



WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
AUGUST 11, 2010

PRESENT: Dan Ericksen, Chair, County Commissioner
Sherry Holliday, County Commissioner
Bill Lennox, County Commissioner
Sue Stephens, Executive Assistant

At 9:05 a.m., Chairman Dan Chairman Ericksen called to order the Wasco County Board of Commissioners to order for Wednesday, August 11, 2010.

OPEN TO DEPARTMENTS

Chairman Ericksen stated he received a letter expressing recognition towards Todd Cornett, Wasco County Planning and Development Director, and Dawn Baird, Wasco County Associate Planner.

Chairman Ericksen read a letter from Mr. & Mrs. Brad Houghton who had previously processed a "Non-Conforming Use Application" with the Wasco County Planning and Development Department. Due to the complex history and nature of their request, they felt Planner Baird demonstrated a wide variety of "management, analytical, problem-solving, and customer service skills" that they seek in Government employees. Chairman Ericksen continued to state that Mr. & Mrs. Houghton expressed their gratitude for the services they received from not only Baird, but the entire Wasco County Planning and Development Department.

Some discussion occurred.

Chairman Ericksen praised Baird and the Wasco County Planning and Development Department.

Baird replied to Chairman Ericksen that she is not the only Wasco County employee that provides that type of service. Baird stated that she appreciates the effort and

returned the praise to Mr. & Mrs. Houghton for writing a letter, sending it to the editor, and ensuring it was published.

Chairman Ericksen stated all County Departments do not get enough recognition, that even with the cut backs, lack of personnel, we still can provide service to all of Wasco County, our constituents, and internally. Chairman Ericksen continued to state that we do a remarkable job for being a Government Body serving our constituents.

OPEN TO PUBLIC

Judy Davis, Wasco County Representative on the Columbia River Gorge Commission, stated that the Oregon Court of Appeals decided the Recreation Plan Resort Amendment case and upheld the Amendment in its entirety; however, there is the right to appeal. Davis stated that her reading of this decision by the Supreme Court is that it would take an appeal; however, there is no legal precedence. Davis went on to state that there are many more steps in the process to go through prior to it ever becoming a Recreation Resort. The process would be, the Gorge Commission passes the plan amendment, and then the County would adopt the plan amendment into their Ordinance. As a result, this would proceed to a public process. Davis stated the County would proceed to adopt, continue with the application process, and then the plan amendment could move forward, with a number of challenging conditions to meet before it could become a Destination – Recreation Resort. The final step would be the appeal process.

Davis stated that there may possibly be bureaucratic and public processes. Individuals who are petitioners pitched a venue to proceed and the Gorge Commission decisions can be appealed through the Oregon Courts, where they go directly to the Court of Appeals, or a Washington Court System. First, they would go to District Court, therefore select a District to go to, or Court of Appeals, or Federal Court, which is done with a Plan Amendment when we look at the National Plan and revisions. Davis continued to state the Forest Service decisions go to Federal Court which would be appropriate due to being a Federal Agency.

Davis stated that approved changes to the Management Plan will be required due to previous Oregon Supreme Court and Court of Appeals rulings on revisions to the Management Plan, and there are four areas that came back to the Gorge Commission which had nothing to do with the original Management Plan, and that were made in the management review process.

Davis stated the Columbia River Gorge Commission was mandated to make changes. The Gorge Commission adopted staff recommendations, along with Wasco County letters of recommendations. Letters from all Counties recommended the Gorge Commission do the simplest changes while still meeting all the requirements of what the Court ordered.

Chairman Ericksen asked Davis if it was controversial or if both sides were in agreement.

Davis stated that everyone agreed what areas needed changes and Friends of the Columbia Gorge offered a more detailed proposal which would have laid out more steps that would have to be carried out and more applications. A majority of the Commissioners felt that this was not the appropriate time to make that decision without further review, and more details of how to deal with the affects should and would be in next plan revision overhaul.

Davis stated that in July, the Gorge Commission had their Annual meeting with four Treaty Tribes, which is the third time the Gorge Commission has participated in the process. All four tribes have new Chairs, Board Members, but Umatilla has had some long-standing leaders for more than a decade. Most recently, four out of the nine members have changed, some of which now are in their 20's. It was a chance for the Gorge Commission to meet with new Tribal Leaders as well as past leaders. Davis stated that the Gorge Commission has to explain who and what the Commission is, and not assume that they know. It was an opportunity to explain the issues the Gorge Commission and Tribal Leaders are currently working on. The Gorge Commission hopes to continue to meet with Tribal Leaders due to the fact that the Gorge Commission cannot do anything to violate their Treaties. The Treaty Rights are important, and sometimes it can be difficult to receive feedback from Tribal Members. Davis said they are provided copies of all applications for development, and have the opportunity to comment. The Gorge Commission has staff-to-staff relationship levels and hope the leaders know who they can work with in the future on issues.

Chairman Ericksen stated that it's important that each side knows who they are dealing with to develop a relationship for upcoming Urban Growth issues.

OPEN TO DEPARTMENTS

Monica Morris, Wasco County Finance Manager, stated she received a quote from Tyler Technologies regarding re-structure of the Wasco County Finance system. The quote from Tyler Technologies was for forty hours, which details a remote consult to connect to the system to review Public Health Department accounts or funds. Morris continued to discuss that the quote would be thirty-four hours in GL (General Ledger), two hours for Planning, and four hours for I.S. (Information Services). Morris reiterated that this is two hours of Todd Cornett's time, Wasco County Planning and Development Director, four hours of Paul Ferguson's time, Wasco County Information Services Manager, and thirty-four hours of her time. This detailed the entire package which included two implements with a total of forty hours, which would be \$150 an hour. The total would be \$6,000, and two hours would be sufficient, Morris stated.

Commissioner Sherry Holliday questioned if it could be less.

Morris replied, "It could be less." Tyler Technologies will not know until they get into the EDEN System. Morris approached the Information Services Department, and they had two comments for Morris. The \$150 per hour, which is all of our software services that we currently have, and the other ones are more expensive. Information Services is impressed with how inexpensive it is compared to Awbrey and Heilon Software. The other comment was if Morris could wait, prior to the EDEN upgrade to make changes. The anticipation of something happening would be around six months or 60 days.

Morris stated that the County has not done one upgrade since they've installed EDEN, (Governmental Accounting Software), so they are extremely behind at this point, since we currently have the 2005 version. The upgrade Ferguson will be doing will bring EDEN up-to-date with the latest version.

Chairman Ericksen stated that AT&T Software follows EDEN software.

Morris continued to state that Tyler Technologies will break out what services they provide, but there have been some questions, "Why is it so expensive?" Morris stated; "it's because it's financial software".

Chairman Ericksen stated that it will add 436 accounts.

Morris stated that it is a lot of work, and she is concerned with four hours of Information Services time, since it may not be quite enough, possible if upgraded.

Chairman Ericksen stated that we need to have some serious discussions with Public Health to see what their concerns would be since Wasco County should not be paying for this system, and this topic may be open to future discussions. Chairman Ericksen questioned why do we need this and what are they asking, which are some definite questions that will be addressed.

Morris stated that the upgrade date will occur within the next 60 days. Ferguson will put out a test on Lylas Anderson's system, Accounts Payable, Shannon Lindell's system, Public Works Office Manager, and Morris' system with the new EDEN Upgrade with a test version. Tests will be conducted to make sure that there are no bugs with our servers, and then an inspection will be done to conclude everything is running properly. Integration will then occur, removing the old EDEN information and it will be saved, transferred into the new EDEN, and then the upgrade will be complete.

Marty Matherly, Wasco County Roadmaster, stated that he was providing a quick update to let everyone know what the Public Works Department is currently working on at this point in time.

Matherly stated that the road crew has finished their chip sealing season, which is one of their biggest projects. The road crew is now moving onto an abatement project at the

intersection of Benson and Five Mile Roads. This is the route up to the landfill, where the school bus stops at this intersection and has to slow down until the crew widens that section. Matherly stated that the crew is getting ready to move to Wamic Grade to attempt this project one more time, weather permitting.

Matherly discussed that his goal was to get things completed on some of his remaining projects, including the road under the Federal Forest Highway Construction Grant, i.e. Dufur Valley Road, Friend Road, and Cody Road. The Highway Construction Grant will cover the Wamic Grade Reconstruction project.

Commissioner Holliday stated that the Forest Service Boundary is not the target we want to focus on, but we need to finish and protect the viewpoint on the grade. The kiosk improvements are eligible for this grant, which is the strategy for this construction grant this fall.

Commissioner Holliday added that Gene Scherer, Facilities Tech II, notified her that he currently has 50 cords of wood to donate, and would like to know if it would be possible to store it at the Wamic Public Works Facility.

At 9:41 a.m. the Board recessed.

The Board reconvened at 9:47 a.m.

CONSIDERATION AND APPROVAL of the Regular Session Consent Calendars of August 11, 2010, (Attached as Exhibit A).

{{{Commissioner Holliday moved to approve the Regular Session Consent Calendar of August 11, 2010, as presented. Commissioner Lennox seconded the motion; it was then passed unanimously.}}}

CONTINUATION OF PUBLIC HEARING to consider the adoption of an Ordinance levying a one (1) percent Transient Room Tax; providing for the administration and collection of the tax; and providing penalties.

Chairman Ericksen called the continuation of the Public Hearing to order.

Eric Nisley, Wasco County District Attorney/County Counsel, spoke for the record as he read from his memorandum and supporting documents that referred to House Bill 2267 in regards to local governments authority to implement transient room taxes, (Attached as Exhibit B).

