

SUPREME COURT OF NORTH CAROLINA

GERALD COSTANZO, BRYAN DAGGOT,)
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.)

From Currituck County

**NEW BRIEF OF DEFENDANTS-APPELLANTS
CURRITUCK COUNTY, *ET AL.***

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ISSUES PRESENTED

1. The North Carolina Court of Appeals should have applied the traditional standard for evaluating decisions of public officials and held that the Currituck County Commissioners have not abused their discretion in how they spend occupancy-tax revenue under a statute that authorizes them to use their “judgment.”

2. The Currituck County Commissioners could reasonably judge that spending occupancy-tax revenue on public safety services, such as law enforcement, is necessary to attract tourists to their county.

INTRODUCTION

This case is about a local statute that allows the Currituck County Board of Commissioners to levy occupancy taxes on visitors and use the revenue for “tourism-related expenditures.” The statute defines “tourism-related expenditures” as those that, in the “judgment” of the Board of Commissioners, will bring more visitors to the county. When it was enacted in 1987, the statute defined such expenditures as including public safety services, and when it was amended in 2004 it gave the Board of Commissioners the authority to exercise its judgment about what such expenditures are. The plaintiffs assert that public safety services, with the exception of beach lifeguards, are not tourism-related, but the commissioners believe that such services help provide a safe environment to which tourists want to come and return. If paying for a beach lifeguard who rescues a tourist from rough surf is tourism-related, as the plaintiffs concede, then emergency medical technicians who take that tourist to the hospital after he or she has been rescued, or the law enforcement officers

who prevent other tourists from getting into the surf, are also tourism-related, or at least the commissioners could reasonably believe so.

This Court must determine whether the commissioners abused their discretion in making their determination about what is tourism-related – that is, whether they acted capriciously, in bad faith, or in disregard of the law. If they have not acted this way, this Court must reverse the Court of Appeals and reinstate summary judgment in favor of the defendants.

STATEMENT OF THE CASE

The plaintiffs filed this lawsuit on May 7, 2019, and sought declaratory and injunctive relief on 13 claims in connection with how Currituck County and the Currituck County Tourism Development Authority spend occupancy-tax revenue collected under a local statute the Legislature enacted specifically for the county. (R. pp. 3-78.)

On July 12, 2019, the defendants timely filed an answer and a partial motion to dismiss in which they sought dismissal of: (1) all claims against the Currituck County Board of Commissioners; (2) all claims against County Manager/Budget Officer Daniel F. Scanlon; and (3) the plaintiffs' Eighth Claim for Relief, which was asserted as a direct claim under the North Carolina Constitution. (R. pp. 95-118.)

On August 1, 2019, the plaintiffs filed a motion for a preliminary injunction seeking “to enjoin the use of any occupancy tax (“OT”) proceeds by the Defendants for the purposes of funding police, emergency medical and fire services and equipment (referred to herein as ‘public safety services and equipment’),” except for “lifeguard

services and related equipment or any services . . . related to beach clean-up.” (R. pp. 119-21.) After a hearing on September 18, 2019, the trial court denied that motion. (R. pp. 129-30.)

On December 9, 2019, the plaintiffs voluntarily dismissed all claims against defendant Scanlon in his individual capacity. (R. pp. 131-32.) On July 19, 2021, the trial court granted the defendants’ partial motion to dismiss and dismissed all claims against defendant Scanlon in his official capacity, all claims against the Currituck County Board of Commissioners, and the Eighth Claim for Relief. (R. pp. 172-74.)

That left Currituck County and the Currituck County Tourism Development Authority as defendants on 10 remaining claims. Of those claims, the first seven sought a declaratory judgment that Currituck County had or was spending occupancy-tax revenues improperly, and the last three sought injunctions to bar future such spending.

On June 18, 2021, the plaintiffs filed a partial motion for summary judgment, limited to the Second Claim for Relief, which asserted that the county’s use of occupancy-tax revenue to pay for public safety services was unlawful. (R. pp. 15-17, 133-34.) On November 19, 2021, the defendants filed a motion for summary judgment on all remaining claims. (R. pp. 183-85, 188-90.)

On December 6, 2021, the trial court heard arguments on the summary judgment motions, and on December 28, 2021, it denied the plaintiffs’ partial motion and granted the defendants’ motion. (R. pp. 211-12.) On January 25, 2022, the plaintiffs filed a notice of appeal. (R. pp. 213-15.)

The North Carolina Court of Appeals heard oral arguments on February 8, 2023, and issued an opinion on March 19, 2024. The Court of Appeals reversed the denial of partial summary judgment for the plaintiffs and the granting of summary judgment to the defendants. See Costanzo v. Currituck County, 293 N.C. App. 15, 24-25, 899 S.E.2d 569, 577 (2024). It ordered that summary judgment be entered in favor of the plaintiffs on the Second Claim for Relief, which involved the spending of occupancy-tax revenue on public safety services. Id. It vacated the entry of summary judgment for the defendants and remanded the case to the trial court. Id.

The Court of Appeals held that the Currituck County Board of Commissioners' discretion in spending occupancy-tax revenue was limited because it could spend "such funds . . . only as permitted by strict construction of the term 'tourism-related' expenditures," which is contained in a 2004 Amendment to the local statute. Id. It found that "the County did not act in accordance with" the 2004 Amendment because it spent "occupancy tax proceeds for public safety services and equipment." Id. The court concluded, "This is not to say that the County has acted in bad faith," only that it had exceeded authorization provided in the 2004 Amendment to the statute. Id.

The concurring opinion stated that, though the county's spending on public safety services "might well be" proper under the local statute, there was no evidence that "the County – through its Board of Commissioners – exercised its judgement, or discretion, in doing so." Id. at 25, 899 S.E.2d at 577 (Hampson, J., concurring).

The defendants filed a petition for discretionary review with this Court on April 22, 2024, and the petition was granted on June 25, 2025. The defendants file this brief in accordance with that order.

STATEMENT ON GROUNDS FOR APPELLATE REVIEW

This Court has authority to review a decision of the North Carolina Court of Appeals pursuant to N.C. Gen. Stat. § 7A-31(a).

STATEMENT OF THE FACTS

The facts are not in dispute. See Costanzo, 293 N.C. App. at 23, 899 S.E.2d at 576. (“The record reveals no controversy as to the facts but as to the legal significance of those facts.”). Relevant facts are set out below.

I. A Local Statute Enacted for Currituck County Allows the County to Collect Occupancy Taxes from Tourists and Spend Revenue from Such Taxes for Purposes Related to Tourism and Tourists.

In 1987 the Legislature enacted a local statute for Currituck County that allowed the county to collect occupancy taxes from tourists and spend revenue from such taxes for “tourist related purposes.” Costanzo, 293 N.C. App. at 16, 899 S.E.2d at 571. The county, which contains the tourist destination of Corolla on the Outer Banks, generates significant revenue from taxes levied under this statute. Id.

The statute was amended in 2004. Id. (citing N.C. Sess. Law 2004-95, H.B. 1721, § 1(a2)). (See also R. p. 198.) This case involves the meaning of that amendment. The 2004 Amendment still allows the county to levy occupancy taxes on visitors who rent properties in the county, and it requires the county to spend most of the revenue from such taxes “for tourism-related expenditures, including beach nourishment.” Id. (citing 2004 Amendment, § 2(e)) (emphasis added). The 2004

Amendment requires the county to spend a specific portion of the revenue “to promote travel and tourism” and to “use the remainder of those funds for tourism-related expenditures.” Id. (R. pp. 198-200.)

The issue in this case is what qualifies as “tourism-related expenditures.” The 2004 Amendment defines them 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.

