

PALM BEACH COUNTY COMMISSION ON ETHICS
300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401
Hotline: 877-766-5920 or 561-355-1915

COMPLAINT FORM

1. Complainant

Name: Steven P. Cullen E-Mail: ethics@palmbeachcountyethics.com
Address: 300 N. Dixie Highway, Suite 450
City: West Palm Beach Zip Code: 33401
Phone No #: 561-355-1915

2. Respondent

Name: Connor Lynch E-Mail: clynch@plastridge.com
Address: 820 NE 6th Avenue
City: Delray Beach Zip Code: 33483
Home #: _____ Work #: 561-276-5221 Cell #: _____
Title/Office Held or Sought: _____

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

- ☒ Allegation is against person in County/Municipal Government
☐ Allegation is about County/Municipal Whistleblower Retaliation
☐ Allegation is against a Vendor, Lobbyist, or a Principal of a Lobbyist

4. STATEMENT OF FACTS ATTACHED

Exhibit 1 – Memorandum of Inquiry
Exhibit 2 – Memorandum of Legal Sufficiency
Exhibit 3 – Supporting Documentation

5. OATH

STATE OF FLORIDA
COUNTY OF PALM BEACH

Personally known to me and appeared before me, Steven P. Cullen, Executive Director of the Palm Beach County Commission on Ethics, whose signature appears below, being duly sworn, says that the allegations set forth in this complaint are based upon facts which have been sworn to as true by a material witness or witnesses and which if true would constitute the offenses alleged and that this complaint is instituted in good faith. Signed and sworn to on this 6th day of January, 2014.



GINA LEVESQUE
MY COMMISSION # EE 207356
EXPIRES: July 17, 2016
Bonded Thru Budget Notary Services

Steven P. Cullen, Executive Director
Gina Levesque
(Signature of Notary Public, State of Florida)

(Print, Type, or Stamp Commissioned
Name of Notary Public)

EXECUTIVE SUMMARY

To: Steven P. Cullen, Executive Director
From: Mark E. Bannon, Investigator
Re: C14-001 – Connor Lynch – Delray Beach

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via anonymous telephone calls received by former COE Staff Counsel Megan Rogers. After an initial review of the information, an Inquiry file (AN 13-015) was opened. On August 24, 2013 Staff Counsel Rogers wrote a Memorandum to File detailing her findings, which was placed in the Inquiry file. The Inquiry was forwarded to COE Investigator Mark Bannon for follow-up.

The Inquiry determined that Connor Lynch (Respondent) was Chair of the Delray Beach Planning and Zoning Board (PZB) and voted on issues brought before PZB on two (2) separate dates, June 17, 2013 and August 19, 2013. It was alleged that both votes were in violation of Section 2-443(c), *Disclosure of voting conflicts* of the Palm Beach County Code of Ethics, because both applicants were customers or clients of Respondent's outside employer or business, Plastridge Insurance.

The primary allegation was that during the June 17, 2013 PZB meeting Respondent improperly voted on an application for conditional use to allow live music to be played by a "disk jockey" for a local bar known as "Sandbar at Boston's on the Beach" and that because the owner of this business was a customer or client of Respondent's outside employer or business, therefore received a prohibited "special financial benefit" from the vote.

The second violation reported in a separate telephone call to Ms. Rogers alleged that during the August 19, 2013 PZB meeting, Respondent voted on an application for a conditional use exception involving a population density issue for a residential development under construction within the City of Delray Beach known as "The Strand", and that the property was also owned by a customer or client of Respondent's outside employer or business, Plastridge Insurance.

- **Investigative information**

The investigation revealed that at the time of the votes on June 17, 2013 and August 19, 2013, Plastridge Insurance was the outside employer or business of Respondent, who served in the role of Chief Operating Officer. The business entity "Boston's on the Beach" (which includes "Sandbar at Boston's on the Beach"), was insured by Plastridge Insurance at the time of this vote, for which they were paid in excess of \$10,000 over a two (2) year period prior to either vote. However, the actual corporate owner of Boston's on the Beach (and the actual "customer or client" of Plastridge Insurance listed in their customer database during that time), was a separate corporation entitled "Bosdell, LLC." which is the corporate entity that owns and conducts business as "Boston's on the Beach". In the application for conditional use, as well as the staff report submitted to PZB prior to the vote, this corporation was not listed. Further, at the public hearing for the application on June 17, 2013, the

applicant disclosed that the property (and Bosdell, LLC.) was actually owned by "Ocean Properties, LTD," a foreign for profit corporation, which was not a customer or client of Plastridge Insurance. Investigator Bannon observed Respondent search the customer database of Plastridge Insurance. Respondent stated that there were over 20,000 customers listed in the database. The database search indicated that Boston's on the Beach, Sandbar at Boston's on the Beach, Ocean properties, LTD, nor "The Strand" were not listed as customers, although the search did list Bosdell, LLC. as a customer of Plastridge Insurance. It is also significant that Respondent attempted to obtain legal advice from the City Attorney and the COE prior to the vote on June 17, 2013, although his concern at that time was based on a personal relationship between himself and an employee of Boston's. He was not aware of the existing business relationship between his outside business or employer (Plastridge Insurance) and Boston's through their corporate name of Bosdell, LLC.

Based on this information, staff recommends that the COE find no probable cause regarding the first allegation that involved the vote on June 17, 2013 on the Conditional Use Application submitted by Sandbar at Boston's on the Beach. The required standard for a violation under Code §2-443(c), *Disclosure of voting conflicts*, as listed under §2-443(a)(1-7), Misuse of public office or employment is **"knows or should know with the exercise of reasonable care."** It is the Staff's opinion that this standard cannot be met based on the various corporate entities involved in the matter coupled with the fact that the actual customer of Plastridge Insurance is Bosdell, LLC. and not Boston's on the Beach or Sandbar at Boston's on the Beach. *COE staff is currently in the process of developing a proposed model rule to assist in identifying such issues for the future.*

Because neither "The Strand" nor Ocean Properties was a customer or client of Plastridge Insurance, staff recommends that the COE find no probable cause regarding the second allegation involving a vote on August 19, 2013 as it appears to be without merit. Additionally, Respondent voted against this conditional use application, and therefore could not have given a prohibited special financial benefit to Ocean Properties, LTD or "The Strand" by his vote even if either were a customer or client of Plastridge Insurance.

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Steven Cullen, Executive Director
From: Mark E. Bannon, Senior Investigator
Re: AN 13-015 – Respondent Connor Lynch, Delray Beach Planning & Zoning Board (former member)

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via an anonymous telephone call received by COE Staff Counsel Megan Rogers. After an initial review of the information, Staff Counsel Rogers wrote a Memorandum to File on August 24, 2013, detailing her findings, and which was placed in the Inquiry File. The initial Inquiry was then turned over to Senior Investigator Mark Bannon for follow-up.

Staff Counsel Rogers related the following information in her Memorandum to File:

1. The anonymous caller alleged that the Chairman of the Delray Beach Planning and Zoning Board (PZB), Respondent, Connor Lynch, had participated in and voted on a conditional use request to allow outside entertainment in an open air porch of the Sandbar at Boston's on the Beach, a restaurant and bar located at 40 South Ocean Blvd. in Delray Beach.
2. That this property was owned by Ocean Properties Limited (OPL), a company to which Respondent's outside employer or business, Plastridge Insurance Group, has allegedly provided insurance services in excess of \$10,000 over the past 24 months.
3. During the course of the June 17, 2013 meeting of PZB, Respondent substantially participated in discussion surrounding a conditional use application submitted by the Sandbar at Boston's on the Beach, and voted to approve this application.
4. On August 23, 2013, COE staff received a second anonymous telephone call stating that Respondent participated in discussions and voted on a second project proposed by OPL at the August 19, 2013 PZB meeting. During this meeting, the caller advised that Respondent disclosed a relationship with the developer (OPL), determined that he did not have a conflict of interest, and participated in discussions concerning a proposed increase in density for "The Strand," a residential apartment complex located within the City of Delray Beach.

- **Inquiry**

I reviewed the file, including the supplemental submissions to the file by Staff Counsel Rogers, which included the following:

1. Agenda and minutes from the PZB meetings held on June 17, 2013. The minutes from this meeting indicated that Respondent was present at this meeting, and that a quasi-judicial public hearing was held concerning the application for conditional use filed on behalf of Sandbar at Boston's on the Beach. During this hearing, Respondent participated in the hearing, and voted to allow the conditional use (with some modifications). The matter was passed by the PZB on a vote of 4-0.
2. Agenda for the PZB meeting held on August 19, 2013 (the minutes for this meeting were not yet available when Staff Counsel Rogers turned the file over to Investigations). The agenda for the meeting listed a quasi-judicial public hearing to be held concerning an application for an increase in

development density requested for "The Strand," an apartment or condominium development to be located at SE 1st Street and SE 2nd Avenue in the City of Delray Beach.

I began to conduct a background inquiry and during that inquiry, located the following documents which are submitted to the file.

1. Corporate records from the website of the Florida Department of State, Division of Corporations (www.sunbiz.com), for the following corporate entities:
 - a. **The Plastridge Agency, Inc.** (Plastridge), located at 820 NE 6th Avenue, Delray Beach, FL 33483, listing Respondent as the Chief Operating Officer (COO) for Plastridge. The original corporate records establishing this business in Florida were filed on June 30, 1950. (3 pages)
 - b. **Boston's**, listed as a fictitious name business registry located at 40 South Ocean Blvd., Delray Beach, FL 33483, owned by Bosdel, LLC, 1000 Market Street, Bldg. one, Suite 300, Portsmouth, New Hampshire, 03801. (1 page)
 - c. **Bosdel, LLC**, listed as a foreign profit corporation, with a principal address of 115 Franklin St., Bangor Maine, 04402-0702, and a mailing address of 100 Market St., Bldg one, Portsmouth, NH, 03801. Bosdel, LLC list Michael P. Walsh and Mark T. Walsh as the managing members. (2 pages)
 - d. **Ocean Properties, LTD**, also listed as a foreign profit corporation, with a principal address of 115 Franklin St., Bangor Maine, 04402-0702, and a mailing address of 100 Market St., Bldg one, Portsmouth, NH, 03801. Ocean Properties, LTD lists Michael Walsh as the President, Mark Walsh as the Vice-President and Treasurer, William Walsh and Suzanne Lanigan as Vice-Presidents, Thomas E. Needham as Secretary, and Richard Ade as Executive Vice-President. Michael Walsh, Mark Walsh and Thomas E. Needham list an address of 1001 E. Atlantic Ave., Suite 202, Delray Beach, FL 33483. William Walsh, Suzanne Lanigan and Richard Ade list the Portsmouth NH address in these records. (3 pages)
2. Copy of the listing located on the website for "Boston's on the Beach," (www.bostonsonthebeach.com), listing information about this venue. The website states that there are "three unique places...one great location," and list information on, Boston's on the Beach, 50 Ocean, and Sandbar. (4 pages)
3. Information from the "Plastridge Insurance" website (www.plastridge.com), listing Connor C. Lynch as COO/producer for this entity. Plastridge lists five (5) office locations, including at 820 NE 6th Avenue, Delray Beach, and additional locations in Palm Beach Gardens, Boca Raton, Stuart, and Coral Springs. Plastridge is an independent insurance agency that represents many companies and sever different kinds of insurance (i.e., commercial property and liability, automobile and home, and health insurance) (4 pages)
4. Respondent obtained an advisory opinion from the PBC Commission on Ethics in September 2011 (RQO 11-075), which is submitted to the file. However this advisory opinion is not relevant to this inquiry as it addresses the Gift Law (Section 2-444) of the Code of Ethics concerning a fundraising event at a local school foundation, and not a voting conflict issue. (4 pages)

On September 19, 2013, at approximately 4:00 PM, I met with Respondent for an interview at his office, Plastridge Insurance Agency, located at 820 NE 6th Avenue, Delray Beach.

- **Interview, Connor Lynch:**

Respondent met with me at his business location for this interview. He asked that the interview not be recorded at this time, but was willing to speak to me. The interview began at approximately 4:10 PM, and lasted for about 30 minutes.

Respondent advised that he grew up in Delray Beach and that his father is a former City official. Respondent is one of the primary shareholders in the Plastridge Insurance Agency. He and his family have served in many positions within the City and he is very involved in his community. Respondent stated that he served on advisory boards with the City for the past nine (9) years, but having fulfilled his four (4) year term on the Planning and Zoning Board as of August 31, 2013, he is no longer on that board nor on any City advisory board at the present time. During the last term on PZB, Respondent served as Chairperson of the PZB.

Respondent advised that his grandfather had originally started Plastridge in the 1950s and since then it has been very successful, now having a client base somewhere around 20,000. The Plastridge website also indicates that the Delray Beach office location is by far the largest, and shows a total 56 employees assigned to this office.

I asked Respondent if Boston's on the Beach and Sandbar were clients of Plastridge. He stated that he has found out through research that Plastridge does insure Boston's on the Beach for commercial liability protection, but that they are not clients of his personally, as he does not do work in the field of commercial liability insurance. He also stated that he believed that Boston's had been a client of his father's some years ago, but until he researched the issue, was not aware that they were still a client. Respondent also pointed out that the insurance provided by Plastridge was not directly to Boston's, but was through their corporate owner, Bosdel, LLC. He then showed me, (and also provided me with a "hard copy" via email), a computer "screen shot" showing that Bosdel, LLC was a client of Plastridge. However, had he run either Boston's or Sandbar in this computerized client system, it would not have shown then to be a client, and he was not aware that Bosdel, LLC was the corporate owner of Boston's, because it was not his client. When I asked respondent if this computer system could be set to identify customers or clients who use a fictitious name, he stated that the program used by his company is one of two (2) similar programs used in the insurance industry, and that they do not have control over how the information is listed as the system belongs to the vendor. He also state that both systems are designed to track clients, but not really with the "conflict" issue in mind, as that is not a problem in his industry.

During this interview, respondent was extremely forthcoming, and provided me with copies of any and all documents I requested. This includes a copy of the staff submission to the PZB of the conditional use application by Boston's Sand Bar, requesting to be allowed to use a "DJ" to play recorded music. This staff study and recommendation (staff recommended approval) is also submitted to the Inquiry file.

Respondent also checked the client records for Bosdel, LLC, and advised that it appeared that from the Bosdel, LLC account, Plastridge had made approximately \$9,000 in 2012. This leads to a reasonable inference that at the point of the June 19, 2013 vote on the conditional use application by Sandbar, it is almost certain that the threshold of \$10,000 over a the last two (2) years was reached, as required by §2-442, *Definitions*, of the Code of Ethics to identify a "customer or client" of an outside employer or business.

Respondent also stated that over the years he had had several conversations with City Attorney Brian Shutt about the fact that with 20,000 clients built over nearly 50 years of existence, it would be nearly impossible to know each and every client. Respondent advised that he has always been told by Shutt that it is a personal business relationship that he needs to watch when voting on projects and neither Boston's or Bosdel, LLC are his clients. However, Respondent did advise he did take the live Code of Ethics training when given in 2011 by former COE Executive Director Alan Johnson for City officials.

Respondent discussed briefly that at a vote in August of 2013, involving a possible business client of his firm, he voted against the application, because he is aware of his duty to base his votes on what he believes is best for the City as a whole, not individual members with whom he may have some relationship, business or personal.

- **Additional Documents submitted to File:**

1. City of Delray Beach Staff study and recommendation for approval of the application for conditional use submitted on behalf of "Boston's Sand Bar" for the June 17, 2013 PZB meeting and hearing. (9 pages)
2. Printed copy of "Screen shot" computer image of the customer records of Plastridge Insurance showing customer Bosdel. LLC, as provided by Respondent via email. (2 pages)

- **Applicable law**

The following portions of the PBC Commission on Ethics ordinance are relevant to this Inquiry:

Section 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

As of June 1, 2011, all elected and appointed officials and employees of the City of Delray Beach were within the jurisdiction of the PBC Commission on Ethics and the Code of Ethics. Respondent was appointed by the Delray Beach City Commission, and served as a member of the City of Delray Beach Planning and Zoning Board during the period of June 1, 2011, until August 31, 2013, and was under COE jurisdiction during this time.

The following portions of the PBC Code of Ethics are relevant to this Inquiry:

Sec. 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory board shall mean any *advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.* (Emphasis added)

Customer or client means any person or entity to which an official or employee's outside employer or business *has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).* (Emphasis added)

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid.... The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and *members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as*

applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity. (Emphasis added)

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, *of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.* For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; or (Emphasis added)
- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, *in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.* (Emphasis added)

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee *shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:* (Emphasis added)

(5) A customer or client of the official or employee's outside employer or business;

- (c) *Disclosure of voting conflicts.* County and municipal officials as applicable *shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above.* The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know *with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).* (Emphasis added)

• **Analysis of Information obtained during the initial inquiry:**

On June 19, 2013, Respondent participated in discussions surrounding an application for a conditional use permit submitted on behalf of Boston's on the Beach, for the Sandbar, a separately named section of Boston's on the Beach having a bar and restaurant adjacent to the main Boston's location, but wholly owned by the same corporate entity, Bosdel, LLC. The staff analysis report and recommendation identified the applicant as "Boston's Sand Bar."

This matter was heard during a quasi-judicial hearing before the City of Delray Beach Planning and Zoning Board (PZB) on June 19, 2013. At that time, Respondent was a member and served as Chairperson of the PZB, having been appointed to PZB by the City Commission. During this public hearing and meeting of PZB, Respondent did participate in discussions, and did vote for approval of this conditional use application. This

information was originally obtained by an anonymous telephone call, and was verified by Staff Counsel Megan Rogers via the minutes from this meeting. This information was also verified by Respondent during an interview with COE Investigator Mark Bannon on September 19, 2013.

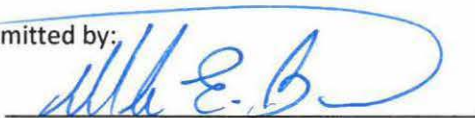
At the time of the August 19, 2013 public hearing on this issue, the corporate owner of Boston's on the Beach and Sandbar (Bosdel, LLC) was a customer or client of Respondent's outside business or employer (Plastridge Insurance), for which Plastridge Insurance earned fees of at least \$9,000 in 2012, and had a continuing business relationship with Plastridge Insurance during 2013. Although unverified yet, it is highly likely that Plastridge Insurance earned enough in fees from Bosdel, LLC to meet the \$10,000 threshold of "customer or client" over a 24 month period (including the period from January 1 – June 19, 2013), as required by §2-442. **Definitions**, of the PBC Code of Ethics.

At the August 19, 2013 meeting of the PZB, where another quasi-judicial public hearing was conducted, Respondent may have also participated in discussions and voted on an issue concerning an application for increased density for a proposed development in the City of Delray Beach known as "The Strand." This development is alleged to be owned by Ocean Properties, LTD, which it is also alleged was also a customer of client of Respondent's outside employer or business (Plastridge Insurance). This information has not yet been verified, as of October 9, 2013, the minutes for the August 19, 2013 meeting and public hearing are not yet available.

- **Recommendation**

Due to the fact that there is sufficient information from the initial inquiry to determine that Respondent may have violated §2-443(c), **Disclosure of voting conflicts**, of the PBC Code of Ethics, on at least one and possibly two occasions, (June 17, 2013 and August 19, 2013), I recommend that a formal investigation be initiated into this matter.

Submitted by:



Mark E. Bannon
PB County Commission on Ethics

10/10/2013
Date

Reviewed by:

SRC
(Initials)

10/10/2013
Date

MEMORANDUM OF LEGAL SUFFICIENCY

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: AN 13-015 – Connor Lynch, City of Delray Beach, Planning and Zoning Board

- **Recommendation**

Regarding the Inquiry against Respondent, Connor Lynch, Former Chairperson, Delray Beach Planning and Zoning Board (PZB), COE staff recommends a finding of **LEGAL SUFFICIENCY** be entered in inquiry number AN 13-015.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based upon facts which have been sworn to by a material witness or witnesses, and if true would constitute the offenses alleged, relating to a violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via an anonymous telephone call received by former COE Staff Counsel Megan Rogers. After an initial review of the information, Staff Counsel Rogers wrote a Memorandum to File on August 24, 2013, detailing her findings and placed in the Inquiry File. The initial Inquiry was then turned over to Senior Investigator Mark Bannon for follow-up.

Staff Counsel Rogers related the following information in her Memorandum to File:

1. The anonymous caller alleged that the Chairman of the Delray Beach Planning and Zoning Board (PZB), Respondent, Connor Lynch, participated in and voted on a conditional use request to allow outside entertainment in an open air porch of the Sandbar at Boston's on the Beach, a restaurant and bar located at 40 South Ocean Blvd. in Delray Beach.
2. That this property was owned by Ocean Properties Limited (OPL), a company to which Respondent's outside employer or business, Plastridge Insurance Group, has allegedly provided insurance services in excess of \$10,000 over the past 24 months.
3. During the course of the June 17, 2013 meeting of PZB, Respondent substantially participated in discussion surrounding a conditional use application submitted by the Sandbar at Boston's on the Beach, and voted to approve this application.
4. On August 23, 2013, COE staff received a second anonymous telephone call stating that Respondent participated in discussions and voted on a second project proposed by OPL at the August 19, 2013 PZB meeting. During this meeting, the caller advised that Respondent disclosed a relationship with the developer (OPL), determined that he did not have a conflict of interest, and participated in discussions concerning a proposed increase in density for "The Strand," a residential apartment complex located within the City of Delray Beach.

During the initial inquiry, Investigator Mark Bannon was able to establish the following information via documentary evidence and an interview with Respondent, Connor Lynch:

1. On June 19, 2013, Respondent participated in discussions surrounding an application for a conditional use permit submitted on behalf of Boston's on the Beach, for the Sandbar, a separately named section of

Boston's on the Beach having a bar and restaurant adjacent to the main Boston's location, but wholly owned by the same corporate entity, Bosdel, LLC. The staff analysis report and recommendation identified the applicant as "Boston's Sand Bar."

2. This matter was heard during a quasi-judicial hearing before the City of Delray Beach Planning and Zoning Board (PZB) on or about June 17, 2013. At that time, Respondent was a member and served as Chairperson of the PZB, having been appointed to PZB by the City Commission. During this public hearing and meeting of PZB, Respondent did participate in discussions, and did vote for approval of this conditional use application. This information was originally obtained by an anonymous telephone call, and was verified by Staff Counsel Megan Rogers via the minutes from this meeting. This information was also verified by Respondent during an interview with COE Investigator Mark Bannon on September 19, 2013.
3. At the time of the June 17, 2013 public hearing on this issue, the corporate owner of Boston's on the Beach and Sandbar (Bosdel, LLC) was a customer or client of Respondent's outside business or employer (Plastridge Insurance), for which Plastridge Insurance earned fees of at least \$9,000 in 2012, and had a continuing business relationship with Plastridge Insurance during 2013. Although unverified yet, it is highly likely that Plastridge Insurance earned enough in fees from Bosdel, LLC to meet the \$10,000 threshold of "customer or client" over a 24 month period (including the period from January 1 – June 19, 2013), as required by §2-442. **Definitions**, of the PBC Code of Ethics.
4. At the August 19, 2013 meeting of the PZB, where another quasi-judicial public hearing was conducted, the second anonymous caller stated that Respondent participated in discussions and voted on an issue concerning an application for increased density for a proposed development in the City of Delray Beach known as "The Strand." This development is alleged to be owned by Ocean Properties, LTD, which it is also alleged was also a customer or client of Respondent's outside employer or business (Plastridge Insurance). While the information concerning the vote was verified via the minutes of that meeting (Respondent was the only member to vote against the increase in density at this meeting), there is no evidence that Plastridge Insurance provides coverage for this development, and Respondent himself advises they do not. Respondent did disclose during the meeting that he had spoken to the applicant, but never stated that he had any relationship with the developer. In my discussion with respondent as to this reported ex-parte communication, he advised that the actual "applicant" listed in the staff report was the Architect, Rusty Kupi, and that this was also who he had communicated with concerning the project. Therefore, this issue does not warrant additional investigation

- **Applicable law**

The following portions of the PBC Commission on Ethics ordinance are relevant to this Inquiry:

Section 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

As of June 1, 2011, all elected and appointed officials and employees of the City of Delray Beach were within the jurisdiction of the PBC Commission on Ethics and the Code of Ethics. Respondent was appointed by the Delray Beach City Commission, and served as a member of the City of Delray Beach Planning and Zoning Board during the period of June 1, 2011, until August 31, 2013, and was under COE jurisdiction during this time.

The following portions of the PBC Code of Ethics are relevant to this Inquiry:

Sec. 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory board shall mean any *advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.* (Emphasis added)

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000). (Emphasis added)

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid.... The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and *members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.* (Emphasis added)

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, *of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced.* For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; or (Emphasis added)
- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, *in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.* (Emphasis added)

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee *shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:* (Emphasis added)
 - (5) A customer or client of the official or employee's outside employer or business;
- (c) *Disclosure of voting conflicts.* County and municipal officials as applicable *shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above.* The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know *with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).* (Emphasis added)

- **Analysis**

As a Member of the Delray Beach Planning and Zoning Board appointed by the City Commission, during the relevant period from June 1, 2011 to August 31, 2013, Respondent was subject to the provisions of the revised Palm Beach County Code of Ethics (the Code), as of June 1, 2011, when all municipalities came under the jurisdiction of the COE.

During 2012, Respondent's outside employer or outside business, Plastring Insurance, provided insurance services to Bosdell, LLC (the corporate owner of Boston's on the Beach and Sandbar) that earned fees in the amount of approximately \$9,000. Since Plastring Insurance continues to provide insurance to Bosdell, LLC in 2013, it is likely that the amount of fees earned for this service during the first half of 2013 exceeds \$1,000, thus allowing a reasonable inference that Plastring Insurance provided goods or services to Bosdell, LLC valued in excess of \$10,000 for the past two years, making Bosdell, LLC a customer or client of Plastring Insurance under §2-442. **Definitions** of the PBC Code of Ethics.

Respondent is the Chief Operating Officer for Plastring Insurance, and is a significant shareholder in this company, making Plastring Insurance the outside employer or business of Respondent.

Documentary evidence verifies that at a meeting of the PZB held June 17, 2013, Respondent did significantly participate in discussions, and vote on a matter concerning a conditional use application concerning "Boston's Sandbar," which is owned by Bosdell, LLC, a customer or client of Respondent's outside employer or business, Plastring Insurance. This participation and vote by Respondent may have been done in violation of §2-443(c), **Disclosure of voting conflicts** of the PBC Code of Ethics.


There is also a second allegation made that at a PZB meeting held on August 19, 2013, Respondent did significantly participate and vote on an application for increased density for a proposed apartment/condominium development known as "The Strand." The allegation is that Respondent disclosed a personal relationship with the developer of this project during this meeting and that he participated in discussions and voted on the application during this meeting. The caller implied that Plastring Insurance also provided Insurance Services to this developer, and if true, this vote is potentially a violation of §2-443(c), **Disclosure of voting conflicts** as well. However, additional inquiry into this allegation revealed there is no evidence to believe this vote was in violation of the Code of Ethics, as there is no evidence that Plastring Insurance provides insurance coverage for this development.

- **Conclusion**

The testimony of Respondent as well as documentary evidence obtained during Inquiry does allege sufficient facts that if true would constitute a violation of the Palm Beach County Code of Ethics as it relates to participation and voting at the June 17, 2013 PZB meeting by Respondent on an issue involving a financial benefit to Bosdell, LLC (doing business as Sandbar at Boston's on the Beach), a customer or client of his outside business or employer, Plastring Insurance, which may be in violation of §2-443(a)(5), **Misuse of Public Office or Employment**, and §2-443(c), **Disclosure of voting conflicts**.

Therefore, there is **LEGAL SUFFICIENCY** to open a formal investigation into this matter.

BY:



Steven P. Cullen, Executive Director
Florida Bar #362204
PBC Commission on Ethics

1/6/2014
Date

MEMORANDUM OF INVESTIGATION

To: Steven Cullen, Executive Director
From: Mark E. Bannon, Senior Investigator
Re: C 14-001 – Connor Lynch, Delray Beach Planning & Zoning Board (former member)

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via an anonymous telephone call received by COE Staff Counsel Megan Rogers. After an initial review of the information, Staff Counsel Rogers wrote a Memorandum to File on August 24, 2013, detailing her findings, and which was placed in the Inquiry File. The initial Inquiry was then turned over to me for follow-up.

The initial inquiry determined that Respondent Connor Lynch may have violated §2-442(a)(5), *Misuse of public office or employment*, and §2-443(c), *Disclosure of voting conflicts*, of the Palm Beach County Code of Ethics on at least one and possibly two occasions (June 17, 2013 and August 19, 2013). However, at the time of the Inquiry, the minutes from those meetings were not yet available.

- **Investigation**

On October 8, 2013, I was able to secure copies of the June 17, 2013 meeting minutes of the Delray Beach Planning and Zoning Board (PZB) from Diane Miller, Executive Assistant to Planning and Zoning Director Paul Doring. Miller related that the minutes of the August 19, 2013 meeting were not available, as they had not yet been approved by PZB. The minutes would not be available until sometime after the October 21, 2013 monthly meeting providing they were approved without changes.

In early November 2013, I was able to obtain a copy of the August 19, 2013 minutes from the City of Delray Beach website (www.mydelraybeach.com). According to the minutes, during that meeting Respondent voted "No" on the issue involving a request for conditional use exclusion for excess building density by The Strand. He was the only PZB member to vote against this exclusion, and the item passed with a vote of 6-1 in favor of granting this conditional use. I was also able to obtain a copy of the staff study and recommendation for this conditional use from the City. The staff study shows that staff opposed this conditional use, but that two (2) other City advisory boards, the Community Redevelopment Agency and the Downtown Development Authority, voted to recommend approval of this conditional use application.

The PZB meeting minutes for June 17, 2013, and August 19, 2013, as well as the staff study for The Strand conditional use issue are submitted to the investigative file.

I again made contact with Respondent to find out if either The Strand, or Ocean Properties (alleged to be the parent company of The Strand development by the information in the anonymous complaint), were customers or clients of Plastridge Insurance (Plastridge). Respondent advised that the only property involving Ocean Properties that is insured by Plastridge is the Boston's property, which as he stated before is actually under a separate corporate name, Bosdell, LLC. The Strand is owned by a corporation known as Fladel, LLC, and Plastridge does not provide insurance to either Fladel, LLC or to The Strand property. Respondent also discussed the fact that he specifically asked City Attorney Brian Shutt about the votes on these properties and was advised that there was no conflict, and that if no financial conflict existed, he was required by state law to vote on the matters. Respondent also stated that he was going to suggest to City Attorney Shutt that in the future applicants are told they must list both the applicant name and the owner of the property on all applications such as conditional use, in order to avoid a conflict problem for others.

I was not able to find a listing for a local corporation entitled Fladel, LLC on the Florida Department of Corporations website (www.sunbiz.com). However, there is a listing for property at 150 SE 3rd Ave., Delray Beach, entitled "Strand Delray" on the PBC Property Appraiser's website (www.pbcgov.com/papa). This property is shown as being owned by Fladel, LLC, with a mailing address of 1001 E. Atlantic Ave., #202, Delray Beach, FL 33483, which is where the Division of Corporations shows three (3) of the Directors of Ocean Properties, LTD to be located.

- **Analysis of Information obtained during the investigation:**

On June 17, 2013, Respondent participated in discussions surrounding an application for a conditional use permit submitted on behalf of Boston's on the Beach, for the Sandbar, a separately named section of Boston's on the Beach having a bar and restaurant adjacent to the main Boston's location, but wholly owned by the same corporate entity, Bosdel, LLC. The staff analysis report and recommendation identified the applicant as "Boston's Sand Bar."

This matter was heard during a quasi-judicial hearing before the City of Delray Beach Planning and Zoning Board (PZB) on June 17, 2013. At that time, Respondent was a member and served as Chairperson of the PZB, having been appointed to PZB by the City Commission. During the public hearing and meeting of PZB, Respondent participated in discussions and voted for approval of this conditional use application. This information was originally obtained by an anonymous telephone call, and was verified by Staff Counsel Megan Rogers via the minutes from this meeting. This information was also verified by Respondent during an interview I conducted on September 19, 2013.

At the time of the June 17, 2013 public hearing on the issue, the corporate owner of Boston's on the Beach and Sandbar (Bosdel, LLC) was a customer or client of Respondent's outside business or employer (Plastridge Insurance), for which Plastridge Insurance earned fees of at least \$9,000 in 2012, and had a continuing business relationship during 2013. Although unverified yet, it is highly likely that Plastridge Insurance earned enough in fees from Bosdel, LLC to meet the \$10,000 threshold of "customer or client" over a 24 month period (including the period from January 1 – June 19, 2013), as required by §2-442. **Definitions**, of the PBC Code of Ethics.

At the August 19, 2013 meeting of the PZB, where another quasi-judicial public hearing was conducted, the investigation revealed that Respondent participated in discussions and voted on an issue concerning an application for increased density for a proposed development in the City of Delray Beach known as "The Strand". This development is owned by Ocean Properties, LTD. However, there is no evidence that neither Ocean properties as an entity, nor The Strand as a specific development, are customers or clients of Respondent's outside employer or business (Plastridge Insurance).

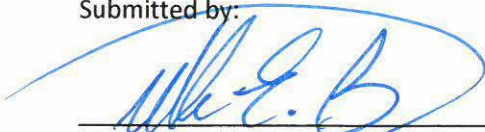
- **Additional documents submitted to file**

1. Copy of agenda and minutes from the June 17, 2013 meeting of the Delray Beach Planning and Zoning Board, including a public hearing concerning a request for conditional use by Sandbar at Boston's on the Beach. (15 pages)
2. Copy of minutes from August 19, 2013 meeting of Delray Beach Planning and Zoning Board, including voting sheet showing Respondent voted was sole member to vote against a request for conditional use by The Strand. (18 pages)
3. Copy of staff study submitted for the August 19, 2013 Planning and Zoning Board meeting, listing applicant for conditional use as "Fladel, LLC," (The Strand) and recommending denial of the request (31 pages)
4. Copy of information from the Delaware Division of Corporations (www.delecorp.delaware.gov) listing "Fladel, LLC" as a Delaware limited liability company. (1 page)

- **Recommendation**

Based on the information found in the initial Inquiry and supplemented in the Investigation, staff recommends that you file a Complaint against Respondent for one count of violation of §2-443(c), *Disclosure of voting conflicts*. This recommendation is based on evidence of Respondent's participation in discussions and vote to approve a conditional use request for a customer or client (Bosdell, LLC, doing business as Sandbar at Boston's on the Beach) of Respondent's outside business or employer (Plastridge Insurance), which resulted in a "special financial benefit" to the customer or client of his outside business or employer in violation of the PBC Code of Ethics.

Submitted by:



Mark E. Bannon
PB County Commission on Ethics

1/10/2014
Date

Reviewed by:

SR
(Initials)

1/10/2014
Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF NO PROBABLE CAUSE

To: Palm Beach County Commission on Ethics
From: John B. Cleary, Jr., Volunteer Advocate
Re: C14-001 – Connor Lynch

- **Recommendation**

A finding of NO PROBABLE CAUSE and DISMISSAL should be entered in the above captioned matter as to the allegations made in the Complaint.

Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, Connor Lynch, violated the Palm Beach County Code of Ethics.

- **Jurisdiction**

COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance which states in pertinent part:

Article V, Division 8, section 2-258. *Powers and duties.* (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the;

- (1) Countywide Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

Article XIII, §2-443(a)(5), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics (the Code) prohibits any employee or official from using their position to give a special financial benefit, not shared with similarly situated members of the general public, to a customer or client of his or her outside business or employer.

Article XIII, Section 2-443(c), *Disclosure of voting conflicts*, prohibits an official from participating in, or voting on an issue that would give a special financial benefit to a customer or client of the employee or official's outside business or employer.

This memorandum adopts by reference the Memorandum of Inquiry (AN13-015) and the Memorandum of Investigation (C14-001) prepared by COE investigative staff.

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via an anonymous telephone call received by COE staff. In this telephone conversation, the anonymous source alleged that Respondent is both the Chair Person and a voting member of the City of Delray Beach Planning and Zoning Board (PZB), a municipal advisory board. The anonymous caller further alleged that at a PZB meeting held on June 17, 2013, Respondent substantially participated in discussions and voted in favor of a conditional use request to allow outside entertainment in an open air porch of a local business, Sandbar at Boston's on the Beach (Sandbar), located at 40 South Ocean Blvd., within the municipal limits of the City of Delray Beach (the City), giving Sandbar a prohibited special financial benefit. The caller alleged that this participation and vote by Respondent was prohibited by the Code of Ethics, because Sandbar is owned by Ocean Properties, Limited (OPL), which is a customer or client of

Respondent's outside business or employer, Plastridge Insurance. The initial Inquiry into this matter was then turned over to Senior Investigator Mark Bannon for follow-up.

- **Facts**

The investigation revealed that Respondent was the Chair Person and a voting member of PZB at the time of these alleged actions. Respondent is also the Chief Operating Officer for Plastridge Insurance, located at 820 NE 6th Ave., Delray Beach, FL 33483.

Documents obtained from the Florida Division of Corporations website (www.sunbiz.com) and the website of Boston's on the Beach (Boston's) (www.bostonsonthebeach.com), indicate that Sandbar is not operated as a separate legal entity, but as an outside area of Boston's, a bar and restaurant located at 40 South Ocean Blvd., Delray Beach, FL 33483. Boston's is owned by a foreign for-profit corporation, Bosdell, LLC, listing a principal address of 100 Market St., Bldg. One, Portsmouth, NH, 03801. While there is no direct connection to OPL, Bosdell, LLC and OPL do have at least two persons who are directors or managing members of both entities. OPL is listed by the Florida Division of Corporations as also being a foreign for-profit corporation with a principal address of 115 Franklin St., Bangor, ME, 04402-0702. OPL also lists the address of several corporate officers at 1001 E. Atlantic Ave., Suite 202, Delray Beach, FL 33483.

Business documents obtained from Respondent during an interview at Plastridge Insurance show that Bosdell, LLC is a customer or client of Plastridge Insurance, and that they had received in excess of \$10,000 worth of insurance services over the past 24 months prior to the June 17, 2013 PZB vote on Sandbar's conditional use request.

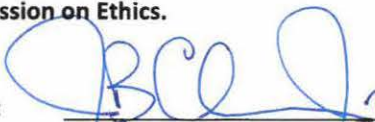
Respondent advised investigator Bannon that at the time of his vote, he was not aware that Bosdell, LLC was a customer or client of Plastridge Insurance, or that they were the entity that owned Boston's. He also stated that he was not aware Plastridge Insurance insured any portion of Boston's, as they were not customers of his personally, and they have a very large customer base. Further, the insurance provided by Plastridge Insurance was not directly to Boston's but went through Boston's corporate owner, Bosdell, LLC. Respondent allowed Investigator Bannon to observe as he accessed the customer database for Plastridge Insurance. While there was no listing for Boston's or Sandbar within the customer database, Bosdell, LLC was listed.

Respondent also stated that he previously sought legal advice over the years from the City Attorney about the fact that with over 20,000 clients built over nearly 50 years of existence, it would be nearly impossible for Respondent to know each and every client. Respondent stated that he has always been told that it is a personal relationship that he needs to watch when voting on projects and that neither Boston's nor Bosdel, LLC are his personal clients. Furthermore, Respondent specifically contacted then Delray Beach City Attorney Brian Shutt about any possible voting conflict concerning this issue, who in turn contacted then COE Staff Counsel Megan Rogers about the issue. However, the information that Boston's was a customer or client of Respondent through their corporate name, Bosdell, LLC, was not known to Respondent at the time, and thus not relayed to Shutt or Rogers, who were asked only about a possible conflict based on Respondent's personal relationship with a manager of Boston's.

- **Conclusion**

Based on the facts and circumstances as listed, and specifically because Respondent did obtain legal advice from the Delray Beach City Attorney prior to voting on this issue in an attempt to avoid any potential code violation, I recommend a finding of **NO PROBABLE CAUSE** to believe that Respondent, Connor Lynch, violated §2-443(a)(5) or §2-443(c) of the Palm Beach County Code of Ethics. Further, I recommend that this matter be **DISMISSED by the Commission on Ethics.**

By:


John B. Cleary, Jr., Volunteer Advocate
Florida Bar No. 99368

3/26/2014
Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM TO FILE

To: Mark Bannon, Senior Investigator
From: Megan C. Rogers, Staff Counsel
Re: ~~ANC~~13-015 Connor Lynch

This matter came to the attention of Commission on Ethics staff via an anonymous phone call. The caller alleged that the chairman of the Delray Beach Planning and Zoning Commission substantially participated and voted on an application for conditional use request to allow outside entertainment in an open air porch of the Sandbar at Boston's on the Beach, located at 40 South Ocean Blvd. According to the caller, the property is owned by Ocean Properties Limited (OPL), a company to which Mr. Lynch's outside employer, Plastridge Insurance Group, has allegedly provided insurance services in excess of \$10,000 over the past 24 months.

I reviewed the Boston's on the Beach website and the Sandbar website. I could not ascertain the ownership of either property based on the information provided. However, on review of the applicant's presentation at the June 17th meeting, Allan Ciklin, attorney for the applicant stated that "the Marriott, both the hotel and Boston's are owned by the same person." The OPL Website lists the Delray Beach Marriott as one of over 100 properties owned, operated and managed by the group.

I verified that Mr. Lynch is a current employee of Plastridge Insurance Group. According to information retrieved from Plastridge's website, Mr. Lynch is listed as COO. I verified that Mr. Lynch was present at the June 17th Planning and Zoning Meeting and requested a copy of the minutes from the City of Delray Beach. Mr. Lynch was present at the meeting. Subsequent to City staff's presentation of the application Mr. Lynch disclosed that he did not communicate with anyone on the project, but that he is a longtime friend of the owner of the property and other employees and that he had "no financial gain from knowing them and I feel and I can be totally independent."¹

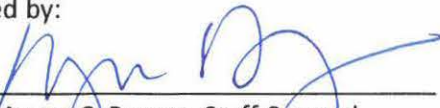
During the course of the June 17th meeting, Mr. Lynch substantially participated in discussion surrounding the conditional use application. Mr. Lynch voted to approve the applicants request for a conditional use permit.

On August 23rd, staff received a second anonymous phone call regarding Mr. Lynch's participation and vote on a second project proposed by OPL. According to the caller, OPL has applied for a conditional use request to allow an increase in density for the Strand a residential apartment complex. The caller alleged that again, Mr. Lynch disclosed his relationship to the developer, determined that he did not have a voting conflict as defined by the code and participated and voted on the application. The vote at

¹ On June 19th, I received a phone call from Brian Shutt, City Attorney for the City of Delray Beach. Mr. Shutt asked whether a board member was prohibited from voting on an application that would give a special financial benefit to a close personal friend. At that time, I provided him with RQO 12-065 and RQO 12-045. These advisory opinions note that while an elected official is not prohibited from voting on a matter that would give a special financial benefit to a personal friend, the official may not use his or her official position to corruptly secure any benefit for any person. Similarly, an elected official is absolutely prohibited from accepting anything of value in exchange for official action. I did not ask and Mr. Shutt did not disclose the advisory board member who he was inquiring on behalf of, but did note that this issue was controversial and related to oceanfront properties in the City.

issue occurred at the Planning and Zoning Board's August 19th meeting. As of August 26th, the minutes for the August 19th meeting are not yet available for review.

Submitted by:



Megan C. Rogers, Staff Counsel
PB County Commission on Ethics

8/26/2013
Date

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS**Detail by Officer/Registered Agent Name****Florida Profit Corporation****THE PLASTRIDGE AGENCY INC.****Filing Information**

Document Number 162103
FEI/EIN Number 590615319
Date Filed 06/30/1950
State FL
Status ACTIVE

Principal Address

820 N. E. 6TH AVENUE
DELRAY BEACH, FL 33483

Changed: 04/16/2007

Mailing Address

820 N. E. 6TH AVENUE
DELRAY BEACH, FL 33483

Changed: 04/16/2007

Registered Agent Name & Address

LYNCH, THOMAS E.
820 N. E. 6TH AVENUE
DELRAY BEACH, FL 33483

Name Changed: 10/26/1984

Address Changed: 04/16/2007

Officer/Director Detail**Name & Address**

Title VP

BOTTCHER, MICHAEL
820 N. E. 6TH AVENUE
DELRAY BCH, FL

Title PD

LYNCH, THOMAS E

820 N. E. 6TH AVENUE
DELRAY BEACH, FL

Title ST

POST, PAULA T
820 N. E. 6TH AVENUE
DELRAY BEACH, FL 33483

Title CFO

LYNCH, BRENDAN T
820 N. E. 6TH AVENUE
DELRAY BEACH, FL 33483

Title COO

LYNCH, CONNOR C
820 N. E. 6TH AVENUE
DELRAY BEACH, FL 33447-0730


Annual Reports

| Report Year | Filed Date |
|-------------|------------|
| 2011 | 01/31/2011 |
| 2012 | 04/02/2012 |
| 2013 | 04/08/2013 |

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| FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS | |  | |  | |
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| BOSTON'S | | | | | |
| <h3><u>Filing Information</u></h3> | | | | | |
| Registration Number | G06094700005 | | | | |
| Status | ACTIVE | | | | |
| Filed Date | 04/04/2006 | | | | |
| Expiration Date | 12/31/2016 | | | | |
| Current Owners | 1 | | | | |
| County | PALM BEACH | | | | |
| Total Pages | 2 | | | | |
| Events Filed | 1 | | | | |
| FEI/EIN Number | NONE | | | | |
| <h3><u>Mailing Address</u></h3> | | | | | |
| 40 SOUTH OCEAN BOULEVARD DELRAY BEACH, FL 33483 | | | | | |
| <h3><u>Owner Information</u></h3> | | | | | |
| BOSDEL, LLC. 1000 MARKET STREET BLDG ONE SUITE 300 PORTSMOUTH, NH 03801 FEI/EIN Number: 02-0772213 Document Number: M06000000349 | | | | | |
| <h3><u>Document Images</u></h3> | | | | | |
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| 06/21/2011 -- Fictitious Name Renewal Filing | | <input type="button" value="View image in PDF format"/> | | | |
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**FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS****Detail by Entity Name****Foreign Limited Liability Company**

BOSDEL LLC

Filing Information

| | |
|------------------------|--------------|
| Document Number | M06000000349 |
| FEI/EIN Number | 020772213 |
| Date Filed | 01/20/2006 |
| State | DE |
| Status | ACTIVE |

Principal Address

1001 EAST ATLANTIC AVENUE, SUITE 202
DELRAY BEACH, FL 33483

Mailing Address

1000 MARKET ST
SUITE 300
PORTSMOUTH, NH 03801

Changed: 03/29/2007

Registered Agent Name & Address

C T CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

Manager/Member Detail**Name & Address**

Title MGR

WALSH, MICHAEL P
1001 E. ATLANTIC AVE.
DELRAY BEACH, FL 33483

Title MGR

WALSH, MARK T
1001 E. ATLANTIC AVE
DELRAY BEACH, FL 33483

Annual Reports

| Report Year | Filed Date |
|-------------|------------|
| 2011 | 01/06/2011 |
| 2012 | 02/13/2012 |
| 2013 | 01/31/2013 |

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State of Florida, Department of State

**FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS****Detail by Entity Name****Foreign Profit Corporation**

OCEAN PROPERTIES, LTD.

Filing Information

Document Number 834955
FEI/EIN Number 010333103
Date Filed 09/03/1975
State ME
Status ACTIVE

Principal Address

115 FRANKLIN ST
BANGOR, ME 04402-0702

Changed: 05/08/1997

Mailing Address

1000 MARKET ST
BLDG 1
PORTSMOUTH, NH 03801

Changed: 05/01/1998

Registered Agent Name & Address

C T CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

Address Changed: 07/01/1992

Officer/Director Detail**Name & Address**

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WALSH, MICHAEL

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Title EVP

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PORTSMOUTH, NH 03801

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50 OCEAN

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August 27, 2013, 8:24 am



Cloudy

71°F

real feel: 74°F

current pressure: 30 in

humidity: 93%

wind speed: 7 mph SSW

wind gusts: 7 mph
sunrise: 6:34 am
sunset: 7:57 pm
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Delray Beach

Delray Beach, Florida
August 27, 2013, 8:24 am



Partly sunny
78°F
real feel: 84°F
current pressure: 30 in
humidity: 81%
wind speed: 0 mph N
wind gusts: 0 mph
sunrise: 6:58 am
sunset: 7:45 pm
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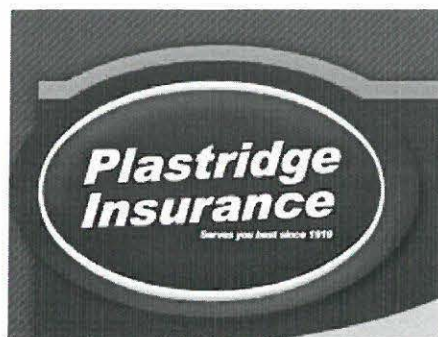
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Executive Director

Alan S. Johnson

September 8, 2011

Mr. Connor Lynch
Plumosa School of the Arts Foundation
2501 Seacrest Blvd.
Delray Beach, FL 33444

Re: RQO 11-075
Charitable Solicitation

Dear Mr. Lynch,

Your request for an expedited advisory opinion pursuant to Commission on Ethics rule of procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your e-mail of August 31, 2011 and follow-up e-mails of September 1, 2 and 6, 2011 whether municipal elected officials and employees may participate in a fundraising event for the Plumosa School of the Arts Foundation (PSAF). You also asked if a conflict of interest exists for public employees who are officers or directors of the foundation.

IN SUM, the Code of Ethics does not prohibit elected officials or employees from participating in charitable fundraising events, provided that any solicitation or acceptance of donations in excess of \$100 from a person they know, or should know with the exercise of reasonable care, is a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies their municipal government, is transparently recorded in accordance with the charitable solicitation requirements of the code.

Public officials or employees who are officers or directors of a non-profit organization may not use their official public position or title, directly or indirectly, to specially financially benefit that organization.

THE FACTS as we understand them are as follows:

The Plumosa School for the Arts Foundation (PSAF) plans to host a "Mayor's Throwdown" (the Event) to be held at Bru's Room Sports Grill in Delray Beach on September 21, 2011. The Event is open to the public. The foundation has invited three municipal mayors (Boca Raton, Delray Beach and Boynton Beach) to act as "celebrity bartenders." The mayors will pour drinks and help pass them out but will not engage in any direct solicitation. All tips go towards PSAF and are placed in one of three tip jars, identified by municipality. The premise of the Event includes a "competition" between mayors as to which municipality raises the most in tips. You plan to have a volunteer stationed at each tip jar in order to log any donations in excess of \$100. The donor will be asked if he or she is a vendor or lobbyist of the municipality but in an abundance of caution, all such donations will be recorded. In addition, the tip jars will not be visible to the mayors during the course of the event. Lastly, to ensure compliance with the code, organizers will announce, in print and orally during the Event, that vendors and lobbyists must identify any cash donation in excess of \$100 to the monitor so that they may be recorded on the log. You have indicated your desire to take these precautionary steps to avoid any inadvertent or unintentional violation of the reporting requirements as well as the appearance that such an unlogged prohibited gift could otherwise be easily made in a cash/tip scenario.

PSAF has had an ongoing campaign to sell name plates on the seats in the auditorium of the school and to sell engraved bricks at the entrance to the auditorium. You plan to continue to solicit these donations at the Event. Bricks sell for \$150, and seats sell for \$500 or \$1000. In order for attendees of the Event to purchase a brick or a chair, they will be required to complete a form that contains a checkbox for vendors and lobbyists of the municipalities involved in the fundraiser. As a cautionary measure, all such donations made at the event will be logged and submitted in accordance with the requirements of the Code of Ethics. No municipal resources will be used at the Event and no vendor with a pending application before any participating municipality will be permitted to donate in excess of \$100.

Two municipal employees serve on the PSAF board or appear on PSAF letterhead. In all instances, they are listed as private citizens and not in their capacity as a public official. None of the "celebrity bartenders" are associated with PSAF. At the Event, you will be speaking as the Chair of PSAF, asking the guests to donate, and will thank the Mayors for volunteering their time.

You have requested an expedited response from the COE.¹

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics, which took effect on June 1, 2011:

Section 2-444. Gift Law

- (a) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than One Hundred Dollars (\$100) from any person or business entity that the recipient knows is a lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
 - (1) An official public action taken or to be taken, or which could be taken;
 - (2) A legal duty performed or to be performed or which could be performed; or
 - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

Section 2-443. Prohibited Conduct

- (a) Misuse of Public Office or Employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner in which he or she knows or should know with the exercise of reasonable care, will result in a financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
 - (7) A nongovernmental group, union, social, charitable, or religious organization of which he or she is an officer or director.

Under the gift law provisions, §2-444(a) prohibits a public employee from soliciting or accepting a gift worth more than \$100 from a vendor or lobbyist in most circumstances. The revised Code of Ethics provides an exception to this prohibition to allow participation by officials and employees in charitable

¹ Rule of Procedure 2.6 Expedited Responses. When the requesting party so indicates, and the facts support an expedited review of a request for advisory opinion, the Executive Director will confer with the COE Chairperson or Co-Chairperson to determine whether; to set the matter for review at the next scheduled meeting; to set a special meeting of the COE to review the request; or to have the Executive Director respond prior to the next regular meeting.

fundraising.² However, this exception does require that fundraisers maintain and submit a log of all solicitations or donations in excess of \$100 from vendors or lobbyists doing business or lobbying their public employer. It should be noted that by including solicitation of charitable donations *by any other person or business entity on his or her behalf* the code encompasses the indirect solicitation made by others involved in a charitable fundraiser. The recording of these gifts may therefore be delegated to a third party who actually solicits or accepts the donation.³ Alternatively, as in this instance, scrutiny and notation of any donations subject to the logging requirement would be handled by announcements and monitors put in place by the non-profit organization. Where the organization has reasonable protocols in place to capture and log otherwise prohibited gifts, an employee or official may act reasonably in reliance on these protocols.

Furthermore, in soliciting donations from vendors or lobbyists, a public employee or official *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions.*⁴ It should be noted that notwithstanding any other provision, a public employee or official may not accept anything of value as a *quid pro quo* in exchange for an official act or the past, present or future performance of a legal duty.

Section 2-443(a), misuse of office, prohibits a public official or employee from specially financially benefiting a non-profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director.* Therefore, any municipal employee who is an officer or director of PSAF, may not use his or her position to financially benefit the organization, *in a manner which he or she knows or should know will result in a special financial benefit, not shared with similarly situated members of the general public,* which in this instance would be all other similarly situated charitable organizations. Here, while two employees serve on the board of directors of PSAF, they do so as private citizens and not in their official capacity or title.⁵

THE RATIONALE for allowing public officials and employees to accept or solicit otherwise prohibited charitable donations made by vendors or lobbyists of their respective municipal governments may be found in §2-244(h) of the revised Code of Ethics. As previously stated, as long as no public resources are used and vendors with pending applications are excluded, these gifts are now permitted provided they are recorded for purposes of transparency. Therefore, gifts from vendors and lobbyists in excess of \$100 solicited or accepted by an official, directly, indirectly, or on his or her behalf, are permissible provided a log is kept and transmitted to the COE as required.

Compliance can be easily monitored when donations are attributed to a person or entity, as with a written pledge or check. In regard to cash donations, when facts and circumstances indicate donations are mostly random, anonymous and in small amounts, the need for transparency may be lessened insofar as public perception is concerned. Recently, the COE opined that Palm Beach County Fire Rescue personnel were not prohibited from participating in the annual MDA Fill the Boot Drive, provided that any donation offered in excess of \$100 is identified as to the donor.⁶ In this way, the donor's name could later be cross referenced with the appropriate vendor or lobbyist list and recorded if necessary.

While the facts and circumstances surrounding the proposed "Bartender Throwdown" may be distinguishable from the MDA event, the requirements of the code remain the same. Unlike the MDA

² Section 2-444(h), PBC Code of Ethics

³ RQO 11-029, RQO 11-041 (solicitations by third parties on behalf of public officials must comply with logging requirements of the code)

⁴ Section 2-444(h)(3), PBC Code of Ethics

⁵ RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

⁶ RQO 11-065 (participation in the MDA Boot Drive Fundraiser, where donations are generally anonymous, spontaneous and given in small amounts, by on duty municipal personnel standing on street corners and medians was not prohibited so long as the requirements of §2-444(h) were followed)

fundraiser, the participants in the PSAF event are not random motorists. In addition, the persons soliciting donations are mayors of three municipalities and, therefore, high-ranking officials. The premise of the PSAF event is based upon competition between elected officials and "bragging rights" over which one can garner the most tips. These are meaningful differences in that there may be a public perception that vendors and lobbyists will contribute in part to obtain the good will of the officials with whom they do business. However, so long as there is no *quid pro quo* or other benefit given in exchange, the motive of the donor is not at issue provided the donation is transparent and properly recorded.⁷

The MDA fundraiser rationale applies equally to the PSAF Event so long as the requirements of the code are met. Because the donations will be cash and the facts and circumstances are distinguishable from MDA, you have indicated that PSAF volunteers will take additional steps to ensure that any cash donations in excess of \$100 from vendors or lobbyists of the respective municipalities will be properly recorded and submitted as required by the code.⁸ To ensure anonymity, the tip jars will be hidden from the celebrity bartenders.⁹ In addition, PSAF will post monitors to ensure that otherwise prohibited gifts may be identified and recorded pursuant to the code requirements. Similarly, the PSAF brick/seat purchase form includes a checkbox for lobbyists and vendors of the three municipalities represented in order to identify their status. To ensure transparency, you have indicated that all such purchases will be recorded and submitted within 30 days of the event to the Commission on Ethics.

Lastly, you intend to publicly announce limitations and transparency requirements in order to ensure prospective donors comply with the code. These combined extra layers of scrutiny will serve to eliminate inadvertent violations by vendors, lessen any perception of impropriety and avoid accusations that a public official knew or should have known a prohibited cash gift was given on their behalf.

IN SUM, Based on the facts you have submitted, the direct or indirect solicitation or acceptance by the various mayors of otherwise prohibited gifts in excess of \$100 from vendors and lobbyists is not prohibited, so long as the gift is transparent, not obtained by the use of public resources and is not from vendors with a pending application before their municipality. A log of these gifts must be transmitted to the COE within 30 days of the event. In addition, a gift of any value may not be given in exchange for the past, present or future performance of an official act or legal duty. The PSOA event is not prohibited and gifts in excess of \$100 from vendors and lobbyists of the participating municipal officials are permitted as regulated.

Officers or board members of PSAF who are public employees may not use their official title or position to specially benefit PSAF.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson
Executive Director

ASJ/gal

⁷ Section 2-442, PBC Code of Ethics defines lobbying as "an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor..." Such an act does not, by itself, constitute a violation of the code.

