

**NC COASTAL RESOURCES COMMISSION (CRC)
Emergency Meeting (Conference Call)
May 24, 2012, DCM Morehead City, NC**

Participating CRC Members

Bob Emory, Chair
Joan Weld, Vice Chair
Lee Wynns
Pat Joyce
Renee Cahoon
Charles Elam
David Webster
Veronica Carter

Present Attorney General's Office Members

Mary Lucasse
Christine Goebel
Amanda Little

CALL TO ORDER/ROLL CALL

Bob Emory called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Jerry Old, Bill Peele, Melvin Shepard, Ed Mitchell, and Jamin Simmons were absent. No conflicts were reported. Based upon this roll call, Chairman Emory declared a quorum.

VARIANCES

Topsail Reef Homeowners Association, Inc. (CRC-VR 12-04), Sandbags
Christine Goebel

Christine Goebel of the Attorney General's Office was present and presented arguments on behalf of the Division of Coastal Management staff. Mrs. Goebel reviewed the stipulated facts: The HOA consists of eight buildings with building #1 located the closest to the New River Inlet. The property is within the Ocean Erodible and High Hazard Flood Areas of Environmental Concern. The property is immediately south of the current Inlet Hazard AEC boundary as it exists today, but it is within the proposed AEC box that has been presented to the Commission. In 2010, DCM issued a CAMA Major Permit to the Town for a beach nourishment project. Phase One of that project authorized the placement of beach fill in the area that includes the property at issue in this case. In January the Town of North Topsail Beach voted to proceed with Phase One of the shoreline protection project. Phase One of the project is estimated to cost 7.5 million dollars. The Town's proposal is to pay for 2.5 million with existing funds, 2.5 million will come from a DWR Grant which hasn't been finalized but is included in the Governor's budget, and 2.5 million will come from Onslow County. If Onslow County doesn't agree, the Town will do a special obligation bond

that will be paid for through occupancy taxes. The Town plans to begin Phase One this winter. Hurricane Irene hit in August 2011. Following that the HOA planned to truck in sand when the turtle moratorium was over. At an on-site meeting in November of last year, DCM field staff told the HOA representatives that they did have the option for a sandbag permit because the structures were imminently threatened. The HOA continued to go for the sand push or trucking in sand options. In December of last year there was a meeting of Town officials and the HOA. The Town officials indicated that there were probably going to do beach nourishment in the near future and the HOA started looking at sandbags as an option. In January 2012, an engineering report was conducted which looked at the pile penetration depths for the buildings and the report is included in the exhibits. In February DCM issued a CAMA General Permit allowing for the installation of 1,500 linear feet of sandbag revetment along the ocean shoreline in front of the eight buildings. Consistent with the Commission's rules the sandbag structure was limited to 20 feet in width and 6 feet in height and no more than 20 feet waterward of the pilings. Pursuant to this permit, the HOA began installing sandbags in March of this year and as of April 13, 650 linear feet has been completed. Since April 13 no further sandbag installation has taken place. In April there was a storm that lowered the sand level under the property by approximately 4.3 feet. To address the ongoing erosion problems the HOA applied for an emergency Major Permit on May 3 and DCM issued it a day later. The Petitioners requested permission to install sandbag structures 40 feet wide for buildings 5-8 and 45 feet wide for buildings 1-4 and up to 12 feet high. Because of the Commission's rules, the permit was issued but conditions limit the size of the sandbag revetment to 20 feet in width and 6 feet in height with placement no further waterward than 20 feet from the waterward pilings. On May 9 Petitioners filed this variance request and requested an expedited hearing. In addition to the larger sandbag size sandbag structures and their location, Petitioners are also asking for the bags to remain on site for up to eight years instead of the permitted five years.

