendment is to assist four specific properties that are generally set back from the street not window shopping locations. Mrs. Fazio stated the BPOA supports the amendment and noted the BPOA feels it needs wider applicability. Mrs. Fazio stated the beach does not have the north/south or east/west streets where offices can be located and if no offices are allowed on Atlantic Avenue, the BPOA feels the community is ill served for normal business and service needs (i.e. accountants, doctors, lawyers, banks, stock brokers, real estate offices, etc.). She stated residents will essentially be living in a part of town with nothing but boutiques and restaurants. Mrs. Fazio asked that the Commission provide the same consideration to the beach area that was provided to West Atlantic Avenue. The BPOA unanimously believe that the area east of the Intracoastal should be exempt from the amendment and urged the Commission to consider their position.

Jeff Costello, Community Redevelopment Agency (CRA), stated this amendment was initiated based on the way the current regulations affects the properties where they are setback excessively from the right-of-way and they are conducive to the pedestrian oriented and retail establishments. Mr. Costello urged the Commission to approve the amendment at this time and if there is any reconsideration based on the previous speaker then direct staff to review it.

Paul Dorling, Director of Planning and Zoning, stated this ordinance does not prohibit office uses east of the Intracoastal; however, the ordinance prohibits office uses on the ground floor with the exception of these four properties. He stated office uses can locate on any second story, second floor, or above and they can locate on any side streets that are currently zoned CBD (Central Business District).

There being no one else from the public who wished to address the Commission, the public hearing was closed.

Mr. Fetzer moved to adopt Ordinance No. 21-07 on Second and FINAL Reading, 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 5 to 0 vote.

10.B. ORDINANCE NO. 20-07: City initiated amendment to the Land Development Regulations (LDR), amending Section 4.4.25, "Special Activities District (SAD)", Subsection 4.4.25(C) to shift the authority for approval of site plans, landscape plans, and architectural elevations from the Planning and Zoning Board to the Site Plan Review and Appearance Board for projects located in the Special Activities District (SAD).

The caption of Ordinance No. 20-07 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 4.4.25, "SPECIAL ACTIVITIES DISTRICT (SAD)", SUBSECTION 4.4.25(C), "REVIEW AND APPROVAL PROCESS", TO PROVIDE FOR THE REVIEW AND APPROVAL OF PLANS BY THE SITE PLAN REVIEW AND APPEARANCE BOARD AND NOT THE PLANNING AND ZONING BOARD; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 20-07 is on file at the City Clerk's Office.)

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

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 20-07, the public hearing was closed.

Mr. McDuffie moved to adopt Ordinance No. 20-07 on Second and FINAL Reading, 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.

At this point, the time being 7:10 p.m., the Commission moved to **Item 9.M. (Addendum) of the Regular Agenda.**

9.M. REVIEW OF LOBBYIST CONTRACTS: Review and discussion regarding Tallahassee Lobbyists' contracts.

The City Manager stated Commissioner Montague asked him to get in touch with Kathy Daley to let her know this was being discussed. He stated a voice mail message was left however, he did not receive a return telephone call. The City Manager stated Ms. Daley is planning to move back to Delray Beach and not continue lobbying. He stated he does not know when Ms. Daley expects to do that or when she expects to end her contract with the City of Delray Beach.

Mr. McDuffie stated he requested that this be placed on the Agenda based on a call from the press and the fact that he has not heard or seen anything and no communication in his term. Mr. McDuffie stated he sometimes hears from Mr. Sebastian Aleksander (other City Lobbyist) twice an hour when things are hot on the floor. In addition, Mr. McDuffie stated he has also been a lobbyist in Tallahassee and does not understand how one can fail to register to lobby until the session is over. Mr. McDuffie stated this is illegal and expressed concern that Ms. Daley was accepting money from the City of Delray Beach to do something that the City has contracted with her and she does not have the legal right to do so.

Mr. Fetzer commented about the difference in the contracts and the registration.

Chevelle D. Nubin, City Clerk, stated the lobbyist sends the forms in to the City for signature; however, the City of Delray Beach does not complete their forms for them.

The City Attorney stated there is a mistake in the Aleksander contract on page three and noted the word should read "consultant".

Mr. Fetzer asked why there is a substantial difference in the retainers that we have agreed to with these two lobbyists.

The City Attorney stated the contract for Ms. Daley has been in the same form for many years.

Mrs. Montague asked how many years Ms. Daley has been the City's lobbyist. The City Attorney stated she has been with the City of Delray Beach for approximately 20 years.

The City Manager stated his understanding is that Ms. Daley was a City employee and was sent to Tallahassee to lobby on behalf of the Delray Enclave Act which passed in 1987. Robert A. Barcinski, Assistant City Manager, stated Ms. Daley worked for the City of Delray Beach directly for two years under him and then decided to go to Tallahassee on her own. Mr. Barcinski stated Ms. Daley has worked for the City of Delray Beach since about 1985. The City Manager stated approximately three years ago former Mayor Perlman brought Mr. Aleksander- on board and wanted him to lobby primarily for earmarks. The City Manager stated Mr. Sebastian Aleksander has been very successful; however, most of them have been line item vetoed by the Governor.

