

Summary Notes  
(Draft # 1, 1/22/10)

Meeting of DEP and Dock Committee of LGI Advisory Committee (hereafter "Dock Committee" or "DC") 1/21/10

Attending from DEP: Lucy Blair, Michael LeBlanc, Rhonda Haag, Jim Kipp, Mark Miller

Attending from DC: Bob Hill, Barry Hurt, Chuck O'Hara, Robert Hill, David Haynes, Tom McCoy

Attending from Gulf Street Association: Ken Obermeyer

DEP presented a current aerial photo identifying each island dock as:

- existing in 1985 and unmodified since then, or
- existing in 1985 and modified since then either with or without documentation found at DEP (in a search that is not yet complete), or
- constructed since 1985 either with or without documentation found at DEP (in a search that is not yet complete).

The photo also indicated those docks that currently have submerged land leases ("SSL"). DEP indicated that all docks in existence in 1985 and unmodified since then would be considered "grandfathered" and allowed to remain, although those that serve as community docks might be required to obtain a SSL.

Two basic development patterns were identified on LGI that may present problems requiring some solution. First, community docks are attached to the bay end of east-west streets and serve all of the parcels fronting on those streets (primary pattern at northern end of LGI). Second, bay-to-gulf parcels were divided into a bay lot and a gulf lot with an easement for the bay lot to access the gulf beach and an easement for the gulf lot to access the bay with a dock attached to the bay end of that easement for the gulf lot (primary pattern at the south end of LGI). DEP indicated an intention to first address the problems presented by the community docks and to defer any inquiry into problems that might be presented by a private single family dock located on a bay front easement for the benefit and use of a single gulf front lot.

DC stated that there were three types of east-west streets with community docks attached to the bay end.

1. Streets that the DC believes are owned by the county as a result of platting but were never "accepted" by the county for purposes of maintenance. The county legal department has expressed some doubts about the extent of the county's ownership of these streets, but other county departments have proceeded on the assumption that these streets were owned by the county. The width of these streets ranges from 30 to 60 feet, and most serve between twenty and thirty parcels. Examples of this type of street dock are Bay Street (#44), Sea Grape (#51), King (#42), Marsh (#38), and Privateer (#82).

2. Streets where the street, or at least the bay end of the street, is owned by an association of the lot owners fronting on the street. The only example cited was Gulf (#48).

3. Streets where the street consists of a collection of easements across the fronts of all the lots fronting on the street. Half the width of the street lies on easements across the front of the lots on the north side of the street and half the width of the street lies on easements across the front of the lots on the south side. The width of these easement streets ranges from 4 feet to 20 feet. Examples of this type of street dock are Peacock (#?), Coconut Palm (#?), and all streets north of Marsh.

DEP inquired about the possibility of a county owned and operated dock system for LGI or a dock system operated by an island-wide association. DC stated its view that both would meet overwhelming resistance from island property owners and both would be politically and legally impossible to accomplish. DC stated its view that any workable solution would need to appear reasonably consistent with the original assumptions of island property owners about their rights to a system of community docks.

DEP made clear and DC agreed that all street-end docks will need a formal legal association of the owners on the street and that each association will need a SLL for its street-end dock. The discussion then identified four problems that remain to be solved with respect to the community docks:

1. Where the dock is attached to a street end that is ultimately determined to be owned by the county, the county has assumed that it has no responsibility for the construction and maintenance of the dock or for acquiring a permit or SLL. The parcel owners on the street have always assumed that they were responsible for the construction and maintenance of the dock and that the dock was for the exclusive use of the owners of parcels on the street. Some solution must be found so that ownership, construction, maintenance, control, and the obligation to obtain a SSL are all vested in the same entity. DC stated that it is their understanding that the county is waiting for the DEP-DC group to devise a solution and recommend that solution to the county. The arrangement used to transfer ownership of the bay end of Gulf Street from the county to the homeowners association is one possible solution.

2. The wording of the easements creating the easement streets (Type 3 above) may not clearly convey the riparian right to construct a dock where the easement reaches the bay shore. DC stated that the universal understanding of all of these easements is that they were intended to convey the riparian right to construct a dock, even if the easement document does not contain that explicit language.

3. Many of the easement streets and some of the other two types of streets are not wide enough at the bay end to allow the construction of a dock (4 feet wide) with boats (8 feet wide) moored on each side (total 20 feet wide) without infringing on

the riparian frontage of the adjacent bay front lots. Even the wider streets will encounter this problem if the dock is designed for mooring boats perpendicular to the dock and parallel to the shoreline.

4. Virtually all of the streets of all three types are not wide enough at the bay end to allow the construction of adequate community dock space in conformity with the DEP's rule allowing ten square feet per linear shoreline foot ("ten to one rule"). This is already a problem for many streets where the permitted dock square footage cannot adequately serve the homes already constructed. The solution to this problem must also account for the fact that additional homes will be constructed on currently vacant parcels on these streets. Most east-west street communities contain between 20 and 30 inland parcels.

DEP emphasized its commitment to finding solutions for these problems in order to guarantee adequate dock access for both existing homes and future development in LGI communities relying on street-end docks. DEP agreed to begin exploring possible solutions and to delay enforcement actions (such as Gulf Street) until comprehensive solutions are devised and implemented. DEP expressed a very strong preference for solutions developed within the framework of the current DEP rules. DEP described the lengthy and complex process for any modification of the rules, and DEP expressed a strong reluctance to pursue any legislative solution except as a last resort after all other approaches have proved impossible.

DC agreed to provide DEP with the necessary details about each street-end dock situation. These details will include the type of street ownership for each street (i.e., Type 1, 2, or 3 above), the terms of the easement documents that create each easement street, the width of each street at the bay shore end, and the boundaries of the "community" served by each street-end dock (which would be the boundaries of an association formed for that dock). DC also agreed to press the county for clarification of its position on the ownership of the streets that DC believes are owned by the county.

DEP and DC agreed to meet again at 2:30 p.m. on Friday, February 19, 2010.