

COVER PAGE

BRIEFING NOTES FOR TOWN OF SUNSET BEACH

MEETING DATE: JUNE 20, 2017

Prepared By

Duane Lewis, resident

BRIEFING NOTES FOR MEETING WITH SUNSET BEACH COUNCIL

SOCIAL—In 2004 the proposition of annexing Medcalf Dr. S.W. and several adjacent streets and roads, was revealed by then councilman Ronald Klein, later to become Mayor. The approach was that as a contiguous street to the Town's current jurisdiction residents were using the services of the Town's maintained streets, police and fire. Promising maintenance of the roadway seemed to be a good trade and worth the extra taxes. Medcalf Drive residents want to be good citizens and not looked upon as "freeloaders."

Later in a meeting, on August 22, 2007 Mayor Ron Klein and Town Administrator Linda Fluegel also discussed with Duane Lewis, Chairman of the Sunset Lakes HOA, Inc. how The Town would apply for emergency public funds (Federal and State) to rebuild the Medcalf Lake dam should it be destroyed by an act of nature. She said it had been done for Sea Trail in the past to repair bridges and dams as a measure to preserve the tax base.

POLITICAL— *"All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole."* **N.C. Constitution Article I, Section 1-2.** Democracy is unique in that it is based on laws, backed up by a fair and balanced judiciary, and executed by fair and responsible representatives, i.e. elected officials.

ECONOMIC—Annexation cannot impose taxes on citizens without providing meaningful benefits to the newly annexed area. See ***Nolan v. Village of Marvin, 360 N.C.256, 624 S.E.2d 305 (2006)***. "...a municipality cannot perpetuate a **policy** of collecting taxes from all residents, while denying substantially similar municipal services to only some of those residents." See ***Dunn v. The City of Charlotte, 284 N.C. 542, 201 S.E.2nd 873 (1974)***. See generally ***N.C. Const. Article I, Sec 19***.

In a letter sent to the Town dated July 21, 2009 the Town admitted that they had agreed to maintain Medcalf with an attempt to repair one pot hole, that was growing exponentially, with a sand slurry that made it worse. Objecting to this fix

in a letter dated August 3, 2009, the Chairman of Sunset Lakes HOA explained to Mayor Klein, why it did not work and it was not what was promised when annexed. The promise was that the The Town of Sunset Beach would ***maintain the roads in the same condition*** they were in at the time of annexation. The annexation map included in the acreage the Rights of Ways (R/W).

Pot holes are one of the major causes of automobile accidents resulting in fatalities, especially in motorcycle accidents. This should be of grave concern to Council because deterioration of roadways puts the burden of responsibility directly on your conscience. Children, the physically handicapped, the bicycle and walking public need safe roadway surfaces. They do not need to be exposed to the automobile and truck-driving public swerving to avoid pot holes and injuring or even worse as they exercise their right to use the roadway. Residents and tax paying owners were told that the roadway would need to be brought up to NC DOT standards before it would be repaired or maintained. This item of news never was mentioned in the conversations and paperwork leading up to the annexation. In a "SPECIAL REPORT: The Hole Truth about getting paid for pothole damage, Chanel 6, Jon Evans, February 6, 2015," reported the Department of Transportation was held responsible and paid for damages done to vehicles caused by potholes. The same is true for municipalities that fail to be responsible for their roadway surfaces. Sunset Beach, failing to live up to their promises, it was assumed, that Sunset Lakes HOA might remain liable for Medcalf Dr.

Showing more concern than Sunset Beach would show, Sunset Lakes budgeted, fixed all pot holes and has maintained the Roadway surface and drainage for the past 13 years since the annexation. In 2012 Laura Lewis wrote an article with pictures of the Chairman of the Sunset Lakes HOA standing beside the new sign at the corner of Sunset Lakes Blvd. and Medcalf Dr. SW. In the article, she referenced then Mayor, Rich Cerrato, for trying to help maintain and repair annexed roadways but that he gets "racked over the coals" for trying to be fair and honest. The Mayor, Rich Cerrato, November 5, 2012 did offer a reimbursement of up to \$500 or 50% of the invoice, whichever is less, per year for involuntary annexed communities consisting of fewer than 50 homes. The roadway surface, to date, is still in good condition but the issue of responsibility is much bigger. Medcalf should get what it was promised. Twenty-one other roadways, identified in Counsel's letter of 12 August 2015, current as of 20 May 2015, where Sunset Beach collects taxes should also be treated honestly and justly and Sunset Beach should comply with the State of North Carolina Statutes

and amend their Policy accordingly. The Policy is identified as **98.18 (B)** of the Ordinance Code. The State Statutes are **160 A-58.10, 160 A-35 (B)**, *Case Law cited above and the Constitution of the State of North Carolina*. I can recite them if you wish but I would encourage the Town's legal Counsel to school you further.

Policy 98.18 (B) has been referenced as a "**town tradition**" of not accepting roadways that are not up to DOT standards. A retired Councilman, said the Policy could not be changed because "... the Town could not afford it." Should this issue not have been thought out before the Annexations? This smacks of giving the residents and property owners the "bird." The Annexation Report generated January 28, 2005 by the Town Administrator, Linda Fluegel identifies revenue from the Annexation to be **\$22,575** from a Tax Ad Valorem Valuation of \$17,365,500 rate of \$0.13 per \$100. The Expenditures attached to the report are startling: Police Protection-0, Mosquito Control-\$635, SolidWasteCollection-0, Fire Protection-0, Street Maintenance-0, WaterDistribution-0. **TOTAL EXPENDITURES \$635. This is a serious disproportionate and unfair distribution of monies.** Question: Where did the other \$21,940 go? Times 13 years equals \$285,220. This is more than the "bird." Policy 98.18 (B) appears to have been crafted willfully, purposefully, and with intent to increase revenue and provide discriminatory services. **Where is the quid pro quo?**

Dated May 1, 2008, Jason Kay, Senior Staff Attorney with the NC Institute for Constitutional Law wrote that: "A municipality must provide substantially similar services to annexed residents as it provides to other residents." He went on to say that the services must be provided on a nondiscriminatory basis and they must be meaningful. He cited case law noted above to back it up.

A mailing list has been generated and mailing labels printed of owners of properties along these 22 streets and roads. Many are residents and vote in the elections. Intent to contact these 360 owners is evident. The mailing list and labels are here. This "**Town's Tradition**" has gone on too long. Tensions have mounted and case law has been discovered and appears to prove a wrong has been done to these annexed areas for the last 13 years. It must stop immediately.

The question last raised by your Legal Counsel G. Grady Richardson, Jr. is that the Town cannot repair private roads. In 13 years, this is the first time "private vs. public" has been mentioned. Why did the former Town Attorney and former Town Administrator not mention this? By every definition in the dictionaries and legal journals nothing can be found that would indicate Medcalf is anything other

than public. Eminent Domain is in practice by de-facto. Eminent Domain has been exercised in every respect; to Utilities placing water and sewer lines in the rights-of-way, to Waste Management collecting garbage, to US Postal services, to Fire and rescue, to police patrols. The Chairman of the HOA, with permission from the Sunset Lakes HOA Board of Directors, dedicated the rights-of-way to Medcalf Drive to the Town free from compensation. It was already existing as an Eminent Domain possession of the Town, Utilities, and public service vehicles. It seems only proper that heavy vehicles owned by these entities should use the access and not be denied by someone claiming private use only. And, because Medcalf residents are already paying to the Town of Sunset Beach taxes that have a proportionate part that covers maintenance and repair of the same said roadway the Town should maintain and repair from the General Fund. DOT standards control nothing as reflected in the State's Constitution, State Statutes and Case Law. Additionally, DOT standards were never mentioned in the Annexation reports and the Annexation Map includes the rights-of way in the total acreage. Currently, many streets and roads that are being repaired and maintained using money from the general fund of the Town of Sunset Beach and getting Powell Bill Funds are not compliant with the DOT standards.

To satisfy the legal challenge by your legal Counsel, G. Grady Richardson, Jr. the Sunset Lakes Home Owners Association, Inc. acting in unanimity, at their Annual meeting on April 29th, 2017, held at Captain John's Restaurant dedicated the roadway and rights of way of Medcalf Drive SW to the Town of Sunset Beach for the purposes of repair and maintenance. Additionally, an agreement is hereby presented to the Town for execution by and between the HOA and the Town.

The above dedication is the second offered to the Town. Al Branham, resident and member of the Sunset Lakes HOA, at the regularly held Annual Meeting April 28, 2012 made a motion that passed unanimously, to dedicate said roadway to the Town of Sunset Beach. This resulted in a response; a letter dated May 17, 2012, then Town Administrator, Gary Parker agreed to bring the roadway up to DOT or Town's standards and assess the residents 100% of the costs. This was an offer that could not be accepted. No estimate of the costs could be presented for reasons of the logistics, engineering, less than adequate R/W and so on. Later discoveries of Law and State Statutes and Constitutional guarantees, backed up with Case Law referenced above, makes all the excuses obsolete and not legal, i.e. *mute*.

In another bizarre e-mail or phone conversation the HOA was told that the HOA would need to have the roadway surveyed for it to be *considered* for acceptance by the Town. This demand was relayed by Town Administrator, Susan Parker earlier this year. This would add another layer of cost. And for what? The roadway in question is delineated on the recorded maps of the subdivision, Sunset Lakes Subdivision, Section I, Map Cabinet h, page 399. In addition, the Annexation Map includes the road rights of way.

In a very real way one can only imagine how this annexation was contrived. Only the participants know for certain. But, willingly and with forethought this “tax grab” was executed. The Town of Sunset Beach at a Special Called Meeting and Public Hearing, July 11, 2005, Linda Fluegel, Town Administrator, reported and recorded in the minutes that Sunset Lakes Subdivision disqualified for annexation. There is a lingering question as to the legality of the Annexation of Medcalf Dr. SW since it is part of and now splits the Subdivision. Michael Lowrey, writing in the Carolina Journal, May 3, 2003 describes how **“NC Cities Go On Annexation Binge.”** Quoting Johnathan Hill, director of Citizens for a Sound Economy North Carolina, “Involuntary annexation turns the idea of democracy on its head and should be stopped.” In a more sinister place we can only imagine how some individuals came up with Ordinance Code 98.18 (B). Were they unaware or simply ignoring **State Statute 160A-58.3**. See letters to Sunset Beach Town Council November 10, 2014 and again in 2015, October 16. Apparently, they were unaware of the: *Dunn v. The City of Charlotte*, 284, N.C. 542, 201 S.E. 2nd 873 (1974) and *Nolan v. Village of Marvin*, 360 N.C.256, 624 S.E.2d 305 (2006) and *N.C. Const. art I, Sec 19*, case law. Or, they didn’t care and decided to get away with it as long as they could. In many ways, this seizing of taxes and denying equal services looks a lot like the reasons that led to the “Boston Tea Party.” Are there any among you that think everyone should pay the same tax rate and some should receive less services? Certainly, it would be considered selfish and an insult to those receiving the lesser of the services if it were true.

Forced annexation did stop or was severely curtailed when the legislature rewrote the annexation statutes. However, the question regarding road maintenance and repair is a different issue. As legal or not legal as the forced annexation may or may not have been in 2004, the Policy or Ordinance Code 98.18 (B) requiring that roads be brought up to DOT standards is a mistake. It should not be enforced or used as a test. It is a myth. Once the annexed area has been taxed it is incumbent on the taxing authority to treat it equally with **all** the taxed area. Once

again please review the case law and the appellate courts' rulings above. This is one **"Town Tradition"** that must end.

Solution One: Change the Policy to read that the Town maintain the roadways in the same condition they were in when annexed. ***As promised.***

Solution Two: It seems only reasonable and proper that if the Policy is not amended or withdrawn a proportionate share of the tax money collected over the years be refunded to the payers and they can get their own contractors to take care of something the Town cannot seem to find the courage to take responsible action to correct. A request that the Town's Budget Officer prepare a document that identifies that part of each tax dollar collected from Medcalf residents and property owners that should have paid for road repair and maintenance be sent immediately to the Sunset Lakes HOA. The Town should also reimburse the HOA for the funds they denied the residents which would have been available from the Powell Bill Funds. Sunset Lakes HOA could use that money now. ***Compensation for being denied equal services for 13 years including Powell Bill Funds plus damages caused by having to hire lawyers to get the justice deserved.***

Solution Three: Political. As cited above referencing North Carolina Constitution Article 1, and State Statute 1-2; ***If Council will not move to obey the laws and the will of the governed they should be replaced ".... for the good of the whole."***

Solution Four: De-annexation with appropriate compensation for receiving substantially less services than the rest of the taxpayers for the last 12 years.

Personal note: Case Law appears to confirm what has been said in public forum for more than 10 years. Excuses have changed, Legal Counsel has changed, Town Officials have changed but that which is written in Law (State of N.C. State Statutes), and tested in the Courts system has not changed. I have no legal training, and claim no certificates of authority to represent any legal opinions. I can only testify that what I have presented is true and accurate to the best of my ability to research and present the findings to you.

Thank you for all you do to try and govern our Town. I recognize it is a job with very little pay and very little appreciation. By eliminating Policy 98.18 (B) you would be taking a giant step toward restoring confidence and pride in our community. It would show leadership and a concern to treat people with dignity

and respect and fairness. It might also de-toxify the de-annexation requests. Discarding the policy might raise the image of the Town and the Council. If pride, fairness and justice are not enough how about legal fees? The Town of Sunset Beach (Legal Fees Related to Subdivision Matters, Bonita L. Bray, MSA, Finance Director) from a small sum of \$650 paid out in legal fees in 2014 the total through April 30, 2017 has risen to almost \$200,000 to defend Council's actions.

Thank you again for allowing this opportunity for us to exercise a democratic right to be heard. May God bless the Town of Sunset Beach.

Duane Lewis and Selected Residents of Medcalf Drive SW

A handwritten signature in blue ink, appearing to read "Duane Lewis", with a stylized flourish at the end.