Prior to the vote, the City Attorney suggested that the Commission discuss this with Kathy Daley.

Mayor Ellis stated the contracts do not specify what the Commission is looking for and what each person's responsibilities are. Mayor Ellis suggested that both contracts be reviewed by the City Attorney and City Manager to talk to our lobbyists and bring back additional information as to what the status is for Kathy Daley and confirm that this not filing is a mistake that the Commission was not aware of and is she planning to not renew the contract and does the Commission need to renegotiate a contract with Mr. Aleksander that is current and based on a start and stop date. The City Manager stated had he been able to get in touch with Ms. Daley, he would have discussed with her about ending the contract by mutual agreement.

Mrs. Montague stated the Commission did not receive a call from Ms. Daley knowing this article was coming out and noted that she has been quoted in the article. Mrs. Montague stated Ms. Daley has had ample time to get in touch with the City Manager to let the Commission know what was going on. Mrs. Montague stated when we are talking about something that is being disclosed in the newspaper that has to do with not registering she feels it is serious enough in her opinion that a telephone call should have been made immediately as soon as there was a call from the newspaper. Mrs. Montague supports terminating the contract.

Mr. McDuffie moved to terminate the lobbying contract with Kathy Daley for cause, 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.

Mrs. Montague agrees with Mayor Ellis concerning Sebastian Aleksander's contract and does not feel the contract is well written. Mrs. Montague stated she is particularly concerned with the clause that Commissioner Fetzer pointed out (Item #7 and the changing the renewal clause to annually). The Commission gave the City Attorney direction to revise language in Item #7 and revise the renewal clause in Sebastian Aleksander's contract.

12. FIRST READINGS:

12.A. NONE

At this point, the time being 7:29 p.m., 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. Robert Ganger, President of the Florida Coalition for Preservation, stated the Coalition is a Public Service Group whose mission is to champion responsible development on the barrier islands. He briefly discussed the Briny Breezes Development Project and stated that the Department of Community Affairs (DCA) in Tallahassee will review the amended Comprehensive Plan for Briny Breezes to determine whether or not it is in compliance with the states growth management plan. He stated on June 29, 2007 everyone will know whether or not DCA rejects the plan, gives it conditional approval pending certain revisions, or gives it the State's endorsement so the developer can proceed with his plans.

11.B.2. Kathy Fazio, 1118 Harbor Drive, Delray Beach (speaking on behalf of the Beach Property Owners Association Board), stated she understands that the Commission has received a copy of the adopted resolutions regarding the proposed redevelopment of Briny Breezes. She stated as an association, the Board feels the project would have a negative impact on their area with regard to traffic and infrastructure. From a safety standpoint, they are also concerned with the environment being at risk. Mrs. Fazio stated as a group with over 1,000 members on the barrier island, she urged the Commission to carefully consider the comments of Mr. Ganger. The BPOA will be eager to hear from the City as to the position it plans to take regarding this issue.

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager suggested that IPARC (Intergovernmental Plan Amendment Review Committee) review the Briny Breezes issue because they are established to deal with intergovernmental conflicts over land use planning. He stated there is a technical committee of planners and IPARC consists of elected officials.

Secondly, he stated the Innovation Group Conference in Bellevue, Washington was great. The City Manager stated the City's team did a super job on their presentation on the R.A.C.E. initiative. He stated the name has changed because they have formed a group with the Innovation Group, the Arizona State University and the International City Management Association and is now called the Alliance for Innovation and they are moving their headquarters from Tampa to Phoenix. Staff looks forward to working with them and he noted the conferences are excellent.

13.B. City Attorney

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

13.C. City Commission

13.C.1. Mr. Fetzer

Mr. Fetzer stated the fundraiser for the Pop-Up Book was great and he congratulated the Education Board for a very successful event.

Secondly, he commented about the Town Hall Budget Meeting regarding the budget issues. Mr. Fetzer expressed concern over some of the ways in which the meeting was handled. He stated overall the meeting gave the public the opportunity to express their concerns about the budget; however, in the future he would like to see a little more discussion amongst the Commission as far as how they are going to conduct the meeting and how to prepare for the meeting.

Mayor Ellis stated she inadvertently left off giving the Commission a chance to speak before she adjourned the meeting and apologized to the Commission.

Mr. Fetzer stated he would have liked to have been informed about what was going to be presented before the meeting so he could have been better prepared in the event he was asked to answer some of the questions. He stated there should have been more discussion regarding the Capital spending program and feels there was confusion about the Capital Improvement Budget issues versus the Operating Budget issues and he would have liked to have seen some clarity brought to this issue.

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

Mr. McDuffie echoed comments expressed by Mr. Fetzer regarding the Town Hall Budget Meeting.

Secondly, he stated he had a wonderful time at the Education Foundation.

Mr. McDuffie stated his background is selling huge expensive things to people and making presentations to large crowds and Boards of Directors. He stated when this is done you take a whole team and prepare them very well before putting them out in front of anyone. He stated he felt ill prepared to walk up on the stage for the Town Hall Budget Meeting. Mr. McDuffie stated if there were questions of taxation he is quite certain he could have addressed those concerns. Mr. McDuffie stated in a private meeting with Mr. Harden, Mr. Safford, and Mr. Hasko he discussed his concerns about the capital projects and his vote on these projects without those projects being conveyed to the public. At that meeting, it was discussed that there was a Town Hall Budget Meeting coming up and he asked that this information be presented. Mr. Duffie stated he felt this was an item that he discussed and gained assurance that we were going to do and it did not happen. Mr. McDuffie stated that the Commission did not have the opportunity to make comments and there were no closing comments. He stated the meeting ended abruptly. He stated the City asked people to give suggestions about what the City should spend and not spend. Mr. McDuffie commented about the Bexley Park representative who spoke and feels there could have been identical feedback on 15 or 20 other projects as well but they missed that opportunity. Mr. McDuffie suggested that this be planned better next time and noted that he is very disappointed that this did not happen.

Lastly, Mr. McDuffie stated he and his staff completed all the calculation packages to be inserted into the website so that anyone in the County will be able to go on the website and get a comparison of "Save Our Homes" versus the "Super Homestead" of what taxable value will be for the next 15 years. He stated this will be available on the Property Appraiser's website in approximately ten days or less.

13.C.3. **Mrs. Montague**

Mrs. Montague stated the Commission did receive some positive comments concerning the Town Hall Budget Meeting and requests to follow-up. She suggested that we take the information, discuss it, set up the proper format and have input. Mrs. Montague suggested getting it out to the public as much as we can in different formats (i.e. Hometown Connection). Mrs. Montague stated at least we have some very specific recommendations on how to make the Town Hall Budget Meeting better next time.

Secondly, Mrs. Montague stated she and the City Manager attended the Transforming Local Government Conference. She stated they had the opportunity to tour Microsoft and it was great.

Mrs. Montague commented about the Education Foundation and stated it was enjoyable and successful.

She stated she attended Juneteenth (a celebration commemorating the ending of slavery in the United States) held at St. Matthew's Episcopal Church.

Lastly, Mrs. Montague stated she attended the funeral for Chief Koen's mother on Saturday and wished him the best.

13.C.4. **Mayor Ellis**

Mayor Ellis commented about her emails not working at home or City Hall; however, this is being worked on.

Secondly, Mayor Ellis stated she met with some representatives from ULI (Urban Land Institute) regarding the Briny Breezes development and noted people who live on the barrier island are very concerned.


Mayor Ellis commented about the Town Hall Budget Meeting regarding the property taxes and in her opinion stated it was a poor turnout (only 11 speakers from the public). She stated she is not sure whether there was not enough time, notice, or advertising. Mayor Ellis stated we really need to do better and believes the Commission will have additional opportunities as we get closer to the budget. She stated they will have to make some tough decisions on budget items that the entire Commission will be weighing in on.

She stated she spoke at the County Commission Workshop Meeting regarding Home Rule and the City of Delray Beach is in the process of obtaining the petitions in order to get this referendum on the ballot. Mayor Ellis stated the County did not want this on the January ballot which is the Presidential Preference Primary because it is also going to be the ballot that holds the constitutional amendments for Property Tax Reform. She stated if the City agreed to wait until November 2008, they would agree to not initiate any County Charter Amendments until we were able to get this on the ballot. Mayor Ellis stated they would support placing it on the ballot and therefore the money that we are raising to get the petitions done could be saved and used to help get the initiative passed when it actually hits the November ballot. Mayor Ellis stated 28 municipalities have signed up to support this and noted it was a 5 to 1 vote with Commissioner Marcus voting against this because she feels that home rule is bad government. Mayor Ellis stated the judge's ruling about the dispatch case was so strong and noted this is being appealed by the County.

Mayor Ellis stated that the Commission's work is just beginning on the budget and she feels they need to look for opportunities and ideas.

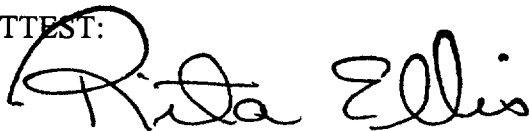
Mayor Ellis and the City Attorney commented about a memo by Jamie Cole who is the attorney in the dispatch case for Boca Raton and Delray Beach. The memo is a legal analysis of the constitutionality of some of the provisions regarding the Property Tax Reform. Mayor Ellis stated it is a unique perspective and deals primarily with the roll back.

There being no further business, Mayor Ellis declared the meeting adjourned at 8:02 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 June 19, 2007, which Minutes were formally approved and adopted by the City Commission on _____.



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.