

**REAL PROPERTY COMMITTEE**  
5:30 p.m., Tuesday, October 14, 2014

The regular meeting of the Real Property Committee was held at 5:30 p.m., Tuesday, October 14, 2014 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Bergwerf and Buckhannon, Chair Loftus, Administrator Tucker, Assistant to the Administrator Dziuban and City Clerk Copeland; a quorum was present to conduct business.

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

2. **Approval of Previous Month's Minutes**

**MOTION: Councilmember Bergwerf moved to approve the minutes of the regular meeting of September 9, 2014 as submitted; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.**

3. **Citizens' Comments – None**

4. **Comments from Marina Tenants**

Jay Clarke of Morgan Creek Grill was present to inform the Committee that Morgan Creek Grill has paid the balance of additional rent due to the City as of today.

5. **Old Business**

**A. Discussion of Marina Outpost and Marina Joint Ventures Leases**

Administrator Tucker recalled that this item of business goes back to the FY14 budget discussions relative to the City-owned items in the marina store that roll forward in the capital plan each year; at a subsequent meeting, a discussion took place suggesting that the City should offer longer leases and require that the tenants be responsible for everything. Shortly after, the Marina Outpost and Marina Joint Ventures leases came up for renewal; in the initial renewal proposal, the merging of the two (2) leases into one (1) lease with an extended term for the new lease was suggested. Although there were elements of the old leases included, they presented a relatively new document.

In discussions with the City Attorney about the lease proposal and about the Committee's concerns at what point the need to rebid the lease was triggered. The City Attorney opined that merging the two (2) leases into one (1) was basically like starting over; therefore, she would advocate for putting the new lease situation out for public bid.

When the Administrator shared the City Attorney's opinion with the tenant Brian Berrigan, he stated that he certainly wanted to retain the leases and has now come back with separate amendments to the two (2) leases, increasing the term on each to January 31, 2045 or thirty (30) years. In the Marina Outpost lease, Mr. Berrigan is proposing that the City retain the walk-in freezer as a condition; they are also asking in both leases that there be no additional rent provision.

In the way of additional information, the Administrator reported that the amount the City receives in regular rent, that is adjusted by the CPI each year, totals about two hundred thirty thousand dollars (\$230,000); the additional rent was approximately forty-seven hundred dollars (\$4,700) annually from the two (2) businesses. The Administrator noted that, with the removal of the additional rent provision, the requirement for financial reporting to the City is also removed.

In addition, the Administrator remarked that, if the City accepts the two (2) lease amendments and if Mr. Berrigan puts together the funding for a dry-stack storage facility, there is no component that shows the City any benefit from the dry-stack.

Councilmember Bergwerf commented that Mr. Berrigan would have a thirty (30) year lease and, with the funding, could move forward with a dry-stack without Council approval.

Administrator Tucker stated that she did not suspect that Mr. Berrigan would do that and, if one were to go back through minutes from Council meetings, he would find that Council "blessed" a dry-stack in prior meetings. She commented that he might technically have an argument that he had prior approval.

Councilmember Bergwerf added that parking is such an issue and making the marina a bigger and bigger business would only push more cars onto Waterway Boulevard, and residents there are unhappy now. She noted that she does not trust anything that is not in writing.

The final comment from the Administrator was that, in the two (2) amendments presented that extend the term, no particular benefits are being proposed for the City in exchange for the additional term.

Councilmember Buckhannon asked what the Administrator hoped to see.

The Administrator responded that, at budget time, she anticipates having the same issues over City-owned capital assets at the marina store; there is no provision in the amendments that states specifically assets for which the tenant is assuming responsibility.

Councilmember Buckhannon recalled that the intent of the extended term lease was that the tenant would take responsibility for the repair/replacement of those assets; Mr. Berrigan stated that year after year, the City has put money into the marina for the development of the marina and development of parking, etc. Speaking as a businessman, the Councilmember voiced the opinion that, if the City wants the marina to thrive and grow, to have better parking and to have better facilities, the marina tenants are not going to do so if tied to a short-term lease.

Chair Loftus commented that the way the amendments are written the tenant is not planning to do those things; they only relieve the City of charges like an ice machine, etc.

Continuing his remarks, Councilmember Buckhannon said that a long-term lease gives the tenant incentive to invest in the property. He noted that the Committee has only one (1) meeting before the end of the year, and the leases expire in January 2015.

Councilmember Bergwerf agreed that the tenant would be encouraged to invest in his business, but a parking resolution still falls to the City.

Councilmember Buckhannon stated that the intent of the long-term lease was to allow the lessee to be responsible for his business; when items fail, the lessee will not be turning to the City to replace it.

The Administrator explained that this was the component missing from the amendment; she noted that it was clear that the Committee was interested in entertaining some resolution to the question of "Who is responsible for what." She continued that there is no provision stating "in return for this additional term . . ." the tenant will be responsible for these things. Administrator Tucker commented that Mr. Berrigan and his attorney obviously thought about the City-owned assets by leaving the walk-in freezer as a City responsibility; in her opinion, the City was looking to get rid of those items.

Councilmember Loftus asked whether the amendments had gotten a legal review; the Administrator said that she had sent them to the City Attorney and that she has been paraphrasing the attorney's comments.

The Chair's concern was an upgrade to the marina like a dry-stack boat storage facility; if that becomes a reality, Chair Loftus thought there should be additional compensation to the City.

Councilmember Bergwerf agreed that a dry-stack would impact the community and questioned how the community would react to more traffic; she recalled that the dry-stack would house two hundred fifty (250) boats which would add at least one hundred (100) more cars at the marina.

Mr. Berrigan responded to Councilmember Bergwerf that there was no ceiling to the number of boats launched in a day, but, if the City proceeds with the parking permit program, a top number will have to be established.

On the subject of the City's benefit from the extended term, Mr. Berrigan stated that the City will get a quality tenant that pays its bill on time, that stimulates business for the City, that brings extra business to the City that it would not get without the marina, and that invests large sums of money into the City's building. He said that, with a thirty (30) year lease, he can invest in the property knowing that he has time to recuperate the money; Mr. Berrigan noted that it was his intent all along to take responsibility for all of the equipment at the marina that the City considers to be its assets. He commented that it was the success of the business that has driven parking onto 41<sup>st</sup> Avenue and Waterway Boulevard. He added that no one on the Committee has remarked on the improvements that have turned the marina to a destination. He said that he has no problem adding a paragraph detailing the equipment for which he would assume responsibility, but he stated that he would not go forward with a dry-stack without the City's blessing and without a formal written document. He commented that, if he and others invest three to four million dollars (\$3,000,000 – 4,000,000) to construct a dry-stack, it would take some time to recuperate the investment; he added that a dry-stack would be a fixed asset that would belong to the City with no financial outlay. According to Mr. Berrigan, the walk-in freezer was left in the lease because it has not functioned for four (4) years, but, if the Committee wanted, it could be removed from the amendment. He concluded that the important thing to him

was the lease being long-term and being able to invest comfortably knowing that he has time to get the investment back.

Administrator Tucker asked the Committee how to proceed with the amendments; in her view, all that was missing from the leases was something that refers to the mutual benefit issue. The Administrator stated that she trusts Mr. Berrigan based on his actions in the past, but there is no written obligation to do as he has stated he will do.

Chair Loftus said that the leases must be able to stand on their own with a clear intention for the City and the tenant; he suggested that the leases go back to the City Attorney for a second review in light of the comments made at the meeting. He added that a meeting with Mr. Berrigan should take place after the legal review and before the next meeting so that a recommendation can be made to the Committee at the November meeting; the Committee could also have a special meeting if needed.

Mr. Berrigan stated that the deletion of the additional rent provision will not preclude the City's access to the financial information of these two (2) businesses, and it can be added back in whatever form the City wants.

## **B. Discussion of Beach Accesses Relative to Handicap Improvements**

Administrator Tucker reported that Directors Kerr and Pitts have been working on this project and Director Kerr is attending the meeting to relate their findings. She reminded the Committee that the goal was to find possibly two (2) accesses that are level and flat which is a challenge because the primary dune cannot be tampered with and is pretty high at the end of the City's beach access paths.

Director Kerr recalled that 9<sup>th</sup> Avenue was initially identified as a good prospect for handicap improvements; when the path was surveyed, they learned that the majority of the path is now on private property. In dialogue with OCRM to determine how wide a path they would allow to get through the dunes, they were told the limit is fifteen (15) feet; he and Director Pitts had hoped to get enough width to get a driving path and an ADA compliant path, but that is not possible. The alternative is to put in, basically, a road-bed of sand shell from the road to the beach after re-aligning the path to its rightful place, and then add a four (4) inch base of sand shell and have it compacted. In Director Pitts' experience, this will become very similar to a road so that City cars and trucks can get through as well as someone with mobility challenges. Director Kerr noted that the City has OCRM authorization to move forward with that plan. The City has a quote from Peterson Grading of thirty-six hundred dollars (\$3,600) to do the work.

Administrator Tucker stated that ninety-five thousand dollars (\$95,000) is in the FY15 budget for beach access paths, and staff proposes that the cost come from those funds. The Administrator reiterated that this action is in response to some physically challenged people who asked Council to give some consideration to having more handicap-accessible beach access paths. Since the cost is less than five thousand dollars (\$5,000), the work by Peterson will not have to go through Ways and Means and City Council, so the work can move forward after this meeting.

Councilmember Bergwerf questioned that the surface would be hard enough to support a wheelchair; Director Kerr commented that Director Pitts is confident it will. According to Director Kerr, the two (2) options are the hardened shell or the hardened shell with Mobi-mat covering it; the problem with Mobi-mat is that it moves around and becomes less stable.

The Director noted that this improvement at 9<sup>th</sup> Avenue is not perfect, but it should be good for someone that walks, and, if done correctly, a car, truck or wheelchair accessible as well.

Chair Loftus asked what the estimated annual maintenance would be for this handicap beach access; the Director replied that he had not asked that question, but Peterson maintains the sand shell on the edges of the roads and the parking lot.

**MOTION: Councilmember Bergwerf moved to spend \$3,600 for Peterson Grading to realign and grade the 9<sup>th</sup> Avenue beach access; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.**

Directors Pitts and Kerr identified 42<sup>nd</sup> Avenue as the best beach access for handicap improvements; Director Kerr distributed a topographical map of the access and a sketch of the handicap improvements proposed for the existing beach access. The elevation at the road is eight point seven (8.7) feet, and at the ocean-side it is eight and a half (8.5) feet; so the beach access is almost dead flat from the road to the beach. At this access path, the City could provide a first-rate handicap beach access.

The Director looked to the sketch and explained that one (1) handicap parking space would be added; the path would be concrete for as long as possible, approximately eighty-five (85) feet where the path transitions to ipe for about two hundred (200) feet of boardwalk.

Since this beach access would be flat and low, it will tie-in well with a handicap parking space and make an excellent handicap access. Director Kerr noted that the funds included in the FY15 budget were specifically earmarked for the Front Beach access at the public restrooms; a handicap beach access at 42<sup>nd</sup> Avenue would be a substitute. To accomplish this goal, the City would need an encroachment permit from SCDOT, the development of plans and to go through the competitive bid process. Before investing time and money, staff wanted to confirm that the Committee was supportive of the plan. In addition, the Director asked whether the Committee wanted to do the 9<sup>th</sup> Avenue improvements in FY15 and hold the 42<sup>nd</sup> Avenue improvements for the next budget year.

Councilmember Buckhannon recalled that the City got "a lot of negative feedback" from the 42<sup>nd</sup> Avenue residents when the path was widened and growth was cut back, so he questioned that this action would create the same type of situation. The Councilmember also noted that there is a big parking problem in that area.

Director Kerr stated that a handicap parking space would take up two (2) of the existing parking spaces at that beach access.

Chair Loftus asked whether the Director had considered having the handicap parking space on the other side, where, in the Chair's opinion, there is a lot of space; doing so would not impact the parking that residents use. Director Kerr indicated that it was possible to do that, but he and the Administrator were doubtful that SCDOT would approve.

Anticipating a negative reaction when the construction trucks arrive, the Director thought the reduction in parking to put in the handicap space might be received favorably by the residents.

Councilmember Bergwerf voiced her support for this additional handicap accessible beach path and asked the Director about the estimated cost for the improvements to the 42<sup>nd</sup> Avenue beach access. Based on the bids for the beach access at the Sea Cabins, the cost at 42<sup>nd</sup> Avenue would be approximately ninety-five thousand dollars (\$95,000); by adding in the thirty-six hundred dollars (\$3,600) for 9<sup>th</sup> Avenue, this line item will be right at or slightly over budget.

Chair Loftus asked whether a beach access like the one (1) at 57<sup>th</sup> Avenue could be built at other beach accesses on the island because, from his viewpoint, someone in a wheelchair could go all the way to the ocean using it.

Administrator Tucker explained that initially staff had looked into constructed access paths that would be handicap accessible; the problem, as she understands it, is that, in meeting ADA requirements, the path must be eighteen (18) inches above the primary dune.

The Administrator commented to the Committee that, if the Committee has reservations about the improvements suggested for 42<sup>nd</sup> Avenue, it should abandon the idea now; the City does not need to spend a lot of staff time and effort and decide at the last minute not to do it.

Councilmember Bergwerf remarked that the City should move forward with 9<sup>th</sup> Avenue and, rather than abandon 42<sup>nd</sup> Avenue, delay action until the Committee can discuss it further.

### **C. Assignment of Baker Contract to and Recommendation for Award of a Change Order for 2014 Shoal Management Contract**

Administrator Tucker explained that, since the City originally entered into a contract with Baker, they have merged with another company; the first action will be to agree to the assignment of the original contract to the new company and the second, to approve the change order to allow for the work to go forward for the 2014 Shoal Management Project. The change order is for two hundred forty-five thousand nineteen dollars and thirty-five cents (\$245,019.35) which brings the total new contract to one million fifty-five thousand five hundred nineteen and thirty-five cents (\$1,055,519.35). The change order is structured to allow for flexibility on the site; the City hopes to harvest and move as much sand as it can within the permit and within the money during this project. Staff is seeking approval for the maximum to avoid stopping work to come back for an approval later and go back to work. The contract is to be assigned to RB Baker Construction, a division of Reeves.

Councilmember Buckhannon asked whether the amount asked from stakeholders is the amount in the budget or greater; the Administrator replied that there is no increase to the amount quoted to the stakeholders.

Administrator Tucker explained that there are two (2) pieces to the contract:

1. the amount of sand to be moved and
2. the price per cubic yard to move that sand.

The permit allows the City to move a maximum of two hundred fifty thousand (250,000) cubic yards of sand at any one (1) event; the original plan was to move eighty-seven thousand (87,000) cubic yards, but the City is hopeful of doing more than that. The goal is to allow flexibility within the budget and within what the permit allows and to maximize what can be done in the moment. If the City is able to do all that it hopes, the total cost will be eight hundred ten thousand five hundred dollars (\$810,500).

**MOTION: Chair Loftus moved to assign the Baker Contract to RB Baker Construction, a division of Reeves, and to approve the change order; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

## **6. New Business**

### **Consideration of Award of a Sole Source Contract, not to exceed \$20,000, to Chris Jones for 5-year Update of Local Comprehensive Beach Management Plan**

The Administrator noted that the City is required to update the Local Comprehensive Beach Management Plan (LCBMP) every five (5) years; Chris Jones assisted the City with the original plan that was approved for the 2008 shoal management project. Administrator Tucker stated that Chris Jones is available to do the work, and he has all of the prior information, which is to the City's advantage. In addition he has indicated that he will cap his price at the twenty thousand dollars (\$20,000) in the FY15 budget even if the task takes more hours than he anticipates.

The Administrator said that the newly updated LCBMP will be very important because the prior plan did not include issues like the current permitting that the City has for periodic shoal management; it may include information on the major project in 2008. In addition, information needs to be included that the City may have occasions, along the full beach, to do beach restoration and activities like that.

The parking component needs to be updated to reflect what the City wants to claim; the Administrator noted that she has already gotten pushback from OCRM on that. She recalled that she has indicated the updated Plan should only claim what is necessary to claim to keep full and complete access. OCRM has stated that they think the City should have to claim what is available, but Administrator Tucker still advocates for only what is necessary. The Administrator noted that every discussion on parking ends with the question whether reducing parking will mean that the City's Beach Management Plan will lose compliance in certain areas. As noted at the public hearing, there is a huge stretch of the island's beach that gets credit for full and complete access already because of public parking, the Front Beach restrooms and the County Park, but the City will need to provide on-street parking for a portion of the beach to be able to claim full and complete access. The Administrator hopes to work with OCRM on this subject and maintain full and complete access.

**MOTION:** Councilmember Buckhannon moved to recommend to the Ways and Means Committee the award of a sole source contract to Chris Jones for the 5-year update to the Local Comprehensive Beach Management Plan in an amount not to exceed \$20,000; Councilmember Bergwerf seconded and the motion **PASSED UNANIMOUSLY.**

**7. Miscellaneous Business**

**Tenant Rents Report**

Administrator Tucker reported that all tenants are current.

**Next Meeting Date: 5:30 p.m., Thursday, November 6<sup>th</sup> in the Conference Room**

**8. Adjourn**

**MOTION:** Councilmember Buckhannon moved to adjourn the meeting at 6:35 p.m.; Councilmember Bergwerf seconded and the motion **PASSED UNANIMOUSLY.**

Respectfully submitted:

Marie Copeland  
City Clerk