

**PORT COMMISSION MINUTES
OCTOBER 20, 2011**

Be it remembered that a regular meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held at the City Hall, 201 Jeff Davis Avenue, in said City at 5:30 o'clock p.m., it being the third Thursday in October, 2011, and the same being the time, date, and place fixed for holding said meeting.

There were present and in attendance on said Commission and at the meeting the following named persons: Commission President Phil Kies, Vice President James Hancock, Secretary Barbara Reed, Commissioners David Marks, Vernon Ehlers, Charles Purchner, Danny Hansen, Barney Hill, Stan Snodgrass, Harbormaster Bill Angley, Port Attorney James C. Simpson, Jr., and Deputy City Clerk Stacey Dahl.

There being a quorum present and sufficient to transact the business of the Port Commission, the following proceedings were had and done.

The meeting was called to order and there were no amendments to the agenda.

Commissioner Purchner made motion seconded by Commissioner Hansen and unanimously carried to approve the Port Regular Minutes of September 15, 2011.

The commission recognized Mr. Ron Robertson, Project Manager, Broaddus and Associates, whereupon Mr. Robertson submitted project updates as follows:

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Long Beach Port Commission
Phil Kies, President

October 20, 2011

RE: Project Updates:

1. **Bait Shop Trailer**

- A. Garner Russell Engineering continues work on design drawings and bid package for new Trailer site. (approx. 1 month to c/p)
- As discussed at last meeting, construction cost and professional fees will increase due to the project revisions. Formal request for approval of additional funding was submitted, however, FEMA no longer has a technical review group and formal review or approvals will not take place until close out of this project. All invoices must be paid prior to PW close out.

2. **Alternate Project. Harbor Pier revisions.**

- A. Garner Russell Engineering continues work on electrical scope of work for Phase-2 bid package; \$105,000 remaining. (approx. 1 month to c/p) Phase-1 low bidder was M&D Construction at \$233,235; received bids in May 2011.

3. **Bulkhead Project.**

- Pre-construction meeting held on 10/13/2011 with prime contractor and his sub-contractors. Blue Ridge Properties representatives were also present.
- Bay South's Notice To Proceed will be dated 12/05/2011 allowing time for submittals and delivery of pilings. Completion is expected by 8/05/2012.
- Blue Ridge Properties' start on their Restaurant will be delayed until the pile driving is completed on the bulkhead. This new restaurant project is estimated to be completed by 11/30/2012.
- A. Garner Russell Engineering continues work on additional work scope and bid package for Phase-2. (approx. 2 months to c/p)

4. **CIAP – Harbor Expansion Planning.**

- Request for Qualifications (RFQ) Submittals for Engineering were due 10/12/2011. Total of six firms (with sub-consultants) were received.
- The LBPC RFQ Review sub-committee met on 10/13/2011 to begin their review process. The review committee expects to be able to make their recommendation to the port commission members by the December meeting. Next review committee meeting on 10/28/11.

Please contact me at your convenience with any questions.

Best Regards,

Ron Robertson, P. E.
Project Manager

Port Commission Monthly Project Update
Prepared by Ron Robertson, P. E.

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Extensive discussion was held regarding the coordination of the Bulkhead project, specifically Bay South's contract, and Blue Ridge Properties construction date.

The commission recognized Mr. Jimmy Levens and the following letter was submitted in words and figures as follows:

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Blue Ridge Properties, LLC
PO Box 779
Long Beach, MS 39560

October 17, 2011

Phil Kies
President
Long Beach Port Commission
709 Dogwood Drive
Long Beach MS 39560

Hand Delivered to Stacy Dahl

Re: Lease Agreement between Long Beach Port Commission and Blue Ridge Properties, LLC

Commissioner Kies:

On October 13, 2011, a pre-construction meeting was held by David Ball of A. Garner Russell & Associates with representatives of Bay South Limited (the general contractor) and Blue Ridge Properties regarding the harbor bulkhead project funded by the Boating Infrastructure Grant program. During this meeting it was determined that the notice to proceed would be issued to Bay South on December 5 and that it would take approximately 8 months or until August 2012 to complete the project.

Due to the close proximity of the bulkhead and restaurant projects, Bay South and Blue Ridge have been meeting to coordinate the pile layouts and driving schedules. Bay South has determined that pile driving for the restaurant cannot begin until the bulkhead is approximately one third complete. Once the pilings and pile caps are finished, Blue Ridge will be unable to do any vertical work on the restaurant until the bulkhead project is 100% complete. From that point, it will take approximately 9 months or until May 2013 to complete the restaurant.

As such, Blue Ridge Properties requests that the Long Beach Port Commission amend the Amended and Restated Lease Agreement dated May 10, 2010 to reflect the completion dates outlined above. If you have any questions or need additional information, please do not hesitate to contact me at 863-0303.

Regards,



Jimmy Levens
Managing Member

CC: Stacey Dahl
Steve Wilson
Jim Simpson

After considerable discussion, it was determined that Mr. Levens would furnish written documentation to substantiate the time lines for restaurant construction.

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Upon continued discussion and careful review, Commissioner Marks made motion seconded by Commissioner Hansen and unanimously carried to direct the City Engineer to amend the Bay South contract to allow for an eight (8) month completion period in lieu of five (5) months. Start date to be 12/05/11 and completion expected 8/05/2012.

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Upon continued discussion, Commissioner Hansen made motion seconded by Commissioner Marks and unanimously carried to direct the Port Attorney to amend the lease by and between the Long Beach Port Commission and Blue Ridge Properties, LLC to state a completion date of May, 2013.

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Discussion continued regarding Blue Ridge Properties, LLC construction, at which time, Commissioner Marks made motion seconded by Commissioner Hancock authorizing Blue Ridge to extend the electrical platform adjacent to Pier 5 to accommodate a new transformer.

There came on for consideration the Clean Marina program as it pertains to the Berthing Agreement. The following revised Berthing Agreement adds paragraph 17 about Clean Marina practices and addresses the four (4) areas that tenants would participate in (sewage, fuel, solid waste, and vessel cleaning and repair):

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STATE OF MISSISSIPPI
COUNTY OF HARRISON

Effective Date: 1 November 2011

BERTHING AGREEMENT

This BERTHING AGREEMENT made and entered into on the day and year herein noted by and between the Long Beach Port Commission, hereinafter referred to as the "Commission", and the following identified Boat Owner as follows, to-wit:

BOAT OWNER OR OWNERS: _____

ADDRESS OR ADDRESSES: _____

BILLING ADDRESS IF DIFFERENT FROM ABOVE ADDRESS:

HOME PHONE: _____ EMERGENCY PHONE: _____

WORK PHONE: _____ CELL PHONE: _____

EMPLOYER: _____

TYPE OF VESSEL: _____ I.D.# _____

BOAT NAME: _____ DOC.# _____

MFG. OF BOAT: _____ HULL I.D.# _____

LENGTH: _____ A/C: # of UNITS _____ NO _____

SLIP NO: _____ PIER NO: _____

RATE PER MO: _____ PRO-RATED 1ST MO.: _____

LIEN HOLDER: _____

LIEN HOLDER ADDRESS: _____

LIEN HOLDER PHONE: _____

INSURANCE COMPANY _____ POLICY # _____ EXPIRES _____

AS A CONDITION PRECEDENT to the placement of any vessel in the harbor, the Boat Owner shall provide the Harbor Master with proof of ownership and a current home state registration for the vessel or a copy of the US Coast Guard vessel documentation certificate indicating actual Over All Length (OAL) to determine slip rent for the vessel. In addition, a copy of an active insurance policy for the vessel shall be provided when the initial agreement is enacted. The Harbor Master's initials certifying proof of ownership, current registration or vessel documentation certificate, and active insurance shall be affixed to the original Berthing Agreement below:

Harbormaster's Initials _____

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BERTHING AGREEMENT 1 NOVEMBER 2011

1. BERTHING AND FEES: Boat Owner shall pay to Commission and/or its duly appointed representative for the use of the above described slip together with utilities and air conditioning charge(s) as required as provided herein and a limited license to use the adjacent areas herein provided as follows, to-wit:
 - A. Mississippi Residents: Rent to be calculated at the rate of \$ 4.20 per linear foot of the above described vessel.
 - B. Harrison County Residents: Rent to be calculated at the rate of \$ 3.50 per linear foot of the above described vessel.
 - C. Out of State Residents: Rent to be calculated at the rate of \$ 6.30 per linear foot of the above described vessel.
 - D. Air-conditioning: Any vessel that has an air-conditioner shall be charged an additional sum of \$ 15.00 per month for each air conditioning unit aboard.
 - E. Utility Fee: Boat Owners shall pay the sum of \$ 20.00 per month for costs of utilities.
 - F. Daily Rate: Boat Owners who rent a slip on a daily basis shall pay the sum of \$ 1.00 per foot of boat length per day. Space and Slip availability is at the sole discretion of the Harbor Master.

The monthly lease rate for the above described vessel based upon the information provided by Boat Owner shall be payable in advance on or before the first day of each and every month hereafter. The first month rent shall be pro-rated. In the event the Boat Owner elects to pay his month-to-month lease rate annually in advance, the Boat Owner will receive a ten percent (10%) discount for said yearly rate, payment to be non-refundable. The above described [payments (i.e., daily, monthly, yearly, etc.) shall be payable in advance at the Long Beach City Hall, Jeff Davis Ave. Long Beach, Mississippi, on or before the first day of each and every month hereafter, unless paid in advance.

2. Non-Payment and /or late payment: A charge of 10% of the monthly rent shall be added to any bill for monthly rent and fees not paid on or before the 15th of the month for which same is due and payable. In the event that the rent and other charges are not paid on or before the date such charges become due and payable, the Boat Owner shall be subject to having his vessel seized and sold according to the lien imposed by general maritime law and/or Section 85-7-9, Mississippi Code of 1972, annotated and amended, et. seq. Further, Boat Owner is hereby advised pursuant to the above referenced State Statute that "such lien shall be paramount to all other debts due and owing by such water craft or the owner thereof or other lien thereon, except as provided by section 85-7-7, Mississippi Code of 1972, annotated and amended. Further, and by mutual agreement Boat Owner shall be responsible for and pay a reasonable attorneys fee deemed to be at least \$400.00 or 25% of the total sum due and owing, which ever shall be greater if found to be in violation of any provision hereof and said matter is turned over to an attorney. Further, Boat Owner agrees that in the event that Boat Owner becomes delinquent in the payment of any sums owed Commission, that Commission and/or its duly appointed Harbor Master may use any reasonable method available included, but not limited to, chaining the vessel to the dock, removing the vessel to a secure storage facility or blocking the vessel in its berth, to impose its lien against the vessel itself. That Boat Owner specifically agrees and understands that some damage may occur to the vessel and the Boat Owner agrees that Commission shall not be responsible for such consequential damages.

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3. Term: This Berthing Agreement shall continue in effect from month to month, subject to termination upon fifteen (15) days written notice by either party.

4. Uses: Boat Owner shall not use nor permit the demised premises, or any portion thereof to be used for: (1) the conduct of any offensive, noisy, or dangerous activity or public nuisance, or against any law, or (2) in any manner which would infringe on the rights of other tenants of the Commission, or (3) in any manner contrary to the rules and regulations of the Commission, a current copy of which has been provided to Boat Owner and which may be amended from time to time without prior notice to Boat Owner. Boat Owner agrees to abide by all rules, regulations and directions of the United States Coast Guard, Mississippi Department of Marine Resources, Mississippi State Health Department, the U.S. Environmental Protection Agency and all other federal and state agencies, departments or political subdivisions thereof.

5. Indemnification of Commission: Boat Owner covenants to exercise due care in the occupation of the leased berthing slip and to vacate the same in good condition, reasonable wear and tear excepted. Boat Owner shall indemnify Commission its agents, employees, members and the City of Long Beach, Mississippi, against all claims, actions, proceedings, damages and liabilities, including attorneys' fees, costs, and other expenses arising from or connected with Boat Owners possession and use of the aforesaid berthing space and common areas, including, but not limited to those caused by or resulting from vandalism, theft, fire, weather, tides or wave action, Boat Owner does further agree to be responsible for and pay any and all damages to other craft and property caused by the above described vessel, Boat Owner, or guest.

6. Alteration and Improvements: Boat Owner shall make no alterations or improvements to the property of Commission without expressed written consent of Commission. Any and all improvements approved by Commission shall become property of Commission.

