

**MINUTES OF THE
HARBOR AND WATERWAYS BOARD MEETING
DESTIN CITY HALL, SEPTEMBER 27, 2021 - 5:00 P.M.**

1. CALL TO ORDER:

Chairman Hoey called the Destin Harbor and Waterways Board meeting to order at approximately 5:00 p.m. on Monday, September 27, 2021 at Destin City Hall. With the Pledge of Allegiance immediately following.

2. ROLL CALL:

Member Present:

Richard Hoey
Casey Jones
Guy Tadlock
Bill McKissick
Harvey Hurst

Members Absent

John Stephens
Jim Green

Staff:

Kim Montgomery Deputy City Clerk
Traci Goodheart Planner
Steven O'Connor Principal Planner
Noell Bell Building Official
Daniel Butler Planner
Louis Zunguze CD Director
Kyle Bauman, City Attorney
Kimberly Kopp, LUA

3. APPROVAL OF MINUTES:

➤ **January 11, 2021**

Board member Tadlock moved to approve the minutes of the January 11, 2021 minutes as written, with Board member Jones providing the second; the motion passes with a 4-0 vote. Board member McKissick was not present for the vote

4. NEW BUSINESS:

1 Gulf Shore Drive - Point Mezzanine Docking Facility (20-32-SP)

The City Attorney swore in staff members, Matthew Trammell, and Agent for the Applicant, Mr. Robert Volpe and staff members Noell Bell, Traci Goodhart, Daniel Butler, Steve O'Connor and Louis Zunguze. He then explained what ex parte discussions are to the Board members and asked if any of them have had any discussion with the applicant prior to this hearing. Out of all the members, Board member Tadlock was the only one who admitted for the record, to have met with agents of the applicant a few years ago, when the project was in its initial stage.

The City Land Use Attorney (LUA) entered into the record as City's Composite Exhibit 1, the Agenda Item and Staff Report as Exhibits A through F. She also noted for the record that Exhibit E, the subdivision plans are not approved and may change and were only included just for

everyone to have an idea of the upland project. She also asked Mr. Volte if he approved of it being entered into the record, for which he acknowledged that he did.

The LUA then informed the Board that the applicant is already approved for a condominium development, noting that the upland development is not a part of their review process. And that the extra information included is only for the Board to be able to get an idea of the project, as a whole. She explained the proposed project information for the request, is for a marine construction permit application. The applicant is seeking a recommendation of approval from the Harbor and Waterways Board for the construction of a 53-slip private docking facility consisting of a total of 50-permanent slips and three flexible mooring areas. The approximate length of linear feet of waterfront parcel is 600-feet. Per the Land Development Code (LDC), Section 11.05.01 (N), slip density may not exceed more than one slip per 8-linear feet of water frontage. The maximum slip density allowed for the parcel is 75 slips. The proposed project is comprised of three dock structures.

Dock-A proposes 4,350 square feet and will accommodate 14 slips with two flexible mooring areas. The applicant provided a width of 829-feet from the mean, high-water line of dock-A with an overall linear length of one hundred and sixty two feet (162-ft.).

Dock-B proposes 4,235 square feet and will accommodate 18-slips. The applicant provided a width of 939-feet from the mean high-water line of dock-B with an overall linear length of one hundred and seventy-five feet (175-ft.).

Dock-C proposes 3,870, square feet and will accommodate 18-slips with one flexible mooring area. The applicant provided a width of 1,388 feet from the mean, high-water line of dock-C, with an overall linear length of one hundred and ninety-six feet (196-feet).

She explained that in their staff report, it lists the criteria and requirements for Section. 11.05.01 of the LDC and underneath each of these requirements listed from A to Z, there are staff comments underneath each of them. And all of Staff's comments, indicate that the project meets Code. Additionally, pursuant to Section, 11.05.03 LDC, all construction will be inspected by the city's Building Inspector for compliance with applicable building codes. As well as the applicant will be responsible for the condition and repair of permitted docks. And failure to maintain said docks in a safe condition will constitute grounds for revocation of the permit.

In regard to the effect of this proposal on the city budget, first, the FDEP permit, from the State requires a \$500k payment to be made to the Trust for Public Lands, for the use of funding of Captain Leonard Destin Park, in addition to the State's net positive public benefit, all new projects constructed in the harbor are required by city code to provide the Net Positive Environmental Benefit equal to 25-percent of the construction costs. Per LDC section 11.05.02 (N). This will be

dealt with at the permitting stage of the project, if the project is approved. Staff also finds that the project improves the Level of Service to residents of the city by providing increased connectivity and recreational opportunities, as indicated in the conclusion section of your staff report. The project consists again of a private 53-slip residential docking facility to support the approved Upland Development under previously approved DO-09-17. The Community Development Department has reviewed the application and determined that the plans comply with city codes and regulations specifically, the proposed dock complies with 11.05.01, LDC, and the Coastal Management Element of the city's Comprehensive Plan. She pointed out as well, that commercial use of the docking facilities is prohibited and use of the slips will be limited to occupants of the condominium units only. Staff recommends approval of the marine construction permit subject, to the City Council's approval of the Major Development Order and Major Subdivision for the project. The Harbor Board's recommendations, with respect to the marine construction permit, in no way bind the City Council with respect to any aspect of the project, including the Marine Construction Permit, Major Development Order, Subdivision, or any other proposed applications currently pending on the subject property.

It is Staff's recommendation is that the proposed Marine Construction project meets the development criteria, set forth in section, 11.05.01 of the LDC. However, staff does not currently have evidence of payment to the Trust for Public Lands for the FDEP permit of \$500k, to that end staff recommends, the harbor and waterways board forward the following conditions to Council for consideration.

- Prior to permit approval, the applicant must provide proof that the State's Net Positive Benefit fee of \$500k has been paid to the Trust for Public Land, prior to permit approval, and issuance.
- The applicant must satisfy the city's Net Positive Environmental Benefit (NPEB) by offsetting the impacts to the harbor with improvements or by paying a fee equal to 25% of the cost of construction of the docking facilities.
- Use of the docking facilities and issuance of a Certificate of Completion for the docking facilities are contingent upon a final Certificate of Occupancy for the previously approved Upland Development and obtained City Council's approval of the proposed major development order and major subdivision approval. Both of which are currently anticipated to be considered by the City Council on October 18th.

She informed the members that staff did receive one public comment attached as Attachment F, and some of those comments need to be dealt with at the City Council Meeting because they are in reference to the previously approved Upland Development and not the docking facilities. And finally, it is staff's recommendation that the motion be, to move that the Harbor and Waterways Board recommend City Council approval of a 53-slip private docking facility at 1 Gulf Shore Drive to support the approved Upland Development subject to the applicant meeting all applicable city permit, requirements, and recommended conditions.

Board member Hurst asked staff, being that he is still in the process of familiarizing himself with the code, if during construction, does staff come out to the location periodically to make sure the building codes are being adhered to.

The Building Official, Noell Bell assured Board member Hurst they do.

Mr. Robert Volpe, of Holtzman-Vogel thanked the Board for their consideration and explained the Applicant's Agent and Project Engineer, Duncan Greer, and Former Engineer, Matt Trammell is present to answer questions they may have. He then explained that they support staff's recommendation and request for the recommended approval by City Council.

The City Attorney asked for the Chairman to open the hearing for public comment and public testimony.

Chairman Hoey opened the hearing to the public for any comments and advised that they will have a three minute limit.

Ms. Lori Sanders of 110 Gulf Shore Drive asked if anyone had any knowledge of the length of time to complete the project and the possible start date, and whether the Upland Development needs to go in before the docks. She also voiced concerns about where construction vehicles would be parked, where the dumpster would be located, and how the trash would be picked up for the marina.

The City Attorney advised the Board that her questions are directed to them and not staff, however, they can ask staff to address her questions.

Chairman Hoey asked staff to answer her questions, if they can.

According to Mr. Zunguze, staff cannot dictate what gets constructed first. What staff can do is control how they use the property. And therefore, they cannot use the marina until the upland development is finished.

The LUA clarified that essentially, there is absolutely no use of the marina's docking facilities without the condo being in place, as far as what they physically construct, it may be simultaneous or one maybe before the other. But they cannot use the Submerged Land Lease until the Upland is complete since the submerged Land Lease is tied to the Upland Development in their FDEP permit.

Regarding the question for the dumpster and the trash from the docks, Mr. Volpe explained that nothing has been determined at this time, since they are still in the permitting

stage. Additionally, there will be no impacts to the right-of-way from the docking facility and all the dumpsters would be stored on the upland portion.

Chairman Hoey stated that he feels Ms. Sanders she has a very valid concern about parking even now, with no construction going on in that area, parking is basically non-existent. He spoke of how there's been problems with emergency vehicles being able to get to the park with how popular it is.

According to the LUA, any parking involved with the condo or the docking facility, would be have to be contained on the private property.

Mr. Zunguze added that prior to any construction projects, especially, large ones such as this, the city requires pre-construction meetings with all the folks involved, so staff can determine the management of traffic and staging areas. Which is all part of what staff does during the permitting process.

The City Attorney reminded the Board that they're in the middle of public comments Ms. Sanders had her time interrupted. Therefore, she should be allowed another minute or so.

Ms. Sanders explained that her main concern to is where the construction equipment would be stored.

The LUA cautioned the Board that they are only reviewing and making a recommendation for the marina siting criteria. Adding that that the road and all questions about the Upland Development will be discussed at the City Council meeting that at this time, is scheduled for October 18th at 6 p.m.

Ms. Sam Perman 4652 Destiny Way, spoke of how the proposed marina site looks to be very shallow and asked if there is going to be a need for dredging and if so, who would incur that cost, the city, or the applicant?

According to Mr. Trammell, as part of the permit, there will be dredging involved which would be at the applicants cost. And is indicated in the Army Corps of Engineers and the FDEP permits.

Board member Jones moved that the Harbor and Waterways Board recommends City Council's approval of a 53-slip private docking facility at 1 Gulf Shore Drive, to support the approved Upland Development, subject to the applicant meeting all applicable city permit requirements and recommended conditions. Board member Hurst provided the second.

Board member Tadlock spoke of his concerns regarding the safety of the marina in this general area and of it being one of the largest, if not the largest marina at the entrance of the Harbor and the congestion of the boat traffic. He pointed out how it looks like it's primarily for large vessels with a couple of slips for 400-foot vessels. And how several slips that could accommodate vessels larger than 60-foot right at the entrance to the harbor, where the channel makes a dogleg. He mentioned how the Harbor Fare Carrying Capacity Committee has requested that the city look at straightening the channel, which means that would bring it even closer to the proposed docking facility. He also spoke of his concern of the harbor's water quality and its impact from the proposed project and lastly, he too is concerned about the parking during the construction phase.

Board member Hurst thanked staff for all the informative information that was provided.

Board member McKissick addressed his concern over the safety of the channel being so narrow at this location and how restricting it is with so many rental boats and the uneducated boat operators going through there and, how extremely difficult it will be. He also questioned riparian line on the west side, questioning why when it comes off of land, is it making a 20 or 30 degree kick to the to the west of the property instead of running parallel with the property line.

Mr. Matt Trammell spoke of being the original engineer for the project and how those lines can only be drawn by licensed surveyors in the State. Therefore, he cannot attest to the position of the lines and how they were drawn. However, there are a plethora of rules and regulations for how those lines are drawn, such as being perpendicular to contours of natural navigation, the fixed location of a Federal Navigation Channel, as well as many other criteria. And, it went before the State of Florida, prior to the Board of Trustees approval. As well as at the FDEP level, their State Certified surveyors had to review the drawing of the riparian line and the documentation that went along with that certification, therefore, it went through many layers of review.

Board member McKissick also voiced concern for the need of dredging for the docks because of the larger boats that will be moored, and the water depth does not appear to be enough. And asked if the end cap of Dock C-108 is a transient slip and is designed to handle a hundred eight foot boat. Adding that it looks to be strictly a side tie dock and asked if there any anticipation in the future for permanent mooring, where additional pilings would have to be put out further for another 20-feet, because a boat a hundred eight feet long would need a 20-foot slip.

Mr. Trammell explained the design of the marina and the intent at the time of design, was not for it to be a fixed permanent slip with full-time use and is referred to as flexible mooring.

According to Board member McKissick, with that being said, the permit is for 53 slips. And without those transients, it's a 50-slip project not a 53-slip project.

Mr. Trammell agreed, but mentioned, just as the city code states, a number of slips had to be placed on the project. And in addition to the fees, you heard about the Net Positive Public Benefit and the Net Positive Environmental Benefit. As well as there is four hundred twenty dollars paid per slip and those were calculated based on 53 slips. Adding that the State of Florida prefers to have a total slip count and is just the way the rules are drawn, and we had to designate those as slip counts. So, whether they're permanent, flexible, or day use; in the eyes of the State and the regulatory authorities, it's just a slip, one in the same.

Board member McKissick expressed his concern, that at some point later, what if someone decides to put some more pilings out, and moves the dock out another 20-feet into the channel area.

Mr. Trammell explained that then, the owner/applicant would have to come back to the City for approval, and the Harbor Board would have to be involved as well.

Board member McKissick spoke in reference to the access to the docks, and would it be across the sand or are they going to build a road there between the condo and the docks. And does the city plan on building a road between their access and the park? Or would it stay just sand?

According to the LUA, that will be discussed at Council level.

And Mr. Zunguze, agreed, it will be discussed before City Council. Adding however, staff does anticipate a road being built.

Board member McKissick spoke of the 25% fee for the cost of the dock paid for the permit and how the cost of materials are today, changing almost hourly; and asked how will the city be compensated for the overruns for the cost of the dock, if it goes over budget?

