

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**City Council Chambers**  
**Wednesday, October 12, 2016**  
**6:30 PM**

**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 (absent)  
Joe Stapleton  
Brad Avery  
Doug West

Staff Members: Chris Miller, Harbor Resources Manager  
Shannon Levin, Harbor Resources Supervisor

City Council Liaison: Duffy Duffield

**3) PLEDGE OF ALLEGIANCE – Harbor Resources Manager Miller**

**4) PUBLIC COMMENTS**

Jim Mosher noted the Harbor Design Standards entered a 30-day public review period at the September Commission meeting. The first item of business referred to diagrams contained in the existing Harbor Design Standards. The interpretation of those diagrams appeared to be open to question. He requested the Commission to provide the status of the updated Harbor Design Standards as they were not on the agenda.

Chair Blank advised there were no qualified Commissioners available to review the Harbor Design Standards within the 30-day timeframe. A subcommittee was convened to address the issue. The Harbor Resources Manager would provide an update.

**5) APPROVAL OF MINUTES – September 14, 2016 Minutes**

In response to Commissioner comments, Harbor Resources Manager Miller advised that under Item 5, Mooring Revocations, the "notice sent in late winter" statement should be "notice sent in late spring." Under Item 7, Sewage Pumpout Service, "to which Commission responded no" should be "a Commissioner" or "the Commission" or "Commissioners" responded no.

Commissioner West moved approval of the Minutes as corrected. Commissioner Girling seconded the motion. The motion carried with 6 ayes, 0 no and 0 abstaining votes.

## 6) **CURRENT BUSINESS**

### 1. ***Continued Item: Appeal – 2888 Bay Shore Drive (Newport Marina Reconstruction)***

This item was continued from the August 10, 2016 Harbor Commission meeting in an effort for both parties to propose a compromise towards a solution.

#### **Recommendation:**

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

Harbor Resources Manager Miller reported the Commission heard the appeal in July 2016 and determined the matter was a "setback issue", but did not determine the amount of the setback. The Commission asked both parties to develop a mutually agreeable plan. In August 2016, the parties still had not reached agreement on a plan and requested 60 additional days. The 60-day time period had expired.

Chair Blank asked if the parties had reached agreement to which parties declined.

Commissioner Kenney had met with the applicant and his attorney subsequent to the July 2016 meeting at the applicant's request.

Chair Blank related the procedure for the hearing.

Mike Hewitt, counsel for the applicant, commented on the challenges of a northern ingress/egress, including an ADA ramp, high-pressure water lines in the pie-shaped area near the PCH bridge, and no guarantee of receiving a dredging permit each time dredging was needed. He cited an email stating no party would transgress onto the other party's waters when navigating. A suggestion was made for installation of dolphin pilings along the property line to prevent boats from hitting Mr. Moriarty's boat. He was willing to submit a plan for those pilings, placed every 15 feet, to the Coastal Commission for approval; however, he was unsure whether the Coastal Commission would approve it. A second proposal was to install just two pilings with a rigid barrier in between, such as a buoyed line. A third proposal was to use an angled corner on the backside of the marina. He preferred to shorten the existing dock by 5 feet to give more passage. His second preference was two dolphin pilings. A 15-foot passage for a Duffy sized boat was possible.

Shawna Schaffner, CAA Planning, provided distances between slips, property lines and seawalls. The area shown in green was important because it allowed all boats to navigate into and out of the marina with adequate water space. The plan for Newport Marina would remove the green area and leave less than 10 feet on the westerly side and 10 feet at the front. At the July meeting, 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 the end of the dock. Also, a Commissioner had indicated any distance less than 26 feet would result in more collisions. The applicant proposed 48 slips and a 10-foot setback, which was later increased to 15 feet and again to 17 feet, but never advanced any plans for review. Mr. Moriarty proposed a plan on July 28 for 46 slips and maintaining the existing 26-foot setback, but received no substantive response. She requested the Commission maintain the 26-foot setback, restrict boats on the west side of the marina to 21 feet in length, and prohibit cleats and/or side ties on the south and west sides to allow for navigation. The 26-foot setback was critical in this instance.

In response to Commissioner Girling, Ms. Schaffner advised that she had not seen Mr. Hewitt's proposal that included dolphin pilings. She had emailed Mr. Hewitt inquiring about a proposed plan and discussed with City staff a deadline for submission of plans to allow for review prior to the hearing. She could not opine regarding Mr. Hewitt's proposal at the current time.

In response to Commissioner West, Ms. Schaffner indicated she was not familiar with the historical diagram submitted by Mr. Moriarty and did not believe it was relevant. Mr. Moriarty's exhibits maintained the 26-foot setback and had not been updated or changed since they were presented to the Coastal Commission.

In response to Chair Blank, Ms. Schaffner reported she would need to confer with her client regarding visual or structural objections to dolphin pilings and a buoy line between them.

Pete Swift, Swift Slip Pier and Dock Builders, hoped the Commission would consider a more reasonable setback than 26 feet. He shared five slides of similar docks in Newport harbor. In each instance, the setback was less than 26 feet. The 26-foot setback could be excessive when considering 20-foot boats. He expressed concern that the Harbor Commission was setting a precedent for the Harbor Commission to settle disputes between neighbors. A 15-foot setback was feasible and fair.

Chair Blank noted most of Mr. Swift's examples were commercial properties next to commercial properties. In response to Chair Blank's question, Mr. Swift stated the distance between the closest piece of float and the property line in the Newport Harbor Yacht Club/residential property slide was 21 feet. After discussion, Commissioners determined one of the boats in one of Mr. Swift's slides was 36 feet in length rather than 45 feet.

Mr. Hewitt reported that immediately following the August meeting, the applicant engaged an engineering firm to evaluate a northern ingress/egress. The firm determined a northern ingress/egress was not possible. He emailed proposals for a 12-foot, 15-foot, and 17-foot setback. Bellingham Marine prepared the historical document/diagram, which could be found in the Coastal Commission's file. The diagram showed a 25-foot powerboat moving through a space of 16.08 feet. The existing dock configuration was not 43 feet or 26 feet. The applicant agreed to no side-ties on the end and to 16.08 feet and wished to install dolphin pilings. The Harbor Commission should allow the applicant to submit a proposal for dolphin pilings to the Coastal Commission.

Ms. Schaffner advised that Mr. Moriarty's boat had been hit several times in the existing configuration. Mr. Moriarty did not agree to a 16.08-foot or 22-foot setback. The applicant's plan was dramatically different because it changed the orientation of the marina and eliminated the navigable area. Mr. Swift's examples were not truly comparable situations. Forty-six slips were viable compared to the existing 40 slips. Mr. Moriarty asked the Commission to consider his plan as a compromise, because it proposed 46 slips and more area for navigation without impeding the design too much.

Mr. Moriarty felt Mr. Swift's examples were not good, because boats had gotten bigger over the prior 40 years and would likely continue to get larger over the next 40 years. The 25-foot boat caused damage of \$1,000 to his boat, while other collisions were just bumps and scuffs. The 26-foot setback was a considerable compromise, given that boats would likely be larger in the coming years. He proposed 46 slips rather than 48; the reduction of two slips should not impact the marina financially. The distance from boat to property line was 22 feet, not 16 feet.

Jason Grayshock stated small boats of 15-20 feet in length could navigate the marinas shown in Mr. Swift's slides; however, the boats were hand-walked, not driven, into and out of the marinas. Experienced boaters could do that. The Commission should remember that not all boaters were experienced. Since the last meeting, four more collisions had occurred with one injury. Dolphin pilings were a great idea for protection, but they were not aesthetically appealing. Not transgressing into another boater's water was not possible, realistically. Twenty-six feet was necessary to accommodate the loss of radius.

Mr. Hewitt noted Mr. Moriarty's drawing showed a 25-foot powerboat in a 16-foot setback. He did not push to make the property lines non-navigable water. Ms. Schaffner presented that concept at the first hearing and requested a rigid boundary. His client agreed to it. If the applicant had to keep the existing dock, then he would need dolphin pilings for safety.

Chair Blank reiterated the Commission's possible action.

In response to Commissioner Girling, Deputy City Attorney Andrew Maiorano reported the Commission had the ability to amend anything within the purview of the Harbor Resources Manager. The package the Harbor Resources Manager approved was before the Commission. He suggested the motion be clear as

to the Harbor Commission's final decision. Chair Blank added that the Commission could develop any compromise it thought suitable and could overlay elements from both proposed plans.

Harbor Resources Manager Miller explained that Harbor Resources staff typically did not consider boats on drawings when approving docks. The Building Department considered boats when reviewing dock construction.

Commissioner Girling commented that the Commission, as an appellant body, did act as referees. He wanted to study and understand the five docks referenced by Mr. Swift before concluding a smaller setback was acceptable. Even at 26 feet, accidents had occurred. A smaller distance would result in more accidents. He questioned whether the 13 boaters on the back side could navigate the current setback or a smaller setback. A precedent for 31 feet could be found in a nearby marina. Eliminating two proposed slips was a reasonable compromise.

Commissioner Kenney concurred with Commissioner Girling's comments. Trying to navigate around the last finger on the bulkhead side was unsafe.

Commissioner West moved that the Harbor Commission adopt Mr. Moriarty's compromised plan presented on July 28th. Commissioner Girling seconded the motion.

Chair Blank clarified the motion as including 46 slips and a 26-foot setback as shown in the Bellingham drawing submitted by the appellant.

In response to Deputy City Attorney Maiorano, Chair Blank indicated the motion included no side-ties or cleats along the yellow line shown in the drawing.

In response to Commissioner Stapleton, Commissioners reviewed changes that would be made to the existing dock under the motion including the elimination of two proposed slips.

In response to Commissioner Stapleton, Chair Blank advised that the appellant's compromise included the 26-foot setback. The applicant could apply for approval of a different dock configuration while retaining a 26-foot setback.

Commissioner Avery believed the applicant's boat would be hit occasionally even with 26 feet of water. Dolphin piles were a real solution to prevent collisions. He did not oppose the motion, but dolphin piles were the best way to solve the problem of collisions.

Commissioner Kenney suggested amending the motion to allow exploration of dolphin piles. If the parties could reach an agreement on dolphin piles, the Commission would approve it. Absent an agreement between the parties, the 26-foot compromise plan would be the default. Commissioner West did not accept the amendment.

Chair Blank stated there was not a precedent for dolphin piles and no guaranty that the Coastal Commission would approve them. He liked the idea of a buoy line, but it would unduly restrict both parties.

Mr. Hewitt proposed a dolphin piling, removing the last finger and using a 16-foot width. Dolphin pilings would solve all issues. He was willing to ask the Coastal Commission what could be done to solve the problem. Width wouldn't matter if dolphin pilings were installed. Twenty-five feet from dock to bulkhead was plenty of room to navigate a Duffy sized boat. Mr. Moriarty proposed 16 feet for a 25-foot boat to the Coastal Commission and showed his 70-foot boat in the slip.

Ms. Schaffner advised that she had asked Harbor Resources Manager Miller to set a deadline for submitting proposals so that they could be reviewed. It was unfair to ask Mr. Moriarty to respond to the proposal without reviewing it. She didn't feel it was an adequate solution. In Coastal Commission proceedings several years ago, the Prestas complained that the existing configuration was too tight, and they did not want it reduced. Mr. Moriarty did not propose 16 feet.

In response to a Commissioner, Ms. Schaffner indicated this was the first mention of a dolphin pile, and she had not seen any of these plans.

Mr. Swift did not feel the motion was a compromise. The motion seemed a little over the top.

Harbor Resources Manager Miller remarked that the motion on the table referred to the exact plan, but he could envision a variation. He suggested the Commission consider an optional motion not specific to the drawing, but specific to the concept of the drawing.

Commissioner West accepted an amendment to the motion requiring the applicant to maintain a 26-foot setback but allowing him to draw the slip configuration to his choosing. Chair Blank clarified the amendment to include a 26-foot setback and prohibition of side-ties and cleats on the southernmost face of whatever structure was 26 feet from the property line. Commissioner Girling concurred with the amendment.

Deputy City Attorney Maiorano inquired whether the motion included 24 feet from the seawall. After discussion, the amendment was clarified to include the setback from the bulkhead to the nearest structure being built would be the distance previously approved by the Harbor Resources Manager.

In response to Commissioner Kenney, Chair Blank indicated the motion prohibited side-ties on the 15-feet at the bulkhead side.

Chair Blank explained that the applicant was under no obligation to build to the requirements of the motion. The applicant could submit a new and different application for a proposal including dolphin piles.

In response to Harbor Resources Manager Miller, Chair Blank advised that no cleats would be allowed on the bulkhead side of the main gangway, south of the last diagonal finger wherever it was positioned. Another finger could be constructed, but cleats would not be allowed on the southern side of it and it could not encroach more than 26 feet.

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

Harbor Resources Supervisor Levin introduced Mooring Deputy Josh Baugh. Former Mooring Deputy Webster was promoted to Sergeant. Chair Blank welcomed Deputy Baugh.

## **2. *Newport Beach Draft Sustainability Plan - Comments***

At the September meeting, the Harbor Commission was asked to review the Newport Beach Draft Sustainability Plan and to provide comments to staff by the October meeting.

### **Recommendation:**

- 1) Review and discuss the Sustainability Plan; and
- 2) Direct staff to report and to provide comments and/or recommendations to the City Council.

Harbor Resources Manager Miller reported that the attachment to the staff report represented comments submitted to staff.

Commissioner West advised he did not have an opportunity to read comments submitted by others.

Chair Blank believed the comments were beneficial, furthered the plan and were comprehensive in relation to the harbor. Commissioner West requested the Commission review comments.

Commissioner Girling had reviewed comments.

Chair Blank chose not to review comments in the interest of time. Comments were well written and well received.

Nancy Gardner thanked Commissioners for their comments, which would be incorporated into the plan. She felt the next item on the agenda was also a part of sustainability. Sustainability should not be construed narrowly.

Commissioner Stapleton moved to approve comments as provided. Commissioner Girling seconded the motion. The motion carried with 6 ayes, 0 no and 0 abstaining votes.

### **3. *Preservation of Marine Related Activities and Businesses in Newport Harbor***

The Harbor Commission Ad Hoc Committee will present their report and recommend it be forwarded to the Community Development Department.

#### **Recommendation:**

- 1) Review the attached report titled "Preservation of Marine Related Activities and Businesses in Newport Harbor", and forward to the Community Development Department.

Commissioner Stapleton thanked former Council Member Gardner for her support. He believed the harbor was the City's greatest asset. It was important for the Commission to be forward-facing and help with the preservation of marine-related activities and businesses in Newport Harbor. He read the objective of the project. Chair Blank, Commissioner Girling, Co-Chairs of the Chamber of Commerce Marine Committee and he met numerous times to discuss important and relevant issues regarding sustainability of the harbor related to marine businesses and activities. He shared a list of critical waterfront services and businesses that were underserved or that should be monitored closely, and a list of elements that would make a successful harbor. He wanted to see the report approved and forwarded to the appropriate body.

Commissioners discussed whether the Harbor Commission was the appropriate body to monitor harbor activities and how a community voice could be part of the land use and development process.

In response to Commissioner Kenney, Harbor Resources Manager Miller recalled at the last meeting the Commission suggested the report be given to the Community Planning Department or presented to the Planning Commission. Council Member Duffield indicated he planned to use the Harbor Commission as a mechanism to support harbor businesses and to keep pressure on the Council.

Commissioners and Council Member Duffield discussed opportunities for preserving marine-related businesses in development; collaboration with the Planning Commission through a joint meeting or reciprocal presentations; and the role of the Community Development Department.

Chair Blank pledged to liaise with the Planning Commission; to attend one Planning Commission by the end of the year; and to represent the list at every meeting of the Mariner's Mile Revitalization Plan effort. Approval of development applications could include a requirement that a portion of a commercial development include marine-serving uses from the list contained in the report.

Council Member Duffield suggested there could be ways to subsidize some businesses so that it was good for everybody.

Commissioner Girling moved to accept the report and forward it to the Community Development Department. The motion was seconded by Commissioner West.

Jim Mosher remarked that some elements of the report could be incorporated into the Sustainability Plan. Planning in Newport Beach was supposed to be directed by the General Plan. The Harbor and Bay Element contained a subchapter called Diversity of Land Uses. The Harbor Commission should review that to determine if it strongly reflected the report. The Planning Division needed to focus on policies and programs regarding the harbor.

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

**7) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)**

Chair Blank announced the Huntington Beach Air Show was scheduled for October 21-23, 2016. Staging and flyovers would occur in Newport Beach.

Commissioner West noted the Balboa Yacht Club would have a presentation regarding the history of the entrance channel and its construction. The presentation will be on Thursday night, November 10.

**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 Miller reported staff was working on copper regulations proposed by the Water Board. A summary snapshot of the proposal was available on the Harbor Resources website at [www.newportbeachca.gov/copperTMDL](http://www.newportbeachca.gov/copperTMDL). The City would issue its comment letter to the Water Board, and he would post it to the website. Others could use points from the City's comment letter in their submissions to the Water Board. The deadline for submissions was Monday, October 17. A hearing was scheduled for October 28 at Irvine Ranch Water District. The temporary anchorage was removed on Tuesday because its time had expired. The Council directed the Harbor Resources Manager to extend it another month which he did. A recap of the anchorage might be available in November. Invictus will keep its buoy deployed until approximately the end of November. It had six days remaining on the permit. Harbor Resources Manager Miller had issued a draft permit for the vessel Leightstar to use the turning basin as anchorage. He was working on finalizing the Harbor Design Standards and hoped to have an open forum meeting/workshop in the next few weeks. The Standards would return to the Commission in January and be presented to the Council shortly thereafter. The Newport Mooring Association was reviewing a redline version of the revised Mooring Code and would provide comments. The proposed mooring rules would likely be presented to the Commission in January and to the Council in January or February. Jetpack America's marine activities permit would expire November 22, 2016. Jetpack America recently sent an email indicating it was pulling out of Newport harbor in early November.

Chair Blank reported Jetpack America was the successful bidder for a permit to be the sole provider for a period of five years. He questioned whether the permit would go to the next highest bidder as Jetpack American would not fulfill the permit. Harbor Resources Manager Miller advised the City was not compelled to reopen bids.

Commissioner Kenney indicated the potential liability for copper issues could extend to boat owners. He encouraged people to attend the hearing.

Commissioner Stapleton noted the Leightstar had a helicopter crash in San Diego in 2010 and wondered whether a helicopter would be flying into the turning basin. Harbor Resources Manager Miller reported that would not be allowed.

In response to Commissioner Stapleton, Harbor Resources Manager Miller stated he would work with the Harbormaster to provide a report regarding the temporary anchorage prior to the Commission meeting.

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

None.

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

Chair Blank suggested a report on stand-up paddle board safety.

**12) DATE AND TIME FOR NEXT MEETING: Wednesday, November 9, 2016**

**13) ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:25 p.m.