

REAL PROPERTY COMMITTEE
5:30 p.m., Wednesday, August 14, 2013

The regular meeting of the Real Property Committee was held at 5:30 p.m., Wednesday, August 14, 2013 in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Buckhannon and Loftus, Chair Stone arrived late, Administrator Tucker and City Clerk Copeland; a quorum was present to conduct business.

1. Vice Chair Buckhannon 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 Loftus moved to approve the minutes of the regular meeting of July 1, 2013 as submitted; Vice Chair Buckhannon seconded and the motion PASSED UNANIMOUSLY.

3. Citizens' Comments

Ben Floyd, a charter boat captain who operates his business out of the IOP marina, asked to address the Committee about what he sees as unsafe practices by employees of TidalWave Watersports. He described situations in Dewees Inlet where the line of jet skis was too close to his boat and actually sprayed his customers. He has had conversations with the Fiem brothers in the past about what he has seen, and they have assured him that their number one priority is safety; the Fiems want to be told when these situations occur and have encouraged Mr. Floyd to take photographs of their employees when the situations happen. When Mr. Floyd approached them most recently, he felt that he was being ignored and that his concerns were not being heard.

Administrator Tucker asked Mr. Floyd how he knew that these jet skiers were from TidalWave Watersports, and he responded that he saw them every day, sometimes multiple times a day, so he has become very familiar with them and where and how they operate.

Both Mark and Mike Fiem, owners of TidalWave Watersports, were present, and Mike Fiem apologized for his brother's actions when he had spoken with Mr. Floyd. Mark Fiem had told his brother about the conversation and admitted that he had not paid as much attention to Mr. Floyd as he should have because he was trying to handle multiple tasks already. Mike Fiem repeated that the first goal of their business is customer safety and that he not only wanted to know when his employees were not living up to their responsibilities, but he needed to know.

Administrator Tucker asked Mr. Fiem what took place when a person paid to rent a jet ski. Mr. Fiem said that each group of eight (8) jet skiers is assigned to one (1) guide who gives them instructions on everything from how to operate the equipment to the basic rules and regulations for safety on the water; each guide gives the same spiel.

Mr. Fiem said that his skiers frequent Dewees Inlet because it is the only area that is big enough, wide enough and deep enough to allow for the safe operation of numerous vessels. He reported that he has spoken with a member of DNR and asked that he park his boat in the middle of Dewees Inlet to photograph any guide not acting responsibly.

Councilmember Loftus asked if TidalWave had added jet skis to their fleet; due to breakdowns, the fleet has been increased by two (2), but there are no more jet skis on the water at any one (1) time, according to Mr. Fiem.

Vice Chair Buckhannon asked what Mr. Floyd wanted the Committee to do for him; Mr. Floyd asked that the Committee ensure that the (TidalWave) operation is done as safely as possible. He asked whether the guides have boating licenses? Are they Coast Guard captains? Do they know the basic general practices of water safety? Are they certified and what experience do they have on the water?

Vice Chair Buckhannon said the Committee would work with the marina management to see what could be done to reassure him.

Phillip Smith also wanted to speak to the Committee regarding the improvements to the TidalWave dock; he distributed copies of a letter to the Committee and of the permit application. The concerns he voiced are (1) building a new covered pier head closer to his property line, (2) the increased size of the covered pier head, and (3) a negative impact on the value of his property. He is asking the Committee (1) to withdraw the permit, (2) to re-evaluate the impact of the improvements to the bordering residential property, and (3) to relocate the TidalWave dock further north within the existing public City docks.

4. Comments from Marina Tenants

Marina Manager Berrigan reported that earlier in the month the fuel pumps at the marina started to leak, but thanks to the efforts of the City Administrator and Director Pitts they were operational again in a matter of two (2) days. Administrator Tucker noted for the record that Assistant Dziuban had been the primary facilitator in this matter.

5. Old Business

A. Status of TidalWave Watersports Dock Replacement – John Shaffer

Administrator Tucker stated that there was never any intent to have a negative impact on the Smith's property; the design Mr. Shaffer came up with as a result of meeting with the Committee and the tenant was intended to try to correct some of the struggles the tenant has had with their business operation. The existing covered area presents issues in dealing with people, safety issues related to getting out of the sun, and other issues which drove the decisions on the design; there was never an intention to be less than a good neighbor. The Administrator thanked Mr. Smith for bringing his concerns before the Committee to see what avenues are available to address them.

Mr. Shaffer of Ocean and Coastal Consultants reported that, in the spring, he worked with the City and the tenant for a concept design that was based on the fact that the existing structure had been damaged from the dredging process and was repaired to allow the business to continue operating through the summer of 2012 and with plans for replacement in 2013. The City and TidalWave were able to arrive at a design that not only works within the City's budget and maintain the existing use, but, also improves the operations and safety of the tenant. The

floating dock is essentially the same size and in essentially the same location, possibly two (2) feet closer to Mr. Smith's property. The size and location of the fixed pier head are based on trying to create a structure large enough to have a central island for the point-of-sale operation and create a shaded, open air space for their patrons to wait. It was pulled a little closer to the shoreline and reduced the overall length of the fixed dock. The gangway was shifted to the south, more to the center of the floating dock, to open up the back side of the north end to create docking space there. Mr. Shaffer assured Mr. Smith that the new structure is beyond the regulated twenty-foot (20 ft.) shared property line offset.

Administrator Tucker explained that, when Council was working on the budget for the Marina Fund, the City was also looking at other initiatives to allow for the rehabilitation of all of the docks at the marina, but the budget limitations in the Marina Fund made that impossible. The only improvements that the FY14 budget would allow are the replacement of the land-side fuel dispensers and the Tidal Wave dock replacement.

Vice Chair Buckhannon added that the City was seeking grant funding through the Boating Infrastructure Grant to begin the phasing process for the marina master plan, but realized that the City could not meet the requirement for matching funds.

Mr. Shaffer reported that the permit had been applied for early in July; the Corps of Engineers' public notice period was fifteen (15) days and expired on August 2nd or 3rd; the OCRM public notice period was thirty (30) days and ends August 15th. Mr. Shaffer stated that both agencies reported having received a letter from Mr. Smith. Once the public notice period is over, the permit application goes to the DHEC Bureau of Water to issue the 401 Water Certification; then the OCRM permit is issued, followed by the Corps of Engineers permit – he expects another couple of months to pass before the permits are issued. He voiced the opinion that one comment on the permit will not change the agencies outlook on the project.

The Administrator said that she thought it was unlikely that the City could stop this project and look at a total relocation of the TidalWave operation on the site. Some of the docks on the Intracoastal Waterway side are tied up in the lease arrangement between the City and Morgan Creek Grill. Speaking for the engineer, the Administrator indicated that, possibly, modifications could be made to the design that would mitigate some of Mr. Smith's concerns.

Mr. Smith ran through the facts that last year the City invested eighty thousand dollars (\$80,000) to repair the TidalWave dock and less than two (2) years later is investing an additional three hundred sixty thousand dollars (\$360,000) when the lease yields only eighteen thousand dollars (\$18,000) per year. In his opinion, the investment does not make good business sense; he contends that the City is losing money by having the TidalWave dock. In addition, Mr. Smith said that the marina is becoming so overrun by people who do not live on the island that the islanders can seldom take advantage of a marina for which they are paying.

Administrator Tucker explained that a large return from the marina is in accommodations taxes that have supported the debt on the marina. The accommodations tax money generated by this community are the result of people coming to visit and staying in accommodations on the island and that money is supporting part of the marina debt. The idea is that there are amenities that visitors and residents can enjoy as a result of being able to bring in that money; the purpose of

that money is to re-invest in it in amenities on the island to continue to attract those “heads in beds.” It is the Marina Fund and Accommodations tax fund that are supporting the initiative, and that affects the decision-making associated with the improvements.

Mr. Smith also proposed relocating the building to land and stated that he has been told by the Building Department that the structure can be on land and on grade.

In summary, Mr. Smith proposed that the existing City docks on the Intracoastal Waterway be moved to the south, closer to his residential property, and that the TidalWave dock be relocated to the space vacated by the City’s docks.

Administrator Tucker stated her understanding of the dialogue that Mr. Smith will only be satisfied if the City relocates the TidalWave operation and that to refine the existing plan and move forward with TidalWave in its present location is not going to be looked upon favorably by you.

Mr. Smith stated that, if the City is going to spend three hundred sixty-thousand dollars (\$360,000), he wants the money spent in a win-win situation for all involved.

Vice Chair Buckhannon asked Mr. Smith if he could be satisfied if the new dock were to follow the footprint of the existing dock. Mr. Smith responded that he does not want to see TidalWave’s business to get any bigger right next to his house.

Mr. Shaffer countered Mr. Smith’s proposal about placing the building on land by saying that, in an emergency response situation, one would want the operation and management as close to as possible.

Vice Chair Buckhannon agreed that there was work to be done and decisions to be made about what is possible under the scope of the permit.

Mike Fiem voiced opposition to relocating their business because their operation is too busy to be near the other businesses – being at the end of the marina is a safety factor for TidalWave.

The discussion ended with the Administrator being charged with setting a meeting with all of the stakeholders to see what changes can be made to have less of an impact on Mr. Smith’s property.

Having arrived late, Chair Stone sat in the audience until the appropriate minute to assume the Chair.

B. Discussion of Bandit Boats at Morgan Creek Grill

Since the last meeting, letters were sent to the owners of bandit boats that had been identified, indicating to them that they should not be doing what they are doing. Administrator Tucker stated that she had invited Captain Usry to attend the meeting to tell the members what the City’s limitations are relative to bandit boats in the Morgan Creek Grill’s docks; this topic has also been discussed in the Public Safety Committee

Captain Usry noted that these docks are included in Morgan Creek Grill's lease with the City, and, as such, the restaurant is responsible for them. The problem for law enforcement is the trespassing issue; if the owner of the boat is not with his boat, the citation cannot be issued and left on the boat. Part of the uniform traffic ticket requires that the ticket be personally delivered; the charge must be explained thoroughly and the person given a court date. Typically the boat owner is not with his/her boat. Another issue is towing the boat. A company named SeaTow has said that, if they are called, the charge is six hundred dollars (\$600) for them to come, two hundred dollars (\$200) an hour of their time and one hundred dollars (\$100) for storage; this nine hundred dollars (\$900) must be paid upfront and can only be recovered through civil court action.

