

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
REGULAR MEETING – DECEMBER 20, 2005

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, December 20, 2005, in the Council Chambers, at Bal Harbour Village Hall. The meeting was called to order at 9:00 a.m. by Mayor Roth. Those present were:

Mayor Seymour "Sy" Roth
 Councilman Jean Rosenfield
 Councilman Jaime M. Sanz

Also present:

Alfred J. Treppeda, Village Manager
 Ellisa Horvath, CMC, Village Clerk
 Andrea Greenblatt, Administrative Assistant
 Stephen J. Helfman, Village Attorney
 David Wolpin, Village Attorney
 Merrett Stierheim, Village Consultant

Absent:

Assistant Mayor Howard J. Berlin
 Councilman Joel S. Jacobi

As a quorum was determined to be present, the meeting commenced.

2. PLEDGE OF ALLEGIANCE: The Pledge was led by Miami-Dade County Commissioner Sally Heyman.

3. APPROVAL OF MINUTES: *A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve the minutes of the November 15, 2005 Regular Council Meeting. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.*

4. PRESENTATIONS:

Key to the Village for Miami-Dade Commissioner Sally Heyman:

Chief Hunker explained that Commissioner Heyman has done a lot for the Village, including providing food, water, and ice for residents after the hurricane and working with the police department and public works department. He advised that Commissioner Heyman put a Committee together and purchased six Segways for six police departments, including Bal Harbour. Chief Hunker noted that Commissioner Heyman also put a program together for the needy, for the police department to distribute Thanksgiving baskets and turkeys. He advised that in conjunction with the maintenance department and the Police Athletic League, spearheaded by Commissioner Heyman, they will distribute over 90 bicycles to needy children. Mayor Roth presented a Key to the Village to Commissioner Sally Heyman, in recognition of her service to the community. Chief Hunker presented Commissioner Heyman with some items from the Police Department. Commissioner Heyman thanked Mayor Roth, Chief Hunker, and the Church.

Officer of the Month for November 2005: Chief Hunker announced that Detective Paul Eppler was selected as the Officer of the Month for November 2005, for his Bal Harbour Village Regular Council Meeting Minutes 12/20/2005

work on the Street Tactics Intervention Group (STING) and solving cases within the Village. Detective Eppler was presented with a plaque. Detective Eppler thanked Chief Hunker and the Council.

5. QUASI-JUDICIAL PUBLIC HEARINGS: Mr. Helfman read the quasi-judicial announcement from the agenda.

There being no disclosures by the Council, the meeting continued. Those planning to speak at the hearing were sworn in by the Village Clerk.

ORDINANCE FIRST READING/PUBLIC HEARING: Mr. Helfman explained that part of the rezoning process to a planned development zoning district, which is the request for this property, entails the negotiation of a Development Agreement that outlines the conditions of an approval to the zoning district. He explained that the administration, with the assistance of Mr. Stierheim, has begun that process and the Agreement is substantially completed, but there are significant issues that still need to be resolved. He advised that the Manager's recommendation on this item is that it be deferred. Mr. Helfman noted that without the Agreement completed, it needs to be deferred and is not properly before the Council. He advised that the appropriate action by the Council would be a motion to defer this item to a January 5th agenda. Mr. Treppeda advised that would be a special meeting. Mr. Helfman noted that the Manager believes that by that time he will be able to complete an agreement, if an agreement can be reached. He suggested that there be a motion and that the Council vote on a continuation of this item to a January 5th special meeting, which the Council would have to, at the end of the agenda, set that special meeting. Mr. Helfman advised that at this time, this is not a public hearing and it's up to the Council as to whether it should be deferred or not.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to defer this item to a later date. The motion carried unanimously, with the vote as follows: Mayor Roth aye; Assistant Mayor Berlin absent; Councilman Jacobi absent; Councilman Rosenfield aye; Councilman Sanz aye.

Mr. Treppeda questioned if January 5th at 9:00 a.m. is good for the Council. Mayor Roth advised that is okay as long as it's good for Mr. Stierheim, Mr. McDowell, etc.

Mayor Roth opened a public hearing.

Babak Raheb, resident - 128 Balfour Drive, is concerned with a special meeting. He noted that he has a problem with the Architectural Review Board meeting that took place. Mr. Helfman is happy to discuss Mr. Raheb's appeal of the Board's decision after this meeting. Mr. Raheb questioned why this meeting is quasi judicial. Mr. Helfman explained that the rezoning of a property is quasi-judicial. Mr. Raheb discussed prior Architectural Review Board meetings regarding PD that were quasi-judicial and noted that the one regarding the St. Regis was not. He noted that people weren't under oath at that Board meeting and may not have told the truth. Mr. Helfman explained his advice to the Architectural Review Board and their role in the process, which was to provide comments to the Building Official, on the application. He advised that the quasi-judicial procedure wasn't necessary. Mr. Raheb discussed Mr. Miller's report regarding green space. He discussed not being able to appeal the Board's decision and thinks that Mr. Helfman changed the rules. He doesn't think that the Board's decision should be considered because of that. Mr.

Helfman clarified that he gave advice on the process and he did not change the rules. He noted that the provision that Mr. Raheb is citing to challenge the decision of the Board is not an appealable section of the Code. Mr. Helfman clarified that the Board only provided comments and the decision on this will be made by the Council.

Brian Mulheren, resident – 10245 Collins Avenue, thinks the Village should get an outside court's opinion on whether it was a quasi-judicial procedure. He noted that this is dealing with the health, safety and welfare of people and that the number of people will be doubled. He questioned if the Board meeting was handled correctly. He questioned the private Beach Club being included as park land. He thinks that the Village needs to know how much money one acre of land is worth on the ocean. Mr. Mulheren discussed traffic. He is against a special meeting and thinks that workshops are needed. He noted that no wind study has been submitted. He discussed the One Bal Harbour not being built, in compliance with what was approved.

Merrett Stierheim, Village Consultant, explained that he has been conducting research. He noted that he has met with the Developer and Attorney for fact-finding and has also met with Village staff (Planner, Building Official, Finance Director), the Property Appraiser, and the State Attorney Joe Centorino. Mr. Stierheim advised that his recommendation will be given to the Village Manager, who will make a recommendation, along with the staff, to the Council. Mr. Stierheim noted that if there's a special meeting on the 5th, it will be a public meeting and the draft development agreement will be available for public inspection. He explained that there will be two public hearings, so there will be ample opportunity for public participation. He explained that his role is to assist the Manager and try to negotiate an agreement that in his opinion is fair and equitable to the Village. Mr. Stierheim reviewed his resume.

Mr. Raheb questioned how many members of the Architectural Review Board have a conflict regarding their involvement with Mr. Perez or the Related Group. Mr. Stierheim advised that if Mr. Raheb is aware of a conflict, then he should bring it to the attention of the Village Attorney or Council. Mr. Helfman explained that one Board member announced that he worked on a landscape plan for someone who worked for Mr. Perez. He advised that the Board member advised that he is not currently working on anything for Mr. Perez or that contractor. Mr. Helfman advised that Board member discussed this issue with the Village Attorneys, prior to the meeting, and he was advised what the conflict of interest law was and he was comfortable that he had no conflict of interest or any relationship under the law that would have precluded him from participating in the discussion. Mr. Helfman advised that there was no withholding of information. Mr. Raheb thinks that should have been disclosed. Mr. Helfman advised that the Board member followed the legal ethical obligations. He offered to discuss these issues with Mr. Raheb, after the meeting.

Mr. Stierheim offered to attend any workshop meetings. He observed that people have strong feelings about this. He advised that he is going to do his recommendations based on what he thinks is fair and equitable, and in the best interest of the Village and its citizens, while respecting the rights of the other party (the Developer). He will do his best to bring peace in the valley.

Mr. Mulheren noted that people didn't know about the open meeting with the Developers. He advised that it was put on the television channel. He advised that the public wants to meet with Mr. Stierheim and thinks the public has the right. Mr. Treppeda advised that Mr.

Stierheim has been in touch with the leaders of the Citizens' Coalition. Mr. Stierheim is happy to meet with any group of citizens, at the appropriate time. He advised that he is not prepared to do that now. Mr. Treppeda advised that the process allows for numerous public hearing types of meetings (first and second reading of the PD). He explained that it's up to the Council, if they feel additional meetings are needed.

Rhea Kelly, 77 Camden Drive, questioned why negotiations are needed if no variances are being requested, there's a development district, and a volunteer group recommended the building. She questioned the role of Mr. Stierheim. Mr. Stierheim explained the purpose of the Architectural Review Board and explained that the Council is the only body that can make a decision. He thinks that the Board recommended the project to the Building Official, but doesn't know if they made any suggested changes, etc. Mr. Stierheim explained that his role is as an outside independent critique, to assist. He discussed the issues being reviewed (loss of revenue during construction, resort tax, property taxes, etc.). He noted that the issues are open to negotiation, to protect the citizens and the Council.

Dina Cellini, resident – 211 Bal Cross Drive, questioned if Mr. Stierheim's role will remain as an advisor, as opposed to a more active negotiator in this process, after his discussion with the State Attorney and Mr. Centorino. Mr. Stierheim advised that the original concern of Mr. Centorino was if there was a large committee that he was a part of in the negotiating process and if that would be surplanting the Village Council. He noted that it was still an open question as to whether it would be sunshine or not, so he felt it would be better to air on the side of sunshine, in that case. Mr. Stierheim advised that is not how this project will be negotiated and is subject to the Manager's call. He visualized sitting down with the Developer, to try to determine the parameters for negotiation. Mr. Stierheim thinks that it would be very difficult to try to negotiate, with 50 to 100 people in a room, with a Committee. He thinks they need to negotiate and come down to some basic issues, at which point it becomes public. Mr. Stierheim is happy to meet with the leaders of the citizens' group, the condos, and the residents, if the Manager wants him to. He noted that, at this point, he is not ready to do that and he has to do some homework and negotiate first.

ORDINANCE SECOND READING/PUBLIC HEARING: An ordinance was read, by title, by the Village Clerk deleting the zoning map from the Village Code and adopting a revised zoning map. Mr. Wolpin explained that this removes the zoning map outside of the Code itself and also updates it. He advised that a notation has been placed on the map, in accordance with the Village Attorney's recommendation.

