

**RECORD OF MINUTES
DARE COUNTY TOURISM BOARD
THURSDAY, APRIL 21, 2016
9:00 A.M.
DARE COUNTY ARTS COUNCIL
300 QUEEN ELIZABETH AVENUE
MANTEO, NC 27954**

ATTENDING: Susie Walters, Chair; Ervin Bateman, Vice Chair; Dorie Fuller, Treasurer; Leo Holland, Assistant Treasurer; Nancy Caviness, Secretary; George Banks III, Bambos Charalambous, Tonia Cohen, Mike Hogan, Natalie Kavanagh, Stuart Pack, Wally Overman, Martha Wickre, and Dwight Wheless, Legal Counsel.

STAFF:

Lee Nettles, Executive Director
Diane Bognich, Director of Administration
Lorrie Love, Tourism Sales and Events Manager
Aaron Tuell, Public Relations Manager
Amy Wood, Clerk to the Board/Administrative Specialist

OTHERS: Dave Hallac, Superintendent; Mark Dowdle, Deputy Superintendent; and Sarah Blizzard, Management Analyst, Outer Banks Group, National Park Service; Neel Keller, *Outer Banks Sentinel*, Russ Lay, *Outer Banks Voice*; Ray Midgett, Chris Sawin, Dare County Arts Council; and Berkeley Young, Young Strategies, Inc.

The meeting was called to order at 9:02 a.m. The Board recited the pledge of allegiance, followed by a moment of silence.

APPROVAL OF AGENDA: Mr. Holland moved to approve the agenda as presented. Mr. Charalambous seconded. There was no discussion and the motion passed unanimously.

APPROVAL OF MINUTES: Ms. Caviness moved to approve the March 17, 2016, meeting minutes. Mr. Bateman seconded. There was no discussion and the motion passed unanimously.

Chris Sawin welcomed the Board and discussed how art and tourism are related, especially in Dare County. He also reviewed event progress and results of events for which the Arts Council had received funding.

PUBLIC COMMENTS: Ray Midgett gave his background as a state auditor, then told the Board he was the one who requested the state audit and his rationale for doing so. He read the following legal opinion from Dan Etefagh into the minutes (full email on file, attachment A):

[So] how does that line up with the session law? As previously noted, the session law has 2 pots of money: 75% used to promote tourism and 25% for services or programs needed due to the impact of tourism on the county. I tend to think neither the expenditures for purchasing real property nor expenditures for grants is a permissible expenditure for the 25% pot.

1. *Regarding using the 25% to purchase property, there is an additional BoC approval process that applies to using proceeds to purchase real property or for the purposes set out in subdivision (2). If purchasing property fell within the purposes set out in subdivision (2), there would be no reason to set it out separately. So, while using the proceeds to purchase real property is allowed (probably under the 75%), that purpose does not seem to have been contemplated as a within sub (2) (i.e. services/programs needed due to the impact of tourism on the county). The plain language of sub (2) seems to support this as well.*

2. *The grant programs, in my opinion, are also problematic based on the plain language of sub (2). These grant programs seem like events/festivals/etc. designed to increase tourism in the county. That means they are being used to augment tourism (and therefore its impact) in the county. Sub (2) seems reserved for services or programs that necessitated as a result of the impact of tourism in the county.*

I think permissible uses of the 25% pot include things like paying for additional police or lifeguard protection during high-tourism or increased trash disposal for increased population density during high-visitation periods. But my initial read is that the current uses of the 25% of these proceeds are not contemplated by the language of the session law.

This language could be changed; however, it is important to note that Dare County's occupancy tax does not conform to the guidelines. Traditionally, changes like this that expand uses or authorization for occupancy tax are granted as a quid pro quo for conforming the occupancy tax to the guidelines, but, given the liberality of the Dare County authorizations, that might not be something the county would want to see happen. Please let Trina or I know if we can be of any further assistance.

