

# HIGH TIDINGS

THE OFFICIAL NEWSLETTER OF THE FOREST BEACH ASSOCIATION, INC.

MARCH 1995

## FBA Wins Lawsuit

The right of property owners in Hilton Head Beach Subdivisions #1, 1-A, 2, 2-A and 3 to use the common properties in the area consisting of the roads, beach accesses, strand blocks and park areas was confirmed by Judge Kimmerlin in the Beaufort Common Pleas court recently.

In a January 31, 1995 decision, Judge Thomas Kimmerlin, Jr., Special Circuit Court Judge, agreed with the Association that "...by virtue of plats and restrictive covenants placed upon the common properties...and by subsequent usage by the public, the roads within the subdivision are dedicated to public use, and the park areas, beach accesses, and strand blocks are set aside as open space for the use and enjoyment of all owners of lots within the five subdivisions..."

Judge Kimmerlin's conclusion was as follows:

"1. Any Finding of Fact which in fact is a Conclusion of Law is here so adopted.

2. The Counterclaim based on slander of title is dismissed.

3. The Plaintiff is entitled to prevail on its Fourth Cause of Action, and I declare that no Defendant has the right to permit or deliver any evidence of private ownership or exclusive use to any person, firm or corporation of the road rights of way, open spaces, drainage and utility easements, beach accesses for common use by owners of lots within the subdivisions, or the Beach Trust Property, and instead, the covenants and restrictions provide —and I conclude

that such provision is now given the force of law by this Order — that the beach strand properties and beach accesses shall be forever held in trust for the use and benefit of all present and future owners of lots within the subdivisions described in the covenants.

4. I enjoin all uses of the properties involved that are inconsistent with the rights of the lot owners in the affected subdivisions."

The Association feels this is an important victory for the rights of all property owners in this area against a few property owners who were trying to restrict the rights of others to freely use the platted beach accesses and stand blocks.

Members who wish to read for themselves a copy of Judge Kimmerlin's ruling may stop at the office for a copy. We are located in Heritage Plaza alongside the Swiss Cookery Restaurant.

The defendants, Property Research Holdings, Inc. and Hilton Head Beach Subdivision #2 Assets Holding Corp., have both appealed this decision and a hearing on the appeal is expected to be heard in March or April.

As is usually the case in such instances, this suit was successful due to the unfailing support of the Board of Directors for almost three years and particularly to the persistence, willingness to give of their time for the benefit of all and the tenacity of Past President Rose Montgomery, Treasurer Bill Lancaster, ARB Representative Dave Witt and Attorney Drew Laughlin.

Thanks for a job well done!!

## Semi-Annual Membership Meeting

SATURDAY, APRIL 1ST AT 10 A.M.

BEST WESTERN OCEANWALK SUITES, SOUTH FOREST BEACH DRIVE

Agenda Items Will Include

Proposed options to maintain dirt streets will be explained by County Councilman Leonard Tinnan and Town Councilman Tom Peeples. Lawsuit recap. 1995 Goals. Other reports. Questions & Answers

*Make Plans To Attend And Bring A Neighbor*

PS: The Best Western advises it is sold out for this weekend so you may have to park in the rear of the property near the tennis courts.



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## Density Increase Rejected

At its January 23, 1995 meeting, the Town Council was petitioned to grant a "affordable housing overlay" district on a 2.8 acre site located off Cordillo Parkway between 60 Pope Avenue apartments, the Circle Center shopping center and Springwood Villas. The effect of granting this request would be to increase the density allowed on this property from 8 to 15 units per acre.

The fact such a request was being made to the Town Planning Commission was brought to the attention of the Board of Directors at its December 12, 1994 meeting. During its discussion, the Board reviewed how densely populated this area already is, the serious drainage problems that exist in that area, the fact a significant portion of the particular property was a wetland and the traffic congestion that exists in this area. As a result of these adverse factors, the Board concluded allowing such a density increase would simply increase the existing problems and, therefore, was not in the best interests of the residents and property owners in this immediate area. It concluded the Association should oppose this request.

Our Town Councilman Tom Peeples led the attack against granting this request and ultimately all Council persons except Councilman Bill Ferguson, who said he might have a conflict of interest, spoke against approving this. Peeples said in the close to 100 calls and letters he received against the project, practically everyone cited density and drainage concerns.

Executive Director Dey spoke against the request for the Association at the Town Council meeting citing the Board's reasons for their opposition. At least 6 other people from the Forest Beach area spoke against the project.

The Town Council denied the request by a vote of 6 to 0 with one abstention.

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## By-Laws Revision Approved

At the October 1, 1994 Annual Membership Meeting a change in the By-Laws to provide for the Immediate Past President to be a member of the Board of Directors throughout the term of the succeeding President was unanimously approved.

The purpose of this change was to provide continuity of administration and to have the benefit of the knowledge and experience of the immediate past chief executive of the Association. This is common practice in non-profit, voluntary organizations like ours.

## Beach Nourishment

At the October 1, 1994 Annual Membership Meeting, Director Alan Jackson, a member of the Town Shore and Beach Preservation Committee, outlined some of the things this committee is doing in preparation for a 1997 beach renourishment and explained some of the things individuals can do to help preserve the existing dunes.

At the same meeting, Councilman Tom Peeples discussed the concern the Town has about the status of the Town's special 2% accommodations tax dedicated to use in preserving the beaches and the suit against it now before the South Carolina Supreme Court. He noted many people feel even if the court rules in the Town's favor, the State Legislature may pass legislation banning such a tax. If this tax is lost, the Town's options are primarily a general increase in property taxes for this purpose or establishing a Municipal Improvement District along the beaches and impose a special tax on those properties. Neither of these options appear to be particularly attractive.

The State Legislature appears to be concerned about allowing too many taxing powers to local governments for fear the local government may abuse this power or use it unfairly. The interest of some local governments in placing a heavy burden of taxes on "visitors" is often cited as a key reason why the State Legislature is so concerned.

In the meantime, since last Fall some of the Island's beaches, including those in North Forest Beach, have been hard hit by storms and strong north east winds.

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## Financial Report

During the last couple of months in 1994 and January 1995 the Association had to scramble to cover its costs because income was not as great as our expenses.

The 1994 cost of a staff addition, computer equipment purchase and higher rent due to the new office location was anticipated in the budget. However, the unexpectedly high legal costs of our lawsuit, the baseline adjustment expenses and covenants enforcement actions are the basic cause of the greater expenses than income.

In order to payoff outstanding bills and to provide sufficient cash flow to cover operating expenses until 1995 annual dues began coming in, the Board of Directors authorized applying for a short term loan from The Anchor Bank until May 1995 with the ability to pay this off sooner if our cash flow allowed us to. This loan was approved and we are pleased to report dues payments are being received slightly better than anticipated. Based on the results the Association has achieved for the benefit of all property owners, we expect to be able to increase our membership.



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## Covenants Enforcement

In the September '94 Newsletter we advised the action we had taken against an oceanfront property owner for the remodeling project they had undertaken without obtaining the necessary approvals of the SC Coastal Council, the Town or the ARB. We also related how this property owner had defied the Town and Coastal Council in addition to the ARB and had gone ahead with the project despite injunctions issued to halt work until a court decision was reached.

In October 1994, Judge Thomas Kimmerlin, Jr., Special Circuit Court Judge for Beaufort Common Pleas, ruled in favor of the Association and ordered the property owner to comply with

the covenants and remove any intrusion the project had made into the beach access area. When the property owner refused to comply with the Judge's order, we requested the Judge to enforce his order or hold the individual in contempt of court.

While this situation has not been resolved when the Newsletter went to press, the individual had come back to the Association to try to get a "better deal" than the court's decision. In effect, this person has said if the Association does not accept the "deal", they would sue the Association for "picking on them" while allowing other infringements into the beach access areas.

In the future, the Association

will do everything it can to prevent any infringements into the beach access areas thus preserving the right of access to these areas by all property owners in the subdivisions and their guests in accordance with the decisions made by Judge Kimmerlin. The Association has not yet determined exactly what it will do regarding infringements that existed before the Judge's decisions. In all probability it will seek to work with individual property owners to reach a resolution that does not impede, intimate or prevent, etc. the rights of all property owners in the subdivisions to enjoy full access to and use of the beach access areas and the strand blocks.

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## Resurfacing North Forest Beach Drive

In response to our inquiry, Beaufort County Councilman Leonard Tinnan gave us the good news that this major traffic artery is scheduled to be resurfaced by the County in 1995!

According to the timetable for this project which he sent us, the engineering is supposed to be completed this month (March), bids to do the work will be solicited in June, a contract award will be made in July, the work will commence in August and the project is scheduled to be completed in November 1995.

This is a long overdue improvement and we are thankful to Councilman Tinnan for his efforts in getting this project approved by the County Council.

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## Road Maintenance

Many property owners have asked if something could be done to periodically have dirt/sand roads scrapped and filled. Property Research Holdings, the owner of the non paved roads, refuses to do this.

It is a complex issue because so many people have different ideas of how much maintenance and improvement they would like to see done. The Board has been studying various alternatives, weighing the pros and cons of different plans and discussing with Town and County representatives what might be done.

They had hoped to be able to present some potential solutions at the April 1st Semi-Annual Membership Meeting for membership input. They are not certain they will be able to have all of the information they wanted to discuss by that time but they will describe what they have been considering, answer your questions and ask for your ideas.

We expect County Councilman Leonard Tinnan and Town Councilman Tom Peoples will be at the meeting to tell you what the County and Town might do if the property owners agree and answer your questions.

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## Membership Development

This is a short reminder to all the residents in the Forest Beach area to be sure to send in your annual dues if you have not done so already. The cost of legal representation, operation of the Architectural Review Board, covenants enforcement in addition to making the physical improvements in the area is continually rising. The Association will not be able to achieve these goals if we do not receive the financial support that is required to finance our operations.

If you are an active member in the Association, please contact your neighbors and encourage them to join also. If you are not a member and would like to have your questions answered, please feel free to call (785-5565) or come by the office and we will be happy to hear your concerns and ideas.

The proper funding to continue our operations is very important, but your time and effort is also greatly appreciated. If you would like to volunteer for a project please call our office and speak to Jeff Nation (785-5565).



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## The Sea Crest

The owners of the Island's oldest motel and a Forest Beach landmark, the Sea Crest Oceanside Inn, recently announced plans to tear down the current buildings and replace them with up to 117 two and three bedroom oceanfront villas. The SeaCrest Motel began with only two rooms in 1951 and after several additions and remodelings grew into the 90 room facility familiar to Forest Beach area residents and visitors.

According to Robert Graves, president of Graves Apartments, Inc., owners of the land, the project will begin with the building of a five story building that will include 30 custom built villas which will each have a lockout room. All units are projected to have full kitchens and ocean views. Later, a second building will be about twice the size of the first and a third building, about the size of the first, is planned for later construction. Plans include an outdoor oceanfront pool and decks, exercise and fitness rooms, an indoor lap pool and underground parking. Sea Pines Real Estate Company will handle sales and Sea Pines Resort Rentals will offer rental services to villa owners.

Demolition of the motel and construction for the first building are expected to start in March 1995 and construction is expected to take about 10 months.

## ARB Reminder

While the Forest Beach area is not designated as a plantation, it has restrictive deed covenants that run with the land since the area was first platted in the early 1950's. In accordance with the Covenants, an Architectural Review Board (ARB) must review all construction, including smaller renovations such as repainting, reroofing & fence construction. All applicable site plans, color samples and drawings must be submitted and approved by the ARB prior to any construction getting underway.

Questions regarding the operation of the ARB should be directed to Ms. Karen Dill, Administrator, at 686-4370. The mailing address is PO Box 5555, Hilton Head Island, SC 29938. The Association requests that if you suspect any construction or renovation that is in progress without the proper authorization please contact our Covenants Enforcement Officer, Jeff Nation at the Association office 785-5565. You will not be required to give your name.

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## Proposed Street Changes

The Town Planning Commission in October of 1994 notified the Association that the eastern portions of Flamingo and Gannet Streets would need to be renamed according to the Town Land Management Ordinance.

Their criteria for this decision is due to the Grace Community Church lot which breaks the two streets into two unconnected sections. LMO Section 16-7-639 states that, "Street sections not connected or unlikely to be connected shall not bear the same name."

The proposed changes were first to be reviewed by the Planning Commission which would then forward

a recommendation to the Town Council for final action. Many residents that lived on both portions of Flamingo and Gannett Streets were contacted to make them aware of the proposed changes. At the Planning Commission meeting the turnout was exceptional and many residents expressed their feelings on the subject.

After such a strong combined response from the Association and the Forest Beach residents, Interim Town Manager, Steve Riley decided permanently to withdraw the proposal. The Association would like to thank all the residents that voiced their opinions on the subject.

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## Commercial District

The Forest Beach Association works to protect the rights and interests of those who work and live in our area. The trend of escalating property values in the Forest Beach area tends to draw the type of resident that is more active in their surrounding community. For example, the number of residents who participate in the semi-annual beach sweep has grown considerably. The Association feels that this type of community responsibility will be felt by the business community in the form of increased patronage by area residents.

The Association has begun to see an increase in support by many of our new neighbors and we ask that the business community play an active role in the Association also by paying the modest dues of \$50.00 per business. If you have not paid your dues for 1995, please mail your check to: Forest Beach Association, PO Box 6442, Hilton Head Island, SC 29938. Please include the name of the business somewhere on the check.

At this time we would like to encourage all residents to support their neighbors in the Forest Beach business community. If you have any questions, please call our office at 785-5565. Thank you for helping us make Forest Beach a more wonderful place to work and live.



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# Island Wide Drainage Study

As those who live here full-time well remember, the Island was literally inundated with 20+/- inches of rain in early October last year. These heavy rains caused serious flooding and drainage problems in many areas of the Island some of which had not previously had serious problems.

To make certain they are aware of the major problems throughout the Island and that they are being addressed in the current study of drainage problems Is-

land wide, the Town Engineer conducted a series of meetings with representatives of all Island areas. Dick Dey and Jeff Nation represented the Forest Beach area at this meeting and a number of individual property owners attended to explain their individual problems.

Dey and Nation reviewed the flooding and drainage problems throughout the area including both road and property problems.

Because of the long history of these problems in the Forest

Beach area, the Town Engineer and the consulting firm conducting the study for the Town are very familiar with our problems. The Town expects the study and recommendations for the solution to these problems to be completed sometime between June and September 1995.

The Association will continue to monitor this situation and hopes to have a report on the results at the October 7th Annual Membership Meeting.

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## Directors Election

At the October 1, 1994 Annual Membership Meeting, Directors William Lancaster and David MacLellan, whose three year terms expired in 1994, were re-elected to the Board in the Class of 1997. Lancaster has lived in the North Forest Beach area for over 25 years and has been very active in the Association. he has been in the real estate and short term rental business for many years and has operated another service business. MacLellan is a long term resident of the Island and lives on Myrtle Lane. For close to 20 years he was Chief of the Sea Pines/Forest Beach Fire Department. When the Town merged the two Island fire departments into one, MacLellan was appointed Chief of the Town's first Fire Department.

Also elected to the Board of Directors in the Class of 1997 was Bonnie Snyder of Nighthawk. She too, is a long time Island resident and has lived in the Forest Beach area for a few years. She is part owner and Vice President of Sales for High Cotton, a local and very successful T-shirt company. Previously, she was Director of Marketing and the Rental Division of Sea Pines Company.

In late October, Secretary and former President Rich Hughes '96 resigned from the Board after seven years of service due to time restraints and burnout. His resignation was accepted with regret and thanks for his service to the Association including two years as President.

Long time resident Debby Urato of Park Road was appointed to complete the remaining two years of Hughes' term. Debby is a teacher at the Sea Pines Montessori School and is very active with the Girl Scouts.

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## Jackson Appointed To ARB

Director Alan Jackson, who lives on Pelican, was appointed to the Architectural Review Board as a landscape architect by the Board of Directors at its January 9, 1995 monthly meeting.

Jackson, who is a professional landscape architect, is Vice President of Design and Construction for The Greenery, one of the largest landscape contractors and retailers of plants and shrubbery in the state.

The other two professional members of the ARB are licensed Architects, Kurt Hermann and Steve Carson, both of who have been in business on the island for the last 20 years. Also serving on the ARB are Administrator Karen Kill, who runs the office and keeps all of the records, and David Witt, the Association's representative, who acts as a liaison between the Board of Directors and the ARB.

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## Dey Resigns

After almost 6 years as a consultant to the Association, Dick Dey resigned at the end of February for personal reasons. Dey had acted as the Executive Director for the Association on a part time basis. During this time, a great many improvements were made in the organization and administration of the Association's business.

**PLEASE don't forget to send in your 1995 dues.**

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**PLEASE REMEMBER:  
SEND THE ASSOCIATION YOUR CHANGE OF ADDRESS WHEN YOU MOVE.**

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# 1995 Officers

At its regular monthly meeting on December 12, 1994, the Board of Directors elected the following Officers for 1995:

<i>President</i>	<b>JOHN SNODGRASS '96</b>
<i>Vice President</i>	<b>PAMELA OVENS '96</b>
<i>Treasurer</i>	<b>WILLIAM LANCASTER '97</b>
<i>Secretary</i>	<b>AIME BAIMA '95</b>

Snodgrass lives on Sandpiper and is associated with Coastal Plains Insurance Company. Ovens lives on Firethorne Lane and is a licensed charter boat captain. Lancaster lives on Mallard and is a long time realtor and business broker. Baima is the owner of the very popular Coligny Bakery in Coligny Plaza.

The Board expressed its great appreciation to Rose Montgomery for her two years of dedicated leadership and significant accomplishments.

*If you wish to contact one of the Officers, please call Jeff Nation at the office (785-5565) and he will ask the appropriate one to call you. If he is not in when you call, please leave a message on the answering machine. Please speak slowly, spell your name and address and give your phone number. Thank you.*

## FBA Board of Directors

### OFFICER & DIRECTORS

John Snodgrass, '96	President
Pamela Ovens, '96	Vice President
Bill Lancaster, '97	Treasurer
Aime Baima, '95	Secretary
Alan Jackson, '95	Director
David MacLellan, '97	Director
Rose Montgomery	Imm. Past President
Scott Schrieber, '95	Director
Bonnie Snyder, '97	Director
Debby Urato, '96	Director

### ADVISORS

Jeff Nation	Executive Coordinator
David Witt	Advisor & ARB Rep.
Karen Dill	ARB Administrator

### The Forest Beach Association, Inc.

12B Heritage Plaza • P.O. Box 6442, Hilton Head Island, SC 29938 • (803) 785-5565 • FAX (803) 842-7918

The Forest Beach Association, Inc.  
12B Heritage Plaza  
P.O. Box 6442  
Hilton Head Island, SC 29938

ADDRESS CORRECTION REQUESTED

