

REAL PROPERTY COMMITTEE

5:00 p.m., Tuesday, March 13, 2012

The regular meeting of the Real Property Committee was held at 5:00 p.m., Tuesday, March 13, 2012 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Buckhannon and Stone, Chair Loftus, City 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 had been duly notified of the meeting in accordance with the Freedom of Information Act.

2. Approval of Previous Meeting's Minutes

MOTION: Councilmember Buckhannon moved to approve the minutes of the regular meeting of February 6, 2012 as submitted; Councilmember Stone seconded and the motion **PASSED UNANIMOUSLY.**

3. **Citizens' Comments** – None

4. **Comments from Marina Tenants** – None

5. **Old Business**

A. Update on Beach Restoration Shoal Management Project

Administrator Tucker initiated her comments with showing the award the City received from the American Shore and Beach Preservation Association as 2011 Best Restored Beach resulting from the 2008 project. She announced that the City will receive another award for the project at the annual Municipal Association meeting in June 2012.

Assistant Dziuban reported that the shoal management project is in its first twenty-four (24) hours, and it is getting a lot of attention. Work will occur from dawn to dusk as they work with the tides, but no work will be done on the weekends, Good Friday and Easter weekend. The excavator has switched to a bigger bucket to speed up the work, and a truck is moving about every two and a half (2½) minutes. For safety reasons, the work area will be cordoned off when work is not occurring. The excavator has located a cluster of sandbags; based on the language of the contract, when the sandbags number around one hundred (100), they will be properly disposed of; if they encounter a larger number of sandbags, a change order will likely be issued for their disposal. Coastal Science and Engineering (CSE) has executed a lighting survey; a second will be conducted at the end of the project.

Responding to Chair Loftus' question, Assistant Dziuban stated that the target completion date is mid-April.

Administrator Tucker reported that City personnel are on-site counting the truckloads.

Councilmember Stone stated that he understood that the lighting survey had been eliminated as a stipulation of the permit; Assistant Dziuban said that the survey was, in fact, a part of the

permit. The lighting survey involves spending a couple of hours standing on the beach and viewing what lights were visible from the beach after the sun set. The Administrator urged Councilmembers to tell any residents in the area to turn their exterior lights off at night so that the survey can report no ambient light.

B. Update on Marina Dredging

1. Consideration of Alternatives Related to Dredging Area Behind Tidal Wave

- A. Remove and replace existing for \$13,000**
- B. Remove and replace with new for \$24,400**

2. Consideration of Change Order to Marcol Dredging for Hourly Work

Jack Walker of GEL Engineering joined the Committee for the dredging discussion. Administrator Tucker referred to an email (copy attached) from Mr. Walker detailing items that need to be covered in this meeting that include the following:

- Dredging around Phillip Smith's dock;
- Dredging hard material at the fuel docks;
- Dredging behind the Tidal Wave dock to remove the maximum amount of material;
- Dredging the area behind the restaurant; and
- Decision about keeping or replacing the Tidal Wave docks.

The Administrator recalled that the dredging contract includes a caveat that the removal of hard material will be at a different rate from the removal of softer material. The Committee needs to decide whether or not to authorize the hourly expense of "sitting" on those hard areas to achieve the twelve (12) foot dredge depth or to accept a lesser depth.

Relative to Mr. Smith's dock, GEL evaluated the area and determined that the silting from the drainage ditch is affecting the water depth around his dock; therefore, the City authorized the inclusion of that area in the project. In conversations with Mrs. Smith, concerns were expressed about the dredge getting too close to the dock pilings and compromising them; Mr. Walker responded to those concerns by agreeing to get no closer than ten (10) feet to their dock, which is how the project was designed and bid. The later complication related to the SCE&G cable affecting how close the dredger can get to the north side of Mr. Smith's docks. In the meantime, Mr. Smith contacted the dredger about the timing for moving his floating docks out of the way and learned that he did not need to move the docks because the dredger will stay ten (10) feet away. At that time Mr. Smith realized that the dredging around his dock was not going to happen as he had envisioned because that area is out of the contract. According to the Administrator, to add that area to the contract will not be a permitting issue, but will be an expense item of six thousand dollars (\$6,000). With the concerns about getting close to his pilings, the City would require that Mr. Smith sign a waiver not holding the City responsible should there be a problem with the docks as a result.

MOTION: Councilmember Stone moved to approve \$6,000 to dredge as described at Phillip Smith's dock; Chair Loftus seconded.

Mr. Smith described a miscommunication between his wife, the dredging contractor and himself about the dredging of his dock area and that he only learned that his dock would not be dredged upon asking about moving the floating dock. Mr. Smith commented that when the dock was constructed he had four (4) feet of water, today there is no water; therefore, he expressed confidence in the stability of his dock. He said that he has no problem signing a waiver to get his dock dredged.

Mr. Walker asked Mr. Smith to consider the depth he wanted to dredge because twelve (12) feet may be too deep for his pilings.

Amendment: Councilmember Stone moved to amend his motion to include a waiver of liability to be signed by Mr. Phillips; Chair Loftus seconded and the amendment PASSED UNANIMOUSLY.

Mr. Smith clarified his understanding that the dredging would not involve the north side of the dock, but would go to the dock on the IntraCoastal Waterway side and as far into the dock area as possible from the south side.

Since the expense is less than ten thousand dollars (\$10,000), Councilmember Stone asked whether this expense would have to go through Ways and Means and City Council. Administrator Tucker explained that, since this represents a change order to the existing contract, it is not a procurement issue and not a contract in excess of ten thousand dollars (\$10,000).

Chair Loftus asked the source of funds to pay for this and the other expenses discussed in the email. The Administrator noted that money remains in the contingency for the project of approximately sixty-six thousand three hundred dollars (\$66,300) and twenty-five thousand dollars (\$25,000) in the FY12 budget related to the Tidal Wave dock.

Councilmember Buckhannon wanted to clarify for the record that the work at Mr. Smith's dock is a result of the problems caused by the buildup of materials from the City's easement at the end of 41st Avenue. Mr. Walker stated that, in his oversight report from last Thursday, at an exceptionally low tide, photographs of Mr. Smith's dock depict a mound of material on the south side of the drainage ditch that progresses to the south under Mr. Smith's dock.

Vote on Main Motion: The motion PASSED UNANIMOUSLY.

The Administrator assured Mr. Smith that the City Attorney would draw up the waiver for his signature as quickly as possible; in the meantime, he could work through the details with Mr. Walker.

Relative to dredging hard materials at the fuel dock, Mr. Walker explained that the permit authorizes dredging up to the face of the floating dock, but nothing closer to the bulkhead. In dialoguing with Marina Manager Berrigan in the presence of the dredger, the best option is moving the floating dock, leaving the pilings in place, to have the dredger dredge in place to a depth of four (4) feet, as approved by the bulkhead design engineer. Mr. Walker confirmed that, at low tide, those docks are dry and in poor condition because of it.

MOTION: Councilmember Stone moved to approve up to \$6,000 to dredge behind the fuel dock; Chair Loftus seconded.

Mr. Walker cautioned that dredging this hard material is not an exact science. If the contractor gets to a depth of eight or nine (8-9) feet and determines that he is making no progress, the City would need to decide for the contractor to move on or to keep digging; therefore, he recommended authorizing a period of twelve (12) hours rather than a dollar amount.

AMENDMENT: Councilmember Stone amended his motion to a maximum of 12 hours at \$500 per hour; Chair Loftus seconded and the motion PASSED UNANIMOUSLY.

VOTE ON MAIN MOTION: The motion PASSED UNANIMOUSLY.

On the issue of dredging behind the Tidal Wave docks, Mr. Walker asked whether the operators needed twenty (20) feet of berth behind the floating dock or would ten (10) feet be sufficient. If the lesser depth is acceptable, the estimate of time to dredge may be too high; the quote of twenty-five (25) hours is to get about twenty (20) feet behind the floating dock.

Michael Fiem, one of the owners of Tidal Wave Water Sports, said that he wants the dredging project to last as long as possible; he said that, last summer, the south end of the dock was not only dry but was also twisting and contorting. Mr. Fiem said that currently he did not have to have twenty (20) feet to the rear, but he would like to have more mobilization there than in front on the Intra-Coastal Waterway for customer safety.

MOTION: Councilmember Stone moved to approve 25 hours at \$500 per hour to dredge behind the Tidal Wave dock; Chair Loftus seconded.

Chair Loftus asked if anything beyond tonight's discussions was going to impact the project's contingency fund. Administrator Tucker responded that some of the materials being dredged up may need to be addressed in a change order from Marcol, but no request has been made to-date. Mr. Walker said that he expects such a request to be made related to tires, chains, anchors, cables, etc. that are being brought up; in particular is the cable winds up in the cutter head as a result of encountering these materials that requires hours with a cutting torch to remove. Mr. Walker remembered that nine thousand dollars (\$9,000) is in the contract for lay time; the time to remove cable from the cutter head would fall in that category.

VOTE: The motion PASSED UNANIMOUSLY.

The next item on dredging was the hard-packed shell material behind the restaurant; Mr. Walker said that his probes indicate two (2) feet of soft material on top of the hard-packed shell. The estimate to dredge the hard material is again twenty-five (25) hours at five hundred dollars (\$500) per hour.

Motion: Councilmember Stone moved to approve 25 hours at \$500 per hour to dredge the hard material behind the restaurant at the marina; Chair Loftus seconded.

Chair Loftus expressed hesitancy at approving an additional expense here; he voiced the opinion that the area could fill in quickly. He also said he did not think this area of the dock got a lot of use.

Mr. Walker confirmed Councilmember Stone's opinion that removing the soft material would lift the dock out of the mud on a low tide, and he added that he does not think that this is a large accretion area and should not silt in fast.

Administrator Tucker offered an alternative of ten (10) hours to get some of the hard material from the area, as opposed to the full twenty-five (25) quoted.

VOTE: The motion FAILED on a count of 0-3.

MOTION: Councilmember Stone moved to approve 10 hours at \$500 per hour to remove hard material from behind the restaurant; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.

Marina Manager Berrigan requested that the post-project hydrographical survey begin in the area of the marina docks to ensure that the job has been done properly before demobilization; Mr. Walker explained that the dredger typically stays on the job an extra day while the hydrographic survey is done to eliminate his demobilizing and then having to re-mobilize.

The last topic for discussion relative to the dredging project is how to adequately dredge around and under the Tidal Wave dock; portions of it will have to be moved, and the City has gotten several estimates from several different vendors with several iterations on how to do it. One concern is that the dock could fall apart when moved, and several of the vendors would not assume responsibility for replacement if that were to happen. The expense to move it to get the maximum from the project was not a consideration when the dredging budget was built; the second question is whether to replace it at this time. In the FY12 budget, Council approved twenty-five thousand dollars (\$25,000) for the design and engineering to replace the Tidal Wave dock. The thinking last year was that the replacement has been on the capital plan for some years, and, if it were to be completely torn out and rebuilt, what would be the best way. What is being suggested tonight is simply the replacement of those sections that would have to be removed to accommodate the dredging. Although the contingency fund can handle this expense, the money in the FY12 budget can also be utilized.

Chair Loftus asked whether the City would be required to get a permit for the replacement of the dock; Councilmember Stone explained that, by using the same footprint and replacing what already exists, no permit is necessary.

The Chair's next question was whether the pilings needed to be replaced; Mr. Walker said they appear to be in good shape whereas the pilings under the fixed structure are hollow.

Councilmember Stone recalled that the Tidal Wave dock pre-dates Hurricane Hugo; during the storm it was deposited at Goal Island, then floated back and was located at the marina.

Councilmember Stone expressed hesitation at moving to proceed with the replacement of the dock when the cost estimates dictate initiating the City's procurement process which could take ninety (90) days to issue generate a design and bid documents and to hire a contractor. The Administrator related that the procurement code can be circumvented when there is an emergency or a sole source situation.

Chair Loftus suggested that, considering the dredge window, this circumstance may be deemed applicable for a sole source award in order to accommodate the dredger's schedule and to have the business operable as the tourist season looms.

The Chair asked Mr. Walker how long it would take to build a new dock rather than try to pull the old one back into place. Per a conversation Mr. Walker had with Jay Leigh, the recommended contractor, it would take only half a day to disassemble the dock assuming it is to be replaced with new. The construction of a new dock would take a week to ten (10) days, and the installation would take a two to three (2-3) days. Mr. Berrigan said that he could accommodate Tidal Wave Water Sports in another area of the marina while the work is being done on their dock.

Michael Fiem thanked the Committee for what they are contemplating doing for Tidal Wave. He noted that the pilings for their dock are in the middle of the dock; if possible, they would prefer to have the pilings on the side of the dock as they are on other docks at the marina. He added that, since the Committee appears to be leaning toward replacement, he voiced his opinion that time should be taken to decide how it should be rebuilt – he wanted the dock to be wider. He explained that the gangway ends at a piling and is not handicap accessible; he suggested that the new gangway be at a ninety degree (90°) angle and run parallel to the dock.

Mr. Walker agreed that the dock has a poor design, but reminded Mr. Fiem that any change to the footprint would require a permit. Mr. Leigh added that reconfiguring the ramp would not require a permit.

Administrator Tucker reminded the Committee that the decision before them at this meeting is what to do related to accomplishing the dredging; issues to designing a new dock need to be associated with permitting a new dock.

Councilmember Stone asked the Fiem brothers whether they would be willing to cover any costs in excess of the twenty-four thousand dollars estimated by Mr. Leigh. Michael Fiem expressed the opinion that they could not do so at this time, but the third partner, Michael Malley, did offer their "sweat equity" to keep costs down.

Councilmember Buckhannon expressed his opinion that the money to do this should come from the amount budgeted for FY12 despite the fact that the intent was different.

MOTION: Chair Loftus moved to approve the expenditure of \$24,400 from the Marina Fund for a sole source award to Jay Leigh for the removal of the Tidal Wave dock and replacing it with a new one; Councilmember Stone seconded and the motion PASSED UNANIMOUSLY.

C. Consideration of Landscape Architect Plan for 1207, 1301 and 1303 Palm Boulevard

Administrator Tucker introduced Kelly Messier to the Committee and asked that she review the conceptual drawing for the properties involved. The Administrator recounted that Council had authorized Ms. Messier to study all three (3) properties; the FY12 budget contained provisions for the City Hall parking lot, parking at the old Building Department site, and the possible elimination of the safety hazard created by garbage trucks turning off Palm Boulevard to access Public Works facilities. The charge to Ms. Messier was to determine whether the safety problem could be eliminated by moving the ingress/egress off of Palm, to capture as much parking as possible and to improve the egress from the City Hall parking area.

Ms. Messier explained the drawing which shows twenty-one (21) graveled parking spaces at 1301 Palm, the defined egresses at the rear of City Hall and replacing twenty (20) curb stops, and a new ingress to Public Works further down 13th Avenue with a circular drive exiting the existing entrance. The entry from Palm Boulevard will be used by drivers exiting the new parking lot to the right and would serve as an emergency access to the fuel station.

Administrator Tucker then directed the Committee's attention to the revised cost estimates for the project that was presented to Council in January. The original numbers have been refined by figures provided by Ms. Messier, and costs were added for the new circular driveway. The items on the schedule in red represent the additions to the budget for the Public Works site, while the items in blue represent refined numbers from those originally presented; the new additional amount needed to proceed with this project is sixty-six thousand five hundred sixty dollars (\$66,560).

Staff has discussed possible sources for this amount as being ten thousand dollars (\$10,000) from tourism funds, specifically the Municipal Accommodations Fees, because the new parking lot is expected to be used in part by visitors and the balance from the Capital Projects Fund that contains ninety-thousand dollars (\$90,000) from the City Hall renovations budget. Based on earlier discussions in this Committee about the difference in costs for this project and a similar project at the Methodist Church, Director Kerr spoke with the individual who arranged for the work there to determine if the City could procure some of the same type of deals on its project. The Director learned that the City would not be offered the same deal.

After Councilmember Buckhannon commented that the total project cost was now one hundred two thousand dollars (\$102,000), Councilmember Stone stated that the City is worthy of this project and the citizens would benefit from it. He expressed support for it to move forward; he added that it will give a pleasant appearance to the area to visitors, those considering buying in the area, and the residents of the island.

The drawing shows two (2) driveways at the rear of City Hall; Chair Loftus asked why there should be two (2) to the rear plus the existing one (1) on 13th Avenue. Ms. Messier noted that the two (2) areas are presently used as driveways. When the Chair then asked if the two (2) spots could be parking spaces, she said that the areas are in the right-of-way for Oak Harbor Boulevard. Ms. Messier said that gravel or ROC could be substituted for the concrete that is in the proposal to reduce costs; she added that the City Hall parking lot, as it is, does not meet any kind of design standards. She related that she has seen photos of the parking that occurs when court is held, and there are twenty-four (24) off-site spaces being used now; the new lot creates twenty-one (21). Ms. Messier added that one of her goals for the sites was to create a traffic flow.

Chair Loftus expressed concern for the cost of the project; he could not support the rehabilitation of the Public Works site. He also expressed a difference of opinion about the ability for vehicles to exit the newly created parking lot onto Palm Boulevard. He believes that vehicles should enter and exit that lot from 13th Avenue. The Chair asked for a modified plan that does not include the changes to the Public Works site.

Administrator Tucker explained that she had been concerned about the Glaves of #9 13th Avenue with the proposed changes, so she had contacted him to explain what was being proposed for the site. Mr. Glave said that he had spoken with Director Kerr, learned what was suggested, and had no problems with it.

Councilmember Buckhannon said that the changes being presented for the Public Works site were not part of the plan when Council approved the demolition of the old Building Department; since it was not budgeted for in this budget cycle, the changes must wait until the next budget cycle. In the FY12 budget, thirty thousand dollars (\$30,000) was made available for the two (2) properties; in addition, Council has authorized fifty-five hundred dollars (\$5,500) to the project from the Tree Fund; Councilmember Buckhannon was very clear that thirty-five thousand five hundred dollars (\$35,500) is the maximum he would support being spent in this fiscal year.

Councilmember Stone countered that the cost of the project was undetermined until the design was prepared. Further, he noted that this plan addresses a safety issue that he believes could potentially result in a very serious issue for the City.

Chair Loftus remarked that the City has lived with the present configuration for many years, and it has continued to be functional. He voiced concern over the way that the City continues to spend money and stated that the City cannot take on every project despite how attractive it may be. The Chair worries that the City could back itself into a tax increase on the citizens.

Councilmember Stone recalled that the City's revenues are trending upward with accommodations and hospitality taxes, and the annual budgets will continue to increase because of the increases in the costs of items the City must have to operate as the service industry that it is. He added that he views this project as another service that is needed. Councilmember Stone expressed disagreement with blocking the exit from the parking lot at 1301 Palm and forcing someone who did not find a space to back onto 13th Boulevard.

At this point, Administrator Tucker pointed out that eliminating the reconfiguration of the Public Works site removes thirty-nine thousand five hundred dollars (\$39,500) from the total, and the project remains under-funded with a total of fifty-three thousand two hundred eighty-two dollars (\$53,282). In addition, Assistant Dziuban reported that nineteen thousand one hundred fifty-six dollars (\$19,156) has already been spent for the demolition, asbestos removal and related items, the fencing and the landscape architect's fees; the balance of funds remaining from the FY12 budget is sixteen thousand three hundred forty-four dollars (\$16,344).

In an effort to reduce costs, Ms. Messier suggested the use of sand shell for the new parking lot and the exits behind City Hall. In addition, she indicated that the trees that will form the buffer between the parking lot and the Public Works site could be reduced in height to lower costs. She said that she would investigate the actual savings the suggestions would generate.

Councilmember Buckhannon repeated his stance that the project needs to be scaled back with the excess being handled in the next budget cycle.

Chair Loftus expressed the opinion that the project needs to be scaled back so that Council can stay focused on saving money to pay off debt and build up reserves for large purchases.

Councilmember Stone noted that this is not a time-sensitive issue, but he wanted to have the end-product look like the image that the community wants to reflect. He, therefore, asked to defer any action on the plan until it could be modified according to the Committee's requests.

D. Prioritization of Projects Greater than \$250,000

Chair Loftus stated that, as members of the Public Works Committee, he and Councilmember Buckhannon were in agreement on their prioritization, and Assistant Dziuban was asked to review it for Councilmember Stone. The Public Works list was as follows:

- 1) Drainage project at 42nd - 52nd Avenue
- 2) Bicycle and Pedestrian Infrastructure Additions
- 3) Recreation Ball-field Reconfiguration, Replace the Lights only
- 4) Underground Wiring Projects
- 5) Disaster Recovery Fund Increase

Councilmember Stone presented his list as follows:

- 1) Beach Restoration – other areas
- 2) Dune Walkover Additions and Replacements
- 3) Disaster Recovery Fund Increase
- 4) Island-wide Beach Access Parking Management System
- 5) Marina Dredging every 8-10 years

Councilmember Buckhannon pointed out that efforts appear to be underway in the FY13 budget for the drainage project for 42nd to 52nd Avenues and replacing the ball-field lights. Chair Loftus voiced his opinion that the most critical safety issue on the island is bicyclists and the lack of proper path.

Councilmember Stone explained that he made his selections from the perspective of a citizen; the drainage project will impact a small portion of the island, whereas the parking issues impact the full island.

Administrator Tucker clarified the value of identifying a project as a priority when the City has initiated the spending of money as, when situations occur that the City applies for grant funds for a project, the application is strengthened by attaching minutes of a meeting that clearly shows full Council support for the project.

MOTION: Councilmember Stone moved to adopt the priority list produced by the Public Works Committee as the priority list for the Real Property Committee; Chair Loftus seconded and the motion PASSED UNANIMOUSLY.

6. New Business

A. Consideration of Requested Amendments to Marina Joint Ventures and Marina Outpost Leases

Marina Manager Berrigan introduced Gray Taylor, his attorney, and Rhonda Sanders, his accountant, and indicated that he had asked them to accompany him to provide additional information that the Committee may require. Mr. Berrigan explained that he has put off making this request to the Committee for as long as he could; he prefers to speak to the Committee about the good things happening at the marina. He wants to have his leases with the City reworked to be more equitable to allow both parties to see some return on their investment. He stated that he had hoped the problems would go away, but the downturn in the economy served to compound them. In prefacing his comments, Mr. Berrigan pointed out that the marina has come a long way since it was purchased by the City toward becoming a first-class marina, and that is being proven by the comments boaters are posting the internet. He added that in the past week, the *City* paper had listed the IOP marina as the best stop for boaters in Charleston with a very nice write-up generating good publicity for both the marina and the City of Isle of Palms. Mr. Berrigan noted that he would like to continue to make improvements and, at the same time, make a reasonable profit. He commented that, in the thirteen (13) years that he has been affiliated with the marina, he is in a position that is totally foreign to him in that he is behind in his rent for the first time, but he is not asking for any concessions on what he currently owes the City; he assured the Committee that he will meet his obligations. He is seeking assistance as he moves forward.

Mr. Taylor explained that he is a real estate attorney in Mount Pleasant and has counseled Mr. Berrigan for some time. He reiterated Mr. Berrigan's comments on the positive changes that have occurred, for instance, in the store; in his opinion, ten (10) years ago, the store was a gas station convenience store at best. He described the Marina Outpost as a smaller version of the Sewee Outpost in the middle of the island.

Mr. Taylor explained that a huge portion of the marina's revenue comes from transient boaters traveling the IntraCoastal Waterway twice a year stopping for supplies and fuel and docking for a few days; with the decline of the economy and the cessation of dredging on the Waterway,

that revenue source slowed and has now essentially stopped. Over the past three (3) years, Mr. Berrigan has had to change the focus of the marina from serving the local population and the transient boater to predominantly serving the local boater.

With those facts established, Mr. Taylor said that Mr. Berrigan has five (5) requests to present to the Committee; they are detailed in Mr. Taylor's letter to the Committee and are summarized below:

- 1) Standardization of lease dates;
- 2) Modification to calculation of additional rents;
- 3) Maintenance obligations;
- 4) Future development of a dry stack; and
- 5) Use of the premises.

On the standardization of lease dates, Mr. Taylor noted that the Marina Outpost lease expires January 31, 2015 while the Marina Joint Ventures' lease expires On September 30, 2014. Mr. Berrigan is requesting that the term of both leases expires on September 30, 2014 with the ability to extend each lease for two (2) additional five (5) year terms. Although these are two (2) separate entities, they are run as one (1) operation.

On Item 2, Mr. Taylor explained that the additional rent components of the two (2) leases are computed differently; in the Marina Outpost additional rent amount is based on gross income, but Marina Joint Ventures' additional rent is computed on gross profits. Mr. Berrigan is suggesting that the additional rent be computed for each lease per the following:

- 5% of gross revenue in excess of one and a quarter million dollars (\$1,250,000) due and payable within thirty (30) days of the end of the lease year; and
- The calculation of gross revenue will exclude all fuel sales.

Assuming that the Committee agrees to the changes, Mr. Berrigan would generate revenue for the landlord, the City, and, at the same time, allow for continuing capital improvements, try to accrue for future capital improvements that will be needed, and continue to provide the top-quality facility that exists today.

Chair Loftus asked how additional rents are computed today. Mr. Taylor stated that for Marina Joint Ventures, the calculations are based on fifteen percent (15%) of gross profit in excess of four hundred fifty thousand dollars (\$450,000); for Marina Outpost, the calculations are based on two percent (2%) of gross income greater than five hundred thousand dollars (\$500,000) and three percent (3%) of gross income in excess of one million dollars (\$1,000,000); both calculations include fuel sales.

On the topic of additional rent, Administrator Tucker explained that, when the original leases were written, managing the marina site was the City's first experience with lease-type situations and business entities. The City had no idea how the businesses would fare, so the thought was, if they do very well, provision should be made for the City to do better; what the lease did not consider was what to do when the reverse happened. As a result of the economic downturn in recent years, the City has seen all of its tenants suffer as costs go up and business goes

down making it more and more difficult for them to meet the additional rent obligations. The Administrator added that Marina Joint Ventures and Marina Outpost has been the City's best tenant in the way that their president conducts business with the City and being responsible for their financial obligations to the City. According to the Administrator, It has been an excellent business relationship, and Mr. Berrigan has handled himself in a very professional manner.

Mr. Taylor commented that these modifications were their attempt to insure that the relationship continues for the City to get the bargain that it struck originally to get the benefits when business is good, but preserve the ability for the business to continue when business is not good.

Relative to maintenance obligations, Mr. Taylor acknowledged in the triple net leases that exist today, the tenant is responsible for all on-going maintenance and upkeep and accrue for capital improvements in the future. Mr. Berrigan was seeking a more typical triple net lease where the tenant pays taxes, insurance and general maintenance, but, when it comes to structural/capital items, the landlord is responsible. Items that he would like to see removed from the tenant's responsibility are as follows:

- For the Marina Outpost – normal maintenance, repair and replacement for the roof, HVAC, commercial coopers and fuel pumps; and
- For Marina Joint Ventures – replacement of dock boards until such time as the entire dock system can be replaced, along with a timeline for replacement.

As an example of the expense to be incurred when one of these items fails, Mr. Taylor said that the commercial coolers will require the removal of a wall to remove and installation of a new one in addition to the cost of the coolers themselves.

On the subject of the dry stack, Mr. Taylor recounted that Mr. Berrigan had made a presentation to City Council about his vision for the marina that included dry stack, and he has not received any feedback, positive or negative, about a dry stack for boats. Mr. Berrigan believes that to have a dry stack would indicate his commitment to the City and the marina for the long-term; with the shift in the business model away from the transient boater, the need for a dry stack to accommodate local boaters is vital both to revenue and to provide a service to the local community. Mr. Berrigan was very clear that he does not expect the City to contribute financially to the construction, but he would like an indication that to pursue building a dry stack would be supported by the City.

The last item is that the current Marina Outpost lease prohibits indoor seating, but, as the store has transitioned, customers would like to sit down to enjoy their morning coffee or noontime sandwich. The request is for a couple or three (3) tables for that purpose; no nighttime dining is planned.

In addition, Mr. Taylor explained that they are seeking a "mutually agreeable definition" of "Adult Use Products" confirming that this is not meant to prohibit the sale of tobacco products, beer or wine. They would also like the hours of the store to be set by the tenant rather than having them defined as part of the lease.

Chair Loftus asked for clarification about which lease expiration date was in the most advantageous; Assistant Dziuban commented that the end of the season seemed to be more reasonable than the beginning of the calendar year. Ms. Sanders added that the end of the season made the calculations related to percentages easier.

Councilmember Stone queried Mr. Berrigan about the timing which he was looking for a response from the City. Ms. Taylor indicated that Mr. Berrigan had initially wanted to put this before the Committee in the fall, but had waited until after the election, so he was ready to move the process forward. Ms. Sanders referred to a financial schedule she prepared that, over the most recent four (4) years, shows Mr. Berrigan has operated at a loss and has paid money from his pocket to meet his obligation to the City. In the previous four (4) years, operating only the marina, Mr. Berrigan made a small amount of money and was able to make capital improvements.

Responding to Councilmember Stone's question what happens next, Administrator Tucker said that she has shared Mr. Taylor's letter with the City Attorney, and Ms. Halversen has commented on issues relative to each point that the City should consider. If the Committee is willing to entertain modifications or amendments to the leases, the City should generate its response to each issue. Among the subjects brought up by the City Attorney were as follows:

- The most advantageous change to the lease term would be the later term;
- No opinion was offered on the dry stack because she did not find it to be legal matter;
- Making modifications to this tenant's leases would be consistent with previous actions taken by the City; and
- On assuming more responsibility for maintenance items, she pointed out that the City would be looking to receive less revenue with an increase in expense.

Administrator Tucker added that she has expressed concern on the maintenance request to Mr. Berrigan; she does not want to encounter the same type of problems that the City dealt with in the past when it budgeted for and managed the type of maintenance discussed here. The Administrator indicated that, if the Committee were to consider that type of change, the structure should be different from the City's budgeting for the expense and the tenant phoning in the need for repairs – some protections for the City would need to be built into the language of the lease.

Based on discussions that the best way to operate for Mr. Berrigan was to manage as if the marina and the marina store were one (1) operation, rather than two (2) separate businesses, Administrator Tucker asked if Mr. Berrigan would prefer to combine them into one (1) lease. Mr. Taylor answered that financial arrangements impede that from happening; he added that the businesses operates more efficiently as if one (1).

Chair Loftus explained that he would want to have a complete financial analysis as well as a legal analysis, but he indicated that he was inclined to consider modifications.

The Administrator remarked that the biggest impact to the City would be on the additional rent provision in the leases; the revenue from the additional rent was a revenue item in the City's annual budget. Dialogue relative to fuel sales produced a request from the City for more information related to what the marina pays for fuel.

Mr. Taylor said that they would be happy to provide all of the information the City will need to make a decision.

Administrator Tucker suggested an approach whereby Ms. Sanders and Mr. Berrigan would compute the numbers necessary for the business to be able to run without taking money from one's own pocket to meet obligations. Ms. Sanders said that she believes the number to be one hundred twenty thousand dollars (\$120,000) to be able to grow and improve the marina and have a little money to take home. Mr. Taylor commented that the addition of dry stack storage was one (1) way to reach those goals and would be beneficial to both the tenant and the landlord.

Responding to the City Administrator's request for opinions, Chair Loftus said that Mr. Berrigan's presentation to City Council of his vision of the marina was well received and that Council was supportive of improvements to the marina and a dry stack would qualify. The Chair added that any major changes would need the support of the residents, as well as City Council.

B. Discussion of Charges to the Committee from Joint Meeting

Due to the hour, Councilmember Stone recommended deferring this discussion to the next meeting.

Before moving forward with the agenda, Administrator Tucker foreshadowed the expiration of the lease for the municipal parking lots in September 2012; therefore, staff needs to know whether the City wants to renegotiate with the existing vendor, to generate an RFP or to operate the lots itself. The Administrator noted that the current vendor would like to continue.

Chair Loftus commented that he would like to see the City get more revenue from the lot and to increase the rate by a dollar or so.

The Committee suggested the lessee attend the April meeting.

C. Review of Operating Budgets for FY 2012-2013

Administrator Tucker explained that budgets that fall under the purview of the Real Property Committee are the Front Beach area, the public restrooms, marina and the beach restoration project; the FY13 budgets for these properties and projects do not have many changes from the FY12 budget.

Front Beach Area

Based on actual expenses, several items have been reduced; they are printing and office supplies, electric and gas, water and sewer, maintenance and service contracts and professional services. A question about the need for the Front Beach call boxes has been raised; expenses for the service and the air cards appears in this budget. Administrator Tucker stated that a key factor in the difference between the FY12 and FY13 budgets are the expenses attributed to the parking nodes included in the FY12 budget.

Chair Loftus cited the change in technology, specifically cell phones, makes the call boxes unnecessary, and the City should take advantage to save money.

Chair Loftus questioned the twelve thousand dollar (\$12,000) budget for professional services when six thousand dollars (\$6,000) was spent in FY11 and less than twenty-seven hundred dollars (\$2,700) has been spend year-to-date. The Administrator explained that funds were professional services relative to the nodes.

The Chair then asked about the PowerPark Flex online service included in the line; Assistant Dziuban stated that is was the on-line ticketing service the City uses to post ticket payments.

The Chair inquired about the amount of money collected through the ROVER service that locates individuals who have been given parking tickets to ensure that the City recuperates its investment in the service.

Based on the amount spent in FY11 and year-to-date for FY12, Chair Loftus expressed the opinion that the contingency was too high and should be lowered.

Public Restrooms/Front Beach Area Maintenance

Increases based on actual expenses were made to water and sewer and maintenance and service contracts; for the same reason, electric and gas was reduced.

Expenses related to the parking nodes again are the key reason that total expenses for FY12 and FY13 vary substantially.

Marina Fund

A key change in the FY13 budget is that insurance costs are now budgeted in the appropriate cost centers rather than appearing as a total under General and Administrative. Administrator Tucker explained that the City anticipates increases in insurance expense; dock coverage will have an increase because the City is under-insured for the docks for the value of the docks. She noted that to be fully insured on the docks will run more than the seventy-seven thousand dollars (\$77,000) budgeted.

Chair Loftus asked what expenses composed the total of twelve thousand dollars (\$12,000) in professional services under "General and Administrative;" those professional services are any charges from the City attorney relative to the marina for any hours billed for the review and anticipated modifications to the marina and store leases. The Chair asked why the figure was so high when the expense appears to be running much lower; Administrator Tucker surmised that the City expected to have more legal fees that it actually had for dredging. Staff agreed to review the history on the figures to determine if the FY13 budget could be reduced.

Another question was why advertising appeared under both "General and Administrative" and "Marina Operations." The Administrator explained that some of the marina advertising is a one-time purchase, for instance, advertising in the "Waterway Guide;" Assistant Dziuban added that some of the marina advertising is a part of the lease agreement.

Chair Loftus noted that the City could possibly negotiate that expense out of the lease as the consideration of modifications moves forward.

Beach Restoration

Administrator Tucker was pleased to point out the FY13 will be payment five (5) of six (6) on the 2008 beach restoration debt. The one hundred thousand dollars (\$100,000) for post-project monitoring for the 2012 Shoal Management Project is an anticipated permit requirement for the City; a closer look at the permit may allow for a reduction in the amount. The six hundred thousand dollars (\$600,000) for a future erosion project does not have a funding source; staff expects to exhaust all funds accumulated for the 2008 project. Once the 2012 project is complete, staff and the stakeholders need to meet to discuss how to get money for future projects.

D. Consideration of Award of Contract in Excess of \$10,000 – None

7. Miscellaneous Business

Marina Rents

The Administrator noted that Marina Outpost and Marina Joint Ventures are current with their monthly rent and all Building Department requirements; Marina Outpost and Morgan Creek Grill have submitted their reports. Marina Joint Ventures has paid five thousand dollars (\$5,000) towards the thirty thousand dollars (\$30,000) in additional rent; the Administrator recalled that Mr. Berrigan is not asking for relief from that obligation. Marina Outpost has paid fifteen thousand four hundred dollars (\$15,400) of additional rent, and a like balance is due.

Morgan Creek Grill was issued a demand letter; their deadline for response was Monday, March 12. Treasurer Suggs learned today, that, while the demand letter was sent to the address intended, the recipient, Jay Clarke, is out of town and has not seen the letter. The City has not received any additional money from the restaurant. They continue to be in default.

A lengthy decision ensued regarding the legalities of evicting the tenant. Administrator Tucker reminded the Committee that the City has to weigh the outcome of eviction; she described a process of serving the notice with a thirty (30) day window of vacating the premises. In that window, the City must generate an RFP and looking at several months of the restaurant being closed generating no revenue for the City. In Administrator Tucker's words, "In that period, the momentum stops, the traffic stops and the black eye happens." Based on past history, the Administrator voiced uncertainty about the length of time it would take to find a new tenant.

Chair Loftus stated that he was prepared to give up the revenue earned over the summer to get a tenant who would abide by the terms of the lease. The Administrator cautioned that the City cannot sell Mr. Clarke's business.

Councilmember Stone expressed his opinion that the eviction needs to go before Council to be discussed fully and a decision made on what course the City is going to follow.

Assistant Dziuban commented that the demand letter spelled out the consequence for inaction on the restaurant's part, but she did not remember exactly what that was.

Chair Loftus recommended that the subject be put on the Ways and Means Committee agenda for the March meeting.

Next Meeting Date: 5 p.m., Monday, April 9, 2012.

8. Executive Session – not needed

9. Adjourn

MOTION: Councilmember Stone moved to adjourn the meeting at 8:45 p.m.; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk