

MINUTES  
BUILDING LINE COMMITTEE  
OCTOBER 24, 2003

The meeting was called to order by Town Manager Andrea Surratt at 3:00 p.m.

Attendance: **Sue Bulluck**, President/Owner, IORC, Inc.; **Eddie Collins**, Contractor, Collins Building, Inc.; **Tracie Davis**, Wrightsville Beach Planning and Parks Director; **Eva Elmore**, Real Estate Agent, Intracoastal Realty; **J. C. Hearne**, Attorney with Lineberry, White, Hearne & Ballantine; **Tom Jarrett**, U.S. Army Corps of Engineers; **Fred Johnston**, Land Surveyor/General Contractor; **Joseph Kalo**, Graham Kenan, Prof. of Law, UNC – Chapel Hill; **James MacDonald**, Attorney, Allen, MacDonald & Davis, TLLC; **Spencer Rogers**, Coastal Engineering Specialist, NC Sea Grant; **John Wessell**, Town Attorney; **Tony Wilson**, Wrightsville Beach Building Code Administrator.

Mrs. Surratt welcomed the group and recognized Mayor Roberts in the audience. She explained that the goal of the first meeting of the Building Line Committee was to give everyone a chance to gather information and to understand the issues. Mrs. Surratt thanked Planning and Parks Director Tracie Davis for her efforts in preparing for the meeting. She thanked the committee members for their time and said that the Town was very appreciative of all the insight they would provide.

Ms. Davis thanked everyone for attending the meeting. She also thanked the Board of Aldermen, the Town Manager and Town Staff for helping to put together this committee. She explained that several concerns had come up from citizens regarding the 1939 building line and the purpose of the committee was to research the building line and compile the facts. Ms. Davis then reviewed the process that would be followed and said that the committee would put together questions to be researched and also set the date for the next meeting.

Following an introduction of each committee member, Mr. Wessell stated that what he hoped to accomplish was to give the group the benefit of the information he had put together about this and related items. He said that it was important for everyone to have their facts as clear and understandable as possible. He then reviewed the following facts:

1. The 1939 building line came into existence by an Act of the General Assembly in 1939. This Act was adopted with what may have been one of the first renourishment projects at Wrightsville Beach.
2. The 1939 Act provides that the building line was established and that the property that lies to the east was conveyed in fee simple to the Town. The property on the west side was owned by the property owners at the time the line was established.
3. The Town had to produce a map establishing the building line. Three maps were recorded at the Register of Deeds in 1939. He said that the building line had been on record for over sixty years.
4. Court decisions make it clear that the property lying on the east (ocean side) of the property line is owned by the Town by virtue of the 1939 Act.

5. The 1939 Act made it clear that if any property owners had any objections in 1939, they had a six-month period after the maps were recorded to dispute or abandon any claim and be forever bound.
6. “Building” and “Property” Line has been used interchangeably. In 1981, the building line was changed to property line so it is assumed that property line is correct.
7. The 1939 Act also said that the Town could establish setbacks.
8. A map was prepared in 1938 in anticipation of the beach renourishment project showing the building line. It also showed where the existing high water line was (to the west or the landward side of the property) and where it would be. The property east of that line was under water and owned by the State. At that point, it was not private property and could not be “taken.” (Referenced NC Supreme Court Decision from 1970 regarding Carolina Beach.)
9. A map was prepared about a year ago by Brian Hobbs when we were having difficulty locating the old building line because some of the markings had been washed away. It was not intended to create a new line because we do not have the authority to create a new line. The line is based on the 1939 line and not a map created later.
10. The Prewitt lawsuit had to do with setbacks and the Town’s authority to impose setbacks from that property line. The Court of Appeals has decided that the Town does have the authority to impose setbacks. Important to know that the Town can set and change the setbacks.
11. Enclosed in packets was a copy of the 1981 Study regarding extension of the building line in an attempt to extend the beach renourishment project north of where it was. It is questionable whether the General Assembly would create a building line today like they did then. It is conceivable that the Town could create a line but it would have to be through the condemnation process.
12. There is a stretch of beach that is not owned by the Town beginning at Heron Street and extending to where the new Shell Island begins. It is assumed that the Town’s setback rules would also govern that. When someone builds a house on the ocean front, there would either be a setback from the Town’s property line or a CAMA setback, whichever is more restrictive. These two regulations come into play and control where a house can be built.
13. An opinion by the Attorney General regarding who owned the beach on Wrightsville Beach on the ocean front in 1939 stated that the property that lay to the east of the 1939 property line was effectively in the name of the Town of Wrightsville Beach.

14. A 1985 Act states in part that when there is a beach renourishment project and sand is deposited and the beach is raised with the use of public funds, that property is owned by the State of North Carolina. It means that the beachfront property is either owned by the State or the Town, but still public property and limitations still exist.

Ms. Sue Bulluck acknowledged that she had brought the 1939 Legislative Act to the attention of Mr. Wessell and the Prewitts and participated partly in getting the ruling that we have. She referenced a packet of material that she had distributed substantiating what Mr. Wessell had said. Regarding what the property or building line was prior to 1981, Ms. Bulluck stated that people's deeds referred to it as a building line and still allowed people to own to the high water mark. She said that deeds that had been written by a variety of attorneys did not recognize the 1981 line. She noted that there had historically been confusion over what the line was and the terms "building line" and "property line" had been used interchangeably as late as the last six months. Ms. Bulluck then reviewed the State's and the County's definition of building line. She stated that, based on the recorded maps, some deeds show the 1939 line and some do not.

Mr. Tony Wilson noted that the Town's information was available online and in the Planning office.

Ms. Bulluck stated that she was hired and worked with Wright Holman to take a look at the whole beach. She said that they discovered more property than the Prewitt's property that had problems. She noted that the packet of information also contained material showing the Surf Motel and other properties that have been surveyed that are in the setback or to the building line. Ms. Bulluck stated that there were approximately 25 homes in the middle of the beach from the Yacht Club north to Heron Street included in a long list of properties with problems. She said that the same was true of duplexes and triplexes in the middle of the island. She explained that her concern was whether we treat everyone equally moving forward and whether we could apply a universal line from north to south that would create a consistent building line for everyone. Ms. Bulluck stated that the CAMA line does that and that was the most valuable line we have because everyone knows where it is. She referenced other materials included in the packets in order to show the hodgepodge of what we have. She said that her solution was to adopt the CAMA line as the universal line based on having been involved with CAMA since 1978.

Following a brief discussion regarding the 1939 beach renourishment project, whether it was a federal project, and why the original line may have been created, Ms. Eva Elmore stated that she felt they also wanted to have rights to do certain things like streets and public parks and it was a way to claim property that was not there in 1938. She said that CAMA regulations were not enforced then and it also gave the Town the rights.

Mr. Wessell stated that he felt the Army Corps of Engineers might have been involved in the 1939 beach renourishment project since he had obtained the 1938 map from them. He also noted that the authority to build streets and parks had been given to the Town.

Professor Joseph Kalo stated that the Act said it was a fixed title. He said that they used the language in part to keep it open for the use of streets and parks because of a North Carolina Statute that precludes any claim of adverse possession by private property owners for streets, parks, etc. He stated that the State was giving ownership to the Town to use for public purposes and there could be no private claims.

Mr. Tom Jarrett stated that in the mid sixties, part of the requirements for federal participation was the establishment of a property line or easement line along the ocean front and the federal project would be constructed oceanward of that line. He said that all property seaward of that line had to be open for public use. He stated that at the time the Wrightsville Beach project was being finalized, the building line was used as the construction line for that project. Mr. Jarrett explained that the problem, when looking where to put this line, was whichever you use has to be landward of the defacto federal project. He noted that the CAMA line could move but the federal line was fixed and could not be moved.

Mr. Spencer Rogers stated that since 1965, there were a number of ways to meet the federal requirement of no houses being built in the federal project area. He said that easements were now required.

Ms. Bulluck questioned whether there was a fixed federal line that runs north and south by the whole beach as determined by the federal government or whether it was just in the space where beach renourishments are conducted?

Mr. Jarrett stated that from his recollection, the Town's building line was used as the control line for the federal project. He said that the back tow of the dune was probably seaward of that line. He noted that it was just a matter of convenience since that line already existed and was owned by the Town. Mr. Jarrett stated that it also met the federal requirement that that land would remain open to public during the life of the project that the Town had agreed to.

Mr. Rogers stated that if the Town allows someone to build seaward of that line or if the Town builds there, they run the risk of losing that project.

Ms. Bulluck stated that it had frightened her when she saw the buildings that were scattered in that area because there were multiple buildings showing in the public trust area. She said that if that area were owned by the State, it would remove the restrictions to the Town for that project.

Mr. Wessell stated that he had found very few examples where structures were built beyond that line. He said that it seemed to taper out around the '80s.

Mr. Jarrett pointed out that structures intended for private use would not be permitted. He said that it was clear that the Corps was using the Town's building line and the project was fitted seaward of that line.

Mr. Wessell asked if anyone saw any issues as far as question of ownership with property lying east of the property line or building line?

Mr. Fred Johnston expressed concern that if it was not under water before 1939, then it could be a taking.

Mr. Wessell noted that there were still deeds that call to the high water mark. When asked by Mr. Hearne what kind of notice was given to owners of property in 1939, Mr. Wessell stated that he did not know. He said the only lawsuit that he had seen was the Carolina Beach one. When asked by Ms. Elmore if the legal descriptions were changed at that time, Mr. Wessell stated that people who owned oceanfront property did not own that property since it was under water. He said that the Act was adopted and he did not know about legal description changes.

Professor Kalo stated that in 1939, the high water mark was essentially where this property line was going to be located so those deeds were a legal description. He said that everyone probably knew what was going on and people would have had notice and then you had the legislation being passed. He stated that everyone had the opportunity to object and that forecloses it.

Mr. James MacDonald stated that in 1939, you did not have setbacks so you did not have these problems. He said that the deeds at that point had all sorts of descriptions and they did not really know where they owned. He stated that the State Legislature said they would make the building line east of where the property line was since it was under water and the people did not own it at that time; and, if there was accretion, the people would not own that land either. Mr. MacDonald stated that he thought most attorneys would acknowledge that some deeds still have old descriptions because they have not been turned over – the property has been kept in the family. He said that in most cases, most of the title attorneys would take exception to any title lying east of the Town of Wrightsville Beach's building line as shown on the map.

Ms. Bulluck stated that for some reason in 1981, John Newton, attorney for the Town, needed to establish boundary lines for the Town and that was when the law was changed to say "property line." She asked if there was a recording of that Act anywhere? She said that that should have been a second clue to people but she had found no notice of that. When asked what prompted the change, Ms. Bulluck stated that there was a challenge to the Town's property at the north end and the Town had to reestablish their boundaries.

Mr. MacDonald stated that a lot of Legislative laws are not recorded. When asked by Mr. Wessell if the 1981 line had changed anything east of the line, Mr. MacDonald stated that it had not because the effect was the same all along since the owner owned title west of the building line. He said that the attorneys understood and the law was uniformly applied that that was a property line and not a building line.

Mr. Jarrett stated that if you refer to the Town's building line as the end of the property, then that was the property line.

Mr. MacDonald stated that if you go up and down the coast, it might fluctuate. He said that even in 1939, there was not a fixed line – it had to be an approximation.

Ms. Elmore expressed the need to re-look at things because there had been a lot of changes – the Town's position on setbacks; there was much more land there now; and there was no true definition of property line.

Mr. Wessell stated that he thought the Act clearly defines where the property line is and what the setbacks are.

Professor Kalo stated that if you were talking about a structure built over this line, one difficulty with the Town doing anything with that was that the Act says if the land is not used for parks and whatever or if violations exist, then it reverts to the State. He said that he did not think the Town has the authority to do anything.

Ms. Bulluck stated that if you look at the CAMA line as the universal line, you have a State base and it is kept in one place because of the Public Lands Act.

Mr. Rogers pointed out that the line was for regulation and not for ownership.

Mr. Wessell asked what the Town could do; whether we should move the line further out to the ocean; and what authority does the Town have to move this line closer to the ocean in view of what has been talked about with the State and Federal requirements.

Mr. MacDonald stated that he would have reservations because he did not believe the Town would have the authority to convey ownership of land lying east of the building line due to the legislation enacted. He said that beyond the legal concerns, he did not think it would be wise to move it because of beach lands being subject to erosion. He noted that we have the berm to protect it and if we move the line, he assumes it would be west of the berm and he did not think it would be prudent to move it.

Mr. Hearne stated that he had an issue with knowledge of this in the past. He agreed that there were ownership issues with structures in violation and it was also questionable as to how to change setbacks.

Mr. Johnston stated that he could see that between 1939 and 1981, there was no zoning in place and people could build up to the line; and in 1981, maybe people did not know about the law. He said that it seems like we need to establish a line – a fixed line – that would not put these people in violation that are in there.

Mr. Jarrett referenced the south end jetty and the land that had accreted that had not been renourished. He said that the original fill went in prior to the construction of the south jetty and the water probably went under those homes.

Professor Kalo stated that one question was whether they needed the Act at all in 1981 given the Carolina Beach case.

Mr. Jarrett stated that most of it had been north of the Blockade Runner. He said that you could not go in and move that line seaward of the project line. He noted that an easement was required now – a 15-foot buffer between that line and the back tow.

Mr. Rogers stated that it would be likely that the Corps of Engineers would have to pull out of the project if we move the line and the State would also come into play. He pointed out that this would be a clear case of trust laws being violated and they would demand the original commitments.

Ms. Bulluck referenced a letter stating that the land now belonged to the State because of backwash. She said that we have an absolute line that we can point to on a map. She expressed concern with being able to say “the State owns this and the Town owns that” because of hurricanes, beach renourishment, bulldozing, etc. She said that she was not for moving the line eastward but she was for continuity and for something that does not get disturbed by hurricanes. Ms. Bulluck noted that we had three maps with different lines.

Mr. Johnston stated that if you get three surveyors, you would get three views but they would not be dramatically different.

Mr. Wessell stated that there was only one line and he thought it had been there since 1939.

Mr. Jarrett stated that the Corps used the building line to place the fill eastward of the property line. He said that the government could not put fill on private property without being paid. He stated that if the Corps went in and established the line, there may be a problem – but there was a line in existence. He said that in Kure Beach, they had to get easements from each property owner and ownership was not conveyed, just use of that property.

Mr. Rogers stated that when a renourishment project is constructed, the vegetation area is surveyed and remains fixed.

Ms. Bulluck stated that there had been movement of the vegetation line to the point where a whole lot of south end had water lapping up under the houses. She said that it was a different thing if you had a survey with a difference of ten feet or a difference in ocean line of fifty feet. She stated that she was looking for a consistent line.

Mr. Jarrett stated that the Corps had contracted with von Oesen to come in and survey at that time. He said that the line exists and you could go out and reestablish that line. He stated that you could put concrete monuments on the ground if you needed them based on the best surveying techniques.

Ms. Bulluck stated that Hobbs did that map it had it five feet forward on the south end. She said that if you use the Hobbs map, the Prewitt case was one-half foot into the setbacks.

Mr. Wessell stated that he had looked at that and concluded that it would be more.

Ms. Bulluck stated that she was saying that wrong – she said that if you use the von Oesen map – the difference is seven to ten feet.

Mr. Wilson stated that the Hobbs map used the sewer covers because they were fixed markers. He explained that if you scale it out, there was no difference in the 1939 map.

Ms. Bulluck pointed out that there has been a difference in where markers were. She said that was at the crux of how many are into and back from – and at the crux of whether you build to the building line or to the setbacks. She stated that we had a problem because of oceanfront as well as sidefronts. She asked whether we should say everyone is okay as they are – or whether we say everyone who is off has to change? She asked where do we go from here?

Mr. Wessell stated that there may have been different rules about setbacks in the past – he did not know. He said that in the Prewitt case, Mr. Manley had testified that during his sixteen years, the setbacks were enforced to the building line. Mr. Wessell pointed out that even though there may be discrepancies in the deeds, the Town required a setback from the building line and that has been the practice of the Town. He noted that he did not know if what Ms. Bulluck handed out was an actual survey.

Ms. Bulluck stated that those were variances that don't have variances.

Mr. Wessell stated that he was not sure they were variances because they were done within the survey at the time.

Ms. Elmore then asked where we go from here? She said that if the Town had the right to establish setbacks, there should be a formula to use where more sand is now.

Mr. Rogers stated that the CAMA line says you can build thirty times the erosion line. He asked people not to think the CAMA line involved safety. He said he would recommend building as far back as possible. When told that setbacks were in conflict with property owners, he said that he did not think we had excessive setbacks in Town.

Ms. Elmore stated that she did not think the setbacks were excessive, just not consistent.

Mr. Jarrett stated that most of the violations were honest errors. He asked if it would be possible for the Town to go back and try to reestablish the 1939 line as close as possible and see which properties were impacted – then adjust the line for those properties as long as we were still in compliance with the federal project line.

Ms. Bulluck asked why the Town didn't keep the same line and grandfather everything and, with the Town's new process regarding building codes, we would, in effect, maintain the line and start afresh. She said that if buildings go down in a storm, they would get rebuilt to the new line.

Ms. Davis stated that the Town may be able to grandfather setbacks but it would take State action with the 1939 line.

Mr. Wessell expressed concern with the possibility of encroaching in the public trust. When asked how many properties were over the building line, he stated that there were two piers but he did not know of any properties constructed over the building line. He noted that there may be a little piece, maybe inches over. When asked if we were in violation of public trust, he stated that he did not have the answer.

Ms. Bulluck stated that if you change the setback to the building line, then there would be no violation.

Mr. Wessell pointed out that if you were to eliminate setbacks, there would be no setback violation because there would be no setbacks and you should not be over the line.

Mr. Hearne stated that the Town really has no enforcement beyond that line.

Ms. Davis expressed the need to come up with questions to research in order to find the long term, short term, and cumulative impact of each possible solution. She said they could identify some main topics or alternatives and look at those at the next meeting.

Mr. Jarrett asked whether the Town had established a building line for Shell Island?

Ms. Davis stated that Shell Island did not convey their property but old Shell Island did.

When it was noted that there was a building line near the Holiday Inn Sunspree, Ms. Bulluck stated that there was a line but it was not registered so that line does not exist. She said the oceanfront line at the Sunspree would be one of those affected.

Ms. Davis then asked for questions, alternatives and solutions.

Ms. Elmore suggested looking at changing how the setbacks are, how variances are for people who are encroaching, and how they conform.

Mr. Collins suggested looking into what could be done with deeds and the building line being the property line. He said that it was unclear and asked if there was a way to clear that up?

Professor Kalo suggested including a notice in tax statements to people owning oceanfront property. He said that some deeds could be changed then.

Ms. Bulluck stated that if the Town owns property and we know there are bad deeds out there, it is the Town's responsibility to tell people they need to check their deed and the 1981 line defines their property. She said she thought we should grandfather everyone in as they sit. She suggested starting with a defined definition for everyone of where the beach line is, then work towards establishing some kind of north line where we can begin to look for renourishment benefits for the north end.

Mr. Rogers asked if the Town was considering telling people they should be back where the line is? He said he thought the assumption was that these were honest mistakes.

Mr. Wessell stated that it was the Town's position that they were charged with enforcing setbacks. He said that the Prewitt house was one example and since that lawsuit was started, four other properties were identified as being in violation. He stated that unless the ordinance is changed, the Town may have to take action. He said beyond that, the information about other violations is speculative. Mr. Wessell stated that as we find violations, we address them on a case-by-case basis.

Mr. Jarrett asked if the Town finds someone in violation, was it the intent to have them move back?

Mr. Wessell stated that if an individual were found who has constructed a house without a building permit, the Town would require compliance. He noted that they could apply for a variance.

Mr. MacDonald stated that the Town needed to be concerned for the precedent down the road regarding whether the people created the problem themselves – even good faith mistakes. He said that no matter where you define the line, someone would make a mistake and if you grandfather everyone else in, they would want you to do the same for them. He stated that the system we have is not perfect, but it works pretty well.

Ms. Bulluck stated that she thought the new department and the new policies in place would not allow a dwelling to get to completion before their pilings were done.

Mr. Wilson stated that since 2001, surveys were required at the piling stage. He said that you would see survey errors in any town, but now it would be more difficult to see those here.

Mr. Hearne stated that the County had done a pretty good job at Hamby Beach where the water/sewer bill would be collected at closing any time a lot is transferred. He said that they put notices in attorney's boxes and posted them at the courthouse. He expressed the need to have deeds corrected to avoid future claims. Mr. Hearne suggested that when folks are notified, at closing, the deed could be modified to note that the Town takes exception to prior deeds.

Mr. Jarrett questioned whether the tax records would show the amount of acreage of a lot because some of the oceanfront lots appeared to be huge and there may be some question about the property line.

Mr. Johnston stated that he felt a straight line would be better than a variable line. He noted that people did not know about this in every case, especially the old houses, and he felt there should be a way to deal with those as opposed to the ones built recently.

Mr. Wessell stated that he thought it was clear that this line was there and it was also fairly clear that property lying east of that line belongs to the State of North Carolina or the Town. He said that the issue was what to do to the buildings encroaching or whether you do anything. He stated that that was a decision the committee could not make but they could address it as they go forward.

Mr. Jarrett stated that he did not feel it mattered which way the Town went because wherever they put that line, there could be violations. He noted that if the Town started grandfathering things in, it sounded like there were safeguards in place.

Ms. Bulluck stated that we were in a different place than we were four years ago. She said that we were now doing things that define the beach and we have a better handle on what is out there. She said that she was concerned that we get out of litigation, although it may be necessary at times, she did not want to take this issue for another round. Ms. Bulluck stated that she felt it was a solvable issue.

Ms. Davis thanked everyone again for their commitment. She said that she would like to set up another meeting time that would give staff time to look at suggestions and try to pull out the pros and cons and the short and long term impacts. She then set December 12<sup>th</sup> at 3:00 p.m. as the tentative date and time for the next meeting. Ms. Davis stated that the committee members could call her or email her with further input.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMITTEE, THE MEETING WAS ADJOURNED AT 5:00 P.M.

Respectfully submitted,

Sylvia J. Holleman  
Town Clerk