

Appeals Court Upholds Ruling In Holden Beach Access Case

BY RAHN ADAMS

A four-year-old battle over public access to the western end of Holden Beach came a step closer to being resolved this week when the N.C. Court of Appeals affirmed a lower court ruling that Ocean View Boulevard West is private through Holden Beach West subdivision.

According to the appellate court clerk's office in Raleigh, the unanimous decision was announced Tuesday morning in an opinion written by Judge Sidney Eagles. A three-judge panel composed of Eagles, Sarah Parker and Robert Orr heard the appeal May 17 in Wilmington.

Plaintiffs in the 1985 lawsuit are a group called

Concerned Citizens of Brunswick County Taxpayers Association and the N.C. Department of Natural Resources and Community Development. Defendant is Holden Beach Enterprises Inc., developer of Holden Beach West.

Details of the appellate court opinion could not be obtained by presstime. When contacted Tuesday afternoon, both Concerned Citizens attorney Jim Maxwell of Durham and developer James Griffin said they were unaware that the ruling had been announced. Assistant Attorney General Allen Jernigan, who represented the state in the case, could not be reached Tuesday.

Maxwell indicated that the N.C. Supreme Court probably will be petitioned to review the case, even

though the appellate court decision was unanimous and the high court may choose not to consider the matter. He noted that the Supreme Court automatically reviews split appellate court decisions.

Like Maxwell, Griffin said Tuesday he could not comment on the ruling since he had not read it yet. However, he observed, "I just hope this would finally put an end to it."

The suit involves the citizens group's and state's contention that Ocean View Boulevard West through the subdivision is a public right-of-way, even though the development firm constructed a gate and guardhouse at the Holden Beach West entrance 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. The plaintiffs have contended that the public used the road for up to 50 years.

The case was tried in November in Brunswick County Superior Civil Court. Judge Bruce Briggs of Madison County ruled 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."

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STAFF PHOTO BY RAHN ADAMS

'What Next, Big Brother?'

Eighteen-month-old Cammie Anderson of Chapel Hill appears to be wondering what to do next after that she and her brother, seven-year-old Luke, complete a major excavation project Sunday afternoon at Ocean Isle Beach. The pair soon found their next job—bailing out their hole, which was flooded by an incoming wave.

Two Withdraw From Fall Election

BY DOUG RUTTER

Two persons have withdrawn as candidates in the fall municipal election, including one local mayoral candidate.

Marion Davis has withdrawn as a candidate for mayor of Varnamtown, and William White has decided not to seek election to the Navassa Town Council, according to Brunswick County Board of Elections Supervisor Lynda Britt.

Davis, who presently serves on the Varnamtown Board of Aldermen, said Monday he withdrew as a candidate because he does not want the mayor to be elected with less than half of the votes. Prior to his withdrawal, there were three candidates for mayor.

The remaining two candidates for the two-year mayor's post are Judy Galloway and Barbara "Bobbie" Varnam. Davis said both are qualified to hold office and that he will support whomever is elected.

"If I won, the town would have lost," he said. "If any other candidate would have won, with three people running, the town would have lost."

Davis said he sent letters early last week to the Brunswick County Board of Elections office and to the town clerk concerning his decision not to seek office.

He said he had filed for the mayor's post on the final day of the filing period mainly because there were no candidates for the office at

that point and because he didn't want the town to be without a candidate for mayor. The other two candidates filed for office after he did, he said.

"I love the town and the people too much to jeopardize what we have," he said. "I just don't think it would be in the best interest of the town to have a mayor elected without the support of more than half of the people."

Davis, who was heavily involved in working toward incorporation of the community last September, will continue to serve as alderman through the end of November.

He said he hopes to stay active in town affairs by serving on committee. (See WITHDRAW, Page 2-A)

District Attorney Easley Eying Senate Race

District Attorney Michael Easley is the talk of the town these days—not just in Bolivia, but also in Raleigh, where his name has been mentioned as a possible Democratic contender against U.S. Sen. Jesse Helms next year.

Easley told the *Beacon* Tuesday that certain Democratic leaders across the state have asked him to run in the 1990 U.S. Senate election. "I've just promised them that I would not close the door to it," Easley said. "I promised to keep an open mind."

The district attorney said key factors in his eventual decision will be whether or not former Gov. Jim Hunt decides to run again, as he did unsuccessfully against Helms in 1984; and whether or not enough financial backing appears to be available for a "new face" in the senate race.