⁸ Section 2-444(a)(2), PBC Code of Ethics (prohibiting a vendor, lobbyist, principal or employer of a lobbyist from giving a gift in excess of \$100 to a person they know is an official or employee of a municipality of which they sell, lease or lobby)

⁹ Section 2-444(a) requires that the official "knows or should know with the exercise of reasonable care" that the prohibited gift is from a vendor, lobbyist or principal or employer of a lobbyist. Therefore, a truly anonymous gift does not violate the code.

ITEM BEFORE THE BOARD

The action before the Board is making a recommendation to the City Commission on a request for a Conditional Use, to allow outside entertainment associated with **Boston's Sand Bar** pursuant to LDR Section 4.6.6(A)(2).

The subject property is located on the west side of South Ocean Boulevard, approximately 200' south of East Atlantic Avenue.

BACKGROUND

On November 9, 2011, the Site Plan Review and Appearance Board (SPRAB) approved a Class V site plan (Phase 2) associated with provision of additional on-site parking, construction of three (3) new accessory structures for storage and men and women's restrooms, construction of a new outdoor bar, platform deck, lobster cooker hut and outdoor seating and dining areas on property previously occupied by Bermuda Inn (south of existing Boston's Restaurant). These improvements include an outside entertainment stage (platform deck) that will provide opportunities for outside entertainment. While the venue (stage area) was approved, the applicant was informed that any outside entertainment would require a conditional use approval.

On December 5, 2011, Attorney Alan J. Ciklin Esq. of Casey, Ciklin, Lubitz, Martens & O'Connell law firm located in West Palm Beach, Florida, filed to appeal the Planning & Zoning Department Director's Interpretation of the Land Development Regulations requiring a conditional use for the outside entertainment (platform deck) for Boston's Restaurant expansion. This requirement was initially identified as a condition of approval and referenced in the staff report. While SPRAB removed it as a condition of approval, it was staff's position that this LDR requirement continued to apply.

On December 13, 2011, the City Commission denied a request by Attorney George Brannen to appeal the SPRAB approval of the Class V site plan due to concerns with the negative impacts on their adjacent residence in Unit #1 of the Bahama House which abuts the south property line of Boston's Restaurant and the proposed new outdoor seating and dining courtyard.

On January 3, 2012, the City Commission considered the appeal of an administrative interpretation of the Director relating to the outdoor entertainment function. The City Commission agreed with the Director's interpretation and denied the appeal.

The Boston's Restaurant is now requesting conditional use approval to allow outside entertainment. The request is limited to a Disc Jockey situated on an existing open air porch located within the outdoor Sand Bar.

PROJECT DESCRIPTION

This conditional use request, as submitted herein, is for an approval pursuant to Section 2.4.5(E)(2) of the City of Delray Beach's Land Development Regulations (LDR), to allow for a Disc Jockey on the open stage (outdoor platform/wood deck) of the Sandbar at Boston's on the Beach. Pursuant to staff's interpretation of Section 4.6.6(B)(9), a Disc Jockey, hereinafter referred to as DJ, may be permissible in an outside venue by the grant of a conditional use approval under Section 4.6.6.(A)(2).

The proposed DJ will be positioned in an existing open-air porch in the Sandbar area. This porch was shown on the site plan when it was approved by SPRAB in November of 2011. The permitted site plan and roof plan, with the location of the DJ noted, are attached as Exhibits "A" and "B" respectively. Staff has interpreted a DJ to be under the guise of "outdoor entertainment." This request is strictly limited to allowing a DJ (not other outside entertainment venues).

Generally, a DJ is responsible for playing pre-recorded music to a group of people. The City of Delray Beach allows for pre-recorded music to be played outdoors without a DJ. However, having an experienced DJ on-site who is able to adjust the song selections in response to the particular group they are playing for is an important component to the overall success of the Sandbar establishment.

The Sandbar includes full service dining and a full service bar area. The DJ will play pre-recorded music from 12:00 p.m. to closing, which is now allowed to be 12:00 a.m. The attached floor plan shows the layout of the Sandbar area with the location of the DJ noted.

Because music is already permitted to be played outdoors and is permitted, the DJ will add nothing new to the situation that currently exists, other than to be the designated person in charge of making song selections and facilitating that function. Additionally, the DJ will not be permitted to use a microphone to amplify their voice and the DJ will ensure the City's noise guidelines are adhered to.

The Sandbar at Boston's on the Beach has been in operation since March of 2012. Currently, a DJ plays pre-recorded music on the open air porch without proper approvals. Upon the City providing notice that Conditional Use Approval was required for the DJ to continue operation, the DJ has been replaced with pre-recorded music and the subject conditional use approval request was submitted on May 3, 2013.

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| CONDITIONAL USE ANALYSIS |
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Pursuant to 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, written materials submitted by the applicant, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application. These findings relate to the following areas:

LDR Section 3.1.1(A) - Future Land Use Map:

The subject property has a Commercial Core (CC) Future Land Use Map designation and is currently zoned Central Business District (CBD). The CBD zoning district is consistent with the CC FLUM designation. Pursuant to LDR Section 4.6.6(A)(1), all commercial and industrial uses are to be conducted within a completely enclosed building, rather than outside, regardless of zoning district. However, certain aspects of a use may be conducted outside and these are identified in LDR Section 4.6.6(B). This section has several categories (including outside dining), but does not include outside entertainment. However, it does include a catch-all reference to "activities associated with outside conditional uses pursuant to 4.6.6(A)(2)", which would include uses not specifically listed inclusive of outdoor entertainment. Hence, the requested conditional use is before the Board for consideration. Based upon the above, a positive finding can be made with respect to consistency with the Future Land Use Map designation.

LDR Section 3.1.1(B) - Concurrency:

As described in Appendix "A", a positive finding of concurrency can be made as it relates to water and sewer, streets and traffic, drainage, open space, and solid waste.

LDR Section 3.1.1(C) – Consistency:

Compliance with performance standards set forth in Chapter 3 and required findings in Section 2.4.5(E)(5) for the Conditional Use 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.

A review of the objectives and policies of the adopted Comprehensive Plan was conducted and the following applicable policies were found.

Future Land Use Element Objective A-1: *Property shall be developed or redeveloped in a manner so that the future use and intensity is appropriate and complies in terms of soil, topographic, and other applicable physical considerations, is complimentary to adjacent land uses, and fulfills remaining land use needs.*

The property is bordered on the west side by RM (Multiple Family Residential – Medium Density) zoned properties. Current uses include condominiums and single family residences. To the north is CBD (Central Business District) zoned property, currently containing a mixed-use condominium building with residences on the upper floors and retail and restaurant on the lower level. To the south is RM (Multiple Family Residential – Medium Density) zoned property also containing condominiums. To the east, is SR A1A right-of-way and the public beach and Atlantic Ocean on the opposite side of the road.

Special physical or environmental characteristics of the land that may be negatively impacted by the proposed development include the proximity to adjacent residential properties. Measures should be taken to mitigate the potential negative affect on adjacent residential properties. In consideration of these impacts, if the conditional use is approved installation of an acoustifence noise barrier to reduce the impact on adjacent residential properties is required and this is attached as a condition of approval.

Housing Policy A-12.3: *In evaluating proposals for new development or redevelopment, the City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied.*

The property was recently redeveloped to expand an existing use which has been established for many years. However, with the acquisition of properties now adjacent to residential uses on the south and west, special consideration should be given to assure that it continues to compliment the neighborhood and does not negatively impact the area with respect to noise and traffic circulation. The increased restaurant use area which includes the new outdoor courtyard (i.e. Sand Bar) raises some concern if live entertainment is offered on-site, particularly at late evening hours near midnight. Several complaints with respect to noise are reflected in the attached grid report for police calls to Boston's Restaurant since the Sand Bar opened in March

of 2012. To prevent degradation of the neighborhood, no additional noise should be introduced. An argument could be made that no additional noise is being added merely by modifying the delivery system (piped music vs. disc jockey). However, in reality, a live performance with a DJ is likely to affect volume levels and create a greater impact. Pursuant to Housing Policy A-12.3, the request should therefore be denied. The applicant has attempted to offset these concerns and assure compatibility with the adjacent neighboring residential properties by limiting the outside entertainment to a Disc Jockey without an amplified microphone who will be subject to compliance with Section 99 "Noise Control" of the Code of Ordinance for the City of Delray Beach. If the Board is inclined to support the request, a condition has been added to limit the outdoor entertainment accordingly.

LDR Section 3.1.1(D) - Compliance with the Land Development Regulations:

LDR Section 4.3.3(VV)(2)(a)(Conditional Use) states that any 24-Hour or late night business located or proposed to be located within a three hundred foot (300') straight line route from any residentially-zoned property shall obtain a conditional use permit from the City for late night operation of such use. Boston's Sand Bar is bordered on the west and south sides by residentially-zoned properties. It is noted that if approved, the subject outdoor entertainment in the dining courtyard area will close at 12:00am midnight. No 24-Hour or late night operation hours for Boston's Sand Bar will be permitted without the processing and approval of a separate conditional use request.

While the applicant may argue that the outside entertainment is an accessory use to the restaurant, such use is not listed as an accessory use in LDR Section 4.4.13 (C)(accessory uses allowed in the CBD). Further, to assume that all restaurant uses may include accessory outside entertainment would set a dangerous precedent.

Pursuant to LDR Section 4.4.13.D.9, dinner theaters and places of assembly for commercial entertainment purposes (i.e. live bands, live concerts or live performances) shall require the processing and approval of a separate conditional use application. While it could be argued that this is not for commercial entertainment purposes, it has many similar characteristics.

Pursuant to LDR Section 4.6.6(A)(1), all commercial and industrial uses are to be conducted within a completely enclosed building, rather than outside, regardless of zoning district. However, certain aspects of a use may be conducted outside and these are identified in LDR Section 4.6.6(B). This section has several categories (including outside dining), but does not include outside entertainment. However, it does include a catch-all reference to "activities associated with outside conditional uses pursuant to 4.6.6(A)(2)", which would include uses not specifically listed inclusive of outdoor entertainment. Hence, the requested conditional use is before the Board for consideration.

Pursuant to LDR Section 4.6.9(B), off-street parking shall be provided with a new conditional use. While this use will not require additional spaces, reallocation of spaces based upon current conditions is appropriate. There has been a number of complaints regarding noise and parking associated with motorcycles (i.e. see attached City Code Enforcement violations). Currently, there is no designated motorcycle parking on-site. Given the demand for motorcycle parking, it is recommended that an area on-site (i.e. preferably on the northernmost part of the site next to commercial uses on Atlantic Avenue) be designated for motorcycle parking that accommodates this demand and reduces the impact on adjacent residential properties. This is attached as a condition of approval.

In conjunction with the Conditional Use request a sketch plan was submitted which has been reviewed by staff. The accompanying sketch plan is compliant with the City's Land Development Regulations. However, at the Board's discretion, the following conditions of approval are suggested:

- Installation of an acoustifence noise barrier along the southern portion of the outdoor seating/entertainment area or southern property line with appropriate landscaping to reduce the impact on adjacent residential properties.
- That an area on-site be designated for motorcycle parking that accommodates the current demand and reduces the negative noise impact on adjacent residential properties. This location should be on the north side of the site away from the southern properties.
- All on-site activities, inclusive of the proposed disc jockey, are subject to compliance with Section 99 "Noise Control" of the Code of Ordinance for the City of Delray Beach.
- If approved, the subject outdoor entertainment in the dining courtyard area will cease at 12:00 a.m. midnight on Friday and Saturday and 11:00 p.m. on all other nights. No 24-Hour or late night operation hours for Boston's Sand Bar will be permitted without the processing and approval of a separate conditional use request.
- The outside entertainment is limited to a Disc Jockey without an amplified microphone. Any other on-site entertainment (i.e. live band performances) will require processing and approval of a separate conditional use request.

The Board can impose these conditions to assure compatibility of the use pursuant to LDR Section 2.4.4(C). At a minimum, these conditions are recommended if the Board is inclined to support the request.

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| REQUIRED FINDINGS |
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SECTION 2.4.5(E) REQUIRED FINDINGS: (Conditional Use)

Pursuant to Section 2.4.5(E)(5)(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. Nor that it will hinder development or redevelopment of nearby properties.**

The following table identifies the zoning designations and uses that are adjacent to the subject property:

| | <i>Zoning:</i> | <i>Use:</i> |
|--------------|---------------------------------|--|
| <i>North</i> | CBD (Central Business District) | Mixed-Use Building (Condominiums, Retail & Restaurant) |
| <i>South</i> | RM (Medium Density Residential) | Condominiums |
| <i>East</i> | OS (Open Space) | Atlantic Ocean/Public Beach |
| <i>West</i> | RM (Medium Density Residential) | Condominiums and Single Family Residences |

Since the adoption of the 1989 Comprehensive Plan, the downtown has changed from a somewhat seasonally oriented shopping area to a more dynamic and vibrant retail, service, and entertainment area with an active nightlife. The proposed renovation and expansion of Boston's Restaurant will continue to make Downtown Delray Beach a vibrant and attractive recreation and dining destination. It will not cause any depreciation of adjacent property values. However, as noted previously, there are concerns with respect to noise during late night operation hours, particularly if live entertainment is offered in the new outdoor courtyard. While a restaurant use is compatible and harmonious with adjacent and nearby properties, mitigation measures must be implemented to assure the least negative impact on neighboring condominium developments. In such case, any outdoor entertainment shall be compliant with Section 99 "Noise Control" of the Code of Ordinance for the City of Delray Beach. Similarly, noise generated from motorcycles shall be reduced with the provision of designated motorcycle parking situated in an on-site location less impacting to adjacent residential properties. Finally, installation of an acoustifence noise barrier has been deemed successful for similar restaurants offering outside entertainment (i.e. Guanabanas in Jupiter, FL) and shall be installed to reduce or eliminate negative impacts to the adjacent residences to the south. These items are attached as conditions of approval. With the implementation of these items (conditions), positive findings may be achievable with respect to LDR Section 2.4.5(E)(5) (Required Findings).

REVIEW BY OTHERS

Downtown Development Authority (DDA):

The northernmost parking lot serving Boston's Restaurant is located within the boundaries of the Downtown Development Authority (DDA). At its meeting of July 8, 2013, the DDA will consider the conditional use request for outside entertainment (i.e. DJ) at the Boston's Sand Bar and make a recommendation.

Community Redevelopment Area (CRA):

At its meeting of May 23, 2013, the Community Redevelopment Agency (CRA) reviewed the development proposal and recommended denial of the conditional use request for outside entertainment (i.e. DJ) at the Boston's Sand Bar.

Courtesy Notices:

Courtesy notices have been sent to the following homeowner's and/or civic associations:

- Neighborhood Advisory Council
- Beach Property Owners Association
- Delray Chamber of Commerce
- Delray Citizen's Coalition
- Bahama House
- Windmere House
- Jardin Delray
- Bermuda Inn

Courtesy notices have also been sent to adjacent property owners, including but not limited to the following:

- George W. Brannen, Casey & Brannen Attorneys at Law

- Sun Prop of Florida Group
- Salina Beach House
- Salina Development
- 350 T Street

Public Notices:

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

ASSESSMENT AND CONCLUSION

The proposal involves a conditional use request to allow outside entertainment via a Disc Jockey on an existing open air porch located within the Sand Bar associated with Boston's Restaurant. Pursuant to Housing Policy A-12.3, if it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied. It is noted that if the use is allowed it would be subject to the same volumes and compliance with the Noise Ordinance as non-entertainment activities like piped in music which can occur without additional approval. If approval is contemplated, it should be subject to the correction of existing issues and prevention of further issues. To that end, if approval is recommended, then it should be subject to the installation of an acoustifence noise barrier south of the outside seating area with associated landscaping. The approval should also be limited to a Disc Jockey without an amplified microphone which will be subject to compliance with Section 99 "Noise Control" of the Code of Ordinance for the City of Delray Beach. The outdoor entertainment in the dining courtyard area should cease at 12:00 a.m. midnight on Friday and Saturday and 11:00 p.m. on all other nights. Further, given the demand for motorcycle parking of the existing operation, it is also recommended that an area on-site be designated for motorcycle parking (i.e. north side of property adjacent to Atlantic Avenue) that accommodates this demand and reduces the negative noise impact on adjacent residential properties. If the proposed conditions of approval are addressed or adhered to, the proposed conditional use could be found to be consistent with the policies of the Comprehensive Plan and Chapter 3 of the Land Development Regulations and positive findings can be made with respect to Section 2.4.5(E)(5).

ALTERNATIVE ACTIONS

- A. Move to **continue** with direction.
- B. Recommend **approval** to the City Commission for a Conditional Use to allow outside entertainment (i.e. DJ) associated with Boston's Sand Bar, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets criteria set forth in Sections 2.4.5(E)(5), and Chapter 3 of the Land Development Regulations, subject to the following conditions:
 - 1. Installation of an acoustifence noise barrier to reduce the impact on adjacent residential properties. This will require subsequent processing and approval of a Class II Site Plan modification application and should include landscaping on both sides of the fencing.

2. Given the demand for motorcycle parking, it is recommended that an area on-site be designated for motorcycle parking that accommodates this demand and reduces the negative noise impact on adjacent residential properties to the south. The preferred location would be at the northernmost access point closest to commercial properties on East Atlantic Avenue.
 3. All on-site activities, inclusive of the proposed disc jockey, are subject to compliance with Section 99 "Noise Control" of the Code of Ordinance for the City of Delray Beach.
 4. If approved, the subject outdoor entertainment in the dining courtyard area will cease at 12:00am midnight on Friday and Saturday and 11:00 a.m. on all other nights. No 24-Hour or late night operation hours for Boston's Sand Bar will be permitted without the processing and approval of a separate conditional use request.
 5. The outside entertainment is limited to a Disc Jockey without an amplified microphone. Any other on-site entertainment (i.e. live band performances) will require processing and approval of a separate conditional use request.
- C. Recommend **denial** to the City Commission for a Conditional Use to allow outside entertainment (i.e. DJ) associated with Boston's Sand Bar, by adopting the findings of fact and law contained in the staff report, and finding that the request is inconsistent with the Comprehensive Plan, particularly Housing Policy A-12.3, and does not meet criteria set forth in Sections 2.4.5(E)(5), and Chapter 3 of the Land Development Regulations.

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| RECOMMENDED ACTION |
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Board's Discretion.

Staff Report Prepared By: Candi N. Jefferson, Senior Planner

Attachments: Appendix A, Location Map, Site Plan, Floor Plan, Applicant Justification, Citizen Objection Letters, Acoustifence Noise Barrier Details, Police Dept. Grid Report Code Enforcement Violations

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| APPENDIX A CONCURRENCY FINDINGS |
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Pursuant to LDR Section 3.1.1(B), Concurrency, as defined pursuant to Objective B-2 of the Land Use Element of the Comprehensive Plan, must be met and a determination made that the public facility needs of the requested land use and/or development application will not exceed the ability of the City to fund and provide, or to require the provision of, needed capital improvements for the following areas:

Water and Sewer:

Water and sewer is available on-site. Pursuant to the Comprehensive Plan, treatment capacity is available at the City's Water Treatment Plant and the South Central County Waste Water Treatment Plant for the City at build-out. Based upon the above, positive findings can be made with respect to this level of service standard.

Streets and Traffic:

The subject property is located in the City's TCEA (Transportation Concurrency Exception Area), which encompasses the CBD, CBD-RC, OSSHAD, and West Atlantic Avenue Business Corridor. The TCEA exempts the above-described areas from complying with the Palm Beach County Traffic Performance Standards Ordinance. Therefore, a traffic study is not required for concurrency purposes.

Parks and Open Space:

Park dedication requirements do not apply for non-residential uses.

Solid Waste:

This particular request is not anticipated to affect solid waste generation rates.

Drainage:

No drainage issues are noted. Thus, there should be no impact on drainage as it relates to this level of service standard.

Schools:

The Palm Beach County School Board concurrency is not required for non-residential uses.

Mark Bannon E.

From: Connor Lynch [clynch@plastridge.com]
Sent: Thursday, September 19, 2013 4:59 PM
To: Mark Bannon E.
Subject: BOSDELL Screen Shot

As requested, attached is a screenshot from our system of the account listed under BOSDELL, LLC. Please confirm Receipt.

Customer: BOSDEL LLC

File Edit Options Window Help

Clients Policies Activity Memo Contacts Info Notes Claims Invoices Images Attach Sticky Wiz

<< Previous << >> Next >> Add

CUSTOMERS

Customers

| Client No. | Agency | Branch | Name | Street | Conglom |
|------------|--------|--------|--------------------------------|-------------------------------|---------|
| BOSTO-2 | 1 | 1 | BOSDEL LLC | 40 S. Ocean Blvd | Parent |
| BOSTO-3 | 1 | 1 | Boston Hair Co. | 7400 N. Federal Highway | |
| BOSTO-4 | 1 | 1 | Boston Ice Cream, Inc. | 141 Citrus Park Circle | |
| BOSTPA1 | 1 | 2 | Paul R. Bosten | 2043 Park Place | |
| BOSTW-1 | 1 | 1 | Alfred Bostwick | 12 S.W. 6th Street | |
| BOSWAL1 | 1 | 6 | Albertina Boswell | 4821 Pinewood Ave | |
| BOSWAN1 | 1 | 2 | Andrewa Boswell | 615 S State Road 7, #2F | |
| BOSWRO1 | 1 | 9 | Roger & Robin Bosworth | P O BOX 395 | |
| BOTAG-1 | 1 | 6 | Botag Industries, Inc. | 702 N. W. 8th Avenue | |
| BOTAN-1 | 1 | 1 | Botanica Lakes HOA, Inc. | 1600 Sawgrass Corp. Pkwy #300 | VALEN13 |
| BOTANA2 | 1 | 2 | Natalie Bota & | | |
| BOTCGE1 | 1 | 1 | George & Florence Botchan | 7872 Dundee Lane | |
| BOTEKA1 | 1 | 7 | Karen Anne Botelle | 21 S E Ontario Way | |
| BOTEWI1 | 1 | 1 | William E. Boterus | 22 Chipmunk Drive | |
| BOTKGL1 | 1 | 2 | Glenn & Lenore Botkin | 2785 Hampton Circle E | |
| BOTNGE1 | 1 | 6 | George & Gretchen M Botner | 7187 Elkhorn Drive | |
| BOTNST1 | 1 | 6 | Stephen Botnick | 7857 Palencia Way | |
| BOTSMA1 | 1 | 6 | Malcolm & Helen Botsford | 7874 Nile River Road | |
| BOTTA-1 | 1 | 6 | Andrew K. Bott, Jr. | 2339 Edward Rd. | |
| BOTTD01 | 1 | 2 | Douglas Bott | 6841 Bridlewood Court | |
| BOTTD02 | 1 | 6 | Donna Bott | 125 E Merritt Island #209202 | |
| BOTTE-1 | 1 | 1 | Ernest Bott & Ruth Stankeiwicz | 355 N.E. 5th Ave., Suite 8 | |
| BOTTE-2 | 1 | 6 | Bottega Grill | 2411 S/W 147 Ave | |
| BOTTE-3 | 1 | 6 | Bottega Express- See BOTTE-2 | 2411 S/W 147th Ave | |
| BOTTFR1 | 1 | 1 | Francis Bottone | 1729 A Forest Lakes Circle | |
| BOTTGI1 | 1 | 2 | Gildo & Martha Bottigliero | 1225 Arnow Avenue | |
| BOTTJA1 | 1 | 1 | James D. Bottcher | P O Box 351 | |
| BOTTLL-1 | 1 | 1 | Bottlebrush Homeowners | P.O. Box 7403 | |

Enter Code BOSTO-2

Detail Options Cancel



AGENDA PLANNING AND ZONING BOARD CITY OF DELRAY BEACH

Meeting Date: June 17, 2013
Type of Meeting: Regular Meeting
Location: City Commission Chambers
Time: 6:00 p.m.

The City shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the City. Please contact Doug Smith at 243-7144, 24 hours prior to the program or activity in order for the City to reasonably accommodate your request. Adaptive listening devices are available for meetings in the Commission Chambers.

If a person decides to appeal any decision made by the Planning and Zoning Board with respect to any matter considered at this meeting or hearing, such persons will need a record of these proceedings, and for this purpose such persons may need to ensure that a verbatim record of the proceedings is made. Such record includes the testimony and evidence upon which the appeal is to be based. The City does not provide or prepare such record. Two or more City Commissioners may be in attendance.

I. CALL TO ORDER

II. MINUTES

April 15, 2013
May 20, 2013

III. COMMENTS FROM THE PUBLIC (NOTE: Comments on items that are *NOT* on the Agenda will be taken immediately prior to Public Hearing Items.)

IV. PRESENTATION

A. West Atlantic Avenue Redevelopment Coalition

V. PLANNING AND IMPLEMENTATION ITEMS:

A. Annual Infrastructure Hearing - Acceptance of public comments pertaining to Citywide infrastructure improvements.

VI. PUBLIC HEARING ITEMS:

- A. Conditional use request to allow a free-standing multiple family housing development within the GC (General Commercial) and RM (Medium Density Residential) zoning districts for St. George, a proposed 38-unit townhouse development located on the east side of North Federal Highway, approximately 360 feet north of George Bush Boulevard. Quasi-judicial Hearing - At the Applicant's Request this item has been postponed to July 15, 2013
- B. Conditional use request allow outside entertainment limited to a Disc Jockey in an open-air porch of the Sandbar at Boston's on the Beach, located on the west side of South Ocean Boulevard, south of Atlantic Avenue (40 South Ocean Boulevard). Quasi-judicial Hearing
- C. City-initiated amendment to the Land Development Regulations by amending Section 2.4.3 "Submission Requirements", Subsection (D) "Preliminary Engineering Plans" and Subsection (F) "Final Engineering Plans" to provide for bus shelters; enacting a new Section 6.1.14 "Transit" to provide for bus shelters (Continued from May 20, 2013)
- D. City-initiated amendment to the Land Development Regulations by amending Section 4.6.9(D)(3)(c) to reduce the stacking distance for parking lots with 51 or more spaces when there are multiple access points.

VII. REPORTS AND COMMENTS:

- A. Board Members
 - Parking Management Advisory Board (PMAB)
- B. Staff
 - Meeting Dates for July
 - Project Updates

VIII. ADJOURN

Paul Dorling, AICP
Director of Planning and Zoning

Posted on: June 10, 2013

MINUTES OF THE PLANNING AND ZONING BOARD

PUBLIC HEARING/REGULAR MEETING

CITY OF DELRAY BEACH
DELRAY BEACH, FLORIDA

MEETING DATE: June 17, 2013

LOCATION: City Commission Chambers

MEMBERS PRESENT: Jan Hansen, Connor Lynch, Thuy Shutt, and Derline Pierre-Louis

MEMBERS ABSENT: Clifford Durden, Dr. Craig Spodak, Gerald Franciosa

STAFF PRESENT: Paul Dorling, Mark McDonnell, Terrill Pyburn (Asst. City Attorney) and Diane Miller

I. CALL TO ORDER:

The meeting was called to order by the Chair, Mr. Lynch at 6:18 p.m. The meeting was delayed as we were waiting on the arrival of Jan Hansen so a quorum could be met.

II. MINUTES:

Motion made by Ms. Pierre-Louis, seconded by Mr. Hansen, and approved 4-0 to move approval of the April 15, 2013 minutes as written.

Motion made by Ms. Pierre-Louis, seconded by Ms. Shutt, and approved 4-0 to move approval of the May 20, 2013 minutes as written.

Chair Lynch read the Quasi-Judicial Rules for the City of Delray Beach and Ms. Miller swore in all who wished to give testimony on any agenda item.

III. COMMENTS FROM THE PUBLIC

Jim Smith – SAFE – Our goal is to have a bike friendly city as suggested by the 2020 vision, we must start by having enough space to ride and walk. It's time to put our travel lanes on a diet and reduce them from 12' to 10'. How can we change all this?

Sue-Ann Levy – 603 Lakewood Circle W. - Journalist from Canada – Sue-Ann lives in the Hamlet but resides most of the year in Toronto, Canada. We are here tonight to comment on the Seagate HHC application of rezoning Lakewood, Section 1, Tract A, Open space to open space recreational. We are here especially for this project to find out it has been postponed. We were informed of the renovation of the golf course and create a putting area behind our home in late April. It was just a fluke that we found out about what was happening. To this day, we have never been advised of the plans by Seagate. We have not seen any plans even though we live 500 feet away from where this is proposed. Despite this change, the HHC was prepared to come to you tonight to request a rezoning change. They are only required to let the club members know of the changes.

★ Ms. Shutt not present ★

Terrill Pyburn

This item being discussed (Seagate) is coming to the next board meeting. Comments are welcome now, but board members are not allowed to comment.

Denise Alexander – 603 Lakewood Circle W. – I am looking for comfort as I am ill with a neurological disorder in my face. There is another person that cannot be here tonight, Maria Helmick, so I am reading her letter for her. Ms. Alexander is reading her concerns.

Jim Knight – 10 SE 1st Avenue – Mr. Knight was here at the meeting to talk about an exciting give away event coming up in the Oseola neighborhood. Madam Gary and Albert Jerome had a giveaway for the under privileged children in the Haitian community and we had a great turnout and gave away over 200 bicycles and food and small appliances. On July 26, 2013, from 12:00pm to 10:00pm we will be having a Back to School Giveaway giving away 200-300 backpacks and other school supplies. Just wanted to let you know of this project.

IV. PRESENTATION

West Atlantic Avenue Redevelopment Coalition

Paul Dorling mentioned that Reginald Cox WARC Chair was here at the beginning of this meeting to present a request to the Planning and Zoning Board but had to leave to attend another meeting. They are proposing that a new committee be established. We are postponing this presentation to another date not yet decided.