Ray Midgett asked the Board to fully discuss the audit and the opinion and to consider asking the Dare County Commissioners to ask legislature to give "you a ruling you can live with."

Superintendent Hallac reviewed the recent naturalization ceremony at the Wright Brothers National Memorial as part of the Park Services Centennial Celebration. He discussed progress with NOAA, NPS and OBVB discussion regarding the Hatteras Island Weather Station potential uses, and that NOAA had received a grant to do some feasibility studies. He also noted that lighthouses and campgrounds had opened for the season, with the potential for some campgrounds to stay open later in the season, and drastic increases at area sites.

STEERING COMMITTEE/CHAIR'S REPORT: The Board discussed:

- State Auditor's Report: The Board and Legal Counsel considered both the audit report and legal counsel's opinion. Legal Counsel noted that it was up to the Board, after reviewing all information, to decide to get clarification if they had questions or to continue on. The Board discussed who to make aware of the letter from Legal Counsel. Mr. Holland moved to send the Board's Legal Counsel's letter (attachment B) to the Governor, State Senator, State Representative and Dare County Commissioners. Mr. Overman seconded. There was no further discussion and the motion passed unanimously.
- HB2: The Board discussed economic impact of the bill and actions taken by other municipalities and organizations; how many callers/emails had been received cancelling trips to the Outer Banks (and North Carolina in general) and the potential economic impact of the bill. The Chair shared a letter that a business had received from a visiting group (attachment C). Following discussion, Ms. Wickre moved to continue to gather data and wait before issuing a resolution and to put language on the website letting visitors know we welcome everyone. Mr. Charalambous seconded. There was no further discussion. The motion passed 12 to 1, with the Chair voting against.

BUDGET AND FINANCE REPORT: Ms. Fuller reviewed the meals and occupancy receipts received. Receipts for fiscal year 2015-2016 to date are up 5.71% from the same time period in fiscal year 2014-2015.

Ms. Fuller moved to approve the budget amendment for FY 15-16, which moved funds from the Special Revenue Fund to the Capital Project Fund for phase 2 and part of phase 3 for the Event Site. Mr. Holland seconded. There was no discussion and the motion passed unanimously.

Diane Bognich reviewed highlights of the the proposed Fiscal Year 2016-2017 budget. After reviewing, Ms. Fuller moved to set the Public Hearing for the Fiscal Year Budget for May 19, 2016 at 9:15 a.m. at the Outer Banks Welcome Center on Roanoke Island. Mr. Holland seconded. There was no discussion and the motion passed unanimously.

OUTER BANKS VISITORS BUREAU UPDATES: Lee Nettles:

- Noted that the Fireworks and Natural, Historic and Cultural Grants had been approved by the Dare County Commissioners
- Gave a presentation at Realtor Fest, with particular attention on the shoulder season
- Produced ads that celebrate the National and State Parks in honor to the 100th Anniversary of both
- Noted the new website would be launched in Mid May
- Hosting an Influencer FAM, bringing in specific social media bloggers and hosting them three to five days, and encouraging them to try new experiences-from horseback riding on the beach to kiteboarding.
- Inquiry, fulfillment and visitation numbers

Lorrie Love noted an upcoming Irish Trade Mission, International Golf Tour Operator Tour, and the Tourism Summit.

Aaron Tuell reviewed recent media coverage and upcoming media missions/press trips.

OLD BUSINESS: There was no old business before the Board.

NEW BUSINESS: Lee Nettles shared a letter from Outer Banks Catch, withdrawing their participation from the Seafood Festival and a response letter from the Seafood Festival directors (attachment D). The Board discussed: if and how this would impact the upcoming Seafood Festival; that the festival supported 100% local seafood and the festival was working towards this goal, in addition to educating the attendees about the efforts local working waterman; no claims were ever made that it was 100% local seafood; that participating restaurants were required to serve, at the least, one local seafood dish; the challenges of receiving the quantities needed and the availability of seafood in October, whether that be from seasonal constraints or and fishing regulations; keeping the pricing in a range that attendees would pay and would allow vendors to sell a variety of local seafood. The Board realized that this is an issue but not one that can be solved easily or quickly.

BOARD MEMBER COMMENTS: Mr. Holland noted his attendance at the First Flight 5k, handing out finisher's medals and saying a few words on behalf of the Board as a sponsor. The Chair and Lee Nettles noted their attendance at the finish and start lines, respectively, at the Flying Pirate Half Marathon.

SET DATE, TIME AND PLACE OF NEXT MEETING: The next Tourism Board meeting was set for Thursday, May 19, 2016 at 9 a.m. at the Outer Banks Welcome Center on Roanoke Island.

Mr. Holland moved to adjourn. Ms. Cohen seconded. The meeting was adjourned at 10:59 a.m.

ATTESTED:



Chair, Dare County Tourism Board

----- Original Message -----

Subject: RE: Dare Tourism Board

From: "Dan Ettefagh (Bill Drafting)" <Dan.Ettefagh@ncleg.net>

To: "Jordan Hennessy (Sen. Bill Cook)" <Cookla@ncleg.net>,"Trina Griffin (Research)" <Trina.Griffin@ncleg.net>

CC:

Jordan,

You have asked us to look into the local tax revenues for Dare County authorized in S.L. 1991-177 and the permissible uses of those revenues. Session Law 1991-177 authorizes Dare County to levy an additional 1% occupancy tax and a 1% prepared food and beverage tax (see sections 3 and 4). The use of those revenues is provided in section 7 of the session law, which provides that 75% of the proceeds shall be used for "the cost of administration and to promote tourism" and 25% shall be used "for services or programs needed due to the impact of tourism on the county." Prior approval by the Dare County Board of Commissioners is specifically required for (i) the purchase of real property or (ii) the services or programs needed due to the impact of tourism on the county funded by the earlier mentioned 25%.

In speaking with Lee Nettles with the County, he indicated that the 25% is used as follows:

- 30% of the 25% goes to the short-term restricted grant program used to provide grants to nonprofits or local governmental entities who apply for money for certain events to be held in the next fiscal year.

- 70% of the 25% goes to the long-term restricted account, which is used for 4 things:

- o Infrastructure and building costs, usually related to visitors bureaus and remodeling costs to welcome centers, etc.

- o The Natural, Cultural, and Historic Grant Program, which is similar to the short-term restricted grant program but is more of an on-demand account, without a set window for applications where a spur-of-the-moment use, festival, or event is identified and needs funding.

- o Event site purchase and improvement program, which is property that was identified and purchased and is currently being improved in the first of 4 phases to be used as a multi-use event site.

- o The green space/open space grant program, which is used for conservation areas and reclaiming commercial areas via an application process similar to that of the Natural, Cultural, and Historic Grant Program.

Broadly speaking, you can aggregate these costs into two categories: grant programs and real property expenditures. Based on the discussion with Lee, all of these uses, regardless of which category, (i) has a formal application process, (ii) are funded using the 25% pot, (iii) are recommended by the tourism board, and (iv) are specifically approved by the Board of Commissioners.

So, how does that line up with the session law? As previously noted, the session law has 2 pots of money: 75% used to promote tourism and 25% for services or programs needed due to the impact of tourism on the county. I tend to think neither the expenditures for purchasing real property nor expenditures for grants is a permissible expenditure for the 25% pot.

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2. The grant programs, in my opinion, are also problematic based on the plain language of sub (2). These grant programs seem like events/festivals/etc. designed to increase tourism in the county. That means that they are being used to augment tourism (and therefore its impact) in the county. Sub (2) seems reserved for services or programs that are necessitated as a result of the impact of tourism in the county.

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That language can be changed; however, it is important to note that Dare County's occupancy tax does not conform to the guidelines. Traditionally, changes like this that expand uses or authorization for occupancy tax are granted as a quid pro quo for conforming the occupancy tax to the guidelines, but, given the liberality of the Dare County authorizations, that might not be something the county would want to see happen. Please let Trina or I know if we can be of any further assistance.

With kind regards,
Dan

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OFFICES ALSO IN:
MANTEO, NC

April 13, 2016

To: Susie Walters, Chairperson
Dare County Tourism Board

Opinion of Counsel addressed to the Dare County Tourism Board regarding the 25% proceeds directed in Section 7 of Chapter 177 of the 1991 Session Laws of the North Carolina Legislature

Room Occupancy Tax of three percent (3%)

Chapter 177 of the 1991 Session laws of the North Carolina Legislature allowed the Dare County Board of Commissioners to levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any campsite, room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(a)(3) and a Food and Beverage Tax of one percent (1%).

Two-thirds of the net proceeds is to be paid to towns in Dare County who may use their portion of the net proceeds "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 one-third of the net proceeds that is retained by Dare County is subject to the same use restrictions.

Additional Occupancy Tax of 1% and Food and Beverage Tax of one percent (1%)

The county is authorized to levy a room occupancy and tourism development tax of one percent (1%) and a food and beverage tax of 1%, both of which are remitted to the Dare County Tourism Board.

The DCTB shall first deduct the cost of its annual audit and then use the remainder as follows:

(1) 75% shall be used for the costs of administration and to promote tourism. The Board's expenditures may include :

- (i) advertising to promote less-than- peak-season events and programs;
- (ii) marketing research;
- (iii) a mail and telephone inquiry response program; and
- (iv) welcoming and hospitality functions.

(2) 25% shall be used for services or programs needed due to the impact of tourism on the county. The Dare County Board of Commissioners' prior approval is required for expenditures of the 25% and any purchase of real property by the Tourism Board. In each instance counsel has been assured that the Board of Commissioners has issued its prior approval.

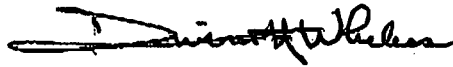
In the opinion of counsel no statutory definition of "impact" is available and no case law has been cited with a definition. For twenty-five years the Tourism Board has administered this fund according to its interpretation of the plain language in the Act without the need for court decree or legislative elaboration.

Simple reference to the Unabridged Edition of the Random House Dictionary of the English Language finds "impact" defined as "influence; effect". A simple reading of the sentence at issue in Section 7 of the Act would be "Twenty-five percent shall be used for services or programs needed due to the influence of tourism on the county" or "Twenty-five percent shall be used for services or programs needed due to the effect of tourism on the county". Had the Legislature intended otherwise it would have restricted expenditures as in other provisions of this Act.

Income from tourism is the mainstay of the Dare economy. Occurrences that affect tourism in positive and negative ways should legitimately be the subject of action by government and those entities challenged with the responsibility of "promoting tourism".

It is the opinion of counsel that the expenditures heretofore authorized from the Section 7 "25% proceeds" provision and approved by the Dare County Board of Commissioners appear to be lawful and properly authorized.

Respectfully submitted,



Dwight H. Wheless, NCSB #4673



Clarendon Presbyterian Church
Progressive . . . Inclusive . . . Diverse

1305 North Jackson Street • Arlington, VA 22201 • Tel: 703-527-9513 • Fax: 703-524-4511 • www.clarendonpresbyterian.org

Dear North Carolina friend,

For the past five years a small group of us from Northern Virginia have enjoyed a lovely weekend together on the Outer Banks. We have strolled your beautiful beaches, enjoyed many wonderful meals at your restaurants, rented condos, participated in OBX running events, visited your parks, and shopped in your stores. We love the Outer Banks.

Thus it is with real sadness that we must let you know that we will not be back in the years to come due to the recent passage of HB2.

We are members of the Clarendon Presbyterian Church community, and the deepest values of our common faith rest on the conviction that all of us are created equally in the image of a loving God. HB2 violates that image in some of our sisters and brothers. More than that, it threatens the safety of our transgender sisters and brothers, and, particularly, of trans kids.

We know that many North Carolinians oppose the law, and that many North Carolina businesses are working to create safe spaces for all people. We applaud that effort, but we will not continue to contribute our dollars to the economy of a state that does not welcome all of us.

We encourage you to become active in your own state's political processes, and send to your legislature leaders who truly want everyone to feel welcome, valued, and safe in North Carolina. In the meanwhile, we encourage you to contact your current lawmakers and your governor and tell them to rescind HB2.

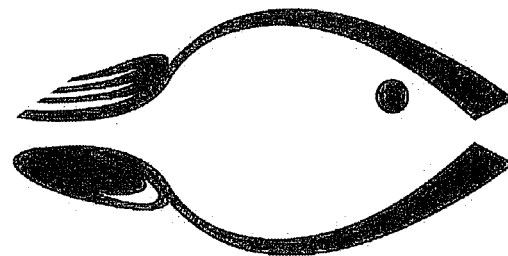
We promise that when you do, we will come back and visit again.

Grace and peace,

A handwritten signature in cursive script that reads "David Ensign".

David Ensign
Pastor

OUTER BANKS CATCH



April 15, 2016

To: Outer Banks Chamber of Commerce

Dare County Tourism Authority

The Outer Banks Catch (OBC) Board of Directors has voted to withdraw the organization's participation in the Outer Banks Seafood Festival. This action is not being taken lightly since it, while under the county auspices, was one of the founding organizations of the event.

Recently, the program has been transferred from the county to a private nonprofit committed to supporting the original intention and mission. The Dare County Board of Commissioners created Outer Banks Catch to support the industry and promote the sale of local seafood. They had the foresight to recognize the possibilities to help not only the seafood industry but also expand the area's economy with the availability of some of the best seafood in the world as the foundation.

The original intention and, in fact, the stated purpose of the Festival includes the following:

"The mission of the Outer Banks Seafood Festival is to provide a fun and educational experience promoting, honoring and celebrating our coastal seafood heritage and community.

Promote the positive social and economic impact of the seafood industry on the citizens of the Outer Banks;

Educate the public about seafood and its importance to the area's economy;

Publicize the wide variety of seafood indigenous to North Carolina and the Outer Banks and provide the opportunity for people to enjoy it...."

The advertising including print, radio, website, facebook, press releases and quotes from Festival officials have indicated that local seafood is the fare of the day at the event. Most of it is not; the public is being misled.

A very large percentage is foreign imports. Also being served is gassed tuna, a lesser grade tuna that is shot with carbon monoxide to give it a rosy red coloring and to hide the age of the fish. Gassed tuna, because it is not top quality, is cheaper than quality locally-landed tuna. Because of possible health effects of the gassed product, Japan, Canada and the European Union have banned the sale of the product in those countries.

Foreign imports also bring quality and health concerns. In 2015, FDA which only inspects about 1 percent of the seafood coming into the country, turned away 297 million pounds of shrimp from India alone due to filth - rat droppings, glass and bacteria. About 90 percent of the seafood consumed in the US is now foreign imports that is passed off as local.

But the real point is that allowing the majority of the seafood served to be from out of area doesn't live up the Festival's mission.

More importantly to OBC is that it doesn't live up to our own mission which is to support our commercial fishing industry and heritage by promoting the sale of locally-caught seafood. The industry includes more than just fishermen, crabbers, oystermen and dealers. It also supports hundreds of jobs such as packers, processors, delivery drivers, pickers, shuckers, repair and equipment shops and the restaurants.

There are many seafood restaurants here that strive to serve as much local seafood as possible and some who exclusively sell local seafood – allowing the sale of imports at the Festival isn't fair to them. In fact, it takes away from their credibility when the restaurant in the booth next to them is selling inferior imported products.

There are more than 900 fishing and shellfish licenses issued this year in Dare County alone. Add the other sectors that depend on the wild-harvested seafood and the economic impact is substantial.

I think that the Festival planners' intentions have been good but misplaced. And in contracting to produce the event, the Chamber is in the unenviable position of putting together the event while not ending up in hot water with some of its own membership. And adding to the problem is the limitation of \$7 per tapas plate which makes it almost certain that participating restaurants will be in the hole.

Outer Banks seafood is unique because of the number of species caught off our shores. It could easily become a foodie destination on par with Calabash if promoted and advertised as such. Various species of seafood is available year round and could be an economic shot in the arm during the shoulder and winter seasons.

The litmus test for OBC in participating in any event is whether we would be willing to take out an ad promoting and endorsing it. We couldn't do that for the Festival as it is currently envisioned. However, if the festival should decide it is worth serving the very seafood it purports to celebrate, we would be glad to help your vendors make contact with local fish dealers to ensure they have adequate product for the event.

In closing, we are not going away mad, we are just going to other opportunities that don't conflict with our mission.

Respectfully,

Sandy Semans Ross

OBC Executive Director

cc: Dare County Restaurant Association



Saturday October 15th, 2016

OuterBanksSeafoodFestival.org

info@outerbanksseafoodfestival.org

Event: MP 16, 6800 S. Croatan, Nags Head, NC

Mail: P.O. Box 805, Nags Head, NC 27959

P: (252) 732-0373

April 20, 2016

Dear Sandy,

The Outer Banks Seafood Festival Board was very disappointed to learn of Outer Banks Catch's decision to forego participation in this year's Festival by way of the letter you sent yesterday. We respect the work of the organization and its purpose, and have appreciated Catch's partnership in the event over the last four years.

True to the Festival's mission, and due in large part to Catch's involvement, we've provided a fun and educational experience for attendees, promoting, honoring, and celebrating our coastal seafood heritage and community.

The one-day Festival brings several thousand residents and visitors together, where they've had opportunities to hear stories from generations of local fishermen; been able to interact one-on-one with our working watermen and learn of the challenges they face in bringing locally harvested seafood to market; learn how to prepare fresh seafood and then actually taste the difference it makes; and become better informed about issues, such as, the potential dangers of chemically treated fish.

This has been, and will be, an essential element of the Outer Banks Seafood Festival.

Just as your organization, through its efforts to enlist restaurant partners and educate consumers, has realized this is a long-term process, we, too, have recognized it takes time for people and businesses to become aware of the benefits of local seafood. It also takes time, and collaboration, to help align good intentions with business realities.

The Outer Banks Seafood Festival encourages its participating restaurants to strive to serve 100% locally sourced seafood at the Festival and we mandate that at least one of its seafood offerings must be local (not unlike how Catch has previously set minimums with its participating restaurants). We have also been proud to let attendees know which of the participating restaurants are Outer Banks Catch members so that the consumer can better inform their decisions.

While we stress the importance of locally harvested seafood in a variety of ways, the Festival does not represent that all of the seafood served is 100% local. We remain committed to that long-term goal, however. As you know and as is the case in coastal restaurants everywhere (and groceries, too, to a large extent), people at beach destinations are often under the misperception that the seafood they are



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OuterBanksSeafoodFestival.org

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eating is local. That is a huge educational challenge for all of us, and part of the long-term process I mentioned earlier.

We believe that the Festival provides the place and opportunity to begin to better inform people. It is what you make of it. We would appreciate having your help in that effort, but respect your decision to forego participation. The Board of Directors of the Outer Banks Seafood Festival wishes you and the organization nothing but success, and look forward to the day when we can work together again.

Sincerely,

Mike Pringle

2016 Chairman, and on behalf of the Outer Banks Seafood Festival Board of Directors

c: Dare County Tourism Board
Outer Banks Catch Board of Directors
Outer Banks Chamber of Commerce
Outer Banks Restaurant Association