

Real Property Committee
9:00 a.m., Wednesday, June 5, 2019
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 Meeting's Minutes**
Regular Meeting of May 1, 2019
3. **Citizens' Comments**
4. **Comments from Marina Tenants**
5. **Old Business**
 - A. Status of removal/replacement of the underground storage tanks at the IOP Marina
 - B. Update on the marina docks rehabilitation project and status of permitting process
 - C. Status of Public Safety Building Repairs project
 - D. Status of Agreed-Upon Procedures for all marina tenants
 - E. Update on marina restaurant RFP process with Lee and Associates
6. **New Business**
Request of Tidal Wave Watersports to provide an inventory of activities and vessels operating from the leased property and the boundaries of operation per SCDHEC-OCRM regulations
7. **Miscellaneous Business**
Tenant Rents Report
Next Meeting Date: 9:00 a.m., Wednesday, July 3, 2019 in the Conference Room
8. **Executive Session – if necessary**
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, May 1, 2019

The regular meeting of the Real Property Committee was held at 9:00 a.m., Wednesday, May 1, 2019 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Ferencz and Ward, Chair Bell, Interim City Administrator Fragoso, City Attorney Copeland and Clerk Copeland; 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 Ferencz moved to approve the minutes of the regular meeting of April 3, 2019 as submitted; Councilmember Ward seconded and the motion PASSED UNANIMOUSLY.

3. **Citizens' Comments – None**

4. **Comments from Marina Tenants**

Jay Clarke of Morgan Creek Grill stated that, although the one (1) year lease on the docks expires on May 31, 2019, he would like to renew it and to retain use of them by the restaurant; he also asked that the finger piers on the restaurant docks be lengthened as part of the dock rehabilitation project. He asked that "the Real Property Committee assist the marina tenants in cooperating with the specified customer and employee parking within the marina site to include the marina operator placing proper signage in the designated areas . . ." When the underground storage removal and replacement project is completed, he asked that the paved area damaged by the construction projects be repaired. In conclusion, he referred to an article in *The Post and Courier* earlier in the week that has been detrimental to the restaurant; he requested that Councilmembers remember the goodwill between Morgan Creek Grill and the City and that Councilmembers refrain from speaking negatively about it to the press. He has found that people are not booking small parties or wedding receptions in the fall because they are under the impression that the restaurant will no longer be operating. He asked that the City send a letter to the newspaper requesting that a correction be published.

Marina Manager Brian Berrigan reported that social media has been commenting on the resident launch rates and slip availability, and he would like to clarify that the resident launch rate is five dollars (\$5.00) and has remained the same since January 1999. He also confirmed that residents were charged another five dollars (\$5.00) for parking. On the subject of slips, he recently rented seven (7) slips to residents; he said that residents are always the first people contacted when a slip becomes available. He noticed that one (1) item under New Business was about business interruption for the marina tenants due primarily to the underground storage tanks project, and he stated very clearly that he had not budgeted for the project to take so long and its extended impact on his business and all other marina businesses. At the pre-construction meeting, the tenants were told by the contractor that the project would take six (6) weeks, and they were currently in week fifteen (15). He said that any consideration by the City would be appreciated.

Michael Fiem, Tidalwave Watersports, reported that since the April meeting he has not received any correspondence from OCRM or the City. He stated that his permit application would be

complete once he gets the survey, but he asked that they be kept abreast of the City's progress on its permit applications. He reported that he spoke with the person performing the audit with McCay Kiddy at length on Friday and expected to have all of the information they wanted very soon. Having seen the Hill report, he said that the one hundred two (102) parking spaces that the restaurant needed was not indicative of any restaurant on Sullivan's Island or downtown. He was concerned that the report did not offer any alternative and did not take into consideration the needs of the other businesses at the marina.

5. Old Business

A. Presentation of building assessment report on Morgan Creek Grill

Interim Administrator Fragoso commented that the Committee members and the marina tenants were given copies of the final report, and it is posted on the City's website. Chip Crane of Hill Construction was attending the meeting to review the report and to answer questions Committee members might have. He noted that the structure was thirty-five (35) years old, has been used as a restaurant, has a unique site and shared parking, and was owned by a municipality. In doing the assessment, they ran into situations that were "outside the box" from the usual building assessment they do. Whatever the City decides to do with the building, he asked that the City keep three (3) things in mind, and they are

1. The building is 35 years old and was built with a lot of wood products that show the wear and tear;
2. The first floor is 1 foot below flood level and limitations exist about how much work can be done and what is allowed to be done; and
3. The parking must be addressed due to zoning regulations.

In general, they looked at the building's condition, the wear and tear, and compliance with ADA regulations; he stated that the building was constructed before several of the regulations were put in place. They based what needed to be done on three (3) factors, life safety and code issues with several needing immediate attention, renovation of the building taking into account the fifty percent (50%) rule that limits the amount that can be done and the practicality of those renovations based on wear and tear and the site, the option to tear the existing building down and build new. Their final assessment was that the sensible thing to do was to tear it down because it solves many of the issues that come into play, but they were not "sold" on the idea. Mr. Crane stated that they were focused on the building and the way it was put together.

Chair Bell indicated that the challenge was in "how to take a marina that needs a significant amount of work and do it in a publicly conscious way with respect . . . the citizens and visitors and the residents."

The Interim Administrator confirmed that the FY20 budget does not have a placeholder for renovations or replacement of the marina restaurant.

For the public record, Chair Bell asked Mr. Crane to review the cost estimates included in the report.

Mr. Crane stated that they looked at the current condition and what it would take, with unlimited money and non-existence of the fifty percent (50%) rule, to determine the cost to remove, repair, replace or modify the building. The biggest item that would affect the operations of the restaurant would be the repair of the floor underneath the walk-in cooler and the two (2) tent-like structures on the roof. They were a temporary use and did not appear to have been designed and installed

to meet any code at any time, when they were added and certainly not to today's standards. They are not required to meet today's codes, but they were to meet the code that was in place when they were installed. He stated that they were in possession of estimates totaling about three million dollars (\$3,000,000) of individual pieces that address items like the walk-in cooler, the slope of the dining room on the main floor that he believes to be a code violation, restrooms that are not ADA compliant, bathroom upgrades, an elevator shaft with no elevator; at the end of the list is a discount if the City could pull together the funds to do all of the work at one time reducing the cost to two million six hundred thousand dollars (\$2,600,000). Based on the value of the structure itself, Hill was not confident that the City could do two point six million dollars (\$2,600,000) of work due to the fifty percent (50%) rule. If the City were to exceed the dollar amount based on the fifty percent (50%) rule, the entire structure must be brought up to code. He thought there were ways to work around the rule, but he thought it would be too cumbersome to try to do it.

According to Chair Bell, an advantage to working within the current structure was that the setbacks would remain same, which a perspective lessee might find attractive.

Mr. Crane stated that the best way to get the job done for the least amount of money was to shut down the restaurant completely and do all of the work at once.

The next scenario Hill looked at was to demolish and rebuild under two (2) sets of criteria, i.e. to replace square foot to square foot and the second was to rebuild smaller. Through their conversations with the Hill team, professionals in the real estate market and the hospitality market, they reached a point where the restaurant size would be fairly close to a hard parking count that would work with the space available, and that size was four thousand to five thousand square feet (4,000 – 5,000 sq. ft.). The cost for the square foot to square foot replacement was four point four million dollars (\$4,400,000) and the smaller restaurant was two point five million dollars (\$2,500,000).

Interim Administrator Fragoso thought the next step was to work with Lee & Associates and to have an appraisal of the building done to know the amount available under the fifty percent (50%) rule; Council has a lot of information to evaluate and digest.

B. Update on removal/replacement of the underground storage tanks at the IOP Marina

The Interim Administrator stated that staff has run into timing delays and very poor communications with the contractor that include accurate time lines and status reports. She stated that the contract allowed eighty (80) days for the project to be completed, and, as Mr. Berrigan stated, the contractor is not into his fifteenth week. City Attorney Copeland is reviewing the contract to initiate the liquidated damages clause. She told the Committee that the contractor is very close to completion with a few punch list items to be addressed. The contractor apparently was confused because he thought that DHEC was going to come last week to do the final inspection, but he has received a letter stating that he must submit all of his reports to them before they will schedule the final inspection.

Chair Bell remembers that the contract calls for one thousand dollars (\$1,000) a day in liquidated damages, and the contractor will be required to pay for damages to the pavement in a couple of areas in the marina.

C. Update on the marina docks rehabilitation project and consideration of expanding the scope of work for ATM associated with the marina docks rehabilitation project

Interim Administrator Fragoso recalled that the current scope of work with ATM was for the engineering and design for the fuel dock, or the area identified as Area A in the approved drawings. The other marina docks have reached such a state of disrepair that they are failing; approximately forty feet (40 ft.) of the dock adjacent to the restaurant collapsed. Based on these occurrences and the overall poor condition of the docks, ATM has advised the Interim Administrator that the planned phasing of the dock replacements is no longer feasible because of the safety concerns surrounding the docks; they are strongly advising the City to replace all of the docks at once.

Kirby Marshall of ATM recalled that the reason the project was starting with the fuel dock was not because it was in poorer condition than the other docks on Morgan Creek, but because it had the critical utilities on it. He added that, when ATM did their initial assessment in 2015, they reported all of the docks on Morgan Creek were at or beyond their useful life; the recent failures have reinforced that. With boats getting bigger and broader, their needs have changed; therefore, the new pilings would be concrete, not treated wood.

If the City was inclined to repair or replace all of the docks as ATM was advising, their existing contract would need to be revised to include the engineering and design for Areas B and C on Morgan Creek. Their proposal was included in the meeting packet and totals sixty eight thousand dollars (\$68,000).

Chair Bell thought that it was important for the residents to understand that the City's annual revenue from the current leases at the marina is approximately four hundred thirty-five thousand dollars (\$435,000) and that the City spends an equal or greater amount in offsetting contributions from ATAX and other funds to keep the marina viable. The costs Council saw for Area A were roughly one million dollars (\$1,000,000) and Areas B and C added approximately two point six million dollars (\$2,600,000) of unbudgeted funds. Chair Bell noted that the terms of the marina lease obligate the City provide safe and operable docks.

Interim Administrator Fragoso referred to the financial worksheet included in the meeting packet that laid out the differences in completing the docks rehabilitation in phases or all at once. Scenario 1 shows the work being done in phases over six (6) years with no debt; Scenario 2 would involve the City's issuing a two point eight million dollar (\$2,800,000) revenue bond for a period of ten (10) years at an interest rate of approximately four percent (4%) pledging State ATAX funds for repayment. The debt service on the bond would be paid with fifty percent (50%) from the marina rents and fifty percent (50%) from State ATAX funds. The financial impact between the two (2) options was the interest expense of approximately six hundred fifty thousand five hundred dollars (\$650,500). She added that this analysis did not include the rising costs of construction or repeated mobilization and demobilization costs for Scenario 1 because the work would be spread over multiple years; another expenditure that was not included in the calculations was the cost for construction management. With Scenario 2, Interim Administrator Fragoso planned for the construction to take place over the winter of 2020 and 2021; she commented that the revenue bond would not count against the City's debt limit.

Kirby Marshall of ATM confirmed that the City might receive the necessary permits in January or February of 2020.

According to the interim Administrator, Scenario 2 did not anticipate an increase in property taxes; the debt service is coming from State ATAX funds.

Interim Administrator Fragoso stated that staff was recommending that the City pursue Scenario 2 for the marina dock rehabilitation.

MOTION: Chair Bell moved to expand ATM's contract as detailed in their proposal in the amount of \$68,000 to include design, engineering and permitting for all of the docks on Morgan Creek at the IOP Marina; Councilmember Ward seconded.

Councilmember Ferencz asked how many major projects the City has that need funding and how many projects could the City look to State ATAX funds to support. She noted that Council has worked hard to reduce the amount of ATAX funds it was using because it is not a number that can be counted on year after year.

Councilmember Bell said that this was the point in the conversation when the statement that the IOP has the lowest taxes in the county actually hurts was a negative and not a positive. He referenced Councilmember Ferencz' comments and agreed that one (1) major storm would end the ATAX revenue stream for an unknown period of time. He recalled that, when he was campaigning, he repeatedly stated that he was not comfortable pledging the future based on things that were out of the City's control.

Councilmember Ward noted that the City has done nothing to refurbish or maintain the marina, and the results have landed on this Council to correct. He agreed with Councilmember Ferencz that the City has several high priority projects that cost millions of dollars and cannot be ignored. He noted that the City faces huge liability issues at the marina with docks collapsing and falling into the water.

Councilmember Ferencz added that there was also a restaurant at the marina that was out of compliance with building codes; another example of neglect on the City's part was Councilmember Ward's response.

The Interim Administrator said that the City has reduced the City's dependence on ATAX funds to pay operating costs; the tourism funds remain available to support special projects, such as this. She stated that if the City were to face circumstances that greatly reduced or stopped ATAX dollars for an extended period of time, Council would have to go back to the drawing board to find the funds for servicing the debt.

Councilmember Ward called for the vote; Chair Bell seconded and the vote was unanimous.

Vote: The motion PASSED UNANIMOUSLY.

Interim Administrator Fragoso stated that the dock rehabilitation would not impact the FY20 budget but would require changes to the forecasts.

D. Update on permitting process for the existing Tidalwave Watersports dock

In the way of background, Chair Bell said that the City became aware of OCRM violations with the Tidalwave dock earlier in the year, and in researching certain information, it was learned that

the permit was in the tenant's name and not the City's. The problem came when the permitting process takes ninety to one hundred twenty (90 – 120) days taking it well into the summer season, and the question was would OCRM allow Tidalwave to operate as is for the balance of the lease. Another issue arose when it was found that part of their operation encroaches into the restricted space from the centerline; in light of the encroachment, the City issued a letter telling the City's tenant that they would not be allowed to use that jet dock until the City received a response from the Army Corps of Engineers.

Kirby Marshall stated that he had a meeting with OCRM the following morning to discuss the permitting of the watersports dock as well as the City's permit application for the dock rehabilitation. The latest information from the Army Corps of Engineers was that the City and Tidalwave would receive a letter in the next week explaining their stance on the jet dock and the few feet of the City's dock that encroaches as well. Mr. Marshall said that he has asked the Corps of Engineers to copy the City on any correspondence to Tidalwave.

E. Update on Public Safety Building Repairs project

The Interim Administrator announced that the work was on schedule and that Trident was working on the report; she hopes the reports can be distributed next week. She reminded Council that they were contracted to do the forensics on the building, to establish a list of priorities and to establish an estimate of what the remediation was going to cost. They performed an additional air quality test and the results were inconclusive; they will look to improve the flood prevention system, to address the multiple instances of air infiltration from the outside and to re-side the entire building. Discussions are ongoing about the relocation of personnel. She repeated that she meets with the superintendent every week for a progress update; in general, the Interim Administrator said that the lines of communication were excellent.

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F. Status of Agreed-upon Procedures for all marina tenants

Chair Bell explained that the purpose of this work by McCay Kiddy was to learn if the City was getting all of the money it was due, i.e. that the tenant's systems were reporting all of their revenue and cost of sales accurately. The leases with the four (4) marina tenants all contain language that the City is entitled to all records and receipts related to their financials upon demand of the City. He stated that all marina tenants needed to understand that this was not an option, but a requirement under their leases, and if the requirements were not met, defaults could be triggered which would terminate their leases.

Interim Administrator Fragoso stated that the report was not yet ready because McCay Kiddy has not received all of the requested information.

G. Update on marina restaurant RFP process and discussion of role of Lee & Associates

John Chalfie joined the Committee at the table and reported that he has emailed Interim Administrator Fragoso an agreement for Lee & Associates working with the City to produce the RFP and to assist with evaluating the proposals the City receives. He acknowledged that the Interim Administrator wanted to get a feel for what the process was going to be in this meeting, but, upon a quick review, he thought he needed to spend time reading and digesting the Hill report on the condition of the restaurant. He assured the Committee that the building would not appraise for the five million dollars (\$5,000,000) needed to do the renovations reviewed earlier. He wanted to figure out if a minimum of work could be done for it to operate as a restaurant leaving no

structural or safety concerns. After he has studied the Hill report, he will come back to the Committee with some ideas on the best way to move forward. He spoke with Mr. Crane before the meeting and was told that, if the City chose to rebuild, permitting would take nine to twelve (9 – 12) months with another ten to fourteen (10 – 14) months for construction; if the City wanted to do the bare bones renovations, the restaurant would be shut down for about nine (9) months.

Chair Bell said the he wanted to have the future for the restaurant wrapped up by the end of the year.

H. Discussion of marina parking

Chair Bell still believed that ample parking exists at the marina to accommodate the businesses with cooperation from the tenants; he thought that the issue was the signage in place and what its uses were. He wanted to see the tenants work together to devise a workable parking plan based on which areas of the marina were busy at what times. He did not see that Council or the members of the Real Property Committee should become caught up in the parking issues at the marina, but he was certain that the City could force the tenants to adhere to the terms of their leases.

Councilmember Ferencz asked where residents were to park; the only resident parking she was aware of was at the marina store where the time was limited. The Chair stated that there was a spot of land near the dry storage that was City owned and would be signed for “Resident Only” parking; another piece of City-owned property was where Mr. Berrigan has been parking the very large trailers. The Chair has been working with Mr. Berrigan to have an area of dedicated resident only parking, but it will not be possible until the construction has been completed and cleaned away.

Interim Administrator Fragoso commented that the Morgan Creek Grill lease states that it would have parking for its customers and employees only to the extent that they do not interfere with marina operations, and it would be up to the marina manager to make such a determination.

I. Review of FY20 Budget – Version 3

According to the Interim Administrator, the only change to the budgets under the purview of this Committee was the addition of thirty-five thousand dollars (\$35,000) from the Beach Preservations fee fund for the feasibility study of the Breach Inlet area of the beach in case a renourishment project must be done there.

6. New Business

A. Discussion of use of Breach Inlet boat landing

According to the Interim Administrator, the City sells ten to twelve (10 – 12) keys per year at a cost of one hundred dollars (\$100) a piece for residents and two hundred dollars (\$200) for nonresidents. The choices are to enhance the area and encourage more residents to use it or to continue with the *status quo*.

Councilmember Ward said that the ramp was too steep and was unsafe, and the lack of parking weakened its appeal.

Chair Bell asked if there was value to be gained for the City in selling it, and Councilmember Ward stated that the spot was worth nothing.

Councilmember Ward suggested that Chair Bell discuss it with the Mayor because problems have been associated with it for many years.

Interim Administrator Fragoso opined that it came up in Public Works as a way of reducing traffic at the marina by allowing residents with boats on this end of the island to launch them there.

B. Recommendation for an award of a contract to Coastal Science and Engineering for RFP 2019-02 – Island-wide Beach Monitoring in the amount of \$30,520 per year for 5 years

MOTION: Councilmember Ward moved to award a contract to CSE in the amount of \$30,520 per year for 3 years for monitoring the entire shoreline; Councilmember Ferencz seconded and the motion PASSED UNANIMOUSLY.

C. Discussion of business interruption for marina tenants

MOTION: Councilmember Ward moved to suspend the rules of order and to invite Marina Manager Berrigan to join the discussion; Chair Bell seconded and the motion PASSED UNANIMOUSLY.

Chair Bell stated that everyone agrees that the work delay with the removal/replacement of the underground storage tanks at the marina has caused a loss of revenue for the marina businesses, and the question is what would be the right way to compensate them for these losses that were totally out of their control. The marina manager suffered the loss of one whole dock and the rent it would have garnered, but his major loss comes when the contractor said six (6) weeks of down time that has now turned into fifteen (15) weeks of downtime; how does one go about calculating the amount of rent abatement he would be due?

According to Councilmember Ward, a meaningful way to compensate the marina manager would be to look at year-to-year comparables and determine the lost revenue. He said that he goes to the marina three or four (3 – 4) days a week for breakfast, and he has seen how the marina store and the deli were hurting.

The Chair thought a good way to start would be to get the marina back in shape with the asphalt repairs, etc. He asked the Interim Administrator to be creative in her thinking and to come back to the Committee with a proposal that was legally compliant and would allow the Committee to look at the big picture and figure out how to apply it.

As comments were made that the reimbursements should apply to all tenants, Chair Bell questioned how they would determine that all downturns in business at the marina were tied to marina disruption.

Councilmember Ward suggested having all of the tenants provide the Committee with comparables between FY18 and FY19 and the data to support them.

Mr. Berrigan recalled the pre-construction meeting in December when the contractor said the businesses would be impacted for a period of six (6) weeks and, ideally, four (4) weeks; he, therefore, budgeted for a period of six (6) weeks to be on the safe-side. The contractor has just

submitted the permit to DHEC, which is new to the contractors in 2019, when, in fact, the entire process was overhauled; they must send the paperwork to DHEC before they will come for the final inspection. When the tanks were removed and some contaminated material was found, the contractor simply dumped the pile of dirt on the ground; whenever Mr. Berrigan asked about its removal, he was told that they have not received the report from DHEC about it. Mr. Berrigan is worried that it will be there all summer taking up two (2) trailer spots. The loss of the forty (40) feet of dock space is actually eighty (80) feet considering docking on both sides of it and that can be added to the forty (40) feet lost last week. He said that he was having to turn away boaters who have had reservations for months, and the docks will not be repaired/replaced until the winter of 2020-2021. Mr. Berrigan said that he could not go two (2) years without that dock space without some kind of remediation. He thought the seventy thousand dollars (\$70,000) quoted by Mr. Marshal was high; the work would be done under a repairs and maintenance order with no permit. He has already gotten a quote from the man who has repaired the docks previously, and he quoted the repair for closer to forty thousand dollar (\$40,000).

Councilmember Ferencz asked if reparations were included in the marina leases and was told that such a provision was included in the leases.

D. Discussion of residential neighborhoods between 21st and 41st Avenues

Councilmember Ferencz asked that this issue be sent to the Planning Commission for study; she stated that she has been hearing complaints from all over the island that the City is losing its residential neighborhoods to short-term rentals popping up in areas that have never had them before. She heard that an ordinance existed or was rumored to exist stating that the neighborhoods between 21st and 41st were to remain residential. When she reached out to Director Kerr, he informed her that areas zoned SR-1 were to maintain residential areas to be quiet, etc.

Chair Bell understood from Public Safety Committee meetings that some number of livability violations could lead to revocation of a short-term rental license. He believed that this was another situation where the fines have not kept up with the violations. He added that he wanted the Planning Commission to look at the whole short-term rental issue – fines, violations, tracking, etc.

7. Miscellaneous Business

All tenants were current with their rent.

The next meeting date will be 9:00 a.m., Wednesday, June 5, 2019 in the Conference Room.

8. Executive Session – not needed

9. Adjournment

MOTION: Councilmember Ward moved to adjourn the meeting at 11:05 a.m.; Councilmember Ferencz seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland, City Clerk