

Town owned Property - SANDMAN

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Mayor Pro Tem

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 - Kure Dunes
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History of this issue

HIGHLIGHTS OF BEACHWALK RETENTION POND. Compiled by Nancy Avery, Town Clerk, based on files from DENR/DWQ and Town files.	
Month/Year	Created 12/10/14 and updated 12/28/18
Nov-92	SW permit # SW8 920807 – letter from DENR/DWQ to Town enclosing original operation and maintenance plan for Kure Dunes (KD) Phase II . Town is responsible party for maintenance of detention pond and exfiltration trenches. Hearne is developer.
Dec-92	SW permit # SW8 920807 – letter from DENR/DWQ to Town approving storm water (SW) control system for KD Phase II .
May-96	MOU and recorded agreement between Weinbach and Town for development of Beachwalk and diversion of SW from holding pond located in KD which belongs to Town. (SW8 920807)
Apr-97	SW permits 8 920807 and 8 960518 Letter from Town Engineering firm, Criser, to DENR/DWQ re filling existing pond
Apr-98	SW permit # SW8 960518 Beachwalk – letter from DENR/DWQ to Weinbach acknowledging permit application to construct a SW management plan at Beachwalk development. Approved permit for 70 single family lots each 4000 square feet of built-upon area, 20 duplex buildings each allowed 4,000 square feet of built upon area. Pond designed for 1,020,238 square feet of built upon area.
Aug-98	Criser & Troutman, engineer for Town, responded to DENR/DWQ re SW project # SW8 920807 Modification KD Phase II pond removal. References additional square footage for additional impervious area that would result from development of existing pond area as four residential lots at some future date. States Town doesn't plan to develop at that time, but requests modification include approval for eventuality of selling lots to prevent Town from having to revisit KD Phase II SW permit again in future . States design capacity for existing pond is 33,050 cubic feet. If developed as four lots, additional run off = 1,786 cubic feet. Total 34,846 cubic feet. Also states Beachwalk SW system designed to receive 38,260 cubic feet from KD Phase II development. Surplus capacity in Beachwalk ponds for KD Phase II SW storage = 3,424 cubic feet.
Oct-98	SW#8 920807 Letter to Hearne (KB Associates) from DENR/DWQ re modification of SW management permit application for KD Phase III . Involves closing detention pond serving KD and routing runoff into offsite SW pond. DWQ stated request is in compliance and issued Permit #SW8 950709 Modified
Oct-98	SW permit # SW8 920870 modification – letter from DENR/DWQ to Town acknowledging receipt of modification application for KD Phase II. Approved modification.
Oct-98	SW permit # SW8 950709 KD Phase III modification – letter from DENR/DWQ to Hearne (KB Assoc.) acknowledging receipt of modification application to close detention pond and route runoff into offsite SW detention pond. Grants approval of modification.

History

Jun-01	Permit # SW8 960518 from DENR/DWQ to Weinbach re need for form to transfer ownership
Aug-01	Permit # SW8 960518 Beachwalk letter from Hogue, Hill, Jones, Nash & Lynch to DENR/DWQ re transfer of ownership
Mar-04	Beachwalk HOA sends application to DENR/DWQ for SW management
Apr-04	Letter from Beachwalk HOA attorney (Norris, Kuske & Tunstall) re plans to bring SW system into compliance
Apr-04	Beachwalk sued Weinbach regarding responsibility for maintenance of SW management system. SW permit # SW8 960518 issued by DENR/DWQ. Resulted in payment of \$100,000 for restoration of SW system to design condition to Beachwalk and transfer of SW permit from Weinbach to Beachwalk
May-04	DENR/DWQ transferred SW permit # SW8 960518 that includes construction, operation and maintenance of a wet detention pond to Beachwalk HOA
Feb-06	Permit # SW8 960518 Letter from Hogue Hill, Jones, Nash & Lynch to Consulting Engineers re depth of Beachwalk pond
Mar-06	DENR/DWQ sends letter to Beachwalk HOA stating only parts of the pond were restored to permitted 7.5” design. Only the outer edges of the pond, as far as a backhoe could reach were restored to 7.5 foot design depth and inner parts were not touched. Letter states this is a problem and Beachwalk needs to provide drawing showing compliance.
Aug-06	Release to Heame by Town to re-issue replacement deed for land on Sandman (location of former SW pond permit 8 920807 KD) Deed recorded. (for some reason, deed never recorded previously)
Aug-08	Letter from Smith, Moore, Leatherwood to mayor requesting Town pay fair share of maintenance costs of Beachwalk SW pond
Jan-08	Letter to Beachwalk HOA from Council stating no contribution of funds or assistance toward maintenance of SW pond
Mar-11	Email from KD HOA regarding Sandman lots.

Assigned purpose in 2014

- At the 2014 retreat – issues regarding MOTSU allowing the town to use the buffer zone area for the parking of town equipment on H avenue drove a discussion on town owned property and how it could satisfy the town's requirements.
- Town Council directed me to investigate the issues with the following directive:
 - The Town Council wants to determine and document the issues around the undeveloped town property on Sandman Drive that was formerly a retention pond. Issues around this property have occurred numerous times in the past – and the goal of this investigation is to document the issues around this property from the Town's perspective, the Kure Dunes HOA's perspective and the Beachwalk HOA's perspective to allow current and future Town Councils to make decisions regarding this land.

Council guidance on Sandman property

- While the council has taken no action on the Sandman property regarding final disposition – discussions at the 2014 retreat initiated by concerns around MOTSU actions highlighted the following:
 - The property does not make sense for any public buildings – it is in a residential community removed from all other Town buildings. The town is taking action to ensure that it has adequate town owned property for any future issues on properties adjacent to the existing Public Works building. These actions are not dependent on a quick resolution regarding this property.
 - The council discussions saw no future path to making it a town park – with the existence of two parks owned and maintained by the town.
 - The Stormwater permits that were modified to close the pond and re-route the stormwater – support the sale of this property and conversion of it to residential properties. This would result in sales revenues to the town as well as ongoing tax revenues of the property.
 - The Council recognizes that there are concerns from both Beachwalk and Kure Dunes and wants to fully understand the issues to determine if there is a path forward that supports all concerned parties.

Kure Dunes Position

- The Kure Dunes HOA is concerned about liabilities to Beachwalk regarding the sale/development of the town properties – and emphasizes that the release/indemnity agreement executed by the town is in full force. Putting aside the indemnity agreement, it is Kure Dune’s understanding that it paid the town for the run-off responsibilities at issue (by giving the town the detention pond parcel), that Beachwalk’s developer assumed these responsibilities from the town, and that the issue of the Beachwalk’s HOA responsibility for this runoff was one of the subjects of a lawsuit and settlement in 2003.
- The Kure Dunes HOA wants to ensure that any sale/development of the town lots would be subject to or at least consistent/compatible with the covenants and restrictions of the Kure Dunes Homeowners Association – as the land is in the KDHOA neighborhood.

Kure Dunes Position

- Kure Dunes has an interest in the property and wants to be involved in the decisions regarding the property.
- The Kure Dunes HOA does not, itself, yet have a firm, final, fully-developed position regarding the development of Beachwalk's adjoining interior common element. However, it must be noted that most, if not all, of Kure Dunes' residents (and, the KDHOA believes – in good faith – MOST of the residents of the Town of Kure Beach overall, INCLUDING many Beachwalk residents) are presently VERY MUCH opposed to the town's granting an easement over taxpayer land to permit development of Beachwalk's interior common element, as they all have grave concerns that such an interior development scenario would NOT be safe (as any proposed access road would be hazardous to playing children and other pedestrians, and potentially inaccessible to emergency vehicles), would NOT be fiscally prudent (as it would require the sacrifice of a valuable town/taxpayer lot to enable an interior project which appears destined to cost more to develop than it could possibly garner in ensuing lot sales), would NOT be compatible with responsible stormwater runoff practices (as it would be replacing wet/low-lying porous soil with impermeable surfaces, in an already challenged district), and would NOT be consistent with the overall continuity of the Kure Dunes community (as it would thrust directly into the side of the neighborhood).

Beachwalk Position

- The sale and development of the property is seen as a potential problem to Beachwalk
 - Stormwater runoff from the previous pond represents a significant load on the currently permitted Beachwalk retention pond – which is the responsibility of Beachwalk. An estimate of 50% of the water going through the BW pond is from the previous pond was stated during discussions.
 - BeachWalk had to spend significant money on maintenance of its Stormwater system – which supports a portion of the Kure Dunes community with no cost sharing from the Town or Kure Dunes.
 - BeachWalk highlights that there is no agreement for cost sharing and does not see that this is fair or equitable treatment of the costs for managing the stormwater.
 - Beachwalk property owners are being impacted by the issues with the current system. The permit was done based on capacity. The issue is not capacity – it is velocity during a large event – causing damage (erosion) of the pond.

Beachwalk Position

- Our position has evolved from a better understanding our current Stormwater System (SWS). For the SWS, pond retention volume ("capacity") is sized to treat the first one inch (1") of runoff from impervious surfaces (roofs, driveways, roads etc.); please note that this amount of rain is time independent. However, the permit specifications were written 20 years ago--before most of the houses were built in Kure Dunes and Beachwalk. The unanswered question is whether Beachwalk's stormwater system is still properly sized for the as-built development. In other words, is our recently renovated stormwater system in compliance with the as-built structures around it? This should be determined before more impervious surfaces are created by five to eight (5-8) new houses. Secondly, the capacity of the stormwater system to handle high volumes of water from major storms is not even mentioned in our permit. The velocity of water flow through the system is slow, even at high water levels, because the downstream gradient is low. It is now Beachwalk's opinion that most of the erosion is triggered by the filling and draining of the ponds and ditches which cause the banks to collapse. When the banks crumble (or slough-off or slump) a slow current moves the debris downstream.

Beach Walk Position

- Believe that there are issues with the current lots regarding subsurface water flows – the land may not be buildable based on the fill used to close the detention pond. The type of soil used to fill the pond was inadequate. There are homeowners that are saying that there is subsurface water flows from these lots. Surface water run-off issues.
- Sale and/or development of these lots potentially disrupts Stormwater permits for Beachwalk and Kure Dunes.

Beach Walk Position

- If the property is sold – what covenants and restrictions will be placed on the properties that would satisfy the needs of both Beachwalk and Kure Dunes.
- *Our current position now includes only the Sandman Lots as given in the written proposal and concept sketch defining the six (6) general parameters below: .*

They are:

1. No monies are paid/received by any of the three participants;
2. TOKB retains maintenance of underground storm water piping systems and swale at rear of the Sandman Lot;
3. Beachwalk retains collection of storm water runoff at Ditch D-1;
4. Beachwalk provides HOA amenities to all eight (8) five (5) Sandman lots;
5. TOKB retains engineering responsibilities for Sandman lots development;
6. Only single family, multi-story structures are permitted to be built.

Beach Walk Position

- Stormwater fees in the community but no financial support from Town of Kure Beach on resolving the existing issues relating to storm water runoff. Recognize that the town has installed some drains to fix issues to benefit the town – not Beachwalk as a community. Presently paying twice to handle the stormwater – once under the Town of Kure Beach’s stormwater fee and once to the Home Owner’s Association for stormwater (started 5 years ago).
- The Beachwalk HOA lawsuit against Beachwalk's developer, Beachwalk Development, Inc. was a lawsuit that did not involve either Kure Beach nor Kure Dunes as parties, and nothing was adjudicated relating to any controversy Beachwalk may have had or still has with the Town or Kure Dunes. The lawsuit was voluntarily dismissed incident to a settlement agreement, and no court ever adjudicated or decided any issues of law or fact in the resolution of the suit. In the settlement agreement the parties agreed that: "The execution of this Agreement shall neither operate nor be construed in any respect as constituting an admission of liability of any such party to any other person, firm, corporation or any other entity; rather, this Agreement constitutes a compromise of disputed claims. The parties hereto expressly deny that any of them are in any respect liable to any other person, firm, corporation or other entity with respect to the subject matter hereof." Settlement Agreement Paragraph 5. The lawsuit and this agreement have no bearing on the controversy between the three parties.

Investigation conclusions

- Town has the right to sell/develop properties
 - Both HOA's have expressed that they have serious concerns and potentially would take legal action to prevent sale
 - While this is a possibility – the town's position based on the facts is strong and current facts support that the town would prevail in a legal challenge
- Beachwalk HOA has property adjacent to the Town's property that is currently undevelopable – it only has a 10 ft easement from the South making it undevelopable
 - Beachwalk HOA has expressed interest in an easement – including working with town to have 5 vs 4 developable lots from the town's property based on facts
 - Currently the Beachwalk HOA does not have approval for development or easement request from its members
- Multiple individual property owners adjacent to the property have stormwater, safety and other concerns regarding any development

Recommendation

- Stormwater concerns that the town will be investigating could potential need this property for any proposed solutions
- **Recommendation is that the town council make no decisions regarding this property until the Stormwater study that Public Works is requesting is completed and the town is sure that this property is not needed for any recommended up grades to the stormwater system.**

Kure Beach, NC