

**REAL PROPERTY COMMITTEE
SPECIAL MEETING**

5:00 p.m., Thursday, May 7, 2009

The Real Property Committee held a special meeting at 5:00 p.m., Thursday, May 7, 2009 in the Training Room of Fire Station 2 located at 41 Forty-first Avenue, Isle of Palms, South Carolina. Attending the meeting were Chairman Cronin, Councilwoman Rice and Councilman Taylor, Administrator Tucker, Marina Manager Berrigan, Assistant to the Administrator Dziuban and City Clerk Copeland.

1. Mayor Cronin called the meeting to order and acknowledged that the press and the public were duly notified of the meeting in accordance with the Freedom of Information Act.

2. Discussion of Comments/Concerns on Marina Management Agreement

Mayor Cronin noted that the Committee members have been in possession of the comments and concerns expressed by Council about the RFP, as well as the staff responses to them to review for a couple of days. The purpose of this meeting is to review them in detail and to decide if the RFP will be amended based on that information before issuance to the public. The document referred to is attached to the City's official record.

Question 1: Currently, is the City getting an appropriate financial return, or could the City be doing better?

The information provided in the response begins with the City's purchase in 1999 and progresses to current, along with financial data for the past three (3) years. Councilwoman Rice commented that the economy had a great deal to do with the profitability of the marina as seen in the financial data; she thought that any increase of fees, in the current economy, would be self-defeating. Mayor Cronin noted that the fees being charged appear to be in-line with other local marinas based on information that the Committee had reviewed in recent months.

Councilman Taylor reiterated that the dock, boat launching and parking rates are the three (3) fees that are recommended by the marina manager and approved by City Council; all other fees are established by the manager; the City sets the percentage rate for the management agreement; and all other decisions are made by the marina manager.

The Committee agreed that there was no change warranted to Question 1.

Questions 2: If the marina were a division of the city government, what would be a reasonable salary for the manager doing an excellent job?

Councilman Taylor related that he had spoken with Councilman Piening at length about his questions, and Councilman Taylor understood that his main focus was what could be done to increase the revenue generated by the marina; to that end, was it feasible for the City to run the marina? Councilman Taylor had explained that the percentage established was a direct result of the bidding process; only with a lease could the City negotiate the price.

In discussing the issue of the City's running the marina, Councilman Taylor said he had tried to list the multitude of costs associated with that, but Mayor Cronin had brought up an additional one – the City cannot go out to hire a manager to manage the existing operation; it is imperative that the person hired have proficiency in running a marina. In addition, it would be

difficult to find a manager who would be willing to work seven (7) days a week for six (6) months a year and a minimum of ten (10) hours per day. When the City initially purchased the marina, the subject of hiring a manager was discussed, and, ten years later, Councilman Taylor opined that the City continued to learn how the process works; he still believed that it was not feasible for the City of Isle of Palms to run the marina.

Councilwoman Rice stated that she could not support adding another department to the City's government, and Mayor Cronin reminded the Committee of the ramifications to the City of exceeding one hundred (100) employees ranged from an increased cost of insurance to adherence to more governmental regulations and requirements.

Again, the Committee decided that no action was required on Question 2.

Question 3: The proposed RFP seems to put a lot of emphasis on past experience. Is there something unique about this job that more than general managerial experience is required? If so, what is unique?

Councilman Taylor commented that he and Councilman Piening had also discussed the DHEC requirements and that they were constantly changing and becoming more complex each year, and the marina manager had to stay abreast of all of them. Councilman Taylor had stated that these qualifications were established in the bidding process and that only a limited number of people would submit bids.

Councilwoman Rice agreed that managing the marina was a complex and unique job; therefore, experience was an excellent quality to have.

Councilman Taylor noted that the marina manager may not need to have the knowledge himself, but that he could hire a person with that knowledge and qualifications.

Administrator Tucker stated that she had asked Mr. Berrigan to assist her with the information listed in the "Management Qualifications Specific to the Marina Industry," because there was no one on staff that had the knowledge necessary. This document could be a valuable tool in evaluating the bidders.

No change was recommended for Question 3.

Question 4: The proposed RFP says "Qualifications of the offeror will be a substantial factor in evaluating the bid." What exactly does this mean and how will it be weighted? For example, if one bidder is offering 30% more income to the City, but has less experience, how will this be treated?

Councilman Taylor stated that in the situation presented there is a tradeoff, but he did not think that the City had a weighting system. Administrator Tucker recalled that, when the City went through this process the last time, the Committee members had score sheets, and each of the proposals was evaluated. She thought that weighting had been given to non-percentage – she does not remember what the weighting was. She added that each respondent was interviewed and scored.

Mayor Cronin recommended that the proposals be reviewed initially without looking at lease payment amounts or percentages to determine the qualifications of the bidders and details presented. He also suggested that the bidders be asked to submit their pricing in a separate envelop from the balance of their proposal; if that were done, the Committee could be more objective about the qualifications and not be influenced by the financial data.

The change requested for Question 4 was that the financial information be submitted under separate cover from the qualifications and plans for the marina.

Question 5: Is there a problem with the current agreement? The pros and cons talk about required City oversight. How much time does this amount to in hours of work for City employees per week, month, or whatever: We need to know what this costs if we are to make an evaluation. What other problems are there with the current agreement?

Councilwoman Rice asked if there were a technology solution that would eliminate or reduce the staff time spent in oversight.

Councilman Taylor stated that, at the auditor's suggestion, the City had invested in a point of sale (POS) system for the marina that has now been fine-tuned; in addition, the City's auditing team does perform tests to the marina manager's accounting system each year based on a management-by-exception approach.

Question 5 did not warrant any changes in the minds of the Committee.

Question 6: The financial sheet given shows net revenue of \$611K. The City receives 28% of net revenue. This leaves \$440K for the manager to pay employees and take a profit.

Councilman Taylor expressed his opinion that the term "net profit" was loosely used here; he stated his understanding of net profit as what the company makes "at the end of the day after all expenses" have been accounted for, and that is not what is represented in the information we have received.

Mr. Berrigan reported that, from the year-end statements from 2007, he was negative seventy-one thousand dollars (-\$71,000), and for the year-end 2008, he was profitable in the amount of thirty-five thousand dollars (\$35,000); therefore entering 2009, he was operating at a loss of thirty-six thousand dollars (-\$36,000). He said he would open his books to anyone who wanted to review them.

The Committee agreed to make no changes to the RFP based on Question 6.

Question 7: What and how are the rental and charter operations run? What are the profit margins? Do we have information on the cost of sales?

Councilman Taylor reiterated that the City sets three things, including the percentage. The City has chosen not to micro-manage the marina.

There would be not changes based on Question 7.

Question 8: The Management Agreement included in the RFP requires bidders to address an overall strategy regarding management to include parking. The lease agreement does not appear to have similar language.

Administrator Tucker explained that, in the management agreement, parking is part of the other amenities for which there is a charge; therefore, the City would want to know how parking would be managed as it affects the City's income. In the lease agreement, how the marina chooses to maximize its revenue is not a factor to the City, because it will receive a specific dollar amount every month.

Question 8 warranted no change in the RFP.

Question 9: Related to the Bid Sheet for Alternate #1, who charters the charters referenced under revenue?

The Committee agreed that this issue fell totally under the manager's purview.

Question 10: The current rate sheet includes, as an exhibit, the sale of propane gas. The store sells propane also; is this a conflict?

With minimal discussion, this generated no changes to the RFP, because the Committee did not see a conflict.

Question 11: Related to the advertising indicating Fishing Charter Information and Rates, what percentage does the City get of this revenue?

The City's percentage remains the same for all marina revenues; the Committee agreed to no changes from this question.

Question 12: The Committee's attention is directed to the following statement in Article II, Section 2.1.B: "Manager shall have the obligation to maintain facilities and equipment; however, replacement of any such facilities or equipment which are inoperable and the repair of which is not economically feasible, shall be the obligation of the City, after prior written notice of such conditions by the Manager."

Administrator Tucker noted that this was taken directly from the draft agreement.

Councilman Taylor stated his understanding that everything the successful bidder gets, they are responsible for and should be returned to the City in the condition in which they received it.

Administrator Tucker pointed out that, under the current draft as written, there are occasions when the City would be paying, and, if the City does not want that to be the case, the City should change the language. Councilman Taylor's suggestion was, if there are to be items that the City chooses to be responsible for, they should be listed, thereby eliminating any questions or confusion in the future.

Councilwoman Rice asked that the Committee jump to *Question 19: Committee's attention is directed to the following statement in Section 6.B "Landlord agrees to be responsible for any and all extraordinary repairs, maintenance and replacements of the Marina piers, docks, bulkheads and retaining walls at the Leased Premises except for any damage caused by Tenant or Tenant's employees, invitees or licenses which is not covered and paid by Landlord's insurance carried hereunder."*

Councilman Taylor wanted to know if this would be the entire list. Mr. Berigan stated that underground storage tanks, the pump out system and the fuel dispensing systems would be an examples of things the City should be responsible for, but have not listed in Question 19.

Mayor Cronin noted that, over the term of a lease or management agreement, much would wear and be faulty. Councilman Taylor's answer to the problem of normal wear and tear was to charge a higher price for the tenant or to absorb the cost in other ways. The Committee agreed that the best approach was to have a specific list of the things the City would assume responsibility for and the degree of responsibility assumed since, for example, there could be improvements to the docks during the term of the lease.

Mayor Cronin posed a scenario where, after twenty years, a tenant was not going to renew his contract and, therefore, returned the assets to the City. The City might find that the marina assets have been maintained and are in a safe condition and working order, but are no longer aesthetically appealing. All costs to maintain the asset have been borne by the tenant.

Councilman Taylor stated that the decision to be made was did the pricing include the cost of renovations, major or minor, upon return of the asset to the City, or was the pricing for the next tenant to be reduced for him to incur the costs of the renovations? If the City is looking at a longer agreement with a tenant, these considerations should be priced into a decision. He added that he thought the City had a long-term agreement with Morgan Creek Grill, and the City has required that the restaurant be kept in good condition.

Councilwoman Rice stated that the marina does belong to the City and is the City's asset; therefore, it is in the best interest of the City to maintain it in a very good condition. The questions according to Councilman Taylor were: are the repairs paid by the tenant or does the City require an additional percentage to establish a reserve for future repairs?

In conclusion, the RFP was to be changed to include a specific list of items, primarily infrastructure, for which the City would bear responsibility, in response to Questions 12 and 19.

Question 13: Committee's attention is directed to the following statement in Article IV, Section 4.5: "Adequate funds shall be provided by Manager for the maintenance of the Marina Operations."

Administrator Tucker interpreted this to mean that, if the City were to go with the management agreement, anyone who is considered must be able to prove to the City that they had adequate liquidity to do what maintenance would be required of them under the terms of the contract.

Councilman Taylor noted that the City knows, for instance, that the current tenant does invest his, or the entity's, funds into the property; therefore, he agreed that the City should require proof that a new tenant would have the funds available to do the same. Administrator Tucker added that proof of liquidity would be another evaluating tool.

The decision reached involved no change to the RFP.

Question 14: Section 4.9 says, "Restaurant Dock Space. Manager agrees to provide dockage to patrons of the restaurant on an as-available basis, at such reasonable charges as may be mutually agreed to between Manager and the restaurant tenant." Has the new dock been factored in?

The RFP will be changed per staff's response.

Question 15: Section 4.10 says, "Securing and Maintaining Certain Types of Licensees or Tenants. Manager agrees to use its best efforts to secure and maintain tenants or licensees which operate charter fishing, charter cruising, kayaking, boat rental, and eco-tour businesses in a manner similar to those which historically have been operated at the Marina during the City's period of ownership." How is the revenue handled for these tenants? The kayak person should be on a separate contract if the building is involved.

The revenue question has already been answered, and a lease agreement with Coastal Expeditions, the kayakers, is in process. The appropriate changes will be made.

Question 16: Exhibit II, which lists "Authorized Revenue-Generating Activities of Manager" references LP gas sales. The store sells LP also. Is this a conflict?

See Question A10.

Administrator Tucker stated her opinion that the question was raised again because of the possibility that a different entity getting the contract award who would want to sell LP when it is being sold by the marina store, as well.

No change warranted.

Question 17: Exhibit II, which lists "Authorized Revenue-Generating Activities of Manager" references "booking agent for charger boat." Look at the rates. What does the City get for a charter? Percent of percent?

Staff's answer was considered sufficient and no change was deemed necessary.

Question 18: Section 3.C. under "Rent" references a twenty-five dollar (\$25) late fee. Should this be increased to fifty dollars (\$50.00)?

There was no desire to increase the fee; no change to be made in RFP.

Question 19: Stated and answered with Question 12.

Question 20: Section 9.C subleasing to tenants. Should the kayaking sublease be treated as the City treats its arrangement with TidalWave?

This issue is in the process of being resolved, and the appropriate changes have been made.

Question 21: On the pros and cons sheet for Management Agreement versus Lease Agreement, Committee's attention is directed to the con related to lease agreements that there is "no opportunity for the City to benefit from better than expected profitability, unless additional rent provision is added to the agreement."

Staff's response was satisfactory; no change to the RFP.

Question 22: Should the insurance liability limits be raised in the management agreement and lease?

The RFP will be changed to agree with the limits in the current management agreement; liability will be increased to two million dollars (\$2,000,000).

Question 23: What are the pros and cons of the management agreement versus the lease?

There will be no change, and the RFP issued will seek proposals for both the lease and management agreements.

As the discussion ended, the Committee agreed that a bid bond accompany each bid submitted.

3. Adjourn

MOTION: Councilwoman Rice moved to adjourn the meeting at 6:05 p.m.; Mayor Cronin seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk