BAL HARBOUR VILLAGE
LOCAL PLANNING AGENCY MEETING MINUTES
OCTOBER 19, 2010

A Local Planning Agency Meeting was held on Tuesday, October 19, 2010, 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 7:00 p.m. by Mayor Rosenfield. The following were present:

Mayor Jean Rosenfield
Assistant Mayor Joni D. Blachar
Councilwoman Patricia Cohen
Councilman Martin Packer

Alfred J. Treppeda, Village Manager
Ellisa Horvath, MMC, Village Clerk
Andrea Greenblatt, Administrative Assistant
Richard J. Weiss, Village Attorney
Anthony Recio, Village Attorney

Absent: Councilman Jaime M. Sanz

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

2. PLEDGE OF ALLEGIANCE: The Pledge was led by Mayor Rosenfield.

3. APPROVAL OF MINUTES: ***A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve the July 27, 2010 Regular Meeting Minutes. The motion carried (4-0).***

4. PUBLIC HEARINGS:

Mayor Rosenfield explained that the meeting was the first time that the issue was being heard by the Village and the Council had not taken a position.

Mr. Recio explained the process and the proposed Comprehensive Plan amendments. He explained the role of the Council as the Local Planning Agency to make a recommendation to the Council. He explained the procedure.

Mr. Recio explained that a sign-in form (Comprehensive Plan Citizen Courtesy Information List) was available at the meeting that would be sent to the Department of Community Affairs, along with the amendment. He clarified that the State would notify the people listed on the form of their action on the application.

Consideration of the Following Ordinance to Amend the Comprehensive Plan Based on an Application Submitted by the Bal Harbour Shops: The following ordinance was read, by title, by Mrs. Horvath:

> **AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE FUTURE LAND USE MAP (FLUM) DESIGNATION OF A PARCEL OF LAND LOCATED AT 501 96TH STREET, BAL HARBOUR VILLAGE, FLORIDA, FROM "INSTITUTIONAL" TO "COMMERCIAL"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

Michael Miller, Village Planner, reviewed the Application for the Church by the Sea site. He explained that the Applicant did not own the site, but that the Statute was silent on them being able to apply even though they were not the owners and did not have a contract for the site. He noted that it was not his position to say if the Applicant was valid. He discussed the traffic impacts for the change from a church (institutional) to commercial. He reported that there was a capacity to handle the change if it occurred. He reported that there was not a big difference between water, sewer, and solid waste. He discussed the Comprehensive Plan policy. Mr. Miller reviewed the main objective to honor the future land use map. He had some reservations recommending Council approval for the following reasons: the Applicant did not have legal ownership or authorization from the owner, a change to position the property for future acquisition that may or may not occur, may intend to beat Amendment 4, and a Comprehensive Plan consistency issue. He noted that if it was changed to commercial and the Shops did not buy the property, then the Church could sell it to anyone for commercial use, which may or may not be good. He entered his staff report, dated October 14, 2010, into the record.

Consideration of the Following Ordinance to Amend the Comprehensive Plan Based on an Application Submitted by the Bal Harbour Shops: The following ordinance was read, by title, by Mrs. Horvath:

> **AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE FUTURE LAND USE MAP (FLUM) DESIGNATION OF A PARCEL OF LAND LOCATED AT 655 96TH STREET, BAL HARBOUR, FLORIDA, FROM "MUNICIPAL" TO "COMMERCIAL"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

Michael Miller, Village Planner, reviewed the Application for the Village Hall site. He explained that the Application was filed by the Shops and the Village is the owner. He reviewed the request to change from "municipal" to "commercial", which was a small scale amendment (under 10 acres). He noted that the same things were applicable to this site that were noted for the prior site. He pointed out that there was not an agreement and the Village did not give authorization to change the designation on its property. He explained that the Application was signed by the Applicant instead of the owner. He discussed Amendment 4. Mr. Miller reported that the Comprehensive Plan had always shown the site as "municipal". He again explained that State law was silent as to who may file. Mr. Miller noted that if the map was changed for this property then the Village would control what would happen, which would provide some freedom, but explained that there was some

benefit to keeping it "municipal." He reviewed some increase in the traffic and the water/sewer being the same or reduced. He concluded that there was currently no plan or agreement to sell the lands and that the application was a request to position the property. He noted that the request could be found inconsistent with the Comprehensive plan language.

Mayor Rosenfield explained that the Council would never take any action without public opinion.

