

**FINAL AGENDA AND MINUTES
TOWN OF JUPITER
TOWN COUNCIL SPECIAL MEETING
COUNCIL CHAMBERS
WEDNESDAY, DECEMBER 14, 2016**

Mayor Wodraska called the meeting to order at 7:00 P.M.

Roll Call: Mayor Todd R. Wodraska; Vice-Mayor Ilan G. Kaufer; Councilor Ron Delaney; Councilor Jim Kuretski; Councilor Wayne R. Posner; Town Manager Andrew D. Lukasik; Town Attorney Thomas J. Baird and Deputy Town Clerk Quintella L. Jones.

REGULAR AGENDA

PUBLIC BUSINESS

1. Advanced Disposal Bid Protest for services associated with the collection and disposal of solid waste refuse, multi-material recycling and vegetative waste.

Mayor Wodraska stated the purpose of the meeting was to discuss the bid protest by Advanced Disposal over the Waste Services contract the Council decided on in November.

Mr. Neil Schiller, Attorney, representing Advanced Disposal, explained Advanced Disposal's request to void the award to Waste Management and award it to Advanced Disposal. He stated Council's decision was based on false information, violation of the Palm Beach County Lobbying Registration Ordinance, Cone of Silence and a complete departure from the Request for Proposal (RFP) criteria. Mr. Schiller summarized the RFP process and where Advanced Disposal was ranked. He provided examples of Advanced Disposal's Clients' experience and qualifications. Mr. Schiller reiterated the other companies did not file a bid protest and that public support was not an evaluation criteria in the RFP.

Mr. Michael Moskowitz, Attorney, representing Waste Management introduced Mr. Bill Salim, Ms. Dawn McCormick, Mr. Jeff Sabin, and Mr. Sharad Kochhar. He reviewed the Town of Jupiter's bid protest policy Article IV, Section K.2 and explained there was no procedure to protest a Town Council's decision. He stated Advanced Disposal was allowed to protest the Town Council's decision, even though the Town's Charter allowed the Town Council to be the final decider. He explained appeals would have needed to have gone to the Fifteenth Judicial Circuit Court of Palm Beach County. Mr. Moskowitz believed Advanced Disposal should have been disqualified due to the proposal pricing sheet not being completed correctly. He briefly discussed the comparisons of trucks, employees and services from the three proposals. He went on to highlight financial loss concerns, technical scoring, resident's comments, the cone of silence and the lobbyist ordinance.

Mr. Jeff Sabin, Waste Management Government Affairs Director, mentioned the thirty-eight year relationship Waste Management developed with the Town, through partnership and commitment to the community.

REGULAR AGENDA

PUBLIC BUSINESS

1. Advanced Disposal Bid Protest for services associated with the collection and disposal of solid waste refuse, multi-material recycling and vegetative waste.

Mr. Moskowitz concluded that the Town was correct to choose Waste Management; he believed Waste Management's proposal was in the best interest of the Town and the Council acted in accordance with Section 18.1 of the RFP specifications. Mr. Moskowitz said the residents had spoken in support of Waste Management and Advanced Disposal's protest appeal should be denied. He thanked the Council for their time and patience.

Mr. Schiller began his rebuttal stating there was no case law or legal precedence cited. He said he objected to Mr. Sabin's testimony. Mr. Schiller said this was an appellate procedure and Mr. Sabin provided new evidence and he objected.

Mr. Schiller said Advanced Disposal followed the rules but he believed Waste Management seemed to break or change the rules at their convenience. He said Waste Management did not file a bid protest, and Staff determined the price sheet was a minor irregularity that could be resolved and did not affect Advanced Disposal's price.

Mr. Schiller said the public opinion polls provided by Waste Management were not included in the evaluation requirements and should not be a factor in the decision making.

Mr. Schiller said Waste Management violated the "cone of silence". He said the twenty dollar gift cards provided for support of Waste Management created economic consideration. Mr. Schiller believed the supporters acted as Lobbyists.

Mr. Schiller concluded that Advanced Disposal met the required evaluation criteria provided by the Town. He suggested the Town uphold the bid protest, Staff's recommendation and award the bid to Advanced Disposal.

Mayor Wodraska reminded Council they would deliberate on the question as to whether or not Staff's decision to sustain the bid protest in favor of Advanced Disposal should be upheld. He mentioned the process had been a good lesson and that Council should focus on the RFP selection criteria outlined in sections 18.1 and 18.2.

Mayor Wodraska clarified his position and said at first reading he was narrowly focused on price but by second reading after many emails and phone calls, he heard overwhelmingly that quality was more important to residents than price. He stated Waste Management won in all the selection criteria except price.

REGULAR AGENDA

PUBLIC BUSINESS

1. Advanced Disposal Bid Protest for services associated with the collection and disposal of solid waste refuse, multi-material recycling and vegetative waste.

Vice-Mayor Kaufer stated at second reading his decision was based purely on technical aspects of the proposal.

Councilor Posner said he had supported keeping Waste Management through the whole process. He mentioned he did not make his decision arbitrarily but based on information given, his experience with RFP's and the value to the Town.

Councilor Delaney said the first red flag for him was that the monthly rate schedule was not filled out by Advanced Disposal. He had expressed his concerns over their service level but was also focused on price. Councilor Delaney stated by second reading, he had dissected the selection criteria and did not want to take a chance on decreased levels of service.

Councilor Kuretski stated this had been the most complicated and constrained process that he had witnessed. He felt the contract, which did not specify resources, ensured maintaining a high level of service. He mentioned he had questioned Advance Disposal at first reading if they understood the expected level of service and they had. Councilor Kuretski said he understood Staff's position and he could not find a criteria that wasn't met by Advanced Disposal.

Vice-Mayor Kaufer asked for clarification from Mr. Baird if it was Council's responsibility to decide if cone of silence violations occurred. Mr. Baird said it would be up to the Commission on Ethics and certainly they would make a decision regarding lobbyist registration. He was not sure about what was submitted regarding cone of silence violations.

Mr. Baird stated the arguments made on cone of silence violations would go to the issue of whether Council's rendered decision was arbitrary or capricious.

Vice-Mayor Kaufer asked if violations were found by the Commission or the Inspector General how it would affect the contract. Mr. Baird stated the entities had their own remedies, but he felt there would have to be consideration by the Town given to the decision. Mr. Baird explained the decision tonight should be based on information provided at the meeting.

Councilor Posner moved to reject Staff's decision to the affirm protest; Second by Councilor Delaney; motion passed.

Wodraska
Yes

Kaufer
Yes

Delaney
Yes

Kuretski
No

Posner
Yes

ADJOURNMENT - 8:48 P.M.

Sally M. Boylan, Town Clerk

Todd R. Wodraska, Mayor