

RESOLUTION NO. 2012- 2068

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A STIPULATION OF SETTLEMENT AGREEMENT IN YOUNG ISRAEL OF BAL HARBOUR, INC. V. TOWN OF SURFSIDE CIVIL ACTION NO. 1:10-CV-24392 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE STIPULATION OF SETTLEMENT AGREEMENT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, On December 10, 2010, Young Israel served a complaint alleging the Town, among other things, has violated of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”); and

WHEREAS, in accordance with the executive session held on January 9, 2012, the Town Attorney and outside counsel entered into settlement negotiations with counsel for Young Israel; and

WHEREAS, the Town Commission believes that it is in the best interest of the Town to enter into the Stipulation of Settlement Agreement an agreement with Young Israel.

THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above and foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Authorization. The Stipulation of Settlement attached hereto as Exhibit “A” is hereby ratified and approved by the Town Commission and the Town Manager and Town Attorney are authorized to do what is necessary to effectuate the terms of this Agreement.

Section 3. Effective Date. This Resolution will become effective upon adoption.

PASSED AND ADOPTED this 23rd day of January, 2012

Motion by Commissioner Kopelman, second by Commissioner Karukin.

FINAL VOTE ON ADOPTION

| | |
|------------------------------|------------|
| Commissioner Michael Karukin | <u>yes</u> |
| Commissioner Edward Kopelman | <u>yes</u> |
| Commissioner Marta Olchyk | <u>yes</u> |
| Vice Mayor Joseph Graubart | <u>No</u> |
| Mayor Daniel Dietch | <u>yes</u> |



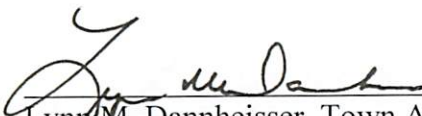
Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Lynn M. Dannheisser, Town Attorney

LAW OFFICES

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A PROFESSIONAL ASSOCIATION

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January 11, 2012

By Email: nat@lewinlewin.com

Nathan Lewin, Esq.
Lewin & Lewin, LLP
1775 Eye Street NW
Suite 850
Washington, DC 20006

Re: Young Israel v. Town of Surfside
Our File 00640/31027
Case No. 1:10-CIC-24392-JORDAN

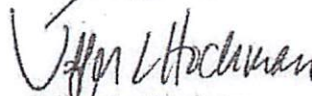
Dear Mr. Lewin:

As discussed during the telephone conference on January 9, 2012, in the above-referenced matter, the parties have acknowledged that the inclusion of and/or the removal of the sentence quoted below from section 2 of a preliminary draft of the Settlement Stipulation will not be relied upon by either party to establish, or as evidence relating to, the intent, meaning, or proper interpretation of the Settlement Stipulation. The Town added the following sentence in an effort to provide concrete examples explaining a preceding sentence in the preliminary draft, and Young Israel requested that the sentence be removed:

"It is acknowledged that during the site plan approval process, the Town reserves the right to require standard mitigation and other action that may be needed, including without limitation, mitigation and action related to traffic, environmental, life safety, public works, and design matters that do not adversely affect the agreed upon items."


I would ask that you please sign and promptly return this letter as a side agreement related to the Settlement Stipulation.

Very truly yours,



Jeffrey L. Hochman
For the Firm

JLH/jh



Agreed to by Nathan Lewin, Esq.
as Counsel for Young Israel

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 1:10-CV-24392-JORDAN/O'SULLIVAN

YOUNG ISRAEL OF BAL HARBOUR,
INC.,

Plaintiff,

v.

TOWN OF SURFSIDE,

Defendant.

_____ /

SETTLEMENT STIPULATION

The parties, (1) TOWN OF SURFSIDE ("Town") and (2) YOUNG ISRAEL OF BAL HARBOUR, INC. ("Young Israel"), hereby stipulate to the following:

1. Young Israel will complete and submit to the Planner and Town Commission, within 15 days after this Settlement Stipulation is signed by both parties a religious land use relief request form ("Request Form") as contemplated under subsection 90-99(1) of the Town's Code of Municipal Ordinances ("the Code"), unless the parties agree to extend the time periods as contemplated in section 7 below. This submission will be made for settlement purposes only and without prejudice to Young Israel's contention that section 90-99 is unlawful for, *inter alia*, the reasons heretofore asserted by Young Israel in this litigation. The Request Form will request specific relief from Code provisions and related rules, policies, and procedures that Young Israel believes interfere with its efforts to build the structure set forth in the site plan submitted to the Town ("Building") and to improve the Property owned by Young Israel on 96th Street

between Abbott and Byron Avenues. The Building and the proposed improvements to the Property shall collectively be defined as the "Project." Young Israel has agreed that the Building will have a maximum of 30 feet in height, except that the Building may also include an architectural feature that is not habitable and that does not exceed three feet in height.

2. Upon receipt of the Request Form, the Town will proceed with its consideration of Young Israel's request for relief as contemplated under subsections 90-99(1), (4), (5) and (7) of the Town's Code. Because this relief is being granted pursuant to the settlement of litigation, the Town has waived the requirements of the remaining subsections of Section 90-99, including the requirement for a separate public hearing on the requested relief identified herein. Provided however, that Young Israel will be required to send the same notices to surrounding properties as is required for site plan approval, i.e., posting, issuance of notices, and advertisement for the hearing during which the Commission shall approve the relief as outlined in this section below by accepting and approving this Settlement Stipulation. Except for the Non-Use Variance Requests identified in subsections A through G of this section 2 (which the Town hereby obligates itself to approve by execution of this Settlement Stipulation), the Town shall be entitled to process the remaining aspects of Young Israel's site plan by applying its typical and customary standards and procedures. The Town hereby agrees to approve the following items A through G ("the Non-Use Variance Requests"), which will be included in Young Israel's request for relief and shall conform in all respects to the following:

A. Eastern setback: The minimum setback distance between the Building and the eastern lot line of the subject property will be 10 feet average.

B. Southern setback: The minimum setback distance between the Building and the southern adjusted lot line of the subject property will be 7.5 feet. The term “adjusted lot line” means the northern edge of the screening wall that Young Israel will construct on or immediately adjacent to the southern lot line.

C. Western setback: The minimum setback distance between the Building and the western lot line of the subject property will be 15 feet. The garage ramp and loading space may be included in this setback.

D. Northern setback: The minimum setback distance between the Building and the north property line will be as follows: (a) 5 feet will be permitted as the setback area for 50% of the length of the north side of the Building and entrance stair, and (b) 0 feet for the remaining 50% of the length of the north side of the Building and entrance stair. The parties acknowledge that this 50% division contemplates the inclusion of a cantilevered feature on the portion of the Building, to which the 0 set back figure applies. Young Israel will install landscaping along the entire length of the north side of the Building, including the area under the cantilevered feature of the Building.

E. Lot coverage: The Building’s footprint may exceed the 40% maximum lot coverage limitation set forth in the Code, but in no event will exceed 78%.

F. Impervious area: The Project may exceed the 65% maximum impervious area requirement set forth in the Code, but in no event will exceed 83%.

G. Parking:

(i) *Parking Obligation*. The number of parking spaces that Young Israel will be required to provide in connection with the Project (“Parking Obligation”) will be determined by subtracting from the “Gross Parking Figure,” the “Parking Adjustment

Figure.” The “Gross Parking Figure” will be defined as one parking space for each 50 square feet of non-administrative and congregational space as contemplated under section 90-77(c) of the Town Code. The “Parking Adjustment Figure” will be defined as the number determined by the “Qualified Independent Parking Consultant” as the number of parking spaces that may be properly eliminated from the Gross Parking Figure so that the resulting Parking Obligation yields an appropriate number of parking spaces after taking into account all relevant factors, including the size and features of the Building, governmental requirements, public impact, impact on Young Israel, and sound judgment. The “Qualified Independent Parking Consultant” will be that individual or entity with professional experience, knowledge, and training in the field of parking consultation in the South Florida area selected by Young Israel from a list of at least three such parking consultants provided by the Town. The fees and costs generated by the Qualified Independent Parking Consultant shall be split by the parties, but subject to a total limit of all such fees and costs not to exceed \$10,000.00. Currently, the parties conceptually anticipate the number of parking spaces needed to satisfy the Parking Obligation to be approximately 54, but the parties also agree that this conceptual figure creates no right of reliance and remains uncertain because Young Israel’s site plan has not yet been submitted to the Town, no Gross Parking Figure has yet been determined, and no Parking Adjustment Figure has yet been determined.

(ii) *Satisfying the Parking Obligation.* Young Israel will satisfy the Parking Obligation at all times without any interruption. At its election, Young Israel may satisfy the Parking Obligation by performing any combination of the following obligations: (a) by providing the number of physical parking spaces under the Building

("On Site Parking Obligation"), (b) by entering into an Off Site Parking Contract as contemplated in sub-section (iii) below, and (c) by paying the Required Contribution to the Town's Downtown Parking Trust Fund as contemplated in sub-section (iv) below. Nonetheless, the number of parking spaces provided by Young Israel must always equal or exceed the number of parking spaces derived by subtracting from the Gross Parking Figure, the Parking Adjustment Figure. The number of off site parking spaces that must be added to the number of physical parking spaces under the Building to satisfy the Parking Obligation shall be defined as the "Required Off Site Parking Spaces." Young Israel's obligations in (b) and (c) above relating to the obligations to contract for Required Off Site Parking Spaces and relating to the obligation to contribute to the Town's Downtown Parking Trust Fund shall be defined as the "Off Site Parking Obligation."

(iii) *Off Site Parking Obligation.* In order to satisfy the Off Site Parking Obligation through an off site parking contract, Young Israel must, at the time of its application for a building permit, have obtained a written and recordable license agreement or lease agreement (a) that gives use, on demand, of the Required Off Site Parking Spaces, and (b) that has an initial term of no less than 5 years. An agreement that satisfies the Off Site Parking Obligation shall be defined as an "Off Site Parking Contract." At least 180 days before the end of the term of any Off Site Parking Contract, Young Israel must renew the Off Site Parking Contract for a term of no less than 5 additional years or enter into a new off site parking contract that satisfies the requirements of the "Off Site Parking Contract." Any effort to satisfy the Off Site

Parking Obligation through an off site parking contract that provides Young Israel with less than the Required Off Site Parking Spaces shall trigger Young Israel's obligations in sub-section (iv) below, as to the shortage of the Required Off Site Parking Spaces.

(iv) *Loss of or Failure to Enter into Off Site Parking Contract.* In the event that Young Israel, at any time, is unable to contract for the Required Off Site Parking Spaces through an Off Site Parking Contract, or in the event that Young Israel is unable to renew or replace an existing Off Site Parking Contract at least 180 days before the end of an existing Off Site Parking Contract, then Young Israel will be obligated to satisfy the Off Site Parking Obligation by paying a required contribution to the Town's Downtown Parking Trust Fund. The amount of the required contribution shall be calculated by multiplying the number of Required Off Site Parking Spaces that are not the subject of an Off Site Parking Contract by \$22,500.00 ("Required Contribution"). Young Israel will pay the Required Contribution by making 30 equal annual payments, each in the amount of 1/30th of the total amount. Once Young Israel becomes obligated to satisfy the Off Site Parking Obligation by paying a Required Contribution to the Town's Downtown Parking Trust Fund, this obligation will remain in force even in the event that Young Israel is able to secure an Off Site Parking Contract at some later date. The first payment of the Required Contribution will be due from Young Israel on the last day of the term of the then-existing Off Site Parking Contract, and each subsequent payment will be due promptly on the same month and day of each following year. If the obligation to pay the Required Contribution was triggered by entry into an off site parking contract that provides Young Israel with less than the Required Off Site Parking Spaces, the first payment of the Required Contribution for the shortage will be due from Young Israel on the last day of the term of the Off Site Parking Contract that applied to

such parking spaces which are no longer subject to an Off Site Parking Contract, and each subsequent payment will be due promptly on the same month and day of each following year. However, in the event that Young Israel fails to enter into an initial Off Site Parking Contract by the date that Young Israel requests a building permit, then the first payment of the Required Contribution will be due when Young Israel requests a Certificate of Use from the Town, and each subsequent payment will be due promptly on the same month and day of each following year. No interest will accrue on the principal amount owed by Young Israel for the Required Contribution. Young Israel's timely payment of the Required Contribution will obligate the Town to ensure that the requisite number of off site parking spaces are available for Young Israel's members and guests to attend events at the Property and that such off site parking is available within 300 linear feet of at least one lot line of the Property. To assist the Town in fulfilling its obligation to ensure such off site parking availability, Young Israel will advise the Town of Young Israel's need for such off site parking at least 48 hours in advance of each applicable event. Currently, the parties conceptually anticipate the number of Required Off Site Parking Spaces to be approximately 23 and that the Required Contribution (unless the figure is decreased through an Off Site Parking Contract) will total approximately \$517,500.00, but the parties also agree that these conceptual figures create no right of reliance and remain uncertain because Young Israel's site plan has not yet been submitted to the Town, no Gross Parking Figure has yet been determined, and no Parking Adjustment Figure has yet been determined.

(v) *Transaction Readjustment.* The parties acknowledge that the Parking Adjustment Figure is being subtracted from the Gross Parking Figure based upon

Young Israel's representation that use of the Building from sundown on Fridays to sundown on Saturdays and on certain Jewish holidays will not typically require the need for any parking spaces ("Religious Observance Representation"). Accordingly, 60 days before the entry into any transaction involving the sale, lease, or transfer of the Building to a person or entity other than Young Israel, Young Israel will provide written notice and a copy of the proposed transaction document to the Town ("Transaction Notice"), and the Town shall have 20 days to increase the Off Site Parking Obligation to mitigate against this change in the Religious Observance Representation. Young Israel will be obligated to satisfy any such increase in the Off Site Parking Obligation through an Off Site Parking Contract or payment of the Required Contribution. In no event will the issuance of a Transaction Notice result in an Off Site Parking Obligation which exceeds the difference between the Gross Parking Figure and the number of physical spaces under the Building. Moreover, in the event the Town fails to respond timely to the Transaction Notice, the Town's right to increase the Off Site Parking Obligation will be extinguished with respect to the transaction referenced in the Transaction Notice. Young Israel will record a valid covenant running with the land that reflects the agreement set forth in this section 2.G(v) simultaneously with the issuance of the resolution approving Young Israel's site plan, and any successor in interest will be bound by such covenant.

(vi) *Failure to Pay the Required Contribution.* In the event that Young Israel fails to promptly pay any part of the Required Contribution when due, with time being of the essence, the Certificate of Use issued by the Town for the Building will become immediately void, and Young Israel will immediately vacate the Building until Young Israel pays all amounts to satisfy the Required Contribution, and the Town issues a new Certificate of Use.

3. The Town agrees that Young Israel will be exempted from paying application fees and other fees that parallel the fees Young Israel previously paid in connection with its previously-submitted site plans, and Young Israel will not be required to pay such fees a second time as part of any new or modified site plan contemplated under this Settlement Stipulation. Nonetheless, Young Israel agrees to pay those fees which do not parallel the fees Young Israel previously paid in connection with its previously-submitted site plans.

4. In the event that a determination by the Town to approve the site plan for the Project becomes the subject of an appeal or the subject of any effort to seek judicial review within 30 days after the Town's approval ("Review Action"), Young Israel will reimburse the Town to the extent provided in this section for the attorneys' fees and costs incurred by the Town in defending its approval. Such reimbursement will not exceed \$10,000.00, and such reimbursement will not be required in the event that Young Israel is joined as a party in any such appeal or in such effort to seek judicial review.

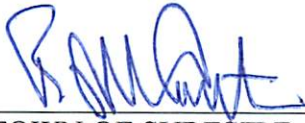
5. Upon the execution of this Settlement Stipulation, the parties will file a joint motion with the Court requesting a 120-day stay of proceedings to effectuate the Settlement Stipulation. Within 40 days after the Town's approval of the Young Israel site plan, the parties will file with the Court the attached stipulation for dismissal all claims against the Town with prejudice and retention of jurisdiction, and the parties will request that the Court enter the attached Final Order of Dismissal with Prejudice and Retention of Jurisdiction ("Final Order").

6. Each party will bear its own attorneys' fees and costs in connection with this dispute and the litigation. However, within 30 days after the entry of the Final Order contemplated in section 5 above, Young Israel will receive a lump sum payment of

\$40,000.00 to defray certain costs associated with this matter. Additionally, the Town will provide a credit to Young Israel in an amount not to exceed \$10,000.00 which credit will be applied by the Town (a) to satisfy those fees which do not parallel the fees Young Israel previously paid in connection with its previously-submitted site plans and (b) to satisfy other expenses charged by the Town to Young Israel in connection with the Project, including fees and expenses contemplated in sections 2.G(i), 3, and 4 above. The parties acknowledge that the lump sum payment and the credit are merely features of an overall settlement, are not an admission of any fact, inference, or conclusion, and shall not be deemed as an acknowledgment of any wrongful, inappropriate, or improper conduct on the part of either party.

7. The parties intend to abide by the following schedule in connection with their performance under this Settlement Stipulation: (1) 1-24-12 Plans submitted; (2) 2-2-12 Development Review Group (DRG) meeting; (3) 2-9-12 Plans resubmitted based on the comments from the DRG meeting; (4) 2-16-12 Second DRG meeting, (5) 2-23-12 Plans submitted for Development Impact Committee (DIC); (6) 3-1-12 DIC meeting; (7) 3-8-12 Plans submitted for P &Z/DRB meeting; (8) 3-29-12 P &Z/DRB meeting; (9) 4-10-12 Commission meeting. Nonetheless, the parties also recognize that this proposed scheduling may need to be modified based upon unforeseen circumstances. In the event of any need to extend any deadline, the parties will work in a cooperative fashion to ensure that the process proceeds expeditiously. Nonetheless, in the absence of an agreement between the parties, each party reserves the right to seek relief from the Court to ensure that delay is avoided.

8. With respect to the Town, this Settlement Stipulation will become effective and binding only after Commission approval during a public meeting during which residents of the Town and other interested individuals may speak and express their views.



TOWN OF SURFSIDE
by Roger Carlton
as Town Manager



YOUNG ISRAEL OF BAL
HARBOUR, INC.
by Morris Kaplan
as President