

REAL PROPERTY COMMITTEE

9:30 a.m., Monday, April 3, 2017

The regular meeting of the Real Property Committee was held at 9:30 a.m., Monday, April 3, 2017 in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Harrington and Rice, Chair Bergwerf, Administrator Tucker, Assistant Administrator Fragoso and City Clerk Copeland; a quorum was present to conduct business.

1. Chair Bergwerf called the meeting to order and acknowledged that the public and press were duly notified of the meeting in accordance with the Freedom of Information Act.

2. Approval of Previous Meeting's Minutes

MOTION: Councilmember Harrington moved to approve the minutes of the regular meeting of March 6, 2017 as submitted; Councilmember Rice seconded and the motion PASSED UNANIMOUSLY.

3. Citizens' Comments

Jim Raih, 3904 Cameron Boulevard, stated that the City had lost an opportunity to put a roundabout at 41st and Palm because properties at 4000 and 4008 Cameron have recently sold and the property at 4007 is going to be torn down. He added that a building at Front Beach is for sale that might serve the City well for a Welcome Center, that would keep half a million dollars (\$500,000) a year of state ATAX funds that now go to the Charleston Visitors Bureau on the island. He also reported that property is also available that is contiguous to property the City already owns and a possible long-term ground lease with SCDOT that could provide water access in the middle of the island. Since parking will no longer be allowed from 40th Avenue and around that corner, he suggested that the time might be right to start the gateway project into the marina site that has been talked about for some time. With growth comes challenges and all of the businesses operating out of the marina want to be successful which means bringing more and more people to the marina. He opined that, once off-site parking for boat traffic and employees on 41st Avenue, it becomes difficult to manage. He commented that, when the bulkhead was replaced several years ago that people could walk around almost the entire site, but presently it is unsafe to walk behind the deck on the restaurant and the store.

Deanna Fanning, 5 Seahorse Court and a twenty-five (25) year resident voiced her support for the marina redevelopment plan and stated that she sees no need for a referendum; she stated that the citizens "already voted to purchase the marina" and that "with any purchase, upkeep is necessary and expensive." She concluded by saying "a good redevelopment project will support the businesses, support the island residents and fix the issues at hand."

4. Comments from Marina Tenants

Michael Fiem, TidalWave Watersports, asked about progress on the repairs to the electrical box for their dock; he indicated that, when the electricity was restored recently, he was told by the electrician that the wiring should be re-done because it was not on one (1) continuous wire, but had been spliced multiple times.

The Administrator commented that the electrical problem at the TidalWave dock is the result of Joaquin and Matthew; some problems from those storms are only now coming to light after the City has completed its damage reports.

(The photographs of the electrical box are attached to the historical record of the meeting.)

5. Old Business

A. Discussion of Morgan Creek Grill lease amendment

Joining Mr. Clarke at the meeting were John Dodds, attorney, Peter Kent, accountant, and Joseph Guerry, appraiser and consultant.

Mr. Dodds voiced understanding that presenting a proposal that would result in a loss of revenue to the City would not be received enthusiastically. He explained that Morgan Creek Grill (MCG) representatives had taken a look at the long-term and the potential revenue stream to insure that MCG can financially support the proposal. A key ingredient to the offer is to increase the fixed base rent to one hundred thirty-eight thousand dollars (\$138,000) a year, and, in return, they are asking for an extension of the lease and increasing the threshold for additional rent to two million dollars (\$2,000,000). For the 2015-2016 time frame, MCG paid approximately one hundred thirty-eight thousand dollars (\$138,000) in total rent to the City of which eighty-five thousand dollars (\$85,000) was the base rent and fifty-two thousand seven hundred dollars (\$52,700) in additional rent based on revenues of nearly four and a half million dollars (\$4,500,000).

Responding to the Administrator, Mr. Dodds stated that the two million dollar (\$2,000,000) figure would be gross profit, which he added was consistent with the definition used for other marina tenants.

Also in the proposed amendment was for the restaurant to assume financial responsibility for certain items included in the City's Ten-year (10 yr.) Capital Plan, i.e. the hood ventilation system and the sprinkler system; contractors have estimated the value to be approximately one hundred thirty-five thousand dollars (\$135,000) in capital improvements. A list of anticipated future capital improvements has been included in the meeting packet totaling more than four hundred twenty thousand dollars (\$420,000); they believe that these things need to be done to enhance the design and overall appearance of the building. Mr. Dodds stated that these are capital improvements the restaurant is willing to do that will ultimately benefit the City as the owner of the property.

