

Councilmember Kennedy confirmed with Mr. DeRollo that a more focused endeavor would have a greater chance of success. She also questioned whether focusing on items with a broader public appeal would be better. Mr. DeRollo agreed that parks and libraries generally have more public support, and a smaller scale program at a lower cost would be more acceptable to the voters.

Councilmember Wainwright asked if voter fatigue would be a factor, since the last bond measure was so recent. Mr. DeRollo said he didn't think that it would be. Councilmember Wainwright asked about future impacts if the measure is put forward this year but doesn't pass again. Mr. DeRollo discussed other factors that would affect the likelihood of a measure passing.

Councilmember Ross asked how much a poll would cost. Mr. DeRollo said the range is \$15,000 to \$22,000, depending on how many people will be surveyed and how many questions will be asked.

Councilmember Ross asked what effect he thought having redevelopment on the ballot might have on voter turnout and support. Mr. DeRollo said it could have a negative effect. Councilmember Ross asked Mr. DeRollo's opinion on whether the City should propose a bond measure at this time. Mr. DeRollo said he thought a bond measure by the City would not succeed in November.

Councilmember Ross said he didn't think it was wise to go forward, although he acknowledged there was still time to reconsider.

Mayor Schroder opened public comment.

Ed McGee discussed why he campaigned against the previous bond measure, primarily because there was not enough provision for staffing to take care of the additional facilities. He felt the citizens would support a bond measure if the necessary budget adjustments could be made. Vice Mayor DeLaney said increased property taxes could contribute toward the additional costs.

Paul Wilson said he voted for the past bond measure because it would have contributed money toward the marina and avoided the current marina situation. He expressed concern about double-taxing the downtown area if redevelopment and a bond measure are instituted. He urged the Council to be cautious about what is included in the bond.

There being no further speakers, Mayor Schroder closed public comment.

Vice Mayor DeLaney said this does not seem to be the right time for another bond measure, especially since redevelopment may be on the ballot. She expressed concern that City parks, the pool and the library are not getting the funding they need. She suggested waiting until the next presidential election.

Councilmember Wainwright said he was more concerned that there was not enough information or time to put together a successful measure for the November election, and the presentation today confirmed that. He was also concerned that the opposition to the previous bond measure still exists. He wanted a measure that would unify the City, perhaps through a more focused approach.

DBAW required the City to set up a marina enterprise fund. He indicated the Marina Commission would not be disbanded, but its goals and purposes may need to be reconsidered. He clarified also that the marina is not being sold, only leased.

Paul Wilson commented on the lack of solid definitions in the lease and the “shot-gun” approach to the problem. He expressed concern about the lack of maintenance proposed for the entitlement period, especially the dredging that is needed. He questioned the long-term effects of the continued neglect.

Tim Leathers, Almar Management Inc., commented on the need to restore the Joltin’ Joe, and expressed willingness to work with the Council, the Marina Commission, citizens, and civic organizations to restore it.

Seeing no further speakers, Mayor Schroder closed public comment.

Vice Mayor DeLaney responded to Mr. Wilson’s comments about the lack of maintenance, noting that one of the “conditions precedent” allows for maintenance dredging during the entitlement phase. She noted that her earlier concerns about the agreement have been addressed, and she was confident that this was a good arrangement and time to move forward.

Councilmember Ross asked whether or not requiring a prevailing wage would set the City up for a lawsuit and suggested alternative language. Mr. Walter and Mr. Hogan were agreeable to the change.

Councilmember Ross asked about the 10% live-aboard requirement, and whether the number currently allowed would remain constant during construction. Mr. Hogan explained that BCDC has the final say in how many boats can be live-aboard, and the marina operator would have to comply.

Councilmember Ross expressed appreciation for Almar’s willingness to help with the restoration of the Joltin’ Joe. He asked for clarification on the costs for removal of the ferry pier, since the City may be moving ahead with it before the lease is enacted. He commented on his childhood memories of the marina, and expressed confidence that this lease will help restore the marina to its former state.

Councilmember Wainwright apologized for the record for statements he made that were based on information about Pacific Marine Development (not Pacific Marina Development) and the mistaken reference to Pacific Marine Development in the document. He also discussed misgivings he had with the manner in which the lease was developed, and he suggested that the marina subcommittee be made a standing committee of the Council and open to the public. He was concerned as well with the short amount of time that the Council was given to review the document, indicating he did not feel comfortable approving the lease at this time. He commented on the 5-year postponement of the needed improvements at the marina also.

Councilmember Kennedy agreed with Vice Mayor DeLaney’s comments about the dredging, and encouraged staff and MMLP to look at ways to work with other marinas to contract with a dredger, to save costs. She discussed her experience with long-range development projects, and said she had no hesitation over the fact that all the partners in MMLP and MLC were not known

apply. Mr. Walter said that section applies to casualty losses. He confirmed there is a provision for the marina to be in good condition when or if the lease is terminated.

Councilmember Wainwright asked about page 13, requiring both parties to negotiate in good faith, and how to determine “bad faith.” Mr. Walter gave some examples, agreeing it was another difficult definition.

Councilmember Wainwright asked if there was provision in the lease stating that the City will own the improvements. Mr. Walter said the ownership issues would be negotiated during the term of the sublease, as provided in paragraph 4T in Exhibit E. He also confirmed that the City will own the entitlements, even though it is not stated in the document, since the City owns the property.

Councilmember Wainwright asked why the lease does not limit the maximum term of the sublease to 5 years. The Council discussed whether it should be stated, since there could be good reason to allow it to go over a 5-year deadline.

Mr. Walter noted that page 12 discusses the requirement to return the property to its original state. He also noted that Councilmember Wainwright had reported a typographical error on page 19, correcting “anndin” to “and in” and the inclusion of “bait shop income” under definitions of income.

Vice Mayor DeLaney commented on a typo on page 22, “tem” instead of “term” and on page 3, where “the” is repeated.

Councilmember Wainwright asked about improvement obligations on page 14, and Mr. Walter said MMLP will be responsible for all improvements other than what is included on Exhibit C.

Councilmember Wainwright questioned whether the language on page 16, specifying MMLP’s payment and performance obligations, was contradictory. Mr. Walter clarified the intent of the language. Ms. Catalano suggested switching the order of the sentences to make the language clearer.

Regarding page 24, Councilmember Wainwright asked how “alternative rent” is calculated, and Mr. Walter explained that the formula follows immediately after that. He also clarified that was still to be negotiated, however. Vice Mayor DeLaney said she thought the alternative rent was less than the minimum rent. Mr. Walter said the alternative is more than the minimum.

He also clarified the difference between “percentage” rent and “alternative” rent, as well as the time differential.

The Council recessed briefly for lunch.

Councilmember Wainwright asked about restaurant siting and attribution of responsibility to MMLP for pad preparation, and the Council’s future rights to make those decisions. Mayor Schroder commented on the difference between landside and waterside restaurants/businesses.

Mr. Hogan agreed that in most cases a lease extension is granted if the lessee has met the requirements of the lease.

Councilmember Wainwright asked Mr. Walter what constitutes “material default.” Mr. Walter gave examples (nonpayment of rent, failure to clean the docks regularly), noting that if it can’t be agreed upon by the parties, a judge would decide.

Councilmember Wainwright also asked for clarification between the “operator” and the “lessee.” Mr. Walter said he was suggesting that language be added that MMLP will make sure that the management agreement is performed by Almar, since MMLP will not be the manager of the marina. He confirmed that Mr. Hogan was agreeable to the change.

Councilmember Wainwright asked whether there would be a change of operators once the entitlement period is over. Mr. Walter said once the entitlement period is over, MMLP will begin managing the marina. He explained provisions of this lease are better, as compared to the terms of the current management agreement.

Councilmember Ross asked if there would be a requirement that MMLP will warrant that Almar will conform to the provisions of the management agreement during the entitlement period. Mr. Walter said yes, and he suggested additional language for Section 4A and Section 7A. Councilmember Wainwright suggested the title of Section 7 include the word “Operations.”

Vice Mayor DeLaney questioned whether Almar was already covered, since it is part of MMLP. Councilmember Wainwright clarified that Almar Marinas (part of the partnership) is different than Almar Management Inc. (which signed the current management agreement).

The Council and Mr. Walter discussed terminology in the lease, such as “commercially reasonable” and “discretionary.”

Councilmember Wainwright questioned statements in the staff report that claimed there would be no impact on the City’s general fund. He specifically referred to 4E(2) of Exhibit E. Mr. Walter said that is still a debatable, negotiable issue, as the City only wants to commit to the funding provided by DBAW. Councilmember Wainwright also referred to page 15 of the sublease. Mr. Walter cited an underlying clause of the lease that said the full extent of the City’s obligation will be negotiated during the entitlement period, and if no agreement can be reached, the deal will die.

Councilmember Wainwright asked if it would be possible to state that the sublease will not take effect until the City receives agreement from the State that the loan funds will be released. Mr. Walter said DBAW would not agree to that; they will not commit to funding until the contract is signed, the entitlement period is completed, and the remaining term begins. Councilmember Wainwright asked if it would be possible to state in the sublease that the City is anticipating a DBAW loan to help pay the cost of improvements. Mr. Walter said he thought it was adequately covered in the sublease.

Councilmember Wainwright asked for clarification on whether the improvements would be done over a 6-year period or 10 years. Mr. Walter said it was hoped that it would only take 6 years, but the contract provides 10 years to allow for the unexpected.

CALL TO ORDER

Mayor Schroder called the meeting to order at 10:05 a.m. with all members present.

CLOSED SESSION (adjourn to City Manager's Office)

CONFERENCE WITH REAL PROPERTY NEGOTIATORS – Pursuant to California Government Code Section 54956.8

Property: 7 North Court Street, Marina.  
Agency Negotiator: June Catalano, City Manager; Jeff Walter, City Attorney;  
Richard Pearson, Community Development Director;  
Joann Tool, Deputy Director of Parks & Community Services.  
Negotiating Parties: City of Martinez and Martinez Marina, LP  
Under Negotiation: Price and Terms of Lease

RECONVENE – PLEDGE OF ALLEGIANCE – ROLL CALL

Mayor Schroder called the meeting to order at 10:45 a.m. with all members present. He noted that a closed session had been held, with nothing to report out.

PUBLIC COMMENT (Comments are limited only to items listed on the agenda)

Mike Alford reiterated his concerns expressed at an earlier meeting regarding the newly discovered earthquake fault line less than 1000' from the marina. He asked if the Council was aware of it, and whether any studies had been done on the matter.

Paul Wilson commented on the length of time spent on marina negotiations, etc, both with Westrec and Pacific Marine Development. He asked for the names of the principals of Martinez LP, what part each will be playing in the partnership, and whether there is an exit strategy if this contract fails.

Mayor Schroder turned the meeting over to Vice Mayor DeLaney briefly and left the chambers.

Seeing no further speakers, Vice Mayor DeLaney closed public comment.

Councilmember Wainwright asked if someone could answer Mr. Wilson's questions regarding the principals and the exit strategy.

Community Development Director Richard Pearson said Tom Hogan, Jeff Pense and Randy Short were the principals. He also explained that either party could withdraw at the end of the 2-year entitlement period if the provisions of the long-term lease are not acceptable.