

REAL PROPERTY COMMITTEE
5:00pm, Wednesday, January 15, 2020
City Hall Conference Room
1207 Palm Boulevard, Isle of Palms, SC

MINUTES

1. Call to order

Present: Council members Bell, Buckhannon, and Popson

Staff Present: Administrator Fragoso, Asst. Administrator Hanna

2. Election of Chair and Vice Chair

Prior to nominations, Council Member Bell thanked everyone who chose to retain his place on this committee. He also lauded the work done by the Real Property Committee during the previous two years. Noting complaints received about an unnavigable website, he said the City and the Committee have been very transparent and all information can be found on the City's website.

Council Member Popson nominated Council Member Buckhannon for Chair of the Real Property Committee. Council Member Bell nominated himself for Chair. There being no other nominations, a vote for Council Member Bell as Chair was taken as follows:

Ayes: Popson, Buckhannon

Nays: Bell

Council Member Buckhannon nominated Council Member Popson as Vice Chair of the Real Property Committee. There being no other nominations, a vote was taken as follows:

Ayes: Buckhannon, Popson

Nays: Bell

3. Approval of previous meeting's minutes – November 6, 2019

Council Member Bell made a motion to approve the minutes of the November 6, 2019 meeting. Council Member Popson seconded the motion. The motion passed unanimously.

4. Citizens' Comments

Patsy Hindman, 7 Barnacle Row, said she believes there has not been enough transparency in the process regarding the plans for the Marina. She expressed concern and shock that there were only three responses to the RFP. She said there should be more information on the City's website.

Nancy Townsend, 254 Forest Trail, spoke in support of Tidal Wave Watersports. She said they are part of the community and act as good examples in the community. She also expressed concern about information not being made available ahead of time.

Susie Kopp, 2504 Waterway, also spoke in support of Tidal Wave Watersports. She also expressed concern about the lack of response to the RFP for the restaurant space at the Marina.

Debbie Faires, 3305 Cameron, agreed with the statements made by Susie Kopp.

Marina Townsend, 254 Forest Trail, spoke in support of Morgan Creek Grill, stating it was her first job. She said their closing is a devastating loss to the community. She also spoke in support of Tidal Wave Watersports.

Michael Fiem, 69 41st Avenue, thanked the committee for changing the meeting time to 5:00pm.

5. Old Business

A. Update on permitting for marina docks and dock currently leased to Tidal Wave Watersports

Administrator Fragoso said, “The City received the OCRM permit for the work at the marina docks this week. The next step will be obtaining the Corps permit, the US Army Corps of Engineers’ permit, and we expect that to be issued by the end of January if everything progresses as we expect. That means that by February we should have both permits, OCRM and the Corps, as well as the final design on the improvements to the Morgan Creek side docks and the geotechnical investigation. You will all recall City Council approving that expense late last year. The City should be in a position to be ready to go out for bid this summer with the expectation to be issuing a notice to proceed with the construction after Labor Day. We have been timing this whole process so that the construction would begin, would not sort of interrupt or disrupt the marina operations as much as possible. We are also in the process of investigating the permitting process for the dredging. You will see if you look at the FY20 10-year Capital Plan, dredging for that site is also scheduled for FY21. We have initiated some efforts to reach out to the other marinas, neighboring marinas, in an effort to coordinate that effort and potentially reduce the cost of both the permitting and the actual dredging.”

With regards to the permitting of the dock at Tidal Wave Watersports, she said, “The full permit application was submitted in November. It has gone through the public comment period. No comments were received, which is a really good thing. It tends to expedite the internal staff review process. It will go through the same process that the marina dock permit just went through. After OCRM looks at it, the Corps will give a final determination.” She then gave a brief review of the work the City has done in coordination with OCRM, ATM, and the Marina tenants since 2018.

She shared her concern about citizens’ comments about the unnavigable website and said that they have set up a meeting with the website coordinator to discuss changes.

Council Member Bell added that City Council, while advised on the permitting process, is not involved in driving the process, and also has been surprised by the delays.

B. Update of marina restaurant lease proposal

Administrator Fragoso reported, “December 2019 the Council voted to enter into exclusive negotiations with the IOP Families Group, which are represented by the Bushnell and the

Lorenzes families and began a 90-day due diligence period. In addition to evaluating new construction scenarios, the proposer has also been conducting due diligence by meeting with the Building and Planning and Zoning Director and Inspector about the options available for the rehabilitation of the building.”

Council Member Bell said he was also concerned about the lack of response to the Marina restaurant RFP, but noted it is a very complicated issue including a complex lease and extensive building rehabilitation. Council Member Bell other people expressed interest in the space but did not turn in proposals.

C. Update on Greenbelt project application – ADA-compliant beach walkover and observation deck at 42nd Avenue

Administrator Fragoso said the application for this project is in process and will be submitted prior to the January 31 deadline. She noted it is a long approval process, and if approved, the project will appear in the next budget year (FY22). Committee members briefly discussed the use of epoxy versus other building products for such a project.

D. Update on Public Safety Building rehabilitation project

Administrator Fragoso reported the contract for the 12-month mobile office for the Police Department has been executed and they are expected to arrive in early February. Staff has developed a relocation plan and will be mobilized prior to the start of construction in early March. She said the final drawings needed for permitting have been submitted. The contractor is out for final pricing with subcontractors, and staff expects final pricing for the whole project to be available by the end of the month. “The plan is to bring those numbers to Council for Council to then award the final phase of that contract which would be for the actual construction, which again, is slated to begin in March.”

She added the owner’s representative (Insight) has been retained and was present at the kickoff meeting in December. Staff has weekly meetings with the design build team to review plans for the project. She also noted there is a healthy contingency amount built into the project budget should be there any surprises during construction.

6. New Business

A. Discussion of timeline of Council’s action related to the existing Tidal Wave Watersports lease

Administrator Fragoso reviewed the timeline of the City’s lease with Tidal Wave Watersports. She said, “The City approved the assignment of the watersports lease for the current tenants in August, September 2006. That lease was amended in 2010, and as part of the terms that were included in that lease, included a 5-year extension until September 2015 with the option to be automatically be renewed for three additional 5-year terms. The first auto-renewal for that lease happened in 2015 for five years. That first automatic renewal was up this year. On April 23, 2019, City Council voted not to renew, to notify Tidal Wave that it did not have an intention to renew the existing lease. The deadline to notify, according to the lease, if the City was not going to renew the existing lease, then it has a year to notify the tenant that that was not going to

happen. So that is what happened back in April. The City had every right under its agreement with the tenant to exercise that right. It was a lease that was agreed to by the tenant that gave the City that opportunity to not renew. I cannot speak for all of the Council members about their decision about doing that. It has been something that has been talked about even before through the whole Marina referendum process that the majority of that site is under contract, under two leases that don't expire until 2045. So there had been questions and comments and discussions about the public wanting more public access, and I think you all have seen the comments we have received so far. For the past five years, since I have been on board, there has always been some talk about too many commercial businesses or we want a public park. I think that that may have been one of the reasons why City Council decided not to renew that lease to give themselves the opportunity to reevaluate the use of that site. There were also some discussions about wanting to change the language of that lease. Also determining what the fair market value was for that lease. I think even the tenant agrees that the lease is not the best lease and that it would rather have it have different language. Council also discussed changing or wanting to evaluate a different method for calculating additional rent, whether it is gross profit. Obviously, it should be gross sales not gross profit, and how difficult it is to sort of manage that. I think there were multiple reasons why Council took that action. It was my responsibility to make Council aware that there was an opportunity to make changes to that lease. Same thing with the restaurant. It was discussed by previous Councils, and it was also presented as an option to Council this time. If not, if Council had not been aware or Council did not take any action, then the lease would have been automatically renewed for five years, and it may have been difficult to envision doing something different if it was the will of Council. So we brought that up to the Real Property Committee. It had been discussed prior during the referendum process about the 2020 being an opportunity for Council with the lease of the restaurant and the watersports operations lease to do anything different, if Council chooses to do so. That is ultimately a Council decision."

Council Member Bell noted it was a difficult and complicated subject for Council to review, and the vote to not renew the lease was a close 5-4 vote. He added, "It was not renewed because it was proposed to sign the lease and then negotiate the lease terms. So to those that think this is a moneymaker for the City, it is approximately \$22,400 a year, on average, for the last ten years. That is \$53 a day. Excluding depreciation, we spend more money than that to maintain that dock. There was no financial incentive for the City. Having said that, and I will say it again here, four times, me personally, I have said if we are going to have a watersports company on our waterfront, it should be Tidal Wave Watersports. They are a responsible operator. The discussion was not had at that the time of that lease renewal as to should we have a public dock, should we have anything else? It was centered on the fact that we had a notification that was written into a lease that we knew was not financially in the best interests of the City to not renew that lease. There has never been a discussion that we couldn't have another lease with Tidal Wave. There has been significant discussion and counsel from our City Attorney and Desiree Frago so that we should be following South Carolina State Procurement Guidelines. By the way, we don't have to, but following procurement guidelines to go to public bid. That is where the discussion has led." Council Member Buckhannon reminded everyone of the public meeting to discuss the vision for the Marina on Thursday, January 30.

When asked if there is an option to renegotiate the current lease, Administrator Fragoso said, “There is no legal or statutory requirement for the City to follow the Request for Proposals method for the lease. The City Code has a section on the books that guides real property, sale or lease of real property transactions from the City. It states that City Council may use the Request for Proposals method if it finds that it is in the City’s best interest to do so. I was asked for my opinion, and Council asked for a legal opinion about what to do with leases, and best practices indicate that people, municipalities should consider competitive procurement to have a fair, open, competitive process by which you determine fair market value. But there is no requirement, and I have always been clear with Council that that is an option available to City Council to make.”

B. Discussion of lease extension options for the dock leased by Tidal Wave Watersports

Council Member Buckhannon said this topic should be discussed following the meeting on January 30. A brief discussion ensued on how to determine the fair market value of the lease.

C. Review of the Front Beach, Beach Maintenance, and Marina 10-year Capital Plan and discussion of new initiatives and projects for consideration.

Administrator Fragoso distributed copies of the 10-year plan for the Front Beach, Beach Maintenance, and Marina areas of the budget. This document appears in the FY20 budget and has not yet been modified by staff in preparation for the FY21 budget discussions. She is seeking input from committee members regarding projects or initiatives in these areas. She highlighted the projects slated for FY21, noting that drainage is still a priority. Council Member Buckhannon added the need for a sinking fund to be prepared for repairs to roads owned by the City.

7. Miscellaneous Business

The next meeting of the Real Property Committee will be Wednesday, February 5, 2020 at 5:00pm.

8. Adjournment

Council Member Bell made a motion to adjourn, and Council Member Popson seconded the motion. The meeting was adjourned at 5:55pm.

Respectfully submitted,

Nicole DeNeane
City Clerk