

City of Delray Beach

100 NW 1st Avenue - Delray Beach, Florida 33444

Phone: (561) 243-7000 - Fax: (561) 243-3774

www.mydelraybeach.com



Minutes - Draft

Tuesday, May 21, 2019

4:00 PM

Regular Meeting at 4:00 PM

Delray Beach City Hall

City Commission

Mayor Shelly Petrolia

Vice Mayor Shirley Ervin Johnson

Deputy Vice Mayor Bill Bathurst

Commissioner Adam Frankel

Commissioner Ryan Boylston

1. ROLL CALL

Mayor Petrolia called the Regular City Commission Meeting to order at 4:00 p.m.

The roll call was taken by the City Clerk.

The following were in attendance:

Mayor Shelly Petrolia
Commissioner Adam Frankel
Vice Mayor Shirley Ervin Johnson
Deputy Vice Mayor Bill Bathurst
Commissioner Ryan Boylston

Others present were:

Neal de Jesus, Interim City Manager
Lynn Gelin, City Attorney
Katerri Johnson, City Clerk

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. AGENDA APPROVAL

Mayor Petrolia requested that **Item 7.F.** be moved up on the regular agenda as **Item 7.A.A.**

The City Attorney stated this is a request to modify the project covenant and noted when the iPic project was approved, a project covenant was created that specified certain conditions that were required as part of the approval. The City Attorney explained that the matter before the City Commission tonight is whether or not to permit a new use; the City Commission is not approving a restaurant or parking spaces. The City Attorney reiterated that the question now is "Can iPic amend the agreement in order to move forward with an application for a new use?" As it stands now, the City Attorney explained the only use permitted on the rooftop terrace is the public access and they want to bring forth an application. If it is granted this evening and the agreement is amended, then they will bring forth an application with a Class III site plan modification, and at that point, there would be consideration for the restaurant and parking.

Vice Mayor Johnson moved to approve the agenda as amended. It was seconded by Deputy Vice Mayor Bathurst. A roll call vote was taken and all were in favor. The motion carried 5-0.
approved as amended

4. PRESENTATIONS:

4.A. [19-469](#) LIVE FRESH SHOWER TRUCK

Recommendation:

Motion to support the Live Fresh Shower Truck to continue to operate at St. Matthews Church, until such time its determined the Shower Truck is found to impact the neighborhood negatively. At this point, the City Commisison can require the Truck to cease its operation and be removed.

Attachments: [Agenda Cover Report](#)
[Live Fresh Shower Truck Presentation 5-7-2019.ppt](#)

Vice Mayor Johnson moved to approve to continue the program. It was seconded by Deputy Vice Mayor Bathurst. A roll call vote was taken and all were in favor. The motion carried 5-0.

4.B. [19-481](#) ANNUAL PRESENTATION OF THE DELRAY BEACH SPORTS DESTINATION COMMITTEE

Attachments: [Agenda Cover Report](#)
[Sports Destination_City Commission May 7](#)

Marjorie Waldo, Palm Beach County Sports Commission, gave a brief presentation.

4.C. [19-485](#) DELRAY BEACH CLUSTER STRATEGIES DISCUSSION

Sponsors: Economic Development Department

Attachments: [Agenda Cover Report](#)
[Delray Beach Cluster and Competitiveness Study 2019-3-21](#)

Joan Goodrich, Economic Development Director, stated she is joined today with Mr. Kevin Griner, Senior Fellow of the Florida International University Metropolitan Center to present the recommendations from the City's first Competitive Assessment and Cluster Strategies Study.

4.D. [19-541](#) PRESENTATION BY PALM BEACH COUNTY SCHOOL BOARD ON THE DELRAY FULL SERVICE CENTER

Recommendation: Requesting support from the City on their request and approval of mitigation measures.

Attachments: [Agenda Cover Report](#)
[2019 3 27 Letter to Interim CM \(002\)](#)

Erica Whitfield, Palm Beach County School Board member, commented about the Delray Full Service Center and thanked the City Commission for being engaged in their efforts toward education. Ms. Whitfield stated the Delray Full Service Center is in need of improvements and some of the funding comes from the taxpayers through the sales tax that was approved. Ms. Whitfield thanked the voters for being a part of that project.

Dr. Robinson, Palm Beach County School Board member, thanked the City Commission and noted they are here because the voters voted for the penny sales tax and allocated approximately \$10 million to work at the Delray Full Service Center. Dr. Robinson stated there were numerous community input meetings with respect to the facility and the programming.

Wanda Pahl, Chief Operating Officer with the Palm Beach County School Board, gave a brief overview of the redevelopment proposal for the Delray Full Service Center (formerly Carver High School).

Commissioner Boylston moved to approve writing a letter from the City Commission that they support to **not** demolish buildings #1, #2, and #12, and renovating the gymnasium and building the 20,000 square foot Delray Full Service Center. It was seconded by Deputy Vice Mayor Bathurst. A roll call vote was taken and all were in favor. The motion carried 5-0.

4.E. Internal Auditor's Report

4.E.1. None

5. COMMENTS AND INQUIRIES ON AGENDA AND NON-AGENDA ITEMS FROM THE PUBLIC- IMMEDIATELY FOLLOWING PRESENTATIONS:

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

None.

B. From the Public

Marjorie Waldo, 8058 Tumblestone Court, representing the Education Board, entered a letter into the record urging the City Commission to support the Palm Beach School District's Plan and stated they were not opposed to preserving the gym or any other historic markers to celebrate the rich history of this site. Ms. Waldo stated they want to make sure they are maximizing the dollars for this site for the local population and they do not want to see anymore delays because they do not want to lose the money as well as construction dollars inflating over time.

Pauline Moody, commented about the Live Fresh Shower Truck, the homeless, and the people in rehab. In addition, Ms. Moody commented about the trash that is not being picked up.

Ann Stacey Wright, 225 S.W. 7th Avenue, Delray Beach, stated on behalf of The Set community, she asked the City Commission to join them in their First Annual Reunion Community Cookout on June 1, 2019 at the Catherine Strong Water Park.

Montre Bennett, 323 N.W. 2nd Avenue, Delray Beach (32 year resident), recited a quote from Dr. Martin Luther King, Jr. Secondly, Mr. Bennett urged the City Commission to allow the rooftop for iPic and let them do what they need to do so that they are able to take care of their employees. Lastly, Mr. Bennett urged the City to work with the Northwest and Southwest Neighborhoods, work with the families that have been here for generations, and come together as brothers and sisters for a unified community. He stated that race should not be a factor in this.

Christian Prakas, 715 Foxpoint Circle, Delray Beach (32-year old Delray Beach native), stated bars and restaurants are being subjected to extreme measures to ensure occupancy ratings are not exceeded and bills over \$8,000 have been imposed on some establishments for the increased presence of the Fire-Rescue Department on Atlantic Avenue and noted that sales are down 60% in some establishments and clients are threatening to close because they cannot sustain the lost revenues or the invoices. Mr. Prakas stated they had a great meeting with the Downtown Development Authority (DDA) yesterday with restaurant/bar owners and employees in attendance and stated everyone has agreed to abide by the current occupancy, but they are requesting immediate relief of the situation and suggested that the City punish those that are violating not the industry as a whole. Mr. Prakas stated the establishments are not asking for more occupancy, however, they are requesting to return to normalcy and urged everyone to work together to create a safe and profitable experience for all.

