

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**REGULAR MEETING – JANUARY 20, 2009**

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, January 20, 2009, 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 9:15 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

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 General Employees Retirement Board meeting.

**3. AGENDA: REQUEST FOR DELETIONS/ADDITIONS:**

*Beth Berkowitz, 10160 Collins Avenue*, requested the removal of Tab D.

Mr. Treppeda requested that the total for Tab I be increased to \$43,650.00.

*It was the consensus of the Council to remove Tab D and Tab I from the Consent Agenda.*

**4. SPECIAL PRESENTATIONS:**

**Officer of the Month for December 2008:** Chief Hunker presented Officer John Fruchey with the Officer of the Month plaque, for December 2008.

**5. CONSENT AGENDA:** Mr. Treppeda requested approval for the following items on the Consent Agenda:

Tab B: December 16, 2008 Regular Meeting Minutes

Tab C: Mutual Aid Agreement with Golden Beach Police Department

Tab E: \$20,000.00 (\$10,000.00 Contribution to the Bal-Bay Police Activity League and \$10,000.00 for Web Site Improvements) and \$425 Monthly

in Police Forfeiture Funds

- Tab F: Red Light Camera Agreement with American Traffic Solutions for Installation and Operation of System
- Tab G: Lease Agreement and Addendum with FDOT to Operate the Public Parking Lot under Haulover Bridge
- Tab H: \$415 Monthly for 48-Month Lease for Public Works Truck
- Tab J: \$41,260.00 in Resort Tax Funds to Replace Two Date Palms, Dump Fees, and Miscellaneous Landscaping by Lukes' Landscaping, Inc.
- Tab K: \$9,900.00 for Additional Demolition Work by Aquarius Building at the Trash Transfer Station (\$4,500) and for the Planting of Sod by Lukes' Landscaping (\$5400)

*A motion was offered by Councilman Packer and seconded by Councilman Jacobi to approve the items on the Consent Agenda, except for Items D and I. The motion carried unanimously (4-0).*

**Discussion of Tab D – Motion Approving Police Department**

**Budgeted Funds:** *Beth Berkowitz, 10160 Collins Avenue*, requested the status of the docking facilities. Council Jacobi clarified that the item is only for telephone recording equipment.

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

**Discussion of Tab I – Motion Approving Purchase of Lighting**

**Fixtures and Ballasts for Date Palms:** Mr. Treppeda requested that the total for Tab I be increased to \$43,650.00.

*A motion was offered by Councilman Packer and seconded by Councilman Jacobi to approve Item I. 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:** None.

**9. REPORTS:**

**A. VILLAGE MANAGER:**

**Discussion of Bal Harbour Village Beach Erosion – Brian Flynn, Miami-Dade County DERM:** Mr. Flynn reported that the Army Corps permit is ready to be issued, an ad will be placed in The Miami Herald providing for a 14-day comment period, and then the State permit will be issued. He added that the County will vote on its permit next month. Mr. Flynn expects for sand to be placed next month. Mr. Treppeda reported that a workshop meeting will be scheduled for discussion of the sand transfer station. Mr. Flynn will meet with Coastal Systems tomorrow to review the information.

**Presentation of Annual Audit – Jerry Chiocca, Rachlin LLP:**  
***Chris Wallace, Finance Director,*** summarized that the Village's net assets increased by \$2.3 million, there is \$17.4 million more in current assets than liabilities, with one water/sewer loan debt of \$100,000 to be repaid this year. He noted that 58% of the reserves are in undesignated fund balance, which is over six months worth of operating reserves. He added that revenue increased 14.4%, due mostly to the Development Agreement with St. Regis. Mr. Wallace reported that tourism was higher than expected, due to foreign travel, and the water/sewer fund had a net income, due to rate increases and reduced expenses. He finalized that the Village is in very good financial condition, with a lot of reserves and a strong tax base.

***Jerry Chiocca, Rachlin LLP,*** reviewed the audit, as of September 30, 2008. He discussed passwords, segregation of duties, and new software that will alleviate most problems. He noted that the financial report is very strong and the Village is in excellent financial shape.

***Neil Alter, 9801 Collins Avenue,*** discussed the discrepancy surrounding Jose Lima managing accounts, related to his tourism position, and questioned if the auditors are responsible for monitoring the activities of the employees.

Mr. Wallace responded that it is management's responsibility to insure that internal controls are sufficient, which they are. He noted that internal controls did disclose Mr. Lima's personal charges on the Village's credit card, which were reviewed. He explained that the auditors evaluate all of the internal controls, but not all of the transactions. Mr. Wallace reported that it is his primary responsibility to insure that the internal controls prevent/detect fraud on a timely basis and noted that changes are being made to how those activities are dealt with in the future. He noted that full restitution was made by Mr. Lima. Mr. Wallace discussed the process followed for credit cards issued to Village employees.

Chief Hunker discussed the private investigator hired by the Village and the involvement of the Miami-Dade County State Attorney's office. The public was directed to contact Chief Hunker regarding the file.

***Brian Mulheren, 10245 Collins Avenue,*** suggested a forensic audit of the entire Village, from an outside source, on all expenditures during that time. He suggested that Mr. Lima be prosecuted. Mr. Treppeda advised that is being done.

Assistant Mayor Rosenfield reported that the issue has been turned over to the State Attorney's office, who will decide what the procedure will be. She noted that the Council

doesn't have that authority.

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

### Quarterly Financial Update Provided by Finance Director

**Christopher Wallace:** Mr. Wallace reported that revenues are a little behind and the tourism revenue is ahead, due to the Regent coming on line in May. He reported that there is positive cash flow, due to the bulk of property taxes being paid.

Mr. Wallace discussed the SBA (State Board of Administration). He noted that the worst is left in Fund B and the problems in Fund A have been corrected and is entirely liquid. He doesn't know the extent of the damage to the Village, but estimated a \$130,000 loss in investments, not including the income that could have been garnered.

### Request for Approval of Consulting Agreement with Energy

**Alternatives, Inc. for Monitoring of Electrical Issues: Caesar Seijas** reviewed his proposal to pressure FPL for items needed by the Village, interpret green/energy mandates, implement FPL permitting process so their work can be reviewed, review the Village's issues, monitor the bills, track feeders to pinpoint the problems, etc. Mr. Treppeda estimated Mr. Seijas to work 20 hours monthly. Mr. Seijas estimated that review of the Village's FPL bills should result in at least a 1% savings to the Village, which would pay for his fees. Assistant Mayor Rosenfield questioned if the items done by Mr. Seijas would be completed in a year. Mr. Seijas explained that it would be an ongoing arrangement to monitor bills, outages, etc. He noted that his services may be reduced, if they are not needed in the future.

**Maryann Goetz, 10150 Collins Avenue**, questioned if DERM is responsible to ensure that electrical lines, etc. are adequate. Mr. Treppeda isn't aware of that.

**Brian Mulheren, 10245 Collins Avenue**, suggested that FPL give advice and work with the Village for improvements. He suggested looking at other services and programs provided by FPL.

Assistant Mayor Rosenfield requested a written report from FPL, showing what they are responsible for.

**Gabriella Webster - 30 Park Drive**, spoke in favor of working on the infrastructure and suggesting hiring Mr. Seijas on a preliminary basis, subject to seeing improvements.

**Dan Holder, 24 Bal Bay Drive**, discussed the proposal amount, but agreed that the infrastructure is aging and that it's good to have someone who worked for FPL to get things done for the Village. He discussed hurricanes, etc.

Councilman Packer suggested additional investigation and consideration. Councilman Sanz discussed the outages being limited to the Security District and not Collins Avenue. Mr. Seijas reported that he has asked FPL for details on that. Mr. Treppeda reported that the item was placed on the agenda, in response to numerous phone calls regarding outages. He thinks the fees can be negotiated. Councilman Jacobi is in favor of the idea, but would like to also see someone from FPL.

*A motion was offered by Councilman Jacobi and seconded by Councilman Packer to table the item for discussion at another meeting. The motion carried unanimously (4-0).*

Councilman Sanz suggested a workshop meeting with FPL and Mr. Seijas. Assistant Mayor Rosenfield requested Mr. Treppeda to contact FPL for discussion of the item at a meeting, with public notice.

**Request for Approval of Sign Permit for the Regent Hotel:**

**Dan Nieda, Building Official**, reviewed the signage application submitted by the Regent for hotel signage, which was recommended for approval by the Architectural Review Board.

**Dina Cellini, 211 Bal Cross Drive**, suggested the use of wrought aluminum instead of the proposed aluminum material, which may pit. Mr. Nieda reported that the application notes the use of a factory sealed coat with a protective membrane that may fail over time, but will not pit like ordinary furniture. He agreed that it is a maintenance issue and it should be replaced as required.

**Dan Holder, 24 Bal Bay Drive**, is concerned about the turtles and the effect of the lighting on the beach. Mr. Nieda reported that the lighting will be shielded from the beach.

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

**Quarterly Financial Update Provided by Finance Director**

**Christopher Wallace:** This item was discussed earlier in the meeting.

**B. VILLAGE CLERK:**

**Lobbyist Registration Report: As of January 20, 2009:** A list of Lobbyists currently registered with the Village was provided in the agenda.

**C. VILLAGE ATTORNEY:**

**Draft Ordinance for Review:** Mr. Weiss is not familiar with any ordinances that have a limitation (cap). He noted that the Council is able to place limitations, but noted that the only limitation currently is the amount that is budgeted, on a first come first serve basis.

*It was the consensus of the Council to schedule a Council Workshop Meeting, chaired by Assistant Mayor Rosenfield, to discuss the issue in the future.*

Mr. Weiss requested Executive Sessions in the Babak Raheb versus Bal Harbour case and the Lynne Bloch-Mullen versus Bal Harbour case, which will be scheduled.

**D. MAYOR AND COUNCIL:**

**Review of Resort Tax Committee Resumes – Assistant Mayor Rosenfield:** Assistant Mayor Rosenfield reported that eight resumes were received for

consideration. She noted that six positions are available and she has been selected as the Councilmember to serve on the Committee. She suggested three people from the business section (Mr. Guenter Richter - the Regent, Mr. Kenneth Smuts - St. Regis, and Cheryl Stephenson - the Shops) and three from the Village (Dr. Michael Krop, Bruce Gelb, and Sandra Lansing).

*A motion was offered by Councilman Sanz and seconded by Councilman Jacobi to appoint Mr. Richter, Mr. Smuts, Ms. Stephenson, Dr. Krop, Mr. Gelb, and Ms. Lansing, to the Resort Tax Committee.*

**Gabriella Webster, 30 Park Drive**, spoke in favor of the recommendations and moving forward with the Committee.

Ms. Horvath read the following names selected by each Councilmember:

Councilman Jacobi	Gelb, Lansing, Webster, Richter, Smuts, Stephenson
Assistant Mayor Rosenfield	Gelb, Krop, Lansing, Richter, Smuts, Stephenson
Councilman Packer	Gelb, Krop, Lansing, Richter, Smuts, Stephenson
Councilman Sanz	Gelb, Krop, Lansing, Richter, Smuts, Stephenson

*The motion carried unanimously (3-1).*

Assistant Mayor Rosenfield reported that the first meeting will be in February. Mr. Weiss noted that the appointed Committee is now subject to the Sunshine law.

### **Report on Police Station Committee Recommendation –**

**Councilman Packer:** Councilman Packer reported that the Police Station Committee has recommended that the Village Attorney negotiate a lease with the Shops, for possible discussion at the next Council meeting. He requested that the negotiated lease be available for review by the public, before the Council meeting.

*A motion was offered by Councilman Packer and seconded by Councilman Jacobi that the Council has the intention of taking the recommendation of Chief Hunker to lease a space in the Bal Harbour Shops and to direct the Village Attorney to draw up a lease that is agreeable to the Shops and the Council, in accordance with the Committee's recommendations as to the way the finances will be structured.*

Assistant Mayor Rosenfield left the meeting. Councilman Packer chaired the meeting.

Chief Hunker suggested a permanent committee to study long term plans for a new Village Hall/Police Station, based on comments by the public at the Police Station Committee meeting.

Councilman Packer announced that the current Police Station Committee is dissolved. He offered to chair a new Committee, if the Council wishes to form one to consider any long term plans.

*The motion carried unanimously (3-0).*

Assistant Mayor Rosenfield returned to the meeting.

**Update on Beach Access Path at Bal Harbour Club –**

**Councilman Packer:** Councilman Packer reported that he has met with Mr. Imbesi regarding the path.

***Joe Imbesi, 175 Camden Drive,*** reported that he volunteered his property for access as a temporary solution, during construction of the north access path. He discussed parking problems and inconvenience, due to the public parking at the Club property. He reported that the north access path is now completed, the two-year contract has expired, and he would like to close the access on his property.

***Anamarie Frances Kelly Stoppa, 77 Camden Drive - domicile,*** discussed a transfer deed, resolutions of the Grantor and the Club, County Clerk records regarding a match line through the Club, and Florida law regarding public access.

Mr. Weiss reported that Mr. Treppeda has requested that the Village Attorneys review the State statutes, regarding beach access.

Assistant Mayor Rosenfield thanked Mr. Imbesi for providing access for two years. Councilman Packer requested that Mr. Imbesi consider re-opening the path.

Mr. Imbesi offered to open the path, until the issue is resolved.

***Stan Whitman, Bal Harbour Shops,*** is not aware of any public easement or right of the public to enjoy the Bal Harbour Club and thinks that the two access paths provided are sufficient.

***Beth Berkowitz, 10160 Collins Avenue,*** reviewed Florida Senate Bill 2622 and Senate Bill 488, regarding the necessity of beach access. She reviewed Village Code Sections 17-31 and 17-32, relating to a road that went through the center of the Bal Harbour Club that was closed. She additionally reviewed Village Code Section 17-51, regarding obstruction of beach access by landscaping, etc. between the buildings. Ms. Berkowitz noted that the Village is breaking statutes.

***Lynne Bloch-Mullen - 10150 Collins Avenue,*** suggested that Mr. Imbesi's path be restricted for use only by Bal Harbour residents, with the use of a key.

**Report on Police Station Committee Recommendation –**

**Councilman Packer:** This item was discussed earlier in the meeting.

**10. OTHER BUSINESS:**

***Dina Cellini, 211 Bal Cross Drive,*** discussed the possibility of the Council initiating a forum prior to the April Election, for the public to meet the candidates, etc. Assistant Mayor Rosenfield reported that the Council will consider that.

***Carlos Rivos, American building tradesman,*** discussed the St. Regis project outsourcing jobs to foreign workers and urged the Council to contact the St. Regis regarding it.

**Gabriella Webster, 30 Park Drive**, discussed concerns of the beach renourishment project and lounges affecting turtles. She requested that the Village encourage the oceanfront properties to alleviate the issues of their lounges, etc. She discussed the need for adequate sand for the beach and restricting lighting on the beach (96<sup>th</sup> Street and behind the oceanfront buildings). Mr. Treppeda reported that DEP (Department of Environmental Protection) is sending warning letters to properties infringing on the beach dunes with storage boxes, etc.

**Neil Alter, 9801 Collins Avenue**, questioned the status of the Date palms at the St. Regis property being removed. Mr. Treppeda reported that they are being moved for sidewalk, plumbing, etc. work and will be brought back. He noted that if they don't survive, then they will be replaced by the Developer.

**Doug Rudolph, 212 Bal Bay Drive**, discussed the large amount of taxpayer money spent on the Lynne Bloch-Mullen case and requested that the Council direct the Village Attorney to look into the rights of the Council, for a claim on the money spent.

**Dan Holder, 24 Bal Bay Drive**, requested that the lights at the One Bal Harbour be looked at, which may be a problem for turtles. He thanked Mr. Whitman for allowing residents to park in his facility during hurricanes.

**Anamarie Kelly, 77 Camden Drive**, thinks the case (Mullen) should be concluded, before any money is expended by the Council to look into reclaiming, etc. She discussed civility and resolution among residents.

**Brian Mulheren, 10245 Collins Avenue**, thanked FDOT and Mr. Treppeda for resolution of the agreement under the parking lot and noted that the red light camera agreement was approved at the meeting, which were both positive items.

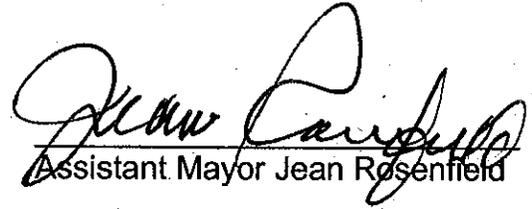
Councilman Jacobi requested that the Council direct the Village Attorney to research the issue of recouping monies spent by the Village on the Lynne Bloch-Mullen versus Bal Harbour Village case, for placement on the next agenda. He also requested that a discussion of the removal of Cecil Mullen from the Police Retirement Board be placed on the next agenda.

Councilman Packer suggested that the February and March Council meetings be held at 7:00 p.m., to allow for more public access, as a trial period.

**Dina Cellini, 211 Bal Cross Drive**, reported that she is assisting the Attorney of Record, for the Mullen case. She clarified that the initial lawsuit was filed against Mr. Jacobi and the Supervisor of the Village's Election and clarified that the Village requested that the Court remove the Supervisor of Election and name the Village, which the Court ordered. She noted that the case is still pending and the Court has not entered an order on the Village's motion for Summary Judgment, which is also appealable, etc. She thinks that it is inappropriate for Councilman Jacobi to make his request, since he is involved in the litigation. She requested that the Council defer any action on Councilman Jacobi's request and not spend additional money.

**A motion was offered by Councilman Packer and seconded by Councilman Sanz to change the February and March meeting times to 7:00 p.m. The motion carried unanimously (4-0).**

**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 11:28 a.m.

  
Assistant Mayor Jean Rosenfield

Attest:

  
Elisa L. Horvath, CMC, Village Clerk