V. PLANNING AND IMPLEMENTATION ITEMS:

Annual Infrastructure Hearing – Acceptance of public comments pertaining to Citywide infrastructure improvements.

Jim Smith – SAFE

SAFE certainly understand Planning & Zoning board responsibility to accept public comments. Except SAFE encourages each board members to support all of SAFE's recommendations and to also make your own recommendations. If there is anyone in the City that should understand what our infrastructure improvements should be it is this board.

Lane Carlee – 734 S. Lake Avenue

I have a few issues but my main one is the North Federal Highway Redevelopment Plan that the city approved in 1999. I feel things are lost, and even the sign as you come into Delray on North Federal Highway starts right before George Bush. It doesn't even start where the line is and that area sure doesn't look at all good. I feel that the corridor has been forgotten.

Marie Gardella – N.E. 7th Avenue

One of my concerns is going east on Atlantic near Atlantic Crossing, there is no left turn signal. On N.E. 7th traffic has increased and if there were 4 way stops, that would help.

Genie DePonte – 24 Marine Way

I think that we are at a point for the city to add another dimension. We have the walkway from Veterans Park to Marina, but we are still in neglect, i.e. the asphalt is in poor condition. Gas lights were proposed some time ago, the thought of putting benches in, were all proposed but nothing has happened.

Jim Knight – 10 S.E 1st Avenue

I am excited about the infrastructure improvements that are coming to the Osceola area. They are going to be fixing up ally ways and repaving, and street lighting. We hope this is going to encourage more people to come to this area.

Alice Finst – 707 Pl. Tavant

In our neighborhood we have had some new sidewalks and some traffic control situations. It is so confusing in this area of how you get in and out of driveways. It would be good to have someone take a look at this and see what can be changed and improved. Also, it would be a help if right turn ONLY could be put at Congress and Lake Ida and Congress and Atlantic. You just sit there if the person in front of you is not turning right.

Georgianna Cerola – 3510 Sherwood Blvd.

At 3610 to 3692 Lakeview Blvd., is underwater anytime that we have any amount of rain. Hopefully someone can come out and look at it. They did do some changes, but it is still not working.

PUBLIC HEARING ITEMS

(A.)Conditional use request to allow a free-standing multiple family housing development within the GC (General Commercial) and RM (Medium Density Residential) zoning districts for St. George, a proposed 38-unit townhouse development located on the east side of North Federal Highway, approximately 360 feet north of George Bush Boulevard. Quasi-judicial Hearing -

At the Applicant's Request this item has been postponed to July 15, 2013

(B) Conditional use request allow outside entertainment limited to a Disc Jockey in an open-air porch of the Sandbar at Boston's on the Beach, located on the west side of South Ocean Boulevard, south of Atlantic Avenue (40 South Ocean Boulevard). Quasi-judicial Hearing

Mr. Dorling entered project file No. 2013-156.

On November 9, 2011, the Site Plan Review and Appearance Board (SPRAB) approved a Class V site plan (Phase 2) associated with provision of additional on-site parking, construction of three (3) new accessory structures for storage and men's and women's restrooms, construction of a new outdoor bar, platform deck, lobster cooker hut and outdoor seating and dining areas on property previously occupied by Bermuda Inn (south of existing Boston's Restaurant). These improvements included an outside entertainment stage (platform deck) that was intended to provide opportunities for outside entertainment. While the venue (stage area) was **approved**, the applicant was informed that any outside entertainment would require a conditional use approval.

On December 13, 2011, the City Commission denied a request by Attorney George Brannen to appeal the SPRAB approval of the Class V site plan due to concerns with the negative impacts on their adjacent residence in Unit #1 of the Bahama House which abuts the south property line of Boston's Restaurant and the proposed new outdoor seating and dining courtyard.

On January 3, 2012, the City Commission considered the appeal of an administrative interpretation of the Director relating to the outdoor entertainment function. The City Commission agreed with the Director's interpretation and denied the appeal.

The Boston's Restaurant is now requesting conditional use approval to allow outside entertainment. The request is limited to a Disc Jockey situated on an existing open air porch

located within the outdoor Sand Bar. However, having an experienced DJ on-site who is able to adjust the song selections in response to the particular group they are playing for is an important component to the overall success of the Sandbar establishment.

Currently the DJ will play pre-recorded music from 12:00 p.m. to closing, which is now midnight and additionally, the DJ will not be permitted to use a microphone to amplify their voice and the DJ will ensure the City's noise guidelines are adhered to.

Required findings in the staff report are made to the Future Land Use Section 3.1.1(A) as it relates to concurrency and also as it relates to consistency, there is an analysis that this property shall be developed or redeveloped in a manner so that the future use and intensity is appropriate and complies in terms of soil, topographic, and other applicable physical considerations, is complimentary to adjacent land uses, and fulfills remaining land use needs.

There is a housing policy noted in your staff report that for a proposal for new development or redevelopment, the City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied.

There has been a number of complaints regarding noise and parking associated with motorcycles (i.e. see attached City Code Enforcement violations). Currently, there is no designated motorcycle parking on-site. Given the demand for motorcycle parking, it is recommended that an area on-site (i.e. preferably on the northernmost part of the site next to commercial uses on Atlantic Avenue) be designated for motorcycle parking that accommodates this demand and reduces the impact on adjacent residential properties.

Installation of an acoustifence noise barrier has been deemed successful for similar restaurants offering outside entertainment and shall be installed to reduce or eliminate negative impacts to the adjacent residences to the south. These items are attached as conditions of approval.

Also, suggested for on-site activities, inclusive of the proposed disc jockey, are subject to compliance with Section 99 "Noise Control" of the Code of Ordinance for the City of Delray Beach. We have had some recent changes with the Noise Ordinance but things have not been enforced because it has been going through this process and it is nearing completion and this project will be subject to this ordinance.

If approved, the subject outdoor entertainment in the dining courtyard area will cease at 12:00am midnight on Friday and Saturday and 11:00 p.m. on all other nights. No 24-Hour or late night operation hours for Boston's Sand Bar will be permitted without the processing and approval of a separate conditional use request. Other than the weekends, 11:00pm is definitely more reasonable than 12:00 midnight.

And then the outside entertainment is limited to a Disc Jockey without an amplified microphone. Any other on-site entertainment (i.e. live band performances) will require processing and approval of a separate conditional use request.

The DDA (Downtown Development Authority) will at its meeting of July 8, 2013, will consider the conditional use request for outside entertainment (i.e. DJ) at the Boston's Sand Bar and make a recommendation. However, the (CRA) Community Redevelopment Agency at its May 23, 2013

meeting did review the development proposal and recommended denial of the conditional use request for outside entertainment (i.e. DJ) at the Boston's Sand Bar.

Courtesy Notices:

Courtesy notices have been sent to the following homeowner's and/or civic associations:

- Neighborhood Advisory Council
- Beach Property Owners Association
- Delray Chamber of Commerce
- Delray Citizen's Coalition
- Bahamas House
- Windmere House
- Jardin Delray
- Bermuda Inn

Courtesy notices have also been sent to adjacent property owners, including but not limited to the following:

- George W. Brannen, Casey & Brannen Attorneys at Law
- Sun Prop of Florida Group
- Salina Beach House
- Salina Development
- 350 T Street

Exparte Communication

Connor Lynch said that he has not communicated with anyone on this project, but I am a longtime friend of the owners of the property and other employees, other than that I have no financial gain from knowing them and I feel and I can be totally independent.

APPLICANTS PRESENTATION

Allan Ciklin – Attorney for the Applicant

I would like to make some clarifications from Mr. Dorling's presentation. In November 2011 SPRAB unanimously approved the SandBar for outdoor dining in the bar area. At that time it was supported by Bahamas House association. At the time of opening, pre-recorded music was permitted and DJ is not. It was indicated that DJ is considered live music and we disagree. We feel that a DJ using a microphone is not live music.

Let me explain what we have done preemptively to deal with any noise coming from the Sand Bar. First of all an acoustical architect was retained to minimize the noise. On the south property line there is a wall that goes up to 11 feet and 2 feet thick which is landscaping.

Off duty policeman are on site Friday and Saturday night. The SandBar closes at midnight and we are aware of the new noise ordinance. We have moved the motorcycle parking to the other side of the restaurant and they are in the valet area.

Also, some information that I would like to relay tonight about the Marriott as both the hotel and Boston's are owned by the same person. People that stay at the hotel comment that the hotel is great and having Boston's near is convenient for them.

PUBLIC COMMENTS

Patricia Healy – 19 Andrews Avenue

I am surrounded by the hotel and yes the experience for these people is great, but what about the people that live here. We need to look at the big picture, and not just the applicant but the residents. I agree with limiting the hours. I look at the Sandbar as a daytime operation. As a resident, I like the quiet at night and not all the drinking and loud music. The thing that comes to my mind is just say 'NO'. What about all these problems that we are having in our city with our alcohol rehab centers. Why do we want to encourage people to stay longer and drink longer.

Linda Bates – 120 S. Ocean – Resident & President of Ocean Place Condo Association Board of Administration

I live 500 feet of the subject property and myself and the owners of 120 S. Ocean strongly oppose the request from Sandbar at Boston's on the Beach as it is presented in public notice 2013-156. The thought of having a DJ from noon to 11:00 pm is an awful request. Since the opening of the Sandbar we have experienced increased noise and increase traffic. When I sat on my balcony I would have to put in earplugs in order to read. I have called them several times and ask that they lower the music. If their current music is loud what is the outdoor entertainment going to be like. A DJ doesn't control the music they are there to get the crowd going. An additional violation since the Sandbar opened is the continued violation of parking at the Sandoway parking lot.

Bob Victor – 120 S. Ocean

As a member of the trustees I support Linda Bates and her comments. I feel that the DJ will cause more music and does not fit the area. We hope that the beach front will be preserved and that the Conditional Use is not approved.

Genie DePonte – 24 Marina Way

I am very concerned about the new noise ordinance and the outdoor music in our city. Restaurant bars are becoming closer and closer to our residential neighborhood and not the other way around. The Sandbar is here with a conditional use to have outdoor music. The Sandbar shares common property line with residential neighborhood and is no more than 25 feet from the Bahamas House and very close to a condo building to the north. The Sandbar has a large following of motorcycles riders which increases the noise in the area. These condos were here long before the Sandbar was established and when we bought the condo we were looking for quiet. I feel when these restaurants are being built they should take into consideration that if they want music, they need to have it inside. We ask for denial of this request.

Gary Shusas – 120 S. Ocean Blvd.

I live in a condo association of 29 units and I am here tonight to represent the other 26 units that cannot be here tonight as most of these people are seasonal residents. We like Boston's, we like SandBar, we eat there a lot. But to have an open aired DJ is a bad idea. As residents we should not have to put up with this noise.

Jim Smith – SAFE

The Sandbar is a wonderful thing for the neighborhood and for the young people. As for SAFE, I took a walk around the property and I see signs that say "No Motorcycles Parking". It seems they are keeping their end of the agreement. The problem is 3 items:

1. I don't think the applicant has a plan for where these motorcycles and bicycles are going to go. When you come in from the back street or the ally, you see signs for valet parking

only, but where are the motorcycles going to park. Unless I missed something I did not see bike racks, or specifically designated motorcycle parking.

2. As far as the DJ is concerned, it is great, but when you have a DJ you are going to attract more motorcycles. What is the plan?

3. We need a NO LEFT TURN sign when coming out the ally going onto A1A.

We ask the applicant to agree to these things and if not we need to direct them to do this.

Steve Blum – Venetian Drive

I have been going to Boston's for many years and enjoy the place. I'm concerned with the introduction of the DJ, and if all these people are having these great thoughts about the music, from the Marriott or surrounding places, and bringing in a DJ without a microphone, to monitor the music, what else will they be bringing in. Why do you need a DJ just to monitor the music. I think this is a prelude to other things to come. I sympathize with the surrounding neighborhoods.

Matt Gracey – 72 S. Ocean Blvd.

I own (2) units at the Bahamas House. My comment is that Boston's is out of control. If you come into the parking lot of Bahamas House you can hear the noise now...you don't even have to get out of your car. I met with the applicant/owner about the noise and they said volume control will work. They have had at least 50 violations and no enforcement. We need to draw a line and find a solution so we can all be good neighbors.

Marie Gardella – NE 7th Avenue

I am a part time musician and I have lived in Delray Beach for 31 years and I am thinking of moving because of this noise issue here. I am thinking of moving to Naples, and I have a contact of a person that you can talk to about how they deal with their sound in their downtown area. One thing they have to do is apply and get a permit for each season that they want music.

Dr. Vic Kirson – Tierra Verde

I have 300 units, 650 residents and my people like the Sandbar. I sympathize with these people but if you were in a court of law your testimony would not be allowed. This issue will go to City Commission and they will look at all the information and it will be passed.

Tom Grihm – General Manager of the Sandbar

I have the DJ of the Sandbar here, my wife Cheryl. I think we are getting crazy about the music. We are here tonight to have the DJ, Cheryl, to choose the next song instead of a computer. I control the volume, whether it is Pandora, which is the system that we have playing or she is playing. I am in control of that and the volume stays the same.

Cheryl – DJ at the Sandbar

I have been a DJ for 20 years at corporate events, etc. and I did not know of the noise ordinance. Some of the comments I agree with and yes, a DJ is a motivational tool for the people that come to Sandbar. The Sandbar already has music there whether I am there or not.

Mark Dentley – General Manager of Boston's on the Beach and 50 Oceans

I am appreciated of all the positive things that the neighbors have said. We have been responsive to comments that have come our way. We have police detail for more than 25 years, and what we are in tune to be is that we work within the guidelines.

CROSS EXAMINATION/REBUTTAL

Jan Hansen asked Paul Dorling is there was a definition of a DJ and he said that there is not one at this time. Also, Jan Hansen asked if Paul Dorling would tell us the difference between the existing ordinance and the decibels. And also, if you could comment on the 50 citations that were issued.

Paul Dorling said that in regards to the noise ordinance, I will have the Asst. City Attorney comment on that. To comment on the citations, the noise ordinance is in process of being updated and at the time of the citations no enforcement was issued.

Terrill Pyburn commented that she has not dealt with the new noise ordinance; it has been Janice Rustin and other attorneys that have been doing research on the ordinance and has been advised by the City Commission. It is my understanding that we are going from a decibel level to an audio level standard. I believe it is 100 feet and there are certain penalties if you do not comply.

Jan Hansen asked Alan Ciklin if he had any objections to the new ordinance and you will comply?

Alan Ciklin said absolutely that they will comply with request.

Jan Hansen finally asked Alan Ciklin what are the plans for the motorcycles.

Alan Ciklin said that one of the conditions that Paul Dorling wants is to move the motorcycles from the south property and move them north away from the south property line. They used to enter close to the south property line and we are willing to and have started to implement no entrance there but to enter on the driveway north of Boston's where the valet person is and they can monitor the motorcycles. Another important thing is this condition is for an acoustifence which we are willing to install.

Jan Hansen asked how we can be comfortable that if we approve this conditional request it will be fully enforced.

Terrill Pyburn asked if what Jan Hansen was saying was could we approve the conditional use for a temporary time. Terrill said that she would like to hear staff comments first before I commented.

Paul Dorling would refer to Terrill Pyburn to whether we can do that but it is a novel idea and we need to see if legally we can do that. It has not been done in any other conditional use in the city and that might be the reason.

Terrill Pyburn said that her only concern is that if this was to be done strict parameters would have to be in place for what period of time and then how would this be enforced. Let's say after 30 days if they are not in compliance we would cite them? Would we have them come back before the board and present their case? In regards to the acoustifence, and not knowing the cost, would the applicant be willing to spend the money to do this? In order to try this conditional use on for size, we would need to implement all the moving pieces.

Jan Hansen agreed and a 30 day trial would not work out but to have a period of time to justify the initial investment, maybe 6-9 months.

Thuy Shutt had some questions for the attorney. When having a DJ you get followers and I am sure Cheryl has them. Who would be the person that would monitor and enforce the maximum occupancy of the SandBar? If there are more people than allowed who is watching this.

Alan Ciklin replied to the question of occupancy, and the fire code limits the number of people that can be in the Sandbar at one time and people will come in from time to time to, especially when it gets crowded and monitor the number of people there.

Thuy Shutt asked does this mean that there are people standing at the door counting how many people go in and out?

Tom Grihm said that over Memorial Day weekend I started a line outside of the Sandbar for people coming into the bar. Also, in regards to the nightclub DJ, that is a totally different thing. What we are looking at is to start at 1:00 pm in the afternoon on a Saturday and go until 8-9 p.m. at night. Thuy Shutt referenced that what you are saying is that this will never change in the future. Mr. Grihm said that it would not matter if we went longer, our music would not be any louder than the noise ordinance will allow. Ms. Shutt said that one of her main concerns is the hours of when the residence can enjoy their homes. And finally, can we do a re-visit of this conditional use and the fence.

Alan Ciklin said in regards to the fence, it hangs so it can probably be removed when needed. The noise will be there whether the DJ is there or not but with the DJ there it would control the noise.

Thuy Shutt said that there is no definition between a day DJ and a night DJ, I am trying to understand how we can address the residence concerns and address future concerns should we have changes. I am trying to be very specific, because we don't have anything that we can point to.

Alan Ciklin stated some conditions that we already have:

1. No microphone for the DJ
2. Only pre-recorded music
3. Fencing
4. New bike location.

Connor Lynch ask Paul Dorling the question of how have we gotten to this point of the Conditional Use.

Paul Dorling said that any outside entertainment is thought to be anyone up there facilitating the music and helping to entertain them.

Derline Pierre-Louis commented that there is a lot of concern with the decibel level...the noise. From the staff there has been complaints and citations, but the residence say yes, the owner say no. Not sure of what is going on. Paul Dorling said that there is a whole list of them in the staff report. I am not sure if the owner is aware of this.

Connor Lynch wanted to make it clear that the police have been called, but the owner says that they have not received any violations. These are two totally different things. Paul Dorling again says that we do not have an updated code and the new ordinance is different now.

Before we continue, Connor Lynch wanted to specify in the staff report that on Page 8 the timing is meant to be 11:00 p.m. The hours right now are 11:00am to midnight, 7/days a week and it is

being requested that they have a DJ at this time. If approved you are asking for 11:00 am to midnight, Saturday and Sunday and 11:00 p.m. all other nights.

Terrill Pyburn addressed the board and the audience to point out that this is a conditional use and the only thing that the P&Z Board can do is make a recommendation one way or another to the City Commission and ultimately it has to be decided by the City Commission.

MOTION/FINDINGS

Mr. Hansen made a recommendation of **approval** to the City Commission for a Conditional Use to allow outside entertainment (i.e. DJ) associated with Boston's Sand Bar, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets criteria set forth in Sections 2.4.5(E)(5), and Chapter 3 of the Land Development Regulations, subject to the following conditions #1-5 as follows:

1. Installation of an acoustifence noise barrier to reduce the impact on adjacent residential properties. This will require subsequent processing and approval of a Class II Site Plan modification application and should include landscaping on both sides of the fencing.
2. Given the demand for motorcycle parking, it is recommended that an area on-site be designated for motorcycle parking that accommodates this demand and reduces the negative noise impact on adjacent residential properties to the south. The preferred location would be at the northernmost access point closest to commercial properties on East Atlantic Avenue.
3. All on-site activities, inclusive of the proposed disc jockey, are subject to compliance with Section 99 "Noise Control" of the Code of Ordinance for the City of Delray Beach.
4. If approved, the subject outdoor entertainment in the dining courtyard area will cease at 12:00am midnight on Friday and Saturday and 11:00 a.m. on all other nights. No 24-Hour or late night operation hours for Boston's Sand Bar will be permitted without the processing and approval of a separate conditional use request.
5. The outside entertainment is limited to a Disc Jockey without an amplified microphone. Any other on-site entertainment (i.e. live band performances) will require processing and approval of a separate conditional use request.

Also,

6. Subject to only pre-recorded music being used as stated by the applicant, similar to Pandora.
7. Subject to a recommendation to resolve the motorcycle issue as stated in the staff report.

Connor Lynch said that we are adding Items #6 & #7.

Motion by Mr. Hansen, seconded by Ms. Shutt (with discussion)

Ms. Shutt added the changes from 11:00 A.M. to 11:00 P.M. in Item #4 and also to revisit this Conditional Use in 1 year after the noise ordinance has been put into place.

Connor Lynch replied that this Conditional Use is not grandfathered in and anything that is done after the noise ordinance is put into effect, could restrict the applicant further from whatever is decided.

Terrill Pyburn said the applicant would have to comply with the noise ordinance which is currently proposed and I believe the current language and conditions are in draft but they would still have to comply with the future noise ordinance.

Jan Hansen said with this information, we should recommend a 1/year condition.

Terrill Pyburn said that the best way to enforce the Conditional Use is if there is an issue that they are not complying with in the conditions, we will cite them and revoke the Conditional Use. But I would suggest that you can have staff look at it within a year once they have all these things in place, and make sure they are complying, but at the same point in time I would think it would be more effective to be as specific as possible in your conditions to what you really want out of this as you might not be on the board when this condition comes here again.

Connor Lynch said that when you are determining this Conditional Use for a year, are you leaving this up the applicant coming back to the board, or staff discussion so they can review this? There is a level of concern that was mentioned on whether this will get out of hand during this time.

Thuy Shutt commented that there should be no noise violations during this 1 year of condition and should there be, the applicant should be brought back to the Planning and Zoning Board for re-evaluation and it could mean limiting time. What I don't want to happen is if they are doing what they are supposed to be doing, I don't want them to have to go through this public hearing again. I think it needs to be more than staff discretion.

Terrill Pyburn explained that what they were discussing earlier was that the restaurant Chez Mika, where if they had 3 violations their Conditional Use would be revoked.

We have an amended motion for Items #6, #7 and #8 (# 8 to read 'If they have a maximum of 3 violations in a year their Conditional Use would be revoked').

Amended motion by Mr. Hansen, amended seconded by Ms. Shutt. Said motion passed with a 4-0 vote.

VI.C.City-initiated amendment to the Land Development Regulations by amending Section 2.4.3 "Submission Requirements", Subsection (D) "Preliminary Engineering Plans" and Subsection (F) "Final Engineering Plans" to provide for bus shelters; enacting a new Section 6.1.14 "Transit" to provide for bus shelters (Continued from May 20, 2013)

Mark McDonnell presented to the board and said that the board had questions at last month's meeting, and staff did the research and provided answers to them in the background section. We added a clause under the transit stop to provide sufficient lighting. Staff recommends approval.

PUBLIC COMMENTS – None

BOARD DISCUSSION – None

MOTION/FINDINGS

Move a recommendation of approval to the City Commission of the amendment to Land Development Regulations, **Section 2.4.3 "Submission Requirements", Subsection (D) "Preliminary Engineering Plans" and Subsection (F) "Final Engineering Plans", and enacting a new Section 6.1.14 "Transit" to Provide Criteria Associated with Transit Stops**, 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)

Motion by Mr. Hansen and seconded by Ms. Shutt to. **Said motion approved 4-0.**

VI.D.City-initiated amendment to the Land Development Regulations by amending Section 4.6.9(D)(3)(c) to reduce the stacking distance for parking lots with 51 or more spaces when there are multiple access points.

Mark McDonnell presented to the board that currently when we have parking lots being designed, and we have 51 or more spaces, they automatically require a minimum stacking from the street system to the parking lot be a minimum of 50 feet. When staff has an application of a parking lot with more than one access point, we consistently support waiver requests that they be reduced to 20 feet. When this consistently happens it is time to change the code. We recommend approval.

PUBLIC COMMENTS – None

BOARD DISCUSSION

Connor Lynch wanted to comment that if there are multiple ingress or egress points in a parking lot, but there is one that is clearly heavily used. There is really nothing to give staff a reason to look at this. Is there something we can do?

Mark McDonnell said that we are going to look at it on a case by case basis.

Thuy Shutt asked if we could do a traffic study in this parking lot, but it was suggested that the parking lot is really too small to do this.

Mark McDonnell said that we already have something in the code about this which allows us to do this. We could analyze the performance of the circulation with reduced stacking under the current code.

MOTION/FINDINGS

Move a recommendation of approval to the City Commission of the amendment to Land Development Regulations, **Section 4.6.9 "Off-Street Parking Regulation", Subsection (D), "Design Standards", Subsection (3), "Point Of Access To The Street System" To Reduce The Stacking Distance For Parking Lots With Two Or More Access Points**, 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) subject to a staff performance analysis.

Motion by Mr. Hansen and seconded by Ms. Shutt to. Said motion approved 3-1. (Thuy Shutt dissenting).

VII. REPORTS AND COMMENTS:

BOARD MEMBERS

Parking Management Advisory Board (PMAB) – Mr. Franciosa is not present at meeting.

STAFF

Meeting Dates for July

Project Updates

Uptown Delray – Recommend denial and they went back with changes.
Church at Congress Square approved by City Commission.
Abandonment of the Fairfield Inn approved by City Commission.

VIII. ADJOURN

Adjourned: 8:45pm

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 17, 2013** which were formally adopted and approved by the board on **July 15, 2013**.

Diane Miller

Diane Miller, 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.

MINUTES OF THE PLANNING AND ZONING BOARD

PUBLIC HEARING/REGULAR MEETING

**CITY OF DELRAY BEACH
DELRAY BEACH, FLORIDA**

MEETING DATE: August 19, 2013

LOCATION: City Commission Chambers

MEMBERS PRESENT: Jan Hansen, Thuy Shutt, Gerald Franciosa, Dr. Craig Spodak, Connor Lynch, Clifford Durden, Derline Pierre-Louis

MEMBERS ABSENT: None

STAFF PRESENT: Paul Dorling, Terrill Pyburn (Asst. City Attorney) and Diane Miller

I. CALL TO ORDER:

The meeting was called to order by the Chair, Connor Lynch at 6:04 p.m. Upon roll call it was determined that a quorum was present.

II. MINUTES:

Motion made by Mr. Gerald Franciosa, seconded by Ms. Shutt and approved 6-0 (Jan Hansen arrived to the meeting at 6:07pm and therefore did not vote) to move approval of the July 15, 2013 minutes as written with discussion. Thuy Shutt wanted to clarify that on page 20 of the minutes it states that we did not have a quorum to continue the meeting when The Strand began its presentation. It should read, "*At the time of this items presentation (The Strand), we did not have a quorum.*"

Chair Connor Lynch read the Quasi-Judicial Rules for the City of Delray Beach and Ms. Miller swore in all who wished to give testimony on any agenda item.

III. COMMENTS FROM THE PUBLIC *(Comments on items that are not on the Agenda)*

Jim Smith – Chairman of SAFE

Mr. Smith spoke about the alternative parking, wider sidewalks, bike lanes and all the LDR changes that we need for the "New Delray" that we need to be ready for.

Robert Schwartz – Motiva-Concensus LLC

Mr. Schwartz agreed with Mr. Smith, with all the changes that we hope will come to Delray. But we look at all this as a seasonal thing and we could make Atlantic Avenue a "promenade" all the time here in Delray Beach. We do this for First Night, and just saw this for Taste Makers.

IV. BOARD APPOINTMENTS

Appointment of a Planning and Zoning Board member to the West Atlantic Avenue Redevelopment Plan Review Committee.

Connor Lynch asked if there was a volunteer for this appointment. Mr. Clifford Durden spoke to say that he would like to volunteer for this position. Motion made by Mr. Gerald Franciosa to nominate Clifford Durden to the West Atlantic Avenue Redevelopment Plan Review committee, seconded by Jan Hansen and approved 7-0. Motion passes unanimously. Congratulation to Mr. Durden.

Paul Dorling spoke to say that they are planning their first meeting on September 6th, so the representative would attend that meeting.

V. PUBLIC HEARING ITEMS

A Conditional use request to allow an increase in density in excess of 30 units per acre (63 units per acre proposed) for The Strand, located on the north and south sides of SE 1st Street, along the west side of SE 3rd Avenue. The development proposal involves the construction of 198 residential apartment units on two parcels; the north parcel will accommodate 43 residential units within a four-story structure and the south parcel will accommodate 155 residential apartment units within a five-story structure. Quasi-judicial Hearing (Continued from July 15, 2013)

Exparte Communication

Clifford Durden spoke with Jim Knight
Gerald Franciosa spoke with Jim Knight
Thuy Shutt got an email from SAFE
Connor Lynch spoke with the applicant
Craig Spodak spoke with Jim Knight

Paul Dorling entered project file No. 2013-183 into the record.

The action before the Board is making a recommendation to the City Commission on the following request for conditional use approval pursuant to Land Development Regulations (LDR) Section 2.4.5(E). This is to allow a residential density in excess of 30 dwelling units per acre pursuant to LDR Section 4.4.13(D)(12). The request is in conjunction with **The Strand, a proposed 198-unit residential development located on the west side of SE 3rd Avenue, between Atlantic Avenue and SE 2nd Street**

At its meeting of July 6, 2004, the City Commission approved a privately initiated small scale FLUM amendment from Community Facilities-Recreation (CF-R) to Commercial Core (CC) and rezoning from Community Facilities (CF) to Central Business District (CBD) for the property bordered by SE 1st Street on the north, SE 2nd Street on the south, SE 3rd Avenue on the east, and the Florida East Coast (F.E.C.) Railway on the west. These requests were submitted in order to accommodate the construction of a mixed-use development containing ground floor retail floor area and condominium residences above known as "The Strand".