Victor Korobker, Buddha Sky Bar, urged the City to come up with a pro-active solution to work together.

Nick Nicholas, Jonnie Brown's (formerly Elwood's), 501 S. Ocean Boulevard, Delray Beach, stated they have not had any problems in the ten years they have been on the Avenue. He encouraged everyone to discuss what the issue is and stated if his business is complying with safety, then there should not be an issue.

Corey Winograd, Chief Executive Officer (CEO), BurgerFi International and Legal Manager and Officer of Oven 201 East Atlantic, LLC a/k/a The Office restaurant, stated the businesses want to be good corporate citizens and will do the right thing. He asked to be treated with respect, due process, and fairness.

Mavis Benson, resident, merchant, Co-Chair of the Merchants and Business Association, and a Downtown Development Authority (DDA) board member, stated their immediate request is to take away this highly visible enforcement that is a financial burden and overall bad perception of how Delray Beach operates as a people-friendly downtown. Ms. Benson suggested that as soon as possible, the City bring all parties involved for a Workshop with the discussion to focus on updating rules, licenses, LDRs, and consider a position of a nighttime manager. Ms. Benson stated the DDA has been advocating for a nighttime manager since 2012 which Amsterdam, Paris, and London instituted in their cities in 2014.

Carol Anderson, 4812 W. Bexley Park Drive, Delray Beach, stated the tv broadcast system in the City Hall lobby is not broadcasting any volume and people cannot hear the meeting. In the future for overflow of crowds, she urged the City to ensure the communication is working better. Secondly, Ms. Anderson stated with respect to the presentations, the City is faced with a lot of demands for money. Ms. Anderson stated she has advocated that the City assess the value and potential alternate uses of all city property. She suggested that the City sell some property for enough money to buy other things the City needs.

Joy Howell, 1 N.W. 25th Street, Delray Beach, on behalf of the Delray Beach Preservation Trust, she thanked the City Commission for sending a letter to preserve Carver High. Secondly, Ms. Howell stated the small restaurant owners on the Avenue need the 90 public parking spaces that iPic is providing.

There being no one else from the public who wished to address the City Commission, Mayor Petrolia closed the public comment section.

6. CONSENT AGENDA: City Manager Recommends Approval

Commissioner Frankel moved to approve the consent agenda. It was seconded by Commissioner Boylston. A roll call vote was taken and all were in favor. The motion carried 5-0.

6.A. [19-569](#)

CITY COMMISSION MINUTES

April 16, 2019 Regular City Commission Meeting Minutes

April 26, 2019 Annual Strategic Planning Workshop Meeting Minutes

Sponsors: City Clerk Department and Maloney

Attachments: [Agenda Cover Report](#)

[April 16, 2019 Regular City Commission Meeting Minutes](#)

[April 26, 2019 Annual Strategic Planning Workshop Meeting Minutes](#)

approved

6.B. [19-575](#) APPROVAL OF THE GREEN IMPLEMENTATION ADVANCEMENT BOARD BYLAWS ESTABLISHING THE RULES OF PROCEDURES

Recommendation: Motion to approve the Green Implementation Advancement Board Bylaws as presented establishing the rules of procedures.

Attachments: [Agenda Cover Report](#)

[General Rules of Procedure of the Green Implementation Advancement Board](#)

approved

6.C. [19-576](#) APPROVAL OF THE PARKING MANAGEMENT ADVISORY BOARD BYLAWS ESTABLISHING THE RULES OF PROCEDURES

Recommendation: Motion to approve the Parking Management Advisory Board Bylaws as presented establishing the rules of procedures.

Attachments: [Agenda Cover Report](#)

[Parking Management Advisory Board Bylaws](#)

approved

6.D. [19-465](#) RESOLUTION NO. 101-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR THE ABANDONMENT OF WATER AND SEWER EASEMENTS DEDICATED TO THE CITY OF DELRAY BEACH AS RECORDED IN THE BORTON MOTORS REPLAT, PLAT BOOK NUMBER 83, PAGES 137 THROUGH 138 OF THE OFFICIAL RECORDS OF PALM BEACH COUNTY, FOR THE SUBJECT SITE LOCATED AT 2201 N. FEDERAL HIGHWAY; THE DEDICATION OF WATER AND SEWER EASEMENTS TO REFLECT THEIR AS BUILT LOCATIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Recommendation: Motion to approve Resolution No. 101-19, as presented.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)
[Location Map - Gunther](#)
[Resolution with Exhibit A and B](#)
[Easement Coordination Plan - Gunther](#)

approved

**6.E. [19-493](#) **INTERLOCAL AGREEMENT BETWEEN CITY OF DELRAY BEACH
AND SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
(SWA) FOR BLIGHTED AND DISTRESSED PROPERTY CLEAN-UP
AND BEAUTIFICATION GRANT FY2019****

Recommendation: Motion to Approve acceptance of an Interlocal Agreement between the City of Delray Beach and Solid Waste Authority of Palm Beach County (SWA) in the amount of \$130,446.25 for assistance in the cleanup and beautification of distressed, blighted or otherwise impacted public properties within incorporated areas of Delray Beach.

Sponsors: Community Improvement and Mesidort

Attachments: [Agenda Cover Report](#)
[Legal Review Checklist ILA Grant from SWA re Delray Beach
Memorial Garden](#)
[2019 SWA FINAL Blighted Grant Agreement](#)
[Resolution 96-19 for Agreement with SWA for funding](#)

approved

**6.F. [19-520](#) **ITEM (A) - ACCEPTANCE OF A TEMPORARY CONSTRUCTION
EASEMENT FOR 1311 W LINTON BLVD.****

Recommendation: **Item A**
Motion to approve and accept a Temporary Construction Easement for 1311 W Linton Blvd.

Item A
Consider acceptance of Grant for Temporary Construction Easement for 1311 W Linton.

In May 2017, the owner (AUTO COMPANY XXVII, INC.) submitted building permit #17-169479 to improve an existing commercial site and buildings.

As part of the improvements, multiple utilities will be installed on the site, the owner will install said improvements and once construction has been completed the owner will update the plat to reflect location of the easements required for location of new utilities.

There is no City cost now or in the future for this item.

Attachments provided:

- 1) Item (A) Grant of Temporary Construction Easement 1311 W Linton Blvd. (Auto Nation)
- 2) Item (A) Legal Review Construction Easement for 1311 W Linton Blvd. (Auto Nation)
- 3) Item (A) PAPA Map of 1311 W Linton Blvd.
- 4) Item (A) PAPA Page of 1311 W Linton Blvd.
- 5) Item (A) Plat for 1311 W Linton Blvd.
- 6) Item (A) Sun Biz Page 1311 W Linton Blvd.

Sponsors: Public Works Department

Attachments: [Agenda Cover Report](#)

[Item \(A\) PAPA Map of 1311 W Linton Blvd](#)

[Item \(A\) PAPA Page of 1311 W Linton Blvd](#)

[Item \(A\) Plat for 1311 W Linton Blvd](#)

[Item \(A\) Sunbiz Page for 1311 W Linton Blvd](#)

[Item \(A\) Grant of Temporary Construction Easement Auto Nation](#)

[Item \(A\) Legal Review Construction Easement for Auto Nation](#)

approved

- 6.G.** [19-539](#) APPROVE SEA TURTLE LIGHTING MAINTENANCE AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

Recommendation: Motion to approve a Sea Turtle Lighting Maintenance Agreement between the City of Delray Beach (City) and the Florida Department of Environmental Protection (FDEP)

Sponsors: Public Works Department

Attachments: [Agenda Cover Report](#)

[Sea Turtle Lighting Maintenance Agreement final 5 20 19](#)

approved

- 6.H.** [19-562](#) RESOLUTION NO. 112-19 TO APPROVE THE UTILIZATION OF CONTRACT NO. 17-0606G BETWEEN LAKE COUNTY, FLORIDA AND MUNICIPAL EMERGENCY SERVICES, INC., TO OBTAIN EQUIPMENT FOR THE DELRAY BEACH FIRE DEPARTMENT AND AUTHORIZE THE CITY MANAGER TO EXECUTE A MASTER EQUIPMENT LEASE PURCHASE AGREEMENT WITH COMMUNITY FIRST NATIONAL BANK IN THE TOTAL AMOUNT OF \$1,011,144.

Recommendation: Motion to approve Resolution No. 112-19 to approve the utilization of Contract No. 17-0606G between Lake County, Florida and Municipal Emergency Services, Inc. (MES) to obtain equipment for the Delray Beach Fire Department and authorize the City Manager to execute a master

equipment lease purchase agreement with Community First National Bank in the total amount of \$1,011,144.

Sponsors: Purchasing Department

Attachments: [Agenda Cover Report](#)

[Sample Municipal Standard 062718](#)

[Res 112-19 SCBA Lease Agreement with CFNB for SCBA via MES](#)

[Legal Review Checklist Community First National Bank](#)

[Lake County Contract 17-0606G](#)

[5Quote from MES in accordance with Lake County Contract](#)

approved

6.I. PROCLAMATIONS:

6.I.1. None

6.J. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS:

6.J.1. [19-500](#) REPORT OF APPEALABLE LAND USE ITEMS FROM APRIL 8, 2019, THROUGH APRIL 26, 2019.

Recommendation: By motion, receive and file this report.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)

[Appealable Items Map](#)

[A - 301 NE 1st Steet - Appealable Report](#)

[B -2500 SW 22nd Ave - Appealable Report](#)

[C - Lucky's 5030 W. Atlantic Ave. - Appealable Report](#)

[D -Delray Chevrolet - 2605 S. Federal Hwy - Appealable Report](#)

[E -405 SE 6th Avenue - Appealable Report](#)

[F - Murphy Oil - 16211 S. Military Trail. - Appealable Report](#)

[G -1405 N Federal Hwy - Appealable Report](#)

[H - Tropic Bay - 2801 Florida Blvd. - Appealable Report](#)

[I - Delray Oasis Business Park - 1201 N. Federal Hwy. - Appealable Report](#)

[J -Mayfair Federal Plaza - 885 SE 6th Ave. - Appealable Report](#)

[K - Delray Beach Yacht Club - 100 Macfarlane - Appealable Report](#)

approved

6.K. AWARD OF BIDS AND CONTRACTS:

6.K.1. [19-307](#) APPROVAL OF RESOLUTION NO. 72-19 TO AWARD AN AGREEMENT WITH B&M MARINE CONSTRUCTION, INC. FOR CONSTRUCTION OF

THE CITY MARINA IMPROVEMENTS (PROJECT NO. 16-098)
PURSUANT TO ITBC. NO. 2019-022 - \$3,800,000

Recommendation: Motion to approve Resolution No. 72-19 to award an Agreement with B&M Marine Construction, Inc. for construction of the City Marina Improvements (Project No. 16-098) pursuant to ITBC No. 2019-022 in an estimated amount of \$3,800,000.

Sponsors: Public Works Department - Programs & Project Management

Attachments: [Agenda Cover Report](#)
[Signed Agreement - B&M Marina](#)
[Legal Review Checklist Agreement with B&M Marine Construction for Marina Improvements](#)
[Res 72-19 for 2019-022 Agreement B&M Marine Construction](#)
[2019-022 City Marina Construction \(rev 3\)](#)
[2019-022 Addendum No. 1](#)
[2019-022 Addendum No. 2](#)
[2019-022 Addendum No. 3](#)
[2019-022 Addendum No. 4](#)
[2019-022 Addendum No. 5](#)
[2019-022 Addendum No. 6](#)
[2019-022 Addendum No. 7](#)
[2019-022 Addendum No. 8](#)
[B&M Marine Construction, Inc.](#)

approved

7. REGULAR AGENDA:

- 7.A. [19-518](#) RESOLUTION NO. 109-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, CONSIDERING A REQUEST FOR A CONDITIONAL USE MODIFICATION TO ALLOW A MULTIPLE FAMILY RESIDENTIAL DEVELOPMENT TO INCREASE A PREVIOUSLY APPROVED DENSITY WITHIN THE CARVER ESTATES OVERLAY DISTRICT. (VILLAGE SQUARE HOMES) (QUASI-JUDICIAL HEARING)

Recommendation: Review and consider Resolution No. 109-19: A Conditional Use Modification request to allow a Multiple Family Residential Development to increase a previously approved density of 13.9 dwelling units per acre (du/ac) to 15.5 du/ac within the Carver Estates Overlay, with the following conditions:

1. Any restricted units are priced and/or rented at workforce housing levels and shall state that those units shall be sold to the

- eligible income group in accordance with Article 4.7 -Family/Workforce Housing.
2. Coordination with the City's Neighborhood & Community Services Department is required on buyer eligibility, housing prices, as well as any applicable requirement to record a covenant or to enforce resale restrictions.
 3. Prior to site plan approval, the rear alley will have traffic calming devices such as speed humps or raised paver cross-walks spaced to deter higher speeds along the alley.
 4. Prior to site plan approval, a note will be added to the Phase III site plan modification noting that 34 workforce housing units must comply with the regulations of Section 4.7 and remain affordable for a period of no less than 40 years. Units are located within Phase I and Phase II.
 5. Common areas must have a maintenance entity.
 6. One space in the two-car garage must be maintained for vehicular parking.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)
[Resolution 109-19 Village Square CU-Final](#)
[Village Square Homes Location Map](#)
[Village Square Homes CU Staff Report](#)
[Village Square Homes Overall Site Plan Exhibit](#)
[Village Square Homes Phase III Survey](#)
[Village Square Homes Phase III Site Plan](#)
[Village Square Phase III Color Elevations](#)
[Village Square Phase III Southeast Perspective](#)
[Village Square Phase III Bird's Eye perspective](#)

Mayor Petrolia stated if anyone from the public would like to speak on **Items 7.A., 7.B., 7.C., and Item 8.B.,** to stand and be sworn in.

The City Clerk swore in those individuals who wished to give testimony on this item.

Mayor Petrolia read the City of Delray Beach Quasi-Judicial rules into the record.

Mayor Petrolia asked the City Commission to disclose their ex parte communications. The City Commission stated they had no ex parte communications to disclose.

Tim Stillings, Development Services Director, entered the project file

#2019-126 into the record.

Mark Ricker, 1615 S. Congress Avenue, Delray Beach, on behalf of the Delray Beach Housing Authority and REG Architects, gave a brief presentation on the overview of the project.

Mr. Stillings discussed some of the highlights of the project. At its meeting of April 15, 2019, the Planning & Zoning Board recommended approval with the conditions listed in the agenda memo with a vote 5-0.

Mayor Petrolia stated if anyone from the public would like to speak on Resolution No. 109-19, to step forward.

Christina Morrison, 2809 Florida Boulevard, Delray Beach, stated affordable housing is critical in Palm Beach County and when she brings a company in that are looking to bring their headquarters to Palm Beach County the two big questions are: (1) Where are my workers going to be able to afford to live? and (2) Where are my children going to go to school? Ms. Morrison stated the developer has met all the conditions set forth and she urged the City Commission to approve.

There being no one else from the public who wished to address the City Commission regarding Resolution No. 109-19, Mayor Petrolia closed the public comment.

There was no cross-examination or rebuttal.

For clarification, Mayor Petrolia confirmed that these units have garages and enter on the backside to the garage and there is an alley between. Mayor Petrolia stated she supports the project.

Deputy Vice Mayor Bathurst stated he too supports the project.

Commissioner Boylston moved to approve Resolution No. 109-19 with staff's conditions. It was seconded by Vice Mayor Johnson. A roll call vote was taken and all were in favor.

approved

7.B. [19-489](#)

RESOLUTION NO. 108-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH CONSIDERING A WAIVER TO LDR SECTION 4.6.7 SIGNS, SUBSECTION (E)(7) DESIGN STANDARD MATRIX, TO ALLOW A WALL SIGN ON THE EAST ELEVATION TO EXCEED THE MAXIMUM SIZE OF NINE (9) SQUARE FEET IN AREA

ON THE REAR OF THE BUILDING WHICH IS PURSUANT TO LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, AND THE COMPREHENSIVE PLAN, AT 215 NE 5TH AVENUE (PCN: 12-43-46-16-01-106-0090); PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES (2019-161-WAI-CCA). (QUASI-JUDICIAL HEARING)

Recommendation: Review and consider Resolution No. 108-19, a waiver to LDR Section 4.6.7. Signs, Subsection (E)(7) Design Standard Matrix, to allow a wall sign on the east elevation to exceed the maximum size.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)
[Resolution 215 NE 5th Avenue](#)
[location map](#)
[justification letter](#)

Mayor Petrolia asked the City Commission to disclose their ex parte communications. The City Commission had no ex parte communications to disclose.

Tim Stillings, Development Services Director, entered project file #2019-161 into the record.

Mr. Stillings stated this is a request for a waiver to the LDRs regarding a sign on the rear wall of the building for the Central Park Taekwondo located at approximately the northeast corner of N.E. 2nd Street and N.E. 5th Avenue. Mr. Stillings stated the sign is individually mounted, reversed channel letters with a tree logo internally luminated with white LED's. The proposed square footage is 37.6 square feet; however, the City's sign code permits a maximum of 9 square feet on the rear of a business. The waiver request meets the four findings as required.

Joseph Capizola, 4770 N. Classical Boulevard, Delray Beach, made reference to the site plan and the east elevation, and stated the main access to this property is from the alley street. Mr. Capizola stated there is a one-way street on the bottom right-hand corner of the presentation entering the property and there is a one-way street entering the property and there is a one-way exit out to the N.E. 2nd Street; the primary entrance for this northern tenant is through the alley. The site plan that has previously been approved and built out the handicapped parking and the primary access is on that side of the building and is the primary access for the building and that the sign be their primary sign for their access as well.

Mayor Petrolia stated if anyone from the public would like to speak on this request, to step forward. There being no one from the public who wished to

address the City Commission regarding Resolution No. 108-19, the public comment was closed.

There was no cross-examination or rebuttal.

Mayor Petrolia and Commissioner Frankel made a few brief comments.

Deputy Vice Mayor Bathurst moved to approve Resolution No. 108-19. It was seconded by Commissioner Boylston. A roll call vote was taken and all were in favor. The motion carried 5-0.

approved

7.C. [19-503](#)

RESOLUTION NO 110-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH FOR A TEMPORARY USE PERMIT REQUEST FOR A TEMPORARY PARKING LOT WITH WAIVERS FROM LDR SECTION 2.4.6(F)(3)(e)1,3,4, 5 AND 8 TO PERMIT A TEMPORARY PARKING LOT WHICH IS PURSUANT TO LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, AND THE COMPREHENSIVE PLAN, AT 101 NW 18TH AVENUE (PCN 12-43-46-18-00-000-1120 & 12-43-46-18-00-000-1141); PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES (2019-154-WAI-CCA). (QUASI-JUDICIAL)

Recommendation: Review and consider Resolution No. 110-19, for the temporary use permit for a temporary parking lot located at 101 NW 18th Avenue, with waivers to Land Development Regulations (LDR) Sections 2.4.6(3)(e)1, 3, 4, 5, and 8.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)
 [Resolution 110 - 19 101 NW 18th Ave Temp Parking Lot](#)
 [Survey 101 NW 18th Ave](#)
 [site plan 101 NW 18th Ave](#)
 [request letter 101 NW 18th Ave](#)
 [warranty deed 101 NW 18th Ave](#)
 [location map 101 NW 18th Ave](#)
 [101 NE 18 AVE TempParking](#)

Tim Stillings, Development Services Director, entered project file #2019-514 into the record and stated this is a temporary use permit request for a temporary parking lot with waivers for 101 N.W.18th Avenue.

The applicant was not present.

Commissioner Frankel moved to **table** Resolution No. 110-19. It was seconded by Commissioner Boylston. A roll call vote was taken and all

were in favor. The motion carried with a 5-0 vote.

tabled

- 7.D. [19-524](#) RESOLUTION NO. 107-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR THE VACATION AND ABANDONMENT OF INTEREST OF PORTIONS OF FLADELL'S WAY (FORMERLY KNOWN AS AVENUE F), CONTAINING 0.283 ACRES, AND AVENUE G, CONTAINING 0.35 ACRES, ACCORDING TO THE DEL RATON PARK PLAT THEREOF AS RECORDED IN PLAT BOOK 14, PAGES 9 AND 10 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING BETWEEN SOUTH FEDERAL HIGHWAY AND FREDERICK BOULEVARD.

Recommendation: Review and consider Resolution No. 107-19 vacating and abandoning the City's interest of portions of Avenue F, totaling 0.283 acres, and Avenue G, totaling 0.35 acres, Del Raton Park, Plat Book 14, Pages 9 and 10 of the public records of Palm Beach County, lying between South Federal Highway and Frederick Boulevard.

Attachments: [Agenda Cover Report](#)
[Abandonment Avenue F and Avenue G Resolution 107-19](#)
[Abandonment Avenue F and Avenue G Location Map](#)
[Abandonment Avenue F and Avenue G PZ Staff Report](#)
[Delray Chevrolet Site Plan](#)

The City Attorney explained that Item 7.D. the abandonment request and Item 7.E. the approval of the final plat are items that are usually placed on the Consent Agenda. The City Attorney noted that the reason Item 7.E. is a separate item is because the abandonment is contemplated in the plat. The City Attorney stated if the abandonment is approved, then the City Commission can make a motion just on the plat.

Michael Weiner, Attorney with Sachs, Sax, Caplan, P.L., 6111 Broken Sound Parkway, Boca Raton, gave a brief presentation regarding the abandonment of Avenue "F" and Avenue "G" between S. Federal Highway and Frederick Boulevard in Delray Beach. Mr. Weiner reviewed the traffic counts (AM peak trips and PM peak trips). Mr. Weiner briefly commented on the traffic control and they meet the requirements set forth by the U.S. Department of Transportation for Federal Highway administration and stated they meet the LDRs for abandonments. He stated these abandonments have been reviewed by the Planning and Zoning Board as well as the Site Plan Review and Appearance Board (SPRAB).

Tim Stillings, Development Services Director, stated this resolution is abandoning and vacating two rights-of-ways. Mr. Stillings stated positive findings are met with respect LDR Section 2.4.6(M)(5)(a) and part of the

approval was the improvement of La Mat Avenue. He reviewed the site plan and the landscape plan. At its meeting of May 21, 2019, the Planning and Zoning Board recommended approval of the abandonment of both rights-of-ways.

Mayor Petrolia stated if anyone from the public would like to speak on Item 7.D. or 7.E., to step forward. There being no one from the public who wished to address the City Commission, Mayor Petrolia closed the public comments.

Commissioner Frankel moved to approve Item 7.D. It was seconded by Deputy Vice Mayor Bathurst. A roll call vote was taken and all were in favor. The motion carried 5-0.

Commissioner Frankel moved to approve Item 7.E. It was seconded by Commissioner Boylston. A roll call vote was taken and all were in favor. The motion carried 5-0.

approved

- 7.E.** [19-533](#) FINAL (MAJOR) SUBDIVISION REPLAT OF PORTIONS OF BLOCKS 24, 25, AVENUE F AND AVENUE G "DEL RATON PARK", PLAT BOOK 14, PAGES 9 AND 10, ALSO KNOWN AS DELRAY CHEVROLET, AND ASSOCIATED TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT, UTILITY EASEMENT AGREEMENT, AND LANDSCAPE MAINTAINENCE AGREEMENT.

Recommendation: Motion to approve the Final (Major) Plat for Delray Chevrolet, 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 criteria set forth in the Land Development Regulations Section 2.4.5(J)(Major Subdivisions) along with the approvals for a Temporary Construction Access Easement Agreement, Utility Easement Agreement, and a Landscape Maintenance Agreement.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)
[Delray Chevrolet Location Map](#)
[Delray Chevrolet Plat](#)
[Delray Chevrolet Plat Staff Report CC-Rev -Tract C](#)
[Delray Chevrolet Plat Site Plan](#)
[Delray Chevrolet Survey](#)
[Delray Chevrolet Utilities Easement Agreement-not executed](#)
[Delray Chevrolet Access Easement-not executed](#)
[Delray Chevrolet Landscape Maintenance Agreement](#)
[Delray Chevrolet-Legal Review Utility Easement](#)
[Delray Chevrolet-Legal Review Access Easement](#)
[Delray Chevrolet-Legal Review Landscape Maintenance Agreement](#)

Commissioner Frankel moved to approve Item 7.E. It was seconded by Commissioner Boylston. A roll call vote was taken and all were in favor. The motion carried 5-0.

approved

- 7.F.** [19-534](#) CONSIDERATION OF THE PARKING FACILITY EASEMENT AGREEMENT AND PROJECT COVENANT FOR THE 4th & 5th DELRAY (IPIC), SPECIFICALLY THE REQUIRED PUBLIC TERRACE AND THE USE OF THE PUBLIC TERRACE AREA AS A RESTAURANT/BAR

Recommendation: Consider the proposed modifications to the Parking Facility Easement Agreement and Project Covenant for 4th & 5th Delray.

Attachments: [Agenda Cover Report](#)
[Parking Facilities Easement Agreement & Project Covenant-ORB 29090, 717 05-16-17 Ex C-1](#)
[Fourth and Fifth Delray Aerial Location Map](#)
[Floor Plan](#)
[Applicant's Site Plan Modification Narrative Ex B](#)
[Exhibit A-1-SPRAB Order - Fourth and Fifth Delray 01-20-16 Meeting](#)
[Exhibit B-1-4th&5th Delray-Class V Site Plan Certification From City 07-19-16](#)
[Exhibit D-1-4th&5th Delray-Shared Parking Memo](#)
[Parking Facilities Agreement-Proposed Revision for Restaurant - Proposed 05.21.19](#)

Item 7.F. was moved up on the regular agenda as Item 7.A.A.

Hamid Hashemi, President and Chief Executive Officer (CEO) of iPic, stated they were asked to provide an alley on the south side of the property and they purchased a 3,000 square foot property for \$2.3 million and dedicated it to the City. Mr. Hashemi urged the City Commission to lift the

restriction imposed on them so they can bring more jobs and prosperity to downtown Delray Beach.

Bonnie Miskel, Attorney representing the applicant, requests to add a use to the terrace area that is on the upper level of the building to amend the existing Parking Easement Agreement and Project Covenant in order to delete Paragraph VI related to public use of the terrace. Ms. Miskel commented about the Request for Proposal (RFP) requirements versus the City Commission requirements. The original RFP was for 50 parking spaces for the public and based his offer on that and submitted the offer based on that. After going through a City process, they absorbed an additional 40 parking spaces and ended up with 90 parking spaces. The RFP provided that the applicant shall design as if the north/south alley would be abandoned and the applicant followed that direction. Ms. Miskel stated the Community Redevelopment Agency (CRA) does not decide that, the City Commission does. She stated the applicant did not want to dead-end the alley and the client had to acquire additional property (the Martini site). With respect to the expansion of the east/west alley, Ms. Miskel stated the contract was for a certain amount of property and by the time they got through the process, they lost 8 feet along the entire north end of the alley.

Mayor Petrolia stated if anyone from the public would like to speak on iPic, to step forward.

Alan Schlossberg, 200 MacFarlane Drive, Delray Beach, urged the City Commission to not renegotiate this Request for Proposal (RFP) and stand by the original agreement. Mr. Schlossberg stated it was part of the agreement for allocating green space and using it for the public. He noted in the original RFP it was discussed that there would be light refreshments, etc. that a theatre might have servicing people who come to see the movies. Mr. Schlossberg stated this restaurant would have to compete against other restaurants. The property was assessed for over the \$3.6 million that was paid for the property and the City paid \$400,000 for the parking spaces and the 90 parking spaces were public spaces that the City gave to the applicant that were previously used on that site.

Nancy Chanin, 200 N.E. 2nd Avenue, Delray Beach, stated iPic made 32 changes to its original plan; the parking spaces, alleys, costs, setbacks to the north. Ms. Chanin stated whole plan for the theatre was impacted (i.e. parking, loss of 100 seats, changes to the kitchen, reduction in size to the entire building and the revenue for that). She stated the building was redesigned three times; the original cost was approximately \$33 million and the final cost \$53 million. Ms. Chanin urged the City Commission to accommodate iPic.

Pauline Moody, living temporarily in Boynton Beach, stated this area was not built for a movie theatre and feels it would have been more appropriate if the City had torn down the old library and put parking spaces for the businesses around there. Ms. Moody stated a restaurant on top of the building is not necessary because iPic already sells food inside. She expressed concern that having a restaurant on the rooftop could potentially create a dangerous situation. Ms. Moody stated to leave iPic the way it is or have another workshop just on iPic.

David Bambace , 5902 Via Delray, Delray Beach, eight year resident and sole-proprietor of a transportation company, supports the rooftop restaurant for iPic because he feels it will enhance the downtown.

