

MINUTES  
CITY COMMISSION MEETING  
May 26, 2015

The City Commission met this date in a special meeting in the Commission Chambers. A quorum being present, the meeting was called to order at 6:00 PM with the following in attendance.

Mayor	:	John B. Arnold, Jr.
Commissioners	:	Heyward H. Strong, Jr.
	:	Kay Hamilton
	:	Joe Morgan
	:	Clark (Tom) Browning, IV
City Clerk	:	Tammy Johnson
Police Chief	:	Joe Hart

Others in attendance: (Not Inclusive) Amber Elledge (camera), Patrick and Louise Pertuit, Bobbi Luna, Mike Luna, Brandon Wilson, Rob Holloway, Bill Cunningham, Tom Miller, Don Pardue, Bill Smith, Gerald Sullivan, Britt Walker, Sue C. Knight, Shirley A. Knight, John Durham, Joseph Pascarella, Joseph Arthur, Henry R. Yancey, Wayne Justice, Obie O'Brien, Wendi Greene

**PLAT I DOCK REPAIR**

Mayor Arnold said the meeting was requested by Comm. Morgan so he would turn it over to him.

Comm. Morgan said the reason to request the meeting along with other Commissioners is that it has been heard from residents there is confusion and concern that the city is going after people in regards to minor dock repairs. He felt as he has been working on a dock ordinance that it is just as important or maybe more important to make sure everyone knows the practices and procedures that are enforced to avoid any confusion. Comm. Morgan said this is one of the intents of the dock ordinance that has been delayed, however due to the delay we need to provide a clear direction to our staff for current enforcement. COMM. MORGAN MADE A MOTION TO INSTRUCT CITY ADMINISTRATOR AND VALPARAISO ENFORCEMENT OFFICER TO ALLOW FOR NORMAL REPAIR OF DOCKS IN PLAT I TO ALLOW CURRENT IN PLACE DOCKS TO RENEW THEIR ENCROACHMENT AGREEMENT IF NECESSARY. COMM. HAMILTON SECONDED THE MOTION. Comm. Morgan said we haven't asked for it and don't think we've ever assumed that we own the dock because we did not enforce it nor do I think we should sustain the liability of those docks. Comm. Morgan said furthermore we should allow current in place docks to renew their encroachment agreements if necessary, some have already renewed. He said in other words those lapsed due to change in ownership, proof of insurance or etc., to renew.

Mayor Arnold said your motion is in opposition to our code of ordinances and if you want to change things or correct something the proper way to do that is to change the code, go through the necessary public hearings and advertisements. He doesn't think the Commission has the authority to arbitrarily go ahead and do something of this nature unless there is a real emergency situation. Comm. Morgan said he looked at that and that is why he worded the motion in such a way not asking to change the code, all he is asking is to back off enforcement of code that we haven't enforced as far as a renewal goes in years. Comm. Morgan said there is nothing in code that doesn't allow renewal, all he's doing is instructing our city staff to renew the encroachment agreements they could have. He said it is that simple and he is restricting this to current dock owners. Comm. Morgan said they've had these docks, they consider they've owned them and there's nothing in our code that doesn't allow for minor repair. He said minor repair includes replacing pilings, nailing boards, docks fall apart, and he is always repairing his own dock so as long as doing that, maintaining safety of dock for public use as they've already acknowledged. Mayor Arnold said that is like asking Chief Hart not to ticket speeders on John Sims Parkway for the next two weeks that violates our code. Comm. Morgan said current encroachment agreement that signed, old ones, nothing about renewal only if informed would they know that they had to renew. Mayor Arnold said ordinance at the time for five years, five year time frame. Comm. Morgan said this is the problem encroachment agreements with varying issues that haven't been renewed, haven't demanded renewal and he thinks we should say now if you have a dock it needs renewal, asking for enforcement and if these owners don't renew encroachment then that is another matter. He said then we would have the right to demand it be torn down, but if current owner wants to assume ownership of dock in front of their land then they should be allowed to do so and would relieve us of liability.

Mr. Henry Yancey, 250 S. Bayshore Drive, said he lives in Plat II, he asked if we have a list of everyone who needs to update and can they be notified to update by letter, that would be official notification and once on record then proceed to do what needs to be done. Comm. Morgan said given the number of docks that we have he believes it would be possible to do that. Mr. Yancey said another question for all dock owners for renew encroachment clause in Plat I or II, he understood exception clause allowed for operational repair. Things that do not have to go through engineering or DEP or Corp of Engineers does that rule not apply today. Comm.

Plat I Dock  
Repair

Morgan said no conflict it does allow. Mr. Yancey said a lot of people feel the city is bearing down on them for make simple repairs that has to be permitted, he thought that was under the exemption. Comm. Morgan said normal repairs and we can specify, normal repairs to include what is needed are allowed and we can specify to include. Mr. Yancey said he realizes it is different but for people with docks in different plats but for clarity it is nice to know. Mr. Yancey said for example eight soft boards, go out to repair and someone from the city comes out and orders you to stop and get a permit that is what is happening. He said it would be nice to be able to make your dock safe without reengineering.

Mayor Arnold said several cases owner would try to increase the size of the dock. He said that is where we got into problems. Mr. Yancey said that is a DEP issue, because of the grassland issue. Comm. Morgan said that is a separate issue, why he is restricting the motion specifically for normal repair, nailing boards, replacing pilings, replacing of decking, etc. Comm. Hamilton said not to change or alter the size.

Mr. Thomas Miller, 2 Hickory Lane, North Bayshore very few have riparian rights, the docks are on property that don't have riparian rights, if we are going to mess around with the amendment to grant a partial exemption give them all riparian rights and have them assessed for taxes. Then they don't have to ask city for anything they own to waterfront. Mr. Miller would like to see amendment change or further thought put into that. He said the docks should be repaired if needed.

Mr. Obie O'Brien, 324 Glen Avenue, said the Commission will be involved with this situation for as long as the city continues to allow a handful of docks on waterfront area that abuts city property. He said the city dealt with almost the exact same situation in 1991 in October a dock in this area was judged by building official, Don Baccadutre to be unsafe and was condemned. He said several months followed with a lot of back and forth, trying to get fixed, sort out ownership issues and who was going to fix it. Mr. O'Brien said the city completed their review and prohibited any docks to be built in Plat I where they fell short was small handful of docks they did not ask for those to be removed or at a minimum a sunset date or have the inspector review them and when it is no longer safe it needs to be removed. Mr. O'Brien said that is what should happen now. Mr. O'Brien said Valparaiso has a unique situation, long stretches of land with no obstructions to the view of the water other than riprap. Mr. O'Brien asked the Commission instead of creating an ordinance for the construction and maintenance of docks instead set a standard for when they will be gone, completely obliterated.

Mrs. Britt Walker, 1253 N Bayshore Drive, said with her dock they have all of their permits and they have come from the city directly to her husband. Mrs. Walker said the DEP gave a permit to her husband because of riprap if they were willing to take their dock down and rebuild, which he did with permits from DEP, Corp of Engineers and the city, this happened in 1991. These docks were grandfathered in and in 1982 some decision were made to not allow new docks to be built on park land. Mrs. Walker said the language in the code is confusing, in paragraph 83 that they violated, it states "in the interest of safety, health and welfare no pier or dock must lose its structural and aesthetic appearance due to age or use." She said it is their obligation as a dock owner on public land or private lands it is in the city code we have to repair those docks. Furthermore in section 83.24 When Permits Not Required, "City permits are not required for maintenance or cosmetic improvements that do not require federal or state permitting." Mrs. Walker said she has in writing from last month from Corp of Engineers and DEP that you do not need state permitting for repairs or changing out pilings, change of planks and boards as long as you do not change the structure. She said in the city files there is a letter from the insurance stating if this policy ever lapses they will notify the city in writing. Mrs. Walker said they've received a letter that states the city will take away our dock and it reverted back to the city, they received the letter three weeks ago and all of the language involved is confusing. She said "reverted back to the city" implies the docks at some time belonged to the city, they did not they were always referred to by the city as our dock. She said it is in her husband's name, when the city declares it as their dock, our insurance will no longer cover it. Mrs. Walker said if someone falls on that dock right now, and they want to sue us, we will tell them no longer our dock; our insurance doesn't need to pay it. She said the city has created a liability for itself, what has been totally unnecessary. Mrs. Walker would like to have this issue clarified, rumors' going around everyone is going to lose their docks, they will rot and fall in the water and this situation just continues to come up. She said as homeowners they are very tired of dealing with it, really, really tired. Mrs. Walker said they have always stood behind the city, loves our city and thinks it is time the city stands behind us.

Mr. Yancey said it if we could to notify the dock owners in Plat I and find out who can commit to rejuvenating their docks and who would want to abandon their docks, put in the ordinance that if a resident abandons the dock, then the resident should have to pay to remove it. He said if homeowners are allowed to improve and beautify their docks it will be better for the city, it would help increase property values.

Mr. Bill Cunningham, 1286 N Bayshore Drive, said it seems there are a number of conflicting ordinances that are causing the confusion. To randomly select one to enforce and others to ignore seems to be the problem. Mr. Cunningham said with articles in the paper it

seems the city is making an effort to resolve issues as of late, a lot of progress being made about building docks. He said he believes he remembers that Mayor Arnold had complimented Comm. Morgan on his efforts with beginning to compose a new ordinance, steps made to resolve issues with the dock and get clear direction. Mr. Cunningham said at the same time accolades are going out suddenly we are enforcing rules that haven't been enforced for many, many years that is sending a mixed message to those of us who own docks. He is concerned, to replace decking that has rotted but hasn't for fear someone will give him a citation. He said people who have docks on what you call city property will be hesitant to do anything because others have received tickets. Mr. Cunningham said seems like situation needs to be resolved first in house with the ordinances before going after people and their docks, especially since this hasn't been done in 10 to 20 years that he knows of.

Mr. Bill Smith, 1281 Bayshore Drive, said he feels this is all about treating people fairly, government treats it citizens and the other way around. He said he really doesn't think someone just showing up and telling someone they don't own their dock anymore is very fair, telling people encroachment hasn't been renewed in 20 years, they haven't done that so they lose their right isn't very fairy. . He said what everyone is looking for tonight is fairness. Mr. Smith said Mayor Arnold said tonight speed limit on John Sims Parkway is 35, but he bets that officers aren't stopping folks for going 36.

Mrs. Walker said that she was told by Mr. and Mrs. Knight that back in 1982 or 1983, if a dock was in need of repairs the code enforcer or building official would write homeowner a letter and ask for repairs to be done. It wasn't a big deal then doesn't know why it is so difficult now. She said she thought the job of the code enforcer or building inspector would be if he saw something wrong to let citizen know so they can fix it.

Comm. Hamilton said when she was elected to the Commission she was mindful that she is a representative of the people, not necessarily what she wants but what the consensus of the citizens want. She said as a Commissioner she has never been so inundated with opinions as she has on this issue, most everyone she has heard from except for Mr. O'Brien, and he is always negative, other than him not one person has been against this. She said not just dock owners that have that opinion. Comm. Hamilton said it is our responsibility to listen to the people.

Mayor Arnold said in defense of Mr. O'Brien, in 1991 the Commission wanted no more new docks in Plat I and restricted the activities as such that in the next 10 to 15 maybe 20 years there would be no docks there because they would've fallen apart and the scenic beauty of the bayou would be restored. He said the initial action was spearheaded by Comm. Tom Miller, who didn't want the bayou to end of looking like Michigan where he is from and the only thing you can see are docks no land. Comm. Hamilton said maybe it is time to go another way. Mayor Arnold said these docks are a management problem, enforcement problem, administration problem, it doesn't stop.

Mr. John Durham, P O Box 2 Valparaiso, said when the Mayor grandfathered docks in what did he mean grandfathered; to the people it was their dock to keep, what was the intent. Mayor Arnold said the intent in 90 or 91 was hopefully they would fall into disrepair and be torn down. Mr. Durham said but then they have obligated the dock owners to keep them up, the docks belong to them. Mayor Arnold said Commission recognized their docks but would not provide any new permits. Comm. Morgan said regardless we have a motion on the floor can we call for the vote.

Mr. O'Brien said this broad based support Comm. Hamilton speaks of not sure about that, he has reviewed sign in sheets for the last few meetings and he was aware of it being a particular section of Bayshore Drive to Magnolia and back towards John Sims Parkway. He said he didn't know who else is speaking to Comm. Hamilton if any of those people live on say Chicago, Andrews or Jasmine. He said his interest isn't to be negative but to support what is special about Valparaiso. He said the areas that don't have docks are special. Mr. O'Brien said he has a dock but where he owns is not special but other areas he would like to see remain open. He doesn't believe the city should have to send letters to the owners to keep docks in good condition.

Mr. Joe Pascarella, 196 Chicago Avenue, said he doesn't have an interest as a dock owner the idea of letting them rot and boards with nails and all that stuff floating along that makes no sense at all, it would be a safety hazard. He said if the people are willing to insure the docks and take care of them it doesn't seem right to take something away from people who have it. Mr. Pascarella said he can understand not allowing new ones but he doesn't see taking something away from someone just because he doesn't have it.

Mr. Yancey said letting the docks rot is a bad policy if the city wants something done write down specifically what is to be done for the homeowners. He said if they have grandfathered from 91 then they have the right to keep it. Mr. Yancey said those that have docks and don't maintain then have a third party remove the dock, not just fall apart. Mayor Arnold said who would pay the third party if the resident doesn't want and it has to be removed. Mr. Yancey said the city. Comm. Hamilton said then the city could file a lien on the property. Mr. Yancey said it would be a reduction of risk. Mayor Arnold said he could reduce risk across the board and get rid of the docks all together. An audience member said you represent the people it

is not what you want. Mayor Arnold said I represent the people, every one of them, not just a select group on Bayshore Drive that wants docks on city property. Mr. Yancey said he respects the comment but make the wording as such that within 90 days if something isn't done the city steps in. Mayor Arnold asked why the city should incur the expense. Mr. Yancey said it is a bad image to say to residents or prospective residents that property owners with docks have theirs but no one else should have one.

Comm. Morgan said first of all we are not changing any ordinances tonight, no further instructions other than what the motion states. He said we've had lapses in encroachment agreements due to faults on both sides so nothing is grandfathered, the intent to grandfather with certain provisions insurance and such. He said technically those have lapsed but it is an issue on both sides, encroachment agreement did not have a renewal clause from the get go. COMM. MORGAN MADE THE MOTION TO INSTRUCT CITY ADMINISTRATOR/ CODE ENFORCEMENT OFFICER TO ALLOW FOR THE NORMAL REPAIR AND MAINTENANCE OF DOCKS WITHIN PLAT I, TO ALLOW CURRENT, IN PLACE DOCK OWNERS TO RENEW THEIR ENCROACHMENT AGREEMENTS IF NECESSARY. In other words, lapse due to change of ownership, proof of insurance, etc. are allowed to renew. Mayor Arnold said he feels this is in opposition to the existing ordinance and you are trying to stop magistrate actions that are already in progress. Comm. Morgan doesn't feel that way and that is the motion on the floor. COMM. HAMILTON SECONDED THE MOTION.

Mayor Arnold said he apologized for being combative earlier, his position on docks maybe quite different. He feels all docks especially those in Plat I need to be reviewed. Mayor Arnold said if the city decides docks need to be there then the city should decide how many, length, width, and so on and he also feels for city permitting docks should be lottery system where everyone in town is eligible not just across the street property owners. He said there is no reason people on Bayshore Drive should be treated any differently, should have any special favors from the Commission.

Comm. Morgan said he feels we are off topic, current enforcement of current code, need to be allowed to repair docks and ask for the vote to be called. Mayor Arnold still feels this is a violation of the current code of ordinances.

Mr. Cunningham said the Mayor was entitled to his opinion but there are two codes that are conflicting and one says you need a permit for repairs the other says you do not that is what needs to be handled tonight.

Mrs. Walker said there is no code they could find that conflicted with the owner having to keep the dock repaired. She said on the original permit SAJ20 it says in the permit itself we agree to keep the dock intact not just city ordinance but the Corp of Engineers and DEP rules. If I followed the City Administrator's own rules not to repair we would have violated the city ordinance, my agreement with DEP, the Corp and my insurance. Mrs. Walker said the Mayor use to send letters and she quotes "existing docks add to the scenery of the city of Valparaiso landscape. The city has been appreciative of coexistence of docks and boats and many agree they add to the scenic value of the bayou and shoreline".

Mr. Joe Arthur, 1290 N. Bayshore, ask to know what Comm. Strong and Comm. Browning think of the situation because they have not spoken on the issue tonight. Mayor Arnold said that would be out of order.

Mayor Arnold called for a vote on the pending motion. MOTION PASSED BY VOTE OF 4 TO 1 WITH MAYOR ARNOLD VOTING IN THE NEGATIVE.

**ADJOURN**

Adjourn

With no further business to discuss, the meeting adjourned at 6:52 PM.

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John B. Arnold, Jr.  
Mayor

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Heyward H. Strong, Jr.  
Chair, VCA

ATTEST:

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Tammy Johnson, CMC  
City Clerk

May 26, 2015

\*\*\*The DVD labeled May 26, 2015 contains the audio and video of this meeting and will be kept as a permanent part of these minutes. \*\*\*