

EXECUTIVE SUMMARY

Recommendation for the Tourist Development Council to approve and recommend authorization to use Tourist Development Tax from Fund 183 Beach Park Facilities for litigation expenses in support of the Administrative Petition styled Rollin Rhea, et. al. v. Collier County and Florida Department of Environmental Protection, DOAH Case No. 12-0495.

OBJECTIVE: For the Tourist Development Council (“TDC”) to approve and recommend authorization to use of Tourist Development Tax from Fund 183 Beach Park Facilities for litigation expenses in support of development of the proposed Vanderbilt Beach Restrooms.

CONSIDERATIONS: A group of Collier County residents has brought a legal challenge to Collier County’s plan to build an improved beach park facility at Vanderbilt Beach. This is an administrative procedure pending before the Division of Administrative Hearings (“DOAH”). The Petitioners are challenging the Florida Department of Environmental Protection (“FDEP”) Notice of Intent to Issue a Variance for Collier County to build its restroom structure.

Collier County needs to engage an expert witness to assist in defense of this litigation and development of the beach park facility. The County has contacted Michael Barnett, a Professional Engineer and the former Chief of the FDEP Bureau of Beaches and Coastal Systems. In addition, the County’s consultant, Michael Poff, from Coastal Engineering will also provide expert and fact testimony and assist in the litigation.

Coastal Zone Management Staff seeks approval from the TDC to fund the litigation expenses in support of the beach park facility using tourist development tax funds in Fund 183 Beach Park Facilities. The funds are currently available in this account. Use of these funds requires a finding and recommendation by the TDC that this expenditure promotes tourism. This recommendation will be forwarded to the BCC for approval.

FISCAL IMPACT: The estimated fiscal impact is not to exceed \$30,000. We anticipate each expert to spend approximately 40 hours in the course of litigation which will include preparation and attendance at depositions and at trial. Funds may also be used for document production and associated expenses and travel costs authorized by Ch. 112, Fla. Stat. for each expert or fact witness.

GROWTH MANAGEMENT IMPACT: There is no impact on the Growth Management Plan from this action.

LEGAL CONSIDERATIONS: This item has been reviewed by the County Attorney’s Office, requires majority vote by the Board, and is legally sufficient for Board action. – CMG

RECOMMENDATION: Recommendation for the Tourist Development Council to approve and recommend authorization to use Tourist Development Tax from Fund 183 Beach Park Facilities for litigation expenses in support of the Administrative Petition styled Rollin Rhea, et.

al. v. Collier County and Florida Department of Environmental Protection, DOAH Case No. 12-0495.

SUBMITTED BY: Gary McAlpin, Director, Coastal Zone Management
Colleen M. Greene, Assistant County Attorney

**OFFICE OF THE COUNTY ATTORNEY
MEMORANDUM**

TO: Scott Teach, Deputy County Attorney
FROM: Colleen M. Greene, Assistant County Attorney *cmg*
DATE: December 16, 2011
RE: **Tourist Development Tax Section 125.0104(5)(a)4, Fla. Stat.
RLS #11-CLK-00109**

Section 125.0104(5)(a)4, Fla. Stat., was amended in 1996 to specifically include the language "beach park facilities." This statutory provision authorizes the expenditure of tourist development tax funds for beach park facilities.

The tourist development tax statute provides that tourist development revenue may be used: "To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river." § 125.0104(5)(a)4, Fla. Stat.

Collier County Ordinance No. 92-60, § 3, as amended tracks the language of the statute referenced above, "to finance beach park facilities or beach improvement."

The Attorney General's Office, charged with interpreting the tourist development statute has found that "the determination whether a particular facility or project, tourist development plan or program is tourist related and furthers such primary purpose is a factual determination which must be made by the legislative and governing body of the county founded upon appropriate legislative findings and due consideration of the peculiar and prevailing local conditions and needs." (AGO 01-42 in response to a request by Collier County regarding the use of tourist development funds to purchase beach front land in Collier County.)

Beach park facility is not defined by statute, ordinance or AGO. Rather the statute specifically authorizes expenditures for beach park facilities or beach improvement. Based on AGO 01-42, the County Attorney's Office has consistently opined that the tourist development tax revenue may be used for beach park facilities with a recommendation by the TDC and a finding by the BCC that the expenditure promotes tourism.

County Attorney Office Opinions specifically related to beach park facilities:

- August 16, 2011 re: Clam Pass Park Beach Access (CMG)
- July 13, 2010 re: Beach Shuttles (HFAC)
- March 9, 2009 re: Naples City Dock (CMG)
- July 11, 2008 re: Public Parking Garage at Delnor-Wiggins State Park (CMG)
- October 15, 2003 re: Beach Access and Parking (HFA)

Based on the statute and County ordinance, the Board of County Commissioners may authorize the expenditure of tourist development tax revenue for beach park facilities. The BCC should make a finding that the use of the revenue will promote tourism, for example improved beach access and amenities.

cc: Jeffrey A. Klatzkow, County Attorney
Jack Wert, Director, Tourism

08-TDC-00029/2