

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS 171 2019 MAY -7 P 3:12

CURRITUCK COUNTY, C.S.C.
BY lw

GERALD COSTANZO, BRYAN DAGGETT,)
JOHN DUMBLETON, PHILIP SCHNEIDER,)
CLARA SCHNEIDER, MARGARET BINNS,)
MOHAN NADKARNI, GREGORY A. WANDER,)
RONALD BUCHANAN, STACEY)
MCCONNELL, GARY S. MILLER, JEFFREY)
P. FUSSNER, WILLIAM T. COLLINS, REX)
LUZADER, ELIZABETH SCHWEPPE,)
GERRILEA ADAMS, RICHARD J. CHOWN,)
PATRICIA C. CHOWN, GARY)
GOSNELL, MARY MAGNER, MICHAEL C.)
BRIGATI, ROBERT RICHARDSON,)
MARYANN DUMBLETON, and)
COROLLA CIVIC ASSOCIATION,)

Plaintiffs,)

v.)

CURRITUCK COUNTY, NORTH)
CAROLINA; THE CURRITUCK COUNTY)
TOURISM DEVELOPMENT AUTHORITY;)
THE CURRITUCK COUNTY BOARD OF)
COMMISSIONERS; and DANIEL F.)
SCANLON II, CURRITUCK)
COUNTY MANAGER and BUDGET OFFICER,)
both in his official capacity and in his individual)
capacity.)

Defendants.)

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs file this action against Defendants and allege and say:

NATURE OF ACTION

1. This is an action for declaratory and injunctive relief pursuant to the North Carolina Declaratory Judgment Act.

2. In addition, it is a direct claim under the North Carolina Constitution as specifically permitted under decisions of the North Carolina Supreme Court.

3. Counties in North Carolina possess no inherent authority to levy taxes. Instead, a county may impose a tax only as specifically authorized by an act of the North Carolina General Assembly. (*See* N.C. Gen. Stat. §153A-146(a).)

4. The North Carolina General Assembly has authorized Currituck County (hereinafter the “County”) to impose an occupancy tax but has imposed restrictions on the use of the tax revenue.

5. Occupancy taxes in the County, as in most counties, cannot be treated or expended as general fund revenue. N.C. Sess. Law 2004-95, as amended (herein referred to as the “Act”), § 2. Attached hereto as Exhibit A is a copy of the cited Session Law.

6. Rather, occupancy taxes may be expended by the County only for the purposes expressly permitted by the Act. *Id.*

7. Prior to the filing of this lawsuit, Plaintiffs have formally objected to the manner in which occupancy taxes are being expended by the County, specifically that the tax levies were – and continue to be – improperly and unlawfully diverted to purposes other than those permitted by the Act.

8. The County has not adequately responded to the Plaintiffs’ concerns and continues to spend occupancy tax revenues in an improper and unlawful manner.

9. Plaintiffs therefore file this action seeking a declaration that various transfers and expenditures of the County’s occupancy tax proceeds constitute an illegal diversion of public funds because they are disbursed for purposes not permitted under the law.

10. Plaintiffs also seek the restoration by the County of certain occupancy taxes illegally diverted to improper purposes.

11. Plaintiffs further seek injunctive relief to prevent the future unlawful diversion of public funds by the County.

12. Finally, Plaintiffs seek a construction of the Act, pursuant to § 1-254 of the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253 *et seq.* (the “Declaratory Judgment Act”), concerning whether certain types of expenditures that have been appropriated by the County from occupancy tax proceeds qualify as permissible “tourism-related expenditures” under § 2 of the Act, and request that the Court impose certain standards that should apply to an authorization of such expenditures.

13. An actual, justiciable controversy exists between Plaintiffs and Defendants because Defendants’ actions have interfered with Plaintiffs’ legal rights as set forth herein and the Plaintiffs and the County have been engaged in an ongoing dispute concerning the “tourism-related expenditures” that are authorized under the Act.

14. The portion of the County that is located in the Outer Banks (herein referred to as the “COBX” or the “Beach”), which is separated by the Currituck Sound from the mainland portion of the County (herein referred to as the “Mainland”), is responsible for generating over 99% of the County’s occupancy tax revenues. The COBX has over 20,000 rental bedrooms in 4,000 private homes that are rented to tourists, primarily in the Summer season, in addition to several hotels and inns, with a total of 200 rooms. The Mainland has approximately 40 rental rooms in several motels and inns and a few hundred rental campsites and RV hookups. The individual Plaintiffs all own (or have owned during periods relevant to the allegations in this Complaint)

properties in COBX that generate occupancy tax revenues.

15. Section 1.1(c) of the Act provides that the Defendant Currituck County Tourism Development Authority (the “TDA” or “Authority”) “shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.” Section 1(e) authorizes use of occupancy tax revenues levied (1) under subsection 1(a) “only for tourism-related expenditures, including beach nourishment” and (2) under subsections 1(a1) and (a2) “to promote travel and tourism,” and “shall use the remainder of those funds “for tourism-related expenditures.” The term “tourism-related expenditures” (hereinafter referred to as “TRE”) is defined in § 1(e)(4) as follows:

“Expenditures that, in the judgment of the Currituck County Board of Commissioners, are designed to increase the use of lodging facilities, meeting facilities, recreational facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures and beach nourishment.”

PARTIES

16. Plaintiffs Gerald Costanzo, John Dumbleton, Bryan Daggett, Philip Schneider, Clara Schneider, Margaret Binns, Mohan Nadkarni, Gregory A. Wander, Ronald Buchanan, Stacey McConnell, Gary S. Miller, Jeffrey P. Fussner, William T. Collins, Rex Luzader, Elizabeth Schweppe, Gerrilea Adams, Richard J. Chown, Patricia C. Chown, Gary Gosnell, Mary Magner, Michael C. Brigati, Robert Richardson, and Maryann Dumbleton are and/or were

at all material times related to the allegations in this Complaint owners of real property located in the County, and rent accommodations located in the County. Pursuant to N.C. Gen. Stat. § 153A-155(c), each Plaintiff is required to collect and remit the County occupancy taxes levied on him or her by the County. Each Plaintiff has collected and remitted occupancy tax to the County and is therefore a taxpayer.

17. Plaintiff Corolla Civic Association (“Association” or “CCA”) is a nonprofit corporation duly organized and existing under the laws of the State of North Carolina with a principal place of business in Currituck County, North Carolina. Its members include individuals who rent accommodations located in the County and are therefore required pursuant to N.C. Gen. Stat. § 153A-155(c) to collect and remit the County occupancy taxes levied on them by the County. These individuals have collected and remitted occupancy tax to the County and are therefore taxpayers. The Association files this action and seeks declaratory and injunctive relief on behalf of its members who are payers of occupancy taxes. The interests the Association seeks to protect by filing this action are germane to its purpose.

18. Defendant Currituck County, North Carolina (hereinafter “County”) is a body politic and body corporate organized and existing under the laws of the State of North Carolina.

19. Defendant Currituck County Board of Commissioners (hereinafter “Board” or “Commissioners”) is the board of commissioners exercising the powers and functions of the County under the Constitution and the laws of the State of North Carolina. The Board consists of seven Commissioners.

20. Defendant Tourism Development Authority (hereinafter “TDA” or “Authority”) is a public authority organized and existing under the laws of the state of North Carolina. The

voting members of the Authority are the seven Commissioners who serve on the Defendant Currituck County Board of Commissioners.

21. Defendant Daniel F. Scanlon II is the County Manager and the statutory Budget Officer of the County. Defendant Scanlon has served in these roles since 2001. He is being sued both in his official capacity and in his individual capacity.

JURISDICTION AND VENUE

22. The Court has subject matter jurisdiction over this action and personal jurisdiction over the parties named herein.

23. The Court has subject matter jurisdiction over this action pursuant to the Declaratory Judgment Act and the North Carolina Constitution.

24. The individual Plaintiffs are County “taxpayers” who pay (or have paid during periods relevant to the allegations in this Complaint) occupancy taxes and property taxes and have standing to maintain this action.

25. A taxpayer has standing to bring an action against appropriate governmental officials for the alleged misuse or misappropriation of public funds.

26. Specifically, the Plaintiff taxpayers have standing to seek equitable relief and a declaratory judgment when alleging government officials violated statutory or constitutional provisions by diverting tax levies appropriated for one purpose but disbursed for another. (*See Goldston v. State*, 361 N.C. 26, 637 S.E.2d 876 (2006).)

27. Upon information and belief, the County has purchased insurance which, by statute, amounts to a waiver of the defense of sovereign and/or governmental immunity as to the Defendants named in this action.

28. For purposes of the Declaratory Judgment Act, an actual, genuine, existing and justiciable controversy exists between the parties. Exhibit B hereto provides a list of communications between the County and CCA on behalf of its taxpayer members that evidence this ongoing controversy concerning the “tourism-related expenditures” that are authorized under the Act. Specifically, Plaintiffs and Defendants dispute whether various transfers and expenditures of occupancy tax proceeds are lawful under the Act that authorizes the County to levy the tax and restricts the purposes for which it may legitimately be used.

29. A claim of unlawful diversion of funds derived from taxes paid by Plaintiffs and others similarly situated is an actual controversy between the parties.

30. Plaintiffs also bring a direct claim under the North Carolina Constitution. Direct claims under the North Carolina Constitution are allowed when a litigant possesses no adequate remedy at state law.

31. Claims brought directly under the North Carolina Constitution are not susceptible to an immunity defense. Neither sovereign immunity nor the more limited governmental immunity applies in this action.

32. Venue is proper under either or both N.C. Gen. Stat. §§ 1-77 and 1-82.

FACTUAL ALLEGATIONS

LEGISLATIVE HISTORY OF OCCUPANCY TAX

33. In 1987, the North Carolina General Assembly authorized the County to levy a 3% occupancy tax. The initial authorizing legislation required that at least 75% of the net proceeds of the tax be used “only for tourist related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection and emergency services.” *See* N.C. Sess. Law 1987-209, §1(e). The remainder was to be deposited in the County General Fund and could be used “for any lawful purpose.” *Id.*

34. In 1991, the General Assembly authorized the County to levy an additional 1% occupancy tax to be used, to the extent needed, in connection with the Currituck Wildlife Museum. *See* N.C. Sess. Law 1991-155, § 1.

35. In 1999, the General Assembly amended the aforesaid enabling statutes to conform to the uniform provisions for occupancy taxes in N.C. Gen. Stat. § 153A-155. *See* N.C. Sess. Law 1999-155.

36. In 2004, the General Assembly enacted legislation with the title “TO ALLOW AN INCREASE IN THE CURRITUCK COUNTY OCCUPANCY TAX AND TO CHANGE THE PURPOSES FOR WHICH THE TAX MAY BE USED.” *See* N.C. Sess. Law 2004-95. The legislation became effective on July 13, 2004. *See* N.C. Sess. Law 2004-95, § 4. This legislation, including certain subsequent amendments that are not material to this action, remains in effect and is referred to herein as the “Act.” (Attached hereto as Exhibit A)

37. In adopting the above-referenced 2004 legislation, the legislature authorized the County to levy an additional 2% occupancy tax, raising the total pertinent tax rate to 6%. *See* N.C. Sess. Law 2004-95 § 1.

38. In addition, the legislature changed the purposes for which the tax could be used. Under the enabling legislation that is currently in effect, there are only two allowed uses: two-thirds of the net proceeds of the 6% tax must be used for “tourism-related expenditures, including beach nourishment.” The remaining one-third must be used “to promote travel and tourism.” *See* N.C. Sess. Law 2004-95, § 2.

39. The Act defines “[p]romote travel and tourism” as: “To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.” *Id.*

40. The Act defines “[t]ourism-related expenditures” as: “Expenditures that, in the judgment of the County Board of Commissioners, are designed to increase the use of lodging facilities, meeting facilities, recreational facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures and beach nourishment.” *Id.*

41. The Act defines “[n]et proceeds” as gross proceeds less the cost of administration and collection, which cannot exceed certain thresholds. *Id.*

42. Paramount to the Plaintiffs’ claims herein, the 2004 amendments eliminated from the original Act the term “tourist related purposes” which, as previously explained, had been defined to include “construction and maintenance of public facilities and buildings, garbage,

refuse, and solid waste collection and disposal, police protection and emergency services.” *Id.* They also removed the authority of the County to deposit any of the net proceeds of the occupancy tax in the County General Fund to be used for any lawful purpose. *Id.*

43. Further, the 2004 amendments required the County to create the TDA, a public authority under the Local Budget and Fiscal Control Act. *See* N.C. Sess. Law 2004-95, § 3. The Authority was initially comprised of six members: five County Commissioners, who were the voting members, and one nonvoting member. *Id.* In 2008, the membership of the Authority was increased to eight members: seven voting County Commissioners and one nonvoting member. *See* N.C. Sess. Law 2008-54, § 1.

44. The Authority is responsible for expending the net proceeds of the occupancy tax in accordance with the purposes authorized by the Act. *See* N.C. Sess. Law 2004-95, § 3. The Authority is required to provide quarterly and annual reports to the Board of County Commissioners regarding its receipts and expenditures. *Id.*

45. In January 2018, CCA served on the County pursuant to the Public Records Act a demand for production of all “quarterly and annual reports required to be provided by the Authority to the Board” from the beginning of the 2010 Fiscal Year through 12/31/17. At the time of filing of this Complaint, none of those reports were produced by the County in response to CCA’s demand.

46. In September 2005, the Commissioners raised the occupancy tax rate in accordance with the 2004 amendments to the Act.

47. Audit reports indicate that from 2005 until 2008 the County continued to use the General Fund as the sole repository for all occupancy tax revenues.

48. In 2007, a bill was introduced that would have restored the ability of the County to use at least 75% of the net proceeds of the occupancy tax for “tourist-related purposes, including construction and maintenance of public facilities and buildings; garbage, refuse, and solid waste collection and disposal, police protection, and emergency services.” The proposed legislation also would have restored the ability of the County to deposit the remainder of the net proceeds in the County’s General Fund to be used for “any lawful purpose.” See House Bill 1102, § 1. However, this bill was not passed by the legislature and failed to become law.

49. The County imposes an occupancy tax pursuant to the Act and has done so since May 18, 1987. The County’s occupancy tax revenues ranked fifth in the State among counties collecting the tax in 2016. (See “*Profile of North Carolina Occupancy Taxes and Their Allocation (2017 Update)*”, known as the “*Magellan Report*”).

OCCUPANCY TAX RECEIPTS

50. The County’s fiscal year extends from July 1 through June 30 of the following year. The County’s occupancy tax receipts for each year from June 30, 2005 through the projected fiscal year ending June 30, 2019 are \$141,332,576. Except as otherwise noted, all figures in this Complaint through Fiscal Year 2018 are derived directly from the County’s audited financial statements, and all figures herein for Fiscal Year 2019 are derived directly from the County’s published Budget and approved 2019 budget amendments for the fiscal year ending on June 30, 2019.

51. The aforesaid receipts are shown on Table 1 as set forth on attached Exhibit C to this Complaint.

FIRST CLAIM FOR RELIEF

DECLARATORY JUDGMENT

**(Unlawful Transfer of Occupancy Tax Proceeds From the TDA Fund to the County's
General Funds)**

52. The allegations set forth in paragraphs 1 through 61 are realleged and incorporated by reference as if fully set forth.

53. As noted above, the 2004 amendments to the Act deleted the language in the prior statute that allowed occupancy tax revenues to be transferred to the County's General Fund. Nevertheless, since 2005 into the present, the County has disregarded this prohibition. In fact, until 2009, when the Tourism Development Authority Fund (the "TDA Fund") was created, the audited financial reports show that the County elected to continue depositing all occupancy tax revenues into, and disbursing them from, the County's General Fund. Tables 1 and 2 as set forth on Exhibit C attached hereto show transfers of occupancy tax revenues to the General Fund and other general County funds, commencing in Fiscal Year 2005 through Fiscal Year 2018, totaling \$72,449,202. Tables 1 and 2 include transfers of occupancy tax revenues for a variety of purposes not authorized by the Statute: Public Safety services and equipment (Sheriff and Emergency Medical Services), Economic Development, Service District Subsidies, Loans to Other County Funds, Mainland Parks & Recreation facilities, and Mainland Historic facilities.

54. Tables 3 through 7 as set forth on attached Exhibit C show the County's line item descriptions of each individual disbursement. The County frequently does not identify the specific use of large amounts of occupancy tax proceeds that have been transferred to the General Fund or other general County funds. As a result, the ultimate use of those funds, in

many cases, is not disclosed to the public, which is in complete contravention of the purposes of the Act.

55. Plaintiffs request the Court to construe the Act by ruling that the County's transfers of occupancy tax proceeds from the TDA Fund to the County's general funds are improper and unlawful under the Act.

SECOND CLAIM FOR RELIEF

DECLARATORY JUDGMENT

(Unlawful Use of Occupancy Tax Proceeds For Public Safety Services and Equipment in Violation of the Act)

56. The allegations set forth in paragraphs 1 through 65 are realleged and incorporated by reference as if fully set forth.

57. Prior to the 2004 amendments to the Act, the County was specifically authorized to deposit "the remainder of the net proceeds of the [occupancy] tax . . . in the County General Fund." N.C. Sess. Law 1987-209, § 1(e).

58. The prior statute then in effect further stated that amounts of occupancy tax proceeds deposited in the General Fund "may be used for any lawful purpose." *Id.*

59. In addition, prior to the 2004 amendments, the County was specifically authorized to expend occupancy tax revenues for "police protection and emergency services." *Id.*

60. In 2004, however, the North Carolina General Assembly enacted legislation with the title "TO CHANGE THE PURPOSES FOR WHICH THE TAX MAY BE USED". *See* N.C. Sess. Law 2004-9. The Supreme Court has held: "We have previously held that even when the

language of a statute is plain, the title of an act should be considered in ascertaining the intent of the legislature.” See *Ray v. NC Dep’t of Transp.*, 366 N.C. 218, 727 S.E.2d 675 (2012).

61. By way of the 2004 amendments to the Act, the General Assembly removed the authority of the County to transfer any occupancy taxes into the County General Fund. *Id.* at § 2. The General Assembly also eliminated the authority of the County to use the occupancy tax “for any lawful purpose.” *Id.*

72. Further, pursuant to the 2004 amendments, the General Assembly changed the purposes for which the occupancy tax were allowed to be used. Among other changes, it specifically eliminated “police protection and emergency services” as authorized expenditures, which had been permitted by the prior statute. *Id.*

73. Since 2004, the County has made numerous and substantial expenditures of occupancy tax proceeds for purposes not authorized under the 2004 amendments to the Act, specifically including but not limited to expenditures for public safety services and equipment.

74. The County’s audited financial statements for each year identify the amounts of the County’s expenditures from occupancy tax proceeds transferred to the General Fund for what the County terms *seasonal* safety services during the “tourist season” in COBX. These services include, but are not limited to, police and EMS services and equipment and, in the case of Fiscal Year 2018, include the costs of services and equipment for the startup of a new Fire Service District (hereinafter “public safety services and equipment”). The County has never defined for the public what period of a fiscal year the County considers to be covered by the term “tourist season”. Further, the County does not distinguish the *incremental* costs of “seasonal” costs paid from occupancy tax proceeds from the normal public safety coverage costs during the “season”

that are paid by property tax for the almost 5,000 homes and businesses, their owners and full time County residents in the area.

75. Tables 2 and 3 as set forth on attached Exhibit C show the expenditures of occupancy tax proceeds for public safety services and equipment commencing in Fiscal Year 2005 through Fiscal Year 2018, totaling \$23,616,396.

76. Given the foregoing, the Plaintiffs allege that the 2004 amendments prohibited the use of occupancy tax proceeds for public safety services and equipment. Further, the Plaintiffs contend that the County is not authorized to classify public safety in COBX as a “tourism-related expenditure” under § 1(e)(4) of the Act, in an effort to have those expenditures comply with the Act. If a county in North Carolina chooses to offer public safety as a service, such service is provided to County residents and visitors alike and, as is the case in Currituck County, is normally funded by ad valorem property taxes. Expenditures to provide public safety services cannot reasonably be construed under § 1(e)(4) as being “designed to increase the use of” certain “facilities” in the County “by attracting tourists,” when considering the inherent nature of the features and benefits associated with these services.

77. Plaintiffs request the Court to construe the Act by ruling that the County’s expenditures for public safety services, including police, emergency medical and fire services and equipment, are improper and unlawful under the Act.

THIRD CLAIM FOR RELIEF

DECLARATORY JUDGMENT

(Unlawful Use of Occupancy Tax Proceeds for General Economic Development

Department Activities and Airport Capital Improvements in Violation of the Act)

78. The allegations set forth in paragraphs 1 through 77 are realleged and incorporated by reference as if fully set forth.

79. The Plaintiffs challenge as unlawful the occupancy tax funding of the general, non-promotional operations and activities of the County's Economic Development Department ("EDD"), including capital improvements at the County Airport. The Plaintiffs do not challenge occupancy tax appropriations to EDD for *promotional* expenses. However, they do challenge the appropriation of occupancy tax proceeds to pay for EDD *operations* and other activities that do not constitute "tourism-related expenditures" ("TRE") under the Act. As noted above, "TRE" is defined in § 1(e)(4) of the Act as expenditures judged by the Commissioners to be "designed to increase the use of lodging facilities, meeting facilities, recreational facilities, and convention facilities in a county by attracting tourists or business travelers to the county."

80. Tables 2 and 4 as set forth on attached Exhibit C show the amounts of occupancy tax proceeds that have been appropriated (or budgeted, in the case of Fiscal Year, 2019) as TRE for EDD non-promotional operations and other activities, including capital improvements at the County Airport, for the relevant Fiscal Years. These also include at least one payment for design services for the County's next big economic development initiative, Currituck Station, formerly known as the Moyock Mega-Site.

81. The above-referenced tables show that since Fiscal Year 2005, \$6,080,028 has been appropriated to EDD from occupancy tax revenues for various purposes. In most cases, the purpose is described only as for “Operations,” the “General Fund for Economic Development,” or “the Airport,” without any further explanation. As part of this, over \$3 million has been appropriated to a project called “Maple Commerce Park.” In addition, audit reports and TDA minutes indicate that as of September of 2018, \$186,610 has been appropriated to EDD for capital improvement projects at the County Airport (including repaving runways and replacing a security gate). Each of these appropriations will be addressed in detail below.

82. First, as to general operations expenses, the County describes on its website the EDD’s role as “supporting the expansion of existing businesses . . . [and] recruiting new industries.” However, the Director of the EDD reported at a CCA Members’ Meeting in June 2017 that “80%” of the new business that EDD attracts “comes from *within* the County.” Plaintiffs can understand how EDD might spend occupancy tax funds to *promote* the County to non-residents as a desirable place to locate their business. However, Plaintiffs allege that, on their face, EDD expenditures for its general operations and activities (as distinguished from promotions) could not, as a matter of law, reasonably be considered TRE when taking into account the legal restrictions incumbent upon those expenditures.

83. Secondly, Plaintiffs allege that the County’s use of occupancy tax proceeds to construct the infrastructure at the Maple Commerce Park could not qualify as TRE under the Act. This Park is described in the EDD website as a commercial park that “is designed to attract a variety of businesses. The area currently is zoned for heavy manufacturing (HM) to allow for a multitude of uses to suit any business’ needs. All of the expected amenities come standard with

these new parcels. Full-service utilities including stormwater management, natural gas, sewer and water are in place, with custom-fit Dominion Energy and CenturyLink broadband service up to 10 gigs.” Plaintiffs allege that the costs of infrastructure improvements on County-owned land to create this commerce park could not reasonably qualify as TRE, given these expenditures were made in an effort to entice business owners to locate their operations at the Commerce Park, as opposed to increasing “the use of lodging facilities, meeting facilities, recreational facilities, and convention facilities” in the County within the meaning of the Act.

84. Finally, Plaintiffs contend that expenditures for infrastructure costs and capital improvements at the County Airport cannot reasonably be deemed to qualify as TRE under the Act. The Plaintiffs contend that the County has apparently misinterpreted the definition of the Act’s term “TRE” by concluding that such expenditures fall within the purview of TRE under the Act based on speculation that some number of business travelers may pass through the Airport in order to do business in the County. Such an interpretation disregards the language of the definition that requires that TRE be “designed to increase the use of” the specified types of *facilities*, consisting of “lodging facilities, meeting facilities, recreational facilities, and convention facilities.”

85. Section 1.1(c) of the Act indicates that business travelers making routine trips to the County through the Airport should not necessarily be considered to be the types of County visitors that are considered to be “increasing the use of” the designated “facilities” in the “TRE” definition. Section 1.1(c) provides: “The Authority [referring to the TDA] shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities of the county, and finance tourist-related capital projects in the county.” (Emphasis added.) Therefore,

a business person's trip through the Airport would not meet the statutory test unless that person's ultimate destination were known to be a convention or particular meeting facility. Thus, Plaintiffs allege that there can be no plausible rationale that would allow occupancy tax funding of Airport capital improvements.

86. Plaintiffs request the Court to construe the Act by ruling that the expenditure of occupancy tax proceeds for EDD general, non-promotional operations and activities, including capital improvements at the County Airport, are improper and unlawful under the Act.

FOURTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT

(Unlawful Use of Occupancy Tax Proceeds for Two Ongoing County Projects That Do Not Qualify as TRE and are in Violation of the Act)

87. The allegations set forth in paragraphs 1 through 86 are realleged and incorporated by reference as if fully set forth.

88. This Fourth Claim for Relief challenges two ongoing County projects that are being funded by occupancy tax proceeds and do not qualify as TRE under the Act – (A) a building called the “Old Jail” and (B) a park called “Veterans Park.” These are examples of projects that use occupancy tax TRE proceeds to improve and expand Mainland Parks and Recreation Facilities and Historic Buildings as shown on Tables 1, 5, and 6 as set forth on attached Exhibit B.

(A) The “Old Jail.”

89. Plaintiffs challenge as illegitimate under the Act the ongoing funding of the restoration of a structure that the County refers to as the “Old Jail.” This is a small, dilapidated red-brick building that was formerly a jail. It is located in the center of the Mainland, immediately next to the “Historic” County Courthouse, which serves as part of the County’s administrative complex. The County Manager stated at the April 2, 2018 Board Meeting that the County’s Fiscal Year 2019 budget provides for TRE of \$100,000 for this project. The TDA had previously set aside \$480,605 in the TDA Fund for this project, according to the minutes of its October 17, 2016 meeting. In August 6, 2018, the TDA approved a \$92,806.00 budget amendment for the project. The County Manager also stated at the April 2, 2018 Board Meeting that *any* “historical” project is a legitimate TRE project, simply because it is historical, and Plaintiffs allege that the County has funded other questionable projects with occupancy tax proceeds under this interpretation.

90. Plaintiffs allege that the small “Old Jail” building is unlikely to attract any appreciable number of tourists. It is located in an area of the County that is not commonly frequented by tourists, and where there are no appreciable local tourist amenities, such as lodging, restaurants, shopping or other tourist attractions. In addition, its cost (at least \$670,000, and likely more before it is completed) is disproportionate to any tourist revenues that could possibly be generated at or in the vicinity of its location.

91. Plaintiffs request the Court to construe the Act by ruling that expenditures of occupancy tax proceeds for restoration of the “Old Jail” are improper and unlawful under the Act.

92. Plaintiffs further request the Court to construe the Act by ruling that projects that are characterized as “historical” do not *per se* qualify for “TRE” funding under the Act unless they satisfy the standards set forth in the Plaintiff’s *Eleventh Claim For Relief*.

(B) Veterans Park.

93. Plaintiffs challenge as illegitimate under the Act the ongoing funding with occupancy tax proceeds of a project known as “Veterans Park.” Plaintiffs claim that the County has typically deemed projects designated as “parks” (particularly if they have playgrounds or recreational facilities) to be tourist attractions and eligible for funding as TRE, regardless of their location, even though many are actually neighborhood parks that are used almost exclusively by County residents.

94. Plaintiffs contend that Veterans Park represents one of the County’s most abusive expenditures of occupancy tax proceeds, in relation to the proportion of its cost to its tourist value. The County’s audited financial statements for Fiscal Year 2018 indicate that the project was then projected to cost \$698,617. It is located in a remote area that is difficult to find, with no appreciable nearby tourist attractions or amenities. The County’s Recreation and Parks website described the project as follows:

“Veterans Memorial park 5.7 Acres -- This park, located on the Intracoastal Waterway, offers a fishing dock and water access combined with a civic memorial to honor the County’s veterans. A picnic shelter and horseshoe pits offer family recreation activities.

Existing facilities include: (1) Fishing Dock (1) Picnic Shelter (3)

Horseshoe Pits - Water Access.”

95. Consequently, Plaintiffs request the Court to construe the Act by ruling that expenditures of occupancy tax proceeds for construction of Veterans Park do not qualify as TRE and are in violation of the Act.

96. Plaintiffs further request the Court to construe the Act by ruling that projects that are characterized as “parks” do not *per se* qualify for TRE funding under the Act unless they satisfy the standards set forth in the Plaintiffs’ *Eleventh Claim For Relief*.

FIFTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT

(Unlawful Use of Occupancy Tax Proceeds in Making Loans in Violation of the Act)

97. The allegations set forth in paragraphs 1 through 96 are realleged and incorporated by reference as if fully set forth.

98. The County’s audited financial statements for Fiscal Year 2012 reveal that the County loaned \$5.7 million of occupancy tax proceeds to the Southern Outer Banks Water System (“SOBWS”) in order to aid in financing the construction of a water treatment facility in COBX. (See Tables 1 and 7 as set forth on attached Exhibit C.)

99. Plaintiffs allege that loans of occupancy tax proceeds are not permitted by the Act, which provides that such proceeds must be used solely for *expenditures* which further the promotion of tourism or amount to a tourist-related expenditure. The aforesaid treatment facility

amounts to a utility that does not increase the use of facilities by tourists and business travelers, nor promote tourism in any way.

100. Further, North Carolina law provides no authority under which a county is entitled to make a *loan* of occupancy tax proceeds, regardless of the purposes of that loan.

101. Wherefore, Plaintiffs request the Court to construe the Act to rule that loans of occupancy tax proceeds are improper and unlawful under the Act. In the alternative, Plaintiffs request that the Court construe the Act by ruling that the above-referenced loan does not qualify as a TRE, making it improper and unlawful under the Act.

SIXTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT

(Unlawful Use of Occupancy Tax Proceeds To Fund Special Service Districts in Violation of the Act)

102. The allegations set forth in paragraphs 1 through 101 are realleged and incorporated by reference as if fully set forth.

103. N.C. Gen. Stat. § 153A-300 et. seq. authorizes counties to provide special services to certain areas in a county in return for an increase in the property tax rate for those areas. The local property owners benefiting from the extra services pay the extra tax. However, in several instances the County has used occupancy tax proceeds to offset special service district costs in lieu of taxing property owners in that district as mandated by North Carolina law.

104. The Plaintiffs challenge as unlawful such uses of occupancy tax proceeds. Four examples include (i) more than \$300,000 in a Road Maintenance District in Carova, (ii) \$40,000 for a fire hydrant in a Water Service District in Grandy, (iii) \$485,863 for the startup costs of the

new Corolla Fire Service District, and (iv) the loan to SOBWS referred to above in Plaintiffs' *Fifth Claim for Relief*. (See Tables 1 and 7 as set forth on attached Exhibit C.)

105. Plaintiffs allege that such uses of occupancy tax proceeds are clearly not permitted by the Act, which provides that such proceeds may be used *only* for TRE and tourist promotion.

106. Consequently, Plaintiffs request the Court to construe the Act by ruling that the use of occupancy tax proceeds to fund special service districts is improper and unlawful under the Act.

SEVENTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT

(Unlawful Use of Occupancy Tax Proceeds Pursuant to N.C. Gen. Stat. § 159-13(b)(4))

107. The allegations set forth in paragraphs 1 through 106 are realleged and incorporated by reference as if fully set forth.

108. N.C. Gen. Stat. § 159-13(b)(4) states: "No appropriation may be made that would require . . . expenditures of revenue for purposes not permitted by law."

109. Plaintiffs request the Court to rule that the expenditures from occupancy tax proceeds for those purposes named above in Plaintiffs' Complaint, including but not limited to funding public safety services, funding County-issued loans, and funding special tax districts, violate G.S. 159-13(b)(4) for the same reason those uses violate the 2004 amendments to the Act.

EIGHTH CLAIM FOR RELIEF

VIOLATION OF NORTH CAROLINA CONSTITUTION

110. The allegations set forth in paragraphs 1 through 109 are realleged and incorporated by reference as if fully set forth.

111. The North Carolina Constitution states: "Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose." See N.C. CONST. art. V, § 5.

112. Direct claims are permitted under the North Carolina Constitution when a litigant has no adequate remedy at state law. *Craig v. New Hanover County Board of Education*, 363 N.C. 334, 678 S.E.2d 351 (2009); *Corum v. University of North Carolina*, 330 N.C. 761, 413 S.E.2d 276 (1992); *Richmond County Board of Education v. Cowell*, 225 N.C. App. 583, 739 S.E.2d 566 (2013).

113. Immunity cannot operate to bar direct constitutional claims. *Craig*, 363 N.C. 334, 678 S.E.2d 351.

114. The North Carolina Constitution requires that tax levies be used exclusively for the purposes stated in the Act.

115. The County occupancy tax levies authorized by the General Assembly were not exclusively used for the purposes stated in the Act.

116. The use of occupancy tax levies by the County and the TDA for purposes other than stated in the Act is a violation of Article V, § 5 of the North Carolina Constitution.

117. The North Carolina Supreme Court has emphasized that the law must ensure that every constitutional injury is redressed.

118. Redress for this constitutional injury includes a declaration of the types of transfers and expenditures prohibited or permitted by the Act, an injunction against future

unlawful transfers and expenditures, the restoration of amounts previously transferred or expended unlawfully and any other relief necessary to redress the injury.

NINTH CLAIM FOR RELIEF

MOTION FOR PRELIMINARY INJUNCTION (RULE 65)

(Restriction on Future Use of Occupancy Tax Proceeds)

119. The allegations set forth in paragraphs 1 through 118 are realleged and incorporated by reference as if fully set forth..

120. Plaintiffs motion the Court pursuant to Rule 65 of the North Carolina Rules of Civil Procedure for a preliminary injunction which acts to enjoin the use of any OT proceeds by the County for the purposes of funding public safety services and equipment, as those uses are defined herein.

121. Because of the foregoing allegations, the rights of the Plaintiffs will be immediately and irreparably harmed. Plaintiffs will suffer irreparable loss unless the injunction is issued, and said issuance is necessary for the protection of Plaintiffs' rights.

TENTH CLAIM FOR RELIEF

PERMANENT INJUNCTION (PROHIBITORY)

(Restriction on Future Use of Occupancy Tax Proceeds)

122. The allegations set forth in paragraphs 1 through 121 are realleged and incorporated by reference as if fully set forth.

123. Plaintiffs seek a permanent injunction against the County prohibiting any transfers of occupancy tax proceeds to the County's General Fund or to any other general County funds of a similar nature.

124. Plaintiffs seek a permanent injunction against the County and the TDA prohibiting any expenditures of occupancy tax proceeds for the costs of public safety services, including but not limited to police, emergency medical or fire services personnel or equipment.

125. Plaintiffs further seek a permanent injunction against the County and the TDA prohibiting any expenditures of occupancy tax proceeds for any purpose not permitted under the Act, including but not limited to any expenditures described above in the Plaintiffs' cumulative *Claims For Relief*.

ELEVENTH CLAIM FOR RELIEF

PERMANENT INJUNCTION (MANDATORY)

(Court-Issued Standards That Would Apply to Tourism-related Expenditures of Occupancy Tax Proceeds)

126. The allegations set forth in paragraphs 1 through 125 are realleged and incorporated by reference as if fully set forth.

127. The Plaintiffs are requesting the Court, pursuant to the authority delegated to it under § 1-254 of the Declaratory Judgment Act, to construe the meaning of the definition of "TRE" under the Act. That pertinent section of the Declaratory Judgment Act provides as follows:

"Any person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of

construction arising under the statute, and obtain a declaration of rights, status, or other legal relations thereunder.”

(Emphasis added.)

128. Plaintiffs allege that (a) they are “persons” whose rights as taxpayers and members of the public are affected by both (i) what expenditures of the proceeds of the occupancy tax are authorized under the definition of TRE under the Act and (ii) the standards and procedures that should be applicable to appropriations of TRE under the Act; (b) there are numerous “questions of construction” that arise under the subject Act, to include definition of TRE thereunder; and (c) the Plaintiffs are entitled to a declaration of their rights and the public’s rights thereunder.

129. Attached as Exhibit D is an exchange of messages dated April 11, 2017 between the County Finance Director, Sandra Hill, and the County Attorney, Ike McRee, that indicates that some of the largest County expenditures of occupancy tax proceeds were on Mainland projects, being expenditures that the Plaintiffs allege are questionable as qualifying as TRE. Some of the more prominent of these expenditures include (the amounts were stated by Ms. Hill as of the date of her memo, and most have increased since that date):

- EMS and Sheriff for Fiscal Years 2013 through 2017 (\$11.6 million)
- YMCA in Barco (\$8.5 million in occupancy tax revenues, out of a total cost of \$14.5 million)
- Baseball fields in Barco (\$5.7 million)
- Soccer fields in Barco (\$1.3 million in occupancy tax revenues, out of a total cost of \$3.1 million)
- Currituck County Rural Center (CCRC), an “equestrian center” located in the central Mainland (\$3.2 million for the “land alone,” according to Ms. Hill – the County’s financial statements reveal that \$3 million more of occupancy taxes were spent on the CCRC since the land acquisition),

- Veterans Park (\$674 thousand “budgeted” in 2017), which is located on the Intracoastal Waterway and is comprised of a flag and plaque honoring veterans, a few picnic tables, horseshoe pits and a small boat and fishing dock.

