

SPECIAL REAL PROPERTY COMMITTEE

5:30 p.m., Wednesday, October 29, 2014

A Special Meeting of the Real Property Committee was called to order at 5:30 pm., Wednesday, October 29, 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, City Administrator Tucker, Assistant Administrator Dziuban and Clerk Copeland; a quorum was present to conduct business.

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

2. PURPOSE

MOTION: Chair Loftus moved to re-order the *Agenda* to discuss the lease renewal for Morgan Creek Grill to this position in the meeting; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.

B. Discussion of Lease Renewal for Morgan Creek Grill

Administrator Tucker noted that she had sent communications to the Committee members that she received from some of the neighbors in the vicinity of Morgan Creek Grill (MCG), some of whom live on Waterway Drive and on Intercoastal Court. (Copies of the communications discussed are attached to the historical record of the meeting.) Additionally the Administrator has sent to members the Police Department's responses to noise complaints made against MCG; the complainants have suggested that, since MCG is in the lease renewal process, the City might incorporate into that lease some sound mitigation or standards in decibel levels so that the neighbors who live on either side of MCG are not impacted by the entertainment. The Administrator noted that several of those neighbors are present, and, with the Committee's indulgence, they might be allowed to speak. The Administrator indicated one (1) thing that she has heard from them is that they do not want to inhibit the success of MCG, but they want MCG to be reasonable and to put in some sort of limits; the argument has also been made in some of the information that MCG is technically in default of its lease at this time because they have caused this noise problem. The lease states that MCG is to abide by all federal, state and local ordinances, that not doing so would technically put them in default and makes them ineligible for a renewal at this time. Or this situation could be used as leverage, requiring that language be added to the lease for noise mitigation. Administrator Tucker stated that she was aware that MCG has received a ticket and been to court, and that they have been doing, in recent months, some self-monitoring; they have purchased a decibel meter. When they book musical entertainment, the groups are informed in advance that they are in the middle of a residential area and cannot exceed a certain decibel level; if they do, they are asked to turn it down. If they have groups that violate those dictates, they are not invited again. The tenant has done some voluntary compliance relative to the noise problem because they do not want to have a negative impact on their residential neighbors and do want to continue to offer music programs.

Chair Loftus then invited attendees who wanted to speak to this issue to come forward.

The first speaker was Francis Lynch, 29 Waterway Island Drive, who commented that he thought he might be in a unique position because he used to have a business like Morgan Creek Grill and that "instinctively" his sympathies were with them. He continued that he thinks the way they

operate their business is "very intrusive," and he said that his granddaughter cannot sleep and his wife suffers from severe migraine headaches. In an effort to resolve these issues, he has spent eighty-seven hundred dollars (\$8,700) on soundproofing his home which has proven to be unsuccessful. He reiterated that he has experience in a similar business when living in New York, and he is "shocked" that the police have allowed music to be "pumped out of there" as it is. He acknowledged that MCG has made an effort recently because the noise has not been as bad as in the past. Mr. Lynch indicated that he has called the police "on numerous occasions" and notices very little change afterward; "the noise just goes on and on."

Dr. Alfred Dawson stated that he treated hearing injuries in the military for twenty (20) years in the National Guard; he said that on some days the noise is so high that one has to wear earplugs at the marina to keep from hurting his ears. In his opinion, it is a volume issue. Dr. Dawson lives six (6) houses from the marina; when he hears the noise in his home, he knows that it is too loud. He commented that the marina is a nice place for families to go, but they should not have a hearing loss from doing so.

Phillip Smith lives right next to the marina; he stated that the sound has always been a bit loud, but when MCG turned the stage area toward the parking lot and added the backdrop, it got much louder. His suggestion was to re-direct the music toward the restaurant and to keep the volume at a reasonable level.

Senator Chip Campsen referred the Committee to the letter he sent to Administrator Tucker and noted that he had a list of twenty-nine (29) neighbors who share his feelings about the loud music emanating from Morgan Creek Grill. The signers live on Waterway Island, Morgan Cove, Yacht Harbor Court, Intracoastal Court and Edgewater Alley. He commented that, no matter the number of calls made to the Police Department, nothing happens. The Senator voiced the opinion that the level of noise is negatively affecting property values. From his interpretation of the City's noise ordinance, Morgan Creek Grill is clearly in violation. He referred to §9.2.5. a (3) that prohibits loudspeakers and amplifiers in public places, and, in his opinion the outdoor stage at MCG is "unquestionably" a public place under South Carolina law. A 1984 case adopted the definition of public place from Black's Law Dictionary when construing a local ordinance; it stated the following:

"A public place is a place where the general public has a right to resort, not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and, usually, accessible to the neighboring public; any place so situated that what passes there can be seen any considerable number of persons if they happen to look; also a place in which the public has an interest in affecting the safety, health, morals and welfare of the community."

