



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Bounce Sporting Club

Meeting	File No.	Application Type
December 13, 2021 <b>Continued from October 18, 2021</b>	2021-243-USE-PZB	Conditional Use (Late-Night Business)
Property Owner	Applicant	Agent
Edwards Atlantic Avenue, LLC	Bounce Sporting Club	Neil M. Schiller, Esq., Government Law Group

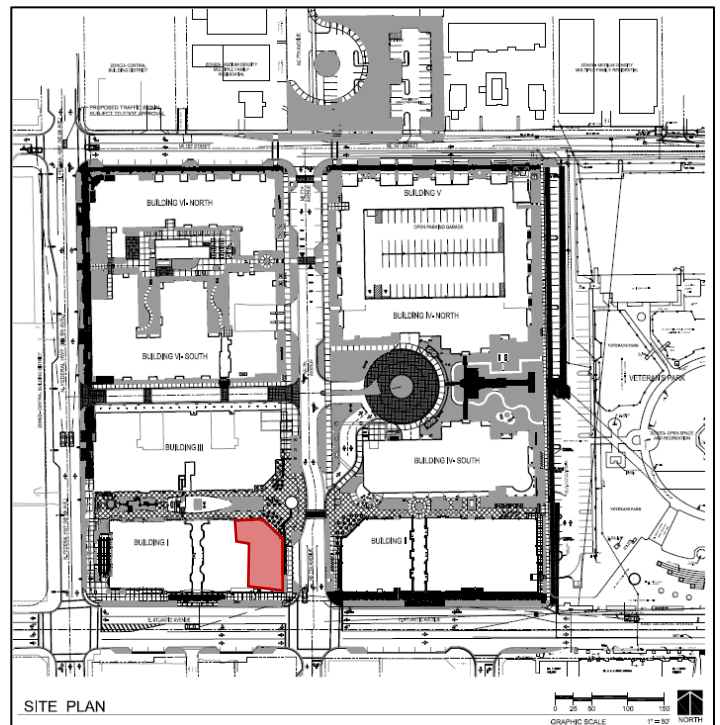
### Request

Provide a recommendation to the City Commission regarding a Conditional Use request by Bounce Sporting Club LLC to establish a Late-Night Business to be open until 2:00 A.M. at 625 East Atlantic Avenue, Building I, Suite No. 115 within the Atlantic Crossing development.

### Background Information

Bounce Sporting Club ("Applicant") is a proposed restaurant located at 625 East Atlantic Avenue, Suite No. 115, in the ground floor of Building I ("Subject Property") within the Atlantic Crossing development (red parcel, map at right). Atlantic Crossing, which is under construction, is a mixed-use development spanning two blocks from Veterans Park to NE 6<sup>th</sup> Avenue to the east and west, and between NE 1<sup>st</sup> Street and East Atlantic Avenue on the north and south. The subject property has a Land Use Map (LUM) designation of Commercial Core (CC), and a zoning designation of Central Business (CBD) District within the Central Core Sub-district.

Bounce is an upscale sports bar and nightclub with a presence in New York, Chicago, and Montauk, NY. The Delray Beach Bounce location is classified as a restaurant, which is a permitted use within the Central Core Sub-district of the CBD. *"The Bounce Sporting Club concept combines elements of a sports bar with the high-end cocktail lounge, nightlife experience. Bounce offers a more casual environment akin to the traditional sports bar with the elevated menu and higher-end product offerings of an upscale lounge. The entertainment and promotional programming revolves around themed events, live performances, and guest appearances."* The Applicant seeks to replicate the Montauk Bounce Beach concept in Delray Beach, which is *"more focused on the food and less on the party."* Bounce will occupy a 5,000 square foot bay designated as a restaurant use within the approved development plans. A full description of the proposed business is provided in the applicant justification statement.



The subject request was previously considered by the Planning and Zoning Board at its October 18, 2021 meeting. The Board expressed concern that the proposed late night use was out of character with the establishments in the downtown, and had the potential to negatively impact nearby residential neighborhoods. The request was postponed to December 13, 2021, to allow the applicant the ability to address these concerns by providing additional information on building ingress and egress, proposed programming, and the configuration of the establishment's indoor and outdoor use areas.

#### Project Planner:

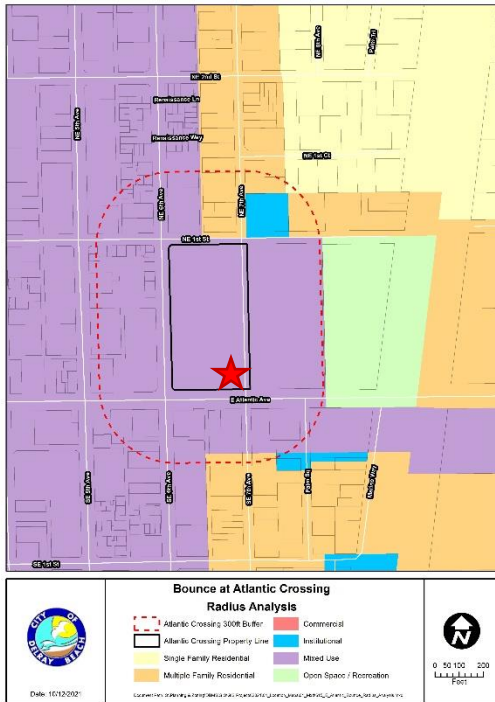
Rebekah Dasari, Senior Planner  
dasari@mydelraybeach.com  
561.243.7040, Ext. 7044

#### Attachments:

- Application Justification Statement
- Site Plan
- Security Plan
- Resolution No. 160-21

Note: The Property Appraiser database identifies the property as 609 East Atlantic Avenue; 625 does not appear in the online records, and the address is a result of the Declaration of Master Covenants that subdivided the property.

## Project Description



The applicant is requesting conditional use approval to operate as a 24-hour or Late-Night Business in Building I, Suite No. 115 within the Atlantic Crossing development. The proposed hours of operation are 12:00 PM to 2:00 AM, with voluntary restrictions by the applicant on the programming, access, and outdoor areas after midnight (discussed in detail below). The Land Development Regulations (LDR) Section 4.3.3(VV)(2)(a) requires that any 24-Hour or late night business located or proposed to be located within a 300-foot straight line route from any residentially-zoned property shall obtain a conditional use permit from the City for the operation of such use. The distance shall be measured from the nearest point of the property on which the 24-Hour or late night business is or will be located to the nearest point of a residentially-zoned property. The map at left shows the location of Bounce Sporting Club (identified with a star) in relation to residential zoning (gold and yellow colors). To the south, Bounce Sporting Club is located within 300 feet of residentially zoned property. And, while the applicant's tenant space is located more than 300 feet from a residentially zoned property to the north, the nearest point of the property is immediately adjacent to residentially zoned property.

A 24-hour or late night business is defined as any restaurant, bar, lounge, nightclub, music hall, club, gasoline station, convenience store, convenience business, retail store, grocery store, laundromat or similar use which is or will, at any time during a calendar year, be open for business at any time between the hours of 12 midnight and 5 a.m. Inasmuch as restaurants are permitted by right within the Central Core

Sub-district of the CBD, the conditional use request is for the extended hours of operation only (after 12 midnight until 2:00AM), not approval of the use. Any other business requesting to be open after 12 midnight and located within Atlantic Crossing would need to apply for separate consideration; approval of the subject request would apply only to Bounce Sporting Club.

Subsequent to the October 18, 2021, Board meeting, the applicant voluntarily provided the following conditions of approval:

- The patio on the northeast corner of Suite 115 will close at 12:00 a.m. on all days.
- All doors and windows will close at 12:00 a.m. on all days.
- The foyer along East Atlantic Avenue will be the sole ingress and egress point after 12:00 a.m. on all days.
- Live music will be prohibited after 12:00 a.m. on all days.

The floor plan identifies the location of these use areas in the figure at right, which was provided by the applicant.



## Review and Analysis

The LDR provides general required findings for conditional uses and additional requirements specific to particular uses. Per **LDR Section 2.4.5(E)(1)**, the City Commission, by motion, after review and recommendation for approval by the Planning and Zoning Board, may approve or reject a request for a conditional use. An analysis of the request and required findings is provided below. It is important to note that a recommendation of approval to the City Commission by the Planning and Zoning Board is required for the request to move forward for consideration by the City Commission.

### **LDR Section 3.1.1, Required Findings**

*Prior to the approval of development applications, certain findings must be made in a form which is part of the official record. This may be achieved through information on the application, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application.*

**(A) Land Use Map.** *The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Land Use Map.*

The subject property has a Land Use Map (LUM) designation of Commercial Core (CC), and a zoning designation of Central Business (CBD) District, which are consistent with each other. Per LDR Section 4.3.3(VV), *a conditional use permit is required when a 24-Hour or late-night business is proposed within a 300-foot straight line route from any residentially zoned property.* The restaurant use is allowed by right in the CBD Central Core Sub-district, but the request to operate as a late-night hour business (after midnight) is subject to conditional use approval.

**(B) Concurrency.** *Concurrency as defined by Objective NDC 3.1 of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CIE-2, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach.*

The complete Atlantic Crossing development was previously analyzed for compliance with traffic, schools, utilities, and solid waste during the review of other development applications submitted for the site. The original approval included the designation of the subject tenant space as a restaurant, and was not limited by the hours of operation as the hours of operation are not a consideration of the concurrency review. For example, the traffic analysis does not specify hours of operation limitations for any of the commercial spaces.

**(C) Consistency.** *Compliance with performance standards set forth in Chapter 3 and required findings in LDR Section 2.4.5(D)(5) for the Rezoning request shall be the basis upon which a finding of overall consistency is to be made. Other objectives and policies found in the adopted Comprehensive Plan may be used in making a finding of overall consistency.*

The following policies apply to the conditional use request:

### **Neighborhoods, Districts, and Corridors Element**

Objective NDC 1.3, Mixed-Use Land Use Designations *Apply the mixed-use land use designations of Commercial Core, General Commercial, Transitional, Congress Mixed-Use, and Historic Mixed-Use to accommodate a wide range of commercial and residential housing opportunities appropriate in scale, intensity, and density for the diverse neighborhoods, districts, and corridors in the city.*

Policy NDC 1.3.5 *Use the Commercial Core land use designation to stimulate the vitality and economic growth of the city while simultaneously enhancing and preserving the cultural and historic downtown area.*

Policy NDC 1.3.7 *Implement the Commercial Core land use designation using form-based code to provide for adaptive-reuse, development, and redevelopment that preserves the downtown's historic moderate scale, while promoting a balanced mix of uses that will help the area continue to evolve into a traditional, self-sufficient downtown. This designation is applied to the Community's downtown area. It includes a substantial portion of the Transportation Concurrency Exception Area described in the Land Use Element and graphically shown in Map 9. The Commercial Core designation accommodates a variety of uses including commercial and office development; residential land use upper story apartments; older homes renovated to accommodate office use; and uses such as "bed and breakfast" establishment; and industrial/commerce type uses.*

The subject property's CC land use and CBD zoning support an active, mixed use, downtown environment. As part of the approved mixed use Atlantic Crossing development, the proposed Bounce Sporting Club adds a new restaurant and sports bar concept to the active and diverse offerings that are part of the downtown. Downtown environments are intended to have more intense uses and a diverse range of commercial activity to compliment the higher density residential development. The requested late-night hours of operation are typical of the development pattern and active environment of the downtown area.



**(D) Compliance with the LDRs.** Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.

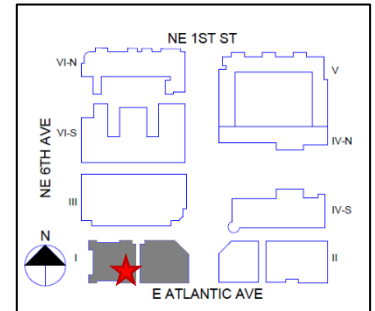
The Atlantic Crossing development was approved in compliance with the LDR. The conditional use findings are discussed below.

