

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

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, November 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 7:00 p.m. by Mayor Rosenfield. The following were present:

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

Absent: 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 the Council.

Mayor Rosenfield thanked Carolyn Travis, Tourism Director, for the recent front page article in the Tropical Life section (The Miami Herald), regarding the Village's public art project.

3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS: Mr. Weiss requested that Tab J be deferred to the December Council Meeting, for technical reasons.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to defer Tab J to the December Council Meeting. The motion carried (4-0).

4. SPECIAL PRESENTATIONS: None.

5. CONSENT AGENDA:

Dina Cellini, 211 Bal Cross Drive, requested that Tabs B, C, D, E, G, and H be removed for discussion.

Approval was requested for the following remaining items:

Tab A: September 13, 2012 Regular Council Meeting Minutes;
September 4, 2012 First Budget Hearing Minutes;

Tab F: Gated Residential Section Advisory Committee Recommendations:
\$1,700.00 to remove dying Ficus tree on Park Drive (south of Harbour Way);
Note: The Committee did not forward the playground and recreational

equipment ordinance for Council consideration;

Tab I: \$3,067.35 to purchase uniforms for the Public Works Department from Creative Ad Specialteez, LLC.

A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to approve Tabs A, F, and I on the Consent Agenda. The motion carried (4-0).

Tab B – Motion Approving Expenditure of Police Budgeted

Funds: Approval was requested for \$4,250.00, for payment of services to MRW Consulting Group.

Dina Cellini, 211 Bal Cross Drive, voiced concern that the Dan Gelber law firm services would be overlapping that of MRW. Mr. Treppeda ensured that there wouldn't be any overlapping of services.

Neil Alter, 9801 Collins Avenue, requested the amount paid to date to MRW. Mr. Treppeda reported that \$6,000.00 had been paid and the requested amount would be in addition to that. Chief Hunker explained the contracts with MRW (first one for \$50,000.00 and the second one for \$55,000.00). Mr. Alter questioned the contract with Franklin. Chief Hunker explained that contract was for something entirely separate from the MRW contract.

A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to approve Tab B. The motion carried (4-0).

Tab C – Motion Approving Termination of Lease Agreement:

Approval was requested to terminate the lease of one 2013 Harley Davidson Road King Motorcycle for the Police Department, which was leased using federal forfeiture funds (\$475.00 early termination fee).

David Kwiat, 10185 Collins Avenue, questioned the number of motorcycles that were leased and how they were paid for. Mr. Treppeda reported that there were three motorcycles, one paid with forfeiture funds (to be returned) and two paid with general funds.

Dina Cellini, 211 Bal Cross Drive, questioned if the other vehicles, etc. paid for with forfeiture funds would now be paid for with general funds. Mayor Rosenfield explained that all of the leases would be reviewed and a determination would be made. Mr. Treppeda agreed that was being assessed and there would be a budget allocation next month, by the Finance Director. He noted that Police take home cars would have to be negotiated. Ms. Cellini questioned what would be done with surplus cars. Mr. Treppeda reported that unneeded items paid with forfeiture funds would be disposed of.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tab C. The motion carried (4-0).

Tab D – Motion Approving Agreement with Code Red

Notification Service: Approval was requested for \$4,660.00 from the General Fund, for one year usage of the Code Red Notification System. The Council previously approved the agreement at the October 2012 meeting, with forfeiture funds to be used.

Brian Mulheren, 10245 Collins Avenue, spoke in favor of the program, but suggested that resort tax funds, not general funds, be used.

Nina Rudolph, 212 Bal Bay Drive, suggested that the service also be divided by districts, to focus on contacting certain areas (such as the gated area or buildings) as needed.

Dina Cellini, 211 Bal Cross Drive, agreed that resort tax funds should be used if possible, since it would alert hotels regarding evacuation orders, etc. She added that if resort tax funds couldn't be used, then the funding should come from the Police fund, not the general fund.

The Council spoke in favor of using resort tax funding, if possible.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tab D and if resort tax funds could not be used, then general funds would be used. The motion carried (4-0).

Tab E – Motion Approving Recommendations of the Resort Tax Committee: Approval was requested for \$15,000.00 for a 3-month trial, for beach cleaning by Beach Raker.

Dr. Krop, 9601 Collins Avenue and Resort Tax Committee Member, explained that he had voted in favor of the item at the Committee meeting, but suggested that it be delayed until after the beach renourishment project. Mayor Rosenfield agreed.

A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to deny approval of Tab E. The motion carried (4-0).

Tab G – Motion Approving Installation of Channel Markers (Buoys): Approval was requested for \$3,788.00 in resort tax funds, for American Underwater Contractors to install channel markers, at the rear of the St. Regis Hotel.

Dina Cellini, 211 Bal Cross Drive, requested clarification. Mr. Treppeda explained that it would be similar to the channel provided behind the ONE Bal Harbour, to allow boats (without propellers) to come up to the shore through the exclusion zone, but not on the beach. He clarified that jet skis or other boats with propellers would not be allowed to come to the shore, but non-motorized vessels would be allowed to come onto the shore.

Neil Alter, 9801 Collins Avenue, questioned if the buoys would be installed to benefit specific hotels. Mr. Treppeda advised that they would not and explained that the Village Code had defined those two areas (behind the ONE and behind the St. Regis) for a zone. He added that the Code also specified that the Village was to pay for the cost of the channels. Mr. Alter spoke in favor of the item, if resort tax funds would be used. Mr. Treppeda confirmed that resort tax funds would be used.

A motion was offered by Assistant Mayor Blachar to approve Tab G. The motion to approve was withdrawn by Assistant Mayor Blachar.

Dan Holder, 24 Bal Bay Drive, clarified that boats could come up to the shore, but could not stay on the shore. Mr. Treppeda agreed and added that boats with propellers were not

allowed in the exclusion zone. Mr. Holder discussed problems with jet skis coming to the beach. He didn't understand the need for the exclusion zone. Mr. Treppeda had never heard of a problem with jet skis and advised that it would be addressed, if there was a problem. Mr. Holder spoke against approval, since it created a nuisance and danger.

Anamarie Kelly Stoppa, 77 Camden Drive, questioned if approval or a permit was needed from the Army Corps of Engineers, or the County. Mr. Treppeda assured that it was properly permitted from all required entities.

Brian Mulheren, 10245 Collins Avenue, spoke against approval and clarified that the Council had previously taken action to prohibit motorized vehicles or jet skis on the beach. He questioned where the jet skis were coming from and discussed the problems with jet skis.

Mayor Rosenfield questioned if the zone could be done without the jet skis. Mr. Treppeda will look into it.

A motion was offered by Mayor Rosenfield and seconded by Councilman Packer to table Tab G, until the December Council meeting. The motion carried (4-0).

Tab H – Motion Approving Funds for the Village's Annual

Snow Festival: Approval was requested for up to \$9,270.00, for the 10th Annual Snow Festival at the Bal Harbour Park, on January 13, 2013.

Dina Cellini, 211 Bal Cross Drive, suggested that resort tax funds be used, as in prior years. Mr. Treppeda discussed prior sponsors and will look into the possibility of using resort tax funds.

Yankee Andrusier, 150 Camden Drive, requested that the date be changed to a Sunday. Assistant Mayor Blachar reported that it had been changed to a Sunday, as of last year.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tab H and to use resort tax funds if possible (otherwise use Village funds). The motion carried (4-0).

6. PUBLIC HEARINGS:

Quasi-Judicial Public Hearings:

Consideration of a Request from Bay Colony of Bal Harbour, Inc. (owner of the property located at 290 Bal Bay Drive, Bal Harbour, FL) for a sign for the Quarzo Hotel. Pursuant to Village Code Section 15-2, signs must be approved by the Village Council: This item was deferred earlier, until the December Council Meeting.

Zoning Hearings/Quasi-Judicial Public Hearings: None.

Ordinances Second Reading/Public Hearings: Mr. Weiss requested that Tabs K and L be delayed, until Village Attorney Tony Recio arrived.

The following Ordinance was read, by title, by Mrs. Horvath:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING," AMENDING ARTICLE I "IN GENERAL" SECTION 21-1 "DEFINITIONS" REGARDING DEFINITIONS OF PERMITTED USES LISTED IN THE ZONING DISTRICT REGULATIONS; AMENDING ARTICLE III "DISTRICT REGULATIONS" DIVISION 10 "OF OCEAN FRONT DISTRICT," SECTION 21-281 "PERMITTED USES" AND SECTION 21-299 "PD PLANNED DEVELOPMENT DISTRICT" OF THE CODE OF ORDINANCES IN ORDER TO AMEND THE PERMITTED USES WITHIN THESE DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was offered by Councilman Packer and seconded by Councilwoman Cohen to approve.

Mayor Rosenfield opened the public hearing.

Hope Calhoun, Attorney with Greenspoon Marder, P.A., explained that her client, a potential tenant, would be impacted by the proposed Ordinance.

Gene (Eugene) Howard, 9999 Collins Avenue, Attorney representing the Owner (Eli Jacob) of the Largest Commercial Unit (7,800 feet) at the Harbour House, submitted his Lobbyist registration. He discussed the Owner's medical condition and the need to sell the property. He discussed the pending contract with Dr. Bernard Shuster (potential tenant) and the Village's proposal to modify the uses for the space, which would affect that. He requested to reserve his client's rights and noted that the changes would be unconstitutional, under the equal protection law. Mr. Howard clarified that his client was being discriminated against, because they were the only one, at 7,800 square feet, that would be affected by the Ordinance. He noted that if the Ordinance was approved, then his client wouldn't be able to sell or use the property. He viewed it as selective enforcement, without any remedy, except the courts.

Hope Calhoun, Attorney representing Dr. Shuster (Plastic Surgeon) reviewed the changes that were made between first and second reading to the Ordinance. She requested that the Ordinance be modified, to allow the Doctor to occupy the space. She pointed out that it was one of the few large spaces in the buildings, there were benefits to the Village, the space would continue to be vacant, there would be no tax benefit, Harbour House residents would pay for the burden of the vacant space, etc. Ms. Calhoun proposed that the Council go back to the October 18th version of the Ordinance, to allow for a medical office in the space, with the addition that it not be limited to only residents. She suggested that, if the Council did not go back to the October 18th version, then the existing commercial spaces be excluded. She requested that on page nine (Section 21-299(c)(1) language be created so that section would not be applicable to existing commercial spaces larger than 7,000 square feet.

Mitch Allen, Attorney representing the Harbour House Condominium Association (10275 Collins Avenue), noted that the Association was against the proposed changes to the Ordinance and would like to allow Dr. Shuster's office in their building.

Stacy, Rothman, Harbour House (10275 Collins Avenue), reported that the majority of the unit owners at Harbour House didn't want a commercial space in the Harbour House. She discussed concern with patients entering and exiting the building and pointed out the

limited parking. She noted that one of the Harbour House Board members was not even aware of the proposed office and none of the residents had been asked about it.

Yankee Andrusier, 150 Camden Drive, discussed the importance of having a doctor like Dr. Shuster in the Village and pointed out that there had been a plastic surgeon in the Balmoral for years, without any issues. He added that Dr. Shuster's parents had lived in the Village for many years and that this would be a tremendous asset to the Village. He spoke against changing the Ordinance, since it had been fine up to now.

Brian Mulheren, 10245 Collins Avenue, voiced concern regarding the existing traffic, an operating place not a doctor's office, the lack of information provided to the residents of the Harbour House and adjacent buildings, and the lack of parking. He spoke in favor of the Council restricting things in the Village.

Howard Weiss, 9801 Collins Avenue (Balmoral), didn't know how correct notice was given to the public, since the Ordinance was not legible. Mr. Treppeda reported that it was provided to the public online in color, so it was legible. Howard Weiss discussed the changes to the Ordinance.

Mayor Rosenfield explained that another business of the same type could occupy the same space, if someone left. Mr. Weiss clarified that if an existing tenant moved, then the existing use would remain during a short period of time. He added that they could exist as long as it was done on a continuous basis. He clarified that if the space was vacant for six months or longer, then those uses would be lost, the grandfathering would not apply and the spaces would then be governed by the Ordinance.

Howard Weiss, 9801 Collins Avenue, discussed taking rights away from the Balmoral building, for the commercial uses. Mr. Weiss explained the vested rights provision and procedures provided to file a vested rights application.

Allen Krieger, 9801 Collins Avenue, discussed the Balmoral's by-laws and the first floor designation for commercial use. He thought it was unfair to the residents to change the Ordinance and explained that the residents relied on those spaces to be rented commercially. He added that they were not looking to have tenants open to the public.

Mayor Rosenfield discussed the vested rights provision.

Gene (Eugene) Howard discussed the urgency to do something for his client. He pointed out that they were being denied all their rights. Mr. Howard clarified that they had enough parking spaces for the space. He pointed out that his client was the only one being affected by the proposed Ordinance.

Hope Calhoun clarified that the space had twenty parking spaces, the vested rights procedure was subjective, based on the tenant's clientele there wouldn't be a significant increase in traffic, and she didn't know that the Harbour House would want the space to be restricted to only a restaurant. She suggested that the Ordinance be deferred, to allow them to meet with the residents, to gain their support.

Marsha Chonchol, 9801 Collins Avenue, spoke against the Ordinance, since it was unfair and would limit the buildings to finding tenants, thereby increasing the maintenance fees to the residents.

Neil Alter, 9801 Collins Avenue, didn't think that the severe restraints were justified.

Mayor Rosenfield explained that the Council didn't want the oceanfront to become a busy commercial area, but were open to discussion.

Anamarie Kelly Stoppa, 77 Camden Drive, questioned if the same restrictions would be placed on the business district.

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

Assistant Mayor Blachar spoke against the Ordinance, which would limit what could be done on the east side and affect the buildings, which relied on the revenue from the businesses. She spoke in favor of the building associations deciding what should be allowed in their individual buildings.

Councilman Packer noted that Councilman Sanz was not in attendance, but had thought that Councilman Sanz was opposed to the public going in and out of the Harbour House. Councilman Packer spoke in favor of a limit on the type of commercial uses to be allowed.

Councilwoman Cohen noted that the Harbour House Association had nothing to do with the tenant.

Eugene Howard agreed that they were not a tenant of the Harbour House Association, but were another tenant in the building that paid monthly maintenance fees. He explained that his client had bought the space, since it could be used for various things, which the Ordinance now proposed to eliminate.

Councilman Packer didn't want to remove the rights for a commercial property. He questioned if the type of commercial business and size could be limited. Mr. Weiss noted that the existing Ordinance already did that. He explained the history behind the proposed Ordinance in which the Council had directed the Village Attorney to eliminate all commercial uses in the oceanfront buildings, except for spas and health clubs.

Eugene Howard pointed out that it was selective enforcement, his client would lose the potential buyer, and the process for vested rights was a seven-month process.

Councilman Packer spoke against taking away any rights.

Councilwoman Cohen discussed the parking that was needed for the commercial space.

Dan Nieda, Building Official, reported that the parking spaces (20 spaces) needed for the commercial space were provided.

Mayor Rosenfield allowed one additional comment from the public.

Barbara Grossman, Harbour House (10275 Collins Avenue), wasn't against a commercial space, but voiced concern with medical people and clients for a plastic surgeon using the same entrance to the building and its affect on the appearance of the Harbour House.

Councilwoman Cohen (a Harbour House resident) reported that the residents and neighbors of the Harbour House were unaware of the transaction for the plastic surgeon,

the valet and parking was out of control, the road was shared by the ONE Bal Harbour, and ambulances/ bandages/stretchers were not consistent with what the Harbour House wanted. She discussed concern that the space would use the entrance to the Harbour House lobby, which would affect security. She didn't think that this commercial use would be in the spirit of the Ordinance. She requested that the Council consider that the Harbour House residents were not aware of the potential plastic surgeon tenant.

Mayor Rosenfield understood the difference between what the Balmoral and Harbour House were asking for. She discussed the importance of deciding what would be in the best interest of all of the buildings. She spoke in favor of the residents having input and suggested that the Harbour House documents be changed, if it didn't require for the residents being notified. Mayor Rosenfield suggested that the item be tabled.

Mr. Weiss read the existing Ordinance.

Assistant Mayor Blachar thought that potential residents buying at the Harbour House would be aware of the ability for that space to be used as a commercial space. Mr. Weiss agreed that if they had looked at the Village Code, then they would have been aware of the uses that were allowed.

The motion failed (1-3), with the roll call vote as follows: Assistant Mayor Blachar no; Councilwoman Cohen yes; Councilman Packer no; Mayor Rosenfield no; Councilman Sanz absent.

A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to continue the public hearing to the December 18th Council Meeting, when there would be a full Council. The motion carried (4-0), with the vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Mayor Rosenfield yes; Councilman Sanz absent.

The following Ordinance was read, by title, by Mrs. Horvath:

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, INCLUDING APPLICABILITY OF REQUIREMENT, APPLICATION AND REVIEW PROCEDURE, COST RECOVERY, AND DEVELOPMENT AGREEMENT; AMENDING SECTION 21-320 OF THE VILLAGE CODE TO CLARIFY THE APPLICABILITY OF COUNCIL REVIEW OF A TRAFFIC STUDY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

Tony Recio, Village Attorney, reported that the only change from first reading was that the word "may" was changed to "shall" on page three.

John Shubin, Shubin & Bass – Attorney on behalf of Bal Harbour Shops, objected to the Ordinance, which would impose additional burdens on the operation of the Shops. He clarified that they weren't opposed to a review for the exterior, but were opposed to the

Village controlling the uses that were currently permitted in the Shops.

Mayor Rosenfield requested clarification that there was precedence for a site plan review process, in other municipalities.

Guillermo Olmedillo, Olmedillo X5 – Village Consultant, agreed that there was already precedence in many municipalities, to have an ordinance to address those issues.

A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to continue the public hearing until after discussion of Tab L. The motion carried (4-0), with the vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Mayor Rosenfield yes; Councilman Sanz absent.

The following Ordinance was read, by title, by Mrs. Horvath:

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING SECTION 21-316 OF THE VILLAGE CODE TO AMEND THE LIST OF USES AND SET FORTH PERMITTED AND CONDITIONAL USES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to approve.

Mayor Rosenfield opened the public hearing.

John Shubin, Shubin & Bass – Attorney on behalf of Bal Harbour Shops, agreed that there was precedence for site plan ordinances that affected the exterior of commercial buildings or the introduction of certain uses within the building that had a discernible impact on the community. He clarified that he wasn't aware of any ordinance that regulated currently permitted uses in an existing shopping center. He noted that it was an inappropriate burden on the Shops (a pre-existing business). He agreed that the Shops would go through an extensive site plan review for the expansion and that the Shops would not introduce a use that would impact the community or their other tenants. He requested that the Ordinance be approved, with changes that would allow a computer store over 2,000 square feet. Mr. Shubin requested clarification on what a certified chef and a mass-assembled food component were.

Mayor Rosenfield questioned why the Apple (computer) store would be 10,000 square feet, if the average store size was 3,500 square feet. Mr. Shubin explained that the Shops would like to do something unique and there were technology stores that were greater than 10,000 square feet.

Matthew Lazenby, Bal Harbour Shops, discussed the concept of a flagship store, which tended to be larger. He spoke in favor of a 10,000 square foot limitation, which would be fair.

John Shubin pointed out that the Shops had agreed to the distance requirement to eliminate any excessive concentration, withholding all pending applications, providing appropriate mitigation for special events, a reasonable limit of 10,000 square feet, and a more thorough review for aesthetics even without adding square footage. He noted that

this is the only item that the Shops has requested, so they're not the only shopping facility that has to go through this type of procedure. He pointed out that the site plan process could take six to seven months.

Mr. Weiss clarified that Mr. Shubin had requested that the change be made solely related to the appliance/electronic store, not regarding the restaurants, etc. Mr. Shubin clarified that as long as the restaurants would not be closed, if the chefs were not certified and they could continue to work in good faith on those issues. Mr. Weiss clarified that page 5(1) and page 3(2) were the two areas of concern discussed by Mr. Shubin. Mr. Shubin requested that the square footage be changed from 2,000 to 10,000 in those two sections. He clarified that the Shops was okay with the other proposed changes.

Councilman Packer reported that the Apple store at Aventura was 8,500 square feet. He spoke against limiting the Shops to 2,000 square feet.

(Amendment #1) A motion was offered by Councilman Packer and seconded by Councilwoman Cohen to amend the Ordinance by replacing 2,000 square feet with 10,000 square feet, on pages 3(2) and 5(1).

Dan Holder, 24 Bal Bay Drive, voiced concern with noise, traffic, and change in hours for activity. He also didn't like the vagueness of the permitted uses (page 2(1)) and suggested that those types of buildings be restricted, to avoid a problem with noise.

Dina Cellini, 211 Bal Cross Drive, pointed out that the Shops proposed expansion necessitated a review process that wasn't needed before. She spoke in favor of having more regulations. She pointed out that the SunTrust Bank property was also zoned Business, which she thought had been sold. She voiced concern that a currently permitted use could be placed on the property that may not necessitate a major site plan review and could be something that the Village didn't want at its entrance. She pointed out that beyond the retail space of a major electronic store there would be accessory space where employees worked. She noted that in addition to the 10,000 square feet, the Ordinance would allow an accessory use with employees impacting traffic, etc.

John Shubin clarified that the operations would be included in the 10,000 square feet. He pointed out that they had pledged that they would wait for the site plan ordinance to allow the Village to have additional review powers. He clarified that they drew the line on internal retail operations, not expansion.

Assistant Mayor Blachar requested that appliances on page 3(2) be limited to countertop appliances and not include fridges, ranges, etc.

John Shubin did not have an objection to placing limitations on those types of uses.

(Amendment #2) A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to amend the Ordinance by changing the permitted uses on page 3(2) to countertop appliances.

Anamarie Kelly Stoppa, 77 Camden Drive, spoke in favor of regulations and against a 10,000 square foot Apple store. She discussed issues with hours of operation for an Apple store when new products were introduced, etc.

John Shubin clarified that the Shops didn't have any intention of changing the existing

hours of operation for any one tenant. He noted that the Village had a police station in the Shops, if someone was breaking the law.

David Kwiat, 10185 Collins Avenue, noted that the stores at the Shops weren't heavily occupied and an Apple store would change the whole dimension, since it had a dense population all the time. He pointed out that the restaurants had different hours than the stores.

Brian Mulheren, 10245 Collins Avenue, spoke against an Apple store at the Shops and a Police station there (which benefited the Shops). He spoke in favor of restrictions and noted that services, traffic, and parking would be greatly affected.

Mayor Rosenfield requested that the motion include the agreement by the Shops that there would not be another store.

Tony Recio, Village Attorney, clarified that the distance limitation, which was provided in the Alternative Version of the Ordinance, was not included in the motion.

Mrs. Horvath distributed the Alternative Version. Mr. Recio reviewed the Alternative Version.

(Amendment #3) A motion was offered by Councilwoman Cohen and seconded by Assistant Mayor Blachar to amend the motion to add the red language, as shown in the Alternative Version.

Mr. Recio clarified that the motion allowed one of 10,000 square feet and any second store of that use category regardless of size, would be a conditional use and would have to go through the site plan review process.

Assistant Mayor Blachar spoke in favor of the Shops continuing to charge for parking, including for the Apple store.

John Shubin reported that the Shops didn't have any intention to treat any store differently for parking, but he spoke against restrictions to be placed for complementary parking for everyone for Christmas Eve, etc. Assistant Mayor Blachar clarified that as long as the same rules applied to all the tenants at the Shops. Mr. Recio suggested the following language "such use shall be prohibited from offering parking at any lesser rate than is applied to invitees of other business on the property." Mr. Shubin clarified that some of the stores validated for parking and the Shops didn't want any particular store to be prohibited from doing what the other stores did. He noted that the Shops would be fine with the amendment if the intent was to make sure that one particular use received special treatment that wasn't available to the others.

Matthew Lazenby explained that there were public rates and validated rates, as well as some VIP customers that were provided with complimentary parking. He clarified that was something that the stores did individually, not the Shops. He added that the Shops still had to be paid for parking, whether it was from the customer or the store.

Nina Rudolph, 212 Bal Bay Drive, spoke in favor of always charging for parking, which helped to control traffic and security.

John Shubin clarified that the Shops would not be opening up their parking lots.

Neil Alter, 9801 Collins Avenue, questioned if the Shops had ample parking available, for a 10,000 square foot store, and if a traffic study had been done.

John Shubin reported that no methodology had been provided that this type of use had any greater traffic generation impacts than any other comparable retail use.

Dina Cellini, 211 Bal Cross Drive, spoke against each tenant being allowed to do what they wanted for parking. She spoke in favor of imposing something regulating that.

Mr. Shubin noted that he had never seen an ordinance that had rules regarding parking charges for a commercial shopping center. He added that the Shops had every intention of maintaining things the way that they were.

Steve Greenberg, 9800 Collins Avenue, spoke against a 10,000 square foot Apple store. He pointed out that the Council needed to listen to the residents, since the residents paid 96% of the taxes and the Shops paid 4%. He added that the residents didn't want to sell Village Hall and didn't want an Apple store.

Councilwoman Cohen questioned if the Village would have input, if Neiman Marcus turned 10,000 square feet of their store into an Apple store. Mr. Recio reported that under the Village's current code Neiman Marcus would be able to do that. He clarified that the proposed Ordinance was an attempt to change that and allow for some review, even within a department store, for this particular use.

Assistant Mayor Blachar questioned if it would be allowed, if it was less than 2,000 square feet. Mr. Recio clarified that the second store would have review requirements, regardless of size.

John Shubin clarified that the 1,000 square foot distance limitation would take it out of the radius of the Shops

Mr. Weiss clarified that the question was if a site plan review would be required if a 10,000 square foot store was not already established and one of the anchor stores used 10,000 of their space and made it into that store. Mr. Recio explained that scenario would be allowed, without site plan review by the Council. He clarified that if there was a second store, then that would have to be reviewed by the Council, regardless of size. He added that wouldn't prevent an anchor store from selling some merchandise.

John Shubin noted that the Shops didn't feel comfortable discussing what could and couldn't be placed at Neiman Marcus or Saks. He requested that the ordinance be approved, without the store within a store prohibition, which could be visited another time.

Councilwoman Cohen was just asking if a department store could do that or not.

Mr. Weiss explained that the amended language would not allow another store within the department store, if one already existed for that use. He suggested that if the Council didn't want to place that restriction on the department stores, then the language needed to be changed to exclude a similar use within an established department store once a stand alone store was established.

Councilman Packer spoke against the Council creating every kind of restriction it could think of on the Shops. He spoke in favor of the least amount of restrictions, while being fair.

Councilwoman Cohen agreed. Assistant Mayor Blachar spoke in favor of some restrictions, including charging for parking. Mayor Rosenfield spoke in favor of as few rules as possible, with strict enforcement.

Dr. Krop, 9601 Collins Avenue, spoke in favor of the Ordinance going back to first reading, to allow the public to speak regarding the material change from 2,000 to 10,000 square feet.

(Amendment #4) A motion was offered by Assistant Mayor Blachar and seconded by Mayor Rosenfield to add "such use shall be prohibited from validating parking or otherwise offering parking at any lesser rate than is applied to invitees of other businesses on the property."

Mr. Weiss reviewed the four amendments: 1.) change the 2,000 square feet to 10,000 in two spots, 2.) add the word "countertop" to the word appliance, 3.) adopt the red language provided in the Alternative Version which imposed the distance requirement (this motion would include changing the square feet from 2,000 to 10,000 and Amendment #1 would not need to be approved), and 4.) include the language making the parking uniform.

Councilman Packer questioned if parking fees were subject to a sales tax.

Matthew Lazenby, Bal Harbour Shops, advised that they were.

The Council discussed the fourth amendment. Councilwoman Cohen noted that some of the stores validated parking for their customers, so this would be doing something different for one type of store. Assistant Mayor Blachar agreed this store would not be allowed to validate for parking.

A motion was offered by Assistant Mayor Blachar and seconded by Mayor Rosenfield to amend the language for Amendment #4 to read: "such use shall be prohibited from offering parking at any different rate than is applied to invitees of other businesses on the property." The motion carried (3-1), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen no; Councilman Packer yes; Mayor Rosenfield yes; and Councilman Sanz absent.

(Amendment #2 – Countertop Appliances) The motion carried (4-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Mayor Rosenfield yes; and Councilman Sanz absent.

(Amendment #3 – Alternative Version – Limiting 1,000 Feet) The motion carried (4-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Mayor Rosenfield yes; and Councilman Sanz absent.

Mr. Weiss noted that Amendment #1 did not need to be voted on, since it was included in Amendment #3.

Dr. Krop, 9601 Collins Avenue, spoke in favor of the Ordinance going back to first reading. Mr. Weiss explained that the title of the proposed Ordinance put people on notice of the subject matter that would be discussed.

The motion to approve the Ordinance, as amended, carried (4-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Mayor Rosenfield yes; Councilman Sanz absent; thus becoming Ordinance No. 2012-565.

The public hearing for the following Ordinance was now held:

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, INCLUDING APPLICABILITY OF REQUIREMENT, APPLICATION AND REVIEW PROCEDURE, COST RECOVERY, AND DEVELOPMENT AGREEMENT; AMENDING SECTION 21-320 OF THE VILLAGE CODE TO CLARIFY THE APPLICABILITY OF COUNCIL REVIEW OF A TRAFFIC STUDY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Beth Berkowitz, 10160 Collins Avenue, requested that Mr. Olmedillo report on the strength of the Ordinance.

Guillermo Olmedillo, Olmedillo X5 – Village Consultant, reported that the Ordinance had all of the standards that the Village needed.

Dan Holder, 24 Bal Bay Drive, voiced concern that the Ordinance didn't protect the residents sufficiently, regarding noise. He requested that number five be added on page 3, to include #5 to be a more than diminuous change in noise and #6 to be more than a diminuous change in hours of activity. Assistant Mayor Blachar requested clarification on his request. Mr. Recio explained that diminuous would be a small change with no impact. Mr. Weiss clarified that Mr. Holder was suggesting additional categories to trigger a site plan review. Mr. Recio voiced concern in how those items would be applied and reviewed, in terms of what a significant change in noise would be. He explained that it would be more subjective than he would be comfortable with.

Mr. Holder also requested that page 3 "Conditional Use will not significantly alter existing impacts to adjacent premises" to "Conditional Use will not alter existing impacts more than diminuous to adjacent premises."

Mayor Rosenfield clarified that there was already a noise ordinance in the Village Code. Mr. Holder didn't think that the Code would cover the items he discussed. Mr. Recio discussed the provision in the proposed Ordinance and the Ordinance passed under Tab L. Mr. Weiss read the current noise ordinance. Mr. Holder spoke in favor of adding the language he suggested.

Mr. Holder requested that the language on page 5 be changed from "If the applicant, or any other substantially affected party" be changed to "If the applicant, or any other affected in more than a dimenimous manner."

John Shubin voiced concern that it would be inappropriate to have someone argue that a permitted use being converted to another permitted use would have to go through site plan review if someone claimed that there was a diminuous increase in noise even though both noise levels met the noise ordinance. He voiced concern about the requirement for site plan review, if something generated slightly more noise than nothing. He thought that the noise ordinance worked and could be enforced.

Dan Holder, 24 Bal Bay Drive, clarified that he had requested that if the change was more than diminuous.

Dina Cellini, 211 Bal Cross Drive, discussed the noise ordinance and pointed out that everyday noises may not be covered under the ordinance. She discussed the significant noise coming from the Shops on Park Drive. She noted that the trees on Park Drive were now very sparse and the noise from the traffic and trucks were very loud, but didn't last long enough to call someone to complain. She requested that be addressed.

Mayor Rosenfield agreed that the Shops should have some type of buffer there.

Dan Nieda, Building Official, reported that sound attenuation was part of the construction process. He clarified that trees didn't count as a buffer, but concrete barriers did. He discussed the Village's noise ordinance and the use of a noise meter by code enforcement.

Sybille Holder, 24 Bal Bay Drive, reported that they hear the Shops at 7:00 a.m., on Bal Bay Drive. She spoke against the Shops being allowed to make noise before 8:30 a.m. or after 5:30 p.m.

The motion carried (4-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Mayor Rosenfield yes; and Councilman Sanz absent; thus becoming Ordinance No. 2012-566.

Ordinances First Reading/Public Hearings: None.

Resolutions/Public Hearings: The following Resolution was read, by title, by Mrs. Horvath:

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, ESTABLISHING SANITARY SEWER AND WATER RATES FOR THE 2012/2013 FISCAL YEAR; ESTABLISHING AN EFFECTIVE DATE.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve the Resolution. The motion carried (4-0); thus becoming Resolution No. 2012-764.

7. ORDINANCES FIRST READING/PUBLIC INPUT: None.

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

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, CONFIRMING THE DECLARATION OF EMERGENCY ISSUED BY THE VILLAGE MANAGER DUE TO THE SEVERE WEATHER CONDITIONS RELATED TO HURRICANE SANDY; TERMINATING THE STATE OF EMERGENCY; PROVIDING FOR AN EFFECTIVE DATE.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve the Resolution. The motion carried (4-0); thus becoming Resolution No. 2012-765.

9. REPORTS:

A. VILLAGE MANAGER:

Discussion of Budget Revision - Christopher Wallace,

Finance Director: Mr. Treppeda reported that an Ordinance First Reading for a budget amendment would be presented at the next meeting.

B. VILLAGE CLERK:

Lobbyist Registration Report: As of November 20, 2012:

The list of Lobbyists registered with the Village was included in the agenda. Mrs. Horvath distributed an updated list at the meeting.

C. VILLAGE ATTORNEY:

Gelber Law Firm: Mr. Weiss reported that a \$295.00 hourly rate had been negotiated with the Gelber law firm. He will review the bills with Mr. Treppeda and pass them on for approval.

SunTrust Bank Property – 9600 Collins Avenue: Mr. Weiss confirmed that the SunTrust property was under contract, with an entity related to the Bal Harbour Shops. He requested Council direction on whether or not to proceed to acquire the property through eminent domain.

Neil Alter, 9801 Collins Avenue, questioned if the insurance carrier for the Councilmembers had been advised that a law firm had been hired, to make sure that satisfied the insurance company's guidelines in case of litigation. Mr. Weiss clarified that there weren't any allegations against the Council that would be covered by insurance. He didn't know if the Village's insurance covered accounting mistakes. He added that the Village hadn't seen the audit from the Federal government yet. Mr. Alter questioned if the regular audits would be shared with the Councilmembers. Mr. Treppeda reported that the regular audits were shared at Council meetings.

Dina Cellini, 211 Bal Cross Drive, questioned if the Marcum report (dated March 2012) was part of the report done for fiscal year ending September 30, 2011. Mr. Treppeda reported that it was. Ms. Cellini noted that was presented at a June Council meeting, but no mention was made of the concerns by Marcum about the practices being followed in the forfeiture fund. She added that it was disregarded and not mentioned. Ms. Cellini advised that only up to page 85 was provided on the Village web site and the compliance pages were missing. She thought that Mr. Alter's concern in the lack of transparency in what the Council was seeing and what the staff was sharing was legitimate.

Ms. Cellini voiced concern with what the Village was paying to defend the practices by the actions of the Chief. She spoke in favor of a cap for the agreement with the Gelber Law Firm. She spoke in favor of notifying the Village's insurance carrier about the Department of Justice allegations.

Ms. Cellini suggested that instead of amending the budget to absorb the obligations of the forfeiture fund into the general fund that those obligations be earmarked to the police budget. She spoke against the Village's contingency or reserves being impacted due to the actions of the Chief. She requested that line items from the forfeiture budget be presented at the next meeting for the public to review what should and shouldn't be cut and the budget it should be placed in. She didn't want to absorb the cost of the forfeiture fund just

because they were committed.

Mayor Rosenfield noted that they were discussing what could and couldn't be eliminated.

Assistant Mayor Blachar left the meeting.

Councilman Packer agreed and requested that the line items be presented to the Council. Councilwoman Cohen agreed that the Council should be aware of every step that is taken. Mayor Rosenfield reported that all of the Council was able to meet and discuss the issue with Mr. Treppeda. Mr. Treppeda understood the process that was requested.

Assistant Mayor Blachar returned to the meeting.

Councilman Packer suggested that a cap of \$10,000.00 be approved for the Gelber Law Firm. Assistant Mayor Blachar spoke against a cap, since the Council didn't know what the amount would be. Mayor Rosenfield explained that the Village hadn't received the audit from the Department of Justice yet, so the Council could consider a cap when it knew what the extent of it was. Mr. Weiss explained that they were careful to only use Mr. Gelber when necessary and not to duplicate services. He noted that they were in a holding pattern, until the audit was received from the Department of Justice.

Mr. Weiss requested direction on the SunTrust property.

A motion was offered by Councilman Packer and seconded by Councilwoman Cohen to proceed to the acquisition of the SunTrust property (through eminent domain).

Brian Mulheren, 10245 Collins Avenue, spoke against approving the motion.

Councilman Packer suggested that the property be used for a community center and/or the Police Department.

Anamarie Stoppa, 77 Camden Drive, thought that the Village Attorney had said that it would take years for eminent domain. She spoke in favor of letting Mr. Whitman have the property.

Mr. Weiss disagreed that he had said it would take years and explained that there was a process for eminent domain.

Assistant Mayor Blachar spoke in favor of waiting, since that could always be done in the future. Councilman Packer spoke against waiting and explained the need to act as quickly as possible, since the new owners would have the right to extend the lease, which would cost the Village more money. Councilwoman Cohen agreed with Councilman Packer. Mayor Rosenfield spoke in favor of waiting, since the Council hadn't asked the residents and many residents were opposed to having a community center on that property. She was not ready to commit to request eminent domain. Councilman Packer discussed the costs for events hosted by the Village outside and the loss of money due to renting items as well as events being rained out. Councilwoman Cohen spoke in favor of pursuing it and noted that the majority of residents agreed that a public space or a park was needed for the community to congregate. Mayor Rosenfield spoke against committing to it at this time, without more information. Councilwoman Cohen explained that approval would only be to investigate.

The motion tied (2-2), with the roll call vote as follows: Assistant Mayor Blachar no; Councilwoman Cohen yes; Councilman Packer yes; Mayor Rosenfield no; and Councilman Sanz absent.

Councilman Packer requested that the item be revisited, when the entire Council was present.

D. MAYOR AND COUNCIL: No items were discussed.

10. OTHER BUSINESS:

Public Comment:

Lynne Bloch-Mullen, 10150 Collins Avenue, agreed with Mayor Rosenfield. She suggested that if money had to be spent to buy something, then a building on the west side should be bought for a community center that's not surrounded by streets that are dangerous to cross.

11. ADJOURN: There being no further business, a motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to adjourn. The motion carried (4-0) and the meeting was adjourned at 11:24 p.m.

Attest:


Mayor Jean Rosenfield


Ellisa L. Horvath, MMC, Village Clerk