



FLAGS WERE LOWERED at Shallotte Town Hall Friday in memory of 13-year-old shooting victim Andrea

Michelle Martin, an eighth-grade student at Shallotte Middle School.

STAFF PHOTO BY SUSAN USHER

Preliminary Findings Indicate Shooting Death Of Girl Accidental

BY RAHN ADAMS

An afternoon ride to the store ended in tragedy last week for a 13-year-old Shallotte girl, when she apparently was accidentally shot and killed inside a parked vehicle at a Shallotte business.

Andrea Michelle Martin, who was an eighth-grade student at Shallotte Middle School, died Nov. 11 from a gunshot wound to the throat. The incident occurred at approximately 4:28 p.m. outside the Atlantic Telephone Membership Corporation office on N.C. 130 near Shallotte, according to Brunswick County Sheriff's Det. Nancy Simpson.

Det. Simpson said Monday that an investigation into the shooting death was continuing. However, preliminary indications were that the shooting was accidental, and no charges were anticipated in the case, she said.

Miss Martin was the daughter of Judy Roden Martin of Shallotte

Avenue and Dennis James Martin of Princeton.

Det. Simpson said the victim and her 11-year-old brother, Michael Paul Martin, were alone inside a van owned by Shallotte Mayor Pro tem Paul Wayne Reaves when the apparent accident occurred.

Reaves, a neighbor for whom the children regularly did odd jobs, was returning home from a local store with them when he made the brief stop at the telephone office, Ms. Simpson said.

"Paul said both kids were happy, and everything was fine," Det. Simpson said, in reference to the scene immediately prior to the apparent accident. "The kids had been cleaning out the van."

She said Miss Martin was struck in the throat by a single shot from a 30-30 caliber rifle that had been laying on a back seat of the vehicle.

Authorities Monday were still unclear as to how the rifle discharged and whether or not either child had

moved the firearm while cleaning the van, she said.

Det. Simpson said that following the shooting, the boy ran into the telephone office to summon help.

The Shallotte Volunteer Rescue Squad responded to the call and transported the victim to The Brunswick Hospital in Supply.

According to a coroner's report, Miss Martin died instantly from the gunshot wound, said Det. Simpson.

Classmates at Shallotte Middle School were understandably shocked by the girl's death.

By request, on Friday local musician Gene Simmons of Supply wrote a brief song in memory of the student. He performed it at two school concerts and again at Miss Martins' funeral that afternoon at Camp United Methodist Church in Shallotte.

At Reaves' request, flags at Shallotte Town Hall were lowered Friday in memory of the girl.

Round 1 Ends

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While Mayor John Tandy at several points proposed setting of a future cutoff date for permits as a compromise, Steinbeck told Tandy, Chavis and other audience members that the "line" for enforcement was drawn with the passage of new septic tank regulations effective July 1, 1982.

Local developers and property owners pointedly questioned the suddenness of the apparent "crackdown" on the island, and also wanted specific information on how the rules are being applied.

District 2 Brunswick County Commissioner Benny Ludlum suggested the town's permit "problems" began with the arrival of Barrett-Rhodes as health director, but Steinbeck said that wasn't the case.

He and other officials acknowledged there had been mistakes made in the past in issuing permits on the island. Steinbeck added that investigations of possible error had begun in the early 1980s. That effort faded after the then-district sanitarian, Dewey Padgett, was killed in an auto accident, he said.

While Barrett-Rhodes has said the

county health department doesn't intend to revoke any permits issued earlier, that is a matter of local policy. State regulations do allow a sanitarian to revoke a permit in the event "there is no shadow of a doubt" a major error has been made, said District Sanitarian Charlie Jackson.

Among other points made, Steinbeck told the group bathrooms had little correlation with projected wastewater usage, that bedrooms provided a more accurate projection. However, he noted that at Holden Beach, the state's rate of two persons per bedroom didn't measure up to actual or advertised occupancy of rental properties.

Further, he said if soil conditions are marginal on a property, they will always be marginal regardless of the size house for which a permit is sought. On the other hand, if the site is deemed unsuitable because of a lack of space, a permit might be possible for a smaller structure.

As for construction on lots that consist partly of suitable soils and partly of marsh, he made note of the state's July 1, 1977, "grandfather" provision. Lots platted for development before that date and adjacent to SA

or shellfish quality waters must have a 50-foot setback from normal high tide. For land platted or subdivided after that date, a 100-foot setback is required by the N.C. Division of Health Services.

Taking Closer Look

In recent months, a greater number of finger canal lots have been deemed unsuitable for septic tanks after sanitarians were directed to take a closer look at the sites.

That directive was based on several factors, according to Brunswick County Health Director Michael Barrett-Rhodes. First, after becoming director, he said he had wanted to make sure the regulations were being enforced properly; and second, that results of a feasibility study commissioned by the town indicated the presence of fecal coliform bacteria, a pollution indicator, in the canals.

Aerial photographs of the three canal subdivisions on the island show some lots were built on sand, which is excellent for wastewater treatment, while others were created over marsh or over water. On many additional fill of varying types had been hauled in.

Firefighters Threaten Walk Out

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not contacted or asked about the revisions prior to the actions of the board.

Although Ferster would not say which of these revisions would be opposed Wednesday, he did say that the ultimate goal is to form a "fire commission" comprised of two fire department members, the fire chief and two town board members.

The purpose of the commission, he said, would be to dispose of the laws and compile a set of rules and regulations for the fire department in accordance with current town ordinances.

Ferster said, "Our goal is for the fire department to run smoothly. We are only trying to provide the best possible fire protection for the people in our district, but we can't do this with constant interference from the town board."

He said that at this time last year, the department had about 24 members; and now has only 12. "That's how much bickering between the fire department and the town board has meant to our membership and our ability to protect people."

Ferster also said that at the special meeting, members formed a fire

department association which is to be governed by a board of directors. The board of directors includes a president, vice president, secretary/treasurer, the fire chief, the assistant chief, and two at-large members.

The association's president and vice president seats, he added, cannot be filled by the fire chief or assistant fire chief.

Ferster also said that the town board members were to be notified of the negotiation request before the Nov. 18 meeting.

Road Is Private

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"The state thinks this is a significant case because it involves a right that is common to all members of the public—that is, the right of access to the public beaches of this state," said Jernigan, following last week's trial.

The N.C. Department of Natural Resources and Community Development's Office of Coastal Management intervened in the case as a plaintiff, in its role as administrator of the state's coastal access program and the state's title to the area between the average high and low water marks of the ocean.

"I do not think it would be proper for a few people to deny the majority of the people access to areas to which they have traditionally enjoyed access to resources which are a part of the common heritage of all our citizens," Jernigan said, following the trial.

On Friday, Griffin emphasized that his company has not closed off public access to the beach, but just to the subdivision—a fact that was brought out during the trial.

"There are areas with full public access to Holden Beach," Griffin said, referring to access areas outside of Holden Beach West, which include a new regional beach access with facilities for the handicapped. "It (Shallotte Inlet) is accessible to the public by walking down the beach."

But Cope disagreed: "For a 30-year-old or 40-year-old in good health, that's fine. But you take one member of our group that's 72 years old and has crippling arthritis and walks with a cane, and sometimes she can't dress herself in the morning. She has always—up until two years ago—went to that end of the island by the road and walked across the dunes to the Shallotte Inlet. There's no way she's going to walk that far (along the strand), seven-tenths of a mile or whatever—there's no way. And it's a shame; it really is."

Vehicles are not permitted on the beach strand, according to town ordinance.

The non-jury trial, which began Nov. 11 just before noon and ended Nov. 12 around 6:45 p.m., featured testimony from four witnesses, including one expert, for the plaintiffs, and five witnesses for the defendant.

The fundamental issue in the case involved the theory of prescriptive easement: whether or not access rights were established by the public's use of Ocean Boulevard West over a continuous and uninterrupted 20-year period.

The plaintiffs maintained that beach-goers and fishermen had been allowed to travel the road until 1985, and that the road had been dedicated to public use, in that the Town of Holden Beach has provided the subdivision with municipal services, including police and fire protection, water service and garbage pickup.

Plaintiffs' witnesses included Cope, Harrell Paden of Holden Beach Road, Kermit Cobe of Holden Beach, and Lloyd Priddy of Morehead City, who is a surveyor for the N.C. Land Resources Division.

Last Wednesday afternoon, Priddy, whose testimony was accepted as an expert in coastal area surveying and interpretation of aerial photography, examined eight aerial pictures taken by federal agencies

between 1962 and 1972 of Holden Beach's west end.

Priddy testified that "for some distances" the trails over the west end remained the same over that 10-year period.

Testimony from Cope, Paden and Cobe also indicated that there had been one main road across the west end to the inlet since the 1930s.

They also said no one stopped them from using the road until 1985 when the present guardbooth was built, even after various types of barricades intermittently blocked the road beginning in the early 1960s.

The defendant, on the other hand, maintained that Holden Beach West was always private property and that any use of it by the general public was "permissive."

Witnesses for the defendant included Holden Beach residents Griffin; Elwood Newman Sr., a former Holden Beach policeman; Rose Holden Cole, a descendant of Holden Beach's original owners; Alma Robinson Roberts, daughter of the late Peter Robinson, who owned part of what is now Holden Beach but was previously called Robinson's Beach; and Sidney Swarts, a resident of Holden Beach West.

Griffin testified last Thursday that he had used logs, cables, chains, gates and signs since the early 1960s to "restrict vehicular traffic" across the subdivision property, actions which he said "met with some disfavor from individuals."

Griffin also said that the Holden Beach West property had always been considered private, but that its developers had never attempted to block the public's access to the west end by the strand.

As a former town councilman, he testified that the subdivision road had not been dedicated or accepted as a public right-of-way, and that no state or municipal monies had ever been used for the road in Holden Beach West.

Griffin also said the road was moved when it was improved in the mid-1970s.

The other four witnesses for the defendant testified that the property was always considered private and that there was no "single, defined pathway" through Holden Beach West to Shallotte Inlet.

In explaining his decision, Briggs said he was "not sure" that the public's use of the road had been continuous and uninterrupted for 20 years, and that he was concerned that the public had not been traveling one "definite and specific" route.

"It would appear they drove anywhere they needed to go," Briggs said, adding that the case would have been a "more definitive matter" if the plaintiffs were seeking access to their own property.

"You overcame the presumption that it (public access to the west end) was permissive," Briggs told the plaintiffs.

Briggs also stated he couldn't find that the road had been dedicated to public use and accepted.

He had indicated earlier in the trial that he felt Holden Beach West residents were owed the same town services as were other citizens, by virtue of the property taxes they paid.

Judge Weighing

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can draw a judgment that says he ought to win."

Gore last week confirmed that he will appeal the case if Briggs' judgment goes against Beach Enterprises.

"I would like for us to have had a decision today," Gore said last week, "but we'll just have to wait until the briefs are in that the judge asked the trial lawyers for. And whatever comes down, we'll decide what our next position will be... I'm quite sure we would (appeal)."

"I think if we could do it (present Beach Enterprises' case) again, we could do it a little more clearly, but that's hindsight," Gore said. "But who knew in 1968 or 1970 that we'd be in court today?"

According to Briggs' closing instructions to the attorneys, the judge's decision will hinge on the following issues:

- Whether or not there was actually an implied dedication of an easement for a public right-of-way across Lot 1-A to the ocean;

- Whether or not the 15-year period for withdrawal of a dedication should have begun with the original 1955 plat of the property or with a subsequent 1958 plat, off which other lots were sold to plaintiffs;

- Whether or not there has been actual use of Lot 1-A by the public, and what that use has been;

- The location of Lot 1-A in relation to another adjacent lot (28-A), which Gore testified that the public was ac-

tually using to reach the ocean;

•And whether or not Beach Enterprises can claim Lot 1-A through "adverse possession," in that the company used and maintained the property over a seven-year period.

Maxwell contended that the plaintiffs continued to use the lot at least until 1978, when the developer constructed a fence to block access to the ocean across the lot.

In reference to the issue of adverse possession, Maxwell said the developer "barricaded and did not use" the lot and "simply prevented other people from using it."

Also, plaintiffs Bill Hunt, Frank Nesmith and Albert Wells, who are

all Sunset Beach property owners, testified last week that they were sure they had been using Lot 1-A and not Lot 28-A, as Gore had claimed.

To show the developer's use of the property, Trest pointed to Gore's testimony that the developer had "stabilized and maintained" the lot by bulldozing a predominant sand dune there.

Trest also noted that Nesmith was convicted of trespassing on Lot 1-A in 1978 after the lot was fenced in, and that people were wanting to use Gore's property to gain access to the beach and not their own property, when other beach accesses were available.

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