At its meeting of February 1, 2005, the City Commission approved a conditional use request to allow a height in excess of 48' (57'-7" proposed) and to allow for a density in excess of 30 units (42.7 units per acre proposed).

At its meeting of March 9, 2005, the Site Plan Review and Appearance Board (SPRAB) approved subject to conditions the associated Class V site plan, landscape plan, and architectural elevations associated with the construction of two mixed-use buildings a south five-story building located along SE 3rd Avenue between SE 1st Street and SE 2nd Street; and a north

four-story building located to the north of SE 1st Street between SE 3rd Avenue and the FEC Railroad. The proposed two buildings combined had 20,841 square feet of retail floor area, 5,361 square feet of office area, and 3,007 square feet of restaurant area, a 176 space parking garage on the basement; a 123 space parking garage on the ground level; and residential dwelling units on the second, third, fourth and fifth levels (134 dwelling units in total). The proposal also included the installation of thirty five (35) parallel off-street parking spaces. The project received final certification but construction never materialized.

A new conditional use application for "The Strand" has been submitted to allow for a density in excess of 30 units (63 units per acre proposed). This conditional use application is now before the Board for consideration. This is now 100% residential development in (2) buildings. Construction of two buildings: a South Building (located between SE 1st Street and SE 2nd Street) with four-story of residential units containing 155 units; and a North Building (located north of SE 1st Street) with three levels of residential units containing 43 units. Both buildings will have covered parking at grade level. The North Building will accommodate 57 parking spaces on the ground level while the South Building will accommodate 223 spaces.

The buildings also include (2) amenity packages, one for each building. There is bicycle parking for each building and also a valet storage parking. There is also a proposal to improve 38 existing on street parking spaces.

There are several waivers being considered but the first one is LDR Section 4.7.9 (i), which requires that the total number of one bedroom units in any qualifying project shall not exceed 30% of the total number of units in the project. The waiver request is to allow the increase in the percentage of one bedroom units over the total number of units from the required 30% to 51% of 100 one bedroom units/198 total units = 51%)

There is relief to setbacks, stacking distance, and sidewalks. Two other ones that are important to this analysis include minimum transparency or glass surface on the ground floor, and one which requires fifty percent (50%) of the garage portion of the building on the ground level to be dedicated to use for retail, office, entertainment or other non-residential uses. This project is 100% residential. These are key waivers from a LDR prospective and necessary from a performance standard that we can grant increased density.

Next we go through the required findings of Section 3.1.1. We have to make positive findings for Future Land Use Map, Concurrency, Consistency and LDR compliance. In this report, positive findings cannot be made with regard to four (b,c,h, and partially f) of the required Performance Standards to grant an increased density above 30 units per acre (63 Units per acre proposed); thus positive findings cannot be made with respect to FLUM consistency.

There are also some policies that are identified in the staff report that are not met and the first one is objective A-1 and we feel that the lack of the non-residential component as required by the LDR's, and a significant shortage of parking, does not allow you to give a positive finding for that objective.

We also do not find C-3 of the Future Land Development or C-3.2 to have been met and the concern of the lack of unit mix and the deficiencies with the LDR compliance.

Performance Standards in the reports need to be met if you are going to grant an increase in density. There are (9) total performance standards and (4) are not met by this development. This is important as they are asking for double the density and to get that density you have to meet all the standards and they are not. There is also an LDR Section 2.4.5(E) that the

Conditional Use 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.

There is a significant issue with parking. The on-street parking spaces that the applicant is proposing as new spaces already exist along SE 3rd Avenue, SE 1st Street, and SE 2nd Street and are currently being used by the public. Thus, Staff does not support the use of any existing on-street parallel parking spaces for this project. The project provides a total of 280 spaces which are included within the covered parking areas of the North and the South Buildings while 311 parking spaces are required. Thus, the project has a shortage of 31 parking spaces (311 – 280 = 31 spaces).

Courtesy Notices

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

- ☐ Delray Beach Chamber of Commerce
- ☐ Delray Citizen's Coalition
- ☐ Neighborhood Advisory Council and Osceola Park

Public Notice

Formal public notice was provided to property owners within a 500' radius of the subject property prior to the Planning and Zoning Board meeting of August, 2013. Letters of support or objection, if any, will be presented at the Planning and Zoning Board meeting

In the staff report positive findings cannot be made to Comprehensive Plan Future Land Use Element Objective A-1, Future Land Use Element Policy C-3.2, Housing Element Policy B-2-2 and does not meet criteria set forth in Sections 2.4.5(E)(5) (Detrimental effect upon stability of the neighborhood), LDR Section 4.4.13(I) (Performance Standards), and LDR Section 3.1.1 (Required Findings) relating to LDR compliance including but not limited to Ground Floor Transparency, Mixed Uses retail/residential mix, Parking, and residential unit mix (max one bedroom units). With this staff is recommending denial of this project.

Applicant Presentation

Rusty Kupa – Project Architect
Gary Eliopoulos – Project Architect
Tom McMurray – Ocean Properties - Owner
Alan Ciklin – Owners Attorney
Chris Heggen – Kimley Horn and Associates

We have been working closing with the people of Oseola Park and their concerns. One very important factor to keep in mind throughout our presentation is that our project is located on the FEC Railroad. Most planning councils agree that projects along railroads corridors should be allowed higher density. By 2016 all of north Florida will begin operations on the FEC railroad abutting to our project and it will increase the trip on the railways.

We have compared our density with others that have been previously approved, all happening in the city. Our density is very consistent with the Sofa 1 and Sofa 2 and well below what was granted to Worthing Place. Similar to our request, neither Sofa 1 or 2 had approved plans for commercial component.

Alan Ciklin – Owners Attorney

Mr. Ciklin asked if they would be allowed 15 minutes to present.

Dr. Spodak made a motion to approve the 15 minutes, seconded by Mr. Durden. All in favor with a 15 minute presentation, 7-0.

The first thing that is important about this project is that it is a difficult site. It is on the railroad tracks and second it is two parcels. When you have two parcels separated that is when you have waivers involved. We have had 2 different developers, very experienced, and we feel that they know what they are doing.

Now we have the Sofa 1 and 2 that were applying for the same approval as this project. They are the Conditional Use for increase in density, increase in the percentage of 1/bedroom units, and last no retail required on the ground floor.

In regard to the comp plan, one of the most important objectives is housing in the downtown. It is recognized that housing is important to shopping and the need for a residential base to support the businesses. Density is directly associated to the health and success of the downtown.

Now in regard to the density, everytime you hear about a project and compatibility, you look at the neighborhoods. Mr. Ciklin discussed and compared all the recent projects that have been approved, and went through how many units per acre they are and then looked at what the Strand is offering.

The next issue to discuss is retail on the bottom floor. The original Strand had retail, a quality developer, had all the permits and could not get the project off the ground.

Another issue is the percentage of one bedroom units. We are marketing these units to young professionals and new families with numerous floor plans to pick from. The developer feels that this will be a huge success.

Next, the developer is investing \$500,000 in parking, and they are asking the City to credit 19 of the 38 parking spaces to the project.

Rustem Kupi – 205 George Bush Blvd.

Mr. Kupi went through some more of the highlights of the project with the 2 minutes remaining. He went through some of the amenities in the building such as parking areas, common areas, right of way dedication, electric cars, charging stations, exercise rooms, club house, and library.

Mr. Ciklin finished the presentation with the criteria of the waivers.

1. That it doesn't adversely affect the neighboring area.
2. That it doesn't significantly diminish the provision of the public area.
3. That it doesn't create an unsafe situation.
4. That it doesn't result in special privilege in that the same waiver would be approved under similar circumstance for another project.

Public Comments

Jim Smith – SAFE

The applicants are good business people and they know what works for Delray Beach. These applicants are owner operated, they will never be flipping this project. This project will provide shopping and cheaper rents. They are providing at front desk all kinds of information for the people can know about the City. The applicant is also going to give 5% of rent revenue to the City for a period of 5 years to be used to expand the trolley system. This shows their commitment.

Craig Spodak asked Mr. Smith what his position was that there is no commercial on the first floor.

Mr. Smith said that it is not in his realm but I think they do not need any commercial.

James Quillin – Oseola Park – President of the Homeowners Association.

I concur with Mr. Smith that this is a different kind of building and they are asking for some waivers, but these people are not going to be bringing their cars. They are going to walk or use the trolleys or bicycles. That is why I approve a lot of the designs that they have. I own a property down the street from this project and we are happy this is coming to Delray.

Gail-Lee McDermott – 721 SE 3rd Avenue

I am here tonight representing myself. I live in Oseola Park and we are looking for change. We need to allow density as a lot of people don't want to live in these big houses. We need to be concerned to fill the empty commercial units that need filling, and not adding new empty commercial units. And the name needs to be changed....it leaves a very bad taste.

Steve Blum –

I am not opposed to new development, but what happened to Pineapple Grove. Pineapple Grove has been a tremendous boom to Delray Beach, mostly because of the commercial. This project seems to be a bedroom community and not live up to Pineapple Grove. The trolleys should be taken out and thrown away. They not only take up too much room, but they cause traffic jams.

Christian Morrison – Commercial Realtor

Speaking about Dr. Spodak comment about commercial on first floors of building. I have dealt with commercial landlords that have tried to put commercial space other than on Atlantic and on Federal Hwy and it just doesn't work. Putting commercial on these side streets and it is just not going to work.

Bob Ganger

I am surprised to stand here tonight and agree with most everything that is said here at this meeting. One thing that I see is that the developers are writing the new Master Plan for Delray Beach. This project that is being built is essentially a dormitory for young people to get started living in Delray, and you have to have someplace to get started and I think the Sofa is designed the same way.

Kevin Homer – 319 SE 3rd Avenue

I am in favor of this project because of increased safety, increased restaurant traffic, and increased tax revenue for the City. We need to look at density to see if this should or should not happen in this city.

Dorias Lucien – 229 SE 2nd Avenue

I have a business here in Delray Beach and I have talked to many residents about this project and they are all in favor of this building coming to the City.

Jim Knight – 10 SE 1st Avenue

(Mr. Knight gave a hand out)

I have been working here in Delray for more than 28 years as a commercial realtor. (Jim went through and discussed his hand out) You can look at 43% vacancy.

Albert Jerome – 229 SE 2nd Avenue

Mr. Jerome is an owner of a grocery store for the past 3 years. He has seen this empty lot and sees drugs and drinking and to improve this area we would have less disruption.

Claudia Willis

We have rules and we need to use them. We have a staff that researches these project, we pay them to do this, and we do have rules that are in place regardless of what your vision might be. The vision of the people created the rules that we now have. The last 4 projects that were approved within 1 or 2 blocks of Atlantic Avenue have over 600 one bedrooms. You are changing the entire fiber of the city with so many small units and this is not what is in the current master plan and these are the rules that we need to follow. Please respect the 30% one bedrooms and not allow the higher density.

Craig Spodak asked Ms. Willis what is her real concern with this project.

Ms. Willis said that she is not anti-project, she is happy that there is a project going there, but I think the fiber of the city is changing. I feel that we use to be a family town and I don't see that we are building properties for families to come into our town.

Terrill Pyburn stated as a point of order – that we should ask questions at the end of the comments so that everyone can speak.

Dr. Vic Kirson – Pres. Tierra Verde

I have been here for years listening and this is the first time I have heard the residents go over all the details on the project. This project will give Atlantic and Delray Beach everything it needs, that is the support and income for 12 months of the year.

Bob Schwartz

I have only been a resident for 2 years and very excited about the projects. I see all this going in the positive direction and any delays are probably to blame on the recession. What turned me to accepting this project, besides the great design, is Albert Jerone and Madam Gully. Their endorsement of this project is the design of the building and to make a link over to Atlantic Avenue.

Kevin Rapps

At one time I was on the Board at Pineapple Grove and invested in a property called the Strand. The whole time I was involved in this there was parking problem. Seeing as what has happened to Pineapple Grove (commercial property) they can't even have any events there anymore. Why??...it will hurt the business as there is no way for anyone to get there. I think it will be very positive for the city and I hope it goes forward.

Staff Cross Examination – None

Applicant Cross Examination – None

Staff Rebuttal – Paul Dorling

There has been a lot of emphasis put on density and really density is not the primary issue here, it is the unit mix. Housing is important in the downtown area, but it should not be at the expense of the housing options. What is being proposed here is higher in (1) bedroom units and much higher if you combine the (1) bedrooms with the efficiencies. Now Sofa had a 45% category for (1) bedrooms and this project is asking for 51%, or even higher at 73% if you look at the (1) bedroom with den. Sofa II had a 27% and Uptown had a 28%. If you combine the efficiencies it is much higher. With the performance standards there are 9 of them and they have met 5. They are asking for double the density or meeting less than 60% of the performance standards. Given these factors we cannot recommend approval.

Applicant Rebuttal – Alan Ciklin

It is apparent that nobody knows better about the project than the people that live there and work there. It is a very difficult site and it is on the railroad tracks and you have to get a quality developer to do this and you have one. This project will do something special for this area.

Board Discussion

Jan Hansen – As I sat here tonight I was not sure of the density but I had to listen and learn. First wanted to say that Paul Dorling and staff have done a great job at presenting this project, a lot of work and a lot of effort.

I wanted to talk about commercial and maybe the reason it does not work on 5th and 6th because it is a one way pair and there is a tendency to rush through that area. In this area we would like to see some service commercial in this project. Look at high density in New York and it all has service commercial.

In regard to single family what does a single family 2/2 go for these days. The response was approximately \$2800.00. To me you have professionals that have loans and other things in their budget will not be able to afford this amount. I think we need to provide for the housing for these families.

I would hope that the developer will pay close attention to the acoustics of the building as a concern with the railroad crossing.

Clifford Durden – Great job to Paul and his staff on a great report and the architect. My main concern is the workforce housing that will be provided in this building and the number of (1) bedroom apartments that we will have. Most of the families for this size apartment will be workforce and how you are going to accommodate for these people.

Derline Pierre-Louis – The workforce is my concern and I will not repeat what Mr. Durden has just said. Another concern is the existing parking and I think the presenters stated that it is just lines on the street. I am not sure that these will be needed as parking will be provided underneath. Also, the (1) bedroom that are already in all the other projects, maybe we could eliminate some of the (1) bedrooms and provide more (2) bedrooms and lessen the price.

Gary Eliopoulos –

We are providing 40 workforce housing. We have to distribute them throughout the building. We are only required to have 20 workforce housing, we are providing 40.

Thuy Shutt – The Master Plan and the rules were done with the Market Study, but it seems that the Market Study component has fallen off and we are really worried about the density. My two major concerns are the unit mix and parking however after the presentation there is room for deviation. We were concerned about 10 years ago for the city to support 2 miles of commercial from the interstate all the way to the beach. This project is a little different from Uptown as they have commercial being on Federal Hwy where The Strand is a few over. When they wrote the Master Plan there were 4 major commercial corridors that they could concentrate on..they are Atlantic, Federal Hwy, NW 5th and Pineapple Grove.

If looking at the parking, workforce house generates less than 1.5 spaces per unit, because a lot of these people cannot afford a second car. So if the numbers can be redone you might come up with an adjusted number.

Two questions that I have for the developer are absorption rate and the school board issues.

Jim Knight-With regards to the absorption we feel the property will be stabilized within 15 months of completion of the project. There is a demand for 1 bedroom at this location so 15 months will be stabilization.

Mr. Franciosa ask Mr. Dorling, on page 27 of the staff report, what do you mean by *"The lack of a non-residential component will generate a detrimental effect upon the stability of the adjacent downtown CBD neighborhood"*.

Paul Dorling replied that it would go to the proximity to the Avenue and the fact that we believe the commercial would be better than all residential. We feel that from a non-commercial stand point it would be detrimental.

Mr. Franciosa said that if it is going to have commercial why would it be detrimental.

Mr. Dorling said that we have numbers, and absent other information we cannot rely on the information stated.

Mr. Franciosa asked Paul if it is going to be detrimental by having commercial what would be detrimental. Would you give me an example.

Mr. Dorling said that he could not give an example.

Craig Spodak commented that the staff report was well done but I am concerned on the commercial. I feel that the commercial will be empty for about 5 years and we might not need it now. I also need to speak about the Green Task Force with this project. They need to have the project certified for the city and it shows a commitment back to the community.

Gary Eliopoulos will look at the LEED certification but not until we have our building systems in place.

Thuy Shutt asked if you can be certified but not build the items and the board answered back that definitely things had to be built. So what they have now is the solar panel, green wall, electrical, being in the re-development area will give you points. What they are missing right now is the electrical/mechanical/plumbing components but they get more points for the thermal areas.

Gary Eliopoulos commented on what Dr. Spodak had mentioned on having commercial in the building, and there are already commercial businesses on the street, and by developing this project we are trying to also have people come to these businesses that need help.

Gerald Franciosa asked in the approval process, staff has asked for certain issues be resolved and if they could comment on Items E & H, Page 28 of the Staff Report. Connor Lynch commented and had a question about the conditions also. His understanding is that the architect (Gary Eliopoulos) and Alan Ciklin (owners attorney) have been working on the plans and if we could go through the list and let us know what has and has not been met.

Alan Ciklin stated that we are seeking waiver on a lot of them.

Gary Eliopoulos commented that he had not been able to go through all these conditions and if we could have a moment to discuss them and Connor Lynch (Chair) asked Terrill Pyburn (Assistant City Attorney) if they could have a 2 minute recess for discussion. Terrill Pyburn said that she did not recommend the Board take a recess, but the presenters may have the 2 minutes.

2 minute Break (*Applicant stepped away from the microphone and discussion continued for the board members.*)

Gerald Franciosa was concerned with the parking spaces. We had the Uptown Delray come before us and they had the parking spaces and it impacted the area and now with this project we have less parking spaces.

Craig Spodak said that with this project it will be so dense and less parking spaces that you will not be able to park your car.

Thuy Shutt said that with the commercial owners they will want some multiple vehicle use besides the city transportation and you will have visitors that will come into the city and they will have cars and need parking. Also, how are we implementing the SAFE issues. Connor Lynch said that those things are not written into the staff report but technically it could be made a condition but they are not in exchange for concessions with the plans that we are approving.

Reconvened

Connor Lynch reconvened the meeting with some comments. As my last meeting of Planning and Zoning this has been an interesting project and there was some clear frustration when I read it. I do believe in increased density downtown, but against the high numbers of one bedroom. Some of the issues needed to have been discussed with staff before this meeting and this is very frustrating for me. It is upsetting that the LDR's need to be reviewed and adjusted and that there is such a gap between our Master Plan which is dated and for us to decide that the project should go over 30 units and not have a ceiling on that, and then have the Master Plan to say up to 100 density units, which I am pretty confident our town does not want.

There are a few items with this project that were on the staff report that do not make any sense to me regardless of where you stand on this project. The fact that the den is being counted as a bedroom when it is not, I don't think it should have been done that way. I still have a problem with the 1/bedroom mix. It is a very large number and I am reading a lot about how people are trying to down size into a more European small place. This doesn't mean there should be some concession of being on the railroad tracks. What is frustrating is that as a Planning and Zoning members in this time in our city that we have to make up the number that we think is

right for our town without any plans or LDR's guiding us in regards to what the community is really looking for. So the gap between 30 density units per acre and 100 units per acre is a huge gap. And where is it right to have slightly more near a railroad crossing compared to on the Federal Hwy.

I do want to commend the design style of the project, but I do think the density unit per acre with the project on two sides of the street is difficult. I do also thank them communicating with the neighbors and SAFE.

The setback wavier did not make any sense to me and staff is asking for a waiver. As I was more geared of opposing this project, it seemed like there was more that we could have gone over with the applicant and worked through.

I do have some concerns that there is not any commercial space but I understand that people are looking for rentals. But to have so many 1/bedrooms and no commercial, it put us in a difficult position with the city.

Questions for the applicant is when we come into this meeting, where do you stand on these items.

Gary Eliopoulos said that there are several items that we did receive from staff back in early July and resubmitted the drawings with revision. In regards to the unit count, you need to look at how we have them labeled. When you look at these dens, they are quite spacious for what there is and the mix is there.

We keep talking about commercial space and Rustey Kupa and myself were the original architects of this site. What we had for commercial space after parking, it was very small and we could not have alleys to service it. So there were reasons why the project could not work.

Connor Lynch asked that you had made some changes in early July, what are they?

Gary Eliopoulos said we had right of ways, sidewalks. When staff came to us we had 5ft. sidewalks, and they said we needed 8ft and with pavers. We looked at all the setback and have to work with the utilities. Other items are the right of way along 1st Avenue, a 5ft. dedication along 3rd Avenue.

Connor Lynch asked if the corner clips for NW intersection of SE 1st Street and SE 3rd Avenue.

Rustey Kupa said that the 20 x 20 corner clips already existing. Now to go back to July 4th weekend, we received a letter from P&Z staff to re submit the plans in 1 week. We took care of all the issues, but we found out that these changes were not update in the staff report as everyone was not there. We spoke to Paul before meeting and asked if these changes would be updated in the report and he said that it was the same staff report from before.

Thuy Shutt asked if we could go through the conditions to see where we are.

Alan Ciklin went through the items as follow: (Page 28 of the staff report)

- a. A contribution of approximately one-half the cost of a bus shelter must be paid prior to certification of the site plan for the development. **ACCEPTABLE**
- b. That at least 21 workforce housing units must be clearly depicted within the building floor plan levels (with a clouded note to this effect to be included on the floor plans). **ACCEPTABLE**

- c. That a portion of the North Building perimeter areas of the ground floor that are adjacent to street right-of-way of SE 3rd Avenue needs to be devoted to display windows and/or entrance of commercial/retail uses. **ACCEPTABLE**
- d. That at least seventy-five percent (75%) of the surface area of the frontage facing SE 1st Street wall(s) at the ground floor of the North Building needs to be devoted to display windows and to entrances to commercial uses from outside the proposed North Building. **CHANGE TO READ, "THAT AT LEAST FIFTY PERCENT (50%)"**
- e. That the project design be revised to resolve the shortage of parking spaces.
Alan Ciklin stated if you recall Kimerly-Horn provided a blended parking study at 1.25, so it should **CHANGE TO READ, "THAT THE PROJECT DESIGN BE REVISED TO MEET THE KIMERLY – HORN PARKING REQUIREMENTS."**

Jan Hansen asked Paul if this change with the parking works as it is written?

Paul Dorling said that the problem with providing things to a project at the last minute is just this. I saw the comment relating to the Kimerly Horn subject, and it made a reference to a 5% credit that they allow in Boca Raton, and I would have to look at that. My assumption is that it is not allowed here and its allowed in our sister city and therefore we should accept it here. I don't know what the details are, as the first time that I have seen this was on the screen here tonight.

Connor Lynch remarked to Paul about the applicant having the staff report for a month and a half, this is one of my biggest issue with this project. It seems that staff has had its changes for a month and a half, and here we are tonight having to go through this plan as if we are staff members as many of the things that the applicant have already done are not updated in the staff report.

Paul Dorling said that some of those issues can stay in the report and should stay in the report, and there is no harm.

Connor Lynch said that if they have met the conditions and re-submitted them, how are we to know what they have or have not met. That should be staff jobs not my job or the boards job. When I got the package there were some serious things that started to raise some red flags with me. It was hard to understand what in the report has and has not been done.

Paul Dorling said what he is seeing is that they did not address the first (2) items, they are changing numbers on one of them, which the LDR's is 75% and it stays the same unless the board changes it. Also, they are asking for waivers, so the board can address it one way or another.

Connor Lynch commented on the waivers and asked how many waivers have they made adjustments to.

Paul Dorling said that those waivers are going forward and will be modified depending on what the Commission decides and then it will go to SPRAB.

Connor Lynch said that with Item E, parking, what is the issue with the dens. Are they considered to be bedrooms, and if they are it will alter the parking requirements.

Jan Hansen commented that the architect said that it can only be a bedroom if it has a window. With this we might need to cross review the South Florida Building Code with the LDR's.

Gerald Franciosa asked Paul Dorling why are we asking for a Conditional of Approval for #H (Page 29) if they are asking for a waiver. Paul Dorling said that the staff is recommending for denial, if you are recommending approval you need to do it under those conditions.

Terrill Pyburn (Asst. City Attorney) said that the waivers are not before you tonight, only conditional use.

Paul Dorling said that the board is taking action on only 1 waiver, and the other ones will be by SPRAB. This is not being counted toward the 2 bedrooms. In regards to the definition of a "bedroom" it is on page 17 as follows:

***Bedroom definition:** A room intended for, or capable of, being used for sleeping and that is at least 70 square feet in area. A room designated on building plan submittals as a "den", "library", "study", "loft", or other extra room that satisfies the definition and is not kitchen, living room, dining room or bath will be considered to be a bedroom for the purpose of computing bedroom area. [Amd. Ord. 8-02 3/5/02]*

Alan Ciklin said that with item E (Page 28 Staff Report) we can leave it the way it is and we will supply staff with a copy of the Kimley Horn report to show adequate parking. With this report it does not give us credit for the 38 parking spaces on the street with a cost of \$500,000. To continue with the conditions,

- f. That corner clips measuring 20' by 20' need to be depicted on the site plan for the northwest and southwest corners of the intersection of SE 1st Street and SE 3rd Avenue, and also for the northwest intersection of SE 2nd Street and SE 3rd Avenue. **ACCEPTABLE**
- g. 2' - 6" of r-o-w dedication has already been depicted on the site plan for both sides of SE 1st Street; and a five feet right of way dedication along SE 3rd Avenue from SE 1st Street to the north limit of the north parcel will be required and needs to be executed as part of the required plat for the property. **ACCEPTABLE**
- h. ~~That the project be re-designed to include no more than 30% one bedroom units over the total number of units provided.~~ **THIS ITEM IS ELIMINATED**
- i. That all utility facilities serving the development shall be located underground throughout the development. A note to this effect has been placed on the site plan. **ACCEPTABLE**
- j. Provide a kid's room for younger residents as part of the amenity packet. **ACCEPTABLE**
- k. A plat must be processed and recorded prior to issuance of a building permit. **ACCEPTABLE**

Jan Hansen ask for clarification on Item E, that the 1.25 will account for the guest parking? Mr. Ciklin said that this is the calculation for a studio apartment.

Craig Spodak said that we have to take into consideration the railroad tracks. You get more mix of units, and a higher rent profile,

Thuy Shutt said I think the railroad tracks is a design issue, we are more concerned with the unit mix. We need to always look at these things if another development comes in to the area.

MOTION/FINDINGS

Move a recommendation of approval to the City Commission of the conditional use and waiver request to allow a density in excess of 30 units per acre (63 du/ac) for **The Strand**, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets criteria set forth in Sections 2.4.5(E)(5), 4.4.13(l) LDR Section 3.1.1 (Required Findings) of the Land Development Regulations, subject to conditions:

That the applicant submits an application for Class IV Site Plan Approval, which will address the following issues:

(a), (b), (c), (d-amended to 50%), (e), (f), (g), (h-eliminated), (i), (j), (k), and (l-to be added, with discussion. Craig Spodak ask that the developer get a Green Certification through either the Green Building Council or the LEED Certification).

MOTION

Motion by Mr. Hansen and seconded by Dr. Spodak (with discussion).

Dr. Spodak amended his motion to include an additional condition with item (m) that applicant agrees to work with SAFE on the items that were listed and second by Thuy Shutt. Said motion approved 6-1.

Paul Dorling asked that because you took out the condition relating to the 30%, I would assume that you are recommending approval of the waiver on page 2 of the staff report, #1, LDR Section 4.7.9 (i).

Move a motion to approve a waiver to LDR Section 4.7.9 (i), which requires that the total number of one bedroom units in any qualifying project shall not exceed 30% of the total number of units in the project. The waiver request is to allow the increase in the percentage of one bedroom units over the total number of units from the required 30% to 51% of 100 one bedroom units/198 total units = 51%). That would be pursuant to positive findings with 2.2.7 (b)(5).

Motion by Mr. Hansen and seconded by Dr. Spodak. Said motion approved 6-1. (Connor Lynch dissented)

V.B. Consideration of a City-initiated amendment to the Land Development Regulations (LDR), by amending Section 2.2.4, "The Board of Adjustment", Subsection B, "Composition", to modify the Board member requirements.

Paul Dorling said that this modifies the specific background requirements for the members. Right now there is no requirements and there are (6) different categories that are suggested that the members would come from.

Public Comments – None

Connor Lynch asked about the requirements for The Board of Adjustment. Mr. Lynch was not sure why these board need a Land Planner and a Landscape Architect.

Terrill Pyburn explained that they have the ability to grant variances to zoning and building code. They also serve as the Board of Construction Appeals.

Connor Lynch said that he understands but to have the same requirements for The Board of Adjustment as other boards seems a little heavy.

Clifford Durden asked that there is not a guarantee to have a lay person on the board.

MOTION/FINDINGS

Recommend approval of the amendment to Land Development Regulations, **Section 2.2.4 "The Board of Adjustment", Subsection B, "Composition", To Modify The Board Member Requirements**, 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).

Motion by Dr. Spodak and seconded by Thuy Shutt. Said motion approved 6-1. (Clifford Durden dissented)

V.C. Consideration of a City-initiated amendment to the Land Development Regulations (LDR), by amending Section 2.2.2, "The Planning and Zoning Board", Subsection C, "Composition", to modify the Board member requirements.

Paul Dorling said that there are (8) people that can meet the (5) out of (7) seats. Land Use Attorney and Developer was added to the list. We recommend approval.

Clifford Durden added that he would like to reserve (2) spaces for lay people.

Public Comment – None

Jan Hansen would like the motion modified to say at least one of the members to be 'citizen at large', and the rest to be as stated in the staff report.

Clifford Durden made a motion that we add the requirements in certain fields, with the exclusion of (2) position which should be allocated to lay members. To clarify the motion, Connor Lynch read,

'Move a recommendation of approval to the City Commission of the amendment to Land Development Regulations, as listed in the staff report subject to (2) members of the board being conditions to be citizen at large'.

Motion/Findings

"Move a recommendation of approval to the City Commission of the amendment to Land Development Regulations, as listed in the staff report subject to (2) members of the board being conditions to be citizen at large".

Section 2.2.2 "The Planning And Zoning Board", Subsection C, "Composition", To Modify The Board Member Requirements, 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).

Motion by Clifford Durden and seconded by Jan Hansen. Said motion approved 4-3 (Craig Spodak, Thuy Shutt and Connor Lynch dissented)

D. Consideration of a City-initiated amendment to the Land Development Regulations (LDR), by amending Section 8.1.1, "Community Redevelopment Agency", Subsection B, "Members" to provide that the appointments for Chair and Vice-Chair occur on an annual basis

Paul Dorling presented that the Redevelopment Agency. Right now, the current requirement does not put a limit on the Chair and Vice Chair of how long they can serve. This will require them to be appointed on an annual basis. This would not prohibit them to serve multiple terms but they would have to be reaffirmed each year.

Public Comment – None

Jan Hansen said that his concern is that you have someone that has been on the board for only a year and they are just getting to know what is going on.

Thuy Shutt answered that these appointments would only be for the Chair and Vice Chair.

Connor Lynch asked Paul Dorling that all the boards have an attendance taken at each meeting, and wanted to know why the CRA does not. Would he know who dictates this.

Paul Dorling was not sure why there is no attendance at CRA and would have to ask.

Motion by Jan Hansen to approve as stated in staff report and seconded by Thuy Shutt. Said motion approved 7-0.

VI. REPORTS AND COMMENTS

A. Board Members

Connor Lynch wanted to thank everyone on the board, that it has been great getting to know you all. I have enjoyed serving as the Chair and it has not been easy at times, and it has been a very interesting year. Tonight has been a very interesting way to end the year, but I do appreciate everything and have enjoyed being here.

Parking Management Advisory Board (PMAB)

Topics:

- Downtown Garage
- Garage near Mellow Mushroom and discussing if there should be commercial on the ground floor.
- Meters

Connor Lynch commented on the LDR changes and aligning it with our master plan is important to the city. I think the GREEN task force is very important to incorporate with this process. I am not sure that I agree with the Commission with their idea to start from scratch with the LDR's. I think some of what we have is good and should stay and some to improve. I am looking for the LDR's to be clearer for the P&Z Board.

Paul Dorling wanted to share with the board that Connor Lynch and I have met and the City Manager and I have met with city commissioners on how to approach this and we are looking at a short term priorities and we are going to bring them forward to the Commission. So we will see them in the next 2 months.

Project Updates

- Chick-fil-a and Suntrust are into their final plats.
- St. George is talking about using the gate as a one way or eliminating it.
- Southgate was approved.
- Abandonments are going forward.

Next meeting

- Final plat Lintco
- City Engineer will respond on the Infrastructure
- 5/year Capital Improvement Plan.

VII. ADJOURN

Adjourned: 9:15pm

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 **August 19, 2013** which were formally adopted and approved by the board on **October 21, 2013**.

Diane Miller

Diane Miller, 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.

| P & Z MEETING HELD: August 19, 2013 City Commission Chambers | ATTEND | | II. Minutes of 7/15/2013 | IV Appointment to WARC | V.A The Strand Conditional Use | V.A The Strand Waiver LDR 4.7.9(i) | V.B LDR Section 2.2.4 | V.C LDR Section 2.2.2 | V.D LDR Section 8.1.1 |
|--|-----------|--|-----------------------------------|--|---|---|----------------------------------|---------------------------------|---------------------------------|
| NAME | | | VOTE to Approve 6-0 | VOTE to Approve (Clifford Durden) 7-0 | VOTE to Rec. to CC 6-1 | VOTE to Rec. to CC 6-1 | VOTE to Rec. to CC 6-1 | VOTE to Rec to CC 4-3 | VOTE to Rec to CC 7-0 |
| Gerald Franciosa | P | | Y | Y | Y | Y | Y | Y | Y |
| Jan Hansen | P 607P | | X | Y | Y | Y | Y | Y | Y |
| Derline Pierre-Louis | P | | Y | Y | Y | Y | Y | Y | Y |
| Dr. Craig Spodak | P | | Y | Y | Y | Y | Y | NO | Y |
| Clifford Durden | P | | Y | Y | Y | Y | NO | Y | Y |
| Thuy Shutt | P | | Y | Y | Y | Y | Y | NO | Y |
| Connor Lynch | P | | Y | Y | NO | NO | Y | NO | Y |

Adjourned: 9:15PM

PLANNING AND ZONING BOARD

CITY OF DELRAY BEACH

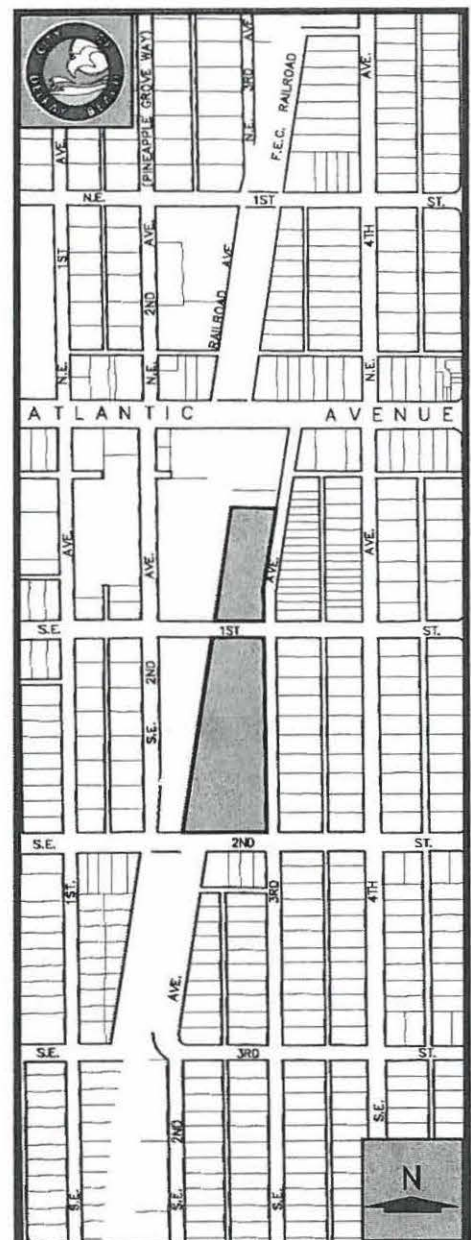
---STAFF REPORT---

MEETING DATE: August 19, 2013

ITEM: Conditional Use Request for The Strand Development to Allow a Density in Excess of 30 Units Per Acre (63 du/ac is Proposed) pursuant to LDR Section 4.4.13(D)(12) within the Central Business District (CBD). The Conditional Use is associated with the construction of two buildings: a south building with four levels of residential units containing 155 units; and a north building with three levels of residential units containing 43 units.

GENERAL DATA:

| | |
|------------------------------|--|
| Agent..... | Kupi & Eliopoulos Architects, P.A. |
| Applicant..... | Fladel LLC |
| Location..... | West Side of SE 3 rd Avenue, Between Atlantic Avenue and SE 2 nd Street |
| Property Size..... | 3.12 Acres |
| Current FLUM Designation.... | Commercial Core (CC) |
| Current Zoning..... | Central Business District (CBD) |
| Adjacent Zoning..... | North: CF (Community Facility) South: CBD-RC (Central Business District Railroad Corridor) |
| | East: (CBD) Central Business District |
| | West: (CBD) Central Business District |
| Existing Land Use..... | Vacant land |
| Proposed Land Use..... | Residential Development |
| Water Service..... | Available via service lateral connections to an existing 6" water main within the SE 3 rd Avenue right-of-way. |
| Sewer Service..... | Available via service lateral connections to an existing 8" sewer main within the SE 3 rd Avenue right-of-way. |



ITEM BEFORE THE BOARD

The action before the Board is making a recommendation to the City Commission on the following request for conditional use approval pursuant to Land Development Regulations (LDR) Section 2.4.5(E):

- ☐ To allow a residential density in excess of 30 dwelling units per acre pursuant to LDR Section 4.4.13(D)(12).

The request is in conjunction with **The Strand**, a proposed 198-unit residential development located on the west side of SE 3rd Avenue, between Atlantic Avenue and SE 2nd Street.

BACKGROUND

The proposal includes Tract "A" (0.83 acres) and "B" (2.42 acres), according to the Plat recorded in Plat Book 105, Pages 81, 82, and 83, Public Records of Palm Beach County, Florida. The subject property measures a total of 3.12 acres, is zoned CBD (Central Business District), and is currently vacant. The most recent land development activity includes:

At its meeting of July 6, 2004, the City Commission approved a privately initiated small scale FLUM amendment from Community Facilities-Recreation (CF-R) to Commercial Core (CC) and rezoning from Community Facilities (CF) to Central Business District (CBD) for the property bordered by SE 1st Street on the north, SE 2nd Street on the south, SE 3rd Avenue on the east, and the Florida East Coast (F.E.C.) Railway on the west. These requests were submitted in order to accommodate the construction of a mixed-use development containing ground floor retail floor area and condominium residences above known as "The Strand".

At its meeting of February 1, 2005, the City Commission approved a conditional use request to allow a height in excess of 48' (57'-7" proposed) and to allow for a density in excess of 30 units (42.7 units per acre proposed). The conditional use requests were associated with the construction of two mixed-use buildings: a south five-story building located along SE 3rd Avenue between SE 1st Street and SE 2nd Street; and a north four-story building located to the north of SE 1st Street between SE 3rd Avenue and the FEC Railroad. The proposed south building had 17,657 sq. ft. of retail area, 5,361 sq. ft. of office area, 98 dwelling units, and 223 parking spaces. The proposed north building had 3,184 sq. ft. of retail, 3,007 sq. ft. of restaurant area, 36 dwelling units, and 76 parking spaces.

At its meeting of March 9, 2005, the Site Plan Review and Appearance Board (SPRAB) approved subject to conditions the associated Class V site plan, landscape plan, and architectural elevations associated with the construction of two mixed-use buildings a south five-story building located along SE 3rd Avenue between SE 1st Street and SE 2nd Street; and a north four-story building located to the north of SE 1st Street between SE 3rd Avenue and the FEC Railroad. The proposed two buildings combined had 20,841 square feet of retail floor area, 5,361 square feet of office area, and 3,007 square feet of restaurant area, a 176 space parking garage on the basement; a 123 space parking garage on the ground level; and residential dwelling units on the second, third, fourth and fifth levels (134 dwelling units in total). The proposal also included the installation of thirty five (35) parallel off-street parking spaces. The project received final certification but construction never materialized.

A new conditional use application for "The Strand" has been submitted to allow for a density in excess of 30 units (63 units per acre proposed). This conditional use application is now before the Board for consideration.

The development proposal incorporates the following:

- ☐ Construction of two buildings: a South Building (located between SE 1st Street and SE 2nd Street) with four-story of residential units containing 155 units; and a North Building (located north of SE 1st Street) with three levels of residential units containing 43 units. Both buildings will have covered parking at grade level. The North Building will accommodate 57 parking spaces on the ground level while the South Building will accommodate 223 spaces;
- ☐ Installation of an amenity deck with extensive planting material, trellis areas, a spa, a swimming pool, a covered BBQ area, extensive deck with lounge chairs, a fitness-exercise room, a club house, and restrooms, all located on the 2nd floor for the south building and on the fourth floor for the north building;
- ☐ Installation of two bike racks (26 bicycles parking capacity), for the South Building which are located along the eastside of the property in close proximity to the main access of the south building, and a valet bicycle parking storage area located on the southeast side of the North Building along SE 3rd Avenue;
- ☐ Installation of two loading areas, one for the South Building located to the southwest side of the property along SE 2nd Street and the other on the northeast side of the property along SE 3rd Avenue for the North Building;
- ☐ Improvements to thirty eight (38) parallel on-street parking spaces. Twenty eight (28) spaces along SE 3rd Avenue, five (5) spaces along SE 1st Street, and five (5) spaces along SE 2nd Street;
- ☐ Installation of two dumpsters and trash collection areas, one for the South Building located to the southwest side of the property along SE 2nd Street and the other on the north side of the property along SE 3rd Avenue for the North Building; and
- ☐ Installation of decorative pavers blocks sidewalks, walkways, and associated landscaping;

Based on the review of the preliminary site plan submitted, the development proposal also includes the following seven (7) waiver requests:

1. A waiver to LDR Section 4.7.9 (i), which requires that the total number of one bedroom units in any qualifying project shall not exceed 30% of the total number of units in the project. The waiver request is to allow the increase in the percentage of one bedroom units over the total number of units from the required 30% to 51% of 100 one bedroom units/198 total units = 51%)
2. A waiver to LDR Section 4.4.13(F)(4)(c)(1), which requires that for a height from finished grade to 25', the required building frontage along the north side of SE 1st Street setback a distance of 10' needs to be a minimum of 65'-4" (70% min. of the lot frontage 93'-4"x0.70=65'-4"). The applicant is proposing a building frontage of 0'- 0" setback at 10' maximum. A setback of between 10' 3" to approximately 30' is proposed. Thus, the waiver request is to allow a decrease in the required building frontage setback at 10' maximum from 65'-4" to 0'-0".
3. A waiver to LDR Section 4.6.9(D)(3)(c)(1), which requires the minimum stacking distance between a street r-o-w and the first parking space in a parking lot with more than 51 spaces shall be 50'. The waiver requests is as follows:

For the North Building:

- A waiver request to reduce the required stacking distance for the cover parking access driveway located : from the required 50' to the proposed 28' for the west side of the access driveway; and from the required 50' to the proposed 23'-4" for the east side of the access driveway.

For the South Building:

- A waiver request to reduce the required stacking distance for the cover parking access driveway located along SE 2nd Street: from the required 50' to the proposed 28';
 - A waiver request to reduce the required stacking distance for the cover parking access driveway located along SE 3rd Avenue, from the required 50' to the proposed 30'
4. A waiver to LDR Section 6.1.3(B)(1)(f), to reduce the required width of the sidewalk in the Central Business District along the west side of SE 3rd Avenue, along the north side of SE 2nd Street, and along the north and south side of SE 1st Street from 8'-0" to 6'-0";
 5. Pursuant to LDR Section 4.6.18(B)(14)(iv)(2), the minimum transparency or glass surface area on the ground floor of all non-residential buildings shall be a minimum of 75%. The waiver request is to reduce the minimum transparency or glass surface along the west side of SE 3rd Avenue, the north side of SE 2nd Street, and along the north and south side of SE 1st Street from the required 75% to the proposed 0%.
 6. A waiver to LDR Section 4.6.18(B)(14)(vi)(4)(b) which requires fifty percent (50%) of the garage portion of the building on the ground level to be dedicated to use for retail, office, entertainment or other non-residential uses. The applicant is proposing zero percent (0%) of the ground level to be dedicated for retail, office, entertainment or other non-residential uses.
 7. A waiver to LDR Section 4.6.14(B)(1) which requires that the area for both sides of the visibility triangle needs to be ten (10) feet by ten (10) feet. The back-up loading area located on the northeast side of the North Building along SE 3rd Avenue r-o-w is required to be 10' by 10' and only 5'-6" by 5'-6" triangle is being provided. The applicant has requested a waiver to LDR Section 4.6.14(B)(1) to reduce the size of the north visibility triangle for the North Building loading area from the required 10' by 10' and to the proposed 5'-6" by 5'-6".

Waiver # 1 (unit mix) will be considered with this Conditional Use application and action is to be concurrently by the City Commission with the Conditional Use. The remaining 6 waivers, which are site plan related, would have final action via a SPRAB recommendation to the City Commission which is the legal body taking final action on the waiver requests. However, as LDR compliance is a required finding of conditional use approval the extent of the requested waivers/relief shall be considered as part of this Conditional Use proposal.

| |
|---------------------------------|
| CONDITIONAL USE ANALYSIS |
|---------------------------------|

REQUIRED FINDINGS (Chapter 3):

Pursuant to 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. These findings relate to the following four areas.

FUTURE LAND USE MAP: The use or structures must be allowed in the zoning district and the zoning district must be consistent with the land use designation.

The subject property has a Future Land Use Map (FLUM) designation of Commercial Core (CC) and a zoning designation of CBD, which are consistent with one another. Pursuant to LDR Section 4.4.13(D) (12), multiple-family dwelling units, excluding duplexes, are permitted through the conditional use approval process at a density greater than 30 units per acre on property located south of NE 2nd Street and north of SE 2nd Street, subject to the standards and limitations of LDR Section 4.4.13(I). As discussed later in this report, positive findings cannot be made with regards to four (b,c,h, and partially f) of the required Performance Standards to grant an increased density above 30 units per acre (63 Units per acre proposed); thus positive findings cannot be made with respect to FLUM consistency.

CONCURRENCY: Facilities which are provided by, or through, the City shall be provided to new development concurrent with issuance of a Certificate of Occupancy. These facilities shall be provided pursuant to levels of service established within the Comprehensive Plan.

Drainage: Preliminary engineering and drainage plans have been submitted with the proposed development. Drainage will be accommodated via floor drains on the ground floor of the cover parking garage that will then connect to an exfiltration trench system. Therefore, there appears to be no problems anticipated in accommodating on-site drainage; however, the Engineering Department does have technical comments regarding drainage that will need to be addressed at the time of site plan approval. Based upon the above, positive findings with respect to this level of service standard can be made.

Parks and Open Space: The Open Space and Recreation Element of the City's Comprehensive Plan conclude that "The City will have sufficient recreation facilities at build-out to meet the adopted standards". A park impact fee is collected to offset any impacts that the project may have on the City's recreational facilities. Pursuant to LDR Section 5.3.2, a park impact fee of \$500.00 per dwelling unit will be collected prior to issuance of a building permit for each unit. A total fee of \$99,000.00 will be required of this development for parks and recreation purposes.

Solid Waste: The proposed 198 dwelling units will generate a total of 102.96 tons of solid waste per year (198 units x 0.52 tons = 102.96 tons). The Solid Waste Authority has indicated that its facilities have sufficient capacity to handle all development proposals until the year 2047, thus a positive finding with respect to this level of service standard can be made.

Streets and Traffic: The subject property is located within the City's Transportation Concurrency Exception Area (TCEA), which encompasses the CBD, CBD-RC, OSSHAD, and West Atlantic Avenue Business Corridor. The TCEA exempts the above-described areas from complying with the Palm Beach County Traffic Performance Standards Ordinance. Therefore, a traffic study is not required for concurrency purposes; however, a traffic statement is necessary to keep a record of trips approved in the TCEA and for calculation of traffic impact fees. A traffic statement has been submitted indicating that the project will generate 1,386 Average Daily Trips (ADT) and 101 net new AM peak hour trips (20 in-trips and 81 out-trips) and 123 net new PM peak hour trips (80 in-trips and 43 out-trips) to the adjacent roadway network.

Water and Sewer: Water service is available via service lateral connections to an existing 6" water main within the southern half of the adjacent SE 3rd Avenue right-of-way and/or an existing 8" water main within the SE 2nd Street right-of-way. Three (3) fire hydrants presently exist on the east side of SE 3rd Avenue: at the SE 1st Street intersection, at the SE 2nd Street

intersection, and midway between these intersections. Sewer service is available via service lateral connections to an existing 8" sanitary sewer main within the SE 3rd Avenue right-of-way and/or an existing 12" sanitary sewer main within the SE 2nd Street right-of-way.

Pursuant to the Comprehensive Plan, treatment capacity is available at the City's Water Treatment Plant and the South Central County Waste Water Treatment Plant for the City at build-out. Based upon the above, positive findings can be made with respect to this level of service standard.

Schools: The Palm Beach County School District must approve the development proposal for compliance with the adopted Level of Service for School Concurrency. Verification from the Palm Beach County School District and a written finding of approval from the School District has been provided. Based upon the above, positive findings can be made with respect to this level of service standard.

CONSISTENCY: Compliance with performance standards set forth in Chapter 3 and required findings in LDR Section 2.4.5(E) (5) for the Conditional Use 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.

A review of the objectives and policies of the adopted Comprehensive Plan was conducted and the following applicable objectives and policies that are relevant to the Conditional Use applications were noted:

Future Land Use Element Objective A-1: Property shall be developed or redeveloped in a manner so that the future use and intensity is appropriate and complies in terms of soil, topographic, and other applicable physical considerations, is complimentary to adjacent land uses, and fulfills remaining land use needs.

There are no special physical or environmental characteristics of the land that would be negatively impacted by the proposed residential development. The development will be complimentary with the future surrounding residential and commercial developments (SOFA Building #1, SOFA Building #2, Up-town Delray mixed use residential, retail, and office development Saxena White office building, The Mark mixed use development, and the Boueri mixed use residential, office, and retail development) and will provide a customer base for the businesses on a year-round basis, which in turn will provide economic stability and growth for the downtown area.

In terms of fulfilling remaining land use needs, the Housing Element of the Comprehensive Plan states the following:

"One of the most important objectives of the City's overall housing policy is the establishment of housing in the downtown area. In the years since adoption of the 1989 Comprehensive Plan the downtown has changed from a somewhat sleepy, seasonally oriented shopping district to a vibrant year-round retail, service, and entertainment area with an active nightlife. A critical missing element is a significant housing development. The City recognizes the importance of providing housing in close proximity to shopping, employment, and transportation, and the need to have a residential base to support the businesses in the downtown area".

The proposed Strand development will help to fulfill this stated land use need by providing 198 additional dwelling units to the downtown area in close proximity to shopping, employment and transportation. However, while the residential use may be appropriate in some respect the following issues are of great concern: 1) the lack of a non-residential component as required by

LDR Section 4.4.13(l) (b) and (h); 2) the intensity of the use as it relates to unit mix with 73% at one bedroom or less while a maximum of 30% one bedroom is allowed pursuant to Section 4.7.9 (c) (i); 3) and 25% efficiencies pursuant to 4.4.13 (1)(c) and parking shortage of 41 discussed later in this report under LDR compliance. Given the above concerns positive findings cannot be made with respect to Future Land Use Element Objective A-1.

Future Land Use Element Objective C-3: The Central Business District (CBD) and surrounding neighborhoods, including A-1-A, Seacrest and Swinton Avenue represents the essence of what is Delray Beach i.e. a "village by the sea". The continued revitalization of the CBD is essential to achieving the overall theme of the City's Comprehensive Plan by managing growth and preserving the charm. The following policies and activities shall be pursued in the achievement of this objective.

Future Land Use Element Policy C-3.2: The "Downtown Delray Beach Master Plan" was adopted by the City Commission on March 19, 2002. Covering the downtown business districts surrounding the Atlantic Avenue corridor between I-95 and A-1-A, it represents the citizens' vision for the growth and unification of Delray Beach, while still retaining the "village by-the-sea" character of the CBD. The Plan addresses a wide range of issues including infill development, neighborhood parks, shared parking, public art, the roadway and alleyway systems, marketing/economic development, and the need to modify the Land Development Regulations to include design guidelines to retain the character of Delray Beach. Future development and redevelopment in this area shall be consistent with the Master Plan.

The following excerpts are from the Downtown Delray Beach Master Plan:

On page 36 - "Increasing residential density is absolutely crucial to ensure a healthy and lasting life to the Central Core District. The residential component will be the elements that will make the Central Core District evolve from a high-end leisure area for a few, to a true downtown that serves the needs of the community as a whole. It will be the factor that induces the proliferation of services for locals, today very scarce or even non-existent."

On page 38 - "In order to maintain the overall "Village Atmosphere" of the City, but at the same time create enough density to encourage a variety of local services and a more balanced mix of retail in downtown, the Master Plan's recommendation in all the reviewed cases consistently supports higher densities within the CRA's downtown district, especially in the four blocks north and south of the Avenue. It is this Plan's additional recommendation to include a minimum density requirement in the zoning code. Within the downtown area, low, suburban densities will cause more harm than slightly higher ones. Within a downtown area, density is directly associated with the health and success of downtown."

As noted above, increased residential density is crucial to the long-term sustainability of the downtown. The proposed conditional use will allow a residential density of 63 units per acre on the subject property. This increased density equates to an additional 104 units per acre over the base density of 30 units per acre ($3.12 \text{ acres} \times 30 \text{ du. per acre} = 94 - 198 \text{ units proposed} = 104$). It is noted, that a similar density increase within the CBD District has previously been approved for the SOFA Building #2 residential development with a density of 64.70 units per acre. However, given this parcel location (proximity to Atlantic Avenue, approximately 84 yards away) a mixed use component is appropriate (retail and office in the ground floor) is appropriate and has not been provided. Further, the increase density is weighted with smaller efficiency units and one bedroom units 73% ($145 \text{ units} / 198 \times 100 = 73\%$) which exceed LDR requirements. The proposed mix does not accommodate a variety of dwelling units, appropriate number of

larger units in the mix that are desired in the downtown. This is also discussed later in this report in Housing Element Objective B-2. Thus, positive findings cannot be made with respect to Future Land Use Element Policy C.3.2.

Transportation Element Policy A-1.5: New residential projects over 25 units and nonresidential projects over 10,000 square feet adjacent to existing or future Palm Tran bus stops shall provide an easement and install a city-approved bus shelter on site. If the project is not adjacent to a bus stop, or a bus shelter already exist, a contribution shall be made to the City in-lieu of providing the bus shelter on site.

Currently, the Palm Tran Route #81 (Eastbound Atlantic Avenue) serves this site along SE 1st Street a Palm Tran with an existing bus stop at the southeast corner of SE 1st Avenue and SE 1st Street (one block to the west of the subject property). Therefore, the proposed development should contribute toward the provision of a bus shelter at this location. A contribution of approximately one-half the cost of a bus shelter must be paid prior to certification of the site plan for the development, and thus, this will be attached as a condition of approval. This requirement will be addressed as part of the site plan review process. Subject to it being addressed at that time, the development will comply with Transportation Element Policy A-1.5.

Transportation Element Policy D-2.2: Bicycle parking and facilities shall be required on all new development and redevelopment. Particular emphasis is to be placed on development within the TCEA Area.

The subject property is located within the City's Transportation Concurrency Exception Area (TCEA), which encompasses the CBD, CBD-RC, OSSHAD, and West Atlantic Avenue Business Corridor. Bicycle racks have been provided in the garage north and south of the garage entrance for the south building project. However, this does not completely address the intent of the policy, which, as expressed in Goal Area D, is to provide a mechanism to encourage alternative options to automobile travel. The bicycle racks provide limited security which is better suited to short term bicycle parking. While this is appropriate for visitors and short term stops by the residents, it is not appropriate for longer term storage. For the use of bicycles to be encouraged, residents must feel that their bicycles are secure. Since adequate storage is not provided in the residential units themselves, it is recommended that a secure storage area, such as bike lockers, be provided for this purpose. There is secure bike storage proposed in the center of the south building (under pool area). In addition, a valet bicycle parking storage area is being proposed centrally located to serve both buildings; and has been placed in the southeast portion of the north building along SE 3rd Avenue. Operation details relating to the valet system will be required as the site development process continues. This requirement will be further addressed as part of the site plan review process. Subject to it being finalized at that time, the development will comply with Transportation Element Policy D-2.2.

Open Space and Recreation Element Policy A-3.1: Tot lots and recreational areas, serving children from toddlers to teens, shall be a feature of all new housing developments as part of design to accommodate households having a range of ages. This requirement may be waived or modified for residential developments located in the downtown area, and for infill projects having fewer than 25 units. The City may require a monetary contribution in-lieu of the provision of on-site facilities where appropriate.

This policy may be waived for projects in the downtown because the City recognizes that households located in the downtown are likely to have fewer children than those located in suburban settings. Furthermore, land in the downtown is at a premium and it can be cost prohibitive to provide land intensive recreational features such as tennis courts, volleyball courts, etc. However, the proposed development does provide recreational facilities such as extensive planting material, trellis areas, a spa, swimming pool, a covered BBQ area, extensive

deck with lounge chairs, a fitness-exercise room, a club house, and restrooms, all located on the 2nd floor for the south building and on the fourth floor for the north building. However, it is recommended that a kid's room for younger residents needs to be provided, and thus this attached as a condition of approval. This requirement will be addressed as part of the site plan review process. Subject to it being addressed at that time, the development will comply with Open Space and Recreation Element Policy A-3.1.

Other recreational, cultural and open space opportunities located in proximity to The Strand development include Veteran's Park, which contains a large playground and recreational area; the Municipal Beach; Currie Commons Park, which includes a baseball field and playground; the City's Tennis Center; and Old School Square Cultural Center. As playground areas are located close by (Veteran's Park and Currie Commons Park) and other facilities are available on site that can be utilized by children, such as the pool and game room, the intent of this policy has been met if the condition (provision of a kid's room) is addressed..

Housing Element Objective B-2: Redevelopment and the development of new land shall result in the provision of a variety of housing types and other amenities (i.e. bike trails, parks, sidewalks) to accommodate the diverse economic makeup of the City's demographic profile, and meet the housing needs of all residents. Policies which will implement this objective include:

Housing Element Policy B-2.2: The development of new adult oriented communities within the City is discouraged. New housing developments shall be designed to accommodate households having a range of ages, especially families with children, and shall be required to provide 3 and 4 bedroom units and activity areas for children ranging from toddlers to teens. This requirement may be waived or modified for residential developments located in the downtown area, and for infill projects having fewer than 25 units.

While the proposed development will not be restricted to occupancy by adults only, it is acknowledged that downtown dwellings are not typically occupied by families with two (2) or more children. To appropriately address the market demand, this development will primarily accommodate single adults, elderly and young professional couples. The development will provide a mix of efficiency (studio units), one (1) and two (2) bedroom units. It is noted that the applicant is seeking a waiver to increase the percentage of one-bedroom units from a maximum of 30% allowed pursuant to LDR Section 4.7.9 (c)(i) to 51%. Staff does not support a one-bedroom mix of this magnitude in the proposed project especially given the accompanying 23% efficiency components. However, while it may be appropriate that the requirement to provide three (3) and four (4) bedroom units be reduced, additional two bedroom units should be provided. Thus, positive findings cannot be made with respect to Housing Element Policy B-2-2.

Housing Objective A-11: To assist residents of the City in maintaining and enhancing their neighborhood, the City, through public input and notification, shall take steps to ensure that modifications in and around the neighborhood do not lead to its decline, such as those described in the following policies.

Housing Policy A-11.3: In evaluating proposals for new development or redevelopment, the City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied.

As noted previously, the residents of this development will aid in the revitalization and economic stability of the downtown area. The introduction of additional residential dwelling units will increase safety of the area by introducing more night time activity and more “eyes on the street” as a deterrent to criminal behavior. Based upon the above, the development proposal will be consistent with Housing Policy A-11.3.

This development will not be restricted to occupancy by adults only. However, it is acknowledged that downtown dwellings are not typically occupied by families with children. The proposed development will primarily accommodate young and middle-age professionals. The development will provide a mix of studio units, one (1), and two (2) bedroom units. However, as previously stated the weighted one bedroom or fewer totals of 73% is too great and should be modified.

PERFORMANCE STANDARDS

The applicant is seeking an increase in density above 30 units per acre (63 units per acre). In order to grant the increase positive findings with respect to LDR Section 4.4.13(I) need to be made.

LDR Section 4.4.13(I) - Performance Standards: These standards shall apply to all applications for new development and modification of existing developments which would result in a density greater than 30 dwelling units per acre.

- (1) The maximum permissible density of a particular project will be established through the conditional use process, based upon the degree to which the development complies with the performance standards of this section, the required findings of Section 2.4.5(E), and other applicable standards of the Comprehensive Plan and Land Development Regulations. Notwithstanding the above, the approving body may deny an application for increased density where it is determined that the proposed project is not compatible in terms of building mass and intensity of use with surrounding development. All eligible developments to use these performance standards shall provide twenty percent (20%) of the residential units above thirty (30) dwelling units per acre in the Commercial Core or twelve (12) units per acre in the West Atlantic Neighborhood as Workforce Housing units (fractions shall be rounded up). The workforce housing units shall be divided between low and moderate income levels and shall comply with other applicable provisions of Article 4.7. The units shall be provided either onsite, offsite or through a monetary contribution or as noted in LDR Section 4.7.2 c.**

There are 198 dwelling units proposed within the subject property (3.12 acres). This equates to an overall density of 63 dwelling units per acre ($198 \text{ units} / 3.12 \text{ acres} = 63.46 \text{ du/ac}$). The base density allowed is 30 du/ac which equates to a total of 94 residential units ($3.12 \text{ acres} \times 30 \text{ du/ac} = 93.6 \text{ units}$). Pursuant to LDR Section 4.4.13(I)(1), to support the increased density, 20% of the residential units above thirty (30) dwelling units per acre shall be workforce housing units. The applicant is requesting an increase of 104 units above the 94 units allowed ($198 - 94 = 104 \text{ units}$), which requires twenty one (21) workforce housing units ($104 \times 20/100 = 20.8$).

Pursuant to the City's Workforce Housing Ordinance, 21 of the proposed 198 units must comply with the regulations of Section 4.7 and remain affordable for a period of no less than 40 years. The 21 workforce housing units must be clearly depicted within the building floor plan levels (with a note to this effect to be included on the site plan) or the workforce housing covenant [LDR Section 4.7.6(a)] include a provision that complies with Section 4.7.9(o) and conveys authority to the City of Delray Beach to monitor rental of the workforce

units. This requirement will be addressed during the site plan review process. The applicant has indicated that a total of 40 workforce units will be provided.

The development is located in the CBD zoning district, which allows the residential density to exceed 30 units per acre subject to conditional use approval. The analysis with respect to LDR Section 4.4.13(I) [Compliance with Performance Standards] and other relevant section of the LDR is provided below.

(2) In addition to the standards and requirements set forth in subsection 4.4.13(I)(1), above, the applicable performance standards for development exceeding twelve (12) units per acre within the West Atlantic Neighborhood or thirty (30) units per acre within the Central Core are as follows:

- (a) The development offers variation in design to add interest to the elevations and relief from the building mass. Building elevations incorporate several of the following elements: diversity in window and door shapes and locations; features such as balconies, arches, porches; and design elements such as shutters, window mullions, quoins, decorative tiles, or similar distinguishing features.*

The proposed architecture style includes various elements of Modern Architecture with such as pre-fabricated modular aluminum trellis, Benjamin Moore Chalk White aluminum frame windows, masonry walls with score lines, 42" high cable aluminum railing, cantilever balconies, shaped parapets at different height intervals. The various roof lines are well articulated by stepping back as much as 15'-0" from the front facade of the building and between 60' to 125' from the rear façade of the south building. This contributes to a reduction in the perception of mass, provides a variation in design and adds significant visual interest to the elevations.

In addition to the step backs and offsets provided, the architectural elevations of the structure also incorporate diversity in color (two types of Benjamin Moore white colors, four different tones of light green colors, and a Benjamin Moore gray color with satin finish. Five different shapes of windows and two door shapes, two different types of covered balconies, decorative pre-fabricated painted aluminum panel system, thin clad smooth stucco veneer, cantilever concrete smooth stucco headers beyond the edge of the windows, decorative score lines stucco finish, decorative balcony railings, and exposed concrete overhangs. It is noted that solar panels for garage and pool deck illumination are proposed on the roof deck of both buildings. The rhythm and proportionality of the architectural treatments creates an appealing presentation. Based upon the above, the development proposal will be consistent with this performance standard.

- (b) If the building includes a parking garage as an associated structure or within the principal building, the garage elevation provides unified design elements with the main building through the use of similar building materials and color, vertical and horizontal elements, and architectural style. Development of a portion of the ground floor perimeter adjacent to street rights of way is devoted to window displays or floor area for active uses such as retail stores, personal and business service establishments, entertainment, offices, etc., is encouraged.*

The development proposal does incorporate two separate cover parking garages on the ground floor of the North and South Building structures. The building materials utilized with the parking garage are architecturally consistent with materials utilized on the upper levels of the structure in terms of texture, color, and vertical and horizontal elements. Access to the parking garage on the ground floor for the south building is from the south

and east side of the building with two separate ingress/egress located along SE 2nd Street and SE 3rd Avenue; and with one ingress/egress for the North Building located along SE 1st Street. The east side of both buildings reveals the parking area as part of the elevation with a unified architectural appearance featuring (for the south building) twenty one (21) decorative horizontal openings with prefabricated aluminum green-design landscape panels that allow natural light and ventilation. It is noted that (as a green design feature) solar panels for garage and pool deck illumination are proposed on the roof deck of both buildings. For the north building, the east parking garage elevation will consist of 12 spaced openings separated by structural columns featuring twelve (12) decorative horizontal openings with prefabricated aluminum green-design landscape wall-panels that allow natural light and ventilation. Solar panels for garage and pool deck illumination are proposed on the roof deck. The openings will permit ventilation and natural light to enter into the parking garage. The incorporation of the prefabricated aluminum green-design landscape panels makes for a visually attractive ground floor parking garage. However, the North Building included in the proposed development is located a very short distance away (approximately 84 yards) from the East Atlantic Avenue retail corridor and consequently a portion of the North Building perimeter areas of the ground floor that are adjacent to street right-of-way of SE 3rd Avenue needs to be devoted to display windows and/or entrance of commercial/retail uses. Thus, this is being attached as condition of approval. It is noted that the applicant has provided instead a covered parking area which is the opposite of what is required by this performance standard.

The applicant has submitted the following statement regarding this issue:

"The project is located along the F.E.C. railway. The north site is not only an irregular shape, but is very shallow in depth (approximately 94'-0"). The shallow site creates a hardship. It becomes very difficult to service the retail space with deliveries while incorporating the parking and circulation requirements. Historically, commercially viable retail space needs to be a minimum of 40'-0" to 50'-0" in depth in order to attract tenants. After we deduct the 'sidewalk dedication', parking and circulation requirements, we are left with a retail space that would be approximately 14'-0" deep. A 'bicycle valet' area for the entire project has been positioned on the southeast corner of the north site (corner of S.E. 1st Street and S.E. 3rd Avenue) to provide the appearance of a retail/commercial component. Although we intend to install a 'green-wall' type system in the parking garage openings facing the street, the developer proposes to install window displays in some of said openings to meet LDR Section 4.4.13 (l) (2) (b)".

It is noted that this same architectural firm designed a building which received SPRAB site plan approval for a mixed use development meeting this requirement and including a retail component on the same parcel in March 9, 2005. Further, even if you agree with this argument it would not apply to the larger parcel located south of SE 1st Street which also is required to meet this performance standard. Based on the above, the intent of this performance standard has not been met, and thus, staff cannot recommend approval of the requested conditional use at this density.

- (c) *A number of different unit types, sizes and floor plans are available within the development. Two and three bedroom units are encouraged, as are a combination of multi-level units and flats. In projects consisting of more than twelve (12) dwelling units, the proportion of efficiency or studio type units may not exceed 25% of the total units.*

There is no maximum percentage established for projects having twelve (12) or fewer units, however, a mix of unit types and sizes is encouraged.

The proposed development includes one and two bedroom units as well as efficiencies. Living areas vary among units between 500 to over 1,562 square feet. Some units have terraces while others have balconies. There are twenty five (25) different unit types for the south building and nine (9) different unit types for the north building in the one hundred and ninety eight (198) units proposed. It is noted that the proportion of efficiency or studio type of units represents 23.3% of the total number units while this performance standard calls for a proportion of no more than 25%. However, the proposed development is weighted to smaller units with 51% one bedroom units equating to 73.3% of the project being one bedroom or less. This does not meet the types of units (two or three bedroom encouraged) nor variety of sizes larger vs. smaller). Based on the above, this performance standard has not been met.

- (d) *The project design shall create an overall unified architectural character and image by the use of common elements between the building(s), parking lot, and landscaping. Examples of some features that could be incorporated to meet this standard are: freestanding light poles and exterior light fixtures that are decorative and consistent with the architectural treatment of the building(s); pedestrian amenities such as benches, shaded walkways, and decorative pavement treatment, that are similar in forms, colors, materials, or details as the architecture of the building(s); focal points such as public art, water feature/fountain, courtyard or public plazas designed to connect different uses along a continuous pedestrian walkway; or a combination of similar features that meet the intent of this standard.*

The applicant has indicated that the development exhibits an overall unified architectural character and image by the use of common elements along the different parts of the project. Decorative light fixtures, the landscape promenade, and decorative pavers are some of the common elements that add character to the proposed development. In addition, the amenity deck is a focal point on the west side of the structure (for both buildings) above the parking deck. The step backs, offsets, and balconies provided along the facades will allow large amounts of natural light via different window shapes, which include floor to ceiling windows in some locations. Also, attractive small plazas located at the corner of SE 1st Street and SE 3rd Avenue as well as SE 2nd Street and SE 3rd Avenue will feature streetscapes benches. These spaces are designed to connect the continuous pedestrian paver brick sidewalk along SE 3rd Avenue with the main entrance to the south building. Based upon the above, the intent of this performance standard has been achieved.

- (e) *The development provides common areas and/or amenities for residents such as swimming pools, exercise rooms, storage rooms or lockers, covered parking, gardens, courtyards, or similar areas and/or amenities.*

The development proposal provides for most of the above referenced amenities, such as an amenity deck (located on the second floor for the south building and on the fourth floor for the north building) with extensive planting material, trellis areas, a swimming pool, a spa, large deck with lounge chairs, fire pits with outdoor dining and barbecue areas, a fitness-exercise room, a club house, and restrooms located on the 2nd floor for the south building and on the 4th floor for the north building. Based upon the above, the intent of this performance standard has been achieved.

- (f) *The development promotes pedestrian movements by providing convenient access from the residential units to the public sidewalk system. Pedestrian areas adjacent to the*

building are enhanced by providing additional sidewalk area at the same level as the abutting public sidewalk. Accessways to parking areas are designed in a manner that minimizes conflicts between vehicles and pedestrians. The public street or streets immediately adjacent to the development are enhanced in a manner that is consistent with the streetscape in the downtown area (i.e., installation of landscape nodes, extension of existing paver block system, installation of approved street lighting, etc.).

The proposed development is inherently a pedestrian friendly project and should provide the maximum pedestrian width amenities required by the LDRs. The project proximity to Atlantic Avenue and Swinton Avenue will result in a pedestrian flow to the commercial, entertainment and cultural activities in the downtown area. Sidewalk areas around the project will be re-built with paver bricks thereby recreating the current pedestrian experience along the project edges. The project will incorporate the extension of the existing paver block system in the downtown and the installation of approved street lighting and street furniture. However, the applicant is seeking relief from the requirement to provide a minimum of eight (8') feet wide sidewalks. Given this project proximity to Atlantic Avenue this waiver cannot be supported

The development proposal provides safe and efficient pedestrian movement with convenient access provided from the residential units to the existing public sidewalk system and parking areas. Pedestrian areas adjacent to the building have been enhanced by providing sidewalk areas at the same level as the abutting public sidewalk. Attractive small plazas are located at the corner of SE 1st Street and SE 3rd Avenue as well as SE 2nd Street and SE 3rd Avenue and will feature streetscape benches. These spaces are designed to connect the continuous pedestrian paver brick sidewalk along SE 3rd Avenue with Atlantic Avenue. Also, access to the parking lot has been designed in a manner that minimizes conflicts between vehicles and pedestrians. Landscape islands in the public right-of-ways and brick paver sidewalks that meander among the landscape and streetscape benches enhance the public streets adjacent to the proposed development. Based on the above, this performance standard has only partially been met.

- (g) *The development provides opportunities to share parking, access ways, driveways, etc., with adjoining properties, or provides additional parking spaces that may be used by the public.*

The development proposal will re-design and re-build with attractive landscape islands thirty eight (38) new parallel public parking spaces. Twenty eight spaces (28) along SE 3rd Avenue, five (5) spaces along SE 1st Street, and five spaces (5) along SE 2nd Street. These spaces could be used by the public as an additional parking opportunity. Based upon the above, the intent of this performance standard has been achieved.

- (h) *Projects fronting on Atlantic Avenue, NW/SW 5th Avenue, N.E. 1st Street, or S.E. 1st Street contain nonresidential uses on the ground floor. At least seventy-five percent (75%) of the surface area of the front street wall(s) at the ground floor of each such building is devoted to display windows and to entrances to commercial uses from outside the building.*

The North Building's south side frontage faces SE 1st Street, and thus, this performance standard is applicable. The North Building's south side frontage of the proposed development should be recognized as located in a retail corridor. Therefore, at least seventy-five percent (75%) of the surface area of the frontage facing SE 1st Street wall(s) at the ground floor of the North Building needs to be devoted to display windows and to entrances to commercial uses from outside the proposed North Building. It is

noted that the applicant has provided instead a covered parking area which is the opposite of what is required by this performance standard. Based on the above staff cannot recommend approval of the requested conditional use. Thus, the intent of this performance standard has not been met. The applicant has submitted the following statement regarding this issue:

"The project is located along the F.E.C. railway. The north site is not only an irregular shape, but is very shallow in depth (approximately 94'-0"). The shallow site creates a hardship. It becomes very difficult to service the retail space with deliveries while incorporating the parking and circulation requirements. Historically, commercially viable retail space needs to be a minimum of 40'-0" to 50'-0" in depth in order to attract tenants. After we deduct the 'sidewalk dedication', parking and circulation requirements, we are left with a retail space that would be approximately 14'-0" deep. A 'bicycle valet' area for the entire project has been positioned on the southeast corner of the north site (corner of S.E. 1st Street and S.E. 3rd Avenue) to provide the appearance of a retail/commercial component. Although we intend to install a 'green-wall' type system in the parking garage openings facing the street, the developer proposes to install window displays in some of said openings to meet LDR Section 4.4.13 (I) (2) (b)".

- (i) The landscape plan for the development preserves and incorporates existing native vegetation (where available), provides new landscaping that is in excess of minimum standards (in height and quantity), demonstrates innovative use of plant material, improves site design, provides useable open space or public plazas, and maximizes available areas for pedestrian interaction. If necessary to achieve this standard, the project may exceed the maximum setback area on the ground floor.*

The project offers a variety of vegetation. The landscape plan for the project is in excess of the minimum standards. It demonstrates an innovative use of plant material in the design and provides useable open space and maximizes available areas for both residents and pedestrian interaction. Based on the above, this performance standard has been met.

Of the Nine (9) performance standards outlined in LDR Section 4.4.13(I), the subject development proposal complies with five (5) performance standards (a), (d), (e), (g) and (i). It is noted that performance standards (b), (c), and (h) have not been met and performance standard (f) has only been partially met. Given this level of achievement with the performance standards it is not appropriate to grant the requested increase in density.

LDR SECTION 2.4.5(E) - REQUIRED FINDINGS:

Pursuant to LDR Section 2.4.5(E) (5), 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.**

The following table identifies the zoning designations and uses that are adjacent to the subject property:

| | <u>Zoning Designation:</u> | <u>Use:</u> |
|---------------|--|---|
| North: | Community Facility (CF) | Parking Lot and Vacant Land |
| South: | Central Business District - Railroad Corridor (CBD-RC) | Convenient Store and Hair Salon built in 1970 |
| East: | Central Business District (CBD) | Office |
| West: | Central Business District (CBD) | Vocational School (Milagro Center) and Avenue East Office & commercial Building |

The additional residential development will help to encourage a variety of local services and a more balanced mix of retail downtown. Further, the neighborhood and the downtown as a whole will benefit by the inclusion of new residential dwelling units. However, pursuant to LDR Section 4.4.13 (l)(2)(b) (Performance Standard for increased density): If the building includes a parking garage as an associated structure or within the principal building, development of a portion of the ground floor perimeter adjacent to street rights of way must be devoted to window displays or floor area for active uses such as retail stores, personal and business service establishments, entertainment, offices, etc. In addition, pursuant to LDR Section 4.4.13 (l)(2) (h): Projects fronting on SE 1st Street contain nonresidential uses on the ground floor must have at least seventy-five percent (75%) of the surface area of the front street wall/(s) at the ground floor devoted to display windows and/or to entrances to commercial uses from outside the building.

The northern building is located a very short distance away (approximately 84 yards) from the East Atlantic Avenue retail corridor. While the first requirement (LDR Section 4.4.13 (l)(2)(b)) applies to both buildings it is particularly important for the northern building. This requirement was endorsed and placed as condition of approval by the CRA Board (Community Redevelopment Agency) at their meeting of June 28, 2013. Based on this concern the proposed development in its current configuration (residential only) may have a detrimental effect upon the stability of the adjacent neighborhood (retail), and will hinder development or redevelopment of nearby properties. Based upon the above, positive findings cannot be made with respect to LDR Section 2.4.5(E)(5) for the conditional request.

Increase in Density:

The following excerpts are noted from the Downtown Delray Beach Master Plan:

On page 36 - "Increasing residential density is absolutely crucial to ensure a healthy and lasting life to the Central Core District. The residential component will be the elements that will make the Central Core District evolve from a high-end leisure area for a few, to a true downtown that serves the needs of the community as a whole. It will be the factor that induces the proliferation of services for locals, today very scarce or even non-existent."

On page 38 - "In order to maintain the overall "Village Atmosphere" of the City, but at the same time create enough density to encourage a variety of local services and a more balanced mix of retail in downtown, the Master Plan's recommendation in all the reviewed cases consistently supports higher densities within the CRA's downtown district, especially in the four blocks north and south of the Avenue. It is this Plan's additional recommendation to include a minimum density requirement in the zoning code. Within the downtown area, low, suburban densities will cause more harm than slightly higher ones. Within a downtown area, density is directly associated with the health and success of downtown."

Increased residential density is crucial to the long-term sustainability of the downtown. The proposed conditional use will allow a residential density of 63 units per acre on the subject property. However, this increased density should come with compliance with other elements of the Downtown Master Plan and LDRs. More specifically a proper blend of uses i.e. mixed use retail on the ground floor and appropriate unit mixes (not 73% one bedroom or less). This development proposes a 73% mix of efficiencies and one bedroom units while the LDRs limit the number of efficiencies to no more than 25% and one bedroom units to no more than 30%. Further, the LDR issues like the shortage of required parking (see discussion under Compliance with LDRs) further support a recommendation of denial of the conditional use request as proposed.

Based upon the above, positive findings cannot be made with respect to LDR Section 2.4.5(E) (5) for the conditional requests pertaining to allow a density in excess of 30 units per acre (63 du/ac is proposed).

COMPLIANCE WITH LAND DEVELOPMENT REGULATIONS:

In conjunction with the Conditional Use request a sketch plan was submitted which staff has reviewed. It is noted that the conceptual plan is insufficient to conduct a complete analysis of the Land Development Regulations. If the Conditional Use is approved, a full site plan submittal complying with LDR Section 2.4.3 will be required. Based upon staff's review of the sketch plan and site inspections, the following analysis is provided.

Open Space:

Pursuant to LDR Section 4.4.13 (F)(2) and (a), a minimum of 10% non-vehicular open space shall be provided for all development in the Central Business District. However, there shall be no minimum open space requirement within the area encompassed by the boundaries of the original Downtown Development Authority as described in Section 8.2.2(B); within the Pineapple Grove Main Street area; or east of the Intracoastal Waterway. Thus, for the South Building a minimum of 10% non-vehicular open space shall be provided. The site plan data indicates that 14.03% open space has been provided for the South Building. The north Building is located within the area encompassed by the boundaries of the original Downtown Development Authority, and thus, there is not minimum open space requirement. The site plan data indicates that 27.07% open space has been provided for the North Building.

Building Setbacks & Frontage Requirements - Design Guidelines:

Staff review of the preliminary site plan indicates that a waiver to LDR Section 4.4.13(F)(4)(c)(1) will be required. This LDR Section requires that for a height from finished grade to 25', the building frontage along the north side of SE 1st Street requires the setback to be a distance of 10' for a minimum of 65'-4" (70% min. of the lot frontage 93'-4"x0.70=65'-4"). The applicant is proposing a building frontage of 0'-0" setback at 10' maximum which is less than the minimum requirement. The building is proposed at 10'-3", and thus, the waiver request is to allow a decrease in the required building frontage setback at 10' maximum from 65'-4" to 0'-0". This waiver will be addressed during the site plan review process.

Off-Street Parking:

Pursuant to LDR Section 4.4.13(G)(1)(f), the parking requirements for residential units in multi-family structures located within the CBD are to be provided as follows:

| | |
|--|------------------|
| • Efficiency dwelling unit | 1.0 space/unit |
| • One bedroom dwelling unit | 1.25 spaces/unit |
| • Two or more bedroom dwelling unit | 1.75 spaces/unit |
| • Guest parking shall be provided cumulatively as follows: | |
| - for the first 20 units | 0.50 spaces/unit |
| - for units 21-50 | 0.30 spaces/unit |
| - for units 51 and above | 0.20 spaces/unit |

Table 1: The Strand Parking Requirements

| Use | Number of Units | Parking Requirement Per Unit or Aq. Ft. | Parking Spaces Required |
|------------------------------|-----------------|---|-------------------------|
| Studio Unit | 46 | 1.00 | 46.00 |
| One Bedroom | 99 | 1.25 | 123.75 |
| One Bedroom + Den (*) | 24 | 1.75 | 42.00 |
| Two Bedroom or More | 29 | 1.75 | 50.75 |
| | 198 | | 262.50 |
| Guest Parking for Buildings: | | | |
| Units 1 - 20 | 20 | 0.50 | 10.00 |
| Units 21 - 50 | 30 | 0.30 | 9.00 |
| Units 50 - 90 | 148 | 0.20 | 29.60 |
| | | | 48.60 |
| | | Parking Required | 311.10 |

(*) Pursuant to LDR Appendix "A" Definitions, the following definition applies to the One Bedroom + Den unit proposed by the applicant which for the purpose of parking requirements is considered to be a two bedroom apartment:

Bedroom definition: A room intended for, or capable of, being used for sleeping and that is at least 70 square feet in area. A room designated on building plan submittals as a "den", "library", "study", "loft", or other extra room that satisfies the definition and is not kitchen, living room, dining room or bath will be considered to be a bedroom for the purpose of computing bedroom area. [Amd. Ord. 8-02 3/5/02]

Pursuant to LDR Section 4.6.9 (E) (2), where adequate right-of-way exists, construction of additional on-street parking spaces directly and wholly abutting the lot, or parcel, may be counted towards the off-street parking requirement of the lot or parcel it is intended to serve, provided that:

- The adjacent right-of-way **has not been previously utilized for parking** or, in cases where the adjacent right-of-way has been used for parking only those spaces in addition to the number of existing spaces shall be counted;
- Such parking spaces are clearly marked on the site plan and designed in accordance with appropriate City, County or State standards, as applicable; and,
- Such parking spaces shall be publicly accessible and cannot be reserved or restricted by the owner(s) or tenant(s) of the lot or parcel, unless approved by the City Commission for special events or valet parking.

- (d) One parking space credit shall be given for each additional full space constructed abutting a lot or parcel. No part of an on-street parking space shall extend past a side property line of the lot it serves.

The on-street parking spaces that the applicant is proposing as new spaces already exist along SE 3rd Avenue, SE 1st Street, and SE 2nd Street and are currently being used by the public. Thus, Staff does not support the use of any existing on-street parallel parking spaces for this project. The project provides a total of 280 spaces which are included within the covered parking areas of the North and the South Buildings while 311 parking spaces are required. Thus, the project has a shortage of 31 parking spaces ($311 - 280 = 31$ spaces). However, the applicant has submitted the following statement regarding the provision of parking spaces:

"We respectfully request a reconsideration for allowing the project to include the 19 'on-street' parking spaces (50% of the 38 parking spaces being installed) with regard to the project's parking calculations per LDR Section 4.6.9 (E)(2) for the following reasons:

- Although parking spaces and a 5'-0" wide concrete sidewalk are currently installed along the R-O-W. for the property, they do not meet any of the requirements set forth in LDR Section 4.6.16(H)(5) regarding "Special Landscape Islands Regulations for Properties within the Central Business District (CBD)";*
- The project is also required to meet the intent of LDR Section 6.1.3(B)(1)(f): "The width of sidewalks in the CBD shall be 8'-0" and shall be constructed with City Approved Pavers".*

Based on these items, and the underground utility work required, the existing spaces and sidewalks regarding the project will be required to be removed. The proposed design provides for new 8'-0" wide sidewalks along S.E. 1st Street with meandering 'serpentine' sidewalks between 5'-0" and 8'-0" wide along S.E. 3rd Avenue and S.E. 2nd Street. All the new sidewalks are to be constructed using concrete pavers as requested by the City.

In addition to the paver sidewalks, the developer will be installing R-O-W improvements that currently do not exist. They are landscape islands, irrigation and lighting. Based on LDR Section 4.6.9 (E) (2), 'One parking space credit shall be given for each additional full space constructed abutting a lot or parcel.' Based on all the required improvements, we respectfully request that the development be allowed to count 50% of the 38 spaces being provided towards the project's parking calculation -19 spaces in all".

It is noted that there are currently 38 existing on-street parking spaces along SE 3rd Avenue, 10 existing spaces along SE 1st Street, and none along SE 2nd Street; this represents a total of 48 existing on-street parking spaces. The applicant is proposing to create a total of 38 new on-street parking spaces; twenty eight spaces (28) along SE 3rd Avenue, five (5) spaces along SE 1st Street, and five spaces (5) along SE 2nd Street. Thus, the 48 existing on-street parking spaces will be reduced to 38 on-street parking spaces. While it is recognized that the new on-street parking spaces will be created with landscape islands and irrigation once the project is built there will be a shortage of 10 existing on-street parking spaces ($48 \text{ existing spaces} - 38 = 10 \text{ spaces}$). These ten (10) on-street parking spaces will have to be provided by the applicant. In summary, the project has a shortage of 41 parking spaces ($311 - 280 = 31 \text{ spaces} + 10 \text{ on-street spaces} = 41$). Clearly there are **no additional** spaces being created and 10 existing ones

are being eliminated. Therefore, no credit can be applied to the proposed development. Further pursuant to LDR Section 4.6.9 (E)(2) a credit (if new spaces were created) would only be available if in-lieu or public parking cannot be applied. This project is eligible for in lieu so any shortage will have to be purchased rather than credited.

Non-compliance with basic parking requirement does not allow this project to meet required findings of LDR Section 3.1.1. Thus, a recommendation of denial of the conditional use request is appropriate. The applicant needs to diminish the total number of residential units in order to meet the parking requirement, and thus, this is attached as condition of approval in the staff report. Staff recommends denial of the conditional use for an increase in density from the permitted 30 units per acre to the proposed sixty-three (63) units per acre based on the shortage of 41 parking spaces.

Compact Parking:

Pursuant to LDR Section 4.6.9(C)(1)(g), up to 30% of the required parking for any use may be designated for compact cars. The development proposal includes thirty one (31) compact parking spaces located within the proposed covered parking garage for the North and South Buildings. This represents approximately 11.07% of the total required spaces, thus meeting the requirement.

