

FEBRUARY 5, 2008

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Rita Ellis in the Commission Chambers at City Hall at 6:03 p.m., Tuesday, February 5, 2008.

1. Roll call showed:

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

Absent - None

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

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

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

4. **AGENDA APPROVAL.**

Mr. Eliopoulos requested that **Item 8.D., Contract Addition (C.O. No. 1)/BSA Corporation/City Hall Interior Renovations Project/IT Remote Building Project**, be removed from the Consent Agenda and moved to the Regular Agenda as **Item 9.A.A.**

Mayor Ellis stated there is a Board Order on the dais for **Item 9.F., Appeal of Waiver Denial/Bru's Room.**

Mr. McDuffie stated staff requested that **Item 7.B., "Spotlight on Education" – Marjorie Waldo, Principal, Delray Youth Vocational Charter School** be removed from the Agenda.

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

5. APPROVAL OF MINUTES:

Mr. Fetzer moved to approve the Minutes of the Regular Meeting of January 3, 2008, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

Mrs. Montague moved to approve the Minutes of the Regular Meeting of January 15, 2008, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

Mr. McDuffie moved to approve the Minutes of the Special Meeting of January 22, 2008, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

Mr. Fetzer moved to approve the Minutes of the Special Meeting of January 23, 2008, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis - Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. Recognizing and Commending the Delray Rocks Football and Cheerleading Squads

Mayor Ellis read and presented a proclamation to Ben Leonard hereby proclaiming the Delray Rocks Football and Cheerleaders participants to be “Champions Among Champions and Ambassadors of Good Will and Sportsmanship for the City of Delray Beach, Florida”. Mr. Leonard came forward to accept the proclamation and gave a few brief comments.

6.B. The Arc of Palm Beach County 50th Anniversary – February 7, 2008

Mayor Ellis stated she will be attending a luncheon and read this proclamation to the Arc of Palm Beach County at that time. Therefore, Mayor Ellis noted that the proclamation will be mailed.

7.A. PRESENTATIONS:

7.A. “Spotlight on Neighborhoods” – Joseph Kamarata, Chair of Neighborhood Advisory Council

Joseph Kamarata, Chair Neighborhood Advisory Council (NAC), stated their slogan is improving Delray Beach neighborhood by neighborhood and their mission is enhancing the quality of life in Delray Beach by educating, assisting and

communicating with community associations to improve their neighborhoods with the aid of available city services and resources. He stated NAC was formed in October 2003 as a liaison body to our City Commissioners the NAC has been conducting monthly meetings on the third Monday in the City Hall First Floor Conference Room at 5:30 p.m. for the past year. Mr. Kamarata stated 15 volunteers and members of the NAC appointed by the City Commission have been busy getting to know the neighborhoods and what they can do to help improve our neighborhoods. He stated with the support of City staff members NAC has accomplished a full agenda of goals in its third year. He stated at NAC meetings they heard several presentations from several neighborhood representatives each with different desires and priorities for improvements. One of NAC's top priorities is to help with communication and in order to be better communicators, it is to clearly understand the programs and policies in place at the City. Mr. Kamarata stated nine presentations were given to NAC including traffic calming policies and procedures, landscape beautification, the Community Land Trust (CLT), Litter Prevention, Delray Beach Housing Authority, the Neighborhood Resource Center, Prosperity Center, Coalition for Community Renewal, and they hosted a citizen participation process for Federal and State grant programs. He stated for the third year in a row NAC hosted a potluck dinner for Rainbow Homes and Windycreek. Mr. Kamarata stated the NAC recently awarded three neighborhood pride grants at \$6,000.00 each for improvements to their neighborhoods. The grants were awarded to Paradise Heights, Woods of Southridge and Delray Estates. Mr. Kamarata stated NAC is looking forward to working with Jennifer Costello, the new Neighborhood Planner. He stated one of the goals this year is to help develop and promote workshops at the Neighborhood Resource Center which would include a homeowner's association leadership series among others. This spring NAC will be launching another annual round of Neighborhood Pride Grants, looking forward to their Annual Association President's Dinner and the neighborhood bus tours. Mr. Kamarata invited everyone to attend one of NAC's meetings and they welcome neighborhood presentations. He recognized Janet Meeks, Education Coordinator, for being such a great mentor.

Mayor Ellis stated NAC is a big asset to the community and the Commission appreciates all of its efforts.

7.B. "Spotlight on Education" – Marjorie Waldo, Principal, Delray Youth Vocational Charter School

This item has been removed from the Agenda per staff request.

7.C. Zion Study Circle Map Project – Susan Ruby

Shelly Weil, 925 Greensward Lane, Delray Beach (Project Chair of the Zion Study Circle Map Project), stated they initiated a series of study circles when former Mayor Perlman was here. He stated there were three groups and the Zion Study Circle was one of the three groups and it was series of nine weeks for the purpose of continuing with R.A.C.E. Relations in the City of Delray Beach. He stated it started by an organization called "Toward a More Perfect Union" for enhancing R.A.C.E. Relations. Mr. Weil stated their first meeting was August 24, 2006 at St. Paul's Episcopal Church

and at that time there were 12 members. Mr. Weil stated even though the session had ended the group decided to stay together and the City approved of their first mission on March 20th. The topic was discrepancies in the literature and films regarding improper history of Delray Beach. At that time, the City Commission approved of the changes and the changes were made and thanked Lori and Charlotte Durante for their assistance. Mr. Weil recognized the members of the Zion Study Circle.

Susan Ruby, City Attorney, stated that the early history was undertaken in collaboration with the Delray Beach Historical Society and the Spady Museum. She stated also with them this evening as part of their new project is Daisy Fulton on behalf of the Spady Museum and also EPOCH. The City Attorney also recognized Dottie Patterson of the Delray Beach Historical Society.

Mr. Weil stated the first Post Office in Delray Beach was actually called Zion which means "a special place of Utopia" and thus how the study circle came up with their name.

Mr. Weil briefly discussed their new map project and stated this project was done to determine of the 65,000 people in Delray Beach where everyone came from. He stated the Zion Study Circle will be talking to people and on a voluntary basis people will be asked to give their name and where they were born. He stated it will then be posted on the map and they will keep the map updated every month. Mr. Weil stated at the top of the map will be the phrase "A World of Diversity and the City of Harmony". Mr. Weil stated besides the map they talked about having a shelf under it with some pictures and some history of Delray Beach and if they do not catch everyone in all the ways they can there will be a little roster in front of the big map, each person can fill out a form and drop it in the box and each person will be added. Mr. Weil stated they are hopeful to get the funds to complete the project.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. RATIFICATION OF THE SOUTH CENTRAL REGIONAL WASTEWATER TREATMENT AND DISPOSAL BOARD ACTIONS: Approve and ratify the actions of the South Central Regional Wastewater Treatment and Disposal Board at their Quarterly Annual Meeting of January 17, 2008.

8.B. REQUEST FOR SIDEWALK DEFERRAL/302 VENETIAN DRIVE:
Approve a request to defer the installation of a sidewalk in front of 302 Venetian Drive.

8.C. REQUEST FOR SIDEWALK DEFERRAL/333 PALM TRAIL:
Approve a request to defer the installation of a sidewalk in front of 333 Palm Trail.

8.D. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 9.A.A.

8.E. CONTRACT CLOSEOUT/FINAL PAYMENT/BRIGGS GOLF CONSTRUCTION, INC.: Approve a Contract Closeout and final payment in the amount of \$9,678.00 to Briggs Golf Construction, Inc. for completion of the Pompey Park Major League Field Sod Replacement Project. There are no changes to the original contract amount.

8.F. CONTRACT CLOSEOUT/FINAL PAYMENT/CHAZ EQUIPMENT COMPANY, INC.: Approve a Contract Closeout and final payment in the amount of \$47,332.70 to Chaz Equipment Company, Inc. for completion of the S.E./N.E. 1st Street One Way Pair Project. Funding is available from 448-5461-538-65.88 (Storm Water Utility Fund/Other Improvements/SE/NE 1st St. One Way Pair) and 334-3162-541-65.88 (General Construction Fund/Capital Outlay/SE/NE 1st Street One Way Pair).

8.G. SERVICE AUTHORIZATION NO. 04-08.3/MATHEWS CONSULTING, INC.: Approve Service Authorization No. 04-08.3 in the amount of \$30,582.00 to Mathews Consulting, Inc. for performing construction administration; specialty, substantial, and final inspections; review of as-built drawings; and coordination of Lake Worth Drainage District (LWDD) and Palm Beach County (PBC) certifications for the Area 4 Reclaimed Water System Project. Funding is available from 441-5181-536-65.96 (Water & Sewer Fund/Other Improvements/Reclaimed Water Transmission).

8.H. SERVICE AUTHORIZATION NO. 04-09/CH2M HILL, INC.: Approve Service Authorization No. 04-09 in the amount of \$89,309.00 to CH2M Hill, Inc. for professional engineering services in the design of a new 40 foot diameter lime sludge thickener unit and associated civil site improvements required in accommodating this new unit. Funding is available from 441-5161-536-68.43 (Water & Sewer Fund/Improvements Other/Sludge Thickener).

8.I. CASH BOND/PALM BEACH COUNTY/AREA 4 RECLAIMED WATER SYSTEM PROJECT: Approve and authorize the execution of a Cash Bond Form and related funding in the amount of \$99,017.00 with Palm Beach County for satisfying the County's permitting requirement on the Area 4 Reclaimed Water System Project. Funding is available from 441-5181-536-65.96 (Water/Sewer Fund/Other Improvements/Reclaimed Water Transmission).

8.J. CONSTRUCTION CONTRACT/CHAZ EQUIPMENT COMPANY, INC./WEST ATLANTIC WATER MAIN PROJECT: Approve and authorize the execution of a construction contract in the amount of \$309,110.00 for the West Atlantic Water Main Project. Funding is available from 441-5161-536-65.24 (Water/Sewer Fund/Other Improvements/W. Atlantic Avenue Phase III).

8.K. AGREEMENTS/FLORIDA PUBLIC UTILITIES/FIRE STATION NO. 4: Approve the Improvement or Relocation of Existing Facilities Agreement and the Property Owner's Consent Form with Florida Public Utilities Company (FPUC) in the amount of \$34,495.00 to allow the installation of a natural gas line to supply Fire Station No. 4 at the corner of Barwick and Lake Ida Road.

8.L. INTERLOCAL AGREEMENT/PALM BEACH COUNTY: Approve an Interlocal Agreement between the City and Palm Beach County for the installation of the trombone mast arms at the intersection S.W. 2nd Avenue and West Atlantic Avenue. Palm Beach County will reimburse the City in the amount of \$132,101.00 for the cost associated with this project.

8.M. US 1 CORRIDOR IMPLEMENTATION OF TEMPORARY MODIFICATION PROJECT/GULF INDUSTRIES, INC./CHAZ EQUIPMENT: Approve and authorize the purchase of temporary curbing in the amount of \$125,169.00 to Gulf Industries, Inc.; and hire Chaz Equipment in the amount of \$325,998.70 for the installation of the temporary improvements along S.E./N.E. 5th Avenue and S.E./N.E. 6th Avenue between S.E. 10th Street and George Bush Boulevard. Funding is available from 334-4141-572-65.99 (General Construction Fund/Capital Outlay/S.E./N.E. 5th & 6th Avenue/S.E. 4th).

8.N. INITIATION OF ANNEXATION/FAIR OAKS CENTER: Initiation of annexation, via the provisions of the executed water service agreements and consent to annexation, with initial zoning of Community Facilities (CF) of the Fair Oaks Center, located on the south side of Linton Boulevard, approximately 1,240 feet west of Military Trail.

8.O. CITY OF DELRAY BEACH SUB-RECIPIENT FUNDING AGREEMENT/ DELRAY YOUTH VOCATIONAL CHARTER SCHOOL: Approve and authorize the execution of a funding agreement in the amount of \$25,542.00 with sub-recipient, Delray Youth Vocational Charter School, under the Weed & Seed Program (now known as the Coalition for Community Renewal). Funding is available from 115-2126-521-83.01 (Special Projects Fund/Weed and Seed Grants/Other Grants/Aid).

8.P. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) SUB-RECIPIENT FUNDING AGREEMENT: Approve and authorize the execution of the funding agreement with one (1) sub-recipient (Fair Housing Center of the Greater Palm Beaches, Inc.) under the Community Development Block Grant (CDBG) program for FY 2007-2008 Annual Action Plan, with the total funding in the amount of \$5,000.00. Funding is available from 118-1966-554-82.12 (Community Development Fund/Aid to Private Organization/Fair Housing Center).

8.Q. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) SUB-RECIPIENT FUNDING AGREEMENT: Approve and authorize the execution of the funding agreement with The Center for Technology, Enterprise and Development, Inc. (T.E.D. Center) under the Community Development Block Grant (CDBG) program for FY 2007-2008 in partnership with the Community Redevelopment Agency (CRA), with the total funding in the amount of \$55,000.00. Funding is available from 118-1966-554-83.01 (Community Development Fund/Other Grants and Aids).

8.R. HOUSING REHABILITATION GRANT/CONTRACT AWARD:
Approve one (1) Housing Rehabilitation grant/contract award through the Community Development Division in the amount of \$22,855.35 to Brian Rega, Inc. (313 N.W. 4th Avenue). Funding is available from 118-1963-554-49.19 (Community Development Fund/Housing Rehabilitation).

8.S. MODIFICATION/2006-2007 STATE HOMELAND SECURITY GRANT PROGRAM SUB-RECIPIENT AGREEMENT/FLORIDA DEPARTMENT OF FINANCIAL SERVICES: Approve a request to authorize a Modification of the 2006 – 2007 State Homeland Security Grant Program Sub-Recipient Agreement, Office of Domestic Preparedness through the State of Florida, Department of Financial Services Division. The Modification is to extend the grant expiration period from January 31, 2008 to May 31, 2008.

8.T. SPECIAL EVENT REQUEST/FASHION SHOW: Approve a special event request to allow a Fashion Show sponsored by the Downtown Marketing Cooperative, to be held on March 7, 2008 from 7:00 p.m. to approximately 9:00 p.m., to grant a temporary use permit per LDR Section 2.4.6.(F) for the closure of Atlantic Avenue between N.E./S.E. 5th Avenue and N.E./S.E. 6th Avenue from approximately 4:00 p.m. to 10:00 p.m., and to provide staff assistance for security, traffic control and barricading; contingent upon receipt of a certificate of general liability insurance.

8.U. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period January 14, 2008 through February 1, 2008.

8.V. AWARD OF BIDS AND CONTRACTS:

- 1.** Contract award to Atlantic Refrigeration Corporation in the amount of \$16,097.00 for the emergency replacement of an air conditioning unit at the Police Department Holding Facility. Funding is available from 334-6112-519-46.10 (General Construction Fund/Repair & Maintenance Services/Building Maintenance).
- 2.** Contract award to JCI Jade Communications, Inc. in the amount of \$18,570.55 for the installation of telephone and data communication (low voltage wiring) for the Pompey Park Community Center Improvements Project. Funding is available from 380-4150-572-62.61 (2004 G.O. Bond/Buildings/Pompey Park-Expansion).
- 3.** Bid Award to Expertech Network in the amount of \$1,384,333.34 for construction of the Area 4 Reclaimed Water System Project. Funding is available from 441-5181-536-65.96 (Water/Sewer Fund/Other Improvement/Reclaimed Water Transmission).

4. Bid award to Pro Courts in the amount of \$19,987.00 for resurfacing seven (7) hard courts at the Delray Beach Tennis Center. Funding is available from 001-4215-575-46.90 (General Fund/Other Repair/Maintenance Costs).
5. Purchase award to Ti Training Corp in the amount \$142,997.00 for a firearms simulator for the Police Department. Funding is available from 334-2111-521-64.90 (General Construction Fund/Other Machinery/Equipment).

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

9. REGULAR AGENDA:

9.A.A. CONTRACT ADDITION (C.O. NO. 1)/BSA CORPORATION/CITY HALL INTERIOR RENOVATIONS PROJECT/IT REMOTE BUILDING PROJECT: Approve Contract Addition (C.O. No. 1) in the amount of \$684,783.00 to BSA Corporation for the City Hall Interior Renovation Phase I Project/Information Technology (IT) Remote Building Project. Funding is available from 334-6112-519-62.85 (General Construction Fund/Capital Outlay/City Hall Exp-IT Building).

Richard Hasko, Director of Environmental Services, stated this is to propose the award of the IT Building Construction as a Contract Addition to BSA Corporation for the North wing remodeling and trying to take advantage of economies for the current construction market. Staff asked for BSA proposals based on the plans that they had done for the IT Building. Mr. Hasko stated staff had them split it out a number of different ways because staff was initially working with the Royal Concrete Concepts firm for the modular structure. He stated as the numbers came in it was somewhat less expensive to do the turn key operation for the entire project. Mr. Hasko stated BSA Corporation came in for a total price of \$684,783.00 for the turn key operation, construction of the building, the site work and the utility connections.

Mr. Eliopoulos asked if David Miller revised the drawings to conventional construction or are these based on assumptions. In response, Mr. Hasko stated David Miller's drawings were for that type of construction from the inception and it was actually the people from RCC that had to take David Miller's drawings and take them to their in-house engineering staff to modify them for their process.

Mr. McDuffie asked what we are actually housing. In response, Mr. Hasko stated this is for IT only.

Mrs. Montague moved to approve the Contract Addition (C.O. No. 1) in the amount of \$684,783.00 to BSA Corporation for the City Hall Interior Renovation Phase I Project/Information Technology (IT) Remote Building Project, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

9.A. WAIVER REQUESTS/CONDITIONAL USE REQUEST/HUNTER CRANE: Consider a request for two (2) waivers and a conditional use request to allow the establishment of storage and rental of construction equipment that does not exceed 100 feet long, 14 feet wide and 15 feet high for Hunter Crane, located approximately 140 feet north of West Atlantic Avenue and west of Congress Avenue within the MIC (Mixed Industrial and Commercial) District. (*Quasi-Judicial Hearing*)

Mayor Ellis read into the record the City of Delray Beach procedures for a Quasi-Judicial Hearing for this item and all subsequent Quasi-Judicial Hearings.

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

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

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-076 into the record.

Mr. Dorling stated this is a 5.61 acre site that was annexed into the City in 1988. He stated the site was occupied by Shaw Trucking for storage of their vehicles and in 2003 the operation ceased. Hunter Crane has been operating on the site without an occupational license. City records show that they were cited through the Code Enforcement process. Mr. Dorling stated they did come forward to process an LDR text amendment to add a category called “heavy construction equipment storage” to the MIC (Mixed Industrial and Commercial) district and this was approved by the City Commission on August 16, 2005. At this point, Mr. Dorling stated they are now coming in to establish the LDR change allotted only as a conditional use and then they will follow that up through the Site Plan Review and Appearance Board.

The application involves a perimeter landscape buffer and some hardening of the soils in which they want to store the cranes. One of the conditions is that this really needs to be a crushed asphalt surface where the storage is taking place so that there is not a lot of dust associated with this use. The two waivers actually include a required berm which was to be six feet in height and they have proposed three feet in height. Mr. Dorling stated there is some additional area that is required by the Lake Worth Drainage District so they had some constraints along the west property line. He stated they are proposing the three foot high berm but they are providing increased height of plant material to achieve the same buffer from the school which is directly to the west. The

second waiver involves a relief from the required ten foot landscape perimeter buffer in an area of 90 feet.

At its meeting of January 28, 2008, the Planning and Zoning Board recommended approval of the conditional use with a 5 to 0 vote subject to the following four conditions: (1) the area where the cranes are going to be stored is a crushed asphalt to reduce dust to a minimum, (2) that the approved site plan be submitted consistent with the Master Plan, (3) that a note be placed on the plan that the equipment shall not exceed the heights and widths that are in the Code, and (4) that all cranes be stored in a down position.

David Hawke, Hawke & Associates (Architects), 121 Heather Lane, Delray Beach, FL (Representing Hunter Crane a/k/a Delray Land Holdings, LLC), stated this site was owned by Shaw Trucking for the past 20 plus years and the site was used for a dumping ground for concrete, concrete spoils, asphalt and commercial building components along the Lake Worth Drainage end of the property and the western boundary. He stated his client has purchased additional parcels besides the main four acre parcels. Mr. Hawke stated his firm was hired with other design professionals to get their arms around the problem and meet the intent of the LDR requirements. He stated the Planning and Zoning Board, Jasmin Allen and Paul Dorling have been working with them to come up with what they deem as appropriate waivers. Mr. Hawke stated the hold-up is that Hunter Crane could not get an occupational license because the site fell short of the land development code and did not have the perimeter landscaping and the amount of dust control and the number of parking spaces. He stated his client would have paid for the occupational license but could not until he came into compliance.

There was no cross-examination or rebuttal.

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

Mr. Eliopoulos moved to adopt the Board Order (approving the waivers and the conditional use request) as presented, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.B. WAIVER REQUEST/COMMUNITY LAND TRUST, INC.: Consider a request for waiver of Land Development Regulations (LDR) Section 4.1.4(D), "Use of Lots of Record," and Section 4.7.12, "Other Incentives", governing the use of non-conforming lots under the Workforce Housing Ordinance for one (1) 45.20 feet wide lot submitted for permitting by Habitat for Humanity in partnership with the Community Land Trust, Inc. The property is located at 303 S.W. 2nd Street. (*Quasi-Judicial Hearing*)

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

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

Lula Butler, Director of Community Improvement, stated the item before the Commission is a waiver to Section 4.1.4(D) and 4.7.12 of incentives governing the use of non-conforming lots under the workforce ordinance for one lot that is 45.2 feet wide submitted for permitting by Habitat for Humanities in partnership with the Community Land Trust (CLT). The property address is 303 S.W. 2nd Street. Mrs. Butler stated the workforce ordinance adopted in 2006 requires certain types of units that need to be constructed and provides for certain design guidelines. She stated the house that has been submitted for permitting does not meet either of those and the CLT has determined the units that are designed specified within the ordinance do cost more than what the typical homeowner can afford. Mrs. Butler stated staff has been revisiting that section of the ordinance and will bring something back to the Commission so that staff will not have to bring the waivers to the Commission in the future. Mrs. Butler stated LDR Section 2.4.7(B)(5) allows the Commission to consider the waiver request with a finding of fact that the granting of relief does not diminish the practical application of the affected (requirement) and that by granting such relief a superior development product will result. Staff recommends that the City Commission waive Section 4.1.4(D) and Section 4.7.12 of the Land Development Regulations governing the use of non-conforming lots associated with workforce units with a finding of fact pursuant to Section 2.4.7(B)(5).

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

There was no cross-examination or rebuttal.

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

Mr. McDuffie moved to approve the Board Order as presented (approving the waivers) seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

9.C. PUBLIC PARKING FEE SPACES/36 FIRST: Consider approval of a request from 36 First to purchase four (4) public parking fee spaces in the amount of \$72,000.00 to accommodate the construction of a 2-story structure containing 5,355 square feet of office space, located at 36 S.E. 1st Avenue. (*Quasi-Judicial Hearing*)

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

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

Scott Aronson, Parking Management Specialist, stated 36 First is located at 36 S.E. 1st Avenue in the Old School Square Historic Arts District. Parking requirements for the Old School Square Historic Arts District are one space per 300 square feet of use. The development proposal is a 5,355 square foot office building which will require 18 parking spaces. The proposal is a two-story building and the first floor is going to have parking underneath the building and it is going to have 14 spaces including one ADA compliant handicapped space. The applicant is requesting the purchase of four (4) public parking fee spaces in accordance with LDR Section 4.6.9(E)(4) of the Land Development Regulations which is \$18,000.00 per area for a total of \$72,000.00. Mr. Aronson stated the Code has several stringent requirements one within 600 feet of a public parking facility and the site is located within 100 feet within the Federspiel Garage on S.E. 1st Avenue. No more than 25% of the required parking can be allocated to public parking fees and in this case it does not exceed that 25%. No more than 25% of the facility in its capacity can be sold at the Parking Fee Program (up to eight parking spaces). He stated only four parking spaces have been sold and that was for the Block 69 office building which is right next door to the proposed site. Mr. Aronson stated it also asks that where right-of-way exists that on-street parking be constructed. The proposal proposes one new constructed space in front of the development on S.E. 1st Avenue which will be used by the general public at all times not reserved for the use. Being that the spaces are office use, the spaces in the garage would be predominantly used in the daytime when there is more availability in the garage. Policy C-4.2 of the Delray Beach Comprehensive Plan supports the Downtown Delray Beach Master Plan which speaks of shared parking concepts and structured parking facilities and infill development.

At its meeting of January 24, 2008, the Community Redevelopment Agency (CRA) recommended approval of the applicant's request; at its meeting of January 29, 2008, the Parking Management Advisory Board (PMAB) recommended approval of the applicant's request. Staff recommends approval of the request.

Francisco Perez-Azua, Architect, stated he is present for any questions the Commission may have.

There was no cross-examination or rebuttal.

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

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

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

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

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 38-07 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendments to the Land Development Regulations (LDR) which intend to clarify the current regulations, provide parameters, and define compatible development within the City's five (5) historic districts and individually designated properties.

The caption of Ordinance No. 38-07 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH BY AMENDING SECTION 2.4.6, "PROCEDURES FOR OBTAINING PERMITS", SUBSECTION 2.4.6(H), "CERTIFICATE OF APPROPRIATENESS FOR HISTORIC STRUCTURES, SITES, AND IN HISTORIC DISTRICTS", PROVIDING CLARIFICATION OF THE REQUIREMENTS AND PROCEDURES FOR OBTAINING A CERTIFICATE OF APPROPRIATENESS; AMENDING SECTION 3.2.4, "STANDARDS FOR SPECIFIC AREAS OR PURPOSES", SUBSECTION 3.2.4(E), "HISTORIC DISTRICTS AND SITES", PROVIDING FOR AND INCORPORATING THE DELRAY BEACH HISTORIC PRESERVATION DESIGN GUIDELINES AND THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION; AMENDING SECTION 4.1.4, "USE OF LOTS OF RECORD", TO PROVIDE FOR VARIANCES; AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", SUBSECTION 4.3.3(Q), "GUEST COTTAGE", TO PROVIDE THAT HEIGHT SHALL NOT EXCEED THAT OF THE MAIN STRUCTURE IN HISTORIC DISTRICTS; AMENDING SECTION 4.4.17, "RESIDENTIAL OFFICE (RO) DISTRICT", SUBSECTIONS 4.4.17(A), "PURPOSE AND INTENT", AND 4.4.17(G),

“SUPPLEMENTAL DISTRICT REGULATIONS”, PROVIDING PARKING REQUIREMENTS FOR CONVERSION OF RESIDENTIAL STRUCTURES INTO OFFICE USE IN HISTORIC DISTRICTS; AMENDING SECTION 4.4.24, “OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)”, SUBSECTIONS 4.4.24(D), “CONDITIONAL USES AND STRUCTURES ALLOWED” AND 4.4.24(H), “SPECIAL DISTRICT REGULATIONS”, CLARIFYING THAT PARKING LOTS NOT ASSOCIATED WITH A USE MUST BE PUBLIC AND CLARIFYING SPECIAL DISTRICT REGULATIONS; AMENDING SECTION 4.5.1, “HISTORIC PRESERVATION SITES AND DISTRICTS”, SUBSECTIONS 4.5.1(B), “CRITERIA FOR DESIGNATION OF HISTORIC SITES OR DISTRICTS”, 4.5.1(E), “DEVELOPMENT STANDARDS”, AND 4.5.1(L), “DESIGNATION OF HISTORIC DISTRICTS”, BY CLARIFYING THE APPLICATION OF DEVELOPMENT STANDARDS WITH RESPECT TO USE, ZONING DISTRICT AND HISTORIC CLASSIFICATION; AND AMENDING APPENDIX “A”, “DEFINITIONS”, TO PROVIDE A NEW DEFINITION FOR “HARDSCAPE”, AND TO PROVIDE AMENDED DEFINITIONS RELATED TO HISTORIC PRESERVATION; PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 38-07 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.

Paul Dorling, Director of Planning and Zoning, stated this is to clarify the intent of existing regulations and guidelines to objectively evaluate the compatibility of proposed new development in both historic and non-historic development within the five districts.

On January 3, 2008, the Commission considered this on first reading and continued it with direction that the visible compatibility standards be amended to eliminate the lot coverage and the number of stories section of the Code. Mr. Dorling stated staff amended the Code and it came back to the Commission at the second meeting in January and the City Commission approved it on first reading. He stated this ordinance gives some regulatory tools to clearly define what is considered visually compatible and includes a few tools including mandatory off-sets in the front facades, a building height plane which provides the setting back of the second stories, requires off-sets on the side facades, and a definition of a “First Floor Maximum Height”. It also includes two visual compatible incentives: (1) allows you to have a greater building

height plane, allowing you to encroach if you provide certain features along the front of the building more particularly porches, balconies and overlooks and (2) allows an additional 25% to extend within this building height plane if you have at least 25% of the building allocated to be one-story. It also adds language that all development proposals are consistent with one architectural style.

At its meeting of December 10, 2007, the Downtown Development Authority (DDA) reviewed the amendments and recommended approval; at its meeting of December 12, 2007, the West Atlantic Redevelopment Coalition (WARC) reviewed the amendments and recommended approval; at its meeting of December 13, 2007, the Community Redevelopment Agency (CRA) reviewed the amendments and recommended approval; at its meeting of December 3, 2007, the Planning and Zoning Board considered the amendments and continued the item. On December 17, 2007, the Planning and Zoning Board unanimously recommended approval (5 to 0) of Ordinance No. 38-07. At its meeting of December 6, 2007, the Historic Preservation Board (HPB) considered the amendments and continued the item. The Historic Preservation Board (HPB) recommended approval of the Ordinance by a 4 to 1 vote on December 19, 2007. Staff recommends approval.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 38-07, the public hearing was closed.

Mr. Fetzer stated there was discussion of removing the 300 block out of the Marina District and asked the City Attorney where the City stands with this particular issue that is not covered by this ordinance. The City Attorney stated this is still being worked on. Mr. Fetzer stated the Commission had discussed possibly placing this issue on the Workshop Agenda. It was confirmed that this issue will be placed on the Workshop Agenda of February 12, 2008.

Mr. McDuffie asked if there has been any progress made toward the grant procedure for the studies to be performed on the districts. In response, Mr. Dorling stated staff will not be hearing back until mid-February. Mr. Dorling stated staff has submitted the applications and they are in review. Mr. McDuffie reiterated his stance that he would very much like to see these studies and if they cannot get them done through the grant process, he would like to find some budget funds to get them done.

Mrs. Montague stated as a follow-up to Commissioner McDuffie's comments, she asked if staff could make calls and find out if we can get some estimates for those dates because the budget discussions will be coming up very quickly. The City Manager stated we will do that out of this year's budget. Mr. Dorling stated those dates have been fixed.

Mayor Ellis asked if this survey and the volunteers that have been doing this just involves the copying of documents related to those properties. Mr. Dorling stated for the majority of this it entails documenting the additions and the original

construction date of the structures and taking pictures. He stated it is really just gathering data. Mayor Ellis asked for a reason as to why we want professionals to do that versus volunteers. Mr. Dorling stated there have been concerns expressed that the findings would be bias in one way or another. Mr. Dorling stated what the Commission has suggested is that we make the future person that will be doing the surveys aware that this data has been collected and if they feel it is not sufficient then they can ask for additional money to collect it or correct it or they can just accept the data and we would see the corresponding reduction in their bid.

Mayor Ellis asked the Commission why they would not want to entertain the use of volunteers for the collection of this data. Mr. Eliopoulos stated he was assuming that the State has certain regulations that they look at when doing this type of a survey and the fact that you need more information than this building was done in 1936 but what style is it and how it is a contributing structure and a professional opinion is going to reinforce that.

Mr. Dorling stated what the volunteers have done is collect the data that would then go to Ellen who is a historic preservation professional and she would analyze the data and put it through the state process. He stated Ellen works for a firm that collects the data and she is very familiar with the information that is necessary to come to her conclusions.

Mr. McDuffie stated there have been numerous comments throughout this process that in many cases we have used professionals as we should have and involve them in the process. He stated it was his assumption to begin with that the surveys would be done by people who are professionals in the historic business and would be very well versed in doing the surveys. Mr. McDuffie stated he suggested that this be put out to bid and allow the professional people who do this to elect to accept or reject what has already been gathered. He stated the professionals will be able to tell if they meet the guidelines and will have to sign their names to it. Therefore, Mr. McDuffie stated it would be appropriate to give them the choice to accept or reject what has been gathered by laypersons.

Mr. Eliopoulos stated if you review the minutes from the Planning and Zoning meetings and the Historic Preservation Board meetings, the biggest issue has been why the City has been consulting historic preservation planners throughout this process. He stated there was even some criticism that the City is only using local professionals and that we are not going to the preservationists that are planners.

Mayor Ellis stated if the work that has been gathered is sufficient, and it appeared to her that it was just a collection of factual data. The Commission had talked about saving a significant amount of money.

Mr. Fetzer stated Commissioner McDuffie's suggestion made a lot of sense in that we are not going to just throw the data away but that we are going to have a professional review that data and either accept it or reject it. Mr. Fetzer stated he feels

this is a very good suggestion.

Mayor Ellis stated she agrees but asked what if the data turns out to be perfectly acceptable would we not consider volunteers collecting the data any further. Mr. McDuffie stated if the City is going to retain someone he feels it would be their decision as to whether to accept it or reject it.

Mayor Ellis asked if the data is proven to be sufficient would the City consider using volunteers to collect it and turn it over to someone we have hired to sign their name to it. Mr. McDuffie stated he does not think we are going to know that until we engage someone to look at it. Mr. Eliopoulos stated in his field they do have to review something before they are willing to take it and noted that there is some liability. Mayor Ellis stated this is something the Commission can consider at a later time.

Mr. Eliopoulos moved to adopt Ordinance No. 38-07 on Second and FINAL Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

10.B. RESOLUTION NO. 03-08/CONTRACT FOR SALE AND PURCHASE OF PROPERTY/COMMUNITY REDEVELOPMENT AGENCY/TRI-PARTY AND INTERLOCAL AGREEMENT: Consider approval of Resolution No. 03-08 authorizing the City to sell certain real property located behind the Old Delray Beach Library, for the development of the old library site; and approve a Contract for Sale and Purchase between the City and the Community Redevelopment Agency (CRA); and approve a Tri-Party and Interlocal Agreement between the City and the Community Redevelopment Agency (CRA) which will allow the transfer/sale of Lots 14, 15, 16, 17 and 18 of Block 101 to the CRA to facilitate the ultimate transfer by the CRA of the entire old library site to the Developer selected by the CRA for development of the entire site. **(THIS ITEM IS POSTPONED DUE TO NEWSPAPER ERROR IN ADVERTISING)**

The caption of Resolution No. 03-08 is as follows:

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

(The official copy of Resolution No. 03-08 is on file in the City Clerk's office.)

The City Attorney stated this is a resolution for adopting a contract for sale and purchase and a tri-party agreement for the old library site. Due to an advertising issue, the City Attorney suggested that the Commission postpone Resolution No. 03-08 to a date certain of February 19, 2008.

Mr. Eliopoulos moved to postpone Resolution No. 03-08 to a date certain of February 19, 2008, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

10.C. RESOLUTION NO. 04-08/CONTRACT FOR SALE AND PURCHASE OF PROPERTY/RICHARD LICASTRI AND ROSEMARY CURRAN/126 N.W. 2ND AVENUE - 136 N.W. 2ND AVENUE: Consider approval of Resolution No. 04-08 authorizing the City to purchase property located at 126 N.W. 2nd Avenue through 136 N.W. 2nd Avenue for future expansion of the municipal complex; and approve a Contract for Sale and Purchase between the City and Richard Licastri and Rosemary Curran in the amount of \$675,000.00 for the property located at 126 N.W. 2nd Avenue through 136 N.W. 2nd Avenue.

The caption of Resolution No. 04-08 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. 04-08 is on file in the City Clerk's office.)

Brian Shutt, Assistant City Attorney, stated this resolution is for the purchase of 126-136 N.W. 2nd Avenue located behind City Hall. He stated there are approximately six duplex units and five of them have tenants in them and the City would be purchasing the property and allowing the tenants to stay in the property.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Resolution No. 04-08, the public hearing was closed.

Mrs. Montague asked if the City is going to be inspecting the properties and making any upgrades that would be necessary for the tenants. The City Manager stated the City has inspected the properties and have determined what should be done to them. The City Manager stated there are six units and one is vacant. Two of the units are in worse shape than the other four. The City Manager stated he and Mrs. Butler discussed that as soon as we have a vacancy occur to keep those four units and demolish the one building with the two worse units in it. The City Manager stated in the meantime, the City will do what needs to be done minimally to keep it in a safe and secure condition.

Mr. Eliopoulos inquired about whether an appraisal was done on this property. In response, the City Attorney stated the City did an appraisal of this property and the appraisal gave no value to the buildings but it was \$650,000.00 and noted that there is some value to the buildings.

Mrs. Montague moved to approve Resolution No. 04-08, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

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

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

With regard to Lois Brezinski's concerns about crime in her neighborhood, the City Manager stated she reported hearing gunshots on occasions within the last three weeks. The City's records reveal one call of gunshots which was received from Ms. Brezinski two weeks after she spoke at the City Commission Meeting. The City Manager stated the City has no other record of anyone calling to report that. There was a robbery three blocks from the residence on Christmas Eve and in that case the victims were approached by two of the suspects as they exited their vehicle and demanded their property. It appears the suspects followed the victims and approached them as they exited their vehicle and detectives are actively investigating this case. The City Manager stated Ms. Brezinski also raised a concern about an alarming number of break-ins and suspicious incidences. During the same time and location search there were no burglaries. There have been several thefts and suspicious incidences but no burglaries. With regard to the number of suspicious incidents, the City expects this number to be increased because people are encouraged to call when they see something suspicious in the community. The City has said this many times to residents and merchants and has emphasized it at association meetings and it has proven to lead to preventing and solving crime. As far as Ms. Brezinski's assertion that there was gunfire at night and it is partially a result of gang violence in the neighborhood, the lack of calls does not appear to support her claim. The City's records show no indication of gangs or gang activity in that neighborhood. The City will continue with proactive controls throughout the neighborhood and we will be sending beat officers for that area to

introduce themselves and discuss with Ms. Brezinski her concerns and share with her our efforts in protecting her community.

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

None.

At this point, the time being 7:23 p.m., the Commission moved to **Item 12, First Readings.**

12. **FIRST READINGS:**

12.A. **ORDINANCE NO. 02-08:** City initiated amendment to the Land Development Regulations (LDR) Sections 4.4.13(C), and 4.6.9(E)(4), to apply minimum property vacancy period requirements for mechanical parking lifts, in-lieu of parking fees, and public parking fees for in-fill developments within the Central Business District (CBD) and also to Appendix "A", Definitions, to amend the definition of In-Fill Development. If passed, a public hearing will be scheduled for February 19, 2008.

The caption of Ordinance No. 02-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(C), "ACCESSORY USES AND STRUCTURES PERMITTED" TO PROVIDE THAT MECHANICAL PARKING LIFTS ARE A PERMITTED USE FOR AN IN-FILL DEVELOPMENT PROJECT THAT HAS BEEN VACANT FOR A MINIMUM PERIOD OF ONE YEAR; AMENDING SECTION 4.6.9, "OFF-STREET PARKING REGULATIONS", SUBSECTION 4.6.9(E), "LOCATION OF PARKING SPACES", SUB-SUBSECTIONS 4.6.9(E)(3), "IN-LIEU FEE", AND 4.6.9(E)(4), "PUBLIC PARKING FEE", TO PROVIDE THAT IN-LIEU FEES AND PUBLIC PARKING FEES ARE AVAILABLE FOR IN-FILL DEVELOPMENTS THAT HAVE BEEN VACANT FOR A PERIOD OF FIVE YEARS OR LONGER; AMENDING APPENDIX "A" TO PROVIDE A REVISED DEFINITION FOR IN-FILL DEVELOPMENT; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 02-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated this was before the Commission last month and it was continued over some concerns about how to amend the infill definition. This revision addresses those concerns and applies a minimum property vacancy period requirement for options like mechanical parking lifts and in-lieu fees. The City Commission recently added the single level mechanical lifts as an allowed use in the CBD (Central Business District). The current definition for in-fill would restrict the using of those two properties which were vacant for more than five years. This amendment will establish a one year period over which the parcel must remain vacant before it can utilize the mechanical lift option. Mr. Dorling stated it does continue to retain the five year vacancy requirement for the utilization of in-lieu fees and public parking fees. Staff believes this meets the intent and addresses the concerns that the City Commission had initially.

At its meeting of November 19, 2007, the Planning and Zoning Board considered the text amendment and recommended approval with a 6 to 0 vote. Mr. Dorling stated although staff has amended the ordinance since then, the ordinance still meets the same intent. Staff recommends approval.

Mr. Fetzer moved to approve Ordinance No. 02-08 on FIRST Reading, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion passed with a 5 to 0 vote.

12.B. **ORDINANCE NO. 05-08:** Consideration of a rezoning from Special Activities District (SAD) to Open Space and Recreation (OSR) for a 0.72 acre City owned parcel, located east of the recently approved Midtown Delray mixed-use development (F.K.A. Bloods Hammock Grove) and west of Orchard View Park. If passed, a public hearing will be scheduled for February 19, 2008.

The caption of Ordinance No. 05-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND PLACING LAND PRESENTLY ZONED SAD (SPECIAL ACTIVITIES DISTRICT) TO OSR (OPEN SPACE AND RECREATION) DISTRICT; SAID LAND BEING A PARCEL LOCATED EAST OF MIDTOWN DELRAY (FKA BLOOD'S HAMMOCK GROVES) AND WEST OF ORCHARD VIEW PARK, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "ZONING MAP OF DELRAY BEACH,

FLORIDA, APRIL 2007"; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 05-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated this is a rezoning from SAD to Open Space OSR for a 0.72 acre City owned parcel located east of the recently approved Mid-Town Delray Mixed Use Development formerly known as Blood's Grove and west of the existing Orchard View Park. During that approval for Mid-Town it was discovered that this parcel which was originally part of the larger SAD (Special Activities District) was now separated by a road. He stated it is appropriate to change the zoning from SAD (Special Activities District) to the OSR (Open Space and Recreation).

At its meeting of January 28, 2008, the Planning and Zoning Board considered the zoning request and the Board recommended approval with a 6 to 0 vote.

Mr. McDuffie moved to approve Ordinance No. 05-08 on FIRST Reading, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

12.C. ORDINANCE NO. 07-08: City initiated amendment to the Land Development Regulations (LDR) Section 2.4.3, "Submission Requirements", Subsection 2.4.3(K), "Fees", Subsection 2.4.3(K)(1), "Development Applications", to provide for an increase in certain development application fees. If passed, a public hearing will be scheduled for February 19, 2008.

The caption of Ordinance No. 07-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 2.4.3, "SUBMISSION REQUIREMENTS", SUBSECTION 2.4.3(K), "FEES", SUB-SUBSECTION 2.4.3(K)(1), "DEVELOPMENT APPLICATIONS", TO PROVIDE FOR AN INCREASE IN CERTAIN DEVELOPMENT APPLICATION FEES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 07-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, Director of Planning and Zoning, stated this is limited to two specific land use fees. The first relates to extension requests for previously approved projects which have both a conditional use and site plan approval associated with it. The second is the fee charge for review of single family homes in the north beach and the Seagate Overlay Districts. The first change will require a separate fee for both the conditional use and the site plan. Those extension requests require separate review, preparation reports to two separate Boards, and staff preparation before each of those Boards. Mr. Dorling stated it appears appropriate to charge a fee for each action. The second change includes an increase in the overlay fees commensurate with the concept plan fee (a review process). The fee that is charged is really a pass through to Urban Design Studios and there is no fee that the City collects for any of neither its review nor its transmittal of those plans by FedEx to Urban Design Studios. Staff is proposing to add the concept plan fee to the fee that is passed through Urban Design Studios.

At its meeting of January 28, 2008, the Planning and Zoning Board considered the text amendment and recommended approval with a 6 to 0 vote.

Mr. Eliopoulos moved to approve Ordinance No. 07-08 on FIRST Reading, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

12.D. ORDINANCE NO. 10-08: An ordinance creating Chapter 94, "Municipal Cemetery", of the Code of Ordinances by enacting Section 94.01, "Authority", to provide for rules and fees for the municipal cemetery. If passed, a public hearing will be scheduled for February 19, 2008.

The caption of Ordinance No. 10-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, CREATING CHAPTER 94, "MUNICIPAL CEMETERY" OF THE CODE OF ORDINANCES BY ENACTING SECTION 94.01, "AUTHORITY", TO PROVIDE FOR RULES AND FEES FOR THE MUNICIPAL CEMETERY; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 10-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Brian Shutt, Assistant City Attorney, stated since the City of Delray Beach recently took over the management of the cemetery. Staff looked at the rules that were in effect and realized that we needed to do a major overhaul on those. Mr. Shutt stated we needed an enforcement mechanism from the City saying these are the rules and regulations that are in place and that govern the cemetery. Mr. Shutt stated the City Commission can change those rules and regulations by resolution from time to time. In addition, he stated this would also govern fees as well. Mr. Shutt stated staff is also working on the rules and regulations and those will be available on February 19, 2008 when this ordinance is considered on second reading.

Mrs. Montague moved to approve Ordinance No. 10-08 on First Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

At this point, the Commission moved to **Item 9.D., of the Regular Agenda.**

9.D. SPECIAL EVENT REQUEST/ASIAN FOOD FAIR AND CULTURAL SHOW: Approve a special event request to allow the 5th Annual Asian Food Fair and Cultural Show sponsored by the Bangladesh Association of Florida, to be held on April 19-20, 2008 from 10:00 a.m. until 10:00 p.m. on the grounds of Old School Square and in the Old School Square surface parking lot, granting a temporary use permit per LDR Section 2.4.6(F) for street closure and use of the Old School Square surface parking lot and City Hall parking lots; authorize staff support for security and traffic control, site clean up and trash removal, barricading, EMS assistance and event signage; contingent upon receipt of a certificate of general liability insurance, state inspection certificate, and a hold harmless agreement. The applicant is requesting a reduction in City costs.

Robert A. Barcinski, Assistant City Manager, stated this is for the City Commission to consider approval of the 5th Asian Food Fair and Cultural Show proposed to be held on April 19-20, 2008 10:00 a.m.-10:00 p.m. on the grounds at Old School Square and the surface lot of the Old School Square parking lot, provide assistance as requested for traffic control and security, site clean up, EMS assistance and event signage. The event producer also has requested consideration of a reduction of payment of the City costs. The permit with all the backup material which included the site plan, a revised budget based on the City's actual costs, and a Certificate of Insurance were included. He stated there will be no alcoholic beverages. The estimated overtime costs for the event are \$13,635.00 with an estimated additional costs for signage \$250.00 and \$210.00 for trash boxes. Per the City's event procedures and policies, this is a non-profit but not incorporated in the City of Delray Beach and they are required to pay 100% of the costs. Staff recommends that we do not reduce those costs and that we uphold the policies and procedures because of the precedent it may set. Staff recommends approval

of the event and the staff support with the conditions: (1) the City is to be provided with a Certificate of Liability Insurance from the amusement ride company, (2) copy of the State Inspection Certificate for the amusement rides prior to operating the rides. (3) The City Hold Harmless Agreement and (4) payment of 100% of the City costs.

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

9.E. AMENDMENT NO. 1 TO THE AGREEMENT/WIFI SERVICES/DELRAY BEACH WI-FI, INC.: Consider approval of Amendment No. 1 to the Wireless Broadband Agreement between the City and Delray Beach WI-FI, Inc.; and Consent to Assignment with e-Path Communications of Delray Beach, Inc. regarding the wi-fi system through out the entire City.

Brian Shutt, Assistant City Attorney, stated the Commission may have received copies of emails he sent them earlier today regarding some conversations he had. In speaking with Mr. Joseph Tortoretti, President and CEO of e-PATH Communications, Inc. a few minutes ago he believes they would be willing to execute the amendment as it is presented before the Commission tonight. Mr. Shutt stated this amendment relates to the Wi-Fi Agreement that the City had originally signed in May 2007. During that time, the City had an initial timeframe that they would need to get free service up and running along Atlantic Avenue and that would need to be completed by around mid-November 2007 and that was not done. Mr. Shutt stated they are requesting that the City give them until April 4, 2008 to have the free service up along Atlantic Avenue. Mr. Shutt stated in the backup material there is a map that shows a little boot area and this is why this maybe did not go quite as quickly as what the City thought it would. He stated Mr. Tortoretti had to get consent from FPL in order to put their antennas on their poles. He stated FPL is replacing some of the poles in that area and they do not have the okay from FPL to do that. They are anticipating that sometime in 2009 FPL will have that completed but this is not definite. Mr. Shutt stated they believe in that boot area that covers Atlantic Avenue they will not be able to go the three blocks north or the three blocks south but they can probably hit the paved area of Atlantic Avenue just from coverage through other antennas in that area without using the FPL poles and they would have to have that completed by April 7, 2008. After they get the pre-service area up then they would have 90 days to complete the Wi-Fi service area east of I-95 excluding the area that is shaded and 90 days after that they would be able to complete the area west of I-95. He stated they will be providing the City of Delray Beach with 100 free computers and 200 families will receive free Wi-Fi service. When the Wi-Fi service became available in those areas the City had pinpointed people who would receive the computers. Staff has amended this language that once the City gives them the names as far as the people the City wants to receive the computers, within ten (10) days then they will provide the free computers. The other provision is that the free computers will also be upgraded from 512 to 1 gigabit of Mb RAM and the upgrade network provision has been amended to have some language that if there are other wireless

networks up then we would try and keep this comparable to other areas that are out there so as to not fall behind technology wise. Delray Beach Wi-Fi is also requesting an assignment from the Delray Beach Wi-Fi, LLC to e-PATH Communications, Inc., and in order to do this staff would request that one of the previous managing entities of Delray Beach Wi-Fi, LLC sign a Consent to Assignment Form.

The City Attorney stated one of the concerns is unless all parties sign the Consent to Assignment then staff could not recommend to the Commission to approve at this time and noted that this is an issue that needs to be clarified. The City Attorney stated Mr. Shutt talked to Mr. Tortoretti who indicated that he is okay with this agreement; however, the City needs to make sure that the Consent to Assignment is agreed to by all parties.

Vincent Mento, CEO for ATC International and Managing Partner of the Delray Beach Wi-Fi, stated they are still working with e-PATH Communications, Inc. and the road blocks that they ran into had nothing to do with City of Delray Beach but rather with FPL and they have experienced this in other cities. He stated the only reason he has not signed this agreement to transfer it over is not because he has any objections but rather there are certain legal documents that needed to be prepared and those have not been prepared.

Joseph A. Tortoretti, President and CEO of e-PATH Communications, Inc., thanked the City Commission for the opportunity to speak this evening regarding the request to increase the time to construct the network. He briefly explained the reasoning behind the delay and apologized if this put any pressure on the City that they did not anticipate when they started.

Mr. Tortoretti stated BelAir is a company that was actively involved with Wi-Fi and Wi-Max Development for wireless applications and they are currently the world leader in that technology and they are based in Ottawa. Mr. Tortoretti stated they have networks and operation in several countries and the benefits of BelAir Technology gives them the ability to provide multiple frequencies and the ability to provide bandwidth and upgrades with much more flexibility than most vendors. Mr. Tortoretti stated the technology is better suited for e-PATH applications and stated BelAir is one of their vendors and they use their equipment for access devices.

Kevin Tyler, BelAir, stated BelAir has been around for approximately four years and is number one in the sales of access points throughout the world. He stated his company does not just specialize in video but specializes in voice and data as well.

The City Attorney stated this agreement is strictly Wi-Fi for the public in a free zone through the middle of the City of Delray Beach and it has nothing to do with City services nor was the Request for Proposal (RFP) for City services.

Brief discussion between Mr. Tortoretti and staff continued.

The City Attorney stated this amendment does not tie the City into any services for the Police Department or anything else. She stated there has been a big push via emails for meetings to determine what the needs of the Police Department may be or not. The City Attorney stated that is not part of this agreement and noted that the Police Department needs to really investigate whether anything like this would be appropriate for them because they have sensitive data and needs a network that responds immediately when they are on the road stopping people and have that public safety responsibility. The City Attorney suggested that the Commission not approve this agreement or the Consent to Assignment until the City of Delray Beach has a signed Consent to Assignment that is appropriately signed with corporate resolution indicating that they have the power to bind their corporation. She also suggested that there be a rationale meeting to discuss this.

The City Attorney suggested that the Commission postpone this until February 19, 2008 and this will give staff a week to meet again and work out those issues on training and include some digital inclusion language and give the opportunity for the Police Department to speak with them and get an idea of what they are asking. The City Attorney stated the City had an agreement where timelines were not met and this amendment would extend those time limits.

After a lengthy discussion, it was the consensus of Commission to postpone this item to a date certain of Tuesday, February 19, 2008.

9.F. APPEAL OF WAIVER DENIAL/BRU'S ROOM: Consider an appeal received from Mr. Brudzinski regarding the City Manager's denial of his request to expand his business license premise to allow the consumption of alcoholic beverages on the Ocean City Lumber Parking lot property on March 15, 2008 from 11:00 a.m. to 11:59 p.m. for the St. Patrick's Day Parade. Staff recommends denial of the appeal. (*Quasi-Judicial Hearing*)

This item was made a Quasi-Judicial Hearing.

Robert A. Barcinski, Assistant City Manager, stated this item is for the City Commission to consider an appeal received from Mr. Brudzinski on behalf of Bru's Room to the City Manager's denial of his request to expand his business license premise to allow the consumption of alcoholic beverages on the Ocean City Lumber Parking lot property on March 15, 2008 from 11:00 a.m. until almost midnight. Per Section 113.02(B) of the Code of Ordinances, Mr. Brudzinski has appealed this decision. The denial was based on three things: (1) We are not approving the expansion of business license area for any private businesses, (2) This year the event producer has been approved for a similar set up on the Old School Square surface parking lot from 11:00 a.m. to 7:30 p.m. where they will be selling food, entertainment to help them raise money to off-set their costs and build their scholarship fund, (3) we received numerous complaints from our Police Department.

Mrs. Montague inquired as to what happened last year.

Officer Tom Mitchell, Police Department, stated Bru's Room applied for a permit and his understanding is it was approved to have an outdoor venue. Mr. Mitchell stated it was supposed to be contained to their area and the street was closed off on N.E. 3rd Avenue. He stated the crowd got too large for their staff to handle and he spoke to management on several occasions and they assured Officer Mitchell that they would control their establishment and they never did. Officer Mitchell stated they started to have alcohol go onto the railroad tracks and proceed east and this became a public safety issue not only with the train crossing but then people stumbling into the roadway. He stated they were inadequately staffed while physical altercations occurred and finally through one of the manager's cooperation of this local Bru's Room with himself they were able to remove the amplified music and the outdoor bar and then gain control to the point where Officer Mitchell stated he had to close the entire road and shut down all of the outside activity.

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). It was the consensus of the City Commission to deny the appeal.

Mr. Eliopoulos moved to adopt Board Order as presented, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes. Said motion to approve the Board Order (denying the appeal) passed with a 5 to 0 vote.

At this point, Mr. Brudzinski stated the day the St. Patrick's Day Parade is held is the biggest sales day for Bru's Room for the whole year. He stated they held the event on the east side of the building and they would like to move it to the north side of the building and fence it in and they would like to put an extra port-a-potty trailer there (although there are already restrooms) and have security. Mr. Brudzinski stated they would keep the railroad avenue clear because it would be all fenced in. He stated they have a site plan and Meisner Electric has given them permission and stated this is a very important day for Bru's Room.

Brief discussion continued between Mr. Brudzinski and the Commission.

After brief discussion, it was the consensus of the Commission to leave the motion and their decision as is.

9.G. MULTIPLE AWARDS/AUTOMOTIVE PARTS ANNUAL CONTRACT: Consider approval of multiple awards to bidders in an estimated annual cost of \$75,000.00 for the purchase of automotive parts stocked in the Purchasing Warehouse. Funding is available from various departments operating budgets.

The City Manager stated this is on the Regular Agenda because some of the items are not to the bidder and each one is explained in the backup material.

Mrs. Montague moved to approve the multiple awards to bidders in an estimated annual cost of \$75,000.00 for the purchase of automotive parts stocked in the Purchasing Warehouse, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

9.H. AUTHORIZATION TO HIRE OUTSIDE COUNSEL/CITY OF DELRAY BEACH V. MARGUENE ST. JUSTE: Consider authorizing the City to hire Kara Rockenbach, Esquire to handle the Oral Argument in the Appellate Case of the City of Delray Beach v. Marguene St. Juste at the rate of \$225.00 per hour.

In June 2007, the Trial Court found the City of Delray Beach 60% negligent in a dog bite case entitled Marguene St. Juste v. Keli Nowling and the City of Delray Beach.

The City Attorney stated this is a request to hire outside counsel for the Oral Argument in the Marguene St. Juste dog bite case. The City Attorney requested the appointment of Kara Rockenbach, appellate lawyer with the office of Gaunt, Radford, Methe and Rockenbach.

Mr. McDuffie moved to approve authorization for the City of Delray Beach to hire Kara Rockenbach, Esquire to handle the Oral Argument in the Appellate Case of the City of Delray Beach v. Marguene St. Juste, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

9.I. BID AWARD/ACCURATE EVENT SERVICES: Consider approval of a bid award to Accurate Event Services in the amount of \$39,702.91 for private security services for the International Tennis Tournament. Funding is available from 001-4210-575-55.40 (General Fund/Tennis Tournament).

Robert A. Barcinski, Assistant City Manager, stated this is a request for the City Commission to approve a bid award for private security to Accurate Event Services for the International Tennis Tournament (ITT). Mr. Barcinski stated private security services will go from February 4-18, 2008.

Mr. Fetzer moved to approve the bid award to Accurate Event Services in the amount of \$39,702.91, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

9.J. PROPOSED INCREASE IN PAVILION, FIELD AND FACILITY RENTALS FEES: Consider approval of a proposed increase in Pavilion, Field and Facility Rentals Fees and implementing a charge for the use of fields.

Tim Simmons, Acting Director of Parks and Recreation, stated after some research staff discovered that these fees have not been increased for park pavilions and facilities in approximately 12 years. He stated the City of Delray Beach does not currently charge on the ball fields.

After brief discussion, Mr. Simmons clarified that the increase in fees for park pavilions and facilities have not been increased in 12 years but the fees will be nominal. In addition, he stated there will now be a fee charged for use of the ball fields where in the past no fee was charged.

Mr. Eliopoulos moved to approve the proposed increase in Pavilion, Field and Facility Rental Fees and implementing a charge for the use of fields as submitted, seconded by Mrs. Montague. Upon roll call the Commission voted as follows: Mrs. Montague – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 8:31 p.m., 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 last week the City received the Housing Leadership Council Award with Palm Beach County for workforce housing in Delray Beach. He stated the Housing Leadership Council has developed a scoring system and they scored Palm Beach County a point higher than Delray Beach and the City of Boynton Beach scored approximately 10-12 points below Delray Beach. The Housing Leadership Council gave a special award to the Palm Beach County School District for their down payment assistance they are giving for teachers.

Secondly, the City Manager stated he had his last interview today with the Parks and Recreation Director candidates and a decision will be made within the next week.

Lastly, he stated he will be going to the Florida Manager's Winter Institute in St. Augustine. The City Manager stated he will be leaving tomorrow and will be back on Friday evening. He noted that he will be available by cell phone if the Commission needs him for anything.

13.B. City Attorney

The City Attorney stated the King's Market has decided not to have a market at the Old School Square Garage retail space. She stated they have an alternate proposal that would operate in a manner similar to Panera Bread or other kinds of establishments where you order the food and they bring it to you and you pay for it. The

City Attorney stated that the City has been trying to negotiate a contract on the King's Market and suggested that this be placed on the February 12, 2008 Workshop Meeting as a special item to discuss how the Commission would like to proceed in this case.

13.C. **City Commission**

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

Mr. Fetzer stated he believes at the February 12, 2008 Workshop Meeting the Commission talked about having some discussion on economic development and noted there is a new Committee or Task Force with the Chamber of Commerce. He stated he would really like to see the Chamber kept in the loop and work closely with the City of Delray Beach on this.

It was the consensus of the Commission to give a special invitation to the Chamber of Commerce people who are working on this issue and that they be part of this discussion.

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

Mr. Eliopoulos stated he would like to send his thoughts and prayers out to Perry DonFrancisco's mother who passed away and also John Miller, Sr. passed away.

Secondly, he stated the Town Hall Meeting was great.

Lastly, Mr. Eliopoulos congratulated the Miami Dolphins and the New York Giants and noted they must be very happy. However, he stated New England fans are not very happy.

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

Mr. McDuffie stated he and the City Manager attended a meeting during the multi-meeting week and the School Board of Palm Beach County awarded the City of Delray Beach for receiving the Sunspira Leading Light Award for the collaboration effort for the Construction Academy at Atlantic High School.

Secondly, he stated the S.D. Spady Chorus is requesting support from the City of Delray Beach and commented that the City of Delray Beach has supported the S.D. Spady Chorus in the past for students participating in the National Honor Choir.

Mr. McDuffie discussed the Delray Beach National and the Delray Beach American League and the progress that is going on. He respectfully requested that staff do no more press releases regarding this because it was not properly worded and there were errors in it and that staff speaks to him before releasing anything. Mr. McDuffie stated there are youth sports leagues that are stepping on each other and because there are so many different sports going on in so many different places and we have children who

would like to play multiple sports, we have lots of overlapping. Mr. McDuffie suggested having somebody oversee the facilities and that the League Presidents meet with a representative from the City in scheduling all of these facilities. He stated there are some conflicts that are causing some problems with seasons. Mr. McDuffie stated he has an offer for a \$20,000.00 grant and noted he will write a letter this week. He stated he spoke to both Boards regarding the signage and it was decided that 32 feet would be the acceptable maximum feet for signage. Mr. McDuffie stated there is a potential donor who offered to assist with the gap in the funding at Miller Park.

He stated that a City run T-Ball program was started this year and if this is successful he would like to see this sucked into these Little League Programs; however, if there is any City funding that goes into it the Little League will take the Charter away from them. Mr. McDuffie stated it would be a boost to both those programs to take the T-Ball group from the City and funnel them through the Little League. The City Manager stated the T-Ball group is designed to dovetail with the American League and it should not be a problem.

Lastly, he stated he had a great time at the Roundtable Meeting and his table was vibrant and they had some exciting ideas. Mr. McDuffie stated Jayne King's idea last year was to get rid of the ocean outfall and this will happen in the spring of 2009. He stated although that one suggestion did not make the top ten it will actually be done.

13.C.4. Mrs. Montague

Mrs. Montague requested that the Roundtable responses be emailed to her.

Secondly, she stated last Saturday (February 2, 2008) she and Mayor Ellis had the pleasure of meeting and having a brief breakfast with the Housing and Urban Development (HUD) Secretary Alphonso Jackson. Mrs. Montague stated the City of Delray Beach in partnership with Auburn Group, the Delray Beach Housing Authority, and the Community Redevelopment Agency (CRA), the Community Land Trust (CLT) are finalists as far as the HOPE VI Grant is concerned (\$20 million grant). She stated this grant is for "The Villages" which is going to be placed on the Carver Estates site.

Lastly, Mrs. Montague announced that there will be a Ribbon Cutting Ceremony on February 23, 2008 at 3:00 p.m. at Donnie's Place and she hopes to see everyone there.

13.C.5. Mayor Ellis

Mayor Ellis echoed comments expressed by Commissioner Montague regarding the meeting with HUD Secretary Alphonso Jackson.

Secondly, she stated she is pleased with how the Town Hall Meeting went and noted that there were great suggestions and ideas.

She stated Commissioner McDuffie provided her with the figure of \$2.5 million that the additional homestead will cost the City of Delray Beach in this year's budget (fiscal year 2008/2009).

Mayor Ellis congratulated Commissioner Fetzer and Commissioner Montague for having their petitions in.

There being no further business, Mayor Ellis declared the meeting adjourned at 9:07 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 February 5, 2008, which Minutes were formally approved and adopted by the City Commission on February 19, 2008.



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

CONDITIONAL USE AND WAIVER REQUEST FOR HUNTER CRANE

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

1. This conditional use and waiver requests has come before the City Commission on February 5, 2008.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the conditional use and waiver requests for Hunter Crane. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsections I, II and III.

I. COMPREHENSIVE PLAN

a. **Comprehensive Plan - Future Land Use and Map:** Is the future use and intensity of the development consistent with the future land use map and comprehensive plan and is it appropriate in terms of soil, topographic, and other applicable physical considerations, is complementary to adjacent land uses, and fulfills remaining land use needs.

Yes X No

b. **Concurrency:** Concurrency as defined pursuant to Objective B-2 of the Land Use Element of the Comprehensive Plan must be met and a determination made that the public facility needs of the requested land use and/or development application will not exceed the ability of the City to fund and provide, or to require the provision of, needed capital improvements for the following areas:

Are the concurrency requirements met as respect to water, sewer, drainage, streets and traffic, parks, open space, solid waste and schools?

Yes X No

II. LDR REQUIREMENTS:

LDR Section 2.4.5(E) Required Findings: (Conditional Use): Pursuant to Section 2.4.5(E)(5), in addition to provisions of Chapter 3, the conditional use will not:

- i. Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;
- ii. Hinder development or redevelopment of nearby properties.

Will Section 2.4.5(E)(5) be met?

Yes X No

III. WAIVERS:

Pursuant to LDR Section 4.4.19(D)(2)(g)(ii) property that is used for the storage and rental of construction equipment must be buffered by a 6' high wall or berm. The applicant has requested a waiver from this requirement to allow a 3' high berm.

Pursuant to LDR Section 4.4.19(D)(2)(g)(iii) property that is used for the storage and rental of construction equipment must have a 10' minimum landscape buffer around the perimeter of the property. The applicant has requested a waiver of this requirement along a 90' portion of the east property line

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; or,
- (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.

Would the waiver of Section 4.4.19(D)(2)(g)(ii) to reduce the berm requirement from 6' to 3' for the property comply with the requirements of 2.4.7(B)(5)?

Yes X No

Would the waiver of Section 4.4.19(D)(2)(g)(iii) to waive the 10' landscape buffer requirement along a 90' portion of the east property line of the property comply with the requirements of 2.4.7(B)(5)?

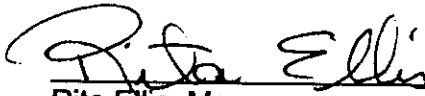
Yes X No

3. The comments and notes set forth in the staff report are hereby incorporated herein.

4. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the conditional use and waiver requests were submitted.

5. 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.

6. Based on the entire record before it, the City Commission approves X denies the conditional use request and waivers set forth above subject to the Conditions set forth in Exhibit A and Technical Items set forth in Exhibit B, attached hereto and made a part hereof, and hereby adopts this Order this 5th day of February, 2008, by a vote of 5 in favor of denial and 0 opposed.

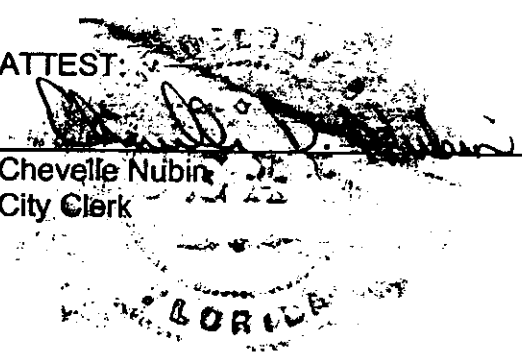


Rita Ellis, Mayor

ATTEST:



Chevelle Nubin
City Clerk


ORLANDO

**EXHIBIT A TO THE CONDITIONAL USE AND WAIVER REQUEST FOR HUNTER
CRANE**

CONDITIONS

1. That the site plan and landscape plan be modified to specifically illustrate that the storage and parking areas for the equipment will be treated with crushed asphalt which will be maintained at adequate levels of compaction to reduce dust. In addition, that the area not designated as storage and parking areas will be landscaped with permanent plant materials not requiring permanent irrigation such as Bahia Sod.
2. Approval of a site plan by the Site Plan Review and Appearance Board that is in general conformance to the submitted site plan accompanying this conditional use request and that addresses Exhibit "A" - Technical Items and conditions of approval attached in the staff report;
3. That the site plan be revised to note that the equipment to be stored shall not exceed 100 feet long, 14 feet wide and 15 feet high.
4. That all cranes must be stored in the down position.

**EXHIBIT B TO THE CONDITIONAL USE AND WAIVER REQUEST FOR HUNTER
CRANE**

TECHNICAL ITEMS

1. Revise the boundary survey and canal cross-section to be tied to Tracts 38 and 39, of the plat of Model Land Company Section 18/46/43, PB 6 page 51.
2. On the landscape plan dimension the landscape buffer along the north property line.
3. Revise the site plan to accurately reflect the property boundaries. The depicted property line is not consistent with the survey along the east property line.
4. Revise the site plan and engineering plan to be consistent with the landscape plan to show the landscape islands within the parking tier located south of the modular building.
5. Revise the landscape plan and site plan sheets to show the limits of the dry retention area at the northwest corner of the site to be consistent with the paving and drainage plan.
6. Provide wheel stops and a landscape island at the end of the parking tier located on the east side of the access drive.
7. Restripe and dimension of the parking spaces located south of the modular building to conform to the standard parking stall dimension of 18' x 9'.
8. Revise the photometric plan to show a detail of the light fixtures with cut-off luminaries and to provide a summary table indicating the number of luminaries proposed as well as the average and maximum foot candles.
9. Per the survey, a 20' easement exists along the north property line. Please provide a copy of the easement deed in order to determine that there will be no conflicts with respect to the proposed landscape buffer.
10. Pursuant to LDR Section 4.3.4(K) the minimum open space in the MIC district is 25% that can only include landscaped areas. Revise the site data table to indicate the proposed open space calculation reflects only landscape areas.
11. That all plans are to be signed and sealed by the appropriate professionals.

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

WAIVER REQUEST FOR 303 SW 2ND STREET

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

1. These waiver requests have come before the City Commission on February 5, 2008.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver request for the workforce housing lot located at 303 SW 2nd Street. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. WAIVER:

Pursuant to LDR Section 4.1.4(D) workforce housing units with forty (40) feet of frontage must meet the typical designs represented by the sketches set forth in Section 4.7.12; must include rear access via an alley, if available; and must also contain design features such as, but not limited to, front porches, eyebrows, outriggers, gables, dormers, arbors, trellises, shutters, balconies, decorative vents, siding, textured stucco finishes, undulating facades and other such appropriate architectural features. The applicant has requested a waiver from these requirements.

Pursuant to LDR Section 4.7.12 lots of record that have at least 40 feet of frontage may be used for workforce housing, as long as the workforce housing unit meets the typical designs represented by the sketches set forth in this section and the additional requirements of 4.1.4(D). The applicant has requested a waiver from this section.

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

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

Does the waiver request to Section 4.1.4(D) tropical designs meet all the requirements of 2.4.7(B)(5)?

Yes X No

Hem A.B

Does the waiver request to Section 4.7.12 meet all the requirements of 2.4.7(B)(5)?

Yes X 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 X denies _____ the waiver requests to LDR Sections 4.1.4(D) and 4.7.12.

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

ATTEST:


Chevelle Mubin, City Clerk


Rita Ellis, Mayor

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

PUBLIC PARKING FEE REQUEST FOR 36 FIRST OFFICE BUILDING

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

1. This public parking fee request has come before the City Commission on February 5, 2008.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the public parking fee request for 4 public parking fee spaces in the amount of \$72,000.00 for the 36 First Office Building. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. PUBLIC PARKING FEE:

Pursuant to LDR Section 4.6.9(E)(4), when parking requirements are applied to new development, in-fill development, from a change of use, or adding floor space to an existing building; the City Commission may approve the payment of a fee towards the construction of a public parking structure in-lieu of providing such required parking on-site.

Does the Public Parking Fee request for four spaces at a cost of \$72,000 to be paid to the City, in full upon building permit issuance to meet the requirements of LDR Section 4.6.9(E)(4) and the conditions, if any, listed below?

Yes 5 No 0

3. The City Commission hereby finds that the Public Parking Fee Request meets the requirements of 4.6.9(E)(4) of the Land Development Regulations, with the conditions listed above, if any, and the City Commission has applied the Comprehensive Plan and finds that its determinations set forth in this Order are consistent with the Comprehensive Plan and Land Development Regulations.

Hem A.C


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

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

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

ATTEST:


Chevelle Nubin, City Clerk


Rita Ellis, Mayor

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

APPEAL OF ADMINISTRATIVE DETERMINATION REGARDING BRU'S ROOM

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

1. This appeal of the denial of an administrative waiver request to allow the consumption of alcoholic beverages on property outside Bru's Room Restaurant, from 11:00 a.m. to 11:59 p.m. on March 15, 2008, pursuant to Ordinance Section 113.02(B) has come before the City Commission on February 5, 2008.

2. The Appellants, Appellee and City staff presented documentary evidence and testimony to the City Commission pertaining to the appeal of the denial of an administrative waiver request to allow the consumption of alcoholic beverages on property outside his business pursuant to Ordinance Section 113.02(B). All of the evidence is part of the record in this case.

3. 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.

4. Based on the entire record before it, the City Commission approves ___ denies X the appeal and hereby adopts this Order this 5th day of February, 2008, by a vote of 5 in favor and 0 opposed.


Rita Ellis, Mayor

ATTEST:


Chevelle Nubin
City Clerk


FLORIDA

Item 9.F