

**MINUTES OF THE
HARBOR AND WATERWAYS BOARD MEETING
DESTIN CITY HALL, SEPTEMBER 28, 2023 - 5:30 P.M.**

1. CALL TO ORDER:

Chairman Stephens called the Destin Harbor and Waterways Board meeting to order at approximately 5:30 p.m. on Monday, September 28, 2023, at Destin City Hall, with the Pledge of Allegiance immediately following.

2. ROLL CALL:

Member Present:

John Stephens
Jim Green
Guy Tadlock
Bill McKissick
Richard Hoey
Jerod Hayden

Members Absent

Casey Jones

Staff:

Kim Montgomery Deputy City Clerk
Steven O'Connor Principal Planner
Rachel Hoag Planner
Christopher Willis Planner
Kyle Bauman City Attorney

3. APPROVAL OF MINUTES:

- **August 28, 2023**

Motion by Vice Chairman Green, seconded by Board member Tadlock, the members approved both sets of minutes by consent with corrections made to the August 28, 2023, minutes. The motion passed 6-0.

4. NEW BUSINESS:

- **Net Positive Environmental Benefit (NPEB) Fee – LDC 11.05.02.N**

Mr. O'Connor explained staff brought this before City Council at one of their recent meetings and they were directed to bring it before this board first to get their input and a recommendation to take it back to City Council for their consideration. He then explained the NPEB fee was established in 1984 and applies to all marine construction that impacts the harbor. Indicating those being anything waterward of the property line, a 25% fee would be applied to the total cost of the construction. He provided the members with the background history of how with the State's assistance, in the 90's, the city created a memorandum of understanding of what the fees would help offset. Such as the costs for purchasing and installing the harbor pump and station, its maintenance, and making stormwater runoff improvements along Highway 98, as well as water monitoring programs and other environmental programs. He explained that staff has provided four recommendations:

1. Keep assessing the NPEB fee to all projects within the Harbor and Canals adjacent to the Harbor, as staff is currently implementing the regulations. This means any new dock, modification, or repair to an existing approved dock and the addition of, modification or

repair to riprap will be assessed a fee of 25% of the construction cost for labor and materials.

2. Assess an initial 25% NPEB fee to all new facilities and expansions or major modifications, then a lesser percentage, for discussion purposes, a 10% fee, for any voluntary modification or repair not directly linked to an emergency event, such as a hurricane or other event out of the upland property owner's control. The NPEB assessment for existing facilities can vary by marine facility type. For example, existing residential facilities can be assessed at an 10% NPEB fee, and nonresidential can remain at 25% or some variation thereof.
3. Assess the 25% NPEB fee once, and no additional fees are required until an expansion or other major modification is proposed from the approved initial marine facility.
4. Any other option the Board may want to develop and recommend to City Council.

Staff is seeking a recommended Option from the Harbor & Waterway Board regarding the implementation of the Net Positive Environmental Benefit Fee program. Staff's suggestion of Option 2 is aimed at attempting to strike a balance between the need to address water quality issues in the Harbor, and also encourages the property owners to maintain and upkeep their facilities. In this regard, Option 2 captures the initial impact of the construction of the marine facilities and the water-based activities those facilities support. Then, a lesser NPEB fee is assessed when repairs or maintenance is required as the repairs extend the marine facility's life, further extending the impacts of the water-based activities it supports.

Vice Chairman Green asked Mr. O'Connor if he knows the annual average collected from the fee. According to Mr. O'Connor, recently the city has seen a tremendous increase in the fees collected because of Compass program that is now in place, but in the past, it was only increased when large marine projects that were built. Vice Chairman Green then asked if the funds collected are used for anything other than harbor associated projects. According to Mr. O'Connor, it is not, the account set up for the funds is very specific.

Board member Tadlock spoke of how he is confident that with the public input and members input, he believes that something can be established to have a fair solution for all and a good funding source for the harbor.

Board member Hayden asked if NPEB is the only funding source for stormwater treatment. Mr. O'Connor explained the city can use other funding sources adding that as far as cost goes for the harbor pump, the city has not collected near enough for the cost of keeping it in working order.

Chairman Stephens opened the hearing to the public to speak.

Mr. Neil Parker 618 Choctaw Drive argued that the NPEB fee is basically a user fee that the city is charging the owners of Holiday Isle and asked how the city would charge all the boats that come into the harbor and into the canals this user fee. He additionally stated how Holiday

Isle takes in over \$10M in taxes and although he understands the city does not get all of it, they get a good portion of it, this fee is ridiculous.

Vice Chairman Green clarified for the record that there is not a user fee for the canals for which the reply was correct.

Staff, members of the Board and the City Attorney tried to explain to Mr. Parker that there is no user fee to use the canals and explained that there is some ambiguity where the harbor ends and the canals begin and provided the definition of what a “User Fee” truly is.

Dr. Irvin Manning 617 Magnolia Drive stated that he first wanted it known that he does not feel the canals are a part of the harbor and therefore they should not have to pay into this tax. He spoke of how this is going to be counterproductive because people are not going to want to pay the fee to repair their seawall.

Mr. O'Connor explained that any project upland, such as seawalls, do not pay the fee. It is only for projects waterward of the property line.

Nicki Noblin 501 Gulf Shore Drive and the President of Holiday Isle feels that the fee percentage is too much and would inhibit people from replacing their old rotting seawalls and docks. She then spoke of the Point One Mezzanine project and how they did not pay the fee and their project will substantially impact the harbor environment more than a residential dock.

Chairman Green corrected Ms. Noblin by informing her and the audience that Point One Mezzanine did pay over \$500k towards the NPEB fund and this was discussed at Council level regarding using the funds towards dredging the channel.

Todd Ginkel 513 Osceola defining a seawall construction and what covered by the fee. He also feels that some sort of fee should be collected from the rental boat businesses because they are the ones that are most likely cruising through the canals and causing environmental issues from erosion.

Rob Valiton 508 Norriego Road agrees with Mr. Ginkel that the environmental impacts by owners are not near as high as they are by the tourists, pointing out that he does not have any problem with them, as they fuel the local economy.

Lynn Schmidt 223 Durango Road Destin Harbor Resort feels that the 25% fee is too high and asked that it should be lowered to something that can be affordable. She spoke of an upcoming project for the condo to replace all the seawalls and how this fee would make them unaffordable if they are not within their property boundaries.

Mark Luciani, 223 Durango spoke of all the fees that has to be paid to the State and the city for permits for their docks and submerged land lease and suggests that the percentages be broken down between commercial and residential.

CeCe Harned 609 Magnolia Drive feels that the percentages of what the residential should not be the same as the commercial marinas pay for the environment impacts. She asked what happens when the community is affected by a hurricane and structures have to be replaced, also since the canals are run by Holiday Isle, what do they (HI) get from the percentage paid into the fee, regarding canal improvements.

Kevin Guernsey 539 Gulf Shore Drive questioned if staff is projecting how future projects that will impact the environment.

Chairman Stephens closed the Public Comment.

Vice Chairman Green spoke of how he agrees with most of the comments but pointed out that without the harbor, the canals are just a pond, however, they are interconnected to the harbor. He does, however, agree that if a marina is being built, it should have to pay a higher percentage since it will cause more of an impact than single family residential properties dock project would, but cautioned most of the condominiums are considered residential, therefore they should be careful with certain terms they're using to identify those types of projects, since they too will be residential. He then spoke of percentages, and he feels that 10-25 percent residential/commercial, and board for board should not constitute a fee, especially if they've already paid into it for the initial build.

Chairman Stephens agrees but feels it would be fair to assess the percentages on an x-number of slips. Board member Green agreed and suggested setting a benchmark of possibly ten slips.

The members and staff briefly discussed the classifications and how they are reviewed by just staff or when it reaches a higher level of review process that would then come before the board for a recommendation to Council.

Board member Tadlock spoke of the incorporation of the canals into the city and how there is not any commercial activity on them and mentioned the rulings that have to be followed per the HOA covenants. He suggests keeping it simple and any project on the canals of course has to get permitted, but he does not think there should be an NPEB fee charged for any residential project in the canals, since those would only be on 6-foot marginal docks. He also feels that any residential projects that are on the harbor that has a dock and lift should also not have to pay the fee, and it should only be directed to commercial activity.

Motion by Vice Chairman Green to recommend to the city council concerning the net positive environmental benefit fee to apply to with percentages as follows:

- **The harbor and canals are considered together.**
- **Residential slips less than 10 - 10%**
- **Greater than 10 – 25%**
- **All commercial 25%**
- **Board for board exempt from the fee if within the original footprint.**
- **New and expansion - not exempt for all projects waterward of the property line. Board member Hayden provided the second.**

In discussion, Vice Chairman Green stated he feels this is the fairest way he sees that would benefit everyone. However, they shouldn't penalize the industry either and feels that it should be fair across the board. He agrees that 25% for residential is not fair, however 0% for residential is not fair either. Pointing out that everyone that enjoys the waterways and has access to the harbor, the bay, and the Gulf, should have to pay towards keeping it healthy.

After asking Chairman Stephens for permission to speak, Mr. O'Connor spoke of cumulative effects and how they initially impact a singular location but as they build, they continue to grow they impact a larger area to where eventually, it impacts an entire area; and this, is what is now taking place in the harbor. Pointing out that there is no single activity now that does not impact the harbor.

Vice Chairman Green spoke of how the Harbor Capacity Study, which was based on facts and not opinions, proved that the channel or infrastructure, which is only a fifty foot wide channel and created in the 1940's, is what is over capacity by the amount of traffic that utilizes it. Additionally, that study and results allows the next steps to be taken, which is the 107 Cap Study.

Board member Hayden suggested a reduced fee, based on the fee schedule described, for board for board projects, since there is only so much new construction that can now happen on the harbor. Vice Chairman pointed out that if someone has already paid the fee, they would not have to pay again if they are replacing their entire project exactly the way it was originally built.

Chairman Stephens provided an amendment to the motion for the following:

- **Class 1, Residential – 7% (Less than 1,000 sq. foot and two slips of less)**
- **Class 2, 3 or more slips – 10% (Over 1,000 sq. ft. with 3 or more and up to 9 slips)**
- **Class 3, Commercial – 25% (All commercial docks/marine facilities or a residential facility with 10 slips or more.**

Both Vice Chairman Green and Board member Hayden agreed with the amendment to the motion. The motion passed 6-0.

Mr. O'Connor clarified again for all that board for board projects would be exempt.

5. PUBLIC COMMENT:

Neil Parker 618 Magnolia Drive asked what the steps were if there is no record of an NPEB being ever paid for the project currently on the property, noting that there is a lot of very old structures in existence.

Mr. O'Connor reiterated that if the request is for a board for board replacement of the current structure, there would not be a fee.

Mrs. Lynn Schmidt asked if there was a hurricane, and everything had to be replaced, what are the rules. According to Mr. O'Connor, as long as the permit pulled within 6-months of the disaster and the reconstruction is within the same footprint, there would be no fees.

Board member Hoey spoke of the Emergency Order that the Governor puts in place for the counties that are affected by a disaster, which allows for the homeowners to get everything rebuilt without having to go through the normal permitting processes.

Board member Tadlock spoke to the members of the public on the importance for property owners to keep good records of what is on their property.

6. MEMBER COMMENTS:

➤ Chairman Stephens

1. Vessel Anchoring in the Harbor

Spoke of how this past summer there was noticeably more vessels in the harbor, even commercial vessels and asked if there is a solution that is being worked on, such as a harbor mooring area.

According to Vice Chairman Green, during the harbor capacity study meetings, this was and still is being discussed at a higher level.

The City Attorney also spoke on the subject explaining that discussions with the County attorney's have been taking place and more information will be brought forward on the subject.

2. Commercial Vessel Slips & Parking requirements.

Chairman Stephens also spoke of seeing vessels pulling up and picking up passengers on the harbor and how he is sure that those are not businesses that have shared parking agreements

with the property owners and how those customers are negating the parking agreements by using spaces, however, he is not sure what can be done about it.

Mr. O'Connor spoke of the requirements of the Development Order and how parking analysis are required as well as shared parking agreements, when the parking on property is shared for businesses that operate at different time of the day. He also spoke about how hard it is to enforce, if staff is not made aware of any kind of operations outside of what was approved by staff in that Development Order.

➤ **Vice Chairman Green**

1. Turn Lane at Marler & 98 – Delayed this discussion to the next meeting.

2. Proposed City Marina Project – Spoke of not being in favor of the idea to put an amphitheater in at 1 Harbor Blvd. property mainly because most of the Harbor CRA funds were utilized for the purchase and, it does not meet the goals and objectives of the Council.

Vice Chairman Green made the motion to recommend City Council direct staff to look for ways to create a used motor oil recycling collection site for the city residents and businesses. Chairman Stephens provided the second. The motion passed with a unanimous vote of 6-0.

➤ **Board member Tadlock – Water Quality Issues**

Board member Tadlock spoke of how he is very concerned with water quality in the harbor and the canals, after being hospitalized from a recent exposure to the water behind his residence. He stated that the doctor told him the infection he experienced, was most likely caused by bacteria from water that he must have ingested, and asked staff how water quality is tested and if or how it is provided to City Council.

Chairman Stephens spoke of how he volunteers for Choctawhatchee Basin Allowance (CBA), to take water samplings. He explained he tests in two locations in the harbor and one between the Coastguard Station and Crab Island. He also mentioned that there are four other location in the north side of Choctawhatchee Bay that are also sampled and, as far as he is aware, there are two locations at Joe's Bayou and Indian Bayou that have deficiencies in Chlorophyll.

Board member Tadlock asked how fecal chloroform is tested. According to Chairman Stephens, Okaloosa County, not CBA or the city, tests for that and releases the report. Board member Tadlock also stated he has requested the run times are for the Harbor pump for the past five years.

Motion by Tadlock seconded by Green to have staff provide the following records so they can be discussed at their next Harbor & Waterways Board meeting:

- 1) What department and person(s) are responsible for monitoring the water quality of the Harbor? How is this reported upward and ultimately to the Mayor, City Manager, and Council?
- 2) Provide complete details of the Water testing procedures done by the city or their agent.
- 3) Monthly schedule and actual run times for the flushing pump for the past 5 years.

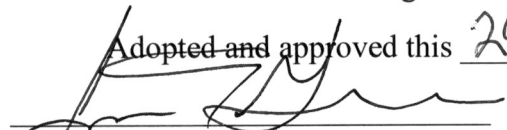
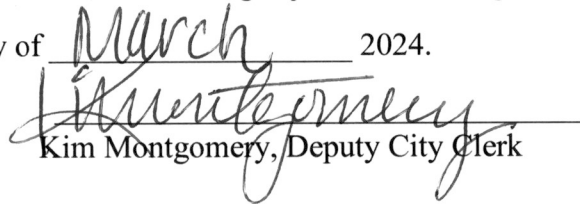
Chairman Green amended the motion to add any county or other testing results to be provided as well, with Vice Chairman Green seconding the amendment. The motion passed 6-0.

7. DIRECTOR'S REPORT: None

8. ADJOURNMENT:

With there being no further discussion, the meeting adjourned at 8:05 p.m.

Adopted and approved this 28 day of March 2024.

 _____ John Stephens, Chairman Jim Green, Vice Chairman	 _____ Kim Montgomery, Deputy City Clerk
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