

October 3, 2016

The Washington County Board of Commissioners met in a regular session on Monday, October 3, 2016 at 6:00 PM at the Commissioners' Room, 116 Adams Street, Plymouth, NC. Commissioners Johnson, Manning, Phelps, Sexton and Walker were present. Also present were County Manager Willie Mack Carawan, Clerk to the Board Julie J. Bennett, Assistant County Manager/County Attorney Curtis Potter and Finance Officer Missy Dixon.

Chair Phelps called the meeting to order. Commissioner Sexton gave the invocation; Cadet Gabriel Moore from Plymouth High School's JROTC led the pledge of allegiance.

ADDITIONS/DELETIONS: Ms. Bennett asked to add item 1e) Records Retention Schedule Amendment to the consent agenda.

CONSENT AGENDA: **Commissioner Johnson made a motion to approve the Consent Agenda:**

- 1a) Approval of Minutes
- 1b) Tax Refunds & Releases and Insolvent Accounts
- 1c) Debt Setoff Hearing Officer Appointment
- 1d) Boards & Committees
- 1e) Records Retention Schedule Amendment

Commissioner Johnson asked if the Board should look into having a Commissioner on the ABC Board. This item was tabled to find more about the ABC Board.

Chair Phelps asked Ms. Kim Cotton-West if she knew of someone to fill the CAC position. Ms. West said no, she did not. This item was tabled until November.

Chair Phelps stated that the Martin-Tyrrell-Washington (MTW) Health Department Board is working to find a local dentist and physician to be on their Board and also an At Large member. Chair Phelps said he would like to submit Christopher Kenon to be the At Large member on the MTW Health Department Board. Commissioner Sexton said he thought that Washington County was only allowed 3 members. Ms. Terrell Davis, MTW Health Department Director said the County can have a dentist and a physician. Commissioner Sexton said he feels they are going over the 3 appointed members. Ms. Davis said the County can have 4 appointed members.

Commissioner Sexton seconded, motion carried unanimously.

PUBLIC FORUM: Ms. Melanie Perry, Hwy 32 South, Interim CEO of Washington County Hospital stated she has had confirmation of a doctor who will start November 1 at Washington County Hospital.

Ms. Ann Keyes, Emergency Management (EM) Director, gave an update on Hurricane Matthew saying she has started on the conference calls with various agencies and that there will be a 10:00 AM briefing at the Emergency Operation Center (EOC) on Wednesday, October 5.

PUBLIC HEARING: FY 2018 COMMUNITY TRANSPORTATION GRANT APPLICATION: Commissioner Johnson made a motion to open the public hearing on the FY 2018 Community Transportation Grant Application. Commissioner Manning seconded, motion carried unanimously.

Ms. Francine Hines, DSS, informed the Board that each year there has to be a public hearing on the Community Transportation Grant application. This year the grant was increased by approximately \$4,000. The total local share (county portion) for FY2018 is \$13,947 and is used to pay part of two salaries for Ms. Shonita Gibson and Ms. Zina Rhodes. Some of the funds are also used for drug testing for Riverlight Transit drivers.

Commissioner Walker asked what Riverlight Transit's average daily ridership is. Ms. Gibson said in September there were 117 different riders--110 were from Washington County and 7 were from Tyrrell County.

Mr. Lloyd Jones, Gourd Neck Road, asked who pays for this. Ms. Hines says Medicaid reimburses them.

Commissioner Johnson made a motion to close the public hearing on the FY 2018 Community Transportation Grant Application. Commissioner Sexton seconded, motion carried unanimously.

Commissioner Sexton made a motion to approve the resolution and the submission of the FY 2018 Community Transportation Grant Application. Commissioner Walker seconded, motion carried unanimously.

"APPLICATION FOR PROPERTY TAX RELIEF" LATE APPLICATION:

Ms. Wilkins, Tax Administrator, spoke to the Board regarding the "Application for Property Tax Relief" late application she received from Mr. Jimmie Clark. Ms. Wilkins explained that Mr. Clark qualifies for the Elderly Exclusion based on his application and feels the application should be approved.

Commissioner Sexton made a motion to approve "Application for Property Tax Relief" late application received from Mr. Jimmie Clark. Commissioner Johnson seconded, motion carried unanimously.

EMPLOYEE OF THE MONTH: Chair Phelps said this will be the 9th employee of the month. The October Employee of the Month is Taundra Morgan, Sergeant in the Detention Center. Ms. Arnold will take Ms. Morgan's picture and it will be placed on the wall in the foyer of the County Administration Building.

VIDANT CHOWAN PRESENTATION: Mr. Jeff Sackrison of Vidant Chowan spoke to the Board and gave the following presentation.

What You Need to Know About Us

Presented by:
Vidant Chowan Hospital
and
Chowan Hospital Foundation



We are Vidant!



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Our system of care

Vidant Health is nearly 12,000 employees, hundreds of physicians and eight hospitals serving eastern North Carolina.

- Vidant Medical Center
- Vidant Beaufort Hospital
- Vidant Bertie Hospital
- Vidant Chowan Hospital**
- Vidant Duplin Hospital
- Vidant Edgecombe Hospital
- Vidant Roanoke-Chowan Hospital
- Vidant Medical Group
- The Outer Banks Hospital



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Vidant's Voyage to Excellence



Our mission

To improve the health and well-being of eastern North Carolina.

Chowan Hospital Foundation Mission:
To provide resources for improving the health of people served by Vidant Chowan Hospital.



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Vidant's Voyage to Excellence



Our vision

To become the national model for rural health and wellness by creating a premier, trusted health care delivery and education system



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Service Area

- Chowan
- Perquimans
- Washington
- Tyrrell



Serving the community for over 60 years!



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2016 Marketing Priorities

- Marketing Priorities
 - Cancer Care
 - Orthopedics
 - Rehabilitation Services
 - Sleep Studies
 - Wound Care



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Vidant Chowan Hospital: Medical Staff

- 24 Active Medical Staff, including 1 Hospitalist & 1 Anesthesiologist
- 197 Affiliate Staff
- 5 Physician Assistants
- 5 Nurse Practitioners
- 3 Nurse Anesthetists
- 2 Podiatrists
- 1 Dentist
- 7 Tele Neurology Providers
- 14 Telemedicine Providers (10 MD's, 2 PA's, 2 NP's)



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Vidant Chowan Hospital

Directors Council

Rhonda Gregory, CPA, Chair
Ralph V. Cole, Sr., Vice Chair
J. Scott Harrell, Jr.
William Hope IV, MD
Bartholomew Resta, MD
John Mitchener
Scott Creighton
Todd Tilley



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Experience

Patient & Family Centered Care

- Respect and Dignity
- Educate and Engage = Information Sharing
- Ask and Acknowledge = Participation
- Listen and Learn = Collaboration



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Quality

- Bedside barcode scanning and labeling of lab specimens
- Care Chat rounding
- Closed Loop Medication Administration
- Digital Mammography Suite
- Early Sepsis identification – best practice alerts
- Hospitalist Program
- MyChart
- Patient Centered Medical Home
- Patient Safety Culture
- Transitional Care Program
- Telehealth
- Telectroke
- Vidant Electronic Health Record
- 24 Hour Medication Review by pharmacist



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Cancer Tower



New cancer center marks Vidant Health's renewed commitment to cancer care.

6-story, 96-bed facility set to open in 2018



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Vidant East Care



Serving eastern North Carolina since 1985

Lease 3 Helicopters at a cost of \$7 million annually

Fuel cost \$700,000 annually



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Vidant Medical Group

- Vidant Medical Group is a multi-specialty physician group that provides superior care for the health and wellness needs of eastern North Carolina's patients. With over 400 primary and specialty care providers in more than 70 locations, quality health care is never far from home.
- Physician Practices in Edenton and Hertford include:
 - *Vidant Family Medicine-Edenton*
 - *Vidant Family Medicine-Hertford*
 - *Vidant Family and Sports Medicine-Edenton*
 - *Vidant General Surgery-Edenton*
 - *Vidant Internal Medicine-Edenton (2)*
 - *Vidant Pediatrics - Edenton*
 - *Vidant Urology - Edenton*
 - *Vidant Women's Care-Edenton (2)*



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Recruitment of New Providers

Family and Sports Medicine

- Dr. Bryan Bunn
- Dr. Jeremy Sexton
- Dr. Brandon Peters
- Beata Jermakowicz-Chuba, NP-C
- Matthew Parker, FNP

Pediatrics

- Dr. Joseph Ginski



Dr. Bunn



Dr. Sexton



Dr. Peters



Dr. Ginski



Chuba, NP-C



Parker, FNP



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Recruitment of New Providers

OB/GYN

- Dr. Crystal Privette



Dr. Privette

Internal Medicine

- Dr. Earic Bonner



Dr. Bonner

Surgery

- Dr. Timothy Capps



Dr. Capps



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Finance: Community Benefit

Estimated Community Benefit

Fiscal Year 2014 = **\$6,445,063**

**Includes bad debts, charity, non reimbursed cost of Medicaid and Medicare and community benefit programs and services*

Vidant Health has nearly 12,000 employees

Salaries and wages = **\$674,900,000**

Vidant Chowan Hospital has nearly 325 employees

Salaries and wages = **\$21,723,000**

Capital Funds Reinvested in Vidant Chowan Hospital

Fiscal Year 2015 = **\$1,401,257**

Utilities Expense (Electrical, Water and Sewer) Last Year at

Vidant Chowan = **\$738,066**



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Finance : VCHO FY15 Performance

- Operating Margin – 20.4%
- Capital Spend - \$1,401,257
- Average Daily Census - 15
- Admissions – 1,695
- Births - 304
- Emergency Department Visits - 17,833
- Outpatient Visits - 22,966
- Surgeries – 1,621



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Finance: Critical Access Status

- Cost Based Reimbursement
- No more than 25 inpatient beds
- Average length of stay is less than 96 hours



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Serving our community!

Community Health Improvement Activities:



- Breast Cancer Awareness Luncheon
- Women's Heart Truth Luncheon
- Men's Health Dinner
- Chowan & Perquimans Health Fairs
- Diabetes Education
- Health Screenings
- Prostate Screenings
- Flu Shot Clinics
- Cancer Support Group
- Teddy Bear Fairs
- Three Rivers Healthy Carolinians

Chowan Hospital Foundation

Officers

Annette Wright, Chair
Leroy Spivey, Vice Chair
Virginia Hope, Secretary
Jeff Sackrison, Treasurer

Staff

Ginny Waff, Executive Director
Sue Bridgeman, Administrative Assistant



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Chowan Hospital Foundation

Board of Directors

Mary Boehling
Andrew Cocarro
Bill Chesson
Mary Gilliam
Rachel Gunther
Virginia Hope
Charlie Lacefield

J. Cris Reynolds, MD
Jeff Sackrison
Leroy Spivey
Key Stage, MD
Kristy Worrell
Annette Wright



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Community Benefit



Chowan Hospital Foundation's and Vidant Chowan Hospital's
Free Annual Prostate Screening



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Community Benefits Grants

Chowan Hospital Foundation & Vidant Health Foundation annually partner to provide the Community Benefit Grants Program. Its goal is to enhance & improve the health status of northeastern North Carolina by encouraging residents to be more proactive in their individual healthcare.

Since 2007, over \$1 million dollars have been awarded to non-profit organizations in Chowan, Perquimans, Washington & Tyrrell Counties to support programs focusing on physical activity & nutrition, access to care, & chronic disease management & prevention.

Organizations include local schools, regional health departments, local food banks, faith-based organizations, farmer's markets, & county extension programs.

We are very appreciative to Vidant Health for providing this opportunity for all of us.



Philanthropy at Work

Every year, **your gifts to Chowan Hospital Foundation** make it possible for

- Patients to receive treatment for lymphedema
- People to receive free flu shots
- Patients to see specialists in our state-of-the-art Outpatient Services Center
- Children to receive top-notch pediatric rehab
- Upgrades to facilities at Vidant Chowan Hospital

Your generosity makes these and other great things happen at Vidant Chowan Hospital.



Philanthropy at Work

Palliative Care Suite



Outpatient Services Center



- **Specialty Clinic**
 - Cardiology
 - Electromyography
 - Gastroenterology
 - Nephrology
 - Oncology
 - Orthopedics
 - Pain Management
 - Wound Care
- **Rehabilitation Services**
 - Occupational therapy
 - Physical therapy
 - Speech therapy
 - Pediatric program
 - Lymphedema therapy



Outpatient Services Center



Expanded Chemotherapy Suite

Pediatric Rehabilitation Gym



Wound Clinic

We are pleased to offer a Wound Clinic at Vidant Chowan Hospital, directed by Dr. Brandon Eppihimer, a certified wound care specialist.

- Many people experience chronic wounds caused by diabetes, infection, injury or burns that can last for months.
- Our doctors, nurses and technicians are dedicated to healing chronic wounds using the latest treatment options.



Dr. Brandon Eppihimer



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Telestroke

If you or someone you know has a stroke, faster care can mean a better outcome. That's why Vidant Health is partnering with the Wake Forest Baptist Telestroke Network, giving our community quicker, round-the-clock evaluation and treatment of stroke symptoms.

How it works

Upon the arrival of a stroke patient to our facility, Vidant Chowan Hospital's ER physician and the patient will communicate through this robot with a Wake Forest Baptist stroke specialist who can view the patient's symptoms and discuss them with our ER physician and the patient. Our ER physician and the Wake Forest Baptist stroke specialist can then develop a treatment plan for the patient.



1-877-WF-4-STROKE
(1-877-934-7876)



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Open Bore MRI Suite



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Mr. Sackrison said Vidant Chowan also works with Pines Elementary School with their program for backpacks filled with food. Vidant Chowan has also contributed exercise equipment to Washington County's Senior Center.

Commissioner Walker said he was at Vidant Chowan on Monday and the staff was very professional.

Chair Phelps told Mr. Sackrison that the Board appreciated Vidant Chowan's investment in Washington County and for speaking to the Board tonight.

ALBEMARLE COMMISSION PRESENTATION: Ms. Cathy Davison, Executive Director of the Albemarle Commission, gave the following stewardship presentation to the Board.



The Albemarle Commission

Founded in 1969 by the General Assembly

Mission:

Improve member governments ability to enhance quality of lives of citizens.

Objective:

Provide direct services, grant writing, planning and assessment, program development and management, and economic development.

Represent:

Counties of Camden, Chowan, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Proudly Serving

- Camden County
- Chowan County
- Currituck County
- Dare County
- Gates County
- Hyde County
- Perquimans County
- Pasquotank County
- Tyrrell County
- Washington County



Albemarle Commission Programs



Albemarle Commission Programs



Albemarle Commission Programs



- Albemarle Rural Planning Organization
- Area Agency on Aging
- Economic Development District
- General Administrative Services
- Northeastern Workforce Development Board
- Revolving Loan Fund

Albemarle Commission Programs



Albemarle Commission Programs

Administrative Services

- Grant Writing & Administration
- Retreat Facilitation
- Utility Rate Analysis
- Monday Morning Briefing
- Project Coordination
- Education Seminars (planning, local government, economic development, HR, trends)
- Regional Legislative Agenda

Albemarle Commission Programs



Albemarle Commission Programs



- Federal Economic Development District for EDA
- Assistance for technical/planning grants
- Assistance for infrastructure grants
- Comprehensive Regional Economic Development Strategy (CREDS)
- Small Business Loan Program

Albemarle Commission Programs



Albemarle Commission Programs



- County Transportation Plans
- Regional Bike & Ped Plan
- Regional Multi-Modal Transportation Project Scoring

Albemarle Commission Programs



Albemarle Commission Programs



- Manage 3 Certified NCWorks Career Centers
- Youth Programs, including OTJ, Real World Experience, & Youth Summit
- Adult Dislocated Worker Programs with education and job placement support
- Coordinates the Certified Work Ready Communities Program
- Business Services Support
- Working Smart: Soft Skills Training
- Work Experience Opportunities and On The Job Training Grants
- One Certified Work Ready Community with 3 additional counties in the application process

Albemarle Commission Programs



Albemarle Commission Programs



- Area Agency on Aging
- Senior Nutrition Program
- Senior Games
- Evidence Based Health Programs and Assistance
- Family Caregiver Programs
- Regional Ombudsman for Long Term Health Care Centers

Albemarle Commission Senior Nutrition

- * USDA Approved Meals
 - Five (5) days a week, except for the week between Christmas and New Year.
 - Shelf ready meals are provided during this time, as well as during inclement weather events (i.e. hurricanes).
- * Meals Served: 128,654
- * Number of Recipients: 1,358

Albemarle Commission Area Agency on Aging

- Medical Transportation 189 clients / 4,208 trips
 - General Transportation 259 clients / 2,196 trips
 - Adult Day Health Care 25 clients / 2,196 days
 - In-Home Aide 294 clients / 46,815 hours
 - Consumer Directed Care 9 clients / 1,185 hours
 - Respite Care 20 clients / 1,566 hours
(in-home and institutional):
 - Liquid Nutritional Supplements 2 clients / 4 units
 - Incontinent Supplies 5 clients / 199 units
- * AAA Services: 58,369 Units of Service
819 Clients
- * Ombudsman Program (Care Center Visits) 1,226 Services Provided
- * Senior Games (does not include Care County): 329 Participants
- * Family Caregiver: 44 Clients

Albemarle Commission Workforce Development

- Youth Program Services including tutoring: 1,105 Services
- Adult & Dislocated Worker services: (tracking did not start until 1/1/2013) 730 Individuals
- Business Services (started 3/27/2015) 68 business
- Total Services Provided: 115,934 Services
- Total Individuals Receiving at least 1 service: 23,898 Individuals

Albemarle Commission Rural Planning Organization

- Represents ten (10) Counties and 15 Towns
- Largest RPO in the State
 - Develop multi-modal transportation plans
 - Prioritize transportation projects
 - Forum for public participation
 - Provide transportation related information to local governments and other interested organization
 - Creating Regional Bike-Ped Website in Partnership with NCDOT Bike-Ped Division

Albemarle Commission Revolving Loan Fund

Small Business Loan Program that provides assistance to businesses for operational and equipment needs.

Requirements:

- Up to \$100,000 per borrower
- Minimum loan amount is \$10,000 borrowed
- 1 full-time job created for every \$10,000 borrowed
- Must have \$2 of private funding for every \$1 borrowed
- Collateral must be dollar to dollar
- Interest Rates are NY Prime plus or minus 4%
- Application Fee: \$500

Albemarle Commission Economic Development

Designated by the Economic Development Administration as the Economic Development District for the Region. Develop a comprehensive regional economic development strategy in order to support local government in their efforts to retain, expand and attract businesses to the Region.

- Strategic Planning
- Technical Assistance
- State Clearinghouse Review for the Region
- Labor Data Center Services
- Advocate for Economic Development in the Region with the State and Federal Government
- Business Visits and Service Feedback
- Comprehensive Regional Economic Development Strategy (Update in Progress)

Albemarle Commission Administration

* Services:

- Weekly Regional Update on Grant Opportunities, Training Sessions and Legislative News.
- Advocate on a Regional, State and Federal Level for Local Government Supported Projects.
- Advisory Member to the Hampton Roads Planning District Commission.
- Municipal Managers Quarterly Meetings
- Meeting Facilitation and Strategic Planning
- Utility Rate Analysis
- Policy Review and Analysis

Washington County Specifics

Service Provided	Units of Service (Meals, Trips, Hours of Service, days)	Number of Clients Receiving Services In the County/Funding Provided	County's Share for Provided Services
Senior Nutrition			
Home Delivered Meals	7,499	45	\$47,807.00
Congregate Meals	2,576	57	
Area Agency on Aging	0	0	\$15,337.00
Medical Transportation	0	0	
General Transportation	1,848	9	
Adult Day Health Care			
In-Home Aide (hours)	6,016	30	
Legal Aide (hours)	58	38	
Respite Services (hours)	38	1	
Institutional Respite Services (hours)	0	0	
Senior Games (Participants)	0	20	
Caregiver Supplies	0	0	
Regional Long Term Care Ombudsman	33		
Workforce Development			
Youth / Adult Worker Services	4,920	440	\$0.00
On the Job Training	0	0	\$0.00
Incumbent Worker Training	0	0	\$0.00
RFD Planning Services	3	3	\$2,164.00
Economic Development, Grant Administration, Advocacy, Strategic Planning, Meeting Facilitation, Quarterly County Manager Meetings, Policy Review and Analysis	2	1	\$8,622.00
TOTAL PAID BY THE COUNTY	22,993 units of service	644 Clients Receiving Service	\$74,574.00 \$3.24 per unit of service

Are there any questions?



Commissioner Sexton asked Ms. Davison what's the rate on grant writing? Ms. Davison replied 26% but charges County's only 10%.

Next, Community Advisory Committee (CAC) Chair, Kim Cotton-West spoke and introduced members Brenda Hill, Burl Walker, Teresa McNair and John Fallon. Ms. West said the Area Agency on Aging Community Advisory Committee was established in 1977 as part of the Division of Aging and Adult Care. They visit facilities (nursing homes) twice quarterly and they attend training classes. Currently there is one vacancy on the Washington County CAC.

RFQ AWARD FOR PEA RIDGE WATERLINE EXPANSION PROJECT: Mr. Curtis Potter, ACM/County Attorney told the Board that only one firm (Rivers & Associates) sent in a proposal. The Public Utilities Director, Mr. David Tawes, agrees that Rivers & Associates are qualified to do the job. Mr. Churchill and Mr. Garner were in attendance at tonight's meeting. Chair Phelps asked if funds have been budgeted for this project. Mr. Potter said the costs were anticipated and put it in the budget.

Commissioner Johnson made a motion to approve Rivers & Associates as the most qualified firm responding to the RFQ, to approve its provision of the engineering services described therein, and to authorize the County Manager and staff to negotiate and enter into additional contracts with Rivers & Associates to provide such services subject to available funding, including without limitation Amendment No. 1 as presented. Commissioner Walker seconded, motion carried unanimously.

Mr. Churchill said Rivers & Associates are excited to get going with this next phase.

TAX APPEAL: Mr. Potter went over the following documentation.

COUNTY OF WASHINGTON
BOARD OF COMMISSIONERS

COMMISSIONERS:
D. COLE PHELPS, CHAIR
JULIUS WALKER, JR., VICE-CHAIR
TRACEY A. JOHNSON
BUSTER MANNING
WILLIAM "BILL" R. SEXTON, JR.



POST OFFICE BOX 1007
PLYMOUTH, NORTH CAROLINA 27962
OFFICE (252) 793-5823 FAX (252) 793-1183

ADMINISTRATION STAFF:
W. MACK CARAWAN, JR.
COUNTY MANAGER
wcarawan@washconc.org

JULIE J. BENNETT, CMC, NCCCC
CLERK TO THE BOARD
jbennett@washconc.org

CURTIS S. POTTER
ASSISTANT COUNTY MANAGER/
COUNTY ATTORNEY
cpotter@washconc.org

AGENDA ITEM MEMO

TO: Board of Commissioners, Washington County c/o Julie Bennett, Clerk to the Board
FROM: Curtis S. Potter, Washington County Assistant County Manager/County Attorney
CC: Willie Mack Carawan, Jr. Washington County Manager
Sherril Wilkins, Washington County Tax Administrator
DATE: 9/16/16
RE: Tax Appeal of Mr. Robert E. Adams Jr. and Ms. Janette J. Adams per NCGS § 105-381

Enclosed you will find the following materials:

- Evaluation Form for potential use by the Board
- Written statement of defense by the taxpayer, and the Tax Administrator's written statement and recommendation.
- Approved Resolution Adopting Procedures for Evaluating Requests for Releases/Refunds Per NCGS § 105-381
- A copy of NCGS Chapter 105, Article 27 "Refunds and Remedies"
- A Copy of an Article from the UNC SOG regarding Property Tax Refunds
- A Copy of a UNC School of Government Property Tax Bulletin regarding Refunds and Releases

Background:

- Washington County has received a written statement of defense and request for a tax refund pursuant to NCGS 105-381 from Mr. Robert E. Adams Jr. and Ms. Janette J. Adams dated 8/24/16.
- That statute requires the governing body to determine **whether or not the taxpayer has a "valid defense"** which is a term also defined within the statute as either an "illegal tax" or a "tax imposed through clerical error"
- At its 9/6/16 meeting, the Board directed the County Attorney to prepare a recommended written procedure for the Board to follow in reviewing such requests. At its 9/19/16 meeting the Board approved the attached Resolution and directed that staff apply its terms to the present case which was scheduled for consideration at the 10/3/16 meeting.
- Staff has applied the terms of the Resolution to the present case, and has confirmed Mr. Adams is in receipt of the Tax Administrator's written statement and recommendation along with a copy of the approved Resolution, and is aware of the right to present additional written information to the Board by 12:00 noon on 10/3/16.

Staff Recommendations:

- Review the applicable statutes and provision 3 of the adopted Resolution along with all written statements from the taxpayer and Tax Administrator (including any additional documentation submitted by the taxpayer by the applicable deadline on 10/3/16.
- Utilize the enclosed Evaluation Form to determine by vote whether or not the taxpayer has a "valid defense" as defined in NCGS § 105-381 and to direct staff accordingly. The form or any other vote taken on this matter must be included in the minutes of the meeting.

EVALUATION FORM

For Governing Body Determination of Taxpayer's Valid Defense to Taxes Imposed

Pursuant to NCGS § 105-381

Pursuant to NCGS § 105-381(b), the Board of Commissioners of Washington County after careful consideration and in accordance with the Resolution Adopting Procedures for Evaluating Requests for Releases or Refunds Per NCGS § 105-381 adopted by the Board on September 19th, 2016, and upon a motion to vote thereon made by Commissioner _____ and seconded by Commissioner _____, which vote passed _____, with the following Commissioners, if any, voting against or abstaining as indicated: _____

hereby finds that the following taxpayer(s): _____

CHOOSE ONE:

___ HAS raised the following "valid defense" as defined in NCGS § 105-381(a)(1) to the imposition of taxes upon them by Washington County:

___ A tax imposed through clerical error;

___ An illegal tax;

___ A tax levied for an illegal purpose

and the Tax Administrator is hereby authorized and directed to release or refund the amount of \$ _____ which is determined to be in excess of the correct tax liability to the taxpayer(s).

OR

___ HAS NOT raised a "valid defense" as defined in NCGS § 105-381(a)(1) to the imposition of taxes upon them by Washington County, and hereby directs the Tax Administrator to notify the taxpayer(s) in writing that no release or refund will be made.

8/24/2016

To: Washington County Manager
Mr. Willie Mack Carawan Jr.
116 Adams St.
Plymouth, NC 27962
252-793-5823

From: Mr. and Mrs. Robert E Adams Jr
305 Gen Matt Ransome Dr.
Plymouth, NC 27962
770-789-7250
Email: jadams5254@gmail.com or usmc672@gmail.com

Subj: Refund of Property Taxes

Mr. Carawan, we are requesting the refund of property taxes paid by our mortgage company, to our mortgage company. This request is in accordance with the Machinery Act 105-381 Taxpayer's remedies section (a) Statement of Defense.

Mid July 2016 I contacted the the Washington Tax office and advised them we were going to be paying our taxes directly to the tax office and directed the tax office NOT to accept payment from our mortgage company. The staff said the office would comply with our directive. They notated our account to reflect that and said they would send us the tax bills for our (3) pieces of property.

August 8th 2016 we received our mail as usual. We had returned later than normal business hours that night. In the mail were our tax bills and a letter from our mortgage company. I expected the tax bills. What I did not expect was a letter from our mortgage company stating we had an escrow balance and could not close our escrow account as they were directed to do. The letter indicated they paid our taxes on July 29 2016 to the Washington County Tax Office, which is after the tax office said they would comply with our directive.

I contacted the Washington County Tax Office on 8/09/2016 early in the morning. The staff informed me they had to accept and post the funds to our account by LAW. However, they have been unable to produce a copy of the LAW. I was presented with the Machinery Act information which is not the Law referenced by the staff, but rather a remedy to correct the action taken by the tax office staff.

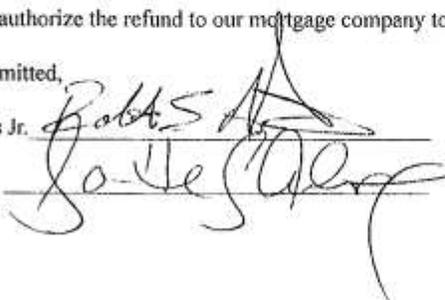
This action taken by the tax office staff has resulted in a negative balance in our escrow account with our mortgage company which is directly opposed to our wishes.

We ask that you authorize the refund to our mortgage company to clear up this matter quickly.

Respectfully submitted,

Robert E. Adams Jr.

Janette J. Adams



Adams, Jr. Robert E.
Adams, Janette J.
Account 53

On July 21, 2016, Mr. Adams called the office and spoke with Denise Jones. He told her that he was not going to escrow the properties and to send him the bills. She put him on hold and called Darlene Harrison to let her know and Darlene removed the "mortgage code" from the account so the bill would not be mailed to the mortgage company. Darlene told Denise that she had removed the code but we could not stop the mortgage company from paying the taxes. If we receive a check from the mortgage company we will post it. Darlene asked Denise to let Mr. Adams know. Denise talked back to Mr. Adams, who was still on hold, and told him what Darlene said.

On July 25, 2016, the tax bill file was sent, by email, to each mortgage company if we had an email address for them. It was also uploaded to Autoagent – a tax processing company. The tax bill shows that the mortgage code is not on Mr. Adams' account.

On August 3, 2016, Denise Jones spoke to Mr. Adams again. He told her that if we received a check from the mortgage company he wanted us to return it to them. She explained to him again that we do not return checks for payment on accounts. If we received it, we would post it. We can only return the mortgage company payment if Mr. Adams has already paid the taxes and the mortgage company payment creates a credit balance on the account. If this happens the credit balance would be refunded.

On August 4, 2016, we received payment from Mr. Adams' mortgage company.

On August 9, 2016, Mr. Adams called the office and spoke with Darlene Harrison. He wanted us to refund the payment to his mortgage company. She explained to him that for us to do that he would also have to pay the taxes to create a credit balance and then we could refund the mortgage company the credit balance. He argued that because the taxes are not considered due until September 1st he doesn't want to pay until September 1st. She explained to him that we do not refuse payments. And we do not refund payments unless they qualify per NCGS 105-380 and 105-381. Darlene went on to explain to Mr. Adams that she did remove the mortgage code from the account when he first notified our office but we cannot make a mortgage company not pay on an account. She told Mr. Adams that the issue of his mortgage company paying the taxes when he didn't want them to was between him and his mortgage company. (At this time of year, we get request weekly from mortgage companies requesting taxes due on a property. At other times, we get request monthly. We cannot stop them from paying the taxes.) Later that day, Mr. Adams came into the tax office and I spoke with him and I reiterated what Darlene told him. I told him that according to the Statutes if we received a payment we had to post it. I told him that we would get copies of the statutes to him.

I was out of the office August 10th – 12th.

On August 11, 2016 Mr. Adams came into the office and spoke with Darlene Harrison. He was upset that I hadn't sent the copies of the Statutes to him. She gave him copies of Article 27, NCGS 105-379, 105-380 and 105-381. Darlene called me after meeting with Mr. Adams, I asked Darlene to email Chris McLaughlin, Associate Professor of Public Law and Government with the UNC School of Government regarding this issue. Following is the response she received from Chris:

"Darlene, your argument is of course correct. I think t105-381 controls here. There is no justification for a refund as the tax was neither illegal nor levied due to clerical error. The tax office has no authority to refuse to accept a payment, as the taxpayer wanted you to do here apparently. I think failure to accept a payment would constitute an illegal refund—you had the money in hand but chose to send it back to the payor. In my mind that would violate the Machinery Act."

On August 11, 2016 Mr. Adams went to see the County Manager.

On August 24, 2016 Mr. and Mrs. Adams submitted their letter to the County Manager.

It is the recommendation of this office that the refund Mr. Adams has requested be denied. Per NCGS 105-381, that he has referenced, a valid defense shall include the following:

- a. A tax imposed through clerical error;
- b. An illegal tax;
- c. A tax levied for an illegal purpose

His claim does not meet these requirements.

COUNTY OF WASHINGTON
BOARD OF COMMISSIONERS

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ASSISTANT COUNTY MANAGER/
COUNTY ATTORNEY
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RESOLUTION
ADOPTING PROCEDURES FOR EVALUATING
REQUESTS FOR RELEASES OR REFUNDS PER NCGS §105-381

WHEREAS, NCGS § 105-381 (a copy of which is attached to this resolution for reference and convenience) provides certain remedies for taxpayers, including without limitation the right to assert a valid defense to the enforcement of the collection of a tax assessed upon their property in accordance with procedures of said statute; and

WHEREAS, NCGS § 105-381(b) "Action by Governing Body" provides in relevant part: *Upon receiving a taxpayer's written statement of defense and request for release or refund, the governing body of the taxing unit shall within 90 days after receipt of such request determine whether the taxpayer has a valid defense to the tax imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct tax liability or notify the taxpayer in writing that no release or refund will be made. All actions taken by the governing body... on requests for release or refund shall be recorded in the minutes of the governing body. If a release is granted or refund made, the tax collector shall be credited with the amount released or refunded in his annual settlement.*; and

WHEREAS, NCGS § 105-381(a)(1) provides: *For the purpose of this subsection, a valid defense shall include the following:*

- a. *A tax imposed through clerical error;*
- b. *An illegal tax;*
- c. *A tax levied for an illegal purpose*

WHEREAS, the Board of County Commissioners of Washington County desires to establish certain uniform procedures for considering such requests in order to do so in a consistent, fair and equitable manner for the benefit of all taxpayers, while also maintaining orderly and productive official meetings; and

WHEREAS, the Board's decision is not final, in that any taxpayer may appeal such decision through a civil action pursuant to NCGS § 105-381(d).

NOW THEREFORE, the Board of County Commissioners of Washington County hereby resolves that the following procedures should be used to handle and consider taxpayer requests for refunds or releases made pursuant to NCGS § 105-381:

1. Receipt of Request by Tax Administrator: Within ten (10) days of receiving a written statement of defense and request for a refund or release from a taxpayer pursuant to NCGS § 105-381, the Tax Administrator shall:
 - a. Provide the Clerk to the Board of Commissioners with a copy of such request, together with a written response and official recommendation for the Board to review during its consideration of the request.
 - b. Mail a copy of the written response and official recommendation along with a copy of this Resolution by certified mail, return receipt requested, to the taxpayer at their last known address, or if none, to any property address that exists to which mail can be delivered. However the Tax Administrator shall not be required to verify actual receipt, nor shall the failure of the taxpayer to actually receive such instruments for any reason, have any effect or impact whatsoever on the continuation of the proceedings pursuant to this Resolution or other applicable law.
2. Scheduling of Request for Board Consideration: The Clerk shall schedule a Refund & Release Request Item on the agenda for the next regularly scheduled meeting of the Board occurring at least ten (10) days after receiving the written documentation described above from the Tax Administrator, or otherwise as soon thereafter as practicable, and in any event within ninety (90) days of the initial request from the taxpayer.
 - a. The Clerk should attempt to contact and inform the taxpayer of the date, time, and location of such meeting, but the taxpayer shall be solely responsible for establishing contact with the Clerk to stay informed about the scheduling of any meeting at which their request is to be considered. The County reserves its right to reschedule any agenda items for any reason within its sole discretion.
 - b. Any additional information the taxpayer wishes the Board of Commissioners to consider in reviewing the request must be submitted in writing to the Clerk by 12:00PM on the day of any scheduled meeting in order for such information to be disseminated to the Board, and considered during its review of the request.
3. Board Consideration of Request: The Board does not intend to provide an adversarial forum during the consideration of requests made for a refund or release pursuant to NCGS § 105-381. Therefore no oral arguments, sworn testimonies, or questioning of witnesses or other parties by the taxpayer will be permitted. The Board shall confine its review of the request to the written record presented, including the taxpayer's written statement of defense and request, the Tax Administrator's written response and recommendation, and any additional written information submitted by the taxpayer before the applicable deadline stated above or by staff.
 - a. The Board may also consider any confidential advice provided by the County Attorney concerning the request, and may at any time during its consideration enter closed session pursuant to NCGS 143-318.11(a)(3) to consult with its attorney regarding any legal questions or concerns the Board may have.

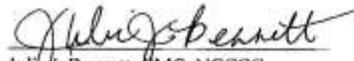
- b. In the event that the Board determines it cannot reach a decision from the written record without obtaining additional information, the Board may request such information from any relevant party in attendance, or who is reachable by phone during any meeting at which the request is under consideration, or it may continue the consideration of the request to another regular or special meeting pending receipt of such information, to be obtained by staff in the interim.
- c. If the Board determines that the taxpayer has a valid defense as defined in NCGS § 105-381(a)(1), then it shall direct the Tax Administrator to release or refund that portion of the amount that is determined to be in excess of the correct tax liability.
- d. If the Board determines that the taxpayer does NOT have a valid defense, then it shall cause written notice to be provided to the taxpayer that no refund or release shall be made.

ADOPTED this the 19th day of September, 2016



D. Cole Phelps, Chair
Washington County Board of Commissioners

ATTEST:


Julie J. Bennett, EMC, NCCCC
Clerk to the Board



Article 27.

Refunds and Remedies.

§ 105-379. Restriction on use of injunction and claim and delivery.

(a) Grounds for Injunction. – No court may enjoin the collection of any tax, the sale of any tax lien, or the sale of any property for nonpayment of any tax imposed under the authority of this Subchapter except upon a showing that the tax (or some part thereof) is illegal or levied for an illegal or unauthorized purpose.

(b) No Order in Claim and Delivery. – No court may issue any order in claim and delivery proceedings or otherwise for the taking of any personal property levied on or attached by the tax collector under the authority of this Subchapter. (1901, c. 558, s. 30; Rev., s. 2855; C.S., s. 7979; 1971, c. 806, s. 1.)

§ 105-380. No taxes to be released, refunded, or compromised.

(a) The governing body of a taxing unit is prohibited from releasing, refunding, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in this Subchapter.

(b) Taxes that have been released, refunded, or compromised in violation of this section shall be deemed to be unpaid and shall be collectible by any means provided by this Subchapter, and the existence and priority of any tax lien on property shall not be affected by the unauthorized release, refund, or compromise of the tax liability.

(c) Any tax that has been released, refunded, or compromised in violation of this section may be recovered from any member or members of the governing body who voted for the release, refund, or compromise by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit. The costs of bringing the action, including reasonable attorneys' fees, shall be allowed the plaintiff in the event the tax is recovered.

(d) The provisions of this section are not intended to restrict or abrogate the powers of a board of equalization and review or any agency exercising the powers of such a board.

(e) **(Expires July 1, 2016)** The governing body of a municipality shall release any tax levied under this Subchapter, without application from the taxpayer being required, on property that was within the corporate limits of the municipality for six months or less prior to deannexation from the municipality, and for which no notice of the tax has yet been sent to the taxpayer. The release shall be made in accordance with the provisions of this Article. (1901, c. 558, s. 31; Rev., s. 2854; C.S., s. 7976; 1971, c. 806, s. 1; 1973, c. 564, s. 2; 2013-19, s. 1.)

§ 105-381. Taxpayer's remedies.

(a) Statement of Defense. – Any taxpayer asserting a valid defense to the enforcement of the collection of a tax assessed upon his property shall proceed as hereinafter provided.

- (1) For the purpose of this subsection, a valid defense shall include the following:
 - a. A tax imposed through clerical error;
 - b. An illegal tax;
 - c. A tax levied for an illegal purpose.
- (2) If a tax has not been paid, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for release of the tax at any time prior to payment of the tax.

- (3) If a tax has been paid, the taxpayer, at any time within five years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense and a request for refund thereof.

(b) **Action of Governing Body.** – Upon receiving a taxpayer's written statement of defense and request for release or refund, the governing body of the taxing unit shall within 90 days after receipt of such request determine whether the taxpayer has a valid defense to the tax imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct tax liability or notify the taxpayer in writing that no release or refund will be made. The governing body may, by resolution, delegate its authority to determine requests for a release or refund of tax of less than one hundred dollars (\$100.00) to the finance officer, manager, or attorney of the taxing unit. A finance officer, manager, or attorney to whom this authority is delegated shall monthly report to the governing body the actions taken by him on requests for release or refund. All actions taken by the governing body or finance officer, manager, or attorney on requests for release or refund shall be recorded in the minutes of the governing body. If a release is granted or refund made, the tax collector shall be credited with the amount released or refunded in his annual settlement.

(c) **Suit for Recovery of Property Taxes.** –

- (1) **Request for Release before Payment.** – If within 90 days after receiving a taxpayer's request for release of an unpaid tax claim under (a) above, the governing body of the taxing unit has failed to grant the release, has notified the taxpayer that no release will be granted, or has taken no action on the request, the taxpayer shall pay the tax. He may then within three years from the date of payment bring a civil action against the taxing unit for the amount claimed.
- (2) **Request for Refund.** – If within 90 days after receiving a taxpayer's request for refund under (a) above, the governing body has failed to refund the full amount requested by the taxpayer, has notified the taxpayer that no refund will be made, or has taken no action on the request, the taxpayer may bring a civil action against the taxing unit for the amount claimed. Such action may be brought at any time within three years from the expiration of the period in which the governing body is required to act.

(d) **Civil Actions.** – Civil actions brought pursuant to subsection (c) above shall be brought in the appropriate division of the general court of justice of the county in which the taxing unit is located. If, upon the trial, it is determined that the tax or any part of it was illegal or levied for an illegal purpose, or excessive as the result of a clerical error, judgment shall be rendered therefor with interest thereon at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions. (1901, c. 558, s. 30; Rev., s. 2855; C. S., s. 7979; 1971, c. 806, s. 1; 1973, c. 564, s. 3; 1977, c. 946, s. 2; 1985, c. 150, s. 1; 1987, c. 127.)

§ 105-382. Repealed by Session Laws 1977, c. 946, s. 3.

Coates' Canons Blog: Property Tax Refunds

By Chris McLaughlin

Article: <http://canons.sog.unc.edu/property-tax-refunds/>This entry was posted on February 11, 2010 and is filed under Finance & Tax, Property Taxes

Which of these taxpayers is entitled to a property tax refund?

1. Jane forgets that she is escrowing her property taxes with her mortgage company and pays the taxes herself in September. Two weeks later she demands a refund because her insurance company will pay the taxes with her escrow funds in December.
2. Sam moves to Virginia but still owns property in NC. The tax office continues to mail Sam's bills to his old NC address. The bills never reach Sam. When Sam finally learns of the outstanding tax bills three years later, he demands that the taxes be waived because of the mailing error.
3. Susan decides to build a home on her lakefront lot, but learns that the lot is unbuildable due to size and slope issues. Susan demands a refund of the "excess" taxes she's paid due to the fact that her lot has been valued as a buildable lot for over a decade.

I think the answer is, "none of the above." Here's why.

The collection of property tax laws known as the **Machinery Act** permits tax refunds or releases only in very limited circumstances. GS 105-381 authorizes the governing board (in other words, the county commissioners or the town council) to refund a tax payment or to waive a tax obligation **only if the tax was illegal or if the tax was imposed due to a clerical error.**

An illegal tax could be one that was not approved by the governing board in the required manner or one that was levied on property that was never in the jurisdiction. For example, if a city has been taxing a property for years but then learns that the property lies outside of the city limits, GS 105-381 would authorize a refund of the city property taxes.

A clerical error is more difficult to define. It's clear that the error must be made by the government, not by the taxpayer. The statute requires that the tax be "imposed through clerical error," and only the government can "impose" a tax. Beyond that, the issue gets murky.

The only appellate case to examine "clerical error" in detail is *Ammons v. Wake County*, 127 N.C. App. 426 (1997), in which the NC Court of Appeals concluded that a "clerical error" must be that one produces an unintended result and is apparent from the face of the documents, such as a transcription mistake. The term does not include judgment errors like the one in *Ammons* when the assessor mistakenly told the taxpayer that his property would not qualify for reduced taxation under the present-use-value program. (Click [here](#) for a terrific analysis of *Ammons* by our former colleague Bill Campbell.)

I don't think any of the three scenarios above involve an illegal tax or a tax imposed due to clerical error.

In Scenario 1, Jane made the error, not the tax office. Her claim is against the insurance company for a refund of her escrow funds, not against the tax office.

In Scenario 2, the error by the tax office delayed the bills from reaching Sam but it didn't "impose" the underlying taxes or render them invalid. See GS 105-394, which states that "immaterial irregularities" in the tax process do not invalidate an otherwise valid tax. Under GS 105-348, Sam is charged with notice of his taxes even if he never receives a bill. Sam has a slightly stronger argument for a release of the interest on those taxes, but I think that too is a loser.



In Scenario 3, both the tax office and Susan made a judgment error, not a clerical error, when they assumed that the lot was buildable. To constitute a clerical error, the resulting tax must be different from that intended by the tax office. That is not the case here: the assessor intended that the lot be taxed as a buildable lot, and it was. The assessor should correct the lot's valuation going forward, but not for prior years. Susan's opportunity to appeal the value of her lot for past years is long gone.

Tax officials and governing boards who think these refund provisions are too restrictive should remember that it's more than just the county's finances that could be on the line if they are too generous with tax refunds. GS 105-380 makes the governing board members personally liable for refunds or releases that violate the Machinery Act.

For more details about the refund and release of property taxes, please [see this bulletin](#).

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-381.html
- caselaw.findlaw.com/nc-court-of-appeals/1235512.html
- www.sog.unc.edu/pubs/electronicversions/pdfs/ptb111.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-394.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-348.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-380.html
- www.sog.unc.edu/publications/bulletins/refunds-and-releases

Refunds and Releases

Christopher B. McLaughlin

Few issues carry a greater potential for conflict between taxpayers and tax offices than do requests for refunds or waivers of property taxes. This is true in large part because the Machinery Act allows refunds and waivers only under two very limited circumstances. Unless the disputed tax is imposed due to clerical error or is illegal, the Machinery Act prohibits the refund of a tax payment or the waiver—called a “release” in the Machinery Act—of an unpaid tax obligation. Contrary to what many taxpayers believe, the refund and release process is not the venue for a re-examination of a property’s value or taxable status. Although some governing boards desire to be more forgiving on these issues, they do so at their peril: board members who approve refunds or releases that violate the Machinery Act can be held personally responsible for the lost taxes.¹

1. Who may approve refunds and releases?

The governing board, always. The local government’s manager, attorney, or finance officer, sometimes. But the tax collector, never.

G.S. Section 105-381(b) of the North Carolina General Statutes (hereinafter G.S.) gives the governing board primary responsibility for approving refund and release requests. For refunds and releases of less than \$100, the board may delegate this responsibility to the manager, attorney, or finance officer, who must then report monthly to the board on the actions taken. Conspicuously absent from this list is the tax collector. In practice some tax collectors grant small refunds or releases and then seek approval from the board, but this is a risky approach.

Once a refund or release is approved by the board or its delegate, the tax collector should be credited with that amount in the next annual settlement.²

Christopher B. McLaughlin is a School of Government faculty member who specializes in local taxation.

1. N.C. GEN. STAT. (hereinafter G.S.) § 105-380(c).

2. G.S. 105-381(b).

2. When are refunds and releases authorized?

Technically, refunds and releases are authorized in three situations: when a tax is (1) imposed through clerical error, (2) illegal, or (3) levied for an illegal purpose.³ However, because reasons 2 and 3 overlap substantially, if not entirely, in practice there are only two situations that justify a refund: when a tax is imposed due to clerical error or is illegal.

Clerical Error

The General Assembly has not defined the term "clerical error," but state courts have. In 1997, the North Carolina Court of Appeals tackled this issue in *Ammons v. Wake County*.⁴ In this case, the taxpayer asked the assessor if his forest land qualified for present-use value (PUV) tax deferrals for the 1993 tax year. The assessor answered no and the taxpayer did not apply for the PUV program. One year later, the taxpayer ignored the assessor's opinion and applied for a PUV deferral. The assessor denied the application, but the taxpayer won his appeal to the board of equalization and review and was granted PUV status for the 1994 tax year. The taxpayer then requested a refund for the 1993 taxes he would have been able to defer had the assessor provided accurate advice about the property's eligibility for the PUV program. After the board of county commissioners denied the refund request, the taxpayer turned to the courts. The superior court ruled that the assessor's incorrect advice did not constitute a clerical error under G.S. 105-381 and dismissed the taxpayer's claim. The court of appeals affirmed this decision, which became final when the North Carolina Supreme Court declined to hear the taxpayer's appeal.

According to the court of appeals, to qualify as a clerical error under G.S. 105-381 the tax office's error "must ordinarily be apparent on the face of the instrument," "must be capable of being corrected by reference to the record only," and must produce an unintended result. Prime examples are transcription errors, such as when an additional zero is added to tax valuation or when two numbers are transposed on a tax bill.

The definition of clerical error adopted in *Ammons* excludes a factual or judgment error by an appraiser, which must be addressed during the assessment appeal period and not in a refund and release request. For example, assume that in 2007 an appraiser values a lakefront lot with the understanding that it is buildable. Three years later, the taxpayer applies for a building permit and is denied based on the size and slope of the lot. The taxpayer immediately asks the tax office for a retroactive decrease in the tax value of the lot and a tax refund, based on the fact that the lot was never buildable. Applying the *Ammons* test, this error does not justify a refund under G.S. 105-381 because it is a judgment error and not a clerical error. First, the error is apparent and correctable only through an examination of the property and a decision by the county inspections department, not by reference to the appraisal documents. Second, the error has not caused an unintended result. In 2007, the appraiser intended to value the house as a buildable lot, and it was so valued. The judgment error by the appraiser can be corrected under G.S. 105-287(a)(2) for current and future tax years, but it does not justify a retroactive change to the tax value or a refund for past years under G.S. 105-381.

For a terrific analysis of the *Ammons* case and its definition of clerical error, please see William A. Campbell's *Property Tax Bulletin* No. 111.⁵

3. G.S. 105-381(a)(1).

4. 490 S.E. 2d 569, 127 N.C. App. 426 (1997), cert. denied, 500 S.E.2d 84, 347 N.C. 670 (1998).

5. William A. Campbell, "Ammons v. Wake County: Some Light on Clerical Errors," *Property Tax Bulletin* No. 111 (October 1997), available online at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb111.pdf.

Can a clerical error by the taxpayer ever justify a refund or a release? No. Based on the language in G.S. 105-381, a refund or release is justified only if the tax is "imposed through clerical error" and only the government can impose a tax.

Consider the situation in which Tina Taxpayer forgets that her mortgage company is escrowing her property tax payments and makes a payment to the tax office. Can Tina's payment be refunded based on the fact that her mortgage company will pay the tax bill later in the year with the escrowed funds? No. Even though Tina's error may be a clerical one, it does not satisfy G.S. 105-381 because the tax on her home was not imposed due to her error. Tina's refund request should be directed to her mortgage company, not to the tax office.

Similarly, a refund is not justified if a taxpayer mistakenly pays the taxes on property that he or she sold to another taxpayer at some point after the listing period. The taxpayer may have made a clerical error when he or she wrote the wrong parcel number on the payment check, but that does not mean the taxes on that parcel were imposed due to clerical error. The taxpayer's remedy, if any, would be from the new owner of the property, not the tax office.

Illegal Taxes

Taxes that are either *illegal* or *levied for an illegal purpose* may be released or refunded under G.S. 105-181. Situations in which refunds may occur include:

1. Double taxation, when the same property is taxed more than once;
2. Situs mistakes, when a taxing unit taxes property that has no situs in the unit's jurisdiction;
3. Procedural defects, when a taxing unit levies a tax without a required ordinance or referendum;⁶
4. Excess taxation, when a taxing unit levies a tax in excess of the applicable cap on that tax;⁷ and
5. Improper purposes, when a taxing unit levies a tax for a purpose not permitted by the General Assembly.⁸

This author believes some local governments inappropriately shoehorn valuation errors and/or judgment errors into the illegal tax category and authorize refunds for matters that should be resolved during the valuation appeal process.

For example, consider the situation in which the assessor's office incorrectly assumes during a reappraisal that Tom Taxpayer's house has a finished third floor. Two years later, Tom demonstrates to the assessor that his house has never had a finished third floor. Tom asks that his assessment be reduced retroactively and that his excess tax payment for the past two years be

6. For example, county and municipal property taxes must be included in the government's annual budget ordinance. G.S. 159-13. Rural fire district taxes require a petition signed by 35 percent of the affected landowners and voter referendum in the proposed district. G.S. 69-25.1.

7. For example, with some exceptions general county and municipal property tax rates are capped at \$1.50. G.S. 153A-149; G.S. 160A-209. Rural fire district tax rates are capped at either 10 cents or 15 cents, depending on the language of the authorizing referendum. G.S. 69-25.4.

8. G.S. 153A-149 and G.S. 160A-209 list the approved purposes for general county and municipal property taxes. Special service district taxes may be used only for the provision of additional services in those districts such as beach erosion control, sewer systems, fire protection (counties only), and downtown revitalization projects (municipalities only). G.S. 153A-301; G.S. 160A-536. Rural fire district taxes may be used only for the provision of fire protection services in these districts. G.S. 69-25.4.

refunded. The error at issue clearly is not a clerical error under the *Ammons* test. Nevertheless, is a refund justified because the resulting tax is illegal, in that the county taxed Tom for property (a finished third floor) that Tom has never owned?

Many counties would answer yes, but this author disagrees. If valuation errors such as the one involving Tom's third floor are refundable under the illegal tax category, then the deadline for valuation appeals becomes irrelevant. Local governments would lose all certainty about the value of their tax bases and find it impossible to budget accurately. For this reason, the best interpretation of the illegal tax category is one that excludes valuation judgment errors. If a taxpayer wishes to contest the valuation of his or her property, he or she must do so through the board of equalization and review appeal process, not through the refund and release process.⁹

Listing errors must also be resolved during the initial appeal period to the board of equalization and review rather than through the refund and release process. For example, assume that Tom Taxpayer has listed a boat in Carolina County for several years. In November 2009 he sells the boat to his neighbor, Tina Taxpayer. In January 2010 Carolina County sends Tom a listing form that includes the boat. Tom signs and returns the form without carefully reading it. The county subsequently assesses the boat for taxation under Tom's name. When Tom receives the tax bill for the boat, he promptly pays it. Six months later he realizes he has paid taxes on a boat he no longer owns and demands a refund from Carolina County. Tom is not entitled to a refund under G.S. 105-381 because the tax on the boat is not illegal: Carolina County is authorized to tax the boat because it still has situs in Carolina County on January 1, 2010. Nor is Tom entitled to a refund under the clerical error category because the listing error does not satisfy the *Ammons* test. Tom's opportunity to contest the listing of the boat in his name ended when the valuation appeal period ended thirty days after he received notice of the boat's tax valuation.¹⁰

That said, refunds and releases *are* justified under GS 105-381's illegal tax category for taxes levied on property that does not exist or does not have situs in the taxing unit as of the listing date. Consider the example above, but assume instead that in mid-2009 Tom sold the boat to a resident of another county who promptly removed it from Carolina County. If Tom mistakenly listed his boat for taxation in Carolina County for 2010, he would be entitled to a refund or a release of those taxes after providing evidence that the boat did not have situs in Carolina County on January 1, 2010. The same would be true if Tom's boat was destroyed by hurricane in mid-2009 and he mistakenly listed it for taxation for 2010. Tom would be entitled to a refund or release of the taxes on the boat if he could provide evidence that the boat no longer existed as of January 1, 2010.¹¹

9. The same is true of taxability errors. As the *Ammons* case demonstrates, incorrect decisions by the assessor regarding applications for exemptions or exclusions do not justify refunds or releases. If a taxpayer believes that he or she is entitled to an exemption or exclusion, the taxpayer must take advantage of the application and appeal process in G.S. 105-282.1. The taxpayer cannot retroactively raise these issues using the refund and release process under G.S. 105-381.

10. G.S. 105-317.1(c). Under G.S. 105-306, the county is permitted to correct the listing error and proceed as if it had been listed in Tina's name all along. This means that if Tom had never paid the taxes, he would no longer be considered the responsible taxpayer and could not be subject to enforced collection remedies. The same conclusions would be reached under G.S. 105-302 if the listing error concerned real property.

11. In contrast, this author believes that a refund or release is *not* justified under G.S. 105-381 when a business taxpayer lists a certain cost of personal property for taxation and then later seeks a refund or release of the related taxes on the grounds that the taxpayer included in that cost amount some personal

3. Which taxes must be released or refunded under G.S. 105-381?

The Machinery Act defines the term "tax" as "the principal amount of any tax, cost, penalties and interest imposed upon property tax or dog license tax."¹² This definition means that G.S. 105-381 controls the refund or release of all property taxes, including special service district taxes and rural fire district taxes. G.S. 105-381 does not control the refund or release of other local taxes, such as privilege license taxes and occupancy taxes, nor does it control the refund or release of costs and fees, such as special assessments and nuisance abatement costs, that by statute are collectible as property taxes. See Question 7 for details on the refund and release of other taxes and fees.

4. Does G.S. 105-381 govern the refund or release of interest?

Yes. Because the term "taxes" as used in GS 105-381 includes interest, any refund or release of interest must conform to the restrictions in that statute. Only when interest is levied illegally or added due to a clerical error can it be released or refunded. For example, if the tax office miscalculates the interest owed by a taxpayer, that interest charge could be refunded or released under G.S. 105-381.

What if the taxpayer claims that he or she was charged interest only because the tax office failed to send a tax bill in a timely fashion or sent an inaccurate tax bill? The North Carolina Supreme Court answered this question in the negative when it decided *In re Morgan* two years ago.¹³ In this case, the taxpayer listed her house with the Henderson County assessor but the house was never assessed or taxed due to tax office error. Eight years later the tax office learned of its mistake and sent retroactive tax bills, plus interest, for each year the house had escaped taxation. The taxpayer contested both the principal taxes and the interest. The Supreme Court ruled in favor of the county, approving not only the principal taxes but also the addition of interest to the tardy tax bills. The court's decision relied on G.S. 105-348, which provides taxpayers with notice of their taxes regardless of when or if they receive tax bills, and G.S. 105-394, which forgives minor defects—"immaterial irregularities" in the language of the statute—during the taxation process.¹⁴ Although the taxpayer in *Morgan* did not seek a release under G.S. 105-381, the result would be the same had she done so. *Morgan* makes clear that it is legal for interest to accrue on taxes billed after the delinquency date due to tax office error. A release is, therefore, not justified under G.S. 105-381.

property that was disposed of prior to January 1. This relatively common situation involves a dispute over the *valuation* of the taxpayer's aggregate personal property as opposed to a dispute over the *existence* of taxable property. Accordingly, the taxpayer's opportunity to contest the issue should be through the listing and appraisal appeal period, not through the refund and release process.

12. G.S. 105-273(15).

13. 362 N.C. 339, 661 S.E.2d 733 (2008).

14. For more on *Morgan* and the immaterial irregularity provisions, please see Christopher B. McLaughlin and Stan C. Duncan, "Discovery, Immaterial Irregularity, and the *Morgan* Decision," *Property Tax Bulletin* No. 147 (March 2009), available online at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb147.pdf.

5. How many years of taxes can be released or refunded?

Different rules apply depending on whether the taxpayer seeks a refund of paid taxes or a release of unpaid taxes. Refunds are limited to the later of (1) five years from the tax's original due date and (2) six months from the date the taxes are paid. Releases of unpaid taxes may be granted at any time.

For example, assume that Carolina County improperly levies taxes for 2005–9 on a boat that Tina Taxpayer keeps permanently moored in Ocean County. These taxes are illegal and justify relief under G.S. 105-381. If Tina has never paid the boat taxes to Carolina County, she can obtain a release of the taxes and interest at any time. She can ask for a release immediately upon discovering the mistake in 2010 or wait years to submit her request; either way, Tina will be entitled to a full release as long as the taxes have not been paid.

If Tina has been paying the Carolina County taxes punctually each year, then the refund rules apply. Tina can obtain a refund for all taxes that were originally due within five years of her refund request. Her 2005 taxes were due on September 1, 2005; as long as she requests a refund before September 2, 2010, she is entitled to a refund of the 2005 taxes and all subsequent taxes. If Tina submits her request after September 1, 2010, she cannot obtain a refund of the 2005 taxes.

The *six months from payment* provision will apply if Tina learns of the Carolina County taxes in 2010 and pays in full for the years 2005–9 on June 1, 2010. In this case, six months from the date of payment (December 1, 2010) will be later than five years from the tax's original due date (September 1, 2010). Tina will, therefore, have until December 1, 2010, to request a refund of the 2005 taxes.

6. If the governing board denies a request for a refund or release, does the taxpayer have the right to appeal that decision?

Yes. If the governing board denies the taxpayer's request or fails to act on the request within ninety days, the taxpayer has the right to bring a civil action in state court within three years.¹⁵ The taxpayer must pay the disputed taxes before initiating a lawsuit if the request is for a release. If the taxpayer prevails, the taxing jurisdiction must refund the disputed taxes plus six percent interest, as well as all costs and attorneys' fees incurred by the taxpayer.

7. Does G.S. 105-381 govern the refund or release of other taxes or fees collected by a local government?

No. In addition to property taxes, local governments are authorized to levy a variety of taxes on activities ranging from owning a pet to selling alcohol to renting cars. All of these taxes may be collected using Machinery Act remedies of attachment, garnishment, and levy.¹⁶ However, none of the authorizing statutes for these various taxes specifically incorporates the Machinery Act refund and release provisions. Local governments are, therefore, free to develop their own refund and release policies for taxes other than property taxes or can choose to adopt

¹⁵ G.S. 105-381(c).

¹⁶ G.S. 153A-147 (counties) and G.S. 160A-207 (municipalities).

the Machinery Act approach. Regardless of the chosen method, local governments would be wise to adopt formal refund and release policies for all of their various taxes in order to avoid controversy.

The same approach holds true for local government costs and fees that may be collected using Machinery Act enforced collection remedies for delinquent property taxes. These include special assessments, public nuisance abatement costs, and solid waste fees.¹⁷ Like the taxes discussed above, the authorizing statutes for these fees and costs do not specifically incorporate the Machinery Act refund and release provisions. As a result, local governments are free to craft their own refund and release provisions for most of the fees and costs they collect. The only exceptions are special assessments, which are governed by their own amendment procedures.¹⁸

17. For special assessments for the cost of public works projects such as water and sewer system extensions, see G.S. 153A-195 (counties) and G.S. 160A-228 (municipalities). For mowing, trash collection, or other costs incurred abating public nuisances on private property, see G.S. 153A-140 (counties) and G.S. 160A-193 (municipalities). For solid waste fees included on property tax bills, see G.S. 153A-293 (counties) and G.S. 160A-314.1(b) (municipalities).

18. G.S. 153A-198 (counties) and G.S. 160A-231 (municipalities) permit special assessments to be modified only in cases of "irregularity, omission, error or lack of jurisdiction."

Mr. Potter reminded the Board of the Resolution that was adopted at the last meeting, and included above. Mr. Potter discussed the abovementioned evaluation form.

Commissioner Johnson said one of the statements in the documentation was about paying to have a credit. Commissioner Johnson asked were two payments made. Mr. Potter said no, only one payment was made and that was by the mortgage company. Chair Phelps said the Board adopted a resolution stating how this would be handled so as not to be an adversarial topic. Mr. Adams was in the audience and tried to speak, but was denied by Chair Phelps. Mr. Potter said that Mr. Adams was advised he could submit a written response and he has done that. Mr. Potter recommended that the Board confine its review to the written documents in their package (and shown above).

Commissioner Johnson asked what the Machinery Act is. Mr. Potter stated that it is Chapter 105 of the NCGS and it is what tax offices follow in North Carolina.

Mr. Adams tried to speak again and Chair Phelps reiterated the terms in the Resolution and said he would ask Mr. Adams to leave if he continues in this manner.

Commissioner Manning asked if the taxes have been paid. Mr. Potter said yes.

Mr. Potter said Mr. Adams' written statement said he did not want his mortgage company to pay his taxes. However, they did. Discussion ensued.

Commissioner Sexton made a motion to deny Mr. Adams' tax appeal stating Mr. Adams HAS NOT raised a "valid defense" as defined in NCGS 105-381(a)(1) to the imposition of taxes upon them by Washington County, and hereby directs the Tax Administrator to notify the taxpayer(s) in writing that no release or refund will be made. Commissioner Walker seconded.

Commissioner Johnson asked if Mr. Adams went in and paid the taxes would the tax office refund what has already been paid. Mr. Potter said he did not think so.

Motion carried 4-1 with Commissioner Johnson voting nay.

OLD BUSINESS:

Ambulance Purchasing/Financing Update: Mr. Potter spoke to the Board regarding purchasing two new ambulances. He read from the following memo giving the Board information on the bid evaluations.

COUNTY OF WASHINGTON
BOARD OF COMMISSIONERS

COMMISSIONERS:
D. COLE PHELPS, CHAIR
JULIUS WALKER, JR., VICE-CHAIR
TRACEY A. JOHNSON
BUSTER MANNING
WILLIAM "BILL" R. SEXTON, JR.



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CURTIS S. POTTER
ASSISTANT COUNTY MANAGER/
COUNTY ATTORNEY
cpotter@washconc.org

AGENDA ITEM MEMO

TO: Board of Commissioners, Washington County
FROM: Curtis S. Potter, Washington County Assistant County Manager/County Attorney
CC: Willie Mack Carawan, Jr. Washington County Manager
Andrew Coccaro, Washington County EMS Director
DATE: 9/27/16
RE: Update for 10/3/16 BOCC Meeting re Ambulance Purchases

Background:

- During the finalization of the budget the Board directed staff to bring back for its consideration and approval the final plan for the purchase of any ambulances during this fiscal year.
- At the 8/1/16 Board meeting, the EMS Director discussed the ability to purchase two van-style ambulances for approximately the same cost as one box-style ambulance and the Board approved this concept.
- Staff has been working since that meeting on the purchasing process to use in purchasing two such ambulances.
- Due to the total amount at issue, a formal invitation for bids (IFB) process was chosen to solicit bids. Specifications were prepared and advertised as required by law. Four (4) bids were received as reflected within the Bid Tabulation Sheet attached.
- The technically lowest bid from Northwestern Emergency Vehicles Inc. was rejected as non-conforming/non-responsive as outlined in the attached letter from the EMS Director. The next lowest bid by Select Custom Apparatus was found to be the lowest responsive responsible bid, and has been recommended by the EMS Director as outlined in the attached letter.

Staff Recommendation:

- Staff recommends that the Board consider and approve a **Motion to award the bid for two (2) ambulances at \$69,313.00 each (\$138,626 total) by Select Custom Apparatus as outlined within their bid documents subject to the following: i) meeting the minimum required specifications outlined by the County in its IFB, ii) the County's obtaining installment loan financing to pay for the costs of said ambulances, and iii) the County's ongoing right to reject all bids until a final purchase order or agreement is signed.**

Bids for Ambulance(s)
 Bid Tabulation Sheet

Time: 4:30 PM

Date: September 26, 2016

Location: Commissioners' Room, Administration Building, 116 Adams Street, Plymouth, NC

Contract Administrator/Bidder	Estimated Cost
FirstClass Emergency ^{Emergency} Vehicles	(2) \$142,392 (\$71,196/ea)
Precision Rescue Vehicles	(\$71,551/ea) \$143,105 ⁽²⁾
Northwestern Emergency Vehicles, Inc.	(\$68,937/ea) \$137,874 ⁽²⁾
Select Custom Apparatus (Wheeled Coach)	(\$69,313/ea) \$138,626 ⁽²⁾

This is to notify of the bids opened and read aloud at the time, date and location shown above.
 The Locality will award the contract based on the contract administrators qualifications and cost estimate.


 Witnessed By


 Opened By


 Rona - Daugherty



Washington-Tyrrell County EMS
Office of the Director
958 US Hwy 64 East Plymouth, NC 27962
252-793-7636

To: Curtis Potter, Assistant County Manager/County Attorney
Fr: Andrew Cocco, EMS Director
Date: 9/27/2016
Re: Select Custom Apparatus (Wheeled Coach) Closed Bid Evaluation

Mr. Potter,

During the opening of the closed bids on 9/26/2016 at 1630 hours in the Washington County Commissioners' Room Select Custom Apparatus (SCA) was one of the bidders that responded to our Invitation for bids (IFB.) During the opening process SCA did bid correctly on the requested type of unit.

They priced the medium roof ambulance as requested at \$69,313 or \$138,626 for two. The SCA bid was reviewed and found to be in compliance to our build specifications. As SCA is the lowest responsive responsible bidder, I recommend that Select Custom Apparatus (Wheeled Coach) Falkland, NC be awarded the contract for this ambulance build.



Washington-Tyrrell County EMS
Office of the Director
958 US Hwy 64 East Plymouth, NC 27962
252-793-7636

To: Curtis Potter, Assistant County Manager/County Attorney
Fr: Andrew Coccaro, EMS Director
Date: 9/27/2016
Re: Northwestern Emergency Vehicles (AEV) Closed Bid Evaluation

Mr. Potter,

During the opening of the closed bids on 9/26/2016 at 1630 hours in the Washington County Commissioners' Room Northwestern Emergency Vehicles (NEV) was one of the bidders that responded to our Invitation for bids (IFB.) During the opening on the bid response form that was part of the initial bid packet Ms. Bennet and I noticed that NEV had priced their bid for a 2017 Ford Transit High Roof. The bid specifically requested a 2017 Ford Transit Medium Roof.

They priced the High Roof ambulance at \$70,937 ea. or \$141,874 for two. They did indicate in the bid that if a medium roof was wanted that we should take \$2,000 off per Transit van. This put them in at \$68,937 or \$137,874 for two. You can refer to their bid packet for these instructions. After taking that amount off NEV was technically the lowest bidder. However after going through their bid specifications the entire bid was based off of a high roof model Transit Van. This was not the requested specifications for the new ambulance build.

The following reasons are why I am not recommending NEV to be awarded the bid for this bidding process.

1. They quoted price was High Roof model of the requested ambulance when clearly a medium roof was the requested unit. In their cover letter it says that they responded per our bid specifications, and it is clearly not the case.

2. The entire bid and build specs from NEV refers to a "high roof" conversion so it is not possible to ensure that all external and internal components match our selected options, and specifications. Their build is not for the specified unit and as such has modifications to the build that are not specified by our IFB.
3. The bid does not cover graphics as requested in one of the addendums for this build.

Mr. Carawan stated he spoke with BB&T which quoted the County a rate of 2.27% for 5 years; Southern Bank's quote was 2.36% for 5 years; Zenith's (formerly Gateway) quote was 3.4% for 5 years and PNC declined to submit a quote.

Commissioner Sexton made a motion to award the bid for two (2) ambulances at \$69,313.00 each (\$138,626 total) by Select Custom Apparatus as outlined within their bid documents subject to the following: i) meeting the minimum required specifications outlined by the County in its IFB, ii) the County's obtaining installment loan financing to pay for the costs of said ambulances, and iii) the County's ongoing right to reject all bids until a final purchase order or agreement is signed and to move forward with financing with BB&T. Commissioner Johnson seconded, motion carried unanimously.

Easements for the Water/Sewer Lines at the Commerce Building: Mr. Curtis Potter, ACM/County Attorney, said he is making headway, but may have to have some condemnations for those not voluntarily allowing the easements. He is a little behind the timeline, but trying to keep up.

Chair Phelps asked if the County is in danger of losing the grant money. Mr. Potter said he doesn't feel that the County is at risk for losing funding.

Chair Phelps instructed the Clerk to put this back on the November agenda for an update.

Nuisance Ordinance Update: Mr. Curtis Potter, ACM/Attorney told the Board that the official hearing was held in September for the property on Pelican Lane and no one showed up for it. The owner has 60 days to remedy the situation, and according to the flowchart, it would come back before the Board.

Chair Phelps instructed the Clerk to put this back on the December agenda for an update.

Service Districts: Mr. Curtis Potter, ACM/Attorney stated that the Town of Roper wants more time to consider this since they would be included in one of the service districts. They want to know what the advantage to them would be regarding whether or not they could obtain FEMA funds.

Mr. Potter also explained there has been a delay due to the Soil & Water Technician being out for an extended period of time due to illness. Mr. Potter said if we get this together before March, it can be tied into next year's budget.

Chair Phelps instructed the Clerk to put this back on the December agenda for an update.

Update on Public Safety Center: Mr. Willie Carawan, County Manager told the Board he has been working with Ms. Keyes on this. Mr. Carawan said Tyrrell County built a metal building and it cost approximately \$800,000 - \$900,000 ten years ago. Mr. Carawan gave the Board a schematic of how the building would be utilized and stated he still feels it would be quicker to do a metal building. Commissioner Sexton asked if the metal frame could be put up and complete the 911 Center first. Chair Phelps said he wouldn't be ok with that. He has seen projects get started and never finished. Chair Phelps said it should be done all at one time.

Mr. Carawan said it would cost \$1,000,000 and for 12 years would be ~\$85,000 (one penny). The consensus of the Board was for staff to move forward with the RFQ.

Courthouse Awning Proposals: Mr. Willie Carawan, County Manager said he has contacted various vendors in Kinston, Martin County and others. The company from Martin County has picked up a set of the plans. Bids are to be in on October 21 and Mr. Carawan will bring them to the November meeting.

Chair Phelps asked about the courthouse security staff. Mr. Carawan said they start on November 1, 2016.

Chair Phelps instructed the Clerk to put the Public Safety Center and the Courthouse Awning proposals back on the November agenda for an update.

Strategic Plan Update: Commissioner Johnson stated that she has talked with Ms. Cathy Davison of the Albemarle Commission and Ms. Davison spoke of what the Albemarle Commission could do for the County regarding a Strategic Plan document.

Mr. Carawan said he contacted Mr. Padrick and he sent Mr. Carawan a Strategic Plan document he did for Carteret County. It provides more information on demographics.

Commissioner Johnson asked Mr. Carawan to talk to Ms. Davison to see what she thinks on how to proceed.

Chair Phelps instructed the Clerk to put this back on the November agenda for an update.

PINES ELEMENTARY SCHOOL: Commissioner Sexton said a lot has been talked about the Pines Elementary School. The Board met with the engineer and took a tour. The Board of Education wants to have a new HVAC system and a new roof. If bids are put out, the bidders will be going by the report that was done by BuildDesign. Commissioner Sexton said he would like to see the County get a second opinion on what needs to be done. He wants to get other ideas on fixing the roof and upgrading the HVAC units. Commissioner Sexton said he still didn't see any signs of rust and would feel better if there was a second opinion. Commissioner Sexton also said he would like the firm to be from NC. What he sees now is the "Cadillac" fix on

that building. Commissioner Sexton stated that during the tour, the engineer said the County could get by getting other things fixed before putting on a new roof.

Commissioner Sexton said he knows the school board is moving forward (due to the Board's motion in a previous meeting) so he would like a second opinion before they go too far. Commissioner Manning said he agrees with Commissioner Sexton on getting a second opinion. Commissioner Manning said he understands that the County is responsible for providing the buildings, but the County is not responsible for the maintenance. Mr. Potter said the property is owned by the school system and has never heard of someone other than school employees handling their maintenance (not county employees). Commissioner Manning said Washington County is a poor county and would like to have new everything, but we'd have to raise taxes even more. Commissioner Manning reiterated that citizens voted down the ¼ cent sales tax increase in the past year. Commissioner Manning said the County has other items that need funding too, such as the hospital pension plan.

Commissioner Walker said he agrees with having a second opinion done on the HVAC units and the roof at the Pines Elementary School.

Chair Phelps asked Mr. Carawan if he knows where the School Board is at in this process. Mr. Carawan said he feels they are moving ahead. Mr. Potter said the Commissioners would have to have the permission of the School Board to have access to the facilities for an engineer to give a second opinion. Mr. Carawan said if the Board is leaning towards a second opinion, then the School Board needs to be notified that this is what the Commissioners are thinking. A second opinion would have to be done by RFQ. Mr. Potter said that proposals could be brought back to the November meeting. Mr. Carawan said it would take more than 2 or 3 weeks to perform the work for a second opinion and an engineer would have to have access to the school. Mr. Carawan stepped out of the meeting to contact Supt. Jackson to see where the School Board is in their process.

Mr. Carawan returned to the meeting and said he spoke to Dr. Jackson and School Board is waiting on one design phase with the Garland group. Mr. Carawan told Dr. Jackson that the Commissioners are considering wanting a second opinion (at the County's expense). Dr. Jackson said she felt as long as the County is moving towards a resolution, she understood why they would want to do that. Commissioner Sexton said if the County is footing the bill, then the Commissioners need to have more say in it. Mr. Carawan said Dr. Jackson said she would wait to hear if the Commissioners proceed with obtaining a second opinion to see where she can stop the School Board's process. Commissioner Sexton said he might could get someone in here next week. He also feels the County needs to get folks in here to focus on the separate issues--one on the roof and one about the HVAC.

Mr. Potter said he could generate a list of qualifications and could get them out by the end of the week.

Chair Phelps said this is not the direction he would like to see the Board go in.

Commissioner Manning made a motion that the County get a second opinion to look at the same thing that the previous firm looked at: leaks—new roof, condensation—HVAC. Commissioner Sexton seconded. Commissioner Walker said after the walk-though the

other day, he too, feels there should be a second opinion obtained...hopefully at a cheaper price.
Motion passed 4 – 1 with Chair Phelps voting nay.

FINANCE OFFICER’S REPORT: Ms. Dixon went over the budget transfers and her report that was in the Commissioners’ package.

Commissioner Sexton made a motion to approve the budget transfers BT #2017-008, BT #2017-009, BT #2017-010. Commissioner Walker seconded, motion carried unanimously.

Commissioner Sexton asked how much money was generated from the sales tax discount. Mr. Carawan said he would get that figure from the Tax Office for the Commissioners.

OTHER ITEMS BY CHAIRPERSON, COMMISSIONERS, COUNTY MANAGER, ASSISTANT COUNTY MANAGER/ATTORNEY OR CLERK:

Mr. Carawan stated he will be moving ahead with setting up accounts with Southern Bank for the County to be able to use them.

Mr. Potter stated he and Mr. Carawan attended a meeting at the Chamber of Commerce about a trip some of their Board members made to DC and their Board members gave an overview of that meeting. Part of the discussion was the long term plan to add on to Hwy 17. Camden County Commissioners were there and said they liked to attend the Chamber of Commerce Conference because there are more legislators there and they are more available for networking purposes. Mr. Potter said he also obtained some marketing documentation.

Mr. Potter said he talked to Mr. Ray Davenport today regarding the Eddie Smith Drainage District and his concerns.

Commissioner Sexton asked what was going to happen with the existing playground equipment once Trillium starts on the new playground. Mr. Potter said that he and Mr. Carawan talked to Mr. Fulford and looked at the equipment and gave Mr. Fulford the “OK” to take what he wanted to place at other County playgrounds so long as he removed it from its current location by September 30. The Trillium playground contractor has advised the County not to reuse the equipment.

Commissioner Sexton made a motion to go into Closed Session pursuant to NCGS 143.318.11(a)(6) personnel. Commissioner Walker seconded, motion carried unanimously.

Commissioner Walker made a motion to go into Closed Session pursuant to NCGS 143.318.11(a)(3) attorney-client privilege. Commissioner Johnson seconded, motion carried unanimously.

At 9:40 PM, with no further business to discuss, **Commissioner Walker made a motion to adjourn the meeting. Commissioner Manning seconded, motion carried unanimously.**

D. Cole Phelps
Chair

Julie J. Bennett, CMC, NCCCC
Clerk to the Board