

**DECEMBER 6, 2011**

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

**1.** Roll call showed:

Present - Commissioner Tom Carney  
Commissioner Jay Alperin  
Commissioner Adam Frankel  
Commissioner Angeleta E. Gray  
Mayor Nelson S. McDuffie

Absent - David T. Harden, City Manager

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

**2.** The opening prayer was delivered by Monsignor Thomas Skindeleski, St. Vincent Ferrer Catholic Church.

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

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

Mayor McDuffie requested that **Item 8.W.2., Award of Bids and Contracts**, be removed from the Consent Agenda and moved to the Regular Agenda as **Item 9.A.A.**

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

**5.** **APPROVAL OF MINUTES:**

Mrs. Gray moved to approve the Minutes of the Regular Meeting of November 15, 2011, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

**6.** **PROCLAMATIONS:**

**6.A.** None

**7. PRESENTATIONS:**

**7.A. Florida City Government Month at Carver Morning Program**

Janet Meeks, Education Coordinator, stated they hosted several activities for Florida City Government Month in October at Carver Middle School. Mrs. Meeks stated they had a wonderful month and started the program off with a presentation from Environmental Services and Victor Majtenyi, Deputy Director of Public Utilities, discussed the Water Treatment Plant and the importance of water conservation. Mr. Majtenyi handed out rain gauges to about 100 students that attended the morning program. Mrs. Meeks stated 19 of the students signed up for the tours to the Water Treatment Plant and the South Regional Wastewater Treatment Plant. Mrs. Meeks stated two of the students wrote articles for the school newsletter and they also hosted a poster contest. Mrs. Meeks extended a special thanks to the Parks and Recreation Department for providing transportation and stated the City provided boxed lunches for the students as well. Mrs. Meeks thanked Dr. Debra Kaiser, Victor Majtenyi, Rich Reade, and Jennifer Buce for their help.

Mayor McDuffie read and presented a proclamation proclaiming the month of October as Florida City Government Month at Carver Morning Program.

Dr. Debra Kaiser thanked the City Commission and stated the generosity and the partnership with the City continues. Dr. Kaiser stated during the month of January with the help of Janet Meeks and Parks and Recreation they are going to be installing a learning landscape at Carver which is a giant grid that has huge tires in it and the kids can actually go outside and use this as a learning tool so the kids can be outdoors and do it. Dr. Kaiser stated this is part of community service and campus beautification and the construction academy from Atlantic Community High School is going to be a partner in this.

Lena Wallace, Principal of Carver Middle School, thanked the City of Delray Beach for their support they provide for the students of Carver Middle School. Ms. Wallace stated they are the only secondary school in the City of Delray Beach that is "A" rated at this time.

**7.B. Lake Worth Drainage District (LWDD) recognizes and commends the City of Delray Beach on their 100<sup>th</sup> Anniversary – Ronald Crone**

Ronald Crone, 1874 Ascott Road, North Palm Beach, FL 33408, Lake Worth Drainage District (LWDD), read into the record the Lake Worth Drainage District Resolution No. 11-05 regarding the City's Centennial. Mr. Crone stated it has been great to work with the City of Delray Beach and they have had an outstanding working relationship.

**7.C. Chief's Achievement Award – Chief Anthony Strianese**

Police Chief Anthony Strianese, gave a brief overview of the Police Explorer Program and stated over the last 1 ½ years it has grown from 6 members to 25. The program is set up to operate similar to the Police Department with the chain of command organizational structure and they also operate in the same family environment. Chief Strianese stated in July they sent 15 explorers up to the Annual Law Enforcement Boot Camp for one week in temperatures that exceeded 100 degrees each day. Chief Strianese showed a video of the boot camp and presented Chief's Achievement Awards to the participants.

Mayor McDuffie and Commissioner Frankel thanked the Police Department.

**7.D. Downtown Development Authority (DDA) Marketing Summary Plan – Marjorie Ferrer**

Marjorie Ferrer, Executive Director of the Downtown Development Authority (DDA), introduced Laura Simon, Associate Director of the Downtown Development Authority and gave a brief PowerPoint presentation. Mrs. Ferrer stated the DDA was created by resolution as a dependent district of the City of Delray Beach in 1971. The main areas of involvement in downtown redevelopment include marketing and promotion of the downtown, business development, security and crime, clean and safe traffic, parking, physical improvements, reviewing the City's Comprehensive Plan within the DDA's boundaries (I-95 to the beach), housing and improvements of coordination with local boards and city departments. Mrs. Ferrer stated the mission statement is to enhance and stimulate economic growth through position marketing activities that engage the downtown businesses, residents, and visitors while creating a clean, safe, physical and experiential place to live, work and invest. Mrs. Ferrer stated in their goal setting session they divided that up into three major categories: (1) position marketing is the marketing and promotion of the district; these are all of the businesses within the district to make sure that people are aware of what we have in our downtown; (2) improve the coordination/communication with local boards and city departments to enhance the downtown; and (3) support the Delray Beach Marketing Cooperative through events. Mrs. Ferrer stated the second piece is called place making and this is the security, clean and safe, management throughout the downtown and involvement in traffic, parking, noise management, and collaborating with the downtown merchants. Mrs. Ferrer stated the third piece is drive economic development through retention and recruitment. Mrs. Ferrer stated they have very few vacant spaces in the downtown so they really focus on retention making sure they stay in business. The last goal is the physical improvements and enhancements of the downtown. Mrs. Ferrer gave a brief recap and summary of this past year for each of those goals.

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

**8.A. FINAL SUBDIVISION PLAT APPROVAL/OCEAN APPLE ESTATES PLAT TWO: Approve the final plat for a 1.52 acre three (3) lot, single-**

family subdivision known as Ocean Apple Estates Plat Two.

**8.B. ACCEPTANCE OF A WATER UTILITY EASEMENT DEED/LINTON DELRAY, LLC.:** Approve and accept a water utility easement deed with Linton Delray, LLC. for the adjacent development to be known as Franklin at Delray Beach which is located at 1030 S. Federal Highway.

**8.C. REQUEST FOR SIDEWALK DEFERRAL/1011 BUCIDA ROAD:** Approve a request to defer the installation of a sidewalk along Bucida Road for property located at 1011 Bucida Road.

**8.D. CONTRACT ADDITION (CHANGE ORDER NO. 1)/INTERCOUNTY ENGINEERING, INC.:** Approve a Contract Addition (Change Order No. 1) to Intercounty Engineering, Inc. in the amount of \$44,062.41, for water main replacement on Island Drive and swale improvements for Reclaimed Water System Area 11B. Funding is available from 442-5178-536-63.50 (Water & Sewer Renewal & Replacement Fund: Improvements Other/Water Main) and 448-5461-538-46.43 (Storm Water Utility Fund: Repair & Maintenance Service/Drainage Swales).

**8.E. CONTRACT ADDITION (CHANGE ORDER NO. 3)/FOSTER MARINE CONTRACTORS, INC.:** Approve a Contract Addition (Change Order No. 3) to Foster Marine Contractors, Inc. in the amount of \$55,674.20, for the construction of additional parking for two (2) additional properties, quantity overrun for additional water service relocations and a contract time extension of twenty-three (23) days for the S.W. 12th Avenue/Auburn/S.W. 14th Avenue project. Funding is available from 334-3162-541-68.04 (General Construction Fund: Other Improvement/S.W. 12th Avenue/Auburn/S.W. 14th Avenue) and 442-5178-536-49.33 (Water/Sewer Renewal & Replacement Fund/Other).

**8.F. PROFESSIONAL SERVICES VENDOR LIST/NEIGHBORHOOD STABILIZATION PROGRAM (NSP):** Approve the list of vendors for Professional Services required to carry out activities under the Neighborhood Stabilization Program (NSP) contingent on the list being approved by the Florida Department of Community Affairs.

**8.G. AGREEMENT/PALM BEACH COUNTY/DISASTER RECOVERY INITIATIVE (DRI2) PROGRAM:** Approve an agreement between the City and Palm Beach County for the Disaster Recovery Initiative (DRI2) Housing Rehabilitation Program to extend the deadline from September 16, 2011 through September 16, 2012.

**8.H. WORKFORCE HOUSING COVENANT AGREEMENT/BAMFOUR, LLC./DKB REALTY INVESTMENT, INC./MATHIAS DEVELOPMENT, INC.:** Approve a Workforce Housing Covenant Agreement, as proposed between the City and Bamfour, LLC., DKB Realty Investment, Inc., and Mathias Development, Inc. for Midtown Delray.

**8.I. REVISED WORKFORCE HOUSING COVENANT/FLORANDA MHP, LLC./ NEW CENTURY EXECUTIVE QUARTERS, LLC.:** Approve a revised Workforce Housing Covenant between the City of Delray Beach and the Floranda MHP, LLC and New Century Executive Quarters, pursuant to the requirements under Section 4.7 of the Land Development Regulations.

**8.J. CHANGE FUNDING SOURCE FROM DISASTER RECOVERY INITIATIVE (DRI) TO STATE HOUSING INITIATIVE PARTNERSHIP (SHIP)/HOUSING REHABILITATION CONTRACT AWARD:** Approval to reallocate the funding source from Disaster Recovery Initiative (DRI) to State Housing Initiative Partnership (SHIP) for the Housing Rehabilitation contract award for 303 S.W. 2<sup>nd</sup> Avenue. Funding from 118-1924-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation) and 118-1960-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).

**8.K. AMENDMENT NO. 1 TO THE INTERLOCAL AGREEMENT FOR FUNDING OF TRANSIT INFRASTRUCTURE/PALM BEACH COUNTY:** Approve Amendment No. 1 to the Interlocal Agreement for Funding of Transit Infrastructure between Palm Beach County and the City of Delray Beach to increase the amount of the grant to install an additional bus shelter at the northeast corner of the S.W. 10th Street and Congress Avenue intersection.

**8.L. CONSENT TO ASSIGNMENT/FAMILY CENTRAL, INC./EARLY LEARNING COALITION OF PALM BEACH COUNTY/SCHOOL READINESS CHILD CARE SERVICE AGREEMENT:** Approve a Consent to Assignment between Family Central, Inc., the Early Learning Coalition of Palm Beach County, and the City of Delray Beach for Pompey Park and the Delray Beach Community Center/School Readiness Child Care Service Agreements.

**8.M. AMENDMENT NO. 2/SCHOOL READINESS CHILD CARE SERVICE AGREEMENT:** Approve Amendment No. 2 to the School Readiness Child Care Service Agreement between Family Central, Inc., the Early Learning Coalition and the City of Delray Beach to amend the term of the agreement and the termination provisions for the afterschool programs located at Pompey Park and Delray Beach Community Center.

**8.N. CONSENT TO ASSIGNMENT/FAMILY CENTRAL, INC./EARLY LEARNING COALITION OF PALM BEACH COUNTY/AFTERSCHOOL PROGRAM SERVICE AGREEMENT:** Approve a Consent to Assignment Agreement between Family Central, Inc., the Early Learning Coalition of Palm Beach County and the City of Delray Beach for the Pompey Park and the Delray Beach Community Center/Afterschool Program Service Agreements to Accept Scholarships for School Age Children.

**8.O. AMENDMENT NO. 3/AFTERSCHOOL PROGRAM SERVICE AGREEMENT:** Approve Amendment No. 3 to the Afterschool Program Service Agreement to Accept Scholarships for School Age Children between Family Central,

Inc., the Early Learning Coalition and the City of Delray Beach to amend the term of the agreement and the termination provisions for the afterschool programs located at Pompey Park and Delray Beach Community Center.

**8.P. TERMINATION OF DEDICATION OF PARKING AGREEMENT/ PINEAPPLE GROVE PROPERTIES, LTD.:** Approve Termination of the Dedication of Parking Agreement with Pineapple Grove Properties, Ltd., for the twelve (12) spaces adjacent to N.E. 3rd Avenue and behind the Astor development, located on privately owned property.

**8.Q. SETTLEMENT AGREEMENT/BANK OF AMERICA CORPORATION (BAC):** Approval to participate in a Settlement Agreement between Bank of America Corporation (BAC) and 28 State Attorney Generals to resolve allegations that BAC engaged in violations of state and federal antitrust laws.

**8.R. RESOLUTION NO. 54-11/INTERNET SALES TAX LOOPHOLE:** Approve Resolution No. 54-11 supporting action by Florida's Governor and State Legislature to close the internet sales tax loophole.

The caption of Resolution No. 54-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, SUPPORTING ACTION BY FLORIDA'S GOVERNOR AND STATE LEGISLATURE TO CLOSE THE INTERNET SALES TAX LOOPHOLE; PROVIDING AN EFFECTIVE DATE.

(The official copy of Resolution No. 54-11 is on file in the City Clerk's office.)

**8.S. RESOLUTION NO. 57-11/POLICE OFFICER AND FIREFIGHTER PENSION PLAN:** Approve Resolution No. 57-11 supporting Police Officer and Firefighter Pension Plan and disability presumption reforms to make the plans sustainable, sound and secure for current and future police officers and firefighters.

The caption of Resolution No. 57-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA SUPPORTING POLICE OFFICER AND FIREFIGHTER PENSION PLAN AND DISABILITY PRESUMPTION REFORMS TO MAKE THE PLANS SUSTAINABLE, SOUND AND SECURE FOR CURRENT AND FUTURE POLICE OFFICERS AND FIREFIGHTERS; PROVIDING AN EFFECTIVE DATE.

(The official copy of Resolution No. 57-11 is on file in the City Clerk's office.)

**8.T. RESOLUTION NO. 58-11:** Approve Resolution No. 58-11 authorizing the execution and delivery of a Master Lease Agreement Equipment Schedule No. 03 in the amount of \$825,000, and related instruments, and determining other matters in connection with this equipment lease. Schedule No. 03 is an amendment to an existing Master Lease agreement dated May 20, 2004 with SunTrust Leasing Corporation and will provide financing for the reimbursement of Public Safety hardware and software expenses totaling \$825,000 at a rate of 1.855% for an 84 month term. Terms of the amendment provide for payments to be made in arrears and a 1% penalty for pre-payment.

The caption of Resolution No. 58-11 is as follows:

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER LEASE AGREEMENT, EQUIPMENT SCHEDULE NO. 03 AND RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

(The official copy of Resolution No. 58-11 is on file in the City Clerk's office.)

**8.U. SPECIAL EVENT REQUEST/ON THE AVE:** Approve a special event request to endorse On the Ave to be held on January 19, 2011 from 6:30 p.m. to 10:30 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the closure of Atlantic Avenue from Swinton to the west side of N.E./S.E. 6th Avenue, Railroad Avenue from Atlantic north to 150 feet north of the east/west alley, and to the alleys north and south of Atlantic on N.E./S.E. 1st Avenue, N.E./S.E. 2nd Avenue, S.E. 3rd Avenue, and N.E./S.E. 4th Avenue; to authorize staff support for security and traffic control, EMS assistance and fire inspection, barricade set up and removal, and trash removal and clean up.

**8.V. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:** Accept the actions and decisions made by the Land Development Boards for the period November 14, 2011 through December 2, 2011.

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

- 1.** Contract award to Intercounty Engineering, Inc. in the amount of \$16,610.00 for replacing large valves used at City's Water Treatment Plant, Filter #3. Funding is available from 442-5178-536-64.90 (Water & Sewer Renewal & Replacement Fund: Machinery; Equipment/Other Machinery/Equipment).
- 2. THIS ITEM HAS BEEN MOVED TO THE REGULAR AGENDA AS ITEM 9.A.A.**

3. Purchase award to Systems Maintenance Services (SMS) in the amount of \$21,960.45 for twenty (20) processors and forty (40) memory module kits for server upgrades, including installation. Funding is available from 334-6111-519-64.11 (General Construction Fund: General Government Service/Machinery/Equipment/Computer Equipment).

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

**9. REGULAR AGENDA:**

**9.A.A. AWARD OF BIDS AND CONTRACTS:** Bid award to Lake Worth Monument in the amount of \$2,100.00 for the purchase of a pink granite base for the Boy Scout sculpture. Funding is available from 115-1702-579-46.90 (Special Project Funds: Repair & Maintenance Service).

Randal Krejcarek, City Engineer, stated this item has to do with purchasing the granite base for the Boy Scout sculpture that was donated to the City from Mr. Shelly Weil. Mr. Krejcarek stated on November 1, 2010 the Public Art Advisory Board (PAAB) voted 4 to 1 to accept a donation from Mr. Weil. It then came to Commission in January 2011 for approval and execution of a donation agreement with Mr. Weil which was executed. There were discussions about how to erect the monument and whether or not it should be on the ground or on a stand with cement. Mr. Krejcarek stated everyone agreed that the best way to show that monument is to put it on the 12 inch high granite base. Mr. Krejcarek stated in the agreement, paragraph 11, page two talks about the monument being placed at Old School Square also.

Dr. Alperin asked who is paying for the granite base. Mr. Barcinski stated the City is paying for the base and noted it comes out of the Public Art Fund and staff feels it is legitimate use of those dollars.

Mr. Carney stated he had a couple of calls this morning and wrote a letter to the City and staff and they responded. He stated there were statements made that the location had not been approved. Mr. Carney stated there were several members of the PAAB that expressed concern to him this morning regarding the location of the placement of the statue suggesting that it was not totally the view of the Board that it should be the location; recommending a couple of other locations that had been discussed. Secondly, Mr. Carney stated that there had been no determination by that Board of the necessity to have the granite base. Mr. Carney expressed concern that the Commission appoint the PAAB to review things and then they do not wait until final recommendation from that Board before we go forward and do things. Mr. Carney stated he was not here when this happened and this is why he wrote the letter.

Mrs. Gray stated she was under the impression that the last time this was brought to the Commission they approved everything but the base. Mr. Barcinski stated everything else was approved and the discussion revolved around the base.

Mayor McDuffie asked if the Commission would like to hear from the PAAB.

Mr. Frankel stated he has heard from the PAAB already. Mr. Frankel stated the question is whether or not we should spend \$2,100.00 on a base.

Dr. Alperin moved to approve **Item 9.A.A. (formerly Item 8.W.2.)**, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

**9.A. WAIVER REQUEST/27-43 SOUTH SWINTON AVENUE:** Consider a request to waive Land Development Regulations (LDR) Section 4.5.1(E)(3)(a)1.c., "Appurtenances, Fences and Walls", to permit the location of a six foot (6') high wall within the side street setback for 27-43 South Swinton Avenue. (*Quasi-Judicial Hearing*)

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

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on **Items 9.A., 9.B, 9.C., or 9.D.**

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Carney, Dr. Alperin, Mr. Frankel, and Mrs. Gray had no ex parte communications to disclose. Mayor McDuffie stated he met with the owner, his agent, discussed the project and received a copy of the site plan.

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-178 into the record.

Mr. Dorling stated the first two items relate a project conversion of the four houses on the east side of Swinton Avenue south of Atlantic Avenue known as the "Swinton Social". He stated the first waiver request is for the actual site and there are four historic structures on this site. Mr. Dorling stated they were approved as a Class V site plan for redevelopment for renovation of the structures and conversion of these four single-family residences to a spa and restaurant use. In addition, Mr. Dorling stated there is some off-site valet parking. The Historic Preservation Board considered this waiver as part of that Class V approval and recommended approval with a 6 to 0 vote. Mr. Dorling stated the spa use will be the northern most structure; there will be an outside pool and some accessory structures. Mr. Dorling stated the LDRs require that if you have a wall in

the front setback that it is no higher than four feet and this wall is proposed at six feet hence the need for the waiver. Staff recommends approval.

**Bob Currie, Currie Sowards Aguila Architects, 134 N.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444, Applicant,** commended Mr. Dorling for his presentation and stated he is present for any questions the Commission may have.

Mayor McDuffie 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.

At this point, Chevelle D. Nubin, City Clerk, swore in the following individual:

**David Armstrong, 321 North Swinton Avenue, Delray Beach, FL,** stated another restaurant in this area would be very ill-advised. Mr. Armstrong stated there is not enough parking downtown as it is and feels there is too much traffic. He stated there are too many restaurants and too much competition. Mr. Armstrong stated he is a retired chef and has worked in Delray Beach for the last 20 years has seen restaurants come and go every season. He stated every season he is looking for work and noted when the snowbirds leave in the summertime the restaurants are suffering. Mr. Armstrong stated he would like to see Atlantic Avenue during season closed off from North Swinton Avenue to Federal Highway because there are too many cars, bicycles on the sidewalks, and you cannot walk by a restaurant without bumping into a waiter. Mr. Armstrong suggested putting temporary podiums in the Avenue, shut off car traffic, and make it foot traffic only.

There was no cross-examination.

Mr. Currie stated this is an important project in that it saves these four historic buildings and restores them.

Mr. Dorling stated the item before the Commission is really a waiver of a wall not the approval of the project.

Dr. Alperin stated in the staff backup for the Historic Preservation Board (HPB) these buildings are called "abandoned" and would like to know what this means. Mr. Dorling stated they have been unoccupied for several years.

Mrs. Gray stated she will be happy to see the renovations of these buildings and supports the waiver.

Mr. Carney supports the waiver as well.

Mayor McDuffie stated this is a major step forward in taking care of these structures.

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).

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

At this point, the time being 7:05 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

**10. PUBLIC HEARINGS:**

**10.A. CONSOLIDATED ANNUAL PERFORMANCE AND APPRAISAL REPORT (CAPER):** Consider approval of the 2010-2011 Consolidated Annual Performance and Evaluation Report required by the United States Department of Housing & Urban Development (HUD) for utilization of federal grant funds.

Lula Butler, Director of Community Improvement, stated this is a request for the Commission to approve the 2010-2011 Consolidated Annual Performance and Evaluation Report (CAPER) as required by the Department of Housing and Urban Development (HUD). Mrs. Butler stated the Consolidated Annual Performance and Evaluation Report is a consolidation of their accomplishments from October 1, 2010-September 30, 2011. She stated it is specified under HUD rule that staff publishes this and it is made available to the public from the period of November 13-28, 2011 and staff did not receive any comments. Therefore, Mrs. Butler stated staff recommends approval of the CAPER for submitting to HUD for October 1, 2010 through September 30, 2010.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding the Consolidated Annual Performance and Appraisal Report (CAPER), the public hearing was closed.

Mrs. Gray stated she is glad that HUD is requesting this report and noted she has learned so much by reading it.

Mr. Frankel moved to approve the Consolidated Annual Performance and Appraisal Report (CAPER), seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

**10.B. ORDINANCE NO. 43-11:** Consider amending Ordinance No. 70-89 which revises Section 1, "Designation", and Section 2, "Requirements of Designation" of Ordinance 70-89, and an amendment to Land Development Regulations (LDR) Section 4.5.1(K)(2), "Designation of Historic Sites", to provide for the revised legal description of the Fontaine Fox Designation.

The caption of Ordinance No. 43-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING ORDINANCE NO. 70-89 THAT PROVIDED FOR THE HISTORIC DESIGNATION OF THE FONTAINE FOX HOUSE AND PROPERTY; AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING ARTICLE 4.5, "OVERLAY AND ENVIRONMENTAL MANAGEMENT DISTRICTS", SECTION 4.5.1, "HISTORIC PRESERVATION SITES AND DISTRICTS", SUBSECTION (K), "DESIGNATION OF HISTORIC SITES", PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 43-11 is on file in the City Clerk's office.)

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

Paul Dorling, AICP, Director of Planning and Zoning, stated this is consideration of Ordinance No. 43-11 which amends the legal description of the Fox Fontaine House Historic Designation in the LDRs under Section 4.5.1(K) and amends the development restrictions of that historically designated house set forth in Ordinance No. 70-89. Mr. Dorling stated there is a desire by the property owner of these lots to the north to take a 50 foot portion of that property and blend it into these two lots. He stated when that is done we need to amend the ordinance. The original restrictions that applied to the parcel will continue to be applied to this property but it needs to be changed in the ordinance by reference because it is now part of a different plat.

At its meeting of November 2, 2011, the Historic Preservation Board (HPB) considered this item and recommended approval with a 6 to 0 vote.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 43-11, the public hearing was closed.

Dr. Alperin moved to adopt Ordinance No. 43-11 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

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

With regard to previous comments expressed by Dr. Victor Kirson from the November 15<sup>th</sup> meeting, Robert Barcinski, Acting City Manager stated Dr. Kirson commented on a project in Hazleton, Pennsylvania where the Police Department arrested everyone from the ship that unloaded the drugs down to the mothers that were selling them. Mr. Barcinski stated the Delray Beach Police Department actively fights the war on drugs through the outstanding work of our streets narcotics enforcement unit and vice intelligence and narcotics unit. Both units have been commended for their work in the field. For the period covering January 1 through November 30<sup>th</sup> this year these units have affected 233 arrests and seized the following: 174 grams of crack cocaine, 111 grams of heroin, 750 pounds of marijuana, and over 5,700 pharmaceutical pills to include roxicodone and oxycodone. Also, Dr. Kirson pointed out how quickly an arrested person is back on the streets if the charge was minor narcotics violation. It should be noted that in a recent Police Department operations meeting one of the Assistant State Attorneys who attended supplied some information concerning what is happening in the entire County. There are approximately 20,000 felony cases that get submitted to the State Attorney's office a year; of those there is a 75% file rate meaning some cases are not filed due to victim/witness not cooperating and lack of evidence, etc. Taking those numbers there are about 15,000 cases filed into the court system. There are only seven criminal judges in Palm Beach County that would equate to a maximum of 700 trials. Taking all of that into consideration we are looking at 14,300 cases that receive plea deals that could entail little jail time or no jail time.

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

**11.B.1. Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach and Member of the Alliance),** stated Delray Beach is the nation's capital for rehabs and sober houses. Dr. Kirson stated now he is seeing vagrants on the beach. Dr. Kirson stated Palm Beach County Commissioner Priscilla Taylor said they were going to put up three facilities and they only have the money for one. He asked if we are going to make a vagrant law where we can either put them into custody where they get food and lodging or are we going to let it get worse until we are a major vagrant city.

**11.B.2. David Armstrong, 321 North Swinton Avenue, Delray Beach, FL 33444,** stated the city is getting larger every day and noted that he does not have a car, a license, or insurance to drive a car. Mr. Armstrong stated we need more buses to run every 15 minutes on every route. He stated New York moves their people by subway and rail. Mr. Armstrong stated he waits ½ hour for the bus and Palm Tran only runs every 20 minutes down Federal Highway east and west once every hour.

Secondly, Mr. Armstrong stated every night he goes to the beach and picks up recycling cans from the beach to make a living. He stated there is a big homeless issue in Delray Beach and the reason is because there are no jobs. Mr. Armstrong suggested building more manufacturing plants out west instead of

condominiums and townhomes because there would be less homeless on the street. He commented about the homeless at Knowles Park and stated he likes the fact that the City is recycling but does not like the fact that the City put in the solar compactors because the cans are being crushed with the paper. Mr. Armstrong suggested that the City put recycling bins at the beach and we could use that money for the kids programs. Mr. Armstrong suggested that the City work together with the Community Redevelopment Agency (CRA) to set up a triage area for food and a sanitation area place for these people to sleep and buy up the abandoned homes in the southwest area of Delray Beach east of I-95 and sell them to people or give them to low income housing people. Mr. Armstrong stated spending \$5 million of tax dollars on brick pavers across from the Fire Department is a waste of tax dollars and gives the homeless people another place to sleep.

**11.B.3. Jolene McClure, owner of Off the Ave Food & Spirits, 19 S.E. 5<sup>th</sup> Avenue, Delray Beach, FL**, thanked the Commission, Police Chief Strianese and the Assistant Police Chief with regards to the situation on Atlantic Avenue and S.E. 5<sup>th</sup> Avenue. Ms. McClure stated Police Chief Strianese and the Assistant Police Chief have come into her business several times, have been up and down the streets and have provided Clean and Safe Officers. She stated the problem is not abated but she appreciates the service.

**11.B.4. Mark Fields, 414 Seasage Drive #4, Delray Beach, FL 33483**, stated for the past 2-3 years he has attempted to have the parking at the beach addressed specifically at the intersection of Casuarina Road and Venetian Drive. Mr. Fields stated he sent an email to the City April 7<sup>th</sup> and he never received a response. He received a response from the City on July 22, 2010 stating that there was a comprehensive assessment of signage for the barrier island. Mr. Fields stated he would like to know where that assessment is that took place. He stated he followed up again on June 15, 2011 via email and received no response from the City Engineer. Mr. Fields stated the intersection is very dangerous and the site visibility is a concern and liability. He stated people are parking on both sides of Casuarina Road and feels this is a real safety issue because rescue vehicles cannot get by on the roads if there were an emergency. Mr. Fields stated somebody is going to lose their life or be severely injured.

At this point, the time being 7:23 p.m., the Commission moved back to **Item 9.B. of the Regular Agenda.**

**9.B. WAIVER REQUESTS/104 S.E. 1ST AVENUE:** Consider waivers to Land Development Regulations (LDR) Section 4.6.9(F)(3)(d), "Special Provisions", which requires a drive aisle width of 24', by permitting a drive aisle width of 22'; and to Section 4.6.9(F)(3)(i), "Valet Parking", which requires a perimeter landscape buffer of 10', by permitting a landscape buffer that varies from 1'6" to 6'4" for the attendant off-site parcel located at 104 S.E. 1st Avenue. (*Quasi-Judicial Hearing*)

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Carney, Dr. Alperin, Mr. Frankel, and Mrs. Gray had no ex parte communications to disclose. Mayor McDuffie stated he met with the owner, his agent, discussed the project and received a copy of the site plan.

Paul Dorling, AICP, Director of Planning and Zoning, stated this waiver request is also associated with the "Swinton Social" site. Mr. Dorling stated they have proposed to have a valet surface and purchase this lot and put in a valet parking lot. The two waivers that are required now relate to the parking lot. Mr. Dorling stated one waiver request relates to the aisle width and noted there is a required 24 foot between parking spaces down the center and the request is to go to 22 feet. The second waiver is to the required ten foot landscape strips that are required around the site. He stated this is a very small site and if they were to comply with those it makes it unusable as a parking lot. The applicant is asking for some reductions that range from a foot and a half to 6 ½ feet in this location. He stated they are providing a landscape plan which provides hedging and trees in that reduced area and has been approved as part of the Class V approval. Staff believes these two waivers to the parking aisle width of two feet and the reduction in landscape setbacks around the site are appropriate in this situation and the landscaping that would be in the wider strips is being provided in the smaller strips.

Mr. Dorling stated the Historic Preservation Board (HPB) considered this waiver as part of that Class V approval and recommended approval.

Mr. Currie stated they are also putting a decorative picket fence in that area.

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

Mrs. Gray asked where the valet queue would be. Mr. Dorling stated the valet queue would be on the primary site and the valet lot is one lot down the block. Mrs. Gray asked if there is public parking in front of the project. Mr. Dorling stated there is public parking along Swinton Avenue and 1<sup>st</sup>.

Dr. Alperin stated there are 7 spaces in the driveway with 2 of them being handicapped. Dr. Alperin asked if the other spaces are going to be used for valet or are they going to be available for parking. Mr. Currie stated they want everything to be valet parking.

Mrs. Gray stated her concern was only that we would not be using the public parking spaces out front for the valet queue. Mr. Currie stated there are nine spaces on the street that they are not using and not counting.

Dr. Alperin asked what would this development require in spaces and how many are actually being provided. Mr. Dorling stated the applicant did receive relief for a number of parking spaces through the approval with HPB and part of that negotiation was also that they seek alternative areas for valet parking and they are actively seeking alternative areas. Mr. Dorling stated while it cannot be counted for their public spaces there is the public parking garage immediately adjacent to the site as well.

Mr. Currie stated he believes 53 spaces are required; 26 on the valet lot; 7 on their property and also made a contractual agreement with the valet where he has between 20-40 additional spaces.

Dr. Alperin stated there are a certain number of spaces required and asked where they are and how can we be reassured that the spaces are going to be available. Mr. Dorling stated there is no requirement that they actually provide any additional spaces because of that waiver. As part of that discussion, they have committed to find those spaces but they are not obligated by Code. Dr. Alperin stated HPB approved a waiver to LDR Section 4.5.1 and reduced the number of parking spaces from 53 to 33 based upon the presentation of confirmation that adequate parking for proposed use would be achieved through alternate means.

Mrs. Gray asked what happens if they want to sell one of the buildings. Mr. Dorling stated there would be a Unity of Title between all of those properties as well as a valet parcel. Mr. Dorling stated they would not be able to break that without City consent and the City's subdivision code if they wanted to sell it separately it would require a subdivision and a platting process. Mrs. Gray stated she loves the project but expressed concern over the parking.

Brief discussion between staff, Mr. Currie, and the Commission followed.

Dr. Alperin stated he is favor of the waiver request.

Mr. Carney stated he is in favor of the waiver request.

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

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

**9.C. WAIVER REQUESTS/BOSTON'S RESTAURANT - PHASE I:**  
Consider approval of requests to waive Land Development Regulations (LDR) Section 4.6.16(H)(3), "New Multiple Family, Commercial and Industrial Development", subparagraph (i) to allow 62 sq. ft. where 75 sq. ft. of plantable area is required near the southwest corner of the site, and subparagraph (j) to allow no landscape islands where terminal landscape islands are required in four locations, in association with Phase I of Boston's Restaurant. (*Quasi-Judicial Hearing*)

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Frankel stated he received a letter and received a tour of Boston's and looked through the entire project with a representative from Ocean Properties. Mrs.

Gray stated she may have received a letter but has not read a letter. Mayor McDuffie stated he received a letter and have not taken a tour or spoken to any of the representatives. Mr. Carney stated he received a letter. Dr. Alperin stated he too received a letter.

Paul Dorling, AICP, Director of Planning and Zoning, stated at this point they are considering two waivers to two portions of the LDRs that were provided with a Class II site plan modification for Boston's renovation. These waivers relate to a required minimum width of a landscape island and are requesting to reduce that from 62 square feet to 75 square feet. Mr. Dorling stated the required findings under LDR Section 2.4.7(B)(5) are made in the staff report. Staff recommends approval at this time.

At its meeting of October 26, 2011, the Site Plan Review and Appearance Board (SPRAB) reviewed the two waiver requests in conjunction with a Class II Site Plan Modification and the Board approved both waivers on a 4 to 0 vote.

**Bob Currie, Currie Sowards Aguila Architects, 134 N.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444, Applicant,** stated Salina Avenue is by space and alley which is 16 or 18 feet wide. Mr. Currie stated the alternative is that you have a 60 foot right-of-way which you would have to get rid of buildings and parking. Mr. Currie stated they had to reduce them because of the radius to trucks and a fire truck around. In addition, Mr. Currie stated they are not required to have any open space requirement and they provided 18%.

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

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

**9.D. WAIVER REQUESTS/BOSTON'S RESTAURANT - PHASE II:**  
Consider approval of three (3) waiver requests to Land Development Regulations (LDR) Section 4.4.13(F)(1)(a), "Height", Minimum Building Height to allow 14' where 25' is required, Land Development Regulations (LDR) Section 4.6.9(D)(3)(b), "Minimum Width", Minimum Drive Aisle Width to allow 22' where 24' is required and Land Development Regulations (LDR) Section 4.6.9(D)(3)(c)(1), "Stacking Distance",

Minimum Stacking Distance to allow 27' where 50' is required, in association with Phase II of Boston's Restaurant which includes demolition and acquisition of adjacent hotel properties to provide additional on-site parking and new outdoor seating and dining areas.  
*(Quasi-Judicial Hearing)*

Mayor McDuffie asked the Commission to disclose their ex parte communications. Mr. Frankel stated he received a letter and received a tour of Boston's and looked through the entire project with a representative from Ocean Properties. Mrs. Gray stated she may have received a letter but has not read a letter. Mayor McDuffie stated he received a letter and have not taken a tour or spoken to any of the representatives. Mr. Carney stated he received a letter. Dr. Alperin stated he too received a letter.

