

Robert Baizley 28 Dunstan Landing Road Scarborough Maine 04074

Maine Department of
Environmental Protection
David P Littell, Commissioner
State House Station 17
Augusta, Me 04333-0017

December 21, 2009

Reference: Town of Scarborough Shoreland Violations,

Dear Commissioner,

Please find within a request for a formal investigation into Monday, December 14, 2009 site plan approval to the Light House Hotel from the Town of Scarborough Planning Board. I also would like to request a temporary and immediate injunction or stop work order at the Light House Hotel. In all of my twenty five years of working in six different states with sensitive/fragile wetlands and shore front properties. I have not seen such a deliberate disregard for or such a total lack of respect for DEP rules and regulations as this past Monday night.

Please find below a list of 14 potential shoreland zoning violations made by the Town of Scarborough regarding a parcel of land located in Pine Point Beach area of Scarborough and being part of Pine Point Beach. These actions made by the Town of Scarborough violate both the "minimum guidelines" of the State of Maine DEP Mandatory Shoreland Zoning Act and the Town of Scarborough Shoreland Zoning Ordinance.

1. In July of 2009 the Town of Scarborough Town Council created a new non-conforming shorefront lot in the shore land zone by subdividing it from a larger lot with out a request for variance or approval from the Scarborough Planning Board.
2. Then the Town of Scarborough Council once again sub divided this new, yet non-conforming and un-recorded shore front lot by splitting into two pieces with out the proper variance or municipal subdivision review, making three non-conforming lots in which two are coastal shore front lots.
3. Then the Town of Scarborough Council entered into a written purchase and sales agreement to transfer one of these two newly created, un-recorded, and non-conforming shore front lots for valuable consideration to the Light House Hotel/Condo. Light House Hotel/Condo is a non conforming structure and operating as non-conforming business use in a residential and shore land district.

4. In October of 2009 the Light House Hotel/Condo submitted plans to the Town of Scarborough Planning Board for expansion of its non-conforming structure and use. This was done by requesting a permit for a driveway and parking spots for 22 dwellings on the yet to be acquired, newly created lot with out proper variance, un-recorded, and non-conforming shore front lot.

In December of 2009 the Scarborough Planning Board issues a permit to the Light House Hotel for a driveway and a 22 car parking lot on this newly created non-conforming shore front lot which was created by the Town of Scarborough this past July in violation of the DEP “minimum guidelines” and lot size standard as listed below:

5. Scarborough Planning Board approved a drive way to 22 residential deeded dwellings far exceeding the limit of two single family deeded dwellings. The planning board also approved a structure covering 80% or more of the lot, far exceeding the 20% limit.
6. The driveway and parking area was not designed to prevent storm water runoff from flowing directly into a water body and when feasible to retain all runoff on site.
7. The driveway and parking spots will result in water pollution, erosion, or sedimentation to surface waters.
8. The proposed and approved use will have an adverse impact on fish, aquatic life, bird or other wildlife habitat.
9. The proposed and approved use will not conserve shore cover or visual views from the water or land.
10. The proposed and approved use will alter and obstruct shore line and ocean navigation land references.
11. The proposed and approved use will not conserve or preserve points of access to coastal waters, in fact it will reduce or eliminates such public owned and access points to the Atlantic Ocean.
12. The proposed and approved use will not protect archaeological and historic sites; this lot was once part of two historic roads dating back to the 1600s and part of Abenaki Indian village.
13. This lot is within a Federal designated Natural Resource Protection Area.
14. The proposed and approved use will not avoid problems associated with flood plain, this entire lot is a floodway, and has flooded at least one or more times in each decade, for the last five decades and possibly more.

Issues

The Town of Scarborough unfortunately has seen more then its fair share of environmental violations over the years. To mention just a few: the filling and creation of a road

way on the Nonesuch River wet lands off the Payne Road and across from the end of Mussey Road, the clear cutting and stripping all vegetation from streams banks of the lot located off the Sawyer Road and across from Scarborough Memorial Park, and wet land encroachment issues brought to this department attention in 2008 by volunteer members of the Scarborough Conservation Committee.

Scarborough has a treasure chest of both environmental and historical assets: the Atlantic Ocean, the largest salt water marsh in Maine, small waterfalls, and its many rivers and streams. In return these same assets have been the home to the Abenaki Indians for a least several hundred generations and attracted many explorers from Europe since the 1500s. This all has made Scarborough extremely rich in historical and archaeological sites.

Unfortunately, Scarborough has experienced leadership, which has done very little to embrace or protect these highly valuable and irreplaceable assets. This has been especially true in the past several decades during which the nucleus of focus has only been on that of monetary issues. This town has become so obsessed on generating additional tax revenues by way of new developments, only to have much of this new development at the cost of losing valuable environmental and historical sites forever. Given all the shore line and wet lands, Scarborough should be the leader in setting the protection standards in the State of Maine. Instead, Scarborough can not even meet the minimal standards set the by DEP for Shore land Protection. At this point in time, it would appear that Scarborough is intentionally ignoring such standards in this present case despite numerous notices and out cries by members of the public.

By allowing these shoreland violations to exist in Scarborough, combined with the lack of respect for DEP regulations by both the Scarborough Planning Board and Town Council. Neighboring municipalities and citizens are all in disbelief and asking why the state has not stepped in to stop these un-conventional actions in Scarborough.

Arguments

The town of Scarborough officials have claimed that the past use of this shore front lot was non-conforming and the new proposed use of this lot will also be non-conforming use and the two uses are equal.

The past and present use of this lot has been a public way to the beach. It has provided for centuries a public vista and is in itself, a historic public way. This lot was once part of an Abenaki Indian shore Village. Upon review of the State's Shoreland zoning minimum requirements, this past use is in fact a conforming use and should not be converted to a non-conforming use.

Lets for argument sake, say that the past use is non-conforming. The new proposed use is not any better then the past use as required by the shoreland zoning. In fact the past use is

superior to the new proposed use in so many ways. The private use of the lot will eliminate many of the DEP zoning objectives which are presently in place such as: access to the Atlantic Ocean which would be reduced or eliminated, removal of scenic vista from both land and sea, elimination of scenic vista for Route 9 - Maine's designated coastal scenic highway, elimination of access to very important historic and archaeological site. It is very clear that the new proposed use is far inferior to the past use of this lot. Therefore a variance should have **not** been issued by the planning board.

On December 14th the Scarborough Planning Board approved a variance regarding the Light House Hotel expansion of a non-conforming use without proper review as listed below, despite numerous attempts made by the public requesting such review.

The planning Board had an obligation to look at storm water drainage and request that such waters be cleaned on site by the applicant. This request was never addressed by the planning board nor did the applicant present such a design in their request. It is a well known fact that autos will discharge petroleum and other pollutants upon being parked for several or more hours. The past use of this lot was only used as a drop off area and not for parking. The new proposed and permitted use will be for parking of twenty two autos for twelve or more hours at a time, substantially increasing pollution and sedimentation to nearby surface waters. Not to mention well beyond the typical one to three vehicles for a non-conforming shore front lot.

In fact, in the 1940s and 1950s the State of Maine Department of Transportation designed and graded this lot and all the other streets running between the beach and East Grand Avenue to have their storm waters and floodways to be directly discharged into the Scarborough Marsh and Jones Creek, resulting in this area of the marsh and Jones Creek experiencing higher levels of pollution in comparison to other waterways and areas of the marsh. By having the Planning board approve the Site Plan to the Light House Hotel, this pollution and sedimentation problem will be substantially increased by the twenty two parked vehicles; especially when combined with DOT design to discharge storm waters into the marsh.

It is crystal clear from the Maine Department of Environmental Protection publication, Guidelines for Municipal Shoreland Zoning Ordinances, page 44, "No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality". However, the Scarborough planning board issued an approval to Light House Hotel despite the above 14 identified potential violations and problems.

I find myself very taken back by Town Officials at all levels who have work so hard to find loop holes in the shoreland rules and regulations. These are the very same people that are just simply circumventing these rules in which have been put in place to protect our fragile environment. Putting twenty two residential dwellings on lot that is just larger enough for one residential unit is just incomprehensible, extremely dangerous, and just plain reckless toward the health and wellbeing of the environment, marsh and citizens.

The above conduct is the equivalent of a person driving a European sports car at 150 mph down a 25 mph residential street with children playing. The environment being the child in need of protection and the development interest being the speeding car. The person speeding on a residential street would be put in jail for their reckless and dangerous conduct. We should expect the same treatment and possible jail time for endangering the environment and health of the Scarborough Marsh. The Light House Hotel owners, town councilor members who voted for the transfer of town property, and the planning board members who voted for the parking lot approval should all receive the same treatment as the person speeding on a residential street.

I have enclosed a number of news publications and emails for your review. These will provide proof to the numerous and courageous attempts by Scarborough Citizens to notified Scarborough officials, and their attempts to stop the wrongful acts of trying to circumvent Shoreland regulations.

In closing, thank you in advance for your consideration, prompt review, and professional oversight of the above listed issues and concerns. If you have any additional questions, my contact number is 207-329-3990

Sincerely,

Robert M Baizley

Cc:

Rep. Sean Flaherty

Rep. Peggy Pendleton

Maine Attorney Generals office

Friends of Scarborough Marsh

Friends of Casco Bay

Maine Audubon Society