

**NOVEMBER 3, 2009**

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, November 3, 2009.

**1.** Roll call showed:

Present - Commissioner Gary P. Eliopoulos  
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  
Brian Shutt, City Attorney  
Chevelle D. Nubin, City Clerk

**2.** The opening prayer was delivered by Reverend Nancy Norman with Unity of Delray Beach.

At this point, Mayor McDuffie introduced the Atlantic High School Criminal Justice Honor Guard.

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

**4.** **AGENDA APPROVAL.**

Mayor McDuffie noted there is revised information (letter) for **Item 8.H., Ratification of the South Central Regional Wastewater Treatment and Disposal Board Action.**

Mayor McDuffie stated staff is requesting that **Item 9.E., Request for Qualifications (RFQ)/Veteran's Park/Worthing Park** be removed from the Agenda. It was the consensus of the Commission to remove **Item 9.E.** from the Agenda.

Also, there is an additional résumé for **Item 9.G., Appointments to the Financial Review Board.**

Mr. Eliopoulos moved to approve the Agenda as amended, 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. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

**5. APPROVAL OF MINUTES:**

Mr. Eliopoulos moved to approve the Minutes of the Regular Meeting of October 6, 2009, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

Mr. Frankel moved to approve the Minutes of the Workshop Meeting of October 13, 2009, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

Mr. Fetzer moved to approve the Minutes of the Regular Meeting of October 20, 2009, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

**6. PROCLAMATIONS:**

**6.A. Recognizing Dan Bernheim – Delaire Charity Golf Tournament**

Mayor McDuffie read and presented a proclamation hereby recognizing and commending **DANIEL “DAN” BERNHEIM** for his unwavering support and efforts on behalf of the City of Delray Beach. A member of Mr. Bernheim’s family came forward to accept the proclamation and gave a few brief comments.

**6.B. Recognizing and Commending Elizabeth Wesley for the “2009 Women of Courage & Achievement” recognition**

Mayor McDuffie read and presented a proclamation hereby recognizing and commending **ELIZABETH “LIBBY” WESLEY** and call upon all present to acknowledge and applaud her longtime outstanding and exemplary dedication, multitudinous contributions and accomplishments to the City of Delray Beach, its residents and her community. Mrs. Wesley came forward to accept the proclamation and gave a few brief comments.

**6.C. Dr. Theodore A. Bush Day – November 8, 2009**

Mayor McDuffie read and presented a proclamation hereby recognizing and proclaiming November 8, 2009 as **DR. THEODORE A. BUSH DAY** and call upon all present to acknowledge and applaud the multitudinous contributions Dr. Theodore Bush has made to his community and church. Dr. Theodore Bush came forward to accept the proclamation and gave a few brief comments.

**7. PRESENTATIONS:**

A. None

**8. CONSENT AGENDA:** City Manager Recommends Approval.

**8.A. REQUEST FOR SIDEWALK DEFERRAL/951 IRIS DRIVE:**  
Approve a request to defer the installation of a sidewalk along Iris Drive for the property located at 951 Iris Drive.

**8.B. ACCEPTANCE OF RIGHT-OF-WAY DEED/ALOHA CLEANERS:**  
Approve and accept a right-of-way deed for Aloha Cleaners, located at 501 N.E. 2nd Street.

**8.C. EXTENSION OF TIME UNDER SETTLEMENT AGREEMENT/FRANK & NILSA MCKINNEY & VILLAGE BY THE SEA, LLC v. THE CITY OF DELRAY BEACH:** Consider approval of an extension of time until January 31, 2010 under the Settlement Agreement dated December 16, 2008 to remove and relocate the tree house accessory structure.

**8.D. AGREEMENT/UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:** Approve an agreement with the United States Environmental Protection Agency (USEPA) to become a promotional partner in the EPA WaterSense national program.

**8.E. AMENDMENT NO. 3 TO THE SUB-RECIPIENT HOUSING PARTNERSHIP AGREEMENT/DELRAY BEACH COMMUNITY LAND TRUST, INC.:** Approve Amendment No. 3 to the Sub-Recipient Housing Partnership Agreement between the City and Delray Beach Community Land Trust, Inc. for subsidizing the costs associated with affordable housing units within the Community Land Trust. Funding is available from 118-1924-554-49.20 (Neighborhood Services/Other Current Charges/Homeowner Subsidy).