"I wouldn't give it any consideration at all if he (Hunt) ran," Easley said, then added about other potential Democratic candidates, "When you get past Hunt, you get into the battle of the midgeets."

Easley emphasized, however, that his "primary concern is the job I'm doing now." He said his intentions now are to run for re-election next year. He has served as the 13th District attorney since 1982.

He noted that word of his possible Senate candidacy and also of a possible run for state attorney general first surfaced in a political column in the *Raleigh News and Observer*. Easley commented with a chuckle, "The N&O keeps putting me in these different races."

Neighboring Communities Will Vote Tuesday On Consolidation

BY DOUG RUTTER

Registered voters from Calabash and Carolina Shores will go to separate polling places next Tuesday to decide if the neighboring communities will become one municipality.

Calabash voters will go to their normal polling place at the fire station, and eligible voters from Carolina Shores will be able to cast ballots at the property owners association building. Polls in both places will be open from 6:30 a.m. until 7:30 p.m.

Rejection of the consolidation plan by either group will cause the proposal to die. As of Tuesday morning, the Brunswick County Board of Elections office could not provide the number of residents registered to vote in next week's special election.

Following the referendum, there will be a special filing period from Aug. 25 through Sept. 8 for persons interested in running in the fall municipal election.

If the merger proposal fails, the filing period will be for the existing Town of Calabash. The mayor's post and all five seats on the town council are up for election this November.

If both communities vote in favor of consolidation, however, the special filing period will be held to accommodate those who desire to run for elected offices in the enlarged Town of Calabash, which would include all 875 acres of the Carolina Shores golf course community.

Under the merger plan, there would be five seats elected from Carolina Shores and two seats elected from the existing Town of Calabash. The mayor could be elected from either area, and all voters in the town would vote for candidates from both districts.

If residents of both areas vote in favor of consolidation, it would take effect Aug. 31. The election of new officials would be held Nov. 7 at the same time as other municipal elections. The state legislation allowing for consolidation features provisions that would establish staggered four-year terms on the town board of commissioners.

Calabash Councilman John High, the only town board member in June to oppose sending the consolidation proposal to a referendum, has said repeatedly that the voters of Calabash will not accept the plan because of the 5-to-2 split on the town board.

However, Mayor Doug Simmons

said last week that the residents with whom he has spoken seem to be evenly split on the proposal.

Leaders from Carolina Shores have said they do not have a good idea how residents of the community feel about the issue and are unsure how the vote will turn out.

Next week's referendum on the consolidation of Calabash and Carolina Shores stems from the work of a committee that organized

in March at the request of state representatives to work out differences between the two areas.

Legislation introduced earlier this year that would have allowed a vote on the incorporation of Carolina Shores as a separate municipality drew opposition from Calabash officials, who have said they would like to have the option of annexing the community into the town limits. (See NEIGHBORING, Page 2-A)

Drug Tax Bill Comes In Under Legislative Wire

BY RAHN ADAMS

After pushing a controlled substance tax bill for the past six months, State Sen. Robert Shaw breathed a little easier Friday at 2:15 p.m. That was when his legislation was ratified—one day before the General Assembly adjourned its longest session in history.

"The bill was kind of hung up in committee on Thursday, and we knew we'd be adjourning this week," the Greensboro senator and Holden Beach property owner told the *Beacon* in a telephone interview Sunday. "There was a lot of action on it in 24 hours."

After being introduced by Shaw in late March, the bill was reviewed by seven committees in the Senate and House, Shaw said. It received unanimous support in the Senate, and last week was approved unanimously on second reading by the House.

The only substantive change in the legislation was the date it will take effect: Jan. 1, 1990, instead of Oct. 1. Shaw noted that the change was made to give the Department of Revenue additional time to prepare to handle the new tax.

"I think it was worth every minute I spent in the General Assembly this year," Shaw said. "I put in six months of hard work on it." He also was gratified that fellow legislators' response to the bill "was in such accord and so favorable," he added.

The new tax calls for levies of approximately \$100 per ounce of marijuana and \$200 per gram of cocaine and other controlled substances. Illegal drug dealers who do not pay the tax within 48 hours of obtaining the illegal drugs would be subject to the tax, an additional penalty equal to the tax, imprison-

ment of up to five years and a fine.

While it isn't likely that many drug dealers will pay the tax up front, Shaw said the legislation will give district attorney's a new "tool" with which to fight drug trafficking. The bill was supported by 13th District Attorney Michael Easley.

When he introduced the legislation in March, Shaw estimated that the tax and non-payment penalties would have raised about \$400 million last year across the state.

Shaw reiterated Sunday that he came up with the legislation, which is modeled after similar taxes in other states, after reading the *Beacon's* accounts of drug trafficking prosecutions in Brunswick County over the past couple of years. He noticed that very few defendants here were being required to pay mandatory minimum fines.

Under state law, a judge can impose less than the mandatory minimum fine—and prison term—if he finds that a defendant has provided "substantial assistance" to investigators. In cocaine cases, for example, the mandatory minimum fines are \$50,000 for charges involving 28 grams of the controlled substance, \$100,000 for 200-gram counts and \$250,000 for 400-gram counts.

Be Prepared!

While a hurricane isn't anything to look forward to, it's only smart to be prepared should one threaten the Brunswick County coast. A guide for riding out the storm safely is inside this issue, Pages 5-B to 8-R.

New Septic Tank Rules Could Allow More Island Development

BY DOUG RUTTER

More owners of canal lots on the local barrier islands and land bordering the intracoastal waterway should qualify for septic tank permits under a new set of state regulations adopted last week by the N.C. Commission for Health Services.

The new rules, which will take effect Jan. 1, 1990, could allow development of more than half of the previously unbuildable canal lots on Brunswick County's barrier islands that were built up with dredge spoil before 1977, according to local health director Michael Rhodes.

These changes will not allow every lot to be approved for a septic tank, but they will allow a greater number to be approved depending on the size of the lot and the type of soils that are there," said Rhodes.

The state health services board adopted the new regulations last Thursday after about two years of work by the N.C. Division of Health Services staff.

Rhodes said the changes with the biggest local impact have to do with a new section dealing specifically with "fill material" and a section on operations and maintenance. He said the section on fill dirt is divided into two parts dealing with new fill and existing fill.

Existing fill applies to lots created primarily with

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—Michael Rhodes
County Health Director

dredge spoil taken from man-made canals and the Atlantic Intracoastal Waterway. Lots filled prior to July 1, 1977, fall under this category. New fill is material applied to the top of a lot after July 1, 1977.

The paragraph was inserted following three public hearings statewide, at which a number of speakers said they understood the issue would be addressed in the new regulations. Speakers asked for grandfathering of lots platted before changes in state septic tank regulations and for the ability to use fill to obtain required separation from the water table.

Steven Berkowitz, an engineer with the division of

health services, said the new rule for existing fill will allow septic tanks to be permitted if there was at least 24 inches of suitable sandy fill material placed on the lot prior to 1977 and there is at least an 18-inch separation between the surface of the lot and the water table.

He said the 1977 cutoff date was chosen because that is when the current state septic tank regulations went into effect, and it is close to the time when North Carolina stopped permitting dredge and fill operations.

Rhodes noted that each lot will still be considered on a case-by-case basis and will still have to meet setback regulations and other criteria that have limited canal lot development in the past. But generally speaking, he said the new rules should allow more development in areas that have been restricted over the past three years.

Since local health officials reinterpreted state septic tank regulations in 1987 to comply more closely with the state's interpretation, a number of canal lots have been turned down for septic tank permits because current regulations do not address fill material and require at least one foot of natural soil above the water table in order to permit the use of a septic tank.

Holden Beach Commissioner Georgia Langley, who has been working for the past year on changing existing state regulations that restrict development of canal lots,

said she was told by state officials that the new regulations will allow the use of septic tanks on about 35 percent of the lots on the island that are now considered unbuildable.

"From what I've been told, it's going to have a great impact here at Holden Beach," she said Monday.

In addition to allowing the permitting of septic systems in more areas, Rhodes said the new regulations should also promote the use of alternative wastewater treatment and disposal systems.

To ensure proper monitoring of those systems, he said the new regulations require local health departments to oversee a "management entity" that will be responsible for the inspection of all non-conventional systems. The old rules did not include any requirements for continual inspections and maintenance of alternative systems.

Rhodes said local health officials and the county board of commissioners will have to decide within the next year how management of alternative systems will be handled. A system for inspections will have to be in place prior to July 1990, he said.

The new regulations will have to pass through a technical review board which ensures the health services commission has the authority to pass the rules before they take effect in January, said Rhodes.