



OFFICE OF THE COUNTY ADMINISTRATOR

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

MEMORANDUM

TO: Clackamas County Board of County Commissioners

FROM: Stephen Madkour, County Counsel
Don Krupp, County Administrator

DATE: January 10, 2018

SUBJECT: Tourism Development Council Legal Memorandum Debrief

We have a work session scheduled for 2:30 pm, Wednesday, January 17th to discuss contents and conclusions of Mr. Steven C. Berman's review of the authority of Clackamas County and autonomy of the Clackamas County Tourism Development Council. Attached to this cover memo is a copy of the analysis, plus Mr. John Erickson's December 14, 2017 letter to the Board of County Commissioners regarding the subject.

This will be the first opportunity for the Board to review and discuss Mr. Berman's report with County Counsel and the County Administrator.

Attachments:

- Steven C. Berman's December 8, 2017 Memorandum
- Mr. John A. Erickson's December 14, 2017 Letter

Stoll Berne

MEMORANDUM

Confidential Attorney Work Product

TO: John Erickson, Chair, Clackamas County Tourism Development Council
Don Krupp, Clackamas County Administrator
Stephen Madkour, Clackamas County Counsel
Chris Storey, Assistant County Counsel
Peter Watts, Clackamas County Tourism Development Council

FROM: Steven C. Berman *SCB*

DATE: December 8, 2017

RE: Authority of Clackamas County and Autonomy of the Clackamas County Tourism Development Council

INTRODUCTION

Clackamas County (the "County") and the Clackamas County Tourism Development Council (the "TDC") seek clarity regarding the autonomy of the TDC in relation to the County. The purpose of this memorandum is to provide the County and the TDC with guidance as to the TDC's authority to act independently of the County, and the County's authority over the TDC. The County and the TDC have not posed specific questions or issues that they want resolved. Rather, they have provided a general summary of areas of potential dispute. This memorandum almost certainly will not encompass or resolve each of the issues that has arisen or may arise between the County and the TDC. Hopefully, it will provide a template from which the County and the TDC can take direction.

BACKGROUND

Voters Approve Creation of the TDC and Changes to the Transient Room Tax Ordinance

At a June 1992 special election, the voters of Clackamas County approved changes to Clackamas County's Transient Room Tax ("TRT") Ordinance. The ordinance was referred to the voters by the Clackamas County Board of County Commissioners (the "BCC") and designated County Measure 3-6. The referral was based on changes recommended by a Hotel Tax Task Force.

As pertinent here, Measure 3-6 amended the then-extant TRT ordinance to make the TRT applicable to all hotel and motel rooms in the County. The prior version of the TRT had allowed cities to opt out of the tax, and most cities in Clackamas County had done so. The 1992 ordinance passed by Measure 3-6 also supplanted in its entirety Section 17 (entitled "Tax Revenue Sharing") of the prior TRT ordinance.

{SSBLS Main Documents/8955/001/00682285-2 }

The County and the TDC's Conduct Since Passage of Measure 3-6

From the outset of the TDC's existence, there has been little consistency as to how the County has addressed the TDC's autonomy. An agreement with the Wilsonville Chamber of Commerce illustrates the inconsistency. The original agreement is dated June 11, 2001. That agreement referred to the TDC as "a political subdivision of the state of Oregon." The Agreement was signed by the TDC's Executive Director "FOR CLACKAMAS COUNTY." In the same document, the TDC appears to have been cast as both its own political subdivision and as an entity acting on behalf of the County. The first amendment to that agreement was signed in June 2006 for the "CLACKAMAS COUNTY BOARD OF COMMISSIONERS" by the Executive Director of the TDC. That amendment provides that it was authorized by a BCC order. In that amendment, the TDC appears to be acting on behalf of the BCC and pursuant to the BCC's approval. A second amendment to the Agreement, entered into in February 2012, was signed for the "Tourism Development Council" by the Executive Director of the TDC. Neither the BCC nor the County is mentioned in that amendment.

The County's position regarding use of TRT funds (and the TDC's authority over those funds) also has evolved. For example, in a July 22, 2009 email, County Assistant Counsel wrote that TRT funds could be used only for TDC purposes, and that authorization from the TDC is required to spend TRT funds. In a June 3, 2014 email, Senior County Counsel wrote that the BCC *might* have oversight over expenditures approved by the TDC, depending on whether the Master Plan was included within the Clackamas County budget. In a May 26, 2016 memorandum, County Counsel took the position that the TDC does not have authority to adopt a budget, and that all of the TDC's appropriations must be approved and authorized by the BCC. County Counsel went a step further, and asserted that the budget, including TDC funding, would be presented by the County Administrator, and that the budget recommendation need not be approved. County Counsel wrote: "statutes clearly require that the budget committee may recommend, and/or BCC may direct, expenditures of TRT monies for tourism related purposes on items that are not contained in the Master Plan nor supported by the TDC."

The County Administrator and County Counsel also have been inconsistent as to whether the TDC can be charged for operating expenses (beyond the 2% allocation). In a February 24, 1995 memorandum from the County's acting Director of Finance and a subsequent March 7, 1995 memorandum from the County Administrator, the County took the position that the 2% administrative fee in the TRT Ordinance was the maximum the County could collect for administration, and that the County would not allocate additional costs to the TDC. In a March 27, 2014 Memorandum to the County Administrator, County Counsel concluded that operating expenses in "operating tourism promotion agencies" (meaning the TDC) can be charged to the TDC.

Based on the documents provided by the County and the TDC, there has been similar inconsistency regarding who has authority over TDC personnel. The May 2010 employment agreement for the executive director of the Department of Tourism and Cultural Affairs between

Clackamas County and the Executive Director. The TDC is not a party to that agreement. That agreement provides that the Executive Director is a County employee, subject to review by the County Administrator, who must adhere to County policies and procedures. The June 2013 job description for the Executive Director provides that the Executive Director: acts under the direction of the County Administrator and the policy direction of both the BCC and the TDC; reports to the County Administrator; hires and directs department staff; presents budget proposals to the TDC, the County budget committee and the BCC; and, negotiates intergovernmental agreements. At least according to the job description, the TDC Executive Director has authority to hire and direct TDC employees and negotiate intergovernmental agreements. That suggests some degree of autonomy.

The TDC's revenue has more than doubled in the past eight years, from \$2.4 million in fiscal year 2009/2010 to over \$4.8 million currently. In the past few years, the TDC has been recognized statewide, nationally and internationally for the quality of its work. And, over the past couple of years, the County Administrator and County Counsel have asserted increasingly aggressive positions regarding the County's authority over the TDC.

Both the County and the TDC focus on different parts of the history of dealings between the TDC and the County to support their positions. Respectfully, the history of the parties' prior conduct does not affect the meaning of Measure 3-6 or resolve the legal issue of the TDC's autonomy from the County. However, the history does support the TDC's assertion that in recent years both County Counsel and the County Administrator have sought to exercise more control over the TDC. The recent history does not clarify the law, but it does clarify the basis for the current confusion regarding the scope of the County's authority over the TDC.

ANALYSIS

The TDC takes the position that it is almost entirely autonomous from the BCC and that the TDC is unique as compared to other County advisory boards. As Department of Tourism and Cultural Affairs Executive Director Danielle Cowan wrote to County Administrator Don Krupp in March 2015: "The TNT Ordinance gives the BCC two responsibilities: Appoint the TDC members and Approve the Master Plan. The rest is up to the TDC to determine as long as they follow the Master Plan." The TDC asserts that TRT funds dedicated to promoting tourism are "pass-through" funds, and are not subject to control by the BCC or the County.

By contrast, County Counsel and the County Administrator have taken the position that the TDC cannot act without their approval and/or the approval of the BCC. Specifically, County Counsel and/or the County Administrator have taken the position that:

- The TDC is an advisory body to the BCC, and not autonomous.
- The TDC cannot enter into contracts or leases without approval from the County (specifically, the County Administrator and/or County Counsel).

- The TDC cannot spend money it receives through the collection of the TRT unless there is a budget approved pursuant to Oregon's Local Budget Law, ORS 249.305, *et seq.*
- The BCC can direct expenditure of TRT monies for tourism related purposes, even if not contained in the Master Plan or supported by the TDC.

Interpretation of a voter-approved BCC referral follows the analysis most recently iterated by the Oregon Supreme Court in *State v. Sagdal*, 356 Or 639, 642-643 (2015). As a practical matter, this analysis is similar to the analysis for interpreting a statute passed by a legislative body set forth in *State v. Gaines*, 346 Or 160 (2009). The analysis starts with the text and context (such as other provisions of the Clackamas County Code), and also includes the historical context against which the text was enacted. When reviewing a legislatively referred provision, the historical context encompasses statements made by members of the body referring the measure at the time of referral, the measure's ballot title and explanatory statement, contemporaneous newspaper accounts and, to a limited extent, voters' pamphlet statements.

Based on review of the applicable law, and the text and history surrounding Measure 3-6, it appears that both parties are right, to some extent (and, correspondingly, wrong, to some extent) regarding the TDC's autonomy. The TDC is neither wholly autonomous from nor wholly subservient to the BCC and the County. The TDC's decisions and actions are entitled to substantial deference from the County, including the BCC, County Counsel and the County Administrator.

The Text of Measure 3-6

After passage of Measure 3-6, the Tax Revenue Sharing provision in the TRT (now codified at Code § 8.02.160) provides:

- “A. Commencing with tax revenues collected January 1, 1993, the total net transient room tax receipts after operator collection expense of 5% and County administrative costs, not to exceed 2%, have been deducted, shall be distributed by the Tax Administrator as follows:
- “1. Between January 1, 1993, and June 30, 1993, an amount sufficient to bring proceeds up to a base support amount of \$250,000 per year shall be paid in equal quarterly installments to the Clackamas County Fair; this amount shall be adjusted annually to allow for inflation by an amount to be determined by the Tourism Development Council (TDC); these funds shall be used by the Fair for construction, operations and maintenance, in accordance with its annual budget approved by the Board; and,

- “2. The balance placed with the County Treasurer for deposit until transferred to the TDC monthly to pay expenditures authorized as provided below.
- “B. There is hereby created the Clackamas County Tourism Development Council, consisting of nine (9) members to be appointed by the Board of County Commissioners. The TDC is to oversee the development and promotion of tourism and conventions in Clackamas County.
- “C. The TDC is to develop, adopt and implement, subject to Board of County Commissioners’ approval, a Tourism Development and Promotion Master Plan. The Master Plan shall address at least the following elements: tourism promotion, tourism development, conventions, visitor information services, special events and festivals, and the County Fair. The Master Plan may be revised from time to time, subject to Board of County Commissioners’ approval. Prior to adoption of the Master Plan, the TDC may adopt, subject to Board of County Commissioners’ approval, an Interim Plan.
- “D. The funds described in subsection 8.02.160 A 2 above shall be allocated to projects and programs by the TDC in accordance with the Tourism Development and Promotion Master Plan, except that revenues collected prior to final Board of County Commissioners’ approval of a Master Plan may be expended pursuant to an interim Plan, if adopted.”

Clackamas County residents voted to create the TDC. The ordinance approved by voters provides that the TDC shall consist of nine members, appointed by the BCC. The TDC “oversees the development and promotion of tourism and conventions in Clackamas County.” Code, § 8.02.160(B). Voters gave the TDC authority (and responsibility) to “develop, adopt and implement, *subject to [BCC] approval*, a Tourism Development and Promotion Master Plan.” Code, § 8.02.160(C) (emphasis added). The TDC may revise that Master Plan “from time to time” again “*subject to Board of County Commissioners approval.*” *Id.* (emphasis added). Funds raised from the TRT (with the exception of the 5% operator collection expense, the 2% designated to administrative costs and the monies directed to the Clackamas County Fair) are held by the County Treasurer, and transferred monthly to the TDC. Code, § 8.02.160(A)(2). Those funds “shall be allocated to projects and programs *by the TDC* in accordance with” the Master Plan. Code, § 8.02.160(D) (emphasis added).

The plain text of Code § 8.02.160(B) provides that the TDC has the authority and responsibility to develop, adopt and implement the Master Plan, subject to the BCC’s approval. The BCC’s role in regard to the Master Plan is simply to approve or not approve the Master Plan. As written, however, under § 8.02.160(D), the TDC has the sole authority to determine how those funds are spent, as long as expenditures are consistent with the Master Plan. While

subsections (B) and (C) of § 8.02.160 provide that that responsibility for development, adoption, implementation and modification of the Master Plan falls to the TDC “subject to” BCC approval, subsection (D) does *not* provide that allocation is “subject to” BCC approval. “The difference in terminology is significant,” because when a statute uses a term in one part of a statute and not another, the assumption is that the omission was deliberate. *Ogle v. Nooth*, 355 Or 570, 581 (2014).

The Context of Measure 3-6

Measure 3-6 did not amend other provisions of the County Code to address how the newly created TDC would operate within (or removed from) Clackamas County government administration. For example, Measure 3-6 did not address Code Chapter 2.09 (regarding the County Administrator), Code Chapter 2.11 (regarding the BCC) or Code Chapter 2.12 (regarding County Counsel). That silence should not be read, however, as an indication that Clackamas County voters intended for the TDC to necessarily be subservient to the BCC, the County Administrator or County Counsel. As was discussed above, the text of the Initiative indicates that under Measure 3-6, the TDC is the entity tasked with promoting tourism in Clackamas County, developing, adopting and implementing a master plan (subject to BCC approval) and determining how TRT funds are spent (not subject to BCC approval). Moreover, this history surrounding Measure 3-6 (discussed below) suggests that the Hotel Tax Task Force, the BCC and voters did not consider all possible implications passage of Measure 3-6 and creation of the TDC could have on Clackamas County government administration.

The Historical Context of Measure 3-6

The relevant history relating to passage of the measure reinforces that voters intended for the TDC to be semi-autonomous. However, that history undermines the argument that the TDC has sole authority to determine what gets funded: Based on the recommendation of the Hotel Tax Task Force, the BCC concluded that “an amended ordinance as recommended by the task force is in the best interests of the citizens of Clackamas County.” On May 27, 1992, the BCC referred the Hotel Tax Task Force’s proposed modifications to the then-extant TRT ordinance and certified a ballot title (to appear on the ballot and in the Voters’ Pamphlet) and an explanatory statement (to appear in the Voters’ Pamphlet).

The ballot title summary for Measure 3-6 provided, in relevant part:

“A Tourism Development Council would adopt a master plan for tourism and convention promotion. *Following the plan, it would decide, subject to Commissioners’ approval, what projects get funds.*”

(Emphasis added). Similarly, the explanatory statement provided, under the heading “Major Changes”:

"The County Commissioners will appoint a Tourism Development Council, a broad based 9-member citizen group. It will develop and implement a comprehensive tourism master plan. The master plan will outline strategies for funding tourism and convention promotion and development of new tourism attractions. . . . *The Council will decide which programs and projects are funded, subject to Board of County Commissioner's approval.*"

(Emphasis added). In other words, both the Ballot Title and Explanatory Statement for Measure 3-6 informed voters that the BCC would have authority to approve TDC expenditures.

An article published in the Clackamas Review in May 1992, shortly before the vote on Measure 3-6, provided, in relevant part:

"A new Tourism Development Council will manage the tourism program. It will be made up of nine members from a wide base of interests. A paid executive director will take care of the day-to-day activities. The TDC will develop and implement the master tourism plan for the county and that will include promotion and development of other tourism projects. All organizations seeking funding will go through the TDC."

(Emphasis added). The newspaper article does not address what oversight responsibilities, if any, the BCC would have over the TDC. While the article states that funding requests will go through the TDC, it does not address whether funding *approval* lies with the TDC. However, the statements that the TDC will manage the County's tourism program and "implement the master plan" with all requests for funding going through the TDC¹ strongly suggests that the TDC was intended to have some authority to determine what gets funded and what does not get funded.

Statements in the Voters' Pamphlet by supporters of Measure 3-6, to the extent they are entitled to any weight, are unhelpful. The chair of the Hotel Tax Task Force wrote that the Measure would "Establish a 9-member Tourism Development Council to develop, promote and manage tourism for Clackamas County!!" That sheds no light on whether, or the extent to which, the TDC would be subordinate to the BCC. The Clackamas County Fair Board asserted, in a statement, that the TDC "will also be responsible for the distribution of room tax money in support of the plan" suggesting that the TDC would execute spending decisions, not subject to BCC approval. But, over a dozen members of the Clackamas County Historical Society (individually, and not in their official capacities) asserted in their statement that "Ballot Measure 3-6 calls for creation of a nine member Tourism Development Council that will produce a County tourist and visitor plan and *recommend* distribution of room tax receipts." (Emphasis

¹The explanatory statement contains a similar language regarding funding requests being made with the TDC. It provides: "Tourism programs and attractions within cities can request funding from the Tourism Development Council."

added). That implies that the TDC's authority was limited to making recommendations as to how funds would be spent.

Interpretation and Application of Measure 3-6

From the text and context of Measure 3-6, and the history surrounding the passage of the Measure, it appears that: (1) voters intended to approve a TDC that is *relatively* autonomous; (2) subject to *limited* oversight by the BCC. The Measure itself provides that the TDC adopts and implements the Master Plan, with BCC approval, but that TDC will allocate funds (with no mention of BCC approval). The neutral statements in the Voters' Pamphlet – the Ballot Title and Explanatory Statement – indicate that use of funds is also subject to BCC approval. In application, this would appear to mean that the BCC's authority over the TDC is restricted to approving TDC actions and decisions *unless* those actions and decisions are flatly inconsistent with the purposes for which the TDC was created or illegal. In other words, the TDC's decisions about how it operates, with whom it contracts, and how it spends TRT funds is entitled to substantial deference. The BCC can disapprove a TDC allocation or action only if the TDC action is illegal or inconsistent with the TDC's purpose of "oversee[ing] the development and promotion of tourism and conventions in Clackamas County." Code, § 8.02.160(B).

As discussed above, from the text context and corresponding history of Measure 3-6, it appears that the voters intended to create a relatively autonomous TDC. To that extent, Ms. Cowan is correct: The BCC has two responsibilities under the TRT – appoint the TDC Council and approve the Master Plan. What is less clear, however, is whether TDC can spend TRT funds without BCC approval. Although the text of the Measure 3-6 supports the conclusion that TRT expenditures do not require BCC approval, the information presented to and considered by the voters provided that expenditures would be subject to BCC approval.

This ambiguity is resolved, to some extent, by the applicable law. Only a "unit of local government" may impose a transient lodging tax. *See generally* ORS 320.345. A "unit of local government" is a "county, city district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter." ORS 190.003. *See also* ORS 320.300(15) (defining "unit of local government" for the purposes of transient lodging taxes by reference to ORS 190.003). The TDC is *not* a "unit of local government"; it could not have been organized and existing under a county charter because Clackamas County is not a home rule county. Rather, TDC is a "tourism promotion agency," a "governmental unit that is responsible for tourism promotion of a destination on a year-round basis." ORS 320.300(8)(a). The Oregon legislature, by choosing to define a "tourism promotion agency" as a "governmental unit" rather than as a "unit of local government" intended to draw a distinction between the two phrases that must be given effect.

As County Counsel correctly points out, Clackamas County cannot spend funds unless it complies with the Local Budget Law. *See* ORS 294.338. That law requires the local budget officer to prepare a budget that must be approved by a budget committee. ORS 294.331; ORS

294.428. The governing body, in turn, approves the budget. ORS 294.456. While Clackamas County voters intended for TRT funds to “pass through” Clackamas County to the TRT, Clackamas County still assesses and collects the tax. TRT funds are – at least technically – being spent by the TDC in its capacity as an agency of the County.

Respectfully, it is the next step in County Counsel’s analysis that may be inconsistent with the history and purpose of Measure 3-6. Although TDC expenditures may need to be approved by the County as part of the budgeting process, it is clear that the voters intended for the TDC to make the budgeting decisions, and that to the extent the BCC had any oversight over those decisions, it was only to approve or disapprove them. Moreover, BCC’s authority to disapprove TDC selected expenditures is limited solely to those occasions when a proposed TDC expenditure would be outside of the TDC’s charge or contrary to some provision of Oregon law. Beyond confirming that a TDC proposed expenditure is consistent with the Master Plan and the law, the County (whether it be County Counsel, the County Administrator or the BCC) cannot interfere with that proposed expenditure. If an expenditure is within the TDC’s charge and consistent with Oregon law, it must be approved; if the expenditure is outside of the TDC’s charge and/or inconsistent with Oregon law, then the County may disapprove it. Acting otherwise could subject BCC members and/or County officials to civil liability. ORS 294.100. There is nothing in the applicable law that provides the BCC the right to claim TRT funds as its own, for County purposes, or to direct how those funds may be used, outside of the recommendations made by the TDC. That assertion by County Counsel appears to be contrary to the language of Measure 3-6 and the voters’ intent. The County may, of course, offer suggestions for how it believes funds could be better spent, and nothing prevents the County from engaging in public discourse to advance its position. But, ultimately spending authority over TRT funds belongs to the TDC, subject only to the County’s very limited oversight.

The County’s oversight of the TDC’s hiring decisions is limited only to actions where County approval is required by existing County policy applicable to all departments or agencies. While the TDC cannot hire any employees who do not meet requirements set by the County for all similarly situated employees (managerial, non-managerial, etc.), the TDC’s hiring decisions are entitled to substantial deference. The County’s authority to disapprove a hire is limited to situations where a proposed TDC hire is ineligible due to state or federal law, or some conflict with existing County policy. The County retains authority to enforce County personnel policies with TDC employees, as set forth in Code Chapter 2.05 and administrative rule.

The County’s oversight of the TDC’s contracting authority similarly is limited to actions where County approval is required by existing County policy applicable to all departments or agencies. To the extent the County would review similar contracts entered into by other agencies, the County also should review contracts for which the TDC seeks approval. The County cannot disapprove a desired TDC contract because the County believes the contract is not the best use of TRT funds or TDC resources. Again, as long as a contract is within the scope of TDC’s charge and is otherwise legal, the County’s oversight authority does not allow the County to deny approval for a contract the TDC desires.

CONCLUSION

Based on review of the information provided by the TDC and the County, and the applicable law:

- The TDC is unique within the structure of Clackamas County government.
- The TDC is not a distinct “political subdivision” of the State of Oregon. It does not have complete autonomy to enter into contracts, spend funds, hire employees or otherwise act as an entirely independent body. Although the TDC is not a distinct “political subdivision” of the State, it has broad authority to take action.
- The BCC, County Counsel and the County Administrator have *extremely limited* authority to disapprove decisions (including decisions to contract with parties, spend funds, or hire employees) made by the BCC. The TDC’s decisions are entitled to substantial deference. As long as the TDC’s actions or intended actions fall within the scope of the TDC’s charge and are consistent with County policies, the BCC, County Counsel and the County Administrator *must* approve those actions or intended actions. The County may only disapprove TDC suggestions, decisions, or requests if those suggestions, decisions, or requests violate County policy, ordinances, or state or federal law. The County cannot, in good faith, change its policies or ordinances as a means to obtain authority to disapprove TDC actions or intended actions.
- With the exception of the 2% “administrative charge,” the BCC does not have authority to spend TRT funds independently of the TDC. All expenditures of TRT funds must be approved by the TDC.

As was set forth above, this analysis will not (and could not) address every question that has arisen or could arise regarding the County’s authority over the TDC and the TDC’s autonomy from the County. However, this analysis does provide a framework that both the County and the TDC could use to resolve most (if not all) of the disputed issues. It is apparent that all involved – the BCC, County Counsel, the County Administrator, the TDC, its Executive Director and the TDC Board – care deeply about Clackamas County and the welfare of its citizens and businesses. Hopefully their shared concern for their community, with the benefit of this analysis, will help the County and the TDC move forward.

John A. Erickson
Chairman
Tourism Development Council of Clackamas County

December 14, 2017

BOARD OF COMMISSIONERS

Chair Jim Bernard
Board of County Commissioners
Clackamas County
Public Services Building
2051 Kaen Road
Oregon City, OR 97045

DEC 18 2017
BCC IDK

Cc Board of County Commissioners
Re: Steve Berman's Analysis and Opinion

Dear Chair Bernard,

We hope that everyone has had an opportunity to review the analysis, and opinion memo, provided by Outside Counsel Steve Berman. The TDC Board was able to discuss the memo at our December meeting and wants to, respectfully, request a meeting with the BCC. All of us want a positive and productive relationship with the county. Given our experience, over that last four years, with the County Administrator and County Counselor, we think that a TDC to BCC meeting gives both bodies the best chance of achieving that objective. Mr. Berman's determination that "...there is nothing in the applicable law that provides the BCC the right to claim TRT funds as its own, for County purposes, or to direct how those funds may be used..." demonstrates why the TDC Board had to advocate that the County Counsel's opinion that the BCC could direct and spend TRT funds was erroneous.

Contrary to the statements of the County Counsel and County Administrator the TDC Board is not an advisory board like any other. The TDC is a unique, semi-autonomous body that is distinct and different from county departments. The TDC Board members have fiduciary responsibility for directing the funds within the parameters of the "Master Plan," already approved by the Board of County Commissioners.

Mr. Berman found that "the County Administrator and County Counsel have asserted increasingly aggressive positions regarding the County's authority over the TDC." There is concern, given the conduct of the County Administrator, and County Counsel, that the TDC will continue to have issues with both. Over the past four years, the TDC repeatedly asked for outside legal representation, to represent the TDC's interests against the County Administrator, and County Counsel, and the County Administrator and County Counsel, repeatedly denied the requests and insisted that the County Counsel was representing the TDC. Given Mr. Berman's opinion, the TDC Board believes that it needs outside legal representation, going forward. The TDC Chair, Vice-Chair, Executive Director, and other members should be able to focus on

John A. Erickson
Chairman
Tourism Development Council of Clackamas County

carrying out their primary responsibilities, instead of defending the TDC against the County Administrator and County Counsel.

Although the TDC Board has broad authority to take action, the TDC and BCC are partners. While Mr. Berman's analysis, and opinion memo, is comprehensive, there are questions that still need to be answered. I have sought recommendations for moving forward from a law professor, who I respect and admire. I have also spoken, at length, with Vice-Chair Watts, who is committed to resolving these matters prior to the end of his term on June 30th. He asked that I please convey his belief that although there are fences in need of mending, both the TDC and BCC can take tremendous pride in the many successes of the CCTCA.

The purpose of my proposed meeting is to start that process. Conversations that did not seem possible until the disagreement with the County Administrator and County Counsel was resolved can now happen. The foundation for our future operating plans, when taken in context with Mr. Berman's findings should include:

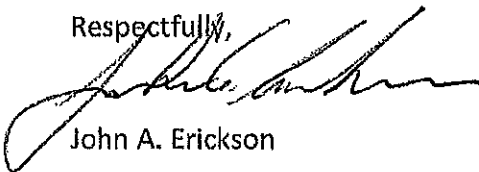
1. Separation of the TDC budget from the general fund budget of the county, which will be presented by the TDC for review by the BCC each year commencing with 2018 fiscal year operations. Despite our fiscal year ending over five months ago, we still cannot get a final number for our end of the fiscal year "true-up," which exceeds \$400,000. We need increased transparency regarding the collection of funds, and an explanation for why information isn't available.
2. Agreement regarding the TDC's oversight over the Executive Director and CCTCA staff, with new contracts if necessary.
3. A signed agreement from BCC with the TDC of support services provided for the benefit of the county tourism promotion and development through a contract of mutual benefit in accordance with the county code 8.02.160(D).
4. Approval to secure an outside audit of collections and payment of funds to the TDC Board, and the ability for the information to be verified by the outside auditor, as needed by the TDC on an ongoing basis, as well as cooperation from the County Administrator and Finance Department.
5. Authorization for TDC to maintain our own accounting and checking functions for distribution in accordance with our fiduciary responsibilities, which was formerly the normal operating structure. A multiple signature and review of our monthly actions will be available for public and BCC clarity.

John A. Erickson
Chairman
Tourism Development Council of Clackamas County

6. Direction given to the County Administrator, and other operating departments, that the TDC is unique, and that the BCC, County Counsel, and County Administrator have extremely limited authority over the TDC. And, an acknowledgement that the TDC has the right to hire employees, contract with parties, and to spend funds in accordance with the TDC annual plan and budget with oversight of legality by only the BCC.
7. Acknowledgement that the citizens of the county have entrusted the TDC to implement the BCC approved Master Plan for execution, future business development, and expending TRT funds expressly in accordance with established applicable law.

Your acknowledgment of this communication would be appreciated. We await your response to set an acceptable time for our two bodies to meet for discussion and planning a positive outcome to this long and unfortunate process.

Respectfully,



John A. Erickson

Attachment: MEMORANDUM from Steven C. Berman