



CITY OF NEWPORT BEACH HARBOR COMMISSION AGENDA

Council Chambers – 100 Civic Center Drive
Wednesday, July 13, 2016, 6:30 PM

Harbor Commission Members:

Dave Girling, Chair
Paul Blank 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 - Absent

1) CALL MEETING TO ORDER

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

2) ROLL CALL

Commissioners: Dave Girling, Chair
 Paul Blank
 Brad Avery
 Bill Kenney
 Joe Stapleton
 Doug West

Absent: Duncan McIntosh

Staff Members: Chris Miller, Harbor Resources Manager
 Andrew Maiorano, Deputy City Attorney
 Dave Webb, Public Works Director

City Council Liaison: Duffy Duffield, Council Member- Absent

3) PLEDGE OF ALLEGIANCE - Chair Girling

4) PUBLIC COMMENTS

Roger Gooding requested the time limit on the bayward side of the 15th Street public dock be changed back to 20 minutes from its current 3 hour time. Chair Girling would refer the item to the appropriate subcommittee. Mr. Miller suggested the speaker utilize the long dock at Marina Park.

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.

Lieutenant Alsobrook reported regarding usage and complaints at the temporary anchorage. Commissioner Avery requested a report regarding the western anchorage. Lieutenant Alsobrook advised that 57 vessels stayed overnight one or more nights. The anchorage was used primarily during the weekend. Lieutenant Alsobrook introduced Deputy Kevin Webster as the new Mooring Deputy.

5) APPROVAL OF MINUTES – June 8, 2016 Minutes

Commissioner Blank moved approval of the Minutes with an amendment to change "the Code needs to be clear to either allow the speed limit to be broken for such activities or be moved elsewhere" to "or those activities should be moved elsewhere" on page 2. Commissioner Stapleton seconded the motion. The motion carried with 6 ayes and 0 no votes.

6) CURRENT BUSINESS

1. Election of Officers

The Harbor Commission will elect officers for the 2016-17 year.

Recommendation:

- a) Elect Chairman.
- b) Elect Vice Chair.
- c) Elect Secretary.

Commissioner West nominated Commissioner Blank to serve as Chairman. Commissioner Kenney seconded the nomination. The nomination carried with 5 ayes, 0 no, and 1 abstaining vote from Commissioner Blank.

Commissioner Girling nominated Commissioner Stapleton as Vice Chair. Commissioner West seconded the nomination. The nomination carried with 5 ayes, 0 no, and 1 abstaining vote from Commissioner Stapleton.

Commissioner Girling nominated Commissioner Kenney as Secretary. Commissioner Stapleton seconded the nomination. The nomination carried with 5 ayes, 0 no, and 1 abstaining vote from Commissioner Kenney.

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

Mr. Moriarty at 2782 Bay Shore Drive is appealing the Approval in Concept issued by the Harbor Manager on April 6, 2016 for the proposed commercial marina (Newport Marina) reconstruction project adjacent to his property located at 2888 Bay Shore, on the basis of potential impacts to his water area near his slip.

Recommendation:

- a) Uphold the Harbor Manager's issuance of the Approval in Concept.

Commissioner Stapleton stated that he had met with Mr. Moriarty to discuss the matter.

Commissioner Kenney stated that he had met with Mr. Moriarty and his consultant. He could not make an informed decision without an in-person visit.

Mr. Miller indicated the Harbor Commission must decide the space between the edge of the proposed dock and the vessel and whether the space should be considered as a setback or a fairway. Mr. Miller reviewed his reasoning for the decision.

The Commission and Mr. Miller discussed the fairway distance based on the longest finger on the backside of the marina being 20 feet. The focus was on application of the Code rather than how people moved in and out of a slip. Commissioner Girling inquired whether the Commission was required to rule according to the Code or if the Commission had discretion to review the matter subjectively.

Mr. Maiorano reported the threshold question was whether the space was a fairway or a setback. If the Commission determined it was a fairway, the Code required the Commission to follow the formula. If the

Commission determined it was a setback, then the Commission had discretion to determine the gap. After further scrutiny, Mr. Miller had determined the space was a fairway rather than a setback.

Shawna Schaffner of CAA Planning and representing the appellant, requested the reconstructed marina be set back consistent with City standards, whether a fairway or a setback, but at least 30 feet. Ms. Schaffner reviewed her arguments against the Approval in Concept and Code provisions in support of her arguments.

Commissioner Girling inquired about the distance of the fairway at the Irvine Company marina near the subject marina. The distance was 46 feet from the end of the marina to the private dock and 31 feet from the outside edge of the side-tied boat to the dock. Ms. Schaffner had referred to the 2008 Waterfront Project Guidelines and Standards, Harbor Design Criteria as the "City standards."

Mr. Moriarty related experiences with boats colliding with his boat. He requested the Commission apply the fairway standard of 30 feet with no side-tie.

A Commissioner asked if the Commission could prohibit side-ties. Mr. Maiorano clarified that the fairway calculation yielded a minimum space, not the exact space. The issue of side-ties was not mentioned in the Guidelines.

Pete Swift of Swift Slip Pier and Dock Builders and also representing the applicant, explained that there would not be fingers, cleats, nor side-tying of boats in the channel. A 30-foot fairway would be three times the width of the largest boat that could fit in the space.

Mike Hewitt, counsel for the applicant, reviewed the proposed configuration for the marina. Mr. Miller correctly analyzed the space as a setback. His position was that the space was not a fairway under the Municipal Code or the Harbor Design Criteria.

Commissioner Avery asked if the marina could be located further north. Mr. Hewitt replied no because of easements. Ms. Schaffner disagreed.

Mr. Maiorano reported the Commission would determine whether the facts merited application of the definition of a fairway. If not, then the setback would apply. Commissioner Kenney asked if the Commission could determine the proper amount of setback after determining it was a setback. Mr. Maiorano added that the Commission would determine also that it was not a fairway.

Jason Greystock, Fishing Boats Unlimited, stated a more narrow space would be a safety issue.

Lieutenant Alsobrook indicated maneuvering through the marina was difficult. Harbor Patrol could not dictate how a marina was built.

Commissioner Girling asked if the clearance of 29 feet stretched around the curve. Mr. Miller thought the vessel would be in the way. Commissioner Girling wanted to know how the marina could be altered to maintain the current clearance.

Commissioner Kenney was confused by the 22-foot distance in one of the exhibits. Mr. Miller explained that number was based on an interpretation in a GIS setting. Commissioner Kenney inquired whether Mr. Miller's number included the bowsprit on the boat at the end slip on the inside. Mr. Miller replied no. Commissioner Kenney felt the slips in the back were very tight.

Commissioner Stapleton tended to support a setback situation. Commissioner Avery agreed the space was close. A distance of only 10 feet was not safe. Commissioner West believed it was a setback situation. Measurements should be taken from the property line. Commissioner Kenney concurred that it was a setback issue. Commissioner Stapleton agreed. Chair Blank understood the Commission reached a consensus that it was a setback condition.

Commissioner West moved, seconded by Commissioner Kenney, that the Commission find that the facts presented to the Commission did not satisfy the definition of fairway in the Municipal Code. The motion carried with 6 ayes and 0 no votes.

The setback from Mr. Moriarty's property line to the structure in the marina was 22 feet in one document and 26 feet by the GIS calculation. Chair Blank understood the consensus was to measure the setback from the property line.

Commissioner Avery suggested a compromise for a wider area that impacted the marina owner the least. Chair Blank asked if Commissioner Avery meant the applicant, the appellant and Harbor Resources should reach a compromise distance or the Commission should determine the distance. Harbor Resources determined the number was 10. A Commissioner concurred with the parties reaching agreement on the setback. If they could not, the item should return to the Commission who would decide. Mr. Maiorano advised that the Commission's responsibility was to approve, reverse or modify the decision of the Harbor Resources Manager. A Commissioner suggested retaining the existing 26 feet of setback from the property line to the edge of the dock and not allowing side-ties to be placed at that end of the dock. A Commissioner indicated any distance less than 26 feet would result in more collisions. Mr. Miller noted the applicant calculated the current distance at 22 feet, while his calculated distance was 26 feet. Chair Blank did not hear any Commission support for upholding the Approval in Concept. Mr. Maiorano reported the Commission could reject or modify the Approval in Concept, both of which were final actions, or continue the hearing to a date certain.

Commissioner West moved, seconded by Commissioner Avery, that the public hearing remain open and the matter be continued to a date certain of August 10, 2016.

Ms. Schaffner requested the Commission maintain the existing setback of 26 feet on the east side and 45-50 feet on the west side.

Mr. Moriarty added that the proposed marina would eliminate the turning radius for boats.

Mr. Hewitt stated the 22 feet from the property line to that point was excessive. The applicant could build a zero lot line and create an exit elsewhere.

Carter Ford suggested constructing a 3-foot wide float not connected to the marina but on marina property with pilings to create a buffer float.

Mr. Greyshock clarified that the 26-foot distance was accurate. The 22-foot distance was measured to the pulpit of the first boat. He recommended the distance be close to if not the 26-foot number and eliminating the first finger as a fair compromise.

Commissioner West made a motion to continue the item to the next Harbor Commission meeting on August 10, 2016. Commissioner Avery 2nd the motion.

The motion carried with 6 aye, 0 no, and 0 abstaining votes.

3. 2016 Harbor Commission Narrated Harbor Tour – Ad Hoc Committee Formation

The Harbor Commission will form an ad hoc committee to plan a Commission narrated tour around the harbor in late 2016. Preliminary ideas and details will be discussed along with a recap of the 2014 event.

Recommendation:

- a) Form an ad hoc committee to plan the tour details, and to report back to the Commission at regular intervals. Discuss preliminary ideas and suggestions based on the 2014 event.

Chair Blank briefly reviewed the 2014 Harbor Commission tour.

Commissioner West moved, seconded by Commissioner Girling that the Commission establish a subcommittee to develop a harbor tour and appoint a subcommittee comprised of Chair Blank, Commissioner Stapleton, and Commissioner Kenney.

Carter Ford supported the Commission organizing the tour.

The motion carried with 6 aye, 0 no, and 0 abstaining votes.

4. *Subsidized Vessel Sewage Pumpout Service in Newport Harbor – Continued*

This item is continued to the next Harbor Commission meeting when the four selected Commissioners are present.

5. *Mooring Management in Newport Harbor – Continued*

This item is continued to the next Harbor Commission meeting when the four selected Commissioners are present.

7) SUBCOMMITTEE REPORTS

Commissioner Kenney reported the subcommittee recommended the Harbor Patrol continue to request permission to board vessels to inspect sewage holding tanks. The subcommittee did not support amending the Municipal Code to allow for mandatory boarding of vessels.

Commissioner Kenney advised that the subcommittee for SUP safety hoped to provide possible recommendations at the August meeting.

Vice Chair Stapleton indicated the subcommittee to ensure the long-term welfare of the Newport Harbor was convening with Chamber of Commerce, Marine Committee Chairman Chandler Bell and David Beek on August 2, 2016, to discuss the topic.

Commissioner Girling related that the Lower Castaway's subcommittee held one meeting and had another scheduled.

Commissioner West shared his experience at the anchorage over the July 4th weekend.

Chair Blank reminded Commissioners of the 50th Anniversary Governor's Cup at Balboa Yacht Club on Saturday.

Mr. Miller would host a workshop geared towards consultants regarding the Regional General Permit process. The fifth eelgrass survey of Newport Harbor was under way. Eelgrass on Balboa Island surpassed the all-time high of 2003.

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

None.

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

None.

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

Cater Ford, Newport Mooring Association, reported permittees felt visiting boats should use moorings. While vessels were completing paperwork for admittance to the harbor, the Harbor Patrol should board the vessel and verify it had a functional holding tank.

Len Bose attended a meeting on oil spills, where the idea of a safety committee was discussed.

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, August 10, 2016 (Location TBD)

Chair Blank reported the next meeting was scheduled for August 10, 2016. A suggestion had been made for the Commission to occasionally meet at other locations, perhaps Marina Park. After discussion, the Chair indicated the August meeting would be held in Council Chambers. The Commission would consider a different venue for the September meeting.

13) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:57 pm.