

MEMO

From: Deputy Mayor Mick Renneisen
Corporate Counsel Philippa Guthrie
Controller Jeff Underwood
To: Mayor John Hamilton
Date: December 5, 2019
Re: Convention Center Expansion Project

Mayor, you have accepted the principle of "equal representation" on the planned board that would develop and operate the convention center expansion project, in order to move forward in full collaboration with county partners and the community at large. You asked that staff investigate and evaluate options to accomplish that equal representation and full collaboration, whether through a Capital Improvement Board (CIB) as established in state law, or through a charitable nonprofit organization (501(c)(3)) as defined under state and federal law, and any related interlocal or other agreements.

Several key points are important to guide this analysis:

- The equal representation agreed to thus far is for the governing body only (CIB or 501(c)(3)), which will 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.
- 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 501(c)(3) entity may be established with fully equal authority with regard to county and city responsibilities and powers.

Given the Mayor's agreement to equal representation, in order to assure fully collaborative and shared involvement and oversight, and based on these realities, certain conclusions follow.

A CIB is essentially a county body, with specific important authorities inextricably assigned, including approval of any bond sales, and particularly approval of the annual budgets of the CIB.

Even when the members of the CIB are evenly divided, the authority of and over the CIB is inextricably tied to county government in these important ways.

By contrast, a 501(c)(3) can be designed to create much more "equal representation" and management over the affairs of the entity. In particular, the 501(c)(3) 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, and of course with the financial support from the governmental entities supporting the bond issuance.

Whether a CIB or 501(c)(3) is created, the county at present retains its control over the CVC, which controls annual funds necessary to supplement the operation of the convention center.

Therefore, other things being equal, a 501(c)(3) can allow a more balanced and equal sharing of authorities between the county and city.

Some factors differ between a CIB and 501(c)(3), some of which have been identified by the county commissioners as justifying their demand for a CIB. We won't attempt to respond in detail to all these factors, but would urge that dialogue and considered discussion about the options are appropriate. Several factors are worth mentioning: a CIB does have statutory tort claim liability protection and a 501(c)(3) would not, but information from individuals consulted in the insurance industry suggests that the relevant insurance coverages required for the two options are not substantially different in cost, especially where the entity operations are properly structured. Annual fiscal review and public meeting requirements are both easily incorporated into a 501(c)(3)'s permanently binding governing documents. Board membership in terms of makeup and size can be more flexibly defined in a 501(c)(3).

In essence, the city has agreed to date to full and equal partnership in the design and building of the new expanded facility, through either a CIB or 501(c)(3) (design and building that will overwhelmingly be paid for by funds appropriated by the city). But if a traditional CIB is created, the city would be deferring very substantially to the county to oversee the ongoing operations of the expanded facility in the coming decades.

We believe a 501(c)(3) offers advantages in flexibility and real balance among various parties, and may offer a more successful long-term structure for a vibrant and entrepreneurial center. We recognize that a 501(c)(3) is a less prevalent governance structure for a publicly funded convention center. We urge discussion with relevant parties to explore this option.

We believe that if a CIB were ultimately to be preferred, several aspects of it should be required in order to create at least a somewhat more balanced ongoing structure and to protect fundamental city interests, including at least:

- The City Council should have parallel and equal fiscal oversight of the CIB, including annual budget review and approval

- The Controller for the CIB, required to be named by state statute, should be the City Controller or their designee, to help achieve balance with the inherent county preference reflected in the CVC composition and budget review
- The City should be allowed to determine without restriction how its three representatives on the CIB are designated

Between these two governance options, we urge that staff and elected officials of the county and city expeditiously explore details that are important, including any required interlocal agreements.

We also feel very strongly that a county ultimatum to accept the CIB solution in a matter of less than two days by December 6 is non-collaborative. We recommend that diligent and detailed negotiations should proceed, and believe they should produce a shared result in short order, no later than the end of the year.