

Friends of Delray

Intelligence Report

August 2013

After a brief absence, we are back. Since the momentous March election of a new Mayor and a new Commissioner, much has changed in Delray Beach. Throw in the appointment of a new City Manager and you have the makings of a new day.

Mayor Glickstein and Commissioner Petrolia were elected on a similar platform to bring back accountability to City Hall. They promised to push for transparency by bidding all appropriate City contracts and they promised to make decisions openly, not in back rooms as was the custom in the several past. The new City Manager, Louie Chapman, promised to bring new energy and ideas to City Hall. So far these promises have been kept.

We are sad to say, however, the remnants of the old guard have actively fought to preserve the bad habits of the past.

Let's examine some items:

A Malodorous Contract

Most of you will recall the votes last year to extend the city's largest contract to Waste Management without competitive bidding. At the time, we stated our belief that those voting not to bid (Mayor McDuffie, Commissioners Gray and Frankel) were wrong on the merits and on the morality of the matter. We called Mr. McDuffie a failed Mayor and offered our opinion that the three officials failed to represent the interests of the residents. We were not surprised when Mr. McDuffie went down to spectacular defeat in his subsequent bid for County office.

One of the early efforts of the newly elected officials in March was to examine the award process for the Waste Management contract. On a 3 to 2 vote, the Commission approved hiring an outside law firm to examine the matter and make a report to the Commission. Commissioners Gray and Frankel voiced repeated and strong objection. Ms. Gray contented that the Commission should not and could not "look back. We should be looking forward". Mr. Frankel suggested it was a waste of money. He offered his legal opinion that the Commission did not have the authority to overturn the decision of a previous Commission. After several weeks, the law firm made a public presentation in which it said that the contract award last year failed to follow either City or State requirements, and

that it was in clear violation of the law. As a result, the law firm stated that the contract extension was not valid and could be voided.

Again, Ms. Gray and Mr. Frankel voiced strident opposition. They continued their arguments and at times the debate became personal. At one point Mr. Frankel turned to Brian Shutt, the City attorney, and said, "Brian, last year you stated that the contract extension was perfectly legal." Mr. Shutt replied, "Yes. But after reading the outside legal opinion I have changed my mind. I agree with the new opinion". A fuming Frankel said, "Well I think your opinion last year was correct. I do not agree with the new opinion".

The City has now filed a legal action asking the Court for a declaratory judgment to void the contract.

The question here is why there is such fierce opposition to the notion of bidding out the City's largest contract. Scuttlebutt around town is that in awarding the contract extension last year certain outside powerful players placed pressure on staff. Former City Manager Harden played an important role behind the scenes. We cannot verify what happened, but it is suspicious that now – almost a year later – 2 elected officials are still working so hard to avoid the bidding process. We expect continued efforts by the old guard to prevent the contract from being bid.

Nominations

Nominations to City Boards has also turned into a fight between the newly elected officials demanding transparency and the old guard fighting to preserve personal privileges. Recently the Commission made appointments for 4 positions on the CRA Board. Commissioner Frankel had one. At the beginning of the process, the Mayor announced that the Commission would allow comments on each nomination before voting. Commissioner Grey said she didn't agree with the discussion period because it was not used by the previous Commission. (Previous Commissions did in fact allow discussion.) Commissioner Frankel also stated that he was against any discussion. He advanced the legal theory based on his years of experience that each Commissioner had the right to appoint anyone on the approved list without objection from other Commissioners. We salute Mr. Frankel for continuing to issue novel legal opinions. Unfortunately, the City Charter is clear on the process that allows independent votes. The City Charter even goes on to say what happens if a nominee is voted down.

Still, it came as a surprise that at 4:45PM on the Friday before the meeting, just minutes before the 5:00PM deadline, two former Mayors put in applications to serve on the CRA Board: Mr. McDuffie and Mr. Carney. We are often naïve, but we have a hard time believing that a hidden hand was not behind this maneuver.

The calculation was that the Commission would not have the fortitude to turn down two former Mayors.

Mr. Frankel nominated Mr. McDuffie. The nomination was seconded by Ms. Gray and discussion began. Commissioner Petrolia said that the County had a rule that an elected official had to wait 2 years before serving on a Board because of the possible influence that person might have. She went on to say, "I don't think Mr. McDuffie is the right fit here. In his time on the City Commission I don't believe we saw the kind of innovation promised particularly in regard to the West Atlantic, NW and SW areas. Additionally after reading the outside legal opinion regarding Waste Management and Mr. McDuffie's involvement in that, I cannot in good conscience support Mr. McDuffie's nomination."

Mr. Frankel sputtered and shouted that he had the right to appoint whomever he wanted. He accused his fellow officials of acting improperly and said he was fed up with the process. In a pout, he then stated that he would not attend the regular Goal-Setting meeting scheduled for the following week - a statement that was met with disinterest by the others.

After much fuming by Mrs. Gray and Mr. Frankel, a vote was taken. Mr. McDuffie looked on with confidence, sitting in the audience with former Commissioner Alperin and Mr. Carney. To his evident surprise, the Commission voted 3 to 2 against his nomination. Mr. McDuffie left quietly. Mr. Carney proceeded to the parking lot outside to express his anger. He got into a loud argument with a CRA official. This entertained a group of bystanders who gathered to listen to the shouting. Mr. Carney was heard to say that he would be back as an elected official. Another memorable evening at City Hall.

At that next meeting Commissioner Frankel nominated Christina Morrison, a former Commissioner. During the discussion that followed, Commissioner Petrolia reiterated her position on appointing former Mayors/Commissioners. In addition, Ms. Morrison qualifications were questioned based on her statements that the CRA district should be reduced, thus reducing its ability to operate. At this point, even though there was a nomination properly seconded on the table, Commissioner Frankel announced that he was withdrawing her nomination. This threw the proceedings into confusion, and the matter was tabled.

At the next meeting, the City Attorney stated that the nomination should not be withdrawn. However, Mayor Glickstein said that in the interest of harmony, even though the nomination was properly before the Commission for a vote, he would agree to allow Mr. Frankel to withdraw Ms. Morrison's name. Mr. Frankel then proposed Mr. Paul Zacks, who was appointed 5 to 0.

It seems odd to us that Commissioners Gray and Frankel continue to argue for rights of personal privilege that are not permitted in the City Charter....but old habits are hard to give up.

The Prince

Immediately after being sworn in, Mrs. Petrolia said that she wanted a new, more transparent government in Delray. She said that the Beach Cabana contract had been awarded improperly and that the City was losing money. You may recall that while the Waste Management contract was being awarded, the Beach Cabana contract was quietly extended. The City Manager and the Commission overruled the recommendation of the Staff and continued the contract at the same annual rate as before. Had the contractor ranked #1 by the Staff been approved, the City would now be receiving \$80,000 per year more than it does. Over the next 3 year period the City would receive an additional \$240,000 more than it does now. Instead, the Commission voted to extend the current contractor with no increase in fees paid to the City. Unfortunately, Mayor McDuffie let the cat out of the bag during the vote when he stated that if he did not vote for the current contractor he would hear from Andre Fladell. "And we don't want that" he chuckled to his fellow Commissioners.

And that is the heart of the matter. Mr. Fladell, who spends the afternoons on the beach, refers to himself as "The Prince" and holds himself out to be a political guru. He is said to receive personal advantages from the existing contractor. It is said that he gets the use of beach equipment, that the volleyball nets are imprinted "Andre..Andre" on the borders, and that he has a lounge chair set aside for him at all times with a plaque reading "Reserved for The Prince". (Maybe he is related to Prince William)

Many well-connected individuals in Delray talk of the very close relationship between Mr. Fladell, Ms. Gray and Mr. Frankel. Many have heard Mr. Fladell refer to Mr. Frankel as "my child".

But we always try to be generous. Perhaps it is a coincidence that both Ms. Gray and Mr. Frankel have been voicing strenuous objections to Mrs. Petrolia in her efforts to have the contract placed out for a new RFP. Ms. Gray continued to repeat that it is not proper to "look back". Mr. Frankel, using his experience as an attorney, argued that the Commission couldn't overturn the will of a previous Commission.

One problem with both of these objections is that the contract is on a month-to-month basis, and can be sent out for an RFP at any time. Even the contractor agrees. But we don't want to confuse the two eminent Commissioners with the facts.