Mrs. Goebel stated Staff's position on the first criteria. Specifically, for buildings 1-5 this condition is met, but not for buildings 6-8. Staff agrees that standard sized bags may not be sufficient to protect buildings 1-5, which are closest to the inlet, from damage. However, for buildings 6-8 staff argues that Petitioner has not met its burden to show why the bigger bags are needed where the sandbags have already been placed. Staff disagrees that Petitioners have met their burden to demonstrate that strict application of the sandbag size limits will cause buildings 6-8 unnecessary hardships. Staff and Petitioner also disagree on the second criteria. Staff argues that in three of the last six years no spoil was placed on the beach in front of the Petitioner's property. This can hardly be a condition peculiar to the property when it happens every other year on average. Petitioners argue that the property's location near a migrating, dynamic inlet is a peculiar condition which causes its erosion hardships. Staff agrees that this property is affected by the inlet and is included in the proposed New River Inlet Hazard AEC box. However, the Commission's rules specifically recognize that inlets are especially volatile and are known to regularly move causing both erosion and accretion so it is difficult for staff to agree with petitioners that merely being located near the New River Inlet fulfills the peculiarity criterion. Staff and Petitioner agree on the third criteria. Petitioner has done nothing to accelerate the erosion affecting the property and has taken steps to address the problem. For the fourth criteria Staff agrees with Petitioner that for buildings 1-5 the regular sized sandbags may not be sufficient to protect those buildings' foundations until nourishment takes place. However Staff asserts that there is no evidence in the record that the sandbags do not afford protection to the foundations of buildings 6-8. Staff does not believe that extending the time limit on the bags for three additional years to eight years is in the spirit, purpose or intent of the Commission's rules. Staff agrees that the variance will secure public safety and welfare and will preserved substantial justice because it will allow the Petitioner to protect the property while it seeks a long-term solution and undertakes a beach nourishment project.

T.C. Morphis of The Brough Law Firm represented Petitioners. Mr. Morphis argued the hardship is caused by conditions peculiar to the property. Specifically, the stipulated facts include the fact that the elevation at this location has dropped nearly 4.5 feet in a single month. There is no evidence that this happens all the time, but it has happened in North Topsail Beach. The unique geography near the New River Inlet and the 4.3 feet of elevation drop are conditions peculiar to the property. Our client was attempting to put in a sandbag line and now they can't because the elevation has dropped so much. Although there have been bags installed in front of buildings 6-8 and part of 5, these bags are already out of compliance. If we are not granted some kind of variance for these buildings then we simply have a bag line that has been compromised and we need to be able to put sandbags back in place. We are not planning to put the 12 feet high and 40-45 foot wide sandbag revetment in front of buildings 6-8 at this time, but we need the flexibility to be able to do it in the future.

Lee Wynns made a motion to support Staff's position that strict application of the rules, standards or orders issued by the Commission will cause the petitioner unnecessary hardships for buildings 1-5. Renee Cahoon seconded the motion. The motion passed unanimously (Weld, Wynns, Joyce, Cahoon, Elam, Webster, Carter).

Veronica Carter made a motion to support Staff's position that strict application of the rules, standards or orders issued by the Commission will not cause Petitioner unnecessary hardships for buildings 6-8. Lee Wynns seconded the motion. The motion passed unanimously (Weld, Wynns, Joyce, Cahoon, Elam, Webster, Carter).

Lee Wynns made a motion to support Petitioner's position that hardships result from conditions peculiar to Petitioner's property. Pat Joyce seconded the motion. The motion passed with five votes in favor (Weld, Wynns, Joyce, Cahoon, Elam) and two opposed (Webster, Carter).

Renee Cahoon made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. Veronica Carter seconded the motion. The motion passed unanimously (Weld, Wynns, Joyce, Cahoon, Elam, Webster, Carter).

Veronica Carter made a motion to support Staff's position that the variance requested will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and will preserve substantial justice. Commissioner Carter further moved to condition the permit to allow the sandbags for five years and after the completion of Phase 1 of the Town's nourishment project that any unvegetated and unnecessary bags be removed. Lee Wynns seconded the motion. The motion passed unanimously (Weld, Wynns, Joyce, Cahoon, Elam, Webster, Carter).

This variance request was granted with conditions.

With no further business, the CRC adjourned.

Respectfully submitted,


Braxton Davis, Executive Secretary


Angela Willis, Recording Secretary