

April 21, 2009

SOLID WASTE DISPOSAL DISTRICT

The Board of Commissioners of the Solid Waste Disposal District met at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Tuesday, April 21, 2009. Present were Chairman Wesley S. Davis, Vice Chairman Joseph E. Flescher, and Commissioners Peter D. O'Bryan, and Bob Solari. *Commissioner Gary C. Wheeler was absent.* Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Athena Adams.

CALL TO ORDER

The Chairman called the meeting to order at 11:33 a.m.

15.B.1. APPROVAL OF MINUTES, REGULAR MEETING OF FEBRUARY 17, 2009

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of February 17, 2009. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the Minutes of the Regular Meeting of February 17, 2009, as written.

Commissioner Solari read a portion of the Minutes which he thought may be relevant to the next Item (15.B.2), which state: “Therefore, if Waste Management or Treasure Coast Refuse has existing commercial contracts, they will retain those contracts up until the point that those contracts expire or are not renewed.”

**15.B.2 PUBLIC MEETING TO APPROVE OR DISAPPROVE
FRANCHISE APPLICATIONS: RFA NO. 2009025 WASTE
HAULING FRANCHISE – UNINCORPORATED ENTERPRISE
ZONE**

Himanshu Mehta, Managing Director of the Solid Waste Disposal District, informed the Board that this Meeting was a public meeting to either approve or to disapprove a Third Franchise Application (with Waste Management, Treasure Coast Refuse, or Capital Sanitation, Inc.) for a third waste hauling franchise in the unincorporated area of the Enterprise Zone. He provided background; updated the Board on the application review process; and explained the requirements for acceptance of applications. He also addressed the bidding process requirements pursuant to the Ordinance, Code Section 204.12.

Director Mehta explained how the withdrawal letter from Waste Pro impacted the review of Capital Sanitation, Inc.’s (CSI) application. Without the support of Waste Pro, the Selection Committee had some concerns of CSI’s ability to provide the necessary collection vehicles. The withdrawal (of the “financial backup company”) also affected how the Committee viewed CSI’s financial ability as a startup company.

Director Mehta described the criteria and point system requirements in accordance with County Ordinance, and informed the Board that after review, the Committee's recommendation was to award the highest ranking to Treasure Coast Refuse, for best meeting the requirements throughout the application process. He also informed the Board that if a Franchise is awarded today, the existing Franchise Agreement with Waste Management would have to be modified and brought back for approval, because Waste Management is currently servicing the unincorporated Enterprise Zone.

Staff's recommendation was therefore, to either approve the application by Treasure Coast Refuse for a third franchise in the unincorporated Enterprise Zone; authorize staff to prepare a new third Franchise Agreement; make modifications to the existing franchise agreements; bring these agreements to the Board at a future scheduled meeting; or to deny all three applications and make no changes to the existing waste hauling Franchise Agreement.

Commissioner Solari asked when did the current Agreement (with Waste Management) go into effect for the subject area, and was informed by Mr. Mehta that the Franchise Agreement was renewed on October 1, 2008, for a seven-year contract.

The Chairman invited the three Applicants to make their presentations.

Director Mehta, upon inquiry from Vice Chairman Flescher, explained that the contract just recently renewed was a seven-year contract that was approved on October 1, 2008, and we were currently under two separate seven-year contracts, one with Waste Management for the north part of the County, and the other with Treasure Coast Refuse for the south part of the County.

Capital Sanitation, Inc. (CSI): Representatives Ardra Rigby and Bill Rigby

Mr. Bill Rigby, 8465 59th Avenue, provided a brief summary of the history that led to the establishment of the Enterprise Zone, and listed the qualifying criteria for Enterprise Zone designation. He alluded to the benefits Piper received for being in the Enterprise Zone, and expressed their desire as a “small disadvantaged business” to work in the Zone.

Mr. Rigby spoke of the intent of the Zone, which he said was particularly established to facilitate small businesses like his and he expressed their readiness to provide quality solid waste services in the Zone, through their years of experience, commitment, and the many other ways that would ensure customer satisfaction.

Mr. Rigby, in closing, told the Board that he was not there to compete with the numbers one or two haulers, but simply submitted an application to provide sanitation services in the Zone. He reiterated that the intent of the Enterprise Zone is about opportunities for minority businesses in the Zone, for which they qualify. He referenced the February 2009 Economic Summit at which one of the main focal points was encouraging the County to provide more small business opportunities, and he challenged the Board to “let’s bring about prosperity in the Enterprise Zone.” He impressed upon the Board that CSI has the ability, resources, skills, and expertise to handle this task.

Commissioner O’Bryan questioned Waste Pro’s withdrawal and **Mr. Bill Rigby** explained that Waste Pro was of the impression that they could take over the contract, in the event CSI failed, but after learning they could not, they withdrew, because the partnership no longer seemed profitable.

Commissioner Solari asked if CSI had any financial information or statement, either about the past performance of the company that tells how they used to operate or any present sources of funds, which would lend itself to the financial capability of the company to perform this work.

Mr. Bill Rigby responded that this was a new company, a family owned business, and the only resources they have currently, are family owned, and everyone did not provide a financial statement.

Commissioner Solari continued to question the lack of a financial statement, in particular, that according to information submitted by CSI, they had been providing sanitation services in Indian River County and St. Lucie County, since 1995, and based on that thought there would be some background financial information.

Mr. Ardra Rigby replied that they were a part of a management team called Capital Sanitation and that was where the expertise came into play. He then reminded the Board that they were not before this Commission for a loan, but for work.

Commissioner Solari pointed out that it was the Board's job to ensure that the customers in the Enterprise Zone are well served, and part of that was to establish the financial strength of any company that might be interested in the work.

Treasure Coast Refuse (TCR): Representative Todd Westover

Mr. Todd Westover, Division Manager, Vero Beach, referenced the Company's Marketing Plan and said the bottom line was about increasing the number of sanitation customers and decreasing and mitigating illegal dumping. To that end, he said, TCR has earned the

reputation, through its actions, as the Number One hauler, in customer service in this County. He spoke of the Company's commitment and dedication to the community, specifying that TCR not only wants this for the community and for itself, but believe they have earned the right to gain this contract through their actions.

Waste Management: Representative Brian Thornton

Mr. Brian Thornton, District Manager, Vero Beach, described his company's ability to provide the required services by highlighting their equipment features, the training of drivers, their preventative maintenance program, their technical experience and expertise, and their financial capabilities. He also highlighted their employment history, and community usage plan to educate customers.

Commissioner Solari asked how many residential customers they have in the Enterprise Zone and was told by Mr. Thornton that there are 21 residential customers.

The Chairman called a break at 12:25 p.m. and reconvened the meeting at 12:40 with all members present.

The Chairman opened the Public Hearing.

Anthony Brown, 4159 57th Court, Vero Beach, and President of Gifford NAACP, spoke about the intent of the Enterprise Zone and noted that the Enterprise Zone was established in a blighted community, with the intent to help minority companies like CSI, compete. He spoke of CSI's inability to compete with major conglomerates like TCR and Waste Management, and

deemed that the Board would come to a fair and equitable decision if they looked at the intent of the Enterprise Zone.

Brian Heady advocated on the Rigbys behalf and reminded the Board that the Rigbys were not looking for a handout; they were looking for a job.

Vernon Reason, 5846 57th Street, Reason Sanitation, in his support of the Rigbys application, reminded the Board that the Federal intent to establish the Enterprise Zone was to make sure that minorities have a fair playing field.

Larry Wapnick, Indian River County, called for focus because the discussions were about the Enterprise Zone. He did not think two companies that are giants, qualify, because the Enterprise Zone was created for small businesses in the Zone, which CSI is; and he felt CSI deserved to have this opportunity, and the Enterprise Zone stipulated they should have it.

William Bradley, Pastor of Friendship Baptist Church, 4545 30th Avenue, supported the Rigbys application and urged the Board to do the right thing.

Todd Westover addressed a prior remark that suggested “this would not hurt the big guys” and explained how his company (TCR) would be affected.

Ardra Rigby, 8465 59th Avenue, addressing comments by Mr. Westover that it has been six months since this process has been ongoing, clarified that it has been five years and six months that Capital Sanitation has been asking for participation, for work in this County.

Ken Daige, 1846 21st Avenue, who was a member of the Enterprise Zone for a few months, stated that the intent was to help small businesses prosper and grow, and if it were not

for the economics of the area, the Zone would not exist. He asked the Board to consider that CSI is not asking for a handout or a loan, but for an opportunity.

Larry Wapnick responding to comments regarding investments made, and how it would hurt not to get the contract, urged the Board to stay focused, because this was the Enterprise Zone and that company (TCR) does not qualify.

Randon Prichard, McNeal's Companies, (producer of garbage truck bodies/residential and commercial collection vehicles) addressing the issue of CSI not having equipment established, stated that his Company would provide CSI with the same support they have offered to other companies (for use of their trucks in the event of a disabled truck) to make it a level playing field.

Rev. Donald Brown, 4461 28th Court, supported the Rigby's application, and asked the Board to have compassion on the Rigbys.

There were no other speakers and the Chairman closed the Public Hearing.

Utilities Director, Erik Olson, explained how staff analyzed the process and reminded the Board of its options. Director Olson responded to questions from the Board as to what the Franchise protects, under our current franchise agreements; and how recycle accounts were treated.

Commissioner O'Bryan believed, if we were to award a third franchise, the award should be under the same rules and conditions as the current franchise.

Director Olson fielded other questions and concerns from the Board that pertained to whether a company could arbitrarily sell a contract to another party without approval from the Board; and whether they could sub-contract those services.

Commissioner Solari believed this decision was about the Board's responsibility to the County's citizens and the customers of the Enterprise Zone. It was his opinion that the Enterprise Zone is color-blind, and therefore this process should be color-blind. It was also his opinion that the Enterprise Zone is to help locate businesses in the Zone, to give our private sector incentives to locate in the Zone, and not to have government make jobs in the Zone. He reminded that there were no advantages to the taxpayers to have a third hauler in the area, and given that they have heard no good reason how the taxpayers or citizens would benefit, felt their only path forward was to maintain the existing contracts and say that they are valid.

Commissioner O'Bryan was torn, because he initially wanted to give a minority an opportunity, but he also agreed with Commissioner Solari about protecting the interest of taxpayers and customers. He wanted to see some compromise in the middle where waste haulers could work with Capital Sanitation, either to sub-contract out or to give them that start they need so they could build their business; and in 6 ½ years when these existing contracts come due, they might be in a better financial position. He agreed with staff and did not know if the twenty-one (21) curbside accounts and the recycling was enough money to make it a viable third franchise. He preferred they tabled the matter for two weeks to see if the applicants could work out some type of agreement where everyone can win and we move forward.

Commissioner Flescher, referring to Commissioner Solari's opinion of the Enterprise Zone, believed the mission of the Zone was carried through by staff and by the applicants as well. He referenced the unfortunate severing of the partnership that could have left one of the applicants in a better stead, and believed the Board has to be concerned about the ability of

haulers to deliver the services to the citizens of the County. He also believed that the capacity to deliver those services was evaluated fairly.

Chairman Davis, commenting on the issues of monopoly and franchises, said he was first bothered after hearing from the Rigby's that they did not have the opportunity to bid or compete; but now everyone has been given that opportunity. He understood Commissioner O'Bryan's comments but felt the practicality of what we feel versus reality is basically to wish that one of these companies like Waste Management or TCR would give the opportunity for some of these other startup companies to compete against them, later down the road. But in the real world that does not happen. He also understood that it was not always possible to have local contracts, and when Waste Pro backed out it weakened the arguments for CSI.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Davis, under discussion, to deny all three applications and to make no changes to the existing waste hauling Franchise Agreements.

Commissioner O'Bryan, responding to Mr. Westover's comments about the amount of staff-time that was tied up going through the process, acknowledged that this sometimes happens. He said the Board had looked at the cost of privatizing the County's convenience centers, and at the end of the day realized that no action was their recourse, therefore, he would support the Motion.

The Chairman asked if there were any further input, and received none.

The Chairman CALLED THE QUESTION, and by a 3-1 vote (Vice Chairman Flescher **dissenting**, and Commissioner Wheeler **absent**) the Board denied all three

applications and made no changes to the existing hauling Franchise Agreements.

15.B.3 ODOR CONTROL SYSTEM DEMONSTRATION AT THE INDIAN RIVER COUNTY LANDFILL.

ON MOTION by Commissioner O’Bryan, SECONDED by Chairman Davis, the Board by a 4-0 vote (*Commissioner Wheeler absent*) approved and authorized the Chairman to execute the Agreement with Hinsilblon, Inc., so that staff may demonstrate the Eco Solar Trailer at the Indian River County Landfill for thirty days and to purchase five (5) gallons of Clear Scent at the price of ninety-five dollars (\$95.00) per gallon plus shipping and handling of forty dollars (\$40.00) or a total of five hundred and fifteen dollars (\$515.00), as recommended in the memorandum of March 31, 2009.

AGREEMENT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

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16. ADJOURNMENT

There being no further business, the Chairman declared the Meeting adjourned at 1:37 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____