Mayor Roth opened the public hearing.

Dina Cellini, resident – 211 Bal Cross Drive, questioned what the notation is. Mrs. Horvath read the notation that was added to the map.

Brian Mulheren, resident – 10245 Collins Avenue, questioned if the map includes the Beach Club, which is private property, as park land. He doesn't think this should be approved, if it is. Mr. Miller explained that there are two maps that control land development within the community and one is within the adopted comprehensive plan (the Future Land Use Map). He advised that the entire Oceanfront plat area is designated as high density residential, which allows both hotel uses and condo/rentals. Mr. Miller explained that the Beach Club is in that area, Tract A, and has been designated in that category since the

plan was adopted in 1989. He noted that it was rezoned from Private Club to Ocean Front recently. He advised that it has nothing to do with credit towards open space or parks and recreation and is just a mapping exercise. Mr. Miller noted that this is the official zoning map of the Village.

Mr. Treppeda requested clarification from Mr. Miller that the State allows cities to count a certain percentage of a private area like that towards park land. Mr. Miller advised that there is a Florida Statute provision for the recreation and open space element of the comprehensive plan. He noted that, in 1989, the Village adopted a zoning land development regulation that adopted, by reference, the Miami-Dade County Level of Service Standards and Concurrency Standards, which is 2.75 acres of land per 1,000 permanent residents. He noted that in the body of the administrative order for Dade County there is a description of what can and cannot be counted. Mr. Miller advised that when the Village was designed, in the 1940s, there were no quantitative standards as to what was needed for open space and recreation. He reported that 100% of publicly owned open space or recreation can be counted, which the Village has very little of. Mr. Miller advised that private open space and recreation can be counted 50%, under the Dade County rule. He clarified that beaches, golf courses, and lakes cannot be counted. Mr. Miller advised that currently the Village is almost right on the number of what it has and can take credit for and what the Village's needs are. Mr. Treppeda clarified that the Village has counted 50% of the Beach Club, since 1989, which can legally be done. Mr. Miller agreed. Mr. Miller pointed out that if that wasn't counted, then the Village would be in a deficit position.

Ms. Kelly suggested that since the citizens are concerned about park land, open spaces, and traffic that the Village float a bond and purchase the Bal Harbour Club, which would guarantee a park and no condominium there.

Babak Raheb, resident – 128 Balfour Drive, questioned the number of residents that Mr. Miller is using for his calculation. Mr. Miller advised that he used 3,300 residents, from the census. Mr. Raheb advised that the Herald quoted Mr. Miller that the beach could be used as acreage, but he is now saying that it cannot be counted. Mr. Miller advised that the ordinance would have to be changed.

Marjorie Schell, resident – Balmoral Condominium, discussed the open space from the beach to the Sheraton. She questioned having a business on the beach, which is public property. She discussed the lack of plantings behind the Sheraton, which everyone else has. Ms. Schell would like the Sheraton to have plantings, instead of volleyball courts, etc. She is concerned with the protection of the Village, from the ocean.

There being no additional comments, Mayor Roth closed the public hearing.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried (3-0), with the vote as follows: Mayor Roth aye; Assistant Mayor Berlin absent; Councilman Jacobi absent; Councilman Rosenfield aye; Councilman Sanz aye; thus becoming:

ORDINANCE NO. 502

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING ARTICLE III "DISTRICT REGULATIONS" OF CHAPTER 21 "ZONING" OF THE VILLAGE CODE BY AMENDING SECTION 21-78 "DISTRICT MAP," TO

DELETE THE EXHIBIT ENTITLED "TOWN OF BAL HARBOUR VILLAGE, FLORIDA ZONING DISTRICT MAP" FROM THE VILLAGE CODE AND TO ADOPT A REVISED ZONING DISTRICT MAP PURSUANT TO SECTION 21-78(b); PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE VILLAGE CODE; PROVIDING FOR EFFECTIVE DATE.

6. ORDINANCE SECOND READING/PUBLIC HEARING: An ordinance was read, by title, by the Village Clerk amending Article III of Chapter 5 eliminating the issuance of a Preliminary Certificate of Appropriateness. Mr. Wolpin explained that this clarifies the existing Code. He explained that currently the Board gives a Preliminary Certificate of Appropriateness and a concern arose that people may claim that once they got the preliminary certificate that they would be entitled to get the final certificate. He noted that this removes that concern and provides for preliminary matters to be addressed by staff. Mr. Wolpin explained that when it's time for someone to get a final certificate of appropriateness to build something, then they would come before the Board.

Mayor Roth opened the public hearing.

Gabriela Webster, resident – 30 Park Drive #15, questioned if the members of the Architectural Review Board provided remarks on this ordinance. Mrs. Horvath advised that three of the Board members provided comments, and all were in favor of this ordinance.

There being no additional comments, Mayor Roth closed the public hearing.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried (3-0), with the vote as follows: Mayor Roth aye; Assistant Mayor Berlin absent; Councilman Jacobi absent; Councilman Rosenfield aye; Councilman Sanz aye; thus becoming:

ORDINANCE NO. 503

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 5 "APPEARANCE BOARD," BY AMENDING ARTICLE III "ARCHITECTURAL REVIEW BOARD," BY AMENDING SECTION 5.5-14 "CERTIFICATE OF APPROPRIATENESS, PRELIMINARY CONSIDERATION" BY ELIMINATING THE PROVISION FOR ISSUANCE OF A PRELIMINARY CERTIFICATE OF APPROPRIATENESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE VILLAGE CODE; PROVIDING FOR EFFECTIVE DATE.

7. ORDINANCES FIRST READING: None.

8. RESOLUTIONS/PUBLIC HEARINGS: None.

9. RESOLUTIONS:

A resolution was read by title by the Village Clerk approving and ratifying the Police Collective Bargaining Agreement.

James Baker, Village Attorney, discussed the negotiation process and advised that this
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agreement is for two years. He urged and recommended the Council to vote in favor of this. Mr. Treppeda noted that the Police Department voted 18 to 1, in favor of the agreement. Mr. Baker advised that the new agreement includes a wellness program, contributions to the cost of health insurance, drug testing for the special units, and a new promotional process.

A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent, thus becoming:

RESOLUTION NO. 678

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, APPROVING AND RATIFYING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE VILLAGE AND THE DADE COUNTY POLICE BENEVOLENT ASSOCIATION; DIRECTING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

A resolution was read by title by the Village Clerk supporting the MPO funding for the South Florida East Coast Corridor Transit Analysis.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent, thus becoming:

RESOLUTION NO. 679

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, IN CONJUNCTION WITH THE NORTHEAST MIAMI-DADE MAYORS' JOINT TASK FORCE ON TRANSPORTATION, SUPPORTING THE MIAMI-DADE COUNTY METROPOLITAN PLANNING ORGANIZATION (MPO) FUNDING FOR THE SOUTH FLORIDA EAST COAST CORRIDOR TRANSIT ANALYSIS.

10. LOBBYIST REGISTRATION REPORT – AS OF DECEMBER 16,

2005: Mrs. Horvath reported that the following lobbyists are currently registered with Bal Harbour Village:

<u>Name of Lobbyist</u>	<u>Principal Represented</u>
Stanley F. Whitman	Bal Harbour Shops, Ltd.
Gary A. Poliakoff Becker & Poliakoff, P.A.	Balmoral Condominium Association, Inc.
Keith M. Poliakoff Becker & Poliakoff, P.A.	Balmoral Condominium Association, Inc.
Ronald L. Book Ronald L. Book, P.A.	Majestic Tower at Bal Harbour Condominium Association, Inc.
Carter N. McDowell Bilzin Sumberg Baena Price & Axelrod LLP	Sheraton Bal Harbour Joint Venture

Robert L. Krawcheck Bilzin Sumberg Baena Price & Axelrod LLP	Sheraton Bal Harbour Joint Venture
Michael A. Patrizio	WCI Communities
Steve Sorensen	WCI Communities

11. REPORTS AND RECOMMENDATIONS:

A. MAYOR AND COUNCIL:

Mayor Roth discussed the traffic and advised that the Town of Surfside is not willing to open the streets. He advised that a motion was previously passed to hire an attorney regarding this issue. Mr. Raheb advised that he has been in touch with the Florida Department of Transportation and Miami-Dade County. He explained that Ms. Kalas, the Director of Traffic for the County, has agreed that the streets were improperly closed. He noted that a letter was received from FDOT giving Surfside 45 days to remove the signs, unless they pass a resolution allowing the streets to be closed; however FDOT doesn't have any jurisdiction over that. Councilman Rosenfield questioned the letter from FDOT. Mr. Raheb clarified that FDOT has advised that the County has to approve the street closings, in addition to Surfside passing a resolution. Councilman Rosenfield questioned what the State says. Mr. Raheb explained that the State has advised that it is not their business. Chief Hunker reviewed his discussions regarding this issue. Councilman Rosenfield would like the County to write a letter saying that they're in charge of that. She questioned the possibility of resolving this without going to court. Mr. Raheb hopes it will be resolved within 30 days. He advised that the State and County are on the Village's side.

Mr. Mulheren thinks the Village should hire an attorney. He advised that the Village has documentation that Surfside illegally closed the streets and the County has the authority of those streets. He discussed the traffic problems. Mr. Mulheren suggested hiring Mr. Bergman. Mr. Raheb thinks that a suit should only be done as a last resort. He requested giving Ms. Kalas time to resolve this. Mayor Roth suggested waiting to see if this can be resolved by the January meeting.

John Donahue, resident – 10245 Collins Avenue, discussed traffic and advised that the Chief and Mayor have tried to resolve this. He doesn't think this should wait 30 days. He suggested having an attorney at least send a letter.

B. VILLAGE ATTORNEY: No items.

C. VILLAGE MANAGER:

Request for Approval of Retail Alcoholic Beverage License 4COP (SRX) for La Goulue Restaurant: Christian, part Owner and Chef, advised that the restaurant will be a French bistro.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

Councilman Rosenfield discussed Ms. Schell's comments and questioned if there's an

illegal business on the beach. Mr. Treppeda advised that the business behind the Sheraton, Atlantic Beach Club, is approved by the State and the Village and is operating legally. Ms. Schell would like the details on that.

Request for Approval of Payment to Grubbs Emergency Services for Hurricane Wilma Cleanup and Approval to Purchase Park Playground Canopy:

Mr. Treppeda discussed the cleanup by Grubbs after Hurricane Wilma. He advised that the bills that have to be paid, which will be reimbursed by FEMA total \$103,508.50. Mr. Treppeda requested an additional \$19,862 for the park canopy, which was destroyed by the storm. He requested a total approval of \$123,370.50, which he expects to get back from FEMA. Mr. Treppeda advised that in the future, the canopy will be totally removed and stored.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

Request for Approval to Purchase Ficus Plants for Hedge:

Mr. Treppeda noted that the hedges around the sewer station, in the Security District, were destroyed, due to the hurricane. He requested approval of \$4,050.00 to replace them (90 Ficus plants at \$45.00 each that are 6 feet tall). Mr. Treppeda also requested to put a fence with screening at the location for \$6,245.00. He advised that prices for plants went up after the hurricane.

A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

Request for Approval of Vehicle Lease for Park & Recreation

Department: Mr. Treppeda requested authorization to lease a Ford Crown Victoria for the Park & Recreation Department (\$436.66 per month, for 48 months, with an allowance of 18,000 miles per year). He advised that this would be through Mears Leasing, which uses the prices on the Sheriffs' Bid.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

Request to Expend Police Forfeiture Funds:

Mr. Treppeda advised that Chief Hunker is requesting to expend funds for the following items:

1.)	Co-Purchase of a Voice Stress Analyzer (Shared Equally with Bal Harbour, Bay Harbor, and Surfside)	\$4,289.00
2.)	Contribution to Bay Harbor D.A.R.E. Program (15% of Forfeiture Funds must be expended on drug education)	\$1,650.00
TOTAL:		\$5,939.00

Councilman Rosenfield questioned what a voice stress analyzer does. Chief Hunker

advised that it's a lie detector test.

A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

Request for Approval of Resort Tax Committee

Recommendations: Mr. Treppeda distributed the list of recommendations made by the Resort Tax Committee at the December 19, 2005 meeting, which showed the following:

1.)	Road Shows (November) (Sales missions to key travel call-centers in the U.S. Including Expedia, AAA, and American Airlines Vacations)	\$ 4,000.00
2.)	Media Mission to New York with Visit Florida (Director will represent the Village at this annual media event and will conduct media sales calls)	\$ 6,000.00
3.)	Individual Media Familiarization/Editorial Visits (To bring at least eight travel writers down)	\$12,800.00
4.)	Travel Agent Familiarization Tour - January (Host groups of travel agents at the Sea View)	\$ 9,000.00
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TOTAL:		\$31,800.00

Mayor Roth questioned the recurring item of \$4,000 for Expedia, AAA, and American Airlines. He thinks that the Sheraton has a responsibility to pick up some of the costs for advertising hotel rooms in Expedia, AAA, etc. He questioned if this will be a monthly expense. **Jose Lima, Director of Tourism Marketing**, advised that is not an advertisement, but are sales missions that were approved by the Council, at the Resort Tax Committee's recommendation, at the beginning of the fiscal year. He explained that they are sales calls to promote the destination and are not ads for the Sheraton. Mayor Roth noted that it was at the request of the management at the Sheraton. Mr. Lima explained that it was the Sheraton's idea, but what they are doing, which was on the marketing plan that was approved for the year, is going to booking centers that are already booking business and are potential booking centers for Bal Harbour to send business. He noted that it is also to boost the summer business. Mayor Roth noted that the Sheraton will not have any summer business, because they will be gone in May. He advised that he was against the resort tax budget of \$2 million, when the anticipated revenue is \$1.5 million. He also discussed the shortage during the month of the hurricane. Mayor Roth thinks that the revenue will be below \$1.5 million. Mr. Lima advised that he can't speak for the Committee. Mr. Treppeda explained that Mr. Lima answers to the Committee. He noted that the Committee discusses all of these items, comes to a conclusion, and Mr. Lima has to carry out the policies that the Committee sets. Councilman Rosenfield questioned how the Council knows what the benefit of this is. She questioned if the visitors are compared from last year to this year. Mayor Roth questioned if guests are asked when they check in what they booked through. Councilman Rosenfield is asking because she wasn't on the Council when this budget was approved. She questioned what the Village is getting, if \$4,000 is being spent monthly. She asked Mr. Lima if the Council receives monthly reports. Mr. Lima explained that they do. He advised that looking at the pre-9/11 levels, the Village has been doing the same type of marketing every year and the numbers have exceeded pre-9/11, which were the highest numbers for visitors and resort tax revenue for Bal Harbour.

Councilman Rosenfield questioned if there's any way to prove that came through Expedia, AAA, or American Airlines. Mr. Lima advised that he can ask the Committee to provide a report from the hotels and he believes that they can track this. He noted that the reason it's being requested is because it's measurable and it's a very trackable action item, which is why the Committee approved it. Councilman Rosenfield would like to see that. Mayor Roth thinks that Councilman Rosenfield is questioning if they are tracking it, since it's a trackable item. Mr. Lima explained that they track all of their incoming reservations. Mr. Treppeda explained that there is also an issue where the hotels sometimes don't like to release things like that, due to competition. Mr. Lima agreed that they do have proprietary information, but he can take any questions that the Council has back to the Committee and then they can respond if the Council wants. Councilman Rosenfield would also like to see the breakdown of the \$6,000 for the Media Mission to New York with Visit Florida. Mr. Lima advised that can be provided. Councilman Sanz questioned if these items were previously approved. Mr. Lima advised that the entire marketing plan was approved at the beginning of the year. Councilman Rosenfield still thinks that the Council needs the breakdown of the costs. Mayor Roth advised that the Council is questioning this in such detail, because in one month, the resort tax revenue is down \$54,000 (due to the hurricane). He advised that the budget, with the anticipated revenue of \$1.5 million, is down that \$54,000 and it won't be made up. He advised that they have to watch the money and the budget was based on a half million dollar deficit, which he thought was fiscally irresponsible. He thinks that the budget is supposed to be balanced, so that it comes out with zero. Mayor Roth thinks that if the anticipated revenue is \$1.5 million, then they should budget that to be spent, not \$2 million. Mr. Lima advised that he can take questions from the Council back to the Committee or the Council is invited to attend the Committee meetings to address the questions to them, but he can't answer questions on policy, because he only carries out the Committee's direction. Councilman Rosenfield questioned when the eight writers are coming down and the breakdown of the costs (\$12,800 for the Individual Media Familiarization/Editorial Visits). She questioned if the journalists have already scheduled their visits to Bal Harbour. Mr. Raheb is against money being spent for advertising, when the Sheraton and One Bal Harbour will not be open. Mr. Treppeda will provide more details to the Council on future reports. Mr. Wolpin noted that the Council is not familiar with these breakdowns, because it has been common over the years that this is how items have been approved as a part of a marketing plan and then when it's time to spend it, the actual expenditures come to the Committee and then to the Council. He advised that if the Council wants to change the policy where more detail is presented to the Council instead of just the Committee, then that could be done. Mayor Roth agrees with what Mr. Wolpin is saying, but doesn't think that this is a normal year. Mr. Wolpin advised that these are normal expenditures, this is part of the tourism, and this is all paid for with the tourist tax money, not the ad valorem property tax. He explained that one of the purposes of the tourism tax is that part of the money goes to promotion, advertising, and things of that nature. He noted that the Village gets the tax from the hotel guests and part of that is turned back into this campaign. He advised that doesn't mean that the Council can't get more information in the future, but noted that the Director is just coming in accordance with the normal procedures and he is being attacked. He noted that if the Council needs more information, then Mr. Lima is happy to get it. Councilman Rosenfield clarified that is all she is asking for. Mr. Lima advised that whenever they propose marketing initiatives, the Committee's number one priority is return on investment. Mr. Lima reviewed his resume. He explained that the costs to bring down those journalists include airfare, hotel rooms at the Sea View or Sheraton, meals, and ground transportation. He thinks that when they compare the return on investment and buy a one page ad in one of the publications that they write for, then it

would probably cost \$10,000-\$40,000. He advised that since it's editorial and people give more credence to that, it's multiplied by 2.5. He explained that it's a return on investment and is something that most convention and visitor bureaus and travel promotion agencies do on a regular basis for promotion. Mayor Roth clarified that this is no reflection on Mr. Lima and he knows that Mr. Lima follows the direction of the Committee. Mayor Roth doesn't think that this is a normal fiscal year, the Village started out with a \$54,000 shortfall in one month, and the Council wants to hone their pencils on the expenses, because he thinks the deficit will be greater. He advised that for a dollar they want two dollars worth. Mr. Lima advised that September was 150% above last year. Mayor Roth advised that the Village is still down 12% (\$27,000) and will continue to be down, due to the Sheraton closing and people knowing it will be closing. He thinks the concentration should be more on the remaining generators of the resort tax revenue (Sea View, Carpaccio, and the restaurants). Councilman Sanz suggested that the other Councilmembers attend the next Resort Tax Committee meeting, since they have a lot of questions about this. He pointed out that the Village has also used the resort tax money for the beautification of Collins Avenue and other things, not just advertising. Councilman Sanz thinks it's okay to ask questions, but Mr. Lima is not able to answer everything and if the Councilmembers want more information, then they should go to the meetings to find out.

Babak Raheb, resident – 128 Balfour Drive, advised that the Committee is spending money to bring visitors to Florida, but the Sheraton is closing. He thinks that \$1 million is being spent on advertising and the Village won't have anything next year. He thinks that the Village is spending more money for less (400,000) people to come. He clarified that the hotel's study advised that when the St. Regis is built, there will be 400,000 less visitors. Mr. Raheb thinks that the money is being wasted. He thinks that the money could be used for beautification and other processes and not for carte-blanc to be given for people to go to New York to bring business for next year, when there will not be any hotel except for the Sea View (220 rooms). He thinks the Council has the right to either table this or have the Sheraton come up with some of the costs. He doesn't think the Council should vote on this now. Mr. Lima requested that the Village Attorney clarify the usage of resort tax funds as dictated by the State of Florida. He thinks that in order for the Village to collect the money so it can be used for beautification and the residents aren't taxed for that, then half of it must be used for marketing and half of it must be used for beautification. Mr. Wolpin doesn't think there's a breakdown, but advised that under the Village Charter provision it's up to the discretion of the Village Council.

Brian Mulheren, resident – 10245 Collins Avenue, questioned if Mr. Lima works for the Council and the Village, or the Committee. He thinks that the Committee should come to the Council to report to them, not the other way around. He discussed damage from the hurricanes and money that needs to be spent on beautification. He advised that the Village isn't taking the money in and won't in the future, because it doesn't have a hotel or anyplace for people to come. He questioned why the money is being spent when there is no hotel. Mr. Mulheren thinks that they should beautify and keep the Village pristine. He thinks the Council is doing the right thing by asking questions. He doesn't think the money should be spent, just because it's budgeted. Mr. Mulheren doesn't think the Village should have to pay for guests to stay at the hotels, because the Village is bringing business to them. He thinks the budget needs to be addressed. Mr. Mulheren thinks that this should be tabled and they should know what's going on. He thinks that Mr. Lima works for the Village and the Committee shouldn't be telling him what to do.

Mayor Roth noted that in November the resort tax revenue was \$84,000 and approval of these action items is \$64,000. He advised that there would be nothing left. He noted that the Village had a hurricane and needs plants and beautification of the beaches. Mayor Roth thinks the Village needs funds for its use, not to advertise on Expedia for a hotel that's going out of business in five months. Mr. Lima clarified that he is not asking for the expenses and that the Committee is. Mayor Roth advised that Mr. Lima is an employee of the Village. Mr. Wolpin advised that besides the room tax, part of the tourist resort tax is also the food and beverage sales and there are some restaurants that generate impressive figures for the tax dollars. Mr. Lima clarified that the number one resort tax generator is the Sheraton, the number two is the group of restaurants at the Shops, and the third is the Sea View.

Rhea Kelly, resident, discussed the negotiations with the St. Regis. She thinks that the Council is assuming that part of the negotiations would not include the loss to the Village of the revenue during construction. She thinks that's a strong negotiating point. Ms. Kelly advised that if they are willing to make up for the loss of revenue, then the budgeted items would have to include that as a credit. She thinks that the Council is premature until the negotiations are over with. Mayor Roth thinks Ms. Kelly is premature and advised that they are talking about this fiscal year ending September 30th and not construction two years down the road. Mr. Wolpin clarified that when Merrett Stierheim enumerated the financial matters that he would be negotiating that one of the items was the loss of municipal resort tax revenue. Mr. Stierheim had advised that his job is to negotiate financial matters and that is one that he is looking at closely.

Mr. Raheb advised that the Village doesn't have that money and shouldn't have an assumption that it will. He thinks this should be tabled until the Village has that money.

Mayor Roth thinks that the representative from Starwood said at a previous meeting that they were going to make good on all the loss of revenue. He isn't concerned about that and doesn't think that part of negotiations will be difficult.

A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to table this, until the next Council meeting. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

Mayor Roth advised that there will be a full Council to discuss it then.

Request for Approval of Annual Performance Bonuses for General Employees: Mr. Treppeda requested approval of \$74,460.93 for annual performance bonuses. Mayor Roth reported that the average bonus was 3.6%.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

Consideration of Annual Performance Bonuses for Village Manager and Village Clerk: Mr. Treppeda and Mrs. Horvath voluntarily left the meeting at this time.

Dina Cellini, resident – 211 Bal Cross Drive, would like the general employees to also be eligible for a 5% bonus. Mr. Wolpin reviewed the Manager's memorandum advising that employees are available for a 1%-4% bonus and Department Heads and exempt management employees, not eligible for overtime, are eligible for up to a 5% bonus. Ms. Cellini doesn't think there should be a cap system and thinks that all employees should be eligible for the same bonus percentage. Councilman Rosenfield discussed the other factors for the bonus. Mayor Roth advised that the employees perform outstandingly. He noted that he has asked for a study of general wages to be reviewed. Councilman Sanz questioned if Department Heads or Managers receive overtime. Mr. Wolpin advised that they don't. Ms. Cellini questioned if Mayor Roth is directing the Manager to do a study. Mayor Roth advised that he has already done that.

Brian Mulheren, resident – 10245 Collins Avenue, thinks that the employees who worked during the hurricane should be given a little more this time. Mayor Roth advised that was addressed and Mr. Treppeda did pay them extra.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve a 5% bonus for both the Village Manager and the Village Clerk. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

12. OTHER BUSINESS:

John Donahue, resident – 10245 Collins Avenue, discussed the trucks spraying the palm trees and questioned what they are spraying. Mr. Treppeda reported that they are spraying water, to keep the birds off.

Rhea Kelly, resident, advised that she is raising an issue for Ms. McGinnis. She advised that during the hurricane Ms. McGinnis' neighbors' tree fell on her house, caused damage, and no action has been taken against the neighbor. Ms. McGinnis is requesting assistance from the Village to trim the tree. Ms. Kelly requested assistance for Ms. McGinnis. She explained that Ms. McGinnis has given permission to cut the tree. Ms. Kelly advised that Ms. McGinnis doesn't have the right to cut the tree and Mr. Sussman has refused. She thinks there should be some action against Mr. Sussman. Mr. Treppeda advised that this is a civil matter, between two neighbors. He advised that the Sussmans have been cited for a Code violation. Mr. Treppeda thinks that Ms. McGinnis should contact her insurance company and make sure she takes care of her property, as soon as possible.

Chief Hunker advised that the Sussmans were cited for this violation, but the problem is that it's a civil liability issue. He explained that at one time the tree was encroaching on Ms. McGinnis' yard and during the hurricane the limbs fell on the house. Chief Hunker advised that the Sussmans' position is that it was an act of God and therefore Ms. McGinnis' insurance should cover it. He explained that the Sussmans were cited, because of the encroachment, so there are two different issues. Chief Hunker advised that Ms. McGinnis did give a waiver to the Sussmans to remove the tree. He explained the problem is that the Sussmans feel that it's an act of God and they're not liable and Ms. McGinnis feels that they are responsible, because of the encroachment. Chief Hunker noted that it's a legal matter, between two parties. He advised that a code enforcement hearing will be set for the violation.

Chief Hunker discussed other violations at the Sussmans' property. Mr. Wolpin advised that it's a private legal matter.

Carter McDowell, representing the Sheraton Bal Harbour Joint Venture, requested that a meeting be set for the St. Regis ordinance on January 5th. Mayor Roth questioned if a Development Agreement can be worked out by then. Mr. McDowell thinks that it can. Mr. Wolpin advised that the Council can set the meeting for January 5, 2006, at 9:00 a.m. and if the Development Agreement is not ready, then the Council could elect to defer it again.

Babak Raheb, resident – 128 Balfour Drive, discussed having the meeting so close to January 1st. Mayor Roth explained that Mr. Stierheim was out of town for a week.

Brian Mulheren, resident – 10245 Collins Avenue, thinks that it should be done at the regular Council meeting. He thinks this item should have been discussed at the beginning of the meeting, because it's being added to the agenda without public notice. Mr. Mulheren thinks that the Council is giving preferential treatment to people and doesn't think that this follows the sunshine law. Mr. Wolpin advised that this was discussed under Tab C and at that time, the Council stated that before the meeting ended, at the recommendation of Stephen Helfman, that the Council would confirm the date and time for that special meeting.

Councilman Rosenfield noted that the Council has postponed this numerous times. She pointed out that this item was supposed to be heard today, but was not, because the negotiations were not complete. Councilman Rosenfield discussed the numerous meetings that the public has attended, regarding the project. She thinks that they should have an opportunity to present it to the Council.

Mr. Raheb is not against the building, but wants it to be done properly. He thinks that setting a special meeting shows that the Developer gets special attention.

Gabriela Webster, resident – 30 Park Drive, thinks that they should meet January 5th.

Dina Cellini, resident – 211 Bal Cross Drive, thinks that people who are interested know about the regular Council meetings and doesn't think this calls for a special meeting. Ms. Cellini questioned if there is a meeting on January 5th and the project is passed on first reading, when the second meeting is proposed. Mayor Roth advised that would be at the regular February Council meeting.

Mr. McDowell explained that the hotel is scheduled to close at the end of May and needs to make a decision in January whether that's happening or not. He advised that they have been delayed since the application submittal in April. Mr. McDowell advised that they are asking, as a courtesy, for a first reading in January. He explained that it's important for the Starwood companies to make a decision on this property, which is the largest taxpayer in the Village. Mr. McDowell requested having the first reading on January 5th and the second reading in February. Mayor Roth questioned the difference. Mr. McDowell explained that the difference is in making a decision as to whether the hotel is going to close or not.

Jordan Cohen, resident – Balmoral, is concerned about the Village negotiator being rushed. He is against having the meeting on the 5th and thinks it should remain on the 17th.

Rhea Kelly, resident, is in favor of the January 5th meeting.

Gabriela Webster, resident – 30 Park Drive, thinks that the meeting should be on January 5th and that Mr. Stierheim should understand that the residents need to be informed and need to voice their concerns.

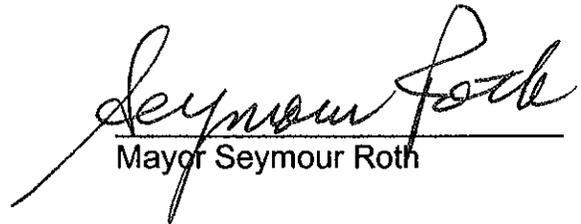
A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to have the meeting on January 5th, 2006, at 9:00 a.m., conditioned upon the full Council being present and the Development Agreement being available and, if those conditions are not met, then the matter will be further continued. The motion carried unanimously (3-0), with Assistant Mayor Berlin and Councilman Jacobi absent.

It was the consensus of the Council not to have the second reading before the February regular Council meeting.

Mr. Mulheren thinks the bird situation is terrible and should be worked on seven days a week. Mr. Treppeda will look into that. Mr. Mulheren discussed the traffic from the One Bal Harbour and the Harbour House projects.

Mayor Roth announced that the Village will have a 60th Anniversary event in March at the Sea View.

13. ADJOURN: There being no further business to come before the Council, *the meeting was adjourned at 11:54 a.m.*



Mayor Seymour Roth

Attest:



Ellisa Horvath, CMC
Village Clerk