



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

CONTRACT OVERSIGHT NOTIFICATION (2011-N-0005)

ISSUE DATE: SEPTEMBER 28, 2011

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

Interlocal Agreement between Palm Beach County and Town of Lake Park for Lake Park Marina Project

ISSUE(S)

In response to a complaint concerning the interlocal agreement between Palm Beach County (PBC) and the Town of Lake Park (Town) related to the Lake Park Marina project, OIG staff reviewed documents related to the Town's acquisition of land, commonly known as 115 Federal Highway (Parcel).

On November 4, 2004, the voters of PBC passed a referendum authorizing \$50 million Waterfront Access Projects Bonds for the purpose of enhancing waterfront access. As part of this initiative, on January 27, 2009, the PBC Commission conceptually approved funding from the Waterfront Access Projects Bonds to the Town.

Representatives of the County met with two of the Parcel's investors to discuss a possible purchase and a purchase price. The County agreed to purchase the Parcel for \$2.4M. The Town later entered into a contract, which was approved by Town Council on November 3, 2010. On November 16, 2010, PBC and the Town entered into an interlocal agreement that included purchase of the Parcel from investors for \$2.4 million, which was 20% more than the investors paid five years earlier in 2005. During that same five year period, the market value* of the Parcel decreased by \$763,504, or 55%.

Owner	Date Purchased	Market Value*	Purchase Price	Purchase Price in Excess of Market Value	% Increase in Purchase Price over Market Value
Investors	Dec. 2005	\$1,390,000	\$2,000,000	\$ 610,000	44%
Town	Dec. 2010	626,496	2,400,000	1,773,504	283%

When comparing the two purchases, the investors paid 44% above market value* and PBC paid 283% above market value*. Further, the review disclosed that the December 2010 purchase price of \$2.4 million was approved by PBC and the Town without support of an appraisal to determine the Parcel's value.

* Market value as assigned by the PBC Property Appraiser

RECOMMENDATION

We recommend that PBC's Real Property, Acquisition, Disposition, and Leasing Ordinance (Real Property Ordinance) be used as a guide to establish policy that requires the determination of value prior to the release of funds.

RESPONSE FROM MANAGEMENT (CITY OF LAKE PARK)

On September 22, 2010, the City of Lake Park, through their attorney, provided the following comments:

"Thank you for sharing the modified Notification. I have one further comment. From the Town's perspective it is not accurate to include the town in the last sentence of the document which reads: "...that the December 2010 purchase price approved by the County and the Town without support of an appraisal." As we discussed yesterday, the town was not involved in the negotiation of the purchase price. The County negotiated it and then advised the town that it would "grant" the Town \$2.4 million to be used for the acquisition of the property. Had the town been charged with negotiating this acquisition I would have recommended (and I feel confident the Town Manager would have accepted my recommendation) that the town obtain two appraisals of the property. I would have made this recommendation because under Chapter 166, F.S., a municipality is entitled to keep these 2 appraisals confidential while it negotiates a contract to purchase real property. I do not know if Chapter 125 (the County powers act) gives County's the same ability, but it seems rather obvious that a local government that has this authority would want to take advantage of it when negotiating the purchase of real property. As a former County Attorney and a 20 year city attorney, I strive to utilize those limited tools the Legislature has provided my clients. My point is that in this case the opportunity to request an appraisal was not made available to me or the Town of Lake Park. Thank you for your consideration and cooperation."

"Accordingly, I would respectfully request that you delete the reference to Lake Park in the last sentence so that it reads: ...THAT THE DECEMBER 2010 PURCHASE PRICE APPROVED BY THE COUNTY WITHOUT SUPPORT OF AN APPRAISAL."

OIG COMMENTS

The OIG appreciates the Town's position that the purchase price was established through negotiations between the County and the property owner, and the County paid the entire purchase price. However, the municipality does have a financial interest in the price paid for this property. That is because the Interlocal Agreement between the County and Town relating to this transaction contains the following language in section 4.05: "In the event the TOWN ceases to operate the Marina as a public marina or transfers ownership of all or any material part of the Marina or Phase I and IIA of the Project to a party or parties not now a part of this Interlocal Agreement, other than another governmental entity that agrees to assume, in writing, TOWN'S obligations hereunder, **TOWN shall reimburse COUNTY for its participation to the full extent of**

the funding awarded to accomplish this project.” (Emphasis added) Therefore, the Town did have a material interest in making certain that the purchase price of the property was reasonable and justified, even though the County was funding the transaction.

RESPONSE FROM MANAGEMENT (PALM BEACH COUNTY)

On September 25, 2011, Audrey Wolf, Director, Facilities Development and Operations, Palm Beach County provided the attached response to this Notification wherein she concurred with the OIG's recommendation. The response acknowledged that both an appraisal and a Property Review Committee evaluation would help identify the issues in such transactions and suggested that the Ordinance be amended to clearly include requirements for grants of this nature. The response also stated that characterizing this as a simple real estate acquisition did not give adequate consideration to the public benefits derived from the overall project and that there were many factors taken into consideration beyond just the market value of the land.

OIG COMMENTS

In lieu of our recommendation to establish County policy, FDO/PREM is suggesting that the Real Property Ordinance be amended for grants of this nature to establish the requirements. The proposed action, if implemented, should adequately address our recommendation. We will be following up to determine if the proposed action is taken. With regard to our presentation of the issue, while we agree that there could have been other factors beyond the market value of the land that influenced the purchase price, we focused on the fact that absent an appraisal, the market value was never clearly established and documented.



**Facilities Development & Operations Department
Property & Real Estate Management Division**

2633 Vista Parkway
West Palm Beach, FL 33411-5605
(561) 233-0217
FAX: (561) 233-0210
www.pbcgov.com/fdo

Palm Beach County Board of County Commissioners

Karen T. Marcus, Chair
Shelley Vana, Vice Chair

Paulette Burdick

Steven L. Abrams

Burt Aaronson

Jess R. Santamaria

Priscilla A. Taylor

County Administrator

Robert Weisman

MEMORANDUM

TO: Sheryl Steckler, Inspector General
FROM: Ross C. Hering, Dir., Property & Real Estate Management *RCH*
THRU: Audrey Wolf, Dir, Facilities Development & Operations *Audrey*
DATE: September 23, 2011
RE: Response to Contract Oversight Notification 2011-N-0005, Interlocal Agreement with the of Town of Lake Park

FDO/PREM has reviewed the above referenced Contract Oversight Notification. While we agree with the IG's recommendation, we feel it necessary to respond to the characterization of the issues.

The Interlocal Agreement was the result of extensive discussions between the Town, the County, and the property owner/developer over the course of years with respect to the redevelopment of the property surrounding the Marina in what amounted to a public/private partnership. Various options were considered to provide grant funding to assist the City and the developer with implementation of the overall project. The proposal ultimately presented by Staff was for the County to provide \$2.4 million dollars in funding for acquisition of the property.

The transaction certainly did involve land acquisition, but characterizing this as a simple real estate acquisition and focusing solely on the market value of the land acquired does not give adequate consideration to the public benefits derived from the overall project. The presentation of the item to the Board should have placed more emphasis on the benefits of this particular transaction toward achieving the goals of the bond referendum and included more discussion on the developer's investment at the height of the market in assemblage of the surrounding property; and need for a certain amount of money in order to pay off/down existing mortgages on this and adjacent properties (including the access easement and restaurant parcels) which were critical elements in; 1) him being a willing seller, and 2) the City and County avoiding the uncertainty and delay associated with a potential foreclosure.

*"An Equal Opportunity
Affirmative Action Employer"*



In addition, there should have been more discussion of the developer's grant to the Town of an access easement to improve vehicular access to the property and proceeding to develop the restaurant at the developer's expense. While these issues were mentioned briefly in the background section of the agenda item, specifically pointing out that grant funding was intended to facilitate all of the above, and was not just a payment for the land, would have been a better presentation of the issue.

FDO/PREM agrees with your recommendation that the procedures for review (appraisal) and independent evaluation (Property Review Committee) within the Real Estate Ordinance be included in future grant documentations which involve real estate. Both the appraisal and PRC evaluation would help identify the issues involved in such transactions and frame the most critical issues for discussion. FDO/PREM would suggest that the Ordinance be amended to clearly include requirements for grants of this nature and expand upon the specific process to be utilized in such cases.

c: Robert Weisman, County Administrator
Verdenia Baker, Deputy County Administrator

U:\RHering\2011\S. Steckler 9.23.11.docx