



EXECUTIVE SUMMARY

TO: City Commission

CC: Jim Scholl

FR: Marilyn Wilbarger, RPA, CCIM

DT: September 3, 2014

RE: Submerged Land Lease for City Owned Submerged Lands in Garrison Bight

ACTION: This is a request to approve a submerged land lease for the upland riparian property owner located at 701 Palm Avenue. The submerged land may only be used in conjunction with the uses occurring on the upland riparian property therefore the public notice and solicitation process called for in the City of Key West Code of Ordinances Section 2-941(c) has not been applied. The property owner is currently utilizing a portion of the submerged land area that is owned by the City of Key West pursuant to the Internal Improvement Fund, State of Florida Deed 19529 A, B, C.

HISTORY: In August, 2013 the Florida Department of Environmental Protection /Bureau of Public Land Administration conducted an internal audit of Deed 19259 (All) to confirm compliance with the restrictions and reverter in Corrective Deed No. 19259-A. The deed restrictions and reverter were included in the deed language to ensure the deed area would remain open to the general public for access to city provided water-related facilities. These restrictions have been the intent of the deed since originally deeded in 1947. With the exception of two modifications to the deed restrictions, the main portion of the deed remains subject to the restrictions in the corrective deed.

The City was found to be out of compliance with the existing deed restrictions in Corrective Deed 19259-A and B. With regard to Corrective Deed No. 19259-C it was noted that the city is not collecting revenue from the private structures under private lease agreements. Additionally, the audit report stated:

Deed modification 19259-C allows for existing private uses and subject to the additional restrictions, for which compliance was confirmed in an Audit Section report dated 10-25-2012.

- A) Existing facilities may remain as they exist as of the Board of Trustees of the Internal Improvement Fund (BOT) meeting October 3, 2006
- B) Existing facilities could only be used in conjunction with the uses occurring on the uplands on the date of the BOT meeting, October 3, 2006
- C) Any new or modified construction at the facility would be subject to 18-21.004 and 18-21.0041 Florida Administrative Code (FAC)

- D) All revenues received by the City from the private use of submerged lands describes in the modified deed 19269-C shall be solely used to fund operation of water related activities for the general public.

The city received notification of this determination in correspondence dated August 19, 2013, a copy of which is attached hereto.

Subsequently, on November 14, 2013 the city submitted Corrective Procedural Changes concerning the use of the submerged lands located with Deed 19259 A, B, and C to the Florida Department of Environmental Protection for their consideration, a copy of which is attached hereto.

On April 14, 2014 the city received confirmation from the Florida Department of Environmental Protection, Division of Lands which stated that the procedural changes outlined are consistent with the actions required by the Board of trustees in 2006 and, although the waiver did not reference the private leases that were cited in the current audit, the Board of Trustees did approve more exclusive activities than what is currently taking place. Therefore, they requested that the City make the procedural changes stipulated in the city's response letter. A copy of this confirmation is also attached.

The following actions and the timeline for implementing the procedural changes are as follows:

On April 25, 2014 a purchase order was issued for the completion of the submerged land surveys which were completed and delivered to the city by the end of May.

On June 2, 2014 notifications and surveys were mailed to each of the riparian property owners extending the offer of a submerged land lease.

On June 6, 2014 the submerged land draft lease was completed.

On June 10, 2014 the draft leases were sent to the riparian property owners that responded to the notices for their review.

As of this date, we have received an executed lease from this tenant for this parcel and it is attached.

FINANCIAL: The lease rates charged will be consistent with the fees charged under F.A.C. 18-21.011 (b) to include the base fees, discounts, surcharges and other payments as may be required. All revenues collected from the use of the submerged land in this deed will be placed back into water-related activities for the general public.

CONCLUSION: With the cooperation and collaborative efforts of the Florida Department of Environmental Protection/Division of State Lands, the city has undertaken all of the actions necessary to culminate in the execution of the submerged land lease that is presented here for your approval.

ATTACHMENTS:

Florida Department of Environmental Protection Internal Audit

Non-Compliance notification dated August 19, 2013

Corrective Procedural Changes dated November 14, 2013

Confirmation of Corrective Procedural Changes dated April 14, 2014.

Submerged Land Lease