

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES **REGULAR MEETING – MARCH 20, 2012**

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, March 20, 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 7:08 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 previously done at the General Employees Retirement Board Meeting.

PUBLIC HEARINGS: *It was the consensus of the Council for this item to be taken out of order.*

Quasi-Judicial Public Hearings:

Review of the Building Official's Interpretation(s) of the Zoning Ordinance, pursuant to Section 21-33 of the Village Code, in Connection with Building Permit No. BL-1-12-4664 for a Driveway from the Bal Harbour Shops Property Located at 9700 Collins Avenue, Bal Harbour Village, Florida, to Bal Cross Drive:

Mayor Rosenfield read the parameters for the public hearing. She explained that the review was initiated by a petition submitted by Anthony Gillam, Fairfield Manor Associates Inc. She noted that the Council would review the interpretations, pursuant to the Village Code, and would arrive at a decision to approve, disapprove, or modify the Building Official's interpretation. She reviewed the responsibility of the Building Official. She explained that the Council would only consider evidence and argument related to the proper interpretation of the zoning ordinance and would not consider any discussion relating to the Building Official's role with respect to the building code, or any matters relating to private disputes over title to roads or the proper interpretation of language in the recorded subdivision plats. Mayor Rosenfield discussed the hearing procedures.

Mr. Weiss explained the procedures for the quasi-judicial process.

The following ex-parte communications were disclosed:

Councilman Packer disclosed that he met with Matthew Lazenby, Bal Harbour Shops, and

with Marc Hauser, Fairfield Manor Counsel.

Assistant Mayor Blachar disclosed that she spoke with Village resident Beth Berkowitz on the phone. She also sent Mr. Gillam (Fairfield Manor President) an email advising him that he should wait for the meeting until proceeding. She received an email back from Mr. Gillam. She spoke to Steve Greenberg (Fairfield Manor resident).

Mayor Rosenfield disclosed that she spoke to Village resident Beth Berkowitz.

Councilman Sanz disclosed that he spoke to Village resident Beth Berkowitz and received phone calls from other Village residents.

Councilwoman Cohen did not provide any disclosures.

Those planning to speak at the hearing were sworn in by Mrs. Horvath.

Mayor Rosenfield explained the hearing procedures.

Bill Spencer, Attorney - Akerman Senterfitt, on behalf of the Fairfield Manor (the Petitioner), addressed the Council and provided a preliminary index of documents, as exhibits.

John Shubin, Attorney - Shubin & Bass, on behalf of the Bal Harbour Shops (permit holder), objected to any evidence submitted or any arguments that were not set forth in the petition or appeal. Mr. Weiss noted the objection for the record.

Mr. Spencer explained that, due to the procedures in the Village Code (21-33), it was his belief that this was a full review under the Village Council's authority, so evidence and testimony would be taken. Mr. Weiss agreed.

Mr. Spencer noted that the quasi-judicial procedures directed that the Council take judicial knowledge of the Code and Comprehensive Plan (including the EAR and 1997 amendments), in the Village published records. He requested that the Council take judicial knowledge of the items with an asterisk (*) in his documents. He noted that under item 13 an additional item would be 21-77 (designation of the district boundaries) and also Chapter 5.5 of the Code, dealing with Architectural Review.

Mr. Spencer reviewed items 1 through 6. He reported that they believed that the permit, which allowed an access/egress, from the Shops across Bal Cross Drive running to Collins Avenue was not permitted by the zoning code. He noted that Cecelia Ward (Planner) would testify that it was also not consistent with the Comprehensive Plan.

Mr. Spencer reviewed item 7, which explained the items that would be removed (privacy wall and landscaping), for the construction of the curb cut, and discussed pedestrian access from the Gated Area to Collins Avenue.

Mr. Spencer reviewed item 8 and requested that the Council revoke the permit, because it was inconsistent with the zoning code, specifically 21-320. He explained that their position was that the Building Official made a mistake and issued a permit, which was contrary to the Village law. He read Section 21-320(a), which required that a traffic study be provided, and noted that a permit was issued without meeting the requirements. He also pointed out that the same Section required vehicular access to be limited to Collins Avenue and to 96th

Street, which the permit violated. He clarified that the requirements of the Code were not complied with, prior to the issuance of the permit.

Mr. Spencer reviewed item 19 and read the emails. He didn't think that the Building Official intentionally violated the Code, but explained that the permit was invalid.

Mr. Spencer reviewed item 16 and explained that it wasn't the first time that the Shops had tried to get a curb cut. He explained that, in 1985, the Village Planner at that time had said that a permit would violate the Comprehensive Plan and that access could not be allowed to Bal Cross Drive.

Mr. Spencer reviewed items 2 and 3 and explained that the Business plat excluded the streets, including Bal Cross Drive, from its property. He clarified that the streets were dedicated to the Residential Section. He noted that Collins Avenue and 96th Street were dedicated to the public. He reviewed the Business plat and explained that the streets designated as Bal Bay, Bal Cross, and Park were not part of the Business plat.

Mr. Spencer reviewed Code Chapter 5.5, which provided for any permit with significant change to go before the Architectural Review Board. He clarified that the permit for the Shops should have gone to the Architectural Review Board.

Mr. Spencer discussed the adverse impact to the Fairfield Manor, the neighbors in the Residential Section, pedestrians, and the entire community. He discussed problems with substantial commercial traffic merging with traffic from the Fairfield Manor, without intersection signals, etc.

Mr. Spencer reviewed item 12 and noted that the deed to the current Bal Harbour Shops owner referenced the Business plat, so the Shops didn't have any ownership to the road (Bal Cross Drive), which was secondary to the Code and Comprehensive Plan.

Mr. Weiss requested that Mr. Spencer stay away from the title issues.

Mr. Spencer reviewed item 13 and added Section 21-77 designation of boundaries, which didn't include Bal Cross Drive for the Shops district boundaries. He read Code Section 21-317 regarding boundary designation for the Business section. He noted that the boundary and limitations precluded the issuance of the permit, which they were asking to be revoked. He added that the permit was handled contrary to 320(a)(b), since there wasn't notice, a traffic study, or review by the Council. Mr. Spencer point out that historically (as shown in items 17 and 18) the Village had always believed that the residential streets were not public.

Mr. Spencer provided photos of the area (items 21), which showed the privacy perimeter wall and the landscaping that historically been there.

Mr. Spencer reported the letter received, dated March 6, 2012, which explained that they had the right to proceed in this manner.

Mr. Spencer reviewed Cecelia Ward's bio and provided it to Mrs. Horvath.

Cecelia Ward, President - JC Consulting Enterprises, addressed the Council and reported that it was her opinion that the issuance of the permit was inconsistent with the Village Comprehensive Plan. She explained that the 1988 Future Land Use Element for

commercial land use and the 1997 Future Land Use amendment discussed that the access points to the Shops were on 96th Street and Collins Avenue. She added that neither one referenced any other access being allowed or considered.

Ms. Ward reviewed the goals and agreed with Village Planner Michael Miller that it was poor planning to provide a commercial access through a residential right-of-way, which was used by pedestrians and vehicles. She noted that it was inconsistent with the goal and the objectives set forth in the Future Land Use Element. She added that vehicular access should only be through Collins Avenue and 96th Street.

Ms. Ward clarified that the issuance of the permit was inconsistent with the Village Code and Comprehensive Plan and would provide an unsafe pedestrian access situation.

Ms. Ward summarized that there had been a consistent pattern of how development was to occur and the permit didn't respond to any of the provisions provided in 1988 or 1997 and was inconsistent with those regulations.

John Shubin - Shubin & Bass, on behalf of the Bal Harbour Shops (Permit Holder), addressed the Council and questioned Ms. Ward. Ms. Ward clarified that she reached her conclusions on March 15 and March 20, this was the first time she was communicating her conclusions to the Village, she never spoke to Mr. Nieda regarding the logic behind issuing the permit, she reviewed the application and the permit, it appeared to her that the Church, Bank and Village Hall were in the Business District, and that the Village Hall building had access directly from Bal Bay Drive, but not from Collins or 96th Street.

Mr. Spencer questioned Ms. Ward if she had served as an expert witness for Mr. Shubin in the past. Ms. Ward advised that she had. Mr. Shubin explained that he stipulated to her qualifications as an expert, but not necessarily to the confidence of the testimony provided.

Mr. Spencer believed that the Council had the power and the duty to issue the mandate to revoke the permit. He provided Mr. Weiss with case law. He requested that the permit be revoked and deemed invalid.

Elizabeth Hernandez, Attorney - Akerman Senterfitt, on behalf of the Bal Harbour Shops, addressed the Council and requested that Fairfield Manor resident Mr. Walsh answer some questions.

Paul F. Walsh Jr., 9800 Collins Avenue #203, reported that he did not receive any notice of the building permit being issued and was not aware that a permit could be issued for a curb cut on Bal Cross Drive, without a hearing. He discussed the impact on the quality of life for him and the community, which would be substantial. He also discussed a safety impact. Mr. Walsh didn't see his property value increasing, if the permit was allowed to remain.

Mr. Shubin asked Mr. Walsh several questions. Mr. Walsh confirmed that he had owned property for 27 years in the Village and had never received notice from the Village regarding a building permit being issued. He added that traffic, safety, and aesthetics would affect his property value. He thought that the issuance of the permit would increase traffic. Mr. Walsh questioned the need for an additional egress, if the Shops was not expanding. He noted that it had been previously reported that there would be up to 50 trucks a day using that egress. He agreed that there wouldn't be additional trucks accessing the Shops, but that they would be egressing differently.

Mr. Spencer noted that in the February 21, 2012 Council Meeting minutes, Ms. (Amy) Huber (Subin & Bass) had estimated that between 25-50 trucks would use the egress daily. He requested that the minutes be added to the information provided.

Mr. Spencer reported that Mr. Hauser would speak on behalf of Anthony Gillman (Fairfield Manor President, since he was on a cruise. He noted that the Fairfield Manor was an 18 unit co-op.

Marc Hauser, Attorney - Hauser and Hauser PLLC, on behalf of Anthony Gillam (Fairfield Manor President), addressed the Council and apologized for Mr. Gillam not being in attendance, since he was on a cruise. He reported that Mr. Gillam signed and filed the petition. He agreed that Mr. Gillam presented the same evidence and testimony as Mr. Spencer did for the Fairfield Manor.

Mr. Spencer requested that the letter from Richard Weiss' firm, dated March 6, 2012, be included as part of the record.

Assistant Mayor Blachar left the meeting.

John Shubin, Attorney - Shubin & Bass, on behalf of Stanley Whitman and the Bal Harbour Shops (Permit Applicant and Owner of the Property at 9700 Collins Avenue), addressed the Council.

Assistant Mayor Blachar returned to the meeting.

Mr. Shubin noted that only one entity filed an appeal to the permit, Fairfield Manor Associates Inc. He incorporated all of the arguments they made in the letter sent to Mr. Weiss, dated March 9, 2012, into the record. He discussed the process of appeals. He noted that their position was that it would be inappropriate to consider any of the evidence heard today that went beyond the four corners of the appeal that was filed by the Fairfield Manor.

Mr. Shubin reported that the Shops voluntarily refrained from proceeding with the permit, but believed that the permit was properly issued. He reviewed Village Code Section 21-33 and noted that it didn't provide any appeal rights, so it was inappropriate to view this as an appeal or consider revoking the permit, which would adversely affect the Shops. He discussed the County Board of Rules & Appeals. Mr. Shubin clarified that nothing was provided in Section 21-33 that gave the right of a third party to appeal the decision of the Building Official.

Mr. Shubin requested that the Council limit their consideration of other material, if they allowed it, and explained that the only relevant material was set forth in the four corners of the appeal. He discussed case law and noted that the testimony by the Fairfield Manor was hearsay and could not be considered. He clarified that the Council could only consider what Mr. Gillam had submitted.

Mr. Shubin clarified that Mr. Miller was not the Building Official and the Village Code designated the issuance of a permit to Mr. Nieda, not Mr. Miller. He explained that if someone complained about what Mr. Nieda did, then the standard was whether or not his position was reasonable. He noted that case law stated that it had to be clearly erroneous, but pointed out that there wasn't any evidence of that and what was being heard was

another interpretation. He clarified that they hadn't demonstrated that Mr. Nieda's interpretation was clearly erroneous.

Mr. Shubin pointed out that under Mr. Spencer's theory the entire expansion and renovation of Village Hall, which didn't have a traffic study or public notice, was null and void. He continued that Village Hall would also be in violation of the interpretation (by Mr. Miller and Mr. Spencer), since it didn't access directly onto 96th Street, but accessed onto Bal Bay Drive. He thought that it was unfair to adopt an interpretation that was contrary to Mr. Nieda's interpretation, or holding the Shops to a standard that the Village didn't hold itself to.

Mr. Shubin reviewed Village Code Section 21-77. He read the business section and noted that the district boundary directed back to the original plat, not some redone plat. He reviewed Section 21-317, regarding boundary designation.

Mr. Spencer objected to the March 9, 2012 letter from Mr. Shubin to Mr. Weiss, since it was not in evidence. Mr. Shubin requested that any correspondence that related to the matter be incorporated into the record, as part of the evidence. Mr. Spencer objected to any unidentified documents that they didn't have a right to cross-examine or discuss.

Mr. Shubin read the correspondence from Richard Weiss to Mayor Rosenfield, dated March 6, 2012, and provided Mr. Spencer with a copy of the letter. He explained that the letter reported that Mr. Nieda determined that the boundary of the business district was the center line of Bal Cross Drive and vehicles exiting the Shops onto Bal Cross Drive remained within the business district. Mr. Shubin believed that as long as Mr. Nieda made a reasonable interpretation of the Code the Council must uphold that. He explained that Section 21-320 didn't apply, since it was a curb cut not an expansion or an alteration of a building or structure, so the provisions that they cited were inapplicable.

Mr. Shubin added Florida State Statute 95-361 into the record. He reported that established Bal Cross as a public road, as a matter of the statute.

Mr. Shubin added that by law the Council should respect the property owner's rights under the Code and interpret it in a way that furthered their right. He clarified that he wasn't suggesting that a third party rights be ignored, but explained that the law required that a tie go to them. He thought that it was overwhelming that the Fairfield Manor (the Petitioner) had not met their burden.

Mr. Spencer read the last sentence of Mr. Weiss' letter that advised any affected party could initiate such review by filing a written request with the Village Clerk. Mr. Shubin noted that his point was that wasn't in the Village Code.

Mr. Spencer questioned if Mr. Shubin sent a letter to Mr. Weiss, in response to the March 6, 2012 letter, requesting for a quasi-judicial hearing. Mr. Shubin didn't think that it was appropriate to cross-examine attorneys, in a quasi-judicial matter.

Mr. Spencer requested that the record reflect that the March 7, 2012 letter from Mr. Shubin be placed into evidence, which requested a quasi-judicial proceeding.

Ms. Hernandez noted that the Council had the right to revoke the decision. She clarified that building code issues would appear before the County Board of Rules and Appeals, but this was a zoning code issue. She added that the appeal was appropriately before the

Council. She reviewed Code Section 21-54 and noted that the Fairfield Manor had standing. She added that the Council had the authority to revoke the permit. Ms. Hernandez reported that the same issue was discussed at a 1985 Council meeting and was denied. She requested that the permit be revoked.

Mayor Rosenfield opened the public hearing.

Beth Berkowitz, 10160 Collins Avenue, discussed Section 21-77 of the Code and voiced her opinion that Tract D, Church by the Sea, was considered residential. She reported that the issue of the curb cut had come before the prior Councils and had always been denied. She noted that the last request was on November 26, 1985, which was denied unanimously. She requested that the Council consider that prior Councils denied the curb cut.

Anamarie Kelly Stoppa, 77 Camden Drive, was unclear on Mr. Shubin's position that the appeal was inappropriate before the Council. She noted that the November 26, 1985 Council Meeting minutes established a quasi-judicial hearing, which was requested by the Bal Harbour Shops. Ms. Stoppa read the last paragraph of the 1985 November Council Meeting minutes, which showed that an appeal had been filed by the Shops at that time, so it was appropriate for the residents to file an appeal at this time. She clarified that the streets were not owned, but were dedicated for use and enjoyment, so the center line only determined the center of the street.

Arthur Gellman, 9801 Collins Avenue #7D, didn't think that anyone thought that Mr. Nieda's decision was reasonable. He questioned if a traffic study was done and voiced concern with traffic turning left, from Bal Cross Drive onto Collins Avenue, which would cause traffic jams. He asked if a noise study was done and discussed the trucks at the Shops that would egress early in the morning. He also voiced concern regarding the pollution. Mr. Gellman felt that it would be a major interruption to the Village and he didn't see how the Council could support that the permit was reasonable. He urged the Council to do what was right.

Neil Alter, 9801 Collins Avenue #11U, reported that his building's (the Balmoral) entry would be located directly opposite the future egress that was contemplated. He discussed concern with pedestrian safety and reported a recent incident, in Surfside, involving an 18 wheeler hitting a boy. He noted that many pedestrians used the gate on Bal Cross Drive, from the gated section. Mr. Alter thought that the issue was the interest of the community versus special interests. He requested that the Council pursue the welfare of the community.

Steve Greenberg, 9800 Collins Avenue – Fairfield Manor, reported that Fairfield Manor Vice President Shirley Greenberg was present to speak on behalf of Anthony Gillam, Fairfield Manor President. He thought that Mr. Shubin lost his argument when he said that Mr. Nieda didn't have to be 100 percent right.

Mr. Holder was sworn in by Mrs. Horvath.

Dan Holder, 24 Bal Bay Drive, spoke against the permit and in favor of the opportunity that the Council had to do something. He discussed his concerns regarding safety, aesthetic, noise, and smell, which would affect everyone. He urged the Council to stand up for the rights of the community and revoke the permit.

Brian Mulheren, 10245 Collins Avenue #12G, didn't agree that nobody had authority over the Building Official. He discussed the Village Planner, Michael Miller, who had been the Planner for many years and knew the Comprehensive Plan and the Village very well. He urged the Council to follow Mr. Miller's opinion. He read an email between the Florida Department of Transportation and the Shops Traffic Engineer advising that the egress was only temporary, as an interim solution, which would eventually be an ingress/egress. He voiced concern with pedestrians, traffic, public safety, etc. Mr. Mulheren noted that the street (Bal Cross Drive) was not part of the business plat and was a private residential street. He noted that the Council had the responsibility to the people that they represented to keep the Village as a village. He requested that the Council deny the permit.

Larry Jaffe, 10175 Collins Avenue #902, reported that the real issue was a review of what was done by the Building Official. He clarified that the codes and the regulations of the Village were violated, because it required a transportation evaluation and review by the Council.

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

Mr. Weiss clarified that the Architectural Review Board did not have jurisdiction in the Business District, since that District was exempt from the entire Appearance Code. He noted that the Council's job was to provide an interpretation of the Code. He added that if the Council agreed with the Building Official's interpretation of the Code, then a motion to confirm his interpretation should be made and, if not, then a motion to disapprove with the Building Official's interpretation should be made.

Mayor Rosenfield explained that the Council needed to hear adequate information, before a decision was made.

Assistant Mayor Blachar noted that she highly respected Building Official Daniel Nieda, who had done a fine job for the Village.

Assistant Mayor Blachar reported that after reviewing all of the information, she considered that the Business District zoning ended at the property line and that the zoning ordinance provided that Bal Cross Drive was not zoned.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to disapprove the Building Official's decision, because the driveway approved in the building permit didn't comply with Section 21-320(a) of the Code, which limited vehicular access to and from the Business District to Collins Avenue and 96th Street.

Councilwoman Cohen asked Mr. Shubin for the real reason that the Shops needed the curb cut. Mr. Shubin reported that it was needed to increase vehicular circulation, by providing an additional egress point. He clarified that it would be available as an egress option, but would not be a requirement for the trucks to use it. Councilwoman Cohen asked if a hardship existed. Mr. Shubin explained that it was in the best interest of the Shops to have the additional egress. Mr. Weiss clarified that the issue wasn't whether or not they needed it, but was looking at the Code and making an interpretation of it. Councilwoman Cohen felt that there was conflicting information. Mr. Shubin pointed out that part of the decision was made after numerous conversations with the Village Police Chief, regarding the need for it.

Mr. Spencer objected to the last comment by Mr. Shubin and requested that it be stricken

from the record.

The motion carried (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes.

The meeting was temporarily adjourned at 9:39 p.m.

The meeting reconvened at 9:44 p.m. All Councilmembers were in attendance.

3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS: None.

4. SPECIAL PRESENTATIONS:

Discussion of Facts about Candy Flavored Tobacco Products not Covered by the Food and Drug Administration (FDA) – Tobacco Free Workgroup: The Group was not in attendance for the presentation.

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

Dina Cellini, 211 Bal Cross Drive, requested that Tab B be removed.

Mr. Treppeda requested that Tab C be removed.

Tab A: February 21, 2012 Regular Council Meeting Minutes;

Tab D: Up to \$15,000.00 from the General Fund for actuarial studies needed for collective bargaining with the Dade County PBA, on behalf of the Village Police Officers;

Tab E: Tree Injections by Spray Pro, for Whitefly treatment, as follows:

\$8,645.00 in Gated Residential Section Funds for Coconut Palms – approval is contingent upon approval by the Gated Residential Advisory Committee (the cost of aerial spraying would be reduced by \$5,188.80)

\$38,640.00 in Resort Tax Funds for Coconut Palms (on 96th Street and on the beach) and Date Palms (on Collins Avenue and on the beach) (the cost of aerial spraying would be reduced by \$7,783.20); and

Tab F: \$6,250.00 in Resort Tax Funds for The Billy Goat to replace a damaged hazardous Date Palm tree, at 10178 Collins Avenue.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to approve the items on the Consent Agenda, except for Tabs B and C. The motion carried (5-0).

TAB B – MOTION APPROVING EXPENDITURE OF POLICE FORFEITURE FUNDS: The request was for approval of Police Forfeiture Funds as follows:

Federal: Up to \$12,613.00 for a mobile modular trailer, to be used as a Police training room (cost includes 24-month lease, delivery cost, and return cost);

State: \$3,500.00 donation to Ruth K. Broad Bay Harbor K-8 Center, to support community based drug/crime prevention program; and

\$10,000.00 for the Crime Watch Prevention Program, for expenses and supplies.

Dina Cellini, 211 Bal Cross Drive, asked where the trailer would be placed, since the prior trailer was an eyesore in the alley (next to Village Hall). Chief Hunker reported that it would be placed north of the Maintenance building, next to the Recreation Center. Mr. Treppeda clarified that it would be between the Recreation Center and the Public Works building, with a hedge to block it from the public. He assured that it wouldn't block anything and would not stick out into the parking lot.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to approve Tab B. The motion carried (5-0).

TAB C – MOTION APPROVING EXPENDITURE OF GATED

RESIDENTIAL SECTION FUNDS: The request was for approval of Gated Residential Section Funds, as follows:

Recommended by the Gated Residential Section Advisory Committee (RAC):

Up to \$112,000.00 for landscape improvements along Park Drive, each entrance, and surrounding the Guardhouse;

Up to \$15,000.00 for Landscape Architect Fees for O'Leary/Richards Design, to handle procurement and installation services, of the proposed landscaping improvements;

Amend Section 6-42 of the Village Code, to expand the uses of the .5% additional permit fee, to as broad a definition as possible (the Code limits the uses to security enhancements);

Amend Section 2-74 of the Village Code, to allow the Gated Residential Section Advisory Committee to make recommendations to the Council, on any issues affecting the Gated Area (the Code limits the recommendations to landscaping and security issues);

Oppose any plan that would result in moving the entry/exit gate on Bal Bay Drive, from its current location; and

Not Reviewed by the Gated Residential Section Advisory Committee (RAC) yet:

Up to \$4,000.00 to replace the trees in the median, on Camden Court, which are full of termites, with something adequate as determined by Mr. O'Leary.

Mr. Treppeda explained that he removed Tab C in order to review the Code amendments that the Committee had requested. Councilwoman Cohen questioned why the entry/exit gate had been discussed at the RAC meeting. Mr. Treppeda explained that a future Shops expansion plan may suggest that the gate be moved. He added that it was suggested by the Committee as a precaution.

Assistant Mayor Blachar noted that if the items were approved, then the Attorney would need to be directed to prepare an ordinance to amend the Code.

A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve Tab C. 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 LOCATED AT 200 BAL BAY DRIVE AND 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 Assistant Mayor Blachar and seconded by Councilman Packer to approve the Resolution.

Anamarie Kelly, 77 Camden Drive, objected to giving the Village Manager and Village Attorney the authority to take all action and execute all documents, but didn't object to the swap of the property. She spoke in favor of the document coming back to the Council once it was executed.

Carter McDowell, Attorney - Bilzin Sumberg Baena Price & Axelrod LLP, addressed the Council.

Assistant Mayor Blachar requested that it be stipulated that the Village would maintain the trees, grass, etc. Mr. Treppeda assured that it would be clear that the Village would do that. Assistant Mayor Blachar thanked Mr. Imbesi for the swap.

The motion carried (5-0); thus becoming Resolution No. 2012-754.

9. REPORTS:

A. VILLAGE MANAGER:

Mr. Treppeda requested that Mr. Nieda provide a statement regarding revoking the building permit, for the Shops curb cut.

Dan Nieda, Village Building Official, advised that he would proceed with the Council's request to revoke the permit, which would be done the next day. Mayor Rosenfield thanked Mr. Nieda.

Mr. Spencer clarified that the permit would be revoked on March 21, 2012. Mr. Nieda agreed.

Mayor Rosenfield reported on the St. Regis Grand Opening event, which was held on March 17, 2012.

B. VILLAGE CLERK:

Lobbyist Registration Report: As of March 20, 2012:

Mrs. Horvath reported that an updated list of lobbyists registered with the Village was provided at the beginning of the meeting, since there were three new registrants the day of the meeting.

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 requested that Mr. Treppeda report on the item.

Mr. Treppeda reported that he would try to obtain prices from the paving company, by the next RAC meeting. Assistant Mayor Blachar also requested Mr. Treppeda to find out whether or not it would be necessary to change the curbs and gutters, at the same time that the paving was done.

Peter Kunen, Craig A. Smith & Associates - Village Engineer, reported that the curbs needed to be replaced, as well as the asphalt paving. He explained that if the pavement was done without the curbs, then it could create future drainage issues. Mr. Kunen will meet with several paving companies, for them to provide an evaluation and estimated costs. Assistant Mayor Blachar questioned if there would be a charge for the evaluation/cost estimate. Mr. Kunen advised that there wouldn't be a charge for that.

Mr. Kunen discussed the Village project to be done in the Gated Area, for the construction of new water mains. He reported that the new mains would be installed through directional drilling, to minimize the impact to the pavement. He estimated the project to begin in June 2012 and to be completed by October 2012.

Assistant Mayor Blachar questioned when the repaving project should be started. Mr. Kunen will provide Mr. Treppeda with a critical path chart. Assistant Mayor Blachar explained that it would be needed, so the RAC would know when to assess the residents for the project.

Dan Holder, 24 Bal Bay Drive, questioned if there were any projects that could be combined, to reduce the cost of the paving. Mr. Kunen will look into that.

Assistant Mayor Blachar pointed out that, if the Village paid to repave the portion of the roads that it was working on, then maybe the Gated Area would pay less for those areas, which would result in a lower assessment. She requested that Mr. Kunen provide a percentage analysis for that.

Dan Holder, 24 Bal Bay Drive, asked if the Village would pay for the gutters and noted that the Village used those roads for its vehicles as well.

Councilwoman Cohen discussed the small section of Bal Cross Drive, outside the Gated Area, and asked who would pay to repave that area. Mr. Treppeda didn't know, but pointed out that it didn't belong to the Village. Councilwoman Cohen distributed pictures and noted that section of the street was the most visible and needed to be repaved more than any of the other streets. Mr. Kunen reported that no projects were planned for that section of the street. Mayor Rosenfield noted that would have to be looked into.

Lenore Riso, 139 Bal Bay Drive, suggested that landscaping removed by some of the new homes be used in the Gated Area, instead of being thrown away.

Councilwoman Cohen explained that the cost to replant landscaping would be more than buying new landscaping. She added that the landscaping also didn't always transplant well.

Discussion of Zoning of West Side Low-Rise Buildings –

Councilman Sanz: Councilman Sanz requested that Mr. Miller discuss the issue.

Michael Miller, Village Planner, clarified that hotels were not permitted in the RM-5 District, but apartment hotels were permitted. He reported that one such apartment hotel, the Quarzo, presently existed. He explained that it was a local land use decision. He discussed residents versus transient people and resort tax revenue that was derived from a hotel.

Councilman Sanz spoke in favor of the RM-5 District being strictly residential. He reported that it was his District and he wanted to protect the residents. He requested that the issue be worked on. Councilman Packer clarified that the Master Plan allowed someone to buy an apartment building and convert it into a hotel, similar to the Quarzo. Mr. Miller agreed. Councilman Packer thought that it might be wise to initiate a study, to amend the Master Plan, to prevent any hotels in that area. Mr. Weiss explained that the documents would have to be revised, to delete apartment hotels as a permitted use, with the Quarzo remaining. Mr. Treppeda clarified that an amendment would take two public hearings. Mr. Weiss agreed. Mayor Rosenfield was not for or against the issue, but pointed out that the Quarzo brought in resort tax revenue. Councilman Packer noted that Councilman Sanz didn't want the buildings to be converted. Councilman Sanz pointed out that the St. Regis would be bringing in resort tax money and the additional resort tax revenue was not needed. He requested that the Village Code be looked at and voiced that he would prefer

that the District be limited to residential. Councilwoman Cohen pointed out that the Quarzo was a high-end property. She didn't want the Council rushing into anything, without looking into the options and having some control over it. Councilman Sanz requested that it be discussed and noted that the residents didn't want more hotels on the west side. Mayor Rosenfield requested additional information on the issue.

Beth Berkowitz, 10160 Collins Avenue, reported that three buildings on the west side had been approached by investors, with the intention of converting them into hotel rooms, without any renovations. She voiced concern that the buildings with financial difficulty may be targeted.

Mayor Rosenfield suggested that the Council be provided with some proposals, on how the issue could be rectified.

Mr. Miller reported that it would be a simple Village Code amendment, if the Council wanted it changed.

A motion was offered by Councilman Sanz, and seconded by Councilman Packer to request that the Village Attorney prepare an Ordinance for first reading next month. The motion carried (5-0).

Dina Cellini, 211 Bal Cross Drive, spoke in favor of amending the Code. She noted that the Quarzo was situated perfectly where it was (at the end), but that she would view it differently if the Quarzo was in the middle of the block, with residents on either side.

Brian Mulheren, 10245 Collins Avenue, commended the Council for taking action. He noted that it wasn't just transients, but also additional cars, which would greatly affect everyone.

Assistant Mayor Blachar thanked Councilman Sanz for bringing the issue to the Council.

Discussion of Bus Shelters – Councilman Sanz:

Councilman Sanz requested that the item be deferred, until the April Council Meeting.

10. OTHER BUSINESS:

Public Comment:

Dan Holder, 24 Bal Bay Drive, agreed that it was good that the Council was acting quickly (on the zoning of the west side low-rise buildings).

Dina Cellini, 211 Bal Cross Drive, asked what the Council was doing to assist the three employees that would be let go, as a result of outsourcing the solid waste services. Mr. Treppeda reported that the employees had already been interviewed by Choice Environmental (the company providing the solid waste services) and recommendation letters would also be prepared. He added that the Village would do whatever it could to assist them.

Penny Sepler, 10275 Collins Avenue, suggested that the apartment buildings on the west side be looked at on a case by cases basis, instead of categorically saying that they should all be kept the way that they were. Councilwoman Cohen agreed and spoke in favor of receiving input from other residents. Mr. Weiss reported that there would be two public

hearings, for the proposed ordinance, which would allow input from the public.

11. ADJOURN: There being no further business, a motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to adjourn. The motion carried (5-0) and the meeting was adjourned at 10:37 p.m.

Attest:




Ellisa L. Horvath, MMC, Village Clerk


Mayor Jean Rosenfield