



CITY OF NEWPORT BEACH

Public Works Department

Harbor Resources Division

APPLICATION TO APPEAL DECISION OF THE HARBOR RESOURCES MANAGER

Pier Permit No. N/A

Plan Check No. 1502-2018

Name of Appellant Kevin Moriarty, Glen Walcott, Zach Fischer, and Terry Morrison

Constructive Notice Provided: November 15, 2018

Name of Applicant Ron and Allyson Presta

Description of Application filed with Harbor Resources

Remove existing 11,729 s.f. marina. Redevelop with new 12,248 s.f. marina including
nine slips that could accommodate up to 80-foot boats in front of existing residences.

Eliminate three slips to provide larger boat slips.

Reasons for Appeal

Contrary to Harbor Commission Approval requiring 26 foot setback from Property line, 24 foot
setback from bulkhead and 46 boat slips. Failure to provide notice to known interested parties.

Inconsistent with health and safety standards. Violates due process.

Sharon Serafini - Representative 11-28-18
Signature of Appellant Date

L. Walcott \$1,000 11/28/18
Received by Fee Received Date

For Office Use Only

Hearing Date- An appeal shall be scheduled for a hearing date before the Harbor Commission within 30 days of the filing of the appeal unless both the appellant or reviewing body consent to a later date, NBMC Section 17.65.040.

Appeal Fee _____

Deposit funds with Cashier in Account 5060-5010



CAA PLANNING

November 28, 2018

Mr. Chris Miller
Harbor Resources Manager
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Appeal of Harbor Permit Number 1502-2018

Dear Mr. Miller:

On behalf of Kevin Moriarty, Glen Walcott, Zach Fischer, and Terry Morrison (identified herein as neighbors), CAA Planning, Inc. (CAA) submits this appeal of Harbor Permit Number 1502-2018 for an Approval In Concept (AIC) issued September 27, 2018 with constructive notice occurring on November 15, 2018. The Harbor Commission is authorized to hear the appeal of decisions made by the Harbor Resources Manager resulting from the administration of the City's code under H.C. 17.65.010. Initiation of this appeal is made to the Harbor Resources Manager in conformance with H.C. 17.65.030.A. Consistent with the requirements for an appeal, the required forms and fees are enclosed with this letter and serve as an adequate initiation of the appeal process.

Appeals or calls for review must be made within 14 days of approval as set forth by H.C. 17.65.020. Under ordinary circumstances, the 14-day period would run from the date of which action was taken upon at a public hearing or the date that public notice was provided by the approving body. However, in the instance of AIC No. 1502-2018, approval was administered on a staff level with no public hearing conducted. No public noticing was provided in spite of a written request for public notice and Mr. Moriarty's legal standing as a successful appellant on this project (Appeal #130-2888). Mr. Moriarty and his neighbors, who are known interested parties, became aware of AIC No. 152-2018 on November 15, 2018 which is the date identified as receiving constructive notice, and therefore, this appeal is timely submitted consistent with H.C. 17.65.030.A.

The reasons for the appeal of AIC No. 1502-2018 are lack of due process, and the plan is not consistent with the approved project and as such the AIC was issued in error. The review authority was incorrect; when the Harbor Commission resided over the original AIC, the Harbor Commission remained the review authority for a changed plan. Supporting facts are provided in detail below.

Lack of Due Process

The City Municipal Code typically provides for a process by which property owners and occupants can either participate in or at a minimum are notified of discretionary actions in their neighborhood.



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This process is incredibly important when a commercial business such as Newport Marina proposes a project that could adversely affect their residential neighbors.

No Public Notification Process

Issuance of AICs for commercial marinas lack a public notification process which creates a situation whereby property owners and occupants aren't able find out about a commercial redevelopment until after an approval is issued and the appeal period has expired. Other City discretionary actions for commercial businesses require some type of public noticing, usually noticing includes owners and occupants in a minimum 300-foot radius. CAA has been aware of this commercial marina noticing deficiency; and therefore, since the time of the appeal in 2016, CAA not only inquired several times with the Harbor Resources Manager but also requested notification as recent as December 2017 and regularly checked the City's permitting database for any applications related to the redesign and rebuild of Newport Marina.

Mr. Moriarty resides at 2782 Bayshore Drive and shares a common water-side property line with the commercial marina at 2888 Bayshore Drive. You may recall, in 2016, the redevelopment of Newport Marina under AIC No. 130-2888 was heard by the Harbor Commission on an appeal filed on April 15, 2016 by Mr. Moriarty. This appeal was filed after only finding out about the project through the California Coastal Commission noticing process due to the fact that the aforementioned AIC was issued with no notification to adjoining neighbors that would be greatly affected. Just as the current redevelopment plan does, the previous redevelopment plan would have caused a situation where residents would be adversely impacted without any notification.

The City's AIC notification appears to be done with some amount of discretion. In looking at projects in 2018, public notice was provided for the dock replacement project at 700 W. Bay Ave. In this instance, public notification appears to have been provided to the surrounding property owners and occupants both before and after issuance of the City's AIC approval. Due to this notification, Newport Harbor Yacht Club (NHYC) was able to bring forth technical concerns regarding the new dock proposed. As a result, the applicant and NHYC were able to reach a compromise.

Appellant and Known Interested Parties are Entitled to Notification

Unfortunately, even after multiple inquiries were made to the City in writing and via telephone calls, notification was not provided to CAA related to the AIC application for the current proposal to redevelop Newport Marina. As Mr. Moriarty's representative through out the appeal process for AIC No. 130-2888, we are shocked by the lack of notification. As previously mentioned, the appeal process lasted over six months with attendance at three Harbor Commission meetings and several attempts to reach a compromise with the owners of the marina. The City was obligated to notice the appellant and known interested parties.

Obtaining Permit Information is Nearly Impossible



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As discussed above, notification was not provided to the impacted residents or to Mr. Moriarty, and to further frustrate the flow of information, the address for Newport Marina is entered into the City's permit database as "2888 Bay Shore Dr." when the address is commonly referred to as "2888 Bayshore Dr." In fact, the name of the street is identified as "Bayshore" on the street sign and the Newport Marina and Bayshore Apartments website. Therefore, although, CAA engaged in efforts to routinely monitor the City's permitting database, it wasn't until after we heard a rumor that an AIC was issued that we were able to locate the permitting for Newport Marina under the incorrect address. The lack of noticing and the mislabeled addresses for Newport Marina thereby creates a nearly impossible situation to obtain information. The incorrect address is grounds for appeal.

AIC No. 1502-2018 Not Consistent with Approved Project

The Harbor Commission approved a plan for Newport Marina at the October 12, 2016 meeting. The meeting minutes are attached hereto. The Harbor Commission said that the marina must be setback 26' from the property line, 24' from the bulkhead and should have 46 boat slips. Under the new plan, the marina would be located 6 inches from the property line, 5 feet from the bulkhead, and have 50 boat slips. This new plan is in direct conflict with the approved plan. The Harbor Commission directed that "the applicant could apply for approval of a different dock configuration while retaining a 26' setback." There are four other references to the 26' setback, the Harbor Commission's intention was exceedingly clear.

An approval issued in error is not a valid approval, a new plan must be consistent with the approved project or it should be reconsidered by the Harbor Commission. While the new plans for Newport Marina may be in compliance with the City's Harbor Design Guidelines and Title 17 Harbor Resources Code, we have identified several practical and serious flaws in the marina design. The original AIC that was the basis of the Appeal 130-2888 was also in compliance with the City's Harbor Design Guidelines. Nevertheless, the plan was found to be incompatible with the surroundings.

Risk to Safety and Liability

The redeveloped marina will be located within six inches of the common water-side property line with 2782 Bayshore Drive where Mr. Moriarty has a 70-foot boat side-tied. The side-tied boat is located completely within the prolongation of the 2782 Bayshore Drive property line. However, if the marina is built to within six inches of the property line, the property at 2782 Bayshore Drive including the Mr. Moriarty's boats, dock, and the residence could easily be accessed by the public by simply stepping from the marina onto Mr. Moriarty's boat. There is an inherent risk to safety and liability to the homeowner if the public is able to access a residential property.

Vertical Clearance, Access and Fire Safety

There are safety concerns regarding the proposed pier and access to the backside of the marina. It appears that there would be more than adequate access between the marina and seawall; however, the pier is located only 14 feet above MLLW. There is no explanation about what happens during



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high tides like we are expecting on December 22 and 23, 2018 where the tide is expected to rise to +6.9 feet. This leaves approximately 7 vertical feet for access under the pier and nothing has been established to ensure that fire boats would be able to access the back of marina at these extreme high tides. Not to mention, that sea level is expected to rise quite a bit over the life expectancy of the marina.

Risk to Privacy

The interface between Newport Marina and its immediate residential neighbors is unique in Newport Harbor. Very few commercial marinas span across the waterfront of single-family residences. In the instances where a commercial marina does span the waterfront of single-family residences, the smaller boats are berthed in front of the homes while the larger boats are appropriately sited adjacent to parking lots or community buildings. This configuration can be seen in the Bayshore Marina, Balboa Bay Club, and on Lido Peninsula, just to mention a few. Newport Marina would be the only commercial marina permitted to berth nine 80-foot boats directly in front of the adjacent homes.

80-foot boats can easily be as tall as 30 feet. This means that the three neighboring residences impacted by the new marina would lose their views of the harbor on their first floors and would have obstructed views on their second floors. More importantly, three or four residences that would be directly impacted by the redeveloped commercial marina, would have boats looking directly into their homes, as boats would be berthed as close as 13 feet from their properties (5-foot marina setback from bulkhead with an 8-foot headwalk). In this area of Bayshores the homes are only set back a matter of feet from the water-side property line, which means the impacted residents would be having breakfast with the boat owners and their staff 13 feet away. All 80 foot boats should be berthed at the northern portion of the property in front of the marina operators property.

Incompatibility Between Residential and Commercial

Generally speaking, Newport Harbor does a good job balancing compatibility between commercial marinas and adjacent residences. However, the proposed redevelopment of Newport Marina violates the balance. There are no instances of commercial marinas being located 6 inches from a residential property line.

Facts Supporting Harbor Commission as the Permit Authority

After the Harbor Resource Department's April 6, 2016 issuance of an AIC and the April 14, 2016 issuance of a Coastal Development Permit (CDP) by the California Coastal Commission, Mr. Moriarty filed a timely appeal of decision to the Harbor Resources Manager. Mr. Moriarty's timely appeal was followed by more than six months of attempts to engage the applicant in hopes of developing a compromise plan to which was met with no avail. During this time period, CAA met with the marina owners' attorney Mike Hewitt on one occasion and sent several emails to the marina owners and Mr. Hewitt.



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The appeal was postponed once in July 2016 and subsequently heard twice by the Harbor Commission on August 10, 2016 and October 12, 2016. The marina owners did not participate in a compromise plan and at the October 12, 2018 Harbor Commission meeting Mr. Hewitt stated that the applicant engaged an engineering firm to evaluate a northern ingress/egress and [t]he firm determined a northern ingress/egress was not possible. He also commented on other challenges of the potential for 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."

Despite Mr. Moriarty's diligent efforts, no compromise was reached during the six-month long appeal process. The Harbor Commission ultimately voted to approve a plan that would provide Mr. Moriarty piece of mind and allow the owners of Newport Marina to rebuild their commercial marina. The Harbor Commission noted that the Prestas could come back with an alternative plan. For this reason, we believe that the Harbor Commission should be the permit authority for the marina redevelopment.

AIC No. 1502-2018 Sets a Bad Precedent

Newport Harbor should be celebrated as a diverse mix of public slips and moorings, residential docks, and commercial marinas. A precedent should not be set allowing commercial enterprises to encroach and infringe upon residences.

Newport Marina currently has 53 slips and is proposing to reduce the number of slips in its redeveloped marina to bring the total to 50 slips. The marina owners have devised a plan to reduce the number of small boat slips but significantly increases number of large boat slips (i.e. revenue) and manages to not impact their landside apartment building. Larger boats are charged at a higher rate per foot than smaller boats; therefore, the marina owners are effectively increasing their revenue while avoiding impacts to their real estate, all at the expense of their neighbors.

It is our express opinion that the marina owners should be able to redevelop their commercial marina; however, to do so at the expense of safety, common sense, and just plain being a good neighbor, would be a shame. Mr. Moriarty and the neighbors of Newport Marina remain willing to participate cooperatively in the marina redesign process.

We appreciate Harbor Commission and Staff's consideration of the appeal of AIC 1502-2018. Please do not hesitate to call me at (949) 581-2888 with any questions.

Sincerely,

CAA PLANNING, INC.



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Shawna L. Schaffner
Chief Executive Officer

Attachments: October 12, 2018 Harbor Commission Minutes

c: Leilani Brown, City Clerk
Kevin Moriarty, 2782 LLC.

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. 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.