

REAL PROPERTY COMMITTEE

Wednesday, April 3, 2019

The regular meeting of the Real Property Committee was held at 9:00 a.m., Wednesday, April 3, 2019 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, and South Carolina. Attending the meeting were Councilmember Ferez and Ward, Chair Bell, Interim City Administrator Fragoso and City Clerk Copeland; a quorum of the Committee was present to conduct business.

1. The meeting was called to order, and the Chair 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 Ferez moved to approve the minutes of the regular meeting of March 6, 2019 as submitted; Councilmember Ward seconded and the motion PASSED UNANIMOUSLY.

3. **Citizens' Comments – none**

4. **Comments from Marina Tenants**

Jay Clarke and Carla Pope, representing Morgan Creek Grill, reported that the building structure under the walk-in cooler was found to be in stable condition at this time, but the engineer will re-check the structure in June. Mr. Clarke stated that his plan was to replace that part of the building structure in the fall. The independent engineer also found that the decking underneath the green roof needed to be replaced; Mr. Clarke said that he has to figure out how to work those costs in the short term remaining on their lease. On the subject of parking, he wanted to have a meeting between with Marina Manager Brian Berrigan and Tidal Wave to devise a better parking system to accommodate the tenants as well as their employees; he repeated his request to have a representative of the City present. Mr. Clarke also reported that the paving of the ante-way to the restaurant was damaged, as were the boat ramp and other areas of the marina, due to the heavy equipment used for the rehabilitation of the bulkhead and the replacement of the underground storage tanks. Marina Manager Berrigan has arranged to have the paved areas on his side of the marina repaired with an asphalt product; Mr. Clarke asked the City to have the same contractor look at the ante-way to Morgan Creek Grill same time.

Ms. Pope stated that she was present to again plead for the RFP for the restaurant to be expedited in whatever way possible; she stated that the delay has been detrimental to the restaurant in attracting personnel. She also asked that the response period not be extended to ninety (90) days; she opined that the forty-five (45)-days in the original draft of the RFP was sufficient.

Chair Bell stated that he was willing to have as many special meetings as necessary to expedite the process, but he did not know what the number was. He noted that the RFP has been delayed awaiting the results of the Hill assessment of the building.

On the matter of the capital improvements, Ms. Pope commented that the roof had to be repaired and the walk-in cooler had to be replaced regardless of how the financial matters were worked out over the remaining term of their lease. According to their accountant, making capital improvements to a building they might not have the lease on after October 2020 was

unreasonable. She said that the upper deck roof had to be repaired immediately because fifty percent (50%) of their business was generated there.

When Councilmember Ferencz asked the cost of the roof repairs, Mr. Clarke said that he was told the cost would be between fifty and seventy thousand dollars (\$50,000 - \$70,000) and the walk-in cooler would run about one hundred twenty thousand dollars (\$120,000) including the structural repairs.

The Interim Administrator noted that the Committee would be approving a contract with a real estate consultant today, and she was anticipating the engineer's report from Hill very soon.

Michael Fiem, Tidal Wave Watersports, thanked the Committee for the City's assistance in recent weeks. He went on to say that, despite the results of the referendum, Tidal Wave Watersports has continued to give island residents, their guests, day-trippers and short-term renters access to the water. He stated that, in a survey they generated, Tidal Wave got one thousand (1,000) signatures in support of their business continuing on the island and only six (6) opposed. They were planning to mail out a survey to all island residents; the survey will have a couple of questions on it and include a stamped envelope in which to return the survey. Mr. Fiem said that the results would tell them if they were wanted on the island. Mr. Fiem questioned the Committee's desire not to renew their lease. On the subject of their lease, Mr. Fiem said they would like to renew the current lease terms with the following revisions:

- To double the base rent with a percentage of gross sales;
- To have stability in lease terms;
- To be allowed to expand the types of activities they could offer assuming they do not directly compete with other marina businesses;
- To be responsible for all dock repairs except for the pilings.

