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Via Email and Certified United States Mail, Return Receipt Requested

Bobby Hanig, Chairman
Currituck County Tourism Development Authority
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Ike I. McRee, Jr.
County Attorney
Currituck County
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Re: Public Records Request

Dear Mr. Hanig and Mr. McRee:

We represent the Corolla Civic Association (“CCA”). The CCA has previously expressed concerns regarding the expenditure of the Currituck County Occupancy Tax. As explained by the University of North Carolina School of Government, for most jurisdictions – including Currituck County – occupancy taxes are not general fund revenue. Instead, local governments face restrictions on their use.¹ Specifically, as explained below, occupancy taxes may only be expended as authorized by the North Carolina General Assembly.

Legislative History

A county may impose taxes only as specifically authorized by the legislature. N.C. Gen. Stat. § 153A-146(a).

In 1987, the North Carolina General Assembly authorized Currituck County to levy a 3% occupancy tax. The 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.” N.C. Sess. Law 1987-209, §1(e). The remainder was to be deposited in the Currituck County General Fund and could be used for any lawful purpose.

¹ See *Occupancy Tax 101*, Chris McLaughlin (Nov. 11, 2013), available at <https://canons.sog.unc.edu/occupancy-tax-101/>.

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

In 1999, the General Assembly amended the authorizing legislation to conform to the uniform provisions for occupancy taxes in N.C. Gen. Stat. § 153A-155. N.C. Sess. Law 1999-155.

In 2004, the General Assembly enacted legislation “TO ALLOW AN INCREASE IN THE CURRITUCK COUNTY OCCUPANCY TAX AND TO CHANGE THE PURPOSES FOR WHICH THE TAX MAY BE USED.” N.C. Sess. Law 2004-95. The legislation became effective on July 13, 2004. N.C. Sess. Law 2004-95, § 4.

First, the legislature authorized the County to levy an additional 2% occupancy tax. N.C. Sess. Law 2004-95, § 1.

In addition, the legislature changed the purposes for which the tax could be used. Under the new authorizing legislation, the net proceeds of the 3% tax must be used for “tourism-related expenditures, including beach nourishment.” Two-thirds of the remainder of the net proceeds of the tax must be used “to promote travel and tourism.” The remaining one-third must be used for “tourism-related expenditures.” N.C. Sess. Law 2004-95, § 2.

The new authorizing legislation 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.*

The legislation defines “[t]ourism-related expenditures” as: “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.” *Id.*

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

The new legislation eliminated 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.* The new legislation also removed the authority of the County to deposit any of the net proceeds of the occupancy tax in the Currituck County General Fund to be used for any lawful purpose. *Id.*

Finally, this legislation required Currituck County to create a Tourism Development Authority (“Authority”), a public authority under the Local Budget and Fiscal Control Act. 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. N.C. Sess. Law 2008-54, § 1.

The Authority is responsible for expending the net proceeds of the occupancy tax in accordance with the purposes authorized by the legislation. 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.*

In 2007, a bill was introduced which would have restored the ability of the County to use at least 75% of the net proceeds of the 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 Currituck County General Fund to be used for any lawful purpose. House Bill 1102, § 1. This bill was not enacted, however.

Public Records Request

Pursuant to Chapter 132 of the North Carolina General Statutes, the North Carolina Public Records Act (“Act”), the CCA requests the Authority and Currituck County to produce uncertified copies of all public records as defined by the Act regarding or relating to the items listed below.

This public records request specifically excludes any records related to any expenditures to promote travel and tourism.

This request excludes written communication that are confidential under N.C. Gen. Stat. § 132-1.1(a) but includes written communications that become public records pursuant to N.C. Gen. Stat. § 132-1.1(a).

1. All records, documents, notes and communications by or to any member of the Authority, the Currituck County Board of Commissioners, the Currituck County Department of Travel and Tourism, the Tourism Advisory Board, the County Manager or the County Attorney regarding or related to any proposed or actual use or expenditure of the occupancy tax in Currituck County beginning with the fiscal year beginning July 1, 2010 through the present.

For purposes of this request, records, documents, notes and communications shall include but not be limited to records, documents, notes and communications regarding or relating to the rationale for any proposed or actual use or expenditure, the purpose for any proposed or actual use or expenditure, the justification for any proposed or actual use or expenditure, the merits of any proposed or actual use or expenditure, the expected or anticipated impact of any proposed or actual use or expenditures, the standards or factors under which any proposed or actual use or

expenditure was evaluated and any projections or estimates of the number of tourists or business travelers expected to be attracted to the County as a result of any projects proposed to be or actually funded by the occupancy tax.

2. All records, documents, notes and communications by or to any member of the Authority, the Currituck County Board of Commissioners, the Currituck County Department of Travel and Tourism, the Tourism Advisory Board, the County Manager or the County Attorney regarding or related to the transfer of occupancy taxes to the Currituck County General Fund beginning with the July 1, 2010 fiscal year through the present.

3. All records, documents, notes and communications regarding or related to the use or expenditure of occupancy taxes transferred to the Currituck County General Fund beginning with the fiscal year beginning July 1, 2010 through the present.

4. All records, documents, notes and communications regarding or related to the transfer of occupancy taxes to the Governmental Facilities fund beginning with the fiscal year beginning July 1, 2010 through the present.

5. All records, documents, notes and communications regarding or related to the transfer of occupancy taxes from the Tourism Development Authority fund to any other fund beginning with the fiscal year beginning July 1, 2010 through the present.

6. All records, documents, notes and communications regarding or related to the use or expenditure of occupancy taxes transferred to any other fund beginning with the fiscal year beginning July 1, 2010 through the present.

For purposes of request Nos. 2 through 6, the requests specifically include but are not limited to all records, documents, notes and communications regarding or relating to the ability or authority of the Authority or Currituck County to transfer occupancy taxes to the General Fund, the Governmental Facilities fund or any other fund.

7. All records, documents, notes and communications regarding or relating to the quarterly and annual reports required to be provided by the Authority to the Board of County Commissioners beginning with the fiscal year beginning July 1, 2010 through the present.

8. All records, documents, notes and communications regarding or relating to N.C. Sess. Law 2004-95, specifically including the use or uses of the occupancy tax authorized by that legislation, the meaning or interpretation of the term "tourism-related expenditure" in that legislation, and how the use or uses authorized by that legislation differed from the use or uses authorized in prior legislation.

9. All records, documents, notes and communications regarding or relating to House Bill 1102 introduced in the 2007-2008 Session of the North Carolina General Assembly.

10. All records, documents, notes and communications regarding or related to any actual or threatened legal proceedings against the Authority or Currituck County involving the expenditure or use of any proceeds of the occupancy tax.

11. All records, documents, notes and communications regarding or related to expenditures for “seasonal” and non-seasonal sheriff and EMS employees and equipment for each fiscal year beginning July 1, 2010 through the present with respect to, including:

- (a) the amounts spent as tourism-related expenditures during each period;
- (b) the components of the budgeted amount for “seasonal” EMS services during the current fiscal year that increased by approximately \$500,000 from the prior fiscal year; and
- (c) whether any of such budgeted amount includes any tourism-related expenditures for such services provided or to be provided on the Currituck mainland.

12. All records, documents, presentations, notes and communications by or to any member of the member of the Authority, the Currituck County Board of Commissioners, the Currituck County Department of Travel and Tourism, the Tourism Advisory Board, the County Manager or the County Attorney regarding or relating to the determination that any of the projects listed below were eligible for the use of occupancy taxes, including whether and extent to which the project was expected to or had attracted tourists or business travelers to the County and whether the project was expected to or had increase the use of lodging or other facilities in the County.

Transferred for Use For	Approximate Total 2005-2016²
Sheriff Dept.	\$ 10.5 Million
EMS Services	\$ 11.2 Million
Rural Center	\$ 3.1 Million
Mainland Parks & Recreation (YMCA)	\$ 9.2 Million
Maple Commerce Park Improvements	\$ 3.0 Million
Economic Development	\$ 2.4 Million
Airport	\$202,629
Grandy Fire Hydrant	\$40,000
Carova Road Service District	\$300,000

13. The financial records of the Tourism Development Authority Fund beginning with its inception in 2005 that show the accumulation and use of occupancy tax receipts including the annual fund balances and investment returns.

14. The record retention policies of the Authority, the Currituck County Board of Commissioners and Currituck County.

² These estimates are derived from the County’s audit reports.

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15. Finally, please confirm that the documents contained on the Currituck County Official website at <http://co.currituck.nc.us> are true, accurate and complete copies of the official public records, specifically including the records listed below. If you cannot so confirm, please provide copies.

- (a) Board of Commissioners Meetings: 1/1/04 to present
- (b) Tourism Development Authority Meetings: 10/03/05 to present
- (c) Tourism Advisory Board Meetings: 01/12/15 to present
- (d) Recreation Advisory Board Meetings: 05/12/15 to present
- (e) Carova Beach Road Service District Meetings: 01/17/17 to present
- (f) Historic Preservation Commission Meetings: 03/28/17 to present
- (g) Annual Audited Financial Reports: Fiscal Years Ended 2005 to 2017
- (h) 2017-2018 County of Currituck Annual Operating Budget and Tourism Development Authority Operating Budget as adopted June 5, 2017

For purposes of this public records request, public records specifically include all email correspondence of each member of the Authority, the Currituck County Board of Commissioners, the Currituck County Department of Travel and Tourism, the Tourism Advisory Board, the County Manager and the County Attorney including all emails sent or received from personal email accounts that relate to official business. Public records also include handwritten notes, drafts and electronic records.

Pursuant to N.C. Gen. Stat. § 132-6(a), copies of public records must be furnished “as promptly as possible.” As such, we would appreciate an initial response to this request by February 28, 2018. Under N.C. Gen. Stat. § 132-6.2(b), no public agency may charge a fee for uncertified copies of public records that exceeds the actual cost to the agency of making the copy. Please let me know if there are any fees associated with this request.

We appreciate your assistance. Should you have any questions or need additional information, please do not hesitate to call.

Sincerely,



Kay Miller Hobart

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