

FINANCIAL REVIEW BOARD – SPECIAL MEETING MINUTES

JULY 9, 2010

ENVIRONMENTAL SERVICES – TRAINING ROOM
434 SOUTH SWINTON AVENUE, DELRAY BEACH, FL.

Item 1. Call to Order

The Chairman of the Board, Mr. Howard Ellingsworth called the meeting to order at 8:30 A.M.

Item 2. Roll call

MEMBERS PRESENT:

Howard Ellingsworth, Chairman
Todd L'Herrou, Vice Chairman
Christina Morrison Pearce
Jack Warner
Yvonne Walker
Rosalie Blood
Hank Higginbotham (Alternate)

PUBLIC GUESTS PRESENT:

“Butch” Carter, Waste Management

STAFF PRESENT:

Rich Reade, Sustainability Officer
Joseph Safford, Finance Director
Barbara Flynn, Exec. / Tech Asst.
Lula Butler, Dir. of Comm. Improv.
Al Berg, Asst. Dir. of Comm. Improv.

Item 3. Approval of Agenda

Mr. Ellingsworth asked for approval of the July 1, 2010 Agenda. Mr. Warner asked to add an Executive Session to the agenda as item # 7. Mr. Warner moved to approve. Seconded by Mr. L'Herrou. Said motion passed unanimously.

Item 4. Public Comment

No public comments.

Item 5. Handouts

No handouts.

Item 6. Open Issues

Waste Management Residential Analysis

This meeting included continued discussion on the verbiage of the final draft of the letter to the Commission concerning the review of the City staff's Analysis of the Residential Solid Waste and Recycling Program and Proposed Business Process Recommendation. (*Please refer to the minutes of July 6, 2010*). There were some minor changes made in order to prepare the document to be submitted. The vote to approve the report was motioned by Mr. L'Herrou and seconded by Ms. Walker. Said motion passed unanimously.

Mr. Safford asked Mr. Warner about the final paragraph stating “the Board’s recommendation that the City Manager undertake a comprehensive organizational and staff review of the purchasing and finance functions”. Mr. Warner stated it is a general statement about functions - Focusing on several financial functions and the activities of purchasing and contract management. Mr. Safford stated the contract with Waste Management (WM) stipulates the Community Improvement Department has a contract administrator; therefore that function is not part of the Purchasing Division. The improvements made to the business processes should lock in the way the contract will be managed. Mr. Warner stated they are making a broader statement due to the fact that the WM contract is only one of 35 existing contracts held in place by the City. It was clarified that they were not recommending more staff to be hired to monitor the contracts.

Item 7. Open Discussion –

Pre-Executive Session- Mr. Ellingsworth stated he and Mr. Reade met with Mr. MacNamee and at the time they did not think WM would comply with the documentation that the City has requested. As an alternative the City could request up to twenty sample customers with all the data for those customers to be tested randomly. Mr. Reade stated that WM has accepted this alternative. Mr. Warner stated he does not agree with this option. Mr. Ellingsworth asked for Mr. Carter from WM to explain why they cannot provide the detailed information that was requested.

Mr. Carter stated the information requested, in the hands of a broker, may end up taking customers away from WM, which he stated will also take the franchise fee away from the City. Other vendors may call it commercial recycling, which no franchise fee is involved. The company may not be bonded and insured. WM has always resisted (to his knowledge) providing that kind of detailed data. There is a clause providing the City can come to their office and have access to anything they want. They just don't want it becoming a “Public Record”. The City cannot lock that file,

especially if it is sent in email format. The issue is not to keep the information from the City, but that they do not want the information to become public. There is a monthly report provided to reconcile the invoices to the billing. The alternate proposal of twenty customers to sample test will be random, so should prove the system is capturing all of the customers, billing them appropriately and paying appropriate franchise fees to the City. The alternate approach should resolve the issue for the City and it helps protect WM's data.

Mr. Warner referred to the Florida Statue 815.045 which specifically exempts trade secret information from disclosure under public records law. It is a felony to disclose such records. So WM may not want to provide the information to the City but the statement that it becomes public record is countered by the facts. Mr. Carter stated the City cannot guarantee the information will remain confidential.

Mr. Reade stated the data being a "trade secret" was discussed with the City Attorney. There was a question as to if the data is considered a trade secret. Mr. Warner stated it certainly would be. Mr. L'Herrou stated the City should treat this as a trade secret so there is no reason why the City cannot devise procedures to handle the information and preserve the secure nature of it. It is common practice in many industries to provide secure information in various ways so it cannot be easily passed out to outsiders. What he is hearing is the City lacks confidence in their own ability to do that. Mr. Ellingsworth stated WM may be the ones with doubts that the City can keep it from becoming public record. They should decide if the procedures to spot check will be sufficient, then if there are irregularities a full review of the data base would be required.

Mr. Reade stated the City has never said they cannot provide procedures to protect trade secrets. We can do that. There is an issue as to whether this information is considered a trade secret. Also, a non-detailed billing summary was requested which we do receive every month. We do receive a full list of customers to be able to select from. Mr. Reade stated Mr. MacNamee has concurred with this recommendation. The City Attorney has discussed this with Waste Management's Attorney. In the contract we are not required to receive the full data report, so it has been identified as something to be addressed when renewing or getting a new contract.

Mr. Safford stated there are two types of reports, during the analysis we received a full detailed billing register for February 2009. This is the one they are saying has trade secret information. On that report they disclose customer addresses but also the container sized, frequency of pickups and all of WM internal codes for every type of charge. The second report is a customer billing list and it includes the customer name, the revenue received from that customer and the franchise fee on that revenue. The total of that report equals the check that we receive each month from WM. We still get that report and we are allowed to go to WM or send an auditor to audit them. They are only saying they do not want to print the full detail report or send by email because if someone makes a public records request, even years from now, it will be included. He feels it would be difficult to protect that information.

Mr. Reade thanked the Board for their time and commitment to this issue and their agreement that the reports are the best reports that we can provide. The Board also thanked him for the conscientious effort on his part. In conclusion, Mr. Ellingsworth will be submitting the Board's final recommendations to the Commission.

Executive Session-

The Board requested this portion of the session be for Board members only.

Mr. Warner stated he wanted to discuss the upcoming meeting on July 13th with the City Commissioners. He handed out a document that may be the message they would like to convey. Mr. Warner stated in the budget submitted in April there is a line item for a severance payment to Joe Safford. He inferred from that as early as April, Mr. Safford and the City Manager have come to an agreement that the Finance Director will be retiring in the next fiscal year. Ms. Blood confirmed Mr. Safford had stated he was going to retire on October 15, 2010. If he is retiring the City will want to have a new Finance Director and he is suggesting this is an opportunity for the City Commission to assert some leadership making it clear to the City Manager the importance of this role; what qualifications they will be looking for and the hiring process. Mr. Ellingsworth stated that would be appropriate if the Commissioners have sufficient background to make that equation. He would rely on the City Manager to bring the last three candidates to the Commission for their choice.

Mr. Warner stated he has no confidence in the City Manager's ability to initiate and manage this process and end up with a strong CFO. Mr. Ellingsworth asked his basis for this comment. Mr. Warner stated it is from everything he has learned in time spent on this Board. The findings of the WM activity are not isolated cases. Mistakes made by the City in long term contracts such as MatchPoint and City pension decisions come to mind. The lack of return on the cost benefit analysis for many long term decisions, the investigation of the WM activity and several other spending items make him think it is a broken system within a broken environment rather than being isolated incidents.

Mr. Ellingsworth stated the City Manager or the Finance Director did not recommend a lot of decisions on these contracts. The City Commission told the City Manager they wanted the MatchPoint 25 year contract. The City Manager was opposed to the Union Contracts, the Fire Department 4% increases and others. He stated Community Improvement is partly responsible for the WM issue.

Mr. Warner feels a strong, professional Finance Director could have prevented a lot of this from happening so he wants a process in place to ensure we get one. Ms. Pearce stated this should be done in a positive fashion by focusing on the opportunity the City will have to get a real financial force to go forward. The Finance Director's retirement announcement has not been made public. Ms. Walker stated a position of that level to be leaving in 90 days should be open and there should be some recruitment process in place and she does not understand why it is not being discussed. Commission should be aware, the money is budgeted, and you can't hire a person leaving in 90 days of that caliber. There is a review process, a need for continuity. The Board is not saying that Mr. Safford is not qualified, just an opportunity exists for a new Finance Director and this needs to be addressed. In response to a question from Ms. Pearce, Ms. Walker stated she is not at the level to know if they have anyone in mind for his replacement. This is a huge position; second to the City Manager and it is ending in 90 days and there seems to be no discussion. However there may be ongoing discussion that she is not aware of. Mr. Warner stated the only way he knew about it was from a line item on the budget. It was stated Mr. Safford is at his 20 years of service, there may be some health issues involved and he is at retirement age; his retirement has nothing to do with the WM issue.

Mr. Higginbotham agrees with Ms. Walker that this should have surfaced a while ago. His worry would be that maybe there are things going on behind the scenes and this process is already underway either within the current administration or outside the administration. He hoped there was not anything like "the good old boys network" going on.

The WM issue has taken up six of the FRB meetings and they wish to get back to analyzing the budget. They feel the WM analysis has uncovered mistakes made by both parties and they will be submitting a statement to the Commission expressing their findings. Mr. L'Herrou stated the normal process is for the group invited to the workshops is they will have a presentation. He stated Mr. Reade will most likely have a presentation regarding WM. The Commission will discuss that, then questions will be asked and the Board will have an opportunity to respond. Mr. Ellingsworth stated the Commission will have the reports of the Board's findings and they will then add the formal recommendation that goes beyond the reports. Mr. Warner suggested focusing on a single core recommendation. Mr. Ellingsworth stated after 1700 hours and 6 FRB meetings they can say City has not billed accurately nor were they paid by WM accurately. He wishes to make it clear that this has been an unacceptable situation. Mr. Ellingsworth will incorporate Mr. Warner's written statements into a recommendation.

Mr. Warner asked about the agreement (as a Board) on not making comments to reporters or speaking directly to any Commissioners and if that restriction could be relaxed. Mr. Ellingsworth stated at the workshop any one of the members is welcome to respond. However, he stated if a reporter confronts a Board member you are speaking for yourself and it should be made clear it is their own opinion.

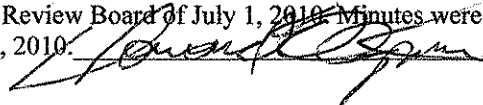
Mr. Ellingsworth received an email from Mr. MacNamee and asked if the Board feels are they finished with any dialogue concerning the WM issue. Mr. Warner stated with the recommendation that there needs to be organizational and staff fixes and additional guidance on that, they should be finished. Mr. L'Herrou stated the message is - we will never know. The analysis that has been done does not provide a definitive answer. We should put an end to this and go forward with the changes they will be putting in place.

Mr. Ellingsworth asked Mr. Warner why he feels the Commissioners are an important part of the equation with hiring the new Finance Director. Mr. Warner stated again that he has no confidence in the City Manager's ability or intention to hire a strong independent Finance Director that could do two things for the City 1.) Put in place a real finance organization 2.) Begin to address the succession plan gap.

Item 8. Adjournment

Mr. L'Herrou motioned to adjourn the meeting seconded by Ms. Pearce. Said motion passed unanimously. The meeting adjourned at approximately 11:00 a.m.

The undersigned is the Finance Director of the City of Delray Beach. The information provided herein are the Minutes of the City of Delray Beach Financial Review Board of July 1, 2010. Minutes were formally approved and adopted by the Financial Review Board on July 20, 2010.



Howard Ellingsworth, Board Chairman