John Shubin, Attorney - Shubin & Bass representing Bal Harbour Shops LLLP, the Applicant, reported that they had properly and lawfully filed two applications for small scale Comprehensive Plan amendments (Church and Village sites). He requested an affirmative vote on first reading and was prepared to agree not to consider a vote on second reading until they had the authorization by the property owners. He discussed the Charter amendment (passed in November 2006) restricting height. He noted that the Village always had something similar to Amendment 4 in that. Mr. Shubin explained that the idea of expansion at the Shops had been thought about by the Whitman family in the past. He discussed an expansion previously presented of what could be done with numerous meetings with the community, etc. He reported that he had appeared before the Council then and the Village made tweaks to the zoning code and they subsequently dropped their challenge to the charter amendment. He discussed the proposed constitutional amendment (Amendment 4), which motivated the Shops to file the application and think of what they wanted to do regarding the expansion. Mr. Shubin noted that they wanted to have a transparent process and needed to take the first step, which was the filing of the applications, which were motivated by Amendment 4.

Mr. Shubin requested approval on first reading, with the understanding that it would not be scheduled for a second reading, until they had consent. He noted that none of that would occur before November 2nd, so they wouldn't have an affirmative vote before the vote for Amendment 4. He discussed all of the issues to be addressed. He requested a signal through an affirmative vote that it was worth their time and effort to continue. He reported that they hadn't lobbied the Village or met with the Councilmembers regarding the application, since they wanted the process to begin tonight at the public forum. Mr. Shubin noted that the infrastructure impacts would be minimal. He again requested an affirmative vote, conditional to the second reading not being scheduled until an appropriate consent was acquired by the properties.

Mayor Rosenfield opened the public hearing.

Anamarie Kelly Stoppa, 77 Camden Drive, spoke against the Application, since the Applicant signed as the owner. She discussed the deed that the Church held, showing that it was in the residential section and not any commercial district. She discussed Camden Drive missing. Ms. Kelly discussed the restrictions on the deed for selling, etc. and offered a copy of the deed as the governing document.

Roger Carlton, Town of Surfside Interim Manager, voiced the concerns of the Surfside Commission. He noted that the study for both of the applications showed an increase in traffic on the south side of 96th Street, which would affect Surfside. He discussed making 96th Street more pedestrian friendly. He requested that the Village work with Surfside in the process and not take action tonight. He offered any consultant/staff work that was

needed to work together. Mr. Carlton acknowledged the attendance of Surfside Commissioner Edward Kopelman.

Dr. Stephen Scheinman, 234 Bal Cross Drive, requested that if the Whitmans developed the property that it be done in a balanced portion.

Beth Berkowitz, 10160 Collins Avenue, read the rest of the Church's deed that Ms. Kelly did not read. She discussed a reverter clause and noted that it was an example of property being taken without proof of ownership. She reported that Village Hall belonged to the residents and they should all have a say, especially since it would be reviewed as a possible historic property (older than 50 years). She discussed the Applicant filing without consent or knowledge of the owner.

Mayor Rosenfield clarified that the Council would not take any action without public input.

Neil Alter, 9801 Collins Avenue, questioned spending time on the issue when there wasn't consent or demonstration of any commitment from the Church or the Village. Mayor Rosenfield clarified that everyone had a right to bring a petition before the Council. Mr. Alter objected to approval of the applicant going further, without consent from the owners.

Kerry Rosenthal, Rosenthal Rosenthal Roscoe Kaplan, Aventura, Counsel for Church by the Sea, introduced the Church Pastor, members, etc. He voiced that the Church did not oppose the application for amendment. He was pleased that the Applicant would not go forward with a second reading, without the Church's consent.

Dina Cellini, 211 Bal Cross Drive, clarified that when the Charter amendment passed overwhelmingly there were plans to build an 18 story hotel at the Shops. She questioned if Amendment 4 passed and the Application was approved on second reading if it would then have to be approved by the voters. Mr. Recio didn't know and explained that it would be decided by the courts. He explained that it would not be adopted until after the November election. Mr. Weiss reported that his firm had not rendered an opinion on how it would be interpreted. Ms. Cellini urged that the only way to ensure that people would be given their chance to vote was to deny the application and let them come back. She recommended that the Council deny the application. She personally was not necessarily opposed to an expansion of the Shops, but noted that the residents didn't know what the plans were. She discussed issues of moving Village Hall, where the Public Works would go, etc. She suggested that the Shops schedule a workshop for the community to present their plans and the Council give feedback. She spoke against the Village considering selling Village property without knowing where the Village was going. She recommended that the Council deny the application.

Mayor Rosenfield explained that the Council would have open meetings and discuss every aspect of the application. She discussed prior traffic studies and moving the public works building, etc.

Ms. Cellini noted that both of the ordinances had a whereas clause that "it's in the best interest of the Village". Mr. Weiss explained that the Council had not adopted the ordinance and every ordinance carried the presumption that it was in the best interest of the Village. He clarified that it was there for the Council to adopt or reject.

Councilman Packer clarified that the Council could also defer.

Mr. Shubin explained that they would like consent on first reading, because if the application was denied then there wouldn't be a pending application before the Council. It was his understanding that people wanted the maximum amount of participation. He explained that it was not just re-filing the application but was spending alot of money, etc. He suggested approval on first reading and deferring the second reading to have public workshops, etc.

Michael Krop, 9601 Collins Avenue, didn't know if he was for or against the project. He suggested holding the first reading at the November meeting, to allow review of the application. He discussed zoning at the ONE, St. Regis, etc. He questioned what the Village would get to rezone the properties. He suggested thinking of the needs of the Village. Mayor Rosenfield explained that the property was zoned business and the Application was regarding the Master Plan, not the zoning. Dr. Krop questioned if the residents were able to submit a petition to oppose it, if they wanted. Mr. Weiss will look into that.

Mayor Rosenfield read a letter from ***Anthony Gillam, 9800 Collins Avenue***, requesting that the Application be denied or deferred.

Mayor Rosenfield read a letter from ***Daniel and Sybille Holder, 24 Bal Bay Drive***, requesting that the proposed changes be denied.

Councilman Packer spoke in favor of deferring the application, since he didn't think that the Church was united on the issue. He discussed the proposed new site for the Church. He would like to see the Shops expand, but he didn't think that it should be rushed. He suggested that it be deferred.

Assistant Mayor Blachar questioned the reverter clause in the deed for the Church. Mr. Shubin explained that he was familiar with the language but was not prepared to give a legal opinion on it. He did note that if the reverter and restrictions were operable then there probably wouldn't be sufficient parking to support a retail establishment in the existing Church property.

Assistant Mayor Blachar concurred with Councilman Packer that it be deferred, to obtain more information for the plans.

Councilwoman Cohen questioned Mr. Shubin what the intent was for the expansion. Mr. Shubin explained that he was happy to discuss the expansion, but that there was no legal requirement that a site plan be filed in conjunction with a Comprehensive Plan application. He clarified that the Shops would not come back for a second reading, without consent from the Church or Village. He had hoped that the public process would provide input for the site plan that the Village/public wanted to see. He clarified that if the Council passed the Ordinance on two readings then the expansion of the Shops could never occur without a lot of review, etc. Mr. Shubin explained that they didn't want to spend dollars submitting a site plan that nobody liked. He reported that what people were referring to were a series of sketches that were done years ago. He requested that it come as part of the public process and come back along with the consent. Mr. Shubin discussed options to expand with the

Village, but not with the Church or with the Church and not with the Village.

Assistant Mayor Blachar requested more information on what they wanted to put there. She read that the Applicant didn't have any interest, etc. She noted that the Church didn't oppose the application, but clarified that they didn't consent it either.

Mr. Shubin clarified that they would not schedule a second reading without the consent of one or both of the owners. He discussed the difference between deferring and denying the application.

Mr. Rosenthal explained that the Church didn't oppose the application at first reading. He explained that they were not stating that the Church was for or against the change from institutional to commercial designation. He clarified that the Church may have a position before second reading either for or against it. Mr. Rosenthal was comfortable that the applicant would withdraw the application if the Church did not consent to the application and the applicant noted today that they would not proceed to second reading without the Church's consent. He clarified that there was no opposition to the application itself at first reading.

Mayor Rosenfield clarified that if the Council deferred if Mr. Rosenthal was saying that he wouldn't go back to the Church population and ask whether they were willing to sell or not. Mr. Rosenthal explained that in the Church's discussion with the Shops no decision had been made by the Church membership whether or not to go forward. He clarified that there may at some point be an affirmative decision of the members to attempt to go forward with a plan to sell the Church property and replace it with other Church property within the Village. Mayor Rosenfield questioned what the Church would do with its population if the Council deferred the application. Mr. Rosenthal explained that nothing would change as far as the Church was concerned. Mayor Rosenfield clarified that they would not make a definitive decision unless the change was approved on first reading. Mr. Rosenthal clarified that a Comprehensive Plan amendment may or may not permit a different use of the property, but if a different use was possible to do then it wouldn't be the Church that was requesting it. He reported that the Church had an ongoing discussion as to whether or not the property can and may be sold without a conclusion at this time. He explained that the consent of the Church would be required for the applicant to move forward on second reading. Mr. Rosenthal clarified that it was possible that the Church would still have ongoing discussion with Bal Harbour Shops regardless of what happened today. He reported that the Church was aware of the deed restrictions on its property and all discussions took into account all of the various factors affecting the property.

Councilman Packer reported that he saw the plans and he is for expansion, but as far as this going forward he believed that the Church should be able to come forward with a definite yes or no to the Shops. He explained that the Council would be much more inclined to go on a first reading if it heard that the Church had a definite conclusion and were accepting what the Shops was proposing. Mr. Rosenthal explained that whether it was approved or denied at first reading would not affect the Church moving forward.

Mr. Shubin explained that one of the options was to move the Church close by and build a nicer one, according to what the congregation wanted. He noted that the Council's decision would have an impact on where the Church would be moved, etc. He clarified that the Council would only be approving the initiation of dialogue. He discussed the desire to be

able to start the public process.

Mayor Rosenfield noted that the Council could deny, defer, or approve the application. She explained that if it was accepted, then nothing was finalized. She explained that if the Council approved this tonight then it would have to think about seriously selling Village Hall. She added that the Council could defer to a date certain or indefinitely.

A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to recommend that the Village Council defer the Ordinance (Church Property 501 – 96th Street parcel).

A motion was offered by Assistant Mayor Blachar and seconded by Mayor Rosenfield to amend the motion to recommend that the Village Council defer the Ordinance (Church Property 501 – 96th Street parcel) until the next Council meeting.

A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to amend the motion to defer the Ordinance (Church Property 501 – 96th Street parcel) until there is an actual agreement between the Church and the Shops.

Mr. Shubin noted that it would be impossible to have an agreement with the Church within 30 days, especially without the Village's consent. He suggested that the Ordinance be approved on first reading, with the condition that the second reading would not be scheduled without the consent of either property owner. Assistant Mayor Blachar would like more information. Mr. Shubin requested approving both ordinances on first reading, with the condition that neither application could come back before consent was received from the property owners. He discussed the process that they would follow.

Councilman Packer questioned if the Church members could say they were in favor and willing to sell the property.

D.J. (Donald) Cannava, Head of the Future Church Task Force, explained the process they were going through with the Shops regarding the move, which was still preliminary. He requested that the Council consider Mr. Shubin's procedural request.

Councilwoman Cohen pointed out that the Applicant was asking for a vote of confidence and she didn't think that it was up to the Council to ask what the Church was doing with their deal. She noted that if there wasn't a deal then nothing would move forward.

Mayor Rosenfield spoke in favor of delaying the issue for 30 days, to see what happened with the vote concerning Amendment 4.

Councilman Packer withdrew his motion to amend.

Mr. Shubin requested that the original motion be considered when they came back in November.

Mr. Weiss clarified that the motion being voted on was to recommend that the Village Council defer the Ordinance (Church Property 501-96th Street parcel) until the next Council meeting.

The motion carried (4-0), with the roll call vote as follows: Mayor Rosenfield yes; Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz absent.

A motion was offered by Assistant Mayor Blachar and seconded by Mayor Rosenfield to recommend that the Village Council defer the Ordinance (Village Property 655 – 96th Street parcel) until the next Council meeting. The motion carried (4-0), with the roll call vote as follows: Mayor Rosenfield yes; Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz absent.

Consideration of the Following Ordinance to Create Section 21-322 Providing for Site Plan Review for B Business Zoning: Mr. Weiss recommended that the following ordinance also be deferred until next month, since another version had been prepared by staff:

> **AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING DIVISION 11, ARTICLE III, CHAPTER 21 OF THE VILLAGE CODE TO CREATE A NEW SECTION 21-322 "SITE PLAN REVIEW", PROVIDING FOR SITE PLAN REVIEW APPROVAL BY VILLAGE COUNCIL AFTER PUBLIC HEARING, INCLUDING APPLICABILITY OF REQUIREMENT, APPLICATION AND REVIEW PROCEDURE, AND DEVELOPMENT AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

A motion was offered by Assistant Mayor Blachar and seconded by Mayor Rosenfield to recommend that the Village Council defer the Ordinance until the next Council meeting. The motion carried (4-0).

5. ADJOURN: There being no further business to come before the Local Planning Agency, ***the meeting was adjourned by consensus at 9:17 p.m.***

Mayor Jean Rosenfield

Attest:

Ellisa Horvath, MMC, Village Clerk