

PINE POINT RESIDENTS GROUP STATEMENTS: April 2, 2008

The following statements were read in response to the Town Manager's report at the April 2, 2008 Town Council Meeting. They were read to the Council at the end of the meeting when citizen comments are allowed. The Town Manager presented his summary of the Lighthouse Inn Report just prior to these speakers. There were no other public speakers. At the conclusion of the meeting during Council Members Comments, all but one Councilor (Ahlquist) responded to these comments. The meeting is broadcast several times on Channel 3.

The Report itself is on the Group's website, www.pinepointbeach.com. It is a large file to download but very interesting to read.

A Press Statement is also included. This was provided to the local papers prior to the meeting and prior to the Residents Group representatives receiving the report, which was provided to us one day before the meeting. It was over 100 pages.

Jack Callahan, 38 King St. Pine Point and Member of the Residents Group.

(Jack summarized this statement)

On behalf of our group I want to thank the Council Chairman for requesting the Lighthouse Motel report and providing answers to our questions.

As you know, we've been involved in the Condominium issue at the Lighthouse Inn, along with other issues in Pine Point, for the past 3 years. When the owners of the motel first contemplated a conversion to luxury condominiums, our group went before the Zoning Board to ask for an opportunity to provide public input. This motel is seriously non-conforming to the residential zone and the owners needed the Town to exchange land in order for the plan to work. The Zoning Board had many concerns, predictably, tabled action on their appeal and instructed the applicants to "work with your neighbors."

In response, a series of public meetings were held. At the end of that summer most everyone seemed to be in agreement on a plan, including our group and the Motel owners (I emphasize OUR GROUP because our support for the Trumans' plan has been consistently misreported.) The last plan became known as Plan D which called for **five**, beautiful, two-story units with garages below, in an expanded building. It's important to remember that five dwellings – five luxury shorefront homes - on 1/3 of an acre was still very high density, but the plan was certainly more residential in nature than the old motel. It was a nice design and, of course, we all expected that a land exchange benefiting the Town would happen as a result of the project.

Unfortunately, the owners withdrew the application from the Zoning Board after the lengthy process of public meetings and eight months of meetings of the committee the Town Council set up to work out the details.

Two years later we learned that the owners wanted to create 22 condos out of 22 motel rooms. We obviously objected and several neighbors spoke to you last fall to encourage adoption of the proposed ordinance to regulate these sorts of conversions. Please remember that the ordinance Mr. Vaniotis and Mr. Owens proposed to you was titled "Change of Ownership of Guest Rooms in Non-conforming Hotels and Motels." The purpose of the ordinance was to provide direction to Code Enforcement by specifying a set of guidelines and restrictions. You tabled that ordinance last fall with concerns about the language and sent it back to your Ordinance Committee. Councilors Messer and Most, however, reassured us all that our existing ordinances were adequate for the time being, and they affirmed their support of the Code Enforcement Officer's decision regarding the change of use. A Change of Use requires Zoning Board approval.

The owners of the hotel filed their declarations just days before your first reading of the ordinance despite the fact that the Town attorney advised, and Code Enforcement officer Grysk had ruled it was a change of use. The Town even filed a notice in the Registry of Deeds alerting potential condo buyers of the Town's existing ordinances.

Given that summary of the events, our group simply does not understand why the ordinance was never completed, why our existing ordinances apparently were not adequate after all, and why the Town's position was reversed administratively and without public notification. One of the recurring themes in the report is that this is a code enforcement matter, not a Town Manager decision or a Town Council issue. That begs the question of why an ordinance regulating conversions was on the Council's agenda on three separate occasions. Once again, the title of the ordinance draft is "Change of Ownership of Guest Rooms in Non-conforming Hotels and Motels" and its authors are Mr. Owens and Mr. Vaniotis. This report repeatedly states that the Town cannot regulate ownership. Why would the Council devote time and listen to public comment on an ordinance regulating changes in ownership?

In short, while we appreciate the report, we have to say in all honesty that it raises more questions than it answers. We also must say that, in all due respect, it is not complete despite its bulk. Several questions were not addressed, and for the new Council to understand the evolution of the pertinent documents they should have been provided with annotations and strikethroughs so the language changes are clear.

Please do not let this issue, which is of great importance to so many people and has far reaching implications for other non-conforming motels. simply fade away because this report essentially states that nothing can be done. We are not convinced of that at all.

This is a defining moment. You're very busy public servants and we don't envy the hours you put in doing the public's business. But we plead with you to treat this report as the first step in the investigation we asked you to conduct. Please decide on the next step and please include the public at all stages.

Thank you

Judy Shirk, Avenue 3

Thank you for the opportunity to speak and congratulations to Councilors Ahlquist, Roy and Wood on your election. I want to speak briefly about the report and what I am worried about. First of all, this issue goes way back to February of 2005 and it's very important for you to be brought up to speed. When we formed our Residents Group at that time it was so we could speak with one collective voice and promote our group's views. At one time we had 135 members interested in the issues ranging from the condos at the Lighthouse to the proposed new pier, the beachwalk subdivision, the barricades on Depot Street and others. Last fall you might have seen a letter to the editor urging the Council to approve an ordinance about these condominium conversions so there would be some reasonable regulations in place. 62 people's names were listed under that letter which the editor said was unprecedented. We feel so strongly about this because it really is all about the character of Pine Point. Some of us have had the experience of going before the Zoning Board of Appeals just to add a first floor handicap bathroom and got denied. We can't understand why a big commercial business can make such a major change without having to do the same.

Now I tried to read all of this 100 pages since we got it yesterday and I did pretty well, and I think the bottom line is that the lawyer says its not a change of use now, but it was last year. The report reads as if nothing different will happen there except that people will own their motel room. Well, I'm no lawyer, but common sense tells me that there will be plenty of changes there. It won't be many seasons before these little vacation homes will be used by their owners, and their relatives and their friends, and their friend's friends and they might as well put up a permanent sign that says NO VACANCY. Well that's not a motel. There is no requirement anywhere that I can find that those rooms have to continue to be available for the public. That's not a motel. That is a change of use.

I read the words that our Town attorney asked the Trumans to put in their amendment. Part of it says "Any unit owner WISHING – the word is WISHING – to rent out his or her unit, and it goes on... so right there you have it – owners aren't required to keep their rooms available, only if they wish. That's not a motel.

The lawyer for the town wanted to make sure these motel rooms would not be dwellings. Well, if I buy one and live there for five months and then head to Florida for the winter, I guess it's a dwelling and not a motel room. Who do you think will buy these places? Retired folks who want to downsize, have a summer vacation place at the best beach in Maine, and go to Florida in the winter. That's a dwelling.

I read in this report that the Town filed a notice in the Register of Deeds last year alerting any buyers of these condos that they would need to get an occupancy permit. The ordinance says that prior to any change in the ownership or tenancy of a building or structure other than a single-family, two family or

multi-family dwelling, the owner or tenant has to get a certificate of occupancy. Well, this is not a single family, two family or multifamily dwelling, so if I own a unit and decide to rent it out to 3 tenants for June, July and August, they each have to get a certificate of occupancy? It doesn't make sense.

Then there is the question of kitchens. The condo documents say that no kitchens are allowed and then it defines a kitchen as a cooktop or stove, but not both. That is the only definition of a kitchen and that doesn't even make sense.

It also says that these condo declarations can be changed by the owners in the association and the town has no say over them. So once again, common sense dictates that the owners will put in kitchens that meet this loophole. They'll be a toaster oven, a tabletop grill, a fridge, a microwave, blender, coffee maker, dishwasher, garbage disposal, electric can opener, and so on. As long as they don't have a stove AND cooktop then they haven't broken the rules. Kitchens are not defined in your zoning ordinance at all, so now we are permitting this condotel to define kitchens in their condo documents, and that definition is absurd. My point is that these places have never had kitchens, kitchens mean dwellings, and dwellings mean a change of use and a change of use means zoning board approval is required.

Another thing that does not make sense is the public safety in this plan. This agreement between the lawyers means that we could have 22 families living together, either owners or renters, for six months, yet there is no requirement to upgrade the building into compliance with current codes. This place has no sprinkler, no fire pull stations, even the smoke detectors are not interconnected like the ones in my house are. This building is old, it needs major renovations according to Andy Hyland who was the architect of their first plan. Now it's going to get sold to 22 people or more with no upgrade except a coat of paint maybe. I thought the ordinance requires it to be upgraded prior to a new occupancy permit but this report doesn't say that.

This plan is the most convoluted thing I've ever read. This building is not going to be a motel, it will be some hybrid multiplex with no oversight. The report said the Town will not be auditing the guest register to ensure that it ran as a motel. There seems to be no enforcement ability at all. And, on top of it, the Town is now dealing with 22 owners.

Please look into this matter further. Appoint a committee to investigate this, or talk to other towns to see what they have done.

Thank you for your service to our Town

Sue Perrino, Driftwood Lane

Thank you for the opportunity to speak. I have been a close observer of this issue with the Lighthouse Inn and the Beachwalk development for the past couple of years and wondered when it would reach a conclusion. I have to say that as an impartial observer, and I do feel impartial, I think the process the administration has used was unwise. When the controversy first erupted, the Town did the right thing; it accepted the advice of its attorney and adopted a consistent conservative approach. After what I will assume was a thorough review of all applicable ordinances, statutes, regulations and declarations it was determined, according to this report, that what the owners of the Inn proposed doing was indeed a change of use. The Town never said they could not do it, the Town simply said that a change of use required zoning board approval. I think we all wished that the owners respected the Town's decision, but they filed their declarations anyway as if to say we don't care what the town's position is. That forced the town to file its own statement to alert any buyers of what would likely be a title defect of sorts.

Now I compared the owners condo documents and I simply cannot believe that the very minor changes made were sufficient to satisfy the Town attorney. Even if that one paragraph change did satisfy him, I'm curious why it also caused the Code Officer to change his mind so suddenly. Nevertheless, this is all a matter of interpretation and language, and while I am certain you have a great deal of respect for your attorney, or I should say OUR attorney, they are not infallible. The law is not always clear. And the best attorneys make mistakes or interpret things differently. It would be interesting to listen to an attorney on the other side of this issue argue the points. More about that later.

What concerns me the most, however, is the executive session you held with Mr. Vaniotis on December 5th. Mr. Vaniotis wrote in his memo about his concern about the "possibility of litigation." Let me take you back to September when you held a public hearing on the new ordinance and I believe 8 or 9 speakers spoke in favor of its adoption. One gentleman spoke against it, and Mr. Truman took to the podium and concluded his remarks with a threat of a lawsuit. When the Council began its deliberation soon thereafter, I was impressed with Councilor Most's statement that she was, and I believe I remember it exactly, "unimpressed with a threat of litigation." Councilor Babine was equally forceful in repudiating Mr. Truman's threat, and I have no doubt that any Councilor would do the same. Then we heard statements by Councilors Most and Messer which reassured the public that the decisions by the Code Enforcement Officer regarding these conversions is fully supported by the Council, and the Town would "vigorously defend" those decisions.

I'm having difficulty finding a reason why the Town attorney would find it necessary to enter Executive Session because of his concern for possible litigation unless further threats were made,

perhaps by attorneys representing the Trumans. Then, a few short weeks later, we learn from Mr. Grysk that the lawyers worked it out and they can do it. You can see how this chain of events is disturbing, and since we were given no information as a neighborhood we have to draw our own conclusions. It is unfortunate that a group of citizens like the Residents Group has to ask for an investigation to get answer, but that is what is clearly needed. This report is only the beginning of that, I hope.

If you were ill and not completely comfortable with your doctor's diagnosis, perhaps because of her interpretation of test results, your physician, your family, and maybe your insurance company would EXPECT you to get a second opinion. I urge you as a second step, to seek out a municipal attorney elsewhere who has no connection to this issue and ask her to research the matter and grant an objective second opinion. Furthermore, I urge as a Council to take the position that, because of the ordinance deliberations on this very matter, the decision to allow the condos at the Lighthouse was premature and should have only been made in the context of the ordinance, by the Council. I strongly disagree with Mr. Vaniotis that it was and remains a code enforcement decision. I'm not a lawyer, but I can reach my own conclusion that a one paragraph change in an amendable condo declaration could not possibly cause Mr. Grysk to alter his formerly strong position that the Trumans are attempting to change their non-conforming use to another non-conforming use.

I have an idea. Since a negative decision by Mr. Grysk can be appealed to the Zoning Board of Appeals, why don't we try something different but perfectly legal, I'm told. Let's have the Town Council file an appeal to the Board asking for relief of his AFFIRMATIVE position in this case. Let the process we use be put to use in this case. Please consider it.

Diane McLellan, East Grand Ave

Thank you for allowing me to speak. I think it's important to put aside all of the legal mumbo jumbo in this 100 page report and look at the reality of the situation down there. Think about the possibilities and as you do ask yourself if this is a change of use or not.

What would happen if five families decided to chip in and buy one unit at the Lighthouse Condominium? The families have an agreement between them to occupy the unit for two weeks each summer on a rotating basis then the rent it out to someone for the balance of their time. The result is a unit which is not available to the public as a motel room for ten weeks during the summer. Also, you know have 21 owners and five others who share ownership. Do any of these legal papers address that because I guarantee you that will happen?

How about a senior citizen couple who decides to downsize and buys their little vacation home at the Lighthouse here where they will spend the summer and then head to Florida for the winter. They rent the unit to a young couple they know for the balance of the six-month period or just keep it vacant. After all who wants strangers using their possessions? Now that unit is no longer available to the general public.

Two young men chip in and live there full time. They like to party. Then they head south. Mr. Truman himself heads for Tobago every winter and returns to run his motel. In a motel a disruptive guest would have to leave, but who will tell the owners to leave their own place? Some association which might never meet.

A company purchases a unit and uses it to entertain clients, or allows employees to use it as a benefit. That unit is unlikely to be available to the general public.

One investor never sees her room, but the management firm you say has to be there rents it out daily or weekly. How compatible is a unit with constantly changing transient guests among people who live in what are essentially vacation dwellings?

Imagine the possibilities? It is within the realm of possibility that this "motel" will never operate as a motel again and we are not convinced the Town has the ability to do anything about it. The end result, of course, is that it has CHANGED ITS USE.

We heard the argument that these are not dwellings. That's not even logical. Of course they are dwellings, perhaps not by legal definition but that is surely an interpretation. As part of your investigation, Mr. Grysk will explain what he has told many of us. When it comes to non conforming properties, he simply determines its use when it was grandfathered and if different from that then he says no and invites the owner to appeal his decision to the Zoning Board. My guess is that he hasn't changed his conservative approach for many years because he knows as well as you that the goal is to move properties toward MORE conformity not less.

And have you given any consideration to the four million dollar homes which are right next door? Have those owners been notified of your reversal? Have they had an opportunity to participate? Will they be affected? Of course they will.

Thank you

PINE POINT RESIDENTS GROUP PRESS RELEASE

MARCH 30, 2008

The Residents Group, neighborhood, and community were not informed of the abrupt change in the Town's previously strong position that conversion of the Motel was a "change of use." We have worked with the Town administration for 3 years on this issue. The residents should have been informed or a public notice made.

We disagree with the Town Manager's new position that "nothing will change there, just the ownership, which the Town can't regulate," That was not true all last year. The Manager even filed a warning in the Registry of Deeds alerting any buyer of the condos of the Town's ordinances. Mr. Owens stated that they have modified their declaration to his satisfaction. Our research, however, is different, the owners did NOT strengthen their condo declarations, they weakened them. The Town will have no enforcement ability over what happens there. A little over one paragraph was changed from the original condo documents. And these can be modified by the Condo Association without Town approval. The Council, as part of an investigation, should ensure that the changes made to these declarations are examined carefully because there is no evidence that they have been strengthened.

It is unreasonable to accept the claim that this operation will continue to be a seasonal motel as the Town Manager indicates in his responses. Once the 22 units are sold, owners will choose to rent long term or allow friends and relatives to use the units, or leave them vacant. They will not be fully available to the traveling public as the declarations indicate and the Town Manager accepts. There is no way of determining the extent to which it remains available to the public without the Town accessing the condotel's records consistently.

The language in their condo declaration amendment indicates that owners will not be allowed to put in kitchens. Kitchens are defined in the amended declaration as a cook top and oven, nothing more. There is no question that owners of these units will equip them with kitchens and it will be unenforceable by the Town. Kitchens clearly create a "change of use." They create a "dwelling." And they present a life safety hazard that the structure is not at present equipped for properly. This facility is old, has no sprinkler system, no pull stations, no fire escapes, no egress windows, outdated electrical systems, asbestos

sheathing, and no inter-connected smoke alarms wired to an alarm service. To permit this change of use is to ignore a significant risk to personal safety.

Most upgrades at this facility need to be done building-wide and there are many. Individual owners will not be able to upgrade on their own nor will they be motivated to share substantial costs to upgrade common areas. Furthermore, it may take some time for all units to be sold, delaying the upgrades necessary under the Town ordinance for the protection of life.

Two other non-conforming lodging places in Pine Point went to the Zoning Board for approval to convert to condos last year. The Lighthouse should also be required to. Ownership issues aside, common sense must prevail along with a correct interpretation of the ordinance and case law. These dwellings will undeniably be a change of use from what the Motel has done for decades. The law requires a process of approval so some conditions can be applied and enforcement made possible.

The Town Council has been involved in this for three years, ever since the owners asked for the Town's help for first 5 condo plan. We do not believe that this should now become an administrative decision, made without public notice or input. The Town Manager does not have the authority, in our view, to make this decision and the Town Council should investigate the irregularities we have pointed out in our submission to them. At the very least, an objective legal opinion by another firm should be sought.

Ownership can take different forms. If the owner's of the motel chose to take on 30 partners or create a corporation and issue shares, there would be little objection. But the change of ownership they propose is far different and it presents a host of complications for regulation. We disagree with the Town Manager that this form of ownership has nothing to do with land use as he stated.

The bottom line is density. To permit a non-conforming motel on 1/3 acre of land to become 22 dwellings would create a housing density that is outrageous by today's standards. When compared to single family homes nearby, this tiny parcel of land will have as many dwellings as all of King Street up to Dunefield Lane.

For more detailed positions, history and details, including correspondence and photos, please visit the Resident Group's website at www.pinepointbeach.com