

# FINANCIAL REVIEW BOARD - MEETING MINUTES

**JULY 6, 2010**

CITY HALL – FIRST FLOOR CONFERENCE ROOM  
100 NW 1<sup>ST</sup> AVENUE, DELRAY BEACH, FLORIDA

## **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 (Alternate)  
Hansen Higginbotham (Alternate)

### **PUBLIC GUESTS PRESENT:**

Dr. Victor Kirson, Tierra Delray  
Ken MacNamee, Citizen  
Kevin Warner, Tax Payer  
"Butch" Carter, Waste Management

### **STAFF PRESENT:**

Joseph Safford, Finance Director  
Barbara Flynn, Exec/Tech Asst.  
Lula Butler, Dir. of Comm. Improv.  
Al Berg, Asst. Dir. of Comm. Improv.  
Russell Accardi, Fire Department  
Brian Shutt, City Attorney  
Rich Reade, Sustainability Officer

## **Item 3. Approval of Agenda**

Mr. Ellingsworth asked for approval of the July 6, 2010 Agenda. Ms. Pearce moved to approve. Seconded by Mr. Warner. Said motion passed unanimously.

## **Item 4. Approval of Minutes**

Mr. Ellingsworth asked for approval of Minutes of June 15, 2010. Mr. Warner motioned to approve. Seconded by Ms. Walker. Said motion passed unanimously.

## **Item 5. Public Comment**

Dr. Kirson provided a handout of a news article concerning two Police Officers killed and the photos of the suspects involved. This illustrates a police department is not the same as railroad employees and to take that into consideration when the Board discusses the Police Department. Also to analyze a Police Department would require a specialist; other sources comments would have no validity.

## **Item 6. New Handout Material**

The handouts included Mr. Reade's Residential Solid Waste Program Analysis and Business Process Recommendations and the Executive Summary. Mr. Warner's (updated) proposed *DRAFT* of the Board's recommendations to Mayor McDuffie regarding the Residential Solid Waste Analysis and Proposed Business Process.

## **Item 7. Open Issues**

### **7a) Departmental Budget Analysis:**

Motion made by Mr. Warner and seconded by Ms. Pearce to move the Waste Management Residential Analysis to be the first item discussed. Said motion passed unanimously.

### **7b) Waste Management Residential Analysis:**

Mr. Reade sent out the revised commercial and revised residential solid waste program analysis. He stated there was concern there was not a formal action or consensus taken on the original commercial report. As a result he submitted the revised report with the main outstanding issues being the verification of customers agreed on and the verification of policy and procedures. He recommends that prior to submitting a letter to the Mayor, the Board formalizes their recommendation. He also provided an Excel spreadsheet with the invoiced data going back to 2003 as requested and additional data on other issues such as "Pelican Cans" (sidewalk garbage containers in specific public areas). The City has not been invoiced on these containers for the past four or five years so the contractor has asked for that amount to be used to offset any overbilling. This will be a separate work plan item and will take the \$64,000.00 overpayment to Waste Management that was determined down to \$26,000.00.

On the issue of special collections, WM was partially paid for past collections and it has been determined that Waste Management will forego any future billings from the beginning of these discussions to the end of their contract. They will no longer charge the City for that "clamshell" service. Mr. Reade and Mr. Safford have verified every invoice on special collections provided and what was paid. Over a five year period they found approximately \$26,000.00 paid by the City to Waste Management.

Another issue was the reconciliation of the field test unit count with our master billing file, which should be done on a regular basis going forward. An analysis of the billings was based on the field count with projected billings for this number and compared to the actual amount billed. From October 2009 to May 2010 there was a difference of \$9,905.00 that has not been billed.

The Board has provided a response to the Mayor for the commercial analysis stating they are satisfied with the findings in Mr. Reade's report, discussed at length by the Board and unanimously determined it would not be prudent to go back to do any further analysis. The Board will provide a determination on the residential analysis to the Mayor as well, once they have reached a conclusion.

Mr. MacNamee stated that an item from the last meeting concerning the statute of limitations had not been resolved, and we have to know how much money we are writing off due to the statute. Mr. Ellingsworth asked Mr. Shutt if we are to conclude that we have a five year statute of limitations. Mr. Shutt stated if garbage is not considered a utility- which is not specified in the statute- the five year limitation would be correct.

Mr. Reade pointed out the one issue that is unresolved in the residential analysis which is the 191 units of Villa de Este which they are still working on determining if they will be categorized as AGAR (single family curbside rollout carts) or DGAR (multi-family). He explained in detail the reason for this question and how the cost differences between the services would impact the totals on the analysis.

Mr. Carter stated they (WM) did not identify the units as AGAR or BGAR, what they had was a certain number of units from when they took over for BFI and added units based on new Certificates of Occupancy (CO's). He stated other units were moved into different categories from the field test and there is an inconsistency if those units are not moved into the AGAR category for purposes of the past billings.

Mr. Ellingsworth asked how Villa de Este can be the ones that make the decision on what type of pick up they have and change it without notifying the City. Mr. Safford stated it may come down to a legal question and that Ms. Butler has contacted the management firm confirming - that from the beginning this complex had its own containers which is a different category than the City provides as an option. Multi-Family units use automated containers (dumpsters) however it allows for different containers (privately owned) only if that issue comes back to the Contract Administrator in Community Improvement to resolve the issue between the contractor and the customer. The ordinance does not allow for a different rate even if other containers are used. If addressed at the beginning, the contractor may have charged a separate rate for that particular customer.

The Board discussed:

- 1.) Has the clamshell truck issue (special collections) been resolved? The franchise agreement and an amendment that will be coming forth to the Commission following the workshop meeting as well as a new rate ordinance. Mr. Reade stated WM has provided an agreement not to bill us in the future. Mr. Shutt stated there will be changes to the franchise agreement and the ordinances. Mr. MacNamee directed a question to the City Attorney asking if the contract permits WM to charge us for this. Mr. Shutt addressing the Chairman stated this and other question responses will be provided to the Commissioners on an individual basis. Mr. Ellingsworth agreed this is not an appropriate forum for an Attorney to opine on an issue.
- 2.) The \$177,000 December 2005 payment was truly omitted rather than been made earlier/later or otherwise offset. Mr. Safford explained the WM removed this in the form of "write off". The payment was never made by the City or pursued by WM.
- 3.) Classification of the 191 units mentioned above in which the outcome may affect the amount overpaid. The Board will limit their report to the five (5) year statute of limitations due to the fact it will serve no purpose to research prior years.

They discussed each item in the *DRAFT* of their preliminary report to the Mayor (mentioned in the handouts) to ensure they convey the intended message. Items discussed – summarized :

- 1.) Has the City overpaid WM.? The analysis found an overpayment of 26,000.00 - the Board recommends pursuing repayment. The outstanding issue of the clamshell truck may affect the amount.

- 2.) Verifying the number of units for future invoices and payments, close the historical review and proceed forward with implementing the new field unit count adjusted monthly based on the C.O. reports.
- 3.) Alternatives and options in preparation for the expiration of this contract. a.) A contract of this size should go out for bid and have three to five year duration. b.) Contacts should clearly delineate ALL responsibilities of both parties. c.) Consider a flat monthly commercial franchise fee per unit of service. d.) Lower the number of types of pickups. e.) encourage compaction.
- 4.) Management of contracts - The Board recommends the City Manager undertake a comprehensive organizational and staff review of the purchasing and finance functions.

Caveats discussed by Mr. Warner amongst the Board: The amount seems to be well documented however neither an audit nor a forensic investigation was completed during the analysis. Staff determined statute of limitation restrictions precluded the possibility of collection before April 2005. Three specific uncertainties should be resolved:

- 1.) Determination of the final amount of the clamshell truck issue
- 2.) The \$177,000.00 unpaid invoice
- 3.) The 191 units. Negotiations will be discussed with WM relating to back payments.

Mr. Shutt stated there are other legal defenses and issues besides the statute of limitations. The other issues may come into play first such as "promissory estoppels" so the statute of limitations may not be the overriding issue. We gave WM the number that they billed us, so he does not want them to focus on the statute of limitation when there are other things out there that WM will be looking at as well.

Mr. Warner will prepare a final document with the changes the Board agreed upon to present to the Mayor. There will be a special workshop meeting between the Board and the Commission on Tuesday, July 13<sup>th</sup>. The Board also decided to hold a special meeting of their own on either July 7<sup>th</sup>, 8<sup>th</sup> or 9<sup>th</sup> to vote on the final report. Date and time confirmation pending.

Mr. Ellingsworth asked for a motion to table the agenda item 7a) Departmental Budget Analysis. Mr. Warner so moved, seconded by Mr. L'Herrou. Said motion approved unanimously.

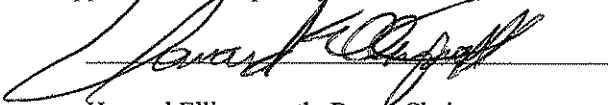
### **Item 8. Open Discussion**

No additional discussion.

### **Item 9. 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 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 6, 2010. Minutes were formally approved and adopted by the Financial Review Board on July 20, 2010.



Howard Ellingsworth, Board Chairman