

Baby J's survives Destin's attempt to sink it

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If it took Destin two months to take Baby J's Water Cafe to court, the city can't expect a judge to make a decision to close the restaurant in one afternoon, Judge Keith Brace says.

"It took you from May to today to figure out this is not a vessel," Brace said at a Wednesday hearing, "yet you expect the court to convene an emergency hearing and in a half a day or less put this person out of business?"

The city had requested a temporary injunction closing the restaurant over alleged safety violations. Instead, Brace granted Baby J's attorney Dana Matthews' request to continue the hearing at a later date, doing so before any of the witnesses — Baby J's owners, City Manager Greg Kisela and others — had testified, or any evidence had been submitted.

"We are elated," Matthews said. "There was definitely a party there last night." [See photos from the hearing »](#)

After the hearing, restaurant owners Vic Starling and Kelly Morgan said they were moving ahead with fixing the alleged problems. They said they'd never put their customers at risk, and they were concerned that the stories about safety violations were hurting their business.

In fact, Matthews said they are considering legal action against the city in light of "damaging" statements against Baby J's.

"We are definitely evaluating all that," he said.

Baby J's opened last summer on Destin harbor, a two-story boat moored at a spot on Destin harbor subleased to Baby J's of Destin by Davis Companies LLC.

[At Destin City Council's July 20 meeting](#), Land Use Attorney Scott Shirley said the Destin fire marshal and the city building official had found life-safety violations at the popular hangout: No kitchen hood, no sprinklers, no second way on or off the second floor of the boat.

Even though it denied the city's code enforcement authority, Matthews said his firm told the city July 2 that Baby J's would fix the safety problems within 30 to 45 days — though it did not believe it was required to install sprinklers, and would make multiple fire extinguishers available instead. Matthews said Wednesday that the hood system was in, and Baby J's was only waiting on permission from a neighboring business to run a staircase from the upper story to the side of the dock.

Expressing disappointment in the continuance, Shirley said after the hearing that there still haven't been any plumbing or electrical inspections of the new restaurant.

"But the problems go beyond that because they haven't obtained any permits from the city thus far including a development order or a building permit of any type," he said.

The city will reschedule the hearing, possibly before a different judge. In the meanwhile, the city will work with Baby J's to "cure the most significant life-safety code violations," Shirley said.

He said that because the boat never leaves its dock, legally it's covered by the building code like a land-based restaurant. The council authorized Shirley to file for the temporary injunction to close Baby J's on July 20, leading to Wednesday's court hearing.

"If you look at the four corners of the complaint, and the motion, it appears this was something that just happened," Matthews told Judge Brace, "like there's some imminent threat to public safety they've just become aware of."

On the contrary, Matthews said, the boat had moored at the end of AJ's dock for four years under other ownership, functioning as a restaurant/bar without any objections from the city. Earlier this year, he said, the city and the Destin Fire Department had agreed to hold off on pursuing any complaints about safety until after the Department of Environmental Protection rules on whether the boat is legally a boat or a building.

The DEP has told Starling and Morgan, that by staying in one spot on the harbor, and building a dock alongside the boat, Baby J's was legally a "structure" and violated the Davis Companies lease. The owners have requested an administrative hearing to settle that.

Shirley said there'd been changes to the boat since it tied up by AJ's, and that according to the Coast Guard, it's permanently moored on the harbor.

The vessel cannot legally be navigated on the waters of this state, especially with a full load of passengers," Shirley said. "When the operator of this restaurant met with the city, he represented (that) it was a vessel and they would continue to treat it as a vessel ... What he didn't represent is that he couldn't leave the dock."

Matthews said the owners had been blindsided by the city's decision to take them to court rather than go through code enforcement.

Matthews said the owners hadn't even known about the court hearing until Monday, because they'd been out of town and the process server had given the summons five days before the hearing to a guy washing the boat. Shirley said the man had identified himself as a daytime manager to the process server.

Matthews told the judge that an immediate injunction to close Baby J's would be a disaster, coming at the height of the tourist season: "If you shut them down, they're out of business, they're financially destroyed."

On Monday, Baby J's employees [sent a letter](#) pleading with city officials not to put them out on the street.

Shirley said the city had decided it was time to act because even though Baby J's was appealing DEP's decision, that decision had been made. He said because it was "a life-safety issue," speed was essential.

But Brace replied that such problems must have existed since 2008: "You may have been

remiss in your obligation to (act). What about the people that were eating there in January and February and March ... You've taken your sweet time."

After granting the continuance, Brace added that "Destin is a fishing community, but I don't like the smell of this proceeding right now."