



## JACKSONVILLE CITY COUNCIL

### TRUE COMMISSION NOTICED MEETING MINUTES – SMG ISSUES February 1, 2011 12:00 p.m.

City Council Conference Room A  
Suite 425, City Hall  
117 W. Duval Street

**Attendance:** Commissioners Wes Benwick, Marcella Lowe, Marc El Hassan, Diane Brown

**Guests:** Bob Downey – former SMG general manager for Jacksonville; Jorina Jolly – JEDC; Tony Bates – Concerned Taxpayers of Duval County; Paul Harden, Keith Van Der Leest, Robin Timothy, Jean Ellen DeSpain, Sarah Bartlo, Larry Wilson, Tracey Evans, Jim Pritchard, Mike Kenny and Gregory Hatch – SMG; Anne Shindler – *Folio Weekly*; Ashley Gurbal – *Jacksonville Business Journal*; Jeff Clements – City Council staff

The meeting was called to order at 12:15 p.m. Chairman Benwick stated that he would have Mr. Downey make his presentation, followed by Paul Harden speaking on behalf of SMG.

#### Bob Downey presentation

Mr. Downey, the former General Manager of SMG operations in Jacksonville, gave a brief overview of SMG's history of operating public facilities in Jacksonville, which began in the early 1990s. His issues concern alleged improprieties by SMG in contracting for various types of insurance and for a food service company to manage the food vending operations at the various SMG facilities in ways that were detrimental to the City's interests and that accrued benefits to SMG in violation of the company's management contract with the City. Mr. Downey also stated that he had hoped that the City Inspector General's audit of the SMG contract would verify his claims, but was disappointed in that report's findings. He did not get the opportunity to review the reports findings before it was released as he had been promised, and believes that the Inspector General's Office was pressured by SMG and the Mayor's Office to overlook certain issues and to downplay the importance of others.

With regard to insurance issues, Mr. Downey stated that when he came to Jacksonville to be SMG's general manager in 1996, he found the insurance costs charged to the City contract to be 25% higher than would be considered normal, which he believed to be the case because the insurance was being procured from an SMG affiliate company as part of a national contract and not bid out locally. When the SMG contract with the City was renewed in 2002 he advocated for a clause requiring a competitive bidding process with Florida-based companies. He stated that Paul Harden, SMG's legal representative, added language to the contract at that time requiring potential bidders to have an office in Jacksonville. The contract with the new bidding language was adopted, but SMG never solicited competitive bids. Mr. Downey said that in 2009 he told Ron Barton, Executive Director of the JEDC, and Richard Wallace, a former Council Auditor then working with the Inspector General's Office, about the savings that could be obtained through a competitive bidding process and was encouraged by them to proceed with their full support. A competitive process was conducted and Jacksonville firm Harden and Associates was selected

by an independent insurance consultant. The cost savings for liability and worker's comp insurance alone was \$165,000 over the previous year's actual cost, and Mr. Downey believes the savings could be as much as \$217,000 if you assume a typical 8% year-to-year increase in annual premiums. Health insurance was rebid with a different benefit package that shifted more costs via co-pays to the employees. The savings for the same coverage level as the employees had previously would have been \$64,000; instead the savings were \$356,500 for coverage that was less expensive for the company but more expensive for the employees. In all, Mr. Downey said SMG saved \$609,000 in insurance premium costs in 2009 because of the bidding process. He is puzzled as to why the Inspector General's report only cites savings of \$230,000 and believes it intentionally downplays the magnitude of the savings achieved through the bidding process by only counting the health insurance savings, omitting the liability and worker's comp savings, and ignoring the rate increases that the SMG insurer would have applied in 2010. He believes that a total insurance cost savings of 25% is possible by bidding out all the lines rather than using the SMG national contract.

Mr. Downey briefly summarized the financial relationship between the City and SMG. The City paid SMG approximately \$25 million last year for operational costs of all the managed facilities and SMG's management fee. Building operations produced approximately \$15 million in revenue leaving approximately \$10 million for the City to subsidize from its budget. SMG contracts for a wide variety of goods and services including food and beverage service. Over the years SMG has contracted with large national companies Aramark, Volume Services and Levy Restaurants to operate the food services at several of the City's buildings. In the 2000s the SMG national corporation created SAVOR as a food service affiliate and wanted the company to be the food service operator for three of the SMG facilities in Jacksonville. The City's contract with SMG did not provide for SMG to use an in-house food service provider unless it could be proved that they were equal to any other potential provider. SMG proposed to use SAVOR as the food service provider and SAVOR provided a pro forma proposal that showed it could outperform Levy. The company was awarded the contract but then provided minimal SAVOR employees to perform the work at the start of the contract – SMG Jacksonville was expected to provide most of the employees. He stated that SAVOR missed its pro forma goals by \$760,000 (actual City income of \$1 million vs. the pro forma projection of \$1.8 million. The Barton and Burton letters say that the new contract benefitted the City by \$7,000 when in fact it substantially underperformed Levy's performance over the previous 5 years.

#### Paul Harden presentation

SMG's attorney, Paul Harden, made a presentation on behalf of the company and challenged a number of Mr. Downey's facts and interpretations. He stated that the Inspector General's audit analyzed the SAVOR contract in great detail and he attributed the financial performance of the contract in its first year to the economic recession which hurt event attendance and food and beverage purchases. The company's performance in the second year of the contract has been good and the percentage return is back up to the Levy contract's levels.

Mr. Harden stated that SMG is a worldwide leader in facility management which operates more than 300 facilities, including 5 NFL stadiums. Jacksonville is very important to SMG and the company operates with great integrity both here and everywhere else. The JEDC vigorously oversees the SMG contracts and meets with company management on a monthly basis to review detailed budget performance. Every year there is an independent third party compliance and financial audit by the City, and SMG corporate also audits the local operation annually. The Inspector General's office spent nine months going over every detail of contract compliance and found no problems. The report cited a need for better JEDC oversight of the contract, but found no serious problems.

Mr. Harden stated that SMG's Business Conduct Policy, which is binding on all employees and which Mr. Downey signed as part of his employment contract, provides for an independent reporting hotline (to a third party law firm) for employees to report any suspected wrongdoing, which is in addition to an internal corporate reporting mechanism. Mr. Downey has never made a complaint via either of these mechanisms. His complaints to the Mayor and City Council President have been investigated and found

to be without basis and the Inspector General's audit, which he apparently hoped would bolster his case, did not confirm any of his charges. Mr. Harden alleged that Mr. Downey's campaign against the company is a result of his dissatisfaction with the company resulting from his failure to receive a pay raise and bonus in 2009. Mr. Harden stated that Mr. Downey threatened the company and later offered to drop his charges in return for a payment of \$240,000 constituting the raise and bonus he expected plus a severance package.

Mr. Harden stated that the idea of bidding SMG's insurance acquisition locally was not Mr. Downey's idea, but rather was an initiative of then-Mayor John Delaney as a way to keep City procurement local to benefit local businesses. When SMG proposed to conduct a competitive procurement process, they were instructed by the City's Risk Management Division that a local-only procurement process was not allowed and they were not to do it. That's why the company did not proceed. The bulk of the insurance-related cost savings comes from the employee health care plan and the switch to a more employee-paid system, not from any competitive bidding success.

Mr. Harden stated that SMG's interest in changing food service providers stemmed from persistent complaints from both patrons and the City about poor performance on the part of Levy Restaurants and a desire by SMG to bring the operation in-house in order to improve the customer experience. Now that the recession is easing, SAVOR is outperforming Levy by \$150,000 (34% rate of return vs. 32%), and the JEDC and Inspector General have both found no problem with SAVOR's operations.

#### Committee discussion

In response to a question about SAVOR's personnel and budget, Mr. Harden stated that the company has its own employees and operating budget and that SMG bills SAVOR for any assistance it may provide to food service operations. He acknowledged that there was some sharing of employees at the beginning of the contract term until SAVOR could get up and running, but says they are entirely self-sufficient now. The Inspector General's audit confirmed that all shared costs were paid back by SAVOR to SMG.

In response to a question, Mr. Harden stated that the TRUE Commission could have a copy of SMG's insurance cost calculations, which he has previously provided to the JEDC.

In response to a question about how Florida's public records laws with regard to procurement processes impact on SMG's operations, Mr. Harden stated that SMG's procurement process is very similar to the City's and that it works well. It is open to review by anyone who is interested.

In response to a question about whether insurance provision is a profit center for SMG headquarters, Mr. Harden stated that every business function is supposed to contribute to profits and SMG's insurance operation is reasonably priced and not excessively marked-up to the local user.

In response to a question about why changes weren't made in the insurance procurement process and coverage levels years earlier, Mr. Harden stated that the deep recession caused economic stresses that didn't exist before and every company in every industry is looking for every possible cost savings mechanism. SMG realized insurance cost savings by cutting benefit levels and shifting costs to employees, not by changing insurance providers.

In response to a question, Mr. Harden acknowledged that SAVOR is a wholly-owned subsidiary of SMG and that dealing with the company is subject to review and approval by the JEDC and the Office of General Counsel. SAVOR is an "affiliate" of SMG as defined in the company's contract with the City. SAVOR does have contracts with other SMG facilities – approximately 80 of 300 managed buildings use SAVOR. The parameters of the contracts differ from city to city depending, in part, on whether SMG operates facilities under a management fee arrangement or a profit-and-loss contract basis.

In response to the question about why he did not utilize one of the "whistleblower" reporting mechanisms to report the problems he believes were happening, Mr. Downey stated that he believes the ethical

problems at SMG go to the highest levels and that reporting the issues to top management was pointless since that's where part of the problem lies. He was not trying to "smear" SMG – he was trying to protect the City from being taken advantage of by the parent corporation. Mr. Downey stated that, contrary to Mr. Harden's earlier assertion, he was not told by the City's Risk Management Division that SMG could not limit the insurance procurement process to local companies until a meeting in 2008. In fact, he met with JEDC Executive Director Ron Barton and other JEDC staff and was urged to try the competitive bidding route and see what cost savings were available.

In response to a question about how many City contracts get an annual independent financial and compliance audit, Mr. Harden indicated that the SMG contract and the Trail Ridge Landfill contract were the only two of which he had knowledge.

Larry Wilson, SMG's General Manager in Jacksonville, stated that the SMG employees present at the meeting were there voluntarily and were offended at some of Mr. Downey's accusations. He defended the company's policies and operations and stated that it was an honorable company.

Chairman Benwick made the following document requests:

- The latest Ernst & Young compliance audit of SMG's operations;
- SMG's insurance policies before and after the recent changes (2008 and 2009);
- SMG's budget in detail;
- The Inspector General's audit of the SMG contract.

There being no further business, the meeting was adjourned at 2:06 p.m.

Jeff Clements, Chief  
Council Research Division  
630-1405

Posted 2.15.11  
5:00 p.m.