According to the LUA, the applicant will have to bear the cost. Adding that there's also mitigation they can do in lieu of monetary payments to address the environmental impacts on the harbor. And all of that would all be worked out at the time of permitting.

Board member Tadlock asked exactly how much further out is the submerged land lease is in relation docks A, B and C?

According to Mr. Trammell, he cannot tell the specific distance, but the general rule of thumb per FDEP guidance is to extend one, to two feet beyond the maximum length of the slip. So, if it's a 50-foot slip, there's additional room, the slip and its depth may be 52 or 53-feet. The submerged land lease would go an additional 1 to 2 feet beyond that.

Board member Tadlock pointed out that on the drawings, one of the docks they call out a 50-foot, long slip and it's my understanding that on submerged land leases, you are not allowed to have a vessel beyond that submerged land lease, legally.

According to Mr. Trammell, the calculations for the submerged land lease are all in the FDEP permit, which was approved, and it does not go beyond any of the infrastructure. Therefore, the full length of the slip that can house the size boat is called out, as well as the mooring pilings that will be used for that specific slip. Adding they are not proposing any additional infrastructure, and, they not proposing any boats going out beyond the submerged land lease shown in the FDEP permit drawings.

Board member Hurst asked about the project description from the Army Corps of Engineers permit where it states that the marina will be comprised of three docks to accommodate a total of 51-slips and four flexible mooring areas. And he wanted to make sure that even though the permit states it's for 51-slips and four of those being flexible, that would not impact the application and not an area of concern for the Board.

According to Mr. Volpe, going through the permitting stages, the Army Corps of Engineers permit was handled several years ago. And it would be the maximum allowed in their permit not in the Army Corps permit. Adding there is an additional slip allowance by the Corp, but it's not going to be part of the final facility.

Board member Tadlock made a substitute motion to add staff's recommendations for the three conditions listed in the staff report.

The LUA clarified those are already part of and incorporated in the recommended motion. Therefore, the motion does not need to be modified to include them.

Mr. Tadlock continued that he still wanted to add those three items listed as well as, that no construction of the docking facility can commence until 50-percent completion of the pending upland project is accomplished.

The City Attorney clarified for the board so that everyone understands, the original motion is to recommend to City Council the approval of the docking facility. Meaning that it meets the Marina, Siting Provisions of 11.05.01 and 02, the permitting requirements. Which includes the three conditions outlined in the staff's recommendation. So, the original motion, includes, prior to permit approval the applicant must provide proof State's Net Positive Public Benefit Fee \$500k has been pledged to the Trust For Public Land prior to permit approval and issuance, the applicant must satisfy the city's Net Positive Environmental Benefit by offsetting the impacts with

improvements or, paying a fee equal to 25% of the cost of construction of the docking facility and three, use of the docking facilities and issuance of the Certificate of Completion for the docking facility are contingent upon a final Certificate of Occupancy for the previously approved upland development and to City Council approval of the proposed Major Development Order and Major Subdivision approval. Both of which are currently anticipated to be considered by City Council on October 18, 2021. However, in addition Mr. Tadlock's the substitute motion, which includes those three criteria, no construction of the docking facility until 50-percent completion of the upland development. Adding that if there is not a second, then the original motion by Board member Jones stands.

With no second being provided, the amended motion by Board member Tadlock died.

Chairman Hoey called for any additional discussion on the original motion. With no one else commenting, he called for a vote on the original motion, **which passed 4-1 with Board member Tadlock dissenting.**

5. DIRECTOR'S REPORT:

➤ **Harbor Pump**

The City Manager explained that the pump currently was disassembled and is the process of being reassembled with all new internal components. However, in the interim staff has secured a temporary pump for that location that is running every day to keep the water circulating in the harbor.

➤ **Harbor Capacity Study**

Mr. Zunguze explained he has a meeting scheduled this upcoming Wednesday and can provide an update at their next meeting.

6. BOARD MEMBER COMMENTS:

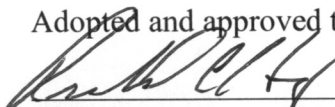
None

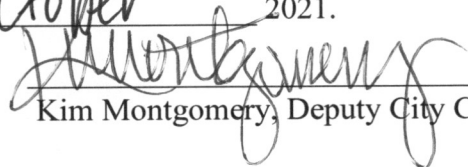
7. NEXT MEETING DATE: October 24, 2021

8. ADJOURNMENT:

With there being no further discussion, the meeting adjourned at 6:05 p.m.

Adopted and approved this 25th day of October 2021.


Richard Hoey, Chairman


Kim Montgomery, Deputy City Clerk