

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**SPECIAL MEETING – JANUARY 5, 2006**

A Special Meeting of the Bal Harbour Village Council was held on Thursday, January 5, 2006, in the Council Chambers, at Bal Harbour Village Hall. The meeting was called to order at 9:00 a.m. by Mayor Roth. Those present were:

Mayor Seymour "Sy" Roth  
Assistant Mayor Howard J. Berlin  
Councilman Joel S. Jacobi  
Councilman Jean Rosenfield  
Councilman Jaime M. Sanz

Also present:

Alfred J. Treppeda, Village Manager  
Ellisa Horvath, CMC, Village Clerk  
Andrea Greenblatt, Administrative Assistant  
Stephen J. Helfman, Village Attorney  
Richard J. Weiss, Village Attorney  
Merrett R. Stierheim, Village Consultant  
Michael Miller, Village Planner  
Daniel Nieda, Village Building Official

As a quorum was determined to be present, the meeting commenced.

**2. PLEDGE OF ALLEGIANCE:** The Pledge was led by Village resident Doug Rudolph.

**3. QUASI-JUDICIAL PUBLIC HEARING:**

**ORDINANCE FIRST READING/PUBLIC HEARING:** The following ordinance was read, by title, by Mrs. Horvath:

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE VILLAGE FOR THE PROPERTY LOCATED AT 9701 COLLINS AVENUE, BAL HARBOUR, FLORIDA, FROM OF (OCEAN FRONT) TO PD (PLANNED DEVELOPMENT); PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

Mr. Helfman read the quasi-judicial announcement from the agenda.

The following ex-parte disclosures were noted by the Council:

Assistant Mayor Berlin has spoken to neighbors and various members of the Resort Tax Committee. Mayor Roth has spoken to some residents. Councilman Rosenfield has spoken to some people in her building.

Those planning to speak at the hearing were sworn in by the Village Clerk.

Mr. Helfman reviewed Ordinance 459, outlining the quasi-judicial procedures adopted by

the Village.

Village Staff presented a summary of the application and their recommendations as follows:

**Daniel Nieda, Building Official**, read pages 11-13 (Executive Summary) of his report, included in the agenda, which is summarized as follows:

1. Building Official's Report: The Architectural Review Board has unanimously endorsed the Building Official's recommendation to approve the PD application. The application is for 271 condominium units and 240 hotel units.
2. Comprehensive Plan: The report prepared by Michael Miller Planning Associates, Inc. concludes that it supports the petition to allow the rezoning of the Sheraton property from the OF Ocean Front District, to a PD Planned Development Zoning District. The proposed development is at less density than the Village would allow, a net reduction in vehicular traffic is expected, and there is a park & recreation surplus of 1.46 acres. The project has less density, floor area ratio and lot coverage. The towers will be 297 feet high.
3. Traffic Volume Studies: Tinter and Associates was retained by the Village as an independent traffic expert. Their review and analysis concurs with the traffic reduction findings documented in the traffic study prepared by the Applicant's traffic expert (Transportation Analysis Professionals, Inc.). The conclusion is that the proposed design will reduce traffic volumes. Mr. Tinter recommends that a signalization study be done to adjust the traffic signal at the entrance to the site, to reflect the new traffic flow patterns.
4. Utility and Civil Engineering Design: Craig A. Smith & Associates has reviewed the preliminary utility and civil drawings and report that the capacity for potable water supply, wastewater and solid waste disposal is sufficient for the St. Regis development. Craig A. Smith & Associates recommends upsizing and replacing certain water mains for fire flow and normal use. A utility easement must be established as part of the Development Agreement.
5. Development Agreement: Merrett Stierheim has been retained to assist the Village Manager in formulating the Development Agreement. Items for consideration include:
  - Provide 10% valet parking and assign tandem parking to specific condo units
  - Study traffic and upgrades for signalization at entrance to site
  - Create a utility easement along Collins Avenue and costs associated with upgrade water and wastewater transmission lines
  - Agreement to transplant plant material from the site onto the Beach Access Path. Requires DEP approval.

**Merrett Stierheim, Village Consultant**, reviewed his memorandum regarding the Assessment of St. Regis Project Impact and Development Agreement with the Village of Bal Harbour. He reported that there were no disadvantages or negative aspects, other than people who currently use the Sheraton that may not use the St. Regis hotel. Mr. Stierheim noted that the project does several positive things for the residents. He reviewed pages 2-4 of his report discussing the proposed Development Agreement, which is summarized as follows:

#### Financial Implications:

- Property Tax revenue will not be less during the construction period, with a possibility of the ad valorem revenue increasing, depending on the assessed value by the Property Appraiser.
- Resort Tax revenue will not be less from the Sheraton Hotel and will increase 5% per year.
- The Developer will make monthly payments to the Village General Fund and will not be restricted.
- Resort Taxes for the St. Regis may be less than the current level plus the 5% that the Village will receive over the 3-year construction time.
- Ad Valorem taxes for the completed project will be 8-10 times higher (800 to 1,000% more) than the existing hotel. It will be approximately equal to half (50%) of the total ad valorem taxes currently collected in the Village. The current ad valorem is \$5,131,000. The estimated range for the development is \$2.3 to \$2.7 million. That is with the current millage rate.
- The Developer will also pay over the 3-year construction period \$6.75 million.
- The Developer will provide for beautification to the front of the property. If that doesn't happen, the Developer will pay the Village \$250,000 to use for the beautification effort.

Traffic and Parking: Mr. Stierheim reviewed pages 4-5 of his report, which is summarized as follows:

- Traffic will be greatly reduced in the new project. Approximate condominium occupancy will be 30%-40% year round.
- Project has 1,000 parking spaces underground, which is more than the 274 current parking spaces.
- No more valet parking across the street (at Bal Harbour Shops)

Compatibility, Ambiance, and Neighborliness:

- The Majestic and the Balmoral are being offered \$1.25 million each by the Developer for inconvenience related to the demolition and construction.
- The Development Agreement provides \$12,150,000 over the three-year construction period.

Mr. Stierheim concurs with the recommendation of the Village Manager, Building Official and Village Planner. He believes that is fair, equitable, puts the Village in a great position, and solves a very serious traffic problem.

Mayor Roth requested a breakdown of the \$12 million. Mr. Stierheim advised the following:

- \$5.4 million in resort taxes over the three-year period
- \$6,750,000 in additional dollars (including the utility taxes of approximately \$300,000 to \$400,000 and cost of inspections of approximately \$430,000)

**Michael Miller, Village Planner**, reviewed his Community Development Memorandum on

the project, which is summarized as follows:

- Development will be below the allowed 55 units per acre.
- Plan is consistent with the density and intensity levels in the Comprehensive Plan.
- State approval is needed for any structure seaward of the Coastal Construction line.
- Concurrency Issues – Traffic, potable water, and wastewater will be significantly less.
- Parks & Recreation – Original traffic was studied at 100% occupancy, which resulted in a need of 1.4 acres of land to serve new residences. The current Comprehensive Plan has an inaccuracy as to the Parks and Open Space that the Village has. The water tank site was replaced with a park, providing .44 acres. The One Bal Harbour Development is 167 units less than the prior building, providing for a smaller impact. Based on a 60% occupancy rate for permanent resident population, there is a .77 acre and there is not a concurrency problem with parks and recreation.
- Compatibility - Page 10 compares the St. Regis project with adjoining developments. The proposed project has less density and FAR than the Majestic and the Balmoral. The project is less intensive than surrounding properties.
- There are no platt issues.
- This project is compatible and would be an asset to the community.

**Carter McDowell, representing the applicants for a joint venture between Starwood Hotels and the Related Companies**, addressed the Council. Mr. McDowell requested that the following be included in the record of this hearing: the ARB hearings, all applications, and letters and communications between the applicant and the Village. **George Perez, President of the Related Company**, was present.

**Charles Sieger, Sieger Suarez Architectural Partnership**, reviewed the project, highlighting the following: the north building is turned perpendicular to the Balmoral increasing visual corridors to the ocean and Village, the hotel and activity spaces are in the center of the site, the footprint is 2 acres less impact on the ground plane, there is a subterranean garage with the majority of cars underground, there are no planter walls on the pool deck, there is a 233 foot setback, the first livable floor is at 45 plus feet above ground, the buildings are raised, the pool deck is 20 feet lower, pedestrians will see 20 feet of sky to create transparency and open space, the buildings sit on a water feature (reflecting ponds), the setback of the first pediment is 300+ feet, the PD gives flexibility to move the buildings perpendicular while Oceanfront zoning produced three parallel buildings blocking a majority of the neighbor views, the majority of the 186,000 FAR difference between PD and Oceanfront is for back of the house services (laundry, cooking), typical five units per floor, each condo has its own pool with the hotel pool in the middle, all cooling towers are on top of the center building, the hotel has a 45-degree saw tooth configuration, no variances are requested, the proposed option "C" has increased setbacks and a reduced number of units.

**Taft Bradshaw, Landscape Architect**, reviewed the landscaping plans, highlighting the following: there are three arrival courts from a single spine, it is the largest and strongest civil entrance in the Village, the building will have the appearance of being in a grove of Bal Harbour Village Special Council Meeting Minutes 01/05/2006

Date palms with lighting, the Collins Avenue landscaping will be continued onto the property, there will be sculptures in the reflective ponds, behind the buildings are three separate gardens integrated to the beach edge, the view of the opening from Collins Avenue will be of palm trees and tropical plants, there is a multi-level stepped-up affect for canvas cabanas, and plans have been submitted to the State to receive permits to realign the beach walkway and relocate existing palms to either side of the property.

Mr. McDowell reviewed the differences between the OF and the PD. He noted that under OF the property could hold 900 hotel rooms or 495 residential dwelling units and they are proposing 240 hotel rooms and 271 dwelling units (under the permitted density). He reviewed that they are less intense from the FAR and density, compared to adjoining properties, they conducted three meetings at the Sheraton for residents, the feedback from the community outreach is substantially positive with a majority, they continue working with the Majestic and Balmoral and have finalized agreements with both properties to help mitigate the negative impacts during construction, the Development Agreement gives the Village \$12.15 million with an additional \$250,000 if the additional beach landscaping is not done, funding will allow the Village to address all of the impacts associated with the project and allow the enhancement of existing facilities for residents, there is a net reduction in impact of the project, they are providing water and sewer line improvements, they will pay impact fess to the Miami-Dade County School Board, and the project meets all the requirements under the Code.

Mayor Roth opened the public hearing.

The following spoke in favor of the application:

**Able Holtz, Resident and President of the Tower**, noted that the Tower strongly supports the project. As President of the Shul of Bal Harbour, he advised that most members like the project.

**Marsha Chonchal, President of the Balmoral**, advised that the Balmoral is in favor of the project.

**Olga Ortiz Mera, Resident and President of the Spanish Church by the Sea**, advised that the membership is in favor of the project.

**Keith Poliakoff, Becker & Poliakoff, on behalf of the Majestic at Bal Harbour Condominium Association**, advised that the Majestic has reached an agreement with the Developer and do not object to the project as presented.

**Dr. Michael Krop, resident - 9601 Collins Avenue**, noted that the Coalition was never opposed to the project and there were just things about the project that they didn't like. Dr. Krop is in favor of the project, with the exception of the Development Agreement. He would like the Council to negotiate for residents to use the St. Regis hotel (join the spa, accommodations, etc.).

**Stanley Whitman, Bal Harbour Shops**, discussed the positive impacts of the project (less density, improved traffic, fits the Bal Harbor image, etc.). He requested that the Council pass the ordinance on first reading.

The following spoke in opposition of the applicant:

**Babak Raheb, resident – 128 Balfour Drive**, is not opposed to the hotel, but is opposed to the Development Agreement. He is against the areas in the Security District being used to calculate the park land. He thinks that Assistant Mayor Berlin has a conflict of interest, since he is part owner of the park land common area, in the Security District. Mr. Raheb recommended using an out-of-state planner and attorney. He is against it, since eminent domain is being used without compensation. Mr. Raheb thinks that the Developers should pay the \$30 million that the 1.5 acre shortage is worth.

**Marjorie Schell, resident – Balmoral Condominium PH#17**, thinks that the center structure is too close to the dunes. She is concerned about protection from the beach.

**Dina Cellini, resident – 211 Bal Cross Drive**, questioned Assistant Mayor Berlin's discussions about the project with Hans Altenhoff (member of the Resort Tax Committee and Sheraton Bal Harbour Manager). Assistant Mayor Berlin explained that there were no private discussions with Mr. Altenhoff and that all discussions were done at the Resort Tax Committee meetings. Ms. Cellini is opposed to the current Development Agreement. She reviewed page 3 of Mr. Miller's report, regarding the properties used to calculate the total open space. She questioned including 50% of the Bal Harbour Club property (a private club) and various land in the gated area in the calculation. Ms. Cellini thinks that there's a big concurrency problem and doesn't think the Development Agreement properly compensates the Village for the shortage of open and recreation space. She suggested that an independent planner be hired or a State agency review Mr. Miller's interpretation. Ms. Cellini questioned how much of the \$6 million are fees that would have been generated under the Oceanfront zoning.

**Erica Dobbs, Clean Condos – 1680 Michigan Avenue, Miami Beach 33139**, thinks that a wind study should be submitted and is concerned about the access to public space. She questioned the methodology used by the Planner. Ms. Dobbs thinks that developers should build projects to increase public space. Ms. Dobbs doesn't think that zoning changes should be approved, until the issues are publicly resolved.

**Dr. Michel Raheb, resident - 10205 Collins Avenue #501**, discussed the ability for all residents to use the areas in the gated area, if they are being designated as public space.

**Brian Mulheren, resident – 10245 Collins Avenue**, thinks the documents should be studied. Mr. Mulheren thinks the relationship of Dr. Krop and Mr. Stierheim raises an ethics question. He noted that Dr. Krop is benefiting financially as an owner at the Majestic. He discussed public safety. Mr. Mulheren is in favor of having outside independent people look at this. He thinks the other buildings in Bal Harbour should also be compensated. Mr. Mulheren suggested having workshop meetings for people to review this further.

Mr. Mulheren questioned Councilman Sanz's residency in Bal Harbour. Councilman Sanz reported that he represents District 3, which is now the One Bal Harbour and Harbour House South. He noted that nobody can live in that District right now and advised that he is planning on moving back to Harbour House, when the buildings are finished.

**Babak Raheb, resident – 128 Balfour Drive**, thinks that Councilman Sanz must reside in the District that he is representing. Mr. Weiss reviewed the Village Charter and advised that

in the event that a Councilmember removes permanently from a district, then the Council can declare the seat vacant. He explained that the Council has to determine whether or not Councilman Sanz has permanently removed himself from the District. Councilman Sanz reported that he has the intent to move back into the Harbour House.

Mayor Roth noted that Councilman Sanz has publicly said that he intends to live in that District. Mr. Weiss noted that it's the Council's determination, based on what they believe his intent is. Councilman Jacobi believes Councilman Sanz, if it's his intention to live there. Assistant Mayor Berlin and Councilman Rosenfield agreed. Mayor Roth advised that the issue is resolved.

Mayor Roth doesn't agree with the calculation of the parkland or the assumption of the percentage of time that is being used for resident occupancy. Mayor Roth is not opposed to the project and thinks it's beautiful. He noted that the Village doesn't need money, but it needs park land. Mayor Roth discussed residents not being able to use the land in the gated area, even though it's being considered as park land. He doesn't think the Village has enough facilities or park land.

Mr. McDowell discussed the Comprehensive Plan and the rules to calculate public recreation and open space. He discussed the 2000 Census data for Bal Harbour and the population per unit for condo projects, which Mr. Miller used in his recalculations. He also pointed out that the prior Harbour House North building (350 dwelling units) is being replaced with 181, which was included in Mr. Miller's revised calculations. Mr. McDowell noted that Mr. Miller did include the tot lot in the original calculation, because he was using the Comprehensive Plan, which was out of date regarding the number of dwelling units, etc. Mr. McDowell advised that park and recreation open space requirements, pursuant to the Comprehensive Plan, is per 1,000 population of permanent dwellers. He noted that legally the hotel units that are owned in a condominium format cannot be considered as permanent dwelling units, because they are deed restricted. Mr. McDowell noted that under the Comprehensive Plan, privately owned recreation and open space can be counted 50 percent, whether there's public access or not (the Club and the park in the single family area). Mr. McDowell pointed out that the Comprehensive Plan also lists the beach area as a recreation area, although Mr. Miller doesn't think it can be counted. He thinks that the project meets the requirements.

Mr. McDowell noted that following the Dade County Administrative Order would show that the project itself meets and exceeds the park requirement for the property, which Mr. Miller doesn't agree with. He explained that the project is meeting the recreation needs, because the people who live in that building will recreate on the premise. Mr. McDowell thinks that the Village meets the park requirement, because the Comp Plan includes the beach, they meet the park requirement on the property itself, and since the 2000 Census and the adoption of the Comp Plan there is excess public open space, not counting any of the space on the property.

Mayor Roth doesn't think that everyone answers the Census. Mr. McDowell noted that the Census shows a 60% vacancy for all the dwelling units. Mayor Roth thinks that an independent planner should review the calculations and study this more. He doesn't think the Development Agreement is the greatest, he would like a breakdown of the \$6 million, and he would like a letter of credit guaranteeing the money. Councilman Jacobi noted that is covered under the Development Agreement.

Mr. McDowell noted that there's no mortgage on the property. Mayor Roth doesn't like the installment plan, without credit. He loves the project, but doesn't like the Development Agreement and doesn't like the lack of parkland.

Mr. Raheb objects to any open space being counted as recreation area. He suggested that the Council ask the Attorney General for an opinion of open space. Mr. Raheb thinks that this item should be tabled.

Ms. Cellini thinks that if the ordinance is passed on first reading, then all residents will have the right to come into the Security District. She objects to using those properties as part of the open space, without further verification from a State agency. She would like to know if items 3-7 were used in Mr. Miller's original report.

Mr. Miller explained that there were no standards in the 1940s for parks, etc. and there is very limited open space and parks/recreation in the older coastal areas of Florida. He discussed the master planned design for Bal Harbour. He noted that the streets in the gated area were originally open to the public, when the community was developed and that open space was available for all the residents. Mr. Miller advised that there's no opportunity to get more publicly owned parks and recreation space, unless eminent domain is used. He noted that the Comp Plan shows approximately 86 acres of open space or parks in the community that are used for that purpose. He advised that subsequent to the adoption of the Comp Plan, the Village had to adopt Land Development Regulations to implement the Comp Plan. He explained that the State has bestowed concurrency, which means there are facilities (parks, water, road capacity) to serve the community, concurrent with the impact of the development. Mr. Miller advised that the Village adopted the Miami-Dade County Concurrency Management Ordinance, dated July 1989. He noted that it prescribes what land areas can and can't be counted in the open space and parks/recreation. Mr. Miller advised that has been amended to add more credits that communities can count, including being able to count a condominium's open space and recreation facilities. Mr. Miller advised that publicly owned land can be counted 100 percent (the Village has .76 acres) and private open space and recreation can be counted at 50 percent. He advised that the beach cannot be counted based on that. He noted that the Village can amend the Land Development Regulations to count the beach area or count some of the private open space in the condo buildings, but that's not what is currently adopted.

Mr. Miller noted that the adopted level of service is 2.75 acres of land for permanent, not total, resident population. He advised that the 2000 Census reports 3,150 dwelling units with a population of 3,350 for the Village. Mr. Miller explained that the Census has an average of 1.73 persons per household, which counts occupied residents and rentals. He advised that he used 1.89 in his original calculations realizing it's a condominium owner occupied unit to figure the 1.4 acres shortfall. He explained that the 1.4 was based on all of the dwellings. Mr. Miller noted that since 2000, some houses have been demolished and rebuilt, the Kenilworth House was demolished (49 units) and 39 units were picked up in the Bellini (81 units) and the One Bal Harbour is replacing the Harbour House North, losing some units.

Mayor Roth thinks that the figures are out of whack and that the Village should hire an independent person to recalculate the figures. Mr. Miller explained taking 271 dwelling units times 1.73 per household equals 500 persons. He noted that not all of those will be

permanent resident population, so it was recalculated at 60% permanent (60% of 271 times 1.73 = .77 acres).

Assistant Mayor Berlin question if Mr. Miller is making a calculation using private property, if that would then make the land public property. Mr. Miller advised that it would not and it would not allow anyone to walk into a private subdivision. Assistant Mayor Berlin questioned if the analysis done by Mr. Miller is done as part of the process. Mr. Miller advised that the Florida statutes and the Village's Comp Plan and Land Development Regulations require that a concurrency analysis be done on any development application (from houses to high rises). Assistant Mayor Berlin noted that if the Village didn't have any public or private park land, then nobody could build anything. He questioned if there's any park land available that hasn't been taken into consideration. Mr. Miller advised that there is not. Assistant Mayor Berlin noted that if the Village needed land to meet the park requirements, then the Village would have to condemn some land. Mr. Miller agreed. Mr. Miller discussed transfer development rights that the City of Sunny Isles Beach uses to get park land, etc.

Ms. Cellini questioned if the five parcels discussed earlier were included in Mr. Miller's original report. Mr. Miller advised that they were.

Mr. Whitman discussed the Shops losing customers, the hotel being unable to book, etc. while the process is dragging on. He requested that this be passed on first reading and the other items be worked out before final reading.

**Doug Rudolph, resident – 212 Bal Bay Drive**, discussed the park land issue. He suggested keeping the process going and if the Council wants, then someone can look at Mr. Miller's figures between first and second reading.

Mr. Nieda discussed public allegations of corruption, the building process, defamation of character, etc. He requested this mater to be referred to the Village Attorneys.

Ms. Schell discussed plantings on the beach.

Ms. Cellini noted that the streets in the gated area have never been public.

Councilman Rosenfield discussed all Village taxpayers paying for the maintenance of the parks in the Security District, but not having access to them.

Mayor Roth closed the public hearing.

Councilman Rosenfield questioned if Mr. Miller's report is legal. Mr. Helfman advised that Mr. Miller and Mr. McDowell disagree regarding the methodology used, but both agree that there is a surplus of park space.

Assistant Mayor Berlin questioned if he needs to recuse himself. Mr. Helfman advised that he does not.

Assistant Mayor Berlin thinks that the project is an upgrade to the existing property and fits the community. He suggested that any items be fine-tuned, between first and second reading. Assistant Mayor Berlin requested that the Developer think about what can be done

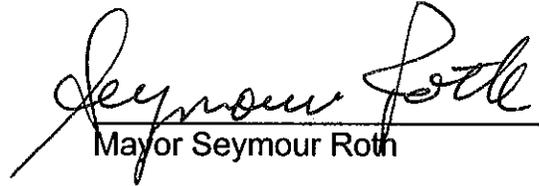
to make the project a Village-friendly facility (resident access to the restaurant, spa, etc.). He thinks that a substantial amount of people are in favor of the project.

Councilman Jacobi suggested that the Comprehensive Plan be revisited. Mr. Helfman noted that the Village is in the process of reviewing it.

A motion was offered by Assistant Mayor Berlin and seconded by Councilman Rosenfield in favor of the project. The motion carried (4-1), with the roll call vote as follows: Mayor Roth nay; Assistant Mayor Berlin aye; Councilman Jacobi aye; Councilman Rosenfield aye; Councilman Sanz aye.

**4. OTHER BUSINESS:** None.

**5. ADJOURN:** There being no further business to come before the Council, the meeting was adjourned at 12:53 p.m.

  
Mayor Seymour Roth

Attest:

  
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Ellisa Horvath, CMC  
Village Clerk