

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**REGULAR MEETING – MAY 20, 2008**

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, May 20, 2008, at the Bal Harbour Village Hall Council Chambers (655 – 96<sup>th</sup> Street, Bal Harbour, Florida).

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

Assistant Mayor Jean Rosenfield  
 Councilman Joel S. Jacobi  
 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

Absent: Mayor Howard J. Berlin

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

**2. PLEDGE OF ALLEGIANCE:** The Pledge was led by Guenter Richter, The Regent Bal Harbour.

Assistant Mayor Rosenfield congratulated Councilman Jacobi on the birth of his daughter, Mia Alexa.

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

**4. SPECIAL PRESENTATIONS:** None.

**5. CONSENT AGENDA:**

*Brian Mulheren, 10245 Collins Avenue*, requested the removal of Tab B.

*Dina Cellini, 211 Bal Cross Drive*, requested the removal of Tab C.

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

Tab A: Minutes for the April 15, 2008 Regular Meeting

Tab D: \$12,807.00 for Trident Telecom, Inc. to repair nine emergency Code Blue phones located along the jogging path on the beach

Tab E: \$16,800.00 in Security District Funds for Lukes' Landscaping, Inc. to fill in landscaping gaps along the wall on Park Drive

Tab F: \$21,950.00 (bid pricing) for Lukes' Landscaping, Inc. to replace dead plants and to add 3,000 sea oats in various locations on the beach

*A motion was offered by Councilman Jacobi and seconded by Councilman Packer to approve the items on the Consent Agenda, with the exception of Tab B and Tab C. The motion carried unanimously (4-0).*

**Item B - Motion Approving Resort Tax Funds in Accordance with the Director of Tourism's Recommendation:**

**Brian Mulheren, 10245 Collins Avenue**, suggested that the Resort Tax Committee make decisions on these items. He reported that the County adopted an ordinance disabling exemption from the County ethics laws. He thinks that a committee is needed, with residents, to make the decisions. Mr. Mulheren is in favor of spending money to promote the Village, in accordance with the law. He doesn't think that the Village's Ordinance is being followed.

**Neil Alter, 9801 Collins Avenue**, questioned the amount of the request. Mr. Treppeda reported the amount to be \$18,100. Mr. Alter questioned the amount of money available. Mr. Treppeda explained that money is available in the Resort Tax budget for the expenditure.

Assistant Mayor Rosenfield reported that the Council has not seen the Ordinance that was approved by the County and will proceed appropriately once it is reviewed. She reported that the Village will continue to work with the residents, to re-establish a committee.

Mr. Alter reported that the County passed an Ordinance eliminating the ability for Committees/Boards to be exempt from the County ethics laws.

Mr. Weiss will provide the Ordinance at the next meeting, with options for the Council's consideration.

Councilman Packer suggested a workshop meeting on the issue. Assistant Mayor Rosenfield suggested that the Village Attorney provide the Ordinance and recommendations, prior to proceeding.

Mr. Treppeda reviewed the following budgeted item:

<b>1.) European In-Market Sales Calls</b>	<b>\$18,100.00</b>
<b>TOTAL:</b>	<b>\$18,100.00</b>

*A motion was offered by Councilman Jacobi and seconded by Councilman Sanz to approve \$18,100.00 in resort tax funds for the item listed in Tab B. The motion carried unanimously (4-0).*

**Item C - Motion Approving Police Forfeiture Funds in Accordance with Chief Hunker's Request:**

**Dina Cellini, 211 Bal Cross Drive**, questioned if Mr. Weiss reviewed the proposed expenditures and if they are in accordance with the forfeiture guidelines. Mr. Weiss advised that he has and that they are in accordance. Ms. Cellini questioned the amount of available

scholarship money. Assistant Mayor Rosenfield suggested that Ms. Cellini contact Chief Hunker regarding available money. Mr. Weiss clarified that Chief Hunker makes a recommendation to the Council, for approval.

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

**6. PUBLIC HEARINGS:**

Zoning Hearings/Quasi-Judicial Public Hearings: None.

Ordinances Second Reading/Public Hearings: None.

Resolutions/Public Hearings: None.

**7. ORDINANCES FIRST READING/PUBLIC INPUT:** None.

**8. RESOLUTIONS:**

The following resolution was read, by title, by the Village Clerk:

RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA SUPPORTING THE REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT OF MIAMI-DADE COUNTY TO THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR MODIFICATION OF NECESSARY PERMIT TO ENABLE BEACH NOURISHMENT TO PROCEED FOR BAL HARBOUR, SUNNY ISLES BEACH AND MIAMI BEACH; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR EFFECTIVE DATE.

*A motion was offered by Councilman Jacobi and seconded by Councilman Packer to approve the resolution. The motion carried unanimously (4-0), thus becoming Resolution No. 703.*

The following resolution was read, by title, by the Village Clerk:

RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, APPROVING A SETTLEMENT AGREEMENT: (A) BETWEEN THE VILLAGE AND BABAK RAHEB; AND (B) BETWEEN THE VILLAGE AND WESTPORT/COREGIS, ARISING OUT OF THE SETTLEMENT OF PENDING LITIGATION; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE ABOVE-DESCRIBED SETTLEMENT AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Weiss explained that the matter is in litigation and that several executive sessions with the Council have been held regarding it. He clarified that the litigation strategy and the Attorney's view of the substance of the case cannot be discussed.

**Michael Popok, Village Attorney's Office**, discussed the proposed settlement to a suit arising out of a constitutional challenge to the propriety of the Village's special assessment

district for security purposes, the Security District. He reviewed the proposed settlement agreement with Mr. Raheb and with Coregis (the Insurer).

**Brian Mulheren, 10245 Collins Avenue**, suggested proceeding to court, to establish if the assessment is constitutional or not. He noted that everyone in the Village could file a lawsuit and thinks it will continue to be challenged, unless it is resolved in court. Mr. Mulheren spoke against settling.

**Anamarie Kelly, under the bridge in Bal Harbour**, suggested a broader discussion with residents, to discuss the implications of the lawsuit. She thinks the real question is who owns the property and if the Civic Association has lost their ownership rights, since tax dollars are used to maintain the property. She agreed with Mr. Mulheren that the issue will be ongoing, until the larger issues are resolved.

Councilman Packer suggested tabling the resolution for additional discussion, since there are objections from the public and the entire Council is not present. Assistant Mayor Rosenfield clarified that the Council has had several discussions and disagreed with the first agreement presented. She thinks that the Attorney has presented an agreement, based on the issue as a one-time case. She noted that the funds would not be from the Village, but are from the Security District. Councilman Packer noted that when the Security Fund is depleted, then the people in the Security District will have to replenish it, whether its Village money or Civic Association money. He thinks that additional discussion is needed and that the legal issue should be resolved. He suggested proceeding to the judge. Councilman Jacobi agreed with Councilman Packer that it should be tabled. Assistant Mayor Rosenfield pointed out that the insurance company is currently offering to contribute \$25,000 towards the settlement agreement and is not charging for legal fees. She clarified that the insurance company will proceed to court if that's what the Village chooses, but may come after the Village for legal fees for the past five years if that happens. Mr. Popok reported that the insurance company has taken the position that this isn't covered under the insurance policy. Councilman Packer thinks that the Village can challenge that. Mr. Popok clarified that would be a separate lawsuit. Assistant Mayor Rosenfield clarified that proceeding will involve the Village in a number of lawsuits.

**Babak Raheb, 128 Balfour Drive**, noted that money was budgeted for this lawsuit, in the Security District budget. He clarified that the Village's insurance company has already requested repayment of attorney fees. Mr. Raheb pointed out that if it continues, then the entire Village, not just the residential area, would be liable to pay the insurance company's legal fees, currently estimated to be \$100,000.

Mr. Treppeda questioned the ability to have a public workshop, since the case is in litigation. Mr. Weiss clarified that an informative workshop can be held.

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

## **9. REPORTS:**

### **A. VILLAGE MANAGER:**

### Discussion of Bal Harbour Village Beach Erosion – Brian

**Flynn, Miami-Dade County DERM:** Mr. Flynn thanked the Council for passing the resolution supporting DERM's efforts for beach nourishment. He reviewed that the County is responding to additional questions from the State agencies, for the permitting process. Mr. Flynn explained that Federal and State agencies have been tightening sea turtle nesting laws, which may affect construction during nesting season.

***Brian Mulheren, 10245 Collins Avenue,*** questioned the involvement of the Village Lobbyist. Mr. Treppeda explained that Ron Book is working on the issue and will provide a status report from him. Mr. Mulheren spoke on the critical condition of the beach. He suggested additional involvement by residents. Mr. Flynn thinks that the residents are doing the right thing by individually contacting the Governor and Congressional representatives. He explained that the permitting process is cumbersome.

***Neil Alter, 9801 Collins Avenue,*** read a letter from Congresswoman Ileana Ros-Lehtinen, discussing her request for the Federal appropriation of 7 1/2 million dollars for a County-wide beach erosion control project. He discussed the letter writing campaign, initiated by Village residents, to Congressional representatives on this issue. He also reported that the letter indicates that the Army Corps of Engineers is evaluating alternative sand sources.

### Request for Approval of Four-Month Trial Use of Ethos Fuel

**Reformulator in All Village Vehicles:** Mr. Treppeda distributed information from EnviroSafe Enterprises.

***Walt Branch, EnviroSafe Enterprises Representative,*** discussed the Ethos product, which is a biodegradable and earth-friendly "reformulator" that doesn't change the chemical makeup of the fuel. He explained the increase in gas mileage and reduction in harmful emissions. Mr. Branch reported that during the two week test of three Village vehicles, gas mileage was increased by 12 ½%, fossil fuel usage was decreased by 12 ½%, and harmful emission was decreased by 34%. He reviewed other municipalities also in the testing process.

***Anamarie Kelly, under the bridge,*** questioned the savings versus the cost. Mr. Branch estimated that it costs 9 cents per gallon, to save 27 cents per gallon.

***Babak Raheb, 128 Balfour Drive,*** questioned if the formulation is the same for gasoline or diesel. Mr. Branch advised that it is and clarified that one gallon treats 1280 gallons of fuel (1 ounce treats 10 gallons).

***Dan Nieda, Building Official,*** questioned where it comes from. Mr. Branch advised that the manufacturer is in San Diego, California and it has existed for 12 years.

***Neil Alter, 9801 Collins Avenue,*** questioned which areas of the Country use the product. Mr. Branch reported that it is used mostly in California and is being expanded across the Country.

***Dina Cellini, 211 Bal Cross Drive,*** questioned the expenditure loss versus gain during the trial period. Mr. Treppeda reported the cost to be \$3300. Mr. Branch reviewed the figures showing that the Village will save \$27,083 net, per year, by using the product (based on a \$3.65 per gallon gas cost). Councilman Jacobi noted that the cost per year for the product

is \$6,188.00.

*A motion was offered by Councilman Sanz and seconded by Councilman Packer to approve \$3,300.00 for a 4-month trial of Ethos fuel additive in Village vehicles. The motion carried unanimously (4-0).*

### **Discussion of Locking Gates at Bal Harbour Club Beach**

**Access Path:** Mr. Treppeda requested direction on restricting the beach access path located at the Bal Harbour Club to residents. He also requested authorization to develop a system, including fees, for distributing gate keys.

**Anamarie Kelly, under the bridge**, questioned which 50% of the Bal Harbour Club is used by the Village, as green space, which would be open to the public. She also questioned the need for keys, if it's open to the public. Mr. Treppeda suggested that Ms. Kelly contact the Village Planner, regarding an explanation of green space. Ms. Kelly thinks that the path is in an FPL easement. She is against locking the path and cutting grass on private property at the public's expense.

*A motion was offered by Councilman Sanz and seconded by Councilman Packer to authorize the Village Manager to restrict the Bal Harbour Club Beach Access Path to residents only, and to develop a system, including fees, for distributing gate keys. The motion carried unanimously (4-0).*

#### **B. VILLAGE CLERK:**

**Lobbyist Registration Report: As of May 20, 2008:** A list of Lobbyists currently registered with the Village was provided in the agenda.

**C. VILLAGE ATTORNEY:** Mr. Weiss discussed a dispute regarding the ownership of 77 Camden Drive. He explained that a Federal lawsuit has been filed claiming ownership of the property and he is concerned about the Village's position regarding that property (lien issues, building permits, etc.). He recommended that the Council authorize the Village Attorneys to intervene in the Federal lawsuit, to protect the Village from any potential mistakes regarding the ownership of the property.

*A motion was offered by Councilman Sanz and seconded by Councilman Packer to approve up to \$10,000 for the Village to intervene in the Federal lawsuit, in order to protect the Village from any potential mistakes. The motion carried unanimously (4-0).*

Mr. Weiss reported that the County Commission has taken action on the Ordinance regarding exemption from the County ethics laws. He noted that some outstanding issues are being researched and he will report back to the Council at the next meeting. Councilman Packer suggesting holding a workshop meeting on the issue. Assistant Mayor Rosenfield suggested that the Council wait to hear from the Village Attorney at the next meeting.

#### **D. MAYOR AND COUNCIL:**

**Discussion of Voluntary Compliance for Mirrors by Eastside Buildings – Councilman Packer:** Councilman Packer congratulated Chief Hunker and

the Police Department on the implementation of the mirror program, in which 98% of the condos voluntarily complied. He is hopeful that the other 2% will comply shortly.

**Babak Raheb, 128 Balfour Drive**, noted that the program was done voluntarily, without the need for a resolution.

Assistant Mayor Rosenfield reported that the Regent Bal Harbour was chosen as one of the 30 best new hotels in the world, by Travel & Leisure magazine (only three in the U.S. were named).

## **10. OTHER BUSINESS:**

**Discussion of 77 Camden Drive – John Thornton (Counsel for Teddy Stoppa)**: Mr. Thornton requested the removal of this item from the agenda, since action was taken under the Village Attorney items.

**Michael Krop, 9601 Collins Avenue**, discussed Councilman Jacobi's ineligibility to serve on the Council and the residency requirement. He pointed out that all the Council members were elected without opposition, without any votes. He added that Ms. Mullen received over 30% of the votes. Dr. Krop suggested that if the Council is in favor of the judge determining if Jacobi is guilty, then the judge should also determine how he should be replaced. He discussed the cost involved for litigation.

**Neil Alter, 9801 Collins Avenue**, suggested that Councilman Jacobi was ineligible to run in the prior election, since he failed to meet the residency requirements. He thinks that taxpayer money is being wasted on the Village being involved in the lawsuit and suggested that the Council support Lynne Bloch-Mullen to serve the Village. Mr. Alter clarified that Ms. Mullen received 30% more than any of the currently seated Council, who were unopposed. He discussed the smear campaign that Ms. Mullen endured.

**Paul Pruess, 10101 Collins Avenue**, President of Palace Condo Association and representing over 200 other Village residents, expressed displeasure and concern that Councilman Jacobi continues to serve on the Council. He reported that the Miami-Dade County Ethics Commission has found probable cause of violation and a history of unethical behavior regarding Joel Jacobi. Mr. Pruess suggested letting the courts decide and for the Council to endorse Lynne Bloch-Mullen. He distributed copies of a Channel 10 news broadcast and letter from the Ethics Commission.

**Marsha Chonchol, 9801 Collins Avenue**, past president of the Balmoral Association, spoke in favor of Lynne Bloch-Mullen. She questioned the Village fighting against Ms. Mullen and spending a lot of money to do so.

**David Kwiat, 10185 Collins Avenue**, past president of the Plaza Association and current Boardmember, questioned the Council supporting the seating of Councilman Jacobi. He discussed ethics violations, financial disclosure problems, residency requirements, etc. regarding Jacobi. He suggested the Council support Ms. Mullen. Mr. Kwiat suggested that the Council schedule an executive session, to re-evaluate its position.

**Brian Mulheren, 10245 Collins Avenue**, reported that residents would have challenged Jacobi's residency before the election, if it was known at that time. He suggested that Jacobi's Attorney is obtaining documentation supplied by the Village Attorney. Mr. Mulheren

discussed police reports involving Jacobi. He questioned the Council's right to spend taxpayer money on this, because he doesn't think the Village should be involved. He suggested an executive session. He spoke on Ms. Mullen's outstanding character and clarified that nobody on the current Council received any votes, since they were unopposed.

**Anamarie Kelly, under the bridge**, reported her interest in running in the last election and being told she was ineligible, because she didn't live in her house. She also discussed Mayor Tantleff not living at the Harbour House, when he served as Mayor. Ms. Kelly requested quality and fairness for everyone.

**Dina Cellini, 211 Bal Cross Drive**, discussed the length of the case and the money spent by the Council. She suggested that the Council request an executive session and re-evaluate its legal position in the case. She thinks Ms. Mullen would be a great member of the Council.

**Marjorie Schell, 9801 Collins Avenue**, requested the Council place Ms. Mullen in the seat.

**Doug Rudolph, 212 Bal Bay Drive**, discussed the election process and Councilman Jacobi receiving 70% of the vote. He discussed the number of people speaking at the meeting, versus the others who aren't, because they are happy. Mr. Rudolph doesn't understand the Council being attacked, because they were unopposed. He thanked the Council for defending the rights of the voters and not just inserting people who only got 30% of the vote. Mr. Rudolph explained that the Village was served and they are defending that. He suggested that the Council take action, if the judge decides that someone cannot serve.

Councilman Packer questioned Mr. Weiss regarding the money being spent and the reason the Village is in court. Mr. Weiss reported that the issue has been discussed in executive session and the Village Attorney is acting pursuant to direction by the majority of the Council. He explained that the Village is not taking a position on Councilman Jacobi's qualifications for office, but noted that if he is removed from office, the Village would like the vacancy to be filled by election, not appointment. He explained that litigation is expensive and noted that the Village is billed at a reduced rate.

Assistant Mayor Rosenfield explained that the original suit was against the Village Clerk and the Village entered the suit to defend her. Mr. Weiss clarified that the original lawsuit was filed against the Bal Harbour Village Canvassing Board, which included the Village Clerk.

Assistant Mayor Rosenfield clarified that the current Councilmembers did not choose to run unopposed and she doesn't think that they should be denigrated due to that. She advised that they all ran for office, for the purpose of serving the public.

**Dina Cellini, 211 Bal Cross Drive**, clarified that the suit was filed against the Clerk and Penelope Townsley in their capacities as election supervisors, in administering the election. She pointed out that the purpose was for the judge to be able to turn to someone and request for the certification of the election to be changed, if Jacobi is ousted. Assistant Mayor Rosenfield clarified that the Village entered the suit due to the Clerk being named in it.

Assistant Mayor Rosenfield discussed the Village being responsible for legal fees, in response to pending legal actions against people appointed by the Council.

Councilman Jacobi left the meeting.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to direct the Village Attorney to request an Executive Session. The motion carried unanimously (3-0), with the roll call vote as follows: Councilman Packer aye; Councilman Sanz aye; Assistant Mayor Rosenfield aye; Mayor Berlin and Councilman Jacobi absent.*

Mr. Weiss requested an Executive Session on the case styled Lynne Bloch-Mullen versus Joel Jacobi, Bal Harbour Village Canvassing Board, Ellisa Horvath, and Penelope Townsley.

*It was the consensus of the Council to schedule an Executive Session.*

**Michael Krop, 9601 Collins Avenue**, clarified that the point of the current Council running unopposed was not made to denigrate the Council, but was made to show that Ms. Mullen would have been unopposed, if Councilman Jacobi didn't run.

**Neil Alter, 9801 Collins Avenue**, apologized for his comments regarding the Councilmembers running unopposed and clarified that the point was to demonstrate that no votes were received, while Ms. Mullen received 30% of the votes.

Councilman Jacobi returned to the meeting.

**11. ADJOURN:** There being no further business, *a motion was offered by Councilman Packer and seconded by Councilman Jacobi to adjourn. The motion carried unanimously (4-0) and the meeting adjourned at 10:38 a.m.*




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Mayor Howard J. Berlin

Attest:



Ellisa L. Horvath, CMC, Village Clerk