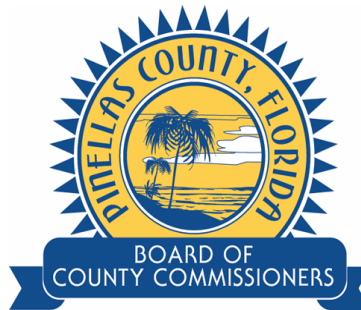


Pinellas County

*315 Court Street
Clearwater, Florida 33756*



Minutes - Final

Tuesday, October 24, 2017

9:30 AM

BCC Assembly Room

Board of County Commissioners - Work Session

*Janet C. Long, Chairman
Kenneth T. Welch, Vice-Chairman
Dave Eggers
Pat Gerard
Charlie Justice
John Morroni
Karen Williams Seel*

ROLL CALL - 9:31 A.M.

Members Present: Janet C. Long, Chairman; Kenneth T. Welch, Vice-Chairman; Dave Eggers; Pat Gerard; Charlie Justice; John Morroni; and Karen Williams Seel.

Others Present: Jewel White, County Attorney; Mark S. Woodard, County Administrator; and Tony Fabrizio, Board Reporter, Deputy Clerk.

Copies of all documents and a PowerPoint presentation referred to in the minutes have been made a part of the record.

Chairman Long called the meeting to order and welcomed everyone in attendance; whereupon, she and Mr. Woodard previewed the agenda.

1. Tourist Development Tax (TDT) Capital Projects Funding Program Guidelines - Recommended Revisions

Mr. Woodard related that this is the first of two items that pertain to the TDT; that the proposed changes have been vetted by staff and the Tourist Development Council (TDC); and that they are being brought to the Board for input, and once finalized, will be placed on a future Board meeting agenda for adoption.

Visit St. Petersburg/Clearwater (VSPC) Consultant Dennis Long related that the proposed revisions result from a review of the program's first funding cycle; and that they are aimed at maximizing the County's return on investment while being fair to the applicants; whereupon, referring to materials included in the agenda package, he presented his recommendations as follows:

- 1. Change from an annual funding cycle to a two-year cycle, but allow for consideration of project funding at any time if the project satisfies the standards and requirements in the revised Guidelines.*

Responding to queries by Commissioners Justice, Eggers, and Morroni, Mr. Long, with input by Mr. Woodard, related that:

- Staff projects that funds will be inadequate to support an annual funding cycle going forward; hence, the recommendation.
- The calculations do not include "lock box" reserves.
- Not included in a cash flow spreadsheet distributed at a previous meeting are an allocation for the Blue Jays facility, possible funding requests for a Tampa Bay Rays stadium and the existing Philadelphia Phillies spring training facility, and unforeseen circumstances such as higher-than-anticipated costs for beach nourishment and erosion control.

- Payment terms under a two-year program cycle would be negotiated with each award.
- 2. *Funding applications for sports facilities and convention centers from the fourth or fifth cent of the TDT, and any application seeking more than \$10 million in net present value funding, must be presented first to the BCC for conceptual approval.*

Responding to queries by Commissioner Welch, Mr. Long, with input by Mr. Woodard, indicated that the sixth cent can be used for any legal purpose; that the exact wording of the revision has not been crafted yet; and that the permitted uses of each TDT cent could be explored further at a future workshop.

- 3. *Establish eligibility thresholds in which an applicant must annually generate at least 10,000 room nights and 25,000 unique attendees for funding up to \$5 million, and at least 25,000 room nights and 50,000 unique attendees for funding between \$5 million and \$10 million.*

Responding to queries by Commissioners Gerard and Justice, Mr. Long discussed why Major League Soccer (MLS) training facilities were exempted from the thresholds; whereupon, Tim Ramsberger, VSPC Chief Operating Officer, explained that VSPC wants to have the flexibility to get funding for facility improvements approved quickly because it has a program underway to recruit MLS teams to train in the area, and Commissioner Seel provided input.

- 4. *Revise applicant match requirements from the current one-to-one minimum to require \$2 of applicant investment for every \$1 of TDT funding for publicly owned and operated facilities, and \$3 of applicant investment for every \$1 of TDT funding for facilities owned and operated by nonprofits or owned and occupied/operated by a private entity.*

Commissioner Gerard stated that she has an issue with requiring a minimum three-to-one match from nonprofit applicants, noting that she would prefer to see the land match eliminated because some of the values in this year's funding cycle seem inflated; and that nonprofits generally do not have the cash resources to meet a three-to-one match. Commissioner Welch concurred, commenting that some entities would not be able to apply because they could not meet the match requirement; whereupon, Mr. Long outlined staff's rationale for the recommendation, explaining that requiring the applicants to provide more of their own funding would prevent scenarios in which most of the available TDT funds go to one or two applicants, thereby allowing the County to fund more projects.

Responding to queries by Commissioner Welch, Mr. Long confirmed that a change in the match requirements would require an amendment by ordinance to the Tourist

Development Plan; and that the change would not apply to sports stadiums such as the Blue Jays spring training complex; whereupon, Commissioner Welch expressed concern about not applying the same standard to sports stadiums as to nonprofits.

Mr. Long discussed why the three-to-one match requirement is being recommended for private entities, explaining that the County is taking a greater risk with them because it has no say in their operations or direction. Responding to queries by Commissioners Seel and Justice, he indicated that the Clearwater Marine Aquarium would not have met the proposed two-to-one match requirement for publicly owned facilities when it was funded at \$26 million in this year's cycle; and that although funding contracts include a "clawback" provision providing for the recovery of funding when a recipient can no longer fulfill its obligations, that option basically exists in the form of a potential lawsuit.

Lengthy discussion ensued, and Mr. Long responded to queries and comments by the members pertaining to the clawback provision, proposed funding matches, and payment terms. Mr. Woodard commented that Mr. Long's recommendations would serve as guidelines rather than hard-and-fast rules, and would bring greater clarity and accountability to the process; whereupon, Chairman Long noted that all of the items being discussed today were vetted for hours by the TDC.

Responding to query by Commissioner Morroni, Chairman Long indicated that the TDC would likely not object if the Board opted to keep the match requirement at one-to-one as proposed by Commissioner Seel and echoed by Commissioner Eggers earlier in the discussion, adding that the intent in revising the Guidelines is to make the process more transparent and accommodate the political reality of ever-increasing scrutiny being applied to the use of TDT dollars by the Legislature.

Thereupon, Commissioner Morroni suggested leaving the match requirements as they are written, and, hearing no objections, Chairman Long requested that staff make that adjustment before bringing back the revised Guidelines for adoption. Mr. Woodard, responding to a concern expressed by Commissioner Eggers, clarified that staff will craft language that makes it clear the recommendations are guidelines rather than hard-and-fast rules.

5. *Establish a standard in which the funding award can be reduced when the County is making significant operation and maintenance payments to the respective facility.*

Responding to query by Commissioner Gerard, Mr. Long related that the recommendation applies to situations in which the County is making significant operation and maintenance payments to a facility and wishes to offset those contributions against any capital improvement funding; and that the aim is to give staff more flexibility in contract negotiations. Mr. Woodard noted that even though the Board may recommend a funding award in an "up-to" amount, applicants often expect to receive the full amount; and that this change could mitigate that expectation.

6. *Application Review and Funding Standards relating to requirements that:*
 - A. *Limit match computations and the funding award to approved project costs incurred after the application filing date.*
 - B. *Applicants use a County-designated consultant to provide economic impact, room nights, and attendance projections; and provide feasibility studies.*
 - C. *Projects or a project phase be completed before the reimbursement of project costs.*
 - D. *Applicants provide marketing and economic benefits at least equal to the capital contribution.*
 - E. *Staff determine the total pool of capital dollars available before starting a funding cycle.*
 - F. *Structure payments so that the County has an insurable interest in the project, if feasible.*
 - G. *TDT capital dollars go to projects with the highest economic impact and marketing benefits.*

Mr. Long discussed the recommendations and, with input by Messrs. Woodard and Ramsberger, responded to queries and comments by the members as follows:

- Applicants would select and pay for their own consultants to conduct feasibility studies, but would be required to utilize a County-designated consultant to provide economic impact, room nights, and attendance data, and would reimburse the County for costs.
- The reason that staff is not recommending that applicants be required to use a County-designated consultant for feasibility studies is that there would be an administrative challenge such that firms would have to be approved through a competitive Request for Proposal process.
- A provision in the existing Guidelines requiring that feasibility and economic impact studies be *reviewed* by a firm approved by the County was followed this year to the extent that VSPC's consultant, Jones Lang LaSalle, vetted the applicants' consultants and reviewed their work.
- Verbiage could be crafted to provide applicants with guidance as to the type of firm they would need to engage to conduct a feasibility study.
- The recommendation that projects or a project phase be completed before reimbursement could protect the County from advancing money for work that does not get completed when anticipated. The change would shift the risk from the County to the applicant.

Discussion ensued, and responding to query by Commissioner Justice pertaining to the Tampa Bay Rays' pursuit of a new stadium, Chairman Long indicated that she has had ongoing conversations with team executives Melanie Lenz and Brian Auld, and there could be a development within two to three weeks.

Responding to query by Commissioner Welch, Mr. Long stated that the proposed thresholds for room nights and attendance are not included in the existing guidelines; whereupon, Chairman Long clarified for Commissioner Justice that the Board would retain the ability under the revised Guidelines to use its discretion pertaining to any recommendation.

In response to query by Chairman Long, Mr. Woodard confirmed his understanding of the direction provided, and indicated that he will proceed accordingly.

2. Tourist Development Tax (TDT) Elite Events Funding Program Guidelines - Update

Mr. Woodard introduced the item, and Mr. Ramsberger provided historical background information about the Elite Events Funding Program, relating that it provides for up to \$2 million in annual funding to support the marketing of special events; that the Guidelines are established by the TDC and must be approved by the BCC; that the proposed update is the result of a TDC review; that it reduces the text from seven pages to four; and that it aims to provide additional consistency, return on investment, transparency, and sustainability for the program and events. He noted that this past year's program had an all-time high of 22 applicants requesting more than \$2 million, and 12 projects were approved for funding totaling \$1.585 million; whereupon, he highlighted the proposed changes as follows:

- Under *Section III, Eligibility*, thresholds would be adjusted to meet a two-to-one ratio of 50,000 attendees and 25,000 room nights for Category 1 applicants, 20,000 attendees and 10,000 room nights for Category 2 applicants, and 10,000 attendees and 5,000 room nights for a new third category for events that cannot meet the higher requirements; and applicants would be required to surpass *both* thresholds to qualify. Funding amounts would be revised to maximums of \$125,000, \$75,000, and \$25,000 for the respective categories.

Responding to queries by Commissioner Justice concerning a proposed sunset provision, Mr. Ramsberger indicated that awardees would no longer be eligible for funding after three years, but could be considered for marketing/advertising payments under VSPC's annual budget; and that the TDC determined that annualizing contracts with select established events would promote sustainability of the program. Responding to queries by Commissioners Seel and Gerard, Mr. Ramsberger confirmed that events receiving annualized contracts would still have to meet the eligibility requirements; and that the funding amounts would be negotiated by staff and approved by the TDC.

- Under *Section IV, Funding Standards*, pre-event installment payments would be eliminated, and all payments would be made in a lump sum, post-event.

- Sections V, VI, and VII have been consolidated into a new *Section V, Application Process and Review*, with changes to the rating criteria that place more emphasis on marketing and media plans and onsite benefits.
- A new *Section VI, Key Documents*, sets forth the documents that are part of the program. Mr. Woodard provided input, indicating that staff and, possibly, a third-party expert will undertake a rigorous review of an awardee's documents to confirm the return on investment; whereupon, Chairman Long noted that some applicants did not complete sections of their applications in the most recent round, and Mr. Ramsberger indicated that that will no longer be acceptable.

Thereupon, the Commissioners thanked Mr. Ramsberger and staff for their work on the update.

The meeting recessed at 11:24 A.M. and reconvened at 2:31 P.M. All members were present with the exception of Commissioner Morroni.

3. 2018 Legislative Priorities

Mr. Woodard related that staff has been working with the Board for the past several months to identify its legislative priorities; that they have been discussed multiple times during public meetings; and that they are being brought forward now for discussion in advance of being presented for adoption at the Board's October 31 meeting.

Draft Legislative Program and Additional Candidate Projects

Canaan McCaslin, Special Assistant to the County Administrator, provided an overview of the item, indicating that staff followed the Board's direction to prioritize appropriation requests and to also produce a list of small-dollar requests in anticipation of the budget constraints that will result from this year's hurricanes; whereupon, he discussed documents included in the agenda packet titled *Pinellas County Board of County Commissioners, Draft 2018 Legislative Program and Additional Candidate Projects to Consider for Appropriations, FY18 Legislative Session*.

Responding to queries by Chairman Long, Mr. McCaslin indicated that the appropriation request for construction of a Veterans Memorial Reef is being submitted by a partner organization, and the County will support that organization's requested amount; and that the funding amount to be sought for school nurses has not been determined as of yet. Commissioner Justice commented that he likes the *Additional Candidate Projects* list, opining that the County should regularly pursue smaller grants that can lessen the burden on local budgets and speed up the completion of projects; whereupon, he requested that the County's legislative team, Peter M. Dunbar and Martha J. Edenfield, be made aware of the list, and Mr. McCaslin stated that the team will make a presentation at the October 31 BCC meeting.

Chairman Long discussed the County position in the *Draft 2018 Legislative Program* list that reads, "Oppose efforts to amend or open up allowable uses for Tourist Development Tax (TDT) funds," indicating that she supports allowing a portion of TDT revenue to be used for tourist-related transportation solutions, citing the demand the growing tourism industry is placing on the County's transportation infrastructure. Responding to query by Commissioner Justice, she stated that she does not have a dollar figure in mind, but that an appropriate amount could be determined through a regional discussion with Hillsborough County; whereupon, Commissioner Justice expressed his concern that such a shift could beget numerous other requests for TBT funds.

Commissioner Eggers expressed support for discussing whether TDT funding eligibility could be expanded to include reimbursements for certain tourism-related expenses; whereupon, Commissioner Gerard commented that she does not support proactively seeking such an expansion, but if the Legislature is going to take that direction anyway, newly permitted uses should be prescribed and limited and include no funding for operation or maintenance. Commissioners Welch and Seel indicated that they would be open to considering the use of TDT dollars only if a very specific transportation project was put forward by the Tampa Bay Area Regional Transit Authority; and that they support the TDC in its quest to protect the minimum 60 percent of TDT revenue allocated to marketing and promotion. Attorney White related that the only transportation-type project of which she is aware that received TDT funds is a trolley at the Orange County Civic Center.

Responding to query by Commissioner Welch, Chairman Long stated that there would be no change in the verbiage of the item for now.

Mr. Woodard indicated that staff is seeking direction from the Board as to whether the new items highlighted in yellow in the *Draft 2018 Legislative Program* list and the *Additional Candidate Projects* list should be included in the final package to be presented for adoption on October 31, and discussion ensued.

Responding to a request by Commissioner Gerard for additional information, Public Works Director Rahim Harji discussed a proposed \$6 million appropriation request for a county/state project to implement a Connected Vehicle Arterial System, relating that Senator Jeff Brandes suggested that the County make the request; and that the system would take advantage of an emerging technology to improve travel times and provide more efficient lighting and other advances. Responding to queries by Chairman Long, Messrs. Woodard and Harji related that the Board has already begun investing in the next generation of Advanced Traffic Management System/Intelligent Transportation System technologies; that they allow for vehicles to communicate with each other; and that the County may be able to leverage the receipt of state funding to obtain federal grants. Responding to query by Commissioner Eggers, Mr. Woodard indicated that the receipt of state funding for school nurses would allow the County to shift the dollars it has already allocated for the program to other uses, and would inoculate the program from new budget challenges that could occur if an expanded Homestead Exemption were to pass next year.

Commissioner Eggers opined that the appropriations request list does not reflect the County's highest priorities; whereupon, Commissioner Justice commented that the Board should seek the guidance of its outside lobbying team pertaining to how to break down the priorities, noting that as the Legislature is responsive to trends and the news of the day, it may be more willing to fund related projects, and Chairman Long concurred.

Pinellas County Construction Licensing Board (PCCLB) Bills

Mr. McCaslin referred to a chart titled *PCCLB Scenario Comparison* and indicated that it updates information that staff presented at the BCC meeting of October 17 with a column that shows how the PCCLB currently operates compared to how it would function under each of the three bills that have been filed. He discussed the differences between the bills and whether they address the Board's concerns about the PCCLB's structure, noting that the most recent proposal by Senators Jeff Brandes and Darryl Rouson comes the closest to reforming the Board as the BCC wishes.

Mr. McCaslin related that the Legislative Delegation could ignore the BCC's wishes and keep the PCCLB independent; and that each of the bills incorporates recommendations issued by the Inspector General, although with slight differences; whereupon, responding to query by Commissioner Welch, he indicated that the PCCLB would receive funding from the BCC for operations and staff under the Brandes/Rouson bill, but not under the separate bills filed by Senator Jack Latvala and Representative Ben Diamond.

Mr. Woodard related that Representative Diamond told him that he captured the Board's intent to the best of his understanding with his bill, believing he could work with the Board and staff later to fill in any gaps. Chief Assistant County Attorney Don Crowell provided input, relating that Section 13 of the Brandes/Rouson bill proposes that PCCLB staff would be employees of the County, and the County would be responsible for all associated costs, but the PCCLB would retain the ability to adopt fees for the functions it serves and, thereby, largely fund itself. Responding to query by Commissioner Welch, Attorney Crowell indicated that the Diamond bill differs in wording from the Brandes/Rouson bill in that the PCCLB would be responsible for the costs of staffing.

Commissioner Eggers noted the differences among the bills in proposed Board membership size and term lengths and limits, opining that the terms are too short, and discussion ensued. Commissioner Seel commented that she favors having 15 members rather than nine to ensure a quorum at meetings and to provide for adequate representation of the various specialties; whereupon, Mr. Woodard clarified for Commissioner Eggers that the Board's permanent members are the subject matter expert staff.

Responding to query by Commissioner Seel, Attorney White indicated that the reason the Brandes/Rouson bill includes a provision allowing for the PCCLB to be dissolved by referendum is to account for the possibility the County may one day have to amend its Charter to grant itself the latitude to regulate functions the PCCLB currently undertakes. Responding to additional queries and comments by Commissioner Seel, Attorney White

and Mr. Woodard discussed potential complications of having a member of the Consumer Protection division sit on the Board in an ex-officio capacity, including Sunshine Law implications and potential conflicts due to the role Consumer Protection has investigating PCCLB cases, and Mr. Woodard recommended that Board audits be conducted by a certified independent auditor rather than the Office of the Inspector General. Attorney White related that her office is examining the bills to make sure none of the language conflicts with those portions of the Special Act that are not being amended.

Responding to comments and query by Commissioner Eggers, Attorney White indicated that the bills, as posed, would not allow cities to opt out of PCCLB participation, whether the Board remains independent or becomes dependent, and Chairman Long opined that with all the media attention the matter is getting, the BCC would know if any cities object to the direction that is being taken with the reforms. Mr. Woodard commented that the primary reason for having 15 members rather than nine is to have all of the specialty trades covered rather than provide diverse geographic representation.

Thereupon, Chairman Long directed staff to bring back a final draft of the Legislative Priorities at the October 31 meeting, and Mr. Woodard noted that the second and final meeting of the Legislative Delegation would take place the next day.

