

Shore Protection Manager

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## CARTERET COUNTY BEACH COMMISSION MEETING

Minutes

Pine Knoll Shores Town Hall

July 28, 2003, 2 pm

### **Acronyms:**

AB – Atlantic Beach

CBOC – Carteret County Board of Commissioners

FEMA – Federal Emergency Management Agency

PKS – Pine Knoll Shores

TDA – Tourism Development Authority

USACE – United State Army Corps of Engineers

### **Attendance.**

Commission chair Buck Fugate, vice-chair William Donnelly, Commission Members Bob Gallo, Art Schools, Dr. John Wells, Jim Willis III, secretary Greg Rudolph, and the general public. Members Doug Brady, Jack Goldstein, George Herrmann, Pat McElraft, and Joe Stroud were absent.

- (1) **Call to Order.** – Chairman Fugate proceeded to call the meeting to order.
- (2) **Approval of Minutes.** – Member Gallo motioned that the minutes for the June 30<sup>th</sup> regular Beach Commission meeting be approved as presented. The motion was seconded by member Schools and unanimously approved.
- (3) **Occupancy Tax and "Beach Fund" Update.** – Secretary Rudolph directed the Commission to the agenda topic sheet and mentioned that occupancy tax revenues remain 5% higher if compared to the revenues collected at this same point in the previous fiscal year. The June 2003 tax collection report should be released soon and if the revenues listed in this report are similar to last year's report, then the "beach fund" should gain approximately \$160,000 more than originally projected for Fiscal Year 2002-03 (FY 02-03). Chairman Fugate noted that the Beach Commission has not met since the CBOC repealed the occupancy tax and asked member Schools for an update concerning the TDA's position. Member Schools proceeded to distribute a letter from the TDA to the CBOC that clarified some of the issues that have been a source of contention. Any changes in the occupancy tax that the CBOC would propose must be agreed to be non-controversial by many different groups and must also take place in the short session of the N.C. Assembly. These circumstances may preclude any changes in the occupancy tax from occurring in FY 03-04. Member Gallo expressed concern that the municipal allocations that are provided in the occupancy tax legislation would also be ceased as a result of the CBOC's repeal of the tax and that PKS's ad valorem may need to be raised to offset this financial burden. Also, if the tax is repealed effective July 1, 2004, then there will be no funding for the Shore Protection Project as well. Member Gallo also suggested that maybe the Mayors of the Bogue Banks municipalities should prepare a letter to

the CBOC delineating the importance of the occupancy tax for beach nourishment. Member Willis noted that the Beach Commission has a good relationship with the CBOC that should be maintained. Chairman Fugate agreed and noted that the upcoming subject concerning Beach Commission appointments should be handled with this in mind.

- (4) **Nomination Committee Appointments and Upcoming Beach Commission Vacancies.** – Member Willis noted that his title of “Capt.” listed in the agenda packet should be changed “Cap’n” and that Beach Commission members are residents of the municipalities and do not necessarily represent any of the municipal districts as listed in the agenda packet as well. Chairman Fugate asked if members Schools, Gallo, and Stroud to serve as the nomination committee for the upcoming Beach Commission vacancies and added that the Beach Commission should extend the courtesy of notifying each municipality of the re-appointments or new appointments. Vice-chair Donnelly expressed concern over his re-appointment based on the political climate in AB. Chairman Fugate recommended that one appointee for each vacancy should be submitted to the CBOC. If the BBOC is not comfortable with a recommended appointment, then another appointee can be solicited.
- (5) **The Bogue Banks Beach and Nearshore Mapping Program.** – Chairman Fugate noted that Secretary Rudolph contacted the Beach Commission earlier in the month via e-mail to disclose that a Request for Bid Proposal was distributed for the upcoming beach surveying contract. This decision was made to ensure the CBOC that the Beach Commission is exercising fiduciary responsibility. The Beach Commission has sought legal counsel from the Institute of Government and although it is not necessary to solicit multiple bids for the survey contract, the Beach Commission has elected to do so. Also, because the surveying program would be in the form of a service contract, the lowest bid does not necessarily have to be accepted. Member Willis mentioned that in light of the fact that the occupancy tax may be repealed and that Section 933 funding may not be forthcoming, it will be important to develop a monitoring program that can assist the long-term existence of Bogue Banks in addition to serving as a measure for FEMA reimbursement. Member Willis suggested to expand the monitoring to include the nearshore berm and determine where to place the dredged material from the outer harbor. Member Willis added that the Shore Protection Project may never be funded and this insight into dredged material disposal options may be a better course of action. Chairman Fugate noted that these topics will be discussed when the subject of Morehead City Sand Management strategies is discussed later in the meeting. Member Schools asked what type of funding would be involved if the offshore coverage of the surveying program was extended and why would these costs diminish the beach fund. Secretary Rudolph replied that this would depend on the scope, but to conduct a littoral transport study complete with current meters and multiple surveys would be very expensive and could very well exhaust the beach fund reserve. Secretary Rudolph added that the surveying bids should be received in enough time for a Beach Commission subcommittee to narrow the field of bids to two or three firms. The subcommittee includes chairman Fugate, vice-chair Donnelly, member Schools, Willis, and Secretary Rudolph.
- (6) **Beach Restoration Projects.**

**A. Bogue Banks Shore Protection and Brandt Island Pump-Out/Section 933 Projects Update.** – Chairman Fugate noted that although the Section 933 appropriation was not included in any of the budgets released by the President, House, or Senate, the appropriation could be

included in the House-Senate Conference Committee Bill that should be completed in September. The chances for this appropriation are slim but that is the primary focus of the lobbying efforts that will be undertaken in the next couple of months. Member Willis asked if the County has signed the Project Cooperation Agreement. Secretary Rudolph replied that the Project Cooperation Agreement has not been signed yet and that the non-Federal sponsor of the Project may have until mid-September to decide whether or not to execute the agreement. Member Gallo asked if the phone calls and messages to our congressional delegation have been effective. Chairman Fugate responded that that at a minimum, these correspondences have placed awareness to the beach nourishment and the sediment budget issue concerning the Morehead City Harbor Project.

Secretary Rudolph guided the Beach Commission to a spreadsheet included in the agenda packet that summarized the beach nourishment appropriations for FY 04. Secretary Rudolph added that the spreadsheet included all beach nourishment projects from the USACE's general investigations, construction general, and operations & maintenance accounts. Unfortunately, construction money in the President's budget was very low (~\$76 million), the House recommendation was ~\$96 million, and the Senate reduced the House appropriation to ~\$79 million. Also, \$24 - \$25 million of these funds are for the Chicago Shoreline Project and there are very few other construction appropriations that approach \$10 million. Secretary Rudolph mentioned that the Kure and Carolina Beach renourishment events are also under-funded. These circumstances are troubling for beach nourishment projects across the Country. Fortunately, the \$400,000 appropriation for the Bogue Banks Shore Protection Project feasibility study has been included in all the budgets released to date and appears to be secure.

**B. Morehead City Harbor Sand Management Strategies.** – Chairman Fugate noted that if Bogue Banks could not receive the \$12.5 million appropriation for the Section 933 Project after making our congressional delegation aware of the urgency of the Project, and the 1:4 cost benefit ratio the Section 933 Project possesses, then the likelihood of gaining construction money for the Shore Protection Project seems very unlikely. However, Bogue Banks continues to erode as a consequence of the dredging activities undertaken at the Morehead City Harbor. There is enough information in the Section 111 Report that incriminates the dredging activities and there is almost no one who doesn't agree that there is an adverse taking of Bogue Banks. Thus, how would Bogue Banks seek mitigation if any legal action was ever taken? Member Willis asked who has taken Bogue Banks and who owns the sand. Member Willis rhetorically answered that the State in collusion with the USACE has taken the sand that was destined to Bogue Banks. Chairman Fugate added that irrefutable proof would be required to bring a suit against the USACE, or other defendant, and to date Bogue Banks does not have this data available. Another line of thought is to retain an attorney first, develop a legal strategy, and have an engineering firm work closely with the legal firm. The legal wisdom gained from the Cape Canaveral and West Hampton Dune cases indicate that the plaintiff should be the agency with the least amount of immunity, which in turn sues the Federal government. If the Beach Commission engages in a definitive engineering study for a legal case, then the funding for the Shore Protection Project would be exhausted. Vice-chair Donnelly added that Bogue Banks would need to prove the littoral drift in the area to substantiate a case against a defendant. Chairman Fugate replied that Olsen Associates and Dr. Robert Dean provided information in their reviews of the Section 111 Report but recommended that additional studies are required.

Member Dr. Wells noted that one of the concerns that have been previously conveyed is that the Shore Protection Project would be suspended as soon as a case was filed. Member Dr. Wells also noted that it would take years to gather the data to provide irrefutable proof, and that the Section 111 Report contained a large burden of proof already. However, member Dr. Wells mentioned that he was uncomfortable with suing at this point. Member Gallo mentioned that he has a different point of view and that he rather use funds to seek litigation than in participating projects that never come to fruition and dredging protocols that never change. Also once a lawsuit is filed, the entire mood of the USCAE would change because attorneys are involved and decisions must be made. Vice-chair Donnelly noted that based upon his experiences in Federal Court, the timeline for a verdict is approximately 18 months. States may have a longer turnaround. Chairman Fugate noted that no action should be taken until a final determination has been made concerning the Section 933 Project appropriation.

Vice-chair Donnelly mentioned that a lawsuit could be filed by a multitude of individuals and agencies, including municipalities, businesses, etc. Also, Bogue Banks would need a standard of proof that includes reasonable scientific certainty, not irrefutable science. Vice-chair Donnelly added that this statement is based on his experience as a defense lawyer for doctors and hospitals with very similar causation-type issues. Chairman Fugate added that it is frustrating that the resource agencies and coastal advocacy groups are more concerned with the effects of beach nourishment than the cause of erosion and sediment deficit issues associated with the Morehead City Harbor.

- (7) **Other Business.** – Charles Bell from the audience mentioned that two Shore Protection options are beginning to present themselves to the municipalities of Bogue Banks; (1) litigation or (2) self-financed projects. Member Gallo asked if the Shore Protection Manager's salary has been changed to reflect the Beach Commission's request. Chairman Fugate responded that the salary request has not been implemented to date and that the Beach Commission will pursue this topic once the timing is appropriate, especially considering that the occupancy tax has been recently repealed by the CBOC.
- (8) **August 2003 Meeting Date (August 29, 2003 – proposed).** - It was agreed upon that the next Beach Commission meeting would be held on August 25<sup>th</sup> at 2:00 pm.
- (9) **Adjourn.**