

IS IT REALLY TRESPASSING?

# Property Owner Asking For Damages From Water Line Project

BY TERRY POPE

Some subdivisions have such narrow street rights of way that the county is forced to bury water lines across private property.

Some residents say it's trespassing.

One property owner on the Holden Beach causeway has asked the county for \$5,000 in damages.

County officials say the state's eminent domain laws allow local governments to legally encroach on private property to bury public utility lines, with or without the owner's permission.

Michael Ramos, attorney for the Brunswick County Utility Operations Board, which oversees county water expansion projects, said the county quit getting easements from property owners to run water lines along narrow streets because of mounting legal expenses.

The last such easements were obtained in Special Assessment District 3. Since then, there have been 10 or more county SAD projects completed or are now under construction.

SADs are areas where residents are assessed the cost of running water lines into their neighborhoods off of the county's main distribution lines.

Ramos believes the law gives counties the right to bury public water lines on private property without the owner's permission as long as no damage is caused.

"I did research on it," Ramos said. "It comes to a point where the only remedy the property owner has is to sue for damages."

The issue is most often raised when water lines must be installed in subdivisions with streets that have not been dedicated to the county. Often, the streets are in some of the county's oldest subdivisions and have such narrow rights of way that the lines must be buried across someone's property.

County Attorney David Clegg said the county installs all of its water lines along rights of way of either state or public roads. If a property owner has deeded a street as

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—David Clegg, County Attorney

private, the county must first obtain an easement, he said.

"Brunswick County has always taken a very restrictive view of the use of eminent domain," said Clegg, "unlike some areas."

An inverse condemnation law does allow property owners to ask for damages from counties that bury public utilities across private property. However, it's difficult for a property owner to argue that installation of a water or sewer line has damaged rather than increased the price of a lot, said Clegg.

"It (law) puts the burden on the person who claims the road is

theirs," said Ramos, "to come forward and to show, by way of an appraisal, that damage has been done."

SAD 3 cost the county \$9,500 in legal fees alone. Most of the cost was to obtain easements from all property owners on narrow streets that are not state-maintained.

"It's too much of a burden," Ramos said. "If you don't get everybody's permission, then you might as well get no one's permission."

**Fighting Back**

Stuart Belton of Holiday Haven, a subdivision included in SAD 7,

claims his property sustained damage when the county buried water lines along a right of way there without his permission. He has asked for \$5,000.

UOB members say they want proof of damages and have asked Belton to submit an appraisal of his property.

"I wouldn't pay him a dime," said UOB member D.V. Jones. "If you're going to set a precedent, you're going to open up trouble."

Lots in Holiday Haven are deeded to individual landowners, but the streets have not been dedicated to the county. A property owners association maintains the streets, said Jerry Webb, Brunswick County director of public utilities.

When asked if the county had trespassed to bury the line at Holiday Haven, Clegg responded, "We're running down rights of way."

Bids on water expansion projects are awarded to private firms. The county must give final approval to a project before the company gets

paid for a job. Contractors, who are held responsible for damages to driveways, fences or other private property, must make all necessary repairs before final approval is granted.

"We try to put the roads back just like we found them," said Webb. "That's just good business."

Ramos said the county knew the roads in Holiday Haven were not dedicated to the county when it installed the water lines.

Three or four other subdivisions have fallen under the same situation, added Jones.

"That's so way out," said Jones, referring to Belton's claim that the county had trespassed. "Holiday Haven has been there for years. Everybody's using the roads. It's been on the tax maps for years."

An appraisal should determine the true extent of damages, said Bob Nubel, UOB member.

"If it's now worth less, you have a claim against the county," Nubel said. "If there's no loss in the value, you have nothing."

## Budget Hearing Set

(Continued From Page 1-A)

conservative as possible with the budget."

**Merit Pay**

Commissioners are to decide at their June 3 meeting whether to adopt an employee policy that would award merit pay for workers who score superior or above expected on job evaluations.

District 4 Commissioner Frankie Rabon said he favors an across the board pay increase for employees rather than merit pay. An increase in insurance deductibles, from \$100 to \$200, to help the county save money is "going to be a burden to all employees," Rabon said.

School children have also been sending him cards and letters asking for longer hours for the county libraries, Rabon said.

"I don't think the children of Brunswick County are getting the full use of the libraries," said Rabon.

He said that if the library system were to receive additional county funds, it should be under the stipulation that the libraries would agree to stay open until 9 p.m. or 10 p.m.

When the county asked State Rep. David Redwine to file a bill that would allow the county to charge a parcel fee for solid waste disposal, other counties took note, said Clegg.

The county's solid waste budget of \$1.2 million is dependent on either the collection of tipping fees from commercial haulers that dump at the Supply landfill or the collec-

tion of a parcel fee charged to all property owners. Special legislation would have to be approved allowing parcel fees in Brunswick County.

Enough counties have become interested that a state bill may pass instead of local legislation, Clegg said.

"Either way, it will benefit us greatly and give us that flexibility that we're looking for," said Clegg.

Under the proposed budget, \$1.2 million will be allocated to the solid waste department, up from \$1.02 million last year. Increases were also made to the Brunswick County Sheriff's Department, from \$1.83 million to \$1.85 million.

The county jail allocation will also increase from \$456,120 to \$565,866. Emergency Medical Services, which did not exist last year, will receive \$594,247 next fiscal year. Of that amount, \$207,000 will be used to purchase two rescue vehicles and \$218,272 in salaries for its director, Doug Ledgett, and emergency medical technicians.

The Parks and Recreation budget has been cut, from \$889,464 to \$763,402.

**Budget Features**

The budget also includes the following allocations: fire departments, \$256,500; fire district allocations, \$250,000; rescue squads, \$135,000; Ocean Isle Airport, \$15,000; Brunswick County Airport, \$52,034; artificial reef program, \$25,000; Brunswick County Law Enforcement, \$1,000; chambers of commerce, \$60,000; welcome center, \$60,000; senior citizen district allocations, \$25,000; 5th District Civic Center, \$5,000; Brunswick Challenge Committee, \$6,000; Literacy Council, \$1,500; Volunteer and Information Center, \$15,000;

Also, Southeastern Sickle Cell, \$3,000; Brunswick Adult Day Care, \$5,000; Hope Harbor Home, \$15,000; Senior Games, \$3,000; Special Olympics, \$3,000; Brunswick County Library, \$125,000; Leland Library, \$30,000; American Legion Baseball, \$5,000; Brunswick Arts Council, \$1,250; Southport Maritime Museum, \$10,000; Miss Brunswick County Pageant, \$2,000; WHQR Public Radio, \$1,000; Brunswick Amateur Radio, \$1,000; Lower Cape Fear Hospice, \$2,500; and Hospital Hospitality House, \$1,000.



A ROAD CREW removes a barricade at the north end of the bypass last Wednesday, clearing the way for the first wave of traffic on the five-mile stretch.

## Bypass Didn't Come Easily

BY SUSAN USHER

Newcomers to the South Brunswick Islands area may welcome the respite from heavy traffic provided by the new Shallotte bypass, but wonder what all the fuss is about.

For many local residents, however, the bypass is a long-awaited reality, literally a dream come true. And for some local officials and community leaders, its completion is a testimony to bull-dog persistence and political acumen.

"It's something I thought I would never see in my lifetime," Shallotte Mayor Sarah Tripp commented after a recent Shallotte Town Council meeting, echoing a sentiment common among townspeople.

The bypass and related improvement of U.S. 17 to the South Carolina line were first proposed in the early 1960s, showing up as proposed routes on official maps and other documents.

But, after the purchase of only a few key segments of right-of-way along the route west and south of town, the project soon fell by the wayside, in part due to local fears that the bypass would harm downtown businesses.

But by the early 1980s, many local business people came to believe just the opposite. They argued that the bypass was the key to relieving serious traffic congestion they believed was stifling downtown Shallotte and its traditional role as an area trading center.

The symptoms were classical: difficulty making left turns; greater-than-average minor traffic accidents; grumpy motorists in long lines of vehicles backed up north of town each holiday weekend and most Friday evenings in mid-summer; and the springing up of shopping areas outside of Shallotte, closer to the South Brunswick Islands beach communities.

Shallotte town officials and the South Brunswick Islands Chamber of Commerce took leadership roles in renewing interest in the bypass project and pushing for its early completion.

In the fall of 1983 then Rep. Tom B. Rabon Jr. announced the return of the bypass and other Highway 17 improvements to the state's Transportation Improvement Program.

But he told Brunswick County residents in a September 1983 interview with *The Brunswick Beacon* that while the four-laning of U.S. 17 through the county was back in the TIP, its status was fragile. He said it could easily disappear again from the 10-year plan, as it had before.

"My word of advice to Brunswick County residents is when the gubernatorial candidates come wooing you is to ask flat out what their position is on Highway 17. If they aren't behind it, get yourself another candidate," was his blunt recommendation.

Anything less than full support

shouldn't be good enough because, he continued, "We've been on the back burner long enough."

Area residents took his word to heart, and in future years won from at least three gubernatorial candidates—Robert Jordan (Democrat), Rufus Edmisten (Democrat) and James Martin (Republican)—pledges of commitment to the project.

Martin's administration ended up in the position to deliver—and last week, did just that with the opening of the bypass to traffic in time for the Memorial Day holiday weekend.

Landscaping and other refinements will continue along the bypass, with its final completion date in August.

In January 1992 a regional rest area/visitor information center is to open at the intersection of N.C. 130 and the bypass. It will be operated by and as the not-for-profit Southeastern Welcome Center, Inc. in cooperation with DOT.

Meanwhile, work continues on schedule for the four-laning of U.S. 17 from Bell Swamp to the South Carolina state line. Last week, with no fanfare, a short section of the new highway opened to traffic between the N.C. 211 intersection at Supply and Bolivia.

**A Brief Chronology**

Here's a brief summary of the latest push for the bypass:

**September 1982**—A corridor study commissioned by the state lists the Shallotte bypass as the top No. 1 priority on U.S. 17 of projects not already included in the state's 10-year Transportation Improvement Program (TIP). Projected cost: \$9.7 million.

**November 1983**—Four-laning of U.S. 17 from Supply to the South Carolina line is restored to the TIP, partly due to the efforts of Rep. Tom B. Rabon Jr. But the bypass is to be the last, not first, portion of work completed.

**Summer 1984**—The Brunswick County Board of Commissioners, the towns of Holden Beach, Ocean Isle Beach, Sunset Beach, Shallotte and Calabash, and the South Brunswick Islands Chamber of Commerce adopt resolutions urging construction of the bypass "as soon as possible."

**1984-1985**—Shallotte officials push for assistance in dealing with Shallotte's "traffic situation" on U.S. 17 and push for speed-up of construction of the bypass.

**December 1984**—Bypass is separated from rest of U.S. 17-Brunswick County projects in the TIP, and worked speeded up after strong push by Mayor Beamon Hewett and other Shallotte area leaders. Right-of-way acquisition is to resume in 1987, construction to begin in 1988.

**October 1987**—The N.C. Board of Transportation awards a \$1.5 million contract to Vecellio & Grogan Inc. of Beckley, W.Va., for

grading and drainage work on 2.3 miles of the bypass from west of S.R. 1316 to west of S.R. 1348.

**July 1988**—The N.C. Board of Transportation award a \$1.4 million contract to BMCO Construction Inc. for grading a 2.5-mile section from west of S.R. 1348 to east of S.R. 1136.

**December 1989**—The N.C. Board of Transportation awards a \$3.9 million contract to Propst Construction Co. of Concord to pave the 4.8-mile bypass, with work to begin in spring 1990 for completion by August 1991. As urged by the South Brunswick Islands Chamber of Commerce, the contract includes a penalty for not opening the bypass to at least limited traffic by Memorial Day weekend.

**Summer 1990**—In response to public concerns, DOT agrees to add stoplight at N.C. 130 intersection near West Brunswick High School.

**October 1990**—Groundbreaking ceremony held for the Southeastern Welcome Center Inc.

**November 1990**—The N.C. Board of Transportation awards a \$1.2 million contract to BMCO Construction Inc. for construction of a 1,400 square-foot welcome center, the Southeastern Welcome Center, and an adjacent 1,000-square-foot rest area facility.

**May 22, 1991**—Shallotte bypass officially opens to traffic.

**Open At Last**

(Continued From Page 1-A)

Over the next six months, Bowers said the state plans to award contracts for the four-laning of 23 miles of U.S. 17 from Supply to the South Carolina state line. Bids will be advertised in July.

Local law enforcement officers were glad to see the bypass open and they think it will cut down on traffic accidents in Shallotte.

"Welcome to a quieter and more gentle Shallotte," one sheriff's deputy told a fellow officer over the scanner just hours after the road opened last Wednesday.

## Summertime Weather Lingers

Summertime weather is expected to continue across the South Brunswick Islands over the next few days, with higher than usual temperatures.

Shallotte Point meteorologist Jackson Canady said the forecast calls for temperatures ranging from the upper 60s at night into the upper 80s during the daytime, with about one-half inch of rainfall.

"Summertime's here, it looks like," he said.

For the period of May 21 through 27, he recorded a maximum high of 89 degrees, which occurred on the 27th, and a minimum nightly low of 64 degrees, which occurred on three consecutive nights, May 21, 22 and 23.

An average daily high of 84 degrees combined with an average nightly low of 67 degrees for a daily average temperature of 75 degrees. Canady said that is approximately two degrees above average for this time of year.

He recorded .55 inch of rainfall at his residence.

## Birds Stolen In Break-In

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a.m. Sunday by cutting through a bar and lock that held a steel gate closed.

The burglar also used a pry bar to damage a lock and to pry open a shelter door, Hewett reported, to gain entry to where the birds were housed.

Following the raid at Belville's Town and Country Motel in April, county workers converted a livestock storage barn into an aviary and holding shelter for the birds.

Animal control officers also seized 13 Pekingese dogs, five mice and four cats from Boney's two-story apartment at the motel. The animals were allegedly living in unsanitary conditions and in need of veterinarian care.

Boney, 48, was charged with 15 counts of cruelty to animals and 14 counts of failing to vaccinate dogs and cats following an investigation by District Attorney Rex Gore's office.

Since Boney had already signed ownership of all of the animals over to Brunswick County, the loss of evidence will not affect the state's case against him, said Ms. Babson.

She anticipates a plea agreement will be accepted in the case, which was scheduled to go to trial in Brunswick County District Court on Wednesday, May 29.

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