

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**REGULAR MEETING – MARCH 21, 2013**

The Regular Meeting of the Bal Harbour Village Council was held on Thursday, March 21, 2013, at the Bal Harbour Village Hall Council Chambers (655 – 96<sup>th</sup> Street, Bal Harbour, Florida).

**1. CALL TO ORDER/ROLL CALL:** The meeting was called to order at 7:01 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

Jay R. Smith, Interim 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 Village resident Neil Alter.

**3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS:** Mr. Smith requested that the following item be added to the Consent Agenda: Motion Approving the Execution of an Agreement with the Florida Inland Navigation District (to secure funding for the sand transfer operation project).

*It was the consensus of the Council to add the item.*

**4. SPECIAL PRESENTATIONS:**

**Officer of the Month for February 2013:** Chief Daddario presented Officer Ernie Febbraio, with the Officer of the Month plaque, for February 2013. Sergeant Raul Martinez will be presented with an Officer of the Month plaque at another time, since he was not in attendance.

The following item was taken out of order, per consensus of the Council:

**Discussion of Donation to Ruth K. Broad Center for Playground – Councilman Packer:** *Julia Magnani – Bay Harbor PTA President and Lisa Robbins – Bay Harbor PTA*, reviewed a Powerpoint presentation and requested money for the PRIDE OUTSIDE campaign, with the goal to raise \$500,000.00, for the school's playground areas, field & track, and basketball court. It was noted that the school's playgrounds were open after hours, to the public. A fundraising event will be held on May 2<sup>nd</sup>, at the St. Regis Bal Harbour.

Councilman Packer reported that the Consultatio project would be contributing \$100,000.00 to the program, as part of their Development Agreement with the Village.

Assistant Mayor Blachar questioned if the County School Board had been notified about the deplorable conditions. Ms. Magnani advised that they had been.

### **Beach Renourishment Update – Brian Flynn, Miami Dade**

**County:** Mr. Flynn was not in attendance. Councilman Packer reported that Village Lobbyist Ron Book was working on the issue.

### **Department of Justice Update – Attorney Dan Gelber, Outside**

**Counsel:** Mr. Gelber discussed the letter the Village received on October 26, 2012, from the Department of Justice. He reported that the Village had sent back the \$1.2 million in the forfeiture account, to the Department of Justice (DOJ), and were waiting for the 2012 audit to see if other things were improperly spent. He noted that after review of the 2012 audit, the Department of Justice would address what to do about the \$750,000.00, which had already been noted as being improperly spent, which he would try to negotiate.

Councilman Packer questioned if the accusations in the Department of Justice letter were resolved, or if an investigation was ongoing. Mr. Gelber clarified that the only thing the Department of Justice (Asset Forfeiture Unit) had determined was improperly done was using federal asset forfeiture money for employees and a month of an American Express bill (\$50,000.00), for a total of \$750,000.00. Councilman Packer questioned the difference between the \$750,000.00 and the \$4 million that was discussed before. Mr. Gelber clarified that the letter had noted that the DOJ thought that the Village had \$4 million in its forfeiture account, which they wanted back. He added that the Village only had \$1.2 million in its federal account, which was given back. He clarified that the money was the Village's share of the forfeited funds, which the Village Police Department had generated through its participation in the task force and was not taxpayer dollars. He added that the Department of Justice did not allow forfeiture funds to be used on employment, which the Village did for two years (\$700,000.00). He clarified that the Village had spent money before the letter was received, so the \$4 million in the account was reduced to \$1.2 million. Mr. Gelber clarified that only the federal forfeiture account was being looked at.

Mr. Gelber reported that the alleged improprieties noted in the DOJ report were referred to the Miami-Dade County Police Department, by the Village, for an internal review. He added that the County wanted to wait for the other investigations to be completed, before their review. Mr. Weiss clarified that Village Manager Alfred Treppeda had asked the Miami-Dade County Police Department to conduct the internal affairs investigation on the allegations, but the County had indicated that they were asked to back off by the federal government. He noted that once the federal audit was done, then the Council and the Village Manager would need to determine if they wanted the County to investigate the allegations. Mr. Gelber was unaware of the allegations being actively investigated by the DOJ.

Councilman Packer questioned if anyone was named as being responsible or for charges to be brought against. Mr. Gelber didn't believe there was any conspiracy on the allegation of using the money for the wrong type of expenditure. He clarified that Chief Hunker and other Officers were named in the 12 allegations, which were not investigated by the DOJ Asset Forfeiture Unit, since they were unrelated to the investigation on the forfeiture fund.

Mayor Rosenfield noted that the Council hired outside counsel (Mr. Gelber), to reconcile the issue.

Councilwoman Cohen thought that it would have been appropriate to bring the issues to her attention previously. Mr. Gelber discussed the information provided in the Marcum audit report, which was provided to the Village. Councilwoman Cohen pointed out that the Finance Director would have read and understood the report. Mr. Weiss clarified that the report was widely disseminated. He added that the Council approved hiring outside consultants (MRW), to assist with the issues. He spoke against giving the impression that nothing was done administratively or by the Council, or that the report was ignored.

Councilwoman Cohen spoke in favor of preventing the same thing from occurring again. Mr. Weiss noted that Marcum presented the report annually and suggested that the Council request Marcum to advise if there was anything that needed to be corrected, for the Council to request the Village Manager to look into and then report back.

Councilwoman Cohen questioned the discrepancy between the \$4 million in the letter and the \$1.2 million in the account. Mr. Gelber explained that the Village had already paid overtime, confidential informants, Glades County, etc. before it was told to stop spending the money in that account.

Councilwoman Cohen questioned who approved the creation of a large department that was needed to bring in the forfeiture money. Mr. Gelber didn't know, but pointed out that the Village did benefit from the program. Mr. Weiss reported that the agreements with Glades County were approved by the Council, to create the program, which grew over the years. He clarified that the money was spent on items for police vehicles, communication equipment, etc. which were on the Council agendas for approval. Assistant Mayor Blachar added that donations were also provided to different organizations. Mr. Gelber noted that Glades County received a large portion of it also. Mr. Weiss noted that a report could be provided, to show how the money was spent over the years.

Mr. Gelber reported that state guidelines allowed money to be used for salaries, but the federal guidelines did not. He thought that the Village used the forfeiture funds, when the state funds had been depleted. He clarified that the question was whether or not the expenditures for overtime were appropriately spent.

Assistant Mayor Blachar spoke in favor of investigating the twelve allegations sooner. Mr. Weiss reported that it would be up to the Council if they wanted to use the County, which could take a year, or hire an outside person to investigate. Assistant Mayor Blachar suggested that the Department of Justice finish their review first.

**Joe Imbesi - 175 Camden Drive**, spoke in favor of re-instating Chief Hunker. Mayor Rosenfield reported that the new Village Manager would address that.

**Anamarie Kelly - 77 Camden Drive**, questioned the agreement between the Village and former Chief Hunker. Mr. Weiss clarified that Chief Hunker had an employment contract, with a termination provision, which had been previously approved by the Council. He noted that the Village Manager terminated Chief Hunker and he was only given the things authorized through that contract. Ms. Kelly questioned why Chief Hunker was terminated, since it was without cause.

Ms. Kelly voiced concern about overestimated overtime, which would have affected the

taxpayer's contribution to the pension fund. She questioned the amount the taxpayers would have to pay and if the pension would be recalculated, in response to any overestimated overtime.

**Dina Cellini - 211 Bal Cross Drive**, discussed the timeline for negotiations. Mr. Gelber clarified that his negotiation with the DOJ would be on the amount that the DOJ thought the Village owed, after reviewing the 2012 audit. He added that he would then negotiate anything the DOJ thought the Village had spent inappropriately during 2012, as well as the \$750,000.00 which the DOJ had already determined was spent inappropriately. He clarified that the DOJ letter sent requested that the Village return the \$3.5 million (not \$4 million), based on the money the Village received at the beginning of the year, but the Village had already spent a portion of that money by October and had \$1.2 million in the account. The DOJ was now looking to see if that money was spent properly.

Ms. Cellini noted that the first Marcum audit report provided online was missing the pages with the improprieties. She clarified that MRW was hired by the Council, at the recommendation of the Village Manager, so the Village Manager had to explain why MRW needed to be hired.

Ms. Cellini suggested that Marcum may have been instructed not to present the improprieties in the audit report, since he didn't report on it. Mayor Rosenfield objected to Ms. Cellini's statement.

**Stan Forest - Bay Harbor resident**, will speak later on the letter he sent to the Council, dated February 27, 2013, regarding Chief Hunker.

**Neil Alter - 9801 Collins Avenue**, questioned who would evaluate the accuracy of the charges and payments, related to overtime and the pension. Mr. Gelber reported that Marcum and the DOJ would be reviewing that, to a certain extent. Mr. Alter questioned if an outside auditor needed to be hired, to provide an actuarial report. Mr. Weiss discussed the process to review the overtime payments. He suggested waiting for the DOJ results and then determining if the Village wanted to audit that.

Mayor Rosenfield noted that the State maximum amount for overtime was now 300 hours.

**Brian Mulheren - 10245 Collins Avenue**, reported that Village Attorney Doug Gonzalez notified the Village that forfeiture money shouldn't be spent on overtime or salaries, per the Department of Justice. Mr. Weiss clarified that the Village Attorney memo indicated what expenses were and were not appropriate to use those funds for. Mr. Mulheren pointed out that the Village Manager, Finance Director, and Police Chief were aware of the guidelines and spent the money anyway. He thought that the Village Manager should have brought the Marcum report to the Council's attention and the Council had a fiduciary responsibility. He thought that the Village Manger should be held accountable.

Mr. Gelber clarified that the Department of Justice was reviewing the amount of money spent on employee salaries and overtime out of the federal account and whether or not that was spent inappropriately.

Councilwoman Cohen left the meeting.

## **5. CONSENT AGENDA:**

**Brian Mulheren – 10245 Collins Avenue**, requested that Tab D and the added item be removed, for discussion.

Approval was requested for the following remaining items:

Tab B: November 7, 2012 Special Council Meeting Minutes  
December 18, 2012 Regular Council Meeting Minutes

Tab C: Recommendations of the Gated Residential Section Advisory Committee:  
Renovation of the Bathroom in the Guardhouse \$6,280.00  
Renewal of Service Agreement with TEM Systems \$6,480.00

*A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tabs B and C, on the Consent Agenda. The motion carried (4-0).*

**Tab D – Motion Approving Vehicle Leases:** Mr. Smith requested approval of replacement lease vehicles for #317 (Public Works Director - \$400 monthly for 48 months) and #330 (Village Clerk - \$400.00 monthly for 48 months), through Mears Motor Leasing.

Councilwoman Cohen returned to the meeting.

**Brian Mulheren – 10245 Collins Avenue**, questioned the need for another Public Works truck.

**Ronald Nelson - Acting Public Works Director**, reviewed the vehicles in the Public Works Department.

Mr. Smith suggested that the lease for the Public Works Director be extended for another month, to allow further discussion.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to negotiate an extra month lease for the current Public Works Director's truck for further discussion and to approve the vehicle lease for the Village Clerk. The motion carried (5-0).*

**Added Item – Motion Approving the Execution of an Agreement with the Florida Inland Navigation District:** Mr. Smith requested approval of an Agreement with the Florida Inland Navigation District, to secure a portion of the funding for the Sand Transfer Operation.

*A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to approve. 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:** The following Resolution was read, by title, by Mrs. Horvath:

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, APPROVING AND RATIFYING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE VILLAGE AND THE DADE COUNTY POLICE BENEVOLENT ASSOCIATION IN EFFECT FROM OCTOBER 1, 2011 THROUGH SEPTEMBER 30, 2013; DIRECTING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

Councilwoman Cohen reviewed page 21, Section 12.3, regarding Confidential Records. Mr. Weiss explained the section and the public records law exemptions, pertaining to police officers.

**The motion carried (5-0); thus becoming Resolution No. 2013-771.**

***Dina Cellini - 211 Bal Cross Drive***, requested clarification that the agreement would be an extension of the existing one. Mr. Smith clarified that it was a new contract, with the same terms of the existing contract, with a 300-hour cap for overtime and no wage increases.

**9. REPORTS:**

**A. VILLAGE MANAGER:**

**Discussion of Medjool Date Palm Restoration:** This item was discussed later in the meeting, since Mr. O'Leary was not in attendance.

**Discussion of Park Improvements:** This item was discussed later in the meeting, since Mr. O'Leary was not in attendance.

**B. VILLAGE CLERK:**

**Lobbyist Registration Report: As of March 21, 2013:** The list of Lobbyists registered with the Village was included in the agenda and posted online.

**Update on Village Special Election:** Mrs. Horvath reported

that a Special Election was scheduled for April 23, 2013, for the land disposal charter amendment.

### **VILLAGE MANAGER:**

**Discussion of Medjool Date Palm Restoration:** Mr. Smith requested approval of \$84,000.00 in resort tax funds, for Groundworks, Inc. to perform a restoration treatment (MAGIC TOUCH) for the Medjool Date Palms.

***Bill O'Leary - Village Landscape Architect***, reported that the palms were healthy, but the trunks had mold, which this process would remove and give a new appearance to. He estimated the process to take a month. Councilman Sanz questioned the guarantee for the amount of time the process would last. Mr. O'Leary reported it to be three to four years, which he would get in writing.

Mr. Smith reported that the six Medjool Date Palms at 10201 Collins Avenue would be removed, for the Consultatio project.

Councilman Packer questioned when the trees would be pruned. Mr. O'Leary reported that would be done around the first week of April.

Assistant Mayor Blachar pointed out that the trees in the Gated Area also needed to be pruned. Mr. O'Leary reported that Collins Avenue would be done first, then the Gated Area.

**A motion was offered by Councilman Sanz and seconded by Councilwoman Cohen to approve up to \$84,000.00, for Groundworks, Inc. to perform the restoration treatment on the Medjool Date Palms (approximately 200 trees). The motion carried (5-0).**

Mr. O'Leary will try to renegotiate, for a better price.

**Discussion of Park Improvements:** Mr. Smith requested approval of \$18,530.00, for Rhino Sports to replace the basketball court at the Park, as well as a discussion regarding further park renovations.

Councilman Packer discussed the need for park improvements, but spoke against approval of the plans, except for the basketball court flooring. He spoke in favor of a master plan for the park, public works building, and senior center, since money would be received from the Consultatio Development Agreement for that.

Mayor Rosenfield discussed the need for bathrooms at the park. Councilman Packer noted that the bathroom at the recreation center could be used, as well as providing portable toilets.

Councilwoman Cohen spoke in favor of replacing the flooring for the basketball court.

Councilman Packer will meet with residents and bring suggestions back to the Council.

***Dina Cellini – 211 Bal Cross Drive***, spoke in favor of a formal park needs assessment. Councilwoman Cohen suggested identifying the space first and then conducting a needs assessment. Ms. Cellini pointed out that the firm may identify the amount of space that would be needed. She spoke in favor of determining what was needed first, then identifying

where the space would be. She didn't think that individual meetings would be sufficient.

Councilman Packer invited any interested residents to meet with him, to provide input on the issue.

**Dr. Sandy Lieberman - 179 Bal Cross Drive**, spoke in favor of a master plan, the water feature, and the ability for all age groups to be able to use the park.

**Neil Alter - 9801 Collins Avenue**, suggested that resort tax funds be used.

**Brian Mulheren – 10245 Collins Avenue**, spoke in favor of hiring a firm for a needs assessment and using resort tax funds.

Mayor Rosenfield agreed, but suggested that the item wait until a new manager was hired.

**Bill O'Leary – Village Landscape Architect**, discussed the need for input on what the community wanted and the amount of space available.

Mr. Smith will review the item.

*A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to approve \$18,530.00, for Rhino Sports to provide new flooring for the basketball court. The motion carried (5-0).*

C. **VILLAGE ATTORNEY:** Mr. Weiss did not report on any items.

D. **MAYOR AND COUNCIL:**

**Discussion of Donation to Ruth K. Broad Center for Playground – Councilman Packer:** This item was discussed earlier in the meeting.

**Bus Shelter Update – Councilman Sanz:** **Peter Kunen – Village Engineer (Craig A. Smith & Associates)**, reported that the structural engineering designs were complete, the civil engineering designs would be complete next week, the preliminary decorative paver and landscaping designs were complete, and the bus shelter shop drawings would be submitted next week for review. He estimated construction to start in May. Councilman Sanz questioned if the Village would still receive federal funds, if the project was not done by June. Mr. Smith reported that the Village was requesting an extension for the completion date, which he would follow up on. Mr. Kunen didn't foresee any problems with approval from the Department of Transportation.

Councilman Packer discussed the traffic light pole, which was blocking a sidewalk on Collins Avenue (in front of Saks).

**Neil Alter – 9801 Collins Avenue**, discussed the missing pavers on the corner of 96<sup>th</sup> Street and Collins Avenue (south). Mr. Smith reported that pavers would be installed there, as part of the bus shelter project.

Mr. Kunen reported that the existing pavers were no longer manufactured. Councilman Packer thought that the Council had already approved a paver. Mr. Smith will follow up on the pavers.

Councilwoman Cohen spoke in favor of addressing the deteriorated sidewalks. Mr. Smith will come up with a solution and look at the budget. Councilwoman Cohen offered her assistance.

Mr. Kunen will provide an update next month.

### **Discussion of Solid Waste Services – Councilman Sanz:**

The Council discussed the following issues with the solid waste services: garbage not picked up at 284 and 286 Bal Bay Drive, garbage picked up after the time noted in the contract, not notifying the Village Manager of problems with the truck, abusing the bins, bins not completely emptied, a supervisor not reviewing the process, and the recycling and garbage being mixed.

**John Lawson, Division Manager - WSI and Choice (3840 N.W. 37<sup>th</sup> Court)**, agreed that the recycling and garbage should not be mixed, unless the recycling was contaminated. He understood the comments and discussed the plans for more stringent rules and regulations. He committed to staying involved to address the issues.

**Brian Mulheren – 10245 Collins Avenue**, complained about damage to the Carlton Terrace garbage bins, wreckless drivers, and dumping recycling and garbage together.

**Carlos Mangual, Government Affairs Manager - WSI**, reported that Choice was acquired by Waste Services on November 16, 2012.

**Neil Alter – 9801 Collins Avenue**, complained about wreckless drivers.

**David Kwiat - 10185 Collins Avenue**, discussed the expense of dealing with the company and the cost to repair the bins. Mr. Lawson requested that the company be made aware of the issues.

Councilman Packer suggested that Choice supply the bins. Mayor Rosenfield noted that wasn't in the original contract, but could be looked at for any future contract.

## **10. OTHER BUSINESS:**

### **Public Comment:**

**Stan Forest - Bay Harbor Islands resident**, discussed his February 27, 2013 letter to the Council and spoke in favor of re-instating Chief Hunker. Mayor Rosenfield noted that the new Village Manager would address the Chief position.

**Brian Mulheren - 10245 Collins Avenue**, spoke against Chief Hunker receiving any money and pension, or providing a recommendation letter, since he spent forfeiture money on items when he was told not to.

**Dina Cellini – 211 Bal Cross Drive**, expressed outrage that Chief Hunker was terminated without cause. She felt that the allegation that Chief Hunker contacted a judge regarding a case was reason alone for termination with cause and should be investigated.

Councilwoman Cohen discussed and displayed photos of the deteriorated condition of the

area underneath the Haulover Bridge. She discussed the responsibility of the ONE Bal Harbour to maintain the area, per the Development Agreement. She spoke in favor of the Village paying to pressure clean and replace the landscaping /dirt and then invoicing the ONE Bal Harbour for repayment. Mr. Weiss reported that the ONE Bal Harbour was in violation of the Development Agreement and was in bankruptcy. He added that the Village had the right to proceed with paying for the items and then trying to recover the money from the ONE, but clarified that there was no guarantee that the bankruptcy court would reimburse the Village the money.

**Bill O'Leary – Village Landscape Architect**, estimated the cost to be \$45,000.00 (including the irrigation system) to improve the area, but offered to receive additional quotes. Assistant Mayor Blachar questioned if resort tax funds could be used. Mr. Weiss advised that they could. Mr. Weiss clarified that the new owners of the ONE would have to take over the obligation, as part of the Development Agreement, unless the bankruptcy judge rejected the agreement.

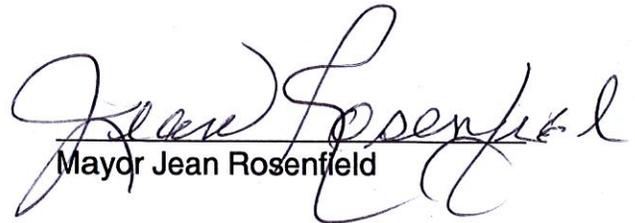
*A motion was offered by Councilwoman Cohen and seconded by Assistant Mayor Blachar to approve \$45,000.00 to improve the area, using resort tax funds. The motion carried (5-0).*

Mr. O'Leary will receive two additional quotes.

**11. ADJOURN:** There being no further business, *a motion was offered by Councilwoman Cohen and seconded by Assistant Mayor Blachar to adjourn. The motion carried (5-0) and the meeting was adjourned at 10:08 p.m.*

Attest:

  
Ellisa L. Horvath, MMC, Village Clerk

  
Mayor Jean Rosenfield