

MEMO

From: Corporation Counsel Beth Cate
Controller Jeff Underwood
Public Engagement Director Mary Catherine Carmichael

To: Mayor John Hamilton & Deputy Mayor Griffin
Date: October 28, 2022
Re: Convention Center Expansion Project

Convention Center proposed plan

Goals for convention center expansion - The goal for a convention center expansion project is to improve the marketability of Bloomington as a convention destination while expanding and diversifying the meeting spaces available to locals.

Key features of mechanism(s) used to achieve those goals - City of Bloomington prefers the flexibility of a 501c3 for several reasons; primary among them is a belief that a 501c3 holds the greatest potential for building a successful convention center expansion that will be architecturally significant, appropriately sized and fitted, and completed in a timely manner.

Staff have investigated and evaluated options to achieve an appropriate governing body for an expanded convention center project to be built on City of Bloomington owned land. Two models were considered: a Capital Improvement Board (CIB) as established in state law, and a charitable nonprofit organization (501c3) as defined under state and federal law, and any related interlocal or other agreements.

Several key points guide this analysis:

- A CIB or 501c3, would have various authorities depending on the statutory and any interlocal contract specifics.
- An additional entity, the Convention and Visitors Commission (CVC), directs annual operating funds provided to supplement operational needs of the convention center. These funds, derived from the local innkeepers tax, are decided by the CVC whose 5 members are, pursuant to state law, appointed exclusively by the county (3 by council, 2 by commissioners, with quite specific requirements for 4 of the 5 members). The CVC's budget is annually reviewed and controlled by the county council.
- The County Council voted to establish a Food and Beverage Tax in Monroe County. The city's portion of those funds have (largely) been collecting since its inception. This vote took political courage, and that body should be commended for its forward thinking and action. A Food and Beverage Advisory Committee exists to determine the appropriateness of F&B tax expenditures. Written approval from a majority of members is required for expenditures.

- The ongoing F&B tax is not a given. The County Council or the Indiana General Assembly could vote to discontinue the tax should they see fit.
- By state statute, a CIB is created by action of the county commissioners. Appointment powers to name the members of the CIB may be delegated by the commissioners (for example, designating that some of the CIB members be appointed by other governmental bodies). Certain statutorily-prescribed powers, however, may not be delegated and result in specific authorities:
 - The County Commissioners must approve any bond issue by the CIB
 - The County Council must approve the CIB's annual budgets
- A 501c3 entity may be established with a wide range of possible board and oversight structures, operational procedures, and fully equal authority with a CIB.

The administration has made clear that any such organization would need to be fully collaborative with appropriate county entities and share involvement, including the creation of at least one advisory body. Staff recommends the advisory body's membership include representatives from the city council, county commissioners, county council, tourism and hospitality industries, the arts communities, Indiana University, and not-for-profit organizations.

Based on these points, certain conclusions follow.

A CIB is essentially a county body, with specific powers inextricably assigned to the county, including approval of any bond sales and the annual CIB budgets. Regardless of how CIB members are appointed, control of a CIB remains with county – not city or shared – government in these important ways.

By contrast, a 501c3 can be designed more flexibly and can embrace diverse voices and representation to assure effective and representative management over the affairs of the entity. In particular, the 501c3 can be established with autonomy over its own operating budget and its own authority to issue bonds through one or the other governmental entities, or the neutral Indiana Finance Authority. In any of these circumstances, direct public oversight from at least four bodies is assured:

1. The County Council which controls the F&B tax
2. The CVC, which controls necessary operating funding
3. The FABTAC, which controls expenditures of the F&B funding, and
4. The City Council, which must establish authority for and bonding of the 501c3

In terms of coordinating and accelerating downtown development and prosperity, a 501c3 with its more flexible governance structure also could potentially accept additional city properties at some point in the future. Possible examples include the Buskirk Chumley Theater, the Waldron Arts Center, the Mill and Trades District, and perhaps the Hopewell development. As such, a 501c3 structure centered with the City of Bloomington offers significant potential.

Some factors that differ between a CIB and 501c3 have been offered as recommending a CIB. We won't attempt to respond in detail to all these factors, but offer some basics:

- A CIB has statutory tort claim liability protection and a 501c3 would not, but information from individuals consulted in the insurance industry suggests that the relevant insurance coverages required for the two options do not differ substantially in cost, especially where the entity operations are properly structured.
- Annual audited fiscal review and public reporting and meeting requirements are easily incorporated into a 501c3's permanently binding governing documents.
- Board makeup and size can be more flexibly defined in a 501c3.

Note that even if a 501c3 builds and owns an expansion of the convention center, the management and daily operations can be fully integrated with the current center. Indeed, that approach seems advisable and efficient. Thus while different ownership would allow timely and efficient construction of new facilities, the operations can be unified.

The city has remained steadfast in committing its portion of the Food and Beverage tax to expand the convention center. Over the last six years the possibility of partnering with Monroe County government in creating a CIB was explored, and while some progress was made, ultimately the City and County were unable to reach agreement on the best path forward. If the City of Bloomington is to have the ability to move forward with an expanded convention center project in a timely fashion, it will need decision making ability to achieve success and efficiency. With time pressure coming from a General Assembly ready to remove the F&B tax option from those communities who have collected but not employed those funds, there is no time to continue unfruitful debate.

The path of a traditional CIB would require that the City – which will dedicate tens of millions of dollars and coordinate multiple very significant and complex downtown redevelopments – depend upon the frequent approvals of a county body that has demonstrated very different approaches, values, and vision for the convention center project. After six years of unsuccessful negotiations, this path is untenable.

A 501c3 offers advantages in flexibility and real balance among various parties. It may also offer a more successful long-term structure for a vibrant and entrepreneurial center – both in its design and construction, and in its coordination with so much happening in the downtown. We urge further discussion with relevant parties to explore this option.