

REAL PROPERTY COMMITTEE SPECIAL MEETING

3:00 p.m., Friday, October 23, 2009

The Real Property Committee held a Special Meeting at 3:00 p.m., Friday, October 23, 2009 in the Second Floor Training Room of Fire Station 2 located at 44 Forty-first Avenue, Isle of Palms, South Carolina. Attending the meeting were Committee and Council members Rice and Taylor and Committee Chairman Mayor Cronin; City Administrator Tucker, Jay Clarke and Carla Pope of Morgan Creek Grill, Peter Kent, Mr. Clarke's accountant, Assistant to the Administrator Dziuban and City Clerk Copeland.

1. Chairman 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. Purpose – Discussion of Renegotiation of Morgan Creek Grill Lease

Mayor Cronin noted that the Committee members had reviewed the proposed lease submitted by Morgan Creek Grill and the correspondence listing the requesting changes to the lease, the list of needed repairs and the anticipated improvements. The Mayor asked the Mr. Clarke review the changes with the Committee and to explain why they are being requested; Mayor Cronin reminded Mr. Clarke that the City was not required to negotiate the Morgan Creek Grill lease at this time.

Councilman Taylor asked the current term of the restaurant's lease. The lease began in May 2002 and has been renewed twice through October of 2011. Three (3) additional three (3) year renewals are available which would take the lease term through October 2020.

Mr. Clarke began his analysis of the requested changes with the nineteen feet (19 ft) of parking space between the end of the asphalt and the roped posts in front of the restaurant that is considered "shared" parking, but the marina lease states "dedicated to marina operations." He would like to see that area specified as one to be shared by all marina tenants. Administrator Tucker remarked that there has been no indication from any of the marina tenants that anyone is doing anything differently from the way it was done in the past. Mr. Clarke said he wanted a clarification in his lease of that parking area.

Administrator Tucker offered Exhibit 1, page 2 of 2 from the most recent marina lease agreement for the Committee to see and to point out that Mr. Clarke's request does not present a conflict with the marina lease agreement. Mr. Clarke asked only for a clarification.

Councilman Taylor reminded the Committee that they had not yet received the final report from the Citadel cadets who were studying the marina to make recommendations to improve parking; therefore, there remained a fluid nature to the marina parking.

Mr. Clarke stated that the restaurant would employ valet parking again next year because they found it to provide more efficient use of the parking areas.

Another section where Mr. Clarke wanted clearer language was related to the dock designated as the "restaurant dock" whereby he could exercise more control over its use.

In this renegotiation, Mr. Clarke was seeking a thirty-four year (34 yr) lease – an initial five-year (5 yr) term from October 1, 2009 through August 31, 2014 with ten (10) renewal options of three years (3 yrs) each. Mr. Clarke stated that the advantages of such a lease to the restaurant were greater ease in negotiating financing lines of credit for the build-outs of the restaurant. In response to Administrator Tucker's question, Mr. Clarke noted that this was thirty-four years (34 yrs) in addition to those years already spent in the restaurant.

Mr. Clarke stated that his investment in Morgan Creek Grill far exceeds the ten thousand dollars (\$10,000) he has deposited with the City as a security deposit; therefore, he would like to have funds refunded to him and that such a refund has become a common practice in commercial leases.

On the subject of the rent payments, Mr. Clarke would prefer to make rent payments seasonally, i.e. \$11,383.20 per month for the months May through September and \$3,000 per month October through April.

Since the subject of additional rents was likely to garner the most discussion, it was agreed to hold it until last.

Mr. Clarke said he would like to share some advertising expenses with the City because they try to promote the City in all of their advertising; he was also aware that the City had provided an advertising allowance of five thousand dollars (\$5,000) in the marina management contract. Mayor Cronin stated that he did not see the City sharing in any advertising with the restaurant; the Mayor said it was a matter of doing with one restaurant would mean doing with all island restaurants. Mr. Clarke said he had no problem in striking that paragraph from the lease if it posed any kind of problem for the City. Councilwoman Rice pointed out that there is a link to Morgan Creek Grill from the City's website.

Ms. Pope stated that she would like to see the various amenities at the marina in the overall marina advertising.

On page 18, Exhibit C – Property Owned by Landlord of the proposed lease, Mr. Clarke indicated that some of the items that were no longer at the restaurant had been deleted, such as electric hand washing equipment and other minor items; he said he would be happy to provide a complete list if needed.

Attention was next drawn to Exhibit D – Items Subject to Repair or Replacement by Landlord that listed items, in Mr. Clarke's opinion, for which the landlord would be responsible for extraordinary repairs or replacements; those items were as follows:

- The installation of a elevator;
- Replacement of walk-in refrigerator/freezer;
- Repair or replacement of restaurant dock; and
- The heating and air conditioning system.

Administrator Tucker stated that she saw the information included in Exhibit D as very significant and worthy of discussion, and each item was discussed separately.

1) Elevator

Mr. Clarke said that the restaurant would be looking for assistance when the time came to the installation of an elevator; Mayor Cronin stated that he only imagined City assistance if there were a grant available for which the situation could meet the grant requirements. Assistant Dziuban stated that she had sought input about applying for a Community Development Block Grant (CDBG), but the application cutoff date had already passed at that time. Administrator Tucker commented that these grants are awarded to local governments to make places handicap accessible, and since Morgan Creek Grill is City property, she thought there was a chance it would qualify. The Administrator stated that, "while she thought it was the mission of the Committee and of Charleston County Council, who ultimately approves the allocations, to try to spread the money among the participating (municipalities), a project like this is going to compete against places where people do not have any indoor plumbing or other very, very serious poverty-level kinds of things, but it is not out of the realm of possibility." She added that CDBG may not be one hundred percent (100%) funding but could be an eighty/twenty percent (80/20%) split. Councilman Taylor suggested that there be a provision for a public observation deck to qualify for a CDBG offering.

Mayor Cronin noted that any elevator would have to be an external structure, and Mr. Clarke was in complete agreement. A general estimate of the cost was approximately one hundred thousand dollars (\$100,00).

1) Restaurant Dock

In response to Mr. Clarke's request that the City docks be place on the list of assets for which the City is responsible, Councilman Taylor noted that the docks are the City's docks and is responsible for them anyway; to him, the question was whether the City would designate a portion on the dock as "the restaurant dock." For Councilman Taylor, this indicated no change from the present.

Mayor Cronin remarked that the dock should be listed in Exhibit C, Property Owned by Landlord; Mr. Clarke agreed, thus, eliminating its notation on Exhibit D.

2) Walk-in Refrigerator/Freezer

Mayor Cronin stated that the refrigerator/freezer belonged to the City and that it was in working order. Mr. Clarke recalled that the floor under the walk-in had rotted away some two (2) years ago requiring a major emergency repair or approximately eight thousand dollars (\$8,000). At that time, he and Ms. Pope had notified the Real Property Committee that the life of the walk-in was limited in that the actual floor of the walk-in is rotting. He indicated that it had been put on this list in hopes that an agreement could be reached that, when it does, in fact, cease to work, the City would replace the walk-in refrigerator/freezer.

Administrator Tucker remembered that a request had been made to replace the walk-in, through the Real Property Committee, and that it had been denied by City Council based on the triple net lease issue. She noted, that, if a request had not been made, discussions relative to the walk-in had taken place leaving her with the impression that replacement would be the restaurant's responsibility. Mr. Clarke agreed that the replacement cost, with installation, would be in the neighborhood of thirty to forty thousand dollars (\$30,000-40,000).

Councilman Taylor stated his understanding of a triple net lease as one where a shell is provided and the tenant becomes responsible for everything inside the shell; therefore, he was of the opinion that a triple net lease between the City and Morgan Creek Grill would keep matters simple for both. He suggested that, if Mr. Clarke was interested in discussing the walk-in further, it would be best included in the rent structure taking into consideration such issues as useful life, replacement cost, depreciated value today, etc. Councilman Taylor stated that the heating and air conditioning system should be treated the same way.

Councilwoman Rice asked to return to the discussion of the elevator; she believed that there was a very real desire to have access to the upper deck, but financially the City was not in a position to be involved unless grant funds could be found.

On the subject of the restaurant dock, Councilwoman Rice wanted the wording to be clear that the restaurant had use and oversight of half the dock, but the City owned and would maintain the dock. In addition, she expressed her support for the commercial use of the dock.

Mr. Clarke referred the Committee to the top of page 3 of the proposed lease where the following appears:

“Without limiting the generality of the foregoing, Tenant shall have the right to dock a boat or vessel at the Restaurant Dock, for any period of time during the term of this Agreement, which boat or vessel may contain signage to advertise the Restaurant business.”

Administrator Tucker commented that she had made two (2) notes, i.e. the boat/vessel must have appropriate business licensing and adhere with the City’s sign ordinance.

Mr. Clarke said that he has strived for this since the inception of the lease – to have the capability to bring in the charter vessels to that dock and to serve the passengers from the restaurant.

Administrator Tucker explained that the problems Marina Manager Berrigan had in the past related to the facts that these charters were not buying gas from the marina, were not paying appropriate fees to the marina and the patrons, frequently, did not pay to park at the marina; therefore, the marina was not getting its share of the revenue generated.

4) HVAC

Refer to the first full paragraph on this page.

Earlier in the discussion, Administrator Tucker had commented on the language used in Exhibit D, namely “Landlord agrees to be responsible for . . .,” “Landlord agrees to replace . . .,” and “Landlord agrees to install . . .;” she and the Mayor clearly stated that the City would not enter into an agreement with such language.

Mr. Clarke referred briefly to the correspondence dated October 14, 2009 that had two (2) lists, one for necessary repairs and a second for improvements; he indicated to the Committee members that these lists were a good lead-in to the discussion of additional rents.

Mr. Clarke's proposal for a modification in the terms for payment of additional rent was on page 5 of the proposed lease agreement and is as follows:

- An amount equal to one percent (1%) of tenant's gross income derived from the property per lease year which is between three million two hundred thousand dollars and four million two hundred thousand dollars (\$3,200,000 to \$4,200,000).
- An amount equal to two percent (2%) of tenant's gross income derived from the property per lease year which is more than four million two hundred thousand dollars (\$4,200,000).

Real Property Committee members had a schedule generated by the City where the City Treasurer had taken the financial information provided by Morgan Creek Grill and entered the factors of the existing lease and the factors of the proposed lease to calculate the difference in revenue to the City from the two (2) agreements.

Mr. Clarke acknowledged the fact that the additional rent for 2008 was due to the City; Ms. Pope noted that she had paid fifteen thousand dollars (\$15,000), but that nearly sixteen thousand dollars (\$16,000) remained to be paid. Since the financial statement for June 30, 2009 has been submitted to the City, Morgan Creek Grill now owes an additional twenty-six thousand seven hundred thirty-three dollars (\$26,733) in additional rent. The total due is in excess of forty-two thousand dollars (\$42,000). Mr. Clarke stated that the restaurant would "aggressively as we can" pay that, but added that it would be spring 2010 before substantive payments would be made. Mr. Clarke noted that the restaurant was moving toward the current status with the City when the economy began its downward spiral in 2009.

Ms. Pope explained that during this period, she and Mr. Clarke chose to draw heavily on the restaurant's lines of credit to stay in business; therefore, paying down that debt has been the restaurant's priority as business increased and cash flow improved.

Administrator Tucker reported that Morgan Creek Grill has, historically, gotten behind on its rent, but then come through with what they owed – so the pattern has been that, in down times, they get behind and catch up when business flourishes in season.

Mr. Clarke expressed his appreciation to the City for the manner in which they have worked with the restaurant and commented to the high level of cooperation from the City that Morgan Creek Grill had received.

Mr. Clarke remarked that Morgan Creek Grill had lived up to its end of the contract as a tenant in that there have been substantial investments into the business as leasehold improvements. He noted that he had charged Mr. Kent with calculating a breakeven analysis for the restaurant; in Mr. Clarke's opinion, these calculations justify his request for an adjustment in the additional rent percentages.

Mr. Kent recalled that, when he and Mr. Clarke had discussed the subject of additional rent due to the landlord, Mr. Kent had stated that the restaurant had to pay its bills before it could pay extra rent to its landlord. That conversation led to the breakeven analysis for Mr. Clarke.

Mr. Kent distributed the schedule of the breakeven analysis he prepared for Morgan Creek Grill; he explained that the expenses were actual figures from the restaurant's operations, as was the cost of sales percentage. (A copy of this schedule is attached to the historical record of the meeting.) The cost of sales and sales figures were calculated numbers to describe the level of business the restaurant must attain in order to breakeven on a cash flow basis.

Mr. Kent explained that the "General and Administrative Expenses" represented everything that was needed to operate the business; the figures are actual numbers that include the rent, but not the additional rent. Mr. Kent indicated that Mr. Clarke takes no pay for the work he does on behalf of the restaurant, and that was not indicated in the figures on the schedule. Mr. Kent took a moment to point out the amount of money that Mr. Clarke had put back into the business over three (3) years as follows:

2006 - \$147,063 2007 - \$65,452 2008 - \$88,133 TOTAL = \$300,648

The seventy thousand dollars (\$70,000) referenced in Mr. Kent's schedule was recognition that, at some point in time, the debt to which Mr. Clarke and Ms. Pope have referred to, must be paid off; Mr. Kent indicated that he had done his calculations based on a five-year (5 yr) pay back period of the debt of three hundred fifty thousand dollars (\$350,000).

According to Mr. Kent's computations, at the current level of expenses, the restaurant must be in the three million dollar (\$3,000,000) sales range in order to breakeven and, presumably, before paying additional rent. It was this schedule that generated the request for a modification in the calculation of additional rent to begin at the three million two hundred thousand dollars (\$3,200,000) sales level.

Administrator Tucker recounted Assistant Dziuban's query that, since there was no additional rent to be paid to the City for the first term of the lease, i.e. 5 years through 2014, was this time to allow for payback of the line of credit of three hundred fifty thousand dollars (\$350,000)? Mr. Clarke responded that his plan was to payoff the debt during that timeframe. If that was the case, then the gross sales figures on Mr. Kent's schedule could be reduced by seventy thousand dollars (\$70,000). Mr. Clarke also commented that the dollars being invested in the building were "sinking us."

Mr. Kent agreed that, if the restaurant were to have an abatement of additional rent for a period of five years (5 yrs) to allow for the repayment of the debt, the breakeven amount would certainly come down.

Councilman Taylor stated that the cost of sales percentages had increased by two (2) percentage points, or sixty-five thousand dollars (\$65,000) per year; he asked if that cost of sales percentage was expected to continue to grow. He continued by asking if there was a way to control the cost of sales figures or potentially stabilize and, ultimately, reduce them. Mr. Kent responded that raising prices at this time was "tricky in this economy," but he indicated that the restaurant is in the process of a major software conversion with the intent to drive costs

down through, for example, better inventory control. Mr. Kent noted that, despite the rise in cost of sales, Mr. Clarke and Ms. Pope were trying to get drive down the "General and Administrative Expenses;" he pointed out the dramatic increase between 2006 and 2007 of approximately twenty percent (20%). Ms. Pope explained that the biggest contributor to the increased expense between those years was the growth the restaurant experienced.

Mr. Kent voiced the question that he had posed to Mr. Clarke, "Why not just shrink back to the size of 2006 when the business could be operated more efficiently?" Councilman Taylor explained that he was more interested in controlling the cost percentages than he was in shrinking the business.

Mayor Cronin summarized Mr. Clarke's proposal as one where the City was being asked to absorb a one hundred fifty thousand dollar (\$150,000) loss over the next five (5) years, and Mr. Clarke agreed. Mr. Clarke added that the funds would, instead, go to the improvements to the restaurant.

Councilwoman Rice remarked that the goal was for everyone – the City and the restaurant – to be successful and the task at hand was to negotiate a contract that both parties can agree upon and both be profitable. Mr. Kent indicated that landlords were making deals across the board to keep their buildings occupied.

Councilman Taylor expressed concern that the restaurant management could do a better job of running their business, i.e. reduce cost of sales and general and administrative costs, if the City were to reduce the rent by one hundred fifty thousand dollars (\$150,000), to be successful long-term. Mr. Clarke expressed confidence that they could operate a better business and get these costs more in line. Councilman Taylor summarized the discussion by stating the Committee's options of doing nothing or working through some version of a negotiated contract.

Mr. Clarke reminded the Committee of the funds, over an above the restaurant's rents, that can be directly attributed to Morgan Creek Grill; he reported that in 2007, the Accommodations Taxes revenue to the City was twenty-nine thousand dollars (\$29,000) and Local Options Sales Taxes revenue was approximately the same; in 2008 combined revenue was sixty thousand dollars (\$60,000) and in 2009 the projected revenue is seventy-four thousand dollars (\$74,000).

Mr. Clarke repeated his goal for the re-investing in the restaurant to make it a landmark, not only for the Isle of Palms but also for the City of Charleston. He stated that he had structured the proposal the best way he knew to make it a successful long-term deal for both the restaurant and the City.

Councilman Taylor posed the question to Mr. Clarke as to which was more important to him at this time – a break on the rent or an extended term on the lease. Mr. Clarke answered that he needed both and that they were equally important.

Ms. Pope related that she had been a part of Morgan Creek Grill for five to six (5-6) years and that, over that time, she had "watched the restaurant grow enormously in so many ways, from the number of guests that come through the door to the number of employees." She commented to the fact that the past year had been a very difficult one for the restaurant and that she and Mr. Clarke had done everything they could to keep the restaurant open. She referred to the new computer system as a very important step because Morgan Creek Grill is no longer a "QuickBooks" restaurant and as a major step to bring costs in line with industry standards.

MOTION: Chairman Cronin moved to go into Executive Session at 4:25 p.m. to discuss contractual matters; Councilwoman Rice seconded and the motion PASSED UNANIMOUSLY.

The Committee returned to regular session at 4:50 p.m. Chairman Cronin announced that the Committee had not taken any votes or other action while in Executive Session.

MOTION: Mayor Cronin moved to consider amending the existing, original Morgan Creek Grill lease document, in consultation with the City Attorney, for the abatement of “additional” rent for a three (3) year period (fiscal year endings June 30, 2010, June 30, 2011 and June 30, 2012), to adhere to the principles of a triple net lease, to include provisions in the document to give the restaurant control over the restaurant dock including commercial vessel(s) for the purpose of cruises and to alter the payment of rent to allow for seasonality of rent payments; Councilwoman Rice seconded and the motion PASSED UNANIMOUSLY.

There was a brief discussion about holding another special meeting, but it was decided that, since the next regular meeting is scheduled for Friday, November 6, they would forego a special meeting in the interim. Administrator Tucker stated that her plan would be to talk with the City Attorney, work with the existing lease to make amendments to it and to reconvene the Committee at that point.

Mayor Cronin noted that the Committee had not discussed Mr. Clarke’s request for the refund of the security deposit; Assistant Dziuban commented that Mr. Clarke had likely read the new marina management lease that had a provision for the refund of the security deposit after twenty-four (24) months if the tenant has complied with all elements of the lease.

3. Adjourn

MOTION: Chairman Cronin moved to adjourn at 4:58 p.m.; Councilwoman Rice seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk