

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
REGULAR MEETING – FEBRUARY 21, 2012

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, February 21, 2012, 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 7:05 p.m. by Mayor Rosenfield. The following were present:

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

Alfred J. Treppeda, Village Manager
Ellisa L. Horvath, MMC, Village Clerk
Richard J. Weiss, Village Attorney

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

2. PLEDGE OF ALLEGIANCE: The Pledge was led by Town of Surfside Vice Mayor Joe Graubart.

3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS:

Mr. Weiss requested an Executive Session for the red light camera traffic litigation (Sean P. Blesi f/k/a Kaminsky vs. Village of Bal Harbour).

Mayor Rosenfield requested the addition of a presentation from Miami-Dade County Commissioner Sally Heyman. *It was the consensus of the Council to add the presentation to the agenda.*

4. SPECIAL PRESENTATIONS:

Update on Beach Erosion – Brian Flynn, PERA Miami-Dade County Department of Permitting, Environment and Regulatory Affairs: This item was discussed later, since Mr. Flynn was not at the meeting.

Recognition for Outstanding Citizenship: This item was discussed later, since the recipient was not at the meeting.

Officer of the Year for 2011: Chief Hunker presented Detective Gonzalez with the Officer of the Year plaque, for 2011.

Presentation by Miami-Dade Commissioner Sally Heyman: Commissioner Heyman discussed the resolution passed by the Village, discouraging the Funktion event at Haulover, and reported that the County denied the request for the event.

Commissioner Heyman discussed the use of a Segway as a crime prevention tool, with high visibility for the police. She presented the Village with a new Segway and displayed the new aspects of the 2012 model. Mayor Rosenfield and the Councilmembers thanked Commissioner Heyman for the new Segway.

A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to accept the donation of the Segway for the Village. The motion carried (5-0).

5. CONSENT AGENDA: Approval was requested for the following items:

Tab C: January 17, 2012 Regular Council Meeting Minutes

Tab D: Expenditure of Police Forfeiture Funds as follows:

Federal Funds: \$2,995.54 Police Dive Equipment
\$2,866.50 Expenses for Honor Guard Travel to Washington D.C. Police Memorial
\$22,500.00 Pay Off for 2008 Ford F-250 Crew Cab Police Truck

State Funds: \$10,000.00 Donation to Relay for Life/American Cancer Society

Tab E: Expenditure of Resort Tax Funds, as recommended by the Resort Tax Committee:

\$4,100.00 Luxury Summit American Express Publishing Event
\$15,000.00 Argentina Sales/Media Trip in March 2012
\$64,000.00 Bal Harbour Public Arts Program

Tab F: Expenditure of Gated Residential Section Funds, as follows:

Recommended by the Committee:
\$6,480.00 TEM Systems Annual Maintenance Agreement Renewal

Time Sensitive Items not reviewed by the Committee:
\$3,612.50 Replenish Supplies of eGO Passes
\$3,231.00 Air Conditioning for the Guard House

Tab G: Expenditure of \$57,500.00 in Resort Tax Funds for the application and permit fees due to PERA (Miami-Dade County Permitting, Environment, and Regulatory Affairs) for the Sand Transfer Station Project

Tab H: Final Change Order Credit of \$228,787.36 for the Collins Avenue Sanitary Force Main Improvements Project

Tab I: Appointment of Brian Dye, St. Regis Bal Harbour, as a Member of the Resort Tax Committee

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to approve

the items on the Consent Agenda. The motion carried (5-0).

6. PUBLIC HEARINGS:

Quasi-Judicial Public Hearings: None.

Zoning Hearings/Quasi-Judicial Public Hearings: None.

Ordinances Second Reading/Public Hearings: None.

Ordinances First Reading/Public Hearings: None.

Resolutions/Public Hearings: None.

7. ORDINANCES FIRST READING/PUBLIC INPUT: None.

8. RESOLUTIONS: Mrs. Horvath read the following Resolution title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA (THE "VILLAGE") APPROVING A LAND EXCHANGE AGREEMENT (THE "AGREEMENT") GOVERNING THE TRANSFER OF REAL PROPERTY OWNED BY THE VILLAGE IN EXCHANGE FOR REAL PROPERTY OWNED BY FLAMINGO WAY ENTERPRISES, LLC, A FLORIDA LIMITED LIABILITY COMPANY ("FLAMINGO"), AND AUTHORIZING THE VILLAGE MANAGER AND VILLAGE ATTORNEY TO TAKE ALL ACTION AND EXECUTE ALL DOCUMENTS NECESSARY TO ENTER INTO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to approve.

Gail Hart, 90 Park Drive, questioned the address for the property and the proposal.

Eduardo Calil, Architect for the Project, discussed the proposal to exchange property (2600 square feet would be given to the Village and 1700 square feet would be given to Mr. Imbesi). He explained that the exchange involved land that was never used by the Village, with a benefit for the Village to receive a private entrance to its pump station. He explained that the Village was currently using Mr. Imbesi's private property to access the pump station. He discussed plans to extend the existing Ficus hedge along the edge of the property line, as well as to add Royal Palms, along Bal Bay Drive. He explained that if the exchange was not approved, then the Village would need to move the entrance for the pump station to Bal Bay Drive. Mr. Calil pointed out benefits to the entire neighborhood through beautification. He clarified that a single family residence was proposed for the area at 200 Bal Bay Drive.

Dan Holder, 24 Bal Bay Drive, suggested that a better exchange would be for the Village to receive a piece of property along the bay, to have a small park and enable the residents to walk to the seawall. He requested that the item be denied and a better exchange be negotiated.

Anamarie Kelly Stoppa, 77 Camden Drive, spoke in favor of approval. She questioned if anyone could have access to the gated area, since the Village had property behind the gates that was public property.

Dina Cellini, 211 Bal Cross Drive, voiced concern of the ease for the Village, with three votes from the Council, to sell, swap, or exchange public property, without any input from the residents other than at the meeting. She questioned if the procedure followed was under the Village Code, Village Charter, or by County Ordinance. Mr. Weiss explained that it was under general law. Ms. Cellini questioned if it was subject to change by referendum. Mr. Weiss advised that it was.

Ms. Cellini questioned who would maintain and be responsible for the liability of the Royal Palms. She didn't want the Security District residents to be responsible for them and wanted to know that the Village would be taking care of them. Mr. Weiss noted that the area was private and the roads were private roads. Ms. Cellini requested that be taken into consideration. She pointed out that Assistant Mayor Blachar was in charge of the Residential Advisory Committee and it wasn't appropriate for her to make decisions now that would affect the residents' pocketbooks.

Joseph Imbesi, 200 Bal Bay Drive, clarified that the property where the Village's pump station gate and some of the property inside the gate belonged to him. He explained that mistakes were made when the pump station was laid out and the wall was put in the wrong place by the Village. He clarified that the pump station fence and gate were put on his property by mistake. He explained that the proposal would correct that mistake, would give the Village private access to its pump station, and beautify the area. Mr. Imbesi noted that if the proposal wasn't approved, then the pump station gate would have to be moved to Bal Bay Drive, which would be difficult for large trucks to turn into. He noted that the Royal Palms did not need to be installed, if there was a problem. He explained that he needed the property and he had proposed several items in exchange for it.

Michael Krop, 9601 Collins Avenue, suggested that a committee of realtors or people with expertise, etc. review the item, instead of the decision being left up to three Councilmembers, after a short meeting. He questioned if there was a method to be followed to buy or sell Village property. He was disturbed with the process.

Mr. Weiss reported that the process was legal and the documents were drafted properly, but it was not within his scope to tell the Council whether or not it was smart or was a good deal.

Stuart Sobel, 271 Bal Cross Drive, spoke in favor of approval, but questioned if it was permissible for the Village, as part of the deal, to agree to maintain the landscaping on that property. Mr. Weiss advised that it was and explained that the property would be owned by the Village, so it could agree to maintain that landscaping.

Mayor Rosenfield questioned if the maintenance portion needed to be included in the Resolution. Mr. Weiss explained that Mr. Imbesi would not be involved in the maintenance of that property, so it would be up to the Village on how it would be maintained. He clarified that if the Village had property in the gated area that it owned then the Village would be responsible for the maintenance of that property.

David Geula, 10175 Collins Avenue, questioned what would be done with the property, if the transfer was approved. Mr. Treppeda explained that Mr. Imbesi wanted to build the

house that was displayed, which would be within the Village's Zoning Code.

Brian Mulheren, 10245 Collins Avenue, questioned who requested that the resolution be placed on the agenda and the value of the land that was being given versus the land that was being received. He pointed out that the residents didn't know about it. He spoke against three Councilpeople being allowed to make a decision, until it was researched and discussed. He suggested that a committee or an outside consultant that knew real estate, etc. be involved and make recommendations.

Mayor Rosenfield explained that the house would need to go before the Architectural Review Board for approval first and would need to meet the Zoning Code. She explained that items were brought to the Council and the Village Manager. She clarified that this item was presented to the Village Manager and the item was examined by other staff members, who decided that it should come before the Council for consideration. Mr. Treppeda agreed that the request came through the Building Department. He clarified that he wouldn't bring an item to the Council, if he didn't think it was something to consider. He explained that Mr. Imbesi owned the property up to the pump station gate, so the Village could be prohibited from entering the station and the gate would have to be moved to Bal Bay Drive. He added that there was also a drainage line that had collapsed and Mr. Imbesi would give an easement that the Village didn't currently have and the cost associated with replacing the drainage line. He added that the property that would be traded by the Village was outside the pump station wall and the Village didn't have any use for it.

Mayor Rosenfield discussed the Council procedure to review items with the Village Manager.

Councilman Packer reported that he visited the site with Mr. Treppeda and Mr. Nieda. He clarified that part of the pump station was on Mr. Imbesi's property. He didn't see a problem with the exchange.

Mayor Rosenfield noted that she had also seen the site.

Councilwoman Cohen noted that she wasn't able to access the site drawings on the agenda, so she didn't fully understand the proposal. She would like to visit the site and understand the proposal before voting on it. Assistant Mayor Blachar agreed with Councilwoman Cohen. She noted that although she thought that it was a great idea, it sounded beneficial, and the Village would maintain the Palms, she would like to view the site. She added that since the address wasn't listed on the item residents living in the vicinity may not know that it was happening. She suggested that the item be deferred to the next meeting and notices be sent out to the surrounding properties (five homes in either direction) to advise them of the proposal. She requested that the address of the property be stated on the agenda.

No vote was taken on the original motion.

A motion was offered by Councilwoman Cohen and seconded by Assistant Mayor Blachar to defer the item until the March Council Meeting. The motion carried (5-0).

9. REPORTS:

Recognition for Outstanding Citizenship: Chief Hunker presented Larry

Feder with a plaque, in recognition of outstanding citizenship. Mr. Feder addressed the Council.

A. VILLAGE MANAGER:

Report on Resort Tax Return on Investment for 2011 – Carolyn Travis, Director of Tourism Marketing: Ms. Travis discussed the investment in public relation campaigns in the United States, Brazil, and Argentina, which had increased revenue by 30%. She explained that the public relation value was three times the amount of an ad value. She reported an ad value of \$3 million, with a public relations value of \$9 million. She explained that the Village spent \$129,000, with a produced ad value of over \$3 million and public relations value of over \$9 million.

Ms. Travis displayed the Bal Harbour Guide. Assistant Mayor Blachar reported that the Guide would be in the New York Times and would also be translated in different languages.

Report/Recommendation on Results of Solid Waste Bids: Mr. Treppeda explained that two bids were received, in response to the Request for Proposals, with Choice Environmental being the low bidder (\$613,773.00 annually).

Marc Wexler, Village Consultant - Pro Resource, reported that he reviewed the bids with Mr. Wallace and the Village Attorney. He explained that the price would be locked in for five years, for a savings of \$1,387,332.00 over the five years.

Mr. Treppeda reviewed the benefits.

Mr. Wallace reviewed a Powerpoint presentation.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve the recommendation.

Michael Krop, 9601 Collins Avenue, questioned if the services were the same. Mr. Treppeda advised that they were.

Grant Smith, General Counsel for Choice Environmental, discussed the company, which looked forward to providing services for the Village. He introduced the supervisory team and noted that a garbage truck was parked outside for viewing.

Assistant Mayor Blachar questioned if certain employees would be assigned to the neighborhood. Mr. Smith advised that they would and explained that they would also interview the Village's employees to compete for the jobs, because consistency was important to them. He reported that they conducted extensive background checks and also checked driver's licenses monthly.

Tim Bowers, Governmental Affairs Manager - Waste Pro Florida, Inc., reviewed the services provided by Waste Pro, which also provided a bid. He reported that the annual difference was only \$38.00 and questioned why Choice Environmental had been chosen over them, since the amounts were so close. He suggested that the decision be based on services, not just price, and also suggested that the Village meet with both companies to negotiate better items.

Frank Simone, Attorney for the Village, explained the request was for bids. He explained that the company with the lowest price would be awarded the bid, as long as all of the items were met with. He clarified that was the criteria for the Village and the proposal was very clear.

Mayor Rosenfield clarified that it was very clear that the Village was to select the lowest bidder, if it chose to outsource services.

Brian Mulheren, 10245 Collins Avenue, questioned the need for a seven-day pick up, at the buildings, and suggested that be looked at and possibly adjusted down the road for further cost reduction. Mr. Treppeda explained that reduction was contemplated in the request for proposals. Mr. Wexler explained that it was bid the current way the Village was providing services, but there was an alternate bid to reduce frequency or to provide compactors, so that would be an option.

Dina Cellini, 211 Bal Cross Drive, discussed whether or not there was a need for outsourcing and discussed the special Public Works employees who currently provided the service and residents were familiar with. She pointed out that the Village had already let four Public Works employees go and this would eliminate an additional three employees. Ms. Cellini thought that outsourcing would affect the residents in the Security District and suggested that the Village reach out to that area to see if they wanted to outsource, at the minimal savings of \$800 over five years. She suggested that Assistant Mayor Blachar should have reported on the possibility of outsourcing at the Gated Residential Section Advisory Committee (RAC) meetings. She noted that the residents that she had spoken to did not want to change to outsourcing. She suggested that the Council wait on making a decision and send notices out to the gated area residents.

Mayor Rosenfield clarified that the issue had been discussed at other meetings, before it went out to bid.

Stuart Sobel, 271 Bal Cross Drive and RAC member, explained the history of the gated area. He reported that the cost of the Village providing the service being more than the cost to outsource was previously discussed. He discussed the dramatic increase in the gated area assessments. He explained that it placed the RAC and Council in an impossible position to keep the employees, while also keeping the prices down.

Anamarie Kelly Stoppa, 77 Camden Drive, discussed the idea to move Village Hall to the waterfront, instead of the garbage trucks. She suggested that the real plan behind outsourcing was to move Village Hall to the water. She would like to know if the intention was to keep Village Hall and not move it to the water or for Mr. Whitman to take the Village Hall property.

Councilman Packer reported that since the Village's population changed in season/out of season, then the oceanfront properties may not need pick up seven days a week. He questioned if anything was provided in the contract for that to be re-negotiated, for a savings. Mr. Wexler advised that an alternative service was built into the contract that would allow the Village to work with the Contractor, to reduce services and save money. He discussed conducting an assessment for each building. Councilman Packer questioned if the contract could be re-opened. Mr. Wexler reported that the contract could be changed to have that wording and explained that the figures had already been provided for alternate services. Councilman Packer questioned if that would be done via Council request or

automatically. Mr. Smith reported that a sample agreement had been provided for the Village Attorney to review. Councilman Packer clarified that the Council was voting on accepting the bid, with the final details of the contract to be negotiated. Mr. Smith agreed that the Attorney for the Village would do that.

Mr. Wallace explained that services would be compared to the existing, which could be changed by the Village in the future.

Councilwoman Cohen reported that she was not informed of any ulterior motives. She spoke in favor of removing the garbage trucks from the waterfront and suggested that the Village could possibly do something for the community on its own. She spoke in favor of approval. She didn't know why Ms. Stoppa would cast negativity on it.

Assistant Mayor Blachar discussed the importance of the service staying the same and the Company looking at hiring the Village employees. Mr. Wexler confirmed that the service would be the same as the current service. He clarified that Village staff would still collect garbage along the beach and at the bus stops. He noted that an alternative collection service was added, for compacted and non-compacted service. Assistant Mayor Blachar questioned if the cost would change in five years, if there were more homes or more multi-family units. Mr. Wexler explained that pricing was by unit and that cost would be passed on to that unit. He added that the alternate plan would be by cubic yard, not by unit, and would be assessed to a building. Assistant Mayor Blachar (RAC Chair) concurred with Mr. Sobel that the gated area residents were angry that the assessments had been increased, so any savings was important. She agreed that in addition to saving money, it didn't make sense to have the garbage trucks on the waterfront.

Mayor Rosenfield explained that the process to consider outsourcing had begun when the budget was finished. She noted that this was in preparation for the next budget.

Assistant Mayor Blachar clarified that the motion was to award the bid for solid waste and recycling services to Choice Environmental, the low bidder, and authorize the Village Manager and Village Attorney (or designee) to formulate and execute a contract between the Village and Choice Environmental in conformance with the bid specifications. Authorize the Village Manager to enter into severance agreements with up to three public works employees with the same terms as the prior severance agreements for public works employees; and to authorize the Village Manager to dispose of garbage trucks, a recycling truck, and any other solid waste related surplus equipment through a competitive process such as eBay, trucks.com, trucktrader.com, or similar site of wide circulation. The motion carried (5-0).

B. VILLAGE CLERK:

Lobbyist Registration Report: As of February 21, 2012:

The list of lobbyists registered with the Village was provided in the agenda.

C. VILLAGE ATTORNEY: No items.

D. MAYOR AND COUNCIL:

Discussion of Repaving of the Streets in the Gated Area–

Assistant Mayor Blachar: Assistant Mayor Blachar notified the Council that the streets needed to be repaved inside the gated area.

Councilwoman Cohen left the meeting.

Assistant Mayor Blachar wanted to mention the item, since it would cost the gated residents an additional assessment, to be determined. She requested comments from the public.

Daniel Holder, 24 Bal Bay Drive, discussed the importance of coordinating the repaving, with other work being done in the area. He suggested that the Village would be responsible for the drainage and the curbs, as it has in the past.

Assistant Mayor Blachar questioned if the Village would pay for the curbs. Mr. Weiss explained that the opinion was that since the stormwater drainage system was owned by the Village the Village was authorized to use Village funds to repair those, but that the Village may decide not to do that. He noted that when the issue came up then the Council would have the authority to make a decision on it. Assistant Mayor Blachar questioned if the Committee could know beforehand whether or not the Village would pay for that. Mr. Weiss advised that she could ask that it be discussed. Assistant Mayor Blachar requested discussion on the issue. Councilman Packer suggested that it first be discussed by the Gated Residential Advisory Committee (RAC) and then brought to the Council.

Councilwoman Cohen returned to the meeting.

Assistant Mayor Blachar clarified that the RAC had discussed the issue, but didn't know if the Village would pay for the curbs, etc. Mayor Rosenfield preferred to have additional information on the item before voting on the issue. Councilman Packer also suggested that more gated area residents participate in the discussion at the Council meeting.

Stuart Sobel, 271 Bal Cross Drive, reported that it was discussed at the last RAC meeting, where several Councilmembers were in attendance. He noted that a rough estimate of the cost was discussed and Ms. Cellini had reported that the Village had paid for the curbs the last time they were replaced. He discussed the importance of the Committee knowing if that precedence would be followed, since the replacement of the curbs were approximately 45% of the cost of the repaving. He requested guidance from the Council on how they would respond to the RAC recommendation, conditioned on the Council agreeing that the Village would pay for the curbs to help with their deliberations.

Mayor Rosenfield questioned if an engineer report advised that it had to be done now. Mr. Sobel didn't know of an engineer report discussing a need, but that there was one regarding the cost. Mayor Rosenfield didn't know what the need was explained that would be a question for the budget process.

Councilman Packer questioned if the repaving of the streets in that area was the responsibility of the gated residents. Mr. Weiss advised that it was. He explained that he didn't know if the curb and gutter had to be done at the same time that the streets were repaved. Mr. Treppeda will look into that. Councilman Packer reported that he has seen streets repaved, without the curbs and gutters being done. Mr. Sobel clarified that was when the streets were resealed, which was different.

Mr. Sobel understood the Mayor's request that it be part of the budget process, but he wanted the RAC to provide a recommendation in sufficient time so that the Council had the information it needed to consider it as part of the budget cycle. He discussed the need for

the repaving. He thought that the curbs needed to be done at the same time that the streets were done.

Gail Hart, 90 Park Drive, suggested that the streets be resealed. Mr. Treppeda reported that the streets were beyond that point.

Dan Holder, 24 Bal Bay Drive and RAC member, explained that it had been determined that the streets needed to be resurfaced, but no decision had been made of when it would be done. He discussed the importance of coordinating the repaving, after work had been completed in the area. He explained that they needed to know if the Village would pay for the curbs/gutters, so they would know what kind of loans would need to be considered.

Anamarie Kelly, 77 Camden Drive, suggested cooperation from the Village. She suggested that the residents be billed according to their street frontage and the Village replace the curbs, if they were damaged by the sewer project.

Dina Cellini, 211 Bal Cross Drive, discussed the increased burden to the individual residents, if the streets were repaved, and noted that she hadn't heard an outcry to repave them. She suggested that the gated residents be asked if they wanted the streets repaved or not before passing another assessment on to them. She thought that the RAC had been unreasonable, with the budget that they created. She didn't think that the solid waste had anything to do with the maintenance inside the gates. She pointed out that the cost for solid waste had been removed from the general budget, since the Council could not balance the budget without doing so.

Discussion of Zoning of West Side Low-Rise Buildings –

Councilman Sanz: Councilman Sanz requested the zoning information for the west side of Collins Avenue, for discussion at the March Council meeting. He questioned if any of the co-ops on the west side had the ability to be turned into boutique hotels. He discussed rumors of people trying to buy the buildings and turn them into hotels. Mr. Weiss and Mr. Treppeda will provide a written report at the March Council meeting.

Discussion of Curb Cut on Bal Cross Drive by Bal Harbour Shops for Truck Exit (Permit Issued by Village) – Councilman Packer: Councilman Packer requested discussion regarding the curb cut on the north side of the Bal Harbour Shops. He requested information from the Shops.

Amy Huber, Attorney - Shubin & Bass – on behalf of Bal Harbour Shops Attorney, clarified that the Shops received a permit for a curb cross onto Bal Cross Drive, to provide for a truck egress.

Mayor Rosenfield questioned if that property belonged to Mr. Whitman. Mr. Weiss requested clarification of the property that was being discussed for the Council and public.

Dan Nieda, Building Official, reported that Bal Cross Drive was a 90-foot right-of-way and the southernmost 45 feet of that right-of-way was paved, which was used as a street now. He explained that the center line of the street was a division of the B (Business) District and part of the ownership of the Bal Harbour Shops. He explained that the curb cut opened onto that right-of-way. Mr. Weiss explained that the street was north of the Shops, along Collins Avenue, and bordered Fairfield Manor, which was outside the gates. Mr. Nieda clarified that it was the street section that was blocked off and had a pedestrian gate

leading into the gated area.

Ms. Huber reported that they were not modifying the existing road way, but were just opening it up for truck egress. She estimated that between 25-50 trucks would use the egress per day, with periodic use by 18 wheelers. She reported that ingress would continue on 96th Street and this would be an additional egress. She noted that Chief Hunker had been asking for an additional egress for some time. Ms. Huber clarified that it was not for use of the patrons at this time.

Anthony Gillam, 9800 Collins Avenue, spoke against the issuance of the permit. He noted that it would allow trucks to exit the Shops through the link fence (the legally established boundary between the commercial and residential districts) and drive out onto Bal Cross and then onto oncoming traffic on Collins Avenue. He clarified that there was a large outcry when the Shops presented plans recently for a new entry on Bal Cross Drive, as part of their expansion. He noted that the Building Department/Official should have known that the permit would be considered highly controversial. He discussed quality of life, health, safety, and traffic concerns. Mr. Gillam disagreed that the Shops owned part of Bal Cross Drive and explained that the tract was not part of the Residential District. He reported that in 1946, the Shops land was undeveloped and the tract was not part of the Residential District and thus did not own any part of Bal Cross Drive right-of-way. Mr. Gillam reviewed the 1946 Dedication and Reservations of Subdivision for the Residential District stating that certain streets, including Bal Cross Drive, were designated for the use and enjoyment of the owners of lots in the subdivision and them only. He added that the 1956 Dedication and Reservations of the Business Section stated that the streets, including Bal Cross Drive, were not part of that Platt. He clarified that Bal Cross Drive could not be owned by the Business Section (Shops). He noted that they have flourished without a northern truck exit. He requested that the Council instruct the Building Department to revoke the permit using whatever legal process was open to them.

Mr. Weiss reported that the issue had been reviewed with the Building Official and it had been determined that the permit was properly issued and the Village didn't have a right to deny the Shops the permit. He clarified that the Council didn't have the authority to overrule the Building Official. He didn't think that it was a matter that the Council had any authority over. Mayor Rosenfield questioned if the residents had the right to employ their own legal counsel, to contest it. Mr. Weiss agreed that was correct. Mr. Nieda reported that he did consult with the Village Attorney before issuing the permit. Mayor Rosenfield clarified that there wasn't anything that the Council could do, but the residents could use legal counsel to contest it.

Anamarie Kelly, 77 Camden Drive, discussed the Platt (60-39 and 44-98) and clarified that the residents didn't want 18 wheelers coming in on a street that was dedicated to the Residential Section. She questioned if the Florida Department of Transportation had given approval for the ingress/egress. Ms. Huber explained that they have spoken to DOT and no contract was necessary. Ms. Kelly pointed out that the Platt established that the Shops didn't own that area and it was a residential section. She spoke against allowing a residential thoroughfare to be used for commercial vehicles and also issuing a permit to a non-owner of the property to do as they pleased.

Steve Greenberg, 9800 Collins Avenue, requested the proof of ownership that Mr. Whitman owned that street. He also questioned if a pollution study was provided on the 18 wheelers that would be idling in front of the Fairfield Manor building. He discussed safety issues with handicap people that walk and questioned if Chief Hunker could guarantee the

safety that trucks wouldn't hit his mother. He discussed quality of life and noted that once the curb cut went in, the Village would no longer be a Village. Mr. Greenberg noted that Mr. Whitman was given a permit and he never had ownership.

Beth Berkowitz, 10160 Collins Avenue, reviewed the November 21, 1955 Council Meeting Minutes, which discussed the walls for the Business District. She reviewed the Ordinance amending Ordinance No. 11, which was submitted to include maximum heights for the boundary walls of the Business Section to eight feet. She reported that, according to the Platt, there were boundary walls for the Business District and it was not a lot. Ms. Berkowitz reviewed Mr. Weiss' January 14, 2011 Opinion. Her belief is that based on the plat, Bal Cross Drive was not part of the Business plat, so that road would not be an egress or ingress. She noted that the dedication was clear and it being changed was an unforeseen, unattended and improper use of the intent of the dedication. She noted that the basic feeling was that this could extend to all the surrounding or abutting streets of the Shops.

Mayor Rosenfield requested that any additional information be provided to Mr. Treppeda for the Village to look into the issue. She clarified that no decisions would be made tonight.

Gail Hart, 90 Park Drive, reported that she lived behind the Shops and the noise was already bad enough with the trucks. She discussed the quality of life issue.

Neil Alter, 9801 Collins Avenue, reported that his building was perpendicular to the Street being discussed and discussed safety issues with trying to cross the street. He was concerned with vehicles exiting and trying to turn north and questioned if the Department of Transportation (DOT) had been consulted, regarding the issue. Mr. Treppeda reported that DOT had advised that it was a local issue. Mr. Alter reported that the Balmoral residents were concerned about quality of life, public safety, pollution, and pedestrians that used that egress from the gated area.

Mr. Nieda discussed the traffic on 96th Street and reported that the curb cut would alleviate traffic. He explained that he discussed the issue with the Attorneys, the applicants checked with DOT prior to applying for the permit, and the Manager checked with DOT.

Dina Cellini, 211 Bal Cross Drive, questioned why the Attorney couldn't say how he concluded that the Shops owned half of that Street. She voiced concern about the precedent it would set and if it was concluded under the dedication of the Residential plat, if the Shops could then also claim ownership for half of Park Drive and Bal Bay Drive, which they also abutted. She requested that the Council think about the legal conclusions that have been drawn. Ms. Cellini requested that Mr. Weiss address the specific language in the Business Platt, which stated that it didn't include Park Drive, Bal Bay Drive, and Bal Cross Drive. She voiced concern about the Shops being able to receive a curb cut onto Park Drive.

Chief Hunker discussed the dangerous situation with the trucks on 96th Street and reported that it was better for the trucks to exit onto Collins Avenue. He recommended that it be done if possible, for safety reasons, for them to exit on the north side of the Shops.

Dan Holder, 24 Bal Bay Drive, questioned what kind of permission was granted from the owners of that street for the work to be done. He discussed the importance of the issue. He thought that the elephant in the room was the expansion of the Bal Harbour Shops. He urged the community to be involved in any changes. He discussed the Shops' proposal to

move the gate back into the gated area, a convention center, movies, etc.

Brian Mulheren, 10245 Collins Avenue, read an email from the Village Attorney to the Building Official stating that the permit was within his authority as the Building Official. He discussed the safety issue, requested proof of ownership for the property, and requested that it be looked at by DOT.

Councilman Packer questioned if the Village could invoke the word "may". Mr. Weiss explained that the Building Official worked under a set of rules to issue a permit, unless something allowed him to deny it. He clarified that there had to be something in the statutes or ordinances for him to do that and they did not see anything. Councilman Packer thought that since there was some dissention about the word "may" it should be invoked.

Mr. Weiss requested that any materials be submitted for them to look at the item again with the Building Official. He noted that if a change was warranted in their opinion, then they would change it. He reported that they made a decision based on the information that they had. He clarified that if there was some discretion on the part of the Village then they would advise the Council.

Mark Houser, Law Offices of Houser & Houser - Attorney for Fairfield Manor, was shocked since the Shops had recently offered to purchase the Manor at a very low price. He noted that if the Shops had the right to the curb cut because they owned half of the Street, then the Manor owned the other half of the Street and did not give them permission to use their half of the street for a truck egress. He explained that if Mr. Weiss' opinion stood then he didn't think it would be difficult to get a restraining order in a court.

Mr. Weiss clarified that the use of streets is different than the ownership of those streets. He added that easement rights and rights to use the right of way are different than the ownership of the right of way. He clarified that they would look at any information provided and the issue would be placed on the agenda for March. Mr. Weiss explained that the building permit had been issued and the residents had the right to pursue whatever rights they had.

Councilman Packer questioned if the go ahead on the permit could be postponed by the Shops, in the interest of the residents that were concerned.

Ms. Huber reported that the Shops had no intention of delaying the installation of the curb cut. She clarified that it had been analyzed and it was their intention to move forward without any further delay.

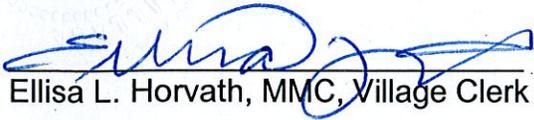
10. OTHER BUSINESS:

Public Comment: Councilwoman Cohen suggested that the Village purchase some stackable chairs, for extra seating.

11. ADJOURN: There being no further business, a motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to adjourn. The motion carried (5-0) and the meeting was adjourned at 9:57 p.m.

Attest:


Mayor Jean Rosenfield


Ellisa L. Horvath, MMC, Village Clerk