

Memo

To: Honorable Mayor and Town Commissioners
From: Thomas J. Baird, Town Attorney
Date: August 27, 2025
Subject: Sales at Sea, LLC Agreement for Nautilus 220's model unit/showroom (the Agreement)
Cc: Richard Reade, Jason Tenney, Nadia DiTommaso

Preface

Per the request of the Town Manager, I collaborated with Jason to prepare this memo to provide the Town Commission with information about Forest Development's desire to relocate its barge to an area in the marina that is not subject to the deed restrictions.

Background

Nautilus 220 entered into an agreement with Sales at Sea, LLC to operate a showroom/model unit to facilitate sales of residential units at Nautilus 220. The Town staff subsequently learned from the Department of Environmental Protection (DEP) that the barge is docked in a deed restricted area in early 2024. The Town was advised that the barge was not permitted to be docked this location must be removed before DEP staff would recommend a modification of the deed restrictions to the Trustees of the Internal Improvement Fund (TIIF). Since early March 2024, Forest Development has engaged in an ongoing dialogue with Town and DEP staff regarding its desire to relocate the barge to another location in the marina that is not within the deed restricted areas. The most recent proposal for the barge's relocation is to the E Dock which is located adjacent to the channel into the marina. As discussed below because of the size of the barge, docking it at the E Dock would result in the barge encroaching into the channel adversely affecting navigability for those vessels entering or exiting the marina and potentially creating liability for the Town.

The Agreement with Sales at Sea LLC (the Agreement)

The barge was permitted to be located in the deed restricted area of the marina pursuant to the Agreement which was presented to the Commission with a recommendation from the then Town

Manager that it be approved. The Commission approved the Agreement. At this time, the Town Manager apparently was not aware that the barge would be docked in an area encumbered by the deed restrictions. Similarly, it appears that the then Marina Director did not know that the barge would be located in a deed restricted area. The barge is not a use that is dependent upon the marina for its operation. Rather, the model unit/showroom use has been a commercial use that is used to facilitate the sale of residential units at Nautilus 220.

The Agreement specifically provides that the barge with the model unit/showroom “***shall only be used to facilitate sales of units in Nautilus 220.***” The Agreement represents that Sales at Sea, LLC would manage the model unit/showroom for Nautilus 220. According to Larry Zabik, Nautilus 220 has reached deposits for 90% of the units and a certificate of occupancy is expected for Nautilus 220 in October, 2025. Given that, and pursuant to the Agreement, were the barge to be relocated, it would only be to market the remaining 10% of the units at Nautilus 220. As for the ongoing marketing of units at Nautilus 220, it may be that once Forest receives its CO, a model unit in Nautilus 220 could be used for continuing sales activities related to Nautilus 220.

Zoning

The barge with its model unit/showroom is essentially a commercial real estate use, the sole purpose of which is to market the sale of residential units at Nautilus 220. The barge is currently located in the Public District Zoning District, Section 78-75 of the Code of Ordinances of the Town of Lake Park (Code). The Public District restricts uses to: “*those necessary or essential to the administration of the town*, including ... town hall, recreation facilities, parks and playgrounds, swimming pool areas, libraries, municipal offices, fire and police stations, aquariums, museums, public works facilities, water and sewage plants. Because it is a public marina, the uses in the marina are similarly restricted to uses that are “necessary or essential to the administration” of the marina. All of the property which encompasses the marina is located within the Public Zoning District. Thus, regardless of where the barge is located within the marina, its use must be “*necessary and essential to the administration*” of the marina. Consequently, were the barge to be relocated in the marina, the operation of a model/showroom to facilitate the sale of Nautilus 220’s will not be a public use that is “*necessary or essential to the administration*” of the marina.

Safety Concerns Regarding The Proposed Relocation To The E Dock

Forest proposes to relocate the barge with its model unit/showroom to the slips along E Dock. The slips in which the barge would be docked are 30 feet in length, however, the barge is 45 feet in length. Accordingly, docking the barge in these slips will result in the barge encroaching into the navigable channel creating an unavoidable potential hazard to navigation. Additionally, the relocation of the barge to the E Dock would have a negative impact on current marina operations because the slips that would be directly across from the barge would no longer be available to dock 40’ vessels, as are now accommodated. Because of the reduced width of the channel caused by the encroachment of the barge into it, 40’ vessels would not have sufficient turning space to make it into and out of their slips. This would require the Town to remove or relocate, to the extent possible,

11 current tenants of the marina. Moreover, this would have negative financial implications for the marina because only smaller vessels could occupy the 11 slips, resulting in less revenue.

Also of concern related to the proposed relocation of the barge to the E Dock, is the potential liability it could create. In the operation of the marina, the safety of the public and vessels is of paramount importance. Although the Town maintains an insurance policy for the marina, the fact is that the relocation of the barge could unnecessarily expose the Town to litigation that otherwise might be avoided if the channel remains unobstructed by the barge. With the relocation of the barge to E Dock, vessels entering and exiting the channel will have reduced navigability. The channel is 60' wide which meets the industry standard of 1.5 times the length of the larger slips. A reduction of the channel to 45' results in the channel *not meeting this industry standard*. In the event of an accident, and the inevitable litigation which would ensue, the *Town's knowing failure to adhere to an industry standard* is a precarious legal position for the Town to attempt to defend. Similarly, the relocation of the barge such that it encroaches into the channel would negatively affect the Town's defense of a lawsuit because the Town knowingly approved the dockage of the barge in an area that the Town had prior knowledge that the navigability of vessels in the marina would be impacted.

Insurance

The Town has an insurance policy for the marina with RLI Insurance Company (RLI). I have examined the insurance policy and spoken to a representative of RLI regarding the barge, its present location, and the relocation proposed by Forest. The policy provides the following converges: (1) Marina Operators Liability (Liability Coverage) and (2) Marina Operators Protection & Indemnity (Indemnity Coverage). Under the Liability Coverage, RLI is obligated to pay for "physical loss of, or damage to, watercraft and their motors, ... while in the care, custody or control of the marina operator¹. The following operations are covered: 1) Repair, alteration or maintenance; 2) Storage; 3) Mooring at slips, spaces or buoys rented by the insured; 4) Hauling out or launching; and 5) Fueling operations. Under the Indemnity Coverage, RLI is obligated to pay for any non-owned watercraft covered under the liability coverage which are *being operated by the marina operator or its employees*. This coverage includes loss of, or damage to or expense in connection with any other non-owned vessels or property of whatever nature. *Together these policy provisions provide the marina with coverages for only the following operations: repair, storage, safe berth mooring; fueling; and hauling or launching*. According to the RLI representative, under the provisions set forth above in the Town's marina insurance policy, the Town is not presently protected by insurance and would not be covered if the barge is located under the current policy.

Recommendation

For the reasons set forth above, the Marina Director and I do not recommend the relocation of the barge to any area in the marina, regardless of whether or not it is in a deed restricted area.

¹ The Marina Operator is the Town by and through the Marina Director.

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