

Real Property Advisory Committee
Isle of Palms, South Carolina
November 12, 2007

The meeting of the Real Property Advisory Committee was held at 10:00 a.m. on Monday, November 12, 2007 in City Council Chambers, 1207 Palm Boulevard, Isle of Palms, South Carolina. Present were Chairman Bettelli, Councilwoman McMackin, Committee member Jim Raih, Marina Manager Berrigan, City Administrator Tucker, Assistant to the Administrator Dziuban and City Clerk Copeland. Guests attending the meeting were Mike Kirby of Zande-Jon Guerry Taylor and Larry Setzler of GEL.

1. Call to Order. Chairman Bettelli called the meeting to order and acknowledged that the press and the public had been duly notified of the meeting in accordance with the Freedom of Information Act.

2. Approval of Previous Meeting's Minutes.

MOTION: Councilwoman McMackin moved to approve the minutes of the meeting of October 11, 2007 as presented; Jim Raih seconded and the motion PASSED UNANIMOUSLY.

3. Citizens' Comments. None.

MOTION: Councilman Bettelli moved to address New Business Item 5 – Dredging and Permitting Schedule for Marina - next so that Mr. Kirby and Mr. Setzler would not have to sit through the business of the Committee; Jim Raih seconded and the motion PASSED UNANIMOUSLY.

5. A. Dredging and Permitting Schedule for the Marina

Administrator Tucker opened the discussion recalling that representatives from GEL and Zande-Jon Guerry Taylor had been invited because the scope of the project has expanded beyond the bulkhead replacement to include dock replacement, electrical replacement, and possible dredging. The GEL monitoring report was distributed last month, which stated that beyond 2009 the City should do all of the major repairs cited in the report. Mr. Setzler stated in simple terms that the wall has moved, therefore, it has failed; in his opinion, any work on the bulkhead beyond 2009 should be a total replacement; anything between now and then should be a major repair.

Administrator Tucker stated that the City could go to bid now with what it has to replace the wall; the problem arose when Zande-Jon Guerry Taylor related to the Committee additional work that should be done in association with the replacement of the bulkhead. The process for replacing the bulkhead will require that the docks be moved to get the equipment in place; Mr. Kirby expressed his professional opinion that there would be a lot of problems putting that same dock back. The Administrator reminded the

Committee that the permit that the City currently holds only allows for replacement of the bulkhead, nothing more.

Councilman Bettelli related to Mr. Kirby that the City Council, through this Committee, was considering a larger project, but the cost factors were huge. Therefore, the Committee wanted Zande-Jon Guerry Taylor to determine exactly what the other required components of the project were, in their opinion, to cost out each one and to give timing estimates on permits that would be required. There was some discussion that permitting that would not change the footprint of the docks might go through faster than one that would reconfigure the marina. Administrator Tucker reviewed the information that the Committee wanted from Mr. Kirby's firm and that the information must be available no later than the meeting in January 2008. The Clerk will provide Zande-Jon Guerry Taylor with a copy of the report generated by the last monitoring by GEL. GEL has been monitoring the bulkhead once a year for the City, and they are available to the City as needed.

4. Old Business:

Marina Manager's Report for October, 2007 – Brian Berrigan

As Brian Berrigan took his seat, he commented that last year, Chris Moore of Zande-Jon et. al. had stated that removal of the docks would not be necessary; Councilman Bettelli stated that Mr. Kirby might not be as familiar with the project as Mr. Moore. Relative to the Manager's October Report, Mr. Berrigan stated that there are ongoing dock repairs and that the Charleston County work crew is still in the process of re-paving the road in the marina. The Ben Sawyer Bridge is broken, so there are several sailboats that are docked at the marina until they can move on up the Intracoastal Waterway.

5. New Business

C. Marina Store RFP Responses

Administrator Tucker notified the Committee members that there had been three (3) responses to the RFP, i.e. Linda Faia representing Calder's Buffalo Pub, Karen and Sharon Johnson representing Mingos of Isle of Palms and Marina Outpost LLC with Brian Berrigan, Managing Partner. The Administrator commented that she did not think the responses were as comprehensive as had been envisioned – only one of the responders provided a business plan as a part of his vision of the marina store. Treasurer Suggs provided the Committee members with a schedule of revenue history on the marina. Although the RFP did include a copy of the proposed lease, there was no indication of rent because the City did not want the decision to be based on who would pay the most rent, but to be based on the offeror whose vision most closely

mirrored that of the Committee and the City Council. There were some similarities between the responders, but only one went into a physical vision of the marina setting. Administrator Tucker noted that both Jay Clarke and Carla Pope were present representing the Morgan Creek Grill; they had expressed some concerns about the marina store lease, which the Administrator felt the Committee should be aware of in light of the proposed offers for the marina store. Carla Pope spoke for Jay Clarke and the Morgan Creek Grill; she stated that they have two basic concerns about the lease and they are:

- The language of the lease should not allow for any type of food service in the convenience store that will impact the restaurant; and
- The longevity of the lease when there is no master plan for the marina.

On the subject of the type of food service, Ms. Pope specifically referred to “no sit-down, no conflict, not impact. . . business, Morgan Creek protected.” The master plan was important in their mind to insure that everyone involved with the marina was working toward the same or similar goal.

In an effort to fully understand the food issue, Administrator Tucker commented that the food customer for the marina store would not be a Morgan Creek Grill customer. For example, she described the customer rushing in to get fuel for a day on the water and seeking picnic type food as one who would not be going into Morgan Creek Grill for lunch. She asked Ms. Pope if she agreed; Ms. Pope responded that she did see it as competition because, with the upper deck at the restaurant, the picnic to go is something the restaurant can also provide. Ms. Pope added that they do not want to see a sit-down lunch counter at the marina store.

Councilwoman McMackin asked Mr. Clarke and Ms. Pope very directly if their desire to continue a lease at Morgan Creek Grill was contingent upon what happens with the store and with what food items are carried in the marina store. Mr. Clarke was quick to respond, “Absolutely not.” Councilwoman McMackin noted that, in reading the three (3) proposals, she did not feel that the food component was the most important and that would not be the component that would sway her decision.

MOTION: At 10:45 a.m., Councilman Bettelli moved that the Committee go into Executive Session to discuss contractual matters; Mr. Rail seconded and the motion PASSED UNANIMOUSLY.

At 11:10 a.m. the Real Property Advisory Committee returned to regular session, and Councilman Bettelli announced that there had been no action and no vote had been taken in Executive Session.

Councilman Bettelli asked Mr. Berrigan to share the names of his partners in Marina Outpost, LLC and wanted to know if they would be willing to have background checks run on them; Mr. Berrigan informed the Committee that his partners were Joe Rice and Benee Wallace and that, yes, there would be no problem with the background checks. When the discussion turned to the monthly lease payments, Mr. Berrigan stated that the amount hinged on several factors, which included the terms of the lease and what they will be allowed to do in the way of renovations; Mr. Berrigan did state that he and his partners would not be comfortable paying the current rate, especially with the upgrades and renovations they have planned. Mr. Berrigan also informed the Committee that, since neither he nor Mr. Rice had any experience running a convenience store, they prefer a two (2) year lease with renewal in case they need to terminate for financial reasons. The only improvement for which they will seek assistance from the City will be the public restrooms simply because they are **public** restrooms; Mr. Berrigan went so far as to state that they would prefer to do the project and get reimbursement from the City in order to use their contractors and to move at their pace. Mr. Berrigan had been present for the comments by Mr. Clarke and Ms. Pope of Morgan Creek Grill. When asked for his comments, he stated that he does not see competition between food service at the marina store and Morgan Creek Grill; he considers food at the store as a complement to the other components of the store. In the way of inventory, Mr. Berrigan stated that he planned to carry a lot of safety gear, marine hardware, trailer parts and accessories, as well as special order items.

Mr. Berrigan expressed his desire to run the marina store, but that he did not feel that the store could sustain itself with the rent at the current level. In answer to Mr. Raih's question, Mr. Berrigan stated initially they want to go in and clean up the store and be operational with as little shutdown time as possible, but they do know that the floors are in bad shape, the roof leaks and front door is broken. So the initial output will be approximately fifty to seventy-five thousand dollars with some two hundred thousand dollars over two to three years. Administrator Tucker explained that, for the Committee to recommend Marina Outpost, LLC's proposal to the City Council, the Committee must know the level of rent to which the partners were willing to commit. Mr. Berrigan said he would have to have his partners present to discuss this and called them to arrange a meeting; his partners agreed to come immediately. The meeting recessed for one-half hour.

Mr. Rice and Ms. Wallace arrived and the discussion started on the subject of the rent. Mr. Rice took the lead stating that he sees the marina as a site that needs to be revitalized not only in physical appearance but also in dependability of merchandise. He wants to make changes over the next two to three years to make it viable and stable; he wants the marina to complement the store and vice versa, and the same for the restaurant. Mr. Rice commented that economically they must have the time to grow the business.

From his study of the way the store has been run the past twenty-four (24) months, to make a viable economic investment, the maximum rent would be \$5,000 to \$5,500 per month due to the fact that money has to go in immediately.

Mr. Rice explained his business model for the store as follows:

“And you know, if we have a reasonable lease with options and commitments to renew that are in plenty of time for you to have your alternatives covered, but that we know, if we start making capital improvements, that we could do it for our long haul. And that, if we are right, we can bring the store and mesh it into an overall environment - then that is what needs to be done. That is our business model.”

Administrator Tucker noted that \$5,000 to \$5,500 is much less than the City has been receiving, but to insert a clause into the lease whereby the City would receive a percent of gross receipts once they reached a certain level would help to sell the proposal to Ways and Means.

Mr. Rice replied that profit participation or additional recovery giving Marina Outpost LLC a chance to get to a profitable state would not be a problem to them assuming it was reasonable. He commented that having the marina store become a pleasant experience for persons who enter must have substantial value to the City over and above the value of the rent itself.

Councilman Bettelli posed the question of the marina store being a competitor to the Morgan Creek Grill to Mr. Rice; he responded that the marina store will be serving a quality deli style sandwich, not a hot lunch – “on the go” type food, not inside dining.

Councilwoman McMackin asked Mr. Rice about initial improvements; Mr. Berrigan answered that, to a degree, the initial improvements were dependent upon the lease term and rent payment. Assuming items are negotiated, the plan is to tear down the wall in the middle to change the point of sale system to the middle of the store, re-do the floor and the lighting, open up the windows giving view of the gas islands, and sealing the leaks in the roof. As for the bathrooms, their repair should be considered a cooperative effort between the store and the City as discussed earlier.

Benee Wallace discussed her vision of bringing events to the marina such as fishing tournaments and oyster roasts – a place where the community can get together.

Mr. Berrigan read from an e-mail he received from Mr. Rice and Ms. Wallace detailing concerns they had with the proposed marina store lease; the concerns are as follows

- The initial five year term;

- The alterations/improvements paragraph; and
- Provision for damage in paragraph 14.

Mr. Rice gave an example of what he referred to as flawed logic in paragraph 14 – The Lessee is required to give six (6) months' notice to exercise the option to renew, but if the building is damaged or destroyed by hurricane in the last year, the City is not obligated to repair or restore it.

Mr. Rice commented that the building would be repaired or restored if the lease were thirteen (13) or fourteen (14) months out, but the lessee is obligated to the lease if he has exercised his option. Administrator Tucker informed Mr. Rice that she would request the City's attorney review that section of the lease.

The question was also raised about whether the City would indemnify the store if someone were injured in the store as a result of the bulkhead being replaced; the tenants of the marina store would not want to be held responsible or liable for that injury. Ms. Wallace wanted the store to be a "named insured" on the City's insurance policy for the building. Administrator Tucker stated that there are certain stipulations from the City's insurance that are requirements of the insurance companies and the indemnification clause has to do with that; there is certain language in any of the City's contractual relationships that perpetually are struck for that reason. In the case of the bulkhead replacement, the City always has liability, so the contractor that will be doing the replacement would have that responsibility and the store would be protected under that.

Administrator Tucker summarized the major points covered as the following:

- Rent in the range of \$5,500;
- Provision in the lease that once revenue at a certain level City would get percentage of it;
- Concern about clause about storm, and may be able to work out;
- Indemnity and may or may not be able to resolve;
- Non-compete with existing restaurant.

MOTION: Councilman Bettelli moved to go into Executive Session to discuss contractual matters at 1:03 p.m.; Councilwoman McMackin seconded and the motion PASSED UNANIMOUSLY.

At 1:23 p.m. the Committee returned to regular session and Councilman Bettelli announced that no action and no votes had been taken in Executive Session.

MOTION: Councilwoman McMackin moved that the Real Property Advisory Committee recommend to the Ways and Means Committee and to City

Council to award the management of the marina store to Marina Outpost LLC, Brian Berrigan, Managing Partner, on the following stipulations:

- **Rent in the amount of \$5,500 per month with an escalation clause stating that, when the gross revenue exceeds \$500,000, 2% of the excess is paid to the City, and, when the gross revenue exceeds \$1,000,000, 3% of the excess is paid to the City;**
- **A storm clause will be included in the lease that is satisfactory to all;**
- **An indemnity clause will be included in the lease that is satisfactory to all;**
- **The food provided by the marina store is marina store is only “on the go” food;**

Councilman Bettelli seconded.

Mr. Raih remarked that the term “on the go” food was insufficient and left to many interpretations. Councilwoman McMackin suggested that the phrase “deli food that could include hot items, but no indoor seating.” The Committee and Mr. Berrigan agreed that this phrase was more definitive of what was planned for the marina store and less open to varying interpretations. The motion was amended to reflect this.

The amended motion PASSED UNANIMOUSLY.

The next meeting was scheduled for 10:00 a.m., Thursday, January 10, 2008.

MOTION: Councilman Bettelli moved to adjourn at 1:30 p.m.; Councilwoman McMackin seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marty Bettelli
Chairman