

NC COASTAL RESOURCES COMMISSION (CRC)

July 29, 2011

Conference Call

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. Angela Willis called the roll. The following Commissioners participated in the conference call: Bob Emory, Jim Leutze, Chuck Bisette, Renee Cahoon, David Webster, Jerry Old, Veronica Carter, Ed Mitchell, Benjamin Simmons, Lee Wynns and Pat Joyce. Joan Weld, Charles Elam, Bill Peele and Melvin Shepard did not participate. Jim Leutze stated he would recuse himself from the variance request submitted by the Village of Bald Head Island. There were no other conflicts reported. Based upon this roll call, Chairman Emory declared a quorum.

VARIANCES

Village of Bald Head Island (CRC VR-11-06)

Christine Goebel of the Attorney General's Office represented staff. Mrs. Goebel reviewed the stipulated facts of this variance request. Mrs. Goebel stated the Point lies directly adjacent to the Cape Fear River Inlet. The Cape Fear River Inlet is a federally maintained shipping channel. The federal project includes a Sand Management Plan. The island is scheduled, under the Plan, to receive sand from maintenance dredging. Funding was not available for scheduled dredging on Bald Head Island in 2010-2011 or 2011-2012. Bald Head Island is scheduled to receive sand from the next channel maintenance dredging if funding is available. Bald Head Island last received sand from the U.S. Army Corps of Engineers dredging in 2006. No sand has been placed since the 2009-2010 placement of sand by the Petitioner. The current long-term average annual erosion rate in the vicinity of the Point is eight feet. The landmark roads at issue are South Bald Head Wynd, owned by the Petitioner, and Sandpiper Trail, also owned by the Petitioner. South Bald Head Wynd is approximately 400 feet landward of the proposed work. Associated with these roads are water, sewer, electric, cable and telephone transmission lines. In 1995 the Petitioner received a CAMA Major Permit for a beach nourishment project in this area. In February 1995, the Petitioner applied for a variance from the CRC's rules to construct 14 to 16 sand tube groins. This variance request was granted. Petitioner's coastal engineer has recommended adding a sandbag revetment to the sand tube groin field project. The coastal engineer has advised that severe erosion and shoreline recession near the Point is expected to occur to historical levels and irreparable impacts are imminent. In July 2011, Petitioners applied for a minor modification to their permit to construct a 1,300 linear-foot sandbag revetment along South Beach and the western edge of the Point. Based on measurements taken on July 14, 2011 by DCM staff, the closest dwelling to the erosion escarpment in the project area is 97.5 feet. South Bald Head Wynd is 400 feet from the erosion escarpment in the project area and Sandpiper Trail is 285 feet away. Petitioners are requesting sandbags that would vary between 6 and 12 feet in height with a base width of between 20 and 40 feet. The size would be determined by the scarp elevation at the time of construction. DCM denied the permit modification request.

Ms. Goebel reviewed the statutory criteria which must be met in order to grant the variance. Mrs. Goebel stated Petitioners say that the project is meant to protect critical habitat, roads,

homes and infrastructure. The nearest dwelling is 97 feet away from the erosion scarp and the roads are 285 and 400 feet away. Petitioners say this is due to the threats from rapid erosion. The Commission's rules acknowledge and warn that ocean hazard AECs have a special vulnerability to erosion and this is especially true at inlets. The CRC's rules allow for sandbags in limited ways at very specific times as a temporary measure. The rules only allow 6x20 structures, they only allow it within 20 feet of the erosion scarp generally, and they are only allowed to protect principal residences, septic tanks and roads and not accessory structures. They are also time limited depending upon the structure. This request is to vary three of the four limitations. They want them bigger. They want them sooner. They want them to protect sand dunes and not structures. Staff argues that there is not an imminent threat to roads, houses and or infrastructure. Staff can and will allow sandbags once they are within 20 feet of the erosion scarp and see no unnecessary hardship. The dunes are also a stated concern of the Petitioners which focus on these dunes only as potential habitat for turtles, other wildlife and birds. However, it ignores the other functions of dunes which are protective features acknowledged in the CRC's rules, therefore Staff disagrees on the first factor. On the second factor, Petitioners say the hardship is due to its location on the shipping channel and allege this is the cause of the increased erosion. Staff notes that erosion and high rates of erosion are common on the ocean and at inlets like the Point. The long-term rate is eight feet per year. Petitioners will attempt to show some impressive erosion rates, but I would caution you that the slides show the shoreline between April of last year and April of this year and compares a 2010 shoreline that was shortly after Petitioners placed sand on the beach. I would also caution that when they claim that there is erosion at a very fast rate, the current erosion that has happened in the last year as shown in the slides had been on a much flatter beach profile. If you look at some of the site-level slides, you can see that the dune area in between the current erosion scarp and the structures is a much taller beach profile. Staff say that this erosion hardship is not peculiar to the site. The third factor is a yes or no statutory factor. When Staff approached it, they acknowledged that erosion generally is not caused by people or petitioners, however, because of the existence of the groin field, Staff cannot say with any certainty about what the role of the groin field might play. We know groins can cause erosion from the terminal groin report that was reviewed in the last year. We do not know if that is the cause here. Staff say that there might be a possibility that Petitioner's groin field is causing the erosion in this area. On the fourth factor, Petitioners focus on the habitat value. Habitat is not the only function of sand dunes. The Petitioners also focus on the protection of property, but Staff feel that they can do that in plenty of time once the structures are imminently threatened and there is no need to do it now. Once the imminently threatened structures are within 20 feet then sandbags can be put in. The roads, houses and infrastructure are not imminently threatened by the definition of the rule. Staff feel they can protect it in time. It is unfortunate about the lack of Corps funding for the Sand Management Plan, but Staff feels that justice would be better served by a denial of the variance.

Charles Baldwin of Rountree, Losee & Baldwin, L.L.P, represented the Petitioners. Mr. Baldwin reviewed the stipulated facts and exhibits which he contends supports the granting of this variance request. Mr. Baldwin stated the proposed 350 foot sandbag revetment is necessary to prevent the groin field from failing. The work is necessary and was advised by the Village's long-time coastal engineer. The stipulated facts in this matter are very important. A Sand Management Plan is in effect and the Village is scheduled, under the Sand Management Plan, to receive sand at the next placement. It is not just beach placement; it is maintenance dredging for

the shipping channel and therefore simply has to occur. Unfortunately it will not happen this winter, but it will happen in the winter of 2012-2013. We are now only a year and a half post the Village's private sand placement and for the beach and protective dunes to have any chance of surviving another year, the groin field has to be kept functioning and intact. Stipulated exhibit 13 is the recommendation of the coastal engineer. He has advised that severe erosion and shoreline recession near the Point is expected to occur to historical levels. We are in a disadvantaged position today, just one and a half years post-renourishment as compared to the events we experienced in 2003 and 2009. Stipulated fact #14 states that the proposed sandbag revetment would be a short-term, temporary measure pending the anticipated large-scale beachfill placement by the Corps. This fact is contrary to DCM's position that we are seeking some sort of seawall or permanent structure. There are peculiar circumstances and topography at issue here. Stipulated fact #24 states, as shown on stipulated exhibit #4 topographic exhibit of Cape Fear Trail, the interior of Bald Head Island is low-lying and subject to flooding. The additional stipulated fact circulated this morning (#2008) which states in 2003, the Corps of Engineers required the Petitioner to restore the sand tube groin field as a condition to receiving sand placement under the Sand Management Plan. The groin field is something the island is required to have and it is not fair to say that the groin field is the fault of the Island. The groin field functions as intended to retain sand and slow the rate of erosion and is overall beneficial. The Village is trying to keep it functionally working as best as it can. There is an absolutely unsupported allegation that we all know groin fields cause erosion. That is simply not true. In fact, the CRC report states that of the groins studied, the areas were eroding prior to the groin field construction and are generally accreting post-construction. There is not a single bit of evidence in the record that a groin field causes erosion. Staff's position relates to a statement that it could not be determined whether natural resources are harmed by groins. That section concerns fish and benthic and these were not studied or recorded with respect to the study site. No conclusions can be drawn. The Village has done everything in its power to avoid the situation we are in today with erosion. I do not know what the Village could have possibly done in addition to try to avoid being here today. There is no engineering evidence in the record contrary to the imminent harm and dire loss of protective dunes and groin field depictions of Erik Olsen. Is this an unnecessary hardship the Petitioner should not have to suffer? Absolutely. The photos show this. Even though these dunes are tall they are being consumed at a huge pace. According to Mr. Olsen it is a pace that will increase. We cannot risk the safety of homes, roads and property. The answer is yes that the conditions are peculiar to the Petitioner's property. We are located adjacent to the shipping channel which provides a Sand Management Plan. The groins are required by the Corps of Engineers and the low-lying topography of the island is such that if the groin field fails and the dunes are breached then the flooding will go inland and harm roads and property. There is already a property 97 feet from the erosion. We are asking for a short-term, stop-gap measure to address the situation. This is not the fault of the Village. For the fourth criteria, this variance will preserve and protect the groins; it will protect the dunes and prevent the groin field from failing. It will protect public trust beaches, protect life and property and it is a temporary measure in the public interest and public safety and welfare and substantial justice will be done. Because these things are true, the converse is also true. A denial of the permit will not be in the public interest and will not be consistent with the spirit, purpose and intent of the rules. We are not setting a precedent. These are unique and emergency circumstances.

Renee Cahoon asked Mr. Baldwin if it is the Village's intention to take the sandbags out before the beachfill occurs. Mr. Baldwin stated that it is more important that the bags be put in timely and the Village would be willing to have permit modifications or requirements to facilitate this.

Veronica Carter asked if this is to be done until the Village receives the Corps' sand and you haven't received sand from the Corps in two years, does the Village have a backup plan if it doesn't receive sand from the Corps for another year or two? Mr. Baldwin stated that the only other tool that the Village has at its disposal is a very, very small sand placement. There is very little we can do which is why it is so critical that this groin not be allowed to fail and set off a chain reaction.

Jerry Old made a motion that strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardship. Renee Cahoon seconded the motion. The motion passed with seven votes in favor (Old, Simmons, Wynns, Bissette, Cahoon, Joyce, Mitchell) and two opposed (Carter, Webster).

Jerry Old made a motion that hardships result from conditions peculiar to the petitioner's property. Renee Cahoon seconded the motion. The motion passed with seven votes in favor (Old, Simmons, Wynns, Bissette, Cahoon, Joyce, Mitchell) and two opposed (Carter, Webster).

Jerry old made a motion that hardships do not result from actions taken by the petitioner. Renee Cahoon seconded the motion. The motion passed with eight votes in favor (Old, Simmons, Wynns, Bissette, Cahoon, Carter, Joyce, Mitchell) and one opposed (Webster).

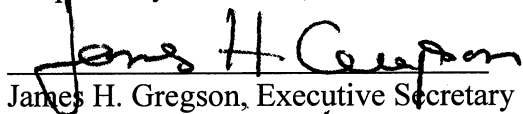
Jerry Old made a motion that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; secure the public safety and welfare; and preserve substantial justice. Renee Cahoon seconded the motion. The motion passed with eight votes in favor (Old, Simmons, Wynns, Bissette, Cahoon, Carter, Joyce, Mitchell) and one opposed (Webster).

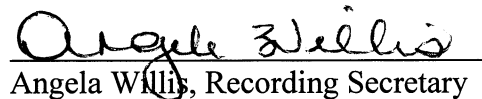
Renee Cahoon made a motion to amend the previous motion to include the condition that the sandbags be removed prior to any large-scale nourishment project. Jerry Old accepted the amendment. Jamin Simmons seconded the motion. The motion passed with eight votes in favor (Old, Simmons, Wynns, Bissette, Cahoon, Carter, Joyce, Mitchell) and one opposed (Webster).

This variance request was granted with the condition that the sandbags be removed prior to any large-scale nourishment project.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary