

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

CITY OF DELRAY BEACH  
DELRAY BEACH, FLORIDA

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MEETING DATE: June 20, 2011

LOCATION: CITY COMMISSION CHAMBERS

MEMBERS PRESENT: John Miller, Mark Krall, Cary Glickstein, Craig Spodak, Al Jacquet, and Connor Lynch

MEMBERS ABSENT: Clifford Durden

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

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I. CALL TO ORDER:

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

II. MINUTES

Motion made by Mr. Lynch, seconded by Mr. Krall, and approved 6 to 0 (Mr. Durden absent) to approve the Minutes of May 16, 2011 as written.

III. COMMENTS FROM THE PUBLIC: None

IV. PUBLIC HEARING ITEMS

- A. Conditional use request to allow the sale of Segway units and merchandise and the provision of historical and landmark guided tours via Segway personal transport units along specific designated routes for "Segway Tours of Delray Beach" located at 162 NE 2<sup>nd</sup> Avenue. Quasi-Judicial Hearing
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The Above Item Was Postponed To The July 18, 2011 Meeting Per The Applicant's Request

- B. Conditional use request for Milagro Center to allow the establishment of a child care center to operate within a portion of the existing 7,500 square foot clubhouse facility at the Village at Delray multiple family residential development, located at 695 Auburn Avenue. Quasi-Judicial Hearing
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Mr. Dorling entered project file no. 2011-128 into the record.

The action before the Board is making a recommendation to the City Commission on a request for Conditional Use approval to establish a private child care facility for the Milagro Center, pursuant to LDR Section 2.4.5(E). The child care facility will operate within a portion of the existing 7,500 sq. ft. club house of the Village at Delray multiple family residential development.

Pursuant to LDR Section 4.4.6(D)(1), within the RM (Multiple Family Residential) zoning district, child care facilities are allowed as a Conditional Use. The subject property is located at 675 Auburn Avenue, which is on east side of Auburn Avenue.

Ex-parte Communications: Mr. Jacquet drove by the property.

Review By Others:

At its meeting of May 27, 2011, the Community Redevelopment Agency (CRA) reviewed and recommended denial of the request citing concerns regarding loss of recreational amenities for the residents and issues with non-compliance with LDR requirements.

Public Notice:

Formal public notice has been provided to property owners within a 500 foot radius of the subject property. Letters of objection, if any, will be presented at the Planning and Zoning Board meeting.

Courtesy Notice:

Courtesy notices have been provided to the following homeowner's associations, which have requested notice of developments in their areas:

- Delray Citizens Coalition
- Neighborhood Advisory Council
- Carver Park
- Carver Memorial Park

Mr. Dorling advised contrary to what you may have read, we are not against childcare centers we are concerned with the recreational components allocated to the future residents of the community now being allocated for private use. Historically this was approved on October 6, 2009 to allow for a density of 17.4 dwelling units per acre, and included many recreational amenities including a pool and a clubhouse. This request is to allow a not-for-profit to occupy part of that clubhouse. The not-for-profit is for 50 children and would take a significant portion of the clubhouse for the operation along with an adjacent outside play area. They would operate on Monday through Friday from 10:00 a.m. until 6:00 p.m. and during the summer from 8:00 a.m. until 5:00 p.m. The proposal represents 79% of the clubhouse which will be allocated for a child care center in addition to one-third of the outside playground areas. While sharing of the facility had been mentioned with initial development it was not envisioned to be the degree they are proposing at this time. There is also LDR requirement for a drop off area which has not been provided. The outdoor play area is noted for 50 children while the square footage requirements of 75 sq. ft. per child would only allow a maximum of 43 students. The project received State and Federal money through Florida Housing Financing Corporation which may have required a commitment that the amenities are for residents only. Verification that the proposed changes are compliant with requirements of these funding designations is required.

This went to the Community Redevelopment Agency (CRA) on May 27, 2011 and they recommended denial citing concerns regarding loss of recreational amenities for the residents and issues with non-compliance with LDR requirements. There has been an attempt to relocate some of the facilities elsewhere within the clubhouse facility however they are not very accessible. The area available for the residents continues to be very limited.

Mr. Miller inquired if they have occupied the building. Mr. Dorling advised no, but they had a grand opening before receiving any approvals

Applicant

Michael Weiner, Esquire, Agent for the applicant, advised they appreciate the staff report and understand their concerns. When you review the staff report their analysis supports this conditional use. We appreciate their concerns for the residents of Delray Beach. Milagro will decrease the size of the program to a maximum of 43 students. The staff concerns are more than adequately addressed. The Milagro Center was established in 1997 at its present location. Children from kindergarten through fifth grade are served after school from 2:15 – 6:00 p.m. Monday through Friday. They will be arriving between 2:15 p.m. and 3:45 p.m. from their perspective schools and picked up between 4:00 p.m. and 6:00 p.m. A significant number of children will walk back home with their parents. One-quarter of the children will be living in the community and one-half will be within walking distance. No more than 43 students will be using the facility at one time. We can meet the regulations imposed by the Department of Health. There will be space in the recreation building exclusively for residential use. Resident-only facilities include: 6 computers with high speed internet, 2 large conference rooms with chairs, and a conference table, a reception area, and a 100 plus book library. In addition, there is a soccer field, basketball court, two BBQ areas, a pool, large green areas, and two playgrounds. Approximately 400 sq. ft. of office space will be used exclusively for the Milagro Center within the recreational building.

LDR Section 3.1.1 in the LDRs has been referenced in the staff report. The number of students and the number of trips will be decreased to represent the 43 maximum students noted. Concurrency is also met. There is no negative impact with the conditional use. There are no regulations requiring clubhouse parking. For us the important part is that there are 423 overall parking spaces for this project which this clubhouse can also utilize.

The clubhouse is surrounded by 83 parking spaces in close proximity; therefore concern with lack of parking should not be a problem. Milagro will not be paying rent but will be occupying a portion of the clubhouse through a private agreement.

Ms. Ellyn Okrent, Executive Director of the Milagro Center, advised Mr. Weiner has explained everything in detail.

Mr. Brian Hinnens, VP of Development, Auburn Group, thanked the Board, and advised Mr. Weiner has accurately described the financial arrangements between Auburn and the Milagro Center. The issues of concurrency will be addressed. We met LDR Section 2.4.5(e). This complies with present parking requirements and recommendations under the LDRs. Having met all of the requirements we ask for your recommendation of approval to the City Commission tonight.

Board Comments:

Mr. Glickstein advised from what he understands how will you be in compliance with LDR Section 2.4.5(e). You said you are in compliance and then you talked about specific sections. What I heard in Mr. Dorling's presentation is that you do not meet the required stacking distance and required drop off criteria.

Mr. Glickstein advised he is familiar with the occupancy of the recreational components of these types of development. Has staff looked at what recreational components are being used and what is not being used? Has there been any feedback from people who live

here as to whether or not they would be in favor of this. Mr. Dorling advised the community has only been open a month. We have not heard from any of the residents.

Mr. Miller inquired other than the clubhouse are there any indoor recreation facilities on the site? Mr. Dorling advised he didn't believe so there is a small building east of the clubhouse for maintenance operations. This is the only clubhouse on the site.

Mr. Glickstein advised in regard to the information Mr. Weiner gave us there is a day care building along Auburn Avenue. Mr. Dorling advised that it has been there for many years. It was built in conjunction with the residential development that was there previously. Mr. Glickstein advised the Board would like to know if you have a facility already intended for day care why is another needed. Mr. Dorling indicated that there are also additional day care functions in the immediate vicinity including the Boys and Girls Club and the Catherine Strong Center.

Mr. Weiner advised what is occurring is there is a great deal of verbiage placed in the LDRs that is not clear. They have provided clear stacking for the drop off area. A clear area is what we have. Mr. Dorling wants to make additional requirements when the LDRs do not say that. No one would walk up to us and say you are taking this away from the tenants. This is for children above 5 years old and kindergarten.

Mr. Glickstein inquired why did the CRA deny the request. Mr. Weiner advised Mr. Hoggard is an effective speaker but he did not have an opportunity to influence the Board and change their mind. It is how the systems works and I honor it.

Mr. Jacquet inquired if this is a required recreation area for this development. Mr. Dorling advised this is the required recreational component provided as part of the original approval.

Public Comments:

Ms. Jayne King, 3400 Place Valencay, advised she is in favor of this project. We felt it would be a good initiative for the community.

Mr. Dorling advised the staff report speaks for itself. I use Mr. Weiner's tab 3 where he talked about only 400 sq. ft. office being utilized for the Milagro Center. This conveniently does not reference the non-office area being taken over representing 79% of the clubhouse. This is a substantial reduction in the community recreation opportunities. If you have a business that is operating out of there, and I don't see it being open to the residents. It also uses one-third of the outdoor play areas for the community. I don't think it is fair to the residents for these facilities that are being taken over.

Mr. Glickstein asked Ms. Okrent why they wanted Milagro at this location. Ms. Okrent advised we have a home on SW 6<sup>th</sup> Avenue, and this is a huge opportunity for the children to be able to have some space to set-up their dorms and for artwork. We will be thrilled to have this space. Mr. Glickstein advised there is no compensation going back to the Auburn Group. Ms. Okrent advised no. If we can rent our existing facility the money we can save in not paying rent will be utilized to support the children who live in the area.

Mr. Weiner apologized and advised it is 684 sq. ft. not 400 sq. ft. Almost a 6,000 or 7,000 sq. ft. building was for the clubhouse. It would be shared with Milagro and Milagro will be offering programs to enhance the amenities of this project. You can see that each and

every number is met. We have 340 feet of stacking distance for the drop off area. The numbers are met. We met the burden of proof and you can make a recommendation of approval to the City Commission.

Mr. Miller inquired if there are still some computer and conference rooms that are under air for the residents.

Mr. Jacquet inquired what the average age of the Milagro residents were. Ms. Okrent advised they are 5 to 18 years old, the kindergarteners to fifth graders will be there after school and then we would serve the teenagers after 6:00 p.m. to provide tutoring. We would stay open till 8:00 p.m. four days a week.

Mr. Lynch inquired what the cost was. Ms. Okrent advised we ask them to apply for funding. Most people do not pay so we subsidize their cost. We ask the parents to pay \$45.00 if they can and many parents do not pay anything. Mr. Lynch inquired how many can the Center support now. Ms. Okrent advised forty (40).

Mr. Lynch inquired why did the Community Redevelopment Agency deny it. Mr. Dorling advised the CRA had concerns about the reduction of the recreational components for the community as a whole.

Mr. Weiner advised we have gotten a great deal of positive support with those people considering moving into the community. The residents will be given as much consideration as possible. Mr. Lynch inquired what Mr. Weiner's rebuttal was regarding the use. Mr. Weiner advised we have to be licensed by the State of Florida's Health Department

Mr. Krall requested clarification regarding the existing daycare, and if was owned by another individual. Mr. Dorling advised it is an outparcel that is not part of the Villages of Delray community.

Motion made by Mr. Glickstein, seconded by Mr. Jacquet, and approved 4 to 2 (Mr. Durden absent, Mr. Jacquet and Mr. Lynch dissented) to move a recommendation of approval to the City Commission of the Conditional Use request to locate and establish a child care facility The Milagro Center within the Village at Delray Club House, staff recommends that it should be done subject to the following conditions:

1. A letter from the Palm Beach County Traffic Division indicating that the project meets the traffic concurrency standards of Palm Beach County is provided;
2. That the proposed outdoor play area be increased or the maximum capacity be reduced to a total of 43 students;
3. That the applicant provides a copy of the Credit Underwriting Report issued and approved by the FHFC listing those specific amenities within the clubhouse and/or the Village at Delray development that were required to be for the RESIDENTS ONLY.
4. That the applicant provides a copy of the Land Use Restriction Agreement between the Florida Housing Finance Corporation and Auburn Corporation which was recorded as a deed restriction against the Village at Delray Development outlining what amenities are required for the use of RESIDENTS ONLY; and
5. That If any of the amenities required by the Credit Underwriting Report or conditioned in the Land Use Restriction Agreement are included in this request then a letter acknowledging this will be required from the FHFC

6. That the space be shared space between this facility and the residents of the development (Village at Delray).
- C. City-initiated amendment to the Land Development Regulations Section 4.4.13 "Central Business (CBD) District", Subsection (G), "Supplemental District Regulations"; and Section 4.4.24, "Old School Square Historic Arts District (OSSHAD)", Subsection (G), "Supplemental District Regulations" to clarify the parking requirements for restaurants.

Ex-parte Communications: None

Mr. Dorling entered the project file into the record.

The item before the Board is to make a recommendation to the City Commission regarding a city-initiated amendment to Land Development Regulations (LDRs) that will remove the current parking incentive enjoyed by restaurant uses in the CBD, CBD-RC, and OSSHAD (except in two areas: West Atlantic Avenue and Pineapple Grove Main Street, where additional redevelopment incentives are desired). The parking requirement will be increased to be commensurate with parking requirements City-wide from 6 to 12 spaces per 1,000 sq. ft. for restaurants.

Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

Mr. Dorling advised that in 1990, the Land Development Regulations listed a parking requirement for all uses in the Central Business District at 1 space per 300 sq. ft. and required that any parking spaces that are eliminated through redevelopment be replaced. This 1 space per 300 sq. ft. parking ratio was the requirement for restaurants at that time.

In 1993, the parking requirement for restaurants within the original DDA area was increased to six (6) spaces for each 1,000 sq. ft. This was half the requirement for restaurants elsewhere in the city, where the requirement was (and remains) at 12 spaces for the first 6,000 sq. ft., and 15 spaces for each 1,000 sq. ft. over 6,000 sq. ft. This incentive was created to attract restaurant uses into the downtown. This incentive has been extremely successful and we are now experiencing a saturation of restaurants within certain portions of the downtown area.

In 2004, the City of Delray Beach Downtown Cluster Study was conducted. Cluster 4, in particular, was identified as having an abundance of restaurants, and it recommended no further conversion of retail over to restaurants be encouraged. While reference to the Cluster Study and its discouragement of restaurant conversions has been made in staff reports, such proposals and conversion have continually been made. A diversity of uses within the downtown is desired to provide customers a variety of options (dining, shopping, entertainment venues, etc.) Limiting options to "dining only" will affect the economic complexion of our downtown.

Recently, there has been increased concern by the business community that too many restaurants have saturated the downtown, and that something needs to be done to incentivize new restaurants to areas where they have not currently located (Pineapple Grove and West Atlantic) and to encourage other types of uses including retail opportunities. This amendment increases the required parking for restaurants to what it is in the balance of the City (12/1,000, then 15/1,000 for floor area over 6,000 sq. ft.) in the

Central Core and Beach sections of the CBD. The parking requirement of 6 spaces per 1,000 sq. ft. remains unchanged for the Pineapple Grove and the West Atlantic neighborhoods. This amendment should not be characterized as an increase but more as a removal of an incentive which has been extremely successful and is no longer needed. This amendment will provide more of an incentive to retain non-restaurant uses (discourage retail conversions to restaurants).

This change will be followed up with additional incentives for retail retention and expansion with a combined goal to ensure there is a mix of downtown activities that include those beyond exclusively restaurants.

Review by Others:

The Pineapple Grove Main Street (PGMS) committee reviewed the item at their June 1, 2011 meeting and discussed their concern over the approach to create a disincentive for restaurants, rather than creating an incentive to achieve what is desired, which is the retention and attraction of retail. They felt that the amendment should be crafted such that it gets us what we want, rather than what we don't want. One suggestion was to evaluate the current "credit" that is given to existing retail establishments when they go about converting to restaurant use; it was suggested that they start at zero and not be given credit for "existing" spaces when those spaces may merely be grandfathered.

This approach would in fact increase the parking requirement similar to this amendment. The proposal's approach to remove the current incentive (reduction) enjoyed by the restaurant uses, and return them to a level commensurate with the overall city requirement, is much more defensible.

The Community Redevelopment Agency (CRA) reviewed the item at their June 9, 2011 meeting and recommended that P&Z work with CRA staff to incorporate this amendment with other parking changes such as reductions for offices, etc. There were also questions concerning whether or not doubling of the requirements was too much of a change, and if the area subject to the increase might be changed (i.e. only certain clusters).

Staff will be working with the CRA staff and further incentives to encourage business diversity in the downtown.

The Downtown Development Authority (DDA) reviewed the item at their June 13, 2011 meeting and a recommendation of approval was made.

The West Atlantic Redevelopment Coalition (WARC) reviewed the item at their June 14, 2011 meeting and a recommendation of approval was made.

Courtesy Notices

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

- Neighborhood Advisory Council
- Progressive Residents of Delray (PROD)

Mr. Glickstein advised to clarify, what Mr. Dorling is suggesting and recommending is that we drop the 6/1,000 and make it 12/1,000 for restaurant parking. Mr. Dorling advised yes, with the exception of the two areas in the downtown area.

Mr. Miller asked if existing facilities would be grandfathered in. Mr. Dorling advised yes, and they will be vested.

Mr. Lynch inquired if Pineapple Grove is excluded from the increase. Pineapple Grove is not subject to the increase. Mr. Jacquet inquired if it is currently retail and the use is changed from retail to restaurant the difference would be between retail and 12 per 1,000.

Mr. Jacquet asked if there are any other uses in downtown that have a different parking requirement. What is retail?

Mr. Dorling advised all retail within two blocks of Atlantic Avenue is 1/300 with the exception of restaurants which are 6/1,000. You will also be looking at an amendment to significantly increase the parking requirements for specific uses like call centers tonight.

Dr. Spodak stated the next item which covers in-lieu parking will allow restaurants to pay for additional parking. Mr. Dorling advised that the in-lieu changes are part of the parking study recommendations and restaurants could utilize this option. Dr. Spodak advised the incentives done in the 1990s worked and we may want to look at revising it.

Mr. Glickstein advised in terms of the additional incentives, everybody who has commented on this is right. This change is not a deterrent for the restaurants that can afford to pay for the in-lieu fees on Atlantic Avenue. I think the CRA was concerned with this amendment because they wanted to see a more global approach. From my perspective that is the key. Has there been any discussions on incentivizing retailers on Atlantic Avenue? They want to operate on Atlantic Avenue, and to attract quality retailers you have to be creative more so than what I am hearing tonight. They (CRA) want staff to come up with a global solution. Look to how other places have accomplished it.

Dr. Spodak inquired if by making this more difficult for the restaurant you will bring in more corporate type of restaurants. Mr. Glickstein advised we really don't have any with the exception of Starbucks. We need a more dynamic downtown. My only suggestion is that you have to think out of the box and look to what other people have done. We need retail and offices.

