

Tasteful Diversions

A new dining and entertainment supplement premieres in this issue!

Talking \$\$\$ And Sense

The Towns of Holden Beach and Ocean Isle Beach aim to hold the line on tax rates as they ready budgets for the coming year. Pages 7A and 11A.

Island Living

Supplement Included In This Issue.

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STAFF PHOTOS BY RAHN ADAMS

DURHAM ATTORNEY JIM MAXWELL (center) confers with members of Concerned Citizens of Brunswick County Taxpayers Association last Wednesday afternoon at the New Hanover County Judicial Building in Wilmington, after the N.C. Court of Appeals heard

arguments in the Holden Beach West lawsuit. Pictured clockwise from left are Assistant Attorney General Allen Jernigan, Nancy Cope, Maxwell, Bill Courtney, Grace Courtney, Raymond Cope, Betty Paroda and Ed Paroda.

Appellate Court Hears Debate In Holden Beach West Lawsuit

BY RAHN ADAMS

A four-year-old dispute over public access to the western end of Holden Beach climbed another rung on the legal ladder last week, as the case was heard by the N.C. Court of Appeals.

A three-judge panel composed of Sidney Eagles, Sarah Parker and Robert Orr heard arguments last Wednesday afternoon in the 1985 lawsuit, which questions the now private status of Ocean View Boulevard West through Holden Beach West subdivision to Shallotte Inlet. The appeal was heard in Wilmington.

Durham lawyer Jim Maxwell, counsel for the plaintiff group called Concerned Citizens of Brunswick County Taxpayers Association, said the appellate court generally renders its decisions 90 days after cases are heard.

Other attorneys involved in last week's proceedings were Assistant Attorney General Allen Jernigan, representing the N.C. Department of Natural Resources and Community Development (NRCD), in its role as intervenor-plaintiff; and Barbara Sullivan, representing the defendant, Holden Beach Enterprises Inc., developer of Holden Beach West.

Representatives of both sides have indicated to the Beacon that the N.C. Supreme Court probably will be petitioned to review the case. Attorneys say the suit is a key test of the public's right to maintain "reasonable access" to the shoreline, versus the rights of property owners to restrict public use of private lands.

Maxwell, who represents the Sunset Beach Taxpayers Association (SBTA) in a similar beach access lawsuit at Sunset Beach, said the Court of Appeals probably will hear arguments in that case in about six weeks. The development firm, Sunset Beach and Twin Lakes Inc., appealed a Superior Court decision that an oceanfront lot was an extension of Sunset Boulevard and, therefore, a public right-of-way.

Two SBTA members—Bill Hunt, who testified in the Sunset Beach access trial, and his wife, Sunset Beach Councilwoman Minnie Hunt—were present at last week's Holden Beach West hearing. Mrs. Hunt said they were there to give "moral support" to the plaintiffs.

Headed by spokesman Raymond Cope of Lexington, six members of the Concerned Citizens group attended. Four Holden Beach West residents also were on hand, including Holden Beach Planning and Zoning Board member Sid Swarts. Jim Griffin, president of Holden Beach Enterprises, was not present.

Both Swarts and Cope had testified in the November 1987 trial in Brunswick County Superior Civil Court. Following last Wednesday's 45-minute hearing, the men expressed mixed reactions to the proceedings.

"My complaint is that what I heard here was not what I heard in the Brunswick County courtroom," Swarts said, later adding, "I believe that the appeals

"Unfortunately, you and other members of the public are barred from that opportunity (to use Ocean View Boulevard West), and that is why we're here."

—Jim Maxwell

Concerned Citizens Attorney

court is smart enough to read the record before they make a decision."

Cope indicated he was cautiously optimistic about the outcome of the appeal. "I'm excited, but it's still a 50-50 chance," he said, then interjected, "Like Jim (Maxwell) said, if I could go to the west end (of Holden Beach), I would go this afternoon."

Cope was referring to Maxwell's opening statement to the justices: "It would be an outstanding day for us to leave where we are and adjourn to one of the beaches. In fact, I would be more than willing and happy to invite you to go to Holden Beach, which is one of the more attractive beaches we have on the barrier islands here on the coast."

"And I would be particularly pleased to have an opportunity to take you to the western end of the island, Shallotte Inlet," Maxwell continued. "But, unfortunately, you and other members of the public are barred from that opportunity, and that is why we're here."

The suit involves the citizens' contention that Ocean View Boulevard West through the subdivision is a public right-of-way, even though the developer constructed a gate and guardhouse at the entrance to Holden Beach West to restrict public traffic.

A fundamental issue in the case is the theory of prescriptive easement: whether or not access rights were established by what the plaintiffs maintain was a continuous and uninterrupted use of a definite route over at least a 20-year period. Maxwell told the court last week that the road was used by his clients for up to 50 years.

However, in his Superior Court decision, Judge Bruce Briggs of Madison County found that the public's use of the road was interrupted, because the developer erected various barriers beginning in 1963 to block the road. Also, Briggs found that the route taken by the public "has not been confined to a definite and specific line of travel."

Maxwell, who used the majority of the plaintiffs' 30-minute allotment to address the prescriptive ease-

(See APPELLATE, Page 2-A)

Previous Conviction Reverses Judge's Ruling In Boney Case

BY RAHN ADAMS

The discovery of a nine-year-old misdemeanor conviction has caused more recent charges to be replaced in a county utility board official's record.

According to the Brunswick County Clerk of Court's office, Judge Darius B. Herring on Friday rescinded his month-old order that had erased charges of assaulting a law enforcement officer and of being drunk and disruptive in public from the record of 33-year-old Leland area resident John T. Boney, a member of the Brunswick County Utility Operations Board.

Documents back on file Friday in the clerk of court's office state that the charges were expunged at Boney's request during the April 17 term of Brunswick County Superior Court, one month after the Brunswick County District Attorney's office dismissed the charges due to Boney's participation in a community service program for first-time offenders.

By state law, individuals who previously have been convicted of a criminal offense—whether a felony or misdemeanor—are not eligible for an expungement. Also, they are not eligible to participate in the first-offender program, which officials say has been used infrequently here.

Court documents show that to support his motion for expungement, filed by Southport attorney Mary Easley, Boney signed a sworn affidavit in April verifying statements in the motion, including one that said he "has not previously been con-

victed of any felony or misdemeanor, other than a traffic violation . . ."

Also, in entering the first offender program, Boney also signed an agreement in February which stated, in part, "that the defendant has not previously been convicted of a criminal offense . . ."

In June 1980, Boney was convicted in Brunswick County District Court of selling a malt beverage to an underage individual, according to court records. He was sentenced to a \$300 fine and a suspended six-month jail term.

Assistant District Attorney Thomas Hicks, who handled the recent case, said no action had been taken against Boney as of Friday, in connection with Boney's statements about his criminal record. District Attorney Michael Easley told the Beacon Monday that Boney might have made the statements by relying on a certified record check which did not turn up the 1980 misdemeanor conviction.

Boney did not return the Beacon's call, which was left Friday on the telephone answering machine at his residence. He also could not be reached for comment Friday at his Belville business.

Boney, who was appointed to the UOB in January, was charged with being drunk and disruptive in public and with assaulting Brunswick County Sheriff's Deputy R.N. Spencer last August, according to arrest warrants. The alleged offenses occurred in the parking lot of Boney's store, while the officer checked a vehicle that displayed no license plate, the

warrants state.

Boney pleaded not guilty to both charges when his case was heard last December in Brunswick County District Criminal Court. Prior to his appeal to Superior Court, he was found guilty of both charges and was sentenced to a \$100 fine and a suspended 29-day jail term, according to court records.

In February, Boney entered the first offender program, based on a request from himself and the District Attorney's office, records state. Brunswick County Community Service Coordinator Pat Martin said Friday that Boney completed 24 hours of outside maintenance work in February at Brunswick Town State Historic Site. He also paid a \$100 community service participation fee.

Ms. Martin said the first offender program has not been used often in Brunswick County, although it is common in other parts of the state. The program's intent is to allow a first offender to demonstrate "good conduct" while prosecution of his case is deferred, as stated in Boney's agreement. Charges are dismissed if the participant complies with the terms of his agreement.

Brunswick County Clerk of Court Diana Morgan said Friday that she notified Judge Herring of Boney's previous conviction on Monday, May 15, after she discovered the 1980 file late on Friday, May 12, while answering a television reporter's inquiry about the case.

Ms. Morgan indicated that the February record check did not turn

(See RULING, Page 2-A)

Developers To Submit Revised Marina Plans

BY DOUG RUTTER

More than one year after original plans were submitted for a proposed marina on Lockwood Folly River, a developer of the facility said this week that a revised set of plans are ready for state and federal review.

Mason Anderson, a principal in Channel Side Corporation which is developing the Lockwood Folly golf and water community near Varnamtown, said Tuesday that changes in the pending state permit application were completed earlier this month.

Original plans for the facility included 50 boat slips in the water and a dry boat storage area which could accommodate up to 100 more vessels.

Anderson said revised plans do not include a dry boat storage area. Also, new plans call for a slight relocation of the marina basin.

Although the developer said revised plans were sent to the proper authorities nearly two weeks ago, a state official involved with the project since its inception said Tuesday that he had received no contact from the developers concerning the plans.

Jim Herstine, regional supervisor of the state Division of Coastal Management, said that he had heard rumors that a revised set of plans were forthcoming, but noted that he had received no official word from Channel Side.

Based on rumors of significant changes in the plans, though, Herstine said he expects the lengthy review process for a major CAMA permit will have to be started from scratch once the revised plans and permit application are received.

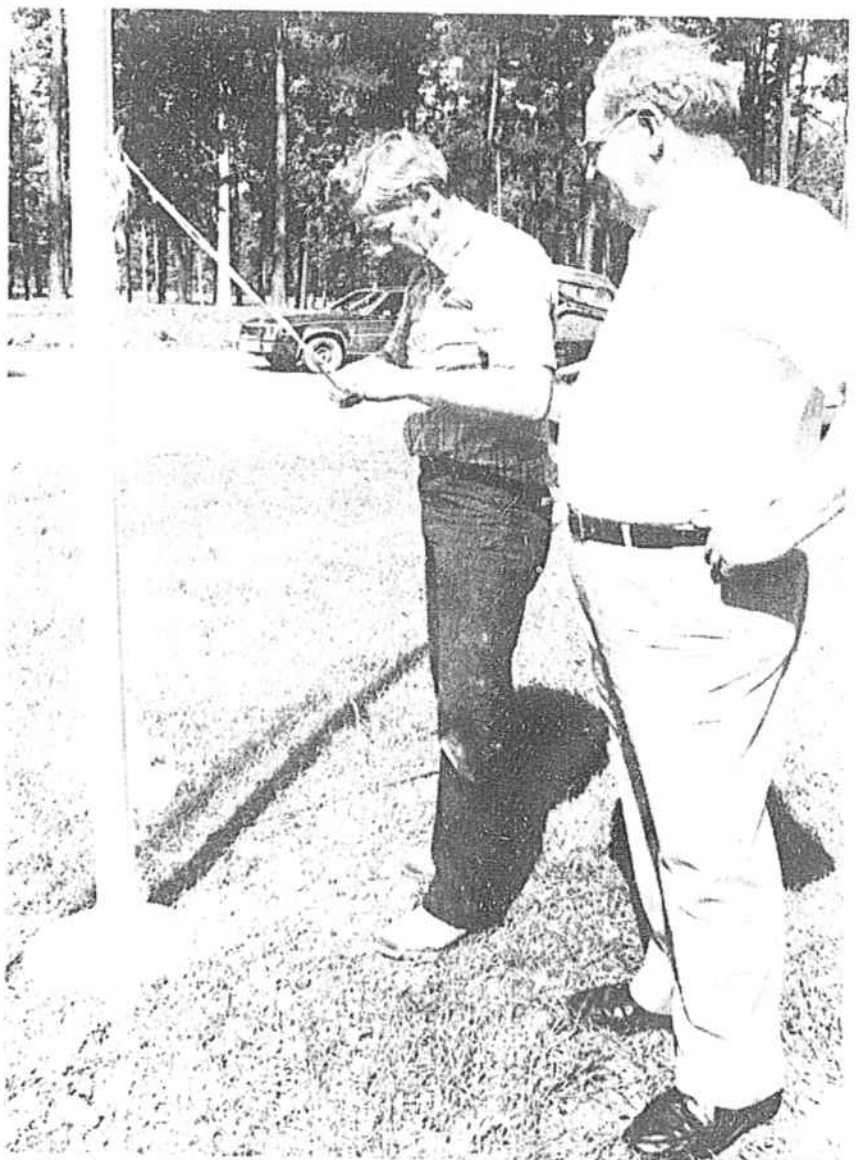
If the changes are minimal, he said the plans would not necessarily have to go through the entire review process.

Although officials with several en-

vironmental agencies voiced concerns, the N.C. Division of Marine Fisheries was the only one of the 14 state and federal agencies to review the plans that objected to the marina during the first review last year.

At the time, Marine Fisheries officials said the marina could jeopardize resources in the Lockwood Folly River, which historically has accounted for about 40 percent of the

(See DEVELOPERS, Page 2-A)



STAFF PHOTO BY RAHN ADAMS

VETERANS SERVICES OFFICER Jess Parker (right) watches as Glen Moore of Burgaw installs three new flag poles Friday morning near the entrance to the Brunswick County Government Center on U.S. 17 in Bolivia.

Veterans Groups Plan Memorial Day Services

Separate Memorial Day services will be held Monday in Calabash and Bolivia by two local veterans organizations.

U.S. Army Col. Charles N. Bullard, commander of the Transportation Brigade at Sunny Point, will be guest speaker Monday at a 3 p.m. service at Calabash VFW Post 7288 in Traders Village, Calabash.



BULLARD

Refreshments will be served by the post's ladies auxiliary.

An Arkansas native, Bullard has served as an officer in the Army's Transportation Corps since 1966. He served tours of duty in Vietnam, Korea and Germany, in addition to posts with the Department of the Army's Military Personnel Center and Field Artillery Center at Fort Sill, Okla.

Holden Beach VFW Post 8866 will conduct a Memorial Day service Monday at 11 a.m., at the Veterans Memorial at the Brunswick County

Government Center, Bolivia.

Brunswick County Veterans Services Officer Jess Parker said the name of the late Harry Langdon Pigott will be added to the Brunswick County Honor Roll of Valor during the service.

Pigott, a World War I veteran from Shallotte, was killed in France in September 1918. The veteran's family recently provided the county with information about his military service, Parker said.

The West Brunswick High School JROTC Color Guard will participate in the Bolivia service. Also, members

of the Calabash and Holden Beach VFW Posts' ladies auxiliaries will place a wreath at the Veterans Memorial.

In addition to the local observances, a traditional Memorial Day service will be held on board the USS North Carolina Battleship Memorial near Wilmington, Monday at 5:45 p.m.

The Second Marine Division from Camp Lejeune will provide music, and a color guard representing all five military services will participate.