

CITY OF ST. AUGUSTINE, FLORIDA

Planning and Zoning Board Workshop Meeting
March 28, 2003

The Planning and Zoning Board met in a workshop session at 2:00 p.m., Tuesday, March 28, 2003, in The Alcazar Room at City Hall. The meeting was called to order by Bruce Dufresne, Chairman, and the following were present.

1. ROLL CALL

Bruce Dufresne, Chairman
Gerald Dixon
Leanna Freeman
Harvey Simms

Excused:

Matthew Baker
Roxanne Horvath
James Solana

Also Present:

James Wilson, Esq., City Attorney
Mark Knight, Director, Planning and Building Department
David Birchim, Senior Planner
Pam Halterman, Recording Secretary

**2. INTRODUCTORY REMARKS
BY THE PLANNING AND
ZONING BOARD**

Mr. Dufresne advised that the workshop would involve generic conversation regarding docks and boatlifts and no specific action would be taken by the board during the workshop. He stated that the board was seeking unanimity whether any changes were necessary on the ordinance regarding boatlifts and docks. He advised that the board would only recommend changes to the City Commission and any changes to an ordinance would require a public hearing at a later date.

Mr. Dixon stated that historically, the boatlift issue was not much of a concern, however, as property values and wealth had increased in the City, there existed more property owners with desires to access the

water.¹ He commented that if one purchased property with relative accessibility to the water, one had the right to construct a dock. He noted that the issue had become more complicated with a dock serving a condominium. He recalled that in 1995/1996, the first application concerning a boatlift involved a home on Davis Shores, which involved a 36' Sports Fishermen twin engine boat and the request had been denied by the PZB. He expressed that a boat in the water was different than a boat on a lift because it involved scenic vistas. He described several styles of boats and compared the size and how some boats could obstruct the vistas while on lifts. Ms. Freeman questioned whether the City currently had a definition of scenic vistas.

¹ Mr. Wilson arrived at 2:07 pm.

Mr. Knight stated that it was a subjective term decided by the board during the hearing process.

Ms. Freeman suggested that the term scenic vista should be defined.

Mr. Dixon expressed that the board was headed in that direction and it needed to be decided fairly soon.

Ms. Freeman said everyone was concerned about the appearance of the bayfront with docks and lifts.

Mr. Dixon stated that scenic vista had only involved adjacent properties, however, that had since changed.

Ms. Freeman asked staff for the number of applications that the board received regarding boatlifts over a time period of one year.

Mr. Knight advised that most boat docks included a request for a lift and the City probably handled twenty-four such requests each year.

Mr. Dixon noted that a dock with a boatlift located in the city had been approved by the PZB, however, he described it as a short dock with a lift holding a smaller center cockpit type boat and suggested that it was no more obstructive to the view than the dock.

Ms. Freeman asked if Mr. Dixon was suggesting that part of the issue involved the height of a boat.

Mr. Dixon noted that the ordinance required a 12,000 pound maximum lift, however, with light weight materials a thirty-six foot vessel could weight 10,000 pounds.

Ms. Freeman asked Mr. Dixon if he felt that height restrictions should be considered by the board.

Mr. Dixon said his concern was the type of boat along with the weight of a boat. Due to the many controversies, he stated that he would not approve a request for a boatlift until a change in the Code occurred.

Mr. Dufresne stated that he had been opposed to docks, mostly in the Salt Run area. He said he had not observed a large problem with docks at locations with deep running water. He expressed that the siltation problem in Salt Run had been compounded by the number of docks in that area. He noted that a very large vessel on a lift, sticking out of the water, caused a sight line dilemma. He asked for guidance from Mr. Wilson.

Mr. Wilson stated that there existed a certain amount of resistance to completely closing off the concept of docks. He noted that many people had property located by a body of water and through ancient law, it was the main source of transportation during that time and the legal decisions regarding that law would be found in the owners favor concerning access to water. He stated that the City had the authority to regulate certain items such as size of boats and length of docks when it affected navigational waters. He advised that it would be difficult to stop all dockage without a good governmental purpose. He explained that he had

completed much research regarding dock issues and had found very little where government entities were able to stop docks all together.

Mr. Dufresne noted that the concern of the board was not to halt docks, but to regulate the obstruction of views.

Mr. Wilson advised that the board had the right to regulate aesthetics to a certain degree. He suggested that it was necessary to better define views and vistas, because the Code was very open to interpretation on what scenic vistas meant. He noted that vague language usually led to legal problems with ordinances. He suggested that the best direction for the board would be to listen to the public in attendance and review their concerns and seek a compromise between the two. He advised that many items involved with docks and lifts could be regulated that would not effect a citizens' ultimate access to the body of water, but took into account the City and residential needs. He commented that it would take some creative design, but could be accomplished.

Mr. Dixon clarified that the board rarely denied the request for a dock. He described problem areas involving navigational waters becoming shallow along the City's coast and the need for very lengthy docks because of sand bars.

3. PUBLIC HEARING AND DISCUSSION

George McClure, 170 Malaga Street stated that the specific purpose for his presentation involved the case of Pelican Reef, which

would come before the board on April 1, 2003. He noted that their intent would be to review the issue in general terms.

Mr. Dufresne delayed Mr. McClure's presentation and stated that the board did not want to hear the words, Pelican Reef, because that case would be presented to the board on April 1, 2003 and the board desired not to prejudice any of the issues involved with that case. He said the intent of the workshop was to discuss docks and boatlifts in a general or generic fashion.

Mr. McClure submitted copies of relevant Codes to the board members. He directed attention to page one of Staffs' report regarding Pelican Reef, which stated that:

Section 11-29. Standards for review.

- a) *Permits for structures and uses located within Conservation Overlay Zone I shall be issued only for such structures and uses which have received permits under provisions of applicable federal and state regulations and will be issued only for those structures and related uses such as fishing piers and catwalks, boardwalks, boat docks, boathouses, boat ramps, marinas, and marine railways as well as dredging and filling, which are determined to be to the benefit of the public as a whole and which are determined as having no significant negative impact on natural systems, by either individual or cumulative effect.*

Mr. McClure stated that it was very difficult for one to spend money for engineering plans to obtain DEP and Corp. of

Engineering permits before they knew what the City desired an owner to construct, even though, it was a small number of applications that the board requested DEP or Corp. of Engineering permits as a condition with granting approval of a Conservation Zone One permit. He explained that Corp. and DEP permits were dependent upon standards that engineers understood. He noted that the variable involved the City regarding what the board allowed. He articulated that the majority of the applications that the board received would be for private use docks, therefore, he said it was difficult to understand the Code when it referred to: "structure of use that was a benefit to the public as a whole". He stated that the term and intent of the Code was undefined and unclear. He commented that the board could suggest that they did not desire anything to be detrimental to the interest of the public as a whole. Therefore, he questioned why the board should be required to determine that if he desired to build a dock in front of his home, that his dock would benefit the public as a whole. He noted that the more significant issue would be the portion of the Code, which stated that: "*The Planning and Zoning Board is authorized to impose limitations in the nature and manner of construction and/or use so as to avoid damage to adjacent salt marshes and the vegetative communities contained therein, to eliminate any harm to the animal, fish or shellfish contained therein, to avoid blocking or disrupting vistas and scenic opportunities, and to enhance those vistas and scenic opportunities which are determined to benefit the public as a whole*".

Mr. McClure affirmed that he had never debated that issue with the PZB, however, he said he had debated the issue of blocking or disrupting vistas and scenic opportunities. He suggested that the importance of that sentence was that the board could not deny an application on that issue, but could limit an approval with conditions. He directed attention to the second page of the Codes that included seventeen individual criteria that applied to docks. He read the seventeen criteria and noted that generally, only four items from the list would be discussed during the presentation of an application to the board. He explained that when a client approached him to aid in their request for a dock and lift, he noted that it was impossible to inform that client about what would be required for approval of the application. He stated that the regulations should not be dependent upon the composition of the board. He expressed that the predominate opinion of people on the board was that they were rational people, seeking fair results and good outcomes. He noted that without standards, it fell back to what the subjective judgment was about what consisted of a scenic vista. He suggested that it came down to whether four out of seven members of the PZB thought that the proposed dock and lift was ugly or not, which was an unfair standard. He stated that it was clear that the board had the ability to reasonable regulate items along with applying aesthetic judgments. He suggested that the board focus on regulating the appearance, which would remove some of the uncertainty involved with the process. Noting years earlier, he said a 12,000 pound boat was not a large boat and was fairly rare because many boats were made of wood, however, by current standards, boats weighing 12,000

pounds could be as long as a forty-five foot cigarette boat. He suggested that the size of a vessel and/or mass of it could be limited. He commented that it would be a mistake to eliminate docks altogether, because the lift itself was not the problem, but the vessel had been the problem. He submitted photographs of boat docks with lifts to the board members. Directing attention to the photographs, he noted that the lifts were not particularly an offensive item and the lifts were an inherently detrimental issue. He articulated that a ½ dozen lifts were located at the foot of the Bridge of Lions and he suggested that the lifts were not as imposing or detrimental to the scenic vistas as one thought they were. He suggested that a greater anxiety existed regarding lifts than the facts supported.

Mr. Dixon noted that the first lift had been requested by Henry Green (inaudible).

Mr. Dufresne directed attention to one of the photographs submitted by Mr. McClure and asked if anyone found anything terribly objectionable about the dock and lift shown in the photograph. He suggested that one would probably not object to a dock with lifts installed as depicted in the photograph and it did not consist of a large impact to the view. He noted that one photograph showed the boats docked extremely close to the shore with a hedge buffer and said that it was not much of an objectionable image.

Mr. Dixon explained that in south Florida, the waterways consisted of channels and alleyways off the main water.

Mr. McClure affirmed that channels would not be dug around the local area because

they were not permissible. He suggested that one would not need to be concerned about channels or sixty-five foot yachts in the local area. He directed attention to the photograph that depicted the Victory Four commercial ship and noted that it could be docked in the City everyday and said he had shown that photograph to clarify that the issue was not the dock or lift, but the vessel itself. He encouraged the board to discuss the issue of an attractive waterfront. He noted that some areas of dockage and lifts were miles away from tourist areas or any person affected by the view. He suggested that if the board planned to apply a standard of physical attractiveness, it should be done with legitimate concerns of the City, such as width of dock, railings on a dock, powder coated aluminum and capacity lifts. He commented that applicants would, thereby, know the standards and how to obtain those standards. He explained that most people ascertained that they would be allowed to install a lift as long as it did not exceed 12,000 pounds, which had not occurred. For example, he noted that if the application involved a 1000 pound lift, the requirement included the approval of the PZB. He stated that the desire would be that if one remained within the rules, they would be entitled to build a structure that involved set regulations.²

Mr. Dufresne stated that he agreed with most of the comments made by Mr. McClure. He directed attention to the submitted photographs and said that he found the docks and lifts to be apropos and attractive. He noted that what was normally applied for was not the equivalent of what

² Mr. Simms arrived at 2:47 pm.

was depicted in the photographs. He said that the dock and lifts shown in the photograph had a neatly packaged appearance and was not located at the end of a five-hundred foot dock.

Michael Hawkins, representative from Terrell and Associates, stated that his company built many docks in south Florida, which were depicted in the submitted photographs. He commented that boatlifts enhanced the safety aspects of boats and docks. He noted that when one attempted to load or unload a vessel, the tidal range could be intense and dangerous for people.

Mr. Dixon commented that a floating dock was available to ease that situation.

Mr. Hawkins stated that in some areas, floating docks would not work without a break-water. He suggested that a break-water would be more intrusive than a lift in many areas. He stated that a break-water turned into a much larger structure than a lift due to the size requirements, navigational impacts and further protrusion. He noted that there existed low profile lifts, as shown on one of the photographs. He explained that the issue was not the dock or lift, but the size of the vessel regarding height and length. He articulated that lifts elevated boats, which resulted in the sunlight penetrating into the water to allow sea grass growth and natural invertebrates surviving on the portion of docks underwater. He noted that when his company permitted a dock, a condition of that permit was to install a lift, whether for environmental concerns or wave action in the area. He explained that the local area consisted of a large amount of waves at intermediate

periods and amplitudes. He noted that an amplitude wave of three feet smacking into the rear of a boat, even if the vessel was tied up, would cause the vessel to bang up against the dock it could result in damage to the boat, dock and adjacent properties.

Ms. Freeman asked if the local tidal changes were similar to ones taking place in south Florida.

Mr. Hawkins clarified that tidal changes in south Florida were between one and two feet.

Mr. Dixon affirmed that locally, the tidal changes involved as much as four foot differences. He commented that, historically, most people placed docks and lifts in areas that were protected, but currently a dock could be constructed anywhere along the coast.

Mr. Hawkins stated that some low profile lifts would be located only one foot above the deck area, which would remove the concern of obstructed views. He explained that powder coating the structures was easily completed and would practically make the lift invisible.

Fred Cone, 207 Inlet Drive, stated that the statutes and rules that the City operated under were very arbitrary and difficult for the property owner to understand what one would be allowed to build. He suggested that the board place predicable standards such as low profile lifts, weight capacity and length of docks in the ordinance. He noted that most people were seeking reasonable criteria and regulations they could follow

and then submit an application and expect a favorable outcome from the board.

Richard Davis, 5 Indian Mound Drive, commented that for a workshop with much sensitivity, the timing of the workshop was not appropriate.

Mr. Dixon agreed that the timing was bad, however, if a change in the ordinance followed, it would come before the City Commission and they would hold a public hearing, which would take place during evening hours.

Ms. Freeman affirmed that staff showed a great effort in coordinating the schedule of the members along with staff.

Mr. Davis suggested that the timing of the meeting was an attempt to control public opinion on the issue.

Mr. Dufresne stated that one could describe it as that, however, it was the best time for most of the members of the board. He agreed that it was not a convenient time.

Mr. Davis referred to a meeting held by interested citizens concerning docks and lifts and noted that most people with waterfront property desired lifts and docks with the ability to use their property to the fullest.

Mr. Dixon stated that as the City's population grew, more regulations would be made and the effects had filtered down to the board level.

Ms. Freeman stated that she would like specific comments from the public and asked if Mr. Davis would be in favor of any

restrictions and whether those restrictions would be helpful.

Mr. Davis suggested that a committee be formed that included Commissioners and citizens of the City to meet and seek solutions that most people agreed upon. He commented that until a definition was developed regarding scenic vistas, the phrase should not be used, because an applicant was unaware of what he would be up against regarding vistas. He stated that the waterways belonged to everyone and a compromise needed to be worked out. He articulated that many people were away for two to three months at a time and would prefer to know that their boat was safe on a boatlift while they were away. He suggested that docks aided the protection of manatees, because they swam close to the shores where the docks were located. He added that if one installed a boatlift, the insurance cost for the boat would be cheaper because the boat was on a lift. He suggested that the scenic vistas should be adopted only in areas where it would matter.

Ms. Freeman questioned whether Mr. Davis favored multiple boatlift situations.

Mr. Davis stated that if multiple boatlifts were constructed properly, he would be in favor of them.

Mr. Dixon stated that he did not desire to debate in detail with Mr. Davis, due to his impending litigation with the City regarding his boatlift.

Mr. Davis stated that one did not have a choice about the boats' height out of the water. He explained that if the City was

experiencing a flood high tide, the tide would raise higher than a normal tide. He noted that he would make sure that the bottom rail on his lift was high enough to handle the flood tides. He suggested that the tidal changes dictated how high the boats needed to be out of the water.

Mr. Dufresne asked the City Attorney if it would be necessary to better codify the term of scenic vistas. He stated that it had been pointed out that scenic vista was a somewhat nebulous term. He suggested that it might be easier to specify height and length restriction than it would be to define scenic vistas.

Mr. Wilson stated that he agreed and advised that staff had attempted that a few years earlier, by placing restrictions in the Code about what could not be constructed on docks, such as roofed structures. He explained that staff had heard, many times from applicants during debates, that they were obstructing their own view. He noted that the Code did not describe whose view the City was attempting to protect. He agreed that imposing limitations that were not subject to interpretation, such as height, size and length, would be beneficial. He stated that much could be accomplished from that standpoint that would achieve what the board was seeking, by shrinking the size of structures and vessels without using a vague term. He noted that the City had taken the first steps by limiting the size of boatlifts and prohibited roof structures and other such items that would protect everyone's rights.

Mr. Dixon commented that the views should include inward to land as well as from land,

thus, scenic vistas came from many angles and not just one.

Mr. Wilson stated that many people liked to view boats and docks from the Bridge of Lions.

Mr. Dixon stated that marinas needed to be separated from the private sector. He said marinas and the type of boats at marinas were regulated by zoning and were located at specific areas in the City.

Mr. Simms asked whether the Code defined a marina.

Mr. Wilson advised that in the City Code, a marina was defined as a commercial operation used for storage and serving boats as a business, as opposed to a condo dock, which would be for residents and also included a different level of activity and service.

Mr. Knight read the Code describing a marina to the board members: "*A marina means an establishment with a waterfront location for the refueling of watercraft, providing minor repair services for such crafts and providing the storage of watercraft. A marina may include as an accessory use; restaurant, snack bar, lounge, motel, hotel, launching facilities and other customary accessory facilities*".

A discussion ensued between board members and staff regarding rental, storage and fueling. It was determined that a marina was a commercial establishment and not an individual private establishment.

Ryan Windler, 1122 San Jose Forest Drive, Jacksonville, stated that his family had recently made a conscience decision to purchase a boat and for convenience and maintenance they had chosen to install a lift by Sebastian Harbour Marina. He noted that for the past week, they had attempted to take the boat out, however, during low tide all the wet slips were mud. He stated that the only other course to take would be to trailer the boat and place it into the water by a boat ramp.

Donna Windler, 1122 San Jose Forest Drive, Jacksonville, stated that she sold waterfront properties with increasing values and high tax base. She noted that people were paying a fortune to own those properties. She suggested that it would work well if the board placed aesthetic limitations within the Code, because it would remove the personal opinion aspect of a dock or boatlift request. She commented that the board should not limit owners the reasonable use of their property. She explained that it was not fair to limit the owners' rights to use their property.

Bob Kramer, 155 Marine Street stated that he had lived in St. Augustine for approximately two years and prior to that, he lived in south Florida at an upscale boating community that did not install boatlifts, however, they installed drive-on lifts, which consisted of a compressor to lower the boat into the water.

Mr. Dufresne explained that one problem with docks involved tidal changes. He noted that south Florida consisted of eighteen inches tidal changes, however, St.

Augustine had 4½ to 5 feet tidal changes, which made a large difference with docks.

Mr. Dixon added that south Florida had canals which were well protected from tidal fluctuations.

Mr. Kramer stated that at Baypointe Condominiums, two residents had recently installed drive-on lifts on their floating dock.

Mr. Davis noted that south Florida did not have the oyster growth that St. Augustine had. He stated that anything that sat in the water resulted in oyster growth in a very short amount of time.

Tom Hogan, 105 Marine Street stated that he owned waterfront property in St. Augustine. He noted that scenic vistas were subject to individual opinions.

Mr. Dixon reiterated that scenic vista included the obstruction of a view and not what one was viewing.

Mr. Hogan suggested that the quicker one was over an attempt to define scenic vistas, the closer one would be to a solution. He stated that Mr. McClure was logical in his attempt to specify items to give an applicant something to shoot at.

4. CLOSING REMARKS

Mr. Dufresne summarized that no one was absolutely opposed to docks and there did not exist universal opposition from the board regarding lifts. He stated that a substantial concern existed about how the view appeared when a boat was on a lift. He

suggested that definitive standards were necessary regarding lifts.

Mr. Dixon affirmed that the board agreed that the Code needed to be better defined. He suggested that staff create a draft for the board's review during the following meeting.

Mr. Dufresne reiterated that it was necessary to "plant a target" to aid an applicant in their desire to obtain boatlifts. He noted that any changes in the Code would be presented to the City Commission, at which time a public hearing would be held. He suggested that the public stated valid concerns that day. Addressing the audience, he advised that the board would take into consideration everything that was said and attempt to create a more concrete ordinance.

5. ADJOURNMENT

There being no further business, the meeting was adjourned at 3:34 PM.

Bruce Dufresne, Chairman

Pam Halterman, Recording Secretary