

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**REGULAR MEETING – MAY 15, 2012**

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, May 15, 2012, 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 7:02 p.m. by Mayor Rosenfield. The following were present:

Mayor Jean Rosenfield  
Councilwoman Patricia Cohen  
Councilman Martin Packer  
Councilman Jaime M. Sanz

Alfred J. Treppeda, Village Manager  
Ellisa L. Horvath, MMC, Village Clerk  
Richard J. Weiss, Village Attorney

Absent: Assistant Mayor Joni D. Blachar

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:** Mr. Treppeda requested that Tab L be removed from the agenda and reported that the Agreement would be brought back in June.

*A motion was offered by Councilman Sanz and seconded by Councilman Packer to remove the requested item from the Agenda. The motion carried (4-0).*

**4. SPECIAL PRESENTATIONS:**

**Officer of the Month for April 2012:** Chief Hunker presented Sergeant Alejandro Alvarez with the Officer of the Month plaque, for April 2012.

**5. CONSENT AGENDA:** Approval was requested for the following items:

Tab B: April 17, 2012 Regular Council Meeting Minutes;

Tab C: Police Forfeiture Funds for the following items:

**State:** \$5,000.00 Miami MacArthur South Senior High School  
(support of alternative education program)

**Federal:** \$2,426.00 Power DMS Training  
(for Detective Gonzalez and Sergeant Young)  
\$115,239.97 1 Year Salary and Benefits for New Police Officer

Tab D: Gated Residential Section Recommendations for the following items:

- 1.) Keep the Assessment formula the same as it is currently for the next budget year;
- 2.) Authorize the Village Attorney to prepare an Ordinance prohibiting temporary storage units, also known as PODS;

Tab E: Authorize the Village Manager to execute three (\$400 monthly) Lease Agreements, with Mears Motor Leasing, for the following Public Works Vehicles (2012 Ford F-150 Crew Cab Pick-up Trucks with 4-Wheel Drive):

Vehicle #305 – Paid through Tourism Beautification and Maintenance Fund;  
Vehicle #306 – Paid through Water and Sewer Fund;  
Vehicle #307 – Paid through Water and Sewer Fund; and

Approve the sale of Vehicle #278 (2006 GMC Sierra Pick-up Truck) on eBay;

Tab F: Authorize the Village Manager, following Village Attorney review, to execute documents necessary for the Village to offer the ICMA Deferred Compensation Plan to Village employees, as an option;

Tab G: \$199,808.00 in Water/Sewer funds for the low bidder (Kailas Contractors) for water meter replacements at the Tiffany, Majestic, Kenilworth, and Carlton Terrace buildings.

*A motion was offered by Councilman Sanz and seconded by Councilman Packer to approve the items on the Consent Agenda. The motion carried (4-0).*

## **6. PUBLIC HEARINGS:**

Quasi-Judicial Public Hearings: None.

Zoning Hearings/Quasi-Judicial Public Hearings: None.

Ordinances Second Reading/Public Hearings:

Mrs. Horvath read the following Ordinance title:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION 9 "RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT," SECTION 21-261 "PERMITTED USES" OF THE CODE OF ORDINANCES IN ORDER TO REMOVE "APARTMENT HOTELS" FROM THE LIST OF PERMITTED USES WITHIN THE RM-5 MULTIPLE FAMILY RESIDENTIAL ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Treppeda noted that a revised Ordinance was distributed at the meeting, which clarified that the Quarzo hotel, including its two planned additional buildings, were grandfathered in.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve the revised Ordinance.*

Mayor Rosenfield opened the public hearing.

**Juan Martinez, Gray Robinson**, requested clarification that the motion was to approve the Ordinance that would grandfather in the Quarzo and its other two buildings. Mr. Weiss clarified that it did not specifically grandfather in the Quarzo, but had specific criteria that the Quarzo could meet.

Councilman Packer questioned if the additional two buildings would still be grandfathered in, if the Quarzo sold them. Mr. Weiss clarified that zoning was not dependent on the ownership, but explained that a clause was provided that specified that the management for the two additional buildings needed to be the same as the first building. He reviewed the criteria on page four of the Ordinance. Councilwoman Cohen questioned the urgency on such an absolute ban on any future hotels. She discussed the beauty and enhancement by the Quarzo, to the community. She suggested that future hotels be allowed, subject to Council approval. Mayor Rosenfield explained that the hotel restriction had been requested by the public. Councilwoman Cohen suggested that the language not be so absolute. Councilman Sanz explained that the residents in the other buildings (on the west side) didn't want transient business. He spoke in favor of respecting what the residents wanted. Councilwoman Cohen clarified that nothing would be imposed against the residents' will and added that some of the buildings could be improved and the community could be enhanced.

