

REAL PROPERTY COMMITTEE
8:30 a.m., Friday, November 6, 2009

The Real Property Committee held its regular meeting at 8:30 a.m. on Friday, November 6, 2009 in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilwoman Rice, Chairman Cronin, City Administrator Tucker, Assistant to the Administrator Dziuban, Carla Pope, Operations Manager for Morgan Creek Grill, Marina Manager Brian Berrigan and City Clerk Copeland; Councilman Taylor's absence was excused.

1. Mayor Cronin 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 Meetings' Minutes**

MOTION: Councilwoman Rice moved to approve the minutes of the regular meeting of October 13, 2009 and the special meeting of October 23, 2009 as submitted; Chairman Cronin seconded and the motion PASSED UNANIMOUSLY.

3. **Citizens' Comments** - None

4. **Marina Manager's Report** – Brian Berrigan

Manager Berrigan congratulated Mayor Cronin on his re-election; he also expressed his thanks to Councilwoman Rice and to Councilman Taylor for the outstanding jobs they have done for the City, particularly related to this Committee.

Mr. Berrigan reported that business at the marina had been "brutally slow;" in fact, September had been the worst month since he has been marina manager, and the figures for October were not yet available. He attributed the downturn to lack of "transients" that have visited in the past; on the other hand, Ms. Pope commented that she thought the restaurant was getting more transient business than in years past. Chairman Cronin asked if the boats were passing the marina or if there was just not enough traffic; Mr. Berrigan responded that the bigger boats were going to Charleston Harbor and that many were staying offshore because of the depth of the water.

There was a brief discussion regarding the closure of the Intracoastal Waterway for the replacement of the Ben Sawyer Bridge; the closure is tentatively scheduled to begin Monday, November 30 for ten (10) days, but that date is not firm. Mr. Berrigan was unsure how it would affect marina business, but Ms. Pope noted that the restaurant was scheduled to close for ten (10) days beginning November 30 for general repairs and maintenance.

Mr. Berrigan reported that recently the dock office had been remodeled and an overhang had been constructed for the dock pumps. He stated that he and Ms. Pope had discussed a joint effort to clean up the employee parking lot; he noted that lighting for that area is still needed. He indicated that he was planning to ask the assistance of the Fire Department, with the Administrator's permission, to install an anemometer on the flagpole and a webcam that would show in real time what was happening at the marina.

Manager Berrigan suggested that the City not pursue a lease with Coastal Expeditions, the kayak company, but allow his ninety (90) day lease to remain in effect. He indicated that, should a problem develop, he could replace them with a ninety-day notice. If for some reason Coastal Expeditions were to leave the marina, Mr. Berrigan wanted to keep the hut as a base for operating the marina valet service next summer.

Mr. Berrigan informed the City Administrator that he had evicted a marina tenant for non-payment of rent and for bouncing a check.

Mr. Berrigan reported that Blue Flame had removed the propane tank from the marina, so he was looking for another vendor.

Like the marina, the Marina Market has also suffered as a result of the economic downturn. Mr. Berrigan reported that an expansion tank on the hot water heater had exploded in July flooding the entire store; the roof had caved in and the hardwood floors have buckled. As a result, the store will be closed for several days beginning January 10, 2010 to replace the floors; Chairman Cronin asked that he put his request in writing identifying the dates.

5. Morgan Creek Grill Report – Carla Pope, Operations Manager

Unlike the marina, Ms. Pope reported that business at the restaurant had been better than the same period in 2008; she stated that Morgan Creek Grill had experienced a good client flow. As in the past, the upper deck has been closed for the season to consolidate staff and to initiate repairs sustained from wear and tear during the season. Saturday oyster roasts begin Saturday, November 7, and the restaurant is anticipating a large turnout. An aboveground fire pit has been established on the grounds; wristbands will cost fifteen dollars (\$15) for “all the oysters and chili you can eat” with draft beer for two dollars (\$2) and live music.

During the ten (10) days the restaurant is closed in December, SCE&G is scheduled to work on the transformer box - straightening, painting and maintenance, so the restaurant will be without power for the three (3) days they are working. Marina Manager Berrigan stated that would present a problem for him because that transformer provided power to the marina docks. Ms. Pope told Mr. Berrigan that she would give him the name of her contact at SCE&G to discuss the details.

6. Old Business

A. Update on Beach Restoration Project

Assistant Dziuban indicated that the status remained the same – the permit for the installation of sand fencing has been applied for, but has not been received. CSE has not yet supplied the City with the report from its last monitoring.

B. Discussion of Morgan Creek Grill Lease Renegotiations

Chairman Cronin stated that the Committee had drafted a motion at the Special Meeting charging the staff to work with the City attorney. Administrator Tucker stated that the legal representation for Morgan Creek Grill has re-drafted a lease document, but she indicated that, assuming that the re-negotiations continue, the final product would be an amendment to the existing lease rather than a new lease. Areas of agreement between Morgan Creek Grill and the City are as follows:

- changing the monthly static rent amount to an amount based on season, but totaling the same;
- adding language giving the restaurant control over the restaurant docks and;
- adding language allowing for the commercial utilization of the restaurant docks for the dinner cruises.

The unresolved issues are related to the additional rent component of the lease; the only area of agreement about the additional rent issue is that the balance of additional rent for 2008 and the new amount due for 2009 are due and payable by Morgan Creek Grill. The question is whether action is to be taken to amend the lease for a temporary period of time to alter the additional rent in such a way as to offer some relief to what has been a difficult economic time for the restaurant.

Administrator Tucker then reviewed the schedule of additional rent options that staff generated for consideration; she added that the staff had stepped away from the Committee's consensus in at least one (1) option simply to make it available for study. She stated that Morgan Creek Grill had requested a new toggle of three million two hundred thousand dollars (\$3,200,000) from which to base the computation of additional rent based on the restaurant's historical performance; this new toggle would have meant that the City would collect no additional rent. Morgan Creek Grill's request was depicted on the schedule as Alternate #1 and showed a cost to the City of approximately one hundred sixty-two thousand dollars (\$162,000). Alternate #2 reflected the motion from the Special Meeting that allowed for an abatement of the additional rent for a period of three (3) years; the motion was not carried forward as an action of City Council, and it represents a cost to the City of eighty-five thousand dollars (\$85,000). This option does provide some relief to the Morgan Creek Grill, but it represents an action that the City has not taken before; therefore, it would be precedent setting. In Alternate #3, the toggle for two percent (2%) additional rent was increased for a period of three (3) years to two million seventy hundred fifty thousand dollars (\$2,750,000) rather than to abate the additional rent. Alternate #3 also would provide some relief for the restaurant and would cost the City just more than seventy-three thousand dollars (\$73,000); the Administrator stated that this choice represented a good compromise for the City. Alternate #4 was the one for which the staff did not receive direction from the Real Property Committee or City Council; it was included because, historically, it represents the type of action the City has taken for its marina tenants. Alternate #4 is a financial structure where the City would agree to assume the expense of some of the items on Morgan Creek Grill's list that would need to be replaced in the near future, like the walk-in cooler; this option represented a potential five-year (5 yr) cost to the City of one hundred thousand dollars (\$100,000). Administrator Tucker stated that there was a listing of some of the things the City has funded as a way of providing the Council-elect with the historical information from a time when the City did not take as hard a line as with the triple net lease.

The downside to Alternate #4 was that the City could be hit with the entire one hundred thousand dollars (\$100,000) of expense in one (1) year, rather than spreading it over several years. On the other hand, if the tenant could delay those expenses for five (5) years, there would be no relief for the tenant. Although City Council has made its feelings on adhering to a triple net lease clear, this alternative has the advantage that it would not mean establishing a new precedent regarding abatement of additional rent and would represent the City's investing in its asset. The final alternate was for no change to Morgan Creek Grill's lease; based on comments at the last Real Property Committee meeting relative to the remaining term of the lease, staff believed it important to include this as well. In reality, if the financial health of the restaurant did not improve and there was concern on the part of Morgan Creek Grill to continue as they are, the tenant could opt not to renew its lease in 2011. The Administrator noted that another reason for including this option was that the information provided at the last meeting, that there was a long period remaining on the lease, was not precisely accurate. The tenant's current renewal expires in 2011. The tenant could choose to renew up to three (3) more time bringing the lease to 2020.

In addition, Administrator Tucker noted that, should this Committee and City Council select any of the alternates – other than the final one (1) to do nothing, the staff recommends that there be an annual audit, done by an auditor of the City's choosing and at the City's expense, of Morgan Creek Grill's books. The reason for this audit is that there is no other way for the City to be sure and confident if the City wants to begin tracking the financial health of the restaurant; Administrator Tucker assured Ms. Pope that the City believes that the financial data of Morgan Creek Grill has been properly disclosed.

Ms. Pope expressed appreciation for the work done by Administrator Tucker and the other staff members in compiling the information before the Committee to present multiple options for consideration. Due to illness, Mr. Clarke was unable to attend today's meeting, but he asked that Ms. Pope relay certain information to the Committee. She recalled that Mr. Clarke had been asked if he preferred a longer lease term or relief from the additional rent; having consulted with legal and financial advisers, as well as bankers, Mr. Clarke said he would prefer to add years to the lease, not necessarily thirty (30) years, but possibly eighteen (18) years. The previous discussion about the toggle for additional rent was predicated, for Morgan Creek Grill, on the break-even point for the restaurant as computed by the restaurant's accountant; therefore, a change in that area would benefit the restaurant. She expressed awareness that both items would represent a loss to the City in the near term. She quoted from Mr. Clarke, "The short-term percentage amnesty is less important depending upon the City's plans to improve the property with landscaping, lighting and other ways that will relieve some of our (Morgan Creek Grill's) expenditures."

Mayor Cronin reiterated Ms. Pope's statement that an extension of the term of the lease was the most important negotiation point. Ms. Pope explained that, when Mr. Clarke approached bankers about renegotiating the lines of credit, the bankers value the length of the lease, and they expressed concerns that the lease was growing shorter. Ms. Pope noted that Mr. Clarke would like to have eighteen (18) years added onto the end of the existing lease making the lease end date October of 2038.

Councilwoman Rice asked for a written explanation of Mr. Clarke's desires related to the term of the lease; the Councilwoman expressed her opinion that this request was little different from the thirty (30) years he indicated at the prior meeting.

Ms. Pope asked that the Committee explain to her their problem with an extended term for the lease; Councilwoman Rice stated that there was concern that Mr. Clarke was seeking the extension to ensure a better product to sell. Ms. Pope indicated that the value to Mr. Clarke was the bank's viewpoint and that was the only reason he was seeking the additional term; she was emphatic that Mr. Clarke was not interested in selling the restaurant.

Chairman Cronin interjected that the City maintained certain power under the existing lease or an extended lease, i.e. non-payment of the rent, etc., to terminate the lease. The Chairman noted that he would like to consult with the City's attorney, who has some experience in real estate and who negotiated the original lease; since the City does have ways to terminate the lease, Chairman Cronin stated that he does not have real issues with extending the term. On the subject of sale, he commented that the City has the right to approve or disapprove any prospective buyer.

Ms. Pope repeated the fact that Mr. Clarke's intention was to continue to operate Morgan Creek Grill in the best fiscal position possible; meaning that the bank's support was vital, and they would like to see the value added to the restaurant of a longer lease.

Referring to the staff's schedule, Chairman Cronin stated that, effectively, he interpreted Alternates #2 and #3 to be, effectively, the same, just a matter of the route the City took to reach the end. Although he indicated that he understood the history and the intent, he thought that Alternate #4 was well away from the triple net consideration and most unlikely to be approved by City Council. Assistant Dziuban explained that staff's argument for Alternate #4 was that there was a cost to the City, but, unlike the other alternates, that cost retained an asset.

