

APPROVED
TOWN OF LAUDERDALE-BY-THE SEA
PLANNING AND ZONING BOARD
MEETING MINUTES
Jarvis Hall - 4505 Ocean Drive
Wednesday, February 17, 2016
6:00 P.M.

1. CALL TO ORDER

Acting Chair Patrick Potts called the meeting to order at 6:00P.M.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

3. ROLL CALL

Members present were Patrick Potts, Charles Clark, Roseann Minnet, John Lanata, and 1st Alternate John Graziano. 2nd Alternate Gerri Ann Capotosto arrived approximately 5:18PM but did not participate or sit at the board member table. The absent member was David Chanon. Also present were Assistant Town Manager Bud Bentley, Assistant Town Attorney Kathy Mehaffey, Development Services Director Linda Connors, and Clerk Idalia Gutierrez.

4. APPROVAL OF MINUTES

a. Previous Meeting Minutes – January 20, 2016

Ms. Minnet made a motion to approve the minutes of January 20, 2016 as presented. The motion was seconded by Mr. Graziano. The motion carried 5-0.

5. PUBLIC COMMENTS

The Acting Chair opened and closed this public comments section of the meeting as there was no one from the public wishing to speak.

6. NEW BUSINESS

- a. Ordinance 2015-17, which amends the definitions used in Chapter 5 and Chapter 30 Related to Channels and Mooring Area; Creates a Standard Mooring Area and a Marina Mooring Area; Amends the Requirements for Docking and Mooring of Watercraft; and, Reorganizes the Requirements for Conditional Use in B-1 and B-1-A Zoning Districts

The meeting was turned over to Development Services Director Linda Connors. She said Ordinance 2015-17 related to marina use. She explained that this ordinance was familiar to the board members as it was reviewed at the January Planning and Zoning (P&Z) Meeting. She said that after significant deliberation at the January 26, 2016 Town Commission Meeting, the

commissioners asked staff to bring this ordinance back to P&Z to discuss two specific issues. The first issue was that they wanted to review the P&Z recommendation regarding site plan approval or should the ordinance be a conditional use review. The second issue was related to the pump-out facility. Specifically, should there be a pump-out facility at the marina and if so, what should the requirements be for the pump-out facility? Ms. Connors explained that Assistant Town Manager Bud Bentley has done significant research over the last year and was present this evening to present and to answer board questions. Ms. Connors then turned the meeting over to Mr. Bentley.

Mr. Bentley explained that he has been working with staff, the Town Attorney's Office, and the property owner trying to get a resolution on this issue. He gave the history of the property starting in 1952 when the property was subdivided. He said that it is not a navigable waterway from the state's viewpoint and, therefore, they do not regulate it. The developer passed over 1/19th ownership of the submerged land. He said that this 1/19th ownership would come back into play about twenty years later. In the early 1980s, the submerged land owner stopped paying property taxes. The county foreclosed on the property for lack of payment of property taxes. By mistake, they did not foreclose on the 1/19th interest. No one purchased the foreclosed land when the county offered it for sale so 18/19th ownership was transferred to the Town of Lauderdale-By-The-Sea. It is an undivided interest. In 2013, a Canadian named Bill Henney, whose boat was at the marina, wanted to purchase the marina. Mr. Bentley explained that Mr. Henney could not get title insurance because of the ownership of submerged land. The Town then started to develop a submerged land lease to allow the marina to be in place.

In 2014, the Town had an appraiser do an analysis of dock rates because we were going to charge a percentage of the revenue stream. Eight "somewhat comparable" marinas were surveyed. Of the eight surveyed, six had pump-out facilities and seven allowed live-aboards. The one that did not allow live-aboards, did not have a pump-out facility. Mr. Bentley pointed out that there is a correlation between live-aboards and pump-out facilities. In 2014, Mr. Henney did not want to proceed with the purchase. However, he acquired the 1/19th interest in the submerged land. He sold that 1/19th undivided interest to the property owner, Silver Shores Yacht Basin. The Town and a private entity now own the submerged land. In the last six months, the Town has been developing a partitioning agreement so that the marina owns all of the submerged land under the marina. The Town would own the rest of the submerged land in the canal. He explained that 1/19th of the canal is about 13,000 sq. ft. The marina needs 22,000 sq. ft. to own all of the submerged land under the facility. Under the negotiations, the marina would compensate the Town for the additional square footage needed. The marina will have one property under this agreement with the Broward County Property Appraiser which cannot be separated in the future. Therefore, site plan approval and conditional use are both viable alternatives to apply to the marina. He then said that the Town has asked their marina consultant, Chappell Group, to prepare a report for alternatives for pump-out facilities. The report will have state grant information which could provide up to 75% of eligible pump-out-facilities even at private facilities. This report will be ready on Friday.

Mr. Graziano asked and Mr. Bentley explained about undivided interest. He then answered another question and explained that the 1/19th ownership allows them to use 1/19th of every square inch of that canal. Discussion ensued about marina mooring area and the amount the property owner and the Town owns and the computation of payment to the Town so that the marina would own the correct amount of submerged land beneath its facility. Ms. Minnet thanked Mr. Bentley for explaining the history.

Ms. Minnet said that she is still in favor of conditional use and not a site plan. She is in favor of a pump-out station of some degree even though there are no live-aboards. It is a health, welfare and safety issue. We have to think of the residents and businesses in that area. Mr. Bentley reminded that for a public pump-out station, a grant could be pursued. This could be a public pump-out station for all the area boats. Mr. Clark asked about the owner's \$45,000 fine and the owner trying to mitigate it. Ms. Connors answered that they must be in compliance before they can apply for a mitigation of fine/lien. Ms. Connors said that they have picked up their dock permit and can start working on the dock. They are waiting to re-construct the finger piers based on the final adoption of this ordinance. She added that they have also been fined for the condition of their parking lot which should be heard at the March Special Magistrate Hearing. Mr. Clark said that he would only go with conditional use. Mr. Lanata felt that a public pump-out station for the hundreds of boats in our canals really scares him. This will create a boat traffic issue particularly if it is going to be a public grant situation. Since this is a storage marina with no live-aboards, Mr. Lanata feels that there is no need for a pump-out facility.

Mr. Bentley distributed to the board members copies of the one-page report of "Summary of Dockage Rates". Mr. Graziano felt that a pump-out station was necessary. Acting Chair Potts wanted to know if the Town could require them to put in a private pump-out station that is not eligible for a state grant. Assistant Town Attorney Kathy Mehaffey said that she thought that as part of the conditions, the Board could limit the pump-out facility to patrons of the marina. Definition of a patron might encompass how long a dockage would they have to have in order to qualify as a patron. Acting Chair Potts wanted to know if the Town precluded the owner against long lease or selling the slips as condo slips. He felt a pump-out station was valuable to the owner. The Town has to structure the deal with a required pump-out station. Ms. Mehaffey said that we would have to state what constitutes a customer/patron of the marina and impose that condition for using the pump-out facility. Mr. Lanata wanted to know the fee to get tied into the sewer system. Mr. Bentley replied that there were different options but it would be cheaper to tie into their existing sewer lines. Mr. Lanata was in favor of conditional use. Acting Chair Potts said if the owner tried to condo these slips or long lease, he felt that he could not do this with a conditional use. He also said that site plan would give more stability. This would be better for the Town and the owner because we do not want transient stuff going on. This would create more revenue for the owner and the Town should participate in that profit.

Mr. Lantana did not want to make the owner's property valueless. Acting Chair Potts also believed that the owner should get the highest and best value that he can make. The Town should make it right for the owner but should also participate in the profit of those slips especially because we have 18/19th interest at this point. Mr. Graziano also felt that this property should succeed and be the Town's little jewel instead of an eyesore. He was in favor of a pump-out station especially if it could be restricted to those who lease the dock space. He was for the conditional use at this time. Ms. Minnet reminded everyone that this is not a commercial venture, as it is in a residential area. She reiterated that she is in favor of a conditional use and a pump-out station. Mr. Lantana said that he would endorse a pump-out system and a conditional use. Discussion ensued about a long-term lease and some other option allowing the Town to participate in the revenue in case there was no standard lease. Mr. Lantana thought that the partitioning agreement that Mr. Bentley spoke about earlier was a good idea. He felt they should let staff work out the negotiations. Ms. Minnet reminded the board members that P&Z recommends and the Town Commission decides.

Acting Chair Potts opened the meeting to public comments but there was no one wishing to speak. There was no more board discussion.

Ms. Minnet made a motion to recommend to the Town Commission that we maintain a Conditional Use. The motion was seconded by Mr. Clark. The motion carried 4-1 by voice vote, four Board Members were in favor of maintaining a Conditional Use and one, Mr. Potts, was not.

Ms. Mehaffey said that the Town Commission requested specific information as to what type of pump-out facility (e.g., portable, one station - one slip, or one station required in each slip, etc.). Mr. Graziano wanted to read the report which is expected on Friday. He would like to table this until the next meeting. Acting Chair Potts said we could work on a set of requirements that say the pump-out station is an engineered solution to serve the customer base of the marina. Mr. Clark felt that we need to know the options in terms of types of pump-out facilities. Mr. Lanta felt that we need to recommend if we want a pump-out station and the type of pump-outs we need should be left to the engineers. Mr. Graziano asked and Mr. Bentley answered that the scope of the forthcoming report was to outline the options available and the magnitude of the capital costs for each of the options. Mr. Graziano still maintains he would like that report but maybe tonight to let the Town Commission know we recommend a pump-out station but not a specific type.

Mr. Lanata made a motion to recommend to the Town Commission that the marina has an engineered sewer pump-out system. The motion was seconded by Ms. Minnet. The motion carried 5-0 by voice vote in favor of an engineered sewer pump-out system for the marina.

Mr. Bentley clarified that the report would not have a recommended solution. It would contain best practices at small marinas and the magnitude of costs. They are not doing an engineered evaluation for this marina.

Acting Chair Potts said that the last motion did not include that the marina's pump-out system is to be restricted to customers only. The previous motion was unanimously agreed upon without objection to be rescinded and the amended version below remains the same but adds the wording "restricted to customers/patrons of the marina only".

Ms. Minnet made a motion to recommend to the Town Commission that the marina has an engineered sewer pump-out system restricted to customers/patrons of the marina only. The motion was seconded by Mr. Clark. The motion carried 5-0 by voice vote in favor of an engineered sewer pump-out system for the marina to be used only by customers/patrons of the marina.

Mr. Lantana suggested having another P&Z Meeting after they read the report. Ms. Connors explained that the ordinance goes in front of the Town Commission on February 23, 2016. She said that if the commissioners table the vote, we could bring it back. She reminded the board members that the board sunsets on Election Day. We will not have another board meeting until April 2016. However, if the members read the report, we could have a Special Meeting before March 15th. Ms. Connors will send the board members the report. She asked them to contact her if they want a Special P&Z Meeting. Ms. Mehaffey suggested that when the board members receive the report, they should e-mail only Ms. Connors if they have comments or suggestions. Mr. Bentley reminded the board members that if the Town Commission adopts the Conditional Use, that conditions could be part of it.

7. OLD BUSINESS

8. UPDATES/BOARD MEMBER COMMENTS

Ms. Minnet reminded that one week from today, February 24th, is The Taste of the Beach and please attend if you can.

Ms. Connors reminded that on March 15, 2016, membership on both Board of Adjustment and Planning and Zoning ends. Please turn in your application to Town Clerk Tedra Smith if you are interested in re-appointed. She informed those in the audience that the application is on the Town's website.

9. ADJOURNMENT

Ms. Minnet made a motion to adjourn at 6:55PM. The motion was seconded by Mr. Clark. The motion carried 5-0.

Chair John Lanata

ATTEST:

Date Accepted: _____

Development Services Director Linda Connors
