

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
REGULAR MEETING – OCTOBER 15, 2013

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, October 15, 2013, 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 7:02 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 Dr. Maria Rodriguez.

3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS: This item was discussed later in the meeting.

4. SPECIAL PRESENTATIONS:

Officer of the Month for July 2013: Chief Daddario presented Officer Andrew Kuncas with the Officer of the Month plaque.

Presentation from Dr. Maria T. Rodriguez, Principal - Ruth K. Broad Bay Harbor K-8 Center: Dr. Rodriguez thanked the Council and residents for their support for the nurse at their school, new playgrounds, police department involvement, and the PAL program.

Department of Justice Update – Dan Gelber, Gelber Schachter & Greenberg, P.A.: This item was discussed later in the meeting.

Village Manger Contract – Sean Baenziger, Colin Baenziger & Associates: Sean Baenziger discussed the Village Manager employment contract negotiated with Jorge Gonzalez.

A motion was offered by Mayor Rosenfield and seconded by Assistant Mayor Blachar to defer the contract, until the November meeting, for further review.

The following members of the public spoke in favor of deferring the contract:

Stanley Tate - 9999 Collins Avenue

Ira Lelchuk - 169 Camden Drive

Alberto Kamhazi - 52 Camden Drive, 131 Bal Cross Drive, 138 Park Drive, and
10175 Collins Avenue #1207 and #1104

Anamarie Kelly Stoppa - 77 Camden Drive (defer for one week as a compromise)

Doug Rudolph - 212 Bal Bay Drive

The following members of the public spoke against deferring the contract:

Dina Cellini - 211 Bal Cross Drive

Neil Alter - 9801 Collins Avenue

David Kwiat - 10185 Collins Avenue

Brian Mulheren - 10245 Collins Avenue

Raj Singh - 53 Camden Drive

Lynne Bloch-Mullen - 10150 Collins Avenue

Beth Berkowitz - 10160 Collins Avenue

Ralph Hertz - 10185 Collins Avenue

Steve Greenberg - 9800 Collins Avenue

Raj Singh – 53 Camden Drive and Budget Committee member, clarified that the specific contract for Mr. Gonzalez was not reviewed by the Budget Committee, but the salary and benefits were budgeted for.

Assistant Mayor Blachar spoke in favor of Mr. Gonzalez, but voiced concern regarding the contract cost and the pension language. She suggested that the contract be deferred for one week as a compromise, for review by the Budget Committee, and for a special Council meeting to be scheduled. Mayor Rosenfield spoke in favor of further review regarding the pension, termination, and outside consulting provisions.

Mr. Baenziger reviewed the pension clause (Section 8), which differed from the plan for the general employees, by providing for immediate vesting and a defined contribution to Mr. Gonzalez's choice. Councilman Packer spoke in favor of the pension clause. Councilwoman Cohen spoke in favor of the contract and against delaying the item. Mayor Rosenfield spoke in favor of Mr. Gonzalez, but would like further review of the contract, with specific concerns regarding Mr. Gonzalez's ability to have a consulting business without any stipulations.

Mr. Baenziger explained that Mr. Gonzalez had agreed to a binding memorandum to the contract, regarding Council approval for outside activities.

Mayor Rosenfield withdrew her motion. Assistant Mayor Blachar withdrew her second to the motion.

A motion was offered by Mayor Rosenfield and seconded by Assistant Mayor Blachar to delay the contract for one week, for review by the Budget Committee. The motion failed (2-3), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen no; Councilman Packer no; Councilman Sanz no; Mayor Rosenfield yes.

Mr. Weiss clarified that if the Council wanted to require prior approval of outside work, then that would have to be included in the contract. Mr. Weiss reviewed Mr. Gonzalez's email

regarding outside activities.

A motion was offered by Councilman Packer and seconded by Councilwoman Cohen to accept what Mr. Gonzalez had suggested in his email, regarding Outside Activities (notify the Council via memo prior to accepting outside employment and, if the Council was concerned about it, that would be placed on a Council agenda for a vote. Current and existing assignments would be deemed approved and would not require any further Council action).

Stanley Tate – 9999 Collins Avenue, spoke in favor of deferring the contract for a week and against outside consulting and the salary amount.

Beth Berkowitz – 10160 Collins Avenue, spoke in favor of allowing outside consulting work.

Brian Mulheren – 10245 Collins Avenue, spoke in favor of allowing outside consulting work and approving the contract.

Alberto Kamhazi - 52 Camden Drive, 131 Bal Cross Drive, 138 Park Drive, and 10175 Collins Avenue #1207 and #1104, spoke in favor of delaying the contract one week and against allowing outside consulting work during Village hours.

The motion carried (5-0).

Neil Alter - 9801 Collins Avenue, spoke in favor of approving the contract.

Mr. Baenziger continued review of the contract.

A motion was offered by Mayor Rosenfield to change the \$25,000.00 bonus (Section 5.6), to the discretion of the Council. The motion failed, due to the lack of a second.

Mr. Weiss clarified that Mr. Gonzalez would receive life insurance.

A motion was offered by Councilman Packer and seconded by Councilwoman Cohen to approve the contract, with the added clause regarding Outside Activities.

Ira Lelchuk - 169 Camden Drive, spoke in favor of further review of the contract.

Mr. Baenziger clarified that Mr. Gonzalez would receive the COLA, at the same time the other general employees received it.

Dina Cellini - 211 Bal Cross Drive, spoke in favor of the contract.

Neil Alter - 9801 Collins Avenue, reported that the COLA for Medicare was approximately 1.2%, so the Village's COLA would probably be less than three percent.

Chris Wallace - Finance Director, suggested that language be added to Section 8 that the Village's contribution would be subject to any limits that may be imposed by federal or state law. Mr. Weiss agreed that should be added.

A motion was offered by Councilman Packer and seconded by Councilwoman Cohen to add language to Section 8 that the contribution would be subject to any limits that may be imposed by federal or state law. The motion carried (5-0).

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

Mayor Rosenfield still had some reservations about the contract. She will contact Mr. Gonzalez regarding the approval of his contract.

Department of Justice Update – Dan Gelber (Gelber Schachter & Greenberg, P.A.): Mr. Gelber discussed the asset forfeiture program and two of the Department of Justice (DOJ) allegations regarding money spent from the wrong account and insufficient documentation for overtime paid out of the account. He reported that written confirmation had not been received yet, but the Department of Justice had indicated verbally that they would not be requesting any additional funds from the Village of taxpayer dollars. He reported that the DOJ would also be making a decision regarding the points account. He added that he was contacted by another component of the DOJ requesting information, but didn't expect anything would come from that. Mr. Gelber clarified that the Village would not receive the money that was in the pipeline.

Doug Rudolph - 212 Bal Bay Drive, requested clarification on several items. Mr. Gelber clarified that items would be clarified in the letter including anything the Village purchased or donated with that money could be kept and the DOJ wasn't requesting any taxpayer dollars, but were looking at the points account, which wasn't taxpayer dollars. Mr. Rudolph requested the amount the Village received, still had, and the benefits of the program, once the DOJ letter was received.

Councilman Packer suggested that \$30,000.00, of the money budgeted for the DOJ investigation, be donated to the PAL program, once the issue had been closed. Mayor Rosenfield noted that it had also been suggested that money be used to pay for the legal fees, so no taxpayer dollars would be used.

Assistant Mayor Blachar commended the Police Department for preparing and providing the documents quickly. Mr. Gelber commended Mr. Smith for involving Marcum, the Village auditors, in the process.

Stanley Tate – 9999 Collins Avenue, commended Dan Gelber on his work.

Brian Mulheren - 10245 Collins Avenue, questioned if the overtime was justified and voiced concern with inflated pensions, which would be taxpayer money. He added that other agencies of the DOJ were still reviewing it and the letter wasn't received, so the issue wasn't over. Mr. Gelber agreed that the Village still needed to receive the letter.

Dina Cellini - 211 Bal Cross Drive, questioned if Mr. Gelber's representation of the Village would be expanded, for him to confer and negotiate with other federal agencies.

Mr. Gelber clarified that the initial report with the allegations was sent to a lot of components of the Justice Department, which had requested documents. He reported that up to 90% of the overtime slips were substantiated.

Alberto Kamhazi - 52 Camden Drive, 131 Bal Cross Drive, 138 Park Drive, and 10175 Collins Avenue #1207 and #1104, commended the Police Department and the results of

suggested that Mr. Gonzalez make that decision.

Brian Mulheren - 10245 Collins Avenue, spoke in favor of Mr. Gonzalez reviewing the bus, web site, and the movies. He suggested using the resort tax money for the beach path, etc.

Mayor Rosenfield pointed out that some of the items were also for residents and discussed the residents that served on the Committee, who had approved the recommendations.

A motion was offered by Councilwoman Cohen and seconded by Councilman Packer to approve items 1 and 2. The motion carried (5-0).

Tab E – Motion Authorizing Execution of a Maintenance Memorandum of Understanding with Florida Department of Transportation for Bridge Painting: Mr. Smith explained the agreement and requested approval of \$14,000.00 of resort tax funds, for Homestead Concrete to paint the Haulover Bridge.

Brian Mulheren - 10245 Collins Avenue, spoke in favor of painting, but against the Village committing to continuously maintain the bridge. He suggested that the contract also be clarified that the Village would only paint the walls.

Mayor Rosenfield, Assistant Mayor Blachar, and Councilman Sanz spoke against the continuous commitment.

A motion was offered by Councilman Sanz and seconded by Councilman Packer to defer the item, until the next meeting. The motion carried (5-0).

Councilwoman Cohen discussed the immediate need to paint the walls. Councilman Packer suggested notifying the FDOT about the deteriorated conditions and finding out when they intended to paint the bridge. Mr. Smith noted that FDOT had advised that they weren't aware of any plans to paint the bridge. Councilman Packer requested to receive FDOT's maintenance parameters, for the bridge.

Dina Cellini - 211 Bal Cross Drive, suggested that the Village Attorney be directed to go back to FDOT, to clarify that the Village would paint the bridge from now on, but not every year.

Neil Alter – 9801 Collins Avenue, suggested a letter writing campaign, with photos showing the deterioration of the bridge.

A motion was offered by Councilwoman Cohen and seconded by Councilman Packer to authorize execution of the maintenance agreement and approval of resort tax funds to paint the bridge, subject to Village Attorney review. The motion carried (5-0).

AFTER SCHOOL CARE: **Debra Portnoy - 88 Camden Drive**, spoke in favor of an after school program and suggested that swimming classes be offered, at the Sea View Hotel pool. Mayor Rosenfield noted that could be investigated, as well as basketball at the park. Councilman Packer suggested that a Parks and Recreation Committee be appointed, to formulate different plans. Mayor Rosenfield agreed, but noted that should wait until the new Manager started.

6. PUBLIC HEARINGS:

Quasi-Judicial Public Hearings: None.

Zoning Hearings/Quasi-Judicial Public Hearings: None.

Ordinances Second Reading/Public Hearings: The following Ordinance was read by title, by Mrs. Horvath:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 2 "ADMINISTRATION" OF THE BAL HARBOUR VILLAGE CODE OF ORDINANCES BY AMENDING SECTION 2-301 "LOBBYISTS" OF ARTICLE VII "LOBBYING" TO BE CONSISTENT WITH THE MIAMI DADE COUNTY ETHICS CODE BY ELIMINATING THE LOBBYIST EXPENDITURE STATEMENT FILING REQUIREMENT FOR LOBBYISTS THAT HAVE MADE NO LOBBYING EXPENDITURE DURING A GIVEN REPORTING PERIOD; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

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

Mr. Weiss explained the Ordinance.

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

The motion passed (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes; thus becoming Ordinance No. 2013-570.

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

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 5.5 "APPEARANCE CODE," ARTICLE III "ARCHITECTURAL REVIEW BOARD," SECTION 5.5-13 "POWERS; DUTIES" AND SECTION 5.5-15 "CERTIFICATE OF APPROPRIATENESS, PROCEDURE FOR CONSIDERATION" OF THE CODE OF ORDINANCES IN ORDER TO AMEND THE DUTIES AND PROCEDURES OF THE ARCHITECTURAL REVIEW BOARD; AND PROVIDING FOR AN EFFECTIVE DATE.

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

Mayor Rosenfield opened the public hearing.

Stanley Tate – 9999 Collins Avenue, suggested that the Ordinance require the majority of Board members to be residents. Councilman Packer discussed the issue with finding enough residents that would be qualified to serve on the Board.

Mr. Weiss explained the Ordinance.

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

The motion passed (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes; thus becoming Ordinance No. 2013-571.

Ordinances First Reading/Public Hearings: None.

Resolutions/Public Hearings: None.

7. ORDINANCES FIRST READING/PUBLIC INPUT: None.

8. RESOLUTIONS: None.

9. REPORTS:

A. VILLAGE MANAGER:

Budget Report for Fourth Quarter (Fiscal Year 2012/2013) Provided by Finance Director Christopher Wallace: Mr. Wallace reviewed his report.

Dina Cellini - 211 Bal Cross Drive, pointed out that the Budget Committee had budgeted \$500,000.00 in the budget, in case the Village had to pay additional funds to the Department of Justice.

Request for Ratification of Police Pension Board

Appointment: Mr. Smith requested ratification of Mr. Daniel Gold, as the fifth trustee to the Police Officers' Pension Board. Mr. Weiss explained that the Village could not impose a residency requirement on the fifth member.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to ratify the appointment of Mr. Daniel Gold, as a trustee of the Police Officers' Pension Board.

Brian Mulheren - 10245 Collins Avenue, suggested that the Council change the Ordinance, to require residency. Mr. Weiss explained that couldn't be done, since the designation was done per State law.

Councilwoman Cohen voiced concern that there would not be a majority representing the interest of the Village.

The motion carried (5-0). This motion was discussed again later in the meeting.

Presentation of Public Notice Signs for Architectural

Review Board Applications: This item was deferred, until the next meeting.

Discussion of Architectural Review Board

Recommendation: Mr. Smith explained the Board's recommendation to amend the Village Code, to require Board review of the Business (B) District, which was currently

exempt.

Johanna Lundgren – Village Attorney, explained the recommendation to amend the Code to provide for the Business District, including the Shops, to appear before the Architectural Review Board.

Stanley Tate – 9999 Collins Avenue, expressed concern regarding the traffic that would be created by the Shops expansion.

Mr. Weiss clarified that the expansion plans for the Shops had been delivered and were public record, but nothing had been done yet.

Amy Huber, Attorney (Shubin & Bass – 46 S.W. 1 Street, Third Floor, Miami, FL) representing the Bal Harbour Shops, spoke against amending the appearance code and noted that the Village's site plan ordinance already required site plan review by the Architectural Review Board, for the Business District. She explained the dramatic difference and burden for the Shops and the Business District if the Code was changed, which would require every building permit, not just exterior changes, to go before the Board.

Ms. Lundgren reviewed the site plan ordinance and explained that the recommendation would provide the Board with authority to review the Business District, for items other than site plans. Mr. Weiss clarified that the recommendation would expand the Board's role in the Business District, instead of their limited role under the site plan ordinance.

Mr. Weiss will provide the Council with a memo of the current requirements of the site plan ordinance and the difference to the Business District, if the Code was amended.

A motion was offered by Councilwoman Cohen and seconded by Councilman Sanz to delay the item, until the next meeting. The motion carried (5-0).

B. VILLAGE CLERK:

Lobbyist Registration Report: As of October 15, 2013:

The report was provided in the agenda.

C. VILLAGE ATTORNEY: Mr. Weiss requested that the issue of the park, between the Gated Area guardhouse and Collins Avenue, be placed on the list of items for Mr. Gonzalez to review.

Dina Cellini - 211 Bal Cross Drive, requested that the appointment of Mr. Gold to the Police Pension Board be withdrawn and tabled until next month, to allow her time to discuss a provision in Chapter 185 that may alter Mr. Weiss' opinion. She discussed the possibility of amending the Village Code, to require that three of the five members be Village residents. She agreed with Ms. Berkowitz that residents had a greater interest that the plan was being run and operated properly.

A motion was offered by Councilwoman Cohen and seconded by Councilman Packer to reconsider the appointment of Mr. Gold to the Police Pension Board. The motion carried (3-2), with Assistant Mayor Blachar and Councilman Sanz opposed.

D. MAYOR AND COUNCIL:

Miami-Dade County League of Cities Partnership with Best Buddies – Assistant Mayor Blachar: Assistant Mayor Blachar discussed the League's partnership with Best Buddies, to find jobs for people who were intellectually disabled.

Dina Cellini - 211 Bal Cross Drive, questioned the employment process. Assistant Mayor Blachar will provide the information.

Update on Bus Shelters – Councilman Sanz: Peter Kunen, Village Engineer - Craig A. Smith & Associates, reported on the remaining items of paver work, rainwater entering the shelters, inadequate lighting, and adding the square pattern on the glass panels. He clarified that the benches could be modified, to provide for additional seat divisions, but that would cost as much as buying new benches.

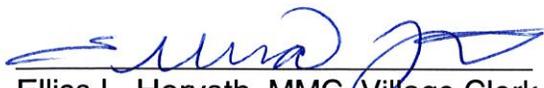
Beth Berkowitz - 10160 Collins Avenue, questioned the status of the pavers for the blacktop area, at the corner of 96th Street and Collins Avenue. Mr. Smith will provide a proposal for pavers, at the next meeting.

10. OTHER BUSINESS:

Public Comment: None.

11. ADJOURN: There being no further business, *a motion was offered by Councilman Packer and seconded by Councilwoman Cohen to adjourn. The motion carried (5-0) and the meeting was adjourned at 11:26 p.m.*

Attest:


Ellisa L. Horvath, MMC Village Clerk


Mayor Jean Rosenfield