

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: OCCUPANCY TAX COORDINATION

DATE: APRIL 30, 2015

COMMITTEE MEMBERS PRESENT:

SUPERVISORS KENNY
MERLINO
CONOVER
DICKINSON
FRASIER
SIMPSON
STROUGH

OTHERS PRESENT:

LEISA GRANT, PRINCIPAL ACCOUNT CLERK, TOURISM
MICHAEL R. SWAN, COUNTY TREASURER
REPRESENTING THE ADIRONDACK CIVIC CENTER COALITION
ELIZABETH MAHONEY, BOARD MEMBER
ED MOORE, BOARD MEMBER
JOEL (JACK) WALTER, MANAGER OF THE GLENS FALLS CIVIC
CENTER
KEVIN B. GERAGHTY, CHAIRMAN OF THE BOARD
MARTIN AUFFREDOU, COUNTY ATTORNEY
AMANDA ALLEN, DEPUTY CLERK OF THE BOARD
SUPERVISORS SEEBER
TAYLOR
WOOD
KATHY MUNCIL, CHIEF FINANCIAL OFFICER FOR FORT WILLIAM HENRY
FRED AUSTIN, FORT WILLIAM HENRY
KATE JOHNSON, DIRECTOR OF TOURISM
TANYA BRAND, GROUP TOUR PROMOTER
DAVID STRAINER, TOWN OF QUEENSBURY RESIDENT

Mr. Kenny called the meeting of the Occupancy Tax Coordination Committee to order at 10:01 a.m.

Motion was made by Mr. Simpson, seconded by Mrs. Frasier and carried unanimously to approve the minutes of the previous Occupancy Tax Coordination meeting, subject to correction by the Clerk of the Board.

Privilege of the floor was extended to Michael R. Swan, County Treasurer, who distributed copies of the Occupancy Tax Revenue Report to the Committee members; *a copy of the report is on file with the minutes.*

Commencing the agenda review, Mr. Swan explained this was his first attempt at restructuring the way he reported the information and welcomed feedback from the Committee. He advised that overall the County was doing well, and reflected an increase of 6.03% in occupancy tax collections compared to the same time period for 2014 collections. He informed that the total revenue for 2014 was \$3,814,804, which was a slight increase from 2013. He apprised the majority of money listed in the Expenses, with the exception of payments to Towns, had not actually been spent but had been encumbered and not yet paid out.

Mr. Strough questioned when the Towns would receive the monies, and Mr. Swan replied that the \$270,000 had already been paid to the Towns. Mr. Strough remarked that he had not been informed by his Town of Queensbury staff that these monies had been received. Mr. Swan further explained that there was another payment in the amount of \$560,000 due June 1, 2015. He apprised that this payment

would be funded from the Occupancy Tax Reserve. He explained the reason for this was due to receiving more money to distribute than had been budgeted.

Mr. Kenny questioned if the Designated Reserve of \$1,000,000 was under the new rule, and Mr. Swan replied affirmatively.

Continuing on with the agenda, members of the Adirondack Civic Center Coalition (ACCC) provided an update on activity. Elisabeth Mahoney, representing the ACCC, distributed copies of the Second Quarter 2015 Upcoming Events; *a copy of the report is on file with the minutes*. Ms. Mahoney advised that at the previous month's Committee meeting there had been a question about confidentiality regarding the information being submitted on the Performance Report, and she asked if there was a way to satisfy the request with reporting information while keeping it confidential. Mr. Conover replied that a discussion should take place with the County Administrator and County Attorney to determine what information would fall under confidentially terms and executive sessions. He stated the overall goal should be to be as forthcoming as possible.

Martin Auffredou, County Attorney, advised Ms. Mahoney to contact him, and they would review the details. He stated they would advise of a recommendation on how to proceed. Ms. Mahoney responded that the ACCC wanted to be compliant with reporting information. She stated she would supply the list of upcoming events to the Committee, and would provide the financial data to Mr. Auffredou.

Mr. Kenny asked Ms. Mahoney to provide her email address to Leisa Grant, Principal Account Clerk for the Tourism Department, in order for Ms. Grant to forward Ms. Mahoney meeting details.

Continuing on, Ms. Mahoney provided an update on activity since the last Committee meeting. She advised that Global Spectrum vacated on April 1, 2015. She informed that Global Spectrum had been helpful with providing information on where bookkeeping records were stored. She stated that they had their first real trial coming up with the Godsmack concert, scheduled for May 6, 2015. She apprised that Global Spectrum was sending two representatives to assist with various steps associated with hosting the event. She remarked that the Glens Falls Civic Center (GFCC) would receive profits for these productions with Global Spectrum no longer receiving a share.

Ms. Mahoney apprised that the month of April was relatively slow. She stated that there had been a couple of fundraisers. She informed that with hockey season having wrapped up, upcoming activity would revolve around graduations, graduation parties and family gatherings in Heritage Hall. She explained she had included this information to let the Committee know that these events have not historically been money makers for the GFCC. She stated that the Godsmack concert and Sesame Street Live event would be the two big events for the second quarter that would have associated costs for the GFCC.

Ms. Mahoney noted that while reviewing the data for the first quarter it was noticed that none of the events received any sponsorship money. She explained that the GFCC's costs could potentially be offset with sponsorship money, and this was something they would be looking to pursue. She advised that this sponsorship money had the potential to replace occupancy tax reimbursements in the future.

Ms. Mahoney informed that they would be canvassing for zip codes at the Godsmack concert as well as "heads in beds" information. She stated that volunteers would be used to collect this information.

Ms. Mahoney apprised that Mannix Marketing had been hired to update the GFCC's website. She stated that the Warren County logo would be incorporated into the updated website, and advised that all future sponsorship, advertising and marketing would include the County's emblems and logos as well as a direct link.

Ms. Mahoney apprised that she had an expense report to submit to Mr. Auffredou for Disney on Ice, New York State Public High School Athletic Association (NYSPHSAA) Boys' Section 2 Wrestling Championships and NYSPHSAA Boys' Basketball Championships. She reported that costs far exceeded the allotments they had received last quarter. She informed that the events for the upcoming quarter would exceed the allotments received from Warren County, and advised that they are using the allotments diligently to offset costs.

Mr. Conover questioned if ACCC was looking into events that would allow the GFCC to break even for the events they were holding. Ms. Mahoney explained that the ACCC had been looking into ways to minimize the cost of utilities, remarking that these costs were driving down the overall profitability of specific events. She apprised costs were reduced through sponsorship and the reduction in cost on the management side with the exit of Global Spectrum.

Edward Moore, of the ACCC, remarked that the ACCC had increased costs to rent Heritage Hall in order to ensure expenses were being covered. He said that the ACCC would need to review the costs associated with graduation ceremonies, and stressed there was a need to find a balance. Ms. Mahoney stated the ACCC's desire was to hold graduations, but they needed to be mindful of costs.

Mr. Strough asked for clarification with respect to the "Funds Needed" column on the Upcoming Events document. Ms. Mahoney apprised that the ACCC did not charge enough to pay for the cost of graduations. She stated that the totals were included to demonstrate that the events were drawing 300 to 500 people to the area. She explained that the hard costs, such as labor, setup fees, cleaning supplies, were used to project the funds needed for events such as Godsmack and Sesame Street Live. Mr. Merlino asked what the costs were for graduation ceremonies, and Ms. Mahoney replied that the costs varied. She remarked that the highest graduation cost was \$2,500. Mr. Strough questioned why the costs varied, and Ms. Mahoney responded the difference was due to the number of people attending as well as different schools having different needs for their ceremonies. Mr. Strough asked if in the future the schools would be charged the actual costs, and Ms. Mahoney stated the ACCC did not want to lose the graduations, but expressed they could not continue to lose money on these events.

Following further discussion regarding graduation costs, Ms. Mahoney stated that the next report of activity would be due April 15, 2015, and she asked if it would be helpful to submit those reports two weeks in advance for review. She commented that she would work out the particulars with Mr. Auffredou.

Mr. Auffredou remarked that the emphasis had been on getting the agreement in place and defining the reporting structure. He explained the understanding had been that the County would be as flexible and accommodating as possible to work with the reporting and funding dates, and indicated it was a work in progress. Mr. Auffredou apprised that the goal had been to get the contract in place and if there were adjustments that needed to be made to the reporting and payment provisions the County would work with the ACCC.

Ms. Grant stated she had a voucher with her and asked if the Committee wanted to approve the \$103,600 payment, or if the Committee preferred to review the information extensively first. Mr. Kenny stated it was the pleasure of the Committee.

Motion was made by Mr. Merlino and seconded by Mr. Conover to authorize the payment to the ACCC in the amount of \$103,600 and refer same to the Finance Committee.

Ms. Seeber commented the ACCC needed to be cautious when considering graduation costs. She reminded the Committee that SUNY Adirondack received funding from Warren County, and her hope was that the ACCC was looking to possibly charge neighboring entities, such as South Glens Falls and Washington County, more to hold graduation events. She stated the ACCC was receiving a contribution from Warren County, however, they were not receiving a contribution from the neighboring Counties. She advised Warren County was contributing on both ends of the scale.

Ms. Mahoney remarked that Ms. Seeber had made a good point. She apprised the ACCC was always cautious when applying the funding and stated they indicated when there was another source of funding for an event.

Mr. Walter asked the Committee if as a County they were comfortable with other entities being charged more than SUNY Adirondack and other entities that received Warren County funding. Ms. Seeber responded that the conversation had made her think that Warren County was paying on both sides.

The question was called and carried unanimously to authorize the payment to the ACCC in the amount of \$103,600.

Continuing with the agenda review, Mr. Kenny stated the next item was a request to transfer \$68,702 from the Occupancy Tax Reserve for the final distribution of the 2014 Occupancy Tax collections to other municipalities. Mr. Kenny asked Mr. Swan if this would continue under the new system, and Mr. Swan replied affirmatively.

Motion was made by Mr. Merlino, seconded by Mr. Simpson and carried unanimously to authorize the transfer of funds and refer same to the Finance Committee. *A copy of the resolution request form is on file with the minutes.*

Mr. Kenny apprised the next agenda item was revisiting the issue regarding collection of Occupancy Taxes from Online Travel Companies.

Mr. Auffredou advised that a Local Law had been drafted in 2013 to capture the occupancy tax collected by room remarketers', such as Orbitz, Hotwire, Expedia, etc. He explained these companies acquired hotel rooms and sold them at a particular rate, and the belief was they were not paying the occupancy tax on the difference between their purchase amount and the rate that they sold the rooms. He expounded that in 2013, following Saratoga County's lead, Warren County drafted a local law to collect occupancy taxes from room remarketers. He apprised that the estimated amount of occupancy taxes that would be collected was between \$20,000 and \$30,000. Mr. Swan responded that based on Saratoga County's figures the amount collected would be less than those projections. Mr. Auffredou stated that in 2013 he recommended that Warren County place the Local Law on hold pending the decision of a lawsuit in the Nassau County Supreme Court. He informed that Nassau County had commenced a lawsuit against the room remarketers regarding the occupancy tax issue. He said that Nassau County had adopted a similar Local Law and had sought to certify a class of plaintiffs, including Warren County and Saratoga County, with all benefitting from the outcome of the lawsuit. He apprised that the lawsuit had been protracted, and he advised he had received notice earlier in April that the New York State Second Department Appellate Division had ruled that the class action could not go forward. He explained this meant Warren County would not benefit from the lawsuit because it would not be a member of the class. He stated the merits of the lawsuit were proceeding forward.

Mr. Auffredou explained it was time to revisit the issue. He advised that a Local Law would be necessary to amend the Warren County Tax Law in order to seek recovery of the occupancy taxes from the room remarketers. He expounded that the Local Law would include the definition of room marketer from the 2010 amendment to New York State Tax Law that defined room remarketers, such as Expedia, Orbitz, etc., as operators for the purpose of hotel use sales occupancy tax. He explained enacting the Local Law would give Warren County the ability to seek to charge the room remarketers for occupancy tax on the difference. He advised it was his belief that Warren County could not collect this tax if there was not a Local Law in place. He asked the Committee to review the draft of Proposed Local Law No. 5 of 2015 "A Local Law Amending the Warren County Occupancy Tax As Authorized By Act of the New York State Legislature (Chapter 422 of the Laws of 2003)" and present questions for further discussion at the next Occupancy Tax Coordination Committee meeting. He said he was not asking that the draft of the proposed Local Law be scheduled for public hearing at the June 19, 2015 Board meeting.

Mr. Kenny commented that this was a growing market, and he had compiled a list of 15 room remarketers. He stated that it was troubling to think Warren County was not getting their fair share of occupancy taxes from these entities.

Kathy Muncil, Chief Operating Officer of Fort William Henry, stated she was the Vice Chair of New York State Hospitality and Tourism, and advised the American Hotel and Lodging Association had included this issue on their agenda to enact at the Federal level. She informed that all of the room remarketers were collecting the occupancy taxes and kept it. She stated New York State received the sales taxes, but not the occupancy taxes.

Mr. Taylor asked why Warren County would not seek to recover the sales taxes, and Mr. Auffredou advised that Warren County should be. Mr. Auffredou stated it was going to be a major effort to collect

these sums from these entities. He explained there needed to be discussions to understand the impact to the Treasurer's Office and what burdens they would incur to recover these fees.

Mr. Kenny advised the discussion regarding the proposed Local Law would continue at the next Committee meeting.

Mr. Dickinson informed the Committee that Robert Blais, Mayor of the Village of Lake George, had signed Artho Guthrie to perform at the Festival Space at Charles R. Wood Park. He stated that there was limited space at the Park, and it had never been considered to bring in big name acts. He apprised that discussions had taken place to sign the Steve Miller Band to perform, but due to space limitations it would not be possible.

Mr. Kenny presented a request he received from Mayor Blais for funding in the amount of \$6,000 for the Arlo Guthrie concert to be paid from the Tourism Special Event Discretionary Fund.

Motion was made by Mr. Dickinson, seconded by Mr. Merlino and carried unanimously to authorize the payment as outlined above, and the necessary resolution was authorized for the May 15, 2015 Board meeting. *A copy of the resolution form is on file with the minutes.*

There being no further business to come before the Occupancy Tax Coordination Committee, on motion made by Mr. Simpson and seconded by Mr. Dickinson, Mr. Kenny adjourned the meeting at 10:45 a.m.

Respectfully submitted,
Samantha Hogan, Secretary to the Clerk of the Board
As typed by Jodi Centerbar, Legislative Office Specialist