

March 9, 2016

To: Mayor Ron Watts, Mayor Pro-tem Councilor Carol Scott, Councilor's Lou DeVita,
Peter Larkin
From: Councilors' Mark Benton and Rich Cerrato
Subject: Palm Cove - Independent Investigation

We are requesting the Council's approval to appoint an independent Special Investigator with subpoena authority to investigate the Palm Cove development to include the UDO omissions and the reported FEMA violations.

Thus far among the critical UDO ordinances that have mysteriously been omitted have directly impacted the Palm Cove and the potential development of Mad Inlet:

- (1) 150.306 Alterations of sand dunes.
- (2) 150.309 Filling, grading and excavation.

Palm Cove is zoned CR-1 and is a FEMA VE Zone. It is also covered under Article 12 of the UDO. The problems are: The Sunset Beach Fill and Grade Ordinance was not enforced. Apparently after paying a consultant \$50,000 to develop the UDO which was then passed by the Town Council in 2012, the Fill and Grade Ordinance along with the other ordinances cited were omitted. These omissions have created a lack of confidence in our processes and systems.

Since these ordinances have never been rescinded, it is our belief these ordinances remain in effect. In fact, the Fill and Grading Ordinance continued to be enforced into 2015 by experienced Town Code Enforcement Staff who apparently were unaware the ordinance had been omitted.

Frankly, it was only when new and inexperienced staff (unfamiliar with coastal issues) arrived that the ordinance ceased to be enforced. During this time lots 8 and 9 were given permission to place 5 to 6 feet of fill on those lots contrary to the Fill and Grade Ordinance and to FEMA requirements for development in a VE Zone - not to mention the bulldozing and alteration of the dune system for the two housing units in direct violation of FEMA requirements. We find this deeply troubling and believe it is very important to establish approval authority that we can rely on.

Moreover, why did the Staff not enforce Article 12, Page 12-3 of the UDO or the other following segments? To quote:

- This article shall apply to all **Special Flood Hazard Areas** that are identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its **Flood Insurance Study (FIS)** and the accompanying **Flood Insurance Rate Maps (FIRM)** for Brunswick County dated June 2, 2006, which are adopted by reference and declared to be part of this ordinance.

- If Non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the **Base Flood Evaluation** or otherwise cause adverse impacts by wave ramping and deflection on to the subject structure or adjacent properties. (Page 12-7).
- A statement, if in Zone VE, that there shall be no alteration of sand dunes which would increase flood damage. (Page 12-8). This article in the UDO is the Town's attempt to fulfill this FEMA requirement – F. New Buildings in V Zones; Avoid areas of sand dunes and mangroves. Human alterations of sand dunes and mangrove stands within V Zones, is prohibited unless it can be demonstrated that such alterations will not increase flood damage.
- Both of these natural features are protected against alterations because they are important first lines of defense against coastal storms and can do much to reduce losses to inland coastal development.
- Generally, you can assume that any removal or other alterations of a sand dune will increase flood damage. The burden shall be placed on the permit of the applicant to demonstrate that this will not occur. This requires a report by a coastal engineer or geologist (NFIP Requirements). If there is such a report in the file that demonstrates or states there will be no increased flood damage, we are requesting a copy.

The January 14th Brunswick Beacon article; “Sunset Beach staff members can’t explain UDO fill omission” and now other related ordinances is unacceptable.

We find it extremely difficult to understand how and why these many errors have taken place and how the UDO ordinances impacting coastal development were mysteriously truncated. We find it necessary to determine, how and why these events occurred to ensure they are not repeated. We believe this can best be accomplished by an independent Special Investigator with subpoena authority to obtain depositions under oath. The taxpayers’ deserve total accountability.

Thank you.

Mark Benton and Rich Cerrato

CC: S.R. Parker