

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
SPECIAL MEETING – MARCH 19, 2013

A Special Meeting of the Bal Harbour Village Council was held on March 19, 2013, at the Sea View Hotel (9909 Collins Avenue, Bal Harbour, Florida).

1. CALL TO ORDER/ROLL CALL: The meeting was called to order at 5:25 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. Sanz¹

Jay R. Smith, Interim Village Manager
Ellisa L. Horvath, MMC, Village Clerk
Richard J. Weiss, Village Attorney
Tony Recio, Village Attorney

2. PLEDGE OF ALLEGIANCE: The Pledge was previously done at the Local Planning Agency Meeting.

3. QUASI-JUDICIAL PUBLIC HEARING: Mr. Recio explained the procedures for the quasi-judicial process.

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

The disclosures provided at the Local Planning Agency Meeting (March 19, 2013) were incorporated into the minutes.

Resolution: The following Resolution title was read by Mrs. Horvath:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE AND CONSULTATIO BAL HARBOUR LLC IN CONNECTION WITH THE CONSTRUCTION OF A MIXED USE OCEAN FRONT CONDOMINIUM DEVELOPMENT; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance Second Reading/Public Hearing: The following Ordinance title was read by Mrs. Horvath:

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, GRANTING THE REQUEST OF

¹ Councilman Sanz arrived during Mr. Olmedillo's report.
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CONSULTATIO BAL HARBOUR, LLC FOR A REZONING FROM OF OCEAN FRONT DISTRICT TO PD PLANNED DEVELOPMENT DISTRICT FOR THE PROPERTY LOCATED AT 10201 COLLINS AVENUE, AS LEGALLY DESCRIBED IN EXHIBIT "A," CONSISTING OF APPROXIMATELY 5.53 ACRES; PROVIDING FOR RECORDING AND PROVIDING FOR AN EFFECTIVE DATE.

Staff Reports:

Guillermo Olmedillo – Village Consultant (Olmedillo X 5 Inc.), reviewed his resume. He distributed and reviewed an updated report (dated February 18, 2013), which concluded that there was still approximately one acre of land available to meet the level of service concurrency, after deducting land from the Yacht Basin (200 Bal Bay Drive) and the Consultatio property (10201 Collins Avenue).

Mr. Weiss explained that the Council had also requested an outside consultant (Calvin, Giordano & Associates, Inc.), to provide an independent review of the open space issue.

Shelley Eichner – Senior Vice President of Calvin, Giordano & Associates, Inc., reviewed her and the firm's resume. She distributed and reviewed the Bal Harbour Park Concurrency Review, which concluded a total amount of 11.363 acres of recreation and open space available, with 10.06 acres required, resulting in a surplus of 1.303 acres of recreation and open space available.

Mr. Recio compared Mr. Nieda's (Building Official) figures to the report provided.

Councilman Packer discussed Mr. Miller's 2008 report, which was not consistent with what Ms. Eichner provided.

Michael Miller - Village Planner (Michael Miller Planning Associates, Inc.), explained that different population data was used and the private Oceanfront recreational facilities were not counted, for the EAR document done in 2008. Councilman Packer noted that report had concluded a shortage. Ms. Eichner explained that the 2010 census data was used for the current report. Mr. Miller clarified that, prior to 2012, the Village had never counted the private recreational facilities, even though it was allowed per the County Administrative Order.

Councilwoman Cohen was satisfied with the figures. She requested clarification of what private recreational space provided to the residents. She discussed her concern with providing open spaces for children, outside of the Gated Area, and not just trying to comply with a formula. Ms. Eichner discussed Village-owned public recreation spaces, as well as opportunities for residents through the County, etc. She confirmed that the data indicated that there was a sufficient level of service in the Village. She clarified that the Comprehensive Plan didn't specify the type of facilities, etc.

Mr. Miller discussed the changes to the Village, since the Master Plan was designed.

Councilman Sanz arrived to the meeting.

Mr. Miller discussed opportunities available, outside the community. Councilwoman Cohen

spoke in favor of exploring the open space that should be provided, since the community had changed. Assistant Mayor Blachar discussed the beach walking path, which was not counted towards the amount of open space. Mr. Miller agreed that wasn't counted, but could be. Councilwoman Cohen noted that wasn't counted because it belonged to the State and the Concurrency Plan would have to be changed to count it. Mr. Recio clarified that the path had never been counted, but it was improved and maintained with Village funds. Assistant Mayor Blachar noted that the new report indicated that the Village had a surplus and was compliant with the open space issue.

Mr. Olmedillo discussed the comparison of the three consultant reports (Mr. Olmedillo, Mr. Miller, and Ms. Eichner) and concluded that there was sufficient open space and recreation land, to provide for an adequate level of service for the Village.

Councilman Sanz had nothing to disclose.

Mr. Olmedillo reviewed a comparison between the OF district, PD district, and the Consultatio proposal.

Councilman Packer clarified that the change to PD would provide them with 171,829 square feet of usage in the building.

Councilman Sanz questioned the number of floors gained. Mr. Olmedillo reported that to be approximately two floors (22 feet).

Carter McDowell – Attorney (Bilzin Sumberg Baena Price & Axelrod LLP – 1450 Brickell Avenue, Miami, FL) representing Consultatio LLC, confirmed that there was a two-floor difference, between the OF and PD districts.

Councilwoman Cohen noted that the buildings north and south of the proposed project were 14 stories and 17 stories, which should be considered. Mr. McDowell noted other buildings that were 275 feet tall, with smaller front setbacks.

Applicant Presentation:

Bernardo Fort-Brescia – Principal Architect (Arquitectonica – 2900 Oak Avenue, Miami, FL), reviewed a Powerpoint presentation of the architecture and landscaping for the project.

Mr. McDowell distributed and reviewed a comparison of a building that could be built under the Oceanfront district regulations, versus the proposed Planned Development district project. He noted that the reports from all three Village consultants concluded that there would be sufficient open space and recreation for concurrency purposes, to accommodate the project with a surplus. He added that the 4.4 acres of the beach jogging path wasn't counted. Mr. McDowell pointed out that the Village could abolish park concurrency requirements, since it was no longer required per State statute and was a voluntary act by local governments. He reviewed a February 14, 2006 memo from Michael Miller noting that the condominium private recreational facilities should be counted towards open space, although they were not at that time.

Mr. McDowell distributed and reviewed the Consultatio Project Benefits to the Village of Bal Harbour.

Councilman Packer clarified that the Village Police Officers hired for the job would be off-duty and would not affect the Village's budget.

Public Comment: Mayor Rosenfield opened the public hearing. The following members of the public provided comments:

Tim Bulger – 10225 Collins Avenue (Bellini Condominium General Manager)
Dr. Michael Krop – 9601 Collins Avenue (Bal Harbour Citizens Coalition President)
David Kwiat - 10185 Collins Avenue (Bal Harbour Plaza Condominium Association, Inc. Treasurer)
Emme Pedinielli - 10205 Collins Avenue (Kenilworth)
Anamarie Kelly - 77 Camden Drive
Lynne Bloch Mullen - 10150 Collins Avenue
Don Jacobs - 10225 Collins Avenue (Bellini)
Nina Rudolph - 212 Bal Bay Drive
Dina Cellini - 211 Bal Cross Drive (also speaking on behalf of her husband Sean Clancy)
Joe Imbesi – 175 Camden Drive
Beth Berkowitz - 10160 Collins Avenue
Doug Rudolph - 212 Bal Bay Drive
Brian Mulheren - 10245 Collins Avenue
Steve Greenberg - 9800 Collins Avenue

Mr. Weiss explained that Councilman Packer had asked if there was a problem with him voting, since Councilman Packer's Condominium Association (Kenilworth) had an agreement with the Developers of the project. He reported that the Village Attorneys had advised Councilman Packer that there wasn't a problem with him voting, based on the Dade County Ethics Code and other applicable provisions. Mr. Weiss noted that Councilman Packer then received a written opinion from the Miami-Dade County Commission on Public Ethics & Trust that he (Councilman Packer) did not have a conflict of interest in voting on the matter. Mr. Weiss confirmed that it was appropriate for Councilman Packer to vote on the item.

Mr. Olmedillo addressed the comments regarding the voluntary contribution and clarified that payment was in lieu of the permit fees, but noted that the Village could use that money for other things and not just for the permit fees.

Mr. Recio clarified that off-duty officers would be paid in advance of the service and that the logistics would be worked out. He clarified that it was off-duty, which would not affect the pension. Mr. Smith clarified that off-duty was paid through payroll, but not calculated as overtime or included in the pension.

Mr. Miller addressed the comments regarding beach access and agreed with Ms. Cellini that the Comprehensive Plan had a goal that mandated that the Village try to achieve at least one more beach access point and that an existing beach access point be maintained. He felt that the proposed plan to provide the beach access point was consistent with the Comprehensive Plan. He disagreed with the Developer that the beach access was

something that they didn't have to provide.

Assistant Mayor Blachar agreed with Ms. Cellini's point and clarified that Ms. Cellini was objecting to the price that the Developer was attaching to the beach access and the claims that providing the beach access was a benefit instead of a requirement.

Mr. Weiss addressed the comments regarding a conflict in sections of the Village Code regarding the concurrency code and how it was being applied. He noted that the Village Attorneys didn't view the two Code sections as inconsistent and read it as intended to mean as amended from time to time, which is how it was interpreted.

Mayor Rosenfield noted that a large portion of the St. Regis Development Agreement had included money to cover the resort tax amount that wouldn't be collected, during the time that the building was under construction.

Councilman Packer would like a larger park in the Village and had a Village space in mind, on the intercoastal. He would like more money, but discussed the Developer's contributions for tennis courts, bus shelters, exercise equipment on the beach, Bay Harbor elementary school playground, and making up the difference of reduction in their taxes.

Mr. McDowell discussed the zoning process and for the project to mitigate any impact their project may have on the Village, but not to solve the Village's problems. He discussed how the project addressed its impact to the Village through the voluntary contribution, easements, public spaces, etc. He discussed the total estimated cost (\$487,949.00) of the building inspection services, which was attached to the Development Agreement.

Councilwoman Cohen questioned the procedure, if the project exceeded the estimated time for construction. Mr. Weiss reported that an additional \$500,000.00 would have to be paid, after 36 months.

Mr. McDowell clarified that the Police services were paid in accordance to how the Village had requested it to be paid (in advance).

Mr. McDowell discussed the goal in the Comprehensive Plan to maintain the existing beach access paths (at the north and south points) and the goal that the Village should seek an additional beach access but didn't identify the place. He disagreed that the beach access was required to be on the Developer's property. He discussed Mr. Miller's 1997 memo, which was in response to the AVA proposed development (rezoning from Private Club to Oceanfront) and was irrelevant. Mr. McDowell clarified that there was excess open space with the proposed project. He noted that Mr. Miller's 2006 memo reported that prior to the adoption of the Concurrency Management System, the County counted private recreation space at 50%. He noted that the concurrency ordinance could be amended by the Council at any time. He requested approval of the project.

Additional comments were provided by:

Dina Cellini – 211 Bal Cross Drive

Mr. McDowell responded to Ms. Cellini's comments. He noted that the consultant reports
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had noted that there would be surplus open space, with the removal of the Beach Club taken into account. He noted that the court had overruled the Village's decision to deny rezoning the property from Private Club to Oceanfront (AVA litigation) and was irrelevant. He added that there wasn't existing public beach access on the property and temporary permission had only been given for a two-year period, during the construction of the North access path.

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

Council Discussion:

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

Assistant Mayor Blachar felt that the Development Agreement mitigated the project's impact on the community. She made the following comments: the concurrency standards had been met, the 25-foot beach access was an incredible amount of space, the underground parking structure and loading docks were a benefit to the community and adjacent buildings, the adjacent buildings were happy with the project, the project was an asset to the Village, and property values would increase.

Councilman Sanz spoke in favor of the building and rezoning to PD, but needed more information on some items in the Development Agreement.

Councilman Packer spoke in favor of the project. He noted that the amenities and mitigation that he had requested were in the Development Agreement and he would like additional items, but felt that the project needed to proceed.

Councilwoman Cohen was not comfortable with the conflicting information and had requested a full survey from scratch. She was not comfortable that some of the studies were based on figures provided by the former Building Official. She also voiced concern that the Building Official (Dan Nieda) and Village Manager (Alfred Treppeda) negotiated the Development Agreement, were not professional planners, and were no longer with the Village. She agreed that the building was beautiful, but thought that the Village was giving up a lot and there was a lack of green space that the Developer could not provide.

Councilwoman Cohen questioned if the Developer would consider helping the Village create a small park on the green space, in front of the Gated Area, if that became Village property.

Mr. Weiss clarified that Councilwoman Cohen didn't think that the project had fully mitigated the open space issue and was requesting the Developer to agree to participate with the capital improvements for that property. He discussed the concept of the Village trying to gain title, then developing that area as an open space park for Village residents.

The Council discussed ways to gain title to the property with Mr. Weiss. Assistant Mayor Blachar didn't know how the residents in the Gated Area would feel about a park at their entrance and suggested that the residents vote on that. She discussed the park area that was being provided, in front of the Consultatio project.

Mr. McDowell noted that the Developer would agree to provide \$150,000.00 for improvements to the green space, subject to the project moving forward tonight and subject to the Village having the ability to use and improve the space. He clarified that the Developer didn't have any desire to be involved in any political issue as to whether or not that area should be a park or not. He will work out the details with the Village Attorney.

A motion was offered by Councilwoman Cohen and seconded by Councilman Packer to amend the agreement that is being approved pursuant to the Resolution, to provide that the Developer would make \$150,000.00 available, in addition to what had already been included in the Development Agreement, for the capital improvement associated with the park across from the Development, assuming that the Village decided to go forward with it and that the Village received the legal right to do it. The motion carried (5-0).

The motion to approve the Resolution, 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; thus becoming Resolution No. 2013-770.

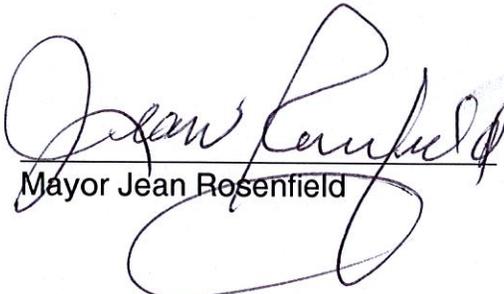
A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve the Ordinance. The motion carried (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes; thus becoming Ordinance No. 2013-567.

4. ADJOURN: There being no further business, **a motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to adjourn. The motion carried (5-0) and the meeting was adjourned at 9:15 p.m.**

Attest:




Ellisa L. Horvath, MMC, Village Clerk


Mayor Jean Rosenfield