Senator Campsen informed the Committee that the Supreme Court has ruled that a hotel lobby is a public place, and, based on the definition, where the stage is located is a public place. It is owned by the City, the public is not excluded from it and a person has to cross it to access the

public docks at the marina. Therefore, MCG is clearly in violation of that section of the noise ordinance since a loudspeaker or amplifier or anything that accentuates sound is in a public place.

Since this is a clear violation according to Senator Campsen, MCG is in default of the lease since the lease states that the lessee shall abide by all federal, state and local ordinances, and, since they are in default, they cannot renew the lease.

Another provision of the noise ordinance says that “there is a general prohibition against any unreasonably loud or disturbing noise.” Senator Campsen noted that the City does not include a decibel level in the ordinance, but looking at other ordinances, for instance Charleston County, and the decibel levels that have been recorded exceed what is in the County’s or other ordinances where decibel levels are stated.

Quoting §9.2.5 a. (5), the Senator stated that a violation also occurs with:

“The playing of . . . any musical instrument in such manner . . . as to disturb any person, or . . . as to disturb the quiet, comfort or repose of any person in any dwelling or other residence”

Countering suggestions that the noise ordinance is subjective, Senator Campsen commented that the prohibition of loudspeakers or amplifiers in a public place is not subjective, but he allowed that there is some subjectivity to the statement about “loud and disturbing noise.” He added that the wording is subjective only to the extent that it looks to the opinion and impact of the noise on the individual or the resident.

Contrary to what residents are being told about enforcement, the Senator indicated that he sees a very strong noise ordinance and that it is easily enforced because the lawn where the stage is setup is a public place. He stated that normally there is one (1) mechanism for enforcement, i.e. the police, but, in this case, the City has a second and possibly stronger mechanism in that it is the landlord.

Senator Campsen concluded by saying that the music needs to be inside Morgan Creek Grill.

Administrator Tucker asked whether there have been occasions when the neighbors were disturbed when the noise is inside or upstairs. Senator Campsen answered that he is disturbed a lot when the music is upstairs because it projects the noise further. He repeated that the music needs to be inside the heated space.

Administrator Tucker commented that possibly the only thing that would solve the problem would be to move all of the music inside the heated space. The Administrator thanked the residents present for bringing the problem to the City’s attention; while she was aware that there have been police responses to MCG for noise, she was under the impression that the police were responding, the noise was being mitigated and everything was then OK. Those attending the meeting communicated that, if that is happening, it is not enough because the pattern

repeats itself; the Administrator also noted that she was not aware of the extent to which the neighbors were being disturbed.

With no one asking to speak, Chair Loftus asked Jay Clarke, owner of Morgan Creek Grill, and Carla Pope, General Manager, to come forward for further discussion.

Mr. Clarke stated that he received notification of this problem the previous evening and he was unaware that the business was in default of its lease at this time. From the last Real Property meeting he was under the impression that the lease renewal had been completed since the balance of additional rent had been paid. He believed this to be a legal issue that he was not prepared to address. In the past, Mr. Clarke has met with the Livability Officer on several occasions and has purchased a decibel meter to try to keep the noise down. He noted that there are no specific guidelines or decibel levels in the ordinance to quantify what is too much noise. He confirmed that the lease states that the restaurant is to abide by all laws, and he thought they were doing that. From his standpoint, the City may need to change or fine-tune the ordinance.

Mr. Clarke noted that a big part of the investment in the restaurant is to provide entertainment because it is what people want. He said that he has only been approached by one (1) person, Phillip Smith, and once was regarding the music and another instance was about the dumpsters. He agreed that a while back, the stage was positioned differently; the managers have all been instructed to control the volume of the music. As for the outside speakers/amplifiers, Mr. Clarke said they are all over the island, and he questioned how he could comply without something more specific. In addition, he took exception with statements that nothing has been done; the music has been turned down, and they are no longer booking loud bands. He was resolute in saying that he wants to work with the City, and the "voice of reason" was to fix the problem as soon as possible with direction.

Ms. Pope said that she is the day-to-day manager at the restaurant, and she only sees the police; she stated that she never gets a phone call from a resident saying that there is still a problem with the noise. With no clear direction from the City, tMCG purchased a decibel meter and arbitrarily picked eighty (80) as the number to keep the noise under. She recalled one or two (1-2) instances when the police showed up at a time when the restaurant was having music every night in the summer; the next incident was with the first oyster roast when there was a very dramatic musician who was very difficult to control. He was told twice to turn down the music, the police came and gave the restaurant two (2) warnings, and, at the close of the evening, she told the musician that he would not be invited back. In addition, Ms. Pope reported that the compliance with noise levels was on the website and in the contract with the restaurant. She stated that they are doing all they can and to do more she needs know when the music is too loud and to know the acceptable decibel level.

Mr. Clarke stated that he wants to see the City renew the lease while a solution is being worked out. In the interim, he said that they would work diligently to reduce the noise and would begin to do so immediately.

Councilmember Bergwerf reiterated that Senator Campsen had pointed out that it is illegal to have amplified music, so the first step is to eliminate that.

Mr. Clarke responded that should be true for the entire island.

Councilmember Bergwerf noted that she lives about four (4) blocks from Coconut Joe's and the Windjammer, but she never hears music from them at her home.

Chair Loftus brought up that Morgan Creek Grill routinely gets behind in its rent in the winter months; Mr. Clarke countered that they have always paid the rent and substantial late fees as they have struggled to stay in business through hard economic times. Mr. Clarke added that Administrator Tucker has always enforced the terms of the lease.

Mr. Lynch addressed the Committee again and reported that, contrary to previous statements, his wife has made numerous calls to the restaurant – twenty to thirty (20-30) times – and – been told “Oh yes, we will take care of it.” Yet they are kept awake until the wee hours of the morning.

Mr. Clarke apologized to Mr. Lynch for his having to call the restaurant and not getting them directed to the proper manager. He asked that, if Mr. Lynch feels compelled to call in the future, he ask for a manager and get the name of the person taking the call.

Mrs. Linda Lynch approached the Committee and stated that she asked for a manager each time she called and the person at the restaurant that she is speaking to says “I’ll deal with it” in a ‘disconnected voice.” She added that she gets nothing and the call apparently goes nowhere. In her opinion, the situation is “dreadful.”

Senator Campsen indicated that his wife has called numerous times as well and called the police only to be told that they really cannot do anything, but they would go to ask for the music to be lowered.

The Senator repeated that §2.B of the lease states “Tenant may not renew this Lease if Tenant is in default of any provision of this Lease at the time Tenant exercises the option or at the time of the commencement date of the renewal” which is October 31, 2014.

From life experiences, Senator Campsen stated that it is difficult to convince an individual of a proposition, a principal or a concept that is not in their financial self-interest, and in his opinion, Mr. Clarke has a financial self-interest in playing the loud, amplified music, but the ordinance does not look to what he thinks is reasonable music. He read again Section 9.2.5. a. (5):

“The playing of . . . any musical instrument . . . with such unreasonably loud volume as to disturb any person, or the playing of such instrument in such manner as to disturb the quiet, comfort or repose of any person in any dwelling or other residence.”

The Senator stated again that the ordinance does not look to what Mr. Clarke thinks is reasonable, but looks to the Lynches and the Phillip Smiths and what they feel is reasonable. He agreed that the ordinance is subjective in that it asks for their opinion, but it is not subjective to the point that it is unenforceable. With the number of calls to the Police Department recorded, Senator Campsen believes it is clear that “many other reasonable people have been disturbed in their dwelling, and that is a violation of the ordinance.”

The Senator added that, in his opinion, there needs to be a consequence to make something happen.

Councilmember Buckhannon recalled the time when a resident lived across the street from the Windjammer and complained every Friday and Saturday night that the music was too loud; at the time, the Windjammer left the doors open, but when the doors closed, the resident still complained. The situation reached a point when the Windjammer spent quite a bit of money in infrastructure to sound-proof the structure; now one only hears a muffled noise on the street. He said that the ordinance has been enforced in the past, and it took going to court a number of times as well; therefore, he does not understand why the ordinance cannot be enforced today.

Recognizing that Morgan Creek Grill has realized some success as a music venue, the Administrator asked if the success been so enjoyable that it could be done in a different way, i.e. sound-proofing on the interior and moving the acts to the interior to operate both a restaurant and a music venue.

Ms. Pope expressed the opinion that it was unfair to ask them to make such a decision under the circumstances.

Councilmember Bergwerf asked whether they could point the stage toward the restaurant; Ms. Pope answered that it would not make any difference.

Mr. Clarke added that he would look to have the provision disallowing amplified music to be enforced all over the island.

Chair Loftus suggested that the lease be changed to include a provision that would be very specific about the noise.

Administrator Tucker stated that the most imminent thing was whether or not the City wants to take the position that the lease cannot be renewed at this time because the tenant is in default due to its violation of the City's noise ordinance. The second issue was whether the City wanted to do some extension of the renewal period in an effort to work something out on the noise issue. The Administrator said that she did not get the impression that the Committee wants to have a new tenant, but nothing can be done rapidly because of the legal work to come up with provisions to the lease. The Administrator repeated what she had said earlier in the meeting that, if the noise ordinance is to stand as it is, the only real solution is to move any amplified music inside.

According to the Administrator, the only way to delay the renewal is to make the default claim and to extend the renewal period if acceptable to the tenant.

Mr. Clarke stated again that the ordinance should be fine-tuned, but they could tone things down and eliminate the amplified music. Although it is a difficult issue, Mr. Clarke believes that, if the City can be specific in the noise ordinance, a solution can be found, but he repeated that the City must be fair with everyone and all businesses have to comply.

Administrator Tucker notified the Committee that to change the ordinance would take a minimum of two (2) months.

Chair Loftus stated that, with what has been revealed at this meeting, the ordinance must be enforced.

If the Committee wants Morgan Creek Grill put on notice that they are in default, the City must notify them and find out if they are agreeable to extending the renewal term for a period of time until it can be sorted out. The other position to take is to notify them that they are default and to come into compliance, they must follow the ordinance, and they have two (2) days to come into compliance or the lease does not renew. The Administrator opined that she sees these as the only options open to the Committee.

Councilmember Buckhannon agreed that the best course was to extend the renewal term, giving time for the Committee to study further and to the City Attorney to get her perspective; he said that Morgan Creek Grill should be allowed to continue to operate their business, but it has to be in compliance with the lease and the law.

Senator Campsen said that he would not be in favor of amending the noise ordinance because it basically says that people should not be disturbed in their homes. In addition, the ordinance says that amplified music is not allowed outside but would be allowed inside where the owners would keep the music within reasonable limits.

Administrator Tucker told Mr. Clarke that the inclusion in the ordinance of "public place" might influence the noise ordinance enforcement island-wide based on amplified music outside.

Having studied Senator Campsen's letter, Chair Loftus agreed that the language in the lease needs to be strong and that the City has a responsibility as a landlord.

Councilmember Buckhannon took a different point of view; he suggested that, if the City had a rental property that consistently had noise violations, the landlord would lose his rental license as the responsible party. In his opinion, responsibility to follow the law falls to the City. He would like to see the City work with the tenant on the language in the lease and acknowledge that the law works. Morgan Creek Grill should be given an extension to the lease renewal period.

MOTION: Councilmember Bergwerf moved to extend the lease renewal period for Morgan Creek Grill 60 days, or until December 31, 2014; Chair Loftus seconded and the motion PASSED UNANIMOUSLY.

A. Discussion of Lease Renewals for the Marina Outpost and Marina Joint Ventures

Marina Manager Berrigan took the opportunity to first apologize to the Committee for the way he reacted at the meeting of October 14th and apologized to Administrator Tucker for getting the lease amendments to her at the last moment.

Mr. Berrigan asked John Shaffer of Shaffer Waterfront Solutions to join him to review the plan they have developed for the up-fit of the marina parking lot (the Dry-stack Conceptual Layout and Parking Plan is attached to the historical record of the meeting).

Mr. Shaffer stated that this plan was built upon previous efforts made for a Marina Master Plan and feedback received from those efforts; the plan as presented works with the existing marina layout and could work with any future improvements at the marina. He will focus discussion on parking, but the conceptual drawing does include a dry-stack that has been considered as a part of a master plan. The plan represents an improvement to the existing conditions, a net increase to the total number of spaces, provides more order, control and simplicity of movement with striping to guide and provides better pedestrian safety. The vision includes a reception feature at the entrance, not shown on this drawing, to welcome people to the marina, to provide directions to the various businesses and possibly to collect fees. The loop through the marina will flow from the entrance to the right, and this first section of road will be one-way; within the marina, traffic will be two-way. The parking contains a good mix of dedicated car spaces and dedicated boat trailer spaces; the plan also includes two (2) areas of angled, pull-through flexible spaces that will accommodate boat trailers, buses of children going on eco-tours or two (2) cars. Both Mr. Shaffer and Mr. Berrigan believe that this configuration has flexibility during the day when boat ramp traffic is heavy and in the evening for guests to the restaurant. Sidewalks will run parallel to vehicular circulation; to improve pedestrian safety, there will be striped cross-walks. As presented, consideration has been given to deliveries, dumpsters and emergency access, as well as golf cart parking and bike racks near the marina store. The property would be landscaped; Mr. Shaffer is proposing that the travel aisles be paved and the parking spaces have some type of pervious surface. To preserve open space, a park will be along the Intracoastal Waterway and the open area will remain between Morgan Creek Grill and the boat ramp. The fuel station will be in approximately the same location but will be re-configured to fit into the new configuration. Mr. Shaffer concluded saying, "This proposal improves the circulation, the flow and the safety which should result in an improved experience for the marina users, the marina tenants and the citizens of the Isle of Palms."

Responding to Councilmember Bergwerf's question, Mr. Shaffer said that this plan provides one hundred fourteen (114) dedicated car spaces, seventeen (17) dedicated trailer spaces and thirty-one (31) flex spaces. Presently at the marina there are about sixty (60) spaces for boat trailers and about one hundred (100) cars.

Administrator Tucker asked if they had a cost estimate for this proposal, and Mr. Shaffer reported that, with the site work, utilities, landscaping and consulting fees, the estimate is one million one hundred thousand dollars (\$1,100,000), and does not include the dry-stack.

Mr. Berrigan introduced his attorney Gray Taylor of Buist, Byers and Taylor who was present to present the proposed amendments and to answer questions from the Committee. Mr. Gray commented that the tenant has exercised his right to extend the leases for the marina and the marina store which are for a ten (10) year term. In order for the tenants to make a one million dollar (\$1,000, 000) capital improvement to the marina property, the tenant needs to know that he can recoup the cost over the life of the lease; therefore, the tenant is requesting that the lease be extended for an additional twenty (20) years for a total of thirty (30) years. With the term requested, the tenant can recoup his costs and, after the FY15 budget year ends, Mr.

Taylor asked for a seven (7) year rent abatement period when the tenant will be paying off the cost of the improvements rather than paying rent to the City. At the end of the seven (7) year period, annual rent increases for the Marina Outpost lease would set back in.

Administrator Tucker noted that that Mr. Taylor had mentioned the rent increase starting for the Marina Outpost lease, but no mention was made of what happens to Marina Joint Venture's lease after the seven (7) year rent abatement period.

Mr. Berrigan stated that Marina Joint Ventures lease was intentionally left out because the financials for MJV cannot afford future rent increases; he stated that he is at the maximum he can handle. If the dry-stack comes to fruition, MJV will be prepared to offer a financial package to the City.

The Administrator concluded that the rent for Marina Joint Ventures will resume with only the annual CPI increase. Mr. Berrigan added that he is proposing an increase of twelve hundred dollars (\$1,200) a year for the Marina Outpost lease in addition to the CPI increase for the duration of the thirty (30) years.

Mr. Taylor reiterated that the proposed lease amendment eliminates the additional rent component and the twelve hundred dollars (\$1,200) is intended to offset it.

Mr. Taylor voiced the opinion that the marina will benefit the most from the parking improvements as it provides the ability to get in-and-out of the parking lot. He commented that the store has become a *de facto* grocery store for that end of the island.

Mr. Berrigan stated that, with approval of the lease amendments, he is committed to executing the parking lot improvements as quickly as possible; he believes that the parking problems need to be addressed before anything else at the marina.

Chair Loftus asked how Mr. Berrigan's estimate for the work compared with the cost if the City were to do the work. The Administrator explained that, if one examines the fund balances of the Marina Fund, there are not sufficient funds available to make a one point one million dollar (\$1,100,000) investment. If the City was to move forward with this plan, it would have to borrow the money or stop doing some things that are currently being covered by tourism funds and move that money into investment in the marina. But, the Administrator noted that most the uses of the tourism funds are things that Council would want to continue to do. Therefore, the Administrator stated that, in the near term, the City does not have adequate funds for the City to make such an investment in parking at the marina without borrowing, and Council's current position has been to save for things rather than borrow money. On a savings plan, it would take a significant amount of time to amass the amount needed in the Marina Fund.

Recalling comments made to Council the night before, Administrator Tucker commented that the City can continue to do what it has been doing, i.e. address lesser expensive things as they become critical with available money, or to address a much more global improvements by borrowing the money to do it under the City's bonding capacity or the City could look to private investment to be able to make the improvements for the City that then become the City's assets.

The Administrator voiced concern about the idea of saving two or three hundred thousand dollars (\$200,000 to \$300,000) every year for a long period of time to take on a major improvement in that things are going to fail; the replacement of the underground storage tanks is a mandated expense to the City and the current estimate for the replacement of the docks is in excess of five million dollars (\$5,000,000). The City does not have that kind of money in the Marina Fund and would be challenged to pull it together from a mixture of the funds.

Chair Loftus expressed concern over the amount the City would be giving up in rent for the seven (7) year abatement period; Administrator Tucker told him that City would give up one point seven million dollars (\$1,700,000) by the City's calculation of the structure being proposed.

Mr. Taylor reminded the Committee members that the tenant will be paying significant interest on the money he must borrow to make the improvement, and there is a likelihood that the costs will increase slightly over time. He stated that the City would not suffer any rent lost in the FY15 budget. The goal is to make the improvements during January and February of the City's next budget cycle; in the meantime, the tenant will be getting the plans finalized, to bid and award a contract, to get all of the permits in place and do the work at the height of the off-season.

Chair Loftus stated that he would want a firm date for the completion of the parking improvements spelled out in the contract; Mr. Taylor said that they would include a construction schedule in the contract.

Councilmember Bergwerf questioned the inequity of the one point one million dollar (\$1,100,000) investment on the part of the tenant to the City's loss of one point seven million dollars (\$1,700,000) in rent. Mr. Berrigan explained that the investor is going to borrow the money, the bank is going to get their principal and interest, and the investor deserves to make some money as well. Mr. Taylor added that the two (2) operations would suffer a significant loss of revenue during the construction period; according to Mr. Taylor, they are trying to build in a realistic recovery of the true expense. By the spring of 2016, Mr. Taylor expects for the City "to have an extremely nice gateway to its marina."

Chair Loftus asked whether irrigation would be included, and Mr. Shaffer answered that they hoped to use native plants that do not require a great deal of irrigation. He also reminded the Chair that the Committee is seeing a very conceptual project.

Councilmember Buckhannon noted that he has been a strong proponent of extending the term of these leases to pass some of the expenses the City would incur and the parking is one (1) of them. He reported that Council has been working with the Planning Commission to develop a new parking lot scheme; some of the numbers coming out of that well exceeded the estimate Mr. Berrigan has gotten. The Councilmember recalled that the money originally put into the FY15 budget for parking at the marina was cut in half for the final version. In his opinion, Councilmember Buckhannon stated that, if the City maintains the marina, "it would continue to have this blight of a property there." He added that the City must look at the financial obligations that it will continue to have such as dredging, docks, the bulkhead, and replacement of the fuel storage tank for which the City has no funds set aside.

Chair Loftus asked whether the storage tank should be replaced before the parking improvements.

Of concern to Councilmember Bergwerf was that the marina rent has been used to pay the marina debt, and the City will have to find another source to those principal and interest payments.

Administrator Tucker said that the revenue would disappear, but the expenses would continue, and they include the items that fall to the City – certain operating expenses, some of the capital expenses and the debt service. Those items would remain to be funded, but there would be a reduction in revenue which would have to be dealt with in the FY16 budget. The City will get the benefit of an infusion of money into the site and the benefit of things that would be removed from capital list that need to be replaced. The Administrator reminded the Committee that the marina debt will be paid off in 2019 which will reduce the City's expenses for the marina, but others may increase.

A question is whether there might be other mechanisms or negotiations that could occur, keeping the thirty (30) year term on the table, but with different concessions from what are currently proposed; there might be alternatives that would make it easier for the City to accept this adjustment that has pros and cons for both parties.

Mr. Taylor summarized that both parties have articulated well their positions on the proposal; he acknowledged that the City is extremely constrained in its ability to fund capital projects; and the City has a private commercial business that is willing to fund improvements but needs some financial consideration for doing it. He commented that they were willing to have discussions with the City on alternatives to their proposals that might be better for everyone; he said that the things that will not change are the financial statements of the businesses, the cost of the improvement and the ability for the tenant to recoup those costs over time will be a necessity.

Administrator Tucker said that what she believes the “givens” of the proposal are as follows:

- a thirty (30) year extension on both leases,
- all marina store and marina assets – listed or not listed on the City's capital plan – become the responsibility of the tenant for repair and replacement except the bulkhead, the underground storage tank,
- the City's insured assets at the marina remain the responsibility of the City, and
- the replacement of the docks will be discussed again in the future.

The Administrator continued saying:

- the property tax statement in the leases stays as it is,
- the City retains approval of all capital improvements,
- the City retains the responsibility for paying the dock insurance,
- rather than abating rent, establish a new toggle to the additional rent provision, on MJV, the toggle would be greater than one million dollars (\$1,000,000) and, on the store, two percent (2%) over seven hundred fifty thousand dollars (\$750,000)
(This would reassure Council, and future Councils, that should the marina become hugely successful, the City will receive a portion of the gross profit.)

- the monthly rent would remain the same, increasing by the CPI,
- perhaps abate monthly rent based on the improvement, meaning that the improvement is completed and because it is done, the City abates rent in arrears to that.

On this plan, the tenant would submit to the City by January 31st of each year a statement of what is planned in "x" period of time to allow the City to plan for its budget. The rent abatement is after the improvement is completed and would likely be dollar-for-dollar.

Assistant Dziuban explained that the City does not want to get in a situation where it agrees to abate rent and something happens that the capital improvement does not occur.

Mr. Taylor responded that, while the rent abatement might be written into the amendment, it becomes effective when the tenant (a) gets a design approved by the City, (b) gets it permitted, (c) engages contractors and (d) does it and gets the equivalent of a Certificate of Occupancy (CO). He added that the rent abatement on a monthly basis will be far less than the capital outlay; for this project, the work would take about three (3) months, but planning might take a year. Mr. Taylor was confident that this could be easily addressed.

While this might make the proposal more acceptable to Council, the matter of how the City would fund the gap remains a problem.

The Administrator explained that the additional rent provision was added back at the request of a Council member, but she noted saying that she did not think the CPI increase was enough.

Mr. Taylor said that they were trying to go away from the CPI because they thought a straight increase was much simpler to calculate and allows the tenant to project ahead for years.

Councilmember Bergwerf voiced the concern that, if the City stays with an annual CPI increase in a thirty (30) year lease, in ten to twenty (10-20) years the City's cost of doing business to keep the marina and whatever the City has to pay for will be outpaced to the rent increases.

Mr. Berrigan clarified questions about a dry-stack and the financial package that accompanies it; he stated as a matter of fact that the City would see a rent increase if the dry-stack becomes a reality. He commented that, to make it work, a new lease would have to be negotiated; Mr. Taylor stated that the current leases do not contemplate anything like a dry-stack much less a five to six million dollar (\$5,000,000 - \$6,000,000) capital investment necessary to make it happen.

Mr. Taylor asked if the City would be happier if they proposed a percentage increase every year rather than a flat twelve hundred dollars (\$1,200) per month. Councilmember Loftus indicated that he would be more satisfied with a percentage. Mr. Taylor said that they would prefer that both leases have the same calculation for an annual increase.

Administrator Tucker expressed the opinion that somewhere between what Mr. Taylor and Mr. Berrigan were proposing and the things discussed during this meeting there is a compromise that both parties can accept. She also voiced concern that the City could not sustain a complete rent abatement, but it could possibly sustain a rent reduction; the Administrator stated

that she does not know how the City would make up the money. She asked that they figure out at what point they could pay some rent and still make the numbers work rather than one hundred percent (100%) abatement.

Mr. Berrigan remarked that, in that scenario, the City is asking that they carry the debt longer and, therefore, pay more interest; he said they would counter that the rent abatement would have to be extended from seven to ten or eleven (7 to 10 or 11) years.

According to Administrator Tucker, the FY15 debt service for the marina to be paid from the Marina Fund is approximately two hundred thousand dollars (\$200,000).

The Committee agreed to re-schedule the November meeting from November 6th to 5:30 p.m., Monday, November 17th.

3. Adjourn

MOTION: Councilmember Buckhannon moved to adjourn the meeting at 7:50 p.m.; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk