

**REAL PROPERTY COMMITTEE**  
5:30 p.m., Monday, February 9, 2015

The regular meeting of the Real Property Committee was held at 5:30 p.m., Monday, February 9, 2015 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Bergwerf and Buckhannon, Chair Loftus, Administrator Tucker, Assistant 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 Bergwerf moved to approve the minutes of the regular meeting of January 12, 2015 as submitted; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.**

**3. Citizens Comments  
Presentation by ATM**

Administrator Tucker informed the Committee that the person who was to make the presentation had the flu that has morphed into pneumonia and was unable to attend tonight's meeting.

The Administrator suggested that the Committee hold a Special Meeting later in the month to avoid delaying this issue another month. The Committee decided they could hold a Special Meeting on Monday, February 16<sup>th</sup> or Wednesday, February 18<sup>th</sup>; Director Kerr was tasked with contacting ATM to learn which date was more convenient for them.

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

**5. Old Business**

**Update on Shoal Management Project**

Steven Traynum of Coastal Science and Engineering (CSE) was present to update the Committee on the shoal management project and to explain their recommendation for moving forward with the project. He reported that to-date the contractor has moved two hundred thirty-nine thousand eight hundred ten cubic yards (239,810 cu. yds.) of sand, according to truck counts; due to an expansion factor two hundred thousand nine hundred cubic yards (203,900 cu. yds.) is closer to the actual volume. The two hundred three thousand (203,000) number is what is being applied to the permit that allows for a total of two hundred fifty thousand cubic yards (250,000). In a conversation with the contractor Baker last week, Mr. Traynum was told that the contractor is running out of sand on the shoal – that he has safely taken as much sand at low tide as he can. CSE has told Baker to move toward the Beach and to harvest sand from the accreted land near Property Owners Beach House and the eastern area of Beach Club Villas, Ship Watch and Mariner's Walk. The majority of the sand will go to the Ocean Club area and the golf course, and some may go to Beach Wood East, if conditions warrant that. Under

the remaining approved funds, forty-eight thousand two hundred ten cubic yards (48,210) can be moved, assuming there is that much sand available; from reviewing the proposed harvest area, Mr. Traynum thinks that between thirty-five and fifty thousand cubic yards (35,000-50,000 cu. yds.) available on the beach. The plan is to get as much sand off the beach as possible until the money runs out; the work will begin tomorrow, Tuesday, February 10 and take twelve (12) days to two and a half (2.5) weeks. That will conclude the construction aspect of the project, and then CSE will do a final survey and issue the project report.

The Administrator noted that the work is still within the project budget; the only item not included in Mr. Traynum's calculations is that, when payment reverts to the per cubic yard method, the City will have to go back to counting trucks and providing security generating personnel expense.

Assuming no weather delays, Mr. Traynum agreed with Councilmember Bergwerf that the project should conclude around the end of February.

Answering Councilmember Loftus' question, Mr. Traynum stated that fencing can be done when the project is completed under a general OCRM permit.

Referring to the aerial photo he distributed, Mr. Traynum directed attention to the breakers on the left side indicating that the shoal has created another arm and yet another arm is forming further seaward; Mr. Traynum said that he thinks that the second arm is responsible for some of the erosion that is occurring in the Dune Crest area and the western Beach Club Villa area. Possibly, a more critical arm is developing on the other side of the original one; the sand on the northern side is wanting to spread out, trying to create another arm; instead of the sand coming straight on shore, it is going to wrap around and make an arm that is going to extend toward the beach. It will take several months for that to happen, and until that arm attaches to the beach, there will continue to be an erosion signature in the Beach Club area, the golf course and Seascape. Mr. Traynum stated that, he cannot predict the amount of erosion that will occur, but he does not expect to see a wide, dry beach by the end of the summer. He recommended that the City anticipate that action may be needed again in the fall of 2015 whether it is a critical erosion issue or to dress up the beach by moving sand around; the current project was maintenance to buy time for another in the fall. The final survey from this project will be taken in March. A fall project would be very similar to the current one; more of the shoal should have attached and be accessible; therefore, the focus would be more from the shoal than the beach.

Looking at a long term plan, Mr. Traynum stated that he believes that it will take two to three (2-3) years for the shoal to fully migrate on shore, and, possibly, longer if additional sand forms in these long-term shoals. Discussions have occurred around having a permit in-hand to do another large scale, off-shore project; he suggested that to be a wise strategy. He commented that the City could find itself in a position where there is not enough accessible sand on the beach and there is not a shoal ready to attach, meaning there would not be enough sand to do a remedial project. Other than emergency temporary measures, the City would have no choice other than an off-shore project.

Mr. Traynum indicated that work needs to begin on a permit, noting that the foundation for the permit exists from the previous off-shore project. The work to be done is geo-technical to find a suitable off-shore borrow area that would cost between one hundred and one hundred fifty thousand dollars (\$100,000-150,000). The environmental reports would cost forty to fifty thousand dollars (\$40,000-50,000); surveys to define the borrow area and update the beach condition will run approximately thirty thousand dollars (\$30,000), and finally the drawings and coordination for the permit would run between fifty and one hundred thousand dollars (\$50,000-100,000) for a total of between two hundred ninety thousand and three hundred seventy-five thousand dollars (\$290,000-375,000). Mr. Traynum noted that the permit would be good for five (5) years, and the agencies have said that, with a permit in-hand, monitoring the beach is interpreted as working toward the project to extend the permit for another five (5) years.

Administrator Tucker summarized with the following:

- The current project is on-time and within budget;
- The City should be planning for and budgeting for another project in the fall of 2015;
- The City should also consider the expense for permitting and the need for continued monitoring for a much larger project in the future to be able to mobilize if the situation becomes critical; and
- Soon the City will need to reach out to stakeholders so they can also plan their future expenses.

The Administrator explained to Mr. Traynum that the City is working on the FY16 budget now, so more exact figures will be needed as quickly as possible.

## **6. New Business**

### **A. Consideration of Lease Amendments for Morgan Creek Grill**

Administrator Tucker noted that Jay Clarke and Carla Pope were present to represent Morgan Creek Grill; the Administrator stated that she has read the amendment provided to the Committee, but she has not thoroughly considered all of the information. Additionally the City Attorney has not reviewed it. To the Administrator, the key changes are for the additional rent and the renewal term.

Mr. Clarke reviewed each of the changes he was proposing as follows:

1. Mr. Clarke stated that he was not in possession of an accurate footprint of the property, the building and the grounds, leased to Morgan Creek Grill.
2. He is requesting six (6) additional five (5) year terms, rather than five (5) three (3) year terms in an effort to obtain long-term financing to maintain and improve the building; he has a separate list of improvements being considered that he will provide to the Committee.
3. He is requesting to renegotiate the base monthly rent in the event of any substantial change in the index.
4. Changes in additional rent are requested for moving the toggle for additional rent to four and a half million dollars (\$4,500,000), alter the percentage and the due date for additional rent to sixty (60) days after the end of the lease year. Mr. Clarke stated that

four and a half million dollars (\$4,500,000) is the break-even point for the restaurant, and the extension of thirty (30) days in the due date is to give the restaurant's accountant to review the financial data.

5. To Section 6, "Condition and Maintenance of the Premises," the request is to add language that the City will maintain the areas of shared parking.

Administrator Tucker commented that one (1) motivation for the City to enter into the longer leases is to divest the City of the need to replace capital items and do maintenance. The requests to maintain the shared parking areas and replace the walk-in cooler/freezer and hood systems that are assets of the City eliminate the City's goal of a longer term lease; with the long-term lease, the tenant would be expected to assume responsibility for said items.

The Administrator noted that the tenant's motivation is to get financing to do things at the restaurant; the City's motivation is to get these expenses off its budget and transfer them to the tenants at the marina.

Mr. Clarke commented that he had inherited "a big problem" with the walk-in cooler and the entire kitchen area but he understood that the changes requested should be beneficial to both parties.

Councilmember Buckhannon referenced the original lease where it states "tenant agrees to take on the lease in its 'as is' condition."

6. In Section 9, No Assignment or Sublease, the tenant would like language added "which shall not be unreasonably withheld or delayed."
7. To section 9, Damage or Destruction, the tenant would like added "if the leased premises are wholly or partially destroyed by fire or other casualty, rent shall abate in proportion to the loss of use, thereof, and Landlord shall, at its own expense, promptly restore the Premises to substantially the same condition as existed before the damage or destruction, whereof full rental shall resume, unless the said damage or destruction was caused by Tenant's negligence or willful acts, in which case any damages not covered and paid for by insurance shall be paid for by the Tenant."

Mr. Clarke indicated that he had been told that the abatement of nine (9) months stated in the original lease was punitive.

8. The tenant would like to change the default terms from fifteen (15) days to thirty days (30) and from thirty (30) days to sixty (60) days.

Mr. Clarke said that this was added in the case of a serious economic downturn.

9. In the section "Notice," the tenant would like to add language requiring "the City to notify the tenant of any substantial actions by the City and/or marina tenants which materially affect the tenant."

Administrator Tucker was clear that this request would not survive because the City's position that it is incumbent upon the tenant to stay informed, to seek out information, to come to meetings, etc.; the City is not required to notify any business or resident when it is all available and being put forth as legally required

10. The last request is to add language to the section the covers the death or disability of James P. Clarke of "inconsideration of legal counsel regarding."

Mr. Clarke stated that he wanted to re-negotiate this lease for a longer term last year, but put it off until this year and the noise issues came up. He indicated that he wanted to work through these issues expeditiously so that he could begin the long-term improvements of the restaurant.

Administrator Tucker said that the next step, in her opinion, Mr. Clarke should go back to his attorney to refine the language based on the comments he has heard at this meeting.

The Administrator gave the same advice to the marina tenant who has negotiated long-term leases with the City; negotiating an amended lease at this point should have "give-and take" which is not addressed in the document presented. She noted that he must take the time to incorporate language that will be some benefit to the City, keeping in mind that the City has debt to pay on the marina, and, if the City does not have the income from the marina rents, it must look to some other source in City's budget to pay for those things. The Administrator asserted that the acceptable document would be balanced.

Chair Loftus noted that he has concerns over changing the default terms to thirty (30) and sixty (60) days from fifteen (15) and thirty (30) days.

Referring to the proposed change in additional rent, Councilmember Bergwerf interpreted it to be negotiation for a rent reduction. Mr. Clarke said that he looked forward to having his accountant present to explain the thinking behind that request; he commented that the rent as it is has meant that the restaurant has been non-profitable for the past ten (10) years.

## **B. Consideration of Plantings at Mayor Carmen R. Bunch Park**

Administrator Tucker recalled that, before the park was cleared, native species were identified and tagged or removed to save; Bev Ballow has kept the plants and is interested in returning them to the park, as well as add other native species. To avoid the landscaping company mowing them down, a plan must be devised for planting them where they would be easily identifiable to them. In the Administrator's opinion, the City needed an expert to generate and execute such a plan to identify the best locations for the plants; she thought that Jeff Jackson, who helped to identify the plants, might be available to assist Ms. Ballow. Director Pitts also needs to be involved since he is the liaison between the landscaper and the City; he will point out to them the areas not to be mowed or cleared. The Administrator added that some of the native species can be found in the buffer.

The Administrator commented that she had not taken any action to-date and wanted to get input from the Committee before proceeding.

Chair Loftus stated that he has not seen one (1) person on the property and was concerned about the cost; he recalled that, when the City moved forward with acquiring the land, Council was told it would require very little maintenance.

When asked about the cost for Mr. Jackson's services, the Administrator reiterated that she had not pursued that information before learning the Committee's opinions on the issue; she noted that the FY15 budget contains ten thousand dollars (\$10,000) of Municipal Accommodates tax for maintenance of the park. The Administrator anticipates ending the year with funds remaining in this line item, approximately eighty-two hundred dollars (\$8,200).

Councilmember Bergwerf indicated that an expert was unnecessary when the City had its own expert in Bev Ballow who had removed the flowers.

Ms. Ballow related that she has contacted Jeff Jackson and their discussion of his participation did not include his being paid for the assistance. Ms. Ballow commented that she is a member of the Native Plant Society, who have work days; as part of that membership, Mary Pringle has saved a lot of seeds that they thought would thrive on the street-side of the park where the plants will get sun and thrive in the sandy soil. Ms. Ballow noted that these plants do not grow very tall and would not block the view of the park. She wants to get five or six (5-6) members of the Native Plant Society to volunteer their time to come to the island to assist with the planting; if for some reason members were not available, Ms. Ballow was certain that people on the island would volunteer to help. Her idea is to add plants to the buffer to make it more than just a buffer.

Councilmember Buckhannon liked the idea of using volunteers from the island – citizens giving back; he also thought that assistance from the Native Plant Society would be a good thing since they must be very knowledgeable.

The consensus of the Committee was for Ms. Ballow to proceed with the planting at the park.

Director Pitts requested that the plants be placed in a designated area so that he could give specific instructions to the landscapers.

### **C. Review of FY16 Revenue Projections**

Beginning with General Fund revenues, Administrator Tucker commented that a slight increase is being projected for property taxes and the debt service millage, as well as Local Option Sales Taxes. She asked that Committee members look at both Business Licenses and Residential Rental Licenses together and noted that they represent a significant portion of the City's overall revenues. The Administrator commented that currently two (2) bills are before the legislature that could seriously impact that number; one (1) would eliminate municipal business licenses entirely, and the second would limit business license fees, possibly as low as one hundred dollars (\$100) per license. If either of these bills was to pass, the City would not be able to find a revenue source to cover the loss from business license fees and would, by necessity, have to cut services to residents. Committee members were requested to follow the announcements from the Municipal Association and to contact elected officials to ask they oppose these bills

because they would have devastating consequences for the City's budget. The major increase in Public Utility Fees can be attributed to the two percent (2%) increase in franchise fees approved by Council in the FY15 budgeting process. Without the building permits and fees collected from Wild Dunes for the renovation of the condos, the City is projecting an increase in that line item; the uptick in construction on the island is quite visible. Court-generated revenue has been slightly reduced; the Administrator noted that this line does not include additional revenue from the new parking plan. Intergovernmental Transfers have been increased by the CPI and represent the amount paid to the City from Sullivan's Island for the dispatch services they have. The proposed revenue budget does not include any grant income; the money that the City has, in the past, received from Charleston County, will now be provided through an increase in the percentage of Municipal Accommodations Taxes from the County. As the number of restaurants has increased, the Alcohol Sunday Sales Permits are projected to increase in FY16. Parking lot revenue is expected to increase as are the Sales of Assets. Recreation Instructor's and Rec Program income are expected to remain relatively flat. With the continuing increase to State Accommodations Taxes, the amount that the City can retain has also grown. Also thought to remain flat are Parking Meter revenue and (rollout) Cart revenue. Since the expense budgets have not yet been prepared, transfers-in have been inserted at the same amount as in the FY15 budget.

Revenue in the Capital Projects fund are a re-budget of the money to bring the Public Works site into stormwater compliance and a small amount of interest income.

Collections for the past twelve (12) months are the basis for increases in all accommodations tax funds. Replacing Grant Income is an increase in the percentage paid to the City in the County Municipal Accommodations Taxes to the City. On the budget for State Accommodations Tax, Administrator Tucker reported that line 234 should be five hundred thousand dollars (\$500,000). As presented, no transfers-in to the Beach Maintenance are indicated in the State Accommodations Fund because the City will collect the one percent (1%) beach preservation fees for the first year.

The anticipated amount from the new beach preservation accommodations fee is nine hundred nineteen thousand dollars (\$919,000); the funds will go into the Beach Restoration Fund. Based on comments from Steven Traynum earlier in the meeting, the City will definitely need those funds in the near future. The new tax also negates the need for transfers-in to the Beach Maintenance Fund.

Marina fund revenues are the rents from the marina tenants, as well as an estimated fifty thousand dollars (\$50,000) in additional rent from Morgan Creek Grill.

Like the Capital Projects fund, the only revenue for the Disaster Recovery fund comes from any positive net year-end results in the General Fund.

Both the Federal and State Narcotics funds are being phased out because the City has not seen a revenue source for them in several years.

Also based on the past twelve (12) months is the ninety-five hundred dollars (\$9,500) budgeted for the Victims Assistance fund.

Projected for the Building Fund is six hundred dollars (\$600) and a total of fifteen thousand five hundred dollars (\$15,500) for the Rec Building Fund. Funds for the building fund come from the Connector Run, the IOP Beach Run and the ATAX sponsorship of the Beach Run.

The Volunteers Fire 1% fund is projected to see a significant increase for FY16; the Administrator indicated that she was unsure the source of the increase since the funds are a percentage of the premiums South Carolina residents pay for fire insurance. In addition, the Administrator reminded the Committee that the City acts as custodian for these funds; decisions regarding spending the funds is based on decisions by the volunteers and the Fire Department staff provided that they are within the parameters for what is allowable under the program.

Councilmember Buckhannon as for staff to update and produce the schedule showing the impact of tourism on each department within the City; he found that to be very helpful in terms of justifying the transfers-in to the General Fund.

Administrator Tucker explained that the large schedule shows the percentage of total revenue each fund contributes; a composite view is in the box at the bottom left of the page. She noted that the years should be FY15 and FY16, not FY14 and FY15.

**7. Miscellaneous Business**

**Tenant Rents Report**

The Administrator reported that all City tenants are current.

Next Meeting Date: 5:30 p.m., Wednesday, March 4, 2015

**8. Executive Session – not needed**

**9. Adjourn**

**MOTION: Councilmember Buckhannon moved to adjourn the meeting at 6:53 p.m.; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

Respectfully submitted:

Marie Copeland