

Management Advisory 2003-9

To: Skip Camp Facilities Management Director
From: Patrick Blaney Internal Audit Director
Date: November 24, 2003
CC: Dwight E. Brock Clerk of the Circuit Court
Jim Mitchell Finance Director
Audit File
Re: County Lease with Subway Real Estate Corp.

SUBWAY/DUNKIN DONUTS LEASE AGREEMENT

OBJECTIVES AND SCOPE

The objectives of this Management Advisory are to review the lease agreement and to test the accuracy of the calculation of rent payments from the Subway and Dunkin Donuts concessionaire located on county property. The scope of this review was to evaluate compliance with lease terms, calculate the accuracy of the rents received, determine the adequacy of lessee-provided documentation, and note the timeliness of rental remittances from Facilities Management to the Finance Department.

BACKGROUND

On June 2, 1998, the Board of County Commissioners executed a lease agreement with Subway Real Estate Corp. (concessionaire), which awarded the concessionaire the exclusive right to operate the food concession at the Collier County Government Center located at 3301 Tamiami Trail, East Naples, Florida. The initial agreement was for a three-year period from June 2, 1998 through June 1, 2001. The agreement was renewable, upon satisfactory performance by the concessionaire, for three additional separate two-year periods under the same terms and conditions. The lease was renewed for the second additional two-year period from June 2, 2003 to June 1, 2005.

The agreement specifies that the concessionaire shall remit to the county 9% of the total retail sales of the concessionaire's business, free and clear of all costs and charges arising from or related to concessionaire's obligations under this agreement. The percentage shall be based on total gross revenues per month, and shall include applicable Florida State Sales Tax at 6%. Gross revenue or gross receipts means all income collected, accrued or derived by the concessionaire excluding any federal, state or other tax collected by the concessionaire from customers, and required to be remitted to the taxing authority.

The concessionaire shall provide a statement of gross receipts and a copy of the State Sales and Use Tax Report for the preceding month. The payments will be tendered to the county by the 15th of each month for the preceding month. If the monthly gross receipts report, the payments, and any other fees due are not submitted to the County, through the Director of Facilities Management, within fifteen (15) days after the close of each month a penalty should be assessed. If the Concessionaire fails to pay within five (5) days of the due date, there will be late charges of \$50 for such late payment plus compound interest at 10% per annum. If not received within 30 days after the normal monthly due date, the County may take possession of the concessionaire's assets on county property and cancel the agreement.

The lease agreement also states that the concessionaire grants the county the right and authority to audit all records, documents, and books pertaining to the concession operations. The concessionaire also agrees to use point of sale machines or other accounting control equipment for the proper control of cash and payment. All financial records are to be maintained during the entire term of the agreement and for a period of three years following the termination of the agreement.

FINDINGS

1. **From November 1998 through the present, the concessionaire dated its rent payment check and remitted the payment later than the due date (the 15th day after the previous month) on the following 15 occasions:**

<u>Monthly Rent</u>	<u>Date of Check</u>	<u>Amount of Check</u>
1) March 2003	4/23/03	\$2,096.74 - Late penalty due
2) December 2002	1/23/03	\$1,831.61 - Late penalty due
3) March 2002	4/17/02	\$1,880.44
4) January 2002	2/26/02	\$1,747.03 - Late penalty due
5) December 2001	1/24/02	\$1,286.69 - Late penalty due
6) November 2001	1/29/02	\$1,299.72 - Late penalty due
7) August 2001	1/19/02	\$1,397.43
8) July 2001	8/16/01	\$1,278.57
9) November 2000	12/18/00	\$1,313.73
10) September 2000	10/16/00	\$1,382.73
11) October 1999	11/18/99	\$1,589.58
12) August 1999	9/16/99	\$1,621.14
13) July 1999	8/20/99	\$1,518.39
14) June 1999	7/19/99	\$1,636.51
15) December 1998	1/18/99	\$1,332.78

The monthly rental checks for March 2003, December 2002, January 2002, December 2001 and November 2001 were also dated past the 5-day grace period. There was no indication that County management monitored the timeliness of rent receipts. The County is entitled to the contractual late charge of \$50 and 10% per annum interest for each of these months which calculates to a total of \$200.76 as of November 1, 2003 (**Exhibit 1**).

Recommendations

County management should monitor rental payments more closely to ensure that payments are received on a timely basis.

The County should assess the concessionaire for all past late payments.

2. Provisions of the lease agreement have not been consistently adhered to or enforced.

The lease requires the concessionaire to pay rent plus a 6% sales tax for leasing the space from the county. Since the inception of the lease payments in November 1998, the concessionaire has not paid the required sales tax payment to the county. Neither Facilities Management nor Finance collected the sales tax from the concessionaire. Thus the county owes the State of Florida for the uncollected sales tax since 1998. Finance has computed the total unpaid sales tax due from November 1998 to May 2003 to be \$5,383.84.

On July 25, 2003, the lessee paid the Board of County Commissioners \$5,383.84 for the sales tax due.

The rent payment and supporting documentation for the month of November 2002 was identical to the rent payment and supporting documentation received for the month of August 2002. A review of the documents established that the August 2002 submission was the correct monthly submission. The November 2002 submission was in error. Facilities Management has requested a corrected submission from the lessee for November 2002.

The September 1999 lease payment appeared to have been received by Facilities Management on October 22, 1999. The records indicate that it was not sent to Finance until March 8, 2000. Other payments were observed to have been sent to Finance on a timely basis.

Facilities Management has stated that, in the past, they reviewed the backup documentation accompanying the Monthly statement every 3-4 months. The Administrative Assistant to the Director also reviewed the mathematical accuracy of the Summary Statement page every month. As a result of this audit, management has stated that it will review the backup documentation every month.

Internal Audit selectively sampled monthly submissions for mathematical accuracy. Of the five months sampled, only two differences were found. The

combined total of these two differences amounted to under \$50 and are considered insignificant.

Internal Audit sampled a group of monthly Sales/Use tax returns and "Control Sheet" schedules (monthly summaries of register tape totals) both prepared by Subway/Dunkin Donuts. These were compared with the lessee's monthly submissions accompanying the rent payments received by the county.

The review reflected that gross receipts reported to the County as support documentation in the calculation of the monthly rent payments as compared to the gross receipts reported to the Florida Department of Revenue on their monthly Sales/Use tax returns are not identical for 36 months from December 1999 to the present. In some months, the amount reported to the State is higher, while in other months the amount reported to the County is higher. However, the overall total of gross receipts reported to the State of Florida and reported to the County, for the entire period of time, varies only by \$2,454. This total difference would only have a negligible effect upon total rental payments, calculated to be \$234 for this period of time, and is not considered to be significant (**Exhibit 2**).

Monthly register tapes were judgmentally sampled for several months during the period from 2000 to 2003. Totals reflected on the tapes were compared to totals reported on the rental submissions and the State Sales/Use tax returns. The sampling reflected only one minor difference. For September 23, 2002, the register tape for Subway sales was \$6.23 less than the amount reported to the county on the rental submission. This difference is considered immaterial for audit purposes.

Recommendations

Closely review all supporting documentation accompanying each monthly rental payment.

Compare the amounts reported on the monthly rental remittances with figures reported on the State Sales and Use Tax Reports for the same accounting period as required for the statement of gross receipts.

RESPONSE FROM FACILITIES MANAGEMENT (see attachments)

In response to the audit for the Subway/Dunkin Donuts Lease agreement, the Department of Facilities Management endorses the findings and recommendations contained within the Internal Audit Report.

Based on the findings of the audit, a letter dated 11/17/03 has been sent to Candito Management requesting remittance of the 15 late payments and interest where required. We have also included a statement indicating that the Sales Use Tax Report should be included with the rent check and all documentation each month (Attachment 1). In addition, we now have measures in place to ensure Candito Management complies with the terms and conditions of the contract. Each month a memo (Attachment 2) is drafted and sent to the Finance Department with all back-up documentation ensuring compliance with the lease.

CONCLUSION

The Internal Audit Department believes that closer monitoring and more hands on enforcement of the rental agreement are necessary.

Internal Audit would like to thank Facilities Management and the Finance Department for their cooperation and assistance during this examination.

ANALYSES OF SUBWAY/DUNCAN DONUTS MONTHLY GROSS RECEIPTS FOR REASONABLENESS

Year	Month	Monthly Gross Revenues Per Sales/Use Tax Return	Reported Gross Monthly Revenues per Subway/Dunkin Donuts	Difference	Over (under) Payment of Rent including Sales Tax
2003	May	\$21,978.15	\$22,017.62	(\$39.47)	(\$3.77)
	April	\$22,939.69	\$21,967.28	\$972.41	\$92.77
	March	\$23,512.09	\$26,126.89	(\$2,614.80)	(\$249.45)
	February			\$0.00	\$0.00
	January			\$0.00	\$0.00
2002	December	\$20,350.78	\$20,351.26	(\$0.48)	(\$0.05)
	November	\$20,634.50	\$19,296.87	\$1,337.63	\$127.61
	October	\$23,530.66	\$23,535.96	(\$5.30)	(\$0.51)
	September	\$18,577.92	\$18,824.79	(\$246.87)	(\$23.55)
	August	\$19,323.93	\$19,296.87	\$27.06	\$2.58
	July	\$20,300.85	\$20,500.94	(\$200.09)	(\$19.09)
	June	\$19,582.88	\$19,582.74	\$0.14	\$0.01
	May	\$21,853.04	\$21,770.85	\$82.19	\$7.84
	April	\$21,013.75	\$20,816.31	\$197.44	\$18.84
	March	\$20,905.61	\$20,893.80	\$11.81	\$1.13
	February	\$19,255.60	\$19,255.56	\$0.04	\$0.00
	January	\$19,411.40	\$19,411.44	(\$0.04)	(\$0.00)
2001	December	\$14,296.60	\$14,296.60	\$0.00	\$0.00
	November	\$14,441.32	\$14,441.32	\$0.00	\$0.00
	October	\$17,413.32	\$16,638.02	\$775.30	\$73.96
	September	\$13,056.81	\$12,573.09	\$483.72	\$46.15
	August	\$15,485.73	\$15,527.00	(\$41.27)	(\$3.94)
	July	\$14,233.18	\$14,206.37	\$26.81	\$2.56
	June	\$16,367.48	\$16,467.39	(\$99.91)	(\$9.53)
	May	\$17,342.73	\$17,397.44	(\$54.71)	(\$5.22)
	April	\$16,444.97	\$16,825.88	(\$380.91)	(\$36.34)
	March	\$20,190.73	\$20,230.45	(\$39.72)	(\$3.79)
	February	\$17,155.14	\$18,310.80	(\$1,155.66)	(\$110.25)
	January	\$18,708.52	\$18,625.21	\$83.31	\$7.95
2000	December	\$14,126.06	\$14,153.27	(\$27.21)	(\$2.60)
	November	\$14,585.88	\$14,596.97	(\$11.09)	(\$1.06)
	October	\$13,079.03	\$17,209.62	(\$4,130.59)	(\$394.06)
	September	\$15,364.28	\$15,363.70	\$0.58	\$0.06
	August	\$18,140.65	\$18,124.54	\$16.11	\$1.54
	July	\$13,293.67	\$13,258.44	\$35.23	\$3.36
	June	\$17,079.07	\$17,130.22	(\$51.15)	(\$4.88)
	May	\$18,817.52	\$18,830.38	(\$12.86)	(\$1.23)
	April	\$18,359.74	\$18,438.03	(\$78.29)	(\$7.47)
	March	\$24,670.26	\$21,055.15	\$3,615.11	\$344.88
	February	\$19,135.26	\$19,144.44	(\$9.18)	(\$0.88)
	January	\$18,220.17	\$18,395.20	(\$175.03)	(\$16.70)
1999	December	\$16,514.84	\$17,259.38	(\$744.54)	(\$71.03)
Grand Total		\$729,693.81	\$732,148.09	(\$2,454.28)	(\$234.14)

Shaded areas represent incomplete data available for comparison.

Based on the above analysis of Canrad's reported Gross Revenues to the County as compared to the Florida Dept. of Revenue, pre-tax Gross Revenue reported to the County seems reasonable.

Note 1- The original March 2003 S/U Tax submission was subsequently corrected to properly reflect Gross Revenues for the period. An additional tax payment was made by Canrad Inc. based on the adjustment.

(Exhibit 2)

**Subway / Dunkin Donuts Lease Agreement Review
Late Fees Due on Monthly Rent Submissions**

Monthly Rent (MM-YY)	Due Date	Date of Check	Amount of Check	Late Penalty Due	Factor for Annual Interest at 10% per Annum	Days Past Due Based on Date of Check	Interest Due on Payment
March-03	4/20/2003	4/23/2003	\$2,096.74	\$50.00	0.8792	3	\$15.73
December-02	1/20/2003	1/23/2003	\$1,831.61	\$50.00	0.8792	3	\$13.79
January-02	2/20/2002	2/26/2002	\$1,747.03	\$50.00	0.8792	6	\$26.33
December-01	1/20/2002	1/24/2002	\$1,286.69	\$50.00	0.8792	4	\$13.06
November-01	12/20/2001	1/29/2002	\$1,299.72	\$50.00	0.8792	40	\$131.85
TOTALS							<u><u>\$200.76</u></u>

Rent is due on the 15th after the close of each month with a 5 day grace period.

Interest and penalties calculated only up until date of check submitted by Subway/Dunkin Donuts.

COLLIER COUNTY BOARD OF COUNTY COMMISSIONERS
DEPARTMENT OF FACILITIES MANAGEMENT

MEMORANDUM

DATE: November 17, 2003
TO: Pat Blaney, Director, Internal Audit
Clerk of Courts
FROM: Skip Camp, CFM, Director
Department of Facilities Management
REFERENCE: County Lease with Subway Real Estate Corp.



In response to the audit for the Subway/Dunkin Donuts Lease agreement, the Department of Facilities Management endorses the findings and recommendations contained within the Internal Audit Report.

Based on the findings of the audit, a letter dated 11/17/03 has been sent to Candito Management requesting remittance of the 15 late payments and interest where required. We have also included a statement indicating that the Sales Use Tax Report should be included with the rent check and all documentation each month (Attachment 1). In addition, we now have measures in place to ensure Candito Management complies with the terms and conditions of the contract. Each month a memo (Attachment 2) is drafted and sent to the Finance Department with all back-up documentation ensuring compliance with the lease.

Thank you.

ATTACHMENTS

C: Len Golden Price, Division Administrator

Please Note: Security Systems Public Records Exemption: This document may be exempt as provided for in Section 281.301, *Florida Statutes*

Please Note: Building Plans Public Records Exemption: This document may be exempt as provided for in Section 119.07, *Florida Statutes*

Acquiring, Designing, Constructing, Maintaining and Securing Government Buildings



COLLIER COUNTY FACILITIES MANAGEMENT

3301 East Tamiami Trail • Building W • Naples, Florida 34112 • 239-774-8380 • Fax 239-793-3795

November 17, 2003

Joe Candito
Candito Management
2626-3 East Tamiami Trail
Naples, Florida 34112

RE: Subway/Dunkin Donuts Lease Agreement/Late Payment Charges

Dear Joe:

Over the years, Collier County has enjoyed having Subway and Dunkin Donuts on the main Government campus and having these concessions available to our employees and the public has proved beneficial. As you are aware, the Collier County Clerk of Courts, Internal Audit Department, recently conducted an audit of the lease agreement between Collier County and Subway Real Estate Corporation.

Upon receipt of the findings, it has been brought to our attention that there were 15 occasions from November 1998 to the present, where the rent payment check was received past the 15th day of the month. By contract, the County is entitled to the late charge of \$50 in each case and 10% per annum interest for each of these months. Taking the 15 late payments (\$750.00) and the 10% per annum (\$200.76 as of 11/01/03) into account, please remit payment in the amount of \$950.76 at your earliest convenience.

In addition, as specified by the contract, please include the State Sales and Use Tax Reports for each month. This report should be included with the paperwork sent to our Department.

All in all, I believe the results of the audit were positive and will lead Collier County and Candito Management to better monitor the lease agreement currently in place. Should you have any questions, I can be reached at 774-8380.

Thank you.

Very truly yours,



Skip Camp, CFM, Director
Department of Facilities Management

C: Jim Mithcell, Finance Director
Clerk of Courts


C o l l i e r C o u n t y

COLLIER COUNTY BOARD OF COUNTY COMMISSIONERS
DEPARTMENT OF FACILITIES MANAGEMENT
MEMORANDUM

DATE: November 17, 2003
TO: Finance Department
FROM: Skip Camp, CFM, Director
Department of Facilities Management
REFERENCE: Snack Bar Revenue / Subway / Candito Management

Attached, please find the monthly commission check from Candito Management Group for sales for the month of **October 2003** at the Main Government Complex Snack Bar. Please deposit it into the following cost center:

190-120110-347908

A.	Total Retail Sales of Dunkin Donuts	\$ 701.59 (9% of total sales)
B.	Total Retail Sales of Subway	\$1463.40 (9% of total sales)
C.	Total Retail Sales for this Period	\$2164.99 Total of lines A & B
D.	Total Late Fees if Paid after the 15 th	\$ Flat \$50.00
E.	Total Interest (10% per annum)	\$ *
F.	Total Applicable Florida Sales Tax	\$ 129.90

*Amount of payment X 10% divided by 365 X the number of days late.

Direction to Finance: Please post lines A-E in Fund: 190-120110-347908
Please post line F in Fund: 190-0-208900-0

Check List: (Send copies to Finance)

- 1) Check from Vendor
- 2) Statement of Gross Receipts (for this period)
- 3) Vendor's State Sales and Use Tax Report (for this period)

Contract Term

Initial term:	June 2, 1998 to June 1, 2001	(2 Years)
Renewal	June 2, 2001 to June 1, 2003	(2 Years)
Renewal	June 2, 2003 to June 1, 2005	(2 Years)
Renewal	June 2, 2005 to June 1, 2007	(2 Years)

Should you have any questions or require additional information, please contact me at extension 8380.