

Sunset Taxpayers File Suit To Establish Public Claim

BY SUSAN USHER

A suit filed last week by the Sunset Beach Taxpayers Association (SBTA) asks the court to declare public a lot adjoining the Sunset Beach Pier parking area and to order removal of a fence surrounding it.

Filed Wednesday morning in Brunswick County District Court, the suit lists as defendants Beach Enterprises Inc. and Sunset Beach and Twin Lakes Inc., with Edward M. Gore as a principal of both.

Three Sunset Beach property owners—Albert N. Wells of Jacksonville, Fla., Charles L. Smith of Cumberland County and Whaley P. Hunt of New York City, N.Y.; and a Sunset Beach resident, Frank M. Nesmith, joined the SBTA in the suit. The SBTA had announced plans to file the suit at its Labor Day weekend meeting.

The purpose of the suit, as explained by SBTA attorney James B. Maxwell of Durham, is to resolve the legal question of "whether or not a piece of property, once platted, which shows a street or road for public usage can thereafter be

withdrawn." The suit is based on the common law doctrine of easement by prescription, or adverse public use.

The SBTA wants the property reopened to public use as a town-owned offstreet parking area. However, in the opinion of the town attorney, Michael Isenberg, the property was withdrawn from dedication properly. The town has no rights in it, he said, since 15 years have elapsed since the offer of dedication was made and the land was never accepted and opened for public use in the town's opinion.

Specifically the plaintiffs seek "a declaratory judgment declaring the public's right and interest to said right-of-way..." and a restraining order "to prohibit the continuing trespass and interference by the defendants with the plaintiff's and public's rights to an easement over and across Sunset Boulevard from Main Street to the Atlantic Ocean."

The SBTA asks the court for a permanent injunction ordering removal of the fence and any other devices that might impede or restrain public

use and enjoyment of the property.

According to the complaint, the lot in question was initially platted in 1955 and again in 1958 as an extension of Sunset Boulevard to the Atlantic Ocean and that even after the plat was changed in 1963 and public dedication of the property "purportedly" withdrawn in 1970, that public use of the property continued "up to and through at least 1978," until the lot was fenced in.

Those public uses, it continues, included "walking, parking, picnicking, socializing and general ingress and egress to the Atlantic Ocean from Main Street."

It alleges error in the timing of deed transferrals relating to the withdrawal of dedication and contends that as a result the deed that resulted "was invalid and null and void."

Deeds purporting to transfer the property (as described on a plat filed in 1963) from M.C. and Mina R. Gore and Sunset Beach and Twin Lakes Inc. to Beach Enterprises Inc. were executed on Nov. 18, 1970, but were not filed at the Brunswick County

Courthouse until Dec. 11.

In the meantime, the complaint indicates, M.C. and Mina R. Gore and Sunset Beach and Twin Lakes Inc. executed a document "which purported to be a 'withdrawal of dedication'" as shown in the plats that had been recorded in 1955 and 1958. The document was witnessed by Edward M. Gore.

According to the complaint, the withdrawal was filed for recording on Dec. 7, 1970.

It is the town's opinion that the property has been properly withdrawn from dedication. Town attorney Michael R. Isenberg has said that the town has no rights in it since 15 years have elapsed since the offer of dedication was made and the land was, in the town's opinion, never accepted and opened for public use.

On Nov. 2, 1970, the Sunset Beach Town Council, with Edward Gore as a voting member, passed a resolution that "purported to reject, on behalf of the Town of Sunset Beach, that portion of Sunset Boulevard lying south of Main Street and extending to

the Atlantic Ocean" as shown in the 1955 and 1958 plats.

While the town may have rejected the offer of dedication, the complaint says, "that area was never rejected by the plaintiff or other members of the public, but had, in fact, been accepted, used and continued to be accepted and used at least up to and through 1978."

The initial plat filed in 1955 by Sunset Beach and Twin Lakes, a company organized by M.C. and Mina R. Gore, the complaint indicates, showed the lot as an extension of Sunset Boulevard to the Atlantic Ocean, as did the plat filed in 1958.

Lots were sold off those initial plats and existence of the right-of-way to the oceanfront, the complaint says, "was inducement to the individual plaintiffs and many of the members of the Taxpayers Association to purchase their lots."

Use and acceptance of the right-of-way to the ocean, the complaint indicated, continued even after a new plat was filed in 1963 that described the tract as "Lot 1-A" instead of an extension of the road.

According to the complaint, in 1968, B.F. Industries Inc. (David B. Kanny Jr. and his wife Frances), the owner of the adjacent Lot 28-A, obtained an injunction preventing M.C. Gore and Sunset Beach and Twin Lakes Inc.

"from interfering or obstructing the public's right of way to the Atlantic Ocean" by means of the road extension or lot.

After the suit was settled (the firm later quitclaimed to the Gore enterprises any rights it had to the property) public use of the tract in question continued, the complaint indicates.

SBTA, in the complaint, describes the fence erected around the land in question as "wrongfully and illegally restraining the rights of the plaintiff and other members of the public from using said public right of way."

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Sullivan Seeks Party Support For U.S. House

A Shallotte area man announced his intent Tuesday to file as a candidate for the U.S. House of Representatives come January 6.

Randy Sullivan, 34, of Shallotte, will file on the Republican ticket for the seat held by U.S. Congressman Charles G. Rose III, a Democrat.

"It looks like a long shot, but it may not be," he said.

At least two other area Republicans, Tommy Harrelson of Southport and Mitchell I. Watrous of Fayetteville, are also interested in challenging Rose. Harrelson is expected to announce his candidacy soon, possibly after a Nov. 9 fundraising event.

The 7th District covers Brunswick, New Hanover, Columbus, Robeson and Cumberland counties.

Sullivan said he doesn't think the area has been represented "adequately" by Rose. Specifically, he asserted, "Rose is not the good representative of farmers he claims to be."

If elected, Sullivan said one of his main objectives would be to vote against "all the military give-aways to foreign countries."

Also, said Sullivan, who described his support is church-based, "They say we can't legislate morality, but we can."

He attends New Life Assembly in Supply.

In the residential construction trade, Sullivan is a 1969 graduate of Shallotte High School and a 1975 graduate of the University of North Carolina at Wilmington. He has a B.A. degree in physical and health education. He also took courses at Southern Methodist University, Eastfield College, and Christ For The Nations Institute, all in Dallas.

He has previously worked in the Dallas area as a teacher and in the admitting office of Baylor Medical Center and in Brunswick County as a substitute teacher. He was in the N.C. National Guard for six years, advancing to the rank of lieutenant.



STATE PHOTO BY DAWN ELLIENBOYD

VISTA Volunteer

Elnora Mitchell of Royal Oak community is one of 12 VISTA (Volunteers In Service To America) Volunteers across the state who will be working to combat illiteracy in North Carolina. Mitchell will be working with the Brunswick County Literacy Council recruiting tutors and volunteers and promoting the program. Mitchell said, "I'm glad to be doing this. I want to help people."

Jailer McNeil Back On Job

A Brunswick County jailer returned to work last week after an assault charge against him was dismissed by District Attorney Michael Easley.

Ronnie McNeil was charged on Oct. 14 with allegedly assaulting Terry Wayne Wooten, 23, of Route 2, Supply, the previous Sunday morning as Wooten was being jailed on a driving while impaired charge.

Easley said the dismissal in Brunswick County District Court on Wednesday, Oct. 30, was based on an SBI report. It revealed no evidence corroborating Wooten's account of what happened.

"Conversely," said Easley, "the only witnesses available—an inmate, a jailer and another officer—contradicted him completely."

Without supporting evidence, he said, the case didn't warrant prosecution.

McNeil is a two-year veteran of the department. He had been suspended with pay pending the results of the SBI investigation.

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