7. Limitation on Commissions Liability: Boat Owner acknowledges that he, she or it has inspected the berthing slip identified herein and has satisfied himself, herself, or itself that the berthing space is adequate for the safe berthing of Boat Owners vessel, Harbor assumes no responsibility for tending mooring lines or moving vessels from the berths assigned, Further, Boat Owner agrees to indemnify and hold Commission harmless from damages to vessel and/or injuries to Boat Owner's guest's, invitees or all others regarding occupancy of the berthing space and use of common areas not the direct negligence of Commission.

8. Cancellation of Berthing Agreement: Boat Owner agrees to give at least fifteen (15) days written notice of his intent to vacate; His failure to do so shall result in Boat Owner being responsible for payment of all monthly payments due on said slip until such time as written notice is given Commission. The removal of Boat Owners vessel from the slip shall not constitute notice to Commission of his intent to vacate, nor does it relieve Boat Owner from the obligation to pay according to the terms hereof.

9. Indemnification: Boat Owner agrees to hold harmless Commission, its members, the City of Long Beach, Mississippi, and/or its employees, agents and contractors against all damages, claims, and cost of defense occasioned by Boat Owner or Boat Owner's guests, use of the slip and/or common areas by third parties for any injury or damage caused by the Boat Owner, his vessel, agents, servants, operators, crew or others.

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10. Liability Insurance: Boat Owner agrees to provide liability insurance on their vessel in the amount of \$300,000.00. Boat Owner shall name the Long Beach Port Commission and the City of Long Beach as additional insureds on said policy and shall provide written proof of such insurance (i.e., such as declarations page), prior to placing vessel in harbor under the initial berthing lease and by January 1st of each year thereafter and upon request of any official of the Long Beach Harbor. Said proof of insurance shall provide proof of liability limits and the named insureds therein.

11. Changes in Circumstances: Boat Owner agrees to promptly notify and provide the Commission or the Harbor Master with documentation of any and all changes to this agreement including, but not limited to, any change in ownership, liens, co-owners or vessels, Failure to do so constitutes grounds for immediate cancellation of this agreement.

12. Commission's Right to Use Slip: Boat Owner agrees to notify Commission of the intention to vacate slip for any period in excess of three (3) days, and Boat Owner agrees that Commission may make said slip available for transient or other use of the slip in Boat Owners absence without charge or credit. Boat Owner agrees to notify Commission or Harbor Master prior to 24 hours of the return of the vessel so that Commission can make alternate plans for any vessel using the said slip in the absence of Boat Owner.

13. Removal of Vessel by Boat Owner: If at any time the Boat Owner or Lessee is in any way concerned about the safety of his/her vessel, he/she should immediately remove said vessel from the harbor. Furthermore, in the event of eminent danger from hurricanes, tropical storms or other natural disasters and/or notification by Emergency Management officials, the Boat Owner agrees to immediately remove said vessel from the harbor. Failure to remove said vessel will result in possible liability of the Owner to other Boat Owners and the Long Beach Port Commission or property owners that may result in damage caused by boat owners.

14. Emergency Removal of Vessel: Boat Owner agrees that Commission may remove the vessel from the slip at the sole expense of Boat Owner in the event that said vessel becomes a nuisance, becomes unseaworthy, or in case of dangerous weather conditions such as hurricanes. "Expense" includes but is not limited to the removal and storage cost of said vessel. Boat Owner further agrees to hold harmless all parties involved in the removal and storage of vessel in the event of its Emergency Removal.

15. Alteration of Agreement: This Berthing Agreement shall constitute the whole agreement of the parties and cannot be altered except in writing and signed appropriately by the parties.

16. Sublease: Boat Owner may not sublease slip specified in this agreement.

17. Clean Marina practices: Boat Owner shall comply with guidelines in the Mississippi Clean Marina Program in order to protect the harbor resources from contamination and pollution as follows:

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Sewage Handling:

- No raw sewage may be discharged and pump out stations are provided in the harbor for use with Marine Sanitation Devices (MSD).
- "Y" valves must be tied down and will be inspected periodically to ensure that no sewage can be discharged and appropriate chemicals are in use.
- Clean, functioning restrooms and showers are available 24 hours a day.

Fuel Control

- Fuel vendor will monitor and supervise all fueling operations.

Solid Waste

- Solid waste must be disposed of in the covered trash receptacles.
- Recycling containers will be available for glass, plastic, and aluminum.
- Fish wastes cannot be disposed within the Harbor. A fish cleaning station and waste receptacle is provided for Harbor patrons.
- Cleaning of fish on docks and floats is not permitted, unless fish wastes are contained (such as with a pan or plastic drop cloth) and disposed in the fish cleaning station.

Vessel Cleaning and Repair

- Take proper precautions against spills, and use environmentally friendly materials. The following minor maintenance and cleaning activities may be conducted on board vessels while in the water:
 - Routine engine tune-ups, oil changes, and other minor servicing and repair
 - Routine care and cleaning of rigging and fittings, interior surfaces, and "bright work" providing these activities do not produce a wastewater
 - Painting/varnishing interior surfaces and bright work
 - Routine sanitary pump-outs and maintenance of sanitary wastewater facilities
 - Bilge pump repair
- All other maintenance activities must be conducted with the vessel out of the water at a proper repair facility specifically designed for the purpose, including hull scraping, sandblasting, or painting the hull exterior or drive units, cleaning the hull exterior with cleaning agents other than fresh water or natural seawater, and any other activities involving the potential risk of an uncontained discharge of oil, chemicals, nutrients, or other contaminants into the water.
- Minimize the use of soap and detergents within the Harbor. Use only phosphate-free and biodegradable cleaning products such as Simple Green and comparable products. The use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye is prohibited.
- Liquid wastes (including but not limited to solvents, detergents, and rinse water) cannot be discharged onto the ground, allowed to enter storm drains, or disposed of in dumpsters or trashcans. Contaminated bilge water cannot enter the water.

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- Reuse or recycle waste oil in the containers provided in the harbor labeled as "Waste Oil Only."

SO EXECUTED, this the _____ day of _____, 20_____

BOAT OWNER

COMMISSION by Harbor Master

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After discussion, Commissioner Reed made motion seconded by Commissioner Purchner and unanimously carried to accept and approve the aforesaid revised Berthing Agreement, effective November 1, 2011.

There was no action required or taken regarding Tidelands or BIG.

Commissioner Hansen made motion seconded by Commissioner Purchner and unanimously carried to approve payment of invoices as listed on Dockets #HBR092011, #HBR100411, and #HBR101811, as submitted.

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Commissioner Kies made motion seconded by Commissioner Hancock and unanimously carried acknowledging receipt of the Revenue/Expense report for September, 2011.

The commission recognized Mr. Bill Angley for the Harbormaster's report, as follows:

Harbor Master Report

October 20, 2011

- Boat Launch Fender System
 - Not doing fuel pier till after construction is complete
- Howie Hobbs paid \$1200 towards Pink Marina bill
- Cruisen the Coast went well some small complaints about boat owners not being allowed to come in but will be resolved next year with parking and entry passes for all boat owners and there guest
- Received ice machine awaiting installation
- Working on Clean Marina check list.
- Working on quotes for signage for clean marina and harbor rules
- Reworking Harbor rental info sheet due to bad measurements and incorrect slip data
- Working on repairs to harbor after tropical storm lee will try to work with BIG contractor to fix pilings while barge is in harbor to save on cost
- Working on final purchases of harbor contents so work order can be closed out with FEMA and MEMA
- Working on electrical audit about 40% done
- Jimmy Levens needs a letter of approval to extend electrical platform to accommodate new transformer
- 80% done on clean marina checklist
- Current Slip Occupancy 197 of 233
- September Income Collected \$34,807

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There was no action required or taken regarding the Harbormaster's report.

**PORT COMMISSION MINUTES
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The commission recognized Mr. James C. Simpson, Jr., for the Port Attorney's report; of which no action was required or taken.

There being no further business to come before the Port Commission at this time, Commissioner Ehlers made motion seconded by Commissioner Hancock and unanimously carried to adjourn until the next regular meeting in due course.

APPROVED:

PHIL KIES, PRESIDENT

DATE

ATTEST:

STACEY DAHL, DEPUTY CITY CLERK