

The Scarborough Town Council may have violated the Town's own Shoreland Zoning Ordinance with the votes to deed a public street to a private entity and discontinue the public road and eliminate vehicular access to the beach on the former Depot Street. This previous public road is the end of Pine Point Road.

The actions of the Town Council should be reviewed by the Scarborough Zoning Board and Maine Department of Environmental Protection to determine whether or not this ordinance has been violated or will be violated by the resulting use of the land for parking and the planting of vegetation and/or building of walls or fences.

A review of the purposes of the ordinance raises the question of whether the Town Council has violated the intent of its own shoreland ordinance. Further there is a question as to whether the intent of the Maine Department of Environmental Protection Mandatory Shoreland Zoning Act was violated.

The Purposes section and Scarborough Shoreland Zoning Ordinance information is reproduced below.

**SHORELAND ZONING ORDINANCE  
FOR THE TOWN OF  
SCARBOROUGH, MAINE  
ADOPTED AUGUST 5, 1992  
AMENDED JULY 5, 1995  
AMENDED DECEMBER 15, 2004  
AMENDED FEBRUARY 6, 2008  
AMENDED JULY 15, 2009**

**(Areas of concern are in bold and italicized.)**

**"Section 1. Purposes**

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; ***to protect commercial fishing and maritime industries***; to protect freshwater and coastal wetlands; ***to control buildings sites***, placement of structures ***and land uses***; ***to conserve*** shore cover, and ***visual as well as actual points of access to inland and coastal waters***; ***to conserve natural beauty and open space***; ***and to anticipate and respond to the impacts of development in shoreland areas.***"

Note: The transfer of publicly owned roadway for the express intent of creating a parking area with four foot plantings and placement of four foot walls or fences appears to be contrary to the purpose of the zoning law.

Specifically the Shoreland Ordinance requires the following:

***“conserve natural beauty and open space”***

The current view available in the King Street, Pine Point Depot Street area will be sacrificed. Currently, no hedges or fences can occupy the area of the current roadway. Parked cars, vans and trucks and four foot walls and vegetation will replace a natural ocean and dune access view.

***“protect commercial fishing and maritime industries”***

Fishermen, lobstermen and clam diggers will no longer be able to use Depot Street for vehicle access to the beach area for commercial fishing activities. The current fifty foot road will be replaced by a foot path.

***“conserve.... actual points of access to.... coastal waters”***

Public access will be reduced. Hundreds of people use this access point on hot summer days to reach the beach. Wedding parties are driven to the shore here. The 50 foot wide access road will be closed to be replaced by a 22 foot walking area. Handicapped people will not be able to be driven to the end of the current street to enjoy the view of the dunes, Prout's Neck and ocean.

***“control buildings sites,.... and land uses”*** and  
***“anticipate and respond to the impacts of development in shoreland areas”***

Has the Town Council in its actions failed to adequately control building sites and land uses and anticipate future development? A review of June, July, and August Town Council Meeting videos will show that the Town Council ignored citizen requests to consider the future uses of the land.

The transfer of an unbuildable public ocean entrance street to a private entity brings about the future probability that the property no longer owned by the public could eventually be reused for more or larger buildings in this current view area.

This land transfer increases the land area of an adjacent shoreland property owner. This increased lot size may at a future date allow for such development.

While the Town Council has claimed that the deed transferring land to the adjacent property owner will restrict the property to parking of cars and four foot vegetation and walls etc., These deed restrictions could be lifted at some future date by the Town Council. This process would be exactly the same as the process followed when the street was traded away on July 15, 2009. Lifting restrictions would allow for construction of more or larger buildings in the area and further degrade the view even further in the future.

The concerns cited above were given as testimony by numerous speakers at public hearings conducted by Scarborough Town Council in June, July and August, 2009..

Also, there were changes made to the shoreland zoning ordinance on July 15, 2009, the same day that the land transfer was approved by the Town Council.

Below is information concerning the Maine Mandatory Shoreland Act that comes from the Maine DEP website.

## **Issue Profile**

### **Mandatory Shoreland Zoning Act**

**Areas of concern are in bold italicized type.**

The Mandatory Shoreland Zoning Act was enacted by the Legislature in 1971. The current law, as amended, requires municipalities to establish land use *controls for all land areas within 250 feet* of ponds and non-forested freshwater wetlands that are 10 acres or larger; rivers with watersheds of at least 25 square miles in drainage area; coastal wetlands *and tidal waters*; and all land areas within 75 feet of certain

What is the intent of the law? *The law's intent is* (1) to protect water quality, wildlife habitat, wetlands, archaeological sites and *historic resources, and commercial fishing and maritime industries*; and (2) *to conserve* shore cover, *public access, natural beauty, and open space*. It does this *by controlling land uses*, and placement of structures within the shoreland area.

The actions of the Town Council and the changes to the shoreland zoning ordinance made July 15, 2009 should be reviewed to make sure that they conform to the purpose of the Shoreland Zoning Ordinance cited above and were not made to facilitate use of the previously public street for private purposes at the expense of others and to ensure that they do not violate Maine State Department of Environmental Protection or US DEP laws and/or rules and/or guidelines.

**We the undersigned request that:**

**Scarborough Zoning Board and Code Enforcement Officer take whatever actions necessary to ensure that the Depot Street Property is fully protected as required by the Scarborough Shoreland Zoning Ordinance and conforms to the town master plan.**

**Maine Department of Environmental Protection review this situation to determine whether the actions taken by the Scarborough Town Council in the "land swap" violate the Scarborough Zoning Ordinance, whether their actions adequately protect viewsheds, the fishing interests, public and handicapped access, and future developmental and other concerns that were addressed by approximately one hundred speakers at public hearings on the "land swap" and review the Town of Scarborough Shoreland Ordinance as amended is appropriate.**

