

SPECIAL REAL PROPERTY COMMITTEE MEETING  
5:30 p.m., Thursday, April 18, 2019

A Special Meeting of the real Property Committee as held at 5:30 p.m., Thursday April 2019 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Ferencz and Bell, Chair Bell, Interim Administrator Fragoso and City Clerk Copeland; a quorum of the Committee was present to conduct business. In addition, City Attorney Copeland and Kirby Marshall of ATM were present.

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.

**MOTION: Chair Bell moved to reorder the Agenda to consider Item 3 to go into Executive Session at this time; Councilmember Ferencz seconded and the motion PASSED UNANIMOUSLY.**

**MOTION: Councilmember Ferencz moved to go into Executive Section at 5:31 p.m. in accordance with Section 30-4-70(a)(2) to receive legal advice relating to pending, threatened or potential claim or other matters covered by attorney-client privilege; Councilmember Ware seconded and the motion PASSED UNANIMOUSLY.**

The Real Property Committee returned to open session at 5:56 p.m.; Chair Bell announced that the Committee did not take a vote or other action while in Executive Session.

2. **Purpose**

**A. Consideration of renewal or cancellation options for the City with regard to the Tidalwave Watersports lease**

Chair Bell stated that the purpose of the meeting was to continue the discussion from the Ways and Means Committee meeting of the lease between the City and Tidalwave Watersports. As discussed previously, the Tidalwave lease will come up for renewal on September 30, 2019, and the City was required to give them one (1) year's notice of renewal or termination. The lease has a provision for renewal for two (2) consecutive five-year (5 yr.) terms; a renewal would mean five (5) additional years with the same terms stated in the current lease. The discussion at Ways and Means focused on the language of the existing lease and the City's decision not to exercise the renewal option for that lease as written. No discussion have occurred related to as new lease or the new lease terms as put forth by Tidalwave.

The Chair said that the Committee needed to take a motion with the proper language to City Council relaying the Committee's position and recommendation for the Tidalwave lease. He suggested that the wording was simply the City did not want to renew that lease with those financial conditions. A discussion of a new lease with Tidalwave with different terms was not a part of the motion to go before City Council.

**MOTION: Chair Bell moved to put forth a motion at City Council that the City has no intention of renewing the existing lease as written or of exercising the lease renewal option; Councilmember Ferencz seconded and the motion PASSED UNANIMOUSLY.**

**B. Discussion and consideration regarding the status of SCDHEC and USACE compliance issues**

Chair Bell commented that Council was spending a lot of time trying to accommodate Tidalwave through their lease term; he noted that issues have been put before Council and Tidalwave that were not created by either party, some of which relate to federal and state law. The City has been looking for alternatives and ways to allow them to continue to operate their business without interruption. In addition, Council is looking at ways for Tidalwave to be lease compliant and legally compliant and to find a way for them to be fully compliant in order to move forward through the end of their lease term in September 2020.

Councilmember Ferencz asked Mr. Marshall when the City would be notified of their decision on the floating jet dock Tidalwave has been using.

Mr. Marshall replied that he spoke with Tracy Sanders, the project manager assigned to the permitting process for the City at the Corps; she informed him that they have reviewed the information provided by the City, the survey provided by ATM and have compared it to the auto-cad information they have for the channel and the construction offset. She confirmed that the jet dock and the outer floating dock are encroaching in the construction setback and that they are going to provide a formal, written response to the City in the next couple of weeks. The response will state the appropriate measures to bring the floating dock into compliance and to potentially seek a variance for the encroachment into the construction setback.

Chair Bell commented that, on the Ways and Means Agenda, was "Discussion of marina leases (Tidal Wave Watersports and the docks for Morgan Creek Grill patrons) as it relates to the overall vision of the IOP marina property;" and he noted that those docks were leased to Morgan Creek for one year, until May 31, 2019. He stated that these four (4) docks were the only docks the City controls at the marina and that discussion have taken place about Tidalwave's use of one (1) to insure business continuity in the event that the Army Corps responds that the jet dock must be re-located out of the construction setback. The Committee and City Council continue to study options for Tidalwave to operate at the same level they are operating today. The Chair noted that no action was taken at the Ways and Means meeting to lease the docks back to Morgan Creek because it would have taken away one (1) option for Tidalwave to relocate their jet dock into one of them to maintain business as usual. He also stated that the City was working with ATM to resolve the compliance issues with OCRM and the Army Corps of Engineers and was trying to keep legal compliance to protect the City and to do the job the City was meant to do.

Councilmember Ferencz concluded that, until the City hears otherwise, the jet dock cannot remain on the outside of the floating dock, but must be relocated or discontinue its use.

Although the Corps has been clear that the jet dock is encroaching into the construction setback, they have not given any direction about what to do in the interim. He opined that the continued use in its current location presented the owner and the City with a potential liability.

The Interim Administrator commented that Michael Fiem, the owner of Tidalwave, has expressed some reservations about the location of the "restaurant docks," but she thought the City could work with the marina operator to switch to a dock closer to the Tidalwave operation.

**MOTION: Chair Bell moved to suspend the rules of order to allow Michael Fiem to join the discussion; Councilmember Ferencz seconded and the motion PASSED UNANIMOUSLY.**

Mr. Fiem said that this has been a challenging time for everyone involved and that some difficult decisions had to be made, but he acknowledged that the City has tried to work with them. He indicated that they were hesitant about accepting the use of one (1) of the “restaurant docks,” but, if they had no other option, the decision was made. As a safety factor, he asked to remove as much liability as possible by swapping one (1) dock closer to their business operation with one (1) restaurant dock. He stated that the area of the marina closer to the restaurant was a blind spot for entry to the water because of the large boats docked on that side of the marina. If they had to operate from one (1) of the “restaurant docks”, they would find it harder to operate their business, but they would do whatever they had to do.

**3. Adjournment**

**MOTION: Chair Bell moved to adjourn the meeting at 6:10 p.m.; Councilmember Ward seconded and the motion a PASSED UNANIMOUSLY.**

Respectfully submitted,

Marie Copeland  
City Clerk