Paul Dorling, AICP, Director of Planning and Zoning, stated these waivers are for Phase II and is part of a Class V Site Plan Modification. He stated these waivers refer to the width of this driveway which is being requested to be reduced from twenty-four feet (24') to twenty-two feet (22') and it relates to the height of these buildings which is supposed to be a minimum of twenty-five feet (25') per the CBD (Central Business District) Design Guidelines and they are lower than that. Mr. Dorling stated there are some waivers to required stacking distances at the two entranceways to the parking. There is a minimum of fifty (50) foot required and twenty-seven (27) feet is being provided in these locations. This proposal includes an outdoor bar area and outdoor seating. Mr. Dorling stated the waiver relates to the height of those buildings and reiterated that the height is required to be a minimum of twenty-five feet (25') and they are a maximum of fourteen feet (14') high.

**Bob Currie, Currie Sowards Aguila Architects, 134 N.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444, Applicant,** briefly spoke about the twenty-two foot (22') drive aisle which is proposed from the southernmost driveway access from A1A. Mr. Currie stated the intention is to bring all the service trucks in and the garbage truck backs into that and goes in and out on Atlantic Avenue.

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

Mr. Carney asked if there is anything the Commission is doing tonight that would work to the detriment of the appeal. Mr. Dorling stated these specific waivers would not and by virtue of approving these waivers it does not approve the overall Class V that would be subject to approval next week. Mr. Dorling stated the reduction of the driveway is in part to provide some additional landscaping. Mr. Dorling stated there will be a large wall that will buffer the outdoor seating area, and then there will be a landscape strip, then there will be a 22 foot driveway and then there will be five foot landscape strip with additional landscaping. He stated if the Commission did not approve a reduction in this driveway width they potentially could not provide that additional landscape strip.

which goes to compatibility. Mr. Dorling stated this would heighten the compatibility that is being proposed.

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

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

**9.E. REVOCATION OF VALET PARKING LICENSE AGREEMENT WITH CUGINI GRILLE:** Consider approval to revoke the valet parking license agreement with Cugini Grille for the valet parking queue located on the south side of the 200 block of East Atlantic Avenue.

**9.E.1. PARKING LICENSE AGREEMENT FOR VIC & ANGELO'S:** Consider approval of a parking license agreement with Vic & Angelo's to use the valet parking queue on the south side of the 200 block of East Atlantic Avenue, replacing Cugini Grille.

Mr. Frankel stated they received a package about 5:55 this evening from representatives from Cugini Grille and they make various allegations, conflicts of interest, and the like. In particular, they have a lot having to do with Frances Marincola and they include some documents from the Clerk of Court. Mr. Frankel stated he previously represented Mr. Marincola on a traffic ticket. Mr. Frankel stated Mr. Marincola is not a party to this but he wanted to know if there is a conflict of interest because of his traffic representation. The City Attorney stated he does not see this as a problem for Mr. Frankel to participate in the discussion.

Scott Aronson, Parking Management Specialist, stated this item is the revocation of the valet parking license agreement with Cugini Grille for the valet queue located on the south side of the 200 block of East Atlantic Avenue. Mr. Aronson stated this was one of the original valet queues with the program in the mid 1990's. In 2004, the restaurant was sold to Joe Gattelaro and changed to Cugini Grille and the valet queue was transferred to the new owner through the Consent of Assignment Form through the City approved by the City Manager. In 2010, the restaurant changed hands and the Consent of Assignment was completed with the approval of the City Manager and the new owners of Cugini Grill proceeded to manage the valet parking queue. In 2011, the valet queue increased its rates from \$10.00 to \$15.00 per car. In March 2011, Mr. Manero, owner of Vic & Angelo's and The Office addressed the Parking Management Advisory Board (PMAB) requesting to take ownership of that valet queue in that the queues were getting too expensive and he felt that his customers were not being treated with the proper respect and some other issues they had. At the time, staff did not recommend approval of that transfer. Mr. Aronson stated the valet queue license was

being met and at the time the agreement did not have anything with respect to pricing or validations and these are all added to the revised agreements. Mr. Aronson stated this was done in March 2011 and it was an informal request of the Board and it was done at under a citizen's time to speak at the Parking Management Advisory Board (PMAB). In April 2011, a formal request came through for the Board to deliberate. Staff did not recommend approval at that time. Mr. Aronson stated somewhere around that time there was a meeting with all of the valet license holders and that meeting was about the changes that were being proposed to the agreements to get their feedback. At that time, Mr. Aronson stated they agreed that the changes were okay. Mr. Aronson stated a question was asked that Cugini Grille was going to be closing for a couple of months around summertime to do some renovations and that they would be reopening in 60 days. Mr. Aronson stated through that time staff was getting several phone calls from neighboring businesses that the restaurant was closed and there were numerous allegations as to why. Mr. Aronson stated at the end of October it was confirmed that the restaurant was indeed for sale and it was going to closing on that following Monday. At that point, Mr. Aronson stated Mr. Manero was advised that if and when Cugini Grille would no longer be in business that the queue could go to Vic & Angelo's as the interested party. Mr. Aronson stated from May when Cugini Grille advised staff that they would be closing for the 60 days through the end of October it was there was no contact from the license holder. Mr. Aronson stated in early November he spoke with the queue operator verifying with him that the restaurant was indeed for sale. Mr. Aronson stated he understood that through previous meetings that once the restaurant sold Vic & Angelo's was going to receive the queue. Mr. Aronson stated November 17, 2011, he received a telephone call that the sale fell through and that they were going to be reopening but the renovations still needed to be done. At that point, staff advised Mr. Manero that he would be getting the queue and it would be moving to the Parking Management Advisory Board (PMAB) for that recommendation. Mr. Aronson stated with Mr. Krevoy's (Cugini Grille) notice to staff that he was interested in keeping the queue staff felt that the Parking Management Advisory Board (PMAB) should hear both parties and make that decision. Staff's recommendation was to transfer the agreement to Vic & Angelo's.

At its meeting of November 22, 2011, the Parking Management Advisory Board (PMAB) heard both parties and recommended approval of the transfer of the queue. Mr. Aronson stated this first issue to revoke the parking license agreement with Cugini Grille. The license agreement is a revocable license and can be cancelled by the City, with or without cause, at any time, effective upon the mailing of notice.

Dr. Alperin asked what the advantage to the City to have individual restaurants controlling the valets. Mr. Aronson stated the City would have to enter into those agreements for those private spaces on those private properties. Dr. Alperin asked if the valet companies would be able to do this. Dr. Alperin stated it would appear logical that the City would have a bidding process for the valets to go find spaces and the valets would have to sign a contract with the City. Mr. Aronson stated this was the original intent of the City in the mid 1990's.

Mr. Barcinski stated in the 1990's they decided it was better to have individual private agreements and have them find the parking spaces on private lots rather than using up any City lots.

Mr. Aronson stated the reason they went to the agreements being tied to the restaurants is the portability of the valets.

Mr. Frankel asked if these insurance companies have insurance and stated the City would be a party.

Brief discussion followed between the City Attorney, Commissioner Frankel, and staff regarding any potential lawsuits that could involve the City and/or valet.

Mrs. Gray asked why we are requesting Cugini Grille to revoke the agreement. Mr. Aronson stated up until the day he was preparing the Board packet they had not communicated.

Dr. Alperin asked Mr. Aronson if nobody brought it up would staff have done anything. Mr. Aronson stated when Mr. David Manero, owner of Vic & Angelo's, asked for it in March and in April staff did not support it but it was a concern that all of a sudden it was for sale. Mr. Aronson stated there was a concern with staff and some of the Board members with valet parking becoming its own independent business. Mr. Aronson stated it was not something that was supposed to be a profit center to support a restaurant that may or may not have been able to stand on its own. Mrs. Gray stated she does not understand how staff can say let's revoke their agreement because they did not communicate. Mrs. Gray stated if they had gone out of business then she would agree with it.

The City Attorney stated at the Parking Management Advisory Board (PMAB) meeting the Board allowed both parties to speak and it is the discretion of the Commission if they wish to allow them to make a brief comment on this.

**Rick Burgess, 1011 West Heritage Club Circle, Delray Beach, FL (employee of 270 East Atlantic Avenue the company that owns Cugini Grille and Martini Bar)**, read a brief statement into the record and distributed copies to the City Commission.

**Michael Weiner, Attorney with Weiner & Lynne, P.A., 10 S.E. 1<sup>st</sup> Avenue, Delray Beach, FL 33444 (representing the Applicant Vic & Angelo's)**, briefly discussed the ownership of Cugini Grille and the agreements as presently written stated "the agreements shall not be transferred or assigned without the express written consent of the City." Mr. Weiner stated they have never heard from the true owner. He stated the last insurance certificate they put in was not correct so they have not met the insurance requirements. Mr. Weiner stated Mr. Aronson testified that he did receive complaints from other people as well as Blue Oyster who has said that they have had

their customers treated badly, had keys thrown at them, and have not been serviced the way they expect to be serviced. He stated the Parking Management Advisory Board (PMAB) voted 8 to 2 regarding this. Mr. Weiner urged the Commission go follow the PMAB's recommendation and stated if the Commission wishes to re-write the ordinances and the agreement they are happy to discuss this on another night.

Mr. Frankel asked when the contract is up. Mr. Aronson stated the contract is up the end of March. Mr. Frankel stated he does not see a breach of contract and there is nothing in the agreement that states you have to be an open business.

Mrs. Gray stated she concurs with Commissioner Frankel.

Mr. Carney stated he too does not see a breach of contract and has not seen any ads where they are selling the valet queue.

Dr. Alperin stated he too concurs with Commissioner Frankel and is not in favor of revoking the license agreement at this time.

Mayor McDuffie stated we need to find ways that we are not marking our merchants at odds with each other because we are working on anything that is divisive in the downtown area. Mayor McDuffie stated he does not believe there has been any breach of contract and believes it needs to run its course until March. He stated the staff needs to do some studying on this and find a way to assign these queues and suggested that the City contract these queues out as like with the Old School Square Garage. Mayor McDuffie stated that way it is not merchant against merchant it is all the City of Delray.

Mr. Carney stated the City does not necessarily need a breach of contract in order to terminate this contract; the City reserves the right to do that.

Dr. Alperin moved to approve the Revocation of the Valet Parking License Agreement with Cugini Grille, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Dr. Alperin – No; Mr. Frankel – No; Mrs. Gray – No; Mayor McDuffie – No; Mr. Carney – No. Said motion to approve the revocation was **DENIED** with a 5 to 0 vote.

**9.F. ASSIGNMENT OF VALET PARKING QUEUE/BREATHE RESTAURANT AND LOUNGE:** Consider a request from Breathe Restaurant and Lounge, located at 401 West Atlantic Avenue, to reestablish a parking valet queue.

Scott Aronson, Parking Management Specialist, stated this is a request to re-establish a valet queue that was established in 2006. The Saki Room occupied 401 West Atlantic Avenue in 2006 and they ran the valet queue for approximately a year but the operation of the restaurant did not pan out and subsequently the queue was not continued on its following expiration. He stated shortly after that the restaurant closed down and it has been vacant for several years. Mr. Aronson stated the parking spaces went back into the municipal pool and the valet signs were removed. He stated Breathe

Restaurant and Lounge is now occupying the space and is requesting to re-establish the valet queue. Mr. Aronson stated they have the support of the Atlantic Grove Condominium Association allowing the valet to utilize their parking lot on N.W. 4<sup>th</sup> Avenue adjacent to the Mt. Olive Church. Staff recommends approval of this valet parking queue.

Mr. Frankel suggested that if the Commission approves this can they make it a condition that the restaurant has to be operational.

Dr. Alperin suggested that the Commission approves this only through March.

Brief discussion between the City Attorney and the Commission followed.

Dr. Alperin moved to approve the assignment of the valet parking queue for Breathe Restaurant and Lounge, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

**9.G. APPOINTMENT TO THE GREEN IMPLEMENTATION ADVANCEMENT BOARD:** Appoint one (1) regular member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2012. Based upon the rotation system, the appointment will be made by Mayor McDuffie (Seat #5).

Mayor McDuffie stated he wished to appoint Jeffrey Conley as a regular member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2012. Mr. Frankel so moved, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

**9.H. APPOINTMENT TO THE EDUCATION BOARD:** Appoint one (1) regular member to the Education Board to serve an unexpired term ending July 31, 2013. Based upon the rotation system, the appointment will be made by Mayor McDuffie (Seat #5).

Mayor McDuffie stated he wished to appoint Julia Kadel as a regular member to the Education Board to serve an unexpired term ending July 31, 2013. Dr. Alperin so moved, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 8:40 p.m., the Commission moved to **Item 12, First Readings.**

**12.**        **FIRST READINGS:**

**12.A.**        **ORDINANCE NO. 44-11:** Consider an ordinance amending the Charter of the City of Delray Beach by amending Article III, "Legislative", Section 3.02, "City Commission: Composition, Eligibility, Election, and Terms" and Section 3.09, "Term Limits"; amending Article V, "Elections", Section 5.02, "Types of Elections"; to provide for a change in the length of a term from a two (2) year term to a three (3) year term; providing for a referendum election to be held on March 13, 2012. If passed, a public hearing will be held on January 3, 2012.

The caption of Ordinance No. 44-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR REVISIONS TO THE CHARTER OF THE CITY OF DELRAY BEACH BY AMENDING ARTICLE III, "LEGISLATIVE", SECTION 3.02, "CITY COMMISSION: COMPOSITION, ELIGIBILITY, ELECTION, AND TERMS" AND SECTION 3.09, "TERM LIMITS"; AMENDING ARTICLE V, "ELECTIONS", SECTION 5.02, "TYPES OF ELECTIONS"; TO PROVIDE FOR A CHANGE IN THE LENGTH OF A TERM FROM A TWO YEAR TERM TO A THREE YEAR TERM; PROVIDING FOR A REFERENDUM ELECTION TO BE HELD ON MARCH 13, 2012; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 44-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance and stated based on comments from the Workshop Meeting on November 8, 2011, staff revised this ordinance where it has been modified to provide that the terms will be three terms and each term will be three years. Staff also added language that provides for the Commissioners that are voting on this particular ordinance and takes into account terms that have already been served. Therefore, the City Attorney stated the nine years is not a cap that you have to reach; if a Commissioner has already served and run again and are re-elected and they have already served one two-year term when this goes into effect then they are eligible to serve two more terms. The City Attorney stated it would be effective starting for the election in March 2013.

Mr. Carney moved to approve Ordinance No. 44-11 on FIRST Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

**12.B.            ORDINANCE NO. 45-11:** Consider a city-initiated amendment to Land Development Regulations (LDR) Section 4.4.9, "General Commercial (GC) District", Subsection (G), "Supplemental District Regulations", Sub-subsection (3), "Four Corners Overlay District", to correct outdated references. If passed, a public hearing will be held on January 3, 2012.

The caption of Ordinance No. 45-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.9, "GENERAL COMMERCIAL (GC) DISTRICT", SUBSECTION (G), "SUPPLEMENTAL DISTRICT REGULATIONS", SUB-SUBSECTION (3), "FOUR CORNERS OVERLAY DISTRICT"; TO CORRECT OUTDATED REFERENCES THEREIN; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 45-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this ordinance is to correct outdated references concerning conditional uses allowed in the four corners overlay district. The permitted and conditional uses for the Four Corners Overlay District are contained within specific district regulations in the GC (General Commercial) District. Mr. Dorling stated there were a number of changes made to the general uses within the GC and this is to re-align the original uses the way they were identified.

At its meeting of November 21, 2011, the Planning and Zoning Board reviewed this item and recommended approval with a 7 to 0 vote. Staff recommends approval.

Dr. Alperin moved to approve Ordinance No. 45-11 on FIRST Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

**12.C.            ORDINANCE NO. 46-11:** Consider an Ordinance amending Chapter 113, "Alcoholic Beverages", Section 113.02, "Prohibition of Consumption or Possession of Open Containers of Alcoholic Beverages in Public Places". If passed, a public hearing will be held on January 3, 2012.

The caption of Ordinance No. 46-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 113, "ALCOHOLIC BEVERAGES", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 113.02, "PROHIBITION OF CONSUMPTION OR POSSESSION OF OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES", TO INCLUDE AN EXCEPTION FOR THE DELRAY BEACH ARTS GARAGE; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 46-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance and stated this is to amend the Code to put the Arts Garage on the same scenario as Old School Square, the Tennis Center, and the Golf Course, etc. where the City does not require a waiver every time.

Mr. Carney and Dr. Alperin disclosed that they are both on the Board of the Creative City Collaborative (CCC) and asked if they need abstain. The City Attorney stated as far as whether this passes or not will anything like that inure to their financial gain or detriment.

Mr. Frankel disclosed that his law firm entered into an agreement to sponsor a series of events that are going to be held there and stated there is no financial gain.

Mrs. Gray asked if they will be selling alcohol. The City Attorney stated they cannot sell alcohol at all.

Dr. Alperin moved to approve Ordinance No. 46-11 on FIRST Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

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

**13.A. City Manager**

Robert Barcinski, Acting City Manager, had no comments or inquiries on non-agenda items.

**13.B.**            **City Attorney**

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

**13.C.**            **City Commission**

**13.C.1.**        **Mr. Frankel**

Mr. Frankel stated the Christmas tree lighting was great and commended Sarah Martin and staff for a great job. He stated approximately 40,000 people were in attendance.

Secondly, Mr. Frankel thanked the City Manager and the City Commission for allowing him to represent Delray Beach at the ATP Championships in London which he attended with Mark Baron and John Butler. Mr. Frankel stated no taxpayer money was used for him traveling to London and noted he paid for the trip out of his own pocket.

Mr. Frankel stated he went to London and was excited to represent the City but left amazed with the respect that our City has on an international level. He stated Delray Beach gets criticized on the monies we spend at the tennis facility and on this tennis tournament but there is no regret on what we are doing as a city.

Lastly, with regard to the water meeting, Mr. Frankel stated he would like the City Manager to speak with the City Manager from Boynton Beach regarding the attendance.

**13.C.2.**        **Mrs. Gray**

Mrs. Gray stated this weekend she attended the International Netball Association in our city and this is their first time having a netball conference in the United States. Mrs. Gray thanked the Palm Beach County Sports Commission, Pompey Park, and City staff who helped organize this event. She stated Delray Beach will be hosting their national event at Atlantic High School in June.

Secondly, Mrs. Gray stated she and Mrs. Butler had a meeting with Senator Sachs last month on technology trying to get the transfer from the high school to the university and she is allowing us to recommend a couple of our youth. Mrs. Gray stated Village Academy is trying to put in place a technology academy.

Lastly, Mrs. Gray stated last week there was community meeting from Delray Alliance and it was very well attended.

**13.C.4.**      **Mr. Carney**

Mr. Carney stated as a follow up to comments expressed by Commissioner Frankel some of those valet companies use City lots.

Secondly, Mr. Carney stated Mayor McDuffie actually knew the street name Salina.

Mr. Carney stated the parking problems at A-1-A and Casuarina have to be addressed. He stated there does not appear to be "No Parking" signs posted and believes you are allowed to park on the swales and the lot 100 feet away is empty.

Lastly, Mr. Carney stated this past Saturday he had the opportunity to see the Delray Beach Chorale who performed at the First Presbyterian Church. He stated it is their 30<sup>th</sup> Anniversary and sent a note to the City Manager about doing a proclamation for them.

**13.C.4.**      **Dr. Alperin**

Dr. Alperin had no comments or inquiries on non-agenda items.

**13.C.5.**      **Mayor McDuffie**

Mayor McDuffie stated with regard to the technology issues at Village Academy we are in the process of finalizing the Tri-Party Agreement between the County, City, and Community Redevelopment Agency (CRA) on the Digital Divide Project which is wireless blanketing all of the northwest/southwest community. He stated as soon as this is signed and finalized this project will be underway. Mayor McDuffie stated a high school and elementary school are refurbishing PC's for the project; the TED Center has some wireless devices, and \$90,000.00 from the CRA, \$10,000.00 from private individuals, and a private organization that may donate \$50,000.00.

Secondly, Mayor McDuffie stated he saw an incredible article on the City of Delray Beach from the Boston Globe.

Mayor McDuffie agrees with comments expressed by Commissioner Carney regarding swale parking and on-street parking being a problem throughout Delray Beach.

Mayor McDuffie reminded the Commission that the Principal of Village Academy invited everyone to attend the Village Academy Meeting tomorrow night at 6:00 p.m. to discuss ideas for activating the community.

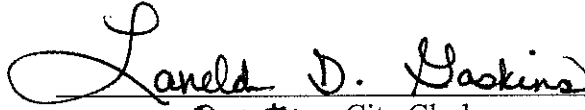
He stated the tree lighting was awesome and Channel 12 & 5 was great. Mayor McDuffie stated City staff did a great job.

Mayor McDuffie stated last Tuesday he went to Coral Gables to the Japanese Consul General's Home to celebrate the birthday of the Emperor. Mayor McDuffie stated the Japanese Consulate General is coming to City Hall tomorrow at 3:00 p.m.

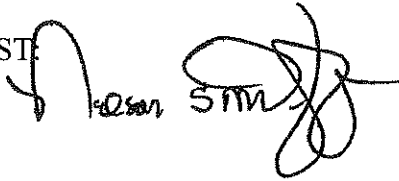
Mayor McDuffie stated he attended a fundraiser on the beach for St. Joseph's and it was great.

Lastly, Mayor McDuffie stated he is growing a mustache because he will be in a musical the middle of January called "From Linton with Love" written by Ernie Simon.

There being no further business, Mayor McDuffie declared the meeting adjourned at 9:00 p.m.

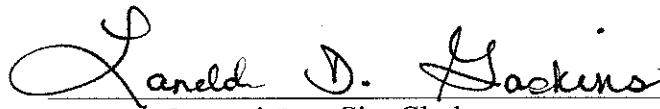
  
Deputy City Clerk

ATTEST



MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on December 6, 2011, which Minutes were formally approved and adopted by the City Commission on January 3, 2012.

  
Deputy City Clerk

**NOTE TO READER:**

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