



## **Town of Beaufort, NC**

701 Front St. - P.O. Box 390 - Beaufort, N.C. 28516  
252-728-2141 - 252-728-3982 fax - [www.beaufortnc.org](http://www.beaufortnc.org)

### **Town of Beaufort Parks & Recreation Advisory Board 6:00 PM Thursday, November 05, 2020 - Zoom due to Covid-19 Monthly Meeting**

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#### **Call to Order**

#### **Agenda Approval**

#### **Public Comment**

#### **Presentations**

#### **Staff Report**

- [1.](#) Homer Smith Marina Covenant Amendment - This item is on the BOC's agenda for Monday, Nov. 9.

#### **Items for Discussion and Consideration**

- [1.](#) Randolph Johnson Park
- [2.](#) Topsail Park

#### **Board Comments**

#### **Adjourn**



**Town of Beaufort, NC**

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**Town of Beaufort Board of Commissioners Regular Meeting  
6:00 PM Nov. 9, 2020**

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**AGENDA CATEGORY:** Items for Discussion and Consideration  
**SUBJECT:** Homer Smith Marina Covenant Amendment

**BRIEF SUMMARY:**

At the September 28<sup>th</sup> and October 26<sup>th</sup> Work Sessions the Board discussed a request from Homer Smith Marina for the town to support NCDOT abandoning 19,409 square feet of ROW, which would be used for parking needed to support an expansion of the marina. In exchange, the owner offered to contribute \$125,000 toward the construction of the restroom/kiosk at the new Cedar Street Park, and agreed to other conditions described in the attached Homer Smith Marina Expansion Agreement Summary

The Board asked the Town Attorney and staff to draft an amendment to the 2011 covenant between the Town and Homer Smith Marina that governs the maximum number of slips permitted to be constructed so that there may be an increase in the total number of slips to 178.

Two optional amendments are attached for review and consideration – one requiring phasing of construction (as presented on Oct. 26) and one that does not require phasing (in response to discussion at the Oct. 26 meeting). The original covenant is also attached.

**REQUESTED ACTION:**

Consider approval of amendment of the covenant between Homer Smith Marina and the Town.

**EXPECTED LENGTH OF PRESENTATION:**

15 minutes

**SUBMITTED BY:**

John Day, Town Manager

**BUDGET AMENDMENT REQUIRED:**

No

1.

Prepared by:  
Grady Quattlebaum, PLLC  
244-A Craven Street  
New Bern, N.C.

Revenue Stamps: N/A  
Parcel ID #:  
Type of Instrument: S/INS  
Grantor's Primary Residence:  
NO

Return to: Grady Quattlebaum, PLLC, 244-A Craven St., New Bern, NC

Address of Town of Beaufort: c/o Grady Quattlebaum, PLLC, 244-A Craven St., New Bern, NC

Address of Homer Smith, LLC & Homer Smith's Docks and Marina Club, Inc.: P. O. Box 68,  
Salter Path, NC

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**AMENDMENT TO COVENANT**

**THIS AMENDMENT TO COVENANT** is made and entered into effective as of \_\_\_\_\_  
\_\_\_\_\_, 2020, by and between **TOWN OF BEAUFORT, HOMER SMITH, LLC, and HOMER SMITH'S  
DOCKS and MARINA CLUB, INC.** as follows:

**WITNESSETH:**

**ARTICLE I**  
**Recitals**

**1.1** Beaufort and Homer Smith, LLC, previously executed a Covenant ("Covenant")  
recorded in Book 1402, Page 13 in the Office of the Register of Deeds of Carteret County, North  
Carolina.

**1.2** Section 3.3 of the Covenant provides that it may be amended by written instrument

approved by both Beaufort and Homer Smith, LLC.

**1.3** The Homer Smith Marina currently contains 85 Wet Slips and 10 transient slips.

**1.4** Homer Smith, LLC proposes to expand the Homer Smith Marina, and such expansion will bring the total number of Wet Slips to 141, the total number of transient slips to 33 and the total number of refueling/pump-out slips to 4.

**1.5** In order to expand the Homer Smith Marina, Homer Smith desires to acquire from the North Carolina Department of Transportation +/-19,409 square feet of right-of-way (“ROW”) of Cedar Street.

**1.6** Homer Smith has requested Beaufort to agree to amend the Covenant to permit additional Wet Slips and to consent to the transfer of the ROW, and Beaufort has so agreed, provided certain terms and conditions as herein set forth are met.

**1.7** Subsequent to the effective date of the Covenant, Homer Smith conveyed a portion of the Homer Smith Property to Homer Smith’s Docks and Marina Club, Inc., which joins in the execution of this Amendment to acknowledge that this Amendment continues to bind the real property so conveyed.