Handicapped Accessible Parking:

Pursuant to LDR Section 4.6.9(C)(1)(b), special parking spaces designed for use by the handicapped shall be provided pursuant to the provisions of Florida Accessibility Code for Building Construction. Accessibility for residential structures is also covered by the Federal Fair Housing Act. Under the provisions of these codes, accessible parking must be provided at a rate of 2% of the spaces required for the residents. This equates to a requirement of six (6) accessible parking spaces ($299 \times 2\% = 5.98$ spaces). The requirement for non-resident guest spaces is addressed in the Florida Accessibility Code for Building Construction. Under this code, the forty (40) guest spaces required will require one (1) additional accessible parking space, for a total of seven (7) spaces required for the proposed development. Since a total of ten (10) handicap accessible parking spaces have been provided, this LDR requirement has been met. In addition, the Florida Accessibility Code for Building Construction requires the height clearance of the handicap parking areas to be nine and one-half feet (9.5') high to allow the access of handicap vans. A note to this effect shall be placed on the site plan, and thus this is attached as a condition of approval. Both of these requirements will be addressed during the site plan review process.

Bicycle Parking:

LDR Section 4.6.9(C)(1)(c) and Transportation Element Policy D-2.2 of the Comprehensive Plan require that a bicycle parking facility be provided. The subject property is located within the City's Transportation Concurrency Exception Area (TCEA). Bicycle racks have been provided in the garage at the north and south end of the project. However, this does not completely address the intent of Policy D-2.2, which, as expressed in Goal Area D, is to provide a mechanism to encourage alternative options to automobile travel. Bicycle racks provide limited security which is better suited to short term bicycle parking. While this is appropriate for visitors and short term stops by the residents, it is not appropriate for longer term storage.

For the use of bicycles to be encouraged, residents must feel that their bicycles are secure. Since adequate storage is not provided in the residential units themselves, it is recommended that a secure storage area, such as bike lockers and or secure storage on each floor, be provided for this purpose. There are two bike racks (thirteen bikes parking capacity each) that

are located on both side of the main access to the South Building, and under the pool area (secured facility). In addition, a valet bicycle parking storage area is being proposed. The "valet bicycle parking facility" is centrally located to serve both buildings; and has been placed in the southeast portion of the north building along SE 3rd Avenue. Function of the valet system is unclear. Realistically it is unlikely that this system would be provided through the day for the occasional user. Provide operating details and or provide more user friendly facilities i.e. secured bike lockers or storage areas that are privately accessible.

Lighting:

A photometric plan consistent with the requirements of LDR Section 4.6.8 and a light fixture detail has been submitted for the development proposal. The maximum and minimum Foot Candle (FC) illumination levels for the covered parking areas as well as the street parking required by the LDR have been met.

Bus Shelter:

As noted earlier in this report, pursuant to Transportation Element A-1.5 of the Comprehensive Plan, the applicant shall provide a contribution of approximately one-half the cost of a bus shelter prior to certification of the site plan. Thus, this is attached as condition of approval.

Minimum Residential Floor Area:

The following tables indicate that the proposal complies with LDR Section 4.3.4(K) [Minimum residential floor area]. Thus, this LDR requirement has been met.

| North Building | Required Sq. Ft. | Provided Sq. Ft. | Total Units | Compliance with LDR Requirements? | |
|---------------------|------------------|------------------|-------------|-----------------------------------|---|
| Dwelling Unit Type: | | | | Y | N |
| Efficiency - Studio | 400 | 500 – 600 | 12 | • | |
| 1 Bedroom Units | 600 | 680 – 800 | 18 | • | |
| 1 Bedroom + Den | 600 | 900 – 1050 | 4 | • | |
| 2 Bedroom Units | 900 | 1,100 – 1,200 | 9 | • | |
| 3 Bedroom Units | 1,250 | N/A | 0 | | |

| South Building | Required Sq. Ft. | Provided Sq. Ft. | Total Units | Compliance with LDR Requirements? | |
|---------------------|------------------|------------------|-------------|-----------------------------------|---|
| Dwelling Unit Type: | | | | Y | N |
| Efficiency - Studio | 400 | 500 – 600 | 31 | • | |
| Efficiency + Den | 400 | 500 – 600 | 3 | • | |
| 1 Bedroom Units | 600 | 680 – 800 | 82 | • | |
| 1 Bedroom + Den | 900 | 900 – 1050 | 19 | • | |
| 2 Bedroom Units | 900 | 1,100 – 1,200 | 20 | • | |
| 3 Bedroom Units | 1,250 | N/A | 0 | | |

Vehicular Stacking Distance:

Staff review of the preliminary site plan indicates that a waiver LDR Section 4.6.9(D)(3)(c)(1) will be required. This LDR Section requires that the minimum stacking distance between the

adjacent street right-of-way and the first parking space in a parking lot with more than fifty-one (51) parking spaces shall be fifty feet (50'). The applicant has proposed the following waiver:

For the North Building:

- A waiver request to reduce the required stacking distance for the cover parking access driveway located : from the required 50' to the proposed 28' for the west side of the access driveway; and from the required 50' to the proposed 23'-4" for the east side of the access driveway.

For the South Building:

- A waiver request to reduce the required stacking distance for the cover parking access driveway located along SE 2nd Street: from the required 50' to the proposed 28';
- A waiver request to reduce the required stacking distance for the cover parking access driveway located along SE 3rd Avenue, from the required 50' to the proposed 30'

This waiver will be addressed during the site plan review process.

Loading:

Pursuant to LDR Section 4.6.10 (B), (C), and (D), one 30' by 12' loading berth per building needs to be provided. It is noted that two (2) loading berths for the project have been provided; one on the southwest side of the South Building along SE 2nd Street right-of-way, and the second one on the northeast side of the North Building along SE 3rd Avenue r-o-w. Both loading berth measure 35' wide by 13' in length, and are located adjacent to the trash collection area and service elevators for both buildings. Thus, this LDR requirement has been met. This will be addressed during the site plan review process.

Sidewalks:

Pursuant to LDR Section 6.1.3(B), an 8' sidewalk shall be provided in the Central Business District (CBD). The applicant has requested a waiver to allow for the following width of the required sidewalks:

- For the North Building: along both side of SE 1st Street and the west side of SE 3rd Avenue a waiver to reduce the width of the sidewalk from required 8'-0" to proposed 6'-0"; and
- For the South Building: along the north side SE 2nd Street and the west side of SE 3rd Avenue a waiver to reduce the width of the sidewalk from the required 8'-0" to proposed 6'-0"

The applicant has submitted the following statement regarding the required 8' wide sidewalk within the Central Business District (CBD):

"Based on the fact that the project does not have a commercial component, the plans have been revised to denote an 8'-0" wide "serpentine" paved sidewalk to be installed along both sides of SE 1st Street with meandering 'serpentine' sidewalks between 5'-0" and 8'-0" wide along SE 3rd Avenue and S.E. 2nd Street".

This waiver is not supported.

Sight Visibility Triangles:

Pursuant to LDR Section 4.6.14(B)(1) when an access way intersects a public right-of-way, triangular areas shall provide unobstructed cross-visibility. The area on both sides of a driveway formed by the intersection of a driveway and an alley with a length of ten (10) feet along the driveway, a length of ten (10) feet along the alley right-of-way and the third side being a line connecting the ends of the other two lines.

Visibility triangles for all access driveway points to the covered parking areas have been correctly depicted and there is no obstruction to any visibility. However, the back-up loading area located on the northeast side of the North Building along SE 3rd Avenue r-o-w is required to be 10' by 10' and only 5'-6" by 5'-6" triangle is being provided. The applicant has requested a waiver to LDR Section 4.6.14(B)(1) to reduce the size of the north visibility triangle for the North Building loading area from the required 10' by 10' and to the proposed 5'-6" by 5'-6". This waiver will be addressed during the site plan review process.

Right-of-Way Dedication:

Pursuant to LDR Section 5.3.1 and Table T-1 of the Transportation Element of the City's Comprehensive Plan, the ultimate right-of-way width for SE 1st Street is 55' and currently 50' exists. For existing streets, the City Engineer, upon a favorable recommendation from the Development Management Services Group (DSMG), may require r-o-w dedications or grant reductions in right-of-way widths. However, the Development Services Management Group (DSMG) will meet on July 18, 2003. The decision of the DSMG will be communicated to the applicant. It is anticipated that 2 ½ feet of r-o-w dedication will be required for both sides of SE 1st Street. Also, 5 feet of right of way dedication along SE 3rd Avenue from SE 1st Street to the north limit of the north parcel will be required. These dedication issues will be address during the site plan review process.

Corner Clip: Pursuant to LDR Section 5.3.1(D)(3), a right-of-way dedication will be required at all intersections in the Central Business District (CBD). This right-of-way dedication will consist of an area of property located at the corner formed by the intersection of two or more public rights-of-way with two sides of the triangular area being 20 feet in length along the abutting public right-of-way lines. Further, a dedication of 10 feet shall be required along both sides at the intersection of an alley and right-of-way. These areas are to be measured from their point of intersection, and the third side being a line connecting the ends of the other two lines. This right-of-way dedication will be referred to as a "corner clip" and is provided to ensure adequate right-of-way for the safe movement of pedestrians in the CBD. Corner clips measuring 20' by 20' need to be depicted on the site plan for the northwest intersection of SE 1st Street and SE 3rd Avenue, and also for the southwest and northwest intersection of SE 2nd Street and SE 3rd Avenue. These corner clip dedications will have to be executed along with the boundary re-plat of the property, and thus this attached as a condition of approval. This dedication issue will be address during the site plan review process.

Undergrounding of Utilities:

Pursuant to LDR Section 6.1.8, utility facilities serving the development shall be located underground throughout the development. A note to this effect shall be placed on the site plan, and thus, this is attached as condition of approval.

Plat:

This requirement will be addressed during the site plan review process. However, due to the r-o-w dedication, sidewalk easements, and corner clip dedication it is anticipated that probably a boundary re-plot of the subject property may be required.

Refuse Enclosure:

Pursuant to LDR Section 4.6.6(C)(1), dumpsters, recycling containers and similar service areas must be enclosed on three sides with vision obscuring gates on the fourth side, unless such areas are not visible from any adjacent public right-of-way. The development proposal includes two trash rooms; one located on the southwest side of the South Building, and the other is located on the north side of the North Building. Both trash room areas provide a dumpster with out-swinging doors and are adjacent to loading areas. The applicant has stated that maintenance personnel will transfer the trash to the dumpster and placed them in the appropriate area for pick-up by Waste Management. Accommodations for bins for recyclables have been provided, and thus, this LDR requirement has been met.

Architectural Standards:

It is noted that pursuant to LDR Section 4.6.18(B)(14)(v), buildings subject to the Downtown Design Guidelines are required to provide a change in roof design, doors and window rhythm and articulation, and building materials or textures every 150' of building frontage. Minimum spacing between the same architectural compositions shall be 300'.

The proposed architectural design style includes various elements of modern contemporary architecture such as pre-fabricated modular aluminum trellis, Benjamin Moore Chalk White aluminum frame windows, masonry walls with score lines, 42" high cable aluminum railing, cantilever balconies, shaped parapets at different height intervals. The various flat roof lines are well articulated by stepping back as much as 15'-0" from the front facade of the building and between 60' to 125' from the rear façade of the south building. This contributes to a reduction in the perception of mass, provides a variation in design and adds significant visual interest to the elevations.

In addition to the step backs and offsets provided, the architectural elevations of the structure also incorporate diversity in color (two types of Benjamin Moore white colors, four different tones of light green colors, and a Benjamin Moore gray color with satin finish. Five different shapes of windows and two door shapes, two different types of covered balconies, decorative pre-fabricated painted aluminum panel system, thin clad smooth stucco veneer, cantilever concrete smooth stucco headers beyond the edge of the windows, decorative score lines stucco finish, decorative balcony railings, and exposed concrete overhangs. It is noted that solar panels for garage and pool deck lighting are proposed on the roof deck of both buildings.

The rhythm and proportionality of the architectural treatments creates an appealing presentation. The various flat roof lines are well articulated by parapets at different heights intervals. This contributes to reduce the perception of mass, provides a variation in design and adds significant visual interest to the elevations. In addition to the step backs and offsets provided, the architectural elevations of the structure also incorporate diversity in color, window and door shapes and locations.

The ground floor parking structure proposed incorporates design elements of the main building such as color, vertical and horizontal elements, and architectural style. A change in flat roof design, heights, doors, window rhythm and articulation, building materials and textures are presented every 150' segment for the east elevations of both buildings. The spacing between similar segments in the architectural elevations has been set at 300'. It is noted that the volumetric variations present on the east elevations for both buildings can be considered to be

sufficient to meet the separation in architectural compositions requirement, and thus, this LDR requirement has been met

Staff review of the preliminary site plan indicates that a waiver to LDR Section 4.6.18 (B)(14)(iv)(2) will be required. This LDR Section requires that the minimum transparency or glass surface area on the ground floor of all non-residential buildings shall be a minimum of 75%. The proposed ground covered parking garage east elevation for the North and South Buildings do not meet this LDR requirement, and thus, the applicant has requested relief. The waiver request is to reduce the minimum transparency or glass surface along the west side of SE 3rd Avenue, the north side of SE 2nd Street, and along the north and south side of SE 1st Street from the required 75% to the proposed 0%. This waiver is not supported as the development should include components (retail on the ground floor) that would accomplish compliance with this LDR requirement.

In addition, Staff review of the preliminary site plan indicates that a waiver to LDR Section 4.6.18(B)(14)(vi)(4)(b) will be required. This LDR Section requires fifty percent (50%) of the garage portion of the building on the ground level to be dedicated to use for retail, office, entertainment or other non-residential uses. The proposed parking garage east elevation for the North and South Buildings does not meet this LDR requirement, and thus, the applicant is proposing zero percent (0%) of the ground level to be dedicated for retail, office, entertainment or other non-residential uses. Given the non-support of waivers and failure to meet LDR requirement as it relates to Transparency, mixed use requirement (retail), and parking shortage identified above a positive finding to LDR Section 3.1.1 cannot be made.

WAIVER ANALYSIS

Waiver – Maximum 30% One Bedroom Units:

Pursuant to LDR Section 4.7.9(i), the total number of one bedroom units in any qualifying project shall not exceed 30% of the total number of units in the project. The waiver request is to allow the increase in the percentage of one bedroom units (including efficiencies) from the maximum allowed of 30% to the proposed 51% (100 one bedroom units of 198 total units).

The applicant has submitted the following statement to justify the waiver request:

"We are requesting a waiver from 30% to 51 %. The Justification: Comprehensive Plan clearly highlights density in the downtown core area from 30 to 100 units/acre (with a conditional use approval). The originally "Approved Strand Project" had 75 one bedroom units = $75 / 134 \text{ total units} \times 100 = 55.9\%$. We are now requesting a reduce amount of (1) bedroom units to 51%.

The Sofa Building #1 across the street was recently approved with above 50% of one (1) bedroom units. The fact is that the targeted market is singles, young professionals, retiree's and small starting families with 1 and 2 young children, our mixture of unit counts, satisfies these markets.

As per LDR section 4.4.13 (I) (2) (c), 'the proportion of efficiency or studio type units may not exceed 25% of the total units'. The project as proposed contains 46 studio units which equates to 23% of the total proposed units meeting the intent of the LDR. There is a clear definition in the LDR's between an efficiency/studio and a 1-bedroom unit.

However, while other projects noted above had high percentages of one bedroom units they have very low numbers of efficiency units. Their combined one bedroom

or less % was close to the 55% total that we have suggested in an appropriate mix for this development.

Pursuant to LDR Section 2.4.7(B)(5), prior to granting a waiver, the approving body shall make a finding that the granting of the waiver:

- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;
- (c) Shall not create an unsafe situation; and
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

The shifting of the market as a result of the downturn of the economy has forced a high number of foreclosures in the housing market decreasing in turn the home ownership index and thereby generating an increase in the demand for rental housing. The Strand project appears to target a specific segment of the population which includes young single professionals and young emerging professional couples with possibly one or two children. This may be appropriate for a downtown residential development as proposed. The applicant has proposed close to the maximum allowed efficiency/studies unit mix within the City of 25%. The applicant is seeking additional density which has as one of its primary requirement provision of workforce housing having a maximum one bedroom requirement of 30%. It is noted that the applicant is seeking an additional 21% above this one bedroom maximum which is not supported.

The issue here is related to the City's goal to create family/workforce housing. To accomplish this goal, the City created incentives for developers, including allowing additional density in the CBD through the conditional use process. The provisions and incentives of the family/workforce housing ordinance were structured to promote larger units for families, which is why there is a limit on the percentage of one-bedroom units allowed in projects under this program.

While some leeway is possible, given the project's downtown location, staff is not inclined to support a one-bedroom and efficiency mix which exceeds the combined 55% max. in the CBD. Since no other projects have been approved above this level, approving this waiver would result in the grant of a special privilege, and a positive finding with respect to LDR Section 2.4.7(B)(5). Staff suggests that the Strand project be redesigned to include no more than 55% one bedroom units or less (including efficiencies) over the total number of units provided, and thus this attached as condition of approval. Since similar residential developments in the CBD have had staff support approximately a 50% one bedroom unit and efficiency mix, granting of the waiver at this level would not result in the granting of a special privilege, and a positive finding with respect to LDR Section 2.4.7(B)(5) could then be made.

| |
|-------------------------|
| REVIEW BY OTHERS |
|-------------------------|

Community Redevelopment Agency:

At its meeting of June 28, 2013, the consensus of the Community Redevelopment Agency (CRA) was to recommend approval of the Conditional Use request to allow a density exceeding 30 dwelling units per acre (63) du/ac proposed) with the comment that commercial uses should be included on the ground floor of the north building.

Downtown Development Authority:

The Downtown Development Authority (DDA) reviewed the development proposal at its meeting of July 8, 2013. The Board recommended unanimous approval of the Conditional Use request to allow a density exceeding 30 dwelling units per acre (63 du/ac proposed); this approval is subject to the condition that the number of residential units be reduced so that the current parking shortage can be eliminated and the project will comply with the LDRs. It is recognizing that the credit being sought for the existing on-street spaces cannot be granted. There was no concern with regard to the lack of non-residential on the ground floor.

Courtesy Notices:

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

- ☐ Delray Beach Chamber of Commerce
- ☐ Delray Citizen's Coalition
- ☐ Neighborhood Advisory Council and Osceola Park

Public Notice:

Formal public notice was provided to property owners within a 500' radius of the subject property prior to the Planning and Zoning Board meeting of August, 2013. Letters of support or objection, if any, will be presented at the Planning and Zoning Board meeting.

ASSESSMENT AND CONCLUSION

The proposed conditional uses is to allow a density in excess of 30 units per acre within the CBD (63 du/ac is proposed). As described in this staff report, the request for increase in density above 30 units per acre cannot be supported as the project fails to meet the following Land Development Regulations:

- LDR Section 4.4.13(I), (Performance Standards): performance standard "b" (north building needs to provide retail stores, entertainment, and offices), performance standard "c" (exceeds 30% maximum of one bedroom units over total units), and performance standard "h" (fails to provide *at least seventy-five percent (75%) of the ground floor area devoted to display windows with entrances to commercial uses*). Thus, the intent of these three Performance Standards has not been met. Of the Nine (9) performance standards outlined in LDR Section 4.4.13(I), the proposed development complies with five (5) performance standards (a), (d), (e), (g) and (i). It is noted that performance standards (b), (c), and (h) have not been met and performance standard (f) has only been partially met. Given this level of achievement with the performance standards it is not appropriate to grant the requested increase in density;
- LDR Section 4.4.13(C)(I)(F) (Parking Requirements), the on-street parking spaces proposed by the applicant already exist along SE 3rd Avenue, SE 1st Street, and SE 2nd Street and are currently being used by the public. Thus, Staff does not support the use of any existing on-street parallel parking spaces for this project. The 48 existing on-street parking spaces will be reduced to 38 on-street parking spaces once the project is built. While it is recognized that the new on-street parking spaces will be created with landscape islands and irrigation once the project is built there will be a shortage of 10 existing on-street parking spaces (48 existing spaces – 38 = 10 spaces). In summary, the project has a shortage of 41 parking spaces (311 required – 280 provided = 31 spaces + 10 on-street spaces = 41). Clearly there are **no additional** spaces being created. Therefore, no credit can be applied to the proposed development. Further, the project is subject to in-lieu fee LDR Section 4.6.9 (E)(3) and therefore is not eligible

even if new spaces were being created. Thus, positive finding cannot be made with respect to LDR Section 4.4.13(G)(1)(f).

- LDR Section 4.7.9(i) (Maximum 30% of one bedroom units), exceeds 30% maximum of one bedroom units over total units. The project is requesting a waiver to increase the proportion of one bedroom units to 51%. Given the efficiency units these results in the project being 73% one bedroom or less, (this does not even count the bedrooms + den options which are for parking purposes being considered two bedrooms).
- Finding to LDR Section 3.1.1 (LDR compliance) project fails to provide required ground floor transparency, mix of uses retail/residential, and required parking);
- LDR Section 2,4,5 (E) (5), (The lack of a non-residential component will generate a detrimental effect upon the stability of the adjacent downtown CBD neighborhood

The development is inconsistent with the following policies and objectives of the Comprehensive Plan:

- Future Land Use Element Objective A-1: lack of non-residential component makes the project non complimentary to adjacent non-residential land uses;
- Future Land Use Element Policy C-3.2: The proposed mix does not accommodate a variety of dwelling units, (2 bedroom/3 bedroom) options that are desired in the downtown.
- Housing Element Policy B-2-2: new housing developments need to be designed to accommodate families with children, and thus, shall be required to provide larger unit mixes.

ALTERNATIVE ACTIONS

- A. Move to **postpone** a recommendation for the conditional use and waiver request and associated waivers associated with an increase in density to 63 du/ac for **The Strand** where thirty (30) units per acre is allowed, by choosing to continue review of the development proposal and offer further direction.
- B. Move a recommendation of **approval** of the conditional use and waiver request to allow a density in excess of 30 units per acre (63 du/ac) for **The Strand**, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets criteria set forth in Sections 2.4.5(E)(5), 4.4.13(I) LDR Section 3.1.1 (Required Findings) of the Land Development Regulations, subject to conditions.
- C. Move a recommendation of **denial** of the conditional use and waiver request to allow a density in excess of 30 units per acre (63 du/ac) for **The Strand**, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is inconsistent with the Comprehensive Plan Future Land Use Element Objective A-1, Future Land Use Element Policy C-3.2, Housing Element Policy B-2-2 and does not meet criteria set forth in Sections 2.4.5(E)(5) (Detrimental effect upon stability of the neighborhood), LDR Section 4.4.13(I) (Performance Standards), and LDR Section 3.1.1 (Required Findings) relating to LDR compliance including but not limited to Ground Floor Transparency, Mixed Uses retail/residential mix, Parking, and residential unit mix (max one bedroom units).

RECOMMENDED ACTION

Conditional Use:

Move a recommendation of **denial** of the conditional use to allow a density in excess of 30 units per acre (63 du/ac) for **The Strand**, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is inconsistent with the Comprehensive Plan Future Land Use Element Objective A-1, Future Land Use Element Policy C-3.2, Housing Element Policy B-2-2 and does not meet criteria set forth in Sections 2.4.5(E)(5) (Detrimental effect upon stability of the neighborhood), LDR Section 4.4.13(I) (Performance Standards), and LDR Section 3.1.1 (Required Findings) relating to LDR compliance including but not limited to Ground Floor Transparency, Mixed Uses retail/residential mix, Parking, and residential unit mix (max one bedroom units).

Waiver:

Recommend **denial** to the City Commission for the waiver request to LDR Section 4.7.9(i), to allow the increase in the percentage of one-bedroom units (including efficiencies) from the maximum allowed 30% to up to 51%, due to a failure to make positive findings with respect to LDR Section 2.4.7(B)(5).

If approval is recommended: the following motion should be utilized.

Alternative Waiver Recommended by Staff:

Recommend **approval** to the City Commission for the waiver request to LDR Section 4.7.9(i), to allow the increase in the percentage of one-bedroom units (including efficiencies) from the maximum allowed 30% to up to 51%, based upon positive findings with respect to LDR Section 2.4.5(E).

Conditional Use:

Move a recommendation of approval to the City Commission of the conditional use request to allow a density in excess of 30 units per acre (63 du/ac) for **The Strand**, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets criteria set forth in Sections 2.4.5(E)(5), Article 3.1.1, and LDR Section 4.4.13(1) Performance Standards subject to the following conditions:

1. That the applicant submit an application for Class V Site Plan Approval which at a minimum addresses the following issues identified in this staff report:
 - a. A contribution of approximately one-half the cost of a bus shelter must be paid prior to certification of the site plan for the development.
 - b. That at least 21 workforce housing units must be clearly depicted within the building floor plan levels (with a clouded note to this effect to be included on the floor plans).
 - c. That a portion of the North Building perimeter areas of the ground floor that are adjacent to street right-of-way of SE 3rd Avenue needs to be devoted to display windows and/or entrance of commercial/retail uses.
 - d. That at least seventy-five percent (75%) of the surface area of the frontage facing SE 1st Street wall/(s) at the ground floor of the North Building needs to be devoted to display windows and to entrances to commercial uses from outside the proposed North Building.
 - e. That the project design be revised to resolve the shortage of parking spaces.

- f. That corner clips measuring 20' by 20' need to be depicted on the site plan for the northwest intersection of SE 1st Street and SE 3rd Avenue, and also for the southwest and northwest intersection of SE 2nd Street and SE 3rd Avenue.
- g. 2' - 6" of r-o-w dedication has already been depicted on the site plan for both sides of SE 1st Street; and a five feet right of way dedication along SE 3rd Avenue from SE 1st Street to the north limit of the north parcel will be required and needs to be executed as part of the required plat for the property.
- h. That the project be re-designed to include no more than 30% one bedroom units over the total number of units provided.
- i. That all utility facilities serving the development shall be located underground throughout the development. A note to this effect has been placed on the site plan.
- j. Provide a kid's room for younger residents as part of the amenity packet.
- k. A plat must be processed and recorded prior to issuance of a building permit.

Attachments:

- *Site Plan*
- *Floor Plans*
- *Architectural Elevations*

The Strand – Staff Additional Technical Comments:

It is noted that the applicant has addressed the following technical comments required by the Planning Department:

1. A five feet right-of-way dedication along SE 3rd Avenue from SE 1st Street to the north limit of the north parcel has already been depicted on the site plan (see sheet # A1.00);
2. Pursuant to LDR Section 4.6.16(H)(3)(d), a minimum five foot (5') landscape buffer is required to separate a parcel boundary line and a vehicular use area. For the South Building, The separation of the vehicular use area from the west property line appears to be less than 5' feet. The applicant has addressed this technical comment and has provided 5'-0" landscape buffer for the south building (please see sheet # A1.00: Site Plan).
3. For the South Building, the proposed development meets the requirements of LDR Section 4.4.13(F)(4)(c)(1) and (2) for a height from finished grade to 25' feet and from 25' feet to 48 feet, along SE 1st Street, SE 3rd Avenue, and along SE 2nd Street.

For the North Building, along SE 3rd Avenue the proposed development meets all the requirements from finished grade to 25' feet and from 25' feet to 48 feet.

However, the North building along SE 1st Street, for a height from finished grade to 25', the minimum building frontage required set back at 10' minimum is 65'-4" (93'- 4" x 0.70%= 65'- 4") while the applicant has provided 0'-0". Thus, the applicant has requested a waiver to LDR Section 4.4.13(F)(4)(c)(1);

4. The proposed design provides for a new 8'-0" wide sidewalks along SE 1st Street; with meandering 'serpentine' sidewalks between 5'-0" and 8'-0" wide along SE 3rd Avenue and SE 2nd Street. All the new sidewalks will be constructed using concrete pavers as requested by the City. However, the applicant has requested a waiver to LDR Section 6.1.3(B)(1)(l) to provide the meandering 'serpentine' sidewalks between 5'-0" and 8'-0" wide along SE 3rd Avenue and SE 2nd Street;
5. The applicant intends to install a 'green-wall' type system in the parking garage openings facing the street; the developer proposes to install window displays in some of said openings in an attempt to meet LDR Section 4.6.18(B)(14)(vi)(4)(b) which requires fifty percent (50%) of the garage portion of the building on the ground level to be dedicated to use for retail, office, entertainment or other nonresidential uses.

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Entity Details**THIS IS NOT A STATEMENT OF GOOD STANDING**

| | | | |
|---------------------|--|-----------------------------|-------------------|
| <u>File Number:</u> | 4308746 | <u>Incorporation Date /</u> | 02/28/2007 |
| | | <u>Formation Date:</u> | (mm/dd/yyyy) |
| <u>Entity Name:</u> | FLADEL LLC | | |
| <u>Entity Kind:</u> | LIMITED LIABILITY COMPANY (LLC) | <u>Entity Type:</u> | GENERAL |
| <u>Residency:</u> | DOMESTIC | <u>State:</u> | DE |

REGISTERED AGENT INFORMATION

| | | | |
|-----------------|--|---------------------|-------------------|
| <u>Name:</u> | THE CORPORATION TRUST COMPANY | | |
| <u>Address:</u> | CORPORATION TRUST CENTER 1209 ORANGE ST | | |
| <u>City:</u> | WILMINGTON | <u>County:</u> | NEW CASTLE |
| <u>State:</u> | DE | <u>Postal Code:</u> | 19801 |
| <u>Phone:</u> | (302)658-7581 | | |

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