Ms. Pope expressed interest in Alternate #3 with some increase to the additional rent toggle to provide a degree of relief for the restaurant; she thought this alternate was a show of compromise from the two negotiating parties. Chairman Cronin expressed concern that, after three (3) years, the toggle fell back to its original level and parties would be again at the negotiating table. Administrator Tucker noted that, if the recommendation on the annual audit were accepted, the City would have financial data and analyses on which to base its decision.

Although the Chairman did not like spending the City's funds for an audit of the restaurant, it would add support to the integrity of Morgan Creek Grill's books. Administrator Tucker added that an audit could, conceivably, present any unfavorable trends that could be developing that would change the City's posture on retaining the tenant and to make some type of permanent change to the lease structure. Of course, the reverse was also a possibility.

Councilwoman Rice suggested that, after the three (3) years, the lease would state that the toggle could not be re-negotiated. She noted that the one million dollar (\$1,000,000) toggle and its affect on Morgan Creek Grill's books, based on the information presented at the last meeting, was putting the restaurant in bad financial situation, and that there was not reason to start that

negative process over again. The lease could state that the toggle would be based on the financial history coming from the City's audits.

According to Ms. Pope, if the restaurant were to continue to grow at its current rate, if the restaurant were to get relief from the additional rent and if the economy continued to improve, the restaurant could be achieving gross revenues of four to four and one-half million dollars (\$4,000,000 – 4,500,000). With the business growth and continued reinvestment in the property that would bring more people to the restaurant, the toggle should still provide the level of revenue that the City is accustomed to receiving from the Morgan Creek Grill.

Ms. Pope expressed complete confidence in growing the restaurant's revenues to that level as long as improvements continue inside the building, to the management of the restaurant and to the marina property as a whole.

In an effort to answer questions that have been posed to her, Administrator Tucker asked Marina Manager Berrigan for his comments on the dinner cruises, specifically, and any other topics that had been discussed. Mr. Berrigan stated that the marina, too, was in the business of providing dinner charters and that the marina gets revenue from the charters when they leave from docks under the auspices of the marina; therefore, this would take a revenue stream from the marina. He did not understand the need for the restaurant to have contractual control of the docks; he expressed his opinion that the docks should stay under the City's control.

When drafting that section of the lease, Administrator Tucker asked Mr. Berrigan what type of exclusions, related to the dinner cruise activity, could be added to make the situation more tolerable. Mr. Berrigan answered that the activities should go through the Marina Management as to dock space and the applicable fees; the volume of cars involved in a dinner cruise added to an already bad parking situation at the marina was another major concern for Mr. Berrigan. When the marina has chartered dinner cruises, he stated that corporate groups were frequently brought to and from the marina from Wild Dunes via buses; therefore, there was no impact to the parking. Mr. Berrigan added that, based on the impact to the marina's revenue, he felt Marina Joint Ventures should have access to the revenue the restaurant generated from the cruises. He indicated that the restaurant's cruise ships had not purchased fuel from the marina. For dock space, the marina had received one hundred dollars (\$100), but the marina would have received twice that amount from any other tenant, plus electricity.

Ms. Pope responded that Morgan Creek Grill's goal was to have their own boat that would accommodate twenty to thirty (20-30) guests; the dinner cruises would be used as a promotional tool for the restaurant – an extension of the restaurant. The boat they would get would fit at the restaurant dock and not take up marina dock space; she commented that she wanted a vehicle that was manageable and that would contribute to the businesses at the marina. In conclusion, Ms. Pope said that was no question that they would follow the marina rules.

Councilwoman Rice stated that she had understood, from the time the docks were built, that half of them were for the use of restaurant customers.

Chairman Cronin explained that the next step was to confer with counsel and that would be followed either by another meeting of Real Property or by a recommendation to Ways and Means.

7. New Business - None

8. Miscellaneous Business

Chairman Cronin expressed his thanks to Committee members Rice and Taylor for their service to the City through this Committee; he stated that they had been a "real voice of reason."

Next Meeting Date: 8:30 a.m., Thursday, January 7, 2010.

9. Adjourn

MOTION: Chairman Cronin moved to adjourn at 9:45 a.m.; Councilwoman Rice seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk