

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**REGULAR MEETING - APRIL 21, 2009**

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, April 21, 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 9:05 a.m. by Mayor Rosenfield. The following were present:

Mayor Jean Rosenfield  
 Assistant Mayor Joni D. Blachar  
 Councilwoman Patricia Cohen  
 Councilman Martin Packer  
 Councilman Jaime M. Sanz

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

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

**2. PLEDGE OF ALLEGIANCE:** The Pledge was previously done at the General Employees Retirement Board Meeting.

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

**4. SPECIAL PRESENTATIONS:**

**Officer of the Month for March 2009:** Chief Hunker presented Captain Jay Smith with the Officer of the Month plaque, for March 2009.

**Officer of the Year for 2008:** Chief Hunker presented Sergeant Jack Young with the Officer of the Year plaque, for 2008.

**Employee of the Month for March 2009:** Walter "Randy" Mathews, Public Works Director, presented Ronald Nelson with the Employee of the Month plaque, for March 2009.

Mr. Weiss requested an Executive Session on the case Lynne Bloch Mullen versus Joel Jacobi and Bal Harbour Village, to be scheduled by the Clerk's office. It was the consensus of the Council to do so.

**5. CONSENT AGENDA:**

***Dina Cellini, 211 Bal Cross Drive,*** requested the removal of Tab C and Tab D from the

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<sup>1</sup> Mrs. Horvath arrived during the Quarterly Financial Update.

Consent Agenda.

Mr. Treppeda requested approval for the remaining items on the Consent Agenda.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve the items on the Consent Agenda, with the exception of Tabs C and D. The motion carried unanimously (5-0).*

**Discussion of Tab C – Motion Approving Expenditure of Police**

**Forfeiture Funds:** *Dina Cellini, 211 Bal Cross Drive*, spoke against the expenditure of \$5,000 to the Drug Free Youth in Town (DFYIT) organization, since Chief Hunker is on the Board of Directors. She suggested giving the money to another agency, such as the Dade County School Board, earmarked for their drug enforcement program.

Chief Hunker reported that he is an honorary member and has never been active in the organization or voted on an issue. He discussed the importance of the organization.

*Doree Weglarz, DFYIT Director of Development*, discussed the organization's impact. She urged the Council for their help and discussed the importance of their partnership with the Police.

*Doug Rudolph, 212 Bal Bay Drive*, doesn't see a conflict and spoke in favor of approving the item.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve the requested items on Tab C. The motion carried unanimously (5-0).*

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

**Budgeted Funds:** *Dina Cellini, 211 Bal Cross Drive*, discussed the lease for the dockage of the police boat with the Bal Harbour Club. She spoke against an automatic renewal, objected to the form of the lease, since it is only for 9 months, and discussed docking the police boat at a Village facility. Chief Hunker reported that it would cost \$20,000 to move the boat and discussed reasons to keep the boat at the Club's marina.

Mr. Weiss explained that the lease is not automatically renewed, but is automatically renewable if the Village desires at the shown contract rate. Ms. Cellini suggested docking the boat elsewhere, since in three years it would cost the same amount as docking it at the Club's marina.

Mr. Treppeda requested the approval of the lease, subject to the Village Attorney clarifying that it is for one year and renewable only with the approval of both parties.

*Anamarie Kelly, 77 Camden Drive*, spoke against the item due to prisoners being brought through the Village and spoke in favor of docking the boat across the street where the holding cell is accessible.

Councilman Packer requested the cost for a full year, before continuing. Mr. Treppeda suggested that the agreement be clarified that the amount is for a year.

*A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to approve*

the requested item, subject to the Village Attorney clarifying that the amount is for a year and correcting the lease. The motion carried (4-1), with Councilman Packer voting no.

## **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 Mrs. Greenblatt:

**A 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.**

Mayor Rosenfield opened a public hearing.

**Anamarie Kelly, 77 Camden Drive,** advised that if a settlement is reached based on an illegal taxing District, then she will be the first one in court after Mr. Raheb to raise the same issue.

**Neil Alter, 9801 Collins Avenue,** requested the nature of the suit and the elements of the settlement.

Mr. Weiss reported that the Village is still in litigation, executive sessions have been held, and certain items will remain privileged until the lawsuit is resolved.

**Michael Popok, Village Attorney,** gave a brief overview of the litigation and settlement. He explained that it is a challenge to the constitutionality of the security district. Mr. Popok explained that the fourth settlement proposal is: the Village contributes \$10,000 as a settlement payment, Mr. Raheb repays his liens owed in the same amount, the insurer Coregis gives Mr. Raheb \$25,000 as a settlement, and Mr. Raheb will not sue or challenge again or cooperate with anyone else in doing the same. Mr. Popok believes this is the last best offer to settle.

Mayor Rosenfield closed the public section.

Mr. Popok explained the definition of a Summary Judgement, per the request of Councilman Packer.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to approve the resolution. The motion carried (4-1), with Councilman Packer voting no; thus becoming Resolution No. 2009-709.

The following resolution was read by title, by Mrs. Greenblatt:

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA (THE "VILLAGE") APPROVING THE LEASE AGREEMENT BETWEEN THE VILLAGE AND THE BAL HARBOUR SHOPS, LLLP FOR THE LEASE OF SPACE WITHIN THE BAL HARBOUR SHOPS FOR VILLAGE POLICE STATION USE; AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Rosenfield opened the meeting to public comments.

**Paul Pruess, 10101 Collins Avenue**, suggested negotiating the six percent interest to a lower amount, or using forfeiture funds to pay the amount upfront to avoid the percentage rate.

Mr. Treppeda reported that forfeiture funds cannot be used to pay for the lease and explained that the Village can pay the construction costs upfront, negating the lease payment. He discussed the recommendation of Chief Hunker and the Police Station Committee to move the station.

**Don Orner, Carlton Terrace**, spoke against the move.

**Gabriella Webster, 30 Park Drive**, who served on the Police Station Committee, discussed the need for the Police to move for space, professionalism, and the support from the community. She spoke in favor of the move and paying the cost upfront, to avoid the interest.

**Dina Cellini, 211 Bal Cross Drive**, spoke against the move, the lease, the interest rate and the rent/sales tax and discussed residents objecting to the move. Ms. Cellini discussed the financial benefit to the Shops to have the Police there and suggested the Shops should provide it at no cost or keep the station at Village Hall. She spoke against spending \$400,000 in taxpayer dollars to move to the Shops.

Mayor Rosenfield recused herself from voting for personal reasons and left the meeting. Assistant Mayor Blachar took over as Chair.

**Neil Alter** questioned Mayor Rosenfield's reason for recusal. Mr. Weiss reported that Mayor Rosenfield removed herself to avoid the appearance of a conflict.

Chief Hunker discussed the importance of the move due to storms, etc. He reported that the Shops originally offered the space at no cost and members of the community spoke against receiving it at no cost. He clarified that the only thing being paid to the Shops is construction costs.

**Anamarie Kelly, 77 Camden Drive**, spoke against the move and spending the money.

Assistant Mayor Blachar closed the meeting for public comments.

Councilman Packer, who served as the Police Station Committee Chair, discussed the necessity of the move. He noted that originally the Shops wanted to donate and build out the facility and the community objected to receiving something for nothing. Councilman Packer expressed his only objection to be the 6% interest amount.

Assistant Mayor Blachar questioned the sales tax. Mr. Weiss and Mr. Treppeda reported that the Village would be exempt from the sales tax that is mentioned in the agreement.

**Dina Cellini, 211 Bal Cross Drive**, questioned exemption from the rent tax. Mr. Kendrick thinks that the Village would also be exempt from that.

Councilwoman Cohen questioned if signage would be provided. Mr. Treppeda advised that it would be.

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

Councilman Packer questioned if the approval was for monthly payments with 6% interest or for one payment without interest. Mr. Weiss reported that the approval was for the lease provided in the agenda.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to reconsider Tab K (Resolution approving Shops Lease Agreement). The motion carried unanimously (4-0), with Mayor Rosenfield absent.*

Councilman Packer discussed either a lump sum payment without the 6%, or in four equal installments with the Village having the right to object to the bids and terminate the lease. Mr. Treppeda reported that the Village and the Shops both have to agree to the bid.

Mr. Weiss reported that the original lease provided no rent and the Village paying for the build-out. He explained that the current lease provides the Shops fronting the money for the build-out and the Village paying the Shops back in the form of a monthly lease payment.

Mr. Kendrick explained that the rent payment is financing the build-out cost. He clarified that if the Village was asked to move to another space and didn't want to then it could terminate the lease and then just be responsible for the remaining portion of the build-out cost that was not charged in rent. He noted that if the build-out cost is paid up front, then the Village would lose the entire payment for the build-out costs.

Mr. Wallace explained that it would be financially better to pay up-front, without having to pay the 6% interest; however, if the Village doesn't pay up front, then it would benefit if the lease is terminated or have to negotiate the balance to be paid back to the Village.

Mr. Weiss reported that if the money is paid up front and the Village is asked to relocate, then the money would be gone, but monthly payments would create a better situation. He thinks the question is where or not the Village will be moving within the 7 years.

**Stan Whitman, Developer of the Bal Harbour Shops**, agreed that the money can be borrowed for less than 6%.

Mr. Weiss explained that the issue is the trade-off of upfront expenses versus termination

of the lease. If the Village pays the money upfront, then the money would be gone if the Village leaves the lease.

Assistant Mayor Blachar discussed the cost of doing business by paying the interest for the monthly payments, which is better than paying upfront and losing the money if the Village moves. She is in favor of the lease as provided.

**Randy Whitman, Bal Harbour Shops**, clarified that if the Village declines to move then the money paid for the build-out is lost, but if the Village agrees to move, then the Shops has to pay for the move at no cost to the Village.

Assistant Mayor Blachar discussed if the Village wants to move, then the money would be lost unless the monthly payments are done.

Mr. Weiss clarified that per Mr. Whitman's comments, if the Shops is able to borrow the money for less than 6%, then the savings would be passed to the Village.

Mr. Treppeda clarified that if the Village terminates the lease after one year then it would be responsible for paying the rest. Mr. Kendrick agreed that would happen if the Village terminates for its own convenience.

Mr. Weiss reported that if the Village relocates at the Village's initiation, then it keeps paying, but if it relocates due to the Shops request, then it would not be obligated to pay the rest.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve the lease, subject to modifying the interest rate to be no greater than 6% or whatever the Shops is paying to borrow the money for the build-out, whichever is less. The motion carried unanimously (4-0), with Mayor Rosenfield absent; thus becoming Resolution No. 2009-710.*

Mayor Rosenfield returned to the meeting.

## **9. REPORTS:**

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

**Discussion of Bal Harbour Village Beach Erosion – Brian Flynn, Miami-Dade County DERM:** Mayor Rosenfield and Mr. Flynn reviewed the history of beach renourishment for Bal Harbour. Mr. Flynn reported on the difficulty in finding sand sources affecting a renourishment project of the entire Village beach, by the Army Corps of Engineers. He noted that in the meantime, the County is having sand trucked in from central Florida to renourish a portion of the beach. Mr. Flynn expects sand to be placed on the beach, during the first or second week of May.

**Consideration of Additional Consulting Services by Coastal Systems International, Inc. for Sand Bypassing System – Jason Cummins: Jason Cummins, Coastal Engineer,** discussed long-term solutions to the beach management for the Village. He discussed the lack of resources off-shore for large projects and the feasibility of bypassing at the Inlet. He explained that the next phase investigates sources

of potential funding sources. Mr. Cummins reported that they will review the Inlets at Hillsborough, Boca, and South Lake Worth for funding, efficiency, and satisfaction.

**Stanley Whitman, Bal Harbour Shops**, spoke in favor of the process and urged the Council's approval.

**Marjorie Schell, 9801 Collins Avenue**, discussed the negligence of people trampling over the dunes. She suggested enclosing the large opening behind the St. Regis hotel to 10-12 feet with plantings, to protect the beach.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve \$25,644.00 in Resort Tax funds for Coastal Systems to conduct the next steps in the process for determining the feasibility of a sand transfer project. The motion carried unanimously (5-0).*

### Consideration of Resort Tax Committee Member

**Appointment:** Mayor Rosenfield reported that Guenter Richter left the Regent and the Regent has requested that Patricia Bradley, Director of Sales & Marketing, be placed on the Resort Tax Committee in his place. She reported that the Resort Tax Committee has endorsed her appointment.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to appoint Patricia Bradley to the Resort Tax Committee. The motion carried unanimously (5-0).*

**Patricia Riverte and Javier Colon, Bal Harbour Manor - 10190 Collins Avenue**, on behalf of their Association, recognized Sergeant Jack Young for his service to the Village.

### Quarterly Financial Update for Second Quarter and Possible

#### Request for Contribution to General Employees Pension Fund – Finance

**Director Christopher Wallace:** Mr. Wallace reviewed the Financial Report. He discussed the General Employees Pension Fund and the large withdrawal of pension assets, due to payouts of retirees. He requested approval to spend up to \$200,000 in cash from the general fund to advance to the pension fund, so that securities don't need to be liquidated. Mr. Treppeda supported Mr. Wallace's recommendation.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to move up to \$200,000 from the General Fund balance to the General Employees Pension Fund. The motion carried unanimously (5-0).*

**Anamarie Kelly, 77 Camden Drive**, recommended re-hiring Northern Trust as the money manager for the General Employees Pension Plan.

### Request for Approval of Beer/Wine License for Majestic

**Restaurant:** Mr. Treppeda presented a request for a beer/wine license for the Majestic Restaurant, limited to service for residents and guests at the Majestic.

**Henri Mastantuono, Owner of restaurant – Mona Lisa Gourmet Consulting, Inc.**, requested approval.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve. The*

*motion carried unanimously (5-0).*

**B. VILLAGE CLERK:**

**Lobbyist Registration Report: As of April 21, 2009:** A list of Lobbyists currently registered with the Village was provided in the agenda.

***Dina Cellini, 211 Bal Cross Drive***, questioned the Council's and staff's ability to deal with Joe Imbesi, since he is not registered as a lobbyist and should be. Mr. Weiss will research the issue and advise the staff and Council.

**C. VILLAGE ATTORNEY:**

**D. MAYOR AND COUNCIL:**

**10. OTHER BUSINESS:**

***Barbara Grossman, 10275 Collins Avenue***, discussed the Village Charter and Jaime Sanz's ability to move from his District (Harbour House - District 3) during the building's renovation in 2005 to District 4 (284 Bal Bay Drive) and remaining there during his term. Mr. Weiss reported that the issue was raised at a Council meeting and Councilman Sanz advised that it was his intention to move back into District 3, which is a key element in the legal analysis. Ms. Grossman noted that Councilman Sanz resigned from the Council (District 3 seat) and spoke against him then being appointed by Council three days later for the District 4 seat.

***Jack Linzer, President Majestic Tower***, representing 164 homeowners, discussed concerns of flying debris from the St. Regis project during hurricane season and requested review of the project's hurricane/disaster plan.

***Ken Smuts, Related Group Vice President and Managing Director of the St. Regis Bal Harbour on behalf of Starwood***, offered to provide the project's hurricane preparedness program and noted that the plans are on file with the Village's Building Department.

***Serge Rivera, CEO and President of Starwood Vacation Ownership and it's Residential Development Division***, offered to address any concerns by residents. Councilman Packer questioned if the project will be finished on time and performance bonds for the project. Mr. Rivera reported the intention to complete the project by the end of 2011 and that performance bonds are in place relating to contractor, sub-contractors and their work. He explained that it is Starwood's money and project and they do not have any debt on the project.

***Anamarie Kelly, 77 Camden Drive***, requested clarification that the Development is between Starwood and the Village and that the resort tax funds will still be paid even if the project is not finished on time. Mr. Rivera explained that it is a Starwood project, with Related group acting as a development manager and clarified that the Development Agreement is between 9701 Collins Avenue LLC and the Village and their intention is to honor the agreement.

***David Kwiatt, 10185 Collins Avenue***, noted less workers on the site and questioned the

project's intention to continue at a slower pace. Mr. Rivera reported that since the project was significantly ahead of schedule and due to the current economic situation, it was determined to not continue accelerating the project and to take a more fiscally responsible position. He noted that staff will continue on a path in accordance with a completion date of 2011.

**Neil Alter, 9801 Collins Avenue**, questioned if the Related Group holds the performance bond. Mr. Rivera clarified that the bond is in Starwood's name for the contractors and their work. He explained the performance bond relating to the \$700 million project, with construction values of over \$500 million.

**Jack Linzer, Majestic Tower**, requested the date that the building next to the Majestic will be topped off. Mr. Rivera estimated it to be topped off by the end of the year, but not necessarily enclosed.

**Don Orner, Carlton Terrace**, questioned if the building without windows facing Collins Avenue was part of the original plans and suggested adding a design. Mr. Rivera reported that to be the center hotel tower, which was designed without windows and will be textured. He offered the public to view the model at the sales building in Bay Harbor (1170 Kane Concourse). Mayor Rosenfield clarified that pictures, models, and plans were displayed at Village Hall meetings.

**Dina Cellini, 211 Bal Cross Drive**, clarified that the lease with the Shops was renegotiated not just due to the gift issue, but to provide a comparable space if the Police were relocated.

**Anamarie Kelly, 77 Camden Drive**, requested the amount spent on the lawsuit filed by Doug Rudolph against the Village. Mr. Weiss reported the amount to be approximately \$33,000. She discussed the Council's duty to qualify Council candidates, etc. Ms. Kelly discussed being threatened by Councilwoman Cohen's relative, the Chief's refusal to write another police report for her, and reports showing that Councilwoman Cohen is not qualified. She spoke against the Council pursuing Bloch-Mullen for legal fees.

**Doug Rudolph, 212 Bal Bay Drive**, clarified that his lawsuit was filed to stop the Council from granting a change of zoning to the Bal Harbour Beach Club to keep it as green space, which is different than attacking the Charter. He clarified that he wasn't asking to be put on the Council or saying the Council was corrupt. He suggested the Council file a public records request for all the emails, accusations, and claims by Ms. Kelly to see the amount of time, efforts, and money being spent by staff. Mr. Rudolph spoke against the Village being split and people using the Village for their own personal things. He spoke in favor of allowing the people who were elected to serve and working together as residents and citizens.

**Don Orner, Carlton Terrace**, discussed the personal attack against Ms. Kelly and spoke in favor of getting along.

Councilman Packer requested the Council authorize the Village Manager to look into televised meetings (cost, etc.) on Channel 77. Assistant Mayor Blachar spoke against televised meetings. Mr. Treppeda will come back with a report.

Councilman Packer suggested reinstalling the Vita Path on the beach. Mr. Treppeda will look into the cost and why the original Vita Path was eliminated.

Assistant Mayor Blachar agreed and also suggested looking into adding water fountains. Councilman Packer agreed. Mr. Treppeda reported that the Public Works Director is working with the Bal Harbour Club to provide a water line.

Councilman Packer reported that he and Mr. Treppeda will meet with County Commissioner Sally Heyman regarding a dog run in Haulover Park.

Councilman Packer discussed alcoholic beverages being served on the beach, which he doesn't think should be allowed. He suggested the Village place some rules, if there are no existing ones.

Councilwoman Cohen reported that alcoholic beverages are served in plastic cups and noted that most 5-star hotels in the world have that amenity for their guests.

Councilman Packer thinks there should be a rule that no alcoholic beverages be allowed on the beach, including the hotels, condo, etc.

Mr. Weiss doesn't see anything in the Village Code regarding it. Councilman Packer suggested the Council decide to allow it or not. Mayor Rosenfield questioned if there have been problems. Chief Hunker is not aware of any incidents. Councilman Packer discussed a County sign on the beach prohibiting alcoholic beverages. Mayor Rosenfield reported that the Village needs to find out if there is a County ordinance.

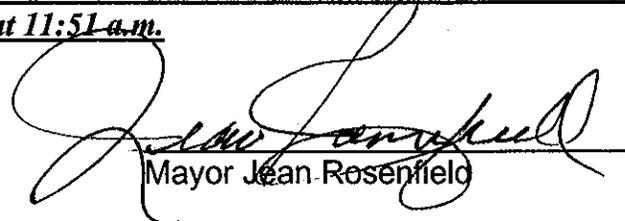
Councilman Packer reported that people are walking dogs on the beach path. Chief Hunker reported that the Police have issued many code violations for that.

Councilman Packer questioned how many people have purchased keys from the Club.

Councilman Sanz questioned if dogs can be walked on Collins Avenue. Mr. Treppeda reported that they can. Councilwoman Cohen suggested reconsidering allowing dogs on the beach path, since there is an overwhelming request for it.

Mr. Weiss was directed to see if there is a County ordinance regarding alcoholic beverages on the beach.

**11. ADJOURN:** There being no further business, a motion was offered by Councilman Sanz and seconded by Assistant Mayor Blachar to adjourn. The motion carried unanimously (5-0) and the meeting adjourned at 11:51 a.m.

  
Mayor Jean Rosenfield

Attest:

  
Ellisa L. Horvath, CMC, Village Clerk