**1.8** The parties hereto execute this Amendment to covenant (“Amendment”) to memorialize their agreements herein described.

**ARTICLE II**  
**Definitions**

All capitalized terms used herein shall have the same meaning set forth in the Covenant, provided any terms in this Amendment contained in quotes shall be defined as so designated.

**ARTICLE III**  
**Amendments**

Beaufort and Homer Smith, LLC, agree the Covenant shall be amended by restating and amending Section 3.2 of the Covenant to read as follows:

**3.2 (a) Limit on Numbers of Slips:** Homer Smith covenants and agrees with Beaufort that the number of Wet Slips in the Homer Smith Marina will not, without the written consent of Beaufort,

exceed 141 Wet Slips, 33 transient slips and 4 refueling/pump-out slips, with the addition of slips after January 1, 2021 to be “phased” as herein provided and subject to the conditions set forth below.

**3.2 (b) Phasing of Expansion:** The Homer Smith Marina may be expanded in phases as follows: (i) a first phase (“First Phase”) which will result in the Homer Smith Marina consisting of no more than 113 Wet Slips, 33 transient slips and 4 refueling/pump-out slips and (ii) a second phase (“Second Phase”) which will result in the Homer Smith Marina consisting of no more than 141 Wet Slips, 33 transient slips and 4 refueling/pump-out slips. Homer Smith may not begin construction on the Second Phase within twenty-four (24) months after the issuance of a final certificate of occupancy for all slips constructed in the First Phase. In no event shall the Homer Smith Marina contain more than 141 Wet Slips, 33 transient slips and 4 refueling/pump out slips.

**3.2 (c) Other Legal Requirements for Expansion:** Any additional Wet Slips constructed for the Homer Smith Marina shall meet all federal, state and local laws, rules and regulations, including but not limited to the Land Development Ordinance of Beaufort and the North Carolina Coastal Management Act.

**3.2 (d) No Waiver:** This Amendment shall not be construed as an implicit or explicit approval by Beaufort under any ordinance or development regulation of Beaufort, including but not limited to the Land Development Ordinance of Beaufort.

**3.2 (e) Parking:** Homer Smith Marina employees, agents, guests, owners, tenants and invitees (collectively “Patrons”) shall be prohibited while using the Homer Smith Marina from parking on Cedar Street or within any parking lot or area owned or operated by Beaufort. Homer Smith shall require all vehicles of all Patrons to display a window decal so that Beaufort may enforce this Section 3.2(e). Homer Smith shall construct a vegetive buffer and fence between its parking area, Cedar Street and Beaufort’s real property described in Deed recorded in Book 333, Page 328, Office of the Register of Deeds of Carteret County, North Carolina, such vegetive buffer and fencing to meet with the written approval of Beaufort. The parking area for the Homer Smith Marina shall contain a separate locked entrance on the western side of same, and use of such entrance shall be restricted to (a) service providers and (b) law enforcement and other first responders.

**3.2 (f) Consent to transfer:** Beaufort shall execute such documents as may be reasonably

necessary to demonstrate to the North Carolina Department of Transportation Beaufort’s consent to the transfer of the ROW.

**3.2 (g) Donation:** Upon execution of this amendment, Homer Smith shall donate to Beaufort the sum of one hundred twenty-five and 00/100 (\$125,000.00). Beaufort shall designate such funds to be used exclusively for the benefit of Cedar Street Park.

**3.2(h) Amendment Runs with the Land:** This Covenant shall apply to the Homer Smith Property and the riparian area appurtenant to and/or adjacent to the Homer Smith Property and will run with the title to the Homer Smith Property and the riparian area appurtenant to and/or adjacent to the Homer Smith Property, including but not limited to that portion of the Homer Smith Property heretofore conveyed to Homer Smith’s Docks and Marina Club, Inc.

**3.2(i) Contingency to Effectiveness:** This Amendment’s effectiveness, including specifically but not limited to the obligations set forth in 3.2(g) & 3.2(h), is contingent upon Homer Smith receiving a special use permit from Beaufort authorizing the expansion of the Homer Smith Marina as herein contemplated.

**ARTICLE IV**  
**Remaining Terms of Covenant**

Except as expressly herein modified and amended, all provisions of the Covenant shall remain in full force effect.

**IN WITNESS HEREOF**, Beaufort and Homer Smith, LLC have each executed this instrument in such form as to be binding.

**HOMER SMITH, LLC**

**By:** \_\_\_\_\_  
**Tony Frost, Manager**

**HOMER SMITH’S DOCKS AND MARINA CLUB, INC.**

**By:** \_\_\_\_\_

Tony Frost, \_\_\_\_\_

TOWN OF BEAUFORT

By: \_\_\_\_\_  
Everette Newton, Mayor

(TOWN SEAL)

\_\_\_\_\_

\_\_\_\_\_

Clerk to the Board of Commissioners

**ACKNOWLEDGEMENT**

The undersigned Notary Public does hereby certify that **TONY FROST** personally appeared before such Notary Public this day in the State of North Carolina and County of Carteret and acknowledged (i) that he is a Manager of **HOMER SMITH, LLC**, a limited liability company, and (ii) that by authority duly given and as the act of such limited liability company, he signed the foregoing instrument in the name of such limited liability company on such limited liability company's behalf as its act and deed.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC



NOTARY SEAL/STAMP MUST APPEAR  
LEGIBLY IN BOX TO RIGHT

**ACKNOWLEDGEMENT**

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WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

My Commission Expires:

\_\_\_\_\_

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**ACKNOWLEDGEMENT**

The undersigned Notary Public does hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2020, **EVERETTE NEWTON**, with whom I am personally acquainted, personally appeared before me in the State of North Carolina and the County of Carteret and, being by me duly sworn, says that he is the Mayor for the **TOWN OF BEAUFORT**, and that \_\_\_\_\_ is the Clerk to the Board of Commissioners, the body politic and corporate described in and which executed the foregoing instrument; that she knows the common seal of said body politic and corporate; that the seal affixed to the foregoing instrument is said common seal; that the name of the body politic and corporate was subscribed thereto by the said Mayor that the said common seal was affixed, all by order of the Board of Commissioners of said body politic and corporate; and that the said instrument is the act and deed of said body politic and corporate.

WITNESS my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2020.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC



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Prepared by:  
Grady Quattlebaum, PLLC  
244-A Craven Street  
New Bern, N.C.

Revenue Stamps: N/A  
Parcel ID #:  
Type of Instrument: S/INS  
Grantor’s Primary Residence:  
NO

Return to: Grady Quattlebaum, PLLC, 244-A Craven St., New Bern, NC

Address of Town of Beaufort: c/o Grady Quattlebaum, PLLC, 244-A Craven St., New Bern, NC

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**1.4** Homer Smith, LLC proposes to expand the Homer Smith Marina, and such expansion will bring the total number of Wet Slips to 141, the total number of transient slips to 33 and the total number of refueling/pump-out slips to 4.

**1.5** In order to expand the Homer Smith Marina, Homer Smith desires to acquire from the North Carolina Department of Transportation +/-19,409 square feet of right-of-way (“ROW”) of Cedar Street.

**1.6** Homer Smith has requested Beaufort to agree to amend the Covenant to permit additional Wet Slips and to consent to the transfer of the ROW, and Beaufort has so agreed, provided certain terms and conditions as herein set forth are met.

**1.7** Subsequent to the effective date of the Covenant, Homer Smith conveyed a portion of the Homer Smith Property to Homer Smith’s Docks and Marina Club, Inc., which joins in the execution of this Amendment to acknowledge that this Amendment continues to bind the real property so conveyed.

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exceed 141 Wet Slips, 33 transient slips and 4 refueling/pump-out slips. In no event shall the Homer Smith Marina contain more than 141 Wet Slips, 33 transient slips and 4 refueling/pump out slips.

**3.2 (b) Other Legal Requirements for Expansion:** Any additional Wet Slips constructed for the Homer Smith Marina shall meet all federal, state and local laws, rules and regulations, including but not limited to the Land Development Ordinance of Beaufort and the North Carolina Coastal Management Act.

**3.2 (c) No Waiver:** This Amendment shall not be construed as an implicit or explicit approval by Beaufort under any ordinance or development regulation of Beaufort, including but not limited to the Land Development Ordinance of Beaufort.

**3.2 (d) Parking:** Homer Smith Marina employees, agents, guests, owners, tenants and invitees (collectively “Patrons”) shall be prohibited while using the Homer Smith Marina from parking on Cedar Street or within any parking lot or area owned or operated by Beaufort. Homer Smith shall require all vehicles of all Patrons to display a window decal so that Beaufort may enforce this Section 3.2(e). Homer Smith shall construct a vegetive buffer and fence between its parking area, Cedar Street and Beaufort’s real property described in Deed recorded in Book 333, Page 328, Office of the Register of Deeds of Carteret County, North Carolina, such vegetative buffer and fencing to meet with the written approval of Beaufort. The parking area for the Homer Smith Marina shall contain a separate locked entrance on the western side of same, and use of such entrance shall be restricted to (a) service providers and (b) law enforcement and other first responders.

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**3.2(g) Amendment Runs with the Land:** This Covenant shall apply to the Homer Smith Property and the riparian area appurtenant to and/or adjacent to the Homer Smith Property and will run with the title to the Homer Smith Property and the riparian area appurtenant to and/or adjacent to the Homer Smith Property, including but not limited to that portion of the Homer Smith

Property heretofore conveyed to Homer Smith’s Docks and Marina Club, Inc.

**3.2(h) Contingency to Effectiveness:** This Amendment’s effectiveness, including specifically but not limited to the obligations set forth in 3.2(e) & 3.2(f), is contingent upon Homer Smith receiving a special use permit from Beaufort authorizing the expansion of the Homer Smith Marina as herein contemplated.

**ARTICLE IV**  
**Remaining Terms of Covenant**

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**IN WITNESS HEREOF,** Beaufort and Homer Smith, LLC have each executed this instrument in such form as to be binding.

**HOMER SMITH, LLC**

By: \_\_\_\_\_  
Tony Frost, Manager

**HOMER SMITH’S DOCKS AND MARINA CLUB, INC.**

By: \_\_\_\_\_  
Tony Frost, \_\_\_\_\_

**TOWN OF BEAUFORT**

By: \_\_\_\_\_  
Everette Newton, Mayor

**(TOWN SEAL)**

\_\_\_\_\_

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Clerk to the Board of Commissioners

**ACKNOWLEDGEMENT**

The undersigned Notary Public does hereby certify that **TONY FROST** personally appeared before such Notary Public this day in the State of North Carolina and County of Carteret and acknowledged (i) that he is a Manager of **HOMER SMITH, LLC**, a limited liability company, and (ii) that by authority duly given and as the act of such limited liability company, he signed the foregoing instrument in the name of such limited liability company on such limited liability company's behalf as its act and deed.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC



NOTARY SEAL/STAMP MUST APPEAR  
LEGIBLY IN BOX TO RIGHT

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My Commission Expires:

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WITNESS my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2020.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC



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## Homer Smith Marina Expansion Agreement Summary October 21, 2020

Homer Smith Marina desires to expand its marina from 85 to 178 slips and replace the fish house with a clubhouse for marina patrons. Of the 178 slips, 4 will be reserved for fueling and pump-out, and 33 for transient boaters, with construction of the latter funded through a Boating Infrastructure Grant.

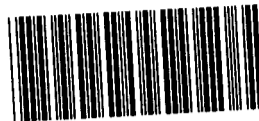
Following is a summary of provisions of the amendment to the 2011 covenant between Homer Smith Marina and the Town of Beaufort governing the number of slips that may be developed by Homer Smith Marina:

1. Marina patrons will be required to adhere a marina parking decal to their vehicle, making any marina patrons parking in the Cedar Street Parking lot identifiable.
2. Homer Smith Marina will construct a vegetative buffer between its parking lot and the Cedar Street Park parking lot that exceeds the Town's development requirements, and also construct a fence.
3. Homer Smith Marina will place a gate at the proposed west parking lot entrance. The gate would be locked and only accessible to fire, police, trash removal service, and large delivery vehicles.
4. Homer Smith Marina will donate \$125,000 toward the construction of a restroom/kiosk building at Cedar Street Park at the time of execution of the amendment.
5. The expansion of the marina will take place in two phases. The first phase will allow for up to 150 slips, including 33 slips for transient vessels and 4 slips for refueling and waste pump-outs. The second phase will allow for an additional 28 slips, construction of which may not commence sooner than 24 months after the certificate of occupancy is issued for phase 1.
6. The Town will endorse Homer Smith Marina's request to NCDOT that it abandon 19,409 square feet of adjacent ROW.
7. The agreement becomes effective upon issuance of a special use permit to Homer Smith Marina for expansion of slips.

K&W

NORTH CAROLINA, CARTERET COUNTY  
This instrument and this certificate are duly filed at  
the date and time and in the Book and Page shown  
on the first page hereof.

Joy Lawrence, Register of Deeds  
By [Signature]  
Asst. Deputy Register of Deeds



FILE # 1402013

FOR REGISTRATION REGISTER OF DEEDS  
Joy Lawrence  
Carteret County, NC  
March 06, 2012 04:28:02 PM  
COUNTER R/C 15 P  
FEE: \$26.00  
FILE # 1402013

STATE OF NORTH CAROLINA

COVENANT

COUNTY OF CARTERET

This Covenant is made for purposes of reference this the  
21st day of October, 2011 by and between the Town of Beaufort, a  
North Carolina municipal corporation, and Homer Smith, LLC, a  
North Carolina limited liability company.

Article I

DEFINITIONS

As used in this Covenant, the following terms are defined  
as described:

- 1.1 "1/4 Rule" shall mean the regulation issued by the  
North Carolina Department of Environment and Natural  
Resources published at 15A NCAC 07H .0208  
(b) (6) (G) (iii) which, with certain exceptions, limits  
pier and docking facility lengths to 1/4 the width of  
the body of water in which such facilities are  
located.
- 1.2 "Beaufort" shall mean the Town of Beaufort, North  
Carolina.
- 1.3 "CAMA" shall mean the Coastal Area Management Act  
(N.C.G.S. 113A-100, et seq.) and any successor or  
replacement legislation that regulates the

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(13)

construction, maintenance or operation of marinas in public trust waters of North Carolina.

- 1.4 "Contested Case" shall mean the proceeding in the North Carolina Office of Administrative Hearings, file number 10 EHR 8547, captioned Beaufort Partners, LLC & John Gardner v. DCM & Homer Smith, LLC wherein Beaufort Partners challenges the validity or scope of the Homer Smith, LLC CAMA Permit.
- 1.5 "DCM" shall mean the Division of Coastal Management of the North Carolina Department of Environment and Natural Resources "DENR").
- 1.6 "Homer Smith, LLC ("Homer Smith, LLC or Homer Smith")", is a North Carolina limited liability company.
- 1.7 "Homer Smith, LLC CAMA Permit" shall mean that major development permit No. 114-10 issued to Homer Smith, LLC on October 15, 2010 for construction of an 85 wet-slip marina and associated facilities on the Homer Smith, LLC Property and extending into the public trust waters of Town Creek adjacent thereto.
- 1.8 "Homer Smith Marina" shall mean the system of piers, docks, pilings and related structures permitted for construction and operation in the waters of Town Creek adjacent to the Homer Smith, LLC Property (as defined below) as well as the related facilities constructed or maintained on the Homer Smith, LLC Property.
- 1.9 "Homer Smith, LLC Property" is that real property, and the riparian area appurtenant thereto, in the Town of Beaufort, Carteret County, North Carolina and more particularly described in that certain deed, dated January 10, 2008, and recorded in Book 1254, beginning at Page 222, Carteret County Registry.
- 1.10 "Municipal Pierhead Line" shall mean the line described in more detail below on the south side of Town Creek, established and adopted by Beaufort on August 8, 2011 pursuant to 15A NCAC 07H .0208 (b) (6) (G) (iii) to modify the 1/4 Rule and allow the Partners' Marina and the Homer Smith Marina (and other riparian owners on the south side of Town Creek) to extend their pier and docking facilities further north

**BOOK 1402 PAGE 13**

than permitted by the 1/4 Rule. A drawing defining said Municipal Pier Head Line is attached as Exhibit "A" and incorporated by this reference.

1.11 "Partners" shall mean Beaufort Partners, LLC, a North Carolina limited liability company, John G. Gardner and wife, Gypsie W. Gardner and Wade Cary Enterprises, Inc., a North Carolina corporation.

1.12 "Partners' CAMA Permit" shall mean Major Development CAMA Permit No. 103-09, issued on July 16, 2009 to Beaufort Partners, LLC for construction of a 59 wet slip marina and associated facilities on the Partners' Property and extending into the public trust waters of Town Creek adjacent to the Partners' Property pursuant

1.13 "Partners' Marina" shall mean the system of piers, docks, pilings and related structures permitted for construction and operation in the waters of Town Creek adjacent to the Partners' Property (as defined below) as well as related facilities constructed or maintained on said Property

1.14 "Partners' Property" is that real property, and the riparian rights appurtenant thereto, in the Town of Beaufort, Carteret County, North Carolina as more particularly described in those certain deeds identified as follows: (1) Beaufort Partners, LLC deed, dated February 21, 2008, recorded in Book 1259, beginning at Page 284; (2) Wade Cary Enterprises, Inc. deed, dated July 3, 1997, recorded in Book 803, beginning at Page 91; and (3) the Gardners' deed, dated April 14, 2009, recorded in Book 1305, beginning at Page 141 - all recorded in the Carteret County Registry, and all being referred to for a more specific description of the properties subject to these Restrictive Covenants.

1.15 "Wet Slip" shall mean an area defined on two or more sides by docking and/or tie pilings, for the purposes of accommodating a single boat, vessel or personal watercraft. "Wet Slip" does not encompass or include transient boat docking along the side or end or T-heads of piers or docks.

**BOOK 1402 PAGE 13**

Article II

RECITALS

2.1 Partners are the current owner of Partners' Property. Partners has been issued the Partners' CAMA Permit and a building permit by Beaufort to construct the same. The Partners' CAMA Permit and Beaufort's building permit allow Partners to construct and maintain 59 Wet Slips in the Partners' Marina.

2.2 Homer Smith is the current owner of the Homer Smith Property. Homer Smith has been issued the Homer Smith CAMA Permit and a declaration of vested rights to construct the same by the Beaufort Board of Commissioners. The Homer Smith CAMA Permit and Beaufort's declaration of vested rights allow Homer Smith to construct and maintain 85 Wet Slips in the Homer Smith Marina.

2.3 Partners filed the Contested Case generally to challenge the alleged navigation issues between the Partners' Marina and the Homer Smith's Marina. In mediation of the Contested Case, the concept of Beaufort establishing a "pierhead line" near the southern side of Town Creek arose as a means of modifying the 1/4 Rule allowing Partners and Homer Smith additional flexibility to reconfigure their marinas to eliminate the alleged navigational conflict over Homer Smith's setback of its marina from the common riparian line, or extension thereof.

**BOOK 1402 PAGE 13**

2.4 Beaufort, having considered, among other factors, the irregular shore line on the south side of Town Creek, has found it to be in the public interest to establish a pierhead line in this area that will allow construction of marinas extending into Town Creek more than permitted by the 1/4 Rule. A pierhead line established by Beaufort could allow Partners and/or Homer Smith to construct more wet slips in public trust waters than currently permitted as part of their marinas. Beaufort has determined that, at this time, additional slips in these marinas are not in the public interest. While not making any specific findings of fact regarding either marina project, Beaufort has concerns over possible impacts associated with the permitting of additional wet slips in this area, including the potential for adverse negative secondary effects in terms of more congestion of boats and boat traffic on public trust waters, additional vehicular traffic to and from the marinas, additional security needs, and other secondary effects not set forth herein. Accordingly, while Beaufort has established the Municipal Pierhead Line, it has conditioned the validity of the same on the following three conditions which are:

- (a) Both Partners and Homer Smith agree that, notwithstanding the extended Municipal Pierhead Line, the numbers of Wet slips in their marinas will be limited to those specified in their existing CAMA and

**BOOK 1402 PAGE 13**

municipal permits, subject to amendment only by future written agreement between that respective property owner or owners and Beaufort amending the terms of that respective owner's or owners' Restrictive Covenants;

(b) Partners and Homer Smith agree in writing to reconfigure their respective marina layouts to avoid any dispute over the setback of their marinas from their mutual riparian line, or an extension thereof; and

(c) The Municipal Pierhead Line is presented to the United States Army Corps of Engineers and DCM for consultation purposes, and no objections are received.

The Board of Commissioners of Beaufort also delegated to the Beaufort Town Manager the authority to review the revised schematic plans for the two marinas in light of changes facilitated by the Municipal Pierhead Line to determine if there remains substantial compliance with the marina plans previously approved by Beaufort so that the "vested rights" of each marina project continue. On or about September 16, 2011, Partners and Homer Smith reached agreement in writing regarding reconfiguration of their respective marina layouts to resolve their existing disputes regarding the setback of their marinas from their mutual riparian line. The Town Manager has reviewed

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this agreement and associated marina layouts drawing, and has determined that said plans remain in substantial compliance with those previously reviewed and approved by Beaufort.

2.5 Prior to the execution and delivery hereof, the Corps of Engineers and DCM have been consulted and have not objected to the Municipal Pierhead Line, and Partners and Homer Smith have each agreed in writing to the reconfiguration of their marina project layouts relative to their mutual riparian line or extension thereof and the manager of the Town of Beaufort has reviewed and approved the schematic drawing of each marina project.

2.6 The purpose of this Covenant is for Homer Smith to agree to limit the number of Wet slips in its marina to the number currently permitted by DCM, unless Homer Smith and Beaufort mutually agree in writing otherwise, in order to satisfy the remaining condition imposed by Beaufort for its establishment and adoption of the Municipal Pierhead Line. Partners similarly has agreed to limit the number of Wet slips in its marina and has executed and delivered to Beaufort a similar Covenant accomplishing same. Attorneys for Partners and Homer Smith have reviewed both covenants to assure their acceptability. For this Covenant to be effective, it and the Partners' Covenant with Beaufort will be recorded on the same

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day, and as close to the same moment in time as possible at the Carteret County Registry.

2.7 The holder of all deeds of trust on the Partner's Property have joined in the execution of its Covenant to subordinate the terms of such deed of trust to the terms thereof, and the holder of any deed of trust on the Homer Smith property will join in the execution of this Covenant to subordinate the terms of such deed of trust to the terms hereof.

Article III

COVENANT AND STATEMENT OF AGREEMENT

To satisfy a condition for the effectiveness of the Municipal Pierhead Line, and for other good and valuable consideration, Homer Smith covenants and agrees with Beaufort as follows:

3.1 Recitals Incorporated. The Recitals above are incorporated herein and made a part hereof.

3.2 Limit on Numbers of Slips. Notwithstanding that establishment of the Municipal Pierhead Line would, or might, allow Homer Smith to construct additional Wet Slips as part of its marina under CAMA regulations, Homer Smith covenants and agrees with Beaufort that the number of Wet Slips in the Homer Smith Marina will not, without the written consent of Beaufort, exceed 85. This Covenant shall apply to the Homer Smith

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Property and the riparian area appurtenant to and/or adjacent to the Homer Smith Property and will run with the title to the Homer Smith Property and the riparian area appurtenant to and/or adjacent to the Homer Smith Property.

3.3 Amendment. This Covenant may be amended or modified only by written instrument approved by the Board of Commissioners of Beaufort, the holder at the time of amendment of the Homer Smith CAMA Permit or successor permit, and the owner at that time of the Homer Smith Property.

3.4 Continuation of Vested Rights. The Manager of the Town of Beaufort has reviewed the schematic drawings of Homer Smith Marina made to reconfigure the same within the Municipal Pierhead Line. This schematic drawing is identified as that certain drawing by Stroud Engineering, P.A., captioned "Proposed Site Plan, Beaufort Harbor Marina & Yacht Club, Revision No. 2, 9/21/11." By executing this Covenant the Town Manager determines and affirms that the revised plan for the previously permitted Homer Smith Marina is in substantial conformity with the Homer Smith Marina for which a 5 year declaration of vested rights to construct the same previously was issued by the Beaufort Board of Commissioners and, as a result, Homer Smith's vested rights to construct the marina shall remain in full force and effect until expiration of such rights according to State law or municipal ordinance.

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3.5 Miscellaneous.

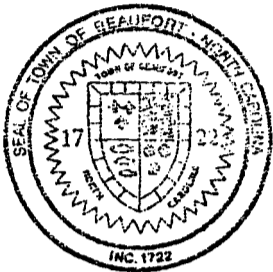
a. Successors and Assigns. This Covenant shall inure to the benefit of and shall bind, Homer Smith, the holder of the Homer Smith's CAMA Permit, and the successor owners of the Homer Smith Property and or successor holder(s) of Homer Smith's CAMA Permit.

b. Rule of Construction. All parties to this Covenant have had ample opportunity to participate in the drafting hereof and there will be no rule of construction or interpretation applied on account of draftsmanship.

(Intentionally left blank.)

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IN WITNESS WHEREOF this instrument is executed and delivered.



TOWN OF BEAUFORT

By: *[Signature]*  
Richard L. Stanley, Mayor

Attest: *Michelle Davis*  
Town Clerk

*Charles W. Burgess, Jr.*  
Charles W. Burgess, Jr.  
Beaufort Town Manager

HOMER SMITH, LLC

By: *Tony M. Frost*  
Tony M. Frost, Manager

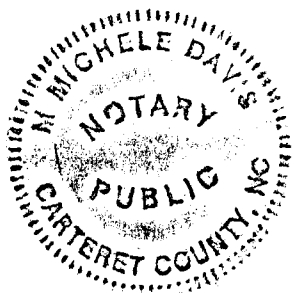
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STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, a Notary Public of the county and state aforesaid, certify that Richard L. Stanley, personally appeared before me this day and acknowledged he is Mayor of the Town of Beaufort and that by authority duly given and as the act of said municipal corporation, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and official stamp or seal this 15<sup>th</sup> day of November, 2011.



M Michele Davis  
Notary Public

M Michele Davis  
Printed name of Notary Public

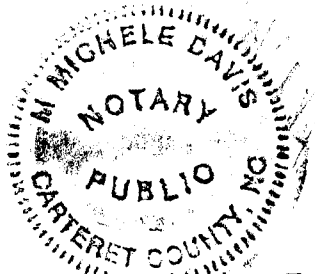
My Commission Expires: 5-10-2014

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, a Notary Public of the County and State aforesaid, certify that Charles W. Burgess, Jr., Manager of the Town of Beaufort, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 15<sup>th</sup> day of November, 2011.



M Michele Davis  
Notary Public

M Michele Davis  
Printed name of Notary Public

My Commission Expires: 5-10-2014

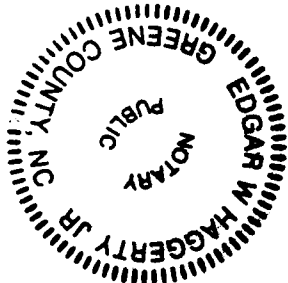
**BOOK 1402 PAGE 13**

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, a Notary Public for said County and State, certify that Tony M. Frost, Manager of HOMER SMITH, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this the 10<sup>th</sup> day of November, 2011.



Edgar W Haggerty Jr  
Notary Public  
Edgar W Haggerty Jr  
Printed name of Notary Public

My Commission Expires: 6-20-2014

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**Subordination Statement/Agreement**

This Subordination Statement/Agreement is given pursuant to paragraph 2.7 of the above Covenant. As used in this Statement/Agreement the "Deed of Trust" is described as:

Date of Deed of Trust: November 28, 2007

Recording Information: Book 1250, Page 130, Carteret County Registry

Grantor: Anna Marie Frost and Alice Marie Willis

Trustee: C.R. Wheatly, III

Beneficiary: Marie Smith

The undersigned executes this Subordination Statement/Agreement to subordinate the terms of the Deed of Trust to the Covenant dated October 21, 2011 between the Town of Beaufort and Homer Smith, LLC to which this Statement/Agreement is attached.

Marie Smith  
Marie Smith, Beneficiary

**BOOK 1402 PAGE 13**

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, a Notary Public of the County and State aforesaid, certify that Marie Smith, Beneficiary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 10<sup>th</sup> day of November, 2011.



[Handwritten Signature]  
Signature of Notary Public

Edgar W Haggerty Jr  
Printed Name of Notary Public

My Commission Expires: 6-20-2014

BOOK 1402 PAGE 13



**Town of Beaufort, NC**

701 Front St. - P.O. Box 390 - Beaufort, N.C. 28516  
252-728-2141 - 252-728-3982 fax - www.beaufortnc.org

**Town of Beaufort Parks & Recreation Advisory Board Regular Meeting  
6:00 PM Nov. 5, 2020**

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**AGENDA CATEGORY:** Items for Discussion and Consideration

**SUBJECT:** Randolph Johnson Park

**BRIEF SUMMARY:**

Randolph Johnson Park is nearing completion. We anticipated opening before Halloween; however, due to drainage work yet to be completed to satisfaction, the contractor still has work to do on the site that would present a safety hazard to park users if it were to be opened.

Carteret Community College officially presented to Beaufort sculpture to the Town on Friday, Oct. 22. Photos and video were posted to social media and the PR served as a teaser to the park opening.

The group consensus was to take a photo with this board after the park was officially open. Staff will coordinate when possible.

The Town is working with a landscaper to obtain a quote for bushes and trees to provide shade and a buffer to the residential area beside the park. The Garden Club has donated a tulip tree and the Fasolinos have donated a tree for either side of the sculpture.

A raised crosswalk is being installed on Carteret Avenue to help with pedestrian safety.

Staff is working to collect oral histories about Randolph Johnson to incorporate into a future dedication celebration.

Staff is asking this Board to explore additional art wall/fence ideas. One was presented at the September meeting and Town staff has asked that other potential ideas be presented as the impact of the wooden circles on the longevity of the fence is unknown at this time. Projects need to be able to withstand the elements without causing premature deterioration to the fence.

Entrance signs are being priced by staff.

There are significant details that staff will need to coordinate on the operation of the splash pad before it opens for the season in 2021. The splashpad will need multiple service checks during peak times of operation and staffing needs will be significant.

Covid-19 continues to present challenges and all park users are asked to wear masks, social distance, wash and understand that the public facilities are not being sanitized on a regular basis. All activities are at the users own risk.

1.



**Town of Beaufort, NC**

701 Front St. - P.O. Box 390 - Beaufort, N.C. 28516  
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**Town of Beaufort Parks & Recreation Advisory Board Regular Meeting  
6:00 PM Nov. 5, 2020**

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**AGENDA CATEGORY:** Items for Discussion and Consideration

**SUBJECT:** Topsail Park

**BRIEF SUMMARY:**

Eastern Earthscapes & Construction, LLC was awarded the contract as the low bidder for the project at \$51,693.80. The Town was awarded a Soil and Water Conservation District Grant for \$13,998 for this project.

The project was delayed in December 2019 due to a fire at the neighboring property. Work has been able to move forward in 2020.

Town staff met with the contractor for a pre-construction meeting on Oct. 23, 2020. The anticipated start date is Nov. 5 or 6, 2020.

Sam Bell, Engineer, is the lead on the project for the Town.

The Beaufort Garden Club has been involved with the entire process. In addition to donating benches for the park, they have raised \$3,000 funding for improvements. A project has not yet been identified by the Garden Club for this funding. They proposed electrical but this is not conducive with the park and its future uses as a passive park in a low laying area with rain gardens.

A sub-group of the Garden Club has also reached out about donating public art to this park. They are working with the Town to ensure any ideas meet the Historical guidelines as well as working with our engineering department for installation. They have not submitted any ideas at this time for review. Staff anticipates they will want to meet with the P&R Board in early 2021 to discuss proposed art.