



# Clerk of the Circuit Court Board of County Commissioners

Marion County



## Internal Audit Division

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### MEMORANDUM

TO: Lee A. Niblock, Community Resources Bureau Chief

FROM: David R. Ellspermann, Clerk of the Circuit Court

DATE: June 27, 2003

RE: COMPLIANCE REVIEW OF HORSESHOE LAKE PARK MANAGEMENT AGREEMENT

Pursuant to your request, the Internal Audit Division has completed a review to determine the adequacy and level of compliance of the management company with which the County contracted to manage the Horseshoe Lake Park rental cabins and day use facility. This is the first such contractual relationship and we included other significant compliance issues, in addition to an audit of Contractor revenue records.

Our review consisted of discussions with Park and Recreation Department (Department) staff of the relevant issues, meetings with the Contractor to discuss the operation of the park, review of the "Agreement Between Owner and Contractor" and pertinent Request for Proposal, examination of the Contractor's reservation system and revenue reporting to the Department. We reviewed the Contractor's accounting and tax records related to the Park's operation and performed revenue analyses. Further, we reviewed and analyzed the Contractor's sales tax reporting to the Florida Department of Revenue and examined the Contractor's 2002 federal income tax return.

Based on our review, **we have concluded that** both the Contractor and the County are in material compliance with the significant Agreement requirements (see Attachment). We did note some issues that are not in full compliance or which require further actions. These are discussed in the report, along with recommendations.

We found the Contractor (Mr. and Mrs. Boatwright) to be very cooperative and accommodating. Department personnel were equally helpful and we appreciate their assistance during our review.

This review was performed by Wallace Watford, Internal Auditor, and Sachiko Leon, Staff Auditor. We appreciate the opportunity to conduct this special review and trust these results meet your needs and expectations.

Attachment

c: Patrick G. Howard, County Administrator  
Janet Y. Tutt, Deputy County Administrator  
Tom and Marie Boatwright

## HORSESHOE LAKE PARK MANAGEMENT AGREEMENT

### FINDINGS AND RECOMMENDATIONS

#### **Background**

Marion County owns Horseshoe Lake Park, which the Parks and Recreation Department (Department) had operated since the inception until the management was contracted to a third party effective in June 2002. The park has two sources of revenues: 1) rentals of all or part of the facilities, such as mess hall and cabins, 2) revenues from "Day Use" beach area, such as entrance fees and boat rentals. With the exception of boat rentals, Day Use revenues are collected on the "honor system," which requires the patron to place the correct fee per person in an envelope and insert into the secure lock box.

The County contracted with Tom and Marie Boatwright, DBA The Rocking TM, to perform the management services. The term is for 2 years, with four 2 year renewal options. The Boatwrights pay the County a minimum of \$100 per month or 5 percent of monthly gross sales for the first year, 7.5 percent of sales for the second year, and 10 percent of sales for the third year. Subsequent years will be negotiated later. The Contractor retains the revenues and absorb all operating expenses, except for repairs exceeding \$500.

The Department noted that there has been a decrease in revenues under new management, compared to the months of the preceding year while under the Department's management. We do not have a definitive answer, but there are many factors which could attribute to this condition. The tourism industry in general has experienced decreases in attendance and revenues. Further, managing a park has been a new experience for the Contractor. It is impossible for us to determine a particular reason which caused the low revenues, but we found no indication that the Contractor was deliberately under-reporting revenues.

#### **Rental Fee Rates and Discounts**

The Agreement states that the Board of County Commissioners has sole authority to approve rental rates. The current fee resolution 02-R-332 for Horseshoe Lake facility along with other County-owned parks was approved in November 2002. Facility rental rates were established previously by fee resolution 00-R-219.

The Agreement prohibits the Contractor from changing the rental rates for the Horseshoe Lake facility prior to approval of the Board. We found the Contractor had charged the newest rate approximately 4 weeks before the resolution went in effect. The Contractor explained that she was told by someone from the Department that it had been approved at the time.

There are 3 rental cabins, of which 2 were divided into 2 sides to accommodate more parties. Each side is rented for \$60 a night (Marion County resident) or \$75 a night (non-resident) according to the approved rental rates. The third cabin is rented for \$100 a night regardless of residency status. When one party rents both sides of a divided cabin, the Contractor has offered discount rates of \$100 or \$125 per night. We noted that the Contractor also has offered discounts to those who stay more than 2 nights. We also noted one party had received a 50% discount of \$700 for extended stays. Others received discounts of \$80 up to \$600 depending on the length of stay and the portion of the facility rented. This appears to be the Contractor's standard practice. We found no instances where rents exceeded the amounts established by fee resolution.

Negotiation of price to attract more guests is a valid and practical business consideration. However, since

## HORSESHOE LAKE PARK MANAGEMENT AGREEMENT

this practice has not been approved by the Board, it is a technical violation of the Agreement which must be addressed by the Department and Contractor. Unless some other decision is reached, we believe that the compensation due to the County should not be affected by the discounts. We therefore determined the effect of the discounts to the County's compensation is \$46.98 through March 2003.

The fee resolution also requires a "damage deposit" of one night's rental for the individual cabin rentals and a \$200 "damage/reservation deposit" for group use reservations. We found that the Contractor usually collected the deposits in advance if there was enough time between contact and rental dates. Such deposits are actually advance payments of rent and any actual physical damages to the facility would have to be separately collected from the guests. The Contractor has established a practice of collecting a separate damage deposit in the form of a check, which is not deposited into the bank and which is returned intact to the guest at the end of the rental period. To date, there has not been physical damage attributable to a specific guest, but such additional deposits would be mitigating should such occur in the future. This seems to be a good business practice, but is not specifically mentioned in the fee resolution.

**We recommend that** Contractor deviations from the fee resolution be reviewed by the Department to determine if appropriate and allowable and, if not, how best to resolve the issue. **We recommend that the** Contractor pay 5% of the gross sales of the approved rates monthly or that the Contractor propose a change to the resolution to have authority to negotiate price.

### **Reservation System and Rental Documentation**

The Contractor's reservation system is very similar to that used by the Department when it operated the facility. When someone calls to reserve the facility, the Contractor takes the information, fills in a form and "pencils in" the information on a desk calendar. The reservation is thereafter recorded on the calendar in ink when the deposit is received or the reservation is otherwise confirmed. While this method lacks sophistication, it appears to be effective. We noted two parties on the calendar were still written in pencil and from whom no revenues were recorded. We were able to contact one of them (for whom we found a telephone number) and verified that the party, in fact, did not stay on the date. This person stated her organization still plans to visit later and was very complimentary of Mrs. Boatwright and the facility.

We noted that the Contractor did not use a rental agreement for the guests to sign. We believe such a form is an important document to clearly disclose the facility is used and rentals collected. Further, the rental agreement form should include the requirements of the guest, as well as clearly state the rental terms and the County parks rules and restrictions. We suggested, and the Contractor agreed, that such an agreement is needed. We provided an example form that the Department previously used, and which the Contractor said would be used in the future. **We recommend that** the Contractor obtain such rental agreement forms and thereafter ensure a form is completed for each guest transaction. A copy of each completed rental agreement form should be submitted to the Department, along with the present monthly activity report.

**Sales Tax**

Florida sales tax is added to the rental rates on facility rentals and is included in the Day Use fees and rentals. We noted that the Contractor had been reporting the Day Use sales tax to the Department as if it were revenue. We have accounted for this in the above section on rental discounts.

We found the Contractor had not been reporting sales tax to the State on revenues from Day Use, believing such were tax exempt. Although Day Use generates small amounts of revenue, the Contractor must calculate the sales tax portion of it from the Day Use area. Therefore there has been a potential underpayment to the State of \$48.07. We also found inconsistencies in sales tax reporting when Horseshoe Lake Park was run by the Department. The Department had charged rental fees plus sales tax on some instances and included sales tax in the fees on others. **We recommend that** the Contractor improve its reporting to the Department of sales taxes and revenues. We also suggest that the Contractor consider filing corrected sales tax returns for prior periods.

**Communication Issues**

We believe that there is a need to enhance communications between the Contractor and the Department. More communication should be in writing (memo or email) to the extent possible in order to better document any questions, issues and resolutions arising from the Agreement.

As an example, there have been some projects planned or begun by the Contractor which were not accomplished. The Contractor asserted that some projects were discussed verbally, but later were turned down or discontinued due to the need for licenses, zoning changes or expensive improvements. Some projects were contemplated in the Contractor's written response to the RFP. The Department believes that verbal communication has been appropriate and has provided copies of letters it has prepared on some issues, such as the required marketing plan. Because these projects have importance to both parties, we believe there may have been a greater probability of receiving prompt feedback and assistance if the Contractor had presented the ideas in writing and obtained written Department correspondence in return. We suggest that additional and more formalized communication will enhance the probability of this contractual relationship to succeed.

**We recommend that** the Department and Contractor improve the manner and level of communication. This could be accomplished by more face-to-face meetings to discuss and resolve operational and other issues. These could be periodic, but should be frequent enough to ensure communication is appropriate. Further, written communication between the parties should be used more often, whether by email or in mailed letters and memoranda.

**Marketing Plan**

The Agreement requires the Contractor to follow its marketing plan for the park after the plan is reviewed in advance with the Department. Further, all marketing materials and promotions are subject to review by Marion County before publication or airing. In addition, the Contractor is to provide the Department with a quarterly report which analyzes the success of the plan.

The Contractor had proposed numerous activities and promotions in its written proposal to the County, as well as verbally subsequent to the contract award. The Contractor has implemented a number of marketing activities (brochures, Internet web site, etc.) and verbally stated other marketing ideas. Some of these ideas appear innovative and appropriate for the facility. However, no formal marketing plan was

## HORSESHOE LAKE PARK MANAGEMENT AGREEMENT

devised and submitted for County review and approval. Therefore there have been no quarterly reports prepared for review with the Department. In addition, the Agreement allows the Contractor, with prior Board approval, to make improvements to the facility to market the daily use and accommodate user needs. **We recommend that** the Department work with the Contractor to ensure an appropriate marketing plan is developed and approved in accordance with the Agreement.

### **Facility Inspections by Department**

The Agreement requires that the Department periodically inspect the facilities before and after rentals, and meet with the Contractor regarding maintenance needs of the facilities. We have been informed by Department personnel that such inspections have occurred. Such inspections appear to have been limited and are not documented. **We recommend that** the results of inspections be formalized and documented, perhaps by a checklist, that is later reviewed by Department management. The results of the inspections should be discussed with, and signed off by, the Contractor.

### **Facility Maintenance Responsibilities**

The Contractor is required to perform a number of duties in addition to renting the facility and collecting revenues. Much of these duties include facility cleaning and maintenance, as well as maintaining the day and group use areas. From our brief inspection, we found no indications of noncompliance and the facilities (grounds, cabins and other buildings) looked appropriately maintained. We noted that significant repairs to some bathroom floors were required. These repairs were the County's responsibility, and considerable time elapsed before the repairs were contracted. The repairs were just completed at the time of this report.

The County is also responsible for the fire lines, fences and trails, which seemed to be appropriately maintained by the Department. The County is responsible for monitoring lake water quality, while the Contractor is responsible for monitoring well water quality. We were informed by Department personnel that the Florida Department of Environmental Protection (DEP) has found problems with the well water system and informed the County that the facility is not in compliance. Apparently one issue resulted from the Contractor using a wrong type of chlorine. If problems with the water system continue, DEP could shut down the water system, effectively shutting down Horseshoe Lake Park. This could constitute a serious breach of the contract and might result in termination of the Agreement. **We recommend that** the County continue to monitor the Contractor's performance of this responsibility and take appropriate and prompt action to ensure compliance and enforce the pertinent sections of the Agreement.

The RFP, which was incorporated by reference into the Agreement, states that the Contractor and County will negotiate a maintenance agreement at the beginning of each contract year for any maintenance or repairs needed that exceed \$500. In our conversations with the Contractor and Department personnel, both parties understand that any repair cost of over \$500 is the full responsibility of the County; any repair cost of \$500 or less is the full responsibility of the Contractor. However, we found no evidence that such an annual agreement has ever been negotiated, and neither party seemed aware of this requirement. It may be that this RFP requirement is not material, but we believe it should be addressed. **We recommend that** the Department review this issue and take any appropriate action.

### **Reporting Entity**

Marion County contracted with the Contractor (Tom and Marie Boatwright) as individuals, doing business as The Rocking TM, and not as an incorporated company. In their response to the RFP, the Boatwrights

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stated that they would incorporate when awarded the agreement. The Boatwrights subsequently formed a corporation and has registered “The Rockin’ TM Company” with the Florida Department of State. The Boatwrights handle all financial activities (revenues and expenses) related to the Horseshoe Lake Park through their personal bank account. The Contractor files Florida sales tax returns as a corporation, but files federal income tax on Horseshoe Lake operations as an individual taxpayer. We believe that better reporting controls would be obtained if the Contractor reported all revenue and expenses in a separate corporate bank account and accounted for such in separate business financial records, instead of the present fashion. We believe there are certain inconsistencies between reporting and operating as both sole proprietorship and corporation that the Contractor should resolve and suggest they consult their accountant or tax advisor.

**ATTACHMENT**  
**Horseshoe Lake Park Compliance Summary**

**Is the Contractor in Full Compliance?**

**Yes   No   N/A**

***Per “Agreement Between Owner and Contractor”***

<u>Scope of Services</u>	The Contractor provides Management Services	✓		
<u>Compensation</u>	The Contractor pays \$100 minimum per month or 5 % of gross sales for 1 <sup>st</sup> year.	✓		
	Prior to the performance of any work, the Contractor shall obtain and pay for all licenses, permits and inspection fees		✓	
<u>Laws, Permits, and Regulations</u>	The Contractor complies with all laws, regulations and ordinances	✓		
<u>Books and Records</u>	The Contractor shall keep records of all services	✓		
<u>Insurance</u>	The Contractor shall procure and maintain insurance as required	✓		

***Exhibit A - Scope of Services***

<u>A2.</u>	The Contractor will provide all services required in operating a park/beach	✓		
	Collection of and retaining of usage fees, maintaining the grounds and facilities area and enforcing park/beach rules	✓		
	With prior approval of the BCC, The contractor may make improvements to the facility		✓	
<u>A3</u>	The Contractor provides systems and services that will be used to exclusively receive and process all reservation for the rental of the Horseshoe Lake facilities.	✓		
<u>Reservations</u>	Customer Services include:			
	• Show facilities (not within a scope of audit)			✓
	• Client Consultation (not within a scope of audit)			✓
	• Booking	✓		
	• Prepare rental agreements		✓	
	• Forward reservation data to the Parks	✓		
	• Maintain pertinent records	✓		

**N/A - Not Applicable to review or not yet determinable at time of review**

**Is the Contractor in Full Compliance?**

Yes   No   N/A

A4. Rental Rates      The Contractor shall not change the rental rate without approval of the Board of County Commissioners.

	✓	
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The Contractor will:

- Collect and retain all fees
- Provide accounting and cash handling services, including accounts receivable and payment of rental fees to the Parks and Recreation Department
- Provide the County with access to all accounting records and books
- Notify the Parks and Recreation Department when deposits are withheld due to damage, and of rental problems or rental complaints

✓		
✓		
✓		
		✓

A7. Facility Marketing      The Contractor follows a marketing plan to include but not limited to media such as newspapers, magazines, brochure publications, and Internet web site.

✓		
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The Contractor reviews its marketing plan with Parks and Recreation Department in advance.

	✓	
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The Contractor provides a quarterly report to the Parks and Recreation Department analyzing the success of the marketing plan/activities.

	✓	
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A8. Rules and Regulations      The Contractor assumes the responsibility for enforcing rules and regulations.

✓		
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The Contractor coordinates with Parks and Recreation Department and County agencies such as Health, Fire, Sanitation.

		✓
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A9.      All accounting records should be made available for review by County

✓		
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**Is the Parks and Recreation Department in full compliance?**

*Per "Agreement Between Owner and Contractor"*

Yes   No   N/A

Notices      All notices and other communications shall be in writing.

		✓
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County Responsibility      The County notifies the contractor within 30 days of any change.

		✓
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Timely Performance      "All work will commence upon authorization from the County's representative. All work will proceed in a timely manner without delays."

✓		
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A6. Facility Premises, Cleaning, and Maintenance      The Parks and Recreation Department inspects facilities periodically.

✓		
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