

Real Property Committee
9:00 a.m., Wednesday, July 3, 2019
City Hall Conference Room
1207 Palm Boulevard, Isle of Palms, South Carolina

AGENDA

1. Call to Order and Acknowledgement that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.
2. Approval of Previous Month's Minutes
Regular meeting of June 5, 2019
3. Citizens' Comments
4. Comments from Marina Tenants
5. Old Business
 - A. Status of marina docks rehabilitation project and permitting process
 - B. Status of the Tidal Wave Watersports dock permitting process
 - C. Status of Public Safety Building rehabilitation project
 - D. Status of marina restaurant RFP process from Jon Chalfie of Lee and Associates
 - E. Discussion of lease rent abatement for Marina tenants
 - F. Discussion of next steps related to findings by the McKay Kiddy Agreed Upon Procedures report
6. New Business
 - A. Presentation and discussion of proposed development of 1100 Palm Boulevard
 - B. Review of insurance policies in place for City property and the applicability at the marina
 - C. Consideration of unassigned docks located on the Intracoastal Waterway
7. Miscellaneous Business

Next Meeting Date: 9:00 a.m., Wednesday, August 7, 2019 in the Conference Room
8. Executive Session in accordance with Section 30-4-70 (a) (2) to receive legal advice related to marina tenant lease compliance

Upon returning to open session, the Committee may take action on matters discussed in Executive Session
9. Adjournment

REAL PROPERTY COMMITTEE
9:00 a.m., Wednesday, June 5, 2019

The regular meeting of the Real Property Committee was held at 9:00 a.m. on Wednesday, June 5, 2019 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmember Ward and Chair Bell, Administrator Fragoso, Attorney Copeland and City Clerk Copeland; Councilmember Ferencz was absent. A quorum of the Committee was present to conduct business.

1. Chair Bell called the meeting to order and acknowledged that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.

2. **Approval of Previous Meeting's Minutes**

MOTION: Councilmember Ward moved to approve the minutes of the regular meeting of May 1, 2019 as submitted; Chair Bell seconded and the motion PASSED UNANIMOUSLY.

3. **Citizens' Comments** – none

4. **Comments from Marina Tenants** – none

5. **Old Business**

A. **Status of removal/replacement of the underground storage tanks at the IOP Marina**

Administrator Fragoso reported that the contractor has completed the work, and Marina Outpost was issued a temporary permit to pump gas. The temporary permit expires on June 14th, and they will issue the permit as soon as the City pays the necessary fees, i.e. the City received the invoice today. Director Pitts and the Marina Manager Berrigan have been trying to schedule the final testing as soon as possible, but it will not impact the Permit to Operate.

B. **Update on the marina docks rehabilitation project and status of permitting process**

Kirby Marshall of ATM was present for the meeting today with a couple of questions that need to be answered for the permit application to be submitted. He informed the Committee that they have a draft application package ready to submit to OCRM and the Corps of Engineers for the docks approved by this committee. He recalled that, in 2015, the Committee discussed the possibility of improvements to the boat ramp that would increase the angle, eliminate the drop-off at the end and replace the slippery finish. Since the City was going through the regulatory process for the docks and the permits are good for five (5) years, the consensus was that the boat ramp should be included in the permit although its replacement was not contemplated in the near future. The second issue that he needs feedback from the Committee was related to the replacement of the fuel dock and hut; Marina Manager Berrigan has discussed the possibility of applying to replace it with a slightly larger hut and adding ADA restrooms. Mr. Marshall cautioned that enlarging the hut could present some challenges from the regulatory perspective, and the restrooms will draw additional scrutiny. He also noted that the increased size of the fuel hut

increased the costs. He again asked for direction from the Committee about including these features to the permit application.

Administrator Fragoso stated that she was told by several Councilmembers that they wanted the docks replace “as is” in the rehabilitation, and she has explained that was the original direction given to ATM. Certain changes have been necessary to become ADA compliant.

The issues Mr. Marshall brought before the Committee at this meeting were expansions of the existing footprint and would add costs to the project for which the City was already searching for funding to accomplish.

Chair Bell stated that he was unaware of anything that would preclude the marina operator from participating in the costs of those items he was asking for. When Mr. Marshall stated that the permit application would be ready to mail in about a week, Chair Bell was confident ATM could wait until after the budget workshop to get an answer to his questions.

Mr. Kirby was asked to provide conceptual drawings for the budget meeting comparing what was there now and what was being asked for as well as cost comparisons; he agreed to provide them to the Administrator.

In addition, Mr. Marshall recalled that, when ATM was contracted to do the design work for the rest of the marina, no restrooms or mechanical systems were included that will now come into play with the addition of the expanded fuel dock. He said there could be additional design costs.

When asked about the permitting of the Tidalwave dock, Mr. Marshall told the Committee that he was regularly contacting the Corps of Engineers trying to get updates from them.

Michael Fiem said that he was told by the Corps of Engineers that they would not be allowed to encroach into the restricted area from the center of the Intracoastal Waterway.

C. Status of Public Safety Building Repairs project

Administrator Fragoso stated that the City has received the assessment of the building along with the estimate for repairs and replacement of equipment that was at or beyond its useful life. The first step in the process, the forensics, has been completed, and it is now time to contract for the second phase which will be the negotiation of the design fees, overhead and profit percentages. Two (2) options are under consideration to fund the additional two million two hundred thousand dollars (\$2,200,000); the first is to issue a General Obligation (GO) bond and the second is to use fund balance since a large portion of the two million dollars is contingency funds. If Council decides to fund the balance of that project with fund balances, the City would avoid additional debt beyond that Phase III Drainage project. Once a decision is made, staff will enter negotiations with Trident Construction for the design and construction of the Public Safety Building remediation.

Councilmember Ferencz expressed concerns about the construction oversight which everyone agrees was seriously lacking in the original construction. Administrator Fragoso reported that she has met with Trident about the next phase of work, and they explained their plan for quality control. Trident will hire outside personnel to review and inspect the design, to make recommendations for improvements before construction begins. Third party inspectors will also be brought on for testing the major issues relative to the envelope and the roof, and included in the scope of work are third party inspectors to test the balancing of the HVAC system and of the roof and siding.

Additionally, the Administrator stated the City has the option to hire its own inspectors for quality control as well. The inspector would perform random testing of various components of the repair and would cost the City approximately fifteen thousand dollars (\$15,000).

Chair Bell opined that the third party inspectors hired by the contractor was simply another employee to the contractor, and his decisions would likely fall to the party signing his paycheck. On the other hand, he thought that the City's hiring its own quality control had merit and should be considered.

On the subject of funding, Chair Bell understood that the contractor included contingency in his calculations and the City added its own contingency. And he recalled that the idea of moving cash over to offset debt was a request made by Councilmember Smith, but he thought that Council should remain cognizant of the amount of cash on-hand. He repeated his belief that when the funds are drained and when eighty percent (80%) of the budget is related to headcount, the next step is a reduction in headcount due to spending of the fund balances. He agreed that the City could always move money around, but it could not always find sources of new money.

D. Status of Agreed upon Procedures for all marina tenants

Administrator Fragoso recalled sending a draft of the report from McCay Kiddy to all Council members; today she received the final report with no changes from the draft. She will share the final document with Council and the marina tenants; she stated that they would attend the Ways and Means Committee to present the report.

Councilmember Ward expressed his view of the report that they found no material discrepancies and noted that Morgan Creek Grill was perfect "with no variances whatsoever." He said that he was glad that the City went through the procedure.

Chair Bell explained that the intent of the procedure was "to identify all source revenue for the businesses being conducted out of the marina and to insure the proper flow of that income was represented in the submissions to McCay Kiddy."

E. Update on marina restaurant RFP process with Lee and Associates

Jon Chalfie and Hailey Clifton from Lee and Associates were present for the meeting to discuss their progress on the RFP accompanied with a draft document and to clarify some issues with the Committee; they refer to the RFP as a Call for Offers

The Call for Offers was to be put on the street as early as Monday, June 10th with a preliminary deadline of August 15th; he added that he has been speaking with prospective bidders around town. Mr. Chalfie said that he had not included anything saying that the City's preference was not to put in a dollar; he asked if it was possible for the City to get traditional financing to put a significant amount of money into the deal.

Chair Bell said that the City did not want to preclude any possibility, but, with the challenges to the infrastructure the City is facing, it would prefer not to put money into the deal.

Having been on Council when Hurricane Hugo hit, Councilmember Ward said that he did not like to pay fixed costs with tourism funds, aka variable income.

After the discussion, Mr. Chalfie said that he would not change the document relative to the City's contribution. He reported that the document includes a link to the building assessment done by Hill Construction.

Administrator Fragoso noted that a change was needed to the site plan of the marina to properly show the parking assigned to the restaurant.

Prior to sending out the Call for Offers, Mr. Chalfie told the Committee that he plans to meet with Jay Clarke and Brian Berrigan to discuss what they like and do not like, their concerns, what they want and do not want, etc.

Based on feedback he has received, Chair Bell thought that a deadline in mid-August giving roughly sixty (60) days to complete and submit offers was too short and asked that it be extended to September 1; he expressed his desire for quality responses.

The Administrator reminded Mr. Chalfie that they were responsible for assessing the offers once they were received to make their recommendation(s) to the Committee and City Council.

Mr. Chalfie explained that the selection process has two (2) separate pieces; they are

- 1) Choosing the offer that would benefit the City the most, and
- 2) Negotiating the deal with the party submitting the offer.

The Administrator said that the City's timeline indicated that the City had a clear direction about where it was going and negotiations began, and that was at the end of October.

Mr. Chalfie opined that the City would know September 1 if it had received an offer it was interested in pursuing. If no offer was acceptable, the process would start over.

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6. New Business

Request of Tidalwave Watersports to provide an inventory of activities and vessels operating from the leased property and the boundaries of operation per SCDHEC-OCRM regulations

Michael Fiem distributed a letter from his attorney to the Committee members, Administrator Fragoso, Attorney Copeland and Clerk Copeland; a copy is attached to the historical record of the meeting.

Chair Bell provided a printed copy of his comments for the historical record of the meeting; these comments concluded with statements about Tidalwave Watersports being in compliance with the terms of their lease and in compliance with all federal, state and local regulations. He stated that, while boating over the weekend, he saw two (2) parasailing boats belonging to Tidalwave when their lease explicitly states that they are allowed to operate one (1).

At this time, the meeting became quite contentious and Councilmember Ward intervened suggesting that the Committee go into Executive Session.

8. Executive Session

MOTION: Councilmember Ward moved to go into Executive Session at 9:45 a.m. to receive legal advice regarding contractual matters; Chair Bell seconded and the motion PASSED UNANIMOUSLY.

The Committee returned to open session at 10:28 a.m., and the Chair announced that the Committee had taken no action and no votes while in Executive Session.

7. Miscellaneous Business

All marina tenants are current with their lease payments.

Next Meeting Date: 9:00 a.m., Wednesday, July 3, 2019 in the Conference Room

9. Adjournment

MOTION: Councilmember Ward moved to adjourn the meeting at 10:29 a.m.; Chair Bell seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk

C:\Projects\18-3287 IOP Marina Permitting & Design\DWG\exhibit.dwg, 8.5x11, 6/28/19
NOTE: THESE DRAWINGS AND DESIGNS ARE STRICTLY CONFIDENTIAL AND PROTECTED BY INTERNATIONAL COPYRIGHT LAW. DETAILS MUST NOT BE DISCLOSED, REPRODUCED OR COMMUNICATED TO A 3rd PARTY IN ANY FORM OR MANNER WITHOUT THE PRIOR WRITTEN APPROVAL OF APPLIED TECHNOLOGY & MANAGEMENT.

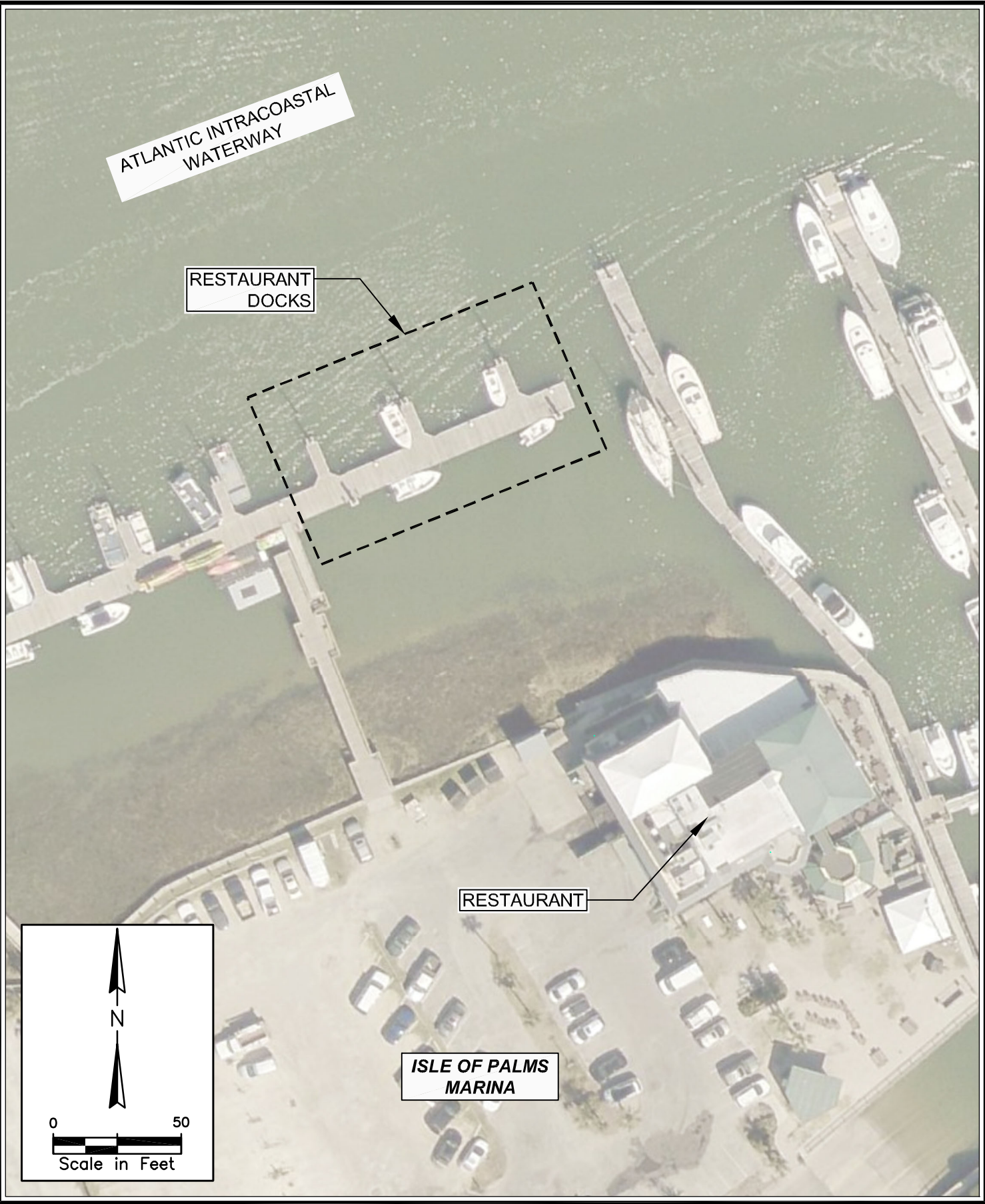


FIGURE: RESTAURANT DOCKS
LOCATION: Isle of Palms Marina
CITY, STATE: Isle of Palms, South Carolina
DATE: 28-June-2019





McCULLOUGH ▪ KHAN, LLC
ATTORNEYS AT LAW

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S.C. Supreme Court Certified Mediator

June 25, 2019

VIA EMAIL ONLY

Julia P. Copeland, Esq.
Attorney for the City of Isle of Palms
Hinchey Murray & Pagliarini, LLC
56 Folly Road Blvd.
Charleston, SC 29407
jcopeland@lawyershmp.com

RE: Watertoys, LLC d/b/a Tidal Wave Watersports

Dear Julia:

I hope this letter finds you well. Thank you for your time today to discuss this request via phone. I am placing our request on behalf of Watertoys, LLC d/b/a Tidal Wave Watersports (“Tidal Wave”) in writing for action by the City of Isle of Palms’ (“IOP”).

As you and the IOP are aware, the recent events with the dock and jet dock leased by Tidal Wave have impacted its operations and business. Tidal Wave had to relocate the jet dock to the landside of the floating dock based on the request of the IOP. This has impacted its ability to store a boat and some jet skis at the dock and overnight. Therefore, Tidal Wave has been trailering the boat and several jet skis to land every evening, causing an impact to operations, additional staff time and expense, as well as the costs of renting the proper space in the parking lot of the marina (as well as taking space in the lot from others who would like to rent space).

It is our understanding that the IOP will have use of all of the Morgan Creek wet slips as of May 29, 2019. Tidal Wave is requesting that the IOP allow it the full use of one of the slips to store the boat and two jet skis and alleviate the above impacts. The term of this request is through Tidal Wave’s season for 2019.

If you have any questions or need further clarification or information, please do not hesitate to contact me. Thank you for your efforts on this matter and please do not hesitate to contact me with any questions or discussions on resolving these matters.

Respectfully,

McCULLOUGH KHAN, LLC

A handwritten signature in blue ink, appearing to read 'J.A.Khan'.

Jamie A. Khan

JAK/dd

**ADDENDUM
TO COMMERCIAL LEASE AGREEMENT BETWEEN THE CITY OF ISLE OF
PALMS AND TIDALWAVE WATERSPORTS DATED JUNE 1, 2004**

THIS ADDENDUM TO THE COMMERCIAL LEASE AGREEMENT (sometimes referred to as "Addendum") is made and entered into this ____ day of _____, 2019, between the City of Isle of Palms ("City" or "Landlord") and Watertoys, LLC, d/b/a, "Tidalwave Watersports", ("Tenant" or "Leasee") for the purpose of incorporating additional property detailed in Exhibit A, and described more fully herein, under the covenants and agreements of the respective parties contained in the Commercial Lease Agreement originally executed on June 1, 2004.

I. Additional Leased Premises: Landlord shall provide and Tenant agrees to use one boat slip, identified in color in Exhibit A.

II. Term: The term of this addendum shall expire on September 30, 2019 or until the Summer tourist season officially ends, whichever comes first.

III. Rent: The rent terms shall remain unchanged from the current Commercial Lease Agreement.

IV. Use of the New Premises: The purpose of the new dock space shall be solely for night storage of one (1) ____ foot motor boat and two (2) jet skis. Tenant will not launch customers from this particular site.

V. All other terms and conditions of the current Commercial Lease Agreement, Assignment Agreement and Consent to Assignment and Agreement to Amend Lease, which are not inconsistent with the terms above, shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness

Witness

THE CITY OF ISLE OF PALMS
LANDLORD/LESSOR:

By: _____

Desiree Fragoso
Its: City Administrator

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness

Witness

WATERTOYS d/b/a "TIDALWAVE
WATERSPORTS"
TENANT/LESSEE:

By: _____

Michael Fiem
Its: Owner