

WAYS and MEANS COMMITTEE

5:00 p.m., Tuesday, March 19, 2019

The regular meeting of the Ways & Means Committee was held at 5:00 p.m., Tuesday, March 19, 2019 in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the Committee were Councilmembers Bell, Buckhannon, Ferencz, Kinghorn, Moyer, Rice and Smith, Chair Ward, Mayor Carroll, Interim Administrator Fragoso, Treasurer Suggs, Attorney Copeland and Clerk Copeland; a quorum of Council was present to conduct business.

1. Chair Ward 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 Bell moved to approve the minutes of the regular meeting of February 19, 2019 as submitted; Councilmember Moye seconded and the motion PASSED UNANIMOUSLY.

MOTION: Mayor Carroll moved to suspend the rules and to reorder the Agenda to take up Item F under New Business at this time; Councilmember Bell seconded and the motion PASSED UNANIMOUSLY.

5. New Business

F. Discussion of a request from the resident at 2600 Palm Boulevard to construct a public boardwalk and to agree to future maintenance

Interim Administrator Fragoso stated that the resident, upon learning the cost of such an endeavor, has changed his mind and withdrawn his request.

MOTION: Mayor Carroll moved to suspend the rules of order to reorder the Agenda to address Item G under New Business at this time; Councilmember Bell seconded and the motion PASSED UNANIMOUSLY.

G. Approval of a Change Order from Applied Technology Management (ATM) to pursue the necessary permits on behalf of the City to insure that the existing Tidal Wave dock is compliant with the regulatory requirements

The Chair invited Kirby Marshal, representative of ATM, to come forward to explain this matter to the Committee and to answer any questions they might have.

Interim Administrator Fragoso explained to the Committee that the City recently learned that the Tidal Wave dock was out of compliance with the most recent DHEC permit issued in 1995. She stated that the City has two (2) options, i.e. (1) to submit an application under the City of Isle of Palms asking for the existing structure to be permitted or (2) to make the necessary modifications to make the structure compliant with the 1995 permit as recommended by SC DHEC. She noted that the 1995 permit was issued to the prior owner of the jet ski operation. One (1) issue of noncompliance with this dock was that a portion of it and the temporary jet ski dock encroach into the one hundred twenty-five foot (125 ft.) offset established by the Army Corps of Engineers. Mr. Marshall discovered this encroachment when he was preparing the permit application for the

rehabilitation of the marina docks, and correcting it requires a different permitting process through the Corps of Engineers.

Mr. Marshall stated that currently ATM was under contract with the City to permit the IOP Marina docks for the dock rehabilitation project. When they were preparing the permit application documents, they were contacted by Tidal Wave Watersports and told that DHEC had identified several areas of non-compliance related to a 1995 permit. When Mr. Marshall reached out to DHEC/OCRM, the non-compliance issues were fueling procedures, point-of-sale procedures, etc. – they were, for the most part, minor operations-type issues and could be corrected with modifications to the operator's Operations and Maintenance Manual. However, DHEC/OCRM noted other issues about the dock that were not reflected in the 1995 permit, for instance the configuration of the floating dock, more floating dock area than was permitted and more jet ski docks than approved. The recommendation of DHEC/OCRM to the operator was to seek a permit authorizing the structure as it stands; at that time, the decision was made that the permit should not be in the operator's name, but in the City's name as the owner.

The procedures for bringing this dock into compliance are relatively straightforward. It would require a separate permit application, similar to the permit for the rehabilitation project, with its own Operations and Maintenance Manual. Mr. Marshall noted that Tidal Wave has an Operations and Maintenance that needs updating relative to their operating procedures. When the Real Property Committee met last week, they recommended that the City should move forward with two (2) permits, i.e. one (1) to bring Tidal Wave and the dock structure into compliance and a second to allow the rest of the dock rehabilitation to occur. If, in the future, the City decided to turn the Tidal Wave dock into a community dock or to allow for a different use, the permit could easily be modified. A complicating factor that the Interim Administrator mentioned was the eight (8) jet ski docks on the outside of the floating dock that were completely inside the channel construction offset; based on ATM's past experiences, the Corp of Engineers has been very strict about not allowing any structures inside the offset. These docks were seasonal docks and have not been put into the water for the coming tourist season. Additionally, the long floating dock itself encroaches about three feet (3 ft.) into the offset area; it is delineated on the drawing by the solid line from end to end. The assumption is that this occurred in the 2012-2013 timeframe when a barge impacted the dock and repair work was done to the structure. Mr. Marshall reported that he reached out to the Corps of Engineers last week to discuss with them the encroachment of the long floating dock, and he was told that a variance could possibly authorize that structure since the encroachment was so limited. He was also told that, due to the seasonal nature of the jet-ski dock on the outside of the floating dock, a variance might be possible to authorize it as well. Therefore, that was the position ATM would take to approach the permit application to bring the structure into compliance as it stands, all of the floating jet-ski docks to be authorized as positioned and to try to get the seasonal/temporary jet-ski dock included.

Councilmember Bell pointed out these operating violations were only discovered through a citizen's FOIA request because they were being worked as operating manual issues and not brought to the Real Property Committee or Council in detail. As a result of the FOIA request, the City received a copy of the violations cited by DHEC/OCRM and another document from the Army Corps of Engineers. He noted that he did not think there was any egregious behavior by Tidal Wave and that they were doing what they thought was right under the current permitting process. The City has been told that any permit would take ninety to one hundred twenty (90 – 120) days; therefore, no permits would likely be approved before September. The City, then, has a non-compliant dock and must tell its tenant Tidal Wave that they must operate within the limits of the 1995 permit.

MOTION: Mayor Carroll moved to approve the Change Order from ATM, and Councilmember Bell seconded.

When DHEC/OCRM found these violations, Councilmember Moye asked if they made any recommendations for resolving them.

Interim Administrator Fragoso stated that she has spoken with DHEC/OCRM since the City learned of the situation, and their goal was compliance. If the violations were such that they could be resolved through an application for a permit modification, they typically worked with the permittee, in this case the City, to bring the structure into compliance. If the violation was deemed egregious, they would typically not shut down the operation but would allow the permittee to pursue a permit modification. The problem with the floating temporary structure was that its entire area encroached into the offset area, and the City could pursue a variance that may or may not be approved. In the meantime, the advice has been not to allow that structure to be reattached to the floating dock. She stated that, if the City does not allow the floating jet-ski dock to be put back in place until the City gets an official notice from the Army Corps of Engineers, the City could face a liability issue. The City could require the tenant to get creative and to find another location on the structure for that jet-ski dock; DHEC/OCRM would accept that as a permit modification.

Councilmember Rice recalled that an extensive rehabilitation of the dock was done in 2013 with a keen eye to detail and on the regulating agencies; therefore, she did not understand how the floating dock was now encroaching into the offset.

Mr. Marshall reported that nothing specific in the FOIA request or the project files they received from DHEC/OCRM showed the Tidal Wave dock in its current reconfiguration; he continued that they surmise that the repairs made to the dock in 2013 were done through a Maintenance and Repair Authorization from the Corps or DHEC/OCRM. The Corps typically would not issue a document because the original authorization would have the stipulation that the permittee maintain the dock in good working order. DHEC/OCRM, on the other hand, would usually issue a letter of authorization; he has not seen it, and the permitting agent who worked on this with the City has died.

The Interim Administrator noted that the City got a copy of the 2013 permit modification when the City's plan was to fully replace and renovate that dock. After running into funding concerns, the plan was scaled back to do repairs and modifications, which would not have required a modified permit. She has been unable to locate any surveys or drawings.

Councilmember Bell asked how Tidal Wave could continue to operate while the City was pursuing the permit.

The Committee agreed to defer any decision making until after Executive Session later in the meeting, and the Mayor and Councilmember Bell withdrew the motion and second respectively.

Mr. Marshall stated that the permitting process for the dock would be like the process for the rest of the marina; it will be a joint permitting process with DHEC/OCRM and the Corps of Engineers, and it will go out for public comment for each agency. The variance request would be part and parcel of the standard permitting process.

Regarding the variance and how Tidal Wave could operate this summer, he explained that ATM was ready to submit the permit package to the Corps and DHEC/OCRM and to schedule a pre-application meeting where they would present what was there today and what they wanted to do.

The package would be presented to the regulating agencies in advance of the meeting so they could study it to be able to provide some preliminary feedback which could be a determining factor about the City's ability to allow Tidal Wave to operate. He expects to have the meeting in the next month or so.

3. Citizens' Comments

Matt and Cindy DeAntonio were the residents at 210 Forest Trail; he stated that they have been working toward acquiring a Flood Mitigation Grant since 2016 and were notified in December 2018 that it would be awarded. They were present to answer any questions that might arise.

4. Financial Statements – Treasurer Suggs

A. Financial Reports

Treasurer Suggs reported that collections through the end of February 2019 in the General Fund were in excess of seven million dollars (\$7,000,000) of a ten million dollar (\$10,000,000) budget; based on trends, she indicated that the City might end the year five hundred thousand dollars (\$500,000) ahead of budget. Expenditures were at fifty-seven percent (57%) of budget against a target of sixty-seven percent (67%); all departments were at or below budget except Mayor and Council due to a timing issue. She commented that the Capital Project Fund has seen significantly less activity than was anticipated by the budget; projects that been done were Drainage Phase 2, the underground storage tanks, a garbage truck, renovations to the Public Works structure, the gym floor and the Eadie's ditches clean out. Projects not done this year will be reallocated to FY20. She stated that the forecasted year-end positive net result in the General Fund will be eight hundred sixty-two thousand dollars (\$862,000) which will be rolled into the Capital Projects Fund for FY20, until Council makes its final decision on its disposition. The cash balance at the end of February was approximately eighteen million five hundred thousand dollars (\$18,500,000) with approximately seventeen million five hundred thousand dollars (\$17,500,000) in the LGIP. Business Licenses and Building Permits revenue continued to out-perform budget, and, with the forecasted revenue from Wild Dunes construction project, revenues in these funds were projected to exceed budget by four hundred seventy thousand dollars (\$470,000). The Treasurer noted that today the Fire Department was in-budget for expenditures; the situations that have generated the excess overtime – military leave, light duty and FMLA leave – have ended, so the over-budget overtime should have ended. She reminded the Committee that nine hundred forty thousand dollars (\$940,000) was in the FY19 budget for the repairs to the Public Safety Building (PSB), but only half of the amount was expected to be spent this year; therefore, the forecast would be adjusted. The projects that will carry over to FY20 are the PSB rehabilitation, Phase III drainage and the ladder truck.

Responding to the Mayor's question, Interim Administrator Fragoso said that she expects the forensic investigative work on the Public Safety Building to be complete by mid-May; therefore, Council should have a better cost estimate for the repairs before finalizing the FY20 budget.

For the pie charts representing General Fund revenue and expenditures, Treasurer Suggs remarked that the two (2) circles were equal; they represented identical amounts of money. With that information in mind, she pointed out that Property Taxes and Other Licenses collected for insurance and utilities were paid by property owners meaning that half of the City's General Fund revenues were paid by property owners.

The Tourism Revenue data was presented in a new format that did not contain the month-to-month comparisons and all of the sources were shown on one (1) page; the yearly comparison by fund were at the bottom of the page.

B. Project Worksheets

The Phase II Drainage Project was winding down and the February expenditures were for invoices from Civil Site Environmental for professional services in excess of the contract.

5. Old Business – None

MOTION: Councilmember Bell moved to suspend the rules of order and to take up Item C under New Business; Councilmember Moye seconded and the motion PASSED UNANIMOUSLY.

C. Acceptance of the award of a Flood Mitigation Grant through SCDNR in the amount of \$239,000 to elevate 210 Forest Trail

MOTION: Chair Ward moved to accept the FEMA grant in the amount of \$239,000; Councilmember Bell seconded and the motion PASSED UNANIMOUSLY,

When asked what he thought about this, Director Kerr opined that it was good for the community and that it was a grant where FEMA paid ninety percent (90%) if the property was categorized as a severe repetitive loss property. The goal of the grant was to make one's home no longer flood prone.

Although she thought the grant was wonderful for the DeAntonio's, Councilmember Rice thought that the application was cumbersome. She stated that her concern was being certain that the City would have no liability since all funds would flow through the City, and Director Kerr assured her that the City would not be liable in any way.

The Interim Administrator commented that she initially had the same concerns and had expressed them to Director Kerr, Attorney Copeland and the SCDNR staff handling it, and she had been assured that the City was free of liability. She explained that the federal government has already allocated the funds to DNR and that the City's role as the sub-recipient would be to pay the invoices presented to it and to file for reimbursement from SCDNR.

Director Kerr commented that the City always was interested in ways to make homes on the island more resilient.

When asked how residents would know if they were on this list of repetitively damaged homes, the Director said that these property owners were mailed letters each year and, as a result of being on the list, were made aware of programs available to them.

The amount of the grant was incorrectly noted on the meeting agenda; the correct amount was \$294,244.20.

6. New Business

- A. Consideration of a Change Order from Thomas & Hutton in an amount not to exceed \$7,500 for the surveying, engineering and design for a drainage improvement on Tabby Lane** (Pg. 23, In 54 – Capital Projects, Public Works, Drainage Contingency - \$70,000)

MOTION: Councilmember Rice moved to approve the Thomas & Hutton Change Order for Tabby Lane; Councilmember Bell seconded, and the motion PASSED UNANIMOUSLY.

As a property owner on Tabby Lane, Mayor Carroll recused himself from this discussion and subsequent vote because he would benefit personally from the drainage project.

Interim Administrator Fragoso stated that the City would pay for the surveying, engineering, and design for the Tabby Lane project, but the property owners on Tabby Lane would pay for the construction. The City's portion of this project would come from the Drainage Contingency that currently has a balance of seventy-one thousand dollars (\$71,000).

- B. Consideration of an award of a contract to Eadie's in an amount not to exceed \$30,000 for emergency repairs to Marginal Road** (Pg. 23, In 54 – Capital Projects, Public Works, Drainage Contingency - \$70,000)

The Interim Administrator reported that a pipe separation has occurred underneath Marginal Road and, as a result, the road was caving in. The work will entail cutting the asphalt, replacing the pipes, installing the flap gate and sealing the joints, and Eadie's has given the City a quote for twenty-seven thousand five hundred dollars (\$27,500). The Public Works Committee recommended that the City accept Eadie's quote so that the work could get underway as soon as possible to prevent the road from completely caving in. The unanimous recommendation from the Public Works Committee was to accept the Eadie's proposal with a not to exceed amount of thirty thousand dollars (\$30,000). She stated that staff has asked Charleston County to do the work in case the City would see savings if they did the work, but the Interim Administrator was seeking an emergency approval of the funds due to the precarious condition of the road by whichever entity could do the work most efficiently and get to work the quickest.

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MOTION: Councilmember Rice moved to approve emergency repairs to Marginal Road in an amount not to exceed \$30,000; Councilmember Smith seconded.

Councilmember Rice told the Committee that Marginal Road was where the Forest Trail drainage went to the 41st Avenue ditch and "the road was literally falling in."

Councilmember Bell thought that this repair might help the stormwater drainage and flooding issues on Forest Trail, and Councilmember Rice agreed.

VOTE: The motion PASSED UNANIMOUSLY.

- D. Award of a contract to Rahman's Painting and Repairs, LLC in the amount of \$73,104.25 to pressure wash, caulk and paint IOP Fire Station #2** (Pg. 41, In 70

– Fire Station #2 Maintenance, ½ Capital Projects \$39463, ¼ Muni ATAX \$19,731, ¼ State ATAX \$19,731)

MOTION: Councilmember Rice moved to award a contract to Rahman's Painting and Repairs, LLC in the amount of \$73,104.25 for painting and repairs at Fire Station #2, and Mayor Carroll seconded.

The Interim Administrator reported that the funds for this work was included in the FY19 budget as part of the repairs and maintenance in the Hill Report. The RFB drew two (2) respondents, and Rahman's bid was the lower one (1), allowing the City to approve certain alternates included in the bid package.

Responding to Councilmember Rice's concern about timing, Interim Administrator answered that she brought this bid straight to the Ways and Means Committee so that the contractor could begin work as quickly as possible.

VOTE: The motion PASSED UNANIMOUSLY.

E. Approval of a Change Order to the scope of work for Phase 3 Drainage Improvements from Thomas & Hutton in the amount of \$23,300 (Pg. 23, ln 54 – Capital Projects, Public Works, Drainage Contingency - \$400,000)

MOTION: Councilmember Kinghorn moved to approve the Change Order from Thomas & Hutton in the amount of \$23,300; Councilmember Rice seconded.

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Interim Administrator Fragoso stated that this request was coming from the Planning Commission.

Director Kerr explained that, due to the long permitting period of about eighteen (18) months, the Planning Commission was concerned that residents would become discouraged since they were not seeing any work toward resolving the island's multitude of drainage problems. They thought that it would be prudent to locate some "quick and easy" projects that could be done in FY20 while the City was waiting for the issuance of the permits. These funds would expand Thomas & Hutton's current contract; Thomas & Hutton would be looking at the entire drainage basin to insure that the outfalls are correctly sized and doing a deeper analysis of the basin to locate "quick and easy" projects for FY20. These smaller projects would insure that, when the outfalls' improvements have been completed, the water will get to them more efficiently. The twenty-three thousand three hundred dollars (\$23,300) would be for conceptual analysis, and, depending on the project(s) selected, the City would see another Change Order of an equivalent amount for the design in FY20.

VOTE: The motion PASSED UNANIMOUSLY.

7. Miscellaneous Business – none

Next Meeting Date: 5:00 p.m., Tuesday, April 16, 2019 in the Conference Room

8. **Executive Session to receive update and legal advice on SC DHEC permit operations for marina operations in accordance with SC. Code Section 30-4-70(2)**

MOTION: Councilmember Bell moved to go into Executive Session at 6:00 p.m. to receive legal advice on SC DHEC permit operations for marina operations in accordance with Section 30-4-70(2); Mayor Carroll seconded and the motion PASSED UNANIMOUSLY.

When the Ways and Means Committee returned to regular session at 6:15 p.m., Mayor Carroll announced that the Committee had not taken any action or a vote while in Executive Session.

MOTION: Councilmember Rice moved to approve a Change Order from ATM in the amount of \$6,500 to pursue the necessary permit on behalf of the City to insure that the Tidal Wave comes into compliance with regulatory requirements; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.

9. **Adjournment**

MOTION: Councilmember Buckhannon moved to adjourn the meeting at 6:20 p.m.; Councilmember Moyer seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk