

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
REGULAR MEETING – OCTOBER 17, 2006

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, October 17, 2006, at the Bal Harbour Village Hall Council Chambers (655 – 96th Street, Bal Harbour, Florida).

1. CALL TO ORDER/ROLL CALL: The meeting was called to order at 9:00 a.m. by Mayor Roth. The following were present:

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

Alfred J. Treppeda, Village Manager
 Ellisa Horvath, CMC, Village Clerk
 Andrea Greenblatt, Admin. Assistant
 Richard J. Weiss, Village Attorney

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 Lydia Kordalewski, Village Park, Recreation, & Transportation Director.

3. APPROVAL OF MINUTES: *A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve the minutes of the September 19, 2006, Regular Council Meeting, and October 4, 2006, Special Council Meeting, as submitted. The motion carried unanimously (3-0).*

4. PRESENTATIONS: None.

5. ORDINANCES SECOND READING/PUBLIC HEARING: *A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to defer this item to the end of the agenda. The motion carried unanimously (3-0).*

6. ORDINANCES FIRST READING: None.

7. RESOLUTIONS/PUBLIC HEARINGS: None.

8. RESOLUTIONS: The following Resolution was read by title, by Mrs. Horvath:

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE,
 FLORIDA, AUTHORIZING THE ESTABLISHMENT OF ACCOUNTS FOR
 POLICE STATE FORFEITURE FUNDS AND POLICE FEDERAL FORFEITURE**

FUNDS WITH THE STATE OF FLORIDA'S BOARD OF ADMINISTRATION
LOCAL GOVERNMENT INVESTMENT POOL.

Mayor Roth opened the meeting for public comment. There being none, the meeting continued.

A motion was offered by Councilman Sanz, and seconded by Councilman Rosenfield to approve the resolution. The motion carried unanimously (3-0); thus becoming Resolution No. 691.

9. REPORTS AND RECOMMENDATIONS:

A. MAYOR AND COUNCIL:

Mayor Roth discussed the new library program, with the Village reimbursing residents for the cost of County Library cards (two cards per household at \$50 each).

Mayor Roth announced that the 60th Anniversary celebration is scheduled for December 10th, at the Bal Harbour Beach Club. He noted that Joseph Imbesi, Club Owner, has offered the use of the facility. Councilman Rosenfield encouraged all residents to participate.

B. VILLAGE ATTORNEY: No items.

C. VILLAGE CLERK:

Lobbyist Registration Report: As of October 13, 2006: Mrs. Horvath reviewed the list of Lobbyists currently registered with the Village.

D. VILLAGE MANAGER:

Request for Approval of Agreement with WCI for Donation for Beach Access Path: Mr. Treppeda explained that WCI is donating \$25,000 towards the cost of providing a temporary access path at the Beach Club and will donate an additional \$12,000, if the north access path is not reopened by January 1, 2007. He requested authorization to approve the agreement with WCI, to accept their donation.

T J Marshall, South Florida Surfrider Foundation, appeared before the Council. Mayor Roth directed Mr. Marshall to appear under Other Business.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve the agreement. The motion carried unanimously (3-0).

Mr. Treppeda requested additional funding for improved fencing, per the request of Mr. Imbesi, Beach Club.

Babak Raheb, resident - 128 Balfour Drive, suggested approval at a maximum amount.

Mr. Treppeda suggested up to \$20,000 for the fence. Mayor Roth suggested that WCI reimburse the Village for the cost. Mr. Treppeda will discuss that with WCI.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve up to \$20,000 for a fence for the temporary access path. The motion carried unanimously (3-0).

Mr. Treppeda explained that once the north access path is reopened, Mr. Imbesi would like to keep the access path at the Club open as long as possible.

Request for Approval of Funds to Lease Three Police Vehicles:

Mr. Treppeda explained that Chief Hunker is requesting authorization to enter into lease agreements with Mears Leasing for the following police vehicles:

2	2007 Ford F150 SuperCab FX Trucks	\$450.00 each, per month
1	2007 Ford Crown Victoria	\$420.00 per month

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (3-0).

Request to Expend Police Forfeiture Funds:

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

1.)	Donation to the PBA Love Fund	\$ 1,000.00
2.)	Equipment for Police Vehicles	\$37,500.00
TOTAL:		\$38,500.00

A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to approve. The motion carried unanimously (3-0).

Fourth Quarter Budget Review – Fiscal Year 2005/2006 -

Christopher Wallace, Village Finance Director: Mr. Wallace reported that the Village funds did very well last year. He summarized that the General Fund finished with a \$225,000 surplus, the Tourism Fund did well, the Security Fund will probably go into reserves, as anticipated, and the Water & Sewer Fund finished well.

Mr. Wallace reported that the audit will begin in early January. He noted that the year was better than expected.

Babak Raheb, resident - 128 Balfour Drive, questioned the Resort Tax Fund income for the year. Mayor Roth discussed the decrease in Resort Tax funds (down 4% for 11-month period). Mr. Wallace reported that the year was good, but is tapering off. He explained that revenues were down, but that the expenditures were lower than expected.

Request for Approval of Funds for 60th Anniversary Party and

Employee Holiday Party: Mr. Treppeda requested funds for the Village's 60th Anniversary Party and Employee Holiday Party. He reported that the Anniversary Party is scheduled for December 10th, at the Beach Club, and the Employee Party is scheduled for December 8th, at the Sea View Hotel. He requested approval of \$85,000 for both parties.

Mr. Treppeda reported that funds donated by the Related Group (\$10,000) and Starwood (\$20,000) will be used for the Anniversary Party fireworks and entertainment.

Babak Raheb, resident - 128 Balfour Drive, thinks that the Shops should also provide a contribution for the Anniversary Party.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve \$85,000 for the Anniversary Party and Employee Holiday Party. The motion carried unanimously (3-0).

Request for Approval of Funds for Holiday Snow Festival: Mr. Treppeda requested up to \$9,000 for the annual Village Snow Festival at the Bal Harbour Park.

A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to approve up to \$9,000.00 for the Holiday Snow Festival. The motion carried unanimously (3-0).

10. OTHER BUSINESS:

TJ Marshall, South Florida Surfrider Foundation, read a letter dated Sept. 20th that he sent to the Village Council, addressing the lack of beach access and parking, due to the closure of the north access for storage purposes for the One Bal Harbour project. He reported that he was notified that the Village will be providing a temporary path at 10201 Collins Avenue, without parking, and that the closest parking would be at Haulover or the Bal Harbour Shops. Mr. Marshall reviewed a letter from Michael Patrizio, Senior Project Manager for WCI, noting that the Development Agreement never considered the public inconvenience due to the closing of the north access path.

Mr. Marshall discussed a violation of State Statute 160.155, which addresses public access to the beach. He distributed information to the Council. He reviewed the history of surfing and its importance in the Village. He noted that the Whitman Brothers were the founding fathers of surfing in Florida. Mr. Marshall discussed the north access area being used as a storage area, without any construction of the walkway. He thinks that the alternate pathway should have been opened before the north access was closed. He suggested that the north access path be reopened, until the alternate is opened. He also thinks that the alternate access needs to provide comparable parking. Mr. Marshall reviewed a map showing the coastal construction control line and explained that the Florida Statutes provide for anything within 5,000 feet landward of the coastal control line to be covered under 160.155.

Mr. Marshall noted that they haven't gone to litigation before and they don't want to interfere with the One Bal Harbour project. He thinks that if the situation continues, then they will have to contact the Florida DEP regarding the violation and seek a halt to construction. He noted that they would also have to notify the Army Corps of Engineers regarding the violation and seek exclusion of the Village from future funding, since the public is being denied reasonable access.

Mr. Marshall discussed the lack of parking at the alternate path and families having to carry items over the bridge or through the Shops, to go to the beach. He added that the parking rate at the Shops is high. Mr. Marshall doesn't think those two parking areas are equitable. He requested that the north beach access be re-opened until the alternate is ready. He noted that they are in favor of the renovation of the area, but that it must be in accordance with State law.

Mr. Treppeda explained that the Bal Harbour Bus is available at no cost, for those parking at Haulover. He reported that the new temporary access should be opened in two weeks. Mayor Roth explained that parking at the Club is not available, due to liability issues. He discussed the bus that is available. Mayor Roth thinks that the Village has done everything possible to provide access. He explained that the health, safety and welfare of people were the Village's primary concerns during the construction. He discussed the beatification of the area and requested that the Foundation bear with the Village for the next three to four months. Mayor Roth noted that the Village could have worked something out with the Shops for paying for parking there. He understands the Foundation's concerns and explained that the Village wants to cooperate. He reported that the Village has tried to address the issue in the safest, expeditious way.

Mr. Raheb thinks that the Foundation should have appeared during the process regarding the One Bal Harbour project, not after. He thinks that the Village has done a good job in considering public safety first. He discussed the accident at the One Bal Harbour project. Mr. Raheb pointed out that access is provided at 96th Street and a bus is also provided, etc.

Mayor Roth thinks that the Foundation will be satisfied, when the temporary access is done and when the project is done.

A motion was offered by Councilman Sanz and seconded by Councilman Rosenfield to recess the meeting, until after the General Employees Retirement Board Meeting. The motion carried unanimously (3-0).

The meeting was recessed at 9:34 a.m.

The meeting was reconvened at 10:13 a.m., after the General Employees Retirement Board Meeting. The following were in attendance:

Mayor Seymour "Sy" Roth
 Councilman Jean Rosenfield
 Councilman Jaime M. Sanz
 Alfred J. Treppeda, Village Manager
 Ellisa Horvath, CMC, Village Clerk
 Andrea Greenblatt, Admin. Assistant
 Richard J. Weiss, Village Attorney

Absent: Assistant Mayor Howard J. Berlin
 Councilman Joel S. Jacobi

ORDINANCES SECOND READING/PUBLIC HEARING: The following Ordinance was read by title, by Mrs. Horvath:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE VILLAGE CODE CHAPTER 21 "ZONING" BY AMENDING ARTICLE I "IN GENERAL," SECTION 21-1 "DEFINITIONS AND RULES OF CONSTRUCTION" AND BY AMENDING ARTICLE III "DISTRICT REGULATIONS," DIVISIONS 2 THROUGH 11 INCLUDING SECTIONS 21-146.1, 21-170, 21-195, 21-215, 21-240, 21-265, 21-293, AND 21-318 RELATING TO STRUCTURE HEIGHT; PROVIDING FOR

SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Weiss explained the curative ordinance, which deals with an unintended consequence of the petition (Charter Amendment). He noted that the ordinance was approved at first reading, without any amendments. Mr. Weiss explained that at that time there was general consensus that Ms. Cellini's comments at the first reading were something that the Council thought was appropriate. He noted that the Village Manager has provided a memo showing the three amendments that would incorporate Ms. Cellini's comments. Mr. Weiss added that if the Council is in favor of those changes, then a motion must be made to amend those appropriate sections (RM1, 2, and 3 Districts). Councilman Rosenfield questioned if any houses in the District are 35 feet high.

Daniel Nieda, Village Building Official, explained that the current Code allows a maximum height of 35 feet for oceanfront homes and 30 feet for dry lot homes. He explained that Ms. Cellini felt that the dry lot multi-family buildings should be a maximum height of 30 feet, to match the homes in that area.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to amend the Ordinance as follows: Section 21-170 to 30 feet, Section 21-195 to 30 feet, and Section 21-215 to 30 feet. The motion carried, with the vote as follows: Mayor Roth yes; Assistant Mayor Berlin absent; Councilman Jacobi absent; Councilman Rosenfield yes; Councilman Sanz yes.

Mayor Roth opened the public hearing.

John Shubin, Shubin & Bass – representing Bal Harbour Shops LLLP, requested further amendments to the proposed Ordinance, which would revise Section 21-318 Business District. He reported that the Shops has filed a lawsuit seeking to challenge the Charter Amendment that was initiated by the Coalition. He noted that they are in the process of settlement negotiations with the Coalition in an attempt to dismiss the litigation and to allow the citizens to vote on the Charter Amendment in a manner that does not impair the rights of the Shops. He distributed and reviewed the suggested amendments. He explained that the intent allows for reconstruction of the Shops in the event of a catastrophe and for future modest retail expansion, if the amendment passes. He added that if the amendment fails, then the revision would not occur. Mr. Shubin noted that the Council would not be pre-committing to any future expansion and clarified that the Shops would need to go through the process. He further explained that if the amendment passes, then the Shops would have the right to seek certain future requests, without a Charter amendment. Mr. Shubin thinks that this is in the best interest of the community, saves taxpayer dollars in that it will lead to the conclusion of the litigation, allows for the vote of the electorate, and allows the Shops if the amendment passes to continue retail expansion, without committing the Council or Coalition to anything.

Connie Quinlivan, Tucker Gibbs Law Firm - representing the Coalition, reported that the Coalition approves the submitted language.

Mr. Shubin read the proposed amendment into the record.

Babak Raheb, resident – 128 Balfour Drive, questioned if the language would be null/void if the owner changes. Mr. Weiss thinks that any owner would have the same

rights.

Michael Miller, Village Planner, explained that commercial structures are currently limited to a height of 56 feet (or 3 stories) and parking garages to a height of 36 feet (or 3 stories). He explained that the amendment proposes to keep the building height the same, but allows the garage to increase to 56 feet (5 stories). He added that if an owner has five or more acres of land, then an area not exceeding 42,600 square feet of that lot area can have a structure not exceeding 69 feet. He clarified that the new language includes a building height story limit of 19 feet and a garage at 11 feet 6 inches. Mr. Miller understands that this is a negotiation between two parties and he thinks that Village staff can live with it.

Mayor Roth thinks that additional parking would be beneficial to the Village. He is in favor of the amendment, if the Council and staff think it's acceptable. Mr. Nieda agreed with Mr. Miller.

Councilman Rosenfield questioned other residents knowing about the changes and being informed. Mayor Roth suggested that a letter be sent out before the election, with the final ordinance language. Councilman Rosenfield thinks that this should have been done previously, to allow more public input. She questioned increasing the height from 56 feet to 69 feet. Mr. Shubin re-emphasized that the Council is not approving anything for the Shops and that the purpose of the ordinance is that if the amendment passes, then anything up to 69 feet within a defined area would be exempt from the amendment, but would still have to go through the hearing process.

Mr. Weiss noted that if a proposed building in the Business District adheres to the Code, then no public hearing is required. Mr. Shubin reported that agreements have been made with respect to what/where might be done in the future that would require additional public hearings. Mr. Weiss noted that would be not withstanding any private agreements. Mr. Shubin advised that the Coalition has reached an agreement, whereby the litigation that the Village is a party to as a defendant, would be dismissed. Mr. Weiss clarified that it wouldn't have to go through a public hearing, if the Code was adhered to.

Mr. Raheb questioned the requirement of a traffic study. Mr. Weiss explained that the Code requires a traffic study for development in the Business District, when plans are submitted. He reported that the Shops is exempt from appearing before the Architectural Review Board. Mr. Raheb clarified that this would allow the Shops to build up to 69 feet, without any input, which he is against. He thinks it should go to court.

It was the consensus of the Council that residents be notified of the Ordinance language, before the November election.

Mr. Shubin volunteered that if anything is submitted to the Village, as a result of this ordinance, then notice would be provided to the Coalition. He explained that it's not their intention to use this ordinance to do anything without the Coalition or public knowing about it. He noted that there would be a transparent process going forward. Mr. Shubin advised that nothing is pending or in the pipeline for the Shops and that this is to preserve certain rights/opportunities if the amendment passes. He clarified that if the amendment doesn't pass, then the Code would remain the same.

Dr. Michael Krop, resident - 9601 Collins Avenue and President of the Coalition,

thought there was a process for the Shops to go through. He reserved the right to oppose whatever is suggested. It was his understanding that the Shops would have to come before the Council for approval. He advised that if that can be rectified, then the Coalition will support this, but if it can't, then they have a problem with that.

Mr. Nieda clarified that the Code exempts the Business District from appearing before the Architectural Review Board. He reported that Stanley Whitman had previously said that the Shops would voluntarily submit to the Board. Mr. Weiss clarified that projects in the Business District don't have a public process, if the Code is adhered to. Mr. Nieda agreed. Mr. Weiss noted that there is no formal public hearing process for that District, unless a variance is requested.

Mr. Raheb suggested that Council approval be needed to build to 69 feet.

Mr. Shubin explained that any future expansion of the Shops would require a variance. He noted that nothing is pending for the Shops. He clarified that the Council isn't approving anything and that there's a process in existence. Mr. Shubin reported that they will provide full public notice and offer public input.

Councilman Rosenfield questioned if the Attorneys for both the Coalition and the Shops have signed off on this. Mr. Weiss noted that Dr. Krop has not. Councilman Rosenfield questioned if the Coalition is withdrawing their approval. Mayor Roth suggested letting the voters decide.

Mr. Raheb thinks that the 69 foot height, without a review process, creates a problem. He noted that the Coalition thought the Shops would have to come before the Council.

Mr. Weiss explained that a private agreement might require that. Mr. Raheb suggested that language be added that if something is built to 69 feet, then it would require Council approval.

Mr. Shubin has no problem with bringing anything above a height of 56 feet to the Council. He explained that it's not their intention to avoid public review. Mr. Weiss will add language providing that they must meet the requirements and receive Council approval, in order to use the bonus provisions. Mr. Shubin and Dr. Krop agreed.

Dr. Krop agreed to the changes and advised that he would sign the agreement, based on that. He thanked the Council for the curative ordinance.

Mayor Roth closed the public hearing.

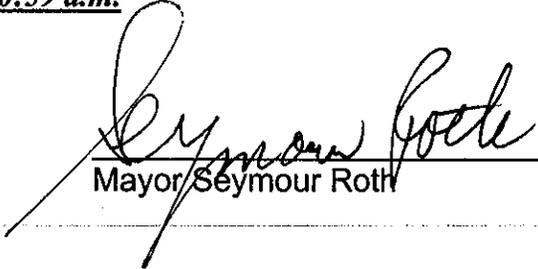
A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to amend the Ordinance, to approve the last document submitted by the parties and read by Mr. Shubin, subject to an amendment which would require a public hearing and approval in order for anyone in the Business District to exercise the bonus provisions, with respect to the 69-foot height. The motion carried unanimously (3-0).

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve the Ordinance, as amended twice. The motion carried unanimously, with the roll call vote as follows: Mayor Roth yes; Assistant Mayor Berlin absent; Councilman Jacobi absent; Councilman

Rosenfield yes; Councilman Sanz yes; thus becoming Ordinance No. 512.

Babak Raheb, resident – 128 Balfour Drive, reported that the signs blocking the streets in Surfside are down (one has been removed and the other will be removed at the end of the week).

11. ADJOURN: There being no further business, a motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to adjourn. The motion carried unanimously (3-0), and the meeting adjourned at 10:59 a.m.



Mayor Seymour Roth

Attest: _____



Ellisa Horvath, CMC
Village Clerk