

FINANCIAL REVIEW BOARD – SPECIAL MEETING MINUTES

JULY 1, 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

PUBLIC GUESTS PRESENT:

"Butch" Carter, Waste Management
Ken MacNamee

STAFF PRESENT:

Brian Shutt, City Attorney
Rich Reade, Sustainability Officer
Al Berg, Asst. Director of Comm.
Improvement
Joseph Safford, Finance Director
Chevelle Nubin, City Clerk
Lula Butler, Director of Comm.
Improvement

Item 3. Approval of Agenda

Mr. Ellingsworth asked for approval of the July 1, 2010 Agenda. Mr. L'Herrou moved to approve. Seconded by Ms. Pearce. Said motion passed unanimously.

Item 4. Public Comment

No public comments.

Item 5. Review Draft –

Residential Solid Waste Program and Proposed Business Process Recommendations Analysis

Mr. Reade formulated this report similar to the commercial report. He explained the foundation of the report and the work plan items were several tasks completed by Community Improvement:

- 1.) Certificate of Occupancy (CO's) listing.
- 2.) Confirmation of unit count.

He explained the process of how they took the March 2010 field test numbers and went backwards in time subtracting the CO's all the way back to April of 2005 to verify the numbers at the beginning of the bid. He researched the actual billings from the invoices. The unit counts have been amended in AGAR (single family curbside rollout carts) other categories remained the same. In August of 2009 the unit counts changed; there was a 2,000 unit discrepancy from our billing. WM did a spot check on the DGAR (multi-family) and agreed to our numbers. WM stated they were told by City staff to put all new units (CO's) into AGAR. For several months on the chart there were no CO's added and Mr. Carter explained he is not sure if they were received, but they were not making any adjustments to unit counts unless they were informed to do so. Mr. Reade stated all of the billings will be adjusted and credits required will be issued. They will be discussing the field count (as of March 2010) and providing WM with those numbers so they can confirm our counts and our method. Mr. Reade went over the rates and field tests numbers showing in April 2005 we estimated we should have been charged \$166,129.00 based on actual unit counts, and we were charged \$170,000.00. At the end there is a total over a five year period there is a \$242,000.00 difference which would have been owed to the City. We also found there is a \$177,000.00 invoice to the City that was not paid. In December of 2005 we show an invoice but there was not a payment that was made. The reason was in the franchise agreement it states the residential invoices are submitted in an arrears basis and the change in billing may have caused this. The Utility Billing personnel have been working with WM to correct this to match the franchise agreement resulting in a difference of approximately 62,900.00.

Mr. Safford stated WM had an invoice problem in their verbiage. They would have an invoice date and in the body of the invoice a month of service that was being charged for. Some mislabeling of the invoices created confusion. It was uncovered by going back to the very first invoice from BFI and follow it through every month confirming payments. They found there was a missing invoice. WM allowed for the non- payment after discussion with Utility Billing. Mr. Safford stated the Utility Billing staff should have done more to trace all of the invoices at the time.

Mr. Reade stated with regards to the Community Improvement unit count, there were 191 units that are still listed that could possibly be moved from BGAR to AGAR category. During the intensive field count they used many ways of

confirming numbers and are confident they are now accurate. That information was provided to WM in April who had some changes in service levels they were providing. In particular the 191 units has been receiving AGAR services, but has been classified as DGAR because they had a compactor. However at some point in time their management company provided the residents with rollout carts, so they were being picked up by WM as an AGAR type service. The City was not provided with that information in writing. We have discussed with them how they would like their service to be provided going forward. Staff felt they should remain in the DGAR category for the purpose of this analysis.

Mr. Carter from WM differs because when they started servicing the 191 units, they had rollout carts, so they had been classified on their end as AGAR service from the beginning. WM is paid based on the service type and the service type was AGAR. They are suggesting the 191 units; coming out of DGAR and going into AGAR to adjust this count. Going forward the City has given the complex an option: use the dumpsters for DGAR or use the rollout carts for AGAR. He stated on the past billings they should be AGAR due to the service that was provided.

Mr. Safford clarified that AGAR is City provided rollout carts; this complex does not have City rollout carts. He asked if the 191 units were switched over to AGAR for past billings the bottom line would change from WM owing us \$64,000.00 to owing us \$18,000.00.

Mr. Reade has made a number of recommendations for future billings that will ensure these issues do not happen again. The benefits of this study are that policies and procedures have now been documented, and we now have a unit count that is solid. We will now be reconciling with the Property Appraiser and SWA on an annual basis. They will be sending out a survey to the BGAR (rear-door pickup) customers to determine if they would like to remain in that category or change to AGAR with a reduction in their bill. Policies on how the information about how the CO's are submitted to WM and Utility Billing have been written. The employee working group will continue to meet once a month.

Mr. Safford stated in the beginning of the discussions, Mr. MacNamee had brought up that the area he lives in is categorized as BGAR, however most residents bring their carts curbside. They were categorized BGAR based on a simple majority vote by the residents back in 1996. Mr. Safford recommends that another vote be taken to see if they would prefer the curbside pickup at the lower rate. Going forward there will be running totals on each category kept by Utility Billing and compared to the WM invoices. In response to a question from Ms. Walker, Mr. Safford explained they will not withhold payment to WM if there is a dispute. The City will correct the unit count, send payment accordingly and notify WM of the change.

Mr. Reade discussed "special collections" which is if you put trash out in advance of your scheduled pickup date, in order to have clean neighborhoods, the clamshell truck will pick up the trash and the customer is charged \$11.50 per cubic yard. The City sends WM a list of pickups to be collected and we are billed on a monthly basis for that service. However during the analysis it was determined that this service should be included in the cost of the existing residential billing. There is an average of one special collection a week and WM has agreed not to charge for this in the future, however the City will continue to charge the residents the \$11.50 for administrative fees. An amendment to the ordinance will provide any changes they have specified in their recommendations as well as an amendment to the franchise agreement that will be brought to the City Commission.

Mr. Carter stated the billing that was occurring in the past was for customers that had called in for special services. In the franchise agreement they would normally be providing the service and billing the customer. Administratively, years ago it was agreed between the parties that the City will use the clamshell truck that WM provides to collect the early or late setouts to avoid Code Enforcement action and the special services. The City would then identify to WM those that were special services. The City was billing the customer, and WM was billing the City for those special services. The billing for this has drastically reduced in the past few years and going forward WM will not be billing for services for the clamshell truck unless it is a commercial customer; the City will return to referring the special services requests to WM and they will make the arrangements, collection and billing directly to the customer.

Mr. Reade stated there was a large amount of staff time required to complete the analysis starting in February. We could have asked WM to complete the field count, but the City determined that we needed to perform that service. They did find some deficiencies, areas of over-payment and payments not made over the past five years. Going forward we have a solid process so these issues will not occur, and documentation will be available. The level of communication has increased and will continue and reconciliation with the SWA for confirmation of unit numbers will help verify accuracy.

Mr. Warner, referring to the December 2005 missed payment, questioned why WM did not pursue the payment of \$177,000.00. Mr. Carter stated the conversation ended in a stale-mate and WM chose not to bring it forward. There was confusion on their invoices and they decided not to go back and fight for the payment. Mr. Warner stated that now we are assuming the \$177,000.00 will be used as an offset to the money WM owes the City. He asked what the basis is of their

confidence that sometime before April 2005 there was not a similar error in the other direction. Mr. Reade stated he went back five years due to the statute of limitations. Mr. Safford did look back further all the way to the beginning of the BFI contract in 2001 and started with the initial invoice of October 2001. No other missing invoices were found.

Mr. L'Herrou asked how something like that could not have been resolved five years ago and now we are going to resolve it in WM's favor. Mr. Carter stated that five years ago there were many things going on in Delray Beach; WM and Delray were involved in litigation with SWA, they moved their accounting department from Tampa to Pompano Beach and some of those records did not transfer correctly. There were some internal issues so they did not take the time to prove the payment was missing. The corporate office gave forgiveness on this to the Pompano office. It has resurfaced due to the analysis the City is doing on errors and omissions. Both parties have made mistakes and the whole process will help them find unknowns. A conclusion will allow them to go forward in good faith.

Ms. Blood disputed the fact that they should require the payment now when it had been "forgiven" in the past. Ms. Pearce also asked if the January bill showed the \$177,000.00 as a past due balance and was it carried forward as a liability or was it "written off". Mr. Safford stated the \$177,000.00 was taken off of the bill, as we were under the understanding at that time we had made the twelve payments for the year. Ms. Walker said we disputed the invoice, and did not pay it so it should not be called a missed payment or an oversight. Mr. Carter stated it was not "written off" but they chose not to take the City to court to pursue the payment, it was not absolved. He stated WM has used the unit counts that have been provided by the City from the beginning. The unit counts were agreed to and in this whole process it is appropriate and both sides have their omissions and commissions accounted for.

Mr. Safford and Mr. Reade informed the Board that after field counts by SWA, there are less than 100 units that need to be reconciled to the billing file and is in the process. Mr. Warner felt one of the results of the activity was that now we have an accurate count in total and in each category. It was explained that the Utility Billing division is currently correcting the field count and service totals. Annually that will be compared with the SWA numbers for consistency. Mr. Ellingsworth stated it should have been apparent that every new CO was coming in categorized as AGAR. Mr. Carter stated Sandy Roberts in C.I. had submitted the CO information and if it did not specify otherwise they were put into AGAR by WM. Ms. Butler stated the CO report has always given the address and the number of units affected by that address.

Mr. MacNamee asked:

- 1.) If the \$177,000.00 is still receivable. Mr. Carter stated it is irrelevant due to omissions and commissions and that it was not "written off" they just chose not to litigate.
- 2.) If the clamshell truck was specified in the contract. Mr. Shutt stated it is in the RFP which is incorporated in the contract. It was determined it is in the contract to be included at no charge. Mr. Shutt clarified that the current contract specifies that there is an \$11.50 charge that will be charged to the residential customer if trash is set out at the wrong time, also if a customer calls and wants a special collection. The charge can be made by WM or by the City and only the City charges the customer.
- 3.) If WM is permitted to bill the City for special collections and Mr. Shutt will check the contract for that information. That amount is approximately \$31,000.00 according to Mr. MacNamee and it has been determined by the Board that this is a reasonable question and needs to be clarified (both the ability to charge and the amount this would account for).
- 4.) Mr. Shutt also answered a question posed by Mr. MacNamee stating the Florida Statute 95.11 has provisions for actions of recovery limits to five years.
- 5.) Is trash considered a utility, because then we could go back as it does not apply to the statute of limitations. Mr. Shutt has not yet made that determination.

There was some discussion about going back to 2003 to do further research on money that could be recouped. Ms. Pearce noted that there has already been 1775 hours of staff time, not to mention time spent by the Financial Review Board, for a total of approximately \$45,000.00 in salaries - to recoup approximately \$64,600.00. She would like to focus on the \$177,000.00 issue but not other issues prior to the already analyzed dates. Mr. Warner feels it would be simple to go back to the inception of the contract as it was noted Mr. Safford has already done this and has the numbers that could be added.

- 6.) What reconciliation has been done with the residential billing side? Mr. Reade stated it is approximately 100 units that are differing and Utility Billing is currently reconciling those units. Mr. MacNamee stated they are 16,000 containers short of the field count and 8,000 containers short of the master billing file. Mr. Reade stated they are working on clearing this up and coming to an agreement with WM.

Mr. Reade will work on finding customers that may not have been paying properly and try to obtain that funding thru a recommendation to continue the lien practices. Ms. Pearce asked how many more staff hours this will add to administer

this contract for all departments involved. Mr. Reade feels the most additional time will be due to the Workgroup Meetings and the operational issues. It may only be one hour extra a month.

Ms. Walker brought up the issue of the 69,960.00 underpayment from WM, and is the City insured this payment. Mr. Reade stated this will be a legal issue and we do not know at this time if they will pay this amount or if it will be less.

Mr. Ellingsworth stated as a Board we need to decide how we want to respond to the report in a formal letter to the City Commission. Mr. Warner stated he would like to see the Executive Summary (the complete report) prior to responding. Mr. Reade stated he will have the full report by the next meeting on July 20th. Mr. Warner questioned the fact that Mr. Reade had stated the Board had unanimously voted to approve the commercial report. Mr. L'Herrou stated the agreement to the report was contingent on the acceptance of the new procedures by WM, and WM did not agree to the procedures that were recommended. This was in regards to the monthly report and WM has agreed only to the alternative option of random sampling.

Mr. Warner stated the original questions from the Commissioners were 1.) Is the City overpaying for residential solid waste collection services due to errors in the number of residential units or incorrect categories? His understanding is there is a net overpayment amount of the 64,960.00 and he recommends the City collect that money. Pending sorting out the clamshell truck issue to see how that changes the amount. 2.) Do our processes insure we have the right counts? In response, he recommends to end the historical analysis and to move forward with the counts that we have today (excluding the issue of the 191 units). He adds that the Board states as a group they are not able to say definitively that the numbers are accurate. We are trusting that the work was done well and has no basis to disagree with that. He recommends we accept the report's conclusions. Going forward he does not feel to maintain the working group is a good recommendation. There were two shortfalls, purchasing contract management and finance. Purchasing contract management is a function that would be involved in the RFP and negotiation process and the management of the contract. We do not have in the City a contract management function. In the financial area the accuracy of the accounts payable process (invoices) and the accounts receivable process (billing) are basic finance functions. When you form working groups to insure these basic processes work is a problem.

Mr. Ellingsworth agrees that better supervision on contract management is needed. They need to see the Executive Summary and data needs to be added from October 2003 to April 2005. The responses to the questions not answered such as the clamshell truck issue and the statute of limitations should also be addressed and added to the report. One other item Ms. Pearce added the contract as written is unmanageable and antiquated. The business is different now with trash going down and recycling increasing. There are easier ways to handle this without this angst on either part. The Chairman thanked Mr. MacNamee as this analysis has brought up some important issues. Ms. Pearce added thanks to both Mr. Reade and Mr. Safford for going above and beyond in trying to address this ten year old issue and they did a great job.

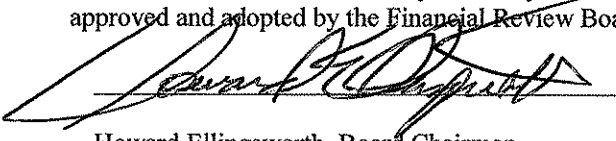
Item 6. Open Discussion

No additional discussion.

Item 7. Adjournment

Mr. Warner 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 Chairman of the Financial Review Board for 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