Angie Gray, 219 S.W. 9th Street, Delray Beach, business owner and resident for 45 years, urged the City Commission to support the rooftop restaurant because she feels competition is healthy and Delray Beach is a destination. Ms. Gray stated they are #3 employers of local employment in the city (i.e. jobs, office space, and retail space).

Dr. Jay Alperin, a former Delray Beach Mayor for 10 1/2 years and Chairman of the Board for the Chamber of Commerce, stated the Community Redevelopment Agency (CRA), the City of Delray Beach, and the Chamber got together to redevelop the piece of property where iPic is located. Dr. Alperin stated originally he supported the idea to not allow a rooftop restaurant until he saw all the restrictions that the City placed on them. Dr. Alperin urged the City Commission to allow the rooftop restaurant.

Rick Burgess, 90 N.W. 3rd Avenue, Delray Beach (resident and business owner), thanked the City Commission for the job they do. Mr. Burgess commented about the history of projects that have been built over the years such as Worthing Place, and Trader Joe's at the corner of Linton Boulevard and Federal Highway. He stated a business in downtown Delray Beach is not going to go out of business because another restaurant opens, but it will go out of business because of terrible service and terrible food. Mr. Burgess urged the City Commission to make the adjustments to this project to support the rooftop restaurant and send the message to small and large businesses that the City Commission supports them. He urged the City Commission to do what is right for the City.

Bridget Lane, 1335 Crystal Way, Delray Beach (born and raised in Delray Beach), wholeheartedly supports the iPic restaurant.

Nelson "Woodie" McDuffie, 2364 S.W. 35th Avenue, Delray Beach, stated he took a tour of the movie theatre and feels it is gorgeous and well built. Mr. McDuffie supports the rooftop restaurant and urged the City Commission to do the same.

Gabriella Gianturco, 1025 Langer Way, Delray Beach, stated she loves the Avenue and downtown, but she would like the opportunity to venture off the Avenue as well. Ms. Gianturco supports a rooftop restaurant and she feels this is a great opportunity for a rooftop garden and iPic can use herbs and vegetables from the garden in the restaurant and suggested making it like a farm to table type of place which many restaurants are heading.

Jeb Conrad, Chief Executive Officer (CEO) of the Delray Beach Chamber of Commerce, urged the City Commission to remove the restrictions from iPic to better provide services required and requested by their customers and the market should be made available for their operations. Mr. Conrad urged the City Commission to support iPic's request to remove the restrictions from the contract so that they can have the rooftop restaurant.

Bill Branning, Chairman of the Delray Beach Chamber of Commerce, business owner and resident, urged the City Commission to work with the applicant, allow the rooftop restaurant, and make a statement to the citizens and the community that the City understands the needs of business in Delray Beach and that they are a partner.

Ari Whiteman, 5091 Washington Road, Delray Beach, stated Delray Beach has always been known to be business-friendly and welcoming new businesses. Mr. Whiteman stated deals do get modified (i.e. the tennis match contract).

Stephen Fike, 55 S.E. 2nd Avenue, Delray Beach, stated he went on a date with his girlfriend to the iPic in Boca for dinner and a movie. Mr. Fike supports the rooftop restaurant for the Delray iPic because he believes if locals like himself would spend their money in Delray Beach versus having to go to Boca. He stated this will help keep these businesses afloat during the summertime and would also help support the other businesses on the Avenue.

Jinny Ritter, 101 N.E. 5th Street, Delray Beach, stated she is opposed to the rooftop restaurant and noted that the applicant promised greenspace for the citizens and she would like to know what the alternative is to replace the greenspace. Ms. Ritter stated Delray Beach made numerous concessions to this building.

Jim Chard, 401 S.E. 4th Avenue, Delray Beach, Vice Chair of Economic Development for the Chamber of Commerce, iPic is one of the largest employers in Delray Beach with the restaurant approximately 300 employees. Mr. Chard suggested combining the public space on the roof with the restaurant.

Coby Jackson, 3601 N. Military Trail, Delray Beach (college student at Lynn University), stated iPic is a great employer and he is very appreciative that iPic has recruited college students. On behalf of the guests who visit the theatre, Mr. Jackson stated they inquire about the empty public space on the rooftop. He stated allowing public access on the rooftop would bring in more people, would allow them to walk around the downtown, and would create more revenue for the City.

Sandy Zeller, 209 N.W. 12th Street, Delray Beach, stated he sent a letter to the City Commission and entered the letter into the record. Mr. Zeller stated in his letter he tried to objectively set forth the chronology of this transaction from 2013 to present. Mr. Zeller stated according to their 2015 traffic study, it showed that they were going to funnel traffic from the east side of the intracoastal through the Marina Historic District to get to the theatre. Mr. Zeller stated he notified the applicant's attorney that the streets in the Marina Historic District are very narrow, and there are no sidewalks or lighting and asked if they would be willing to put in some lighting (according to FPL the cost for 2 or 3 lights would be approximately \$15,000-\$20,000) , however, they declined.

Steve Blum, 115 Venetian Drive, Delray Beach (21 year resident),

Denise Whittish, 2308 S.E. 21st Street, Fort Lauderdale, supports iPic's rooftop restaurant and she believes the competition will be good. She urged the City Commission to approve allowing a rooftop restaurant for iPic to complete Mr. Hashemi's vision and destination for Delray Beach.

Michael Harper, 620 Lavers Circle, Delray Beach, urged the City Commission to support the growth of Delray Beach because he feels it is working, attracting a wider audience, and people are comparing Delray Beach to Miami and that they would rather be here. Mr. Harper stated friend who plays tennis all over the world has played in the professional tennis tournament hosted at the Delray Beach tennis stadium and he talks about Delray Beach being one of his favorite places. Mr. Harper encouraged the City Commission to support the iPic addition.

Tom Carney, 135 S.E. 5th Avenue, Delray Beach, expressed concern why it was a bad idea to put public space inside a private building.

Reeve Bright, 700 Seasage Drive, Delray Beach, supports iPic and requested that the City Commission take away the public non-green space and allow the applicant to have his restaurant.

Jack Warner, 256 Venetian Drive, Delray Beach, urged the City Commission to approve iPic's request for the good of the City's residents and the taxpayers.

Carol Anderson, 4812 W. Bexley Park Drive, Delray Beach, hang on to the shared public access to this piece of property and work with the developer to put whatever he wants there without denying access to the public.

James Quillian, 925 S.E. 2nd Avenue, Delray Beach, Delray has given to iPic and they are trying to take back what they agreed to and are now trying to take more. Mr. Quillian stated as neighbors, iPic has not fulfilled their obligations to them about what they agreed to when they met with them initially and before they started construction. Mr. Quillian expressed over the applicant already asking for changes and not fulfilling what he said he was going to do yet the building is not complete.

George Long, 46 N. Swinton Avenue, Delray Beach, expressed concern that there is not much of a greenspace.

Rick Edick, 615 N. Ocean Boulevard, Delray Beach, the parking concerns that were part of this entire process of evaluation should be revisited (i.e. traffic study) and because the restaurant will bring in more people, there will be an impact on the shared parking spaces available for the other businesses. Mr. Edick expressed concern over how the City will address the lack of these parking spaces taken up by the restaurant. He encouraged the City to consider the value in the public easement, make sure the parking is addressed, and the potential adverse impacts such as noise and smells from the exhausts for the neighbors.

There being no one else from the public who wished to address the City Commission regarding Item 7.A.A., Mayor Petrolia closed the public comment.

Commissioner Frankel recognized three former Delray Beach Mayor's and two former City Commissioners speaking tonight. Commissioner Frankel stated three years ago Ordinance 19-18 did not exist. For the record, Commissioner Frankel supports the request.

Commissioner Frankel left the dais at 6:45 p.m. and returned at 6:46 p.m.

Commissioner Boylston commented that he received approximately 100 emails with respect to iPic and answered all of them. Commissioner Boylston stated he is ready to treat iPic as the Delray business, the Delray job creator, and the Delray community partner that they are. Commissioner Boylston stated he had the opportunity to tour iPic and commented about the beautiful interior and that iPic will be putting their headquarters in Delray Beach. Commissioner Boylston stated he supports iPic's request; however, he will be working with staff and legal team to ensure that if someone does not want to order a drink or food, but would like to enjoy the ambiance of the rooftop, that an area remains open to the public.

Deputy Vice Mayor Bathurst stated prior to him becoming a City Commission he spoke as a resident about support the iPic project. Deputy Vice Mayor Bathurst stated in his line of work he negotiates many deals and referred to the term "anchoring" which is when people get attached to one piece of information that they cannot let go of even if it is irrelevant in today's circumstance. He noted to avoid anchoring in anyway in a contract or business deal, is to start from scratch and rebuild it so that it works for everyone. Deputy Vice Mayor Bathurst stated he appreciates the comments from the former Mayors and City Commissioners. Deputy Vice Mayor Bathurst stated he supports re-negotiating this deal with iPic and moving forward with something else.

Vice Mayor Johnson thanked everyone who sent emails with respect to iPic and out of those emails there were approximately 6 more that were in favor ("yes") of iPic's request than the ones who were against it ("no") and one telephone call from former City Commission Jim Chard. Vice Mayor Johnson inquired if Mr. Hashemi deed this property to the City exclusively.

The City Attorney explained that this is an easement and it is still Mr. Hashemi's property; Mr. Hashemi is just giving the public access to the 4th floor public terrace portion of the building.

Vice Mayor Johnson stated she toured the property and expressed concern over the public greenspace on the 4th floor of a commercial building with the type of problems that are happening on the ground level with respect to Parks and Recreation. She expressed concern whether the City is opening itself up to something (i.e. insurance) and who is going to be responsible should someone be injured. In addition, Vice Mayor Johnson asked if the property is official greenspace codified as City property public space and who is responsible for funding.

The City Attorney stated as part of the development agreement, the developer agreed to maintain the area.

Furthermore, the City Attorney explained that the City is going to permit the use and open it up so that an application can be filed. The City Attorney stated the City Commission can see what happens at the Site Plan Review and Appearance Board (SPRAB) meeting and see what gets approved, and what conditions are apart of that approval and at that point, the City can amend this agreement in order to encompass exactly what SPRAB approves. The City Attorney reiterated that today the City Commission is deciding whether or not the applicant can submit a new use. The City Attorney stated in the near future if this agreement gets approved, then staff can make the necessary adjustments to this agreement and she spoke with Ms. Miskel about this and she agreed. The City Attorney stated this agreement is not going to be handled tonight and it is not going to come to the Mayor for her signature. However, the City Attorney stated in the near future, the agreement will come before the City Commission once the City Commission handles the SPRAB process.

Vice Mayor Johnson stated she hopes that people in the audience who spoke on iPic attend the SPRAB meeting if they have additional comments to make.

Mayor Petrolia inquired about the property changing hands. Mayor Petrolia stated the agreement states that there is an agreement between the City of Delray Beach, the Community Redevelopment Agency (CRA), and the holding company that was under this group. Mayor Petrolia inquired if this is still not owned by the same individuals, is it okay to still go forward.

Mr. Hashemi stated when the price of construction went from \$33 million to \$53 million, they brought in a partner for the project. Mayor Petrolia asked if this is still owned by Delray Beach Holdings. Mr. Hashemi stated Delray Beach Holdings was the original party under the contract and now Delray Beach Holdings is a party to the joint venture that they created between American Realty Advisors and Samuels & Associates.

Mayor Petrolia expressed concern over the potential precedent that could be set here. For example, Mayor Petrolia inquired if a national company were to come in that might bring in a lot more traffic, would they have to go through a traffic evaluation to bring in a different restaurant in the future if that happens. The City Attorney stated these agreements do change and the City has to move forward and understand what the changes are, but also be reasonable about it. The City Attorney stated the City Commission is not changing anything other than a change to this agreement and emphasized that the LDRs still have to be followed. She stated although they can ask for waivers and variances, but that would have to come before the board and has to be approved.

The City Attorney stated the City Commission has to be reasonable in looking at this agreement and is the overall idea of what the City envisioned being followed, and tonight the City Commission is only making a simple change to allow them (the applicant) to bring forth an application.

Mayor Petrolia stated if the City is going to negotiate, that the City look at it from a negotiation standpoint on both ends.

Commissioner Frankel moved to approve Item 7.A.A. (formerly Item 7.F.) allowing iPic to move forward with an application to introduce a new use. It was seconded by Commissioner Boylston. A roll call vote was taken and the motion carried a vote of 4 to 1, with Mayor Petrolia dissenting.
approved

8. PUBLIC HEARINGS:

- 8.A.** [19-537](#) ORDINANCE NO. 05-19: ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ADOPTING A SMALL SCALE FUTURE LAND USE MAP AMENDMENT RE-DESIGNATING A PARCEL OF LAND APPROXIMATELY 0.433± ACRE IN SIZE FROM COMMUNITY FACILITIES (CF) TO COMMERCIAL CORE (CC), PURSUANT TO SECTION 163.3187, FLORIDA STATUTES, FOR THE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF EAST ATLANTIC AVENUE AND SE 3RD AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN, PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

Recommendation: Consider Ordinance No. 05-19, a small-scale Future Land Use Map amendment from Community Facilities (CF) to Commercial Core (CC) for the property which measures approximately 0.433 acres, and is located at the southwest corner of East Atlantic Avenue and SE 3rd Avenue.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)
[Ordinance 05-19](#)
[Current FLUM Map](#)
[Proposed FLUM Map](#)
[PZB Staff Report 121718](#)
[Public Notice Provided with PZB action](#)
[Ipic Ltr to Delray 4.26.19](#)
[Porten Companies letter of support](#)
[Tin Roof letter of support](#)

The City Attorney read the title of Ordinance No. 05-19 and Ordinance No. 06-19 into the record.

The City Attorney stated both ordinances came before the City Commission in March and they did not pass and were not adopted. Ms. Miskel requested reconsideration at the next meeting, it was granted, and thus the reason this is before the City Commission now. The City Attorney explained that there is currently litigation on this and a petition for writ of certiorari was filed in the courts. The petitioner, Ms. Miskel, asked the Court to stay pending this hearing and the basis for the petition was that the City Commission did not rely on competent substantial evidence to support their decision and that the court should intervene.

Tim Stillings, Development Services Director, entered the project file #2019-004 and #2019-005 into the record.

Bonnie Miskel, Attorney (applicant) representing the petitioner, gave a brief presentation.

Mr. Stillings stated the land use is currently Community Facilities and is proposed Commercial Core and the zoning is Community Facilities and is proposed for Central Business District. He stated there are concurrency findings related to the map amendment and a positive finding can be made for each one of those. Mr. Stillings stated positive findings can be made with respect to the three standards for rezoning. At its meeting of December 17, 2018, the Planning & Zoning Board voted 5-0 for both the land use and the rezoning request.

Mayor Petrolia asked the City Commission to disclose their ex parte communications. Vice Mayor Johnson stated she met with the applicant and received an email from Mr. Simon. Commissioner Boylston stated he met with Ms. Miskel and he received an email from Mr. Simon. Commissioner Frankel stated he too spoke with Ms. Miskel and received an email from Mr. Simon. Deputy Vice Mayor Bathurst stated he spoke with Ms. Miskel and received an email from Mr. Simon. Mayor Petrolia

stated she too received an email from Mr. Simon.

George Long, 46 N. Swinton Avenue, Delray Beach, the parking for Sun-Trust can be worked out and feels it makes sense for this not to be a parking lot and that maybe it should be a building.

Roy Simon, 201 N.W. 11th Street, Delray Beach, stated he grew up in Delray Beach and stated in 1968 an ordinance was passed on parking and that stifled growth in downtown and businesses left downtown to go to the shopping centers. Mr. Simon stated they have always fought to maintain the downtown. Mr. Simon stated this property was part of the Sun-Trust property in 1974 when they had expanded with a 33,000 square foot addition requiring 110 parking spaces. He urged the City Commission to keep this property CF (Community Facilities).

Alice Finst, 707 Place Tavant, Delray Beach, stated keeping that as a parking lot gives an open space on Atlantic Avenue so it does not feel like you are tunneled in and urged the City Commission to leave the open space.

There being no one else from the public who wished to address the City Commission, Mayor Petrolia closed the public comment.

Ms. Miskel gave a brief rebuttal.

The City Attorney asked questions of Mr. Bird.

The City Attorney stated she and Mr. Stillings condition of site plan approval versus having a separate agreement to avoid any appearance of impropriety.

The City Attorney explained the project is not being approved today, but the City Commission would just be allowing them to make an application for what they want to do with the understanding that it requires a rezoning and a Future Land Use Map amendment.

Commissioner Frankel moved to approve Ordinance No. 05-19 on Second and Final Reading. It was seconded by Commissioner Boylston. A roll call vote was taken and the motion carried a vote of 4-1, with Mayor Petrolia dissenting.
approved

8.B. [19-538](#)

ORDINANCE NO. 06-19: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND RE-DESIGNATING LAND PRESENTLY ZONED COMMUNITY FACILITIES (CF) DISTRICT TO CENTRAL

BUSINESS (CBD) DISTRICT, WITHIN THE CENTRAL CORE SUB-DISTRICT; SAID LAND IS LOCATED AT THE SOUTHWEST CORNER OF EAST ATLANTIC AVENUE AND SE 3RD AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "CITY OF DELRAY BEACH, ZONING MAP, JUNE 29, 2017" AND FURTHER AMENDING THE CENTRAL CORE SUB-DISTRICT AND REGULATING MAPS IN SECTION 4.4.13, LAND DEVELOPMENT REGULATIONS ACCORDINGLY; PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

Recommendation: Consider Ordinance No. 06-19, rezoning from Community Facilities (CF) to Central Business (CBD) District a 0.433± acre parcel of land located at the southwest corner of East Atlantic Avenue and SE 3rd Avenue.

Sponsors: Development Services Department

Attachments: [Agenda Cover Report](#)
[Current Zoning Map](#)
[Proposed Zoning Map](#)
[PZB Staff Report](#)
[Public Notice Provided with PZB action](#)
[Ord 06-19](#)
[Iplic Ltr to Delray 4.26.19](#)
[Porten Companies letter of support](#)
[Tin Roof letter of support](#)

Commissioner Boylston moved to approve Ordinance No. 06-19 on Second and Final Reading. It was seconded by Deputy Vice Mayor Bathurst. A roll call vote was taken and all were in favor and the motion carried 4-1, with Mayor Petrolia dissenting.
approved

9. FIRST READINGS:

9.A. None

10. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:

A. City Manager

Interim City Manager de Jesus stated the week of December 10, 2018 the City received an anonymous complaint that there was a serious life safety issue in downtown Delray Beach saying that "it is only going to get worse because Santacon coming that weekend and we know what Santacon has brought in the past." At that time, Interim City Manager de

Jesus stated he was in the role as Fire Chief and he directed the Fire and Life Safety Bureau to go downtown and begin to communicate with these restaurants that were listed on the Santacon advertising as stops along the way and remind them that the City will not tolerate what happened last year. Interim City Manager de Jesus stated the City had a great meeting with all the businesses.

Interim City Manager de Jesus stated last week and the week before, he made several options to the mangement of the businesses: (1) the City will pull out as long as they start functioning as they are licensed to function as a restaurant (there was no willingness to do that), (2) the City will pull out, however, if the City does spot checks and a business is over occupancy, the City is not going back through this same process, but instead the City will go straight to what the City Code requires them to do which is to shut the business down. Interim City Manager de Jesus stated if \$5,000, \$6,000 or \$7,000 is an expensive bill for a month, shutting a business down for one evening is probably going to be more expensive than that.

Interim City Manager de Jesus stated the only thing that is going to make the issue go away is compliance regardless of what license or permit the City Commission chooses to grant them based on whatever changes the City Commission may or may not consider and whatever the businesses are they will have an occupant load and by law the City will have to enforce.

B. City Attorney

The City Attorney stated she received a response from MatchPoint on the City's counter-offer and noted their response was "see you in trial" and she assumes that MatchPoint rejected the City's counter-offer. The City Attorney stated she has court on this tomorrow and will keep the City Commission posted.

C. City Commission

For the record, Commissioner Frankel announced the passing of former City Commission candidate and a frequent City Commission critic Dr. Victor Kirson.

Secondly, Commissioner Frankel stated tomorrow Vice Mayor Johnson is going to be recognized by the Palm Beach County League of Cities

Commissioner Boylston stated there was a request from the Downtown Development Authority (DDA) to have a Workshop and as we move forward, that it be us verse the problem not us verse each other.

Commissioner Boylston stated the EJS Block Party was great.

Commissioner Boylston congratulated Kaufman Lynn Construction for winning the South Florida Business Journal coolest office.

Vice Mayor Johnson stated she is happy to be working with her fellow Commissioners and is also happy to see a former Mayors and two former City Commissioners speak tonight.

Mayor Petrolia also commented about the passing of Dr. Victor Kirson.

Secondly, Mayor Petrolia she supports whatever Interim City Manager de Jesus feels is necessary for the downtown establishments.

Lastly, Mayor Petrolia stated with respect to iPic, although she voted against what the majority of the rest of the City Commission decided to vote for, she wants nothing but success with Mr. Hashemi's operations. Mayor Petrolia explained she sits in a very different seat because having sat on the City Commission previously, she went through that and understood where it began. Mayor Petrolia stated she feels it would be wrong not to stick with the decision that was made previously because there was a reason for it then. Mayor Petrolia stated she appreciates the support of her colleagues for understanding where she stands and where the rest of the City Commission stands with respect to iPic.

There being no further business to discuss, Mayor Petrolia adjourned the regular meeting at 8:46 p.m.