N.C. Sess. Law 2004-95, H.B. 1721, § 2(e)(4) (emphasis added). (R. p. 199.) See also Costanzo, 293 N.C. App. at 18-19, 899 S.E.2d at 573.

Under the 1987 statute and 2004 Amendment, the county, out of every \$100 in occupancy-tax revenue it collects, must use one-third for promotion of tourism and the remaining two-thirds for expenditures that the commissioners judge will help attract tourists. (Sandra Hill Dep. p. 37; Mary “Kitty” Etheridge Dep. pp. 11, 32; Robert “Bob” White Dep. p. 7.) The county takes in between \$10 to \$12 million in occupancy-tax revenue a year, so about \$3.5 million of that is spent on promotions. (R. p. 192; Sandra Hill Dep. p. 37.)

When it was first enacted in 1987, the statute required the county to use 75 percent of occupancy-tax revenue “only for tourist related purposes,” which were defined to include, among other things, “construction and maintenance of public facilities and buildings, . . . police protection, and emergency services.” N.C. Sess.

Law 1987, Chapter 209, H.B. 555, § 1(e) (emphasis added). (R. p. 201.) The remaining 25 percent of revenue could be used “for any lawful purpose.” *Id.* In other words, it could be used for expenditures unrelated to tourism.

The 2004 Amendment also created the Currituck County Tourism Development Authority (TDA), which consists of the seven members of the Currituck County Board of Commissioners¹ and a tourism-industry representative, who serves as a non-voting member.

Under the 2004 Amendment, the TDA is charged with spending occupancy-tax revenue to “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.” N.C. Sess. Law 2004-95, H.B. 1721, §§ 3(1.1) and 3(c). All occupancy-tax revenues go to the TDA, which allocates the required one-third of revenue for promotions and sends the rest to the county’s general fund for expenditures under the commissioners’ discretionary authority. (R. p. 195.)

II. The Currituck County Commissioners Have Exercised Their Judgment to Determine What Expenditures Are Related to Tourism and Have Relied on Their Observations and Experiences as Well as Reports from County Officials and Tourists.

The plaintiffs, some of whom may collect and remit occupancy taxes but do not pay them, claim that Currituck County spends this revenue in violation of the statute and that many expenditures, especially for law enforcement, emergency medical

¹ The statute was amended in 2008 to add two county commissioners to the TDA board. *See* N.C. Sess. Law 2008-54, H.B. 2763, § 1.

services, and fire protection, should not be paid for with occupancy-tax revenue because they are not related to tourism. (R. pp. 4-7.)

The commissioners, who have used the discretion given to them by the statute, disagree.² They have unanimously judged that certain expenditures, including those on public safety services required in response to the influx of visitors to the county during tourist season, are related to tourism. (R. pp. 192, 195.)

A. The Corolla Outer Banks drive tourism to Currituck County, and 80 percent of occupancy-tax revenues are spent there.

The focus of Currituck County's tourism economy is on Corolla. Corolla is on a peninsula that is set off from the county's mainland by the Currituck Sound, which flanks Corolla on one side, with the Atlantic Ocean on the other side. (R. p. 192.) Most of Currituck County's land and population are on the mainland, but tourism is driven by visitors to Corolla. Costanzo, 293 N.C. App. at 16, 899 S.E.2d at 571. Though it comprises only "about ten percent of the county's total land area," Corolla provides about half of the county's tax base. (Robert "Bob" White Dep. pp. 33, 35.)

Because most tourists visit Corolla, most of the county's occupancy-tax revenue is generated there, and 80 percent of revenue is spent on Corolla each year. (Robert "Bob" White Dep. pp. 19-20; R. p. 192.) One of the biggest recipients of occupancy-tax revenues has been the Whalehead Club and its maritime museum, which are tourist destinations on Corolla. (Robert "Bob" White Dep. pp. 15-16, 23, 27.)

² Commissioners Selena Jarvis, J. Owen Etheridge, and Kevin McCord remain on the board. The board's membership can be found at <https://currituckcountync.gov/board-of-commissioners/commissioners-profiles/>.

Only 1,159 of the county's 28,100 year-round residents live on Corolla, but the population doubles to about 60,000 during tourist season from the influx of visitors. (R. p. 192; Robert "Bob" White Dep. p. 35.) Between 2006 and 2020 (when discovery in this lawsuit took place), the number of tourists who visited Currituck County increased every year, except for 2009, when there was a recession. (R. pp. 194-95.)

The county uses occupancy-tax revenue to pay for public safety services on Corolla and the mainland during tourist season. Because Corolla is accessible only through the mainland, tourists headed to Corolla must go through the mainland and thus bring increased traffic there. (Selena Jarvis Dep. pp. 12, 15-17.)

Though all seven members of the Currituck County Board of Commissioners are elected at-large, five must live in distinct geographic districts, one of which covers Corolla. (R. p. 192.) The commissioner from Corolla at the time this lawsuit was filed was Robert "Bob" White, who has run a tourism business on Corolla since 1996. (R. p. 192; Robert "Bob" White Dep. p. 15.)

The plaintiffs alleged in the Complaint that the use of occupancy-tax revenues to pay for public safety services, such as law enforcement, emergency medical services, fire protection, beach lifeguards, and ocean rescue teams, was unlawful, though they later withdrew the objection to lifeguards. (R. p. 192; Robert "Bob" White Dep. p. 18.) The need for lifeguards and ocean rescue teams is seasonal, but other public safety costs are year-round because the county cannot hire employees for such jobs for only part of the year and must hire them on a full-time, annual basis and move them to Corolla during tourist season. (R. p. 192, 195; Sandra Hill Dep. pp. 19,

22.) The commissioners judge these expenditures as tourism-related because their need is caused by the influx of tourists. (R. p. 195.)

The commissioners make budget decisions after receiving input from county officials, including the tourism director. (Sandra Hill Dep. pp. 5, 8-10; Mary “Kitty” Etheridge Dep. pp. 20-22.) The county is transparent in making spending decisions. Budget decisions are made in open public meetings and after open budget workshops at which county residents can provide input, and budgets are placed on the county’s website. (R. p. 195; Robert “Bob” White Dep. p. 49; Mary “Kitty” Etheridge Dep. pp. 35-37.)

The commissioners believe that their spending of occupancy-tax revenues has been logically related to tourism and is within the discretion the statute provides them. Their testimony shows that they have had a rational, reasonable basis for their decisions and used their best judgment in exercising the authority given to them by the Legislature under the statute.

Commissioner White, who was chairman of the board from 2018 to 2020, testified about his experience in the tourism business and his daily interactions with tourists. (Robert “Bob” White Dep. pp. 5-6, 15, 34.) The board recognizes that occupancy-tax revenue may be used only “for tourism-related expenditures,” but that it may determine what such expenditures are by using its “judgment.” (Robert “Bob” White Dep. p. 13.) The board must find “some correlation between that expenditure and the tourism-related portion of that,” and commissioners discuss this connection in work sessions and with county officials. (Robert “Bob” White Dep. pp. 13-14.)

The commissioners agree that paying for items such as school textbooks would not be related to tourism. (Kevin McCord Dep. p. 15.) But using occupancy-tax funds for public safety services, such as those provided by the sheriff's office, fire departments, emergency medical services, and lifeguards, ensures a safe environment for tourists and thus are "an integral part of the tourist satisfaction." (Robert "Bob" White Dep. pp. 14-17.) Occupancy-tax funds have been used to pay for sheriff's deputies on a year-round basis, including for their overtime, and that allows the sheriff's office to provide protection to homes that are empty in the off-season, when break-ins on Corolla increase. (Robert "Bob" White Dep. pp. 20-22.)

The commissioners believe that the influx of tourists drives the increased costs for public safety on Corolla. (Robert "Bob" White Dep. p. 33.) "The need [for services] is greater . . . because of the tourist impact on the Outer Banks area. And this simply pays for that extra service level that is needed over there because of the tourist involvement." (Robert "Bob" White Dep. p. 33.)

The sheriff and other county officials have reported the need for such services to the Board of Commissioners. (Robert "Bob" White Dep. p. 32; J. Owen Etheridge Dep. pp. 18, 26.) The commissioners rely on the recommendations of the county's professional staff, including the tourism director, and know that there is a greater call volume for public safety services because of tourism. (Selena Jarvis Dep. pp. 19, 23-27; Mary "Kitty" Etheridge Dep. pp. 17, 20-22.) This information informs their judgment about how to spend revenue. (Selena Jarvis Dep. pp. 19, 23-27; Robert "Bob" White Dep. p. 32.)

County officials also receive reports from tourists who are pleased with the level of public safety services the county provides, and officials believe this “absolutely is crucial to the tourist experience here in attracting them through a positive tourist experience. . . . [A]nd re-attracting them.” (Robert “Bob” White Dep. pp. 15, 31, 44.) This leads the commissioners to conclude that such spending “is a perfectly acceptable expense” under the statute. (Robert “Bob” White Dep. pp. 19-20, 27-28, 34-35, 44.)

The use of occupancy-tax funds to pay for some public safety services is reasonably related to tourism because it ensures that tourists have a safe place to visit. (Robert “Bob” White Dep. pp. 15-20.) Tourists travel throughout the county just going to and from Corolla, so “[t]he whole county is affected by the tourist season.” (Selena Jarvis Dep. pp. 8, 11-17.) Thus, tourism-related expenditures are, in the commissioners’ judgment, “[a]nything that will bring the tourists to our county, make the tourist feel safe, secure and know that it is someplace that they can bring their family and feel those same things, that safety and security.” (Mary “Kitty” Etheridge Dep. p. 33.) Visitors would stop coming “if they felt like they were not going to be safe, that there was not adequate facilities here for them . . . if something were to happen.” (Mary “Kitty” Etheridge Dep. p. 33.)

The county has “to have more [deputy] [s]heriffs or EMS because of the influx of the tourists on our county.” (Mary “Kitty” Etheridge Dep. p. 12.) Occupancy-tax revenue pays for some, but not all, of the increased costs to cover tourist-driven needs on the Outer Banks. (Mary “Kitty” Etheridge Dep. p. 15.)

Though commissioners rely on information from public safety officials and review relevant data, it also “just makes common sense that if we don’t have fire protection, if we don’t have police protection, people are not coming to an area that they don’t feel is safe.” (Mary “Kitty” Etheridge Dep. p. 19.) Tourists bring the need for “more police protection, more fire protection, more everything[.]” (Mary “Kitty” Etheridge Dep. p. 23.) Not only does tourism “bring[] the need for more services,” but tourists want those services and there are obvious benefits to providing those services. (Mary “Kitty” Etheridge Dep. pp. 29, 33.) When the county increased beach patrols in 2020, for example, it did not suffer any water deaths. (Mary “Kitty” Etheridge Dep. p. 39.) Increased public safety spending also covers tourists on the mainland. If no one responded to an accident on the mainland involving tourists traveling to Corolla, that could affect tourism. (Mary “Kitty” Etheridge Dep. p. 31.)

Commissioner Kevin McCord, who is a Currituck County sheriff’s deputy and owns a business, believes that the public safety expenditures keep tourists safe. (Kevin McCord Dep. pp. 5-6, 16.) Because increased public safety spending on Corolla helps tourism, this spending is tourism-related. The county’s ocean rescue teams conducted 194 rescues in one recent year, for example, and occupancy-tax revenue pays for increased medical units on Corolla and sheriff’s patrol vehicles. (Kevin McCord Dep. pp. 16-17, 31-32, 40.)

Visitors have told county officials that they are impressed with the “clean and safe” beaches, and commissioners believe that “if the services weren’t there the people

wouldn't be there, and you wouldn't have your clean, safe beaches. . . . ” (Kevin McCord Dep. pp. 16, 18, 25-26, 45.)

B. Currituck County is trying to diversify its tourism economy and has spent some occupancy-tax revenues on the mainland for things other than public safety services.

The county is aware of other needs in attracting tourism and does not use occupancy-tax revenues just for public safety services. As a result of a consultant's recommendation, it has tried to diversify its tourism economy to attract more visitors to the mainland and has used occupancy-tax revenue for several projects there. (R. pp. 193-94.)

The county spent \$177,000 to refurbish the Old Currituck County Jail, a tourist attraction on the mainland. (R. p. 193; J. Owen Etheridge Dep. pp. 41-42.) It upgraded the county airport, which is used by hunters and fishermen from around the world. (R. p. 194.) It built baseball and softball fields, which attract visitors for tournaments most weekends each year. (R. p. 194; J. Owen Etheridge Dep. pp. 41-42.) It converted an old Coast Guard station into a veterans' park along the Intracoastal Waterway and near a marina used by boaters who travel up and down the East Coast. (R. p. 194; Kevin McCord Dep. p. 50.) It helped restore the Historic Jarvisburg Colored School Museum, which dates to 1868, is on the National Register of Historic Places, and is popular with tourists. (R. p. 194; J. Owen Etheridge Dep. pp. 41-42.)

The county also has used occupancy-tax revenues to pay for several tourist-related events on the mainland each year, including the Currituck “Bulls and BBQ”

rodeo festival. Those events “need to be staffed,” including by EMS crews. (Robert “Bob” White Dep. pp. 23, 43.)

ARGUMENT

Standard of Review

This Court “‘review[s] de novo an appeal of s summary judgment order.’” N.C. Farm Bureau Mut. Ins. Co. Inc. v. Herring, 385 N.C. 419, 422, 894 S.E.2d 709, 712 (2023). “When reviewing a matter de novo, this Court ‘considers the matter anew and freely substitutes its own judgment’ for that of the lower courts.” Id. (citation omitted).

I. The Court of Appeals Should Have Applied the Established Standard for Determining Whether Public Officials Have Abused Their Discretion.

Because this case involves deciding whether the Currituck County Commissioners have properly exercised their statutory “judgment” to determine whether an expenditure is related to tourism, this Court must decide whether the commissioners have abused their discretion in making their determinations.

North Carolina has a well-established standard for analyzing whether public officials have abused their discretion. Courts will only act “[w]hen an officer acts capriciously, or in bad faith, or in disregard of the law, and such action affects personal or property rights[.]” Pue v. Hood, 222 N.C. 310, 22 S.E.2d 896, 900 (1942).

As is appropriate for this case, this abuse-of-discretion standard “is applied to those decisions which necessarily require the exercise of judgment.” Little v. Penn Ventilator Co., 317 N.C. 206, 218, 345 S.E.2d 204, 212 (1986) (emphasis added). “The test for abuse of discretion is whether a decision is manifestly unsupported by reason

or so arbitrary that it could not have been the result of a reasoned decision.” Id. In determining this, “[b]ecause the reviewing court does not in the first instance make the judgment,” it “is not to substitute its judgment in place of the decision maker,” but “only to insure that the decision could, in light of the factual context in which it was made, be the product of reason.” Id.

If a court finds that a public official has “acted within the law and in good faith in the exercise of his best judgment, the court must decline to interfere even though it is convinced the official chose the wrong course of action.” Burton v. City of Reidsville, 243 N.C. 405, 407-08, 90 S.E.2d 700, 703 (1956).

This deference given to public officials and bodies is an inherent part of our system of government, as this Court has explained:

The right to err is one of the rights – and perhaps one of the weaknesses – of our democratic form of government. . . . [W]e operate under the philosophy of the separation of powers, and the courts were not created or vested with authority to act as supervisory agencies to control and direct the action of executive and administrative agencies or officials. So long as officers act in good faith and in accord with the law, the courts are powerless to act – and rightly so.

Id. at 408, 90 S.E.2d at 703 (emphasis added).

This principle is engrained in our law. “The acts of administrative or executive officers are not to be set at nought by recourse to the courts. Nor are courts charged with the duty or vested with the authority to supervise administrative and executive agencies of our government.” Id. at 407, 90 S.E.2d at 702. A court may only “determine whether a public official has acted capriciously or arbitrarily or in bad

faith or in disregard of the law.” Id. This requires evidence of an “arbitrary abuse” of discretionary authority. Id. at 407, 90 S.E.2d at 703.

“The ‘arbitrary or capricious’ standard is a difficult one to meet,” and requires evidence that decisions are “‘patently in bad faith,’” or “‘whimsical’ in the sense that ‘they indicate a lack of fair and careful consideration’ or ‘fail to indicate any course of reasoning and the exercise of judgment.’” Act-Up Triangle v. Comm. for Health Services, 345 N.C. 699, 707, 483 S.E.2d 388, 393 (1997) (citations and internal quotations omitted)). In Act-Up Triangle, this Court affirmed the lower court’s decision not to interfere with a state agency’s policy eliminating anonymous HIV testing by local health departments. Id. at 702, 483 S.E.2d at 389. Courts do “not have authority to override decisions within agency discretion when that discretion is exercised in good faith and in accordance with law.” Id. at 707, 483 S.E.2d 393.

This doctrine rests on the rationale that legislative and executive officials must be able to do their jobs, and, with some exceptions, “[c]ourts have no right to pass on the wisdom with which they act.” Barbour v. Carteret County, 255 N.C. 177, 181, 120 S.E.2d 448, 451 (1961). Courts “cannot substitute their judgment for that of the . . . officials honestly and fairly exercised,” unless the officials “acted in wanton disregard of public good.” Id.

In Barbour the issue involved county commissioners’ decision to spend funds on the design, construction plan, and prospective site for a public building. Id. These were “duties inherent to their office, expressly conferred by the Legislature,” and

courts could not interfere with such decisions unless there was evidence that “the county officials acted in wanton disregard of the public good.” Id.

Federal courts give similar deference to public officials and bodies. For example, in Gibbs v. Babbitt, 214 F. 3d 483, 487 (4th Cir. 2000), the court found a rational basis for a federal agency’s regulation banning the taking of red wolves on private property and concluded, “Judicial deference to the judgment of the democratic branches is therefore appropriate.”

This does not give public officials and bodies unlimited authority, however. In In re Housing Authority of City of Salisbury, 235 N.C. 463, 469, 70 S.E.2d 500, 504 (1952), this Court affirmed a jury verdict finding that a city housing authority had acted arbitrarily and capriciously in trying to condemn a portion of Livingstone College to build a public housing project. There was “substantial evidence” that the authority “either failed to understand or disregarded the ill effects and harm likely to come to Livingstone College” from the housing project, especially when other suitable sites, including adjacent property owned by the college, were available for this use. Id. at 466, 469, 70 S.E.2d at 502, 504.

Absent an abuse of discretion, however, courts must defer to the authority that public officials and bodies are given under our system of government.

In Painter v. Wake County Bd. of Educ., 288 N.C. 165, 176, 217 S.E.2d 650, 657 (1975), the plaintiffs challenged a school board’s decision to exchange lands for the construction of a high school, but this Court said: “Such decisions are vested in the sound discretion of the Board. The Board’s discretion with reference thereto

cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of the law.” Id. at 176, 217 S.E.2d at 657.

This principle was reaffirmed in Granville County. Bd. of Comm’rs v. N.C. Hazardous Waste Mgmt. Comm., 329 N.C. 615, 407 S.E.2d 785 (1991). In that case this Court declined to interfere with a state agency’s preliminary decision about where to place a hazardous-waste treatment plant. Id. at 618, 407 S.E.2d at 786. This was a matter for the executive branch and it was well established that courts should defer to such decisions. The Court stated:

“Courts will not undertake to control the exercise of discretion and judgment on the part of the members of a commission in performing the functions of a State agency.” When discretionary authority is vested in such commission, the court has no power to substitute its discretion for that of the commission; and, in the absence of fraud, manifest abuse of discretion or conduct in excess of lawful authority, the court has no power to intervene.

Id. at 625, 407 S.E.2d at 791 (quoting Pharr v. Garibaldi, 252 N.C. 803, 811-12, 115 S.E.2d 18, 24-25 (1960) (internal citations omitted)).

This reasoning was also applied in Alamance County. v. N.C. Dep’t of Human Resources, 58 N.C. App. 748, 294 S.E.2d 377 (1982). In that case the court declined to intervene in a funding dispute between the state and a county, and, citing Pharr, said that because the county had not even alleged “fraud, manifest abuse of discretion, or conduct in excess of lawful authority,” it had “sought relief beyond the power of the court to grant.” Id. at 749, 294 S.E.2d at 378.

In a lawsuit challenging the decisions of public officials, a court starts with the presumption that officials acted properly. A court must presume “ [t]hat public

officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law,’ and ‘[e]very reasonable intendment will be made in support of the presumption.’ ” Painter, 288 N.C. at 178, 217 S.E.2d at 658 (citations and quotations omitted). Thus, “[t]he burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence.” Id. (citation and quotations omitted). A “mere assertion of a grievance” is insufficient to rebut this presumption. Alamance County, 58 N.C. App. at 750, 294 S.E.2d at 378.

This proposition has been reaffirmed many times. “North Carolina law recognizes a strong presumption that governmental bodies act in good faith,” and there is a “strong presumption of lawfulness that attaches to the actions of public bodies.” Reese v. Mecklenburg County, 204 N.C. App. 410, 422, 424, 694 S.E.2d 453, 462-63 (2010).

II. The 1987 Statute Classified Public Safety Services as Tourist-Related, and the 2004 Amendment Did Not Exclude Them as Such But Gave the Board of Commissioners the Discretion to Decide.

The Legislature recognized the need for tourist destinations to provide public safety services when it enacted the statute in 1987, because it classified “tourist related purposes” as “including . . . police protection, and emergency services.” Costanzo, 293 N.C. App. at 16, 899 S.E.2d at 571 (quoting N.C. Sess. Law 1987, Chapter 209, H.B. 555, § 1(e) (emphasis added)). The Legislature clearly believed then that public safety services were related to tourism and that occupancy-tax revenue could be spent on such services.

In 2004, when it amended the statute, the Legislature changed the phrase “tourist related purposes” to “tourism-related expenditures.” But if “police protection,

and emergency services” were related to tourists in 1987, they were related to tourism in 2004. The Legislature did not say otherwise; rather, it gave the Board of Commissioners the authority to use its “judgment” to determine what spending was related to tourism. The commissioners could have concluded that public safety services were not needed to attract tourism, but they knew that the Legislature thought they could believe this and that the decision was up to them.

The intent of the 2004 Amendment is clear from its language. Section 2(e) provides: “Currituck County shall use the net proceeds of the [occupancy] tax levied under subsection (a) of this section only for tourism-related expenditures, including beach nourishment.” Costanzo, 293 N.C. App. at 18, 899 S.E.2d at 573 (citing N.C. Sess. Law 2004-95, Chapter 209, H.B. 1721, § 2(e)). Just below that, Section 2(e)(4) defines “tourism-related expenditures” 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 by attracting tourists or business travelers to the county.” Id. If these two sentences were combined into one, the statute would read this way:

Currituck County shall use the net proceeds of the tax levied under subsection (a) of this section only for expenditures that, ***in the judgment of the Currituck County Board of Commissioners***, are designed to increase the use of lodging facilities, recreational facilities, and convention facilities in a county by attracting tourists or business travelers to the county and such expenditures include capital expenditures and beach nourishment.

(Emphasis added.)

Given this, the Board of Commissioners could reasonably judge that spending on public safety services increases the use of lodging, recreational, and convention facilities by attracting tourists and business travelers to the county because such services keep the county safe for tourists and business travelers. The plaintiffs seek a declaration that the use of public safety services is not related to tourism. Costanzo, 293 N.C. App. at 22, 899 S.E.2d at 576. But if such services were related to tourists in 1987, they were also related to tourism in 2004, especially when the Legislature did not say otherwise but left it up to the commissioners to decide.

The 1987 statute and 2004 Amendment should be read together. “ ‘[S]tatutes which are in pari materia, i.e., which relate to or are applicable to the same matter or subject, although enacted at different times must be construed together in order to ascertain legislative intent.’ ” Friends of Hatteras Island Nat’l Hist. Forest Land Trust Inc. v. Coastal Resources Comm’n, 117 N.C. App. 556, 566, 452 S.E.2d 337, 344 (1995) (quoting Carver v. Carver, 310 N.C. 669, 674, 314 S.E.2d 739, 742 (1984)).

The 1987 statute provided specific examples of what “tourist related” expenditures were and included “police protection, and emergency services.” See N.C. Sess. Laws, 1987, Chapter 209, H.B. 555, Sec. 1(e). The 2004 statute is general and defines “tourism-related expenditures” as those 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.” N.C. Sess. Laws 2004-95, H.B. 1721, Sec. 2(4). It provides only two examples, “capital

expenditures and beach nourishment,” but it does not specifically exclude anything and instead leaves it to the commissioners to decide what attracts visitors.

The 1987 statute gave the county authority to use such revenue for two specific and separate categories: (1) a Tourist Related category, which expressly included “police protection, and emergency services,” and (2) a residual General Purpose category, which allowed funds to be placed in the “General Fund” to be “used for any lawful purpose.” *Id.* (emphasis added). Section 1(e) of the 2004 Amendment included “tourism-related capital expenditures and beach nourishment,” but it did not specifically exclude anything. The term “including” and the use of examples is not exhaustive or exclusive. “The term ‘includes’ is ordinarily a word of enlargement and not of limitation. The statutory definition of a thing as ‘including’ certain things does not necessarily place thereon a meaning limited to the inclusions.” N.C. Turnpike Auth. v. Pine Island, Inc., 265 N.C. 109, 120, 143 S.E.2d 319, 327 (1965) (citations omitted). Accord, Jeffries v. County of Harnett, 259 N.C. App. 473, 492-93, 817 S.E.2d 36, 49 (2018) (“‘use of ‘including’ to introduce examples . . . indicates the list is meant to be illustrative and not exhaustive”); State ex rel. Utilities Comm. v. EDF, 214 N.C. App. 364, 367, 716 S.E.2d 370, 372 (2011) (“use of the word ‘including’ expresses legislative intent to list examples.”).

If the Legislature determined in 1987 that “tourist related” expenditures included “police protection, and emergency services,” it follows that in 2004 the Legislature, in giving authority to the Board of Commissioners to use its judgment, would know that the board could still consider “tourism-related expenditures” as

including “police protection, and emergency services.” There is no substantive difference between the words “tourist,” which was used in the 1987 statute, and “tourism,” which was used in the 2004 statute. Again, if such services were tourist-related in 1987, they were tourism-related in 2004.

III. The Currituck County Board of Commissioners Could Reasonably Judge that Public Safety Services Are Necessary to Attract Tourism and Thus Proper Under the Statute.

Tourist destinations have a “significant interest” in preserving their reputations as good places to visit. Billups v. City of Charleston, S.C., 961 F.3d 673, 686 (4th Cir. 2020).

One component of such a reputation is tourists’ belief about whether a destination is safe to visit. When public safety deteriorates, a community’s reputation as a tourist destination may suffer. Perhaps the most glaring example of this in the country in recent years has been San Francisco, where the president of the tourism bureau cited “open drug markets” and “brazen crime” as a reason that “[a] lot of visitors are concerned, concerned for their own safety.” Stephanie Sierra, “SF’s ‘dirty streets’ hurting international tourism as conventions struggle to come back,” ABC-7 News San Francisco (found at: <https://abc7news.com/sf-tourism-san-francisco-streets-international-travelers-conventions-in/12227886/>) (last visited July 22, 2025). That tourism bureau president said, “It’s really imperative that San Francisco is a safe destination, otherwise the city is going to risk losing a lot.” Id.

Tourists may also want to know that communities could deal sufficiently with unexpected emergencies, such as natural disasters or man-made ones.³

As shown above, the Currituck County Commissioners believe the county has a good reputation as a tourist destination and want to preserve it.

The 2004 Amendment gave the commissioners discretion to decide what is related to tourism. They believe that the influx of tourists requires more public safety services because tourists expect such services. As one commissioner testified: “[I]t just makes common sense that if we don’t have fire protection, if we don’t have police protection, people are not coming to an area that they don’t feel is safe. . . . [¶] [I]f we didn’t have protection, people wouldn’t come to the Outer Banks anymore.” (Mary “Kitty” Etheridge Dep. pp. 12, 19, 29) If a tourist got into an accident “and nobody responded . . . that could be very detrimental to how people perceive the county.” (Mary “Kitty” Etheridge Dep. p. 31.)

The commissioners, who live in the county, know what brings visitors. As one commissioner testified: “I can only utilize my personal experience. I’m not going to go somewhere personally that I don’t feel safe or feel like that if I was in a bad situation that help would not be there to access me.” (J. Owen Etheridge Dep. p. 25.) In addition, the county has “always marketed Currituck County Outer Banks, the Corolla Area, as a family oriented beach,” and having good public safety services

³ During the pendency of this appeal, a mass shooting occurred just north of Currituck County, for example. See Eduardo Medina and Mike Ives, “6 People Are Fatally Shot at a Walmart in Virginia, the Authorities Say,” The New York Times, Nov. 23, 2022 (found at: <https://www.nytimes.com/2022/11/23/us/chesapeake-shooting-walmart-virginia.html?searchResultPosition=13>) (last checked July 22, 2025).

“enhances the experience of the person coming that they feel like they’re safe in that community.” (J. Owen Etheridge Dep. p. 17.)

The most obvious example of where the plaintiffs’ argument about public safety services fails involves paying for beach lifeguards with occupancy-tax revenues. The plaintiffs conceded the propriety of this. (Robert “Bob” White Dep. p. 18.) This is a reasonable judgment because the use of lifeguards is clearly related to tourism since it provides a sense of safety and security for tourists who go to the Corolla beaches. It thus falls under the definition of “tourism-related.” (Kevin McCord Dep. pp. 16-17, 26-27; Kitty Etheridge Dep. p. 39.) But, if that is the case, it follows that police, fire, and EMS services do the same, and the commissioners could reasonably conclude this. If lifeguards, who save swimmers from rough surf, are related to tourism, so is the EMS crew that takes a swimmer to the hospital after he or she is pulled from the water, or at least the commissioners could so conclude. The commissioners are merely using the judgment they were asked to use by the Legislature. Unless that judgment is clearly out of bounds, the courts should give deference to that judgment.

If the Legislature had specifically listed what the commissioners could spend occupancy-tax revenues on, this Court could look at a specific expenditure and determine whether it fell under the list of authorized expenditures, as was the case with the 1987 statute. But the Legislature chose not to be specific, and instead broadened the law and put the decision-making authority in the hands of the commissioners, who are elected to make decisions about what is best for the county.

The commissioners are not abusing their discretion in making this determination. They are not using occupancy-tax revenue to pay the county manager's salary, to build offices for county staff, or to pay for new schools or school supplies. They are using revenues to pay for costs incurred because of tourism and to provide services that they believe keep tourists coming back.

The Legislature used the word "judgment" in the statute for a reason. "Judgment" involves "exercising one's own discretion or advising others; the mental faculty of decision-making." Judgment, BLACK'S LAW DICTIONARY (11th ed.). It is "the formation of an opinion after consideration or deliberation," as well as "discernment" and "the capacity to form an opinion by distinguishing and evaluating." Judgment, AMERICAN HERITAGE COLLEGE DICTIONARY (3d ed. 1997). The Legislature believed that those public officials closest to the county's residents and tourists could judge what this revenue should be used for.

The 2004 Amendment is clear in giving the Board of Commissioners the authority to use its judgment about what is tourism-related. The commissioners have not abused the discretion given to them. The courts therefore should respect the judgments of the Legislature and the Board of Commissioners on what is best for tourism in Currituck County.

IV. This Court Should Find That the Currituck County Commissioners, by Exercising Their Judgment as Allowed Under the Statute, Have Not Abused Their Discretion.

In this case, the Court of Appeals did not apply the abuse-of-discretion test. It did not address whether the Currituck County Board of Commissioners, in approving expenditures and exercising the "judgment" given to them by statute, "acted in

wanton disregard of the public good.” Barbour, 255 N.C. at 181, 120 S.E.2d at 451. It found for the plaintiffs despite implying that the commissioners had acted in good faith. See Costanzo, 293 N.C. App. at 25, 899 S.E.2d at 577 (“This is not to say that the County has acted in bad faith[.]”). Instead, it just made a judgment that the statute at issue prohibited spending occupancy-tax funds in the manner that the commissioners believe it allows.

Under the applicable standard, the Court of Appeals not only should have presumed that the commissioners had acted lawfully but also deferred to that judgment unless the plaintiffs had met their burden and shown that the commissioners had abused their discretion. The Court of Appeals did neither, and the plaintiffs failed to show that the commissioners abused their discretion. The statute at issue gives the commissioners the authority to use their “judgment” in determining what are “tourism-related expenditures,” and the Court of Appeals not only did not presume the legality of their decisions but overrode them.

The evidence shows that, under that standard, the Currituck County Commissioners have not abused their discretion because they have not acted capriciously, in bad faith, or in disregard of the law. Rather, their conclusions are reasonable, rational, and in accordance with the purpose of the statute.

Given this well-established standard and the facts in this case, the Court of Appeals should have affirmed the grant of summary judgment for the defendants. However, except for the concurring opinion, the Court of Appeals did not address this standard, and the concurring opinion was limited to finding that the commissioners

had not provided a sufficient statement about their spending decisions. See Costanzo, 293 N.C. App. at 25, 899 S.E.2d at 577 (Hampson, J., concurring). The concurrence concluded that, because they have not sufficiently explained their rationale, they had abused their discretion. Id. (Hampson, J., concurring).

The facts, however, show that the commissioners' rationale is obvious and reasonable, and they provided it in testimony. Their judgment has not been capricious, arbitrary, in bad faith, or in disregard of the law. The plaintiffs may not like their judgment, but if the Legislature believes the commissioners are wrong, it can change the statute.

This does not mean the commissioners have unlimited discretion in how to spend occupancy-tax revenue. The Court of Appeals erroneously characterized the commissioners' position as requiring "total deference to [their] judgment" and believing that the statute gives them "unlimited discretion." Costanzo, 293 N.C. App. at 20-21, 899 S.E.2d at 574. The commissioners do not see it that way. They recognize that the occupancy-tax revenues are "not designed for residents" but are for tourists. (Robert "Bob" White Dep. pp. 47-48.) Though the statute gives them discretion to use their judgment, they realize that they still must tie an expenditure to tourism; they just disagree with the plaintiffs about what is tourism-related. (J. Owen Etheridge Dep. pp. 40-41, 45.)

Thus, for example, though the plaintiffs and the commissioners probably would agree that the use of occupancy-tax revenues to pay for a beach festival that attracts tourists would be proper, they would disagree about whether it would be to use such

revenues to pay for extra sheriff's deputies or EMS medics at the festival. But the commissioners could conclude that enhancing the safety of tourists who come to the festival is related to the festival and thus to tourism since the festival would attract tourists. The plaintiffs may see it differently, and that is a reasonable disagreement, but in such a case the courts should defer to the commissioners, who have the duty by statute to make that judgment. Neither the plaintiffs nor the courts should have a veto over a decision in which reasonable minds may differ.

Just as there are “ ‘judicially enforceable outer limits’ ” as to what affects interstate commerce under the Commerce Clause of the United States Constitution, Gibbs, 214 F. 3d at 490, so too are there limits as to what is related to tourism under the 2004 Amendment. For example, there would be no “rational basis,” id. at 490, 497, to use occupancy-tax revenues for school textbooks, as one commissioner conceded. (Kevin McCord Dep. p. 15.) Such an expenditure would have been proper under the 1987 version of the statute, which allowed 25 percent of revenue to be used for “any lawful purpose,” but that language was removed by the 2004 Amendment, which required that expenditures be related to tourism. Costanzo, 293 N.C. App. at 17, 899 S.E.2d at 571-72.

When a reasonable basis exists, however, the courts should defer to the commissioners and the Legislature. Just as “ ‘the Commerce Clause represents a broad grant of federal authority,’ ” Gibbs, 214 F. 3d at 490 (citation omitted), so too does the 2004 Amendment represent a broad grant of authority by the Legislature to the Currituck County Board of Commissioners.

The Legislature had sound reasons to give the commissioners the discretion to exercise their judgment about how to spend occupancy-tax revenue. The commissioners are elected by the whole county and are in the best position to know how to spend money to attract tourism and do so in a fiscally responsible way.

The plaintiffs may want revenue spent on other things, such as beach nourishment. This would be understandable because they might feel that beach nourishment would protect their homes and it is an authorized expense under the statute. But one storm could wipe out an expensive beach nourishment project overnight. See, e.g., Lola Fadulu, “Beach Town Residents Paid \$600,000 for Sand. It Lasted a Few Days,” The New York Times, Mar. 16, 2024 (found at: <https://www.nytimes.com/2024/03/15/us/salisbury-beach-storm-sand.html?smid=url-share>). Such an expenditure, if not carefully made, could result in a massive waste of money. Again, the commissioners are responsible for the whole county, not just Corolla, and for its fiscal health.

The plaintiffs have disagreed with the commissioners not just about spending on public safety services, however. The plaintiffs have pointed to the use of occupancy-tax revenues outside Corolla, where the plaintiffs live and the Corolla Civic Association is located. In their Third and Fourth Claims for Relief, they alleged that spending on the County Airport, the Old Jail, the Veterans Park on the Intracoastal Waterway, and ball fields on the mainland were not related to tourism. (R. pp. 21-22.) This is even though the commissioners provided a reasonable and rational basis for their decisions. (See, e.g., Kevin McCord Dep. pp. 22-23.). The

plaintiffs, in the Complaint, also questioned the propriety of spending on the Historic Jarvisburg Colored School (R. p. 37) even though it is on the National Register of Historical Places and attracts tourists (Selena Jarvis Dep. p. 38; J. Owen Etheridge Dep. p. 42). Such disagreements are why the Legislature gave the commissioners the authority to use their judgment.

The commissioners are in the best position to determine how to spend occupancy-tax funds, whether it is on beach nourishment, public safety services, or other things. They are elected by and responsible for the entire county, know what brings in tourism, and are responsible for the county's financial stability. The Legislature knew this and so it gave the commissioners the authority to make their judgments. As long as there is a rational basis for them, this Court should defer to those judgments because "judicial review is limited by the due respect that [courts] must have for the decisions of a coordinate branch." Gibbs, 214 F. 3d at 505 n.5.

The Court of Appeals should have applied the long-established standard for evaluating whether public officials have abused their discretion. Under that standard, this Court can conclude that, in making decisions under their statutory authority, the commissioners have acted in accordance with the 2004 Amendment.

CONCLUSION

For the reasons and authorities cited herein, Defendants-Appellants Currituck County and Currituck County Tourism Development Authority respectfully request that this Court reverse the decision of the North Carolina Court of Appeals and reinstate the trial court's decision granting them summary judgment on all claims.

Respectfully submitted, this 25th day of July, 2025.

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CERTIFICATE OF COMPLIANCE

I certify that this brief has been prepared using Century Schoolbook typeface, a proportionally-spaced typeface, in 12-point type, and complies with North Carolina Rules of Appellate Procedure.

/s/ Christopher J. Geis

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for Defendants-Appellants Currituck County, et al. in this matter, and is a person of such age and discretion as to be competent to serve process.

I hereby certify that, on July 25, 2025, I electronically filed the foregoing **NEW BRIEF OF DEFENDANTS-APPELLANTS CURRITUCK COUNTY, ET AL.**, with the Clerk of the Court using the efilings system, which will send notification of such to the following participant, and a copy also will be mailed to the following:

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GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 209
HOUSE BILL 555

AN ACT TO AUTHORIZE CURRITUCK COUNTY TO LEVY A ROOM
OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Currituck County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3), or from the rental of a campsite within the county. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Currituck County Tax Collector shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the county tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use of tax revenue. Currituck County shall use at least seventy-five percent (75%) of the net proceeds of the tax levied under 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. The remainder of the net proceeds shall be deposited in the Currituck County General Fund and may be used for any lawful purpose. 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.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Currituck County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

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.

(d) 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 ,



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BUILDING A BETTER BAY AREA

SF's 'dirty streets' hurting international tourism as conventions struggle to come back

"A lot of visitors are concerned, concerned for their own safety," travel expert says. "They don't know where to walk."

By **Stephanie Sierra**

Tuesday, September 13, 2022



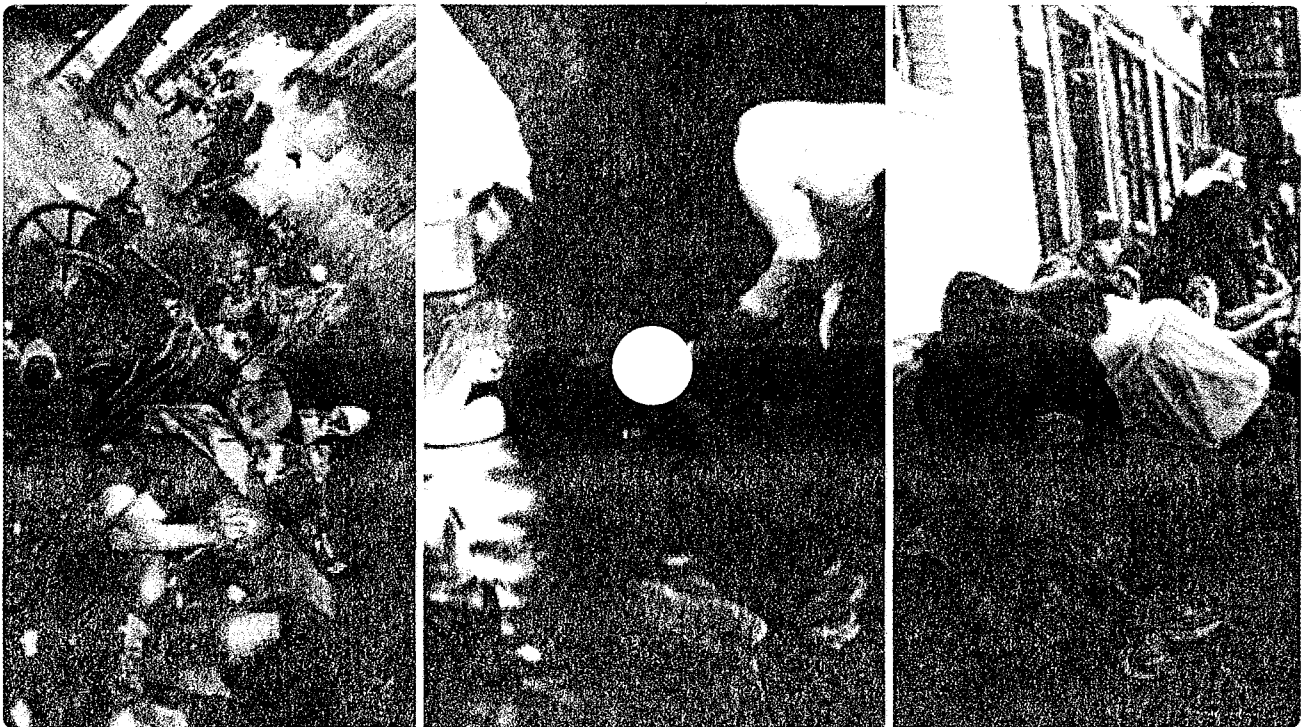
San Francisco used to be one of the most iconic tourism hot spots in the world, but today the city is struggling to keep international tourism alive.

SAN FRANCISCO (KGO) -- A grim outlook for the future of San Francisco's economic recovery as the city struggles to compete for tourists abroad.

San Francisco used to be one of the most iconic tourism hot spots in the world, but today the city is struggling to keep international tourism alive.

Convention clients are weighing their options: safety and cost. And San Francisco isn't offering an optimistic picture of either these days.

Just blocks from the city's convention mecca, the Moscone Center, people are seen shooting up in broad daylight with homeless tents and trash crowding the sidewalks.



San Francisco resident's video shows children walking past open drug use on city streets amid worsening crisis in the Tenderloin District.

Or in some cases, clients are concerned about potential harassment. On Tuesday afternoon for example, a man ran up to our unmarked ABC7 News car and threatened to punch out our window as he saw us driving by with a GoPro.


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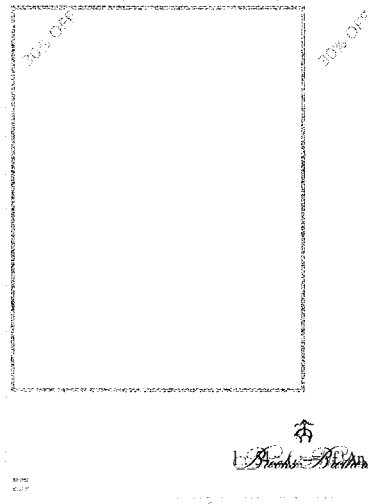
"We have to be honest, we have to tell the truth about what to expect in San Francisco," said Joe D'Alessandro, the president and CEO of SF Travel. "Anyone who's planning a convention is going to see for themselves."

D'Alessandro and his team has talked with more than 2,000 meeting planners this year who schedule conventions in San Francisco.

"A lot of visitors are concerned, concerned for their own safety," he said. "They don't know where to walk."

RELATED: SF's Financial District slowest in US to recover in post-pandemic phase, study shows

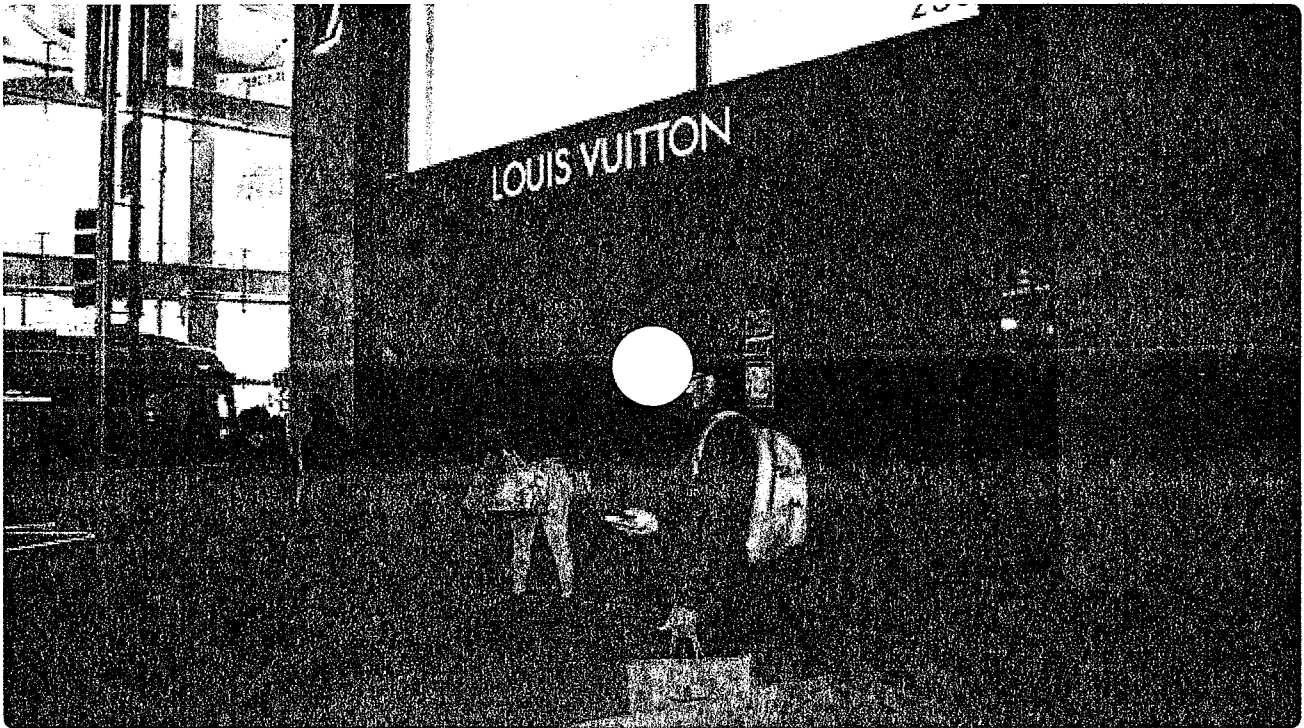
Clients have seen firsthand what they describe as the "dirty streets of San Francisco" - scenes like open drug markets crowding the sidewalks and needles lining the streets nearby the convention space.



One man threw a water bottle at our car as we drove by 8th and Mission Tuesday.

It's these daily interactions and problems plaguing the city that's caused former clients to turn to other cities like Austin, Chicago, and Boston.

"Most every customer that we talk to, most every meeting planner that we talk to, talks to us about these situations and the challenges we have," D'Alessandro said. "When they make that final decision, those factors all come into the decision."



The San Francisco tourism industry is worried the recent string of brazen, mob-like thefts will keep people from visiting the city.

In 2019, the city hosted 40 large-scale conventions at the Moscone Center. This year, they may reach half that. One of the big conventions on the schedule is Salesforce's Dreamforce which opens next week.

But it's not the local conventions D'Alessandro is concerned about, it's the international clients that are hesitating.



[Read More](#)

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"One of the things they're looking at is the conditions on the streets," he said. "We need to be able to walk down the streets and not feel harassed."

To put it in perspective, a quarter of all tourists visiting San Francisco in 2019 were international travelers. But more importantly, that group made up 63% of all tourism spending that year - the largest percentage of any major city in the country, according to SF Travel. Most of that spending was attributed to China - which was the city's number one international market pre-pandemic. Now, it's not even in the top 10.

"Our numbers will not be what they were in 2019 until we see those markets return," he said. "It's really imperative that San Francisco is a safe destination, otherwise the city is going to risk losing a lot."

Beach Town Residents Paid \$600,000 for Sand. It Lasted a Few Days.

Residents who live on Salisbury Beach, a seaside community in northern Massachusetts, paid for the sand dunes to protect their beachfront homes from storms. Then a storm came.



By Lola Fadulu

March 15, 2024

The owners of beachfront homes in the seaside community of Salisbury Beach in northern Massachusetts spent nearly \$600,000 to have around 15,000 tons of sand dropped near their properties to protect themselves from future storms.

But the Atlantic Ocean had something else coming. The high tide and winds that pounded the area on Sunday washed nearly half of the sand away, mere days after it was placed.

The storm left the beach area stripped and defenseless before the ocean waters that draw vacationers to that beach town every year.

"People are depressed, discouraged, angry," said Tom Saab, the president of Salisbury Beach Citizens for Change, a group representing property owners that spearheaded the sand project. "The dunes did their job. They sacrificed themselves to protect the properties — no properties were really damaged."

The citizens group decided in January to purchase the sand that was placed in mid-February along a 1.5 mile stretch of Salisbury Beach near the properties, Mr. Saab said. Around 150 buildings line the stretch of beach, including single houses and

condos. The beach stretches for about four miles, and the adjoining properties are estimated to be collectively worth \$2 billion, he said.

The sand dune project came to be after Salisbury Beach had been hit hard by storms over the past couple of months. It was inundated by a high tide and a nor'easter in December 2022, which "devastated" the beach, said Mr. Saab, who has lived on Salisbury Beach for decades.

In January, two more nor'easters hit the area, he said.

"Those two storms basically wiped the whole beach out," Mr. Saab said of the January storms. "Properties were damaged— decks were destroyed," he said, adding that stairways and patios had been damaged too. "One home was condemned, not allowed to be lived in," he said.

In an effort to take matters into their own hands, the citizens group initiated the sand project in mid-February, raising the required funds from property owners. It had wrapped up the project last week, on Wednesday, March 7. It was cause for celebration, just a few days before the next washout.

"Everybody had beautiful dunes, all paid for out of their own pockets — not a penny from the State of Massachusetts at all," Mr. Saab said. "We built this one and a half miles of beach ready to protect us."

Then the nor'easter landed and took 50 percent of the sand and an estimated \$300,000 worth of work, according to the group.

Two access points to the Salisbury Beach State Reservation were closed on Sunday and remained closed on Thursday because of storm damage, according to the Massachusetts Department of Conservation and Recreation.

Some area residents are calling for help from state leaders. They contend that state officials should chip in, partly because the protection afforded by the dunes extends beyond their properties to the infrastructure of the town and the state. The beach has received state and federal assistance before.

The state “remains in regular communication with representatives from the town, the legislative delegation and the community and will continue to work with them to address the impacts of erosion at the beach,” said a spokeswoman for the state’s Conservation and Recreation Department.

It is not uncommon for the East Coast to be struck by nor’easters and other storms, according to the National Center for Atmospheric Research.

About half of Salisbury Beach properties have been owned by the same families since the period from the 1950s to the 1970s, and those owners are loath to renounce their ocean views, Mr. Saab said.

“Nobody wants to give up,” he said. “I will never give up on protecting Salisbury Beach.”

Lola Fadulu reports on the New York City region for The Times.

A version of this article appears in print on , Section A, Page 9 of the New York edition with the headline: Beach Residents Paid \$600,000 for Sand to Protect Homes. It Lasted a Few Days.