

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**SPECIAL MEETING – FEBRUARY 5, 2013**

A Special Meeting of the Bal Harbour Village Council was held on February 5, 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 7:03 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 led by Assistant Mayor Blachar.

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

**Ordinance First 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 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.**

Disclosures were provided by Mayor Rosenfield, Assistant Mayor Blachar, Councilwoman Cohen, and Councilman Packer.

Mr. Recio explained the meeting process and the first reading of the Ordinance to rezone the property from OF Oceanfront to PD Planned Development, which required two readings. He noted that the Development Agreement would be discussed but not voted on and would be considered as a separate item, at the same time as the second reading of the Ordinance.

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1 Councilman Sanz arrived during disclosures by the Councilmembers.  
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Councilman Sanz arrived to the meeting. He had nothing to disclose.

Mr. Recio explained the difference between the OF and PD districts.

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

**Staff Reports:**

Guillermo Olmedillo (Olmedillo X 5 Inc.) - Village Consultant, read the Building Official (Daniel B. Nieda) Executive Summary into the record (dated January 15, 2013), which noted the following:

- Building Official's Report - The Architectural Review Board unanimously endorsed the Building Official's recommendation to approve the PD application;
- Comprehensive Plan - The report prepared by Michael Miller Planning Associates, Inc. (Village Planning Consultant) concluded that it supported the petition to allow the rezoning of the property from the OF Oceanfront District to the PD Planned Development District;
- Traffic Volume Studies & Civil Engineering – Tinter Traffic, LLC (Village Traffic Consultant) reviewed the report by the Corradino Group (Applicant's Traffic Consultant) and concluded that the traffic issues were appropriately addressed and the traffic analysis was acceptable;
- Traffic Volume Studies & Civil Engineering – Craig A. Smith & Associates (Village Engineering Consultants) report indicated that the preliminary utility and civil drawings (VSN Civil Engineers) were compliant with project demands. Additionally, concurred that the capacity for potable water supply, wastewater, and solid waste disposal had been deemed sufficient for the project. CAS recommended the upsizing and replacement of certain water mains as part of the Development Agreement to increase fire protection flow and normal use; and
- Traffic Volume Studies & Civil Engineering – The DEP and DERM separation requirement will require a utility easement along the Collins Avenue right of way, which is to be established as part of the Development Agreement.

Mr. Olmedillo discussed the purpose of the Development Agreement to address the impacts of a development on the Village. He reviewed the proposal for a primarily residential project, with a restaurant and private club. He reviewed the primary aspects of the building including 260 condominium units, 27 stories, below ground parking garage not visible from Collins Avenue, a 60-foot high by 50-foot wide breezeway, and 50-foot side setbacks.

Mr. Olmedillo reviewed the DRAFT Development Agreement including: Beach Access, Collins Avenue and Beach Easement Improvements, Public Beach Improvements, Medjool Palms, Utilities and Easements, Parking, Access Control Gate, Traffic Signalization, Schools, Building Department Inspection Services, Public Safety, Ad Valorem Taxes, Voluntary Contribution, Compliance with Fire/Life Safety Laws, Use Restrictions, and Construction Noise.

## **Applicant Presentation:**

Carter McDowell – Attorney (Bilzin Sumberg Baena Price & Axelrod LLP – 1450 Brickell Avenue, Miami, FL) representing Consultatio LLC, explained the project team, introduced Eduardo Constantini (Developer), and reviewed the background of Consultatio.

Eduardo Constantini – Owner (Consultatio LLC), addressed the Council. He reported that agreements were reached with both of the buildings to the north and south of the site. He provided an overview of the project.

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

Jeremy Calleros Gauger - Landscape Architect (Arquitectonica GEO - 2900 Oak Avenue, Miami, FL), reviewed a Powerpoint presentation of the landscaping for the project.

Mr. McDowell reviewed the three easements granted, as part of the Development Agreement, totaling 47,000 square feet. He explained that the density was capped at 260 units, where 304 units were permitted. He reviewed the recreational facilities including a spa, tennis courts, and swimming pools. He noted that the open space was 189,000 square feet of a 241,000 square foot lot (78% of the ground plane was green open space). Mr. McDowell discussed the positive impact of the underground parking garage and the ability to see through toward the ocean, at the pedestrian level.

**Public Comment:** Mayor Rosenfield opened the public hearing.

The following members of the public provided comments:

Eleanor Fine - 10245 Collins Avenue (Carlton Terrace)  
Jeffrey Freemark - 10225 Collins Avenue (President of the Bellini Association)  
Anamarie Kelly Stoppa - 77 Camden Drive  
Dr. Ron Feldman - 10185 Collins Avenue (Plaza)  
Bambi Betts - 10205 Collins Avenue (Kenilworth)  
Emme Pedinielli - 10205 Collins Avenue (Representing the Kenilworth Association Board of Directors)  
Nina Rudolph - 212 Bal Bay Drive  
Oscar Frances - 9601 Collins Avenue (Majestic Towers)  
Adam Petrillo - 172 Camden Drive  
Tucker Gibbs - Attorney (3835 Utopia Court, Coconut Grove) Representing the Plaza (10185 Collins Avenue)  
Dina Cellini - 211 Bal Cross Drive  
Forest Roman - Kenilworth Condominium (10205 Collins Avenue)  
Neil Alter - 9801 Collins Avenue  
Jordan Cohen - 9801 Collins Avenue  
Steve Greenberg - 9800 Collins Avenue (Fairfield Manor)  
Beth Berkowitz - 10160 Collins Avenue  
Lynne Bloch-Mullen - 10150 Collins Avenue  
Dan Holder - 24 Bal Bay Drive  
Doug Rudolph - 212 Bal Bay Drive

Dr. Michael Krop - 9601 Collins Avenue  
Brian Mulheren - 10245 Collins Avenue

In response to comments provided:

Mr. McDowell reviewed the shadow study. He believed that both neighbors on either side of the property supported the project. He discussed hiring off-duty Village officers and private security for traffic, per the Development Agreement. He noted that the best management practices were required per the Development Agreement and DERM, to decrease the construction impact to surrounding properties. He added that complaints would be addressed as quickly as possible.

Mr. Recio clarified that the Development Agreement contracting party was Consultatio Bal Harbour, LLC, which was also the owner of the property, according to the Miami-Dade County Property Appraiser. He noted that the Development Agreement would be recorded. He noted that any evidence regarding the title of the property should be provided to the Clerk for the Attorney's review.

Mr. McDowell offered to provide the special warranty deed, from Bal Harbour Club, Inc. to Consultatio Bal Harbour, LLC. He confirmed that the property was owned by Consultatio Bal Harbour, LLC, which was the Applicant and would be the party to the Development Agreement.

Mayor Rosenfield explained that the Village residents had requested the center beach access for residents, which would be paid and maintained by the Developer.

Mr. McDowell clarified that the beach access would be secured via electronic gates and monitored via the guard on site, but not manned.

Mr. Recio explained the differences between the OF (Oceanfront) and PD (Planned Development) Districts.

Michael Miller - Village Planner (Michael Miller Planning Associates, Inc.), discussed the comments regarding the calculations for open space in the Village and explained that the areas were reviewed with new technology, instead of relying on the Comprehensive Plan from the 1980s. He clarified that areas from the Oceanfront Developments were included in the calculations, as allowed by the Miami-Dade County Concurrency Rules, which had changed the acreage amount (from 10.77 acres to 12.84 acres).

Mr. McDowell clarified that the Developer would be paying for all of the infrastructure upgrades that were needed to support the project, in addition to other benefits provided to the Village.

Mayor Rosenfield clarified that the beach was a public beach and didn't belong to the residents or the buildings. She added that the Council had requested another access to the beach, which would be restricted to the use of Village residents.

Mr. McDowell reviewed the differences between the St. Regis Development Agreement and the Draft Consultatio Bal Harbour, LLC Development Agreement. He clarified that the main difference with the Consultatio Agreement was the dedication of the beach access for

Village residents (valued at \$13 million) and money for other recreational improvements on Village land.

Mr. McDowell clarified that the Oceanfront (OF) District allowed for a height of 275 feet and the Planned Development (PD) District allowed up to 297 feet. He added that the proposed project was slightly below 297 feet, with no additional stories at 27 stories, and the biggest difference being the underground garage.

Mr. Recio and Mayor Rosenfield clarified that Mr. Olmedillo was hired by the Council to negotiate the Development Agreement for the Village. Mr. Recio noted that he, Mr. Treppeda (former Manager), and Mr. Nieda (Building Official) had participated in the negotiations.

Mr. Olmedillo reviewed his resume. He noted that the Development Agreement was proportional to the impacts (physical and fiscal) that the Village would have from the project.

Mr. McDowell reviewed the negotiation process. He understood the open space issue, but explained that legally the Village was required to count the private open space, which it hadn't done in the past. He thought the current open space calculations were based on more accurate information. He noted that the project was providing substantially more open space and recreational space than was required. He reviewed the view corridors and elevation of the building (8 feet – 6 inches base flood elevation). He noted that the building could be larger, without a Development Agreement and with larger shadows, if built under the Oceanfront (OF) District regulations. He discussed the 300-foot front setback, the rear setback which could be 75-feet further seaward, and the 50-foot side setbacks (25-feet were required).

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

**Council Discussion:**

Councilman Packer requested clarification of Mr. Miller's report (Page 12) that there wasn't enough room for a public park.

Mr. Miller clarified that the only infrastructure items that were not addressed were the parks and the schools. He noted that the Village was not part of the Interlocal Agreement in the County for schools, but the Village Attorney was looking into whether or not the project would put the Village into the category to address schools. He clarified that the issue of the parks had been rectified, with a slight surplus in park acreage by counting the condominium buildings.

Councilman Packer questioned if the Development Agreement provided for any additional park space for the public's use. Mr. Miller clarified that only the walkway and the area east of the blue line, but there wasn't a public dedication of land to the community.

Councilwoman Cohen suggested a study on the impact of the project on the public schools and that affect on the Comprehensive Plan, prior to the next hearing. Mr. Miller was familiar with the school concurrency issue, with the biggest problem being the senior high school capacity. He discussed the Mitigation Agreement approved by the School District that

provided for excess seats to be purchased, if there was an impact on an over-capacity school. Mr. Miller noted that nothing had been submitted to the School District yet, to negotiate a Mitigation Agreement. Councilwoman Cohen suggested that the Developer bear the burden of that cost. Mr. McDowell clarified that the Development Agreement provided for the Owner to be responsible for school mitigation or impact fees. He explained that they wouldn't know that amount until the building permit stage. He added that the impact fees alone for the project would be \$1 million and they would pay for 100% of their units, whether or not they were occupied full-time.

Councilwoman Cohen discussed the general concern of the public regarding the lack of open space and the discrepancy in the figures. She suggested that the Council direct that a survey of the open spaces be done, prior to second reading. She also suggested that the County review the survey, to see whether or not the Village complied with the County Administrative Order.

Mr. Miller understood the concern with the open space calculations, but noted that he was very comfortable with the calculations.

Assistant Mayor Blachar was comfortable with Mr. Miller's calculations. She spoke in favor of approving the PD request. She suggested a bathroom facility on the access path.

Councilman Sanz wasn't comfortable with the conflicting statements and voiced concern regarding the open space issue. He agreed with Councilwoman Cohen that a review should be done by the County or someone else, on the green space calculation.

Mayor Rosenfield understood the issues with the open space calculations and suggested that Mr. Smith look into having another survey done, using the County's standards.

Councilwoman Cohen discussed residents' concerns regarding the affect of the oceanfront buildings on the skyline. She questioned if the building would be significantly different, if the PD was not granted. Assistant Mayor Blachar explained that the building could be bigger.

Councilman Packer spoke in favor of an independent person conducting a survey for the green space and mitigation for that, if necessary.

Mayor Rosenfield suggested a vote for first reading and a survey, prior to second reading.

The Council discussed the possibility of conducting another survey.

Mr. Recio reviewed the different types of surveys that could be done.

Councilman Packer spoke in favor of the Developer paying for the survey.

Mr. McDowell noted that the project was providing more open space than required and any deficit would not be because of the project. He suggested that the staff calculations be reviewed by a third party. He discussed the time delay that would be caused by hiring the County or a Surveyor, which wasn't fair to the Applicant. He discussed the substantial benefits of the project, as provided by the Development Agreement, which the Oceanfront zoning wouldn't require. He discussed the support of the buildings on either side of the project.

Councilwoman Cohen suggested that if the two buildings (Kenilworth and Plaza) on either side of the project didn't receive any compensation then they may not be in favor of the project. Mr. McDowell explained that they supported the project because the concerns of those buildings had been addressed. Assistant Mayor Blachar noted that the buildings on either side of the St. Regis had also received money from that Developer.

The Council discussed whether a review of the calculations or a new survey should be done.

Mr. Miller explained that the County Property Appraiser used the Village's plat, which is where the acreage came from.

Councilwoman Cohen questioned when the Village last conducted its own survey. Mr. Miller advised that it had never done that, because the properties were platted. He discussed the variables of the permanent population and counting private open space and recreational facilities of the beachfront and west side condos. He estimated that an independent planner could verify the green space calculations within a month.

Mr. McDowell suggested that Mr. Olmedillo review the calculations. Assistant Mayor Blachar spoke in favor of Mr. Olmedillo reviewing the numbers.

Councilwoman Cohen spoke in favor of hiring a certified surveyor. Mr. McDowell discussed the cost of hiring a surveyor.

Mr. Olmedillo reported that he could review the existing data, but he was not a certified surveyor to go onsite and survey or review aerial photos.

Mayor Rosenfield would like to see a park, but didn't know where the acreage would come from. She spoke in favor of approving the Ordinance and for Mr. Olmedillo to review the green space calculations.

**A motion was offered by Mayor Rosenfield and seconded by Councilman Packer to direct staff to request Mr. Olmedillo to review the green space. The motion carried (5-0).**

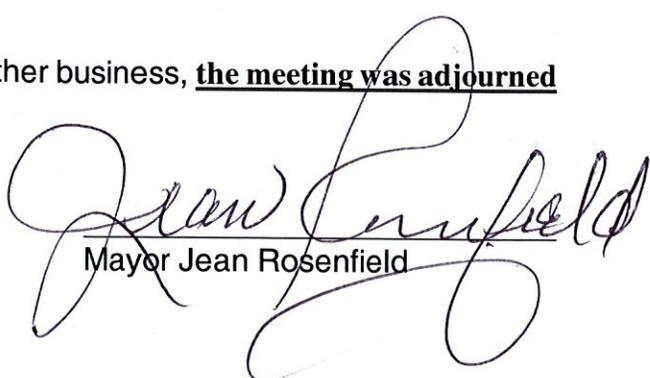
**A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve the Ordinance. The motion carried (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes.**

**4. ADJOURN:** There being no further business, **the meeting was adjourned by consensus of the Council at 10:44 p.m.**

Attest:

  
Ellisa L. Horvath, MMC, Village Clerk



  
Mayor Jean Rosenfield