

BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES
REGULAR MEETING – SEPTEMBER 16, 2008

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, September 16, 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 4:04 p.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 done at the Local Planning Agency meeting.

3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS:

Mr. Treppeda requested the removal of item 2 on Tab C (Resort Tax Funds - Strategic Research Initiative) from the Consent Agenda. *It was the consensus of the Council to remove item 2 of Tab C from the Consent Agenda.*

Assistant Mayor Rosenfield requested that Tab 2 (Resolution approving a Lease Agreement with the Bal Harbour Shops for a Police Station) be deferred, for further discussion by the Council, in response to requests by residents.

Dina Cellini, 211 Bal Cross Drive, agreed that further discussion is appropriate.

Babak Raheb, 128 Balfour Drive, doesn't have any objection to additional public discussion.

Anamarie Kelly, 77 Camden Drive, requested the possibility of an ethics conflict for a lease with the Shops, which expired in 2006, to be discussed at any future meeting.

Councilman Packer reported that the Committee made a decision on this issue, but he agreed to further discussion, if desired by the Council. Assistant Mayor Rosenfield suggested a Council Workshop meeting, with postcard notification to residents. She clarified that the meeting would be for public input and discussion, but noted that the Council would not be voting on the issue at the workshop meeting.

A motion was offered by Assistant Mayor Rosenfield and seconded by Councilman Sanz to defer Tab 2. The motion carried unanimously (4-0).

Assistant Mayor Rosenfield requested that Tab 8 (Discussion of Resort Tax Committee Member Appointments) be deferred. She requested additional information from the Village Attorney, before suggesting names (composition formula, etc.).

Gabriella Webster, 30 Park Drive #15, questioned if the composition is limited to five members. Mr. Weiss will check the authorizing legislation.

Michael Krop, 9601 Collins Avenue, suggested five lay people, either in the industry or not, who can receive information from the community (businesses and residents) to make decisions.

Anamarie Kelly, 77 Camden drive, questioned if the Committee is in place. Mr. Weiss clarified that there is a Committee, but that the activities have been suspended. Ms. Kelly questioned if there is an existing Committee in place. Mr. Weiss responded that there is.

A motion was offered by Councilman Jacobi and seconded by Councilman Sanz to defer Tab 8. The motion carried unanimously (4-0).

4. SPECIAL PRESENTATIONS:

Presentation Thanking Village Council for Contribution to MacArthur South High School – Terry Nelson: This item was discussed later in the meeting.

Officer of the Month for July 2008: This item was discussed later in the meeting.

Officer of the Month for August 2008: This item was discussed later in the meeting.

Employee of the Month for August 2008: This item was discussed later in the meeting.

5. CONSENT AGENDA:

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

Tab B: Minutes for the June 17, 2008 Regular Meeting, July 11, 2008 Special Meeting, and September 8, 2008 First Budget Hearing

Tab C: \$65,500.00 in Resort Tax Funds (\$6,000 Latin American Markets Vogue Travel Guide 2008, \$50,000 Greater Miami Convention & Visitors Bureau Co-op, and \$9,500 Advertising Imagery Renewal)

Tab D: \$29,642.25 in Police Forfeiture Funds (\$14,600 On-Target Performance Systems Software Programs, \$1,000 North Miami Beach Safespace

Project, \$10,000 Mother's Against Drunk Driving (MADD) Fundraising Event, \$1,000 Dade County PBA Love Fund Donation, and \$3,042.25 Flashlights)

Tab E: \$27,010.00 in Police Budgeted Funds for Miami-Dade College School of Justice Assessment Center to prepare and administer the Village Police Department Sergeant Promotional Examination

Tab F: Approval for the Village Manager to execute the new Mutual Aid Agreement with the Miami-Dade State Attorney's Office for the South Florida Money Laundering Strike Force

Tab G: \$4,728.00 for Challenger Enterprises, Inc. to establish a Boat Access Channel behind the One Bal Harbour Hotel/Condo through the Exclusion Zone

Tab H: \$15,000.00 annual contribution to the Surf-Bal-Bay Recreation Program

Tab I: \$4,175.00 for Aquarius Building Inc. to demolish the Trash Transfer Station

Tab J: \$59,400.00 to purchase 180 ballasts and light bulbs for the date palm lights

Tab K: \$8,356.00 for ThyssenKrupp Elevator to install parts for compliance of Village Hall Elevator

Tab L: \$23,475.00 for Lukes' Landscaping to replace dead plants on the beach

Tab M: \$35,000.00 (over a three year period) for MCCI to provide scanning and indexing services for the Building Department

Tab N: \$5,282.94 for Butler National Services, Inc. to repair the storm water pump station in the Security District

Tab O: \$6,298.11 for Butler National Services, Inc. to repair a leak in the main discharge pipe at sewer station #2 located at Founders' Circle

Tab P: \$21,889.43 for Nextran Truck Center to replace the engine in trash (grapple) truck (#224)

Tab Q: \$3,890.00 (up to) to replace the cabinets, sink, and faucet in the Public Works Break Room

Tab R: \$10,000.00 (up to) for the Annual Snow Festival

Tab S: \$89,920.00 (up to) for Springbrook to provide a new software package and additional hardware for the Accounting Department

Tab T: \$3,373.70 to purchase a cable for the sewer cleaning machine from Sewer Equipment Company of Florida, Inc.

Tab U: Renew Village Clerk Ellisa Horvath's Contract for three years

Tab V: Renew Health Insurance coverage with United Healthcare for FY 2008/2009

Tab W: Renew Policy for Liability, Property, and Workers' Compensation Insurance with the Florida League of Cities for FY 2008/2009

A motion was offered by Councilman Jacobi and seconded by Councilman Packer to approve the items on the Consent Agenda, except for item 2 on Tab C. The motion carried unanimously (4-0).

6. PUBLIC HEARINGS:

Zoning Hearings/Quasi-Judicial Public Hearings: None.

Ordinance Second Reading/Public Hearing: The following ordinance was read, by title, by the Village Clerk:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 19 "TRAFFIC AND MOTOR VEHICLES" BY AMENDING SECTION 19-4 "PARKING IN P OFF-STREET PARKING DISTRICT AND ON HERMAN B. FULTZ BRIDGE" BY ESTABLISHING RULES FOR PARKING WITHIN THE DISTRICT INCLUDING PROHIBITING OVERNIGHT PARKING; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR EFFECTIVE DATE.

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

A motion was offered by Councilman Jacobi and seconded by Councilman Packer to approve the Ordinance on second reading. The motion carried unanimously (4-0), with the roll call vote as follows: Assistant Mayor Rosenfield yes; Councilman Jacobi yes; Councilman Packer yes; Councilman Sanz yes; Mayor Berlin absent; thus becoming Ordinance No. 527.

Resolutions/Public Hearings: The following resolution was read, by title, by the Village Clerk:

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, ADOPTING AN ASSESSMENT ROLL, FOR FISCAL YEAR 2008/2009, FOR THE SECURITY PROGRAM SPECIAL ASSESSMENT AREA; PROVIDING FOR AN EFFECTIVE DATE.

Assistant Mayor Rosenfield opened the public hearing.

Anamarie Kelly, 77 Camden Drive, questioned the Council's authority in assessing the homeowners in the Residential Section, with pending litigation. Mr. Weiss reported that the authority is in the Taxation Section of the Village Code. Ms. Kelly disagreed that the Council has the authority.

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

A motion was offered by Councilman Packer and seconded by Councilman Jacobi to approve the
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Resolution. The motion carried (3-1), with the roll call vote as follows: Assistant Mayor Rosenfield no; Councilman Jacobi yes; Councilman Packer yes; Councilman Sanz yes; Mayor Berlin absent; thus becoming Resolution No. 705.

7. ORDINANCE FIRST READING/PUBLIC INPUT: The following ordinance was read, by title, by the Village Clerk:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 2 "ADMINISTRATION" BY AMENDING SECTION 2-89 "DEFENSE OF OFFICIALS IN ETHICS MATTERS", BY AMENDING THE TERM "OFFICIAL" IN PARAGRAPH (A) "DEFINITIONS"; PROVIDING FOR EXPANSION OF APPLICABILITY TO INCLUDE THE DEFENSE OF MEMBERS OF VILLAGE BOARDS AND COMMITTEES INCLUDING ADVISORY BOARDS AND COMMITTEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR EFFECTIVE DATE.

Assistant Mayor Rosenfield opened the public hearing

Babak Raheb, 128 Balfour Drive, questioned the criteria for reimbursement and if each member will hire their own attorney or use the Village Attorney. Mr. Weiss clarified that the ordinance provides a procedure for approval of an attorney of the member's choice and fees. Mr. Raheb suggested the fees be limited. Mr. Weiss reported that the fees are limited by the annual budgeted amount, to be used on a "first come first serve" basis. Councilman Packer suggested that the Village Attorney defend the member. Mr. Weiss suggested that it is more appropriate for the member to have a lawyer of their own choice, due to confidentiality, defending more than one person at a time, etc.

Dina Cellini, 211 Bal Cross Drive, discussed the unfairness of a "first come first serve" basis. She suggested an individual cap, in addition to the aggregate cap. Ms. Cellini is not opposed to the ordinance, but suggested that certain additional amendments be made to the existing ordinance. She reviewed sections e(4) and e(9) of the existing ordinance and suggested that a distinction be made of adjudicating someone "not guilty" and allowing them to plea "no contest." She is against reimbursement for those that plea "no contest."

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

A motion was offered by Councilman Jacobi and seconded by Councilman Packer to approve the Ordinance. The motion failed (2-2), with the roll call vote as follows: Assistant Mayor Rosenfield yes; Councilman Jacobi no; Councilman Packer no; Councilman Sanz yes; Mayor Berlin absent.

SPECIAL PRESENTATIONS:

Presentation Thanking Village Council for Contribution to MacArthur South High School – Terry Nelson: Mr. Nelson thanked the Village Council for the recent contribution and explained the program at MacArthur South High School. He presented Chief Hunker with an appreciation plaque. Assistant Mayor Rosenfield commended Mr. Nelson for his work.

Officer of the Month for July 2008: Chief Hunker presented Officer Jack Young with the Officer of the Month plaque for July 2008.

Officer of the Month for August 2008: Chief Hunker presented Officer Steven Goldberg with the Officer of the Month plaque for August 2008.

Employee of the Month for August 2008: Chief Hunker presented Pam Flanders with the Employee of the Month plaque for August 2008.

A motion was offered by Councilman Jacobi and seconded by Assistant Mayor Rosenfield to reconsider Tab Z (Ordinance Amending Defense of Officials in Ethics Matters). The motion carried (4-0).

Councilman Jacobi agreed that existing committee members need protection, but doesn't like an individual cap or "first come first serve" idea. He discussed the possibility of money being extended from the budget, if necessary for additional fees. He added that the ordinance could be amended in the future. Councilman Jacobi retracted his prior vote against the Ordinance.

The Council expressed consensus in extending protection to all Committee/Board members. Mr. Weiss suggested passing the ordinance on first reading and providing the Attorney direction for any future desired changes.

Dina Cellini, 211 Bal Cross Drive, requested the Council to re-consider her prior suggested amendments. She is opposed to the elimination of a cap and thinks that a \$50,000 budget is sufficient. She suggested the Village limit the amount that will be reimbursed to individuals. Councilman Jacobi clarified that he did not suggest the elimination of a cap.

Babak Raheb, 128 Balfour Drive, agreed that there should be a cap.

The Council discussed a cap for individuals. Councilman Packer suggested the ordinance be passed on first reading and fine-tuned at the next meeting. Mr. Weiss reviewed the issues raised: a cap for individuals and the ability for the Village to recoup the reimbursement for those that enter a plea of "no contest".

Ms. Cellini reviewed the existing ordinance and procedures for reimbursement. She suggested that unless the official is adjudicated "not guilty" or no probable cause is found, then the Village should have the right to seek reimbursement.

Mr. Weiss suggested that the Council approve the ordinance on first reading and clarified that he can prepare amendments based on the comments received. Council Jacobi is against an individual cap, but is in favor of an overall cap, noting that an individual should be able to petition the Council to extend the cap, if necessary, as long as the attorney fees are reasonable.

Mr. Raheb questioned the ability for a Committee member to request reimbursement of legal fees, if the ordinance isn't passed. Mr. Weiss explained that there is no obligation for the Village to reimburse the fees currently and that the ordinance would protect the Committee members and give them the right to seek reimbursement.

Assistant Mayor Rosenfield suggested the Village Attorney come back with revisions. She suggested that a cap be investigated. Mr. Weiss clarified that there is no cap provided in

the ordinance, but that the amount is limited by the budget. He suggested passing the ordinance and proposed that another ordinance can be drafted with the suggested changes.

Councilman Packer discussed amending the ordinance to limit the reimbursement to situations of "no probable cause" or "not guilty". Councilman Jacobi suggested the Council have the discretion on reimbursement in situations where adjudication is withheld, which may be done to save the Village money.

Councilman Packer suggested that the Council discuss any amendments at the next Council meeting.

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

A motion was offered by Councilman Sanz and seconded by Councilman Jacobi to suspend the Council Meeting until after the Second Budget Hearing. The motion carried unanimously (4-0) and the meeting was suspended at 5:15 p.m.

A motion was offered by Councilman Jacobi and seconded by Councilman Packer to reconvene the Regular Council Meeting. The motion carried unanimously (4-0) and the meeting was reconvened at 5:33 p.m.

Chief Hunker introduced **Janet Mondshein, Executive Director of MADD** (Mothers Against Drunk Driving). Ms. Mondshein thanked the Council for their contribution and commended the Village police department. She distributed information and invited the Council and public to participate in the Moonlight Madness event on October 17, 2008.

8. RESOLUTIONS: 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.

No action was taken by the Council.

9. REPORTS:

A. VILLAGE MANAGER:

Discussion of Bal Harbour Village Beach Erosion – Brian Flynn, Miami-Dade County DERM: Mr. Flynn reported that permit applications have been submitted for renourishment of the beach at the north end of the Village and that the project will begin once the permits are received. He explained the delay of biological
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surveys that were requested by the Army Corps of Engineers, due to weather, but noted that all information has been provided. Mr. Flynn will attend the next Council meeting to provide an update.

Quarterly Financial Update for Third Quarter 2007/2008

Provided by Finance Director Christopher Wallace: Mr. Wallace reported that the update is provided through August 31, 2008. He expects a \$1.5 million surplus in the General Fund. He reported that the Water and Sewer Fund will be close, but noted that a rate increase should help. He noted that the Village should finish the year in good order.

Consideration of Re-Appointment of Two Members to the

Police Retirement Board: Mr. Treppeda requested the Council consider appointing Dr. Abraham Gotman and Mr. Cecil V. "Moon" Mullen to another two-year term on the Police Retirement Board.

A motion was offered by Assistant Mayor Rosenfield and seconded by Councilman Sanz to re-appoint Dr. Gotman and Mr. Mullen. The motion carried unanimously (4-0).

Discussion of Proposed Fee Revisions to Village Code Section

6-33 Building Department Service Charges Generally – Building Official Daniel

B. Nieda: Mr. Treppeda recommended directing the Village Attorney to prepare an ordinance amending Code Section 6-33, to increase the Building Department fees.

A motion was offered by Councilman Packer and seconded by Councilman Jacobi for the Village Attorney to prepare an Ordinance with the proposed fee changes. The motion carried unanimously (4-0).

Request for Reimbursement of Legal Expenses Regarding Neil

Alter v. Resort Tax Committee of Bal Harbour Miami-Dade Commission on

Ethics and Public Trust Complaint C08-08: Mr. Treppeda requested Council consideration for the reimbursement of \$12,540.50 in legal fees, paid by Randall Whitman, for his defense as a Resort Tax Committee Member. Mr. Weiss reported that under the County Code, the Village has the option to reimburse. Assistant Mayor Rosenfield pointed out that the Council has reimbursed two other members.

Babak Raheb - 128 Balfour Drive, is against paying \$12,000 for legal fees, when the amount paid for other Committee members was much less.

Dina Cellini, 211 Bal Cross Drive, is against paying the full amount, but agreed that it could be paid up to \$650 (the amount reimbursed to Ms. Molina). She discussed the following items: no legal obligation to reimburse, an outrageous bill with no hourly rate, time, or date indicated, and no procedure to follow. She clarified that the Ethics Commission did not find the complaint to be frivolous or malicious and reviewed the Probable Cause Memorandum written by the Commission on Ethics and Public Trust Assistant Advocate.

Anamarie Kelly is against approving the fees.

Assistant Mayor Rosenfield discussed the Council's approval of legal fees for two other

members and pointed out that denying Mr. Whitman might not be the proper action for the Council to take. She suggested that the Council request Mr. Whitman to resubmit the request, if the Council feels it's too broad. She doesn't object to a re-examination of the bill.

Gabriella Webster, 30 Park Drive #15, agreed that there has to be a reasonable cap, on a per hour basis. She discussed the hesitance of people serving, if they are not protected. She is in favor of reimbursing Mr. Whitman.

Ms. Cellini pointed out that the Village had an obligation to reimburse Mayor Berlin under the existing Ordinance, but noted that there was not an obligation to pay Ms. Molina.

Councilman Packer suggested that if the Council feels that the bill is high, then it should determine what is reasonable.

A motion was offered by Councilman Jacobi and seconded by Assistant Mayor Rosenfield to reimburse Randall Whitman \$12,540.50 for legal fees incurred. The motion failed (2-2), with the vote as follows: Assistant Mayor Rosenfield no; Councilman Jacobi yes; Councilman Packer no; Councilman Sanz yes; Mayor Berlin absent.

The Council discussed whether or not an itemized bill should be submitted. Assistant Mayor Rosenfield suggested reimbursing Mr. Whitman the same amount paid to Mayor Berlin.

A motion was offered by Councilman Packer and seconded by Assistant Mayor Rosenfield to reimburse Randall Whitman \$4,865.00 for legal fees incurred. The motion carried (3-1), with the vote as follows: Assistant Mayor Rosenfield yes; Councilman Jacobi no; Councilman Packer yes; Councilman Sanz yes; Mayor Berlin absent.

B. VILLAGE CLERK:

Lobbyist Registration Report: As of September 16, 2008: A list of Lobbyists currently registered with the Village was provided in the agenda.

C. VILLAGE ATTORNEY: No items.

D. MAYOR AND COUNCIL:

Discussion of Resort Tax Committee Member Appointments – Assistant Mayor Rosenfield: This item was deferred.

Discussion of Water Fountains Along Beach Jogging Path – Councilman Packer: Assistant Mayor Rosenfield requested Mr. Treppeda to research laws regarding the placement of water fountains on the beach, the removal of prior water spickets due to health and safety issues, and the approximate cost of installing/maintaining pipes, etc. before discussing the issue.

Councilman Packer reported that numerous residents have requested water fountains and he requested it be investigated, for placement on the walking path.

Walter Mathews, Public Works Director, discussed the use of water spickets by people

for washing and then left on.

Mr. Weiss and Mr. Treppeda will report back to the Council on safety concerns, jurisdiction, etc. at the next meeting.

Discussion of Workshop Meeting to Discuss Future Village Issues – Councilman Packer: This item will be discussed at the next Council meeting by the Village Planner.

10. OTHER BUSINESS:

Anamarie Kelly, discussed Assistant Mayor Rosenfield's request for speakers to provide their correct address when addressing the Council (at the Local Planning Agency Meeting).

Babak Raheb, 128 Balfour Drive, discussed the lack of any action on his settlement Resolution. He questioned if the Council was lobbied concerning the issue. Mr. Weiss advised the Council against disclosure, since the Village is back in litigation with Mr. Raheb.

Dan Nieda, Building Official, discussed Mr. Raheb's dialogue with the Council.

11. ADJOURN: There being no further business, a motion was offered by Councilman Jacobi and seconded by Councilman Packer to adjourn. The motion carried unanimously (4-0) and the meeting adjourned at 6:16 p.m.¹



Mayor Howard J. Berlin

Attest:



Ellisa L. Horvath, CMC, Village Clerk

¹ After the meeting was adjourned, Dina Cellini approached the podium, asked to be recognized, and proceeded to make comments pertaining to potential redistricting of the Village. Although the meeting had been officially adjourned, we are noting Ms. Cellini's presentation in the minutes, because four members of the Council were present, heard the presentation, and the official tape was still running.