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He said that he has never had a parking problem; Tidal Wave has managed the parking spaces assigned in their lease and did not infringe on other businesses. He reported that they have purchased a fifteen (15)-passenger van to provide free shuttle service to any of their customers who have made reservations in advance.

Mr. Fiem said that he has been told that their lease would go out to bid. When only two (2) insurers in the world issue policies for this type of business, he asked that the City be sure that all bidders was properly insured before signing a contract.

Chair Bell assured Mr. Fiem that no one on the Committee wanted to issue a contract to another watersports business.

Mr. Fiem invited all present to attend the Residents' Day at the marina on Sunday, April 9th to enjoy the activities Tidal Wave would be offering for free; this event was to benefit the IOP Exchange Club. He stated that Residents' Day was going to become a regular occurrence held twice a year; he also noted that all island residents can get ten percent (10%) off the cost of an activity all the time.

Based on the extensive training their employees receive, Mr. Fiem noted that they frequently offer assistance to the Fire Department in any type of water rescue; they also assist kayakers who are too exhausted to get back to the marina or boaters who run out of gas or boaters who get stranded on a sand bar, etc.

Mr. Fiem stated that, if the City were not to renew their lease, it would be more devastating to Mark O'Malley and himself that anyone could imagine because their lives were Tidal Wave Watersports. He indicated that they could not operate anywhere else in Charleston. He said that his father helps them at the dock; he has found that he has had the opportunity to spend quality time with his father than he never thought they would have.

In conclusion, Mr. Fiem stated that Tidal Wave Watersports was their dream; they have sacrificed for it and hoped it would be their retirement.

The full context of these comments are attached to the historical record of the meeting.

6. Old Business

A. Presentation of building assessment report

Chair Bell announced that the City has not received the building assessment of the restaurant building, but remains hopeful that it will arrive shortly.

When the Chair said shortly, Councilmember Ferencz asked if he could be more specific.

Interim Administrator Fragoso replied that she had been told the beginning of next week, leading Councilmember Ferencz to ask if a Special Meeting would be called next week; Chair Bell said that he would be out of town next week.

Councilmember Ward commented that this building assessment was a high priority and that he and Councilmember Ferencz would make a quorum; they could hold a Special Meeting if the Chair was not opposed. The Chair stated that he had no reservations about their meeting.

B. Consideration of proposal from Lee & Associates to provide real estate consulting services to the City

MOTION: Chair Bell moved to suspend the rules and to invite Jon Chalfie and Hailey Clifton from Lee & Associates to join in the discussion; Councilmember Ward seconded and the motion PASSED UNANIMOUSLY.

Mr. Chalfie said that he has been doing commercial real estate locally for eighteen (18) years focusing in the east Cooper region particularly Mount Pleasant; he noted that the Isle of Palms has a limited amount of commercial area compared to the region. He stated that their goal was to get the Isle of Palms as a client, and, according to the basic rules of real estate, a client was someone whom they are working for and to whom fiduciary responsibilities are given in looking out for the City's best interests. He understood the project was Morgan Creek Grill, but he thought that any picture would be short sighted if it did not include the marina as a whole and Tidalwave. Mr. Chalfie noted that their proposal spoke for itself in addressing the tasks included in the RFP specifications, i.e. meeting with the Committee, creating a plan for communicating with the City and vice versa, meeting with Morgan Creek Grill and determining how it fits into the big picture. He felt that the building assessment would be the foundation for any conversations going forward and said that they will need a copy of it.

He introduced Hailey Clifton as an associate who joined the firm five (5) years ago; she was an associate's assistant for four (4) years, and, in July, she began working with Mr. Chalfie as an agent to assist him in working deals and to team with him on projects.

Chair Bell agreed that the project was Morgan Creek Grill, but he added that the City has control over a certain amount of property, including the Tidalwave portion, the parking along 41st Avenue and Morgan Creek Grill and the parking specifically assigned to it. He thought everyone was asking, "What can the City do?" He also asked about the percentage Lee & Associates would be due if the City decided to enter into a one dollar (\$1) land lease with the lessee building a new structure; he asked that Lee & Associates acknowledge how fluid the project was and how broad it could be.

Mr. Chalfie responded that he had already gone through that scenario mentally and recognized that someone was going to have to put capital into the building; He assumed that the City would be looking for a long-term lease of ten (10) or more years, and it was time to determine where that capital was going to come from. He could envision many scenarios where that could come from the operator. He stated that he was confident they could work out the fee arrangement with the City.

Councilmember Ferencz asked if it was normal to receive only one (1) proposal, and the Interim Administrator said that the City had actually received two (2) bids, but the second was delivered to City Hall well past the time for the proposal opening. She noted that the two (2) proposals were very similar and offered the same fee structure.

MOTION: Chair Bell moved to recommend the award of a contract to Lee & Associates to be the City's real estate contractor for the marina restaurant RFP and evaluation of the proposals; Councilmember Ward seconded and the motion PASSED UNANIMOUSLY.

Mr. Chalfie sought clarification because, from reading the current lease, he recalled that the roof was the responsibility of the lessee; Interim Administrator Fragoso confirmed that he was correct.

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C. Presentation of 2018 beach monitoring and consideration of opportunities for the beach at the south end of the island

Steven Traynham and Dr. Tim Kana were attending the meeting to represent Coastal Science and Engineering. Mr. Traynham reported that the most recent beach renourishment project was completed last spring, and they did the final survey of the project area in April 2018. They have been working since then compiling the data into the report; the winter storms delayed the process. The beach project went very well and continues to look good; it added eight hundred thousand cubic yards (800,000 cu. yds.) more of sand than the previous project; the City got fifty thousand cubic yards (50,000 cu. yds.) of sand over what it paid for. The one-year survey of the project area would be conducted in coming days; they were waiting on the RFP for the survey of the entire shoreline that has been done on an annual basis and were hopeful that the two (2) could be done at the same time. Planting the vegetation has been completed, and the contractor has been on the island several times to check their progress, which he was not required to do.

Since 2012, the beach south of the pier has been relatively healthy, but beginning with Hurricane Sandy, the entire shoreline suffered measurable erosion that triggered some degree of concern. An erosional arc formed in the area of 6th – 7th Avenue that was tracked over the next several years as it moved further south and the area began to rebuild itself. With storms Joaquim in 2015, Matthew in 2016 and Irma in 2017, then Florence and other smaller storms, over the past several months, the area of the turn at Breach Inlet has become very erosional. From the historical perspective, the area will eventually heal itself, but for now it has become a concern, and, in the coming five or six (5 – 6) years, maybe sooner, the City could be looking at a project in that area.

Due to the permitting process of one to two (1 – 2) years, CSE has always advised that a permit be obtained before an area was in crisis; Mr. Traynham commented that, if the area were to experience another Matthew, the beach could retreat another twenty to thirty (20 – 30) feet, or more in the case of a stronger storm. He added that the permit would be good for five (5) years.

In a new project site, CSE normally would perform a feasibility study to determine the cause of the erosion, calculate how much sand would be needed, and determine the best and cheapest way to deliver the volume of sand needed. Because Breach Inlet was a rather unique site, it might have multiple opportunities for sand sources, and the project could present an opportunity to cost share with the Army Corps of Engineers.

Dr. Kana added that another factor was tracking the amount of sand working from the northeast down the island section by section; this provided a better prediction of what the future held.

The Committee agreed that this topic should be discussed as part of the FY20 budget process to consider permitting for a future project at Breach Inlet.

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

According to the Interim Administrator, the contractor plans to pour concrete by the end of the week and to install the hose reels by the end next week. Staff is continually reminding the contractor that the work was to be wrapped up as quickly as possible; Marina Manager Berrigan commented that the contractor was into the third week of delays.

Councilmember Ferencz asked if the contract included a delay clause, and the Interim Administrator indicated that she would check.

Councilmember Ferencz also asked if the City had received the results of the soil sampling tests, and she was told that it had not.

E. Update on marina docks rehabilitation project

Staff continued to work with Kirby Marshall and ATM to get the permitting application documents ready to submit, and a meeting with the permitting agencies and marina tenants was scheduled for next week.

F. Update on joint permitting process for the existing Tidalwave Watersports dock

The Interim Administrator informed the Committee that a meeting was scheduled for tomorrow with the City Attorney and Tidalwave to talk specifically about the process for getting the dock compliant with the existing permit. Next week a meeting was scheduled with DHEC/OCRM, ATM and the marina tenants to develop a plan for the permitting process for the overall project.

G. Update on Public Safety Building Repairs project

Trident Construction was completing the third week of investigative work with a few remaining tests to be completed; they will then begin the documentation, reporting and budgeting that was to be completed by the end of the month. The City would then have an order of magnitude for the cost of the project to finalize that piece of the FY20 budget.

The Interim Administrator reported that the construction superintendent was on-site every day and that she and Chief Graham met with the team each Thursday morning to stay abreast of their findings. In her opinion, nothing particularly dramatic has been uncovered to-date.

MOTION: Chair Bell moved to re-order the Agenda to take up Old Business, Item H to the end of the meeting; Councilmember Ward seconded and the motion PASSED UNANIMOUSLY.

6. New Business

A. Consideration of Ordinance 2019-07 – An Ordinance Amending Title 5, Planning and Development, Chapter 4, Zoning, Article 2, District Regulations Regarding Lot Subdivisions

Acknowledging that this ordinance passed First Reading last week at Council, Interim Administrator Fragoso stated that the current ordinances have come under scrutiny of late due to a subdivision planned on Forest Trail, and citizens asked that the City impose a moratorium on subdivisions until possible changes to the code could be discussed and passed. The Interim Administrator and Director Kerr noted that a moratorium was harsh and that means could be found to limit future subdivisions without it. The amendment stated that future subdivisions of property would be slowed until the next drainage project was underway, and it was geared to put the pending ordinance doctrine into play. She commented that the plan was to hold off on Second Reading until the Planning Commission made its recommendations.

Councilmember Ferenz stated that she understood that the square footage referenced in this amendment doubled the square footage in the existing ordinance and that they were feasible numbers that were logical and would not “send up any red flags”.

B. Consideration of Ordinance 2019-05 – An Ordinance Amending Title 7, Chapter 1, Business Licenses, of the City of Isle of Palms Code of Ordinances, Regarding the Increase in Short-Term Rental License Fees

Based on discussions at the first budget workshop and subsequent to Council’s approval, this ordinance doubled both the base short-term rental license fee to three hundred fifty dollars (\$350) and the additional per thousand rate to four dollars sixty cents (\$4.60), beginning with the new budget year.

The Interim Administrator announced that a Public Hearing for the ordinances and resolutions related to increasing fees for the City would be held at 5:45 p.m. on April 23, 2019, just prior to the City Council meeting.

C. Consideration of model ordinance for regulating small cell installations

Interim Administrator Fragoso explained that the telecommunications industry was rolling out 5G capabilities to provide more bandwidth and support faster downloading for mobile devices; to do this they needed a denser network for antennae. The additional antennae were to be placed on existing poles, utility poles or decorative poles, and they must be installed in publicly visible places. Although the City could not prohibit them, it could regulate the location, the mounting and the overall aesthetics. A model ordinance included in the packet was generated by the Municipal Association in cooperation with telecommunication companies and has been approved by many municipalities to create a permitting system. Applications would be submitted and fees would be

paid to the City, thereby giving control over the installation to the City. The Interim Administrator would work with Director Kerr on what the permitting process would look like. A bill was introduced in the State legislature to limit a municipality from having the permitting process in place; therefore, it was important that the City adopt this ordinance to insure it retained control of the additional antennae that would be placed on the island.

Chair Bell commented that, with 5G, more antennae would be placed around municipalities and that some would be mounted on kiosk-like structures rather than on cell structures or water towers. He said that they have been rather controversial because the major carriers wanted to maintain the geography they have for the antennae, whereas City's, like IOP, wanted to do it much more attractively. The goal was for the City to retain as much control as possible to avoid "the growth of unsightly antennae all over the island."

MOTION: Councilmember Ward moved to recommend to City Council the adoption of the attached ordinance for the installation of small cell antennae; Chair Bell seconded and the motion PASSED UNANIMOUSLY.

D. Discussion of Tidalwave Watersports lease

Chair Bell stated that this discussion should go before full Council to avoid repeating the discussion that would take place in this Committee.

Councilmember Ferencz thought a decision needed to be reached as to the City's vision for that side of the marina. She stated that, if the goal was to have less commercialism and a more passive space for the residents to have access to the water, the City needed to look at that entire docking system; she commented that portions of the ATM redevelopment plan had things that people really liked.

Chair Bell noted that no one was more vocal about the marina in the last election than he was, and his issues were first the cost of the plan and secondly the fact that too many businesses were operating out of the marina, a problem that continues today. In his opinion, the question was whether the marina exists for commercial industry or for the benefit of the residents.

Interim Administrator Fragoso agreed that Council needed to decide if they wanted the marina to continue to operate with too many businesses calling the IOP Marina home or if they wanted a residents' area with a more park-like atmosphere with no commercialization on the Intracoastal Waterway side of the marina.

Councilmember Ward stated that he hoped the Committee could balance their vision with common sense and awareness that they were looking at situations where people's financial lives were on the line. Consideration of the human side should be included with the business owners and the residents.

E. Discussion of request by Homeowner for a Quit Claim Deed from the City for the unopened portion of 33rd Avenue, 2,532 sq. ft.

Director Kerr stated that this request was for a "paper" road between Cameron and Hartnett that would have been part of 33rd Avenue that currently ended at Cameron. The right-of-way was never developed, and 33rd Avenue was not extended to Hartnett but was divided between the four (4) property owners adjacent to it. When looking at the tax records, the portion of the right-of-way assigned to three (3) of them was incorporated into the adjoining lots, but Leonard Krawchek, the

fourth property owner has learned that this property was not issued a Quit Claim deed from the City to get clear title.

MOTION: Chair Bell moved to recommend to City Council to issue the Quit Claim deed to Mr. Krawchek for this property; Councilmember Ward seconded and the motion PASSED UNANIMOUSLY.

F. Discussion of request by landowner for the City of Isle of Palms to modify covenants and restrictions related to lots 54/55 between 34th and 35th Avenue to conform to intent of the parties and consistent with previous action of City Council on similarly situated lots.

Beth Settle, attorney for the Sheridan family who owns the property, explained that the family bought lots 54 and 55, beachfront property purchased from the McLeod family, but the property line has never been abandoned. When the sand accreted, the Beach Company sold the accreted land to the adjoining lot owners. When The Beach Company issued Quit Claim deeds to the accreted land, they contained restrictions that the lots would always convey together and the only things that could be built on this accreted land were walkways or gazebos in accordance with the codes. The purpose was to prevent houses from being built between the original lots and the beach. She noted that the rights of The Beach Company were assigned to City Council in 1992, the accreted land was deeded to the property owners in 1991, and The Beach Company assigned the right to enforce the covenants to City Council in 1992. Ms. Settle reiterated that today they were before the Committee asking that it follow the precedent set in 1994 by amending the restrictions to clear the record to say that the intent of the parties was that lots 54 and 54A be conveyed together and lots 55 and 55A be conveyed together.

Chair Bell stated that this was not the subdivision of lots; it was to establish the property line that would allow the properties to be conveyed as two (2) lots.

MOTION: Chair Bell moved to recommend to City Council that the request be approved; Councilmember Ward seconded.

When Chair Bell asked if an approval to this request would be in conflict with the changes to lot size discussed earlier, Attorney Copeland stated that she did not think so.

Director Kerr stated that a couple things to consider were that the lots were considerably deeper than they were in 1991 due to accretion, and they would comply with future subdivision standards because of their depth.

VOTE: The motion PASSED UNANIMOUSLY.

5. Old Business

H. Discussion of FY20 budget

Interim Administrator Fragoso said that no changes were made to the budget document since the Committee last saw it.

In the budget for Beach Maintenance and Preservation, she directed attention to the Professional Services line to see \$250,000 for post-storm sand scraping as needed; also in this line were post-project monitoring and the monitoring of the entire shoreline. Capital Outlay has \$100,000 for

beach walkovers, a reduction of \$30,000; the funds would be used to maintain the beach access paths. The Interim Administrator said that staff was pursuing Greenbelt Funding to possibly add a beach walkover or evaluate the possibility of having foot bridges for those accesses that never seem to dry-out.

When Councilmember Ferencz asked about funding for handicap accesses, the Interim Administrator explained that they would be funded from the same line item as the Mobi-mat.

Councilmember Ferencz stated that she would be interested in having beach accesses that would end in a platform space that would allow handicapped persons, in whatever type of transport, at least, to view the ocean and feel close to it. She said that this could be part of the City's strategic plan.

In the State ATAX budget for the Front Beach restrooms, the amount funded for the cleaning and maintenance of the restrooms was \$20,000; despite the lower year-to-date numbers for FY19, the amount has been increased in anticipation of maintaining the good condition attained through the renovations. In addition, cleaning supplies were budgeted at \$7,500. The Interim Administrator reminded the Committee that the City intends to issue an RFP for the contract for the daily restroom attendant; therefore, \$150,000 has been budgeted anticipating a higher expense with a new contract and an expanded scope.

In evaluating the need for additional funds for landscape maintenance for the municipal parking lots, staff recalled that funds for the City's landscape contract were increased significantly several years ago when Council decided that all City-owned spaces should be as attractive as the Rec Center. Funding for increased maintenance and landscaping for the Front Beach parking lot were available in that contract to direct specifically for that service; other improvements for the parking lots were to replace sections of the fence and to replace several bumper stops.

The management and supervision of the landscaping contract will be one (1) of the tasks assigned to the Assistant Public Works Director.

The Marina Fund also included no changes since the Committee saw it last; Interim Administrator Fragoso repeated that \$147,000 has been set aside for the engineering and design of the first phase of the dock rehabilitation project in FY20 with construction expected to begin in FY21.

The City has not planned to seek a bond issue to pay for these improvements, but it intended to transfer-in money from tourism funds to pay for it.

The Interim Administrator noted that the Marina Fund was quite fluid because, looking at the leases with an eye to FY21, no one can predict the circumstances regarding the restaurant and watersports businesses beyond October 2020. The FY20 budget as it was contemplated did not show a change in revenue beyond the CPI rent increases.

When Councilmember Ferencz asked about the amount of time the City was required to give the tenants on any decisions it makes about the leases, Interim Administrator Fragoso answered that, for Tidalwave, a decision must be given one (1) year in advance of the date of possible renewal, i.e. September 20, 2019. The timeliness of this notification was the reason she was encouraging Council to make its decision sooner rather than later.

7. Miscellaneous Business

Tenants Rent Reports – The Interim Administrator announced that all tenants were current with their lease payments.

Next Meeting Date: 9:00 a.m., Wednesday, May 1, 2019 in the Conference Room

8. Executive Session – not needed

9. Adjournment

MOTION: Chair Bell moved to adjourn the meeting at 10:40 a.m.; Councilmember Ferencz seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk