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Scarborough Council's decision on Pine Point land swap stands

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The Scarborough Town Council Wednesday decided to uphold its July 15 decision to go forward with a controversial land swap. During the meeting, attorney Peggy McGehee of Perkins Thompson, who represents the newly formed Save Old Depot Street Association, questions the legality of the town's decision. **(Roberts photo)**

SCARBOROUGH —Despite claims of new evidence from a state representative, questions of legality by an attorney and intense public opposition from the podium, the Town Council chose to uphold the decision it made last month to swap a portion of Pine Point land.

Councilors Carol Rancourt and Karen D'Andrea requested the agenda item be placed on the agenda to allow councilors to reconsider their July 15 vote to swap the end of Depot Street and a strip of beach access located in front of the Lighthouse Motel with the motel's parking strip and beach access.

While they have maintained they are not against an even swap of property, opponents insisted the deal negotiated by Town Manager Tom Hall gives a disproportionate amount of land to the motel, benefiting a private business over the community's interests.

Hall and those councilors who voted in favor of the swap have stressed the value can't be measured by an even amount of land, but in what the swap achieves for the town, namely, improved safety for beach-goers and access to a small parcel of town-owned property that could provide a turn-around and a better approach to the water. The benefit to the motel would be to have its parking next to the building, rather than across Depot Street.

A newly-formed opposition group, Save Old Depot Street Association, was represented by attorneys Peggy McGehee and James Katsiaficas at Wednesday's meeting. In her comments and in an Aug. 12 letter to the town, McGehee asked the council to reconsider because "two fatal legal flaws render the July 15 votes invalid."

According to McGehee, the town was not in compliance with the state when it chose to discontinue the town way and the discrepancy in values of the traded land is "invalid."

"The 21-foot wide strip is worth substantially less than the 49.5-foot wide road, rendering the Town's exchange a prohibited 'waste' of public resources and an abuse of discretion," she stated in her letter.

But in an Aug. 14 written response by the town's attorney, Christopher Vaniotis, he told the council that "there was no procedural flaw in the adoption of the discontinuance order." In addition, he disputed McGehee's claims that the council's actions were "invalid."

"Nothing in the Town Charter or state law inhibits the Council from conveying interests in land when the Council deems it is in the best interest of the public to do so," he wrote.

Saying he had uncovered new information that could indicate the town did not own a portion of the land in the swap, State Rep. Sean Flaherty asked the council to hold off on a decision to move forward.

But Chairman Mike Wood in councilor comments at the end of the meeting criticized Flaherty for holding back his information from councilors for at least two days, instead waiting to bring them forward when councilors had no time to review them.

And in the end, after Councilor Shawn Babine made the motion to reconsider, councilors chose to vote without any further discussion, upholding their approval of the swap 5-2. Councilors Wood, Babine, Ron Ahlquist, Judy Roy and Richard Sullivan voted in favor and Rancourt and D'Andrea were opposed.

Members of Save Old Depot Street have not yet determined whether to appeal Wednesday's decision and no declaratory action has been filed, McGehee said Thursday morning.

When asked about an appeal, association member Judy Shirk said she wasn't sure.

"We're stunned – I really can't say; I can't speak," she said.

Though the decision to appeal has yet to be made, last week Shirk, under the Maine Freedom of Access Act, requested all relevant correspondence between the motel owners and the council, between the owners and their attorney and the town, between the council and the manager and between the town and attorney and Scarborough resident Dan Warren.

According to Wood, Warren provided the town with signatures gathered on a petition that opposed the swap before the July council meeting, giving the town clerk and her staff time to validate them.

When asked why she requested the communications, Shirk said she "wanted to find out the information because the public wasn't involved."

"It was all private meetings, we didn't know anything about it," she said.

Hall has maintained that he had been instructed to pursue a trade with the motel owners before bringing it to the council and the public, an action he said is allowed under the law.

The council plans to involve the public in the planning process by forming a small working committee to assist with the configuration and design of the newly-acquired property.

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