



CITY OF NEWPORT BEACH HARBOR COMMISSION AGENDA

Council Chambers – 100 Civic Center Drive
Wednesday, August 10, 2016, 6:30 PM

Harbor Commission Members:

Paul Blank, Chair
Dave Girling Brad Avery Bill Kenney
Duncan McIntosh Joe Stapleton Doug West

Staff Members:

Chris Miller, Harbor Resources Manager
Shannon Levin, Harbor Resources Supervisor

City Council Liaison:

Duffy Duffield, Council Member

1) CALL MEETING TO ORDER

The meeting was called to order at 6:30 p.m.

2) ROLL CALL

Commissioners: Paul Blank, Chair
 Dave Girling
 Bill Kenney
 Duncan McIntosh
 Joe Stapleton

Absent: Brad Avery
 Doug West

Staff Members: Chris Miller, Harbor Resources Manager
 Shannon Levin, Harbor Resources Supervisor
 Andrew Maiorano, Deputy City Attorney

3) PLEDGE OF ALLEGIANCE – Commissioner McIntosh

4) PUBLIC COMMENTS

Roger Gooding requested the Commission review the three-hour time limit for the 15th Street dock at the July Commission meeting. Dinghies were being locked to the dock on the outside. He had not been able to use the visitor slips at the marina. He requested the Commission consider returning the time limit to 15 minutes.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least seventy-two (72) hours in advance of each regular meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. If requested, this agenda will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Please contact the City Clerk's Office at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3005 or cityclerk@newportbeachca.gov.

Chair Blank advised that the subcommittee responsible for public piers had discussed the situation. As soon as practicable, bayward side of the 15th Street pier would be repainted and the limit restored to 15 minutes. The paint contractor would be onsite restriping bayward floats the following day.

5) APPROVAL OF MINUTES – July 13, 2016 Minutes

Chair Blank noted Mr. Mosher's comments would be incorporated into a motion to approve the Minutes. In addition, Council Member Duffield was not present.

Commissioner Kenney added that "anchorage was used primarily during the week" should be "weekend" at the top of page 2. The sixth paragraph on page 3 should reflect that it was Mr. Hewitt's opinion that the space was not a fairway.

Harbor Resources Manager Chris Miller indicated the spelling of Commissioner Kenney's name would be corrected. He requested Item Number 2 include a statement that Commissioner West moved to continue the item to the next Harbor Commission meeting on August 10th. Commissioner Avery seconded the motion.

Commissioner Kenney moved approval of the Minutes as amended. Commissioner Stapleton seconded the motion. The motion carried with 4 ayes, 0 no and 1 abstaining votes.

6) CURRENT BUSINESS

1. *Waterfront Development in Newport Harbor: An Overview*

At the request of the Harbor Commission, Community Services Director Kim Brandt will present an overview of waterfront development in Newport Harbor.

Recommendation:

1. Receive and file.

Community Services Director Kim Brandt reported DJM Capital had been renovating Lido Marina Village. The Newport Harbor Yacht Club received Coastal Commission approval for reconstruction of the facility and had begun the plan check process. She expected the residential portion of the Newport Bay Marina project would open in the near term. The Aerie residential project located in Corona del Mar was under construction. An application for a new mixed-use project located in the vicinity of 29th Street had been submitted but was not complete. City staff was currently developing a Master Plan for revitalizing Mariners' Mile. The next community workshop was scheduled for September 26, 2016. City staff had been working with the Coastal Commission for certification of the City's Local Coastal Plan. The Coastal Commission scheduled it for a public hearing in September 2016. With a certified Local Coastal Plan, the City could issue Coastal Development Permits for the land side. The harbor area would remain under the jurisdiction of the Coastal Commission. The Federal Emergency Management Agency (FEMA) was conducting an Open Pacific Coast Study to review modeling for flood hazards. The City Council authorized City Staff to hire a consultant to review and analyze FEMA modeling, so that the City could appeal proposed FEMA flood maps.

Commissioner Stapleton inquired whether City Staff had been in contact with the new owner regarding Coast Highway or Mariners' Mile. Director Brandt advised the owner was participating in the study as they developed plans for their property.

Chair Blank asked if City staff had received plans for redevelopment of the Kerckhoff Marine Laboratory. Director Brandt indicated City staff had received preliminary plans for modernizing the facility. The application was incomplete. Chair Blank related that the current plan was to complete the original architectural rendering. Chair Blank attended the community workshop regarding Mariners' Mile in July 2016. Public concerns included a continuous boardwalk from the Bay Club to the Arches Marina. He planned to advocate for waterside access to businesses. Chair Blank inquired whether the current flood base was 9 feet. Director Brandt indicated the base on the harbor side was 8 feet, and the other side was 13 feet. Chair Blank asked if the base elevation for the harbor would change from 8 feet to 13 feet. Director Brandt responded that the harbor base elevation would remain at 8 feet. FEMA anticipated a

greater area of flooding. City Staff needed to analyze the assumptions of FEMA's model to ensure it accurately reflected conditions in Newport Beach. Chair Blank and Commissioners Girling and Stapleton were meeting with the Chamber of Commerce's Marine Committee to identify businesses they collectively agreed were essential to the harbor and either needed harbor-front space to operate or were essential to having a vibrant harbor. Chair Blank wished to ensure City Staff, when evaluating Mariners' Mile, was aware of results of the collaboration. Director Brandt suggested he provide information to her, and she would integrate it with the planning process for Mariners' Mile. He would provide a list of agreed businesses once it was formalized.

Commissioner Kenney requested an update regarding the Back Bay Landing project. Director Brandt reported the Shopoff Group had acquired the property and was interested in redeveloping the project. An application had not been submitted. Commissioner Kenney inquired whether the previous owner had submitted an application to the Coastal Commission. Director Brandt clarified that the project had received a Coastal Land Use Plan Approval. The next phase would be approval of a development plan.

2. Continued Item: Appeal – 2888 Bay Shore Drive (Newport Marina Reconstruction)

This item has been continued from the July 13, 2016 Harbor Commission meeting in an effort for both parties to propose a compromise.

Recommendation:

1. Uphold, amend or reverse the Harbor Manager's issuance of the Approval in Concept.

Commissioner McIntosh requested permission to remain in the room in order to follow the discussion. Deputy City Andrew Maiorano opined that an argument could be made that Commissioner McIntosh's presence in the room could influence a decision. As a potential compromise, Commissioner McIntosh could remain in the room, hidden behind a wall, while listening to the discussion. Commissioner McIntosh recused himself because of his absence from the July meeting and asked if he had to recuse himself at a subsequent meeting. Deputy City Attorney Maiorano reported Commissioner McIntosh could participate in a subsequent discussion if he reviewed all documents and audio recordings prior to that discussion.

Commissioner Stapleton had not met with Mr. Moriarty since the last Harbor Commission meeting; however, that would not affect his decision.

Commissioner Kenney met with Mr. Moriarty and his consultant prior to the previous Harbor Commission meeting. It would not influence his decision.

Chair Blank noted the applicant was present and represented. The appellant was present and represented. He inquired whether the parties had reached a mutually satisfactory agreement regarding the arrangement of the applicant's docks. Mike Hewitt, counsel for the applicant, replied no.

Chair Blank asked if the parties were willing and able to continue to work towards a mutually satisfactory agreement regarding the arrangement of the applicant's docks. Mr. Hewitt responded yes. Shawna Schaffner, CAA Planning and representative for the appellant, received a brief email from the applicant suggesting a 15-foot setback but with no plan. At that point, the appellant advanced a compromise plan to which the applicant did not respond. The appellant would prefer to be heard. Chair Blank asked if the appellant was willing and able to continue discussions towards an agreement in some reasonable timeframe. Ms. Schaffner replied yes.

Chair Blank asked if the Harbor Commission would consider a motion to continue the item for an additional period of time to allow the parties to continue to work towards a compromise.

A Commissioner inquired regarding the amount of time the parties would need to reach a potential compromise. Mr. Hewitt indicated at least 60 days in order to obtain permits and engineering plans.

Ms. Schaffner requested the Commission review the appellant's presentation and consider additional information from the appellant. Sixty days would be reasonable. In the interest of time and costs, she preferred to keep the item moving forward.

Commissioner Kenney requested the motion stipulate that the Harbor Commission would make a determination absent a proposed compromise by the parties at the October 12 meeting. The Harbor Commission could consider an agreement subject to technical aspects.

Jim Mosher recalled Carter Ford's previous suggestion of a floating barrier. He shared his research of the Department of Boating and Waterways Guidelines for Marinas. To his understanding, the choice was between a fairway and an internal channel rather than between a fairway and a setback. If the area had no boats moored along it, it would be an internal channel. If boats were moored along it, it would be a fairway.

Chair Blank clarified that Department of Boating and Waterways definitions concerned navigation without regard to property rights or property lines. The decision at hand concerned two adjacent properties.

Commissioner Girling moved to continue the item to the October 12, 2016 meeting of the Harbor Commission. At that time, the Harbor Commission will hear a mutually satisfactory compromise proposed by the parties or resume the hearing and determine whether to uphold, reject or modify the original Approval in Concept. Commissioner Stapleton seconded the motion. The motion carried with 4 ayes, 0 no and 0 abstaining votes.

3. Harbor Commission Ferry Tour Planning

Planning details will be discussed about the upcoming Harbor Commission ferry tour later this year.

Recommendation:

1. Receive and file.

Commissioner Stapleton reviewed the Harbor Commission's objectives and purposes for a special Harbor Commission meeting to include a tour of the Newport Harbor led by Commissioners aboard one of the Balboa ferries. This would be an opportunity for the public to become involved in activities and projects of the harbor and for the Commission to learn of the public's interests and concerns. The tour would cover almost 6.5 nautical miles around the harbor, beginning and ending at the Harbor Patrol Office.

Commissioners discussed their availability for proposed dates and chose a tentative date of December 10, 2016 from 9:00 a.m. to 11:00 a.m. The Harbor Commission's special meeting would be held at the Harbor Patrol Office prior to the tour if the Community Room was available.

7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Chair Blank reiterated the painting of the 15th Street dock time zones. Chair Blank and Commissioners Stapleton and Kenney attended the meeting of the Chamber of Commerce's Marine Committee. Chair Blank attended the public workshop regarding Mariners' Mile. Parties responsible for the Harbor Commission's objectives should complete quarterly reporting of progress for discussion at the September Harbor Commission meeting. The City's website was the most reliable resource for agendas, minutes and meeting schedules and locations.

8) QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES

None.

9) QUESTIONS AND ANSWERS WITH HARBOR RESOURCES MANAGER ON HARBOR RELATED ISSUES

Harbor Resources Manager Chris Miller sent a letter to the Coastal Commission requesting the City receive funds in the amount of \$350,000 from Newport Harbor Yacht Club. Those funds in addition to grant funds would be used to improve the Central Avenue Public Pier and Plaza. At the Commission's request, Harbor Resources Supervisor Levin would communicate with the Coast Guard regarding fixed

markers, particularly Marker Number 11. The Invictus had visited five days over two weekends on a permit for 17 days. There had been no issues.

Harbor Resources Supervisor Shannon Levin reported 22 derelict vessels had been disposed. Reimbursements totaling \$43,000 were in process or had been received. Approximately ten derelict vessels were in process, which would result in reimbursements of approximately \$30,000. She wished to utilize as much State funding as possible prior to funds expiring on October 1. A Commissioner asked if the 22 boats were located in the harbor or towed to the harbor. Ms. Levin advised most were located in the harbor. The City did accept boats towed to the marina. She would explore whether grant funding would be renewed.

Mr. Miller indicated the Harbor Master could not attend the Commission meeting to provide a report. Mooring and anchorage updates would become a monthly agenda item beginning in September.

Chair Blank noted anchorage was well used and appreciated. There had been no complaints.

Mr. Miller reported the Gemini had been removed. The new permittee was onsite.

10) PUBLIC COMMENTS ON QUESTIONS AND ANSWERS WITH COUNCIL LIAISON OR HARBOR RESOURCES MANAGER

Jim Mosher noted City staff signed a contract with AECOM to revise the Harbor Design Criteria. With respect to Agenda Item Number 1, the Director inadvertently omitted the Irvine Company's restaurant proposal and the Newport Dunes Lagoon resort. The Bayside Marina property was zoned commercial marine, which was dedicated and incentivized for marine-dependent uses. Currently, offices occupied the property.

11) COMMISSION ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)

None.

12) DATE AND TIME FOR NEXT MEETING: Wednesday, September 14, 2016

The next meeting was scheduled for September 14, 2016, in Chambers.

13) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:43 p.m.