**8.F. GRANT AWARD AND APPLICATION/FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)/AGGRESSIVE DRIVING:** Accept an award from the Florida Department of Transportation (FDOT) in the amount of \$48,800.00 and approve filing a grant application for implementation of an aggressive driving/speed enforcement program.

**8.G. RESOLUTION NO. 58-09:** Approve Resolution No. 58-09 amending Resolution No. 55-09 which created the Budget Review Committee in order to change the name to the Financial Review Board and to expand the responsibility of the board.

The caption of Resolution No. 58-09 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF DELRAY BEACH, FLORIDA, AMENDING

RESOLUTION 55-09 WHICH CREATED THE BUDGET REVIEW COMMITTEE IN ORDER TO CHANGE THE NAME TO THE FINANCIAL REVIEW BOARD AND TO EXPAND THE RESPONSIBILITY OF THE BOARD; PROVIDING AN EFFECTIVE DATE.

(The official copy of Resolution No. 58-09 is on file in the City Clerk's office.)

**8.H. RATIFICATION OF THE SOUTH CENTRAL REGIONAL WASTEWATER TREATMENT AND DISPOSAL BOARD ACTION:** Approve and ratify the action of the South Central Regional Wastewater Treatment and Disposal Board at their Quarter- Annual Meeting of October 15, 2009.

**8.I. SPECIAL EVENT REQUEST/HOLIDAY PAGEANT PARADE:** Approve a special event request to endorse the Annual Holiday Pageant Parade co-sponsored by the Parks and Recreation Department and the Chamber of Commerce to be held on December 12, 2009 beginning at approximately 4:00 p.m. to 6:00 p.m., granting a temporary use permit per LDR Section 2.4.6(F) for the closure and use of Atlantic Avenue from Gleason Street and Andrews Avenue to N.W. 1st Avenue for parade route; and Miramar, Lowery, Gleason and Andrews for parade set up from approximately 2:00 p.m. to 4:00 p.m.; and authorize staff support for traffic control and security, EMS assistance, barricading, trash removal/clean up, and event signage.

**8.J. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period October 19, 2009 through October 30, 2009.

**8.K. AWARD OF BIDS AND CONTRACTS:**

- 1.** Contract award based on highest commission revenue to the City, to Vending Americas for snack vending machine services at various locations within the City.
- 2.** Contract award in the estimated amount of \$18,000.00 to Alliance Linen d/b/a Gold Coastal Linen Service for linen rental service for the Delray Beach Municipal Golf Course Restaurant. Funding is available from 445-4715-572-52.22 (D B Municipal Golf Course/Operating Supplies/Uniforms/Linen Service).
- 3.** Multiple purchase awards at an estimated annual cost of \$264,200 to HD Supply Waterworks for the purchase of pipes, valves, and fittings and to Ferguson Enterprises, Inc. for water meter fittings and water line accessories for the City's irrigation system, underground water and sewer repairs and capital construction projects. Funding is available from various departmental operating budgets.

Mr. Eliopoulos moved to approve the Consent Agenda as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Eliopoulos – 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. WAIVER REQUESTS/FIRE STATION NO. 3:** Consider two (2) waiver requests associated with the Fire Station #3 project to increase the maximum driveway width from 36 feet to 48 feet 8 inches and decrease the minimum standard aisle width from 20 feet to 15 feet located on the north side of Linton Boulevard, 320 feet east of S.W. 8th Avenue at 651 Linton Boulevard. (*Quasi-Judicial Hearing*)

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

Chevelle 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, Director of Planning and Zoning, entered the Planning and Zoning Department file #2009-240 into the record.

Mr. Dorling stated this is for two waiver requests; one to the maximum driveway width which is allowed to be 36 feet and the proposed width is 48 feet 8 inches and decrease the minimum standard aisle width from 20 feet to 15 feet. This is for the Fire Station #3 site. He stated a site plan was processed for replacement of this fire station in conjunction with some grant requests that have been done. Mr. Dorling stated this is a mirror image of the fire station done on Barwick Road. The site is a little narrower and therefore, there is a request for a reduction in this driveway width which provides access to the parking spaces to the rear. Mr. Dorling stated this will be employee parking and shift parking and the public will utilize the parking spaces in the front.

