



SPECIAL MEETING MINUTES OFF

OCTOBER 25, 2011 at 5:30 pm

The Kure Beach Town Council held a special meeting on Tuesday, October 25, 2011, at 5:30 pm for the purpose of discussing construction issues at the Ocean Front Park. Attorney Canoutas was in attendance. There was a quorum of Council present.

COUNCIL MEMBERS PRESENT:

Mayor Dean Lambeth
Mayor Pro Tem Chuck Keener
Commissioner Emilie Swearingen
Commissioner Jim Dugan

COUNCIL MEMBERS ABSENT

Commissioner vacancy

STAFF PRESENT

Building Inspector John Batson
Town Clerk – Nancy Avery

Others in attendance:

Liz and Wayne Laws, Integrity Builders
Ashley Hague and David Lisle, Lisle Architecture & Design, Inc
Brian Cox, Engineering Services

CALL TO ORDER

Mayor Lambeth called the meeting to order at 5:30 pm and read from a letter dated October 20th received from Liz Laws (Integrity Builders). Said letter is herein included as part of these minutes. Mayor Lambeth stated there is an email from Engineering Services and a letter from the Town in the agenda packet and he has CDs of the recording from other Council meeting, if anyone would like a copy.

DISCUSSION AND CONSIDERATION OF CONSTRUCTION ISSUES AT THE OCEAN FRONT PARK

Mayor Lambeth asked Mr. Lisle if all the problems to fix the concrete slab for the pavilion have been addressed.

Mr. Lisle stated the concern at this point is that by either elevating or modifying the slab somehow, we will have implications on the project as it relates to bearing heights, door heights, toilet partition and all different ramifications of things that will affect the height of the building or the slope as we change and move forward.



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Mayor Lambeth asked Mr. Lisle if he has shared any drawings to modify the slab with Mr. Laws or Mr. Cox.

Mr. Lisle stated he has not. He said the plans were ready and we gave them to Brian (Cox), but then we were told everything was on hold.

Mayor Lambeth asked Mr. Cox if he had anything to add.

Mr. Cox responded no, he had nothing to add.

Mayor Lambeth asked Mr. Lisle and Mr. Cox if the preliminary slab drawings showed any difference from the engineer stamped drawing.

Mr. Lisle stated there is a difference in elevation in that they were raised because of the slab condition.

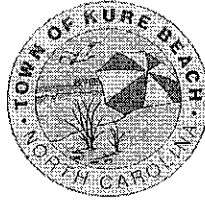
Mayor Lambeth said that was to facilitate the two and half foot end cut from the slab edge and removal of the center section so the slope could be continued as per the drawing and to use brick pavers for a two and half foot distance around the slab.

Mr. Lisle stated yes, in essence we took the same slab and elevated it.

Mr. Laws stated he doesn't have any drawings, so he doesn't know what everyone is talking about until he sees the drawings. He said he can't answer anything without seeing the drawings. He stated his letter was in response to the Town's letter. All my letters have been in response to your letters.

Mayor Lambeth asked Mr. Laws if he is saying he will not be financially responsible for any changes made to the original plans and if he was saying that the slab is in compliance.

Mr. Laws stated the slab is in compliance with all those drawings he pointed out. He (Lisle) said that is one foot nine where the stairs went, it shows where the door elevations were, how to measure the windows and plumbing all off that one foot nine elevation and all the cuts and the cross cuts show it. He (Lisle) is right, on the exterior you have your slopes where you went back to the bathroom and you had a four inch step where he squashed it down and changed that elevation to meet building code. The only reason he changed it was not for personal benefit, but to meet code or you wouldn't have a step. –



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He stated that's his fault because he took the risk and he'll fix it the area that he changed, but the areas he didn't change, he doesn't feel responsible for.

Mayor Lambeth stated the peripheral effect of raising this slab up will require a three and half inch elevation change in the bathroom walls, and you are saying you are not responsible for that.

Mr. Laws replied no, he is not.

MOTION - Mayor Lambeth made the motion to have the slab torn back down to grade and start over.

SECOND – Commissioner Dugan

Discussion – Liz Laws stated this is like tearing a house down because you have a stain on the carpet. It is crazy. You need to think long and hard about this. We will go into litigation over this. We don't want to. We want to work it out. This letter is in response to the letter you sent to us. It is all one sided. You sent us a blanket letter trying to trick us into saying we will pay for all your change orders on this job. Your architect has made mistakes. We have made mistakes. We are willing to pay for our mistakes. Your architect needs to pay for his. That letter wants us to agree to fix all changes you haven't even shown us. That's underhanded. You haven't given us anything official and you are trying to tell us to pay for something sight unseen. It's like giving you our credit card.

Mr. Lisle stated that going back to the contract and document, when they see a conflict or anything that they feel needs to be changed, they are required to call us. If we had received that phone call, this project would be on track and the concrete would be poured the way we drew it.

Mrs. Laws stated it has taken you (Lisle) three weeks to respond when you found out something was wrong and we still haven't seen any drawings.

Mayor Lambeth responded that you (Integrity) signed an official document, 4.03-2 on page eight. Mayor Lambeth read from that section of the contract. He stated you did that at your risk. You have admitted that you made a mistake

Mr. Laws said we haven't denied it.

Commissioner Dugan stated that the part he finds difficult to believe is that when we had the meeting there was the option to tear it down and start over. Then over the course of



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discussion back and forth, it was decided there was a cheaper way that benefitted you cost wise that was acceptable to the Town to only tear out a portion of it. Was it your understanding when you walked out of that meeting that the interior portion of the concrete was going to be torn out and re-poured.

Mr. Laws responded yes, we agreed to that. That is what it says in our letter. We have never said anything different.

Mayor Pro Tem Keener stated that what he remembers from that meeting was that you all agreed to that and then in the next few days there was a letter or something saying he (Laws) was going to do anything. Are you saying at this point you are still willing to comply with what was agreed to at that meeting.

Mr. Laws replied that we are willing to correct our mistake. The pavers are an additional thing that has nothing to do with this.

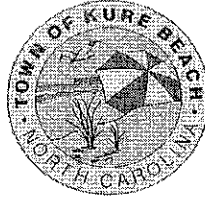
Commissioner Swearingen said to Attorney Canoutas that she wants to be absolutely certain that if we go in and tear this down to grade that we won't have any kind of legal repercussions from doing that and it won't be contrary at all to anything in the contract.

Attorney Canoutas replied that was one of the three options provided by Engineering Services.

Mayor Lambeth asked Mr. Laws in his experience as a commercial builder, if you don't put pavers on the first two and half feet, how are you going to fix that problem. The concrete is slick.

Mr. Laws replied that if was going to put pavers there, he would put them on the other side of the fence, so to speak, because that way you don't have to raise the whole slab because that way you are compounding the problems that you had in the other rooms. That being said, he stated he still doesn't understand why you need the pavers there. Increte Concrete did the concrete work and they can fix it. They can make it per plan. It is sloping off now. The end of the concrete is not the problem. It is up in the middle where it needs to be hirer. It is sheening right off on the edge. They can etch it which will give you a broom finish.

Commissioner Dugan asked, for my own information, was there a letter we sent to you that made you send a letter back to us?



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Mrs. Laws replied that it was the letter you sent us that gave us forty-eight hours to respond.

Mayor Lambeth asked Mr. Cox, as the engineer on record for this job, his recommendation since the letter stated Integrity isn't responsible for any changes.

Mr. Cox replied by asking Mr. Laws these questions:

1. We talked about the solution to the concrete slab, cutting it out two feet and removing the inner section and bringing back the slopes and installing it back. In essence, we were going to raise that slab. Are you saying in your response in the October 20th letter to the Town that you will not be responsible if additional block is required to add to the top of the existing walls or concrete lentles (spelling?) that may have to be raised up, or varying heights and framing that may have to be raised to accommodate the doors?

Mr. Laws replied the concrete lentle (spelling ?) can't be raised unless you raise the entire building.

2. If there are any requirements or changes required as a result of raising that floor three and half to four inches, are you saying you are not responsible for any of that?

Mr. Laws replied he is responsible for what he did but he is not responsible for additional items that you might want.

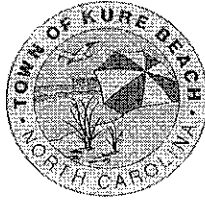
Mr. Cox asked Mr. Laws what he would consider an additional item.

Mr. Laws responded that he hasn't seen anything and it isn't fair to pin him into something until he sees the plans.

Mrs. Laws stated that we are not answering these questions until we see the plans.

Commissioner Dugan stated that on the other side, the letter we got from you is cut and dried and says there will be nothing you will pay for from your end. If there are changes made to the original plans because of the original problem that you have accepted responsibility for, would you consider that as something you are your responsibility?

Mrs. Laws says the letter states we are willing to make the corrections to the concrete slab.



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Mr. Laws asked why would you raise the slab two to three inches? He said it makes no sense to me. If we are ripping it out, it doesn't make any sense to raise it up. Just to put pavers on the end? Is that the only reason?

Mayor Lambeth said he assumed the reason you would take it out and put pavers is to make sure the slope on the original set of plans is followed. There is no slope down there now. You can take a four foot level down there now and measure back two and half feet and prove to me you will have an eighth of an inch slope?

Mr. Laws stated there is a slope and it's not ponding water at the end.

Mrs. Laws said let's work it out.

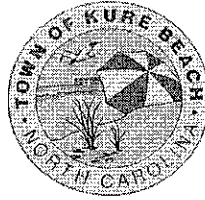
Mayor Lambeth stated we have tried to work it out. We are having to pay an engineer and architect to go back and make sure this is going to be to code. We, as a Town, want to make sure we won't have any liability problems with this slab puddling water.

Mr. Laws stated it wasn't to code the first time. That is what caused this. He corrected it to meet code. Why can't we cut the slab out and put it back the way it was.

Mr. Cox stated that the slab he sees doesn't function as designed. Water ponds in the middle in two separate places. It doesn't have the slope, the exterior is inferior, and when we put water on it, it didn't go off the edges.

Mr. Law asked why you want pavers by the back wall and bathrooms?

Mr. Lisle stated the reason we have the thirty inch perimeter was because of the way the foundation was poured, to move inside of the current foundation and the structure. That allows you to cut the slab out thirty inches in, allows you to maintain the bathroom concrete, allows you to maintain the perimeter integrity of the foundation and tiles. This gets us back to the slope we intended without requiring you to tear out the walls. The pavers were intended to help you elevate the perimeter to allow you to pour the concrete back up to that slope. This gives relief on the bathrooms re-pour those center sections of the slope and put the tile in. What's required after that is to raise the perimeter bearing height to the ceiling height we drew, it would require raising the door height which is elevated, requires re-looking at some of the toilet partitions to make sure they are correct; the stairs going to the second level. Anything related to elevation has to be coordinated. We think by increasing it by three and five eights of an inch of brick, it allows you to put brick on upper level, which is going to be covered and doesn't require you to tear out the entire slab, which is what we are trying to do.



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Mr. Laws stated let me take the drawings and review, like we said in the original meeting, and then have another meeting to discuss the drawings. This isn't fair to me. He said he wants to do what we originally agreed on that he would get the drawings and have time to review them. .

Mayor Lambeth said in going back to the original drawings and contract, are you taking responsibility for not following the plan and making changes on your own and if your change adds additional changes, are you taking on that responsibility.

Mr. Laws replied he needs to see what you are talking about before committing.

Commissioner Dugan stated that from the perspective of the architect and engineer, the reason he is willing to vote for tearing down the slab is because it fixes all these problems.

Mr. Laws stated it doesn't fix it because the original plans don't meet code.

Mr. Lisle stated we contend they meet code. Even so, we should have been contacted and worked it out if our plans were flawed.

Mayor Lambeth said if so, then why did you not contact the engineer or architect before taking action.

Mr. Laws replied that the answers he has been given are silly. The slab doesn't slope and he will because that was my problem, but he doesn't get legitimate answers.

Commissioner Dugan asked Mr. Cox his opinion on having Mr. Laws review the plans and meet again.

Mr. Cox stated that the Town has to decide. There are two options: either tear it down and start over or let Mr. Laws review and meet and let them say what they are or aren't responsible for.

Commissioner Dugan said they are saying the existing plans are faulty. If we take a vote to tear it down and you say those plans are faulty, are you saying you are not willing to move forward with those plans?

Mr. Laws replied that's correct, those plans are faulty.



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Commissioner Swearingen asked if we are to take the time to tear down and remove from the site, who is paying for that?

Commissioner Dugan said the builder needs to pay.

Mayor Pro Tem Keener asked Mr. Lisle if the new plans correct what Mr. Laws is talking about.

Mr. Lisle responded that we looked at that. It is the same plan and we would give the same plan again.

Mayor Pro Tem Keener stated he thinks it is problem that Mr. Laws hasn't seen the plans and we are asking him to take responsibility for something he hasn't seen. He said he wouldn't sign off on it either.

Commissioner Swearingen stated the plans were supposed to be ready in ten days. Why is it taking so long? It has been three weeks.

Mr. Cox stated the plans were ready Wednesday of last week. Everything was ready to go. Then Friday I was told the Town had received a letter from Integrity and there was a stop work order on the project.

Commissioner Dugan stated suing each other back and forth doesn't do anyone any good. What do we do when the builder says the plans are flawed and the architect says they aren't.

Mayor Pro Tem Keener asked Mr. Lisle if we will end up with the same quality with fixing the concrete as we would with tearing it down.

Mr. Lisle replied he thinks the fix with the pavers is a reasonable approach to the problem. There are implications associated with the changes and they shouldn't be the burden of the Town. If they are associated with the fix and the mistake, the Town shouldn't pay for it. He said he thinks the quality will be the same.

VOTE – the motion to have the slab torn back down to grade and start over resulted in a tie vote and did not carry. Mayor Pro Tem Keener and Commissioner Swearingen in the negative. Commissioner Dugan and Mayor Lambeth in the affirmative.



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MOTION – Commissioner Swearingen made the motion to get the plans to Mr. Laws by tomorrow (Wednesday) morning and have him respond by Thursday morning.

Commissioner Swearingen was asked to rescind her motion by Mayor Lambeth.

Commissioner Swearingen rescinded her motion.

MOTION - Mayor Lambeth made the motion for the plans in discussion for the renovation to bring the slab for the Ocean Front Park up to what the plot plan originally showed be rendered to the Laws (Integrity Builders); require that any change to the building because of the new engineered plans be detailed as to whether or not the Laws think that is part of the damage or problem with the original non compliance with the plans or is this new; Integrity Builders to provide a detailed letter if there is anything on the plans that they think the Town is responsible for over and above the original contract; Integrity Builders to review the plans and respond by Monday, October 31, 2011 with a detailed explanation of any other expenses that Integrity Builders thinks they are not responsible for.

SECOND – Mayor Pro Tem Keener

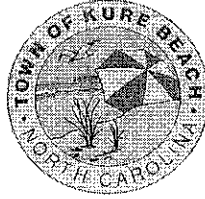
VOTE – Unanimous

Any questions go to Brian Cox, Engineering Services.

Attorney Canoutas stated we should be familiar with the contract and should re-read it and become familiar with the ins and outs. We have bounced around with this thing. There seems to be a lack of communication. Once this is resolved, henceforth, put everything in writing. Any conversation on site, put it in writing on both sides.

Commissioner Dugan stated he would like to see Integrity Builders be able to keep working, but the project has a stop work order issued. Mr. Cox stated the issue is particular to the pavilion

Commissioner Swearingen stated that she hopes when looking at the plans, that before you write any letters, you (Integrity) talk to Brian (Engineering Services) before putting anything in a letter.



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MOTION – Mayor Lambeth made the motion to go into closed session to discuss legal matters at 6:25 pm.

SECOND – Mayor Pro Tem Keener

VOTE - Unanimous

MOTION – Commissioner Dugan made the motion to return to open session at 6:44 pm.

SECOND – Mayor Pro Tem Keener

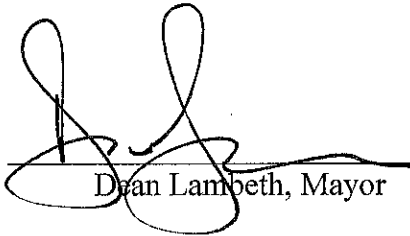
VOTE – Unanimous

ADJOURNMENT

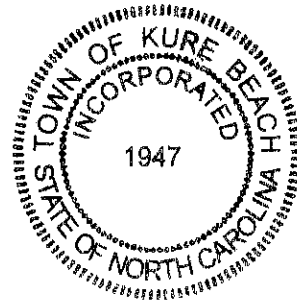
MOTION – Commissioner Dugan made the motion to adjourn at 6:46 pm.

SECOND – Mayor Pro Tem Keener


VOTE - Unanimous



Dean Lambeth, Mayor



ATTEST:



Nancy Avery, Town Clerk

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting. Persons wishing to hear the recording of this meeting may request to do so by contacting the Town Clerk