

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Budget and/or Contract Development and Control Comments:

Elizabeth Blaser 11/28/06 N/A
 OFMB/Budget Contract Development and Control

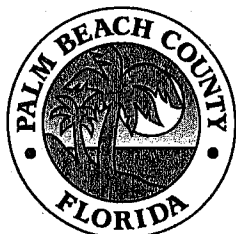
pm 11-28-06

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director



County Administration

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**Palm Beach County
Board of County
Commissioners**

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Burt Aaronson

Jess R. Santamaria

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Robert Weisman

INTEROFFICE COMMUNICATION

DATE: November 28, 2006

TO: Addie L. Greene, Chairperson and Members
of the Board of County Commissioners

FROM: Robert Weisman
County Administrator

A handwritten signature in black ink, appearing to read "Robert Weisman".

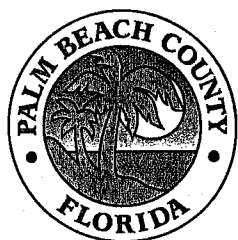
RE: Posse Site

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The Posse Site RFP occurred three years ago. The purpose of my review of the Posse site sale was to document for the Board what occurred, try to ascertain if there was undue influence by Commissioner Masilotti in favor of the Bruce Rendina proposal, and if so, should the County Commission reconsider its approval. I also sought to review the process followed and information provided to the Board for any irregularity that might have led to a different conclusion or require a change in County procedures for the future. I was a party to this process at various times. A report with backup was delivered to you by Ross Hering two weeks ago.

RFP: It was decided to sell this 10-acre parcel because an intended use was not identified and cash from the sale could be used to pay for the new equestrian facility at Cholee Park. As Mr. Hering relates in the attachment, an RFP was initiated and there were numerous responders. The number of responders is an indication that the RFP was viewed as fair and open. Mr. Hering included Mr. David Farber, Royal Palm Beach Village Manager, as a voter. While it was reasonable to include a representative of the Village in the process, the fact that this occurred after proposals were received could have placed a bidder at a disadvantage. An alternative would have been to include him as an advisor only. Mr. Hering says that Commissioner Masilotti did not ask for this inclusion. If he had, that would not have been out of the ordinary for a Commissioner to be seeking involvement for a constituent municipality. Procedurally, the inclusion of Mr. Farber was not in accordance with the RFP wording that called for three county employees to vote and it

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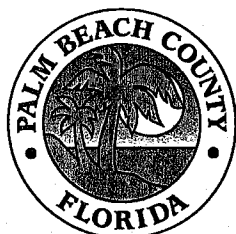
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should not have occurred. In addition to Hering, Parks Director Dennis Eshleman was the third member of the RFP panel. Mr. Eshleman has informed me that he voted for the proposal that seemed to provide certainty and maximized the money his Department would receive as quickly as possible and that he did not recall any contact with the Commissioner or any other undue influence.

Kilday & Associates is and has been our general consultant for land use issues. Mr. Hering discusses their RFP involvement and the disclosure of a non-Rendina conflict at the RFP meeting. A letter, attached, has been received from Kilday describing the relationship his firm had with Rendina as well. Staff has been aware about the potential for appearance of conflict involving Kilday over the years but has felt that there was a benefit to the County's property development activities from their representation. In this case, Kilday's staff did not play a role in evaluating proposals but rather provided general land use advice. Nonetheless the fact that there were or had been relationships with participating bidders is at least undesirable. It seems difficult though, to retain a firm such as Kilday with Palm Beach County experience without the likelihood of such conflicts. This will require further address with the Board.

County Commission Consideration: A detailed Board item was prepared. Due to the closeness of the vote between the two top proposers, the summary highlights the selection issues between the non-residential Rendina proposal and the Lennar residential. The entire Board was present. A resident of Breakers West, Lennar and Mr. Rendina all addressed the Board. No complaints were received about the RFP process. There was considerable Board discussion. Rendina's proposal offered slightly more money than Lennar (without TDR's) and was not contingent on a zoning approval. Lennar's was contingent. The primary reasons for the Board's unanimous vote seems to have been the certainty of payment and the type of use proposed for the property by Rendina. Commissioner Masilotti supported Rendina's proposal.

Post Board Consideration: In the attachment, Mr. Hering informs that Commissioner Masilotti advocated for a delayed closing pending the departure of the Posse to Cholee Park. This may have been a deciding factor in delaying closing, but I did participate in one discussion, and it is my recollection that there was a bona fide expectation that the Posse was going



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to be off the property by the anticipated closing date and due to construction delays, that didn't happen. The Rendina proposal did still offer the best likelihood of payment which was ultimately received, though approximately one year later than expected. Mr. Rendina did secure a County zoning approval for the property in early 2006 that matched his proposal as approved by the Board. Annexation into Royal Palm Beach is pending.

Tape of Selection Meeting: Lastly, Mr. Hering reports that when they previously sought to produce the tape of the selection meeting, it was blank. I am advised that a tabletop recording device was used and it apparently did not record. There were two employees involved in the tape setup, one new, one unknown. The means of taping has since been upgraded. While this provides conspiratorial fodder, the fact of the matter is that the Committee meeting was attended by at least some of the competing developers and there is no legal requirement that these meetings be taped. If not taped, then minutes must be prepared as was done. Nonetheless, if an effort is made to record a meeting it must be successfully accomplished to avoid negative appearances. While it is frustrating that we cannot listen to this meeting as it happened, no protests or questions were raised by any of the attendees regarding the conduct of the meeting or the results. In fact, the second placed responder, Lennar, complimented staff on the process during their presentation to the Board and addressed the differences between the proposals on the merits. The voting results are documented.

Conclusion: The County Attorney has provided a legal opinion which indicates that the Board can reconsider a prior approval if merited. The repercussion of such reconsideration is potential legal challenge from negatively affected parties. An unchallenged RFP process was conducted. The Board had a full public discussion about the award. The transaction has closed with payment to the County and zoning approval obtained in accordance with the proposal. Review suggests that the award to Rendina was reasonable and was not unduly influenced by former Commissioner Masilotti, though he did maintain an active interest in the process throughout.

However, this does not mean I am totally satisfied with the way this RFP was conducted. The blank recordings and the inclusion of Mr. Farber as a voting representative at the last minute at best contribute to a perception of carelessness or lack of forethought. At worst, it feeds the perception that something improper could have occurred. This is unacceptable. I have



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already begun discussing these issues with Management staff. I will promptly mandate the following rules regarding conduct of this type of process, so that competitors know what to expect and can fairly compete while trying to assure the best outcome for the public:

- 1) No change will be made in selection criteria or process after submittal of responses. If such a change is deemed unavoidable, notice will be given to the County Commission before the selection process continues.
- 2) All selection meetings will be taped and a test will be run before the meeting and each tape used checked immediately after the meeting for verification. If a tape problem is identified, it will be immediately reported to the Administrator's office for further evaluation.

Kilday's participation, as a firm, is a challenging issue for us. The types of conflicts can be different, as evidenced by his recent service and then withdrawal on Mecca. Who will the County turn to for land development consultant support? Who will our Traffic Engineering consultants be? Do past, current or future clients all constitute a conflict situation, or just current? The consultants' role in this case was to provide information but that information was used to gauge proposals. It is at least an appearance issue. In this case, Rendina was probably a lesser conflict than Shapiro/Pertnoy. Does it matter if the individual representing Kilday is different for the different parties? We will agenda this for Board discussion.

Kilday & Associates
Landscape Architects / Planners

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E-Mail: info@kildayinc.com

November 7, 2006

Mr. Ross Hering, Director
Palm Beach County Property and Real Estate Management
3200 Belvedere Rd., Bldg 1169
West Palm Beach, Florida 33406

Re: Posse Property
Our File Number 1259.35

Dear Ross,

In light of the recent news articles and my lack of recall of our firm representing the Rendina Companies in Palm Beach County in recent years, I have researched the matter further. I have found that the Rendina Tambone Company was added to our lobby list on June 26, 2003. This listing corresponds to a Site Plan approval application and landscape plan our office prepared for their Company during the same time period ending in October 2003. The project, the Bethesda Medical Arts Building, is located within the City of Boynton Beach on Seacrest Boulevard. As the project was not in the unincorporated area of the County and received no County review, the client should not have been listed on the County's lobbyist form. However, because our clerical staff often does not have the knowledge of where a project is located, new clients have been traditionally added to the list without regard to jurisdiction.

Our office has done no further work for the Rendina Tambone Company since that time. The last work performed by our office on behalf of any Rendina Company property within unincorporated Palm Beach County was related to approvals for medical office buildings on Jog Road and LeChalet Boulevard in Aberdeen PUD on June 4, 1999.

As you are aware, our former employee, Wes Blackman, reviewed the submittals on the Posse property strictly from a zoning process and traffic impact viewpoint. He had no direct contact with any of the submitters and made no recommendations regarding rankings.

It has come to my attention that while we have been careful to add new clients to the County's lobby list when we are retained by that client, we have tended to leave the client on the list for years after the project is completed. We now intend to review and adjust the list on a yearly basis to make sure it is up to date and accurate. Thank you.

Sincerely,



Kieran J. Kilday

cc: Robert Weisman; PBS Administration