#### LDR Section 2.4.5(E)(5), Required Findings

In addition to provisions of Chapter 3, the City Commission must make findings that establishing the conditional use will not:

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

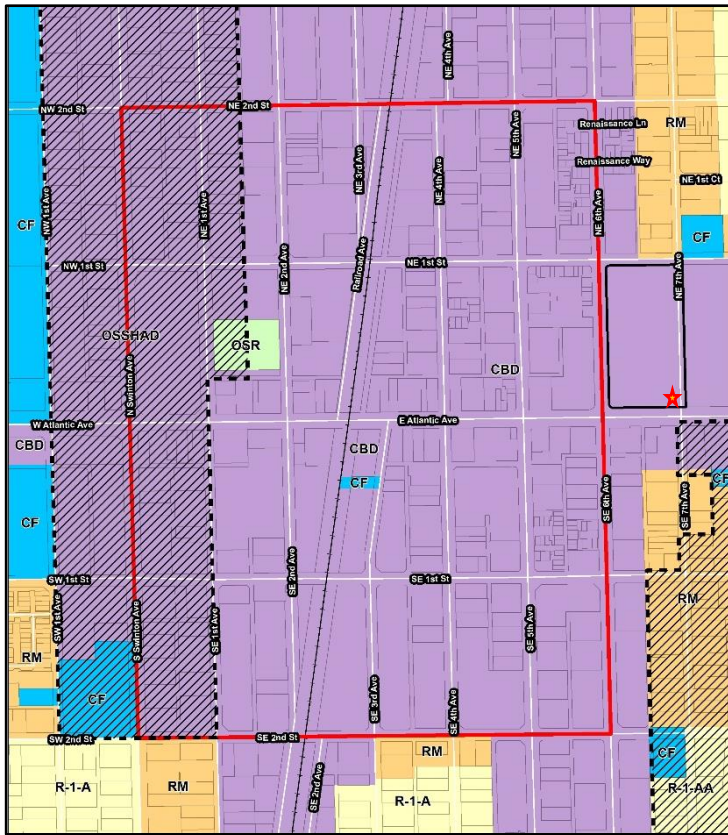
Bounce Sporting Club is part of the approved Atlantic Crossing development, a mixed-use development with 36,667 square feet of retail floor area, 36,767 square feet of restaurant floor area, 83,462 square feet of office floor area, 343 multiple family residential units, and two underground parking garages spread across two blocks and multiple buildings. Bounce Sporting Club is located in Suite No. 115 on the ground floor of Building I, in the southeast corner of the western block of the Atlantic Crossing development (figure at right).



The uses within Atlantic Crossing, as well as the surrounding development, is summarized in the table below.

Adjacent Zoning, Land Use, and Use				
	Zoning Designation	Land Use	Use	
<b>Subject Property</b>	Central Business (CBD)	Commercial Core (CC)	<b>Bldg. I</b>	Restaurant, retail, & office, 3 floors
			<b>Bldg. II</b>	Restaurant, retail, & office, 3 floors
			<b>Bldg. III</b>	Restaurant & retail; Residential (Floors 2-5)
			<b>Bldg. IV-S</b>	Restaurant, retail, & residential; Residential (Floors 2-4)
			<b>Bldg. IV-N / Bldg. V</b>	Residential, 4 floors
			<b>Bldg. VI-N and VI-S</b>	Residential, 5 floors; Ground floor commercial along NE 6 <sup>th</sup> Ave
<b>North</b>	Central Business (CBD) Medium Density Residential (RM)	Commercial Core (CC) Medium Density (MD)	Restaurant; Residential single and multi-family development	
<b>South</b>			Retail, parking, multi-family development	
<b>East</b>	Central Business (CBD) District	Commercial Core (CC)	Atlantic Crossing	
<b>West</b>			Retail, parking, restaurant, and Town Square townhomes	

The configuration of Atlantic Crossing with the location of the residential buildings in the northern part of the development provides buffering from the residentially zoned neighborhood to the north, and a degree of separation from much of the residential uses within the development. Building II, immediately to the east, has no residential uses. Building III, located to the north, has ground floor restaurant and retail with residential uses on the four floors above. Building IV-S, located to the northeast, has ground floor residential, but retail and dining bays separate the residential units from Bounce. Buildings IV-N, V, VI-N, and VI-S are located in the northern portion of Atlantic Crossing, providing a step-down in intensity of use from Atlantic Avenue to the residential zoning to the north. Residentially zoned properties are located within 300 feet to south of the subject property across Atlantic Avenue. The buildings fronting East Atlantic Avenue provide a certain level of buffering for the Marina Historic District neighborhood to the south.



Bounce is located just east of the “Entertainment District,” an area regulated within **Section 99.03(A)(1)(a)(i)** of the Code of Ordinances (see figure at left). The Entertainment District has historically been limited to such an area to limit the impacts on adjacent residential neighborhoods in proximity to the CBD. Within the Entertainment District, approved uses have expanded hours for noise-generating activities. The section specifies that for buildings or structures used for commercial purposes, operation of any such set, instrument, machine, or device between the hours of 12:01 a.m. and 7:00 a.m. Monday through Friday and between the hours of 1:00 a.m. and 7:00 a.m. on Saturday and Sunday in such a manner as to be plainly audible at a distance of 100 feet from the boundaries of the property is a violation of the section. Establishments outside of the Entertainment District are prohibited from such between 11:00 p.m. and 7:00 a.m. A location within the Entertainment District allows an establishment to request approval to operate until 1:00 a.m. with audible projection up to 100 feet, however **any establishment within 300 feet of a residential zoning district and operating past 12:00 a.m. is still required to obtain conditional use approval, regardless of whether or not the business is located within the Entertainment District.** Although the property is located outside of the designated Entertainment District, the CBD zoning is a mixed-use zoning district consisting of an array of commercial and residential uses typically found in an active and thriving

downtown. Downtown areas are designed to be active, mixed-use environments, and the entire Atlantic Crossing development contributes to the active, mixed use fabric of the downtown area, as supported by the comprehensive plan and LDR. Additionally, Bounce is classified as a restaurant, and pursuant to the definition in the LDR, “a bona fide restaurant shall mean an establishment engaged primarily in the service of food where the sale or service of alcoholic beverages is incidental to the sale and service of food,” and full course meals must be available during all hours of operation at permanent tables and chairs or customer counters. The Board should consider whether the proposed late night conditional use requested by the applicant for Bounce Sporting Club contributes to or detracts from the character of the downtown.

The following section provides detailed review and analysis of the specific conditions for a 24-hour or late night business.

#### LDR Section 4.3.3(VV), 24-hour or Late Night Businesses

The purpose and intent of the regulations and approval process in **LDR Section 4.3.3(VV)** is “to promote the health, safety and general welfare of the citizenry” and “to provide conditions upon the use of 24-Hour or late night businesses in order to minimize impacts upon residentially-zoned properties from such uses.” Businesses located “within a 300-foot straight line route from any residentially-zoned property shall obtain a conditional use permit from the City.” Pursuant to **LDR Section 4.3.3(VV)(2)(b), Conditions**, the following conditions shall apply to all 24-Hour or late night businesses seeking conditional use approval when located within 300 feet from a residentially-zoned property:

- 1) **Security plan:** A 24-Hour or late night business shall submit a security plan detailing the manner in which the business intends to address the security of the establishment, its patrons, employees and nearby residents. A convenience business as defined in Section 812.171, Florida Statutes (2000), as may be amended from time to time, is exempted from filing a security plan with the City pursuant to this subsection. However, convenience businesses shall comply with all applicable provisions of Sections 812.101-812.175, Florida Statutes (2000), as may be amended from time to time. A security plan shall include, at a minimum, a detailed description of the following:

- a. external lighting; and,
- b. other external security measures, such as security cameras or other similar measures; and,

*c. internal security measures, such as drop safes, silent alarms, security personnel or other similar measures.*

The security plan includes, among both interior and exterior security cameras; exterior security lighting along the perimeter of the premises; interior, after-hours, motion-sensor lighting; a drop safe with combination lock; and a “safe room” with fire-rated and drill-proof steel door. Bounce is working with a local security expert, who has proposed the use of approximately 34 HD Digital Watchdog 4MP 2.8MM IP Cameras with Nightvision, or comparable, to remain visible to customers, staff, and passersby – monitoring cash registers, entry and exit points, and other vulnerable areas throughout the interior and exterior of the premises. Bounce has indicated an intent to work with the landlord to develop and implement an adequate exterior security light plan and will install motion-sensor lights within the venue to be used during non-business hours as both a deterrent and safety measure. The Atlantic Crossing development is working with a commercial security system provider, and Bounce will work with the same provider, or other comparable company, to implement security and fire alarm solutions. Bounce intends to retain trained, certified, unarmed security guards, and will maintain a security presence of 1-8 guards within the venue during all hours of operation. The applicant is in the process of interviewing local, licensed, and insured security guard companies. The application justification statement provides a complete discussion of security plan for Bounce Sporting Club. The security plan details were not subject to review by the Police Department during review of the conditional use request.

2) **Buffering:** *A 24-hour or late night business shall provide adequate buffering to minimize the effects of noise and to act as a visual buffer to the property from nearby residential districts.*

As discussed above, the configuration of the Atlantic Crossing development with four and five story residential buildings in the northern portion of the block provides buffering from the residentially zoned properties to the north, and separation from the residential portion of the development. The residentially zoned properties to the south are separated by the one- and two-story commercial buildings that front onto East Atlantic Avenue.

Pursuant to **LDR Section 2.4.4(C) Imposition of Conditions**, *in granting approval to any development application, the granting body may impose whatever conditions it deems necessary in order to insure:*

- *The compatibility of the use with nearby existing and proposed uses.*
- *Concurrency.*
- *Consistency with objectives and policies of the Comprehensive Plan.*
- *The fulfillment of requirements of these Regulations which should have or could have been fulfilled prior to the approval action but which were not, due to conditions beyond the control of the applicant.*
- *The fulfillment of requirements of these Regulations which could have been fulfilled prior but remain outstanding; thus, providing that they will be accommodated in a later stage of processing.*

The applicant has proposed conditions (see description of proposal) intended to provide additional controls to mitigate a negative impact on the surrounding residential uses.

**Review By Others**

The Downtown Development Authority (DDA) reviewed the request at its meeting on October 11, 2021 and voted to recommend approval of the request; a memo from the DDA is provided as agenda backup.

## Board Action Options

- A. Move to recommend **approval** to the City Commission of **Resolution No. 160-21**, a Conditional Use request by Bounce Sporting Club LLC to establish a Late-Night Business to be open until 2:00 A.M. at 625 East Atlantic Avenue, Building I, Suite No. 115 within the Atlantic Crossing development, finding that the request is consistent with the Land Development Regulations and the policies of the Comprehensive Plan.
- B. Move to recommend **approval** to the City Commission of **Resolution No. 160-21**, a Conditional Use request by Bounce Sporting Club LLC to establish a Late-Night Business to be open until 2:00 A.M. at 625 East Atlantic Avenue, Building I, Suite No. 115 within the Atlantic Crossing development, finding that the request is consistent with the Land Development Regulations and the policies of the Comprehensive Plan, **subject to the following conditions:**
1. The patio on the northeast corner of Suite 115 will close at 12:00 a.m. on all days.
  2. All doors and windows will close at 12:00 a.m. on all days.
  3. The foyer along East Atlantic Avenue will be the sole ingress and egress point after 12:00 a.m. on all days.
  4. Live music will be prohibited after 12:00 a.m. on all days.
- C. Move **denial** of **Resolution No. 160-21**, a Conditional Use request by Bounce Sporting Club LLC to establish a Late-Night Business to be open until 2:00 A.M. at 625 East Atlantic Avenue, Building I, Suite No. 115 within the Atlantic Crossing development, finding that the request is inconsistent with the Land Development Regulations and the policies of the Comprehensive Plan.
- D. **Continue with direction.**

## Public and Courtesy Notices

(NOTE: The notices identified below were provided for the Public Hearing of October 18, 2021; additional public notice is not required.)

<p>X _Courtesy Notices were sent to:</p> <ul style="list-style-type: none"> <li>- Delray Beach Chamber of Commerce</li> </ul>	<p><u>X</u> Public Notice was posted at the property 7 calendar days prior to the meeting.</p> <p><u>X</u> Public Notice was mailed to property owners within a 500' radius 10 days prior to the meeting.</p> <p><u>X</u> Public Notice was posted to the City's website 10 calendar days prior to the meeting.</p> <p><u>X</u> Public Notice was posted in the main lobby at City Hall 10 working days prior to the meeting.</p> <p><u>X</u> Agenda was posted at least 5 working days prior to meeting.</p>
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