Mr. Dodds said that the restaurant was looking for a ten-year (10 yr.) extension with regard to the present lease that expires in 2020 and for four (4) additional five-year (5 yr.) options with a net effect of a thirty-year (30 yr.) lease, which he commented again was consistent with leases for the two (2) other marina tenants. He indicated that, when they go to a lender for a line of credit to fund shortfalls in the off-season, the lender is looking for a long-term lease to insure the restaurant's ability to repay the loan.

In conclusion, he expressed the belief that their proposal presented the City with a “win-win” situation; one where the City will not lose any revenue and which gives the restaurant a sense of stability.

When Chair Bergwerf asked whether the rent would increase by the CPI annually, Mr. Dodds replied that they would consider it.

Councilmember Rice stated that she was in no way amenable to increasing the toggle for additional rent as requested.

Mr. Dodds asked if consideration would be given to changing the definition of the toggle from gross income to gross profit; he noted that the additional rent for other marina tenants is based on gross profit.

Councilmember Rice commented that the issue of employee parking was not addressed in the lease and it is a major issue at the marina; she opined that employee parking should be defined in the lease.

Administrator Tucker stated that a negotiation is more than what they are bringing to the City but it is also the City listening to the requests but issues like parking need to be worked out. The changes cannot be the tenant’s requests; it must also entertain the issues that are problematic to the City. She restated Councilmember Rice’s concern that the lease does not address the problem of the congestion at the site and the spill-over outside of the site, and she said that a big contributor to the congestion is the result of the success of the restaurant. The City needs a partner in solving the issue.

Based on other leases at the marina, Mr. Clarke feels that the City is looking to the restaurant to come up with a solution to the parking and congestion problems; he thought all of the marina leases would need to be adjusted once the redevelopment is complete.

Mr. Dodds asked if the City had a global parking plan for the marina.

Councilmember Rice reported that a plan was worked out last year for employees to park at the Rec Center and be shuttled to the marina, and she thought it should be re-instituted, particularly for the sixty (60) cars belonging to employees of the restaurant.

Mr. Clarke stated that MCG bore the costs of the shuttle for employees to and from the Rec Center with no participation from the other marina tenants; he opined that the parking and congestion are a problem for all tenants, and he thought it unfair to hold up the MCG lease over parking.

Councilmember Harrington voiced his disappointment that the list of capital improvements was not prioritized with an accompanying timeline.

Mr. Clarke stated that he has maintained the building and made substantial capital improvements, but he has too often had to respond to the failure of equipment, and some improvements may not be visible to the public eye.

Chair Bergwerf stated that, from the beginning, she has not supported a thirty (30) year lease because the marina is in such a state of flux with the redevelopment plan; she suggested three (3) renewal options of three (3) years each, including the three (3) years remaining on the current lease totals twelve years (12).

Mr. Dodds said that he found it difficult to understand why MCG was not being treated the same as other marina tenants who have been given thirty (30) year leases.

The Chair stated that she, as a Councilmember, was responsible for protecting the City's investment. She noted that the City's budget seems to get tighter each year and Council must always consider whether they are doing the best they can for the residents.

Mr. Guerry said that he had used the square footage from a 1998 appraisal of the restaurant, and Chair Bergwerf remarked that, since that time, the square footage has changed with the outside bar and the rooftop dining, which would reduce the value of a square foot of space.

Mr. Clarke was quick to note that there has been no change to the restaurant's footprint.

The Committee appeared to agree that any space that created revenue for the restaurant should be included in its total square footage.

Mr. Guerry clarified that the analysis he did was based on the heated and cooled square footage, which is a common practice.

Mr. Dodds added that Morgan Creek Grill contributes forty-six percent (46%) of the revenue to the City from the marina site.

Based on her studies of the financial information provided to the Committee, Chair Bergwerf was of the opinion that MCG would never reach the toggle of two million dollars (\$2,000,000) for additional rent.

When Councilmember Harrington asked about the change to gross profit, Mr. Dodds' initial response was "because it was done for the other marina tenants;" he stated that he thought it was extremely unfair not to do the same for MCG. He noted that the Food/Beverage/Other income exceeded three million dollars (\$3,000,000); he stated that, when looking at gross income, the fixed costs were being overlooked. To compute gross profit, the fixed costs that do not contribute to revenue are deducted from the gross revenue.

Councilmember Rice stated that she would like to re-bid the lease for the restaurant at the end of the current lease and that she thought Morgan Creek Grill would have a huge advantage. She would prefer to re-bid the lease as a true triple net lease; she added that, in her opinion, too many docks were dedicated for the restaurant's use. She was interested to see what the City could get financially and the end of the lease presented the opportunity.

Mr. Kent commented that, in the typical triple net lease, the lessee does not pay additional rent; he, therefore, asked if the additional rent was being eliminated.

Councilmember Rice said that she would like to see the tenant handle the building.

Mr. Clarke stated that the restaurant is a huge asset for the City that brings a great deal of revenue to the City; he noted that MCG has “overwhelming support from the locals.”

Mr. Guerry went through his qualifications as an appraiser, and stated that the Uniform Standards of Professional Appraisal Practices that governs what he does are very specific about offering an opinion, stating that “an appraiser cannot offer an opinion of value that serves one party over another.” He stated that he performed his research and analysis from an unbiased perspective to identify what a fair market rent is for MCG. He stated that when first asked to do the job, he told Mr. Clarke that he could determine that the lease was actually below market and that he would have to accept it. He reported that his research included restaurants downtown and east of the Cooper and three (3) recent leases for restaurants in Mount Pleasant and the Isle of Palms; none of them had percentage rent while downtown restaurants were a mixture with the majority being triple net leases. Other things he found to be typical in these leases was that the landlord maintained the building shell – the outside structure, the roof, the foundation, etc. – and the tenant was responsible for the interior. He added that another common factor in the leases was, when the tenant made significant improvements, in exchange he was granted a long-term lease. If the City were to decide to limit the term of the restaurant’s lease, it would be contrary to what is happening in the market. Mr. Guerry noted that many restaurants, when they get up and running, end up creating some sort of outdoor space because the weather is so inviting in Charleston; he said that he has never seen a lease where a tenant’s rent was increased for adding such a space. The exchange is that the improved building reverts to the landlord at the end of the term. In his opinion, the increase in base rent is very fair to the City since the City will continue to receive the monthly rent even if the restaurant was badly damaged by a weather event and was forced to close for a period of time.

In the course of discussion, Councilmember Rice has stated that she wants the lease to be re-bid at the end of the existing lease; the Chair said that she would be amenable to the rent with the CPI increase each year, but she wanted to discuss the issue of the toggle with the City Treasurer before committing to anything. The Chair reiterated its proposal for three (3) three (3) year extensions.

Mr. Dodds asked if MCG would have to wait for the lease to be re-bid before getting a decision on the lease amendment.

Administrator Tucker stated that the Committee had made no motion one (1) way or another and that re-bidding the contract did not mean that Morgan Creek Grill would go away.

Chair Bergwerf stated clearly that the marina tenants must resolve the matter of employee parking this year whether it is included in leases or not.

Mr. Clarke expressed his opinion that Waterway Boulevard should have been left open to parking for vehicles, but he said that he was willing to work with the tenants to operate a shuttle service between the Recreation Center and the marina.

Administrator Tucker stated that the City did spot checks during the time the Recreation Center was available for alternate marina parking and found few cars there.

Mr. Dodds said that the MCG Team would like to come back to the Committee to address some of the issues raised today, including time projections for capital improvements and parking; he commented that it was going to be difficult for the restaurant to operate for the next three (3) years not knowing whether they were going to have an extension beyond 2020.

Mr. Clarke added that items could fail at any time in those three (3) years and, without an extension, he would not be able to obtain funding to repair/replace them. He noted that the roof, in particular, was in serious need of repair, but without financing he could not do it, and it would not make good business sense for them to invest that kind of improvement in the building if they were not going to be occupying it beyond 2020.

Mr. Dodds noted that the lease includes an assignment section; Mr. Clarke is planning to give Carla Pope a membership in Barrier Isles LLC, but Mr. Dodds wanted to make sure that doing so would not put the restaurant in default of their lease.

The Administrator replied that, as long as the assignment was approved by City Council, the restaurant would not be in default. In addition, she stated that the City and MCG were the closest to coming to an agreement in February 2016; she, therefore, encouraged them to review the minutes of that meeting as they prepare for the next one.

B. Discussion of replacement of walk-in freezer at Morgan Creek Grill

The Administrator reminded the Committee that, in March, Mr. Clarke presented two (2) options to consider, i.e. to replace the freezer in its present location or to put the walk-in outside. Mr. Clarke indicated that the walk-in is currently functional. Administrator Tucker recalled that, in the past, the walk-in was outside and had to be moved inside due to a code violation.

Director Kerr stated that, a long time ago, the walk-in was placed outside the building on the ground; it had to be moved inside because it was in violation of the City's flood ordinances. If MCG wants to reconfigure to put the walk-in outside again, it must be elevated to meet the flood regulations or at the building and at the same elevation.

Mr. Clarke indicated that he has stamped engineered plans that he was told meet all City Codes.

If the restaurant were to reconfigure and put the walk-in outside, it would disguise the back of the building, making it more aesthetically pleasing, and it would reduce the number of deliveries the restaurant receives, thereby reducing the traffic and congestion at the marina. An advantage to the restaurant would be that it would not have to close, but Mr. Clarke thought it was too late in the season to do now.

Mr. Clarke confirmed that he would be asking for the City to pay for the project using the funds in the current budget of approximately one hundred ten thousand dollars (\$110,000).

The Administrator explained that no funds for the restaurant are in the FY17 budget.

Chair Bergwerf stated that Council was in the middle of the budget preparation now and that it was a very tight budget year; she, therefore, did not think adding one hundred ten thousand dollars (\$110,000) to it was realistic.

The Administrator explained that one hundred ten thousand dollars for the restaurant is in the Ten-year Capital Plan, but the Ten-year Plan is not a part of the budget. On the Plan, the expenditures are projected for FY18, but she is confident that they are not included in the FY18 budget as proposed.

As to the fifteen thousand dollars (\$15,000) the City agreed to reimburse to MCG, Mr. Clarke assured the Administrator and Committee that the work would be completed by June 30, 2017 and could be done as early as in the next week or two.

Mr. Clarke also noted that the termite inspection had been done last week.

Councilmember Rice asked whether the downspouts had been adjusted so that they do not direct the runoff under the restaurant, and Mr. Clarke confirmed that the work has been done.

If the City were to be able to afford this project, Chair Bergwerf asked where the funds could come from.

Mr. Clarke indicated that he would have pushed the project up to this year if the restaurant had been granted a lease extension.

Councilmember Harrington expressed his belief that part of his duty as a Councilmember was to protect the City's investments.

Councilmember Rice asked Mr. Clarke if he would consider cost sharing, and his reply was that, by funding the difference between the cost of one hundred thirty-one thousand dollars (\$131,000) and the City's contribution and paying for all cost overruns, he was sharing in the cost.

Councilmember Rice asked Mr. Clarke if he would be willing to pay one-half (½) of the total cost.

Having briefly reviewed the plans for the reconfiguration, Director Kerr stated that he saw no issues with the plan and that they meet the City Code relative to flood and setbacks; he added that he did not foresee any issues with the structural plans.

Chair Bergwerf remarked that Council was responsible for the finances of the City without a tax increase to the citizens; she agreed with Councilmember Harrington that Council was also responsible for maintaining the City's assets. The Chair suggested that the City assume the responsibility for the walk-in cooler structure, the storage area, loading dock and alterations to the handicap ramp at eighty-seven thousand dollars (\$87,000) and for the restaurant to assume responsibility for the walk-in freezer and its installation, as well as the floor covering replacement. The Chair noted that she was making the suggestion without knowing where the City would find the money.

Councilmember Rice suggested that the City pay the costs for Option 1 (replacing the walk-in where it is now) of approximately sixty-five thousand dollars (\$65,000) and for Morgan Creek Grill to fund the balance of the one hundred thirty-one thousand dollars (\$131,000) so that the end product would be new structure to have the walk-in cooler outside. She thought that recommendation was fiscally more responsible.

Mr. Clarke indicated that his team had to add these figures into its financial proposal to determine if either suggestion was workable for the restaurant, and if so, add it to their proposal for the next meeting.

The Administrator reiterated that being an expenditure on the Capital Plan does not mean the City has the money to do it and that the expenditures discussed are not on the FY17 or FY18 City budget.

D. Discussion of current restroom agreement – Possible RFP

Administrator Tucker stated that the restrooms are open nearly all of the time; the contract was initially bid out and has been automatically renewing annually. Many changes have occurred since the original contract was written, i.e. the hours have increased significantly based on public demand. The contractor is responsible for staffing when it is open, cleaning, restocking, and reporting all damage or maintenance issues. The question before the Committee is whether to re-bid the contract at the end of the season after the renovations have been completed, and, if so, what components would the Committee want to be included.

Councilmember Rice stated that she wanted to investigate what other communities do about their public restrooms.

Chair Bergwerf suggested that the City compile a detailed check list of tasks to be done and how frequently they should be done.

Since nothing would happen before the renovations are complete, the Chair commented that the Committee has some time to consider the contract and the check list; Administrator Tucker asked that Committee members communicate their ideas to her or Assistant Fragoso.

E. Further discussion of Marina Redevelopment Plan

Chair Bergwerf stated that the six point four million dollar (\$6,400,000) price tag was an eye-opener and that, being realistic, the Committee must begin to separate the wants from the must haves.

Councilmember Harrington stated that the traffic flow and the parking should be the first things addressed and that the walkway over the boat ramp should be eliminated.

Councilmember Rice wanted to find a way to have a dedicated fishing area at the marina, particularly since a considerable part of dock space had to be classified transient docking in order to be considered for a Boating Infrastructure Grant (BIG). She suggested that the City take part

of the Morgan Creek dock space and use it for fishing; based on her observations, the Morgan Creek docks are seldom used.

Since Councilmember Ferencz asked how Coastal Expeditions fits in at the marina, Brian Berrigan, the marina manager was asked to join the discussion.

Mr. Berrigan told the Committee that Coastal Expeditions has had a lease with him for twelve years (12 yrs.); based on the lease, they pay for dock space and five percent (5%) of their gross revenue. Mr. Berrigan stated that he has similar leases with Barrier Isle EcoTours, the standup paddleboard company and the boat rental company.

Councilmember Rice also wanted to have a place for residents to launch their kayaks at no charge that is away from the boat ramp. She stated that she understands the reasons behind eliminating the ADA walkover for the boat ramp, but she is disappointed that there will be no way to safely move people from the store to the restaurant.

The Chair again spoke to the lack of organization for people and vehicles that make the marina such a chaotic area; she believes that to do that would make the space safer and friendlier to both residents and off-islanders. She noted that the City is somewhat in limbo until it learns the results of the BIG grant in May. Chair Bergwerf asked that the Committee members take a pencil to paper to identify everything that could be eliminated in order to reduce the price.

The Administrator recommended that the members use the sheet entitled "Conceptual Cost Estimate" included in the memorandum from ATM when they begin to take items out of the project.

Chair Bergwerf commented that all efforts must be made to convince the public that the redevelopment is to make the marina more resident-friendly, i.e. amenities are being added or improved for the marina to be more inviting to residents, as well as increasing the value of the marina for the City.

Councilmember Harrington stated that he would like for ATM to present a way of phasing the project with the costs associated with each phase.

Councilmember Rice noted that ATM has recommended that the project begin with the upland improvements which have an estimated cost of three million dollars (\$3,000,000), including the marine design and permitting.

Chair Bergwerf asked Mr. Berrigan if he would be willing to finance the tractor shed that he needs, and he said that he would.

Mr. Berrigan stated that he disagreed with the reconfiguration of the fuel island, which is likely to be costly; he indicated that the number of ADA gangways is in excess of the number required, and they cost approximately one hundred thousand dollars (\$100,000) each. The Chair asked the Mr. Berrigan make his recommendations on ways to reduce the cost.

Based on the discussions, the Chair asked that Kirby Marshall of ATM attend the May meeting.

Administrator Tucker commented that one (1) Councilmember has requested additional pro forma be done on the proposed new project; she stated that some money remains on the ATM contract, but more will be required. She opined that the project should be pared down via Committee and marina manager recommendations before tasking ATM to do more.

When ATM presented their most recent proposal, it had a menu of options for Council to select, and Council chose not to award the technical steps. With the most recent drawings, ATM has fulfilled work for which they were contracted.

In summary, Chair Bergwerf stated that, at the May meeting, she would like to see the recommendations for items to be eliminated from the plan and a realistic process for phasing the project from ATM.

E. Update on City-wide landscaping Request for Bid

Assistant Fragoso reported that the bid is out and that she contacted contractors who are already working on the island and the previous bidders. Questions must be submitted by 3:00 p.m. today, and the bid opening is scheduled for 2:00 p.m., Wednesday, April 12th.

Administrator Tucker stated that she had received an inquiry from another member of Council asking if the sidewalks and multi-purpose paths on Palm Boulevard and Waterway Boulevard were included in the bid package. She said that they were not included because that work is typically done by Public Works or a contractor with a specialized piece of equipment as well as assistance from Charleston County and SCDOT.

F. Status of beach access signs

Assistant Fragoso reported that she expects to get pricing from two (2) vendors this week.

6. New Business – None

7. Miscellaneous Business

The Administrator reported that all tenants are current in paying their rent.

Next Meeting Date: 9:30 a.m., Monday, May 8, 2017

8. Executive Session – not needed

9. Adjourn

MOTION: Councilmember Rice moved to adjourn the meeting at 11:20 a.m.;
Councilmember Harrington seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland, City Clerk