At its meeting of October 14, 2009 the Site Plan Review and Appearance Board (SPRAB) approved the Class V site plan, landscape plan, and architectural elevations for Fire Station #3. Mr. Dorling stated the required findings are made in the staff report and given those positive findings staff recommends approval.

There was no cross examination or rebuttal.

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

Mr. Eliopoulos stated everyone keeps talking about going green and one of the ways to go green is by doing renovations. Therefore, he will not support this.

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. Frankel 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. Eliopoulos – No. Said motion passed with a 4 to 1 vote, Commissioner Eliopoulos dissenting.

**9.B. CONTRACT ADDITION (C.O. NO. 6) WEST CONSTRUCTION, INC./MILLER PARK IMPROVEMENTS:** Consider approval of a Contract Addition (C.O. No. 6) in the amount of \$74,550.00 to West Construction, Inc., for renovations to the Little Fenway Ball Field as part of the Miller Park Improvements Project. Funding is available from 334-4173-572-63.90 (General Construction Fund/Improvements Other/Other Improvements).

Richard Hasko, Director of Environmental Services, stated this proposal is a contract addition to the Miller Park project and addresses the issues that exist primarily with the condition of the outfield irrigation system at Little Fenway Ball Field. Mr. Hasko stated those areas were not part of the original scope of the Miller Field project. He stated staff had interaction with the various organizations that use the field and because of the poor condition of the outfield staff asked West Construction for a proposal to re-sod and re-grade and put in a new irrigation system and that proposal is \$74,550.00. Mr. Hasko stated this would be Contract Addition No. 6 and amounts to about an 8% contract increase. The City Manager stated staff received another quote that was a little over \$100,000.00.

Mr. Eliopoulos asked why staff did not know about this going into this and inquired if the conditions have changed. Mr. Hasko stated when the project was originally conceived and scoped out, the focus was primarily on the playing fields and the improvements to the south that involved the issues with the parking facilities, the condition of those fields and the ability to expand those and improve those, the Miracle League Field, etc. The City Manager stated both the Sergio Field and Little Fenway were not included in the original plan. In the last few months, the City Manager stated it has been brought to the City's attention that Fenway really needs some work.

Mrs. Gray asked if there is any indication the other field will be coming back for improvements. The City Manager stated staff met today to discuss the press box

at Little Fenway. He stated the press box at Little Fenway is in very poor shape and the City is considering knocking it down and replacing it. Staff will bring more information to the Commission as it develops.

Mr. Frankel expressed concern that this is the sixth change order. The City Manager stated this is not a change but it is an addition to the contract that was not part of the original scope.

Mrs. Gray moved to approve Change Order No. 6 for West Construction in the amount of \$74,550.00, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

**9.C. RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT/POLICE BENEVOLENT ASSOCIATION (POLICE LIEUTENANTS):** Consider ratification of a Collective Bargaining Agreement between the City of Delray Beach and the Police Benevolent Association (Police Lieutenants).

Bruce Koeser, Human Resources Director, stated the City has reached an agreement with the Police Benevolent Association for the Police Lieutenants. Mr. Koeser stated the agreement duration is from September 1, 2009 through September 30, 2011, and provides for a 5% wage adjustment retroactive to September 1, 2009, the work cycle was increased to 84-hours in a two (2) week cycle, a wage freeze effective October 1, 2009 and a wage reopener for next fiscal year. Mr. Koeser stated other benefits Lieutenants have been receiving such as take home vehicles and the ICMA match remains the same.

Mr. Frankel moved to approve ratification of the Collective Bargaining Agreement with the Police Benevolent Association (Police Lieutenants), seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

**9.D. AGREEMENT/FUMERO LAW GROUP, P.A./ENVIRONMENTAL LEGAL SERVICES:** Consider an annual agreement with the Fumero Law Group, P.A., for legal services with respect to monitoring, reporting and limited representation regarding rule proposals, legislative initiatives and permitting associated with environmental issues affecting the City for an annual fee of \$46,800.00. Funding is available from 441-5111-536-31.10 (Water and Sewer Fund/Professional Services/Legal).

Richard Hasko, Director of Environmental Services, stated this proposal is with Fumero Law Group for legal services with respect to monitoring, reporting and limited representation regarding rule proposals, legislative initiatives and permitting associated with environmental issues that affect the City particularly the public utilities not purely water and sewer but stormwater as well. Mr. Hasko stated historically we

have been reliant on memberships and non-profit organizations to try and monitor all of the rule change proposals and legislative proposals that we face every year.

Mr. Fetzer stated he spoke with the City Attorney today to see if there was some other funding plan because as he understands it staff does not know the amount of legal work that is going to be required to do this. Mr. Hasko stated it does not have an exclusive scope in terms of a particular issue that Mr. Fumero's group will represent the City on but it is more of a focus on environmental issues that potentially will impact the City.

Mr. Fetzer stated in his conversation with the City Attorney today he realizes this could possibly be a very significant financial impact on the City and he is concerned because he does not know the scope of work that is involved. Mr. Fetzer suggested that if the City goes forward with this that staff try to monitor what is required of this firm and what they do for us for that amount of money so that we will have a better feel for if this makes sense to do in the future.

Mr. Eliopoulos stated he has similar reservations as Commissioner Fetzer. Mr. Eliopoulos expressed concern with doing a yearly contract with someone and not really knowing the outcome of what you are going to get. He stated he understands the purpose of it and the goal but he does not see any guarantees. Mr. Hasko stated in this type of agreement it does not focus on a specific issue for which the firm will provide the City with representation. Mr. Hasko stated its focus is overall monitoring to identify those issues and staff thinks they know what they are going to be faced with this year from FDEP (Florida Department of Environmental Protection) but there could be others. He stated staff does not know what type of Legislature initiatives the City may be facing this year. Mr. Hasko stated in the last few years there has been more and more focus on environmental types of issues in the State Legislature.

Mrs. Gray asked if there is a restriction or cap as to how much work they would be doing for the City for example if there were 3, 4, 5, or 6 issues. Mr. Hasko stated there is limited representation involved with this contract and if there is an issue that arises that the City has serious concerns about that would require a specific focus on from a legal standpoint then they would come forward with an additional proposal to do that.

Brief discussion by the Commission continued.

Mrs. Gray moved to approve the agreement with the Fumero Law Group, P.A., for legal services, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor McDuffie – No; Mr. Eliopoulos – No; Mr. Fetzer – Yes; Mr. Frankel – No; Mrs. Gray – Yes. Said motion to approve the Agreement was **DENIED** with a 3 to 2 vote, Commissioner Fetzer and Commissioner Gray dissenting.

**9.E. THIS ITEM HAS BEEN REMOVED FROM THE AGENDA.**

**9.F. LANDSCAPE ARCHITECTURAL SERVICES/COTLEUR & HEARING, INC. (ATLANTIC AVENUE LANDSCAPE MEDIANS):** Approve an agreement with Cotleur & Hearing, Inc., in the amount of \$23,122.00 to provide landscape architectural services for Atlantic Avenue Landscape Medians. Funding is provided by a Keep Palm Beach County Beautiful Grant and the Community Redevelopment Agency (CRA).

Lula Butler, Director of Community Improvement, stated this is a request to approve an agreement for landscape architectural services for the medians between Swinton Avenue and 12<sup>th</sup> Avenue. Mrs. Butler stated staff recommends the second lowest bidder as the most qualified bidder, Cotleur & Hearing, Inc., in the amount of \$23,122.00. She stated the City applied and received a \$200,000.00 grant in May 2009 that will be used towards the redesign and installation of new landscape and irrigation material within the project limits. Mrs. Butler stated if the Commission approves this agreement tonight then staff can move forward with conceptual plans and have a multitude of meetings that will have to occur with Florida Department of Transportation (FDOT) to do this. Staff recommends to award to the most qualified bidder, Cotleur & Hearing, Inc., in the amount of \$23,122.00.

Mrs. Gray asked how soon this project will be completed. Mrs. Butler stated staff hopes to have this project completed by this time next year.

Mrs. Gray moved to approve an agreement with Cotleur & Hearing, Inc. for the Atlantic Avenue landscape medians, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

**9.G. APPOINTMENTS TO THE FINANCIAL REVIEW BOARD:** Appoint two (2) regular and one (1) alternate member to the Financial Review Board to serve terms ending July 31, 2010 and July 31, 2011. Based on the rotation system, the appointments will be made by Commissioner Gray (Seat #4), Commissioner Fetzer (Seat #2) and Commissioner Gray (Seat #4).

Mrs. Gray moved to appoint Brenda Durden as a regular member to the Financial Review Board to serve a one (1) year term ending July 31, 2010, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

Mr. Fetzer moved to appoint Christina Morrison Pearce as a regular member to the Financial Review Board to serve a two (2) year term ending July 31, 2011, 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. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Gray moved to appoint Helena Antunes-Boska as an alternate member to the Financial Review Board to serve a two (2) year term ending July 31, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

**9.H. APPOINTMENT TO THE POLICE ADVISORY BOARD:** Appoint one (1) regular member to the Police Advisory Board to serve an unexpired term ending July 31, 2010. Based on the rotation system, the appointment will be made by Commissioner Fetzer (Seat #2).

Mr. Fetzer moved to appoint Jeff Ritter as a regular member to the Police Advisory Board to serve an unexpired term ending July 31, 2010, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

**10. PUBLIC HEARINGS:**

A. None

At this point, the time being 6:50 p.m., the Commission moved to **Item 11.B., Comments and Inquiries on Non-Agenda Items from the Public.**

**11.B. From the Public.**

**11.B.1. Don Anthony, Communications Director for the Animal Rights Foundation of Florida (speaking on behalf of the 5,000 members of the Animal Rights Foundation of Florida many of whom live in Delray Beach),** briefly spoke about the carriage horse situation that the Commission voted to allow to run on the streets of Delray Beach two weeks ago. Mr. Anthony urged the City Commission to reconsider and disallow such a vehicle for numerous reasons. He stated many other cities have banned carriage horses because it is cruel to the animals, it is dangerous to the people, and it is a legal hazard to the city. He urged the Commission to re-examine allowing any company to operate these horse drawn carriages in Delray Beach and not allow this type of operation next year.

**11.B.2. Christina Pearce, 2000 South Ocean Boulevard #307, Delray Beach, FL 33483,** commented about the Palm Beach Post article on Sunday regarding the prescription drug clinics in the city. She requested that the City send a letter of rebuttal that we have already addressed that issue in the city and are outlawing future drug clinics from operating in the city. Ms. Pearce requested that we have some positive press releases because there are so many good things going on in the city and all that is getting published are the bad things.

**11.B.3. Pauline Moody, 609 S.W. 8<sup>th</sup> Avenue, Delray Beach, FL 33444,** asked when the sidewalks are going to be totally completed in the city.

Mayor McDuffie stated he is a member of the Metropolitan Planning Organization (MPO) and it will be sometime after 2035 before every street, alley, and sidewalk is complete in Delray Beach (those are the ones that the City of Delray Beach has to do business with the Florida Department of Transportation).

**11.B.4. Shawn T. Wright, 30 Lake Court, Delray Beach, FL 33444 (lived in Delray Beach his entire life and is going to practice law here),** expressed concern over an article in the Palm Beach Post dated October 20, 2009 of which this Commission held a vote regarding a developer and within that vote it was stated within the article that several Commission members received campaign contributions from the developer. Mr. Wright stated the article went on to state that maybe these Commission members should have recused themselves. Mr. Wright stated he is concerned about the character that Delray Beach is sending out to the rest of Florida about how we handle politics. He asked if the Commission is going to address some type of reforms that there are stronger checks and balances so that other cities are not looking at Delray Beach in the history of what has happened in the last year and continuing to judge us on that.

At this point, the time being 6:58 p.m., the Commission moved to **Item 11.A., City Manager's response to prior public comments and inquiries.**

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

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

At this point, the time being 6:59 p.m., the Commission moved to **Item 12, First Readings.**

**12. FIRST READINGS:**

**12.A. ORDINANCE NO. 58-09:** Consider a privately-initiated rezoning from AC (Automotive Commercial) to GC (General Commercial) for a 1.73 acre parcel of land located at 1900 North Federal Highway, formerly known as Motorsport of Delray. If passed, a second public hearing will be held on November 17, 2009.

The caption of Ordinance No. 58-09 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND PLACING LAND PRESENTLY ZONED AC (AUTOMOTIVE COMMERCIAL) DISTRICT TO GC (GENERAL COMMERCIAL) DISTRICT; SAID LAND BEING A PARCEL LOCATED ON THE WEST SIDE OF NORTH

FEDERAL HIGHWAY, APPROXIMATELY 150 FEET NORTH OF ALLEN AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "ZONING MAP OF DELRAY BEACH, FLORIDA, OCTOBER 2009"; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 58-09 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated this is a privately initiated rezoning from AC (Automotive Commercial) to GC (General Commercial) for a 1.73 acre parcel located at 1900 North Federal Highway, on the west side of North Federal Highway, approximately 150 feet north of Allen Avenue. The property is developed and contains an existing commercial building with associated parking that was constructed in 1963. Prior to 1985, an automobile dealership (Miller Dodge) occupied the site. The property was rezoned from SC (Specialized Commercial) to AC (Automotive Commercial) with the citywide rezoning of 1990. Subsequently on January 23, 1996, the property was rezoned from AC (Automotive Commercial) to SAD (Special Activities District). In October 1998, the parcel was rezoned from SAD to AC in order to accommodate the sale of motorcycles (formerly known as Motorsports of Delray). The Motorsports operation has vacated the site and the site and building are currently vacant. The owner now wishes to market the property for office/commercial uses.

At its meeting of October 19, 2009, the Planning and Zoning Board recommended approval with a 6 to 0 vote.

Mr. Eliopoulos moved to approve Ordinance No. 58-09 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

At this point, the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items.**

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

**13.A. City Manager**

The City Manager stated the golf tournament the League has to raise money for scholarships was very successful. He stated next year's event will be held on October 8, 2009 in Atlantis again.

Secondly, he stated the Tri-Cities barbeque is scheduled for December 4, 2009.

The City Manager stated the General Membership Meeting this month was a joint meeting of the League of Cities, the County Commission, the School Board and the Legislative Delegation. He stated each group made a presentation and Commissioner Gray was present for most of that meeting. The City Manager stated the County Commission spoke about regional transportation funding and they hope there will be a December special session to address funding for Tri-rail as well as other commuter rail projects around the State. He stated they feel by addressing all the projects around the State there is a greater chance of getting something passed. The City Manager stated they are still talking about the \$2.00 per car rental surcharge. In addition, the City Manager stated they also talked about homelessness, the homeless service centers, and the "End Your Plan for Ending Homelessness in Palm Beach County" and they are starting out with a site in the northern part of the County but they plan in the future to have something in the central part and the southern part of the County for interim housing facilities. The City Manager stated they discussed the application for the broadband technology grant. Also, he stated the half cent school infrastructure sales tax surcharge will sunset December 31, 2010 and they will be discussing in January whether or not to seek to extend that some. The City Manager stated the School District spoke about the Federal stimulus funding and the class size reduction requirements. He stated right now they are met on an average for the total system or for the school. Next year it has to be met on an individual class basis and they are very concerned about the ability to meet that requirement. The City Manager stated the enrollment is up by 1,700 this year. He stated the stimulus money is 5% of the district budget and it ends in 2012 and they are concerned with how they are going to make up for that. The City Manager stated there was some discussion in the press about the move back to a more decentralized management system for the schools and they have a lot of resistance to what they were doing to centralize things and they are very concerned about people not stopping for school buses on four lane highways so they have asked everyone to pay more attention to that issue. He stated the League of Cities spoke about the Lobbyist Registration System and there is also a group working with the development community on possible standardization of forums, systems and processes to generate some efficiency in the whole development process and they gave a brief report on the Adhoc Committee that is working with the Supervisor of Elections on election costs. The City Manager stated the Legislative Delegation spoke about the upcoming Legislative session and there was further presentation on the Inspector General and the Ethics Commission proposal and the two proposals are coming together. The City Manager stated the County Commission expects to be adopting ordinances which will be in place January 1<sup>st</sup>. Cities will have the option to opt into those ordinances and they also plan to put a question up for referendum vote on November 10<sup>th</sup> and if that Charter Amendment were adopted it would require all cities to come under the Ethics Commission and the Inspector General. The City Manager stated he does not know whether the City of Delray Beach would be required to contribute to the financing of that and how they are proposing to finance it is adding one-half percent (1/2 %) to all contracts (\$100,000-\$200,000 a year) that the City would have to contribute towards the cost of that function if it is required of us to do it that way. He

stated staff will continue to follow that as it develops and he is encouraged that they will come together with one proposal instead of having two competing proposals on the ballot.

**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 stated he forwarded an email about an article in the Sun-Sentinel to the Commission regarding the anti-corruption reforms and this Office of Inspector General that is proposed. He stated it is obvious that the confidence in our elected officials has been shaken over the last couple of years. Mr. Fetzer stated he is pleased to see that it is coming together to one initiative. The highlight of the proposed reforms is a creation of this Office of Inspector General and stated it is an independent full-time government watch dog charged with ferreting out waste and corruption in local government. Mr. Fetzer stated if this goes to referendum in November next year it would require the City of Delray Beach to be a part of that. He stated the City can voluntarily agree to go with this before waiting for the referendum and urged the rest of the Commission to consider doing that. Mr. Fetzer stated we have a responsibility to be proactive with this and he would like to see Delray Beach be a leader in taking that role. He stated if this passes and becomes a plan he would like to ask this Commission to consider doing this on a voluntary basis and move ahead with this without waiting for a referendum on it next November.

Secondly, Mr. Fetzer stated he has had a lot of contact with Tom Kinsloe the developer who wanted to do the Old School Square retail space and he and his partners withdrew that offer because everyone could not come to terms. However, Mr. Fetzer stated the developer still has a lot of interest in this project and he met with Mr. Hasko and himself earlier this week and went over some of his recommendations that are well worth listening to. Mr. Fetzer stated there are some service quarters that has a lot of wasted space and he went over some ways to reclaim some of that space and actually increase our retail space by 1,272 square feet and also provide additional storage space for the Chamber as well as whoever we wind up with as a tenant for the Old School Square garage. Mr. Fetzer thanked Mr. Kinsloe for his efforts publicly tonight and thanked Mr. Hasko for supporting the ideas that Mr. Kinsloe came up with. Mr. Fetzer stated it would help us maximize some of the available floor space to rent there and make it more financially attractive. He stated the next step is Mr. Hasko will get people from the CRA and the Chamber into a meeting to talk specifically about Mr. Kinsloe's ideas.

**13.C.2.**        **Mr. Eliopoulos**

Mr. Eliopoulos stated on Thursday night the CRA voted and supported doing a deal with the City to take over the Old School Square retail space. He stated he is very pleased with this.

Secondly, he commented about the emails regarding the horse and carriage issue and he would like to know what cities are banning them and facts regarding what accidents have occurred.

Lastly, Mr. Eliopoulos stated the R.A.C.E. relations meeting went well but he was expecting more out of it. He stated he can appreciate the participation but more staff than public attended. Mr. Eliopoulos suggested that the City Manager talk with Alberta McCarthy about the format of the meeting before the next session. The City Manager stated a second session is scheduled for December 9<sup>th</sup>.

**13.C.3.**        **Mrs. Gray**

Mrs. Gray stated she attended the League of Cities meeting and they discussed finding a location in the South County area for a homeless shelter. The City Manager stated there was an effort a few years ago to rezone something that Frank McKinney was interested in setting up but it went nowhere.

Secondly, she stated the Black Elected Officials will be honoring Mrs. Libby Wesley at a luncheon in West Palm Beach.

Lastly, Mrs. Gray stated she attended the Knights of Pythagoras meeting at Atlantic High School. She stated this is going to be a great program and she will attend their meeting next Tuesday.

**13.C.4.**        **Mr. Frankel**

Mr. Frankel publicly complimented Lieutenant Jim Tabeek who participated in a fundraiser for the library at the Falcon House last week.

Secondly, Mr. Frankel stated he received a telephone call from a resident regarding security concerns and a couple of weeks ago a female was attacked off Atlantic Avenue on a Wednesday evening. He stated she also expressed security concerns that at the garage homeless individuals are coming from Atlantic Avenue looking for money.

**13.C.5.**        **Mayor McDuffie**

Mayor McDuffie asked about the status of the Waste Management audit. The City Manager stated the Finance Director is working with Waste Management to try to get some documents that will enable staff to do the comparison of what was being charged in the August or September 2008 timeframe versus months later. He stated the

City received the billing register for February and Waste Management indicated that they could not give the City the same thing for those earlier months. The City Manager stated the Finance Director is working with Management to try and obtain an electronic file from Waste Management that would have the information in it that would enable the City to make the comparison. If the City can get that, then the City can work with Mr. MacNamee and do the comparison ourselves and we will not need to do an audit, but if we can't, staff can take another look at it. The City Manager stated that the City would probably still want to do an audit. He stated staff needs a few more days to see where this leads and noted that the City has the language for an RFP (Request for Proposal) but has not issued it yet.

Secondly, Mayor McDuffie stated he participated in the Lupus Foundation 5K walk/run this past Saturday morning as well as AVDA's walk/run a few weeks ago. He stated in both cases each one of these events had over 400 participants and both events were very successful.

He stated he attended the trick-or-treat event downtown on Atlantic Avenue and noted this event has been hosted by Vince Canning for nearly 40 years. Mayor McDuffie stated the downtown was packed for the trick-or-treating and at 1:30 p.m. there was a Halloween Parade which was great. Mayor McDuffie stated the merchants noted what a great day it was and all the people that were out. He stated the City should thank Vince Canning for putting on this event. In addition, the Parks and Recreation Department had the haunted house at the Community Center which turned out to host approximately 600 people. Mayor McDuffie thanked staff for all their help with making this a successful Halloween.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:25 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 November 3, 2009, which Minutes were formally approved and adopted by the City Commission on November 17, 2009.

  
\_\_\_\_\_  
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 RELATING TO THE MAXIMUM  
DRIVEWAY WIDTH AND STANDARD AISLE WIDTH  
ASSOCIATED WITH THE CLASS V SITE PLAN FOR FIRE STATION #3**

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

1. This waiver request to expand the maximum driveway width from 36 feet to 48 feet and 8 inches and decrease the minimum standard aisle width from 20 feet to 15 feet has come before the City Commission on November 3, 2009.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver request for the temporary use permit. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

**I. WAIVER TO MAXIMUM DRIVEWAY WIDTH:**

LDR Section 4.6.9(D)(3)(a) provides that the point of access to a street or alley shall be a maximum of 24 feet unless a greater width is specifically approved as part of a site and development plan approval. However, in no event shall such point of access be greater than 36 feet. The proposed driveway along Linton Boulevard is 48 feet 8 inches wide.

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

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

**Does the waiver request meet all the requirements of 2.4.7(B)(5)?**

Yes  No

**II. WAIVER TO MINIMUM STANDARD DRIVE AISLE WIDTH:**

LDR Section 4.6.9(D)(4)(d), provides that a standard aisle width of 24 feet is required for normal two-way traffic flow with perpendicular parking and a minimum width of 20 feet for short distances is required when there are parking spaces entering therein. The applicant proposes a 15-foot wide aisle along the west side of the proposed fire station.

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

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

**Does the waiver request meet all the requirements of 4.6.9(D)(4)(d)?**

Yes   ✓        No       

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

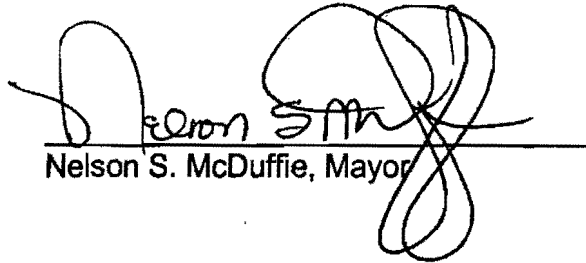
4. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses supporting these findings.

5. Based on the entire record before it, the City Commission approves   ✓   denies    the waiver request, subject to the listed condition, to LDR Section 2.4.6(F).

6. Based on the entire record before it, the City Commission hereby adopts this Order this 3rd day of November, 2009, by a vote of 4 in favor and 1 opposed.

ATTEST:

  
\_\_\_\_\_  
Chevelle Nubin, City Clerk

  
\_\_\_\_\_  
Nelson S. McDuffie, Mayor