4. Proposed Opioid Litigation - Legal Update

Attorney White conducted a PowerPoint presentation titled *Potential Opioid Litigation*. She provided an overview of cases that have been filed by other local governments and states against various parties related to the opioid epidemic, noting that they are the types of civil lawsuits that could be considered by the County. She related that as none of the cases have proceeded very far, there is no record of success or failure; and that enforcement actions filed by Attorneys General around the state and the U.S. Department of Justice have resulted in some large fines, with Purdue Pharma and three of its top executives pleading guilty of criminal charges in federal court and paying more than \$600 million in fines.

Responding to queries by Chairman Long, Attorney White indicated that some of the fines have been paid to the federal government; and that since the County would be pursuing a civil action rather than a criminal complaint, it would be seeking monetary damages. She provided an overview of potential causes of action the County could pursue, including claims of public nuisance, violations of the Florida Deceptive and Unfair Trade Practices Act, negligence, and violations under the Racketeer Influenced and Corrupt Organizations Act (RICO); whereupon, she discussed the following:

- Potential defendants: manufacturers, distributors, pharmacies, and prescribing doctors.
- Potential damages, potential risks, and other considerations.
- Competitive procurement for hiring outside counsel.

Responding to queries by Commissioner Gerard and Chairman Long, Attorney White discussed potential defenses against claims of statute of limitations expiration and how that

could tie into the County's "pill mill" ordinance, and frivolous lawsuit claims. She indicated that every outside law firm she has spoken with has indicated it would indemnify the County against any claim of frivolous lawsuit.

Attorney White discussed attorney fees, relating that they would be handled on a contingency basis, meaning they would be payable only if the County receives a monetary award through a verdict or settlement; whereupon, she reviewed the evaluation factors the County would consider in its competitive procurement for representation, including the financial ability to front the costs of depositions and expert witnesses, experience with complex litigation, and a competitive fee structure.

Discussion ensued, and Attorney White responded to queries and comments by the members as follows:

- Damages that have been incurred by the County due to the epidemic include costs related to first responders and law enforcement, prosecution and jails, and medical treatment and personnel, including the "skyrocketing" cost of the opiate antidote Narcan.
- There would be some burden on staff to compile and analyze the data that would be the basis of damage claims, although some of that information could be forthcoming from the Opioid Task Force.
- Many people are likening the opioid-related civil lawsuits to "big tobacco" litigation, and the litigation is often being handled by a consortium of law firms, in which a national firm is aligned with a local firm.
- She does not know of any instances in which a state legislature has filed suit, but she has read that 41 states have filed lawsuits.
- The County would largely rely on outside counsel to develop the cause of action, which is why it is important to select a law firm that has experience in developing opioid cases.
- The state has not taken any formal steps to initiating litigation, but could be moving in that direction. State litigation could proceed in parallel with a County lawsuit.

Commissioner Welch expressed his support for moving forward, provided the County takes the requisite time to prepare, as there is a substantial amount of data that must be mined; whereupon, Chairman Long commented that the opioid epidemic is worse than the threat posed by foreign terrorists, because the destruction is from within. Attorney White acknowledged that there would be an administrative burden pertaining to gathering facts and evidence and discussed how other local governments are viewing potential litigation.

Commissioner Eggers commented that he would like to see the Task Force's report and recommendations before committing to a lawsuit; whereupon, Chairman Long asked Mr. Woodard to invite Health Director Dr. Ulyee Choe to appear at the next Board meeting and

provide a status report on the Opioid Task Force's work, and he agreed to do so, noting that the full report probably will not be available until the end of the year.

Thereupon, Attorney White stated her recommendation that the Board, by general consensus, authorize staff to initiate a competitive process for legal services with the aim of presenting the members with a hiring decision in January. Responding to queries by Commissioner Welch, she discussed the potential makeup of the committee that will select the law firm and indicated that the County may be able to accelerate the process by examining the procurement results of other local governments. Commissioner Welch requested that the Board be given the opportunity to ratify the authorization to initiate the solicitation at a future regular meeting, and Attorney White indicated that she could bring it up as an action item under *County Attorney Miscellaneous*.

ADJOURNMENT - 2:15 P.M.