

**BAL HARBOUR VILLAGE COUNCIL MEETING MINUTES**  
**REGULAR MEETING – DECEMBER 18, 2012**

The Regular Meeting of the Bal Harbour Village Council was held on Tuesday, December 18, 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 7:01 p.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, MMC, Village Clerk  
Richard J. Weiss, Village Attorney

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

**2. PLEDGE OF ALLEGIANCE:** The Pledge was led by Susan Packer, Councilman Packer's wife.

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

Mr. Treppeda requested that Tab B be removed from the agenda.

Mayor Rosenfield requested that Tabs L and O be removed, until the January meeting.

*A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to remove Tabs B, L, and O from the Agenda, until the January meeting. The motion carried (5-0).*

**4. SPECIAL PRESENTATIONS:** None.

Mayor Rosenfield requested that her two items under Mayor and Council be taken out of order.

*A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to take the two items out of order. The motion carried (5-0).*

**Update on Department of Justice Matter – Mayor Rosenfield:** Mayor Rosenfield reported the following, in response to the United States Department of Justice letter:

- Police Chief Hunker was placed on administrative leave, pending the results of an investigation by the Department of Justice (DOJ) of the allegations in the report;
- Mr. Treppeda was working with Marcum (the Village's Auditors) to conduct a

review of the Village's Forfeiture program. Upon completion, the Village would share the findings with the Department of Justice and the public, to determine the best course of action;

- The Village was taking steps to dismantle the Forfeiture program:
  - Two contract Officers had been terminated
  - Five vehicles and a significant amount of equipment that was used in the operation and no longer needed would be disposed of;
- The Village would take all steps necessary for a proper conclusion; and
- Dan Gelber was engaged to represent the Village in discussions with the Department of Justice.

**Presentation by Attorney Dan Gelber, Outside Counsel – Mayor**

**Rosenfield:** Mr. Gelber reviewed his resume and explained that he was hired to work with the Weiss law firm, to navigate through the Department of Justice (DOJ) process. He discussed the forfeiture program, its regulation, and the equitable sharing program. He explained that the DOJ oversaw how the assets were forfeited and how they were distributed, which was highly regulated. He explained that the money discussed was money that the Village received from its Police helping the Federal government to forfeit.

Mr. Gelber explained that the DOJ normally conducted compliant audits, to ensure that the forfeiture programs in police departments were operating within the regulations. He added that there was also an external audit program, conducted by Marcum, the Village Auditors. He explained that in May 2011, the Marcum audit revealed many of the deficiencies/allegations reported by the DOJ, which were provided to the Finance Director. He added that the Village retained MRW, forensic accountants, to provide subject matter expertise to the Finance Director, on equitable sharing and money laundering. Mr. Gelber explained that the problem was that when the Marcum audit revealed the deficiencies and MRW gave advice on the matter, the recommendations were not implemented satisfactorily and the same problems were repeated.

Mr. Gelber reported that in August 2011, the DOJ compliance audit started and they weren't happy with the answers that they received from the Village. He clarified that the Village's Finance Department wasn't implementing the results of the report from Marcum, which created a lack of confidence by the DOJ. Mr. Gelber clarified that, due to that, instead of doing a compliance audit the DOJ conducted an investigative audit. He added that the DOJ report repeated much of what was in the Marcum audit.

Mr. Gelber explained that on October 26, 2012, the Village received the letter from the DOJ advising that the Village was ineligible to participate in the program and requesting that money be returned that was expended improperly. He added that the report and its documents were requested by the Village Attorney and received a week and a half ago.

Mr. Gelber reviewed the DOJ report, which included six areas of concern of things that weren't addressed, in response to the audit deficiencies, and twelve allegations, outside the audit, about the Police Department and the Chief (those were sent to other parts of the Justice Department by the DOJ and referred to the Miami-Dade County Police Department by the Village to investigate). Mr. Gelber noted that there were areas of the report that were redacted.

Mr. Gelber reviewed the list of items that pointed out problems with the equitable sharing program including: improper use of Federal money for salaries (\$700,000.00), non-

compliance with travel rules for a month, failure to properly document the submission forms, and not having the proper audit function over the program and bank accounts. He reported those were the same issues that Marcum had told the Finance Director needed to be fixed. He noted that the DOJ had said that the Village Police Department wasn't able to keep up with the regulations, due to the program's quick expansion.

Mr. Gelber requested approval to return the money in the account, as requested by the Department of Justice, which was estimated to be between \$1.3 million and \$1.4 million.

**A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to approve sending the money in the account back to the Department of Justice.**

Councilman Packer discussed his thought that Marcum was partly responsible. He noted that nothing was spent by the Village that wasn't approved by the Council, if it was legal to spend it. Mr. Gelber clarified that Marcum was the Village's outside external auditor, whose job was to produce a report, which was given to the Village. Councilman Packer noted that it wasn't brought to the Council's attention that something was wrong. Mr. Gelber believed that Marcum's audit was provided to the Village's Finance Director, to implement any issues that needed to be addressed. He added that the Council also hired MRW, a consultant group, to provide the Finance Director with additional guidance, to implement the corrections to the items. He clarified that the Finance Director tried to implement the items, but did so inefficiently and repeated the same issues. He clarified that the Finance Department was in charge of implementing Marcum's recommendations.

**Michael Fuderman - Marcum**, explained their responsibility to audit the federal forfeiture program, in accordance with federal guidelines, and report their findings, which were significant in 2010 and 2011. He clarified that it was up to the Village to implement those findings, which were detailed in both reports. Councilman Packer understood that, but noted that it should have been presented in a special paragraph to the Council. Mr. Fuderman explained that the audit was presented two years in a row to the Council. He noted that the findings in the second audit were more severe and they issued an Adverse Opinion on Compliance.

Councilwoman Cohen noted that the Council didn't receive the report or opinion. Mr. Fuderman explained that the report and opinion would go to the Finance Director and the elected body. Councilman Packer agreed, but thought that those adverse items should have been highlighted to the Council. Councilwoman Cohen agreed.

Mr. Gelber clarified that the audits were provided to the Finance Department and the Village did respond to the findings, when they hired MRW to help the Finance Department to implement those findings.

Mr. Weiss clarified that the money being returned was money that was given to the Village by the Federal government, in recognition of the efforts the Village put into seizing the money. He explained that the Village received it as a grant, as part of the equitable sharing program, which the Federal Government now wanted back. Councilman Packer noted that this may not be the only money that would have to be returned. Mr. Weiss explained that the Department of Justice felt that \$700,000.00 should be returned that was spent incorrectly. He added that there may be a request for additional reimbursement, as they were conducting an audit for 2012. He clarified that in the meantime, the DOJ wanted the money back that was left from the money that the Village received from them. He added that the Village was still discussing the amount of money that the DOJ believed was spent

inappropriately.

Mr. Gelber clarified that the issue wasn't an option, but was federal money that needed to be returned.

Mr. Weiss spoke against placing the blame on Marcum, since they were the external auditors. He explained that Marcum's job was to audit the books and they had made it clear in their audit that there were problems with the way that the money was being spent. Councilman Packer agreed that Marcum did their job, but thought that they should have emphasized the problem more.

**Brian Mulheren - 10245 Collins Avenue**, requested that the Council have the United States Attorney General appoint someone, to oversee the Village and the Police Department, and conduct a review. He noted that the Department of Justice had requested \$4.2 million, according to the letter, and questioned why the amount was now \$1.3 million. Mayor Rosenfield clarified that the motion was for the Village to return the amount that was in the account.

**Dina Cellini - 211 Bal Cross Drive**, noted that the DOJ had requested the return of \$4.2 or \$4.4 million. She questioned why there was less money in the fund now, since Mr. Treppeda had reported there was \$2.2 million in the Forfeiture fund last month. She spoke in favor of returning the money that the DOJ had requested.

Mr. Treppeda explained that \$2.2 million included both of the forfeiture funds (Federal and State). He added that spending was done, until the Village was notified to stop.

**The motion carried (5-0).**

Mr. Gelber clarified that there was a question as to when the DOJ had informed the Village to stop spending. He further clarified that the amount given was the balance as of October 26, 2012. He advised that Marcum was providing an audit of 2012, which the DOJ would receive. He noted that it was the Village's intention to be completely transparent with the DOJ. Mr. Gelber will discuss the 2012 audit with the DOJ and then report back on the results of the discussion.

**Michael Fuderman, Marcum**, clarified that the audit Marcum performed was on the federal forfeiture fund and that they were not involved with the audit of the task force and if there was any misspending (DOJ would handle that).

Councilman Packer questioned who reviewed the police fund, which wasn't audited. Mr. Treppeda advised that the police task force did. Mr. Fuderman advised that it wasn't being audited.

Mr. Gelber reported that the DOJ had a lot of confidence in the Marcum Group.

**David Paul - 9801 Collins Avenue**, questioned why the Village's or Mr. Weiss' insurance carrier wasn't notified. He suggested that Mr. Weiss notify his insurance carrier, of the Village's potential claim. Mr. Weiss clarified that his firm had given the Village advice not to spend federal forfeiture money on salaries and the money was spent anyway.

Mr. Gelber explained that his job was to negotiate with the DOJ. He clarified that Marcum and Mr. Weiss had both raised the issue and the Finance Director didn't implement

anything. His impression was that the Finance Director thought that he could just reconcile it at the end, but it wasn't done sufficiently. Mr. Gelber explained that he didn't have all of the information from the DOJ yet.

**Allen Sher - 10275 Collins Avenue**, spoke in favor of a global settlement with the DOJ, before sending them the money. Mr. Gelber explained that was discussed, but the DOJ wanted their money now. He discussed the Village presenting itself as responsible, by giving the DOJ their money.

**David Guillermo - 10175 Collins Avenue**, questioned why the Village was on the front page twice of the Miami Herald. He questioned the difference in the amount between \$1.3 million and \$4.4 million. Mr. Gelber didn't know why the Village was in the newspaper. He explained the difference in the amounts in the account, due to spending and when the Village was told not to use the money. He noted that the DOJ was waiting for the 2012 audit from Marcum. He explained that the Village would provide the DOJ with accounting for the money spent and discuss whether or not the money was spent appropriately.

**Ree Stoppa - 77 Camden Drive**, suggested that the Village contact its insurance carrier, for possible coverage for the investigation. She questioned why outside counsel was being hired, when the insurance carrier could cover that. Mr. Weiss would review the policy and inform the insurance carrier, if necessary.

**Michael Krop - 9601 Collins Avenue**, questioned why all of the forfeiture expenses weren't listed in the budget. Mr. Treppeda explained that a budget could not be prepared for the forfeiture funds. Dr. Krop noted that the Village was being accused of spending money irresponsibly. Mr. Treppeda explained that the expenditures in question were mainly for salaries. Dr. Krop questioned if the expenditures would be shown in the budget, at the end of the year. Mr. Treppeda reported that money spent for equipment went before the Council for approval, but the other money spent would be shown in the audit. Dr. Krop questioned Mr. Weiss' comment that he hadn't approved the expenditures. Mr. Weiss explained that Village staff was told that the forfeiture funds could not be used for salaries. Assistant Mayor Blachar clarified that staff did not include the Council and that she was not aware of the Attorney's recommendation not to spend that money. Dr. Krop pointed out that the Council selected the Manager and the Attorney. He noted that the Council needed to pay attention to what was going on. Assistant Mayor Blachar thought that something needed to be done about the Village Attorney's advice not being followed. Mr. Weiss explained that the Village Attorneys provided advice on many matters, to different staff members, which the Council would not be copied on. He didn't know why the legal advice wasn't implemented. Mayor Rosenfield noted that the Council depended on those people who worked in that program to follow the rules. Dr. Krop questioned who signed the checks made out to the forfeiture fund. Mr. Treppeda reported that he signed the checks and, if they were over \$2,500.00, then another signature would be needed. Dr. Krop questioned Mr. Treppeda if he was told it wasn't a proper expenditure. Mr. Treppeda clarified that there were emails to that extent from Mr. Weiss' office where questions were asked. Mr. Gelber noted that the DOJ had reported that the \$700,000.00 of salaries were paid from the wrong account, which Marcum and the Village Attorneys had advised the professional staff and Finance Department about. He explained that MRW was hired, to help the Finance Department to implement the changes, which wasn't done and was where the breakdown was.

**Neil Alter - 9801 Collins Avenue**, questioned who received the Marcum report (2010 and 2011) and if the Finance Director shared it with the Manager and the Council. Mr. Gelber

reported that the Marcum report was produced to the Village. He added that Mr. Weiss and Marcum both instructed the Finance Director not to spend the money that way and to abide by the comments in the audit, which he failed to do. He noted that the Justice Department had lost a lot of faith that the Village didn't implement the changes.

Assistant Mayor Blachar reported that the Village was considering hiring a full time Finance Director, since there were issues that needed to be addressed. She reported that the current Finance Director was part time, which she thought was a contributing factor.

**Dina Cellini - 211 Bal Cross Drive**, thought that the Village was trying to blame the Finance Director, but she wanted to hear from the Village Manager on what his responsibility was. She reported that she read the audit for 2010 and 2011, which noted that there were material and significant weaknesses, and it was two years before the federal government got involved. She noted that the Council knew that the DOJ was investigating the records from January 2012, but the Village continued to spend federal forfeiture money during that time, which she didn't agree with.

Ms. Cellini questioned if the scope of Mr. Gelber's services included any defense of the allegations or the findings against Chief Hunker. She pointed out that the twelve allegations were not just against the Chief, but were about other individuals. She questioned what the other two DOJ findings were, since Mr. Gelber only listed four (salaries, one month travel expenses, no documentation, and the audit function). Ms. Cellini also requested the difference between the laundering function and the forfeiture function. She questioned if the \$56 million that was laundered included the \$49 million that was seized.

Mr. Gelber clarified that he didn't represent the Chief, who had his own lawyer, but represented the Village. He added that his job was to navigate and to negotiate with the DOJ.

Mr. Gelber reported that he had nothing to do with the twelve allegations in the report, which were referred to Miami-Dade County. He added that the six allegations were repetitive. He noted that the additional two were that they didn't follow guidelines set by a report and they failed to follow their own memorandum of understanding. He explained that the audit findings were that \$700,000.00 federal sharing money was allegedly spent on salaries for employees, \$40,000.00 was used for travel and the per diem amount was in question, the DAGs 71 (paperwork submitted to get the money back) had some improper items, and there were no audit functions (referred in a couple of the points). He didn't know what the redacted parts were. Mr. Gelber explained that laundering money was how criminals received their money and the forfeiture came out of that illicit act of laundering. He explained the forfeiture process.

Mayor Rosenfield clarified that the Councilmembers put themselves on the line and to say that they hadn't been diligent was not the truth. She added that the Council depended on those employed by the Village to run the Village properly. She noted that mistakes happened and the Council would do everything they could to help correct it.

**Brian Mulheren - 10245 Collins Avenue**, thought that the Village Manager was the ultimate responsible person. He noted that the Council allowed a task force to be established with Glades County and allowed the Chief to establish the task force, which was not a federally supervised task force. He noted that the only purpose for it was to make money. Mr. Mulheren read the DOJ report. He questioned where the money and expenditures were. He thought that the Council was responsible and the public relied on

the Council to do what was in the best interest of the residents.

Mr. Mulheren spoke against the Chief being on paid leave. He added that Mr. Weiss had said that he notified Mr. Treppeda that the money shouldn't be spent.

Mr. Weiss clarified that all of the money the Village received came from the federal government, so to say the program was not authorized was not correct, because the DOJ gave the Village all of the money. He added that in order to receive it, the money would go through a forfeiture process, through the courts, for the government to then own the money. He clarified that the Village didn't do any of that forfeiting and it was handled by others.

**Lynne Mullen - 10150 Collins Avenue**, found it hard to believe that only the Finance Director saw the reports from Marcum, since the Village had a Manager and a Council. She thought that the Council should care enough to read the Marcum reports and should have notified the public of the reports. She discussed the importance of the sunshine law and transparency.

**Steve Greenberg - 9800 Collins Avenue**, noted that this was the second time that Chief Hunker had done this. He questioned who was paying Chief Hunker's Attorney fees. Mr. Weiss didn't know, but clarified that the Village was not.

**Doug Rudolph - 212 Bal Bay Drive**, spoke in support of the Council, who served for the best interest of the Village. He didn't recall when any of the residents had complained that the program was wrong or that they didn't want the money or the equipment received from the program. He also noted that none of the residents had read the Marcum reports, which were public record and placed online. He spoke in favor of the Council waiting until all the facts were in and then doing the right thing.

**Beth Berkowitz - 10160 Collins Avenue**, didn't think that the residents should be spoken against, because they had questions and the issue affected all of the residents.

The meeting was temporarily adjourned, by consensus of the Council, at 8:33 p.m.

The meeting was reconvened at 8:45 p.m. The following were in attendance:

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

A moment of silence was observed for those children and teachers in Connecticut, who lost their lives.

## **5. CONSENT AGENDA:**

**Dina Cellini, 211 Bal Cross Drive**, requested discussion for Tabs C, D, E, and F.

Councilman Packer requested discussion for Tab H.

Approval was requested for the following remaining items:

Tab A: November 19, 2012 Council Induction Meeting Minutes;

Tab G: \$51,409.79 in Water/Sewer Funds for emergency repairs to the water main and a water valve in the vicinity of 150 Bal Bay Drive.

*A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to approve Tabs A and G on the Consent Agenda. The motion carried (5-0).*

**Tab C – Motion Approving Recommendations of the Resort Tax**

**Committee:** The request was for approval of the following item, recommended by the Resort Tax Committee:

\$7,000.00 Resort Tax Compliance Audits

***Brian Mulheren - 10245 Collins Avenue***, questioned the cost of \$7,000.00 for an audit.

Mayor Rosenfield explained that the Village was auditing the properties that submitted resort taxes, to ensure compliance. Mr. Treppeda reported that the amount was for five additional audits and some of the audits had already been approved and conducted on several properties. He reported that the Village planned to conduct audits, on all of the larger venues. Mr. Mulheren clarified that all of the properties that collected resort taxes would be audited. Mayor Rosenfield agreed.

*A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tab C. The motion carried (5-0).*

**Tab D – Motion Approving Performance Bonuses for General**

**Employees:** The request was for approval of \$73,980.38, for performance bonuses for the General Employees.

***Dina Cellini - 211 Bal Cross Drive***, requested an explanation of the bonuses and if contract employees were eligible.

Mayor Rosenfield explained that the bonus program was for general employees, not contract employees. Mr. Weiss explained that in lieu of raising salaries each year, the Council had agreed to provide the employees a COLA (cost of living) and an annual bonus (1%-4%), based on performance. Ms. Cellini noted that some of the employees received up to a five percent bonus. Mr. Treppeda explained that department heads and exempt management employees, which were not eligible for overtime, could receive up to a five percent bonus. He clarified that the Finance Director and any other contract employees would not be eligible. Mr. Weiss clarified that the Manager and Clerk were not included in the amount and would be considered under a separate item. Ms. Cellini spoke in favor of performance bonuses for the general employees. Mayor Rosenfield clarified that the Council would be reviewing the process next year.

*A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tab D. The motion carried (5-0).*

**Tab E – Motion Approving Installation of Channel Markers:** The request was for \$3,788.00, in resort tax funds, for American Underwater Contractors to remark the beach access channel, behind the St. Regis Bal Harbour. In addition, if the Council would like to prohibit motorized vessels in the exclusion zone, then the Village Attorney would need to be directed to prepare a modification to the Ordinance for the Council's consideration.

***Dina Cellini - 211 Bal Cross Drive***, questioned if the Ordinance was changed to prevent motorized vessels, as discussed at the last meeting. Mr. Treppeda explained that the request was to amend the Ordinance, to allow non-motorized watercraft operators. Ms. Cellini clarified that no motorized vessels would be allowed to come to the beach. Mr. Treppeda agreed.

***Brian Mulheren - 10245 Collins Avenue***, requested clarification on what would be allowed within the channel markers. Mr. Treppeda explained that a canoe and paddle boat would be allowed. Mr. Mulheren spoke in favor of a size restriction, since a sailboat could be allowed. He spoke against the channel markers, due to the abundance of swimmers in that area.

Councilman Packer suggested that the St. Regis pay for the markers, since it was for their benefit, even though resort tax funds were to be used. Mr. Treppeda explained that the Ordinance provided that the Village pay for the channel markers, which the Council could change. He reported that there was another channel marker area, behind the ONE Bal Harbour.

***A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to approve Tab E. The motion carried (4-1), with Councilman Packer voting no.***

**Tab F – Motion Approving Funds for Marcum to Assist with Department of Justice Audit Response:** The request was for approval of up to \$7,500.00, for the services of the Village's Auditor (Marcum), to assist with the Department of Justice audit response, if needed.

Mr. Treppeda explained that the Department of Justice was comfortable with Marcum to work with the Village.

***Dina Cellini - 211 Bal Cross Drive***, spoke in favor of approval, but suggested a cap for Marcum, as well as the legal fees for Attorney Dan Gelber's law firm.

***Brian Mulheren - 10245 Collins Avenue***, spoke against approval and suggested that the Department of Justice conduct a full investigation.

***A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tab F. The motion carried (5-0).***

**Tab H – Motion Approving Copy Machine Lease for Building Department:** The request was for approval of a copy machine lease (\$145.92 monthly for 36 months) with Toshiba, for the Building Department.

Councilman Packer suggested purchasing a machine and service, in lieu of leasing one. Mr. Treppeda spoke against doing so, since the machines needed to be replaced

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frequently.

*A motion was offered by Assistant Mayor Blachar and seconded by Councilman Packer to approve Tab H. The motion carried (5-0).*

## **6. PUBLIC HEARINGS:**

**Quasi-Judicial Public Hearings:** The following hearing title was read by Mrs. Horvath:

**Consideration of a Request from Bay Colony of Bal Harbour Inc. (Owner of the property located at 290 Bal Bay Drive, Bal Harbour, FL) for a variance from Code Section 15-36(a), in order to attach a sign to the Quarzo Hotel building:** Mr. Weiss explained the procedures for the quasi-judicial process. No disclosures were made by the Council. Those planning to speak at the hearing were sworn in by Mrs. Horvath.

***Daniel Nieda - Building Official***, presented the sign, reviewed his report, and provided a favorable recommendation. He reported that the Architectural Review Board provided a favorable recommendation on September 5, 2012, subject to reducing the logo to the maximum permitted height of 30 inches. Mr. Nieda concluded that the standard to grant a variance had been met.

Mr. Weiss corrected Mr. Nieda's report and noted that Section 15-36(a) of the Code indicated that signs may NOT be attached and may NOT contain written matter other than the name of the establishment. He explained that the Council needed to decide whether or not it would grant a variance, to allow the sign to be attached to the building.

Councilwoman Cohen noted that the Council was misinformed, since there was an error in Mr. Nieda's report, concerning what the Code allowed.

Mayor Rosenfield opened the public hearing.

***David Paul - 9801 Collins Avenue***, noted that he wanted to speak on Tab K, not the current issue.

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

Councilwoman Cohen thought that the "Q" sign was tasteful, but suggested that they use the Quarzo name. Mr. Weiss clarified that for this item the Council needed to decide only if the sign should be attached to the building.

Councilman Packer questioned if approval would set any precedence and if the Code should be changed. Mr. Weiss explained that denial of a similar application would have to have a rational basis. He added that if the Council wanted to change the Code, then it could approve this variance and then have the Village Attorney come back with a more liberal sign code. Councilman Sanz spoke against changing the Code, which would allow anyone to put a sign up on their building. Mr. Weiss explained that no sign would be permitted, unless it came before the Council for approval.

**Juan Arcila - Managing Partner Bal Harbour Quarzo Hotel (290 Bal Bay Drive)**, explained that they tried to make the sign small, but still legible, for guests to find it.

Councilwoman Cohen agreed that the property was difficult to find.

Assistant Mayor Blachar agreed that the existing signage was awful and spoke in favor of the proposal.

**A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to grant the variance. The motion carried (5-0).**

The following hearing was considered by the Council:

**Consideration of a Request from Bay Colony of Bal Harbour Inc. (Owner of the property located at 290 Bal Bay Drive, Bal Harbour, FL) for a variance from Code Section 15-36(a), for a sign for the Quarzo Hotel. Pursuant to Village Code Section 15-2, signs must be approved by the Village Council:**

**Daniel Nieda, Building Official**, reviewed the sign and provided a favorable recommendation. He advised that the Architectural Review Board also provided a favorable recommendation on September 5, 2012, subject to reducing the logo to the maximum permitted height of 30 inches.

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

Councilman Packer spoke in favor of approval.

Councilwoman Cohen pointed out that, in accordance with the Code, nothing but the name of the establishment should be on the sign, which she agreed with. She spoke against using the words "boutique hotel." Mr. Nieda noted that this would be the only hotel allowed in the RM-5, since the Code was changed and that use was no longer permitted there. Councilwoman Cohen pointed out that could change in the future.

**Juan Arcila - Managing Partner Bal Harbour Quarzo Hotel (290 Bal Bay Drive)**, clarified that the legal name was the Bal Harbour Quarzo Boutique Hotel. Councilman Packer questioned if that was the name on the stationary. Mr. Arcila advised that it was and that was also how the hotel was marketed. Mr. Weiss agreed and reported that it was listed on their web site, Facebook, and corporate documents as the Bal Harbour Quarzo Boutique Hotel.

**Johanna Lundgren, Village Attorney**, reported that their license, issued by the Department of Business and Professional Services, also listed it as the Bal Harbour Quarzo Boutique Hotel.

Assistant Mayor Blachar pointed out that they would be using less space with Q. Councilwoman Cohen questioned why they were using Q and not using Quarzo. Mr. Arcila explained that was their logo. Councilwoman Cohen voiced concern for emergency vehicles to find the property. Mr. Arcila explained that the ground sign used the name Quarzo.

Councilman Sanz clarified that this was the only hotel allowed on the west side. Mr. Nieda agreed. Councilman Sanz questioned if the other buildings were grandfathered in. Mr. Nieda clarified that there were two more buildings that were part of the same hotel project.

Assistant Mayor Blachar spoke in favor of approval.

*A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to approve the sign. The motion carried (5-0).*

**Zoning Hearings/Quasi-Judicial Public Hearings:** None.

**Ordinances Second Reading/Public Hearings:** The following Ordinance was read, by title, by Mrs. Horvath:

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING," AMENDING ARTICLE I "IN GENERAL" SECTION 21-1 "DEFINITIONS" REGARDING DEFINITIONS OF PERMITTED USES LISTED IN THE ZONING DISTRICT REGULATIONS; AMENDING ARTICLE III "DISTRICT REGULATIONS" DIVISION 10 "OF OCEAN FRONT DISTRICT," SECTION 21-281 "PERMITTED USES" AND SECTION 21-299 "PD PLANNED DEVELOPMENT DISTRICT" OF THE CODE OF ORDINANCES IN ORDER TO AMEND THE PERMITTED USES WITHIN THESE DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Rosenfield opened the public hearing.

***Stanley Price (Bilzin Sumberg Baena Price & Axelrod LLP) – Attorney for Bal Harbour Executive Suite LLC***, spoke against approval of the Ordinance. He noted that the Harbour House Board approved Dr. Shuster purchasing the unit. He also submitted letters from the Bellini and three other condominium associations in favor of his client purchasing the unit. Mr. Price noted that the residents on the oceanfront were against the restrictions.

***Gene Howard – Attorney representing the Owners of the CU1 Unit***, submitted a letter from the Bal Harbour Tower Association. He noted that his client also had approval from the Bellini and Harbour House Association. He explained the importance of a doctor in the Village and didn't see any reason to restrict the use, to prohibit his client to sell the space.

***Ree Stoppa - 77 Camden Drive***, spoke against approval of the Ordinance. She noted that there was no difference between this doctor and the one that was there before. She spoke against the Council interfering.

***Susan Motley (Greenspoon Marder, P.A.) - Attorney representing Dr. Bernard Shuster (Contract Purchaser for the space)***, reported that the space had been dedicated for commercial use in the condominium documents and the Association approved the purchase. She reviewed Dr. Shuster's resume. She spoke against approval of the Ordinance and noted that approval of the Ordinance would take away valuable property rights.

***Allen Shirl - 10275 Collins Avenue and Harbour House Board Member***, did not speak as a Boardmember, but as a private individual. He noted that not all of the Board members

were consulted (only three were). He spoke against Dr. Shuster occupying the space. He clarified that the Board had not voted or passed anything. He noted that although there were letters from counsel that the Association backed the sale, most of the residents were not aware of the issue. He suggested a survey of the building residents. Mr. Shirl discussed issues with the driveway and entrance, as well as limited parking. He noted that if a doctor was in the space previously, it was a long time ago.

**David Paul, 9801 Collins Avenue**, spoke against the Ordinance, since it affected all of the buildings economically and the lifestyles of the residents. He commended Mr. Weiss and his integrity.

**Stacy Rothman - 10275 Collins Avenue**, noted that the Harbour House Association didn't know anything about this and the Owners would be affected by the business. She added that additional doctors, other than Dr. Shuster, would also use the space, which would affect the parking.

**Marsha Chonchol - 9801 Collins Avenue (Balmoral President)**, spoke against approval of the Ordinance.

**Beth Berkowitz - 10160 Collins Avenue**, spoke in favor of the building residents having a say of what they wanted in their buildings. She noted that no medical practice could be sustained by the residents alone and outside clients would be brought in. She noted that the Harbour House residents had discussed concerns for safety and parking.

**Eileen Shirl, 10275 Collins Avenue**, discussed concerns if there was a fire at the building, due to the crowded entrance. She didn't see the benefit of having a doctor at the building, since he was a plastic surgeon. She also discussed the clients coming in from outside the building and its affect on parking. She agreed that the residents should have a say and no doctor was in the space before.

**Elizabeth Brown - 121 Bal Cross Drive and Real Estate Agent for the Sellers**, reported that when the contract was entered into, a medical office was an allowed use. She noted that if the Ordinance was passed, then a restaurant could purchase or lease the space, which would create more traffic.

**Brian Mulheren - 10245 Collins Avenue**, discussed the serious entrance and parking problems at the Harbour House building and voiced concern regarding access for emergency vehicles. He suggested that the Building Official and Fire Department review it, for ADA compliance, etc. He suggested that the Balmoral be grandfathered in, since the building could accommodate additional parking needs.

**Dan Nieda, Building Official**, reported that the Harbour House building complied with ADA and Fire Department requirements.

**Steve Greenberg, 9800 Collins Avenue**, discussed the lack of parking spaces and noted that the doctor would be running a hospital, with ambulances entering and exiting the property. He discussed concern with emergency vehicles being able to access the building.

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

Councilwoman Cohen clarified that Dr. Elias had an office in the north tower (the building that was imploded), not the south tower (the current Harbour House building), and the Bal Harbour Village Regular Council Meeting Minutes 12/18/2012

space had always been used for real estate or sales. She noted that the Code specified that the space was to be used for the primary use of the residents. She didn't know how a plastic surgeon would be an allowed use. Councilwoman Cohen was sensitive to the Balmoral, but pointed out that the Harbour House would be adversely affected.

Assistant Mayor Blachar spoke against approval of the Ordinance.

Councilman Packer spoke in favor of the Ordinance, to limit what was permitted in the residential buildings on the east side.

Mayor Rosenfield spoke against approval of the Ordinance. She urged residents to be more involved in their buildings and to find out what was going on.

Councilman Sanz questioned if a notice was sent to the residents regarding second reading of the Ordinance. Councilwoman Cohen reported that she notified some of the people, but the majority of the residents in the building didn't know this was being considered.

Councilman Sanz pointed out that the Village was infringing on private property. He would like to hear from the Harbour House residents.

Assistant Mayor Blachar clarified that the Ordinance applied to all of the buildings on the east side, not just the Harbour House. She spoke against restricting the buildings. She spoke against voting just to suit the Harbour House.

Mr. Weiss clarified that if the Ordinance passed, there was a vested rights provision. He didn't know if the doctor was aware that the space was for the primary use of the residents of the building, in the current Code. He agreed that this wasn't about the Harbour House, but that it covered all of the buildings in the Ocean Front District.

Councilman Packer pointed out that Councilman Sanz had lived at the Harbour House and had noted that when a doctor's office was in the building it created a crowd of people. He clarified that the Ordinance listed the uses that would be allowed in the condominiums, which were not located in a commercial area.

Councilman Sanz agreed that he did live in the Harbour House (south) building which had a restaurant, but clarified that the medical office was in the north building.

**A motion was offered by Councilwoman Cohen and seconded by Councilman Packer to approve the Ordinance. The motion failed (2-3), with the roll call vote as follows: Assistant Mayor Blachar no; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz no; and Mayor Rosenfield no.**

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

**Resolutions/Public Hearings:** None.

**7. ORDINANCES FIRST READING/PUBLIC INPUT:** The following Ordinance was removed from the agenda until the January meeting:

**AN ORDINANCE OF BAL HARBOUR VILLAGE AMENDING THE BUDGET FOR THE GENERAL FUND FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2012, AND ENDING SEPTEMBER 30, 2013, BY REALLOCATING FUNDS WITHIN THE POLICE DEPARTMENT AND TRANSFERRING FUNDS FROM GENERAL CONTINGENCY TO THE POLICE DEPARTMENT AND ESTABLISHING AN EFFECTIVE DATE.**

**8. RESOLUTIONS:** None.

**9. REPORTS:**

**A. VILLAGE MANAGER:**

**Village Manager DROP Update:** This item was discussed later in the meeting.

**Discussion of Full Time Finance Director:** This item was discussed later in the meeting.

**Discussion of Beach Renourishment and Sand Transfer Project and Additional Funds for Consulting/Coordination – Brian Flynn, Miami-Dade County and Penny Cutt, Coastal Systems International:** Mr. Flynn reported that, due to erosion from Hurricane Sandy, the County would look into trucking in sand to address certain areas that were public safety hazards.

Mr. Flynn estimated the Army Corps of Engineers complete beach renourishment project to start in the spring, due to a delay in permitting and other issues.

Mr. Flynn reported that he was working on the sand transfer from Haulover Park, with Coastal Systems and the Village. He noted that a Memorandum of Understanding needed to be approved by the Council and the County Commission. He discussed problems with the grant application process for State funds, due to the funding cycle. He explained that a resolution needed to be approved by the County Commission, prior to consideration for the grant.

Assistant Mayor Blachar left the meeting.

Councilman Packer questioned if the Village would have to wait another year.

Mr. Flynn clarified that the project would still include extending the jetty, which would entail approval from the Army Corps of Engineers, navigations issues, State land issues, etc. Councilman Packer questioned how the sand transfer dredging would be affected. Mr. Flynn advised that would not be affected. He noted that they didn't want to have the jetty extension and the sand transfer together. Mayor Rosenfield questioned what the \$21,660.00 was for. Mr. Treppeda reported that the money was for Coastal Systems, for consultant fees.

Assistant Mayor Blachar returned to the meeting.

Mayor Rosenfield discussed disappointment that the Army Corps project would be delayed.

Mr. Flynn will provide a brief summary update, to provide to the residents.

**Michael Krop - 9601 Collins Avenue**, questioned the cost of the complete restoration. Mr. Flynn estimated the total cost to be \$5.7 million, for the Army Corps of Engineers project. Dr. Krop questioned what the \$1 million reserved for beach renourishment was for and if it was enough. Mayor Rosenfield reported that was reserved for hurricanes. Dr. Krop suggested that the renourishment fund be increased, in case the Village needed to renourish the beach itself, in the future. Mr. Weiss noted that Code section hadn't been amended, since 1974.

**Brian Mulheren - 10245 Collins Avenue**, noted that extending the jetty was never discussed, only dredging was. He discussed the urgency to renourish the beach and questioned the problem with permitting and requested to know who held it up, so the Village could put pressure on its Congressional representatives. Mr. Flynn reported that sometimes the permitting process was delayed, not due to anyone's fault. He reported that the County worked diligently with their Congressional delegation very closely. He explained that sometimes informational items came up during the permitting process, which is what happened.

**Neil Alter - 9801 Collins Avenue**, expressed disappointment that the Village was just learning about the delay.

**Penny Cutt - Coastal Systems International (coastal engineering firm representing the Village)**, distributed and reviewed the cost spreadsheet. She clarified that the jetty modification (extension) was necessary for the bypass to work and had always been part of the plan.

Councilman Packer questioned the amount the County would contribute. Ms. Cutt clarified that the County hadn't committed to an amount, but that there was potential funding from the State (up to 75%), the Florida Inland Navigation District FIND (up to 50% of the remaining 25%), and the County (possibly the remaining percentage).

Ms. Cutt reported that there was funding from FIND towards permitting (up to \$31,000.00). She explained that part of the agreement with FIND required that the areas of the project be open to the public for 25 years and a portion of the project (north of the Inlet) was on County property. She explained that, due to that, the Village needed to enter into a joinder agreement with the County, so the Village could execute the FIND agreement and receive that funding. She reported that the FIND agreement needed to be submitted by March 30th. Ms. Cutt reported that the applications were ready a year ago to submit for permitting, but the County needed to be the Applicant and had requested an Interlocal Agreement with the Village, before signing those applications. She recommended that the Village move forward and agree to bid out the project, contract it, do the construction administration, and administer the project by fronting the money and then being reimbursed for it (not waiting for the County). Ms. Cutt noted that Coastal Systems could provide those services, with an estimated cost provided on the spreadsheet.

Councilman Packer questioned if County Commissioner Sally Heyman had been apprised of the situation. Mr. Flynn reported that she was aware that the County was working with the Village, but suggested that the Village schedule a meeting with her to discuss it.

Ms. Cutt requested Council approval to revise the Interlocal agreement, with the Village proceeding with construction administration, bidding, and construction, and to be able to

work with the Village Attorney. She explained that the Interlocal Agreement would come to the Council for approval and the County had committed to signing the permit applications, once the Village approved an Interlocal Agreement, without waiting for the County Commission to approve and execute the Agreement.

Mayor Rosenfield questioned if there would be additional consulting fees. Ms. Cutt reported future estimated costs were included in the spreadsheet. Mr. Treppeda reported that costs for the engineering design would be \$225,000.00, in the future.

**Ree Kelly - 77 Camden Drive**, questioned when DERM submitted the Interlocal Agreement to the Village. Ms. Cutt reviewed the process.

Ms. Cutt requested approval of \$21,660.00 (resort tax funds). Mr. Treppeda reported that the Village had invested \$160,040.00 thus far.

*A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar to approve \$21,660.00 and to get the ball rolling. The motion carried (5-0).*

**Acting Police Chief:** Mayor Rosenfield introduced Acting Chief Michael Daddario and thanked him for serving. Acting Chief Daddario ensured the residents that the Police Department was still functioning.

**Update on Bus Shelter Project and Request for Approval of Additional Funds for Replacement of Pavers:** The request was for approval of two types of pavers, to replace the pavers around the bus shelters, since the existing ones were no longer available. Mr. Treppeda displayed the pavers, which were recommended by the Landscape Architect and Building Official.

*A motion was offered by Councilman Packer and seconded by Councilman Sanz to approve the new pavers. The motion carried (5-0).*

**Discussion of Police Department Budget Cuts:** This item was removed from the agenda, until the January meeting.

**Village Manager DROP Update:** Mr. Treppeda reported that his participation in the DROP and his employment with the Village would end on April 30, 2013, after 32 years of service (17 as Village Manager). He requested direction from the Council on proceeding with a search, for his replacement. He distributed a proposal from Colin Baenziger & Associates. He also recommended a search for a full time Finance Director.

Mayor Rosenfield requested Mr. Treppeda to come back with proposals from additional search firms, for a Village Manager and Finance Director. Councilwoman Cohen agreed.

**B. VILLAGE CLERK:**

**Lobbyist Registration Report: As of December 18, 2012:**  
The list of Lobbyists registered with the Village was included in the agenda.

**C. VILLAGE ATTORNEY:** Mr. Weiss did not report on any items.

**D. MAYOR AND COUNCIL:**

**Update on Department of Justice Matter – Mayor**

**Rosenfield:** This item was discussed earlier in the meeting.

**Presentation by Attorney Dan Gelber, Outside**

**Counsel – Mayor Rosenfield:** This item was discussed earlier in the meeting.

**Consideration of Annual Performance Bonuses for**

**Village Manager and Village Clerk:** Mr. Treppeda and Mrs. Horvath left the meeting.

***Dina Cellini - 211 Bal Cross Drive***, spoke against Mr. Treppeda receiving a performance bonus. She also suggested that, in light of the Department of Justice investigation, all of the administrative staff bonuses be put on hold. She noted Mr. Treppeda signed the checks after the Village Attorney put in writing that forfeiture funds could not be used for salaries and there were a lot of unanswered questions and nobody was exempt.

***Brian Mulheren - 10245 Collins Avenue***, agreed that all bonuses for administrative staff should be on hold, until the Village knew its financial situation. He spoke against Mr. Treppeda receiving a bonus, at least until the Village knew what was going on.

***Doug Rudolph - 212 Bal Bay Drive***, suggested that it made sense to wait, until the facts were in. He noted that aside from the issue, he appreciated Mr. Treppeda.

Assistant Mayor Blachar spoke in favor of waiting on the bonus for Mr. Treppeda and approving a 5% bonus for Mrs. Horvath.

**A motion was offered by Assistant Mayor Blachar and seconded by Councilwoman Cohen to award a bonus (5%) for Mrs. Horvath and put Mr. Treppeda's bonus on hold, pending further investigation.**

Councilman Sanz suggested waiting on both bonuses. Assistant Mayor Blachar spoke against doing that and thought that Mrs. Horvath should receive the bonus and shouldn't be penalized, due to the problems. Councilwoman Cohen agreed.

Councilman Packer questioned if the Council could provide Mr. Treppeda with a bonus down the road, if his was put on hold. Mr. Weiss advised that could be done if he was still with the Village, but not after he left.

**The motion carried (5-0).**

Mr. Treppeda and Mrs. Horvath returned to the meeting.

**10. OTHER BUSINESS:**

**Public Comment:**

***Beth Berkowitz - 10160 Collins Avenue***, complained about the new traffic light, in the middle of the sidewalk, outside the Shops across from the St. Regis. She noted that DOT (Department of Transportation) was supposed to widen the sidewalk there. Councilman

Packer agreed that it was dangerous for pedestrians and suggested that a resolution be sent to the DOT.

*A motion was offered by Councilman Packer and seconded by Assistant Mayor Blachar requesting that DOT recess or move (toward the grass) the pole that was put up for the traffic light. The motion carried (5-0).*

**Dina Cellini - 211 Bal Cross Drive**, questioned if the following items for the Police Department budget cuts had been implemented: no promotions, optional pay increases or non-essential overtime. Mr. Treppeda reported that had been implemented. Ms. Cellini suggested that the lease for the modular building (forfeiture VIN trailer) be terminated.

Councilman Packer requested that a budget committee and an audit committee be appointed at the next meeting.

Mayor Rosenfield clarified that the specialized police unit no longer existed. She noted that the Village had an audit company to audit the budget. She agreed that a budget committee should be considered and suggested that Councilman Packer provide a proposal.

Councilman Packer recommended that the discussion of redistricting be placed on the January agenda.

The Council discussed whether or not to terminate the trailer lease.

*A motion was offered by Councilwoman Cohen and seconded by Councilman Packer for Mr. Treppeda to look into terminating the lease of the VIN trailer and, if practical and allowed in the lease, terminate the lease as soon as possible. The motion carried (5-0).*

**Yaffa Raviv - 20 Park Drive #10**, requested that the Council create an ordinance to prohibit smoking in her building. She discussed problems at her building with smoke coming through the vents to her unit, which her Association would not help with. Councilman Packer requested Mr. Treppeda to speak to the Building Official, to see if there was anything structurally wrong with the building. Ms. Raviv also requested that the building only be allowed to rent to non-smokers. Mayor Rosenfield didn't know if there was anything that the Council could do. Mr. Weiss will see if anything legally could be done.

Councilwoman Cohen suggested that a letter (along with the Code section) be sent from Mr. Treppeda to the Harbour House Board of Directors, advising them that whoever purchased the space needed to abide by the Village Code (specifically that the space was for the primary use of the residents). Mr. Weiss suggested that the letter and Code section be sent to all of the building associations, in the Ocean Front District.

Assistant Mayor Blachar noted that she had received complaints that there wasn't as much police presence, on the west side of Collins Avenue, as in the past.

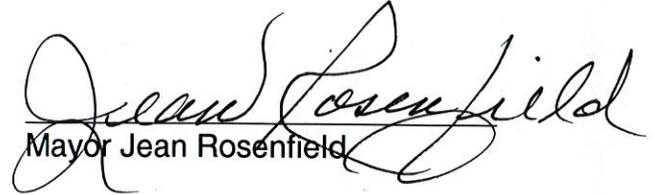
Acting Chief Daddario will address the issue and discussed plans for the police to patrol on a Segway.

Councilwoman Cohen spoke against the police cars having tint that was too dark. Acting Chief Daddario explained that those were traffic enforcement vehicles.

Councilwoman Cohen voiced concern about the memo received from the Building Official, with two typos, which she relied on for correct information. Assistant Mayor Blachar agreed that was a concern.

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

Attest:



Mayor Jean Rosenfield



Ellisa L. Horvath, MMC, Village Clerk