

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
REGULAR MEETING – APRIL 18, 2006

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, April 18, 2006, at Bal Harbour Village Hall (655 – 96th Street, Bal Harbour, Florida).

1. CALL TO ORDER/ROLL CALL: The meeting was called to order at 9:00 a.m. by Mayor Roth. The following were present:

Mayor Seymour "Sy" Roth
 Councilman Joel S. Jacobi
 Councilman Jean Rosenfield
 Councilman Jaime M. Sanz

Alfred J. Treppeda, Village Manager
 Ellisa Horvath, CMC, Village Clerk
 Andrea Greenblatt, Administrative Assistant
 Richard J. Weiss, Village Attorney

Absent: Assistant Mayor Howard J. Berlin

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

2. PLEDGE OF ALLEGIANCE: The Pledge was led by Stanley Whitman.

3. APPROVAL OF MINUTES: *A motion was offered by Councilman Jacobi and seconded by Councilman Rosenfield to approve the minutes of the March 21, 2006, Regular Council Meeting. The motion carried unanimously (4-0).*

4. PRESENTATIONS:

Officer of the Month for March 2006: Sergeant Charles Merrill was presented with a plaque by Chief Hunker, as the Officer of the Month for March 2006, in recognition of his efforts in the March multi-agency DUI Checkpoint.

5. ORDINANCES SECOND READING/PUBLIC HEARING: None.

6. ORDINANCES FIRST READING: None.

7. RESOLUTIONS/PUBLIC HEARINGS: None.

8. RESOLUTIONS: None.

9. LOBBYIST REGISTRATION REPORT – AS OF APRIL 18, 2006: Mrs. Horvath reviewed the lobbyists that are registered with the Village.

10. REPORTS AND RECOMMENDATIONS:

A. MAYOR AND COUNCIL:

Mayor Roth discussed the new Surfside Commission and the possibility of a better relationship with that Town.

Mayor Roth discussed the three-month delay of the St. Regis project. He suggested that Council approval for a development have a time limit, for the commencement of construction. Mayor Roth would like the Council to direct the Village Attorneys to determine what a reasonable amount of time would be for construction to start, on zoning that has been approved. It was the consensus of the Council for the Village Attorney to research this, to see what other municipalities are doing.

Mayor Roth discussed the Restrictive Covenants, for the west side of Collins Avenue. Mr. Treppeda explained that document restricts the west side apartments to three stories and is in the deed for that property. The Council directed the Village Attorney to look into this, see how it affects the Village, and come back with information. The Village Attorney will come back next month, with an interpretation. Councilman Jacobi would like the explanation in layman's terms.

Councilman Jacobi thinks that the new Surfside Commission is open to new ideas and wants to work with the Village.

Councilman Rosenfield reported that she met with Dr. Krop and a Village resident. She wanted clarification on whether or not the Council gave away space between the St. Regis and the Majestic Condo. She questioned if there's 50 feet on the side setbacks. Mr. Nieda reported that the setback is 50 feet on each side (correction on this issue is noted under Other Business).

B. VILLAGE ATTORNEY: No report.

C. VILLAGE MANAGER:

One Bal Harbour Request for Extension of Work Hours: Mr.

Treppeda reported that normal working hours are 8:30 a.m. to 5:30 p.m.

Michael Patrizio, Senior Project Manger – WCI Communities, Inc., requested permission to begin work at 7:00 a.m. and to work on Sundays, to expedite the construction process. He discussed delays due to hurricanes and the goal to open in January 2007, for the Super Bowl. He distributed copies of a letter from the Harbour House supporting the additional hours. Mr. Patrizio noted that the north beach walk will be closed within the next 30 days for improvements. He explained that their main concern is to open that access as soon as possible, to enclose the building (for less risk of debris and a cleaner job site during hurricane season), and to alleviate the cranes, etc. Chief Hunker is in support of work getting done sooner, due to the hurricane season and the upcoming beach dredging project. He strongly urged the Council to approve this for public safety concerns. Daniel Nieda, Building Official, is in support of the project being completed sooner. He discussed his concerns about the Related Group. He questioned if the Related Group is going to

conduct themselves professionally, assist in the process, and give the same binding commitment to the Village as WCI, to be done by January.

Mr. Patrizio reported that this work would include the ramp and the garage at the Harbour House. The work next to the Carlton Terrace would be pavers/curbs, with the majority of the work in front of the One Bal Harbour. Chief Hunker reported that they have agreed to hire an off-duty officer to monitor this. Mr. Patrizio agreed.

Doug Rudolph, resident – 212 Bal Bay Drive, is concerned that there will be ramifications on the neighbors and suggested that if the Council grants approval that it be done on a case by case basis and on a conditional basis, with the ability to rescind approval.

Babak Raheb, resident – 128 Balfour Drive, doesn't think approval should be based on the hurricane season. He is concerned with the public access to the beach being closed. Mr. Patrizio explained that they have delayed construction on the access to create the least amount of impact. He reported that it will be closed until they open the building (approximately 6 months).

Joe Imbesi, Bal Harbour Club Owner, offered the use of 30 feet of the Club's property as public access, if the Village helps to clear it.

Dina Cellini, resident – 211 Bal Cross Drive, is opposed to a wholesale granting of the extension, due to the noise. She suggested that any approval be conditional, to be revisited in a month, to determine the affect on residents. Mrs. Cellini hasn't heard a binding agreement that they will be open by January 1st, if permission is given.

Mr. Patrizio advised WCI would clear up the access offered by the Bal Harbour Club and take care of it, for use as beach access during the construction process.

Brian Mulheren, resident – 10245 Collins Avenue, is opposed to a blanket approval. He requested that the cranes be removed from the project, as soon as possible. He suggested two shifts, instead of working on Sundays (to alleviate debris and close the building in). Mr. Mulheren is in favor of approval, if they can guarantee safety. He thinks it should be done on a case by case basis. He also suggested that they hire at least two police officers. Mr. Mulheren discussed problems with the Related Group.

Marjorie Schell, resident – 9801 Collins Avenue PH#17, suggested that the Council be cautious about the liberties they're giving to builders. She discussed her concern with the oceanfront and the subterranean garage at the St. Regis.

Councilman Jacobi is in favor of the conditional basis and reviewing it in one month for the impact. He discussed his concerns about the cranes and the hurricane season. He thanked Mr. Imbesi for offering the beach access and Mr. Patrizio for offering to clear the path. He suggested starting at 7:30 a.m. during the week and starting at 10:00 a.m. on Sundays.

Councilman Rosenfield discussed the noise created when workers congregate. Mr. Patrizio advised that if permission is granted, then the workers would not congregate under the bridge. Councilman Rosenfield is concerned with exterior work on Sundays.

Councilman Sanz thinks that permission should be conditional for one month, to see the

affect on the residents.

Mayor Roth suggested approval be conditional for 30 days. He discussed the noise created by exterior work. He is in favor of hiring off-duty police officers. He is concerned about work on Sunday. He suggested extending work at night. Mr. Patrizio discussed the hardship in getting quality workers at that time. He suggested doing only interior work on Sundays, with the same criteria of off-duty officers. Mayor Roth is in favor of less visible workers, etc.

Mr. Weiss reviewed the Code and explained that there's not a variance procedure for the Council to grant what WCI is asking for. He explained that the only discretion in the Code is for the Village Manager, under very limited circumstances (concrete pour, etc.) and not for a long period of time. He explained that the Code would need to be amended, to give the Council the ability to grant variances on a case basis. Mr. Weiss doesn't believe that this would fall under section (d) for emergency situations.

It was the consensus of the Council to direct the Village Attorney to draft an ordinance, to amend the Code. The Council will have a special meeting, to consider the proposed ordinance for first reading. Mr. Weiss explained that the Council will have a staff recommendation at the second reading, for this specific request, addressing details (time, etc.).

Mr. Nieda thinks that it's in the best interest of the Village to expedite the project. He again discussed his concerns with the Related Group.

Mayor Roth requested a target date of December 31st, so the project can be placed on the tax rolls. Mr. Patrizio noted that they intend to close on all the condo units in 2006.

Dr. Leonard Deutch, resident – Balmoral Condominium, is concerned that if the Code is changed, then the Village is working to accommodate the developers and construction, instead of giving primary concern to the residents. He thinks there's a conflict of interest between the residents and the developers.

Babak Raheb, resident – 128 Balfour Drive, requested that Mr. Weiss notify the Council earlier when a request cannot be done.

Brian Mulheren, resident – 10245 Collins Avenue, thinks that if the Code is changed, then it should only be for this specific building. He thinks work can be allowed, but not as a blanket approval.

Mr. Weiss clarified that discussion was allowed on this issue, because he doesn't always know where the Council is going (if they're interested or not in the issue).

Request for Ratification of Re-Appointment of Special Master

Joni Blachar: Mr. Treppeda requested ratification of his reappointment of Joni Blachar, as Special Master. The term will be April 20, 2006 – April 20, 2007.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (4-0).

Quarterly Financial Update Provided by Finance Director

Christopher Wallace: Mr. Wallace presented the Second Quarter Budget Report for Fiscal Year 2006. He reported that the General Fund revenues are ahead, with expenditures below anticipated. He explained that the Tourism Fund is better than expected, considering the hurricane. Mr. Wallace reported that the Security Fund is in good shape, with collections slightly behind. He advised that the Water and Sewer Fund revenues will be lagging, due to the delay in implementing rates. He noted that the Village's finances are in good shape overall.

Request for Approval to Purchase and Install Plants on the Beach: Mr. Treppeda requested approval for Luke's Landscaping to replace sea oats on the beach for \$32,000.

A motion was offered by Councilman Rosenfield and seconded by Councilman Jacobi to approve. The motion carried unanimously (4-0).

Request for Approval of Additional Funds to Replace Fences/Gates: Mr. Treppeda requested approval of an additional \$4,163 for fences/gates for the trash transfer station and the recreation center. The low bidder is Ruben Fence Company.

A motion was offered by Councilman Rosenfield and seconded by Councilman Jacobi to approve. The motion carried unanimously (4-0).

Request for Approval to Replace Trash Truck Dump Bed: Mr. Treppeda requested approval of \$8,950.00, to replace the public works trash truck's dump bed. The low bidder is B&B Welding & Machine Service, Inc.

A motion was offered by Councilman Rosenfield and seconded by Councilman Sanz to approve. The motion carried unanimously (4-0).

Request for Approval to Upgrade Automated Meter Reading System for Water/Sewer Billing: Mr. Treppeda requested approval of \$26,250.00 from the Sewer Fund and \$26,250.00 from the Water Fund, to upgrade the automated Water/Sewer Meter Reading System.

A motion was offered by Councilman Sanz and seconded by Councilman Jacobi to approve. The motion carried unanimously (4-0).

Request for Approval of Funds to Add Office in Public Works Building: Mr. Treppeda requested approval of \$6,880.00, to construct an office within the existing Public Works facility, for a secretary (\$4,880 construction cost and \$2,000 for interior items). The low bidder is Construction Depot.

A motion was offered by Councilman Jacobi and seconded by Councilman Sanz to approve. The motion carried unanimously (4-0).

Update on DRI Process for Bal Harbour Shops: *Michael Miller, Village Planner*, reviewed the DRI (Development of Regional Impact) Process for the

proposed Bal Harbour Shops Expansion Project. He reported that in August 2005, the Shops submitted an application to the State Department of Community Affairs (DCA) for interpretation. He explained that local government doesn't have any involvement at this level. Mr. Miller advised that the State noted questions regarding the application and in January 2006, the Shops responded to that. He explained that the DCA was supposed to make a decision by March 23rd, but the Department of Transportation questioned some of the traffic information, so the Shops requested an extension of 30 days, until April 23rd. He explained that the DCA will rule at that time whether or not they believe the project is considered a DRI project. He explained that if it's not, then the applicant can proceed with plans to local government, but if it is a DRI, then the Shops have to decide whether or not to proceed. Mr. Miller has told the Regional Planning Council and the State verbally that there are some zoning issues (a hotel is not listed as a permitted use in the zoning code, the expansion includes acquiring the Village Hall property and the Church by the Sea). He summarized that the Shops wants an interpretation on whether or not the project would be a DRI. He explained that the proposal presented to the State is a general mall expansion with one major, a hotel, and a movie theatre.

Councilman Jacobi questioned the ability for Council involvement. Mr. Miller reported that the current process is administrative, in making a determination on whether the threshold has been crossed (over 120% of the threshold range listed for what is being done is considered a DRI and below 80% is presumed not to be a DRI). He explained that for percentages between 80% and 120%, the State has to make a determination based on the specifics of the project. Mayor Roth questioned if the Council can have any input. Mr. Miller advised that the DCI is making a decision on the threshold. He reported that whether the Village likes the project or not is immaterial to them, in the function they're doing now. He advised that the Village could point out in writing that the plan is contingent upon acquiring some properties, as well as some other zoning issues. Mr. Miller noted that the Village could provide comments, but he doesn't think it would sway the State on determining the DRI threshold.

Daniel Nieda, Building Official, questioned if the plans contemplate the expansion towards Collins Avenue and towards Bal Bay Drive. Mr. Miller noted that it includes everything.

Babak Raheb, resident – 128 Balfour Drive, thinks the State will consider any comments by the Council and doesn't think the Council should wait. He thinks the Council should provide comments that it is opposed to certain aspects of the plan, as presented.

Mr. Weiss noted that it's not typical for municipalities to comment at this point, but is possible. He questioned whether or not the Council wants it to be a DRI or not. Mr. Weiss isn't sure that the Council has enough information, to make that determination yet. Mr. Weiss questioned if the Village gets or gives anything by the project being a DRI or not. Councilman Jacobi thinks that it's a major project and recommended that the Council decide where it stands either way. He thinks the Council should make a recommendation, to help in the process.

Dina Cellini, resident – 211 Bal Cross Drive, questioned the process if the DCA determines that it's not a DRI.

Mr. Miller explained that if it's not a DRI, then it's only a local matter. He noted that

commercial properties are exempt from the Architectural Review Board or coming to the Council, so it would go to the Building Department. He advised that there are concurrency issues in the Comp Plan and Zoning Code that have limitations on the level of service (number of cars driving on the road) that are involved. Mr. Treppeda pointed out that there is no hotel classification within that District, so that would need Council approval.

Anthony Gillam, resident – 9800 Collins Avenue, questioned if the Restrictive Covenants referring to the commercial area will have any impact on the State's decision. Mr. Miller reported those Covenants only apply to the residential section. He noted that a title search would be needed, to uncover any existing restrictions or modifications and how it would affect that property. He explained that deed restrictions would not have any affect on the DCA's determination.

Steve Sorensen, Vice President/Senior Project Manager for WCI Communities, suggested keeping decisions on the Village locally.

Mr. Raheb questioned if the State doesn't approve it and it comes locally, then with the exception of the hotel, if the project would only go to the Building Department. He doesn't think the Council has a say locally, unless the Code is changed. He suggested that the Council consider updating the Code, so if it's not a DRI, then the Council would have more control.

Councilman Rosenfield questioned if the State decides it's not a DRI, if the Council could amend the Code with a retroactive date. Mr. Weiss explained that can be done, because no application has been filed with the Village yet. He explained that the current Code provides that a traffic analysis be submitted with the building permit application, for the Business District. Mr. Miller advised that if it's determined to be a DRI, then the Owner will decide whether or not to proceed with the process. He noted that the Village would be involved with that process, because it would have to approve the final development order, for a DRI project.

Mr. Nieda noted that even though that District is excluded from ARB review, the applicant would probably go before the ARB voluntarily. Mr. Nieda would like feedback from the ARB, which has been done in the past. He doesn't want the responsibility of the project just coming to the building department.

Stanley Whitman, Bal Harbour Shops, noted that he came to the Village and made an offer to buy Village Hall, but hasn't had a response. He explained that he cannot do what he would like, without the Village Hall property and the Church property. Mr. Whitman noted that there is nothing before the Council, until that is done. He reported that there are deed restrictions on the west side residential, for three stories, which can only be changed by the residents in that area every ten years. He noted that the only thing the Village can do is condemn the property. Mr. Whitman is interested in preserving the residential area the way that it is. He discussed the history of development in Bal Harbour. He noted that there was no deed restriction placed on the Business District. Mr. Whitman explained that the District is zoned so that anything that's built requires a variance, approved by the Council. He thinks that the Council still has control. He noted that no plan has been submitted to the Council. He pointed out that building a hotel would require a zoning change, which would come before the Council. Mr. Whitman advised that if the project is a DRI, then it has to go through two years of needless studies and a lot of costs. He clarified that what he wants to

build requires variances and Council approval. Mr. Whitman noted that he has no problem going before the ARB or answering questions from the community.

Mr. Whitman requested the Council not to interfere with the process in Tallahassee, because the Council still has control. He pointed out the items that he has done to enhance the community. Mr. Whitman would like to work with the community.

Councilman Jacobi agreed that Mr. Whitman has been a great asset to the community. He has no objection to adding an upper level, but thinks that an expansion including the Village Hall and Church properties, along with a hotel, etc., is something that will impact everyone.

Mr. Whitman discussed the lack of space for merchants at the Shops and competition with South Beach. He explained that retail is not successful above the second floor, so he would like to build additional spaces along 96th Street, with an upscale movie theatre on the third floor, catering space, etc.

Brian Mulheren, resident – 10245 Collins Avenue, suggested that the Code be amended, so that Council approval is needed for anything in the Business District. He thinks that the Council should be involved. He is opposed to a movie theatre at the Shops.

Dr. Michael Krop, resident – 9601 Collins Avenue, is opposed to extending work hours and amending the Code. He thinks that if Council approval is given, then there should be a price that the Contractor has to pay.

Dr. Krop noted that the Citizens' Coalition is concerned about the 240-foot hotel being proposed at the Shops. He explained that whenever the Council gives any amenity beyond what is allowed, such as a variance, that it's at the expense of the residents. The Coalition thinks that type of hotel structure would be an eyesore on that side of the street. Mr. Whitman clarified that he doesn't have an architect hired.

Mayor Roth explained that this is an issue that doesn't exist, because Mr. Whitman has to buy Village Hall and the Church. He noted that Village Hall will not be sold, without the voters agreeing. Dr. Krop wants the Council to be aware that there are a set of plans that include building a hotel. He thinks that the Council should let Mr. Whitman know whether or not they are in favor of the plans. Mayor Roth clarified that there is nothing for the Council to approve or disapprove.

Mayor Roth would like the One Bal Harbour project to be done as soon as possible. He doesn't think that the Village needs to worry about Mr. Whitman's dreams, because it's years away and he doesn't think it's going to happen.

Dina Cellini, resident – 211 Bal Cross Drive, requested that the Council direct the Village Attorney to conduct a title search for deed restrictions on the oceanfront and the commercial district. She advised that the Coalition's issues are traffic and additional congestion in the Village. Mrs. Cellini noted that an 18-story hotel, in Mr. Whitman's plans being reviewed in Tallahassee, would result in additional traffic that they don't want.

Joe Imbesi, Owner – Bal Harbour Club, agreed that Mr. Whitman is a visionary and has made Bal Harbour what it is. He noted that he trusts Mr. Whitman.

Councilman Rosenfield wants to listen and examine everything, before making a decision.

Mr. Weiss would like to provide a cost estimate first, before reviewing the titles on all the oceanfront properties and the commercial properties. He noted that if the task is minimal, then he will do it as part of the other research. Ms. Cellini suggested that the Village Attorney be directed to research what restrictive covenants exist on all the properties in Bal Harbour. Mr. Weiss doesn't think it's the Village's place for the Village Attorney to start giving opinion on whether or not restrictive covenants are valid, binding, or enforceable. He noted that restrictive covenants are a private contract and he doesn't think that the Village should be in the business of interpreting private contract. He noted that if the project is minor, then it will be done for the next meeting, but he will provide a cost estimate if it's a large task.

Mr. Whitman shares the concern that there should be nothing higher than three stories on the west side of Collins Avenue. He noted that the deed restrictions he provided apply only to the residential area and nobody has a say in it, except the people who live there. He noted that deed restrictions are not political and are put on by professional planners. Mr. Whitman explained that the only way the Village can overturn them is by eminent domain or by the citizens living there voting them out.

Councilman Jacobi suggested amending the Code, to require commercial development to come before the Council. Councilman Rosenfield thinks that Mr. Whitman explained that anything he would build would require variances, which the Council would have to approve. Mr. Treppeda pointed out that the hotel would require Council approval, because it would require a zoning change.

Mr. Weiss suggested that the Council think about this issue, for discussion at the May meeting.

Update on Comprehensive Plan Evaluation & Appraisal

Report Procedure: Mr. Treppeda explained that the Village Planner is working on the EAR for the Comprehensive Plan and a meeting needs to be scheduled for public input. He questioned if the Council would like to conduct the workshop meeting, or if the Village staff should. A tentative date is set for May 3rd at 5:30 p.m.

It was the consensus of the Council for Village Staff and the Planner to conduct the meeting.

Selection of Winner of Village Seal Contest: Mr. Treppeda requested consensus for the winning Village Seal. The winning student will win a \$4,000 scholarship.

Councilman Jacobi prefers entry 104. Councilman Rosenfield prefers entry 104. She likes the colors in 102, but doesn't like the buildings in the background. Councilman Sanz agreed. Mayor Roth prefers 102, but thinks the buildings need to be changed.

It was the consensus of the Council to narrow the finalists down to entry 102 (change the background buildings) and 104 and to defer this for another month.

11. OTHER BUSINESS:

Dina Cellini, resident – 211 Bal Cross Drive, discussed the side setbacks for the St. Regis project. She noted that Mr. Nieda was wrong and the side setback is 35 feet on both sides of the project, not 50 feet.

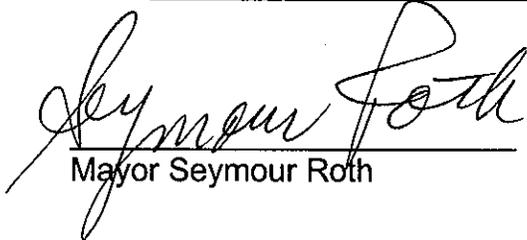
Mr. Nieda noted that it's 35 feet to the building line and 46.83 feet to the balcony line, which is an average of 40 feet-11 inches. He explained that it's 9 feet-1 inch short, of a typical condition.

Marjorie Schell, resident – 9801 Collins Avenue, requested that the Village be referred to as a Village, not a City.

Brian Mulheren, resident – 10245 Collins Avenue, commended the Manager, Chief, Police Department, and Public Works Department for their work during the BET weekend. He doesn't think that event should have been allowed, due to the traffic problems. He thinks that the Village needs a new Police and Village facility.

12. ADJOURN: There being no further business, the meeting adjourned at 11:44

a.m.



Mayor Seymour Roth

Attest:



Ellisa Horvath, CMC
Village Clerk