

NEWPORT BEACH HARBOR COMMISSION MINUTES

City Council Chambers

October 14, 2009

CALL TO ORDER

6:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Chair Karen Rhyne, Commissioners John Corrough, Marshall Duffield, Don Lawrenz, Ralph Rodheim and Vincent Valdes were present; Commissioner Tim Collins was absent.

Staff: Lorrie Arcese, Chris Miller and Shannon Levin

MINUTES: The minutes from the last meeting were approved with changes as mentioned.

ACTION & APPEAL ITEMS

Subject: Appeal the Harbor Permit / Approval in Concept for the AERIE Dock Structure at 201-207 Carnation Avenue.

Issue: Should the Harbor Commission affirm, modify or reverse the decision of the Harbor Resources Manager who approved the Harbor Permit / Approval in Concept of the AERIE dock structure?

Discussion: The City Attorney and Jim Campbell were present. Chris refreshed everyone minds on the issue and the conditions. We are following the appeals procedures as per Title 17, and the Commission is governing under that appeals process to hear the appeal of the Approval in Concept for the project. The Commission is tasked to judge if the project is consistent with City Policies and Codes and the Design Criteria; will not create navigational congestion or interfere with other permittees rights; and does conform to the Local Coastal Plan. The Harbor Resources Manager has found that it does meet all conditions. The appellant has raised the issues under CEQA and filed a lawsuit. There are a total of 8 slips, same number of apartments, plus one guest side tie, which is not clear in the conditions. The applicant has followed the EIR, downsized and has been responsible so there is no reason not to approve it. Harbor Resources, Planning and the City Attorney have thoroughly researched it. It was suggested that we modify condition #13 by the City Attorney and present the plan prior to approval.

Public Comments:

- Steven Miles, the appellant representative, reserved time at the end. We are asking that the Commission approve the appeal as this project is aggressively excessive. It is claimed that the project will not impact, but by definition will impair navigation, recreation and environmental uses of the CA Public Trust Doctrine. We claim that the EIR is not in compliant with CEQA. There has been an insufficient analysis of a reasonable range of alternatives. The project reducing residential dwelling units but is increasing the dock, it is a contradiction and is not a true analysis. There is a smaller dock analysis. All the issues have not been analyzed and air quality has not been quantified. The special conditions are illusory and do not address the perceived impact of the project; number 13, inclement weather, when will a plan be submitted and how will it address storm surge and navigation and recreation impacts.
- Tim Payon, Applicant council, wants to address the issues raised by Mr. Miles. He misconstrues the project and they looked at the EIR for the entire project. We need to clarify that the plans are for 8 slips and a guest side tie, not a total of 9 slips, to equal the 8 resident units.
- Kent Moore who lives across the street from the project, is not a marine structural expert and has seen this surge and storms in this part of the bay. He has never seen the current dock in this

area damaged due to a storm or surge, but others in the neighborhood have. Please affirm the earlier decision of the project.

- Brion Jeannette, architect: Chris Miller has been very diligent in reviewing this project and all issues have been addressed throughout the process. The owner is establishing a protocol to protect the sand dollar even though it is not an endangered species. The owner is in full compliance and will honor all special conditions imposed. We are asking that you deny the appeal.
- Steven Miles expressed his concern with special condition #13. What will the plan do, when it be prepared and how will that address the safety concern. We don't think it can and we don't know what it will say and believe it is in violation of the EIR. This project started as a Negative Declaration and the City took the path of least resistance. It is the most intense form of development in both boat dock and marina and has not been taken into consideration. We ask that the permit be reversed.

Action: Commissioner Lawrenz made the motion to uphold the decision of the Harbor Resources Manager who approved the Harbor Permit/Approval in Concept of the AERIE dock structure with the following modification: The number of slips must be clarified in the conditions and an inclement weather plan must be submitted to the Harbor Resources Manager for approval prior to approval. The motion was seconded and carried with all ayes. The item will come back for adoption of resolutions, findings and modifying permit at the November 18th meeting.

HARBOR RESOURCES UPDATE – Chris gave a PowerPoint presentation on harbor updates. Chris made sure that the tug and barge will not affect the Christmas Boat Parade and must follow all rules. *The update is posted at <http://www.newportbeachca.gov/index.aspx?page=462> (under Harbor Resources Updates).*

RECOMMENDED TOPICS FOR FUTURE AGENDAS:

- Sea Lions mitigation
- Statewide Coastal Marina Process – Jim Sinasek will come to the next meeting to bring information.

DATE OF NEXT MEETING: November 18, 2009

ADJOURNMENT