Nisley stated that a local Government may impose a transient lodging tax. He used an example of Cannon Beach, Oregon, where 1,500 tourists occupy hotel rooms, where

this option affects the sewer and taxes every year. The legislative history is important to consider; lodging history shows that a room tax will be acceptable. The Law states that you must use at least 70% of revenue from the transient lodging tax for the facility infrastructure. Of course it is permitted to use the entire 100%, but the County can use 30% for the General Fund. Legislative processes and tax revenue have similarities with the Columbia Gorge Discovery Center tourism related facility. Debt is allowed by Oregon Law to adopt without referral of voters

The Board had no questions of County Counsel.

Chairman Ericksen stated that the County Counsel and the Oregon Attorney General's opinions, which are not binding, or persuasive, but supports authority regarding legislative history.

Chairman Ericksen asked if there was anyone wishing to present testimony either in favor or against the proposed Ordinance.

Dana Schmidling, The Dalles Area Chamber of Commerce Executive Director, stated that she believes this Ordinance will affect visitors throughout the Columbia River Gorge from Troutdale all the way to Pendleton. Schmidling's opinion is that it's unfair to tax lodging destinations since the highest tourist attractions, and South County will not benefit from Wasco County's disadvantages and will have to come up with additional revenue now. It's unfortunate it sets precedence over other Counties, and Wasco County has some responsibility.

Schmidling continued to state that 1.5% will have to be for marketing, and this percentage will always have to be increased, so we are heading down a slippery path.

Dan Spatz, Columbia Gorge Community College Executive Director of Resource Development, stated as a private citizen he would like to look at this from a bigger perspective. We have one Washington bill proposed that would cut the National Scenic Area funding completely. Attractions at this level can draw close to a million visitors per year. Staffing has been on the continual decline, which is a chronic issue. The Federal agencies needs to be involved with the Discovery Center. We can work with the motels to include the Discovery Center which is a component to the tourism of this particular location. Spatz stated that the potential for financial stability is not there currently and we need to put the mechanism in place to give us time with Salem, Olympia, and other Federal agencies to find more permanent funding. The point is that we will be letting agencies off the hook, and we need to use our leverage to work with them in securing long-term sustainability for the Columbia River Gorge Commission and the Columbia Gorge Discovery Center. The overall success of one is the success of another.

Chairman Ericksen stated that Spatz knows some City Councilors who can identify operational, marketing, and capital debt. Spatz can address all those who know the process, and possibly can create a market and operation plan from City level, and assist

the County. The County will move forward with this obligated debt issue. Chairman Ericksen suggested to Nolan Young, City of The Dalles Manager, that there may be some City Councilors who might not support the County financially on this issue another year. Chairman Ericksen asked Spatz what his take was on this suggestion.

Spatz stated the Discovery Center is on life support. The events will trigger a reaction with City Council depending on what course we take, and may take two elections where time is a factor if City Council pulls funding.

Spatz questioned Chairman Ericksen if the City contributes more than \$25,000 towards the debt.

Chairman Ericksen stated if the City pulls its contribution of \$25,000 to this debt and a bond is not secured, then the obligation to the County goes to \$85,000 a year. There is a complete detachment between the debt and the survival of the Discovery Center. We own the land and not the facility. If we gave the land away without the bond tax authority, we have to budget it out of General Fund. The Community Outreach Team took this package back to Washington D.C. for funding assistance and was unsuccessful.

Commissioner Bill Lennox stated addressing the sustainability is a huge project. We need to look at our financial situation and the General Fund. We are going to hit some serious cut backs and need to be proactive.

Spatz questioned when it will take effect on the ballot.

Nisley stated that the election has to be certified as he read from the Statue. This will not be effective January 1, but effective immediately.

Chairman Ericksen stated that once this is done, if it doesn't pass, the County will have to cut two or three positions.

There will be further discussions, and we are a couple hundred thousand dollars in the hole due to the PERS (Public Employees Retirement System) increase. Chairman Ericksen will meet this afternoon for capital project negotiations. We are all in a bind.

Spatz stated that we are cutting vital services. If we do not solve our issues we will be forced to address a bigger part of one-third of funding, and we can use this as leverage.

Chairman Ericksen stated we can use the date of January 1, 2011.

Nisley stated it takes ninety days, or as soon as it's certified due to the Clerk having to count all of the ballots. It takes approximately fourteen days, and voters may challenge.

Jim Hoffman, Cousins Country Inn, stated that there are problems after this tax is approved. There is no longer a tourism facility. The legality of taxing industry is that it

mimics the Congress tax and all the IAG Executive tax for hotel owners. The equity is not a solution.

Nisley stated that the room tax will be for the debt, and the adoption purpose is to pay for debt of tourism industries.

Hoffman questioned if refinancing is an option.

Chairman Ericksen stated that re-bonding the tax will cause slight penalties that decreased from 4% to 3%, and down to 2% this year. It will take care of the tourism facilities, with 70% of the revenue mandated for facilities. Only using 30% can be used for County General fund, but according to the Ordinance 100% will be used to retire debt. There is a strict criterion to terminate when the bond is paid off. The County had some agonizing decision around the subject of the money. If there was another way out of this situation, we would not be here. We are working hard on an alternate solution and eliminate the tax woes.

Scott Hege, Candidate for Wasco County Commissioner, questioned why private entities don't have to pay. Under Section 5, Ordinance consists of 100% of camping and recreational sites collected \$100, and they are not exempt from taxes.

Chuck Langley, Owner of Wind Rider Inn, stated that this is wrong and the concept of targeting is the wrong way to go. Langley opposes the Ordinance and feels like he is already being punished. The Board of County Commissioners has made their decision already. The tourism industry is being punished, but yet we want more tourism in the Columbia River Gorge. Taxing the tourism industry is not only a punishment to the tourism, but to the owners. The City is abusive with taxes and the Discovery Center is a fatality, so targeting the tourism industry is wrong. Langley stated this is false thinking.

At 10:52 a.m. the hearing was closed to further testimony.

Chairman Ericksen stated that his request for help from the Oregon Solutions Team was granted by the Oregon Governor. He had asked for help finding funding solutions. He gave a brief history of the Columbia Gorge Discovery Center and how the Center came to be. The siting location and land had to be secured. A donation of the property was obtained. There was huge community support, and the Wasco County Court was persuaded to participate by securing financing. The State of Oregon assisted the County in securing bonds through the Oregon Economic and Community Development Department (OECDD). The bottom line is that Wasco County has to make the annual payments. The City of The Dalles has helped immensely and for that we are grateful. Chairman Ericksen asked for suggestions.

Spatz suggested that the State needs to market and provide services. Eighty-five thousand dollars a year for these bonds essentially means more layoffs. If the transient room tax is not passed, this will guarantee layoffs at the County level and the reduction of public services, and then more essential services will be cut as well. The problem is no one takes the hardest path, but takes the easy one.

Chairman Ericksen stated that the top six choices were presented. Chairman Ericksen questioned how this will affect South County. There have been reports from visitors who visit the Discovery Center, and it gets more remote if you go South. The Discovery Center is a big piece of the package that people come to look at in the County and now is in bad shape financially. This was not an easy task for the Board to pass another room tax.

Langley stated that it is not fair to target the industry. The local Government issues taxes that the public is forced to face unfairly and he feels the Commissioners have already made up their minds.

Commissioner Lennox stated that the important needs of the County are public safety. We are at a crucial point. Commissioner Lennox stated that his priority is the individuals in Wasco County, and we are looking at a temporary tax that will have a less impact on the County and how we offer services to the County.

Commissioner Holliday stated that she backs her supporters. She wanted to personally thank Chairman Ericksen for going to the State and Federal level seeking funding with the support of the City of The Dalles. To address Mr. Langley, the Wasco County Commissioners have not made their minds up yet and there are sufficient reasons to move forward. Maybe it is the right thing to do, but the wrong time to do it.

Chairman Ericksen stated he will leave a list of changes if alternate funding is null and void. (See Section 8, "The Exception"). A listing of the proposed changes made to the Wasco County Transient Lodging Tax Ordinance was available for the public's review, (Attached as Exhibit C).

Nisley questioned effective date.

Commissioner Lennox stated there should be a start date.

Chairman Ericksen questioned Nisley as to where in the Ordinance the date is referenced, can just write it in there, or does a new document have to be prepared with the date of January 1, 2011.

{{{Commissioner Lennox moved to adopt Ordinance #10-005 in the matter of establishing an Ordinance levying an One (1) Percent Transient Lodging Tax; providing for the administration and collection of the tax; and providing penalties, and that said Ordinance shall become effective on January 1, 2011 upon the successful passage of the County Measure on the November 2, 2010 General Election Ballot; and that Resolution #10-035 in the matter of calling an Election on November 2, 2010 to refer an Ordinance establishing a one (1) per cent Transient Room Tax to the voters of Wasco County, Oregon. Chairman Ericksen seconded the motion; the motion passed by a vote of two to one. Chairman Ericksen and Commissioner Lennox voted yes, while Commissioner Holliday voted no.}}}

CONSIDERATION AND APPROVAL of the Resolution in the matter of calling an Election on November 2, 2010, to refer a Three (3) Year Local Option Tax to the voters of Wasco County, Oregon.

Chairman Ericksen opened the meeting up to members of the public wishing to make comments about the proposed Resolution referring a three year Animal Control and Animal Shelter Local Option Tax Levy to the voters of Wasco County.

Janna Hage, Interim Executive Director of Home At Last, stated that by adding the verbiage "kill" to the levy will cause voters to be confused.

Sheila Dooley, Home At Last Board Member, stated that the public will not know what they're voting on due to the verbiage. The public does not want a kill shelter, nor does Home At Last.

Chairman Ericksen stated that we will be going out for an Request for Proposal. We are actually going out for money and the specific services will be determined through the RFP process.

Nolan Young, City of The Dalles Manager, stated that Home at Last has been a big help with minimal killing.

Kathy Norton, Home At Last Secretary, stated that if this levy goes out it needs to be clear as possible that this is a minimal kill shelter. Voters will not have a clear understanding of the RFP process to cast ballots in the coming election.

Young commented the intent was to try and maintain the current service level. The levy may help us achieve this goal, and Animal Control has brought the community structure. The City Manager's position is not a political position.

Commissioner Lennox stated that his intent was to provide the same level of service as is currently provided and his philosophy was to find homes for animals. We'll leave the legal aspects of this levy to the County and to the voters. The important issue is to let voters know what they are voting on and what's right for the animals.

Commissioner Holliday questioned clarifying minimal kill shelter. Home At Last has stated that it could not promote the levy if it is not a minimal kill shelter due to the conflict with their Mission Statement.

Chairman Ericksen stated that the tax levy funding will allow the continuation of the operation of the shelter as a no kill shelter, and the intent is that adequate funding will make it possible.

Nisley stated how the new Commissioners interprets how "no-kill" means "will allow" was something additional added in the explanatory statement. Nisley pointed out if the new Commissioners come in, "will allow" may be confusing.

Commissioner Lennox stated that we are going to need to be very specific, and do everything in our power, but demands are measured on our resources.

Chairman Ericksen examined kill shelter versus minimal kill shelter through discussion and comments and the intent is to run a minimal kill shelter, the word intent is key.

Tyler Stone, Wasco County Administrative Officer, states this does not fall on the County, but falls on the voters.

Further discussion occurred regarding the proposed language in the Explanation Statement for the proposed Local Option Tax Levy.

Chairman Ericksen read sentence "minimal kill shelter", and will not say "required to". The public will read this sentence, but the RFP will require several things that will not be a lot of the services that Home At Last is providing. Everything else will have to be created. Home at Last is at the back of our minds, while an explanatory reader will be reading the voters pamphlet.

Scott Hege raised the issue of a non-profit and the philosophy where we can answer more questions from the public and clarify it when we go out for RFP. Home at Last is not comfortable with the language.

Commissioner Lennox stated "private non-profit".

Holliday stated she did not see anything wrong with the original language, but agreed.

Chairman Ericksen stated this will constitute an explanatory statement.

Chairman Ericksen concluded with thoughts about the Home At Last operations. Expenses have gone up significantly to continue animal services at a level that we established. In a strong economy the people will vote yes, but in a weak economy, people will vote no.

Commissioner Lennox added that Home at Last has developed a credible reputation and recognition.

Chairman Ericksen stated that it is an uphill battle in this tough economy, and Wasco County has passed the Library, which speaks to our community in general as a whole, and as well as to our four-legged friends.

{{{Commissioner Lennox moved to approve Resolution #10-034 in the matter of calling an Election on November 2, 2010, to refer a Three (3) Year Local Option Tax to the voters of Wasco County, Oregon. Commissioner Holliday seconded the motion; it was then passed unanimously.}}}

CONSIDERATION AND APPROVAL of the Wasco County Fringe Benefits and Employee Reimbursements Policy.

{{{Commissioner Lennox moved to adopt the Wasco County Fringe Benefits and Employee Reimbursements Policy. Commissioner Holliday seconded the motion; it was then passed unanimously.}}}

CONSIDERATION of the recommendation of the Wasco County Planning Commission on the appointment of a member to the Planning Commission.

The Board considered the recommendation of the Wasco County Planning Commission, (Attached as Exhibit D).

{{{Commissioner Holliday moved to accept the recommendation of the Wasco County Planning Commission and that the Order in the matter of the appointment of John Wood to the Wasco County Planning Commission is approved. Commissioner Lennox seconded the motion; it was then passed unanimously.}}}

The Board signed:

- The Intergovernmental Agreement between Wasco County and Wasco County People's Utility District for G.I.S. Services.
- Intergovernmental Agreement between Wasco County and the City of The Dalles for G.I.S. Services.
- Intergovernmental Agreement between Wasco County and Mid-Columbia Fire and Rescue for G.I.S. Services.
- Intergovernmental Agreement between Wasco County and Sherman County for G.I.S. Services.
- Special Session Minutes of November 25th, 2009.
- Wasco County Fringe Benefits and Employee Reimbursements Policy.
- Resolution #10-034 in the matter of calling an Election on November 2, 2010, to refer a Three (3) Year Local Option Tax to the voters of Wasco County, Oregon.
- Ordinance #10-005 in the matter of establishing an Ordinance levying an One (1) Percent Transient Lodging Tax; providing for the administration and collection of the tax; and providing penalties.
- Resolution #10-035 in the matter of calling an Election on November 2, 2010 to refer an Ordinance establishing a one (1) per cent Transient Lodging Tax to the voters of Wasco County, Oregon.

- Order #10-105 in the matter of the appointment of John Wood to the Wasco County Planning Commission.

The Board adjourned at 12:01 p.m.

WASCO COUNTY BOARD
OF COMMISSIONERS



Dan Ericksen, Chair of Commission



Sherry Holliday, County Commissioner



Bill Lennox, County Commissioner

**WASCO COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
August 11, 2010**

CONSENT CALENDAR

1. Intergovernmental Agreement between Wasco County and Wasco County Peoples Utility District for G.I.S. Services.
2. Intergovernmental Agreement between Wasco County and the City of The Dalles for G.I.S. Services.
3. Intergovernmental Agreement between Wasco County and Mid-Columbia Fire and Rescue for G.I.S. Services.
4. Intergovernmental Agreement between Wasco County and Sherman County for G.I.S. Services.
5. Special Session Minutes of November 25, 2009.

WASCO COUNTY DISTRICT ATTORNEY

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The Dalles, Oregon 97058
Telephone, 541-506-2680 Fax, 541-506-2681

Eric J. Nisley, District Attorney
Leslie C. Wolf, Chief Deputy District Attorney
Sarah Carpenter, Deputy District Attorney

MEMORANDUM

TO: County Commissioners Ericksen, Holliday and Lennox
DATE: August 11, 2010
FROM: ERIC NISLEY
RE: Transient Lodging Tax

Question

You have asked me whether House Bill 2267 prohibits the County from adopting the proposed transient room tax that is being referred to the voters for the November election.

Discussion**a. Oregon Law**

House Bill 2267 made significant changes to local governments' authority to implement transient room taxes. Most of the changes do not impact the question presented and will not be addressed. As adopted into to law, the House Bill is known as Oregon Laws, 2003, Chapter 818.

Of significance to your decision to proceed with the proposed tax is ORS 320.350 (Chapter 12 of Oregon Laws, 2003, Chapter 818). I have copied that portion of the statute for your convenience.

This section imposed a moratorium on "new" local transient lodging taxes. ORS 320.350(1). A number of exceptions were included in the bill as a compromise during the legislative process. Of importance here is the exception for a "new or increased transient lodging tax if[,] at least 70 percent of net revenue from [the] new or increased local

transient lodging tax is used...[to] finance the debt of tourism-related facilities..." ORS 320.350(5)(c);(6).

As I understand the purpose of the use of the local transient lodging tax revenue is to finance the debt that is owed on the Wasco County Discover Center. The first question is whether the Discover Center qualifies as a "tourism-related facility" under ORS 320.350(5).

b. Attorney General Opinion—"Tourism-Related Facility"

This issue has been addressed in Opinion Request OP-2008-3 written by the Oregon Attorney General. While not binding authority, the Opinions of the Attorney General are considered persuasive and where no other authority exists, should be given considerable weight in interpreting a statute. A copy of that opinion is also attached for your review. The purpose of the opinion was to determine what the legislative intent was with respect to transient room tax funding infrastructure for tourism-related facilities with local transient room taxes.

The opinion contains a fairly detailed legislative history of the law and conclude that the "type of facilities the legislators intended to include were things like performing arts centers, convention centers and other facilities that, by their nature and operation draw "substantial numbers" of tourists to the community. Opinion at p15.

c. Examples of Tourism-Related Facilities

In the legislative history that is included in the opinion, examples of what the legislators anticipated would be "tourism-related facilities" included the Hult Center in Eugene and the Brownsville Museum. Opinion at page 12. A copy of the initial web page for the Brownsville Museum is also attached. It is somewhat similar to the Columbia Gorge Discovery Center and Wasco County Historical Museum but much smaller in scale and much more focused on local history. The Hult Center is a performing arts center that has opera, theater, and music.

d. Columbia Gorge Discovery Center and Wasco County Historical Museum

The official name of what is locally referred to as the "Discovery Center" is the Columbia Gorge Discovery Center and Wasco County Historical Museum. A copy of the lead page of their website is attached

for your review. The Center has multiple events and exhibits and also hosts events that it charges rental fees for. In sum, it appears to be an interactive museum with activities ranging from reading historical books to watching birds of prey. It also contains a movie theater and sponsors nature walks on a 5 acre preserve and on trails along the Columbia River.

Another factor to consider is whether the local lodging industry deems the Columbia Gorge Discovery Center and Wasco County Historical Museum a "place of interest." Yesterday, I retrieved a brochure from one of my favorite hotels, the Cousin's Inn, describing the Columbia Gorge Discovery Center and Wasco County Historical Museum. I have seen this same brochure at numerous other hotels in Wasco County.

Conclusion

In sum, the similarities in purpose and function to the facilities mentioned as examples during the legislative hearings to the Columbia Gorge Discovery Center and Wasco County Historical Museum suggests that it is in fact a "tourism-related facility" and any transient lodging tax to finance debt for that facility is allowed by Oregon Law. This applies equally to debt related to construction of infrastructure directly related to the Columbia Gorge Discovery Center and Wasco County Historical Museum (parking lot, sewer, access roads, etc) as discussed directly in the Attorney General's Opinion.



HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 14, 2008

Todd Davidson, Chief Executive Officer
Oregon Tourism Commission
670 Hawthorne Avenue SE, Suite 240
Salem, OR 97301

Re: Opinion Request OP-2008-3

Dear Mr. Davidson:

In 2003, the legislature enacted ORS 320.300 to 320.990, which govern the collection and use of state and local transient lodging taxes. Or Laws 2003, ch 818. Transient lodging taxes are taxes "imposed on any consideration rendered for the sale, service or furnishing of transient lodging." ORS 320.305(1). ORS 320.350 restricts how local governments may spend revenue from lodging taxes imposed or increased on or after July 2, 2003. Specifically, ORS 320.350(5) and (6) require local governments to use at least 70 percent of the net revenue generated from any new or increased lodging taxes for specified tourism-related purposes (for simplicity this opinion will refer to the net revenue generated from new and increased taxes as "new lodging tax revenue.") One of those tourism-related purposes is funding "tourism-related facilities." ORS 320.350(5)(a). You ask whether certain local expenditures qualify as funding "tourism-related facilities." Your question, a short answer, and a supporting discussion follow.

QUESTION PRESENTED

Can local infrastructure, such as county roads or city sewers, qualify as "tourism-related facilities" under ORS 320.350(5)(a) such that local governments may fund them, without restriction, with new lodging tax revenue? If so, under what circumstances?

SHORT ANSWER

Based on the text, context, and legislative history of ORS 320.300(9) and ORS 320.350(5) and (6), the legislature most likely intended local roads, sewers, sewer plants, and transportation facilities to qualify as "tourism-related facilities" only if they draw tourists themselves, directly serve a specific tourist attraction (such as an access road), or are part of the infrastructure of a specific tourist attraction (such as a restroom and the on-site sewer line.) The legislature most likely did not intend "tourism-related facilities" to encompass roads and other infrastructure simply because they are used, even heavily, by tourists as well as locals.

Todd Davidson
November 14, 2008
Page 2

DISCUSSION

1. Method for Interpreting Statutes

To answer your question, we must interpret the relevant statutes with the goal of determining the legislature's intent. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993); ORS 174.020. We begin by examining the statute's text and considering statutory and judicially created rules of construction that bear directly on how to read the text, such as to give words of common usage their "plain, natural and ordinary meaning." *Id.* at 611; ORS 174.010. We do not examine the text in isolation but in context, including other provisions of the same statute. *Id.* at 610; *SAIF Corporation v. Walker*, 330 Or 102, 108, 996 P2d 979 (2000). If the text and context suggest only one possible meaning, our inquiry ends there. *PGE*, 317 Or at 610-11. If more than one meaning is possible, we examine legislative history to determine which meaning the legislature intended. *Id.* at 611-12.

2. ORS 320.350

a. Text of the Provision

ORS 320.350 provides, in relevant part, that:

(1) A unit of local government that did not impose a local transient lodging tax on July 1, 2003, may not impose a local transient lodging tax on or after July 2, 2003, unless the imposition of the local transient lodging tax was approved on or before July 1, 2003.

(2) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not increase the rate of the local transient lodging tax on or after July 2, 2003, to a rate that is greater than the rate in effect on July 1, 2003, unless the increase was approved on or before July 1, 2003.

* * *

(5) Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6) of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt * * *.

Todd Davidson
November 14, 2008
Page 3

* * *

(6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section.

Accordingly, local governments must spend at least 70 percent of new lodging tax revenue on the identified tourism-related purposes, including funding tourism-related facilities, and no more than 30 percent to fund "city or county services." You ask whether local infrastructure, such as county roads or city sewers, can qualify as "tourism-related facilities" under ORS 350.320(5)(a) and be funded without limitation by new lodging tax revenue or whether those facilities are more properly categorized as county and city services subject to the 30 percent funding limitation.

b. City or County Services

We first discuss the meaning of "city or county services." "Services" is the plural of "service," which, used as a noun, has a variety of meanings. Potentially relevant meanings include "the duties, work, or business performed or discharged by a government official," "action or use that furthers some end or purpose: conduct or performance that assists or benefits someone or something; deeds useful or instrumental toward some object," "useful labor that does not produce a tangible commodity -- usually used in plural <railroads, telephone companies, and physicians perform *services* although they produce no goods>" and "the provision, organization, or apparatus for conducting a public utility or meeting a general demand." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (WEBSTER'S) at 2075 (unabridged 2002).

It is not apparent from the text and context which of those meanings the legislature intended. For instance, it may be that the legislature intended city or county services to mean the provision of labor (police, fire, etc.), but not facilities funding or it may have meant the term to encompass all services provided. In such a circumstance, we consult legislative history to discern the legislature's intended meaning.

ORS 320.350(5)(b) was enacted in 2003 as part of HB 2267. Or Laws 2003, ch 818, § 10. Originally, HB 2267 required all new local lodging tax revenue to be spent on tourism. HB 2267, § 11 (Introduced) (2003). Before 2003, local governments had not been restricted in their use of local lodging tax revenue and they opposed the new restriction. *See former* ORS 305.824 (governing local lodging taxes before 2003). Lodging and tourism groups and local government associations eventually compromised and the bill was amended to allow local governments to use up to 30 percent of new local lodging tax revenue for city and county services. The legislative history demonstrates that the legislature intended to allow local governments to use that 30 percent for *any* expenditure they chose:

Todd Davidson
November 14, 2008
Page 4

LARRY CAMPBELL: Recognize that, in this Bill, 30 percent of increased local taxes can be used any way the community wants to. They are not limited to public service or anything else.

Testimony of Larry Campbell, Oregon Lodging Association (HB 2267), July 23, 2003, tape 223, side B at 117.

REPRESENTATIVE VERGER: This bill perhaps strikes [a] balance of being able to protect 70 percent of that money at the same time [allowing] cities * * * to do whatever they want to do with the 30 percent.

Testimony of Representative Verger, House Revenue Committee (HB 2267), August 12, 2003, tape 241, side A at 73.

REPRESENTATIVE SCOTT: [HB 2267] require[s] 70 percent of the new local tax revenue to be used for tourism purposes [and] up to 30 percent to be used for the needs of the local jurisdiction at their choice.

Testimony of Representative Scott, House Floor Debate (HB 2267), August 19, 2003, tape 176, side A at 065.

SENATOR METZGER: [HB 2267] creates a formula requiring 70 percent of new local room tax revenue to be used for tourism purposes and up to 30 percent to be used for the needs of the local jurisdiction as they see fit.

Testimony of Senator Metzger, Senate Floor Debate (HB 2267), August 22, 2003, Tape 281, side B at 311.

That history demonstrates that the legislature intended ORS 320.350(6) to allow local governments to use up to 30 percent of new lodging tax revenue in any way they saw fit, but to require that they spend at least 70 percent on tourism. Therefore, local governments may use up to 30 percent of new lodging tax revenue to fund local infrastructure, including roads and sewers. If the road or sewer does not qualify as a "tourism-related facility" the local government can spend no more. But, if a road or sewer qualifies as a "tourism-related facility", the 30 percent limitation is inapplicable and the local government may expend up to 100 percent of new lodging tax revenue to fund the facility. We next consider whether city or county infrastructure such as roads and sewers can qualify as "tourism-related facilities."

c. Definition of Tourism-Related Facility

ORS 320.300(9) provides that "tourism-related facility":

(a) Means a conference center, convention center or visitor information center;
and

Todd Davidson
November 14, 2008
Page 5

(b) Means other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

"Conference center," "convention center" and "visitor information center" are defined by ORS 320.300(2), (3) and (13), respectively. Facilities that fit within those categorical statutory definitions are "tourist-related facilities]" for purposes of ORS 320.350(5)(a). But those definitions are very restrictive and apply to very few facilities in Oregon. For example, among other requirements, a convention center must have a room-block relationship with the local lodging industry and generate a majority of its business income from tourists. ORS 320.300(3). A conference center must meet the current membership criteria of the International Association of Conference Centers. ORS 320.300(2).

Other tourism-related facilities also can qualify as "tourism-related facilities" if they meet certain criteria set out in ORS 320.300(9)(b). Specifically, the facility must be: "other improved real property"; "ha[ving] a useful life of 10 or more years"; and "a substantial purpose of supporting tourism or accommodating tourist activities." We examine each of those criteria in turn.

(I) Other Improved Real Property

The first criterion is that the facility be "other improved real property." "Other" obviously means "other than" conference centers, convention centers and visitor information centers that fit within the categorical statutory definitions.

Turning to "improved real property," there is no common definition of that phrase. Parsing the words, the relevant definition of "improve" is "to increase the value of (land or property) by bringing under cultivation, reclaiming for agriculture or stock raising, erecting buildings or other structures, laying out streets, or installing utilities (as sewers)." WEBSTER'S at 1138. "Real" in this context means "[1] c: of or relating to things (as lands, tenements) that are fixed, permanent, or immovable; *specifically*: of or relating to real estate <real property>." *Id.* at 1890. The fitting definition of "property" is: "2 a: something that is or may be owned or possessed: WEALTH, GOODS *specifically*: a piece of real estate[.]" *Id.* at 1818. Putting those definitions together, "improved real property" means real estate or land enhanced in value by a building or other structure, cultivation, reclamation for agriculture or ranching, or by streets and utilities, such as sewers. Therefore, land enhanced by streets or sewers or other utilities is "improved real property."

We note "improved real property" connotes a thing - improved land - rather than a project. If the improved real property qualifies as a "tourism-related facility" the local government may "fund" it without limitation pursuant to ORS 320.350(5)(a) and (6). "Fund," which is used as a verb in the statute, means "to furnish money for." THE AMERICAN HERITAGE DICTIONARY at 342 (3d ed 1994) (we consulted a commonly-used dictionary other than WEBSTER'S, because it provides no definition that is applicable in this context). Applying that definition, to "fund" a tourism-related facility is to furnish money for a tourism-related facility.

Todd Davidson
November 14, 2008
Page 6

Thus if the improved real property qualifies as a tourism-related facility, the local government may use funds in any way it sees fit on the facility, including to expand or maintain it.

(2) Useful Life of 10 or More Years

Roads and sewers and other city or county infrastructure, in the normal instance, have a useful life of 10 or more years, but that would be a factual matter to be determined on a facility by facility basis.

(3) Substantial Purpose of Supporting Tourism or Accommodating Tourist Activities

The last criterion – that the property has “a substantial purpose of supporting tourism or accommodating tourist activities” – is the linchpin of the definition, being the one that makes the property “tourism-related.” Each of the terms in this criterion requires careful consideration, beginning with “substantial purpose.”

The pertinent definition of “purpose” is “something that one sets before himself as an object to be attained: an end or aim to be kept in view in any plan, measure, exertion, or operation; DESIGN.” WEBSTER’S at 1847. Therefore a “substantial purpose” means a substantial objective to be attained by the facility.

“Substantial” is used in the statute as an adjective to describe “purpose.” The adjective “substantial” has a range of meanings, three of which are pertinent. The first is “consisting of, relating to, sharing the nature of, or constituting *substance*: * * * MATERIAL.” *Id.* at 2280. “Substance” means “essential nature: ESSENCE * * * a fundamental part, quality or aspect: essential quality or import: the characteristic and essential part.” *Id.* at 2279. The second relevant definition of “substantial” is “being of moment: IMPORTANT, ESSENTIAL.” *Id.* at 2280. “Important,” in turn, means “marked by or possessing weight or consequence.” *Id.* at 1135. The third relevant definition of substantial is “being that specified to a large degree or in the main” as in “a *substantial* victory or a *substantial* lie.” *Id.* at 2280. The relevant definition of “large” is “of considerable magnitude: BIG.” *Id.* at 1272. And “main” means “outstanding, conspicuous or first in any respect: GREAT, PREEMINENT; principal.” *Id.* at 1362.

In short, “substantial purpose” may mean: (1) a fundamental, characteristic or essential part of the purpose; (2) a weighty, consequential purpose; (3) a purpose of considerable magnitude; or even, (4) the first purpose. A slight, unimportant or inconsequential purpose would not be “substantial” under any of those definitions; the purpose must be important and consequential. Under the last definition, the purpose must even be the “main” – meaning first or preeminent – purpose.

Context suggests that the legislature may not have meant “substantial” in the sense of the main or first purpose. ORS 320.300(13), a related statute defining “visitor information center,” states that it is “a building, or a portion of a building, *the main purpose of which* is to distribute or disseminate information to tourists.” (Emphasis added). We generally presume that when the legislature uses different language in related provisions it intends different meanings. *PGE*, 317

Todd Davidson
November 14, 2008
Page 7

Or at 611 (use of term in one section and not in another section of the same statute indicates a purposeful omission); *State v. Guzek*, 322 Or 245, 265, 906 P2d 272 (1995) (when the legislature uses different terms in related statutes, we presume that the legislature intended different meanings.) Applying the presumption, the legislature's use of "the main purpose" in ORS 320.300(13) and "a substantial purpose" in ORS 320.300(9)(b) presumptively demonstrates that the legislature did not intend "a substantial purpose" to mean "the main purpose" as in the first or principal purpose.

Accordingly, "a substantial purpose" likely means an important, weighty, consequential purpose, but not necessarily the first or chief purpose. "Important, weighty and consequential" have both qualitative and quantitative aspects. Even in the latter sense, those terms do not lend themselves to precise quantification. Thus, it is not obvious how to determine whether a "purpose" is "important, weighty, or consequential." For that reason, it is appropriate to consult legislative history for clarification. But first we consider the meanings of "supporting tourism" and "accommodating tourist activities."

Beginning with "supporting tourism," "supporting" means "to uphold by aid[ing] * * * [or] actively promot[ing] the interests or cause of [.]" WEBSTER'S at 2297. "Tourism" means "economic activity resulting from tourists." ORS 320.300(6). Therefore, "supporting tourism" means aiding or actively promoting economic activity resulting from tourists.

Facilities might aid or actively promote tourist spending in the community in a number of ways. First, facilities like convention centers, conference centers, and performing arts centers could hold conventions, conferences and other events that draw tourists -- and their tourist dollars -- into the community. Second, tourists could be drawn into the community by the nature of the facility itself, such as an improved recreational area or a museum. Third, a facility like a visitor's center could disseminate information to tourists that would induce them to spend their money at various places in the community. All of those facilities likely aid or actively promote tourist spending in the community.

Roads and sewers are not like those facilities; they do not "draw" in tourists or induce them to spend their money in the community. On the other hand, most roads and sewers may *indirectly* aid or promote tourist spending by providing adequate infrastructure to tourists who are drawn to the community for other reasons. The text and context do not clarify how attenuated the legislature intended the "aid" or "support" of tourist spending to be and, later in this opinion, we will look to legislative history for clarification, but first we examine the meaning of "accommodating tourist activity."

The relevant definition of "accommodate" is to "furnish with something desired, needed, or suited." WEBSTER'S at 12. "Tourist" is defined by ORS 320.300(10) to mean:

a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person's community of residence, and that trip:

Todd Davidson
November 14, 2008
Page 8

- (a) Requires the person to travel more than 50 miles from the community of residence; or
- (b) Includes an overnight stay.

"Activity" means "an occupation, pursuit, or recreation in which a person is active -- often used in plural <business activities> <social activities>." WEBSTER'S at 22. Putting the definitions of "tourist" and "activities" together, "tourist activities" are business activities, pleasure and recreation activities, and attending arts, heritage and cultural events when done by people who travel more than 50 miles from their community of residence or stay overnight in a community that is distinct from their community of residence to do so. We doubt that the legislature meant "tourist activities" to include activities of daily living, such as using local infrastructure like the roads, water, and wastewater systems, because the definition of "tourist" is limited to visitors who come to a community "for" certain activities. That limitation strongly suggests that "accommodating tourist activities" means accommodating the listed activities.

Putting it all together, an improved real property has a substantial purpose of "accommodating tourist activities" if it furnishes something desired, needed or suited for tourists to engage in business, pleasure or recreational activities or to attend arts, heritage or cultural events. Obvious examples, because they furnish places that are desired, needed or suited to those tourists activities, would be convention and conference centers, improved recreational areas, museums, and performing arts centers.

Once again, local infrastructure is unlike those facilities because it does not directly accommodate tourist activities. But, again, infrastructure may indirectly accommodate tourist activities by furnishing something necessary, desired or suited for tourists to use the places that *do* accommodate tourist activities. For example, an access road to a recreational facility makes it possible for tourists to use the facility. It is not clear, however, whether the legislature intended facilities that provide indirect accommodation to be included.

Based on our examination of text and context, we conclude that roads and sewers fit within the definition of improved real property, but questions remain about whether they have a substantial purpose of supporting tourism or accommodating tourist activities. We next examine the legislative history for clarification.

d. **Legislative History Concerning "Substantial Purpose of Supporting Tourism or Accommodating Tourist Activities"**

ORS 320.300(9) (defining "tourism-related facility"), ORS 320.350(5) (specifying the purposes on which new local lodging tax revenue could be spent) and ORS 320.350(6) (specifying the percentages that must be used for tourism and may be used for non-tourism purposes) were enacted in 2003 as part of HB 2267. Or Laws 2003, ch 818, §§ 1, 2 and 8. The primary purpose of HB 2267 was to establish a state lodging tax dedicated to increasing Oregon tourism marketing efforts. Again, the legislature originally intended all new local lodging tax revenue to be used to promote tourism. Although the state tax had wide and enthusiastic legislative support, the new restriction on how local governments could spend their local tax

Todd Davidson
November 14, 2008
Page 9

dollars was highly contentious and the subject of numerous proposed amendments, which were discussed and debated at length. Those discussions resulted in two significant compromises. The first -- allowing local governments to spend 30 percent on any purpose they saw fit -- we discussed earlier. The second compromise was changing the definition of "tourism-related facility" to make it more inclusive. We now address that change.

The legislature, over the course of seven months, considered 19 different proposed amendments to HB 2267. Many of them proposed alternative definitions of "tourism-related facility." The first definition relevant to our analysis was the one proposed in the -9 amendments, which was:

[A] conference center, convention center, visitor information center or other improved real property that has a useful life of 10 or more years and *the primary purpose* of supporting tourism or accommodating tourist activities.

HB 2267, § 1(9) (-9) (2003) (emphasis added). The House Revenue Committee discussed that new definition in a work session on June 25, 2003. Much of that discussion focused on the fact that the definition appeared to require conference centers, convention centers and visitor information centers that met statutory definitions to also meet the 10-year useful life and primary purpose criteria. In the course of discussing that problem, Representative Barnhart raised concerns about the "primary purpose" language:

I have to say I have a big concern about the use of that word "primary" and let me just give you an illustration of that. The Convention Center in Portland is not "primarily" used for tourism. It's -- most of the people who use it come from the neighborhood -- certainly within 50 miles -- on any given event, it doesn't matter what event it is, most of the people come from the neighborhood within 50 miles.

In Eugene, the Hult Center is another good example, obviously a tourist-related facility, but most of the people coming to events there come from within 50 miles even though the Bach Festival, for example, has people from 35 states that are going to be attending starting the end of this week. * * * I really need to understand how the use of that word "primary" would not limit the use of these funds for facilities like those that certainly have a tourist-related function -- a very important one -- but are not "primarily" tourism-related facilities.

Testimony of Representative Barnhart, House Revenue Committee (HB 2267), June 25, 2003, tape 190, side A 411-446. Representative Barnhart interpreted the "primary purpose" criteria to eliminate facilities that drew most of their patrons from the local community, even if they also had a very important tourism-related function. That interpretation of "primary purpose" is consistent with its plain meaning as the relevant plain meaning of "primary" is "first in rank or importance: CHIEF, PRINCIPAL." WEBSTER'S at 1800.

No further discussion of the meaning or implications of the "primary purpose" requirement took place in that work session. But when the committee held its next work session on July 23, 2003, it considered amendments that changed the definition of tourism-related

Todd Davidson
November 14, 2008
Page 10

facility to: (1) clarify that conference centers, convention centers and visitor information centers that met statutory definitions did not have to meet additional criteria; (2) for other facilities, substitute a "substantial purpose" requirement for the "primary purpose" requirement; and, (3) expressly exclude "roads, other transportation facilities, [and] sewers or sewer plants" from the definition. HB 2267, section (1) (9) (a) - (c) (-14 and -15 amendments) (2003).¹⁷

The committee discussed the latter two changes at length. Because that discussion was so lengthy, we summarize the most pertinent points, beginning with the exclusion of "roads, other transportation facilities, [and] sewers or sewer plants" from the definition. At the beginning of the work session, Chair Shetterly told the committee that he intended to remove "other transportation facilities" from the exclusion. Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 380-400. But four committee members, Representatives Haas, Barnhart, Hobson and Verger, refused to vote for the amendment even with that change, because it continued to exclude roads, sewers and sewer plants. Testimony of various legislators, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side B at 010-070.

None of the legislators explained what roads, sewers, or sewer plants should be included; their objection to the exclusions was more general. Both Representatives Hobson and Verger expressed opposition to the exclusion because it "was moving in the wrong direction," the "wrong direction" in this context being imposing greater restrictions on local governments. *Id.* Representative Barnhart opposed the exclusion because he was concerned about how a city would be able to raise a local tax and spend 70 percent of it on tourism if the restrictions on the definition of tourism-related facilities were so substantial. *Id.* Representative Haas merely stated that the exclusion was a source of consternation among his colleagues, who otherwise supported the bill. *Id.*

Two non-legislator witnesses discussed roads and sewers more specifically. The first, Ken Strobeck, representing the League of Oregon Cities, testified that he was concerned about the exclusion because coastal communities' sewer systems and roads were heavily impacted by tourists. He testified that those communities had to build their sewer facilities to accommodate tourists, not local residents. He gave the example of Cannon Beach, stating that it had a population of 1500 to 2000, but over 1000 motel rooms. He also testified that he thought the exclusion would prevent funding public restrooms. Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 059-314.

On the other hand, Mr. Strobeck appeared to recognize a distinction between "tourism-related facilities" and funding local infrastructure such as sewers. He testified that new restrictions on how local governments could spend the revenue were not necessary, because local governments already were "spen[ding] [50 percent of the revenue from existing taxes] on tourism promotion, tourism facilities, with the other half * * * on sewers, police, etc..., which are affected by tourist traffic." Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 278. In other words, while he appeared to want local communities to have the flexibility to spend more money on local

Todd Davidson
November 14, 2008
Page 11

infrastructure, such as sewers and roads, his testimony also appears to acknowledge that such spending is not funding a tourist-related facility.

The second non-legislator witness, Doug Riggs, representing the Central Oregon Cities Organization, testified that the exclusion was problematic because a city like Redmond might want at some future point to expand roads or sewers around the Deschutes County Fairgrounds, a facility that drew a lot of tourists, specifically to address the needs of the tourist industry. Testimony of Doug Riggs, Central Oregon Cities Organization, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 318-371.

At the end of the work session, the committee decided not to vote on any proposed amendments that day, but to attempt to work out a compromise. Testimony of various legislators, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side A at 371-497. The resulting compromise was the removal of the express exclusion of "roads, other transportation facilities, [and] sewers or sewer plants" from the definition of "tourism-related facility." The definition otherwise remained the same. HB 2267, § (1) (9) (a) -- (c), (-19) (2003).

After that change, when discussing the specific types of facilities that they intended "tourism-related facilities" to include, legislators mentioned the types of roads and sewers as follows. In the work session on August 12, 2003, Representative Barnhart stated that: "I am especially pleased that we left out the piece on sewers and such. I can imagine putting in a restroom in a park might very well be a substantial promotion of tourism and, of course, that involves sewer lines among other things." Testimony of Representative Barnhart, House Revenue Committee (HB 2267), August 12, 2003, tape 241, side A at 031-113. Second, in the House Floor Debate, Chair Shetterly stated that "improvements and access to natural resources and recreational facilities" could very well fall under the definition of "tourism-related facility." Statement of Chair Shetterly, House Floor Debate (HB 2267), August 19, 2003, tape 177, side A at 211. Representative Farr agreed. Statements of Chair Shetterly and Representative Farr, House Floor Debate (HB 2267), August 19, 2003, tape 177, side A at 237.

In sum, the history shows that the legislature did not intend to categorically exclude roads, sewers, sewer plants, and other transportation facilities from the definition of "tourism-related facilities." If a specific road or sewer, etc., meets the criteria in ORS 320.300(9)(b), including having a substantial purpose of supporting tourism or accommodating tourist activities, it would qualify as a "tourism-related facility." But legislators cited only three very limited types of roads and sewers that might qualify: roads that provide access to natural and recreational facilities, other improvements to recreational facilities, which could include sewers, and a restroom in a park. Those types of roads and sewers either are part of tourist attractions or directly serve them. In that sense, those facilities might "draw" tourists to the extent that the attraction itself draws tourists. No legislator stated any intent to include roads and sewers merely because they are used heavily by tourists. Consequently, the history suggests that the legislature may have intended local infrastructure such as roads and sewers to be "tourism-related facilities" only to the extent that they either are part of or directly serve tourist attractions.

For further clarification, we turn to the legislature's discussion about the meaning of "substantial purpose." First, Chair Shetterly explained that the change from a "primary purpose"

Todd Davidson
November 14, 2008
Page 12

test to a "substantial purpose" test was a compromise that benefited local governments by giving them more flexibility. Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side A at 010-497. In other words, "substantial purpose" was a lesser standard than "primary purpose." Accordingly, the legislative history on that point is consistent with the context, which also suggests that "substantial" was not intended to mean the primary or chief purpose of the facility.

But no legislator provided a definition of "substantial purpose" and there appeared to be considerable confusion amongst the legislators about what facilities would meet that test. Rather than clarifying the meaning of "substantial purpose," Chair Shetterly attempted to demonstrate the legislature's intent by describing on the record the kinds of facilities that were meant to be included. Other legislators appeared to agree with his assessment, although Representative Barnhart appeared to intend the definition to be interpreted as broadly as possible. The following are excerpts of legislators' statements from the time that the "substantial purpose" language was introduced to statements made during the House floor debates. We begin with committee discussions following the introduction of the "substantial purpose" language on July 23, 2003:

CHAIR SHETTERLY: I will say on the record that I think the Hult center, *because it accommodates the Bach Festival, and when it is not accommodating the Bach Festival, there is the Eugene Opera and there are concerts that are advertised and I know I have traveled several times to events at the Hult Center.* I think that there is no doubt in my mind that the Hult Center and other *regional facilities that bring people in are going to qualify under the substantial purpose test.* Keller Auditorium. I don't know how many times a year I am up at the Keller Auditorium in Portland and I live more than 50 miles from Portland, and *I'll bet that you've got a substantial number of people who are in there every time there is a show that live more than 50 miles away. I think those are the facilities that in fact do come under the substantial purpose test * * ** which is, again, exactly why it has been such a difficult test for the lodging association and the proponents of the Bill to move towards. ** * ** And I think Brownsville, the Brownsville Museum, or some of those kinds of things, if those are even owned or funded by municipalities I think those would qualify. *Again, I have traveled to the Brownsville Museum on several occasions to see them [sic]. They have a sign by the freeway that draws people in off the freeway and I am sure that that would qualify under any reasonable standard of "substantial purpose."* So I think there is more flexibility than what you are granting in your testimony with that move toward the "substantial purpose" test.

* * *

* * * [A] convention center that we do have in Salem now, that *we have gatherings of statewide organizations on a regular basis * * * would qualify as a substantial purpose[.]*

REPRESENTATIVE SCOTT: * * *. We talk about, Doug you have spoken to the Redmond facility and everyone is talking about how *folks come to these* and

Todd Davidson
November 14, 2008
Page 13

where they get the money to operate these. And now we are talking about the tourism industry that collects a tax and should that bear the burden of the facility. *I think we need to look at really how many people affect those facilities, wherever they may be.*

* * *

REPRESENTATIVE FARR: You know, we have had Mr. Chair, you placed on the record during this discussion that you feel that "substantial" includes the Hult Center and "substantial" includes the Deschutes facility and the Astoria facility and I think that placing that on record goes a long way to the interpretation of the intent of the amendments and the intent of the language of this bill.

* * *

REPRESENTATIVE WILLIAMS: * * *. My own concern that the "substantial" language modifying the word tourism in that sentence still creates in my mind some question as to whether some of the facilities that have been discussed today would, in fact, be protected.

Testimony of various witnesses, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A, 380-400, tape 223, side B 300-436; tape 224, side A, 010-497, and tape 224, side B, 010-070 (emphasis added).

The following are excerpts from the committee work session on August 12, 2003 following the removal of language expressly excluding "roads, other transportation facilities, [and] sewers or sewer plants":

CHAIR SHETTERLY: There was concern still about the language of "substantial purpose" and what kind of facilities [would meet that test.]

* * *

I just want to confirm my inclination for the record that these are the kinds of things that we would be looking around [at] statewide: performing arts centers, we talked about the Hult Center, I think your convention center in Salem that might not qualify as a convention center within the specific language of the statute, *but that nevertheless was designed to facilitate statewide conferences and conventions*, I think would be one that would fall under that substantial purpose test. I can see recreational facilities, improved recreational facilities, performing arts centers, cultural facilities, *those kinds of things would be my intent as long as you have folks coming in from out of the area and can establish that there is a substantial number of those, whatever that is. That is going to be a locally-driven test, but I think there is flexibility on all sides.*

* * *

Todd Davidson
November 14, 2008
Page 14

REPRESENTATIVE BARNHART: * * * I was in Pennsylvania a few weeks ago for a family reunion and one of the things that we did while we were there was to visit some sights in the little town that the Barnhart family came from. Among the things that we saw were historical houses; there is a genealogy library set up as part of the county library there and, of course, parks, historical railroad stations, and a variety of other things. It seems to me that within the right context all of those might be considered to be tourist, might be facilities that support tourism or accommodate tourist activities. After all, while we were there, we spent money in the local restaurants and in lodging and so forth in Pennsylvania. *So, I think and I hope that this is considered to be a very broad definition. I am especially pleased that we left out the piece on sewers and such; I can imagine putting in a restroom in a park, might very well be a substantial promotion of tourism and, of course, that involves sewer lines among other things.* I think, otherwise, the Chair has mentioned most of the areas, most of the issues that I am interested in. *It is hard for us to know all of the things that bring tourists to town and I hope that anyone interpreting this language will interpret it very, very broadly.*

REPRESENTATIVE FARR: * * * I just want to make sure that the understanding [is] that, for instance, fairgrounds are included in tourism facilities.

CHAIR SHETTERLY: Well, I guess my thinking would be that they are not excluded. Again, I think it is going to be a facility-by-facility test and, *depending on the nature of the crowd that comes, I think they very well could be.*

Testimony of various legislators, House Revenue Committee, August 12, 2003, tape 241, side A, 031-113 (emphasis added).

Following that discussion, the committee unanimously voted to send the bill to the floor with a do pass recommendation. These statements followed in the House floor debate:

CHAIR SHETTERLY: As you know, if you followed this Bill, one of the most contentious issues was the element of the rumination on the use of new tourism tax dollars by local communities.

* * *

Examples of a tourism-related facility that local communities can fund out of their 70 percent share that is restricted under this bill would include such things as the Hull Center in Eugene. *That draws and has the substantial purpose of attracting tourists to the Eugene community.* Keller Auditorium in Portland. I know my wife and I travel up there as often as we can. We are tourists under the definition of this Bill. And even here in Salem, the planned convention and conference center that's *going to be drawing conferences from around the state; statewide conferences and meetings. Those are the kinds of facilities at the*

Todd Davidson
November 14, 2008
Page 15

local level that would fall under this tourism facility. County fairgrounds could very well fall under this definition as well as cultural and historical facilities that draw people from elsewhere in the state. And also, improvements and access to natural resources and recreational facilities. There is flexibility in this for local communities and, at the same time, there is a guarantee that to the extent that flexibility is used, it is going to be used for facilities that draw tourists and that have as their substantial purpose that tourism promotion[.]

REPRESENTATIVE BARNHART: One of the key issues in this was the repeated working and reworking of what it was that cities and counties could spend any new transient room taxes that they might raise on and whether, not going into the specific details of what we ended up with in the bill, except to say that, as we worked through this, we came to realize that the *cities and counties needed to have a very broad definition of what it was that they were going to be allowed to spend the 70 percent of their new or expanded tax that had to be spent on tourism promotion or tourism-related facilities. The "substantial purpose" which is referred to in the bill having to do with tourism-related facilities turned out to be a very important phrase for us as we worked on this bill, because it deals, of course, with not only facilities that are designed to primarily draw tourists, but facilities which are useful to the local community to do local things, but also, as a part of their operation and nature, will have a substantial purpose of supporting tourism and accommodating tourist activities.*

* * *

[While in Pennsylvania] we visited * * * a couple of local museums and the library. And, as the committee dealt with this issue of "substantial purpose" I would submit, and I believe the other committee members would agree that those facilities, small facilities that they were, *because they do in fact draw tourists from far away*, that they have, along with other reasonable purposes, they have a "substantial purpose" of supporting tourism or accommodating tourist activities.

Testimony of Chair Shetterly, House Floor Debate, August 19, 2003, tape 177, side A at 211 (emphasis added); Testimony of Representative Barnhart, House Floor Debate (HB 2267), August 19, 2003, tape 176, side B at 09 (emphasis added).

That history demonstrates that the types of facilities that legislators intended to include were things like performing arts centers, convention centers and other facilities that, by their nature and operation draw "substantial numbers" (a locally-driven and flexible test) of tourists to the community.²¹ Roads and sewers, while they do serve tourists, do not, by their nature and operation, draw tourists.

But the legislative history also is clear that legislators did not want to exclude roads and sewers from the definition; the only possible conclusion to be drawn from that fact is that they believed that at least some types of roads and sewers would qualify. Legislators mentioned three that might: "improvements and access to natural and recreational facilities" and "a restroom in a park." Those facilities might be said to draw tourists as they are part of the infrastructure of a

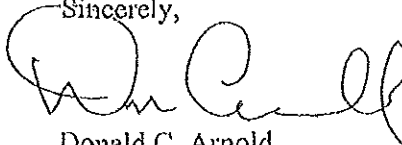
Todd Davidson
November 14, 2008
Page 16

tourist attraction or directly serve a specific tourist attraction. No legislator expressed an intent to include local infrastructure that does not have that direct nexus to a tourist attraction simply because it is used heavily by tourists. The legislature likely intended local governments to use their 30 percent unrestricted funds to pay for those facilities.

CONCLUSION

We conclude, based on the text, context and history of ORS 320.300(9) and ORS 320.350(5) and (6) that the legislature most likely intended local roads, sewers, sewer plants, and transportation facilities to qualify as "tourism-related facilities" only if they drew tourists in themselves, directly serve a specific tourist attraction (such as an access road), or are part of the infrastructure of a specific tourist attraction (such as a restroom and the on-site sewer line). The legislature most likely did not intend "tourism-related facilities" to encompass roads and other infrastructure simply because they are used, even heavily, by tourists as well as locals.

Sincerely,



Donald C. Arnold
Chief Counsel
General Counsel Division

DCA:JTM:AEA:meg/645803

¹¹ At the beginning of the work session, Chair Shetterly mentioned a July 1, 2003 memo that he had circulated to the committee that "addressed changing 'primary' to 'substantial.'" Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A 006-022. That memo is not included in the legislative history materials and the Office of Legislative Counsel does not have a copy of that memo in its file, so we do not know what discussion, if any, it contained about the reason for the change from "primary purpose" to "substantial purpose." The only memo from Chair Shetterly to the committee members concerning that change is dated July 23, 2003 and it merely tells committee members about the change without explaining the reason for it. Minutes, House Revenue Committee (HB 2267), July 23, 2003, Exhibit 4.

²¹ There was no discussion of visitor information centers which aid tourism spending by disseminating information, likely because those facilities are unique and fit within the categorical statutory definition.

ing in this section shall limit the use that can be made of such information for regulatory purposes or its use and admissibility in any enforcement proceedings.

(2) If a conflict is found to exist between subsection (1) of this section and ORS 314.835, ORS 314.835 controls. [2003 c.818 §8a]

(Local Transient Lodging Taxes)

320.345 Lodging provider collection reimbursement charges. (1) On or after January 1, 2001, a unit of local government that imposed a local transient lodging tax on December 31, 2000, and allowed a transient lodging provider to retain a collection reimbursement charge on that tax, may not decrease the percentage of local transient lodging taxes that is used to fund collection reimbursement charges.

(2) A unit of local government that imposes a new local transient lodging tax on or after January 1, 2001, shall allow a transient lodging provider to retain a collection reimbursement charge of at least five percent of all collected local transient lodging tax revenues. The percentage of the collection reimbursement charge may be increased by the unit of local government.

(3) A unit of local government that increases a local transient lodging tax on or after January 1, 2001, shall allow a transient lodging provider to retain a collection reimbursement charge of at least five percent of all collected local transient lodging tax revenues. The collection reimbursement charge shall apply to all collected local transient lodging tax revenues, including revenues that would have been collected without the increase. The percentage of the collection reimbursement charge may be increased by the unit of local government.

(4) A unit of local government may not offset the loss of local transient lodging tax revenues caused by collection reimbursement charges required by this section by:

(a) Increasing the rate of the local transient lodging tax;

(b) Decreasing the percentage of total local transient lodging tax revenues used to fund tourism promotion or tourism-related facilities; or

(c) Increasing or imposing a new fee solely on transient lodging providers or tourism promotion agencies that are funded by the local transient lodging tax. [2003 c.818 §10]

320.347 Alternative remittance of receipts from tax on camping and recreational vehicle spaces. (1) Except as provided in this section, a unit of local government that imposes a tax on the rental of

privately owned camping or recreational vehicle spaces shall, regardless of a schedule imposed by the unit of local government for remitting tax receipts, allow a transient lodging provider to hold the tax collected until the amount of money held by the provider equals or exceeds \$100.

(2) Once the amount held by a transient lodging provider equals or exceeds \$100, or by December 31 of each year if the \$100 threshold is not met, the provider shall remit the tax collected at the next following reporting period established by the unit of local government for payment of the tax.

(3) A unit of local government may not assess any penalty or interest against a transient lodging provider that withholds payments pursuant to this section. [2005 c.610 §4]

320.350 Tax moratorium; exceptions; uses of revenues. (1) A unit of local government that did not impose a local transient lodging tax on July 1, 2003, may not impose a local transient lodging tax on or after July 2, 2003, unless the imposition of the local transient lodging tax was approved on or before July 1, 2003.

(2) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not increase the rate of the local transient lodging tax on or after July 2, 2003, to a rate that is greater than the rate in effect on July 1, 2003, unless the increase was approved on or before July 1, 2003.

(3) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not decrease the percentage of total local transient lodging tax revenues that are actually expended to fund tourism promotion or tourism-related facilities on or after July 2, 2003. A unit of local government that agreed, on or before July 1, 2003, to increase the percentage of total local transient lodging tax revenues that are to be expended to fund tourism promotion or tourism-related facilities, must increase the percentage as agreed.

(4) Notwithstanding subsections (1) and (2) of this section, a unit of local government that is financing debt with local transient lodging tax revenues on November 26, 2003, must continue to finance the debt until the retirement of the debt, including any refinancing of that debt. If the tax is not otherwise permitted under subsection (1) or (2) of this section, at the time of the debt retirement:

(a) The local transient lodging tax revenue that financed the debt shall be used as provided in subsection (5) of this section; or

(b) The unit of local government shall thereafter eliminate the new tax or increase in tax otherwise described in subsection (1) or (2) of this section.

(5) Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6) of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt, provided that:

(A) The net revenue may be used for administrative costs only if the unit of local government provides a collection reimbursement charge; and

(B) Upon retirement of the debt, the unit of local government reduces the tax by the

amount by which the tax was increased to finance or refinance the debt.

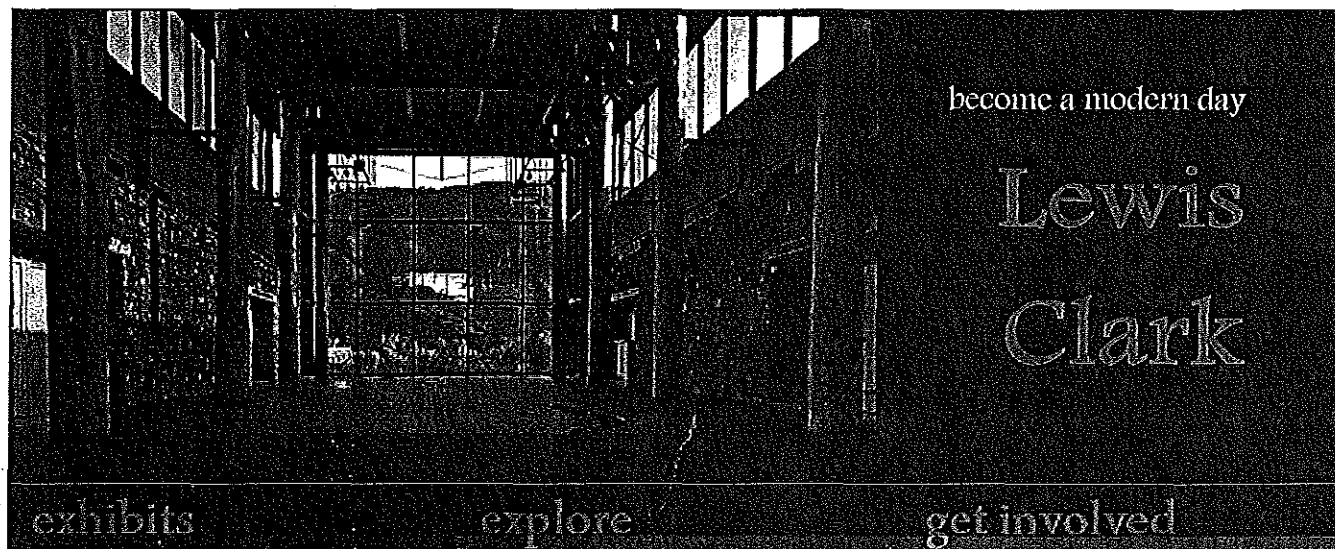
(6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section. [2003 c.818 §11]

PENALTIES

320.990 Penalties. Violation of any provision of ORS 320.005 to 320.150 by any person is punishable, upon conviction, by a fine of not more than \$500, or by imprisonment in the county jail for not more than six months, or by both. Justice courts have concurrent jurisdiction with the circuit courts of any prosecution provided for in this subsection. [Amended by 1955 c.574 §7; 1971 c.743 §356; 1999 c.501 §10; 2005 c.94 §99]

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Discovery Center Annual Fundraiser [more](#)

Ongoing through September 6th, 2010 ■

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at the Discovery Center's Columbia River Trading Company [more](#)

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with local storyteller & historian Jerry Tanquist [more](#)

Friday August 20th: *The Painted Hills & God's Healing Hands* ■

Author's book signing [more](#)

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Lobby at the
Historical Museum

Books, artifacts, dioramas and models are all on display at the Linn County Historical Museum.

Linn County Historical Museum Hours

Monday- Saturday, 11:00 - 4:00

Sunday, 1:00 - 5:00

Group tours are available by
appointment

Location

101 Park Ave, Brownsville, OR 97327

Museum Contact Information

PO Box 607, Brownsville, OR 97327

Phone: (541) 466-3390

Email: lchm@centurytel.net

The Linn County Historical Museum is located in historic Brownsville, Oregon. Housed in Brownsville's original railroad depot, the museum holds collections and information representing all of Linn County.

The museum also cares for the Moyer House, an elegant home completed in 1881 by pioneering figures of Brownsville. The Linn County Historical Museum and Moyer House are owned by the Linn County Parks & Recreation Department.

The Linn County Historical Museum was established in Brownsville in 1962 by the Linn County Historical Society in cooperation with the City of Brownsville.

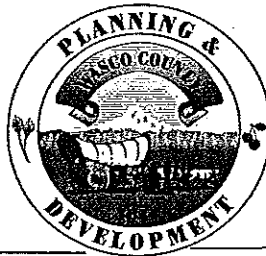
Under the leadership of Floyd Jenks, of Tangent, and others, many county residents contributed



LISTING OF CHANGES MADE TO THE PROPOSED
WASCO COUNTY TRANSIENT LODGING ORDINANCE

1. All references to Transient "Room" Tax have been changed to Transient "Lodging" Tax.
2. All references to "per cent" have been changed to "percent".
3. Under Section 3 Tax Imposed an additional sentence was added as follows: "If alternate funding is identified, the Board of County Commissioners may declare the Ordinance null and void at any time prior to the retirement of the full debt".
4. Under Section 8 Due Date; Returns and Payments the "monthly" filing requirements were change to "quarterly" filings.
5. Under Section 8 additional sentences were added as follows: "The exception to this requirement is for operators of privately owned camping or recreational vehicle spaces. The taxes collected by these operators are due and payable to the tax administrator as required by ORS 320.347."

WASCO COUNTY PLANNING
AND DEVELOPMENT
Todd R. Cornett, Director
2705 East Second Street
The Dalles, Oregon 97058



Phone: (541) 506-2560
Fax: (541) 506-2561
Web Address: co.wasco.or.us

Memorandum

To: Wasco County Board of County Commissioners
CC: Wasco County Planning Commission
Todd Cornett, Planning Director
From: Brenda Jenkins, Planning Coordinator
Date: 8/3/2010
Re: Wasco County Planning Commission Recommendation

The Wasco County Planning Commission met on August 3, 2010, to discuss the applicants for the Planning Commission position vacated by the resignation of Commissioner Joel Brown.

Applications were received by the Wasco County Planning Office from Gary Cotter, John Wood, Dennis Whitehouse, Tim McClure, Christina Ryan, and Brad DeHart. After interviews, the Commission members voted unanimously 5-0, 1 absent (Commissioner Omeg), in favor of recommending the following:

For the vacancy of Position #3 of the Wasco County Planning Commission; the Wasco County Planning Commission recommends appointment of John Wood. The Planning Commission further recommends Dennis Whitehouse and Brad DeHart as unranked alternatives.