

May 2012

Surfs Up...A No-Bid Contract

Very quietly the City has given out a large contract on a no-bid basis. Recently the City Manager using his own authority extended the Beach Services contract for 3 years. The original contract was awarded to Oceanside Beach Services of North Palm Beach in 2009 to offer chair and umbrella services to the public. It was the bid that offered the least money to the City, and it is not clear to us on what basis it was awarded. But at least it was approved by the City Commission. Oceanside offered to pay the City \$170,000 per year for the 3 years of the contract. A competitive bidder, Boucher Brothers of Ft. Lauderdale, offered to pay \$175,000 for the first year, \$200,000 for the second year and \$225,000 for the third year. Boucher Brothers came well recommended and has similar contracts with other public beaches in south Florida. So in choosing Oceanside the City gave up \$85,000 in revenue over the last 3 years - \$55,000 this current year alone.

Now comes the interesting part. The contract given out in 2009 allowed the parties to extend the contract for an additional 3 years beginning this summer at the same rate as the last year of the original contract. This means that the City will receive \$170,000 per year for the next 3 years for a total of \$510,000. If the higher bid had been accepted Delray would now be receiving at least \$225,000 per year, for a total of \$675,000. Thus, the City gives up a minimum of \$55,000 per year or \$165,000 over the next 3 years. If the contract had been put out for bid the gain to the City may have been even more.

You may recall much anguish from City officials this winter about the tight budget. Well, it seems that it is not tight enough to worry about getting additional revenue from a City resource.

This story raises several interesting questions:

1. Does the City Manager have the independent authority to sign contracts in the amount of \$510,000, even if an extension, without the approval of the City Commission?
2. Was the Commission notified or asked for an opinion on this extension?
3. Normal policy calls for contracts to be bid out. Even if an extension, why would the City not want to try to get additional revenue?
4. For reasons we cannot understand, the City seems to have an aversion to requesting bids for certain large contracts, including its biggest – Waste Management. Why?

The City's Financial Review Board has recommended that all contracts be competitively bid when feasible. The County Inspector General agreed. This seems to be simple. Why was this recommendation not followed? It seems to us an opportunity for our elected officials, who during campaigns promise to represent the interests of our residents, to insist on a tighter policy.

There are reasons other than monetary to offer contracts: services covered, reputation, indemnities etc. However, we cannot understand why the City would not want to test the market at every opportunity for the best possible deal. And why not make extensions public?

It's something to keep in mind when you hear "the budget is tight".

City loses preliminary round in Caron fight

You've all heard by now the news that a federal judge has ruled against the city in a lawsuit over "transient" housing in a Preliminary opinion that leaves many questions unanswered.

The judge granted an injunction against the city, saying the Caron Foundation—a drug and alcohol treatment organization—might have a good chance of showing that the city may have "unlawfully discriminated" against people in recovery when it modified its transient housing laws in February.

But in reviewing the 29-page decision it appears that the judge opened the door to the possibility that a municipality can enact ordinances to protect single family neighborhoods.

The trick for the city will be its ability to convince the legal system that its intent was not discriminatory toward those in recovery who are protected by Fair Housing and anti-discrimination laws.

In ruling against the city, the judge cited community websites, public testimony during hearings on the transient housing ordinance, comments by Mayor McDuffie and former Commissioner Jay Alperin's agreement with public comments at a hearing. All told, the judge felt this added up to discrimination.

This is only a Preliminary ruling, and it seems to recommend that the two sides see if there is any middle ground.

So what's next?

How should the city proceed? Can it tailor the ordinance to meet legal scrutiny? Is it even possible to decipher a community's intent? The City is represented by well-qualified outside counsel, and we are not privy to the legal discussions.

We think the City has done the right thing in advancing its position, and we support the Commission in its deliberations.

The lawsuit against the well-heeled Caron Foundation could be a costly endeavor, but the City should have rights also.

We'd like to hear your opinion. Please write and let us know your thoughts.

Fire Tax Redux

After several awkward and failed attempts to consider a fire tax or fee or whatever you want to call it, it appears the issue is dead for now. But only by the slightest of margins—3-2 to be exact.

The Intelligence Report has exhaustively chronicled the fate of the tax since the commission voted last summer to balance the city's budget with the fee. So we won't reiterate its tangled history here.

But we will openly wonder why it ended up on the commission's consent agenda—an area usually reserved for no brainer items that require no discussion. The city said it was merely trying to send the Property Appraiser some information so a fee or tax could be considered in the future.

Commissioner Tom Carney mercifully pulled the item and it was voted down 3-2, with Carney, Angie Gray and new Commissioner Al Jacquet voting against. (As we pointed out earlier, both Commissioners Gray and Jacquet ran for election stating they were against the new tax.) Mayor McDuffie and Commissioner Adam Frankel voted to proceed.

So it appears the tax is off the table for now. But considering that the tax is a like a phoenix that continually rises from the ashes we would not be surprised to see its return. Someone really, really likes this new tax.

Parking Meters?

The city has been sitting on a six-figure parking study for well over a year now. Another example of a costly consultant hired to deal with an issue the commission won't resolve.

In an effort to break the logjam, the city's Parking Management Advisory Board has suggested moving ahead with parking meters on Atlantic Avenue with some consideration for local merchants—therefore free parking for the first hour allowing shoppers to run errands without having to pay. Longer visitors would have to pony up.

The question has been and remains, will the City Commission lead on this issue?

Or will they continue to play dodge ball?

Speaking of Waste Management

We know you are all careful readers of the Intelligence Report and you will recall the battles Mr. Ken MacNamee has had with City Hall regarding the Waste Management contract. After he proved that Waste Management had been overcharging the City for several years, and after he got Waste Management to refund the City tens of thousands of dollars, the powers at City Hall proposed extending

the Waste Management contract (the largest that it gives out) for an additional 5 years (a) years before the contract came to an end, and (b) on a no-bid basis. Fortunately the County Inspector General issued a sternly worded opinion that a no-bid extension would be in violation of the City's own policies and that it was a bad way to conduct public business.

Well, guess what just happened? After 20 years with a Waste Management subsidiary Broward County put its land fill contract up for bid. Because there was competition for the first time, the Wheelabrator subsidiary reduced its fee from \$65 per ton to \$42 per ton – a 35% reduction. This will be a direct savings to households and businesses. As the SunSentinel reported on May 8th, “Garbage bills in Broward County are expected to drop substantially now that a long-term monopoly on trash disposal has been broken.”

Is there still someone at City Hall who doesn't want to put our contract out for competitive bids when it expires?

Happy Birthday

Recently the Arts Garage celebrated its One Year Anniversary with an elegant sold-out dinner. During the year the Arts Garage has become a premier destination for music – jazz and classical – as well as a new theater program. Few people could have predicted the level of public success and the high quality of its programs. Your Editor had the opportunity to chat with several Board members and to congratulate them on their vision and leadership. He was seated with Alyona Ushe, Executive Director who is directly responsible for turning an empty space into a thriving arts center. (Your Editor always enjoys the company of stylish women.) Also at the table was Joe Gillie of Old School Square. We were very interested to learn that there is a close collaboration between the Arts Garage and OSS. We were not aware of this, but it's clear that the collaboration makes each of them stronger.

Our congratulations to all involved: Diane Colona and the CRA Board, the Arts Garage Board under the leadership of Chairman Carney, and the staff of the Arts Garage. The Arts Garage has made Delray an even better place.

Artists Alley

In the past we have mentioned that the Cacace Gallery has moved from Atlantic Avenue to reconverted warehouse space just west of the tracks between NE 3rd Street and NE 4th Street. That has prompted other artists to rent adjoining spaces. With this new influx, the artists themselves are now calling the unnamed alley “Artists Alley” and have created appropriate signage. There are now 8 artist studios producing painting, sculpture and pottery.

The artists have started Open Studio Nights on the third Thursday of every month. From 5:30PM to 9:30PM beginning Thursday of this week, May 17th, all the studios will be open to the public and the artists will be available to discuss their work.

We predict this will become a popular event, so check it out before our neighbors from Boynton and Boca discover it.

Finally..... "Delray Beach Magazine" has just listed "25 Reasons Why We Love Delray". The Friends of Delray Intelligence Report is listed as Number Two. Proper etiquette would dictate that we not mention it, but just between friends we have to admit we are flattered.