#### Public Comments

Jeffrey Lynne, Esquire, advised there are certain assumptions under the last paragraph (page 1) Background/Analysis in the staff report that he doesn't agree with and that there is not a person on the Board that would rather have a Mizner Park than Atlantic Avenue any day of the week. The New York Times has recognized it as one of the hottest spots in the nation. If we penalize restaurants by what is akin to a parking tax you will drive the costs only to the hands of those that can afford it. We need to be smart and incentivize retail. I grew up on Lincoln Road. The art galleries came and then the restaurants came, and then the retailers came. If you look at Mizner Park there is not a person who works for that City who would not want to give back Mizner Park for Atlantic Avenue.

Mr. Fran Marincola, Luna Rosa, Delray Beach, advised that Mr. Lynne was right it would be better to have a Lincoln Road than have all restaurants there. The problem is he misses the point and the issue. The issue is quality of life for the residents of this City. We don't want to go to Boca Raton to do our shopping, we want to go to downtown Delray Beach and that is Atlantic Avenue. It is not going to do any good if you let it become too easy to go from retail to restaurant. If you do the numbers at one point we are going to get

Lincoln Road. I differ with Mr. Dorling on one thing and that is that Pineapple Grove should be included in the area were a parking increase is imposed. It is not going to be good if there is a mad rush to open up in Pineapple Grove. This is the first step and I think the Planning Director is very courageous. This is not simple it is very complicated.

Mr. Andy Katz, 220 South Ocean Boulevard, representing the Beach Property Owner's Association (BPOA), advised the quality of life is a major issue. We want to hold on to the retail and other non-restaurant space. However, we would like to go a step further to encourage professional offices.

Ms. Diane Colonna, Executive Director, Community Redevelopment Agency, advised we do feel our Board (CRA) made a valid recommendation. We do feel there is an issue that needs to be addressed. Our concern is that we think this is too broad an approach and that retail should be encouraged in certain areas in the Cluster Study. It is tough getting retail in all of the areas and 12/1,000 is a big jump in the restaurant requirements. We have a contract for a hotel to be built on the old library site and we are concerned over the impact of this change. We need some other approaches or other incentives for retail. The issue needs to be addressed and there is a concern not having a good mix. This merits some additional discussion.

Mr. Glickstein asked Ms. Colonna if she has an opinion on the change and if she would support it. Ms. Colonna advised she thought it had merit in the area of the Cluster Study from Atlantic Avenue and Swinton Avenue along Atlantic Avenue; but it should not go into the Central Business District or west of Swinton Avenue.

Mr. Glickstein advised if you were to increase the parking requirement for restaurants where would it be, Swinton Avenue is the western boundary and would you take it to 5<sup>th</sup> Avenue on the east?

Mr. Glickstein advised he respects Mr. Marincola's opinion on several levels. Aside from the Pineapple Grove area would you draw the east boundary at 5<sup>th</sup> Avenue? Mr. Marincola advised he does not know when we first approached the issue it was just for Cluster 4, Swinton Avenue to 5th Avenue. You are only seeing the tip of the iceberg; this should be made to encourage retail. I was surprised when Mr. Dorling took this on. I think it is very courageous. I am here to support him. We are talking about quality of life. I think the increase should include Pineapple Grove. There are only four (4) restaurants in Pineapple Grove that are just about making it. It would be sad to make it easier to open there rather than anyone else and put those struggling operations out of business.

Dr. Spodak advised he had a concern. There is a whole influx of new restaurants but they are more like a club if you go there past restaurant hours. There is a transition going on you would not be happy about. We are talking about restaurants and then making night clubs out of themselves. I have spoken to some restaurateurs; they are making money on the drinks.

Mr. Dorling advised those are separate issues but it is obviously a concern. Our current restaurant regulations do not allow them to operate as a bar. We understand there are some folks who are not meeting the intent of a restaurant and they are being looked into. (Alcohol, Tobacco and Firearms) ATF needs to do an investigation. They will be forced to comply. We also have issues relating to sidewalk cafes.

Mr. Lynch advised he thinks there is a lot to this issue and doubling their fee is a very tough thing. I agree with the CRA, I would rather see it as a package and look at the whole think at one time. I think I would rather look at it all at one time. We should postpone this until August. I agree if we are going to do anything it should be restricted to certain areas of the CBD. I think the restaurants that are part of hotel/motel uses should also be excluded. I would like to see staff come back with more detail on calculations. I am fully supportive of making the change, however, I don't think we are at a point to make the change.

Mr. Dorling advised on the reference to two space increase (made by Mr. Marincola) is based on an assumption that the bay is occupied with a retail use which is credited with four spaces, while a restaurant is 6/1,000.

Mr. Lynch inquired about the Atlantic Ocean Club. Mr. Dorling advised they received a huge amount of credits. Mr. Lynch advised he sees the problem and it needs to be dealt with. I believe office space is a huge need and more so than retail. Atlantic Avenue originally wanted the restaurants. Do I think there needs to be more restaurants? No, this will pull the trigger and make it difficult for new restaurants.

Mr. Miller asked if the Board wanted to make a recommendation that we postpone this until the August meeting. Mr. Dorling advised there are very few remaining non-restaurant spaces and if we postpone he would be concerned that they will come in and convert and these will never be retail again. These other issues (additional retail incentives) have been talked about and I don't know how quickly they can come forward. Our desire would be to do them as quickly as possible. This is a very complex issue. The purpose was to at least put this change into place and we could adjust it later if necessary and follow up with additional changes.

Dr. Spodak inquired if Mr. Dorling would be open to moving this forward with a more defined area. A suggestion to limit the change to an area consistent with Cluster 4 was made.

Mr. Jacquet advised Dr. Spodak makes a good point. I would like to see this move. Mr. Lynne I have to agree with you as I grew up here and to see the changes are beautiful. I think it is a healthy saturation we need to think ahead. Back in the days we planned ahead. Mr. Katz made a great point as well as Mr. Lynch. We need some professional offices and more retail uses.

Mr. Lynch inquired why are we going from 6 to 12 instead of in between. Mr. Dorling advised we are looking at this as a removal of the incentive. Everyone else in the City is at 12/1,000. Mr. Lynch inquired if that was the industry standard.

Motion:

Motion made by Mr. Jacquet, seconded by Dr. Spodak, and approved 6 to 0 (Mr. Durden absent) to recommend approval of the amendment to Land Development Regulations, By Amending Section 4.4.13, "Central Business (CBD) District", Subsection (G), "Supplemental District Regulations", Section 4.4.24, "Old School Square Historic Arts District (OSSHAD)", Subsection (G), "Supplemental District Regulations", And Section 4.4.28, "Central Business District-Railroad Corridor (CBD-RC)", Subsection (G), "Supplemental District Regulations", To Clarify The Parking Requirements For Restaurants in the area immediately north and south of Atlantic Avenue from Swinton east

to SW/NW 5<sup>th</sup> Avenue 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 Section 4.6.9 “Off-Street Parking Regulations” Subsection 4.6.9(E)(3) “In-Lieu Fee” to clarify the applicability of the payment of in-lieu of parking program.
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Mr. McDonnell entered the project file into the record.

The item before the Board is to make a recommendation to the City Commission regarding a city-initiated amendment to Land Development Regulations (LDRs) that will provide additional opportunities for property owners to voluntarily participate in the payment in-lieu of parking program.

Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

Mr. McDonnell advised payment of a fee in-lieu of providing required parking spaces is an option currently available to properties located within the CBD, CBD-RC, and OSSHAD zoning districts. Further, the parking space fee associated with this program is based upon the In-Lieu Fee District Area Number within which the property is located.

There are currently a number of qualifications that must be satisfied to be eligible for the City Commission to consider approval of a payment of a fee in-lieu of providing the required number of parking spaces. These qualifications are:

- When additional parking is required that results from in-fill development that has been vacant for five (5) years or longer;
- From a change of use;
- Adding floor space to an existing building.

In lieu options are specifically prohibited for the following:

- New development;
- For Changes of use, or increases in floor space, if either occurs within two (2) years of the granting of a Certificate of Occupancy for new development.

The current LDRs mandate that the City Commission make a finding that it is impossible or inappropriate to provide the required number of on-site or off-street parking spaces, and that no parking spaces are to be eliminated in the case of building additions.

This amendment would allow this as an option for these currently prohibited applications and would remove the required finding of impossible and inappropriate and replace it with a finding that adequate public parking exists and subject to direction of studies like the Cluster Study.

Review By Others:

The Pineapple Grove Main Street (PGMS) committee reviewed the item at their June 1, 2011 meeting and made a unanimous recommendation of approval.

The Community Redevelopment Agency (CRA) reviewed the item at their June 9, 2011 meeting and made a unanimous recommendation of approval.

The Downtown Development Authority (DDA) reviewed the item at their June 13, 2011 meeting and a recommendation of approval was made, but that consideration of the following is made:

- That developments that are exclusively residential not be eligible;
- That it be found that sufficient public parking is available when considering commercial projects;
- That individual components, such as the residential component, of a mixed-use project be addressed separately, and that residential component not be able to utilize this option.

The West Atlantic Redevelopment Coalition (WARC) reviewed the item at their June 14, 2011 meeting and a recommendation of approval was made.

#### Courtesy Notices

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

- Neighborhood Advisory Council
- Progressive Residents of Delray (PROD)

Mr. Miller inquired why the DDA made the comment to exclude residential developments. Mr. McDonnell advised that dedicated residential parking is desired to assure parking will always be available.

Mr. Jacquet inquired if we are now allowing in-lieu for new developments. Mr. McDonnell advised we are changing it with this amendment.

#### Public Comments:

Jeffrey Lynne, Esquire, Weiner & Lynne, did not like the reference to Cluster Study as this study has not been adopted by City Commission. I have an application before the City right now. The Cluster Study has not been adopted by the City. I like the intent I do not like the design. I think it is a constitutional issue. The way this is drafted is way too open to interpretation.

Mr. Dorling advised that the Cluster Study identifies specific proposed recommendations in specific zones. In regard to the Cluster Study for zone 4 we should not look at conversion of restaurants to retail space. In cases where we have an in-lieu request from retail to restaurant these recommendations are relevant.

Mr. Jacquet inquired who did the Cluster Study. Mr. Dorling advised it was done Blount Hunter a real estate research firm, and they had a very impressive resume. They took every use in the individual clusters and made some suggestions on what businesses should be promoted to maintain a sustainable and healthy mix of use. It had gone through the Downtown Development Agency (DDA) and it has not been officially adopted. City Commission is aware of it but has not taken any action.

Mr. Jacquet inquired how often do we do these studies. Mr. Dorling advised this is the first one we did. It has been updated information like this when we consider add the West Atlantic Avenue but not after 2005 for the balance.

Mr. Dorling advised we look at information like this when we consider in-lieu requests. If you are asking for an in-lieu conversion, the availability for public parking in the city to absorb the impact is considered. Mr. Scott Aronson does the analysis for the in-lieu requests.

Public Comments: None

Board Discussion:

Mr. Lynch advised if the Cluster Study is done both the Planning and Zoning Board and City Commission should review and challenge this and commit to agree or not agree. It should be an official document at that point. City Commission should approve and adopt it.

Mr. Glickstein advised of the three comments the Downtown Development Authority mentioned one of those three were incorporated. Was consideration given for the other two? Mr. Dorling advised we will look into incorporating them as well.

Mr. Shutt advised there may be portions that we may not want to accept, therefore, I am concerned the Cluster Study is not before you tonight. I would make a motion to remove reference to the Cluster Study.

Mr. Dorling advised if you want to make a suggestion that the City or the Community Redevelopment Agency update the Study you could also suggest that the City should adopt an updated version. It would be good to have a recommendation so they can go forward.

Motion:

Motion made by Mr. Lynch, seconded by Mr. Glickstein, and approved 6 to 0 (Mr. Durden absent) to recommend approval of the amendment to Land Development Regulations, by Amending Section 2.4.5 (O), In-Lieu of Parking and Public Parking Fee Requests, Section 4.6.9, "Off-Street Parking Regulations", Subsection 4.6.9(E) (3), "In-Lieu Fee", and the Supplemental District Regulations of Section 4.4.13 Central Business District, Section 4.4.24 Old School Square Historic Arts District, and 4.4.28 Central Business District-Railroad Corridor District, 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 Section 4.6.9 "Off Street Parking Regulations", Subsection 4.6.9(C) "Number of Parking Spaces Required" and Appendix "A" "Definitions" by adding the definition of call centers and providing for specific parking requirements for call centers.
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Mr. McDonnell entered the project file into the record.

The item before the Board is to make a recommendation to the City Commission regarding a city-initiated amendment to Land Development Regulations (LDRs) that will introduce the new definition for a call center use and to provide a specific parking requirement for the use. The use is currently included under general office category and subject to an inadequate parking requirement.

Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

Review By Others:

The Pineapple Grove Main Street (PGMS) committee reviewed the item at their June 1, 2011 meeting and a unanimous recommendation of approval was made.

The Community Redevelopment Agency (CRA) reviewed the item at their June 9, 2011 meeting and a unanimous recommendation of approval was made.

The Downtown Development Authority (DDA) reviewed the item at their June 13, 2011 meeting and a unanimous recommendation of approval was made.

The West Atlantic Redevelopment Coalition (WARC) reviewed the item at their June 14, 2011 meeting and a unanimous recommendation of approval was made.

Courtesy Notices

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

- Neighborhood Advisory Council
- Progressive Residents of Delray (PROD)

Public Comments: None

Motion:

Motion made by Mr. Lynch, seconded by Mr. Krall, and approved 6 to 0 (Mr. Durden absent) to move adoption of this ordinance will provide a parking requirement for call centers that more closely correlates to the parking demand of such uses. The ordinance further defines the use of a call center. The purpose of the ordinance to ensure sufficient parking is provided, thereby avoiding undo congestion and parking spillover.

- F. City- initiated amendment to the Land Development Regulations Section 2.4.3(K) "Fees", Subsection 2.4.3(K)(1) "Development Applications" to provide for an increase in fees

Mr. McDonnell advised he item before the Board is that of making a recommendation to the City Commission regarding an amendment to the Land Development Regulations (LDRs) to increase the land development application fees pursuant to LDR Section 2.4.5(M).

Pursuant to Section 1.1.6(A), an amendment to the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

A review of the application fees assessed by adjacent municipalities and Palm Beach County reveals that the City of Delray Beach still remains at the low end of the fee schedules in comparison to our neighboring municipalities. As stated above, an overall increase has not been considered since 2009. Staff research of similar development activities within adjacent municipalities determined that an increase in the Development Application fees of 5% is justified (the fees have been rounded up in increments of five

dollars (\$5.00). This increase would place the City of Delray Beach's fees comparatively closer to the fees charged by the adjacent municipalities.

Courtesy Notices:

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

- Neighborhood Advisory Council
- Delray Citizens Coalition
- Chamber of Commerce

Public Comments: None

Motion:

Motion made by Mr. Glickstein, seconded by Mr. Krall, and approved 5 to 1 (Mr. Durden absent, and Mr. Jacquet dissented) to move approval to recommend to the City Commission approval of the amendments to the Land Development Regulations Section 2.4.3(K)(1) regarding proposed increases to the Land Development Application Fees, by adopting the findings of fact and law contained in the staff report and finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations.

V. PLANNING AND IMPLEMENTATION ITEMS:

A. Initiation of Comprehensive Plan Amendment 2011-1.

Under new growth management changes within House Bill 7207, which was signed into law on June 2, 2011, the twice a year limit on Comprehensive Plan Amendments has been removed. This is the City's first Comprehensive Plan amendment for the year 2011. The amendment includes one (1) city-initiated Future Land Use Map Amendment and one (1) city-initiated text amendment. A brief description of each item suggested for inclusion in the Plan Amendment is listed below:

City-Initiated Future Land Use Map Amendments:

- City initiated Future Land Use Map amendment to assign a City Future Land Use Map designation concurrently with the annexation of the "Lago Vista" property, located at the southeast corner of Linton Boulevard and the E-3 Canal. The current County Land Use Map designation is INST/8 (Institutional with an underlying Residential of 8 units per acre) and the proposed City designation is CF (Community Facilities).

City-Initiated Text Amendments:

- Future Land Use Element - Addition of Policy A-5.4 to require the building and site designs for all development and redevelopment projects to incorporate Crime Prevention Through Environmental Design (CPTED) standards to the greatest extent possible.

Motion made by Mr. Krall, seconded by Mr. Jacquet, and approved 6 to 0 (Mr. Durden absent) to recommend that the City Commission initiate Comprehensive Plan Amendment 2011-1, containing the material stated in the staff report.

VI. REPORTS AND COMMENTS:

A. Board Members

- Parking Management Advisory Board (PMAB) - Mr. Krall advised that the Board discussed that there are other alternatives other than parking meters on Atlantic Avenue. All the interested parties need to come up with solutions before throwing up meters.

B. Staff

Meeting Dates for July

CITY COMMISSION MEETINGS

Tuesday, July 5, 2011, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Tuesday, July 19, 2011, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

PLANNING AND ZONING BOARD MEETING

Monday, July 18, 2011, Planning and Zoning Board Regular Meeting, 6:00 p.m., City Commission Chambers:

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The following items will be considered by the Board next month.

1. Comprehensive Plan Amendment 2011-1, including:

- City initiated Future Land Use Map amendment to assign a City Future Land Use Map designation concurrently with the annexation of the "Vista Lago" property, located at the southeast corner of Linton Boulevard and the E-3 Canal. The current County Land Use Map designation is INST/8 (Institutional with an underlying Residential of 8 units per acre) and the proposed City designation is CF (Community Facilities).
- Future Land Use Element - Addition of Policy A-5.4 to require the building and site designs for all development and redevelopment projects to incorporate Crime Prevention Through Environmental Design (CPTED) standards to the greatest extent possible.

2. Annexation with the assignment of initial zoning of CF (Community Facilities) for Vista Lago, located at the southeast corner of Linton Boulevard and E-3 Canal.

3. Conditional use request to allow the conversion of a residential use to a church and the construction of an off-site parking lot for Eglise De Dieu Primitive De La Nouvelle Jerusalem Church, located on the south side of Martin Luther King Jr. Drive, west of NW 6<sup>th</sup> Avenue.

4. Conditional use request to allow an increase in density above 12 units per acre (proposed density is 13.91du/ac) in conjunction with the construction of a 253-unit multiple family residential development for Village Square, located at the southeast corner of SW 7<sup>th</sup> Street and Auburn Avenue and extending to the south to SW 10<sup>th</sup> Street between SW 12<sup>th</sup> and SW 13<sup>th</sup> Avenues.

5. Conditional use modification to allow the conversion of two existing repair/service bays to facilitate the expansion of the existing convenience store for Gasland Convenience Store Expansion, located at the southwest corner of NE 5<sup>th</sup> Avenue and NE 4<sup>th</sup> Street.
6. Consideration of amendments to the Community Redevelopment Agency (CRA) Plan 2011.

C. Board Members - no comments

VII. ADJOURN

The meeting adjourned at 8:35 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 June 20, 2011 which was formally adopted and approved by the Board on September 19, 2011.

*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.