**Anamarie Kelly Stoppa, 77 Camden Drive**, clarified that the Quarzo is part of Section 12-A, which was originally part of the oceanfront section, so hotels were permitted. She added that the other sections, where the other low-rise buildings are, have always been in the Residential Section. She clarified that 12-A was never part of the original Residential Section. Ms. Stoppa noted that, by plat, the only ones that qualify are the three buildings that were Section 12-A.

**Brian Mulheren, 10245 Collins Avenue**, explained that the residents didn't want Bal Harbour to turn into Sunny Isles Beach and didn't want transient business. He spoke in favor of keeping Bal Harbour nice and quiet. He commended Councilman Sanz for bringing up the issue and for the Council agreeing with it.

**Dan Holder, 24 Bal Bay Drive**, spoke in favor of approval and the importance of the Ordinance being absolute.

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

Councilwoman Cohen suggested that Ms. Stoppa's comments be looked into.

**The motion carried (3-1), with the roll call vote as follows: Councilwoman Cohen no; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes; Assistant Mayor Blachar absent; thus becoming Ordinance No. 2012-559.**

Mrs. Horvath read the following Ordinance title:

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE BAL HARBOUR VILLAGE CODE OF ORDINANCES BY AMENDING SECTION 6-42 "FEE FOR CONSTRUCTION ACTIVITIES IN THE SECURITY DISTRICT OF RESIDENTIAL SECTION" OF ARTICLE II "PERMITS AND INSPECTIONS" OF**

**CHAPTER 6 “BUILDINGS AND BUILDING REGULATIONS”; PROVIDING FOR EXPANDED USES OF FEE REVENUES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Rosenfield opened the public hearing.

Mr. Treppeda explained that the RAC (Gated Residential Section Advisory Committee) recommended approval of the Ordinance.

***Dan Holder, 24 Bal Bay Drive and RAC member***, explained that the Committee wanted to expand the use of the fee money, for items other than security.

Mr. Treppeda clarified that the money from the fee was set aside for use by the gated area, which currently totaled approximately \$70,000.00.

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

***A motion was offered by Councilman Sanz and seconded by Councilman Packer to approve the Ordinance. The motion carried (4-0), with the roll call vote as follows: Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes; Assistant Mayor Blachar absent; thus becoming Ordinance No. 2012-560.***

Mrs. Horvath read the following Ordinance title:

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE BAL HARBOUR VILLAGE CODE OF ORDINANCES BY AMENDING SECTION 2-74 “POWERS AND DUTIES” OF DIVISION 3 GATED RESIDENTIAL SECTION ADVISORY COMMITTEE” OF ARTICLE III “BOARDS, COMMITTEES AND COMMISSIONS” OF CHAPTER 2 “ADMINISTRATION”; PROVIDING FOR EXPANDED ADVISORY RESPONSIBILITIES FOR THE GATED RESIDENTIAL SECTION ADVISORY COMMITTEE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.**

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

***A motion was offered by Councilman Sanz and seconded by Councilwoman Cohen to approve the Ordinance. The motion carried (4-0), with the roll call vote as follows: Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes; Assistant Mayor Blachar absent; thus becoming Ordinance No. 2012-561.***

**Ordinances First Reading/Public Hearings:** None.

**Resolutions/Public Hearings:** None.

**7. ORDINANCES FIRST READING/PUBLIC INPUT:** Mrs. Horvath read the following Ordinance title:

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING ARTICLE V “SPECIAL ASSESSMENTS” OF CHAPTER 18 “TAXATION AND**

FINANCE” OF THE BAL HARBOUR VILLAGE CODE OF ORDINANCES BY CREATING SECTION 18-121 “UNIFORM METHOD OF COLLECTION OF SECURITY AND LANDSCAPE SPECIAL ASSESSMENTS”; PROVIDING FOR THE UTILIZATION OF THE UNIFORM METHOD OF COLLECTING NON-AD VALOREM ASSESSMENTS FOR SECURITY AND LANDSCAPE SPECIAL ASSESSMENTS WITHIN THE GATED RESIDENTIAL SECTION OF THE VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Treppeda recommended approval and explained that the Ordinance would allow the assessments to be placed on the property tax rolls.

Mayor Rosenfield opened the item for public input. There being no comments, Mayor Rosenfield closed the item for public input.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve the Ordinance. The motion carried (4-0), with the roll call vote as follows: Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; Mayor Rosenfield yes; Assistant Mayor Blachar absent.*

**8. RESOLUTIONS:** None.

**9. REPORTS:**

**A. VILLAGE MANAGER:**

**Request for Approval for Village Manager to Execute Property Damage Release with Coastal Construction for Settlement of Claim for Damage to Bal Harbour Sewer Line:** This item was removed from the agenda, at the beginning of the meeting.

**Discussion on Use of Ad Valorem Tax Revenue to Pay for Construction of Curbs and Gutters in the Gated Residential Section:** The Gated Residential Section Advisory Committee (RAC) has requested an answer on whether or not ad valorem funds will be used, to pay for replacement of the curbs and gutters in the Gated Area. The Council discussed deferring the item, until more residents were in attendance.

Mr. Treppeda reported that the Village had paid for the curbs and gutters in the past, since the Village owns the storm/sewer system and they were considered part of that. Mayor Rosenfield questioned who the Councilmembers were at the time, if they represented the entire Village, and if the majority of the members were from the gated community. Mr. Treppeda reported that three of the Councilmembers were not from the gated community.

Mayor Rosenfield explained that the question was if the Village should pay for the gutters and curbs in the gated area. She clarified that the gated area residents would pay for the repaving of the streets.

***Dan Holder, 24 Bal Bay Drive, representing the Gated Residential Section Advisory Committee (RAC),*** explained that when the Developers built the streets it was agreed that

the Village would build the curbs/gutters, since it was part of the drainage system. He noted that the Gated Area residents would pay for the roads (repaving), even though the Village used the roads for various items (to service drainage areas and the pumps, to park vehicles in the gated area on meeting dates to allow for more parking in the lot, etc.). He thought that it would be fair for the Village to pay for the gutters/curbs and the Gated Area residents to pay for the streets.

Mayor Rosenfield reviewed the estimate provided in the agenda (\$1,959,720.00 for curbs and gutters). Mr. Treppeda clarified that the project would not happen until approximately 2014.

**Anamarie Kelly, 77 Camden Drive**, noted that the streets are private and were dedicated for the use and enjoyment (there was never a deed). She explained that the Village has the right to access that area, since it's part of the municipality. She explained that, in 1982, the gutters were damaged by the repair of the sewers, which is why they were paid for by the Village. She clarified that the deeds show that the property lines are set at the curbs, so it's the responsibility of the homeowners to keep their curbs in decent order. She pointed out that public funds could not be used for private use, unless there was justification, such as redoing the sewers, etc.

Mr. Treppeda reported that the curbs and gutters needed to be done, since the streets were being done. He discussed the stormwater drainage project, in the area.

**Neil Alter, 9801 Collins Avenue #11U**, requested that the issue be tabled, until the next meeting, based on issues of ownership. He pointed out that the Attorney/Client session regarding the Shops litigation was cancelled.

Mr. Weiss clarified that the session was cancelled, since a mediator had not been selected. He explained that items discussed at the session would be confidential and added that the litigation did not have any effect on this item.

Mr. Weiss explained that an opinion had been provided that the stormwater system was conveyed to the Village in 1952, so the Council could approve the item if they wanted to.

**Beth Berkowitz, 10160 Collins Avenue**, clarified that Mr. Alter tried to point out that the Village was in the process of discussing ownership issues.

Councilwoman Cohen left the meeting.

Ms. Berkowitz agreed that many of the curbs/gutters were broken, primarily on either side of the driveways and due to vehicles parking on top of the curbs, etc. She reported that some of the sewers had cracked concrete, but most of Park Drive was in decent shape. She clarified that the curbs were broken in the past, due to the major sewer work, which is why they were replaced by the Village. She noted that the stormdrains would be repaired under a different method this time, which would be less invasive. Mr. Treppeda agreed. Ms. Berkowitz discussed Attorney General Opinion 8590, which addressed road and drainage improvement in a subdivision being private property. She requested that be looked into, before the Council made a decision.

Councilwoman Cohen returned to the meeting.

The Council discussed the estimate provided in the agenda.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to defer the item, until the June Council meeting. The motion carried (4-0).*

Mayor Rosenfield suggested that residents submit any questions regarding the item to the Village Manager.

### **Discussion of Traffic Enforcement in the Gated**

**Residential Section:** The Gated Residential Section Advisory Committee (RAC) has requested that the Bal Harbour Police Officers be authorized to enforce traffic laws, in the Gated Residential Section.

**Anamarie Kelly, 77 Camden Drive**, reported that Florida Statute required that any police activity in a private residential section, where the streets are dedicated, must have an agreement (signed by all of the homeowners) and repayment of that fee. She clarified that the Gated Area had never paid the Village back for the Police patrolling in there. She discussed misuse of public funds for private use. She clarified that the Police had the right to enter the area, in response to a crime or emergency, but not for patrolling.

**Dan Holder, 24 Bal Bay Drive**, discussed the importance of the issue to those living in the Gated Area. He noted that the original understanding was that signed agreements by three fourths of the homeowners would be sufficient and noted that 100% of the homeowners was not feasible. He clarified that the Gated Area residents were paying for Police protection the same as the other residents. He explained that the Gated Area residents were requesting that the State traffic laws be enforced in there, due to safety issues for children, speeding, etc. He requested that the Council do something, to protect the residents in the Gated Area, from traffic incidents.

Mayor Rosenfield questioned what the Gated Area had done regarding children playing in the streets. Mr. Holder noted that there had been discussion at the last meeting regarding kids not playing in the streets. Councilman Packer suggested that speed bumps be installed, before the paving project. Mr. Holder didn't think that would be a solution to the problem.

**Doug Rudolph, 212 Bal Bay Drive**, concurred with Mr. Holder and pointed out that the residents inside the gates paid a lot of the taxes to help pay for the Police. He discussed the Police boat, which was kept in the Gated Area, and other uses by the Village. Mr. Rudolph discussed the importance of the Police being allowed in the Area and the speed limits being obeyed. He believed that the Gated Area had a super-majority of the residents that were in favor of it. He added that they would never get everybody to sign the agreement and noted that most of the people, who hadn't signed it, lived in the buildings.

**Brian Mulheren, 10245 Collins Avenue**, pointed out that the law needed to be followed and, if 100% was required, then that should be done, otherwise the Village would be liable.

**Beth Berkowitz, 10160 Collins Avenue**, discussed the Police patrolling a private area and private streets. She agreed that people speeded in that area, but pointed out that they were the residents. She didn't know that it was the Village's issue to take care of and thought that it was the Gated Area's issue to deal with.

Councilwoman Cohen requested that the record reflect that legally they needed 100% of

signatures, but thought that it was unconscionable to deny police patrolling a neighborhood with a lot of children, who paid their taxes, etc. She pointed out to the public that the issue was not an easy decision for the Council.

Mayor Rosenfield agreed. Mr. Treppeda reported that the Village had received 64% of the signatures. Mayor Rosenfield requested that additional signatures be submitted.

**Dan Holder, 24 Bal Bay Drive**, explained that some of the residents just didn't want to sign the agreement.

Councilman Sanz pointed out that he had never been contacted to sign an agreement.

**Doug Rudolph, 212 Bal Bay Drive**, clarified that only the property owners were allowed to sign the agreement. He again noted that they would never receive 100% of the signatures.

Councilman Packer questioned if it was possible to lobby, to change the State law to a lower percentage. Mr. Weiss advised that would be possible.

**Doug Rudolph, 212 Bal Bay Drive**, spoke in favor of doing whatever they could.

Mayor Rosenfield noted that it needed to be discussed with the Village Lobbyist and the Village Representative.

Councilman Sanz pointed out that the renters were residents too and were willing to sign. Mr. Weiss noted that the renters would not qualify to sign the agreement.

**Anamarie Kelly, 77 Camden Drive**, pointed out that the laws were clear and suggested that the solution be their private security guard. She noted that the alternative would be for the residents to agree to the Village taking over the streets.

Councilman Packer suggested that Mr. Treppeda and Mr. Weiss be directed to speak with the Village Lobbyist, to see if something could be worked out.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to defer the item until the June Council meeting. The motion carried (4-0).*

Mayor Rosenfield clarified that the Village had the responsibility for the health and safety of all its residents.

**Dan Holder, 24 Bal Bay Drive**, requested that it also be looked into whether or not the Village would have any liability, if someone was injured from speeding in the community.

**B. VILLAGE CLERK:**

**Lobbyist Registration Report: As of May 15, 2012:** The list of Lobbyists registered with the Village was included in the agenda.

