

**MINUTES OF THE PLANNING AND ZONING BOARD  
PUBLIC HEARING/REGULAR MEETING**

CITY OF DELRAY BEACH  
DELRAY BEACH, FLORIDA

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MEETING DATE: February 27, 2012

LOCATION: Environmental Services Department, TRAINING ROOM

MEMBERS PRESENT: Mark Krall, Cary Glickstein, Al Jacquet, Gerry Franciosa, and Clifford Durden

MEMBERS ABSENT: Connor Lynch, and Craig Spodak

STAFF PRESENT: Mark McDonnell, Brian Shutt, and Denise Valek

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I. CALL TO ORDER:

The meeting was called to order by Chairman Glickstein at 6:00 p.m. Upon roll call it was determined that a quorum was present.

II. MINUTES

Motion made by Mr. Franciosa, seconded by Mr. Krall, and approved 5 to 0 the December 19, 2011 Minutes as written.

Motion made by Mr. Jacquet, seconded by Mr. Durden and approved 5 to 0 the January 23, 2012 Minutes with the following changes: Page 11 – 3<sup>rd</sup> paragraph add single before family, and Page 12 – change vote 6 to 1.

III. COMMENTS FROM THE PUBLIC: None

IV. PLANNING AND IMPLEMENTATION ITEMS:

A. Annual Infrastructure Hearing – Acceptance of Public Comments pertaining to City-wide Infrastructure Improvements.

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Mr. James Smith, 2025 S. Ocean Boulevard, comments are listed below:

- 1) Repair cement headers between the bricks and asphalt at the Atlantic Ave/A1A Intersection. The existing headers are breaking up, and the bricks are unstable resulting in a deteriorating road surface.

Problems: some loss of vehicle control, tire wear, and front end alignment damage.

Consider replacing the bricks with faux bricks (similar to the crossing at Atlantic Avenue and E. 7th Avenue). The visuals are almost as good as real bricks and would be much easier to maintain.

- 2) Pedestrians are standing in the street in front of the Luna Rosa Cafe waiting to be seated. Also, there is a lot of jaywalking in that general location. An ascetically pleasing barrier should be constructed to restrict the flow of pedestrians into the street and route pedestrians to the A1A/Atlantic Ave traffic signal. Also, a barrier would prevent vehicles from jumping the sidewalk and

crashing into diners (as happened at 32 East). The owner of Luna Rosa supports the installation of such a barrier.

- 3) Stop deferring sidewalk construction where a property immediately abuts an existing sidewalk.
- 4) Vehicles travelling on A1A routinely travel 10 mph over the speed limit (some 20 - 30 mph over).

Delray Beach is the only municipality in Palm Beach County that does not enforce the speeding law along A1A. As an alternative to enforcing the speed limit, traffic calming is a viable alternative.

- 5) Add more landscaping along the west side of A1A. Highland Beach could be used as a model.
- 6) Encourage A1A homeowners to relocate their mailboxes from the edge of the street.

These homes have long since been considered rural delivery. It's dangerous for mail deliverers, other vehicles, bicyclists, and pedestrians. Also, these mailboxes detract from the appearance of A1A.

- 7) Plant dense landscaping on the west side of Atlantic Dunes Park to channel pedestrians to the signalized crosswalk.

Now, instead of pedestrians using the signalized crosswalk, they are crossing willy-nilly from the various parking lots.

- 8) Several of the pedestrian signals on Atlantic Avenue are not accessible. The pedestrian signal on the southeast side of East 4th Avenue is one example.
- 9) Delray Beach has neither a single, safe East/West bicycle route from Military Trail to A1A, nor a City North/South bicycle lane.

Suggest that the following future through routes be included in the comp plan:

- i. Lowson Avenue and South 10th Street from Military Trail to Federal Highway.
  - ii. Lake Ida Road and South 4th Street from Military Trail to Federal Highway and continuing on George Bush Boulevard between Federal Highway and A1A.
  - iii. Swinton Avenue from South 10 Street to North 4th Street.
- 10) For new construction, require a minimum sidewalk width of 6'. Narrower widths do not encourage walking.
  - 11) Extend the existing A1A sidewalk on the west side, northward to Beach Road. This has been recommended by Staff in the past and FDOT said that they would do it, at no cost to the City.

- 12) Widen the existing sidewalk on the east side of A1A and provide for a designated lane for bicyclists and rollerbladers.

Some have suggested a second meandering sidewalk instead of widening the existing sidewalk; however, this will not result in the separation of bicyclists, rollerbladers, etc. from pedestrian traffic.

- 13) Annually budget a fixed amount for the construction of new sidewalks and bicycle lanes. Suggest a minimum of \$100,000 for each. Funds not used should be reserved and carried forward to future years.

- 14) Improve A1A Street.

Ms. Margie J. Walden, 6103 Caladium Road, advised she is Executive Vice President of the Alliance of Delray Residential Associations, Inc. She advised there are several issues with The Boy's Market located on Military Trail in Delray Beach. The parking lot is extremely dangerous and the barriers should be taken away to make the parking lot less congested. A signal needs to be placed at 143<sup>rd</sup> Place and Lakeside Boulevard. In 2006, a plan was presented to the Planning and Zoning Board, but was never instituted. Is there something that can be done about it? Better lighting needs to be installed on West Atlantic Avenue between Swinton Avenue and I-95.

Ms. Deb Sullivan, Kevro's Art Bar, advised they would like SE 1<sup>st</sup> Street to become a two way street as it will help with traffic flow, and help slow down the speeding valets. Ms. Sullivan wanted to thank Mr. Harden for keeping us in the loop regarding the City's efforts. Traffic can barely get through SE 2<sup>nd</sup> Avenue. We should encourage all the residents to help keep the public areas neat. The City should provide any updates on the FEC railroad and people movers. Ms. Sullivan advised the area is known as the South Side.

Mr. Glickstein advised he never heard of that area being called the South Side. It would be nice to brand that area.

Mr. Jacquet advised in regard to SE 1<sup>st</sup> Street it seems like every week there is an accident with people travelling in the wrong direction.

Ms. Alice Finst, 707 Place Tavant, advised we need traffic control at Carver Middle School and Barwick Road. There are children riding their bikes and playing basketball in that area. The lighting needs to be looked at as well.

Mr. Glickstein advised we need crosswalks, and more Code Enforcement Officers. Maybe that should be the no. 1 priority. I also think we need more lighting east of Swinton Avenue. Mr. Glickstein inquired if we were going to present this item to the Planning and Zoning Board next month. Planning and Zoning should finalize these comments into a memo and consider them for inclusion into the upcoming CIP program.

Mr. Jacquet advised in Osceola Park, between SE 3<sup>rd</sup> and SE 2<sup>nd</sup>, the sewers back up from a nearby restaurant. I think something needs to be done about that. Also, on SE 2<sup>nd</sup> St. and SE 3<sup>rd</sup> Avenue, there is a problem when the valets come from Atlantic Avenue turning onto 2<sup>nd</sup> Street there are always cars backed up. Something should be done to open it up.

Mr. Durden advised there is a problem in Chatelaine and we need traffic calming on Chatelaine Boulevard and Avenue Serrant, as well as additional lighting in the development.

Mr. Glickstein inquired if 1<sup>st</sup> Street is the only remaining one way in the downtown.

Mr. Glickstein advised a few years ago, there was some discussion about paving the alleyways in the southwest section. What came of that? I thought the neighborhood wanted it. Nothing has been done over there. Those unpaved areas seem to be just hanging out collection areas. If they were paved, it would make more sense in the neighborhood.

V. PUBLIC HEARING ITEMS:

- A. Privately-initiated amendment to the Text of the Comprehensive Plan modifying the description of the GC (General Commercial) Future Land Use designation to identify specific uses and intensities (FARs) for Delray Place, located at the southeast corner of Linton Boulevard and South Federal Highway; and associated Small-Scale Future Land Use Map amendment from TRN (Transitional) to GC (General Commercial); and Rezoning from POC (Planned Office Center) to PC (Planned Commercial) for said property. Quasi-Judicial Hearing.

Ex-Parte Communications:

Mr. Franciosa spoke with several people. Mr. Jacquet visited the site.

Mr. McDonnell entered project file no. 2012-058 and 2012-059 into the record.

The subject property is located at the southeast corner of Linton Boulevard and Federal Highway and is approximately 9.95 acres in size. The property is known as the Old Harbor Office and Bank Facility and it is currently occupied by three office buildings: two multiple-story office buildings (one located to the north of the property and the other to the south), and a one-story multiple tenant office building located to the east side of the property along Linton Boulevard.

The property was originally annexed into the City of Delray Beach from unincorporated Palm Beach County in the late 1970's. The property was assigned the Future Land Use Map designation of Transitional (TRN) and a zoning of SAD (Special Activities District) and it was developed with three office buildings and associated parking simultaneously with the annexation. In 1991, the City of Delray Beach adopted new Land Development Regulations and the property was assigned the new zoning designation of POC (Planned Office Center) and retained the Future Land Use Map Designation of TRN (Transitional).

This application amends the Future Land Use Map designation of the property from TRN (Transitional) to General Commercial (GC) and changes the zoning from Planned Office Center (POC) to Planned Commercial (PC) and is now before the Board.

The development proposal is not within a geographical area requiring review by the DDA (Downtown Development Authority) or CRA (Community Redevelopment Agency).

Courtesy Notices:

A special courtesy notice was provided to the following homeowners and/or civic organizations:

- Neighborhood Advisory Council
- Tropic Isle Civic Association
- Domain Delray
- Delray Citizen's Coalition
- Banyan Tree Village
- Andrea Poveda, Student Advisor

Mr. Franciosa advised the property to the south has only one multi-family unit and the rest are single-family homes.

Mr. McDonnell advised the amendment also changes the text of the Comprehensive Plan. We are primarily changing from TRN (Transitional) to GC (General Commercial), which would increase the FAR from 1 to 3. They will drop the development potential with the proposed text amendment to limit it to 0.46 in order that it meets transportation concurrency. We have done this in other areas to reduce the FAR ratio so that transportation concurrency will work.

Mr. Jacquet inquired why the standards A, B, C, and E for rezoning are not applicable, and what are they.

Mr. Franciosa inquired when would this get to the public. Mr. Franciosa inquired if the commercial zoning was going to be different. Mr. McDonnell advised the buffer is either 15 feet or 25 feet. Mr. Franciosa advised we need to know that. Mr. Franciosa inquired if that would change in the report.

Mr. Glickstein advised to clarify your question, it is relating to the review of the redevelopment plan for South Federal Highway as to whether they are going to change any landscape buffer. Mr. Franciosa inquired if it was going to be different. The reason we are doing that is because of Walmart and the size of the buildings. What is the size of the building now? The commercial requirements under this zoning now will be different. People were worried about big box stores. Mr. McDonnell advised future development will be under the existing regulations. We will ensure there is sufficient buffering.

Mr. Jacquet inquired if future development would be under the old regulations. Mr. McDonnell advised that was his understanding.

Mr. Glickstein inquired if the South Federal plan is an overlay. Mr. McDonnell advised yes it was. Mr. Glickstein inquired if the old rule would apply. Mr. McDonnell advised they would be grandfathered in and we sent a zoning verification letter. Whether or not that grandfathering is afforded the applicant prior to them submitting a development plan, I am not certain. Maybe the applicant has had some conversations with the Planning Director. I reviewed the zoning verification letter that asked, "when we move forward, will we be under the new regulations or existing regulations?" I was told it was the existing regulations.

Applicant:

Mr. Joseph Carosella, RPG, Inc. advised he is the new owner of the property. There are positive findings in the report. I would like to clear up a few items. FAR is a

number attached to a piece of property when you do a corporate plaza as a maximum density of how it can be developed? That does not mean that is how you are going to develop it. On this property, an FAR of 1 equals 433,000 sq. ft. When you apply the 3 allowed by the GC designation, it is 1.3 million sq. ft. of building. We are suggesting a maximum of .46 as a text change which equates to a maximum of residential suggesting a maximum of 200,000 sq. ft. The second part of the equation, in the comprehensive plan, you are forced to look at the maximum intensity of the development. We are only talking about the maximum intensity. Maximum FARs do not apply to residential. In the proposal, we can have office, retail, commercial, and residential. We are currently looking at all those options. We do not have a tenant signed up yet. We have talked to a lot of people. We have done a lot of site plans in terms of looking for different alternatives. The whole site could be commercial or residential. Office is not viable but it could be part of a mixed-use development. When you look at these ratios, the .46 will allow us to have the flexibility to come up with a plan. At this point we are trying to build as much flexibility into the site so we have that flexibility.

Mr. Glickstein inquired what is there now. Mr. Covelli advised it is about 100,000 sq. ft. of office, a one story office building on the Linton Boulevard side. Mr. Glickstein inquired of the 35 site plans, what does the 35<sup>th</sup> look like? Mr. Covelli advised the first 10 we did were for area analysis to see how much parking you need. Let me talk about the buffer issue. The code gives you different buffers depending on the use. If you have residential against residential the buffer is very different. We have the ability to do residential here. Right now we are looking at land use and zoning. If we were to do commercial or mixed-use, the buffers are very different. The nature of the use will determine what the buffer is in terms of the compatibility. Depending on what the ultimate use is, it is going to be the job of the Board and staff to come up with a proper buffer. If you have different uses, obviously you have to deal with it in a different way, so at the end of the day, the staff and the approving Boards can say what is compatible. There is no set number at this point.

Mr. Glickstein advised this Board has to look at what is the probability of the most intense use and in my view that would be GC. What is the buffer now for GC? Mr. Covelli advised the number has been anywhere between 15 and 25 feet that I have seen around town. Mr. Glickstein inquired if there is a minimum when the Site Plan Review and Appearance Board (SPRAB) gets a staff report, what are they seeing in there as a minimum regardless of what you are providing? Mr. Covelli advised as an example, if you were to put commercial against residential you are going to have to build a wall. There are landscape requirements you have to have hedge material and trees every so many feet. You have to deal with foundation issues of the wall the location of the wall, and based on what that landscape requirement is, it will dictate the ultimate configuration of the buffer.

#### Questions of Applicant

Mr. Glickstein inquired if the South Federal Plan is in the embryotic stage? Has it moved? Has it been presented to the public? The genesis is that Walmart and staff supported Walmart. Mr. McDonnell clarified that staff supported the rezoning.

Mr. Franciosa said that plan was supposed to be in effect five years ago. We wanted a zoning district. Staff did nothing for four to five years, and then we saw plans for Walmart. That was done in March of last year. I have had meetings with Mr. Ron

Hoggard and I was told the buffer was 5 feet and the new one was a minimum of 25 feet. When you say embryotic, no it is almost complete. Mr. Glickstein inquired where are we on this plan. Mr. McDonnell advised he was not aware as his involvement with the South Federal Highway Overlay project was limited to attending two charette sessions relative to the Plan last March and June. I am not aware if there is any progress. Mr. Glickstein advised you have a major development plan which caused this Board tremendous consternation when Walmart came through. This corner is far more important than Walmart. I am trying to understand, doesn't staff make that same connection? How can we consider rezoning? Is this a timing issue? Why are we here again in what seemingly is premature? Mr. McDonnell advised it is a privately initiated and we are obligated to present it.

Mr. Covelli advised we have talked to Mr. Hoggard and the current plan as I understand it is pretty well along. From my impression Ron needs one or two more meetings.

Public Comments:

Mr. Richard Van Gemert, 912 Eve Street, advised his property is less than 100 feet from the property in question. A change in zoning could allow big box stores to open.

Mr. Baron Degner, 919 Hyacinth Drive, advised we are buying a pig in a poke and we don't know what is coming through. We went through this with Walmart. We still don't have a plan. We don't know what stage it is in. Even the City Commission doesn't know where it is. We are being asked to open a drawer to an unknown that could be extremely detrimental. I ask this group to seriously not approve this.

Mr. Bill Schnabel, 902 Cleary Street, advised this report goes back to 1991 but I go back to 1982 when the property was rezoned. Let's do limited commercial. One time on Federal Highway we had a massage parlor. I don't know how this Board can approve a plan for GC that does not guarantee any kind of buffers. I am 85 feet from the closest building.

Ms. Kelli Freeman, 917 Banyan Drive, advised she was before you in 2010 and we asked you to oppose the rezoning. You voted unanimously. We are now back doing the same thing. You are asking for spot zoning that we do not believe should be GC. We are not opposed to developing that area or developing anything on Federal Highway. It is the spot zoning. We don't even know how it would be governed. On February 1, 2012, Tropic Isle had their annual meeting. Mr. Ron Hoggard talked to us. They held the meetings in June and waited until people left for the summer. We were asking the City to come up with zoning that would be compatible with the neighborhoods. We were asking them to go create one and have a dialogue. We can take the presentation we made to Planning & Zoning and change the word Ralph Buick to Delray Place. It would not be compatible with the neighborhood. It is still something we are not interested in having. We want the right mix of businesses. We are willing to work with whoever has the property. There has to be something the residents can stand behind. We don't know what is going to go there. There are issues within the site plan that we as a residential community cannot be comfortable with. It is hard for us to say no or yes. The South Federal Highway Development Plan has not been completed. It needs to go before City Commission for a vote. Mr. Glickstein inquired when you met with Mr. Hoggard did he present your Association

with anything? Ms. Freeman advised there is no tangible plan that he has presented to any of the associations.

Dr. Victor Kirson, President Tierra Verde Homeowners Association, advised the way I see it I kind of knew what has to go there or why would somebody buy property when most of the things that would be acceptable fail, and then ask for commercial zoning. Obviously the only way of making money is one that will not be acceptable to the residents. Why buy it? I know this is common practice that they ask for zoning first and then present your plans. I would reject it until we know exactly.

Mr. Michael Young, 1807 Spanish Trail, advised he has had extensive experience with shopping centers in Northern Virginia, and changes of uses with properties. A retail center there would impact traffic on Linton and Federal Highway. We don't know what they are going to do and what the buffers are going to be. There is so much retail there already and I am against this as proposed.

#### Public Hearing Closed

Mr. Covelli advised we have been talking with staff. We have followed everything in the LDRs. I understand your concerns but from a planning point of view you have to have certain reliance on things. Staff is looking at that area. It is not spot zoning we are asking for, it is PC. We have followed all of the requirements, we have done everything we can do to follow the rules and requirements.

Mr. Jacquet advised there are a lot of unanswered questions. I think it is spot zoning. We also need to plan ahead. Once it goes for site plan review we will deal with it. The site plan review works within the boundaries of what the LDRs say. It is within our duty and responsibility to be forward thinking. We are losing track of the intent behind the zoning for that area. My main concern is for the neighborhood as we have no answers as to what will go there. We can't take your word that you are not going to build a 400,000 sq. ft. project. That is a major concern. I don't know if GC belongs in that area. We have all these single-family homes and I do think something needs to be done about protecting that area. We need a plan for the entire area before we do spot zoning.

Mr. Franciosa advised he agreed with Mr. Jacquet. I am not comfortable with the plan as it stands. They need to wait and come back with the South Federal Highway Plan. The preliminary report says they are going to approve GC. People feel that the City is giving us the run around. Mr. Hoggard seems to be working on the plan and he said next month he will have two meetings. Not knowing what he is going to do with the property we can wait four or six weeks. Based on that alone I would have to say no to the amendment.

Mr. Krall advised he agrees with what was said. I think it is premature. If you look at the other GC areas on the west side you have the tracks and to the north you have a low impact commercial strip center. And you have Harbor's Edge, single-family homes, intracoastal homes. Based on these circumstances, there is a reason why it is still designated Transitional. I can't support this.

Mr. Glickstein advised he thinks it is a very flawed process to request a rezoning of this magnitude without some kind of site plan commitment. It never made sense to me. I struggle with the transient housing when you buy into a neighborhood you have certain expectations that that corner would remain as it was. Because the other three

corners are GC there is a difference on many levels. It is the only corner that puts residential abutting single-family residential. I don't think they are similar. I think Mr. Hoggard should have been here tonight. It is unfair to ask Mr. McDonnell because he is not part of the South Federal Highway Plan process. We are not prepared to make a decision without all the information. As a developer, I understand Mr. Carosella. He has a process to follow. I understand the clock is running. This Board has been concerned about the lack of direction on Federal Highway. We are not any closer. I cannot support this.

Motion:

Motion made by Mr. Krall, seconded by Mr. Franciosa, and motion Denied 5 to 0 (Mr. Lynch and Dr. Spodak absent) to move a recommendation of approval to the City Commission for the privately initiated Future Land Use Map change from Transitional (TRN) to General Commercial (GC), rezoning from POC (Planned Office Center) to PC (Planned Commercial) and Text Amendment of the Comprehensive Plan modifying the description of the GC (General Commercial) Future Land Use designation to identify a maximum FAR of 0.46 for Delray Place, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and does meet the criteria set forth in LDR Sections 3.1.1 (Required Findings), 3.2.2 (Standards for Rezoning Actions), 2.4.5(D)(5)(Rezoning Findings).

- B. City-initiated amendment to the Land Development Regulations (LDR) by amending Appendix "A" Definitions, to expand the definition of "Restaurant".

Mr. McDonnell entered the project file into the record.

Over the last several years, the City has become increasingly aware that some establishments in the downtown area that are approved as restaurants transform into stand-alone bars and nightclubs after a certain hour of the evening. When this occurs, the uses are in violation because they either become stand-alone bars for which they are not approved, and/or they fail to satisfy the requirements for operation as a restaurant.

To help remedy this situation and to make the Land Development Regulations even more clear, the current definition of restaurant is being expanded. To avoid such establishments from becoming dance clubs, language is added that requires that all tables, chairs and counter areas are to remain available for full course meal service during all hours of operation. New language is added that states that facilities licensed by the State as "stand alone bar facilities serving food" do not qualify as bona fide restaurants. Finally, the definition is strengthened to require that service of full course meals must be available at all times that alcoholic beverages are being served.

Review by Others:

The Downtown Development Authority (DDA) reviewed the item at their February 13, 2012 meeting and a unanimous recommendation of approval was made, but suggested that language be added to state that the kitchen staff be on hand at all times.

The West Atlantic Redevelopment Coalition (WARC) reviewed the item at their February 14, 2012 meeting and a unanimous recommendation of approval was made.

The Community Redevelopment Agency (CRA) reviewed the item at their February 23, 2012 meeting and a unanimous recommendation of denial was made. The CRA Board felt that if restaurants desired to move away tables and chairs at a certain point of the evening, and thereby transition into a dance floor/night club, that such an option should be available.

The Pineapple Grove Main Street (PGMS) committee will review the item at their March 7, 2012 meeting and their recommendation will be forwarded to the City Commission.

Courtesy Notices

Courtesy notices were provided to the following homeowner and civic associations:

- Neighborhood Advisory Council
- Alliance of Delray

Public Comments: None

Mr. Durden inquired if the CRA gave a reason for their decision. Mr. Franciosa inquired if this would cover all restaurants downtown. Mr. McDonnell advised this would affect all restaurants in the City.

Mr. McDonnell advised Captain Thomas Mitchell, Ms. Lula Butler, and Mr. Al Berg went out on a Friday night and scoured the downtown area and found several violators. They have also received complaints from nearby businesses.

Mr. Franciosa inquired what type of financial impact would this have. Mr. Glickstein advised he would be in favor of it. The Community Redevelopment Agency's Charter is more focused on the business interest than the people affected by its uses. I do support this Amendment.

Motion:

Motion made by Mr. Krall, seconded by Mr. Franciosa, and approved 4 to 0 (Mr. Lynch and Dr. Spodak absent, and Mr. Jacquet left the meeting early) to recommend approval of the amendment to Land Development Regulations, Appendix A, "Definitions", to Clarify Required Operations and Components for Restaurant Uses, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

- C. City-initiated amendment to the Land Development Regulations Land Development Regulations (LDR), by amending Appendix “A” Definitions, to provide a definition of “Delicatessen”, Section 4.6.9 “Off-Street Parking Regulations”, and Article 6.3 “Use and Work in the Public Right of Way”, Subsection 6.3.3, “Sidewalk Café”, to provide a definition, clarify required parking, and to clarify the characteristics of a Delicatessen.

Mr. McDonnell entered the project file into the record.

The primary purpose of this amendment is to clarify parking requirements for delis, sandwich shops, coffee shops, and sub shops, and to identify how sidewalk café components can be utilized for these uses, and to provide a new definition for delicatessen. An additional change is included to clarify that a sidewalk café can be established in front of the business or alongside a side street adjacent to a business or public open space plazas (i.e., current reference to “public space” is being modified to read “public open space plazas”).

A delicatessen use, along with ice cream stores, sandwich shops, sub shops, coffee shops, and other similar uses with no indoor seating are considered ‘take-out only’ facilities and are assessed a general commercial parking requirement. If these uses have indoor seating, they are more akin to restaurant uses and the restaurant parking requirement is applied.

These take-out uses are allowed to have sidewalk cafés where take-out products could be consumed. Additional clarification is provided in the sidewalk café section of the LDRs that limit sidewalk café operations for take-out facilities to take-out food only. Waiter service to tables is only allowed for restaurants or facilities which have been assessed restaurant parking requirements.

The amendment also clarifies that sidewalk cafés allowed in public space adjacent to the front or side street of a business. Public space refers to public open space plaza areas (like Worthing Park) for which the public space language was originally envisioned.

Finally, a definition for Delicatessen is provided to further help regulate and provide a distinction from restaurant uses.

#### Review by Others

The Downtown Development Authority (DDA) reviewed the item at their February 13, 2012 meeting and a unanimous recommendation of approval was made, but suggested that language be added to state that food must be packaged as “take-out” with utensils.

The West Atlantic Redevelopment Coalition (WARC) reviewed the item at their February 14, 2012 meeting and a unanimous recommendation of approval was made, but with the suggestion that the full term “delicatessen” be used, and with the shortened nickname of “deli” be included in parenthesis.

The Community Redevelopment Agency (CRA) reviewed the item at their February 23, 2012 meeting and a consensus was reached to recommend approval.

The Pineapple Grove Main Street (PGMS) committee will review the item at their March 7, 2012 meeting and their recommendation will be reported at the City Commission meeting.

Courtesy Notices

Courtesy notices were provided to the following homeowner and civic associations:

- Neighborhood Advisory Council
- Alliance of Delray

Public Comments: None

Motion:

Motion made by Mr. Krall, seconded by Mr. Durden, and approved 4 to 0 (Mr. Lynch and Dr. Spodak absent, and Mr. Jacquet left the meeting early) to recommend approval of the amendment to Land Development Regulations, Appendix A Definitions to provide a definition for Delicatessen, Section 4.6.9, "Off-site Parking Regulations", and Subsection 6.3.3, "Sidewalk Café", by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

- D. City-initiated amendment to the Land Development Regulations (LDR), by amending Article 7.9, "Docks, Dolphins, Finger Piers, and Boat Lifts", by amending Section 7.9.5, "Standards for Approval"; to clarify current language regarding docks.

Mr. McDonnell entered the project file into the record.

As stated in the purpose and intent of Article 7.9, this regulation is to permit in and upon certain waterways the construction of docks, dolphins, finger piers, and boat lifts which do not cause a hazardous interference with navigation, endanger life or property, or deny the public reasonable visual access to public waterways. Section 7.9.5 of the LDRs includes standards for docks. The current language states "a dock, exclusive of dock pilings, shall not project more than five feet into a waterway from the property line or seawall or bulkhead or seawall cap, whichever is nearest to the waterway. The current requirement also limits the dock from extending more than eight (8) feet beyond the property line".

The strict/verbatim interpretation of the current language would prohibit the construction of docks in those cases where the property line lies in excess of eight feet landward of the waterway. Additionally, the utilization of the seawall cap as the basis of measurement without any restriction as to the size of such cap could potentially give rise to the unlimited extension of the dock into the waterway.

The proposed amendment eliminates the ambiguity by replacing the term "nearest the waterway" with the term "water's edge" as a basis for measurement. Likewise, the use of the "property line" as a basis for measurement has been removed as property lines sometimes lie within the water channel or too far landward of the existing seawall. Further where the seawall exists, the measurement is from the seawall face rather than the seawall cap.

Courtesy Notices

Courtesy notices were provided to the following homeowner and civic associations:

- Neighborhood Advisory Council
- Delray Citizens Coalition

Mr. Franciosa inquired if the sea wall cap that is 3 feet do you only go out 2 feet? Where does the measurement start? Mr. McDonnell advised the measurement is from the edge of the sea wall face.

Mr. Glickstein inquired if the measurement is 5 feet now? We should have Randal Krejcarek (City Engineer) look at this. Are you going from the seawall and not the cap? Where did this amendment originate? Mr. McDonnell advised it came from the Building Department (Mr. Phil Etchison). This was going to clarify existing interpretive problems. Someone needs to get with the Building Department to find a clearer way to do this.

Mr. Durden inquired what was the average size of a seawall cap. Mr. Franciosa advised 3 feet. If you can only go from the sea wall and the boat will be in muck degrading the property. You need to relook at this, and talk to Mr. Krejcarek.

Motion:

Motion made by Mr. Krall, seconded by Mr. Durden, 4 to 0 (Mr. Lynch and Dr. Spodak absent, and Mr. Jacquet left the meeting early) to move to postpone the amendment until the Building Department meets with Engineering for clarification where the five (5) foot measure referred to in the Ordinance starts, to Land Development Regulations, Article 7.9, "Docks, Dolphins, Finger Piers, and Boat Lifts", by Amending Section 7.9.5, "Standards For Approval"; to update current language regarding the construction of docks, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

- E. City-initiated amendment to the Land Development Regulations (LDR) by amending Section 8.5.1, "Establishment of Public Arts Program", Subsection (B), "Appropriation of Capital Improvement Project (CIP Funds)", setting forth the City's right to use appropriated funds.

Mr. McDonnell entered the project file into the record.

The City Commission established a Public Arts Program on February 1, 2005 by enacting Ordinance No. 77-04. The purpose was to use part of the Capital Improvement Project dollars to incorporate art in certain public projects. Current Land Development Regulations allow for the City to appropriate 1.5% of the total eligible construction costs to be used for various components of the public art program. In the recent budget revisions, Public Art Program monies, along with other Capital Improvement Project dollars, have been reallocated. This LDR amendment would clarify that the public art program funds can be utilized for not only public art programs, but for other purposes as otherwise appropriated in the City Budget.

Courtesy Notices

Courtesy notices were provided to the following homeowner and civic associations:

- Neighborhood Advisory Council
- Alliance of Delray

Mr. Franciosa inquired that the City already reallocated the money from the fund. Are they are allowed to move the money?

Mr. Shutt advised we need this in order to move the money. We need to make this change in the LDR in order to allow the budget move to take place. Once this ordinance is adopted it will apply retroactively to any fund in that account. I don't know if the City Manager has reallocated it.

Mr. Franciosa inquired how much money are we talking about. I looked at the mid-year budget review. Has this already been reallocated or are we here to decide if it can be?

Mr. McDonnell advised this is being done to clarify what has already been done, and the money has already been moved. Mr. Franciosa inquired in order to take the money you need to change the LDRs? Mr. Shutt advised you are here to make a recommendation to the City Commission whether you want to approve the proposed change. The City Commission has the right to move the 1.5%. Mr. Franciosa inquired if the money has already been moved why are we voting on this? Mr. Shutt advised I can't answer your question as I do not know if it has been moved or not. The intention is to move all the money when we went through the budget review. Mr. Glickstein questioned for purposes of understanding, if they are going to do it anyway what portion have they moved. We are voting on whether we would support the City's ability to move money.

Mr. Durden advised if we are voting on the change there has to be something that we can change. Mr. Shutt advised you are changing the LDRs. Mr. Durden inquired if we are changing something that the City does not have the right to move the money without the change? Mr. Shutt advised when the City Manager is trying to balance the budget, and change the LDRs to allow this to occur. That is why this LDR is in front of us. This would clarify it Mr. Franciosa advised when you look at the revised mid-year budget. Mr. Shutt advised those dollars were already factored in. Mr. Franciosa inquired if they took the money how did they take it? How did the City take the money without having this LDR passed? Even if the City Manager allocated the change he would not be allowed to do that without the LDR change going forward. Mr. Franciosa inquired who initiated it. Mr. Shutt advised his office did. Mr. Franciosa advised he does not have enough information to vote on this. Mr. Shutt advised they took \$135,000.00 out of the fund.

Public Comments:

Ms. Dana Donaty, Member of the Public Art Advisory Board, advised there were no courtesy notices send to the Art Board. I disagree with the proposed amendment. I do not understand why the amendment is being proposed as it needs further clarification. I did speak with Mr. Harden today at 3:45 p.m., and the money has not been taken. This amendment would allow them to take the money. I believed that the City Commission had initiated this. City staff initiated it and will bring it to the City

Commission. I think you need to discuss this as it is very ambiguous. It is open ended.

Ms. Carolyn Parker, 510 Gardenia Terrace, asked Mr. Shutt if we can go down to 1% rather than 1.5%. It is my understanding that the budget has severe problems.

Ms. Shelia Franciosa advised what she does not understand is that no one gives us a straight answer. If you are no longer concerned with the Public Arts Board, what will you do with the arts in Delray Beach? Do you dissipate the Art Board entirely? We volunteered for this.

Mr. Glickstein advised, essentially the City has funded this account and now they want the ability to take it out. Mr. Shutt advised in most other accounts with the City, they have the flexibility to move money around. Maybe it should have been setup that way with the Art Board. We are trying to clarify that now. We have the ability to move dollars from one account to another through the budget process. Mr. Glickstein advised we want to leave it where it is. Mr. Shutt advised the City Commission could have done that when they had the mid-budget presentation.

Mr. Franciosa advised it is not the money. The City wanted art. You go to different cities and they have art projects. I would have to vote against this.

Mr. Glickstein advised if this Board does not approve this to the extent they take money they will have to put it back. Mr. Shutt advised Mr. Harden said the money was not moved. The City Commission would have the final say and could adopt the ordinance.

Motion:

Motion made by Mr. Krall, seconded by Mr. Franciosa, and denied 3 to 1 (Mr. Lynch and Dr. Spodak absent, Mr. Franciosa dissented, and Mr. Jacquet left the meeting early) to move a recommendation of approval of the amendment to Land Development Regulations, Section 8.5.1, "Establishment of Public Arts Program", Subsection (B), "Appropriation of Capital Improvement Project (CIP Funds)", Setting Forth the City's Right To Use Appropriated Funds, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

VI. Reports and Comments

A. Board Members

Parking Management Advisory Board – No report

B. Staff

Meeting Dates for March

City Commission Meetings

Tuesday, March 6, 2012, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Tuesday, March 20, 2012, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers  
Planning and Zoning Board Meeting

Monday, March 19, 2012, Planning and Zoning Board Regular Meeting, 6:00 p.m., City Commission Chambers:

1. Master Development Plan for Bellantica Gardens, located at the southeast corner of West Atlantic Avenue and Military Trail.
  2. Annexation, Future Land Use Map amendment and establishment of initial zoning of A (Agricultural) for a 3.138 acre parcel located at the southeast corner of Barwick Road and LWDD L-30 Canal.
  3. Amendment to the Text of the Comprehensive Plan, General Commercial description, Future Land Use Map amendment (small-scale) from CMR (Commerce) to TRN (Transitional) and rezoning from LI (Light Industrial) to NC (Neighborhood Commercial) for 10<sup>th</sup> & 10<sup>th</sup> Center, located at the southeast corner of SW 10<sup>th</sup> Street and SW 10<sup>th</sup> Avenue.
  4. Amendment to the Wallace Drive Redevelopment Plan to allow neighborhood commercial retail and service uses as a principal use.
  5. Privately initiated amendment to the Land Development Regulations Section 4.4.11(G)(1)(e) (Neighborhood Commercial) to limit the FAR of the non- residential uses in the Wallace Drive Overlay District.
  6. Conditional use request to allow the re-establishment of a gasoline station, Delray Gas Station at 14111 South Military Trail.
  7. Conditional use request to allow the expansion of the Beachway Motel, located at 655 George Bush Boulevard.
  8. City initiated amendment to the Land Development Regulations regarding the undergrounding of utilities.
  9. City initiated amendments to the Land Development Regulations primarily to provide clarification of the Historic Preservation Board's (HPB) duties, review of variances and development review.
  10. City initiated amendment to the Land Development Regulations to define the spatial arrangement of uses in mixed-use developments.
  11. City initiated amendment to the Land Development Regulations Section 4.4.13 "Central Business District" pertaining to the parking requirement for offices
- Project Updates

## VII. ADJOURN

The meeting adjourned at 9:00 p.m.

The undersigned is the Secretary of the Planning and Zoning Board and the information provided herein is the Minutes of the meeting of said body for February 27, 2012 which was formally adopted and approved by the Board on April 16, 2012.

*Denise A. Valek*

Denise A. Valek, Executive Assistant

If the Minutes that you have received are not completed as indicated above, then this means that these are not the official Minutes. They will become so after review and approval, which may involve some changes.