130. Plaintiffs allege that the primary purposes of these expenditures were not “tourism-related,” because they are in very remote areas, far from the COBX tourists at the Beach (or any other tourists). They have no appreciable nearby lodging (the County directs visitors to the ball fields to lodging in a neighboring county), restaurants, shopping or other entertainment facilities, and they all have zero or negligible revenue or tax generation capabilities. In light of the nature of these projects and their close proximity to the County’s Mainland residential areas, Plaintiffs allege that their primary use is by County residents, not tourists. By comparison, the COBX generates over 99% of the County’s occupancy taxes and has a seasonal population peak of 55,000 visitors weekly, with almost a million tourists annually. Almost all of the listed Mainland facilities are at least a one-hour drive from the Beach, but within 12 miles of 80% of the County’s full-time Mainland inhabitants.

131. Plaintiffs allege that the expenditures referenced directly above illustrate the County’s past practices in appropriating occupancy tax revenues to certain types of Mainland projects that do not appear to be designed to attract tourists. As a result, Plaintiffs contend that such projects give rise to the apparent need for a judicial construction of the meaning of the terms in the Act’s definition of TRE and an articulation of the standards and procedures that should apply to determinations of future County TRE project authorizations.

132. Wherefore, Plaintiffs request that the Court, pursuant to § 1-254 of the Declaratory Judgment Act, (a) construe the meaning of the Act’s definition of the term “TRE” in

order to resolve the existing controversy between the Plaintiffs and the Defendants concerning the standards that should apply to said definition, and (b) prescribe standards, mandates, and regulations that the County shall be required to apply in determining the existence of an eligible TRE project and how those standards are applied to each TRE appropriation.

133. Consequently, Plaintiffs hereby request the Court to construe the Act as imposing the following standards on any proposed TRE project that is being considered by the County:

- a. The County shall provide the public with advance notice of full details of the proposed project at least 30 days prior to the planned TDA meeting to approve the expenditure (except in case of emergencies)
- b. The amount of TRE funding towards the total cost of a project must be proportionate to its projected attendance by tourists/business travelers, as compared to visits by County residents (based on professional projections or some other published objective source)
- c. The Board's approval of the project shall (i) specify the basis for its determination that it will increase tourist use of facilities in an area of the County that (at the date of appropriation or in the reasonably near-term future) contains appreciable nearby lodging, restaurants, shopping areas or other tourist facilities that are likely to generate significant sales or occupancy tax revenues for the County, and (ii) explain its justification of such determination in light of the amount of occupancy tax spending to attract such tourists compared to both those projected tax revenues and the cost of such project.
- d. The Board must assure that, to the extent practicable (particularly in the case of projects that are indoors or that have an admission gate, where sign-in data may be maintained and preserved), records of attendance at any occupancy tax-funded project by both tourists and County residents will be maintained and preserved for at least 5 years, and such records must be readily accessible to the public.

e. Any TRE project must be supported by the County Attorney's written opinion that the funding qualifies as "TRE" under the Act and complies with the above standards.

134. Finally, Plaintiffs recognize that the "judgment" of the Commissioners plays a role under the definition of TRE in determining whether an occupancy tax appropriation is authorized under the Act. Nevertheless, Plaintiffs request the Court to rule that the Commissioners' judgment must be objectively reasonable and have a rational basis at the time of the decision that is supported by the facts and the law. Otherwise, the Board's judgment would be absolute and could be arbitrary and capricious, with no rational basis.

TWELFTH CLAIM FOR RELIEF

PERMANENT INJUNCTION (MANDATORY)

(Requirement on Restoration of Improperly Used Occupancy Tax Proceeds)

135. The allegations set forth in paragraphs 1 through 134 are realleged and incorporated by reference as if fully set forth.

136. Plaintiffs seek a mandatory injunction against the County requiring restoration and replacement into the TDA Fund of all occupancy tax proceeds subject of this Complaint that are found to be unlawfully used and disbursed.

THIRTEENTH CLAIM FOR RELIEF

(Inclusion of Daniel F. Scanlon, II as an Individual)

137. The allegations set forth in paragraphs 1 through 136 are realleged and incorporated by reference as if fully set forth.

138. Defendant Scanlon has served for at least the last 18 years as the County's Budget Officer, meaning he has served in this position for the entire time that the current OT statute (2004) has been in effect. Budget Officer is a statutory position under the Local Government Finance Act, N.C. Gen. Stat. § 159-9. The duties of the Budget Officer include monitoring and evaluating County government activities, overseeing all County expenditures, and recommending and preparing an annual budget for consideration by the Commissioners that complies with State laws pertaining to the County's budget. The County's website states that the County Manager's responsibilities include that he "Recommends an annual budget," "Oversees all County expenditures," and "Works to ensure that the policies and guidelines mandated by both federal and North Carolina state statutes are implemented."

139. One requirement under the Local Government Finance Act states: "The following directions and limitations shall bind the governing board (*i.e.*, the Commissioners) in adopting the budget ordinance: . . . (4) No appropriation may be made that would require . . . expenditures of revenues for purposes not permitted by law." § 159-13(b)(4). (Emphasis added.) Accordingly, Plaintiffs contend that Defendant Scanlon was legally responsible for determining what proposed expenditures under the County budget were permitted by the law.

140. Plaintiffs have alleged in this Complaint that Defendant Scanlon has proposed for many years County budgets that included TRE for projects that were not authorized under the Act. These included (a) transfers of TDA funds to the County General Fund, (b) expenditures for public safety services, including police, emergency medical and fire services and equipment, (c) expenditures for general, non-promotional operations and activities of the County's Economic Development Department, including Airport capital improvements, (d) use of TDA

funds to fund special tax districts for County roads, the startup costs of a Fire District and a fire hydrant in a fire district on the Mainland, and to make a \$5.7 million loan to finance the construction of a water treatment facility in COBX, and (e) construction of various “recreational facilities” and “parks” on the County Mainland, described in Exhibits C and D attached hereto, that Plaintiffs contend are highly questionable and/or clearly not permitted under the Act’s definition of “TRE” because they are not designed to attract tourists and cannot reasonably be deemed to be “tourism-related” under the Act.

141. Plaintiffs also contend that the absence of any County records pertaining to *projected* or *actual* statistical tourist attendance in connection with the recreational facilities and parks authorized as TRE (and referred to in the preceding paragraph) constitutes evidence that Defendant Scanlon knew or should have known that those projects did not qualify as TRE under the Act. Based on the Plaintiffs’ review of the minutes of Commissioners’ meetings since 2004, none of those project authorizations were based on any prior documentation concerning projected tourist attendance. This is borne out by the County’s failure to provide *any* such documents, in response to Plaintiffs’ January 25, 2018 request under the NC Public Records Act. That request had asked the County to produce any documents relating to the eligibility of those projects “for use of occupancy taxes,” and “the extent to which . . . [those projects] were expected to or had increased the use of lodging or other facilities in the County”.

142. Plaintiffs contend that Defendant Scanlon has engaged as County Manager and/or Budget Officer in a decade-long and futile effort to develop the remote, rural Barco area as a County recreation facility that he has promoted as a tourist attraction, called “Currituck Community Park.” However, these facilities are used almost exclusively by County residents,

with that area having no appreciable nearby hotels, restaurants or other facilities that may attract tourists or result in the generation of any significant sales or occupancy taxes. The County has invested many millions of occupancy tax dollars into this Park that to date have not produced any net revenue-generation capabilities for the County. These investments clearly were not based on any professional projections of the future generation of tourist revenues in any reasonable future time frame, given the County's failure to produce any such documents pursuant to CCA's documents request. Plaintiffs assert that the County's incremental expenditures of occupancy tax proceeds for this Park were not consistent with the Act's requirement that TRE be "designed to increase the use of" certain facilities by attracting tourists. Instead, they were designed to *create* new facilities for County residents using Occupancy Tax resources, justified by the speculative hope that the area might, some day, far off into the future, attract tourists that generate significant revenues. This is evidenced in public statements that he has made concerning this project. For example:

- *The Virginian Pilot* reported on the Barco project in a January 2012 article, stating: "Now the county is planning to spend \$9.3 million more over the next five years to build tennis courts, a skateboard park and tournament-quality softball fields. Currituck officials are hoping the new projects will cause restaurants, stores and possibly motels to spring up on nearby farm fields."
- *Almost five years later*, an 11/27/16 article in the *Daily Advance* reported Defendant Scanlon's remarks at a ground-breaking ceremony for the new County ball fields, citing him as saying:

"The one downside of Currituck Community Park is that he and county staff haven't yet created 'the critical mass' needed for Mainland Currituck to drive the development of hotels and dining establishments and all kind of related developments. However, he emphasized that Currituck Community Park, now with baseball and softball fields, has the ability to draw several thousand people every weekend, and that the site also will be in proximity to the future Mid-Currituck Bridge and the Outer Banks. He particularly emphasized that when one starts having tournaments at Currituck Community Park,

people will need a place to buy drinks and nabs [*sic*] in-between ballgames, have dinner and spend the night. Then, Scanlon said, will be the start of creating the critical mass that drives economic development.” (Emphasis added.)

- The following 8/26/18 article in the *OBX Voice* summarized a presentation by Defendant Scanlon to the County Education Board:

“Occupancy tax funds have also been used for meeting and recreation facilities, such as the ballparks in Maple [another name for Currituck Community Park]. Tournaments are held almost every weekend at Maple Park, and the teams and spectators who attend will result in a greater need for restaurants and hotels in Currituck, Scanlon said.

‘We’re trying to bring people into the county so they can spend money and generate sales tax revenue,’ he said. Although visitors to the beach, the county’s main attraction, generate most of the occupancy tax, Scanlon said it’s prudent for the county to expand its tourism offerings because of the potential drop in beach visitors following a major storm or hurricane.”

143. Defendant Scanlon has often publicly (and inaccurately) advised the Commissioners and other County officials and staff regarding the legitimacy of some of the County’s occupancy tax expenditures. For example:

- He advised the Commissioners at a public Budget Work Session in June 2017 that occupancy tax proceeds could be used to fund EMS services on Rte. 158 on the Mainland, because “tourists” traveled on that road to their vacation destinations (whether they be in Currituck or Dare County). The Board authorized such expenditures in subsequent budget appropriations.
- At a public meeting on April 2, 2018, a Commissioner asked Defendant Scanlon whether occupancy tax proceeds may be used to fund the new Corolla Fire Service District. He replied that it was the Commissioners’ “judgment” that was controlling but added that he believed it was permissible under the Act. There was no discussion by the Commissioners on how this would attract tourists or increase use of lodging and other revenue generating facilities.
- An article in the 4/10/18 *OBX Voice* reported: “During the tourism authority meeting, Defendant Scanlon said that use of occupancy tax revenue was appropriate for getting the new service under way [referring to the Corolla Fire Service District]. Occupancy tax revenue also pays for additional sheriff’s department costs for patrolling the beach during the summer season.”

- The minutes of the 12/10/12 Tourism Advisory Board Meeting indicate Defendant Scanlon's expansive views of occupancy tax funding. They reported: "Dan Scanlon made a comprehensive presentation on occupancy tax, explaining the General Statute and how occupancy tax revenues can be spent to enhance tourism, recreation and economic development". (Emphasis added.) Plaintiffs allege that the concept of "enhancing" recreation and economic development is inconsistent with the definition of TRE under the Act, and that Defendant Scanlon got it backwards – only *tourism* is intended by the Act to be enhanced by expenditures of occupancy tax revenues.
- At a June 18, 2018 Commissioners' meeting, a member of the public suggested that the Commissioners consult with their private attorneys regarding the legality of many of their interpretations of TRE that are permitted under the Act. The Chairman asked Defendant Scanlon whether the County's auditors had approved the County's occupancy tax expenditures in their annual audits. Defendant Scanlon confirmed that they had. Plaintiffs contend that, although the Chairman might be forgiven for his ignorance, Defendant Scanlon, a career CPA, should not. The auditing profession is governed by the standards prescribed by the American Institute of Certified Public Accountants, whose Statement of Auditing Standards No. 22 states that it "addresses the auditor's responsibility to consider laws and regulations in an audit of financial statements." Section 4 of that Statement provides: "The requirements in this section are designed to assist the auditor in identifying material misstatement of the financial statements due to noncompliance with laws and regulations. However, the auditor is not responsible for preventing noncompliance and cannot be expected to detect noncompliance with all laws and regulations." It further provides: "It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with laws and regulations." (Emphasis added.) Plaintiffs allege that Defendant Scanlon's misleading statement to the Commissioners showed a disregard of the laws applicable to expenditures under the Act.
- Lastly, the County funded with occupancy tax proceeds the rehabilitation of an "historical school" in Jarvisburg on the Mainland. An 11/28/17 article in the *Daily Advance* reported that attendance at the facility had declined, to the point that it was open only for several hours on one day each week. However, the County decided to continue funding the facility as TRE, and Defendant Scanlon stated at the January 2018 Commissioners' public Retreat that the continued occupancy tax funding of the Jarvisburg School would be permissible under the Act, simply because the facility is "historical".

144. Wherefore, based on the foregoing allegations, Defendant Scanlon's actions, to include recommending that the County divert occupancy tax revenues for purposes that are not authorized under the Act, constitute evidence that he acted outside the scope of his duties, in

disregard of the statutes, laws, and regulations under which he proceeded and in utter disregard of the law. The Plaintiffs pray to the Court to extend any judgment or award in this matter to Defendant Scanlon in his individual capacity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Issue a declaratory judgment declaring that transfers by the TDA of occupancy tax proceeds from the TDA Fund to the General Fund or any other of the County's funds of a similar nature are contrary to the Act and that such transfers are therefore illegal and unlawful.
2. Issue a declaratory judgment declaring that expenditures by the County and the TDA of occupancy tax proceeds for costs of public safety services and equipment, including but not limited to police, emergency medical or fire services personnel or equipment, are contrary to the Act and that such transfers are therefore illegal and unlawful.
3. Issue a declaratory judgment declaring those actions of the Defendants named in the Plaintiffs' *Third through Sixth Claims For Relief* as unlawful and in violation of the Act.
4. Issue a declaratory judgment declaring those actions of the Defendants named in the Plaintiffs' *First through Sixth Claims For Relief* as unlawful and in violation of N.C. Gen. Stat. § 159-13(b)(4).
5. Issue a declaratory judgment declaring those actions of the Defendants named in the Plaintiffs' *First through Sixth Claims For Relief* as unlawful and in violation of the North Carolina Constitution.
6. Pursuant to the motion herein, issue a preliminary injunction prohibiting any County expenditures of occupancy tax proceeds for costs of public safety services and

equipment, including but not limited to, police, emergency medical or fire services personnel or equipment until such time as this matter has been adjudicated on its merits.

7. Issue a permanent injunction against the County and the TDA prohibiting any transfers of occupancy tax proceeds to the County General Fund or to other County general funds.

8. Issue a permanent injunction against the County and the TDA prohibiting any expenditures of occupancy tax proceeds for costs of public safety services and equipment, including but not limited to, police, emergency medical or fire services personnel or equipment.

9. Issue a permanent injunction against the County and the TDA prohibiting any expenditures of occupancy tax proceeds for any purpose not permitted under the Act, including but not limited to the expenditures referred to in the Plaintiffs' *Third through Sixth Claims For Relief* herein.

10. Issue an order requiring the County to restore to the TDA Fund all amounts of occupancy tax proceeds improperly transferred from the TDA Fund as the same are subject of this Complaint and deemed to be unlawfully used and disbursed during the years prior to the filing of this Complaint.

11. Issue an order requiring that the TDA promptly produce (a) to the Board and prominently make available to the public all future periodic reports by TDA of its receipts and expenditures, as required by § 1.1(d) of the Act, and (b) to CCA the periodic reports that it requested pursuant to its January 2018 Demand under the Public Records Act and that the County failed to produce.

12. Issue an order that (a) construes the meaning of the Act's definition of the terms "TRE" in order to resolve the existing controversy between the Plaintiffs and the Defendants concerning the standards that should apply to said definition, and (b) prescribes the standards, mandates, and regulations that the County shall be required to apply in determining the existence of an eligible TRE project and how those standards are applied to each TRE appropriation.

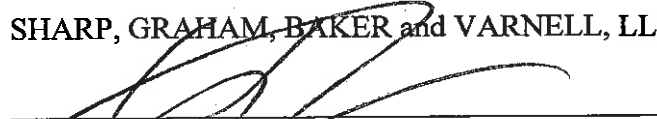
13. Issue an order extending any judgment or award in this matter to and against Defendant Scanlon in his individual capacity.

14. Tax the costs of this action, including reasonable attorney fees, against the County; and

15. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this 6th day of May, 2019.

SHARP, GRAHAM, BAKER and VARNELL, LLP



Casey C. Varnell
Attorney for Plaintiffs
P.O. Drawer 1027
Kitty Hawk, NC 27949
Phone: 252-261-2126
Fax: 252-261-1188
NCSB No.: 40405

List of Exhibits

- A. SL 2004-95; HB 1721 OT Statute**
- B. List of Key Communications in On-Going Controversy About Use of OT**
- C. Summary of Questioned Expenditures**
- D. Exchange of email messages between the County Finance Director, Sandra Hill, and the County Attorney, Ike McRee**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2004-95
HOUSE BILL 1721

AN ACT TO ALLOW AN INCREASE IN THE CURRITUCK COUNTY
OCCUPANCY TAX AND TO CHANGE THE PURPOSES FOR WHICH THE
TAX MAY BE USED.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 209 of the 1987 Session Laws, as amended by Chapter 155 of the 1991 Session Laws and Chapter 155 of the 1999 Session Laws, is amended by adding a new subsection to read:

"(a2) Second Additional Occupancy Tax. – In addition to the tax authorized by subsections (a) and (a1) of this section, the Currituck County Board of Commissioners may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this act. Currituck County may not levy a tax under this subsection unless it also levies the tax under subsections (a) and (a1)."

SECTION 2. Section 1(e) of Chapter 209 of the 1987 Session Laws, as amended by Chapter 155 of the 1991 Session Laws, reads as rewritten:

"(e) Use of tax revenue. Currituck County shall use at least seventy five percent (75%) of the net proceeds of the tax levied under subsection (a) of this section only for tourist related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services. ~~tourism-related expenditures, including beach nourishment.~~ The remainder of the net proceeds of the tax levied under subsection (a) shall be deposited in the Currituck County General Fund and may be used for any lawful purpose. Currituck County may shall use at least two-thirds of the net proceeds of the tax levied under subsection subsections (a1) and (a2) of this section, to the extent that they are needed, for capital costs, operation, and maintenance of the Currituck Wildlife Museum. Whatever is not needed for the capital costs, operation, and maintenance of the Currituck Wildlife Museum shall be used for tourist related purposes. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer. section to promote travel and tourism and shall use the remainder of those funds for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:
 - a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or

- otherwise permitted by all appropriate federal and State agencies.
 - b. The nonfederal share of the cost required to construct these projects.
 - c. The costs associated with providing enhanced public beach access.
 - d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.
- (2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.
- (4) Tourism-related expenditures. – Expenditures that, in the judgment of the Currituck County Board of Commissioners, are designed to increase the use of lodging facilities, meeting facilities, recreational facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures and beach nourishment."

SECTION 3. Chapter 209 of the 1987 Session Laws, as amended by Chapter 155 of the 1991 Session Laws and Chapter 155 of the 1999 Session Laws, is amended by adding a new section to read:

"Section 1.1. Currituck County Tourism Development Authority. – (a) Appointment and Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of six members: five voting members and one ex officio nonvoting member. The ex officio nonvoting member shall be the county's designated travel and tourism representative. The voting members shall be as follows:

- (1) The county commissioner representing the Moyock Township.
- (2) The county commissioner representing the Crawford Township.
- (3) The county commissioner representing the Poplar Branch Township.
- (4) The county commissioner representing the Fruitville Township.
- (5) The at-large county commissioner.

(b) Administration. – The resolution creating the Authority shall designate one member of the Authority to serve as the initial chair and provide for the members' terms of office and for the filling of vacancies on the Authority. After the initial term, the Authority must elect a chair from among its members. The members of the Authority shall serve without pay. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Currituck County shall be the ex officio finance officer of the Authority.

(c) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(d) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

List of Communications Between Corolla Civic Association and Currituck County Evidencing Their Ongoing Controversy Concerning the “Tourism-Related Expenditures” That Are Authorized Under N.C. Sess. Law 2004-95, as amended (the “Occupancy Tax Act” or “OT Act”)

1. On March 13, 2017, Barbara Marzetti, the President of the Corolla Civic Association (“CCA”) sent to the County a 6-page letter dated March 7, 2017 that contained extensive criticism of the County’s “tourism-related expenditures” (“TRE”) of occupancy tax (“OT”) proceeds.
2. On April 13, 2017, CCA representatives met with the County Attorney and 3 Commissioners and discussed the objections raised in CCA’s March 7 letter. The County representatives rejected all of CCA’s objections to OT expenditures of TRE that were specified in the letter.
3. On the same date, William Collins, then a CCA Director, typed up his “Notes” of the 4/13/17 meeting, as evidence that the County rejected CCA’s objections to the County’s authorizations of TRE
4. As agreed at the 4/13/17 meeting, in April 2017 CCA sent the County a Memo that outlined a suggested approach to ensure that future expenditures of OT proceeds are made in accordance with the letter and spirit of the OT Act. The County never responded to that Memo. CCA’s suggestions included: advance public notice of proposed TRE; establishment of criteria and standards for authorizing TRE; and the use of professional projections of (i) tourist attendance at OT-funded projects and their expected generation of tourist revenues and (ii) the proportionate use of OT-funded projects by tourists and County residents. In particular, the Memo stressed CCA’s belief that OT-funding of emergency services violates the OT Act.
5. Mr. Collins sent to the County Manager on behalf of CCA a 6/21/17 email that noted CCA’s objections to the County’s presentation of OT expenditures in its proposed FY2018 budget, but no changes were made in response to such objections.
6. In January 2018, CCA’s counsel submitted to the County a request for documents pursuant to the Public Records Act. Despite repeated requests, no documents were produced until June 27.
7. In April, 2018, CCA drafted a proposed 10-year “OT Budget” that spelled out CCA’s suggestions for future expenditures of OT proceeds that it believed would be consistent with the OT Act. It circulated that draft to CCA members and, based on input from many members, it sent to the County a revised proposal for its consideration and requested the County to meet with CCA representatives to discuss it. The County never responded to this request.
8. CCA representatives spoke at BOC meetings on April 2 and May 21, 2018 at which they objected to various matters pertaining to TRE expenditures, including the County’s OT-funding of \$486k for startup costs for a Fire Service District in Corolla.

9. On June 15, 2018 CCA submitted to the County a list of questions and objections pertaining to the County's draft FY 2019-20 budget, including matters concerning proposed expenditures of OT proceeds. On June 22, 2018 (after the BOC had adopted the new budget), the County replied to CCA's June 15 submission; on June 28, CCA sent the County an email stating that the County's reply had failed to respond satisfactorily to CCA's comments.
10. Several CCA representatives spoke at the June 18 BOC meeting objecting to the draft budget, but the budget was unanimously approved at the meeting. An Outer Banks Voice 6/22/18 article reported on the CCA' objections made at the 6/18 Budget hearing.
11. Mr. Collins sent an email on June 19, 2018 to the Director of Economic Development and the County Manager, challenging the budget's appropriation as TRE of OT funds for Economic Development operations. He received no reply.
12. CCA sent to the County on June 29, 2018 an email detailing its objections to the County's final budget and the process of its adoption.
13. Ms Marzetti sent an email on October 1, 2018 to the BOC and the County Manager, objecting to various appropriations of OT funds, including recent TDA appropriations for pumping floodwaters from Carova/Swan Beach "streets" following Spring 2018 storms and for repaving of a County Airport runway – expenditures that CCA contends are not authorized TRE under the OT Act.

Questioned OT Expenditures

Table 1: Overview of Occupancy Tax Use By Year
(Sources: Currituck County Audit and Budget Reports)

Fiscal Year	OT Collected	Transfers to General Funds	Total Questioned OT Spending
2005	\$4,667,481	\$4,667,481	\$1,594,795
2006	\$5,322,539	\$5,322,539	\$2,225,496
2007	\$8,056,036	\$8,056,036	\$4,056,882
2008	\$8,944,369	\$8,944,369	\$1,300,000
2009	\$9,276,524	\$(1,903,562)**	\$1,339,164
2010	\$8,672,218	\$4,596,624	\$4,155,770
2011	\$9,442,002	\$3,746,455	\$3,669,028
2012	\$9,991,095	\$4,126,976	\$9,782,425
2013	\$10,046,807	\$4,356,275	\$4,546,882
2014	\$10,579,294	\$4,264,112	\$4,724,771
2015	\$10,844,887	\$4,908,379	\$5,029,319
2016	\$11,065,242	\$7,141,952	\$3,948,907
2017	\$11,511,034	\$4,673,333	\$5,519,872
2018	\$11,913,048	\$4,589,220	\$4,208,063
2019*	\$11,000,000	\$4,959,013	\$3,867,153
Totals	\$141,332,576	\$72,449,202	\$59,968,527

* from approved 2019 budget document; **reflects surplus from prior years

Table 2 – Summary of Questioned Expenditures By Category By Year

Fiscal Year	Public Safety	Economic Development	Service District Subsidies	Loans to Other County Funds	Mainland Parks & Recreation	Mainland Historic
2005	\$-	\$-	\$-	\$-	\$1,594,795	\$-
2006	\$-	\$225,496	\$-	\$-	\$2,000,000	\$-
2007	\$-	\$-	\$-	\$-	\$4,056,882	\$-
2008	\$-	\$-	\$-	\$-	\$1,300,000	\$-
2009	\$-	\$73,360	\$-	\$-	\$1,255,952	\$9,852
2010	\$1,900,000	\$478,943	\$300,000	\$-	\$1,470,819	\$6,008
2011	\$2,043,827	\$645,663	\$-	\$-	\$961,568	\$17,970
2012	\$2,155,424	\$1,303,245	\$-	\$5,700,000	\$575,301	\$48,455
2013	\$2,420,188	\$1,178,181	\$40,000	\$-	\$796,131	\$112,382
2014	\$2,214,187	\$285,487	\$-	\$-	\$2,194,394	\$30,703
2015	\$2,280,614	\$279,830	\$-	\$-	\$2,455,484	\$13,391
2016	\$2,349,032	\$447,403	\$188,675	\$-	\$858,269	\$105,528
2017	\$2,419,503	\$433,235	\$20,000	\$-	\$2,610,337	\$36,797
2018	\$2,971,264	\$299,955	\$485,863	\$-	\$443,524	\$7,457
2019*	\$2,862,357	\$429,230	\$40,000	\$-	\$324,200	\$211,366
Total	\$23,616,396	\$6,080,028	\$1,074,538	\$5,700,000	\$22,897,656	\$599,909

* 2019 approved Budget document plus amendments

Questioned OT Expenditures

Table 3 – History of Questioned Public Safety Expenditures

Year	Audit / Budget Report Description of OT Expenditure	Amount
2010	From the TDA Fund to the General Fund for Sheriff Deputies	\$950,000
2010	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$950,000
2011	From the TDA Fund to the General Fund for Sheriff Deputies, ATV & boats	\$1,056,452
2011	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$987,375
2012	From the TDA Fund to the General Fund for Sheriff Deputies, ATV & boats	\$1,034,338
2012	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$1,121,086
2013	From the TDA Fund to the General Fund for Sheriff Deputies, Vehicle Purchase	\$1,299,103
2013	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$1,121,085
2014	From the TDA Fund to the General Fund for Sheriff Deputies, Vehicle Purchase	\$1,093,103
2014	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$1,121,084
2015	From the TDA Fund to the General Fund for Sheriff Deputies, Vehicle Purchase	\$1,125,896
2015	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$1,154,718
2016	From the TDA Fund to the General Fund for Sheriff Deputies, Vehicle Purchase	\$1,159,673
2016	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$1,189,359
2017	Transfer from Tourism Development Authority for Sheriff Deputies	\$1,194,463
2017	Transfer from Tourism Development Authority for EMS Seasonal Coverage	\$1,225,040
2018	From the TDA Fund to the General Fund for Sheriff Deputies	\$1,260,294
2018	From the TDA Fund to the General Fund for Sheriff beach patrol vehicles	\$108,907
2018	From the TDA Fund to the General Fund for Emergency Medical Services Personnel	\$1,602,063
2019	From the TDA Fund for Sheriff Deputies/ Seasonal Beach Patrols	\$1,260,294
2019	From the TDA Fund For EMS Seasonal Coverage	\$1,602,063
	Total Questioned Payments for Public Safety Services & Equipment	\$23,616,396

Questioned OT Expenditures

Table 4 – History of Questioned Economic Development Expenditures

Year	Audit / Budget Report Description of OT Expenditure	Amount
2006	Tourism Budget in General Fund for ED Vision Plan	\$153,896
2006	Tourism Budget in General Fund to match grant for airport taxiway	\$71,600
2009	From TDA Fund to County government facility Fund for matching Funds for airport projects	\$73,360
2010	From the TDA Fund to the General Fund for Economic Development	\$110,773
2010	From the TDA Fund to the County Governmental Facilities Fund to accumulate Funds for Maple Commerce Park	\$368,170
2011	From the TDA Fund to the General Fund for Economic Development	\$154,689
2011	From the TDA Fund to the County Governmental Facilities Fund to accumulate Funds for Maple Commerce Park	\$490,974
2012	From the TDA Fund to the General Fund for Economic Development	\$172,694
2012	From the TDA Fund to the General Fund for Airport	\$18,115
2012	From the TDA Fund to the County Governmental Facilities Fund to accumulate Funds for Maple Commerce Park	\$1,112,436
2013	From the TDA Fund to the General Fund for Economic Development	\$231,558
2013	From the TDA Fund to the General Fund for Airport	\$19,462
2013	From the TDA Fund to the Governmental Facilities Fund for Maple Commerce Park	\$927,161
2014	From the TDA Fund to the General Fund for Economic Development	\$239,244
2014	In TRE Portion of TDA Budget for Economic Development	\$28,848
2014	From the TDA Fund to the General Fund for Airport	\$17,395
2015	From the TDA Fund to the General Fund for Economic Development	\$261,879
2015	From the TDA Fund to the General Fund for Airport	\$17,951
2016	From the TDA Fund to the General Fund for Economic Development	\$435,267
2016	From the TDA Fund to the General Fund for Airport	\$12,136
2017	Transfer from Tourism Development Authority for Economic Development	\$418,263
2017	Transfer from Tourism Development Authority for Airport	\$14,972
2018	From the TDA Fund to the General Fund for Economic Development	\$287,313
2018	From the TDA Fund to the General Fund for Airport	\$4,167
2018	From the TDA Fund to the General Fund for professional services for Currituck Station Master Plan	\$8,475
2019	From the TDA Fund for Airport	\$20,000
2019	From the TDA Fund amendment 9/17/18 airport apron repaving	\$41,650
2019	From the TDA Fund for Economic Development	\$277,580
2019	From the TDA Fund for Economic Development	\$90,000
	Total Questioned Payments for General Economic Development	\$6,080,028

Questioned OT Expenditures

Table 5 – History of Questioned Parks & Recreation Expenditures

Year	Audit / Budget Report Description of OT Expenditure	Amount
2005	Tourism Budget in General Fund to Government Facilities Fund for Parks & Recreation	\$1,520,000
2005	From the Tourism Budget for General Purpose expenses	\$74,795
2006	From the Tourism Budget General Fund to Government Facilities Fund for Parks & Recreation	\$2,000,000
2007	From the Tourism Budget Capital Outlay for Parks & Recreation	\$4,056,882
2008	From Tourism Budget in General Fund to construct a facility for Parks and Recreation	\$1,300,000
2009	From TDA to the Government Facilities Fund to accumulate Funds for a Recreation facility	\$1,000,000
2009	Non-Whalehead Capital Projects in TRE Budget	\$255,952
2010	From the TDA Fund to the General Fund the Currituck Rural Center	\$373,380
2010	From the TDA Fund to the County Governmental Facilities Fund to accumulate Funds for a Recreation facility	\$586,980
2010	Non-Whalehead Capital Projects in TRE Budget	\$510,459
2011	From the TDA Fund to the General Fund the Currituck Rural Center	\$749,210
2011	From the TDA Fund to the County Governmental Facilities Fund to accumulate Funds for a Recreation facility	\$200,000
2011	Non-Whalehead Capital Projects in TRE Budget	\$12,358
2012	From the TDA Fund to the General Fund for the Currituck Rural Center	\$558,396
2012	Non-Whalehead Capital Projects in TRE Budget	\$16,905
2013	From the TDA Fund to the General Fund for the Currituck Rural Center	\$185,716
2013	From the TDA Fund to the General Fund for Parks & Recreation mower	\$15,169
2013	From the TDA Fund to the Governmental Facilities Fund for Maple Multi-use fields	\$477,998
2013	Non-Whalehead Capital Projects in TRE Budget	\$117,248
2014	From the TDA Fund to the General Fund the Currituck Rural Center	\$177,493
2014	From the TDA Fund to the Governmental Facilities Fund for Maple Multi-use fields	\$1,500,000
2014	Non-Whalehead Capital Projects in TRE Budget	\$516,901
2015	From the TDA Fund to the General Fund the Currituck Rural Center	\$175,611
2015	From the TDA Fund to the Governmental Facilities Fund for Maple alpine tower	\$75,000
2015	From the TDA Fund to the From Governmental Facilities Fund for Maple baseball/softball fields	\$1,977,275
2015	Non-Whalehead Capital Projects in TRE Budget	\$227,598
2016	From the TDA Fund to the General Fund for the Currituck Rural Center	\$321,590
2016	From the TDA Fund to the County Governmental Facilities Fund for Veteran's Park (total budgeted \$673,617)	\$163,000
2016	Non-Whalehead Capital Projects in TRE Budget	\$373,679
2017	Transfer from Tourism Development Authority for CCRC	\$773,885
2017	Non-Whalehead Capital Projects in TRE Budget	\$1,536,452
2017	Transfer from TDA for Veterans Park Water Access	\$300,000
2018	Non-Whalehead Capital Projects in TRE Budget	\$205,912
2018	From the TDA Fund to the General Fund the Currituck Rural Center	\$237,612
2019	From the TDA Fund for Currituck Rural Center Operations	\$260,700
2019	From the TDA Fund 9/4/2018 transfer for Shingle Landing Park	\$63,500
	Total Questioned Payments for General Parks & Recreation	\$22,897,656

Questioned OT Expenditures

Table 6 – History of Questioned Mainland Historic Project Expenditures

	Audit / Budget Report Description of OT Expenditure	
2009	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$9,852
2010	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$6,008
2011	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$17,970
2012	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$48,455
2013	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$112,382
2014	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$30,703
2015	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$13,391
2016	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$105,528
2017	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$36,797
2018	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$7,457
2019	8/6/18 TDA budget Amendment for Historic Jail and Historic Preservation	\$92,806
2019	Historic Preservation Expense in non-Whalehead Club TRE Budget	\$118,560
	Total Questioned Mainland Historic Preservation Expenditures	\$599,909

Table 7 – History of Questioned Expenditures of Loans and Subsidies for Special Service Districts

Year	Audit / Budget Report Description of OT Expenditure	Amount
2010	From the TDA Fund to the Carova Road Service District to accumulate Funds for district	\$300,000
2013	From the TDA Fund to Mainland Water Fund for a fire hydrant in Grandy	\$40,000
2016	From the TDA Fund to the County Governmental Facilities Fund for Corolla Village Road Phase III	\$168,675
2016	From the TDA Fund for Carova Road Service District	\$20,000
2017	Transfer from TDA to Carova Road Service District	\$20,000
2018	From the TDA Fund to the Corolla Fire District for start-up costs for fire services	\$485,863
2019	From the TDA Fund to Carova Road Service District	\$20,000
2019	From the TDA Fund To Carova Road Service District	\$20,000
	Total Questioned Payments to Tax Service Districts	\$1,074,538

	Audit / Budget Report Description of OT Expenditure	
2012	Loan From TDA Fund for Enterprise Fund for SOBWS (page 32 of audit report)	\$5,700,000
	Total Questioned Internal Loans	\$5,700,000

EXHIBIT D

From: Sandra.Hill@CurrituckCountyNC.gov
Subject: RE: Occupancy Tax
Date: April 11, 2017 at 5:47 PM
To: Ike.Mcree@CurrituckCountyNC.gov
Cc: Dan.Scanlon@CurrituckCountyNC.gov

Ike,

I believe this answers most of your questions below. Call me at Whalehead if you need more information 453-9040 and just ask for Finance. I get there before the desk folks so they may not know I am there on the third floor. I will also send Jason's economic impact sheets with the events schedule to date.

Sandra Hill
Finance Director

County of Currituck
153 Courthouse Rd, Ste 101
Currituck, NC 27929
(252) 232-2381
Fax (252)232-2141

From: Ike McRee
Sent: Tuesday, April 11, 2017 4:34 PM
To: Sandra Hill
Subject: FW: Occupancy Tax

From: Barbara Marzetti [<mailto:bmarzetti@corollacivicassociation.com>]
Sent: Tuesday, March 07, 2017 10:56 PM
To: Ike McRee
Cc: Dan Scanlon
Subject: Occupancy Tax



Ike McRee, Esq.
County Attorney
Currituck County

(Sent via e-mail)

Re: Use of County Occupancy Tax Proceeds

Dear Ike:

Our Board has been concerned for some time about the County's use of occupancy tax proceeds, and recently took this issue to our members at our February 23 meeting. We had a full discussion of our concerns at the meeting, and they have authorized the Board to ask you to meet with Board representatives on this subject. We are writing to ask you if you would be available to meet with us to discuss this issue of vital importance to us all?

CCA's concern is whether the County has been properly interpreting the County's Occupancy Tax statute. We ask you to consider the following comments as background for our meeting. (Please excuse the formal tone of these comments, which are derived from a memo that Bill Collins, a retired attorney and one of our board members, prepared for his personal use to examine this subject.)

Discussion

Currituck County (the "County") collects a 6% Occupancy Tax ("OT") from room and lodging rentals that currently raises approximately \$10.5 million annually. The OT is authorized by an NC statute, Chapter 209 of the 1987 Session Laws, as amended (the "OT Act"), that prescribes the use of OT proceeds as follows: one-third of the net proceeds for promotion of travel and tourism and the balance for Tourism-Related Expenditures ("TRE"). The County has confirmed that almost 100% of the proceeds are derived from rentals of properties in the COBX.

TRE are defined in the OT Act as "expenditures that, in the judgment of the [Board of Commissioners] are designed to increase the use of lodging facilities, meeting facilities, recreational facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures and beach nourishment." (Emphasis added.)

Many of the County's expenditures of TRE during at least the last six years seem to have been either not specifically authorized or at least very questionable under the Act. The vast preponderance of OT proceeds available for TRE has been spent on the Currituck Mainland, which accounts for only a miniscule portion of the tourism dollars spent in the County and generates negligible (if any) OT revenues. It is unclear if these Mainland projects even have any potential to generate tourist revenues in the reasonably near future. Such expenditures have included:

- Aggregate funding of EMS personnel (\$3.5 MM) and purchases of police

vehicles (\$3.5 MM) during the fiscal years from 2013 through 2015. At a public meeting in December 2016, a County official said that an additional \$1.1MM and an additional \$1.2MM are budgeted for EMS and the Sheriff's Office, respectively, for the current fiscal year. It is difficult to understand how these expenditures could possibly be considered authorized TRE under the OT Act. In fact, language authorizing expenditure of OT proceeds for "police protection" and "emergency medical services" was originally included in the OT Act, but was deleted by the 2004 amendment to the OT Act.

Reflected on financial statements as a transfer to the Operating Fund from Occupancy Tax.

Occupancy Tax Funding for EMS/Sheriff						
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	Total
EMS	1,148,521	1,121,085	1,154,718	1,189,359	1,225,040	5,838,723
Sheriff	1,065,668	1,093,103	1,069,379	1,159,376	1,194,463	5,581,989
Sheriff Vehicles	206,000					206,000
	<u>2,420,189</u>	<u>2,214,188</u>	<u>2,224,097</u>	<u>2,348,735</u>	<u>2,419,503</u>	<u>11,626,712</u>

- \$5.9 MM for baseball fields in Barco, a remote farming area where there are no nearby hotels, restaurants or other attractions that would support tourist spending. Budgeted \$5,736,663, still under construction 4/11/2017, estimated to complete within current budget. All Occupancy Tax Funded. The baseball facility is still under construction; however, this facility is booked for 24 days of tournaments from May 13 through November 11.
- \$13.5 MM to construct a YMCA in Barco. Total construction of the YMCA facility was \$14,501,434.

YMCA	14,501,434
Occupancy Tax	8,541,086
Transfer Tax	3,989,300
Investment Earnings	697,348
Capital Improvements	1,273,700
	<u>14,501,434</u>

- More than \$18 MM spent through FYE 6/30/15 for construction in Maple Park (now called "Community Park"), also located in Barco, which consists of various athletic and recreational facilities (see below).

This is as of 4/10/2017 – All projects have been completed except Baseball/Softball Soccer Fields

Soccer Fields	3,171,227
---------------	-----------

Occupancy Tax	1,333,246		
Transfer Tax	581,107		
Capital Improvements	235,829		
School Proj Closeout	536,377		
PARTF Grant	484,668		
	<u>3,171,227</u>		
			Other
		Occ Tax	Funding
Soccer Fields	3,171,227	1,333,246	1,837,981
Baseball/Softball Fields	5,736,663	5,736,663	-
YMCA	14,501,434	8,541,086	5,960,348
	<u>23,409,324</u>	<u>15,610,995</u>	<u>7,798,329</u>

- More than \$1 MM spent to purchase land for and to construct a “Rural Center” (now called the Currituck County Rural Center “CCRC”) for equestrian activities located in a sparsely-populated area in central Mainland Currituck, where there are few motels or restaurants or other tourist attractions.

Purchased Rural Center Property in August 2006 for \$3,226,919.62, funded with Occupancy Tax.

Purchase Information

Purchasing

Purchase date: 08/22/2006 818

Vendor: 10371 ... VANDENBENTER BLACK LLP TRUSTEE

Purchase order: 0

Line number:

Check number: 35261

Document: 035261

Invoice: 035261

Invoice account:

Amount: 3,226,919.62

1 of 1

- More than \$300k spent to construct “Veterans Park,” which consists of a short boardwalk and fishing gazebo located in the Mainland’s Waterlily area, on the Intracoastal Waterway. This is a remote area that has a nearby restaurant but is far from any lodging or other tourist facilities.

Budgeted \$673,617, spent \$442,795 to date. Project under construction

Account

Fund: 0050 GOVT CONST

Org: 10755 RECREATION

Object: 590005 CAP OUTLAY

Project:

Acct: 0050-4794-580005

Acct name: VETERAN'S PARK DOCK IMPROVEMENT

Type: Expense

Status: Active

Role:

Annual Budgeting

Multi Fund

4-year Comparison	Current Year	History	Fiscal Year 2017	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Life
in Per 2017/09							
Original Budget	158,500.00		163,000.00	.00	.00	.00	163,000.00
Transfers In	110,617.00		.00	.00	.00	.00	110,617.00
Transfers Out	.00		.00	.00	.00	.00	.00
Revised Budget	469,117.00		163,000.00	.00	.00	.00	473,617.00
Actual (Planned)	276,331.95		4,300.00	.00	.00	.00	230,331.95
Encumbrances	442,796.09		.00	.00	.00	.00	442,796.09
Request/Save	.00		.00	.00	.00	.00	.00
Available	.00		158,500.00	.00	.00	.00	.00
Percent used	100.00		2.76	.00	.00	.00	100.00

The expenditures shown above for police vehicles and EMS are derived from the County's financial statements, which are posted on the County's website. The amounts shown as spent on the Maple/Community Park facilities in the Barco area are derived from the County's financial statements for FYE 6/30/15. (As of today, the County had not yet published its financials for FYE 6/30/16 or any subsequent period.)

The County CAFR for FY 2016 is on the County website:

<http://www.co.currituck.nc.us/Financial-Statements.cfm>

The other amounts shown above are based on estimates derived from newspaper articles or postings by the County. It is unclear whether the cost of the Barco YMCA (listed above as \$13.5 MM, based on a Virginian Pilot article dated 10/31/10) is included in the \$18 MM figure shown above for the Maple/Community Park expenditure, derived from the FYE 2015 financials. The County's historical financials do not clearly disclose how TRE were spent on specific projects in any given year. This is because the OT proceeds are initially posted in a Tourism Development Authority ("TDA") Fund. Some monies are disbursed for TRE directly from the TDA Fund, and such expenses are identified on a schedule to the financials. However, TDA monies are frequently shown on that schedule as having been transferred to the County's "General Fund" or to the "County Governmental Facilities Fund." It is difficult to determine how those transferred monies were spent (although some were clearly spent on TRE projects), which makes it impossible to ascertain the total amounts spent on many of these projects.

See details above, lists all costs to date and funding sources.

Expenditures for Police Vehicles and EMS. These clearly seem to be improper expenditures of OT proceeds. Section 209(e) of the OT Act states that the County "shall use the net proceeds of the [occupancy] tax . . . only for tourism-related expenses, including beach nourishment and . . . to promote travel and tourism . . ." (Emphasis added.) It seems obvious that expenditures for police vehicles and EMS personnel do not qualify as TRE under the definition of that term in the current OT Act.

County officials have stated in public meetings that expenditures for police vehicles and EMS are permitted under the theory that the OT Act allows the proceeds to be used to pay expenses necessitated by the impact of tourism during the Summer months. (However, it is hard to comprehend how \$1.2 MM could be spent each year for these

(However, it is hard to comprehend how \$1.2 MM could be spent each year for three years on police vehicles for use in COBX for the 3 - 4 month peak season.) The TDA page on the County's website seems to confirm the County's confusion about what the OT Act authorizes. It says:

Vehicles were a 1 time expense of \$206,000. Fully equipped vehicles with radios, lights, etc and for the beach must be 4 X 4, which run in excess of \$50,000 equipped.

Over the years, [occupancy] tax revenues have assisted communities with the many governing aspects related to a growing tourism industry. These have included adding additional fire, emergency medical, life guard, and law enforcement personnel. (Emphasis added.)

There are two possible explanations for the County's misinterpretation. The first is that Section 1(e) of the 1987 version of the OT Act had permitted OT proceeds to be applied to "maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services." (Emphasis added.) However, that quoted language was deleted in the 2004 Amendment to the OT Act, and replaced by the term "TRE." The second possible source is that Dare County's OT statute (according to its website) allows a portion of its occupancy tax to be spent on "police protection and emergency services." A Magellan Strategy Group Report (April 2016) on occupancy taxes in North Carolina (available on the internet) states at p. 9 that "Dare County . . . has legislation that specifically dictates a portion of its occupancy tax will go towards 'services or programs needed due to the impact of tourism on the county.'" Currituck has no such legislation.

Whatever the reason, expenditures for police and EMS are not "TRE" and would seem to be unauthorized today.

Other Expenditures. The Currituck Mainland projects itemized above also would not seem to qualify as "TRE" under the standards set forth in the OT Act's definition of that term, particularly under the following statutory terms:

"Attracting Tourists." As noted above, the OT Act requires that OT-financed facilities must be "designed" to increase the use of certain facilities "by attracting tourists." Obviously, the costs of constructing facilities could not be considered "tourism-related" under the definition unless they actually attract tourists to the County. In the context of the OT Act, a "tourist" would generally be considered to be a visitor from outside the County. This seems logical, because the aim of the Act seems clearly to authorize funding of facilities that attract out-of-towners to visit the County and utilize its lodging, meal and other entertainment facilities, and thereby generate more occupancy and sales taxes.

In other words, under the TRE definition there must be a nexus between tourists and their spending money. What does it benefit the County if its facilities attract tourists to an area in the County where they will have no way to spend their

money due to the absence of any lodging, meal, shopping and other entertainment facilities in that area?

I believe there should also be a proportionality test under the OT Act, so that the spending generated by a facility should be proportionate to the cost of that facility. For example, construction of a \$5.9 MM baseball complex with OT proceeds in a remote area would not seem to make sense, even if attracted tourists, if the facility generated only refreshment stand revenues or occasional user fees during the baseball season.

The facilities listed in the above bullet points do not meet either a “nexus” test or a “proportionality” test. The facilities in the Barco area, Veterans Park and the CCRC all share the same problem. By a very conservative estimate (because there are no County financials covering a period later than June 30, 2015 and because the historical financials do not reveal total costs of projects), these facilities cost considerably more than \$30 million of OT proceeds. However, they all have the same characteristics – they are in very remote areas, far from the COBX tourists at the Beach or any other significant population areas; they are in rural areas that have no nearby lodging, meal, shopping or other entertainment facilities; and they have negligible revenue generation capabilities themselves.

Some of the Barco facilities, such as the YCMA and the ball fields, as well as the CCRC, might generate incidental revenues, but it is very doubtful that they would generate any net income, considering their operating and maintenance costs, and they certainly could not justify expenditures of OT proceeds exceeding \$30MM++. It is commendable for the County to provide these facilities to its citizens, but it is improper to use OT proceeds to finance them.

The wastage of OT proceeds by the Barco investments is illustrated by an article dated January 6, 2012 by Jeff Hampton in the Virginian-Pilot. It reported that the County was planning to spend \$9.3 million “more” in Maple and Barco to build tennis courts, a skateboard park and tournament-quality softball fields. It said “Currituck officials are hoping the new projects will cause restaurants, stores and possibly motels to spring up on nearby farm fields.” Five years and many millions of dollars later, the County still cannot justify those expenditures under the OT Act.

“Judgment of the Board of Commissioners.” Under the OT Act, the County BOC is obligated to make a determination that, in the “judgment” of the Commissioners, all proposed expenditures of OT proceeds meet the statutory test to qualify as “TRE”. It seems logical, in the context of the Act, that the BOC cannot be arbitrary in exercising their judgment, and that it should have reasonable and transparent standards to determine when an expense qualifies under the “TRE” definition.

In order to judge whether proposed expenditures will qualify as "TRE," it would seem necessary for the Board to consider a number of factors: based on professional projections, whether the financed facility will "attract tourists" and what revenues can be expected to be generated in the County by those tourists in the reasonably near future; whether the amount of the projected tourist revenues is proportionate to the expected cost of the facility; and whether tourists will be attracted to all or only a part of the facility (if only a part, then only that part should be eligible for financing with OT proceeds).

However, it appears that the County has not published any standards to guide these necessary judgments, and the minutes of BOC meetings at which TRE are authorized do not even mention that the Commissioners have made the "judgment" required in the TRE definition, or explain any basis for their judgment. County officials have informed us that the BOC does not even seek an opinion of the County Attorney as to the legitimacy of proposed TRE. This raises the legitimate question whether the County Commissioners have failed to meet their statutory obligations in connection with the appropriation of OT proceeds described above.

Conclusion

CCA plans to discuss this subject with other County officials and the Commissioners, but we wanted to discuss it first with you, because we respect your judgment and knowledge of the pertinent statutes. We hope that this review may result in encouraging the Commissioners to consider possible improvements in a more formal authorization process for OT proceeds expenditures, consistent with the intended objectives of the OT Act, and by affording the community the advance opportunity to participate more fully in that process. Please feel free to share this letter with the Commissioners and other interested County officials.

Thank you for considering our comments. We look forward to meeting with you in the near future to discuss this further.

Sincerely,

Barbara Marzetti, President
Corolla Civic Association

"One voice to preserve, protect & enhance the Currituck Outer Banks for residents, owners, visitors & businesses"

STATE OF North Carolina

COUNTY OF Currituck

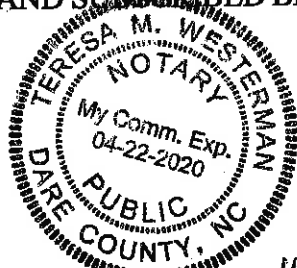
VERIFICATION

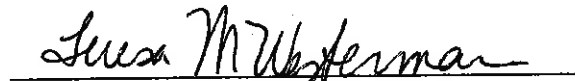
Barbara Marzetti, President of Corolla Civic Association, being first duly sworn, depose and say: That she is the president of the Corolla Civic Association, which is a Plaintiff in the above-entitled action, that she has read the foregoing Complaint and that the same is true to her own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, she believes them to be true.



Barbara Marzetti

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 2ND DAY OF April, 2019.





NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-22-2020

STATE OF Pa
COUNTY OF Allegheny

VERIFICATION

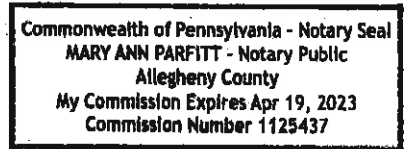
Gerald Costanzo, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.

Gerald Costanzo
Gerald Costanzo

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 2 DAY OF April,
2019.

Mary Ann Parfitt
NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-19-23



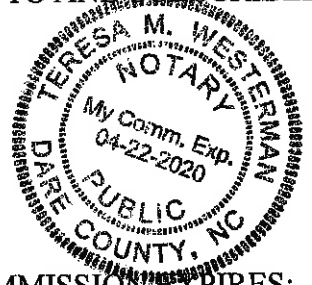
STATE OF North Carolina
COUNTY OF Currituck

VERIFICATION

Bryan Daggett, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.

Bryan Daggett
Bryan Daggett

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 2ND DAY OF April, 2019.



Teresa M. Westerman
NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-22-2020

STATE OF TEXAS

COUNTY OF Hendon

VERIFICATION

John Dumbleton, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.

John Dumbleton 4/2/19
John Dumbleton

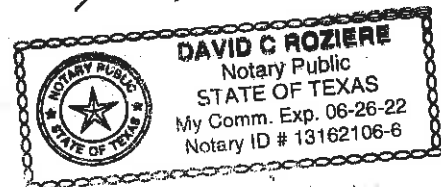
SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 04 DAY OF APRIL, 2019.

[Signature]

NOTARY PUBLIC

DAVID ROZIERE

MY COMMISSION EXPIRES: 06-26-22



VERIFICATION

Margaret Binns, being first duly sworn, depose and say: That she is a Plaintiff in the above-entitled action, that she has read the foregoing Complaint and that the same is true to her own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, she believes them to be true.

Margaret C Binns

Margaret Binns

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 4 DAY OF April, 2019
2019.

[Signature]

NOTARY PUBLIC

Galina Moshkovich
NOTARY PUBLIC

MY COMMISSION EXPIRES: Montgomery County, Maryland
My Comm. Expires June 01, 2020

STATE OF Maryland

COUNTY OF Montgomery

STATE OF N. Carolina

COUNTY OF Currituck

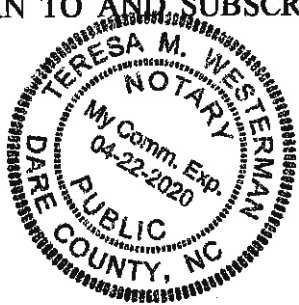
**VERIFICATION of CCA Complaint for Declaratory Judgment and Injunctive Relief
(received as attachment to email from CCA 4/1/19 12:29pm)**

Mohan Nadkarni, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.



Mohan Nadkarni

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 5th DAY OF April,
2019.



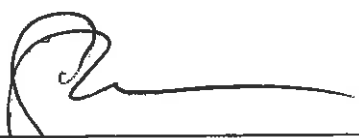
NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-22-2020

STATE OF N. Carolina
COUNTY OF Currituck

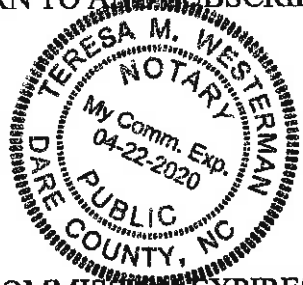
VERIFICATION


Gregory A. Wander, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.



Gregory A. Wander

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 8th DAY OF April, 2019.





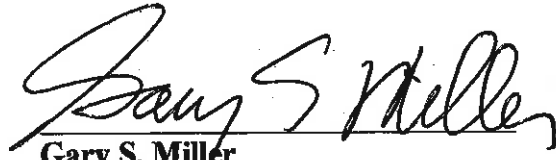
NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-22-2020

STATE OF N. Carolina
COUNTY OF Currituck


VERIFICATION of CCA Complaint for Declaratory Judgment and Injunctive Relief
(received as attachment to email from CCA 4/1/19 12:29pm)

Gary S. Miller, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.


Gary S. Miller

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 4th DAY OF April,
2019.




NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-22-2020

STATE OF Connecticut
COUNTY OF Fairfield

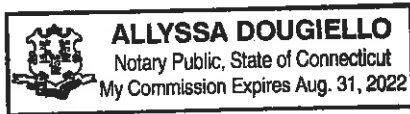
VERIFICATION

William T. Collins, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.



William T. Collins

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 1st DAY OF April, 2019.





NOTARY PUBLIC

MY COMMISSION EXPIRES: 8.31.2022

STATE OF New York
COUNTY OF Dutchess

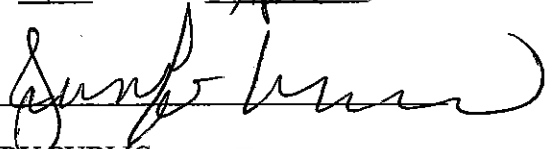
VERIFICATION

Elizabeth Schweppe, being first duly sworn, depose and say: That she is a Plaintiff in the above-entitled action, that she has read the foregoing Complaint and that the same is true to her own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, she believes them to be true.



Elizabeth Schweppe

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 4 DAY OF April, 2019.



NOTARY PUBLIC

MY COMMISSION EXPIRES: 6/23/2022

JENNIFER LYONS
Notary Public - State of New York
No. 01BR6306835
Qualified in Ulster
My Commission Exp. 06/23/2022

STATE OF North Carolina

COUNTY OF Currituck

VERIFICATION

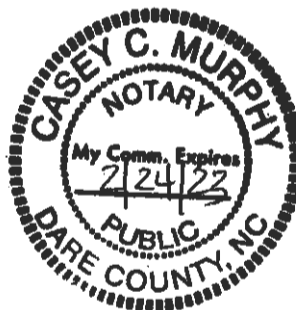
Gerrilea Adams, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.

Gerrilea Adams
Gerrilea Adams

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 2 DAY OF April,
2019.

Casey C Murphy
NOTARY PUBLIC

MY COMMISSION EXPIRES: 2/24/23



STATE OF New York

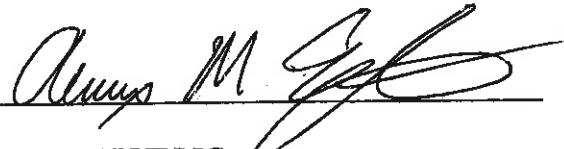
COUNTY OF Niagara

VERIFICATION

Richard J. Chown, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.


Richard J. Chown

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 4th DAY OF April, 2019.


NOTARY PUBLIC

MY COMMISSION EXPIRES: 03/21/2020

ALEX M ESPOSITO
Notary Public - State of New York
No. 01ES6338918
Qualified in Erie County
My Commission Exp. 03/21/2020

STATE OF New York

COUNTY OF Niagara


VERIFICATION

Patricia C. Chown, being first duly sworn, depose and say: That she is a Plaintiff in the above-entitled action, that she has read the foregoing Complaint and that the same is true to her own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, she believes them to be true.


Patricia C. Chown

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 5th DAY OF April, 2019.

Becky Mae Marchetti
Notary Public, State of New York
No. 01MA6064097 Qualified in Niagara County
Certificate Filed in Niagara County
Commission Expires 09-17-2021


NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

STATE OF MARYLAND

COUNTY OF MONTGOMERY

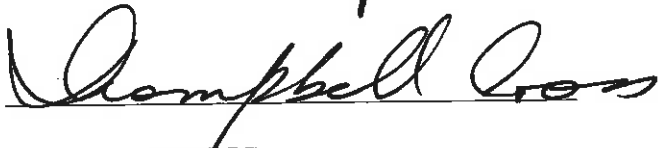
VERIFICATION

Gary Gosnell, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.



Gary Gosnell

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 10th DAY OF April, 2019.



NOTARY PUBLIC

MY COMMISSION EXPIRES: 05/19/19

DELION CAMPBELL-CROSS
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
My Commission Expires 05-19-2019

STATE OF Maryland
COUNTY OF Montgomery

VERIFICATION

Mary Magner, being first duly sworn, depose and say: That she is a Plaintiff in the above-entitled action, that she has read the foregoing Complaint and that the same is true to her own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, she believes them to be true.

Mary Magner
Mary Magner

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 1st DAY OF April, 2019.

Carol English

NOTARY PUBLIC

MY COMMISSION EXPIRES:


Carol English
Montgomery County, Maryland
Notary Public
My Commission Expires August 20, 2020

STATE OF North Carolina

COUNTY OF Currituck

VERIFICATION

Michael C. Brigati, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.


Michael C. Brigati

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 7 DAY OF April, 2019.


NOTARY PUBLIC

MY COMMISSION EXPIRES: 2/24/23



STATE OF MARYLAND
COUNTY OF Anne Arundel

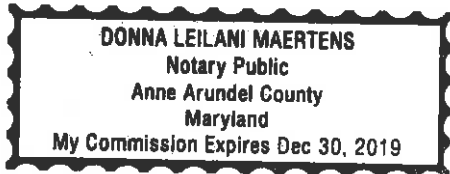
VERIFICATION

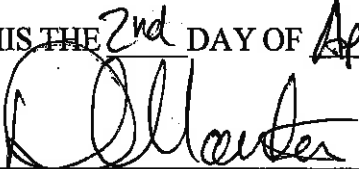
Robert Richardson, being first duly sworn, depose and say: That he is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.



Robert Richardson

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 2nd DAY OF April, 2019.





NOTARY PUBLIC

MY COMMISSION EXPIRES: 12/30/2019

STATE OF TEXAS

COUNTY OF Denton

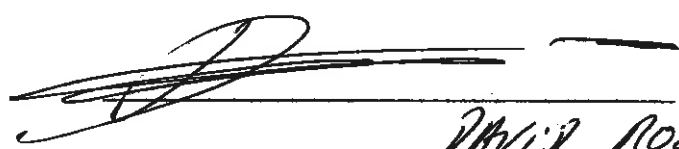
VERIFICATION

MBO
she

Maryann Dumbleton, being first duly sworn, depose and say: That ~~he~~ is a Plaintiff in the above-entitled action, that he has read the foregoing Complaint and that the same is true to his own knowledge and belief, except as to those matters and things stated on information and belief, and as to those, he believes them to be true.

Maryann Dumbleton 4/2/19
Maryann Dumbleton

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 04 DAY OF APRIL, 2019.


NOTARY PUBLIC *DAVID ROZIERE*

MY COMMISSION EXPIRES: 06-26-22

