



CITY OF FORT LAUDERDALE

**MEETING MINUTES
CITY OF FORT LAUDERDALE
MARINE ADVISORY BOARD
FORT LAUDERDALE FIRE RESCUE DEPARTMENT
528 NW 2ND STREET, STATION #2
FORT LAUDERDALE, FLORIDA 33311
3RD FLOOR CONFERENCE ROOM
THURSDAY, SEPTEMBER 5, 2024 – 6:00 P.M.**

**Cumulative Attendance
January-December 2024**

Steve Witten, Chair	P	7	1
James Harrison, Vice Chair	A	4	4
Tyler Brunelle	P	7	1
Robyn Chiarelli (6:15-8:19)	P	4	4
Jason Dunbar (dep. 8:21)	P	4	1
Barry Flanigan (arr. 7:00)	P	7	1
Robert Franks	P	6	3
Elisabeth George	P	8	0
Brewster Knott	P	5	3
John Lynch	A	6	2
Noelle Norvell	A	4	4
Ed Rebholz	P	6	2
Bill Walker	P	5	3
Robert Washington	A	6	2

As of this date, there are 14 appointed members to the Board, which means 8 would constitute a quorum.

Staff

- Andrew Cuba, Marine Facilities Manager
- Jonathan Luscomb, Marine Facilities Supervisor
- Susan Grant, Acting City Manager
- Robert Dunckel, Assistant City Attorney
- Sgt. Travis O’Neal, Marine Unit Supervisor
- Carl Williams, Director of Parks and Recreation
- Stephen Gollan, Fire Chief
- William Schultz, Police Chief
- K. Cruitt, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

I. Call to Order / Roll Call

Chair Witten called the meeting to order at 6:01 p.m.

II. **Statement of Quorum**

Roll was called and it was noted a quorum was present.

III. **Approval of Minutes – July 9, 2024**

Motion made by Ms. George, seconded by Mr. Brunelle, to approve. In a voice vote, the **motion** passed unanimously.

IV. **Discussion – Anchoring Limitation Area Legislation – State Representative Chip LaMarca**

Chair Witten introduced Florida Representative Chip LaMarca, who explained that a bill was brought forward in the Florida Legislature with the intent of creating a designated area where vessels may anchor or moor. It proposes that any county may establish anchoring/mooring areas in which they may regulate how long a vessel can stay there. Counties may also establish recreational and navigable waterway areas.

Representative LaMarca continued that there are 3800 acres of navigable waterways in Broward County, which equals roughly six square miles. The bill allows for 10% of this total to be set aside as designated anchoring/mooring areas.

Representative LaMarca advised that the City of Fort Lauderdale may propose a Resolution which would be sent to the Broward County Board of County Commissioners. The Board of County Commissioners would then schedule a two-part hearing for the adoption of the Resolution. Once 100% of the total area that can be set aside has been designated, municipalities may review them and determine whether or not they would like to modify their designations.

Representative LaMarca emphasized the importance of addressing issues such as derelict vessels, sanitary concerns, and proper anchoring in the event of a storm. The bill would give municipalities greater ability to enforce anchoring regulations.

Acting City Manager Susan Grant stated that the Fort Lauderdale Police Department is on board with how the proposed bill would work.

Assistant City Attorney Bob Dunckel noted that the bill states an individual may not anchor a vessel for more than 45 consecutive days, and asked if there is the possibility of allowing greater flexibility in residential neighborhoods on the water. Representative LaMarca replied that while it may be possible later on to include further limitations in the regulations,

he would recommend moving ahead with a Resolution now and working with the County later on to tighten those regulations if possible.

Chair Witten observed that there are areas in other parts of the country where vessels may not anchor and are required to use mooring buoys. He asked if this has been discussed as an option for Florida. Representative LaMarca stated that he did not want to place this type of additional requirement on local governments. Attorney Dunckel added that there is a distinction between anchoring and mooring; he was not certain whether or not the law would permit mooring buoys to be required in anchorage limitation areas.

Ms. George asked if a vessel which leaves its anchoring/mooring area for one of the 45 permitted days would begin a new 45-day cycle when it returns. Representative LaMarca recommended seeking clarification from the County on this issue.

Ms. Chiarelli arrived at 6:15 p.m.

Mr. Walker asked if the bill includes any language addressing environmental issues, such as pump-outs. It was noted that this would be governed by other legislation, although Representative LaMarca noted that environmental concerns were one reason the bill was proposed.

Kurt Holstein, member of the public, expressed concern that boats anchored for a long period of time can leak gas or sewage, or the individuals living aboard them may dump contaminants into the water. He recommended a bill which requires anchored vessels to be occupied and in navigable condition.

Representative LaMarca recommended that the City move forward with action specific to derelict vessels and similar concerns. He noted that there has been resistance from the Florida Fish and Wildlife Commission (FWC) with regard to taking any type of action that would change the current status quo. He also emphasized the need to ensure that boaters take care of their vessels and maintain them properly.

Mr. Walker asked if the County or City could add contingencies to the proposed state law, such as requiring pump-outs or other action or maintenance. Marine Unit Sergeant Travis O'Neal advised that if law enforcement is contacted with this type of concern, an Officer must actually witness an individual dumping effluent into the water; otherwise no action can be taken.

Mr. Brunelle asked what consequences a boater might face if a vessel is anchored or moored for more than 45 days. Attorney Dunckel advised that there is a provision that states a vessel which is the subject of more than three violations within 12 months could be declared a public nuisance and can be classified as derelict.

Chair Witten requested that Representative LaMarca continue to forward information to the Board so they may discuss it on future Agendas. He added that there may be a lack

of public understanding of the bill at present, and that the message to the public must be clearer. It was also suggested that the Board may be able to advise the City on designating its anchoring/mooring areas.

Ms. George pointed out that some areas in City waterways may be designated as federal mooring zones. Chair Witten advised that he would seek additional information on this.

Chair Witten thanked the Police and Fire Chiefs as well as the Acting City Manager for their attendance at tonight's meeting.

V. Waterway Crime & Boating Safety Report / Code Enforcement Update

Sgt. O'Neal reported the following activity from July and August 2024:

- 171 calls for service
- 9 accidents, none of which involved injuries
- 154 citations

Chair Witten advised that he has reached out to electronics manufacturer Garmin to request that a representative of that company attend a future meeting. Sgt. O'Neal recommended that boaters bolt in their devices to discourage theft.

Sgt. O'Neal provided a brief presentation on the City's Marine Unit, which has a fleet of 10 vessels. A shallow draft connector rescue vessel will be added to the fleet the following week. He also reviewed typical shifts, which are seven days per week, 7 a.m. to 5 p.m. An Enhanced Marine Law Enforcement Grant (EMLEG) provides funding for Officers to work at night. Marine Unit Staff consists of the Sergeant and seven Officers.

The Marine Unit responds to any crimes that take place on the waterway, including burglaries, thefts, accidents, traffic enforcement, fires, medical emergencies, and anchored vessel violations, among others. By comparison, Code Enforcement addresses dock violations, derelict/abandoned/sunken/unsightly vessels, live-aboards, seawalls, and similar issues.

A question was asked regarding the possibility of later Marine Unit hours on weekends. Fort Lauderdale Police Chief William Schultz replied that the Marine Unit previously had later hours, and he hoped to restore some of these hours once staffing has been addressed. At present, the Fort Lauderdale Police Department's focus is on filling vacancies. Chief Schultz advised that he hoped to staff two full shifts of the Marine Unit and fully cover the evening hours.

Chair Witten asked if the Marine Unit is short of equipment at present. Sgt. O'Neal replied that this is not currently an issue, although the Department is working to improve its equipment. He noted that two new engines are currently anticipated for boats.

Patience Cohn, representing the Marine Industries Association of South Florida (MIASF), noted that the city of Miami has a dedicated derelict vessel Officer. Sgt. O'Neal advised that the Marine Unit stays on top of the derelict vessels anchored in Fort Lauderdale; many more vessels are considered to be at risk rather than derelict. Three at-risk tickets must be issued to these vessels before they can be classified and adjudicated as derelict, which is a time-consuming process.

Ms. Cohn also asked what would be done once a derelict vessel has been anchored or moored more than 45 days. Sgt. O'Neal replied that this would probably involve a citation, although he would need more information about the new bill to be certain.

Kevin Connelly, member of the public, asked if grant funds are available for closed-circuit television (CCTV) cameras in certain areas. Sgt. O'Neal explained that most of these cameras are located on private properties rather than City-owned properties.

VI. 10 Minutes with an Industry Expert – Brendan McDonnell, Co-Managing Pilot – Port Everglades Pilots Association – “Small Boat Traffic from the Eyes of a Port Everglades Pilot”

Chair Witten introduced Captain Brendan McDonnell, Co-Managing Pilot of the Port Everglades Pilots Association, who gave a PowerPoint presentation on small boat traffic as seen by Port Everglades pilots.

Mr. Flanigan arrived at 7:00 p.m.

Capt. McDonnell showed several examples of the difficulty of very large vessels to see smaller ones on the waterway. He referred to the International Regulations for Preventing Collisions at Sea (COLREGS), which are navigational rules that apply to vessels on waterways, noting that it can also be extremely difficult for large vessels to come to a stop. Interference of small vessels with large ones at the Port can result in serious economic delays. He strongly encouraged smaller boaters to monitor their radios when on the water.

VII. Dock Waiver – 1240 Bayview Drive / Andrew Schein, Esq. as agent for Richard Lehecka

Andrew Schein, representing the Applicant, showed a PowerPoint presentation on the Application, which is a request for a boat lift, which would be placed at 36 ft. from the property line. Waterway width varies between 200 ft. and 280 ft. An average width of 250 ft. was used in the Application. The request would extend use of the waterway from roughly 10% to 14.4%. The Applicant's boat is 40 ft. in length and would be approximately 11 ft. from the dock.

Mr. Schein noted that the property lines for the subject site are not fully accurate. The Applicant's dock is located fully outside his property line. He added that the Application includes letters of support from immediate neighbors.

Mr. Schein advised that he had spoken with Attorney Dunckel in advance of tonight's meeting to discuss a potential issue. Section 47-19.1 of the City's Unified Land Development Regulations (ULDR), which addresses accessory structures such as boat lifts, mooring piles, and docks, states that no watercraft shall be docked at an adjacent property such that it extends beyond the side setback line as extended into the waterway. He stated that the Assistant City Attorney's interpretation of Code is that because accessory structures are not permitted in side yards in the subject zoning district, they are also not permitted in waterways.

Mr. Schein concluded that his interpretation of this language differed from this reading. While Attorney Dunckel had requested the Application be deferred for this reason, Mr. Schein was not comfortable doing so, as he did not agree with the Assistant City Attorney's interpretation.

Attorney Dunckel explained that Code allows marginal docks to extend from property line to property line; however, Section 47-19.1 states that no accessory use or structure may be located within a required yard setback specified by the zoning district where the development site is located, unless specifically permitted by the ULDR. He advised that he has seen Code Enforcement cite properties in which a floating vessel platform is located within a side yard setback once a boat has been placed on that structure.

Attorney Dunckel suggested that if the Board chooses to recommend approval of the dock waiver request, it should be done specifically with a potential challenge in mind in relation to the boat lift extending into the side yard setback.

Attorney Dunckel encouraged the Board to review the subject property's location on Seminole Lake and its proximity to the Intracoastal Waterway, which means it is greatly influenced by tides and storms, as are most waterways within the City. He was not certain that tidal influences constituted extraordinary circumstances in this case.

Mr. Schein pointed out that the subject location is often used as a "yacht turnaround" area, which creates large waves from large boats. In addition, extension into the waterway is measured from the property line rather than from the location of the dock. The dock itself is outside the property line.

Mr. Flanigan commented that the language referring to extraordinary circumstances should be eliminated from waiver requests. Attorney Dunckel stated that there must be a standard by which applications are judged. It was also noted that while large boats turn in the area, it is an idle speed zone.

Chair Witten commented that the majority of waivers that come before the Board do not have extraordinary circumstances. He felt an owner's request to have a boat lift constituted a reasonable request in itself. He asked if Attorney Dunckel had identified other issues with the request aside from a lack of extraordinary circumstances.

Chair Witten also asked if the setback question was a legal challenge the Board is not capable of addressing within its purview, and if that meant they should defer the Item. Attorney Dunckel stated that the language he had cited is part of Code, which is the standard by which the City Commission must judge the Application. The Commission's decision could then be challenged in court to determine whether or not there is substantial evidence to support the conclusion that extraordinary circumstances exist.

Attorney Dunckel reiterated that if the Board recommended approval of the Application, they should state that the Assistant City Attorney feels there is a violation of Code which could deny the Applicant the necessary zoning permit to proceed.

Mr. Schein confirmed that the Applicant understands zoning is a separate issue and that a zoning permit may be denied; however, the Application before the Board is not a zoning application.

Attorney Dunckel advised that extraordinary circumstances are determined on a case-by-case basis and may include factors such as high wake or speed zones; however, he did not believe the Application before the Board at this time fell into any of the necessary categories.

Mr. Brunelle asked if the use of a boat lift in the event of a hurricane could be seen as an extraordinary circumstance. Attorney Dunckel stated that a hurricane would affect all properties on a waterway.

Mr. Schein observed that the Applicant's dock already exists, and if the dock were rebuilt, there may be a way to position the boat lift in a way where an 11 ft. waiver would not be necessary. The 11 ft. buffer, however, is required between the dock and the center of gravity on the lift.

Mr. Brunelle asked if the dock is located within the Applicant's property line. It was clarified that the dock is 1.4 ft. from the property line. The property is required to have a 10 ft. setback on each side. Mr. Schein replied that the dock and finger pier were approved and permitted by the Zoning Department.

Attorney Dunckel asserted that his recommendation to defer the Item was separate from the waiver request itself; he was instead asking the Board to think in terms of whether or not the Application satisfies the requirements for extraordinary circumstances, such as high speed or wake zones, which the Board regularly sees. He also recalled a case in which a waiver decision by the City Commission was appealed; while the City prevailed in that case, it is not guaranteed that they would win others. For this reason, he

recommended careful review of applications, particularly due to issues that can occur on the western New River.

Mr. Walker asked if extraordinary circumstances may include navigational hazards on the waterway. Attorney Dunckel confirmed that this was his interpretation of Code.

Chair Witten observed that the Board regularly uses the term “extraordinary circumstances,” and proposed that a full discussion to clarify this term be placed on a future agenda. He reiterated, however, that the Board should not ignore a request for a boat lift or another type of waiver if extraordinary circumstances are not provided. Attorney Dunckel stated that if an application was granted by the City Commission with no mention of extraordinary circumstances, it was his opinion that the approval could be overturned in court.

Chair Witten asked if the Board may still recommend approval of the Application even if they do not believe extraordinary circumstances exist. Attorney Dunckel replied that in his opinion, if the Board does not believe extraordinary circumstances exist, it is their responsibility to recommend denial of the Application. If they do believe the factors presented constitute extraordinary circumstances, it is their responsibility to recommend approval, subject to the side yard setback issue.

Mr. Brunelle commented that extraordinary circumstances are not required to be negative impacts. Attorney Dunckel pointed out that extraordinary circumstances are historically considered in light of how they negatively impact an applicant and their property. He reiterated that he hopes to modify this language in Code in the future, and will seek feedback from the Board at that time.

There being no further questions from the Board at this time, Chair Witten opened the public hearing. As there were no individuals wishing to speak on the Item, the Chair closed the public hearing and brought the discussion back to the Board

Motion made by Mr. Brunelle, seconded by Mr. Dunbar, to approve. In a roll call vote, the **motion** passed unanimously (10-0).

Chair Witten concluded that he will request a discussion of extraordinary circumstances be placed on a future Agenda.

VIII. Dock Waiver – 601 Cordova Road / JFB Assets Management, Jean-Francois Boisvert

Hector Heguaburo, representing the Applicant, explained that while this Application had previously been approved, a subcontractor made an error in constructing the dock, placing it within 1 ft. of a setback. The Applicant was asked to bring the Application back before the Board.

Mr. Cuba further clarified that a 5 ft. setback exists on docks on Cordova Road. The Applicant's previous dock was installed within the north end of that setback. The Application will bring the structure within the setback on the 80 ft. wide property.

Motion made by Mr. Walker, seconded by Ms. George, to approve. In a roll call vote, the **motion** passed unanimously (10-0).

IX. Dock Permit – 823 SE 2nd Street / Roger & Mary Edwards

This Item was deferred.

X. Dock Waiver – 1414, 1424 & 1500 SE 12th Street / Hemingway Landings Condominium Association

Romney Rogers, representing the Applicant, stated that the Hemingway Landings Condominium is located next to the Fort Lauderdale Yacht Club and consists of three buildings with 21 units. It proposes 21 slips, one per unit owner.

The request before the Board is a distance waiver. There are 26 dolphin pilings shown on the Applicant's survey. Four of the 26 pilings are currently within the 25 ft. limitation; nine of the pilings are within 1 ft. of this limitation, and the furthest distance of the remaining pilings is 2 ft. 7 in. beyond the 25 ft. limitation. The waterway is 118 ft. wide at the subject location. The farthest dolphin piling is at approximately 27.7 ft. into the waterway and does not intrude into the navigable waterway.

Mr. Rogers advised that all 21 unit owners have received a notice of violation of the 25 ft. limitation. While 22 of the 26 pilings are beyond the 25 ft. limitation, they are all within 2.7 ft. of the limitation. The Applicant requests an after-the-fact distance waiver to approve the pilings.

Extraordinary circumstances include:

- Need for the dolphin pilings in order to secure docked vessels in a severe weather event
- Protection against wakes in a heavily traveled boating area
- Most of the pilings were originally installed when the development was put into place in 2009; only a few of the pilings have been updated and moved
- If the nine pilings located within 1 ft. of the limitation are moved a short distance, which is within a few inches in some cases, the pilings may be less stable and may lean or lose position

Mr. Brunelle asked for more information on whether or how the pilings which have been updated since 2009 were replaced. Mr. Rogers replied that the pilings within 2.7 ft. of the limitation were moved due to the installation of a lift which was permitted at a distance of 25 ft.

Chair Witten pointed out that some boats at the subject location exceed the 25 ft. distance limitation. Mr. Rogers confirmed that some boats docked at the subject property exceed the limit. Attorney Dunckel advised that Code restricts a vessel from protruding more than 30% into the width of a canal.

Mr. Walker requested clarification of the width of the waterway at the subject location. Mr. Rogers replied that the narrowest area is roughly 118 ft.

Mr. Dunbar commented that neither the pilings nor the boats at the subject location have constituted an impediment when he is boating in the area.

Motion made by Mr. Walker, seconded by Ms. George, to approve. In a roll call vote, the **motion** passed unanimously (10-0).

XI. Old / New Business

Chair Witten advised that John Nybro, representing the Fort Lauderdale International Boat Show, was unable to attend tonight's meeting, but may be able to attend in October 2024 to give a "behind-the-scenes" presentation on the Boat Show. It has also been suggested that the Board invite a representative of the Winterfest Boat Parade to a subsequent meeting.

Chair Witten showed an example of an advertisement for a charter dock for rent, which means charter vessels are offering the use of commercial docks to pick up and drop off their customers. This practice is not legal in Fort Lauderdale. Unauthorized charter vessels, including "party boats," also continue to be an issue. Attorney Dunckel advised that the advertiser in question has been cited for multiple Code violations.

Chair Witten continued that the new Broward County Commissioner for the Florida Inland Navigation District (FIND) is Richard Waltzer, who has been invited to attend a Board meeting. He also noted that the Boat Show is scheduled to begin on October 30, 2024 and the Winterfest Boat Parade for December 12, 2024.

Chair Witten recalled that while there is no longer a proposed moratorium on waivers along portions of the New River, the Board is still active on this topic. He asked if it would be possible for the Board to recommend changing the City's rule permitting 30% extension into the waterway to 25%. Attorney Dunckel confirmed that the Board may make this recommendation. He added that in his work to address extraordinary circumstances, he hopes to identify a different label that could include factors justifying the grant or denial of a waiver.

Ms. Chiarelli left the meeting at 8:19 p.m.

Chair Witten also reviewed some of the items mentioned at the July 2024 meeting for further discussion in the future, including cleaner waterways and commercial barge locations. He stated that he will put together a document summarizing these items.

Mr. Dunbar left the meeting at 8:21 p.m.

Attorney Dunckel advised that one change he is considering for proposal would be for floating vessel platforms to require pilings equipped with reflectors at the end of the floating structure. He felt this constitutes a navigational hazard or impediment. Chair Witten also expressed concern with non-reflective dolphin pilings, stating that he felt reflectors should be a requirement.

XII. Adjournment

There being no further business to come before the Board at this time, the meeting was adjourned at 8:23 p.m.

Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto.

[Minutes prepared by K. McGuire, Prototype, Inc.]