



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Miscellaneous

J.2.

2/25/2020

Subject:

Tourist Development Tax Proceeds, District 2

Fiscal Impact:

Unknown

Dept/Office:

District 2

Requested Action:

Direct Staff and the Tourist Development Council (hereinafter "TDC") to Consider Use of Increased TDT Funds over the currently anticipated \$16.6M for improvements to County- owned roadways and bridges benefiting tourism in Brevard County or projects benefiting or restoring the Indian River Lagoon, including utility expansions or improvements.

Summary Explanation and Background:

The tourist development tax (hereinafter "TDT") has seen immense increases over the past several years. The actual fiscal year 2015 - 2016 TDT budget was \$12.8M. 2016 - 2017 saw a rise to \$12.6M. 2017 - 2018 tallied at \$15.6M. 2018 - 2019 totaled \$16.0M. The Office of Tourism, perhaps conservatively, forecasts a 2019 - 2020 TDT budget of \$16.6M. It is possible that the TDT will bring in an amount exceeding this most recent estimate.

Brevard County presently authorizes up to \$1M, of the TDT funds, to go toward Indian River Lagoon (hereinafter "IRL") cleanup efforts on an annual basis. Given the rise in the TDT, it may be worth revisiting whether this stagnant amount is too low.

Partly to that end, given the sharp and continuing increase of TDT funds, I am concerned that these funds continue to be used in a manner which benefits not only the tourism industry but also the vast majority of all residents, including those residents who do not see a value in the many worthwhile projects facilitated by TDT allocation and associated grants.

We may wish to consider using TDT funds in a manner not only benefiting the tourism sector but also emphasizing benefit to local residents who may not be directly involved in the tourism industry. This is a unique opportunity for commissioners to show constituents that we value their concerns and that none of us are controlled by lobbyists or special interests who may wish to exploit the TDT for their self-benefit.

As presently enacted, section 125.0104 (5)(a), Florida Statutes, explicitly permits TDT funds to be used for the purpose of financing "... estuary, or lagoon improvement... [and] restoration." However, the county ordinance restricts the amount of expenditures on the estuary or lagoon restoration projects.

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TDT funds may also lawfully be used to "... acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county" if the "public facilities are needed to increase tourist related business activities" and are "recommended by the county tourist development council". The statute defines public facilities as "... major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities." Id.

When TDT funds are to be used to finance public facilities, certain statutory requirements must be met. Among the requirements, the Board of County Commissioners (hereinafter "BOCC") must approve the use by 2/3rds, requiring a supermajority to assent to the use. Moreover, a maximum of 70% "... of the cost of the proposed public facilities will be paid for with tourist development tax revenues, and sources of funding for the remaining cost are identified and confirmed by the county governing board." Id.

Importantly, an "... independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county." Id.

To be clear, the rather onerous requirements placed on using these funds to finance public facilities do not apply to estuary or lagoon improvement under the statute.

Numerous County-owned roads now require reconstruction - typically at a cost of four to seven times that which would have been required to simply have repaired them had they been timely attended. While it appears that the Indian River Lagoon is on the road to recovery, we could be doing more to speed its revival - including upgrading and extending our sanitary sewer system.

Out of roughly 1125 miles of County-owned roadways, approximately **306 miles** (as of 06 February 2020) fall into what is referred to, by staff, as the "backlog." The backlog includes roads that require resurfacing, those requiring resurfacing that are at imminent risk of requiring full reconstruction, and those which already require full reconstruction.

As mentioned on 06 February 2020, during the publicly noticed Brevard County Board of County Commissioners meeting discussion of an earlier version of this agenda item, I mentioned that Clerk of Court Scott Ellis asked that I relay, to the Commission, Mr. Ellis' belief that TDT funds cannot be used for roads.

Based upon my conversations with County Attorney Eden Bentley, it is my present understanding that both I and the County Attorney's Office share the firm opinion that, so long as certain statutory requirements (including those indicated, above, in this agenda item) are met, there exists no blanket prohibition on the use of TDT funds for roads. Rather, such use appears explicitly permitted by state statute.

For more information on Mr. Ellis' position, please visit the following URL and watch the portions of the video immediately preceding and following 2 minutes, 9 seconds.

<https://www.facebook.com/jerry.barvitskie/videos/2816159818406897/>

In fairness to Mr. Ellis, but for State Representative Randy Fine having successfully lobbied to expand the permissible use of the TDT, usage of the TDT for the contemplated roadwork would likely have remained prohibited. For more information on this topic, please visit the following URL.

<https://www.facebook.com/voterandyfine/posts/my-bill-that-will-authorize-the-county-commission-to-spend-up-to-another-50-mill/757609377742953/>

I ask that County staff be directed to bring the BOCC options, utilizing TDT funding where authorized by statute, to better ensure that we focus on reducing the **306-mile** (as of 06 February 2020) backlog of County-owned roadways. These options must be contemplated as having some articulable positive impact on tourism-related businesses in the County. Staff is encouraged to look at both standard roadways as well as bridges which may benefit from allocation of the funds. Options should not be limited to a single Commission district.

Once these options are identified and the BOCC is sufficiently apprised, it is my intention that the BOCC decide upon which is most palatable and, in turn, direct County staff to procure an independent professional analysis to determine the positive impact the selected infrastructure work would have on tourist-related businesses in the county. Thereafter, if Code amendments are required, the Board may address the issues at that time.

This item merely begins the due diligence process. Both the TDC and the BOCC will have to approve any project identified and/or recommended by staff before any TDT funds may be spent on any such proposal.

Clerk to the Board Instructions:



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February 26, 2020

M E M O R A N D U M

TO: Commissioner Bryan Lober, District 2

RE: Item J.2., Tourist Development Tax Proceeds

The Board of County Commissioners, in regular session on February 25, 2020, tabled consideration for the Tourist Development Tax proceeds to a future Board meeting.

Your continued cooperation is greatly appreciated.

Sincerely yours,

**BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK**

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

cc: County Manager