With this 2 to 2 split the vote of Commissioner Jacquet became all-important. When Commissioner Petrolia began her efforts months ago in April, Mr Jacquet supported her. On a 3 to 2 vote in May, the Commission instructed staff to prepare an RFP to be issued this summer.

However, at the Commission meeting at the end of July Commissioner Jacquet had a sudden change of heart – exactly as your Editor had been informed before the meeting. The current contractor’s attorney, Mr. Michael Weiner, appeared before the Commission and pleaded to have the contract maintained. He said the company would offer to pay the City a one-time payment of \$30,000 to have the contract continued for the remaining 20 months without competition. Commissioner Petrolia reminded everyone that the issue had already been settled in the May vote.

Mr. Jacquet, however, seized on the offer of \$30,000 and tried to steer the Commission to accept it. “It seems to me this is a win-win”, he opined. He looked at a stunned Mayor and Commissioner, and stated, “Mr. Mayor I support what you are doing 100%. I am in favor of bidding contracts.” He went on to try to subvert the process. Although he had voted previously to put out an RFP, he spent 30 minutes pushing to have the matter tabled.

The item on the Commission agenda that night was for information only. There was nothing required of the Commission. Nonetheless, Mr. Jacquet repeated several times, “I don’t know how I am going to vote”. Curious, because there was nothing to vote on.

He asked the City Attorney if the City could accept the new offer from the current contractor and not go to an RFP. Mr. Shutt said he would look at the matter and get back to him. At which point Commissioner Jacquet said once again that he would withhold his vote until he received the legal opinion.

Mr. Jacquet is an attorney. Did he not understand that there was nothing to vote on? Did he not understand that Mr. Shutt’s opinion had nothing to do with sending out the RFP that had been previously approved and was in the final stages of approval by staff? Or was he simply maneuvering for time?

At the August 6th meeting Mr. Weiner appeared once more, this time offering to pay \$45,000 if the City agreed not to send out the RFP. The matter became heated as Commissioner Jacquet said he thought the offer was generous, and another “win-win”. He made a motion to accept the offer, but there was not enough support for it to succeed. He lacked 3 votes because Commissioner Gray wanted to extend the contract with no payment from the contractor. She called Mr. Weiner’s offer “extortion”.

The matter seemed at a dead-end. The Mayor turned to Mr. Jacquet and demanded, "Al, what is the fear of bidding contracts? Your arguments are so convoluted that it defies imagination. This is total hypocrisy." The Mayor went on to say, "This is about integrity. When a politician says 'win-win' that means here comes the BS."

The Mayor called for a vote on sending out the RFP, and at 10PM, after an hour of debate, Mr Jacquet joined the Mayor and Commissioner Petrolia in approving the RFP that had been already approved in the Spring.

Ah, but we forgot one element of the story. It turns out that people close to Mr. Fladell have suggested running a candidate against Commissioner Jacquet next March if he continued to support Glickstein and Petrolia. In a posting to a public website, Mr. Gerry Franciosa – a Fladell acolyte writing under his covert name Gerry Frank - wrote, "consider this...the clan is alive and well and just taking notes...and we will be back so have no fear...there is more to come". Referring to the next election he predicts, "Their days are numbered". Only Jacquet and Gray are up for election at that time.

Could a political threat have motivated Mr. Jacquet to suddenly oppose those on the Commission who want to have open, public competition? Mr. Jacquet has stated that he is beholding to no one other than the residents. We have gained respect for him since he assumed office, but were sad to see him lose his bearings. We regard this episode a temporary loss of sanity.

We were pleased to see that at the end of this tiring meeting Mr. Jacquet and the Mayor were seen shaking hands and smiling.

Congress Avenue

At a recent Commission Meeting, Vin Nolan the City's Economic Development Officer said that the City was close to getting a redevelopment deal for the former Office Depot site on Congress. He said he went to the Midwest to meet with the potential developer, and said the plan was "a very exciting". Might be good news for Delray.

There is much more to discuss, but we've taken too much of your time already. We will be back with more items including a discussion of Atlantic Plaza II and some information on the last election that has never been revealed.

Stay tuned....