

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
REGULAR MEETING – FEBRUARY 19, 2008

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, February 19, 2008, at the Bal Harbour Village Hall Council Chambers (655 – 96th Street, Bal Harbour, Florida).

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

Mayor Howard J. Berlin
 Assistant Mayor Jean Rosenfield
 Councilman Joel S. Jacobi¹
 Councilman Martin Packer
 Councilman Jaime M. Sanz

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

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

2. PLEDGE OF ALLEGIANCE: The Pledge was led by Jerry Chiocca.

3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS: None.

4. SPECIAL PRESENTATIONS:

Employee of the Month – January 2008: Chief Hunker presented Pamela Flanders, Police Patrol Secretary and Dispatcher, with the Employee of the Month plaque for January 2008, in recognition of her assistance with the EGO Pass process.

5. CONSENT AGENDA:

Babak Raheb, 128 Balfour Drive, requested a list of the items included under Tab C (Motion Approving Resort Tax Funds in Accordance with the Director of Tourism's Recommendation) from the Consent Agenda. Mr. Treppeda reviewed the items.

Mr. Treppeda requested approval for the following items on the Consent Agenda:

Tab B: Minutes for the January 15, 2008 Regular Meeting and February 4, 2008 Special Meeting

Tab D: \$30,365.29 (\$2,421.89 Additional Funds for the Wounded Warrior Visit and \$27,943.40 Marked Police Vehicle Design Change) and \$520.58 monthly (2008 Dodge Charger Lease to Replace Vehicle #237) in Police

¹ Councilman Jacobi left the meeting after approval of the items on the Consent Agenda.
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forfeiture funds

Tab E: \$9,000.00 in Police budgeted funds for Construction Depot to conduct additional work related to the Police holding cell areas (General Obligation Bond funds will be applied for to pay for this item)

Tab F: \$100.00 per month and approval of the addendum to the agreements for Butler National Services, Inc. to add the Village's two storm water pumping stations onto the maintenance agreement

Tab G: \$8,895.00 for Silver Plumbing, the low bidder, to replace a broken valve near the Plaza of Bal Harbour property

Tab H: \$380.00 per month and approval of the lease agreements with Mears Leasing for three trucks (2008 Ford F150 XL 4X4 Supercrew Long Bed) for the Public Works Department

Tab I: \$2,520.00 per week, plus materials, and approval of the proposal for Lukes' Landscaping to inspect and repair the irrigation system on the beach, to optimize it for maximum effectiveness under strict water restrictions

A motion was offered by Councilman Sanz, and seconded by Councilman Packer to approve the items on the Consent Agenda. The motion carried unanimously (5-0).

Councilman Jacobi left the meeting.

6. PUBLIC HEARINGS:

Zoning Hearings/Quasi-Judicial Public Hearings: None.

Ordinances Second Reading/Public Hearings: None.

Resolutions/Public Hearings: None.

7. ORDINANCE FIRST READING/PUBLIC INPUT: The following

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

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 18 "TAXATION AND FINANCE" OF THE VILLAGE CODE BY REVISING ARTICLE II "RESORT TAX" BY AMENDING DIVISION 2 "RESORT TAX COMMITTEE", BY AMENDING SECTION 18-45 "POWERS AND DUTIES", TO ALLOW THE COMMITTEE TO RECOMMEND, NOT DECIDE, MEDIA PLACEMENT, AND TO CLARIFY THE COMMITTEE'S AUTHORITY CONCERNING ITS PROCEDURAL RULES; AND TO EXEMPT THE COMMITTEE FROM THE ETHICS PROVISIONS CONTAINED IN THE MIAMI-DADE COUNTY CODE PURSUANT TO ADVISORY BOARD EXEMPTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Weiss explained that the issue was raised as to whether there were County rules that made certain members of the Committee ineligible to vote on certain matters, because they affected that member's business. The Village Attorneys met with the County Ethics Commission on Ethics and Public Trust and representatives of the Shops that were impacted by this. He advised that the Resort Tax Committee was previously able to spend resort tax money to place advertising, within budgetary constraints, without Council approval. He noted that this ordinance would require that the Committee's votes be advisory to the Council instead. Mr. Weiss reported that the State Ethics Code will still apply, but the County Ethics Code will not apply, so that Committee members can advise the Council, even if it affects their business. Mayor Berlin noted that if the ordinance is approved at first and second reading, then a new Committee will have to be appointed. A representative of the Village Attorney's office would attend the meetings to advise the Committee on how to conduct business.

Mayor Berlin opened the public hearing.

Neil Alter, 9801 Collins Avenue #11U, is concerned about the exemption of the County ethics rules and requested clarification of it being justifiable.

Babak Raheb, 128 Balfour Drive, questioned what part of the Ethics Code is exempt (sunshine, disclosure, etc.) and if the exemption only covers Committee work or if would extend to the Council, if a Councilmember serves on the Committee. He questioned the makeup of the Committee and thinks that the language could be resolved, if there were more residents and less business members involved.

Dina Cellini, 211 Bal Cross Drive, is opposed to an exemption from the County ethics requirements. She questioned if there's another way to get around the problems with the previous make up of the Committee. She agreed with Mr. Raheb that some resident representatives on the Board are appropriate. Ms. Cellini thinks that the funds have been managed very well, but noted that she doesn't like the exemption. She explained that some violations may only be with the County Ethics Board and, in that case, unethical behavior may not be challengeable.

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

Mr. Weiss explained the conversations with the County Ethics Board. He reported that the County felt that the ordinance is a good solution to the problem the Village had. Councilman Packer would like to research this issue further. Assistant Mayor Rosenfield questioned what ethical behavior would be eliminated. Mr. Weiss explained that the ethics issue of voting conflicts would still apply to the Committee. He reported that the County prohibits a person from serving, if there could be frequent and re-occurring conflicts. He explained that this ordinance would allow people to serve, with the Village Attorney advising them not to vote if there is a conflict, under the State Code. Mr. Weiss noted that the Sunshine and public records laws are not part of the ethics code and that it only affects the conflict of interest issues. He reported that the intent was to allow people with special knowledge and understanding of tourism within the community to serve on the Board, without violating the ethics code. Mr. Weiss explained that the Pension and Architectural Review Boards have authority to invest, grant retirements, etc. and are not advisory boards. He clarified that the Resort Tax Committee would be purely advisory to the Council, without the ability to spend money. He further clarified that Councilmembers serving on the Committee would only be exempt for their activities on the Committee, but not for the Council or other boards they

serve.

A motion was offered by Councilman Sanz and seconded by Councilman Packer to approve the ordinance on first reading. The motion carried unanimously (4-0), with the roll call vote as follows: Mayor Berlin aye; Assistant Mayor Rosenfield aye; Councilman Jacobi absent; Councilman Packer aye; Councilman Sanz aye.

8. RESOLUTION: The following Resolution was read, by title, by Mrs. Horvath:

A RESOLUTION OF THE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, PROVIDING A 90 DAY EXTENSION TO THE INITIAL FOUR MONTH TRIAL PERIOD FOR OPERATION OF NON-MOTORIZED BICYCLES ON A DESIGNATED PORTION OF THE PUBLIC BEACH; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Treppeda explained that the trial period ends March 1, 2008. He recommended extending the trial period, in order to allow the Village Attorney to prepare an ordinance to make the change permanent. Chief Hunker reported that no complaints were received regarding the use of bicycles on the access road.

A motion was offered by Assistant Mayor Rosenfield and seconded by Councilman Sanz to approve the resolution and direct the Village Attorney to prepare an ordinance to permanently allow bicycle riding on the beach access road. The motion carried unanimously (4-0); thus becoming Resolution No. 702.

9. REPORTS:

A. VILLAGE MANAGER:

Update on Bal Harbour Village Beach Issues – Brian Flynn,

Miami-Dade County DERM: Brian Flynn explained that the County is in the permit process and expects work to start in four to six months. He reported that the sand from the Sheraton site is logistically and financial not feasible (to handle and store it) to use. He noted that sand for the Village project will be used from another source.

Mr. Flynn reviewed the idea of a fixed dredge at the north jetty, to pump sand for Bal Harbour. He distributed a section of a report, dated March 1995, regarding mechanical sand bypassing. Mr. Flynn estimated that it would now cost approximately \$3.2 million, with an annual cost of \$350,000 to operate. He noted that the maximum amount of sand pumped, based on the engineering analysis, would be 24 cubic yards per year, which is small. He reviewed the cost over 10 years to install and maintain a system on the beach versus trucking and reported that trucking would save \$1million over the 10-year period. Mr. Flynn noted that the results of the report indicated that there are benefits to the fixed system, but recommended against it, due to the cost of installation and maintenance. He reported that currently every three to four years, the Army Corps of Engineers dredges the Haulover Inlet and pumps that sand (30,000 to 280,000 yards) onto the Village's beach, at no cost to the Village. He thinks that it's better to do larger quantities periodically, instead of smaller quantities regularly, because the smaller quantities disappear quicker. Mr. Flynn noted that the County recommends the periodic maintenance projects, combined with

regular Army Corps projects, for Bal Harbour. Councilman Packer discussed the current unacceptable beach erosion. Mr. Flynn explained that the problem was that the erosion was due to storms and no permits were in place to do work. He reported that once the permits are in place, they will be able to mobilize immediately to fix future problems. He clarified that the permits are good for five years, with the ability to be extended. Mr. Flynn advised that their goal is to permit the entire County, to expedite the approval process for future erosion problems.

Dan Nieda, Village Building Official, questioned why the County is not using the sand from the Sheraton site for renourishment. Mr. Flynn explained that the site has 25,000 cubic yards of sand and the original discussion was for 16,000 cubic yards of it to be screened on site by the Developer, etc. for placement on the Village's beach. He explained that they have now been told that the sand is not going to be screened and that it would have to be stored at Haulover for four to six months, until the permits for the renourishment are received. He added that the remaining sand (9,000 cubic yards) would need to be stored at Haulover for two to three years until the St. Regis site is ready for it. Mr. Flynn noted that since the County would have to pay for screening, storing it, and transporting it back to beach, it wasn't logistically or financially feasible.

Mayor Berlin requested that Mr. Flynn come back next month to discuss the status of the process. He questioned after the permit is issued, when renourishment will begin. Mr. Flynn reported that during the 14-day notice period of the permit being ready, the County will receive bids and work out the process. Mayor Berlin questioned if sand is earmarked for Bal Harbour. Mr. Flynn clarified that it's marked for the County, but noted that there's plenty of sand.

Babak Raheb, 128 Balfour Drive, questioned if the permit will automatically renew after five years. Mr. Flynn explained that the County will renew it automatically or get a new permit.

Stanley Whitman, Bal Harbour Shops, discussed the cost of sand. Mr. Flynn reported that sand currently costs approximately \$38 per cubic yard. Mr. Whitman noted that a lot of smaller inlets have the pumping stations and thinks that the cost benefit is there. He suggested that it be studied. Mayor Berlin questioned how much renourishment a 250,000 cubic yard project would cover. Mr. Flynn reported that it would build the Village's beach out another 70-80 feet beyond the existing shoreline and would be considered a complete renourishment. Mayor Berlin noted that 24,000 cubic yards would be 10% of the beach. Mr. Flynn explained that amount would be placed from the north end to south end of the beach, but not on the entire beach.

Dina Cellini, 211 Bal Cross Drive, questioned how the deal with the Sheraton sand deteriorated. Mr. Flynn reported that the Sheraton decided not to screen the sand and were requiring the County to store additional sand at a County Park. Ms. Cellini questioned why that was necessary and requested clarification that the Sheraton would want that additional sand returned to them after storage. Mr. Flynn advised that was his understanding. He doesn't know if they pursued another storage location, but thinks that they are now giving all of the sand to someone else. Ms. Cellini pointed out that they would rather give all of the sand to someone else, instead of at least giving the Village 16,000 and find another place for their 9,000. Mr. Flynn clarified that it doesn't make sense for the County financially to do it (screening, transporting, storage). Ms. Cellini questioned if the County would move forward, if it just had to screen the sand and not store it long-term. Mr. Flynn noted that

there is a cost associated with screening and transporting. Ms. Cellini suggested that the Council intervene with the Developer to rectify some of the problems, so that the Village will be able to use the sand from the Sheraton, to be able to move quicker. She questioned if resort tax money could be used to maintain a pumping station, if it is installed.

Mayor Berlin would like an accurate proposal for the installation and annual cost for pumping. Mr. Flynn explained that a coastal engineering company would need to provide that. He noted that if it's run through DERM, then they have access to a pool of companies they can pick from to do an analysis. He explained that the Village would probably have to pay for it, since the County's conclusion has constantly been that it's not cost effective. Mayor Berlin noted that the study is from 1995 and he would like to have another study done. He advised the Village Manager that he would like to get a current proposal focused on that alternative showing the anticipated costs of development, installation and maintenance. Mayor Berlin requested that Mr. Flynn provide the Council with information at the next meeting. He noted that the Council can then decide what to do.

Update on the State Board of Administration Local Government Investment Pool – Christopher Wallace, Finance Director: Mr. Wallace reported that the Village invests the surplus funds that it doesn't need for operations in the State Investment Pool. He reviewed that the Pool had financial difficulties and there was a run on the Pool. He noted that the liquidity of the Pool has now increased to 37% of the assets and is continuing. Mr. Wallace discussed Fund B and reported that most of the securities will become liquidated by the end of the fiscal year. Mr. Wallace is not recommending withdrawing funds from the Pool and thinks that it's still a good investment vehicle. He will update the Council at the March meeting regarding any changes.

Babak Raheb, 128 Balfour Drive, questioned the monetary loss of the investments and the type of investments. Mayor Berlin explained that they are short-term government securities. He reported that the maturity was extended by the State and all of them should mature by the end of the fiscal year. Mayor Berlin noted that the Village should get all its money back, at par, by the end of the fiscal year. He explained that the Village would recognize a loss if they were sold today, because some of them are under par. Mr. Wallace reported that they do not know if they will be able to collect on one of the securities. He explained that the Village can't withdraw the risky Pool investments now; because they have been frozen. He clarified that as they become liquid they are moved from Fund B to Fund A.

Presentation of Audit Report for Fiscal Year Ending September 30, 2007 – Jerry Chiocca, CPA, Rachlin Cohen & Holtz and Christopher Wallace, Finance Director: Mr. Wallace noted that the Village's funds did very well and the General Fund Balance had \$671,000 in revenues over expenditures, which was more than expected. He noted that the unreserved/undesignated fund balance portion of the General Fund is 48% of the expenditures (approximately 5-6 months of expenditures set aside for emergencies). The Tourism Fund had \$312,000 more in expenditures over revenue, which was anticipated (fund balance was appropriated to make up for the loss of the revenue from the Sheraton Hotel). He noted that the loss was less than budgeted. Mr. Wallace advised that the Water and Sewer Fund made money, but not enough to cover expenses. He thinks that a rate study will need to be done in the future, for possible changes.

Jerry Chiocca reported that the Village is in excellent financial position. He reviewed pages 13 and 46. He explained that the internal comments are being resolved (the need to segregate duties in finance for better internal control). Mayor Berlin questioned the big items in the General Government expenditure that resulted in a variance of \$1.2 to the positive. Mr. Wallace explained that the Village budgeted \$935,000 in revenue and expenditure of \$935,000 from the County General Obligation Fund (\$900,000) and the Village didn't expend the bond money.

Babak Raheb, 128 Balfour Drive, is happy that the audit is on time.

A motion was offered by Councilman Sanz and seconded by Councilman Packer to accept the audit. The motion carried unanimously (4-0).

B. VILLAGE CLERK:

Lobbyist Registration Report: As of February 19, 2008: A list of Lobbyists currently registered with the Village was provided in the agenda.

Consideration of Re-Appointment of Lois Evans to the Bal Harbour Village Police Officers' Pension Plan Board: The Council was requested by the Police Officers' Pension Plan Board to re-appoint Lois Evans to the Board.

A motion was offered by Assistant Mayor Rosenfield and seconded by Councilman Packer to re-appoint Lois Evans to the Bal Harbour Village Police Officers' Pension Plan Board. The motion carried unanimously (4-0).

C. VILLAGE ATTORNEY: No items.

D. MAYOR AND COUNCIL:

Councilman Packer thanked Captain Smith for his work in replacing the buoys on the beach. He requested an update on the mirrors. Mr. Treppeda reported that Chief Hunker is proceeding, based on the direction given from the Council. Chief Hunker reported that letters will be sent to the east side buildings, along Collins Avenue, regarding the placement of mirrors.

10. OTHER BUSINESS:

Discussion of Security District – Anamarie Kelly and Alberto Stoppa: This item was withdrawn.

Mr. Treppeda requested that the Council direct the Village Attorney to prepare an ordinance for the red light cameras. *It was the consensus of the Council for the Village Attorney to draft an ordinance for the next meeting.* Chief Hunker is in favor of passing an ordinance.

Lynne Bloch-Mullen, 10150 Collins Avenue, spoke against opening the North parking lot after 10:00 p.m., for safety reasons. Mayor Berlin agreed and responded that Mr. Treppeda has articulated that the residents do not want the hours of operation to change.

Neil Alter, 9801 Collins Avenue, requested that the design of crosswalks at the SunTrust Bank be studied, for pedestrians to cross safely. He noted the lack of a sidewalk to go north at Collins Avenue and 96th Street. Councilman Packer has noticed that at the corner of 96th and Harding Avenue pedestrians have to cross the street three times. He will meet with Surfside Mayor Burkett and come back to the Council with a recommendation.

Stan Whitman, Bal Harbour Shops, discussed the dangerous situation on Collins Avenue for pedestrians crossing from the north side of 96th Street across Collins Avenue, to the Majestic. He discussed the width of Bal Harbour sidewalks versus Surfside, which entices people to use the Bal Harbour sidewalks on 96th Street even though they are crossing the street with their backs to turning vehicles. He suggested removing the sidewalks on the Bal Harbour side of the street, east of the bank entry, and replacing it with landscaping, so pedestrians can't walk on that side of the street. Mayor Berlin thinks that's a severe solution, since people are accustomed to using that sidewalk. Mr. Whitman also suggested widening the sidewalks on the Surfside side of 96th Street. Mayor Berlin suggested that Councilman Packer also meet with Mr. Whitman regarding his thoughts.

Lynne Bloch-Mullen, 10150 Collins Avenue, reported that the police have suggested having red lights in all directions for pedestrians to cross. Mayor Berlin requested that Councilman Packer consider the public safety issue.

Marjorie Schell, 9801 Collins Avenue, requested that the Council consider the size of the openings (between the sea oats) behind the east side buildings, to the beach. She discussed the wide opening behind the St. Regis site and the lack of plantings to protect the beach there. She reported that the beach concession behind the St. Regis property is still there. Assistant Mayor Rosenfield reported that it has already been voiced that the Village doesn't want motorized concessions. Mr. Treppeda explained that the beach concession stand is a legal matter that the Village Attorney is handling. He thinks that Starwood is trying to reserve their rights, in case they want something in the future. Councilman Packer questioned who controls the plantings of the sea oats on the beach. Mr. Treppeda explained that the Village does the plantings, but is permitted by the State. Councilman Packer thinks that an increase of plantings behind the St. Regis site should be looked into.

Babak Raheb, 128 Balfour Drive, suggested that Councilman Packer contact the County Public Works Department regarding the crosswalks. He suggested that if the security detection is permanent, then it be located downstairs instead of upstairs for a larger processing area. Chief Hunker noted that alot of people come into the building for the front desk, etc. and the security is just for public meetings. Mayor Berlin explained that the Village is looking into the best location. Mr. Raheb suggested that the police officer be located outside the meeting room, since it might intimidate people against speaking. Mayor Berlin thinks that it allows people to feel safe in the meeting room. Chief Hunker thinks that the best place for the police officer is next to the Council at the meetings.

Neil Alter, 9801 Collins Avenue, questioned if the suggested red light cameras will capture illegal turns at the intersections. Chief Hunker reported that it will. He explained that the cameras are at no cost to the Village and that the company will receive 40% of the revenue and the Village will receive 60%. Assistant Mayor Rosenfield requested police presence south on Collins Avenue at 3 p.m., since she has noticed a lot of violations

occurring during that time.

Dina Cellini, 211 Bal Cross Drive, questioned if the information captured by the cameras will be subject to public records requests. Chief Hunker thinks so and reported that the violations will be code enforcement, not traffic violations. Mr. Weiss clarified that not all the tapes will always be available for public record (no legal opinion has been given yet). Ms. Cellini would like to know once the Village Attorney determines that.

Mayor Berlin thanked Chief Hunker and his staff for the new security efforts. He thanked Guenter Richter, The Regent, for providing cookies at the meeting.

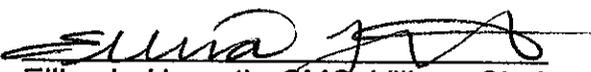
Guenter Richter, One Bal Harbour/The Regent Hotel, reported that the opening is scheduled for Saturday, March 1, 2008. He explained that the hotel will have the first Guerlain Spa in the United States. Mr. Richter clarified that the building has 185 residences, 124 hotel-condo units, a restaurant and bar (One Bleu), banquet facilities, and the spa.

11. ADJOURN: There being no further business, a motion was offered by Assistant Mayor Rosenfield and seconded by Councilman Sanz to adjourn. The motion carried unanimously (4-0) and the meeting adjourned at 10:35 a.m.



Mayor Howard J. Berlin

Attest:



Ellisa L. Horvath, CMC, Village Clerk