



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Unfinished Business

I.3.

1/25/2022

Subject:

Driftwood Expired Escrow Agreement

Fiscal Impact:

\$65,000

Dept/Office:

District 2

Requested Action:

Discussion and Motion

Summary Explanation and Background:

As mentioned during my board report provided at the last duly noticed BOCC meeting, the county's escrow agreement with Driftwood expired on December 31, 2021. At present, we have roughly \$65,000 of unspent funds which belong to Driftwood. Without action by the both BOCC and Driftwood, as it now stands, the county is contractually obligated to return these funds.

Representatives of Driftwood have requested that we not return the unspent funds presently in escrow with the county. As such, this item seeks to authorize county staff to negotiate the county retaining any unspent funds for the purpose of applying those funds toward the cost(s) described herein.

This item seeks to authorize staff to seek to negotiate a new escrow agreement with Driftwood in which Driftwood will pay 100% of the costs of having a proposal pertaining to the planned Westin project (located on SR-A1A in Cocoa Beach), which Driftwood is to provide, analyzed for both legal sufficiency and economic impact. No taxpayer dollars (e.g., millage, TDT, etc.) are to be spent in paying for this analysis.

The proposal is to be subject to such analysis by one or more unbiased third parties selected by a selection committee comprised solely of county staff chosen by County Manager Frank Abbate. Driftwood is to have no role in selecting the members of the selection committee.

The County Manager is to bring forth an agenda item seeking BOCC authorization for his selection committee choices as well as a draft of the RFP, itself, for BOCC approval. I intend to support any selectees the County Manager may choose and I would encourage my colleagues to do likewise.

The RFP will not be drafted unless and until staff is in receipt of the proposal to be evaluated. Amendments and/or alterations to the proposal shall require written authorization of both Driftwood and the BOCC and this shall be negotiated into the escrow agreement with Driftwood.

The RFP process shall not be expedited and shall run the full, standard, duration.

Moreover, Mr. Abbate's agenda item shall seek authorization for the selection committee to select from among those responding to the RFP which entity or entities are to undertake the analysis. Neither Driftwood nor its agents (and/or other representatives) shall have any verbal communications with any entity which seeks to be awarded the RFP either during the time the RFP is being advertised or following the selection of any respondent.

Upon completion of the analysis, the original proposal, in its entirety, along with the any documents produced in the analysis shall be made public as quickly as reasonably practical. So, too, shall all documents used in forming any opinions contained within the analysis be released to the public. Should Driftwood and/or its agents (and/or other representatives) have any written communications with the entity/entities performing the analysis, those too shall be included in the public record. To this end, this requirement shall be negotiated into the contemplated escrow agreement between the county and Driftwood.

Staff is authorized to send these documents to Peter Cranis for inclusion in a forthcoming TDC agenda as a staff-driven item requesting that the members of the TDC review the item and all attachments and provide any thoughts and ask any questions they may wish to ask.

Once the members of the TDC have had the opportunity to ask questions and provide commentary, Driftwood shall be given until the next regularly scheduled TDC meeting to address any such questions or comments received. It is strongly encouraged that Driftwood timely and unambiguously respond to all questions posed by TDC appointees.

After this has occurred, staff shall be directed to bring the matter before the BOCC, along with any questions or comments provided by the TDC and any responses to those provided by Driftwood.

As the county cannot control the content of the proposal provided by Driftwood, it is entirely possible that there may be one or more concerns not adequately addressed by the proposal or, by extension, the analysis of that proposal. As such, when the item comes back before the BOCC, the BOCC may seek to expand the scope of the analysis should it wish to do so. If this is desired, the BOCC may request that Driftwood pay the costs associated with the expanded analysis, though staff is not being directed, at this juncture, to negotiate this aspect which may or may not arise several months from now.

Staff is authorized to take all steps reasonably necessary to effectuate the directives contained herein but shall not utilize any taxpayer funds (e.g., millage, TDT, etc.) in doing so.

Clerk to the Board Instructions:



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January 26, 2022

M E M O R A N D U M

TO: Commissioner Brian Lober, District 2

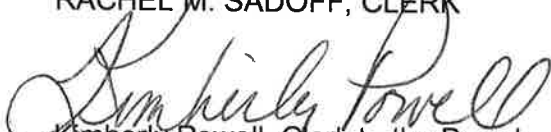
RE: Item I.3., Driftwood Expired Escrow Agreement

The Board of County Commissioners, in regular session on January 25, 2022, discussed the Driftwood Expired Escrow Agreement, but took no action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ns

cc: Each Commissioner
County Manager