Captain Usry indicated that the suggestion has been made to Carla Pope of Morgan Creek Grill about hiring a part-time person to monitor the docks. In addition, the Police Department will respond to calls from Morgan Creek Grill, but the City does not have the staff to police their docks. When some of the boats were identified, it turned out that a couple belonged to restaurant employees, and they were put on notice that they cannot use the slips since they are not restaurant patrons.

The difference between issuing a uniform traffic ticket and a vehicular parking ticket is that the parking tickets are city tickets adhering to City ordinances; the uniform traffic ticket is a state ticket following state statutes.

Councilmember Loftus asked about signage stating "NO PARKING WITHOUT AUTHORIZATION FROM RESTAURANT."

Councilmember Buckhannon asked if a new ordinance could be passed to address this problem, to which Chair Stone said would be a question for the City Attorney.

Councilmember Buckhannon concluded that there is very little the City can do, and the burden falls on Morgan Creek Grill.

Chair Stone recalled that there is stern language warning boaters that the use of certain docks is available only to Morgan Creek Grill diners.

Marina Manager Berrigan said that by not enforcing the patron-only parking in the docks included in their lease means that they are violating their lease, and the Committee agreed. Administrator Tucker stated that letters have been sent to Morgan Creek Grill in the past, saying that if they allow people who are not patrons to use their docks for free, those patrons are not paying to use the other marina space which is problematic to the City because it is damaging to revenues.

Councilmember Buckhannon stated that, if they do not want to manage the docks as per their lease arrangement, they then should be required to give up the use of those docks.

Councilmember Loftus said that he had the understanding that the problem has improved in the month between meetings.

Chair Stone suggested involving Attorney Halversen to write the letter that they should adhere to the lease or give up those docks as a valid way to get the appropriate action.

MOTION: Councilmember Buckhannon moved for Attorney Halversen to write a letter to Morgan Creek Grill instructing them to police the docks assigned to them in their lease or be in default of said lease, or as an alternative, Morgan Creek Grill can relinquish control of said docks; Councilmember Loftus seconded and the motion PASSED UNANIMOUSLY.

C. Status of Replacing Fuel Dispensers at the Marina

Administrator Tucker reported that the RFP was advertised in *The Post and Courier* and is posted to the City's website, and bids are due on August 30th. The City is beginning to get questions and interest from bidders; the RFP does request bidders look at the potential for interfacing with the existing point-of-sale system.

Councilmember Loftus asked whether the RFP included functionality for newer software or newer technology in the future. The Administrator answered that the RFP asks for an evaluation of whether or not the product they are proposing would interface with existing or have to upgrade technology.

6. New Business

Consideration of Contracts in Excess of \$10,000 – None

7. Miscellaneous Business

Marina Rents Report

Administrator Tucker stated that all marina and parking lot tenants are current with rents and reimbursements to the City for insurance and solid waste disposal fees. Morgan Creek Grill and TidalWave Watersports are due to submit some reports; typically Morgan Creek Grill's report kicks in the additional rents provision. The report from Morgan Creek Grill was due July 30, 2013, and the report from TidalWave was due April 15th, 2013. Michael Fiem said he had sent the report to Assistant Dziuban, but could easily re-submit.

Next Meeting Date: 5:30 p.m., Wednesday, September 4, 2013 in the Conference Room.

7. Executive Session

MOTION: Councilmember Loftus moved to go into Executive Session at 6:55 p.m. to discuss the contract for the TidalWave dock replacement; Chair Stone seconded and the motion PASSED UNANIMOUSLY.

The Committee returned to regular session at 7:06 p.m., and Chair Stone reported that the Committee had not taken a vote or taken any action in Executive Session.

Administrator Tucker restated the issue under discussion as the will of the Committee is to consider relocating the TidalWave dock and to put the money toward the reconfiguration; she noted that any engineering work needed was not part of the contract. The discussion also continued regarding holding a meeting with all of the marina tenants, the consultant John Shaffer and Phillip Smith to get feedback from all parties involved in a relocation of TidalWave Watersports.

Councilmember Buckhannon stated that the Committee needed to know what the relocation costs would be, how long it would delay the project and was it possible to alter or amend the permit application. He was also wanted to know if what it would take to relocate the planned new dock closer to the footprint of the existing dock.

Administrator Tucker expressed doubt that the structure could be on land at grade due to the electronics in the building and commented that the site is so congested that it cannot lose parking spaces.

MOTION: Councilmember Buckhannon moved for the City Administrator to schedule a meeting of the marina stakeholders, consultant John Shaffer and Phillip Smith to discuss the options on the table and to report on the meeting at the September meeting; Councilmember Loftus seconded and the motion PASSED UNANIMOUSLY.

MOTION: Chair Stone moved to adjourn the meeting at 7:23 p.m.; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.

Respectfully submitted:

Marie Copeland
City Clerk