

Judge's Order Allows Banned Boat Rental Business At Sunset

BY SUSAN USHER

A company that began seeking permission from the Town of Sunset Beach last fall to rent boats on the beach this summer, and claims that it still had no answer from the town when it arrived May 27 to start operation and was subsequently shut down, won a temporary restraining order July 1 allowing it to do business on the island without town interference until a request for an injunction is heard.

A hearing on the plaintiffs' request for a preliminary injunction was to be heard July 6 in Columbus County, but has been delayed by mutual agreement of the parties involved.

M. Kevin Smith of Salemburg and Alexander W. Kinlaw of Beaufort, N.C., president and vice president respectively of The SeaQuest Company Inc., are seeking injunctive relief from the court and a trial by jury in a civil complaint filed June 20 in Brunswick County Superior Court.

The complaint alleges that the town's "failure to provide a hearing or other type of process and a timely decision" and subsequent actions were "arbitrary and capricious," vio-

lated their right to due process as provided under the state and national constitutions, unlawfully closed "a legal business" that did not violate the town zoning ordinance, and deprived them of their liberty and property interests.

Further, they claim that enforcement of town ordinances against their business "violates the 'exclusive emoluments' clause of the North Carolina Constitution by 'burdening the business and extending the privilege of being able to operate without similar threat of closure and prosecution to similar businesses within Sunset Beach without a reasonable basis for the distinction.'"

At least two other companies, The Sunset Beach Trading Company and Julie's Sweet Shop, offer beach equipment rentals of some type from locations within the beach business district. Items rented range from beach chairs and umbrellas to bicycles and boogie boards, with equipment checked in and out at the rental location.

Smith and Kinlaw appeared before town council last Oct. 4 and asked to be allowed to operate a business renting out four water-jet-

powered, family-size inflatable boats. They proposed booking rentals from a beach business district location, parking the boats in the ocean for loading and unloading, and supervising their use from the public trust beachfront, possibly from a simple umbrella-type stand.

Sunset Beach officials advised that existing town ordinances did not allow conduct of any business from the beach and referred the matter to the planning board.

In exchange for being allowed to do business in the town, the two committed themselves "to making an appropriate contribution of our talents and resources for the benefit of the town" in the interest of civic responsibility.

Still lacking a reply from the town regarding their legal status despite repeated follow-up efforts, the two claim in a complaint filed June 20 in Brunswick County Civil Superior Court. Smith and Kinlaw entered into a lease with a local retailer and with a local marina for boat storage, invested in equipment, hired employees and on May 17 notified the town they planned to begin operation Friday, May 27.

On May 27, the complaint alleges, a letter from Fluegel advised that the business did not conform with the town's zoning and peddling ordinances. "At or about the same time" they allege, a local citizen advised that the town's police chief, under order of council, was prepared to charge the two with peddling if they opened for business.

In ensuing discussion with police officials initiated by the two, Smith and Kinlaw allege they were "threatened with arrest" and confiscation of their equipment because had neither a business permit nor a peddling permit. In a compromise reached with police, the business was allowed to operate "on a limited basis," the complaint states through the afternoon of May 30, when they were "forced to cease the business."

At the town council meeting on June 6, Town Administrator Linda Fluegel advised that the town had made the company relocate out of town to a site on the waterway. Council then agreed to her recommendation that the planning board end further consideration of any change in the town zoning ordinance to accommodate the business.

In a June 2 letter to Smith and

Kinlaw, Fluegel apologizes for "the confusion" the two dealt with over the Memorial Day weekend and advised the planning board hasn't discussed amending the beach business zoning district.

She wrote, "You must be aware that you were allowed to operate Memorial weekend only because the police were under the incorrect impression that watercraft rentals were allowed in the inland waterway. You may not operate a business of watercraft rentals in any zoning district of Sunset Beach."

Last July, the complaint asserts, while investigating possible sites for opening a small boat rental business during the 1994 season, Smith visited the Sunset Beach Town Hall to look at its zoning and other ordinances. Later he and Kinlaw met with Fluegel to discuss their plans, including the possibility of leasing a retail rental site in the beach business district on the island, then appeared at the town council meeting in October.

In his July 1 temporary restraining order, Judge William C. Gore Jr. found as fact that after SeaQuest Inc. opened for business Memorial Day weekend, Sunset Beach closed

the business and has threatened prosecution if the business reopens.

He also found that SeaQuest has financial obligations which, unless paid by revenues from the boat rental business at Sunset Beach, will result in default; that "unless restrained" the town's actions could cause "irreparable injury, loss and damage to the plaintiffs"; that issuance of the order would cause little possibility of harm to the town; that there is a "strong likelihood that plaintiffs will succeed on the merits at trial"; and that the "interests of justice" would be served with issuance of the restraining order and was necessary "to preserve the status quo" during litigation.

SeaQuest has posted a \$2,000 performance bond with the court.

Neither the attorney for the plaintiffs, Daniel L. Brawley of Wilmington, nor the town's attorney, Michael Iseberg of Southport, returned calls from *The Brunswick Beacon*.

State Septic Rules Have Profound Implications

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systems would have a profound effect on development in Brunswick County. Some lots, where the smaller drain field is the only type that will fit, could be made unusable without a central sewage system.

Other owners of small building sites would be forced to invest in a more expensive "low-pressure" waste treatment system that uses an additional pump, tank and level regulator to control the effluent flow. These septic systems often cost more than twice as much as a conventional setup.

Owners of such systems also are required to have a certified operator to inspect the unit and perform annual maintenance, which could cost \$500 to \$1,000 a year or more. Health officials say the more complicated "low pressure" septic systems are more prone to failure than those with traditional gravity-fed drain fields, including bed systems.

Rhodes said the county was never notified about the change in the state's 46-page book of sewage treatment regulations during subsequent visits by state environmental health specialists. Nor were any memos or letters sent to alert the county about the rule change.

"That's why we didn't know there was a problem," he said. "It was not related to us until recently. It's still a matter of interpretation. It doesn't say you can't use bed systems. They just have to be in the right soil."

Cooler Temps Are Expected

Daytime temperatures should be a few degrees cooler this week than they were last week, when the daily average high was a sweltering 91 degrees.

Shallotte Point meteorologist Jackson Canady said Tuesday that both temperatures and rainfall should be near normal this week.

Canady said he expects temperatures to range from around 70 degrees at night to the upper 80s during the day with one inch of rainfall over the next seven days.

For the period July 5-11, Canady measured just one-tenth of an inch of rain at his residence.

The daily average temperature for the period was 82 degrees, which is about three degrees above normal.

The maximum high reading was 93 degrees on July 10 and 11, and the minimum low temperature was 71 degrees on July 5. The average daily high was 91 degrees and the average nightly low was 74.

School Can't Open Until System Fixed: Health Department

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on-site for them to try before we would require them to look off-site."

He said health officials and school consultants hope to reach a "conceptual agreement" on how to proceed during a conference call this week that Boney has said he will initiate.

In his earlier review of the site, Berkowitz advised that "because the soils (on the east side of the existing field) can 'work,'" that efforts should be focused on figuring out what the rate of application should be and if enough suitable area was available for treatment.

Boney & Associates Architects of Wilmington experienced delays in finding a consultant to do the needed studies, according to Boney, the school architect. Few companies are qualified for this type of work, he said, and all of them were very busy. "It took a while to get someone here."

Based on the data available, Boney said he believes the system failed as a result of a combination of factors:

-The west end of the nitrification field contained "fill dirt" as opposed to the naturally-occurring soils present elsewhere, which DEM would not have allowed had it been aware of it. State and local health officials and the soil scientist agree this section needs to be abandoned.

-The dosing rate (the rate at which effluent was pumped onto the field) permitted by DEM was too high; and

-Better drainage was needed to help prevent infiltration of the field by surface run-off waters.

In addition to abandoning the west section of the existing nitrification field, Martin's report recommends increasing the field adjacent to the east section of the field now operating and adding drainage to the soil layer below the "slowly permeable" layer to prevent groundwater mounding.

Problem Arose In Mid-March

School employees called county health officials' attention to problems with the nitrification field of the school's low-pressure pipe system in mid-March.

Local and state inspectors found the field in "a state of total failure," all trenches saturated with effluent and geysers of effluent whenever pumps operated.

They also identified problems with other elements of the overall system. The school was advised it needs to install a separate grease trap to handle kitchen waste and elapsed time counters on each pump, among other improvements.

Since then, Boney said "everybody has been trying to figure out what to do. Everybody acted good intent based on the data available at the time of construction. Certainly if we could turn the clock back with what we know now, we would do things differently."

The situation has been complicated because of the change of agencies and rules regulating this type of system.

At the time the LPP modified septic system was under construction in 1991, the state's Division of Environmental Management was responsible for issuing the operating permit. Since then state offices dealing with health, environment and natural resources have reorganized and regulations governing large low-pressure pipe systems have changed.

The Brunswick County Health Department is now responsible for inspecting the system, and permits are approved by the state Division of Environmental Health.

A permit from DEM to operate the low-pressure pipe (LPP) modified septic system at Supply Elementary School was issued Aug. 5, 1991, and was to remain in effect until July 31, 1996, subject to proper functioning. It allowed the school's system operator, Irene Webb, to apply the wastewater to the entire field at the rate of up to 0.25 gallons per day per square foot.

"The way it's designed," said Andrew Robinson, environmental health supervisor with the county health department, "the entire volume of waste generated by the school enters the system at the same time" instead of being pumped over a longer period of the day. "They were overdosing the treatment area."

The system consists of a 9,000-gallon septic tank and an 18,000-gallon wet well. Wastewater is pumped from the wet well by dual 720 gpm submersible pumps through an 8-inch force main into a sub-surface 7,200-foot network of low-pressure lateral pipes buried in trenches throughout the 39,000 square foot treatment field. The field is situated between the soccer and softball fields behind the school. Dual 720 gpm submersible pumps alternate in pumping sewage from the school onto the field.

Data from the initial soil survey by Larry Baldwin of Land Management Consultants in Wilmington was used by the civil engineering firm of Talbert & Bright in designing the system. That data was submitted to DEM for determination of whether the site was suitable for a system prior to the school system's purchase of the property, said Boney.

In an earlier evaluation by Soil Science Services Inc. of Raleigh, a consultant determined that the soils used in the system met the state criteria for permitting and are commonly used for systems, but that the criteria didn't address "every situation," such as the mix of soil textures and large size of the field at Supply.

Consultant Dennis Osborne was unable to determine if the apparent hydraulic overload of the field had been caused by effluent or groundwater or a combination of both. He recommended a "loading" or wastewater application rate of 0.05 to 0.10 gallons per day per square foot.

The nitrification field was first going to be placed adjacent to Benton Road, but was later moved at the direction of DEM based on groundwater movement monitoring data, said Boney.

Data collected from monitoring wells installed at specific locations on the property indicated "that the water wasn't moving downhill toward U.S. 17 as one would think based on the contours of the land, but were on a slight tangent toward Benton Road."

"They didn't want the groundwater moving outside the property; that would have violated groundwater rules," he acknowledged.

Superintendent Johnston said determining why the nitrification field failed has been a concern of the school system and that attorney Glen Peterson has been directed to research the question. "What I'm focused on," he said, "is trying to get it repaired."



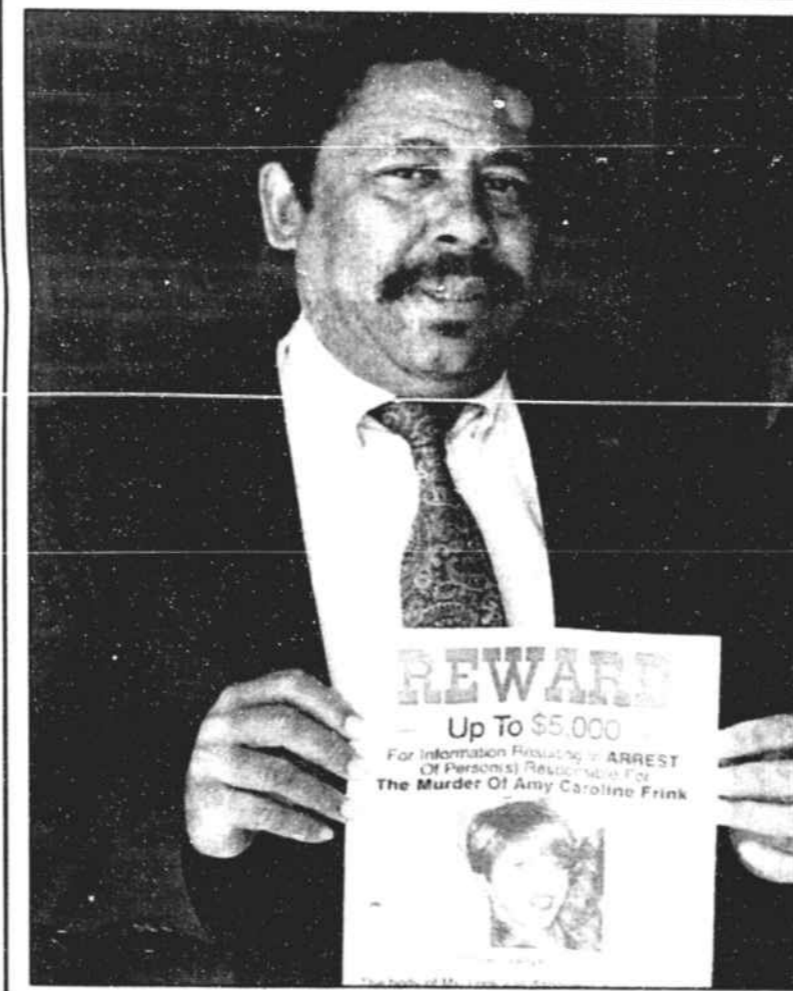
STAFF PHOTOS BY ERIC CARLSON

Investigation Continuing

Barry and Birdie Frink (seated at left in photo above), parents of Amy Caroline Frink, attend a press conference last week with law enforcement officers who are heading the investigation into the Shallotte teenager's brutal murder on June 23.

Police on both sides of the state line are continuing to collect evidence and conduct interviews, but say they have no firm suspects in the case. Brunswick County Sheriff's Department Chief Deputy John Marlow (in photo at left) holds one of the posters

circulated by deputies offering a reward for information regarding her apparent abduction. Shown standing above (from left) are Horry County, S.C., Police Lt. Bill Knowles, who is heading the investigation, Brunswick Sheriff John Carr Davis and Horry County's Interim Police Chief Gerald Whitley.



Schools, County Talk In Effort To Resolve Budget Differences

BY SUSAN USHER

Delegations of Brunswick County school and county officials talked into the night Tuesday as negotiations continue over a requested \$1.29 million increase over the county's \$9.2 million allocation to the school system for 1994-95.

The Brunswick County Board of Education says the county's funding isn't adequate to meet the schools' needs; that at least the additional money to maintain current operations and meet obligations beyond the schools' control.

School system officials did not discuss details of the discussions that began earlier this week and continued at Tuesday's 4 p.m. meeting and did not return calls Tuesday night.

Acting County Manager Charles McGinnis also wouldn't discuss details Tuesday night.

"There was no decision reached, just discussions," he said from his quarters at the Twilight Motel in Shallotte. "That's all they could do since they were not meeting as a full board. As separate boards they will have to review those discussions."

School board member Polly Russ of Shallotte said she considered "a good sign" that she had not heard from the school system's delegation by mid-evening.

If the two boards are unable to reach agreement by the end of the

business day Monday, the matter will go to Brunswick County Superior Court for professional mediation, and if necessary, a trial.

Clerk of Superior Court Diana Morgan said both boards asked her this week to not take any action until Monday, allowing them more time for the boards to try to negotiate their own compromise.

Monday is Morgan's deadline for either arbitrating the dispute over funding herself or referring it on to Superior Court. While she might

technically have until midnight, she said, "I plan to do something by 5 o'clock."

The school board and commissioners are still working on funding issues relating to construction of the planned Leland Elementary School, which was part of the settlement reached by the boards in a similar budget dispute last August.

The document called for the boards to mutually agree on a funding plan for the school, which so far they haven't been able to do.

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