

## September 2012 Intelligence Report

We wish we could report better news to you. We wish we could offer a more cheerful report, but we don't control what happens.

This month, we'll cover garbage, hotels and weird votes.

### **To Bid or Not to Bid**

Something stinks in Delray Beach. There's just no other way to say it.

Honest people can disagree about issues ranging from development to taxes. People can argue for one outcome, yet accept another. But some things are so basic that when your elected officials go off the reservation you have to seriously question what is going on.

We are referring to last week's 3-2 vote to extend Waste Management's garbage hauling contract for eight more years without a bid – and more than a year before the current contract expires. Mayor McDuffie, Commissioner Adam Frankel and Commissioner Angie Gray voted to extend. Vice Mayor Tom Carney and Commissioner Al Jacquet voted to go out to bid.

This issue has been foul-smelling from the start.

For the past eight months, Waste Management's request for extension has mysteriously appeared and disappeared from the Commission's agenda without explanation. The current contract expires in the Fall of 2013, near the end of next year, but there has been great pressure to extend it now.

People who have been following the saga surmised that the commission did not want to deal with the issue until after Mayor McDuffie's ill-fated campaign for Supervisor of Elections was completed, but it wanted to act before the City Manager and Mayor leave their offices in January. Why the rush? Earlier this month, in spite of a well-run campaign, our Mayor was defeated by 40 points in his race for Supervisor of Elections. Mayor McDuffie denies any political motive in relation to the timing of the vote, and denies that contributions to his campaign were a factor. But the matter came to the Commission on the first meeting after the election.

The first step on this road to shame was for the Commission to vote to deny the public the right to speak on the issue as it was being discussed by the Commission last week. So much for the open process they all promised.

This decision impacts everyone---from residents to business owners. The value of the contract is said to be about \$65 million. Could we have gotten a better deal by bidding it out? We'll never know. But the other haulers have been trying to tell city officials for months that we could save money. They too were denied the right to meet with city administrators including City Manager David Harden. No competitors had the right to request information on the contract or to present their case. No one from the public was allowed to speak.

This process has been a travesty.

As taxpayers, we should be outraged. This is the same city that has been crying for years about money issues and yet they won't bid a contract that could potentially save its residents and business owners millions of dollars. This is the same city government that does not seem to understand the basics: contracts should be bid. And this is the same commission that wanted to institute a new tax on residents – the fire tax.

It's actually the policy of Delray Beach to ask for competitive bids on all contracts as outlined in Section 36 of the city code. However, it's a policy that our elected officials routinely ignore.

The vote to extend or bid out the City's largest contract – Waste Management – was tied at 2-2 when Mayor McDuffie cast the deciding vote. We watched in amazement, when Mayor McDuffie launched into a long speech about his reasons for deciding not to bid.

In his self-indulgent soliloquy (which reminded us of President Nixon's farewell speech) McDuffie touched on his business career, how as a Burroughs salesman decades ago he lost a contract to IBM and how badly it made him feel. He said how hard it was to sit on the dais and make decisions, how he had friends at all the garbage companies and he talked about how corporations are people too. He prattled on about how difficult this decision was; how he was not swayed by campaign donations (Waste Management was a contributor to all his campaigns) and repeated how tough it was to be in his seat.

What he failed to mention was his obligation to the residents of Delray Beach. In fact, he never mentioned the residents or businesses. Somehow lost in his lengthy message about the great weight of his responsibilities was the need to get the best possible deal for the people he actually works for: the people of Delray Beach.

He didn't want to hear from citizens at the meeting, but he allowed an official from Waste Management to pitch his company and to belittle the motivation of residents who cared enough to ask to be heard.

To our knowledge, the Mayor never responded to emails which we saw from concerned citizens urging him to bid the contract.

In various press reports and on his own campaign website, McDuffie was quoted this summer as saying that he was in favor of bidding the contract. He stated, "My vote would be to bid it out, not because of the OIG (Inspector General) saying so, but just because we've had the same contract for a long time."

He is reported to have promised other trash haulers that he would allow an open bid process, and he gave every indication that he would do so – that is, before his defeat at the polls this month.

The day after the Commission vote, the Palm Beach Post in an editorial said,

*"Mayor McDuffie said he could not 'ignore' a company that had done so much for the City. In fact Mayor McDuffie was ignoring his constituents. He was doing the sort of insider friendly business that has been common in Palm Beach County for years."*

*"Mayor McDuffie voted for what Waste Management wanted, not what the residents wanted."*

What happened? The outcome of the vote was not what we wanted, but we don't expect to win all arguments and we accept the outcome. However, when as a public official you take money for your campaigns from preferred city suppliers, when you promise the residents and potential bidders for public contracts that there will be a transparent and open process, when you promise potential vendors there

will be an opportunity to bid and then renege on those promises, when you deny public comment, when you say one thing but do the opposite, you have lost your way. This applies to all who serve, not only the Mayor.

Your Editor believes this marks a sad conclusion to the public career of Mayor McDuffie.

### **Not Alone**

This is not to let the two other commissioners who voted along with McDuffie off the hook. Many of the same criticisms listed above can be directed to Commissioners Gray and Frankel.

Commissioner Gray, who has championed expensive pet projects and has a history of flipping her vote - most noticeably on the controversial Auburn project - tried to do some wheeling and dealing to cloak the smell during the debate. She asked if Waste Management's offer of new trash compactors could be paid to the city in cash to lower costs and help the city's budget. Her friends at Waste Management did a quick shuffle and politely told her "no way". But no amount of wheeling and dealing done only for show can mask her bad vote - a vote by the way that is likely to unfavorably impact the residents of the West Settlers district that she claims to care about.

Commissioner Frankel pontificated that there was no way to know if we would indeed save money in a competitive process and therefore we should not do it. Is this a serious approach to handling public money? Maybe it's a joke. By this logic, no existing contracts should ever be bid out. All should be renewed. Note to Mr. Frankel: Among the many communities paying lower trash fees than Delray, our neighbors immediately to the west (ie. on the west side of Military Trail, 100 feet from us) pay \$9.03 per month for outside container service. Delray residents pay \$13.61 per month, or 51% more for the same service. Both areas are served by Waste Management.

On a positive note, Commissioner Jacquet stood up to the Mayor's claim that a corporation was a person and that Delray should not insult that person. He pointed out that Waste Management was a large company that has earned the right to compete for the City's business but should not have special privileges. He and Commissioner Carney were the only ones who seemed to consider the interests of the residents and we applaud them both for that.

### **Another culprit**

Where was the Chamber of Commerce? It is sad to see the business community fail to exercise its voice when businesses rely on it to stand up for their interests. Fearful of offending its member Waste Management, the chamber was conspicuous in its absence from the debate despite a very large increase in commercial rates in 2008. Business people know that bidding keeps vendors sharp and prices low even if contracts are renewed. But the Chamber was silent on the biggest contract in the City. In fairness we must point out that the head of the Chamber, Mike Malone, did attend the meeting.....to ask that the Commission not cut funding for the 4<sup>th</sup> of July celebration. Interesting priority.

In the end, the issue is not about Waste Management or the outcome of the vote. It's about our city government following rules and our elected leaders looking out for us, not for their own selfish political interests.

For many years, Delray city government was a model for others to follow. That is no longer the case.

### **Hotel rezoning**

For the past three years, the Delray CRA has been working to bring a hotel project to West Atlantic Avenue just east of I-95. This is no small feat, considering the economy and the fact that the last private investment made along West Atlantic was Atlantic Grove a decade ago.

The CRA chose a developer who promised to bring a Fairfield by Marriott to the corridor, offering a lower cost alternative to pricier downtown hotels. The developer made it through the bidding process, worked closely with the neighborhood and was sailing through the approval process until they reached our City Commission last month.

But faced with approving a minor rezoning of a sliver of adjacent land that would be required for any commercial development on West Atlantic the Commission refused to act. As standard procedure, Commissioner Carney made a motion to approve the rezoning of the small piece of land. No one expected any opposition. After all, the hotel project itself had already been approved. His motion was greeted with silence from the Mayor and the other three commissioners. All four of them sat looking at their shoes, saying nothing, letting the motion (and the project) die—without debate—for failure to get a second.

Strange? We think so. In fact we know of no other time in the last decade or two when a Commissioner did not get a motion seconded.

The developer who has experience in various markets was stunned, as was the CRA and the Chamber of Commerce which has been encouraging redevelopment on West Atlantic.

This led to a flurry of calls and emails to commissioners asking why they would kill a project without even debating it, wasting three years of time, expense and effort from the CRA and the developer. There weren't many good answers but Commissioner Frankel cited his opinion that a new hotel would bring crime to Delray. That was quickly batted away when the Police Department said they were in favor of the project because investment of this type has shown to reduce crime. All the police want is an opportunity to work with the hotelier on safety and security, a proviso that the developer strongly favors. So what's up?

Why would the commission publicly insult Mr. Carney and the CRA without so much as a discussion? And why would they refuse to explain their inaction?

McDuffie later said he that as Mayor he could not second motions. But he didn't say that he could have passed the gavel to another Commissioner as many Mayors have, then seconded the motion and forced a discussion. He didn't show that leadership. The others have said nothing.

Nevertheless, the pressure and support for the project from business leaders, CRA officials, neighborhood leaders and the West Atlantic Redevelopment Coalition prompted the commission to vote 5-0 to reconsider. Finally last week, they voted 5-0 to rezone the parcel and keep the hotel project and its \$15 million investment and 32 jobs alive.

Why is this so hard? And boy did this send a message to the development community.

Even when they finally approved the project, Frankel persisted with his concerns about safety prompting Mr. Jacquet to give a spirited and well-reasoned argument in favor of improving his city's gateway. Another curious chapter.

### **Tidbits**

Local arts entrepreneur Kevin Rouse of Kevro's fame was elected to the Palm Beach County Republican Executive Committee in the August election. He won by 2 votes, and will now be known as Landslide Kevin. We wonder how the local R's are going to react when Kevin walks into the room in his trademark pony tall and flip flops. We hope it's a big tent.

There has been a change in the Democrat candidates for State House of Representatives District 89 which covers most of Delray. Due to family illness, Pam Goodman has withdrawn. She has been replaced by Tom Gustafson. Yes, the former Speaker of the Florida House. Election is November 6<sup>th</sup>.

Declared Mayoral Candidate Cary Glickstein has filed a public records request for information on the many funds held by the City to fund current and future projects. There are between 10 and 20 such funds, the status of which has been buried by City Hall for many years. In a letter to the City Manager made public to the media Mr. Glickstein said he wanted to determine if some were overfunded and might be used to ease the city budget.

Delray activist and accountant Ken MacNamee has been seeking information on the status of the Police and Fire Pension Fund. He has discovered that it is grossly underfunded at about 53% of what is needed and he is looking a series of very poor investments made by the plan Trustees. It is our understanding that the City's Financial Review Board will also initiate an investigation into the Pension Plan. Because of the poor performance of the fund (which manages to lose money on its investments), it now constitutes one of the major expense items each year in the City budget because the City must make up the difference.

### **Summarizing**

All in all we believe it was a sad month for our Village. The Beach contract could still be sent out for bids, the Waste Management contract has not yet been signed and could also be reconsidered. Yes, so many things could happen. But we doubt they will.

Perhaps it is time for residents to stand up and demand better representation. There will be an election next March for 3 of the 5 people on the Commission. The current Commissioners silenced us last week. Maybe we will be heard in March.

Yet we still feel lucky to live in Delray, and are confident there will be better days ahead. Stay dry !