**C. VILLAGE ATTORNEY:** No items.

**D. MAYOR AND COUNCIL:**

### **Discussion of Bus Shelters – Councilman Sanz:**

Mr. Treppeda reported that the alternate shallow footing design was received and the electrical items were being worked on. Councilman Sanz pointed out that it had been two years since the item was voted on. Mr. Treppeda explained the process and reported that Homestead Concrete was delayed until the design was received. Councilman Sanz requested the item to be mostly settled by next month.

Councilwoman Cohen suggested that one bus shelter be installed at the St. Regis site, for review, before proceeding with the other shelters (regardless of the cost). Mayor Rosenfield clarified that the Council already debated and approved the design for the shelters. Councilman Packer thought that it would cost a lot of money for Councilwoman Cohen's suggestion. Councilwoman Cohen pointed out that the St. Regis had given the Village \$50,000.00 for their shelter and the Village received \$250,000.00 from the government. Mayor Rosenfield explained that there wasn't a motion from the Council to do that. Councilwoman Cohen thought that it would be prudent to proceed one step at a time. Mayor Rosenfield noted that the motion on the item would be researched. Councilwoman Cohen spoke in favor of providing a prototype first and pointed out that, if that was done, then the remaining shelters would be at a more reasonable cost. She discussed visionaries in the Village, including Mr. Whitman, who had spoken against the shelter design that was selected. Mayor Rosenfield discussed the process that was followed, for the selection of the shelter design.

**Dan Nieda, Building Official**, clarified that there was consensus from the Council for the design selected. He noted that the shelter was being mass produced. He pointed out that once one shelter was ready, the Council may be able to view it, or have it brought to the Village.

Mayor Rosenfield clarified that all of the Councilmembers, except for Councilwoman Cohen, voted in favor of the new shelter design.

**Neil Alter, 9801 Collins Avenue**, spoke in favor of getting the bus shelters done, to provide protection from the elements.

## **10. OTHER BUSINESS:**

### **Public Comment:**

Mayor Rosenfield discussed the Relay for Life event and commended Chief Hunker on his work, to help the community and children. Chief Hunker discussed the Department's joint effort, along with the Council, and Attorney's office.

Councilman Packer commended Mike O'Quinn (Park/Recreation Director), on the Mother's Day event.

Councilman Packer reported that new water meters were being installed, at most of the oceanfront buildings. He explained that he was assured that foliage would be installed around the pipes, to screen them. Councilwoman Cohen spoke in favor of landscaping around the pipes.

**Jacci Suzan Seskin, running for Miami-Dade County Court Judge**, reviewed her resume and encouraged people to vote.

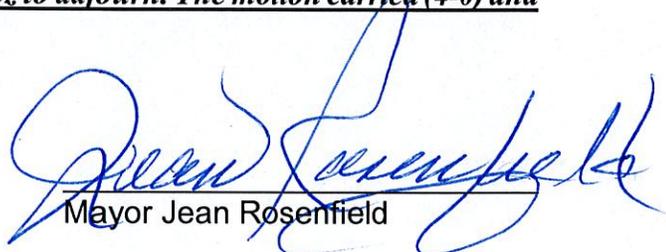
**Tracy Spitz, Kenilworth (10205 Collins Avenue)**, thanked the Council for their dedication, the park, and the Pilate classes on the beach. She asked about exercise equipment on the beach. Mayor Rosenfield invited Ms. Spitz to attend the Resort Tax Committee meetings, where that item could be discussed.

**Anamarie Kelly, 77 Camden Drive**, reported that the rumor was that if the Shops didn't get Bal Cross Drive, then it didn't want the Village Hall property. She added that the Fairfield Manor was served with a lawsuit from the Shops and questioned if the Village would help the Fairfield. She noted that Bal Cross Drive was a private road and the Shops was bullying those that lived in the Residential Section.

Mayor Rosenfield clarified that the Village wasn't in any discussion with the Shops. She added that when the Shops was ready to make a presentation to the Village, then it would be done in an open meeting. She clarified that the Village Attorney provided direction on legal matters.

**11. ADJOURN:** There being no further business, *a motion was offered by Councilman Packer and seconded by Councilman Sanz to adjourn. The motion carried (4-0) and the meeting was adjourned at 8:36 p.m.*

Attest:



Mayor Jean Rosenfield



Ellisa L. Horvath, MMC, Village Clerk