

AUGUST 19, 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 6:00 p.m., Tuesday, August 19, 2008.

1. Roll call showed:

Present - Commissioner Gary P. Eliopoulos
Commissioner Fred B. Fetzer
Commissioner Woodie B. McDuffie
Commissioner Mackenson Bernard
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 Ron Arflin, Chaplain of Abbey Delray.

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.G., Service Authorization No. 04-09.1/CH2M Hill, Inc./Design of New Sludge Thickener Unit** of the Consent Agenda be moved to the Regular Agenda as **Item 9.A.A.**

The City Manager noted that **Item 9.C., Waiver Request/Ed Morse Toyota** has been withdrawn by the applicant. Staff has determined that this matter can be handled by the Site Plan Review and Appearance Board (SPRAB) as a Master Sign Program and a waiver is not necessary and therefore this can go to SPRAB next week.

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

5. APPROVAL OF MINUTES:

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

Mr. Fetzer moved to approve the Minutes of the Special/Workshop Meeting of August 12, 2008, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. National Alcohol and Drug Addiction Recovery Month

Mayor Ellis stated that this proclamation will be mailed.

7. PRESENTATIONS:

7.A. Granicus Award Presentation

Mayor Ellis presented the 2008 Granicus Digital Governance 2nd Place Award to the City of Delray Beach, Florida from Granicus, Inc. for Excellence in Disseminating Government Information. Charles Furment, Technical MultiMedia Specialist/IT, came forward to accept the award.

Guy Buzzelli, Chief Information Officer, stated Charles started with the City of Delray Beach approximately two years ago as the Office Automation Analyst and in February 2008 was reclassified to a Technical MultiMedia Specialist. Mr. Buzzelli stated Charles has done a fantastic job with the virtual tours and the video streaming in the Commission Chambers, etc.

7.B. Welcome Home Certificate for Harrison Colt McDuffie, AD3 (AW/SW)

Mayor Ellis read a Welcome Home Certificate from the “You Are Not Alone” Program into the record for Petty Officer Harrison Colt McDuffie with the United States Navy. Commissioner McDuffie presented his son Harrison Colt McDuffie with the Welcome Home Certificate.

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 July 31, 2008.

8.B. CHANGE ORDER NO. 1/FINAL/SOUTHLAND PAINTING CORP./WATER TREATMENT PLANT CLARIFIER #2 REHABILITATION PROJECT: Approve Change Order No. 1/Final in the amount of a \$200.00 decrease and final payment in the amount of \$12,432.70 to Southland Painting Corp. for work related to the Water Treatment Plant Clarifier #2 Rehabilitation Project. Funding is available from 442-5178-536-64.90 (Water and Sewer Renewal & Replacement Fund/Other Machinery and Equipment).

8.C. CHANGE ORDER NO. 1/FINAL (CONTRACT CLOSEOUT)/GC WORKS, INC./SUNSHINE NEIGHBORHOOD PARK PROJECT: Approve Change Order No. 1/Final (Contract Closeout) in the amount of a \$16,844.22 decrease and final payment in the amount of \$16,534.39 to GC Works, Inc. for the completion of the Sunshine Neighborhood Park Project. Funding is available from 334-4151-572-68.39 (General Construction Fund/Other Improvement/Sunshine Park).

8.D. CONTRACT CLOSEOUT (C.O. NO. 2/FINAL)/CHAZ EQUIPMENT COMPANY, INC./WEST ATLANTIC WATER MAIN PROJECT: Approve a Contract Closeout (Change Order No. 2/Final) in the amount of a \$43,862.46 decrease and final payment in the amount of \$14,765.25 to Chaz Equipment Company, Inc. for the completion of the West Atlantic Water Main Project. Funding is available from 441-5161-536-65.24 (Water/Sewer Fund/Other Improvements/W. Atlantic Ave. Phase III).

8.E. CONTRACT CLOSEOUT (C.O. NO. 1/FINAL)/WEST CONSTRUCTION, INC.: Approve Contract Closeout (Change Order No. 1/Final) in the amount of a \$52,323.08 decrease and final payment in the amount of \$20,330.48 to West Construction, Inc. for the completion of the Lindell Boulevard Traffic Calming Project. Funding is available from 334-3162-541-65.78 (General Construction Fund/Capital Outlay/Traffic Calming Lindell Blvd.) and 448-5461-538-65.78 (Storm Water Utility Fund/Other Improvements/Lindell Blvd.).

8.F. CONTRACT CLOSEOUT/FINAL PAYMENT/THE BG GROUP, LLC: Approve a Contract Closeout and final payment in the amount of \$80,144.60 to The BG Group, LLC, for the completion of the Carver Estates Demolition Project. Funding is available from 118-1960-554-34.36 (Neighborhood Services/Other Contractual Services/Carver Estates Demolition).

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

8.H. INTERLOCAL AGREEMENT/PALM BEACH COUNTY/ANTENNA ON THE POLICE DEPARTMENT TOWER: Approve an Interlocal Agreement between the City and Palm Beach County providing for the placement of an antenna on the City's communication tower located at the Police Department in order to bridge the digital divide regarding the provisions of free internet

services to qualifying families. Palm Beach County shall pay for all installation, repair and maintenance costs associated with the antenna. Palm Beach County will not be charged any rental fee and the City shall pay the minimal utility costs for the antenna.

8.I. RATIFICATION OF APPOINTMENTS TO THE PARKING MANAGEMENT ADVISORY BOARD: Approve and ratify the reappointments of Mr. Fran Marincola and Mr. Herman Stevens, Downtown Development Authority Representatives and Mr. Joseph Pike, Planning and Zoning Board Representative (alternate member) to the Parking Management Advisory Board for terms ending July 31, 2010.

8.J. RESOLUTION NO. 34-08/ABANDONMENT OF EASEMENT/SHERWOOD HONDA: Approve and adopt Resolution No. 34-08 abandoning a utility easement located west of U.S. Highway No. 1 within the Sherwood Honda Property at 3000 South Federal Highway to accommodate the installation of parking, landscaping and other structures associated with the construction of a bullpen parking area for the dealership.

The caption of Resolution No. 34-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, VACATING AND ABANDONING A UTILITY EASEMENT LOCATED WEST OF U.S. HIGHWAY NO. 1, WITHIN THE SHERWOOD HONDA PROPERTY AT 3000 SOUTH FEDERAL HIGHWAY AND AS MORE PARTICULARLY DESCRIBED HEREIN.

(The official copy of Resolution No. 34-08 is on file in the City Clerk's office.)

8.K. AMENDMENT NO. 1/eCIVIS, INC.: Approve Amendment No. 1 to the agreement between the City and eCivis in the amount of \$29,870.00 to renew the contract for one (1) year. Funding will be available from 001-1111-511-31.90 pending budget transfer.

8.L. GENERAL RULES OF PROCEDURE OF THE HISTORIC PRESERVATION BOARD: Approve the revised Historic Preservation Board Rules to include the Quasi-Judicial Procedures, and the reference to appealing variances to Circuit Court is now eliminated in light of the new ordinance the City Commission recently passed.

8.M. FIRST AMENDMENT TO FUNDING AGREEMENT/DELRAY YOUTH VOCATIONAL CHARTER SCHOOL: Approve the First Amendment to the funding agreement with Delray Youth Vocational Charter School to include authorization to purchase program equipment, books and curriculum for students attending the charter schools. No additional funding will be allocated for this agreement.

8.N. FIRST AMENDMENT TO FUNDING AGREEMENT/CHILDREN LEARNING AFTER SCHOOL SESSIONS: Approve First Amendment to the funding agreement with Children Learning After School Sessions (CLASS) to include authorization to pay stipends to volunteer tutors for CLASS and to amend the language in number two (2), Paragraph four (4) under "Purpose of Work" to read as the period covered March 04 – September 25, 2008. No additional funding will be allocated for this agreement.

8.O. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period August 4, 2008 through August 15, 2008.

8.P. AWARD OF BIDS AND CONTRACTS:

- 1.** Contract award to H & J Contracting, Inc. in the amount of \$95,135.10 for modification and installation of drainage; repairing of root damaged areas, asphalt overlay, parking lot re-striping; and the installation of landscaping and irrigation at the Delray Swim & Tennis Center East Parking Lot. Funding is available from 117-4133-572-65.57 (Recreation Impact Fee Fund/Capital Outlay/Swim & Tennis Parking Lot).
- 2.** Bid award to Fast Dry Courts in the amount of \$42,700.00 for drainage improvements at the Delray Swim and Tennis Club and the Tennis Center. Funding is available from 117-4133-572-63.90 and 117-4145-572-63.90 (Recreation Impact Fee FD/Improvement Others).
- 3.** Purchase award to Garber Chevrolet in the amount of \$17,310.00 via the Florida Sheriff's Association Contract #07-15-0827, Specification #4 for the purchase of one (1) 2008 Chevrolet Impala Admin Package with options and warranty for the Police Department. Funding is available from 501-3312-591-64.20 (Central Garage Fund/Automotive).

At this point, Commissioner McDuffie stepped away from the dais.

Mr. Eliopoulos moved to approve the Consent Agenda as amended, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Bernard – Yes. Said motion passed with a 4 to 0 vote.

At this point, Commissioner McDuffie returned to the dais.

9. REGULAR AGENDA:

9.A.A. SERVICE AUTHORIZATION NO. 04-09.1/CH2M HILL, INC./DESIGN OF NEW SLUDGE THICKENER UNIT: Approve Service Authorization No. 04-09.1 in the amount of \$28,179.00 to CH2M Hill, Inc. for additional professional engineering services relating to the design of the new 40' diameter lime sludge thickener unit. Funding is available from 441-5161-536-68.43 (Water & Sewer Fund/Improvements Other/Sludge Thickener).

Richard Hasko, Director of Environmental Services, stated this is a scope increase for our consultant on the City's sludge thickening project at the Water Treatment Plant. He stated as staff got into the preliminary planning of the project staff was not happy with the location that was selected. Mr. Hasko stated staff thought it would work and contracted with CH2M Hill, Inc. to design and as staff got into it they realized it was going to be too crowded for post construction to work around for maintenance aspects. He stated staff relocated it a farther distance across the driveway to the south side of the plant that requires additional sledge handling elements which require additional design work.

Mr. Eliopoulos stated he is a little disappointed that the City has paid roughly \$90,000.00 before we realized it is not going to work. He stated it is 9.7% of the revised estimated construction cost and assumes this is how CH2M Hill, Inc. is establishing their fee. Mr. Eliopoulos stated in reality we should be below 8%. He stated the City is actually paying for them to coordinate with their consultants (an extra \$5,000.00). He expressed concern that the City's paying them extra to work with their consultants in today's market does not make sense. Mr. Eliopoulos expressed concern over the pedestrian walkway (catwalk) system and stated he is worried about the construction estimate.

Mr. Hasko stated the catwalk is an addition that is going to be necessary because of where this is going to be relocated. He stated it is now located across an access drive and staff needs to be able to get to it. Mr. Hasko stated the Water Treatment Plant is on two levels; a ground level where you can access individual structures and individual components from the ground for maintenance. There is a second level that is connected by a series of catwalks and the catwalks are primarily used by the plant operators. Mr. Hasko stated the catwalk is important to the operations. He stated in terms of the cost estimate for this project this is a project that has been deferred for about 2-3 years; and it is at the point where this cannot be deferred anymore because we are developing some serious sludge handling problems at the Water Treatment Plant. Mr. Hasko stated staff budgeted approximately \$450,000.00 for this project and over the years the cost of construction has gone up and some of the cost increases occurred because of where this is now going to be located so that it works better with the operations of the plant and the cost is approximately \$1.2 million at this point. As far as the consultants' percentage of construction that is something we use to check in terms of the relationship between the consultant cost and the construction cost depending on how wide the scope of services is. Mr. Hasko stated most of the City's Engineering consultants will base their fees on a schedule of estimated hours and employee categories

that are going to be working on this. Then, they will have their sub-consultants down and their profit and overhead on top of that. He stated the City uses the percentage as one check to see if that seems to be a fair price or not. Mr. Hasko stated with regard to the 8% he has not seen 8% in approximately 7-9 years. Mr. Hasko stated if he gets a consultant contract for 10% of the construction costs and that includes all of the sub-consulting (surveying, geotechnical work) preparation construction documents, permitting acquisition, bid reviews and the recommendations right up to bid proposal he feels this is a fair price.

Mr. Eliopoulos stated with regard to the fees he is surprised that the City is paying that much. He stated from what he knows about the industry when you are talking 10% that is a very good chunk and it is usually involving more of the consultants. Mr. Eliopoulos stated he not only depends on staff but he depends on the professional. He stated if staff was concerned with the space the professional should have been concerned too and feels the professionals should have come up with different options. Mr. Eliopoulos stated it is upsetting to him that now we are moving it and now it is going to cost the City more money.

Mr. Hasko stated the \$90,000.00 was the original contract amount and is for the entire design from preliminary sketches and drawings up through completion of construction documents, permitting, etc. Mr. Hasko stated the City has not paid the \$90,000.00 and decided to do something else. Mr. Eliopoulos clarified with Mr. Hasko that CH2M Hill, Inc. has not been paid the \$90,000.00. He stated staff is not actually redesigning anything but this is going to require additional design for some additional components (hydraulic and pumping components) because of where this is going to now be placed.

Mr. Mackenson moved to approve Service Authorization No. 04-09.1/CH2M Hill, Inc. in the amount of \$23,179.00 to CH2M Hill, Inc., seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos - Yes; Mr. Fetzer - Yes; Mr. McDuffie - Yes; Mr. Bernard - Yes; Mayor Ellis - Yes. Said motion passed with a 5 to 0 vote.

9.A. APPEAL OF HISTORIC PRESERVATION BOARD DECISION/36 S.E. 1ST AVENUE: Consider an appeal of the Historic Preservation Board's decision regarding the Certification of Appropriateness (COA), Class V Site Plan Application, and associated waiver and variance requests for the new construction of a two-story office building located at 36 S.E. 1st Avenue, Old School Square Historic District. (*Quasi-Judicial Hearing*)

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

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. Mr. McDuffie stated he spoke to Mr. Weiner for about 15 seconds when he walked in the door tonight. Mr. Bernard stated he spoke to Mr. Weiner for about two minutes on the telephone today. Mayor Ellis stated she spoke to Mr. Weiner. Mr. Eliopoulos stated he talked with the architect, the developer and Mr. Weiner. Mr. Fetzer stated he spoke with the applicant and Mr. Weiner.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-064 into the record.

Mr. Dorling stated this proposal was originally before the City Commission on October 2, 2007 as it related to an LDR Amendment which was to apply the CBD Design Guidelines to this lot which is currently zoned OSSHAD. The City Commission had significant discussion about whether that was the appropriate way to address this proposal and they directed staff to work with the applicant in looking at alternatives to this amendment. Mr. Dorling stated staff met with the applicant and the alternative was suggested that the applicant come forward with this development plan which included some waivers and some variances to the original OSSHAD designations which would allow him to accommodate this development. However, he stated it would address concerns as it related to the potential for the increased development intensity if and when this developer did not develop the property. Mr. Dorling stated this was a method by which staff and the applicant agreed upon and they came before the Historic Preservation Board (HPB) on March 6, 2008, for a COA for a Class V modification along with two waivers and four variances. He stated the Board subsequently denied their application and the specifics of the application were for the construction of a new 10,739 square foot office building (which relates to 5,274 square feet of office on the second floor and the majority of first floor being parking. The applicant's attorney appealed that decision on March 18, 2008. The appeal was initially scheduled for City Commission consideration on May 6, 2008. However, the applicant requested the continuation given concerns over issues related to the ability of the City Commission to consider appeals of variance requests which are normally appealable to Circuit Court. On August 5, 2008, an LDR Amendment was processed and approved by the City Commission which allowed them to consider the variances as well as the Class V and the waivers that were initially part of this development proposal. Staff recommends approval of the request with the conditions identified on page two and three of the City Commission documentation. Mr. Dorling stated there are a couple of conditions that are slightly modified; one that required a waiver to be considered for a guest cottage and that relates to the original site and the second condition that is slightly modified that HPB originally considered relates to condition #10, which is a recommendation that the approval be accompanied by an application for an individual historic listing of this site to assure a current level of protection for this property when and if it is relocated within a historic district or out of a historic district.

The City Attorney for clarification stated there are three waivers and four associated variances and the conditions of approval are in the memorandum to the City Commission dated August 12, 2008.

Michael Weiner, 10 S.E. 1st Avenue, Delray Beach (speaking on behalf of the Applicant), stated this is a lengthy odyssey that began in 2007 and now is in August 2008 concerning what is construction of an office building. He stated the office building produces only about 5,200 square feet of air conditioned office space. Mr. Weiner stated Mr. Perez-Azua has given the appropriate transition so as to let CBD co-exist with our OSSHAD District.

Francisco Perez-Azua, 4205 West Atlantic Avenue, Delray Beach (Architect), gave a brief PowerPoint presentation regarding the parking, setbacks and elevations.

Mr. Weiner stated Jim has been working hard to make sure the house is going to be relocated and one of the expressions of interest is from the Community Redevelopment Agency (CRA). He handed out some materials to the Commission and stated with respect to relocation the first sentence reads: "The existing structure on the site is a contributing structure to the Old School Square Historic District, however, its historic setting has been drastically and irreversibly compromised by recent approvals for construction of a new four-story parking garage, Block 69 office building, and Worthing Place residential project." Mr. Weiner stated this is the conclusion of the staff report and they are agreement with it. Further, he stated compliance with the LDRs and with the Comprehensive Plan are also in the staff report and referred to Appendix "A" & "B" that talk about how they meet consistency and compatibility. Mr. Weiner stated this is exactly what they are doing in making this building transitional between OSSHAD (Old School Square Historic Arts District) and CBD (Central Business District) and also how they meet concurrency. He stated there were a lot of things that were necessary from a procedural standpoint for the Commission to consider variances and there are different approaches to variances in the City's Historic Board ordinance and one in our Board of Adjustment ordinance. Mr. Weiner stated they meet all of those criteria and if the Commission has questions about meeting what is called "J1" or "J2" he would be happy to answer them. He stated all of this is approximately 5,000 square feet of space and approximately 4,700 is air conditioned office space and it is 12 feet below what would be required in OSSHAD and noted that there is no attempt to get any kind of third story on this. Mr. Weiner stated considering how long the Commission has considered this and how they have given instructions to both the applicant and to staff to come up with appropriate transition, the developer and Mr. Perez-Azua have made every attempt in order to carry out what the Commission's instructions were to them.

Mayor Ellis stated if anyone would like to speak in favor or in opposition of the request, to please come forward at this time.

Claudia Willis, 160 Marine Way, Delray Beach, stated she disagrees with Mr. Perez-Azua's interpretation of the LDRs. She stated to move ahead with these waivers and variances we have to ignore LDR Section 4.5.1(E)(5) which states "relocation of historic buildings and structures to other sites shall not take place unless it is shown that their preservation on their existing or original sites is not consistent with the purposes of this Section or would cause undue economic hardship to the property owner." Mrs. Willis stated in order to proceed with removal of this house the applicant requests

this new construction with variances and noted the LDRs are very explicit with respect to removal and this house is consistent with this section and this client can realize reasonable and beneficial use or return on this property. She stated in preservation economic hardship is *not* the inability of an owner to maximize a property's economic return. Mrs. Willis stated as HPB did, she urges the Commission to find that these variances and waiver and therefore the resulting removal are inconsistent with the LDRs and deny this appeal.

Joann Peart, 107 N.W. 9th Street, Delray Beach, stated personally she has always liked Mr. Zengage and loves Mr. Perez-Azua's work in the district. In addition, Mrs. Peart stated she likes the idea that this is transitional and likes the changes they have made. She stated the first time this came to the Historic Preservation Board (HPB) she would have voted "yes" for this but the City had just gone through the new ordinances and the new LDRs, Mr. Gonzalez, and S.E. 7th Avenue wanting out of the district. Mrs. Peart stated every time we let a historic structure out of a district we are lessening the historic stock in that district and everybody has a reason or an excuse and everyone usually sounds good. She asked what is going to happen the next time the house next door says they are the only house on the block and they want off. Mrs. Peart stated because our districts are near downtown and tall buildings she feels this is going to be a domino affect. Mrs. Peart stated she understands that Delray Beach wants to be a "Preservation City" and an All-America City. She stated that St. Louis just won All-America City again after many years and 90% of their downtown is historic preservation. Mrs. Peart expressed concern about what will happen to our historic districts if the City keeps making exceptions.

Tom Carney, 1219 Vista Del Mar, Delray Beach, supports the appeal of HPB's decision and stated he is a member of the Community Redevelopment Agency (CRA) Board and they started looking at this project because of the change in the LDRs several months ago and spent time driving through the neighborhood to see whether it would or would not fit. Mr. Carney stated this has been approved for them to relocate the house to another location. He stated he is a big supporter of historic districts and lives in a 1935 house. At some point, Mr. Carney stated everyone has to understand that we are going to have transitions. He stated they have a nice job in the height, the massing, and considering the square footage the design is remarkably non-imposing. Mr. Carney urged the Commission to support the appeal.

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

There was no cross-examination from either Mr. Dorling or Mr. Weiner.

Mr. Dorling gave the following rebuttal:

Mr. Dorling stated with respect to the reference to compatibility to LDR Section 4.5.1(E)(5), it was noted in the staff report and states that "Pursuant to LDR Section 4.5.1(E)(5), relocation of historic buildings and structures to other sites shall not take place unless it is shown that their preservation on their existing or original sites is

not consistent with the purposes of this Section or would cause undue economic hardship to the property owner." It is noted that the historic setting has been drastically and irreversibly compromised by recent approvals for the construction of this new four-story parking garage (Block 69 office building and Worthing Place residential project). Mr. Dorling stated under those circumstances, required findings can be made to LDR Section 4.5.1(E)(5). Secondly, Mr. Dorling stated staff was not privy to the revised elevations that the applicant presented and feels they go a long way in addressing some of those items that were addressed by HPB. Mr. Dorling stated there were previously nine condensing units which were shown on the roof and he would like to ensure that the new design appropriately screens those (Condition #13).

Mr. Weiner gave the following rebuttal:

Mr. Weiner thanked Mr. Dorling for covering that important point about the condensing units. He stated that in the history of Delray Beach certain historic structures have been lost because they were in locations that were inappropriate and either through neglect, fire, or other kinds of casualties the City could not enjoy those historic structures. Mr. Weiner stated they are doing the opposite and will make sure that the structure is moved to an appropriate location. He stated that is why there is the word "unless" in that particular ordinance requiring that you can move a structure under certain circumstances and preservation is not consistent with the Section on this particular site because it is an inappropriate site as a result of actions taken by the City Commission over a period of years with the other neighboring zoning we had. Mr. Weiner stated as far as the economic hardship is concerned, he stated it is a 700 square foot building and commented that they are not maximizing their building because if they were they would try to at least go to the height that is allowed in the OSSHAD District. Under those conditions, Mr. Weiner stated all of the regulations are met. He pointed out that in the Marina Historic District there are houses as large as 8,100 square feet under air conditioning and stated they only have 4,787 square feet under air conditioning. He stated with respect to variances and waivers the Commission has granted waivers on many occasions on neighboring projects similar to this and the City's parking garage (although it was in CBD not under the restrictive OSSHAD regulations) required a variance in order to be built. Mr. Weiner stated they meet each and every requirement.

Mr. Fetzer commented about the 12 Conditions specified by staff and asked if the applicant is in concurrence with these conditions. Mr. Weiner stated they agree with each of the 12 conditions listed in the August 12, 2008 memorandum.

Mr. McDuffie stated he believes Condition #13 was added during discussion which is the nine condensing units to be adequately screened.

Mr. Eliopoulos suggested that a condition be made for staff to review those elevations and concurred that they do appear to address a lot of things that were in and brought up by HPB. He stated as Mr. Perez-Azua reviewed the elevations during his presentation there might have been another generation of elevations because what staff has is not the previous ones. Mr. Perez-Azua stated there were actually three; the original submittal, the one that went to HPB with modifications as per staff's request so he may

have the original submittal and the next generation which actually eliminates that parapet. Mr. Eliopoulos made reference to Condition #10 which states "That the relocation application contain an application for individual listing, even if the new location is within a designated historic district." Mr. Eliopoulos stated for the record that it has to be in a historic district. Mr. Eliopoulos stated he believes that this structure is respectful of the district and is a good transition and feels this site needs to have a great site, great visibility and should not be behind anything else.

The City Attorney stated she would like consensus from the Commission on the change in Condition #10.

Mayor Ellis stated she can see this structure fitting in appropriately in several areas in our City that it would fit in nicely and add to that particular neighborhood which may not happen to be in a historic district.

Mr. McDuffie stated he would not like for this Commission to see this house again and wherever it goes it needs to remain and be saved so that this Commission or another Commission does not have to take a look at demolishing a structure. He stated the house needs to be protected wherever it goes so that this Commission or another Commission does not have to take a look at demolishing the structure or doing something else with it again. Mr. McDuffie asked if Condition #9 covers that.

The City Attorney stated Condition #9 basically requires a Certificate of Appropriateness (COA) for relocating the house but it does not necessarily have to be relocated in the historic district although along with that relocation application needs to be for an individual designation as a historic structure even if it is outside of a historic district. The City Attorney stated if the Commission would like to make sure that it is in a historic district she suggested that Condition #10 be modified to state "the structure shall be appropriately relocated to a historic district and accompanied by an application for individual designation."

Mayor Ellis stated the designation is sufficient.

Mr. Bernard stated he agrees that it should be relocated to a historic district.

Mr. Fetzer stated he concurs with Commissioner McDuffie and Commissioner Bernard and would like to see this as part of Condition #10 as well.

It was the consensus of the Commission to modify Condition #10 that the structure be appropriately relocated to a historic district.

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).

At this point, the City Attorney clarified that the City Commission approves the appeal subject to Conditions #1-12 with Condition #10 being modified to state "that the structure shall be appropriately relocated to a historic district and accompanied by an application for individual designation." The City Attorney stated an additional condition (Condition #13) be added to state "that the air conditioning condensers will be screened."

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

At this point, the time being 7:16 p.m. the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 36-08 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) by amending Section 1.3.8, "Reconstruction Necessitated by an Act of God", Subsection (A) to provide for the ability to rebuild the pre-existing square footage in additional circumstances in the event of destruction by an act of God.

The caption of Ordinance No. 36-08 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 1.3.8 "RECONSTRUCTION NECESSITATED BY AN ACT OF GOD", SUBSECTION (A) TO PROVIDE FOR THE ABILITY TO REBUILD IN ADDITIONAL CIRCUMSTANCES, IN THE EVENT OF AN ACT OF GOD; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 36-08 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 a City initiated amendment to the LDRs. The current regulations allow residential and commercial structures that have been destroyed by an Act of God to rebuild in accordance with the use and number of units permitted by their respective Certificate of Occupancy (CO's). This amendment would add the term "square footage" to that list that would be permitted to rebuild to their current levels. Mr. Dorling stated this is being requested to address some concerns that were voiced during the recent adoption during the Lake Ida Neighborhood Design Guidelines and noted it would be Citywide in its application.

At its meeting of July 21, 2008, the Planning and Zoning Board considered this and unanimously recommended approval with a 4 to 0 vote.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Mr. McDuffie moved to adopt Ordinance No. 36-08 on Second and FINAL Reading, seconded by Mr. Bernard. Upon roll call the Commission voted as follows: Mr. McDuffie - Yes; Mr. Bernard - Yes; Mayor Ellis - Yes; Mr. Eliopoulos - Yes; Mr. Fetzer - Yes. Said motion passed with a 5 to 0 vote.

10.B. ORDINANCE NO. 34-08 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) amending Section 4.6.7, "Signs", Subsection (H), "Exempt Signs", Sub-subsection (10), "Temporary Signs", to clarify when temporary non-commercial signs placed on the public right-of-way or on private property require the owner's permission.

The caption of Ordinance No. 34-08 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 4.6.7, "SIGNS", SUBSECTION (H), "EXEMPT SIGNS", SUB-SUBSECTION (10), "TEMPORARY SIGNS", TO CLARIFY WHEN TEMPORARY NON-COMMERCIAL SIGNS PLACED ON THE PUBLIC RIGHT-OF-WAY OR ON PRIVATE PROPERTY REQUIRE THE OWNER'S PERMISSION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 34-08 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 a City-initiated amendment to the LDRs. Temporary non-commercial signs are currently allowed in the public rights-of-way. This proposed ordinance requires that permission from the adjacent private property owner first be obtained. Mr. Dorling stated it also provides clarification that allows temporary non-commercial signs on private property so long as the property owner's permission is obtained.

At its meeting of July 21, 2008, the Planning and Zoning Board considered this and unanimously recommended approval with a 4 to 0 vote.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 34-08, the public hearing was closed.

Mr. Eliopoulos moved to adopt Ordinance No. 34-08 on Second and FINAL Reading, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

10.C. ORDINANCE NO. 33-08 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) Section 4.5.9, "The Southwest Neighborhood Overlay District", Subsection 4.5.9(A), "Defined" and Article 4.7, "Family/Workforce Housing", Section 4.7.1, "Definitions", Subsection 4.7.1(p), "Southwest Neighborhood Overlay District," to modify the description and provide for expansion of the Southwest Neighborhood Overlay District.

The caption of Ordinance No. 33-08 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 4.5.9, "THE SOUTHWEST NEIGHBORHOOD OVERLAY DISTRICT", SUBSECTION 4.5.9(A), "DEFINED", AND BY AMENDING ARTICLE 4.7, "FAMILY/WORKFORCE HOUSING", SECTION 4.7.1, "DEFINITIONS", BY REPEALING SUBSECTION 4.7.1(p), "SOUTHWEST NEIGHBORHOOD OVERLAY DISTRICT" AND ENACTING A NEW SUBSECTION 4.7.1(p), "SOUTHWEST NEIGHBORHOOD OVERLAY DISTRICT", TO MODIFY THE DESCRIPTION AND PROVIDE FOR EXPANSION OF THE SOUTHWEST

NEIGHBORHOOD OVERLAY DISTRICT; PROVIDING
A SAVING CLAUSE, A GENERAL REPEALER
CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 33-08 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 a City-initiated to both the definition sections and the maps relating to the Southwest Neighborhood Overlay District. This change was implemented as part of Comprehensive Plan Amendment 2007-2 and this is the respective LDR Amendment to be consistent with that. He stated it adds an additional area along 12th Avenue between S.W. 2nd Street and S.W. 3rd Street to the designation of the Southwest Neighborhood Overlay District and the regulations which apply to that. Mr. Dorling stated its part of a larger private sector redevelopment initiative associated with the entire corridor of S.W. 12th Avenue.

At its meeting of July 21, 2008, the Planning and Zoning Board considered this item and unanimously recommended approval with a 4 to 0 vote.

Mayor Ellis declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Mr. Fetzer moved to adopt Ordinance No. 33-08 on Second and FINAL Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes. Said motion passed with a 5 to 0 vote.

10.D. RESOLUTION NO. 33-08/QUIT CLAIM DEED/AUBURN TRACE LTD.: Consider approval of Resolution No. 33-08 authorizing the City to release any interest that it has in the real property located in the vicinity of the Auburn Trace Development.

The caption of Resolution No. 33-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE
CITY OF DELRAY BEACH, FLORIDA,
AUTHORIZING THE CITY TO RELEASE ANY
INTEREST THAT IT HAS IN THE REAL PROPERTY
LOCATED IN THE VICINITY OF THE AUBURN
TRACE DEVELOPMENT AS MORE PARTICULARLY
DESCRIBED HEREIN.

(The official copy of Resolution No. 33-08 is on file in the City Clerk's office.)

- 1. ACCEPTANCE OF AN EASEMENT DEED/AUBURN TRACE LTD:** Approve and accept an easement deed granting the City the right to maintain construction and locate its lift station on Tract F of the Auburn Trace Plat.

The City Attorney stated this resolution seeks clear title to a portion of property and conveyed by Quit Claim Deed to Auburn Trace Limited our interest, if any, to track. She stated there is a dedication on the plat to the City of Delray Beach and we are going to substitute an easement for that and this will clear up any title problems they have. The City Attorney stated we still apparently have an easement that we need for the lift station.

Mr. Bernard declared a conflict of interest and stepped down from the dais.

Mayor Ellis stated if anyone would like to speak for or against the Resolution which pertains to the Quit Claim Deed and the Easement Deed to come forward at this time.

Mr. McDuffie stated he wants to make sure that he understands this correctly. The City of Delray Beach is Quit Claiming something to Auburn Trace and they are turning around and dedicating back to us through an easement instead of a dedication on the plat.

Mr. McDuffie moved to approve Resolution No. 33-08, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to approve acceptance of an easement deed granting the City of Delray Beach the right to maintain construction and locate its lift station on Tract "F" of the Auburn Trace Plat, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

At this point, Commissioner Bernard returned to the dais.

At this point, the time being 7:25 p.m. the Commission moved to **Item 11, Comments and Inquiries on Non-Agenda Items from the City Manager and the Public.**

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

In response to concerns expressed by Mr. Chuck Ridley and a resident in the Southwest neighborhood last week expressing concern about some crime problems in the neighborhood, the City Manager stated the Police Department is working very closely with that neighborhood and will continue to do so.

11. From the Public.

11.B.1. Carolyn Zimmerman, 212 S.W. 2nd Avenue, Delray Beach, regarding Mr. Chuck Ridley's concerns she stated they had the same problem in a great deal of the Southwest area. Miss Zimmerman stated they are proposing a meeting with the Chief of Police because the house across the street from her they took they the entire back end of the house off and went in and destroyed the inside of the house. She urged the City to pay better attention to this problem rather than just talking about it.

Secondly, Miss Zimmerman expressed concern about getting rid of animal control in the City. She stated eliminating animal control will not stop owners of pit bulls and noted there are teen gangs that own pit bulls and by not having someone who knows how to handle these dogs will not stop the trouble. Miss Zimmerman asked who will be taking care of the animals without animal control because the Police Department is already overloaded with what they have to do and she feels that the County will not be able to help the City right away. She expressed concern over the rabid animals that could potentially bite someone and what will happen if children get rabies. Miss Zimmerman stated there are now a lot of iguanas and coral snakes and both are illegal to have. She also expressed concern over feral cats. She stated the animal control responds to approximately 130-145 calls per month and picks up dogs and cats that are either sick or dead animals. Miss Zimmerman stated the County will not come to the City of Delray Beach for a sick or dead cat. She stated we cannot just stop taking care of these animals because of the budget and feels there are other things in the budget that could be eliminated.

11.B.2. Joann Peart, 107 N.W. 9th Street, Delray Beach, concurs with comments expressed by Carolyn Zimmerman about the Animal Control Officer. Mrs. Peart stated several years ago there was a problem in her neighborhood with bands of stray dogs killing people's cats. She commented that she had a huge iguana in her yard too.

11.B.3. Rosetta Rolle, 301 N.W. 3rd Avenue, Delray Beach, asked if there are copies of the budget available to the public.

The City Manager stated if Mrs. Rolle would like to come to City Hall staff can provide her a copy of the budget or a copy can be mailed to her.

Mrs. Rolle stated if the City does not have animal control we will have an overrun of animals in Delray Beach. Mrs. Rolle stated this has happened before and you

cannot call the police. She stated dogs and cats are especially a danger to older citizens and children and feels this is a health issue because when dogs and cats run loose they poop in public places and on people's lawns. She stated some people work in their yards with their hands and noted you can get ringworm. Mrs. Rolle expressed concern over the health of a community and stated we have to think of the citizens. She urged the Commission that before they do something drastic and take something out of the budget that they create a Task Force made up of individuals from the community to talk it over because that is what the citizens are for.

12. FIRST READINGS:

12.A. NONE.

At this point, the time being 7:33 p.m. the Commission moved back to the Regular Agenda.

9.B. APPEAL OF SITE PLAN REVIEW AND APPEARANCE BOARD DECISION/ MAROONE DODGE DEALERSHIP: Consider an appeal of the Site Plan Review and Appearance Board's decision regarding condition of approval that photometric plans be provided, and lighting be installed under awnings associated with a Class I Site Plan Modification for the two Maroone Dodge sites located at 700 & 706 N.E. 6th Avenue. (*Quasi-Judicial Hearing*)

Chevella D. Nubin, City Clerk, swore in those individuals who wished to address the Commission.

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 #2008-142 and #2008-143 into the record.

Paul Dorling, Director of Planning and Zoning, stated this is consideration of an appeal of the Site Plan Review and Appearance Board's (SPRAB) condition of approval that photometric plans be provided, and lighting installed under awnings associated with a Class I Site Plan Modification for two Maroone Dodge sites.

At its meeting of May 14, 2008, SPRAB tabled the Class I Site Plan Modification and requested clarification as to whether lighting was to be provided under the new awnings. The applicant submitted a letter dated June 25, 2008 indicating that the owner did not intend to provide lighting under the awnings and would like SPRAB to consider approving the awnings. Mr. Dorling stated the applicant came back before SPRAB on July 23, 2008, and SPRAB recommended approval with a 4 to 0 vote with the condition that the applicant provide lighting and photometric plans for the five awnings that were to be installed on two buildings located on both the east and west sides of N.E. 6th Avenue between N.E. 7th Street and N.E. 8th Street. The applicant has appealed that decision or that condition in that they contend that it is not consistent or compatible with

any LDR that currently exists. Mr. Dorling stated it is noted that in fact the LDR Section 4.6.8 refers to illumination levels and uniformity of lighting throughout outdoor parking areas and commercial sites. In staff's original recommendation of approval, they did not require any condition that lighting be provided as part of that Class I Site Plan Modification nor did the applicant offer that while lighting can be pursuant to LDR Section 4.6.8 (contrary to the applicant's assumptions), it would appear to be excessive in this instance. Staff supports the applicant's appeal of this condition at this time.

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

Mr. Eliopoulos inquired about the four sides of the building. Mr. Dorling clarified that this is five awnings on two buildings and believes it is on three sides. Mr. Eliopoulos stated he is hoping that SPRAB saw more and voted based on something more substantial than what the Commission has before them now. Mr. Dorling stated SPRAB saw a survey and the awnings identified on that survey with respect to the existing buildings from where these awnings would be located on the site.

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

9.C. THIS ITEM HAS BEEN WITHDRAWN FROM THE AGENDA PER THE APPLICANT'S REQUEST.

9.D. DEVELOPER'S AGREEMENT/CANNERY ROW, LLC: Review of the Developer's Agreement between the City and Cannery Row, LLC for compliance with the terms of the Agreement executed May 8, 2007.

Commissioner Eliopoulos declared a conflict of interest and stepped down from the dais.

Brian Shutt, Assistant City Attorney, stated approximately one year ago the City of Delray Beach entered into a Developer's Agreement with the Developer for Cannery Row. Mr. Shutt stated Florida Statutes requires the City on an annual basis to review the Developer's Agreement to make sure that the developer has complied with the terms of the agreement. He stated there were two terms in the agreement that they dedicate the Northeastern parcel to the City for a park which they have done on the plat and that the City of Delray Beach enter into a Purchase and Sale Agreement for a parcel on the Southeastern part of the project. Mr. Shutt stated when the development gets to

that point they will notify the City and then it will come before the Commission to make a decision on whether they would like to purchase the land, the building, or do nothing. Mr. Shutt stated they have complied with those terms and this is now before the City Commission for approval that they comply with the terms of the agreement.

Mayor Ellis asked if this is an extension. The City Attorney stated this is not an extension but it requires an annual review of the compliance with the terms. The City Attorney stated originally staff wanted some timelines in the agreement that the City Commission did not support so now it is open ended.

Mr. Fetzer moved to approve the Developer's Agreement between the City of Delray Beach and Cannery Row, LLC for compliance with the terms of the Agreement executed May 8, 2007, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Bernard - Yes; Mayor Ellis - Yes; Mr. Fetzer - Yes; Mr. McDuffie - Yes. Said motion passed with a 4 to 0 vote.

At this point, Commissioner Eliopoulos returned to the dais.

9.E. PUBLIC COMMENTS/FY 2009 PROPOSED BUDGET: The City Commission will hear public comments, if any, regarding the FY 2009 Proposed Budget at this time.

None.

9.F. BID AWARD/WEST CONSTRUCTION, INC./LINTON BOULEVARD BRIDGE TENDER HOUSE RENOVATIONS: Consider approval of a bid award to West Construction, Inc. second low bidder, in the amount of \$208,010.00 for Linton Boulevard Bridge Tender House Renovations. Funding is available from 334-3162-541-46.05 (General Construction Fund/Public Works Road & Streets/Linton Blvd Tender House).

Richard Hasko, Director of Environmental Services, stated staff is recommending award of the second low bidder for the construction of improvements to the Linton Boulevard Bridge Tender House Renovations. Mr. Hasko stated we are getting participation from Palm Beach County on this project not to exceed \$100,000.00 as a reimbursable grant. He stated there were three bidders and they came in very close. The apparent low bidder was McCabe Brothers Construction at \$197,103.83; West Construction, Inc. was \$208,010.00; and the high bidder was \$235,010.00. Mr. Hasko stated the reason that staff is recommending to award to the second bidder has to do with some concerns the City has. He stated staff is not suggesting that McCabe Brothers Construction is not qualified. Mr. Hasko stated McCabe has done work in the City before but staff is concerned about performance with regard to starting projects on time. He stated there is some indication that there is some commonality between McCabe and another contractor that the City had working on entirely different type of work in terms of personnel, staff, and officers that we had some issues and challenges on completing. Mr. Hasko stated that together with the fact that we have a very good relationship with West Construction in terms of the project that they have done in the City which is much more

parallel with this type of work than some of the projects that were submitted or referred to by McCabe in terms of the type of work that this is. Mr. Hasko stated staff feels very confident that West Construction would be able to complete this project in a timely fashion for the budget that we have.

Mr. Eliopoulos moved to approve the bid award to West Construction, Inc. (second low bidder) in the amount of \$208,010.00 for the Linton Bridge Tender House Renovations, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes. Said motion passed with a 5 to 0 vote.

9.G. SELECTION OF EAGLE NEST HOMEBUYER: Consider the selection of a first, second and third ranked applicant so that the Neighborhood Services Division may secure a buyer for the Eagle Nest home located at 46 N.W. 12th Avenue.

Lula Butler, Director of Community Improvement, stated staff is requesting that the Commission select a first, second and third ranked application as solicited by the City's Neighborhood Services Division for the purchase of the Eagle Nest house located at 46 N.W. 12th Avenue. In 2005, the City entered into a multiparty/interlocal agreement between the City of Delray Beach, the Community Redevelopment Agency (CRA), the Chamber of Commerce, Palm Beach County School Board and the Atlantic High School Career Academy to build this house. Mrs. Butler stated the City donated the lot, the CRA loaned the construction money, the Chamber of Commerce helped solicit volunteer services from different contractors and the School District has allowed their Construction Academy to do this work. She stated they have spent two years building the house and are approximately 90% finished. Mrs. Butler stated what the City agreed to is that we would provide the eligible homebuyer through the City's Renaissance Program; however, the City no longer has the Renaissance Program. Therefore, Mrs. Butler stated her staff solicited an advertisement for eligible buyers and had 15 people who came forward and three of those 15 actually met the qualifications. Staff requests the Commission to rank those three qualifiers.

Mayor Ellis asked if the applicants had to prove that they could obtain that mortgage. In response, Mrs. Butler stated the three qualifiers have been pre-qualified.

The City Attorney stated the #1 choice is Adams, the #2 choice is Williams, and the #3 choice is McGriff.

Mr. Fetzer moved to approve Adams as #1 choice, Williams as #2 choice, and McGriff as #3 choice, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Bernard – Yes; Mr. McDuffie – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

Mayor Ellis stated she remembers the ground breaking ceremony for this project and those students and the contributors to making this happen. She stated it was truly a dream that nobody thought would make it through. Mayor Ellis stated we now

have people that want to move into the home and are truly deserving of it. She stated this program will continue and encouraged everyone to drive by and take a look because it is very nice house.

9.H. OLD SCHOOL SQUARE RETAIL SPACE/LETTER OF INTEREST/ARTIST ENRIQUE MARTINEZ CELAYA: Provide direction regarding a letter of interest from Artist Enrique Martinez Celaya for the sale of the Old School Square Retail Space.

1. CONTRACT AWARD/COASTAL COMMERCIAL GROUP/REAL ESTATE BROKERAGE AND MARKETING SERVICES/OLD SCHOOL SQUARE RETAIL SPACE:

Consider approval of a contract award to Coastal Commercial Group in an amount of \$5,674.00 to \$11,564.00 plus postage costs for real-estate brokerage and marketing services for the Old School Square retail space. Funding is available from 380-4150-572-31.90 (2004 G.O. Bond/Professional Services/Other Professional Services).

The City Attorney stated this is a letter of interest regarding the space from Coastal Commercial Group (Ingrid Kennemer) on behalf of Artist Enrique Martinez Celaya. She stated there are references to Mr. Celaya and his art in the City Commission backup.

Mayor Ellis stated Mr. Eliopoulos summed it up at their previous meeting that we have been chasing this market around in a circle and they want to sell this property. She stated the Commission would like this property to be something appropriate for where it is located and they have been talking about awarding the Request for Proposal (RFP) to a broker that would bring us potential clients so that we could accomplish this.

Mr. Eliopoulos concurred with comments expressed by Mayor Ellis. Mr. Eliopoulos stated Pineapple Grove is the City's art district and to have someone of Mr. Celaya's fame there is very exciting. Mr. Eliopoulos stated he would like to keep all options open and should we award the RFP let the brokers do it and bring everybody and anybody to the City.

The City Attorney stated in the RFP the response the City got was 5% commission and the broker is the sole broker or 6% if it is a shared commission. She stated at the time (because it was over a year ago) that the commission would be paid by the purchaser.

Mr. McDuffie stated he is in concert with this and feels we need to move this along.

Mr. Eliopoulos moved to approve the contract award to Coastal Commercial Group/Real Estate Brokerage and Marketing Services, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

9.I. COMMISSION LIAISON ASSIGNMENTS/SEAT #4: Discussion regarding City Commission Seat #4 Liaison Assignments to various Advisory Boards and outside agencies.

Mr. Fetzer moved to substitute Commissioner Bernard for former Commissioner Montague's liaison assignments, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

9.J. SELECTION OF NEW DEPUTY VICE MAYOR: Select a new Deputy Vice Mayor to serve until March 26, 2009.

Mr. McDuffie moved to nominate Commissioner Eliopoulos as the new Deputy Vice Mayor to serve until March 26, 2009, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.K. RESOLUTION NO. 35-08: Consider approval of Resolution No. 35-08 amending Resolution No. 55-07 adopted September 18, 2007, Resolution No. 16-08 adopted May 6, 2008 and Resolution No. 24-08 adopted July 1, 2008, which made appropriations of sums of money for all necessary expenditures of the City of Delray Beach, Florida, for FY 2007/2008, by setting forth the anticipated revenues and expenditures for the operating revenues and expenditures for the operating funds for the City FY 2007/2008.

The caption of Resolution No. 35-08 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING RESOLUTION NO. 55-07 ADOPTED SEPTEMBER 18, 2007, RESOLUTION 16-08 ADOPTED MAY 6, 2008 AND RESOLUTION NO. 24-08 ADOPTED JULY 1, 2008, WHICH MADE APPROPRIATIONS OF SUMS OF MONEY FOR ALL NECESSARY EXPENDITURES OF THE CITY OF DELRAY BEACH, FLORIDA, FOR THE FISCAL YEAR 2007/2008, BY SETTING FORTH THE ANTICIPATED REVENUES AND EXPENDITURES FOR THE OPERATING FUNDS OF THE CITY FOR

THE FISCAL YEAR 2007/2008; REPEALING ALL
RESOLUTIONS INCONSISTENT HEREWITH.

(The official copy of Resolution No. 35-08 is on file in the City Clerk's office.)

The City Manager stated this is an amendment to the Community Development Fund. The major part of it is to add to the budget the Community Redevelopment Agency's (CRA) contribution for rehabilitation of 135 N.W. 5th Avenue. The City Manager stated this is property owned by the CRA; however, the City of Delray Beach will be handling the construction for them. He stated a couple of other minor things are the grant from the Delray Housing Authority and some fourth quarter SHIP revenue. The City Manager stated this does not affect the General fund it only affects the Community Development Fund.

Mr. Eliopoulos moved to approve Resolution No. 35-08, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes. Said motion passed with a 5 to 0 vote.

9.L. APPOINTMENT TO THE BUDGET TASK FORCE: Appoint one (1) alternate member to the Budget Task Force to serve an unexpired term ending July 31, 2009. Based upon the rotation system, the appointment will be made by Commissioner Eliopoulos (Seat #1).

Mr. Eliopoulos moved to appoint Mark Denkler as an alternate member to the Budget Task Force to serve an unexpired term ending July 31, 2009, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

9.M. APPOINTMENTS TO THE SITE PLAN REVIEW AND APPEARANCE BOARD: Appoint five (5) regular members to the Site Plan Review and Appearance Board to serve two (2) year terms ending August 31, 2010. Based upon the rotation system, the appointments will be made by Mayor Ellis (Seat #5), Commissioner Eliopoulos (Seat #1), Commissioner Fetzer (Seat #2), Commissioner McDuffie (Seat #3) and Commissioner Bernard (Seat #4).

Mayor Ellis stated she wished to reappoint Mark Gregory as a regular member to the Site Plan Review and Appearance Board to serve a two (2) year term ending August 31, 2010. Mr. McDuffie so moved, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

Mr. Eliopoulos moved to reappoint Shane Ames as a regular member to the Site Plan Review and Appearance Board to serve a two (2) year term ending August 31, 2010. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

Mr. Fetzer moved to appoint James Borsos as a regular member to the Site Plan Review and Appearance Board to serve a two (2) year term ending August 31, 2010, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Bernard – 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 appoint Chris Stray as a regular member to the Site Plan Review and Appearance Board to serve a two (2) year term ending August 31, 2010, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes. Said motion passed with a 5 to 0 vote.

Mr. Bernard moved to appoint Jerome Sanzone as a regular member to the Site Plan Review and Appearance Board to serve a two (2) year term ending August 31, 2010, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes. Said motion passed with a 5 to 0 vote.

9.N. APPOINTMENTS TO THE BOARD OF ADJUSTMENT: Appoint three (3) regular members and two (2) alternate members to the Board of Adjustment to serve two (2) year terms ending August 31, 2010. Based upon the rotation system, the appointments will be made by Commissioner Eliopoulos (Seat #1), Commissioner Fetzer (Seat #2) and Commissioner McDuffie (Seat #3).

Mr. Eliopoulos moved to reappoint Clifton Miller as a regular member to the Board of Adjustment to serve a two (2) year term ending August 31, 2010, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

Mr. Fetzer moved to reappoint Bernard Federgreen as a regular member to the Board of Adjustment to serve a two (2) year term ending August 31, 2010, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Mr. Bernard – Yes; Mayor Ellis – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

Mr. McDuffie stated he would like to defer his appointment to the next Regular Meeting of September 3, 2008.

At this point, the time being 8:14 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 the Boynton Beach Police Department was extremely complimentary of Delray's paramedics and the way they handled the shooting that occurred and the care they gave their Police Officer.

Secondly, he stated the Florida League of Cities (FLC) conference was good. The City Manager explained he went to one session on "Going Green without Going Broke" and it was very interesting. The City Manager stated the first general session speaker was Jim Lovell talking about the Apollo 13 mission and he drew some analogies between that and the circumstance of what local governments face in Florida.

Lastly, the City Manager stated he is looking forward to the Budget Workshop Meeting next week (Tuesday, August 26, 2008).

13.B. City Attorney

The City Attorney stated they had a trial that concluded yesterday and there may be some post hearing motions. She stated the City was found liable 10 percent and the other parties 90 percent and this is the result of the Hoeffert v. the City of Delray Beach case.

13.C. City Commission

13.C.1. Mr. Fetzer

Mr. Fetzer thanked the City Manager for his memorandum regarding the economic impact of the tennis tournaments and stated he would like the opportunity at one of the budget workshops to talk about this a little bit more because there is good information in the memorandum that needs to be reviewed.

Secondly, Mr. Fetzer stated there were several people that have talked about animal control and doing away with the Animal Control Officer in the budget. He stated at the last Workshop Meeting he asked for some more information regarding this and the impact assessment of what we are really trying to do. Mr. Fetzer stated another issue that was discussed at the Workshop Meeting was the figures that were given regarding the amount of water that is treated but not being billed. Mr. Fetzer asked if this is being worked on to analyze what is causing that or if those numbers were accurate. The City Manager stated the numbers themselves are accurate. The City Manager stated he does not expect that we will have a final answer to that within the next month or so but staff is aggressively working on it.

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

Mr. Eliopoulos commented about the chart that was emailed to the City Commission showing how the water is getting pumped. He stated he too would like to see how this problem works out.

Secondly, Mr. Eliopoulos stated at Miller Park at the south end of the parking before you enter the large parking lot there used to be a stop sign there. He stated from what he can tell the sign disappeared probably during the storm. Mr. Eliopoulos stated when the cars are coming up that way and there are also cars coming out of the parking lot no one is stopping (north of Dotterel Road) and there is potential for an accident.

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

Mr. McDuffie commented about a meeting he had with the agent for one of the bidders on the beach concession. He stated he met with the attorneys for one of the bidders along with the bidder himself. Mr. McDuffie stated he would like to discuss some of their concerns with the City Manager and is pretty certain this can be resolved.

Secondly, Mr. McDuffie commented about the animal control situation and asked if the City feels the County can actually pick up the slack. The City Manager stated the County will not provide the quality of service that the City of Delray Beach has been providing.

Mr. McDuffie stated he had a wonderful extended weekend in St. Augustine a short time ago and feels it is the greatest example of historic preservation in the State of Florida. He stated he stayed in a Bed and Breakfast and saw beautiful homes that were restored impeccably. However, Mr. McDuffie stated he walked around and got into some areas that were not in the area that catered to tourists and found some old structures have become so blighted that it is unbelievable. He stated some of these structures had sheets of plywood nailed on them, roughly painted over, screens knocked out, and doors missing. Mr. McDuffie stated it was such a contrast from just a few blocks away. He stated the Commission made a decision this evening to save a gorgeous contributing historical structure by actions they took tonight which was "out-of-the-box" thinking but feels that is what it takes to look at how we can save all these structures. Mr. McDuffie stated the City needs to look at some other ways that we can do some other things for some of the other structures that are out there so that we do not turn around in a couple of years and find ourselves in the position that St. Augustine has found themselves in where they have some structures that are crumbling just outside the tourist attraction area of their city. Mr. McDuffie stated he feels the Commission did a good thing tonight and feels we need to think about things like that and look at our alternatives in saving these historic structures.

Lastly, Mr. McDuffie thanked the Forgotten Soldiers and everyone for recognizing his son tonight.

13.C.4. **Mr. Bernard**

Mr. Bernard stated he received numerous telephone calls regarding the animal control especially from the Southwest area. He stated he had a meeting with Mr. Chuck Ridley and the homeowners association and it appears that the residents had a lot of problems in regards to loose dogs in the neighborhood. Mr. Bernard stated he would like to see if the City can take care of the dog issues that are going on in the Southwest area. He stated Community Patrol, the Police Captain and the Chief of Police were there and he believes they are working to try and make that neighborhood a little better.

Secondly, Mr. Bernard stated his wife is having contractions and he will be at the hospital for the next couple of days.

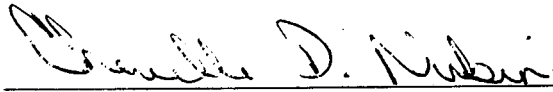
13.C.5. **Mayor Ellis**

Mayor Ellis stated with regard to comments expressed by the public regarding animal control, she stated although everyone said to keep the Animal Control Officer not one person had a solution as to where this money could come from. She stated the Commission has struggled with what is going to be cut and what is going to make it. Mayor Ellis stated we should encourage these people who have these personal issues to think of a solution that would help the Commission in order for them to get what they want.

Secondly, she stated she enjoyed the FLC conference in Tampa this weekend and she particularly liked the Mayors' Conference that they had one day. Mayor Ellis stated we all have the same problems but feels that when you begin to talk about them you begin to see how just tweaking things a little bit will give you some different ideas.

Lastly, Mayor Ellis commented on the Municipal Solutions Report the Commission received at the Workshop Meeting last week. She stated although there are some issues that need to be addressed the consultant was very flattering of our financial savvy and not that it has just happened in a year but that it has happened over the last 20 years. Mayor Ellis stated the report also mentioned that the departments have a spirit of providing excellent service and it spreads from the department heads down to the departments and it was very evident to them. Mayor Ellis stated she is very proud of that and feels the City Manager deserves a lot of the credit for this.

There being no further business, Mayor Ellis declared the meeting adjourned at 8:34 p.m.



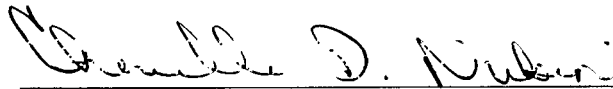
City Clerk

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 August 19, 2008, which Minutes were formally approved and adopted by the City Commission on September 3, 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.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Eliopoulos, Gary P.</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Delray Beach City Commission</i>
MAILING ADDRESS <i>205 George Bush Boulevard</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Delray Beach Florida 33444</i>	COUNTY <i>Palm Beach</i>
DATE ON WHICH VOTE OCCURRED <i>8/19/2008</i>	NAME OF POLITICAL SUBDIVISION: <i>City of Delray Beach</i>
	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

Item 7.D - 8/19/08

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Cory Elipoulos, hereby disclose that on August 19, 2008:

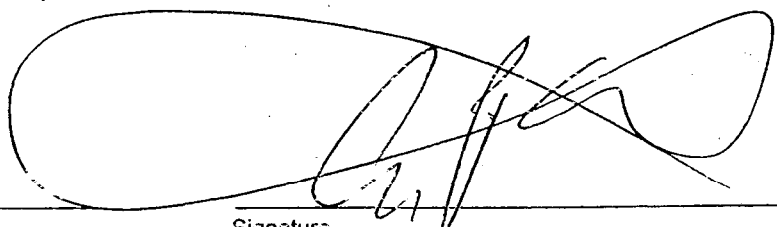
(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, Elipoulos Architecture, Inc.
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

8/19/2008

Date Filed



Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME DEBNAID, MACKENSON	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE City Commission
MAILING ADDRESS 1534 Lexington Place	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY Delray Beach	COUNTY Palm Beach
DATE ON WHICH VOTE OCCURRED 8/19/08	NAME OF POLITICAL SUBDIVISION: City of Delray Beach
MY POSITION(S): <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTEE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

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For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, MACHENSON BERNARD, hereby disclose that on 08/19, 2008.

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Represented Client

08/19/08
Date Filed

Machenson Bernard
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.