# To Members of the Scarborough Planning Board

We, members of the Pine Point Community, are providing you with research we have done which we hope will help you as you consider the Lighthouse Condominium's Site Plan and the Town's Task Force Plan for the Abutting Parcel which the Site Plan Ordinance requires you review and issue an advisory opinion.

We hope you can peruse this material before your site walk on December 7, 2009, and again before December 14<sup>th</sup>. We urge you to table any action given the amount of information to verify and the fact that the Council has not approved the Municipal Project which has such an impact on the Condo's site plan.

Please call if you need further information.

Thank you.

Judy Shirk On Behalf of the Citizen's Research Group 883-9400

# Planning Board Review of Task Force Plan Required by Ordinance

## PLANNING BOARD REVIEW

Please be reminded that the Board is supposed to review Municipal uses, as outlined below. Why has the Town not asked the Board to review the Task Force Plan. The Trumans' Site Plan review is premature given the required review by the Board of the municipal project.

3. Municipal buildings or uses, but shall be reviewed by the Planning Board for an advisory opinion to the Town Council or the applicable Town Department.

#### **CHAPTER 405B**

## SITE PLAN REVIEW ORDINANCE

## **TOWN OF SCARBOROUGH**

#### CHAPTER 405B TOWN OF SCARBOROUGH SITE PLAN REVIEW

#### I. Purpose

The Town of Scarborough finds that uses and structures for which site plan submissions are required are potentially significant additions to the community's built and natural environment as well as to the residential, commercial or industrial neighborhood in which they are proposed. The purpose of site plan review is to ensure that the design, layout and construction of these additions to the community constitute suitable development and will not result in a detriment to the neighborhood, community or environment. The standards and requirements of this ordinance are intended to assure that adequate provisions are made for: traffic safety, access and circulation; emergency access and response; stormwater management; protection of natural features and the environment; water supply and sewage disposal; and minimizing impacts to abutting properties or uses.

#### II. Applicability

#### A. Activities Requiring Site Plan Review

Site Plan approval is required before any building or structure is erected or externally enlarged and before any parking, loading, or vehicular or pedestrian use is established, enlarged or changed, with the exception of the activities found below in Section II(B).

#### B. Activities Exempt from Site Plan Review

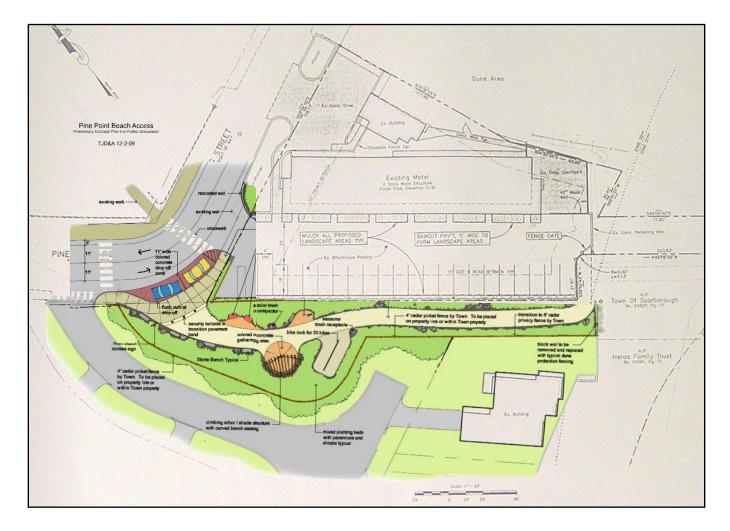
The following activities shall not require site plan approval, however such activities may require building permits, plumbing permits or other local or State approvals:

- 1. The construction of, or addition to, single and two-family dwellings and their accessory buildings, structures and areas for parking and vehicular or pedestrian use.
- 2. Alterations to a building which in total do not increase the floor area of the building by more than 100 square feet.
- 3. <u>Municipal</u> buildings or uses, but shall be reviewed by the Planning Board for an advisory opinion to the Town Council or the applicable Town Department.

# Planning

# The Big Picture 4 Developments Converge Traffic Studies Needed

## THE BIG PICTURE: 4 DEVELOPMENTS IMPACTING ONE ANOTHER



On the left is a hybrid of the two plans; the Lighthouse Condos Parking and Town's Task Force Plan presented to the Town Council December 2nd.

The Planning Board is urged to consider the Trumans' Site Plan in the context of the abutting 3 developments, all of which are in process.

This graphic takes the Town's Task Force Plan and superimposes it on the Lighthouse Condos initial Site Plan.

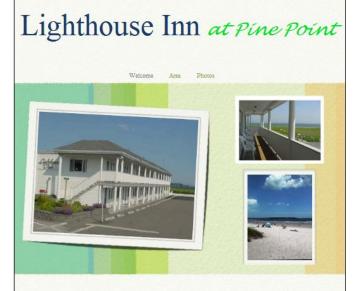
The Beachwalk has still not completed its infrastructure (you may want to ask about the lawsuits and settlements between the Beachwalk and Town which relate to your approvals). For example, the Beachwalk developer has not installed the required sidewalk along the Pine Point Rd. but no record of amending the approval could be found.

There are many curb cuts in this area. It is a highly traveled area for Hurd Park and the harbor with boats, RV's, bikes, trailers, boats, 18 wheelers, etc. A traffic study is absolutely necessary before design work is done, but one has never been done in recent memory.

# The Lighthouse Condominiums 22 Dwellings 1/3 Acre

## **MOTEL or CONDOS?**

Marketing material for the condos. Registry of Deeds Citation. The Lighthouse Inn consists of 22 condos. The Board is encourage to review the Declarations and restrictions already in place, such as the required six month closure of the building.

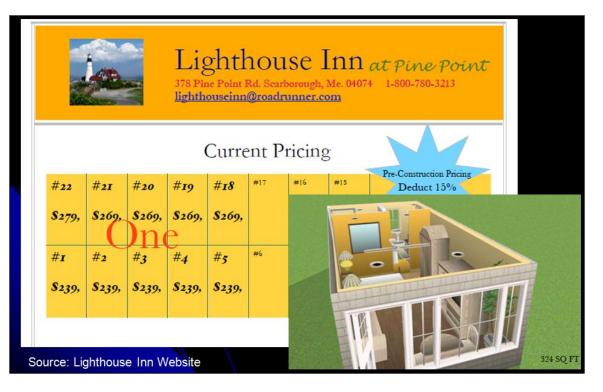


#### Seasonal Oceanfront Studios For Sale



•This is your first step towards owning a piece of the Lighthouse Inn at Pine Point! Enclosed you will find information on the ownership of a seasonal vacation unit, conceptual layouts, the building and unit upgrades.

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# Fencing Restrictions To Preserve Public Vistas

# FENCING & VEGETATION

Planning Board Members:

Please consider a condition of approval allowing <u>only 3 foot</u> <u>open rail fencing</u>. That is consistent with the Beachwalk, Hurd Park and many other coastal properties.

The Town Manager felt a 4' height restriction on plants and fences was a benefit to the Town, but it is too high. Please impose a more restrictive one so views are preserved and a boxed in look is avoided. The Comprehensive Plan envisions openness in coastal marine areas.

#### FENCING

Various Styles of "Cedar Pickett" Fences called for in the Task Force Plan. They range from closed, full privacy designs to more open. Open styles, however, appear solid when viewed at slight angles.

Post & Rail Alternatives are pictured below. They do not obstruct views, are easier to maintain and are less subject to vandalism.









< Albion Hurd Park in Pine Point has Rail Fencing



# Town's Drop Off Design Impacts Lighthouse Condos Site Plan

#### **DROP OFF DESIGN**

Planning Board Members: Comparison of Drop off Design from the Fall 2008 Road Reconstruction Plan and the current Task Force.

#### COMPARISON OF "DROP OFF" PLAN

ABOVE: Wendel Sketch for 2008 Road Reconstruction Committee showing a "Drop Off" Area for Vehicles. The Committee Rejected the Drop Off Concept as unsafe and impractical. It now appears in the 2009 Task Force Plan below.

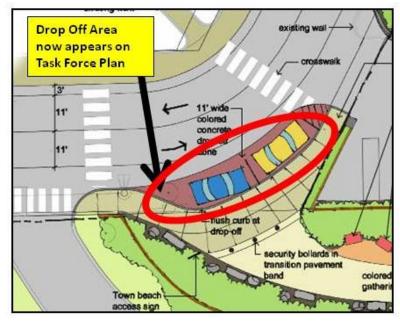
Mr. Wendel is quoted in the 12-3-09 Forecaster:

#### Article in Forecaster 12-3-09:

The drop-off holds some concern for Town Engineer Jim Wendel, who said Thursday morning that it could cause traffic problems.

"If it gets highly used, such that you get a high frequency of cars backed up that are trying to use the space, then you're going to be pushing traffic back into the travel lane and the potential is there to block the Beach Walk Drive," he said. "I couldn't say it will be unsafe, but it has the potential to become a traffic jam."





#### **DROP OFF DESIGN**

Planning Board Members: Please take note of Engineer Wendel's concerns about the Drop Off. He Expressed similar ones during the 2008 Road Reconstruction Study when an identical plan was considered but rejected and removed from the design. A separate graphic compares the two.

FORECASTE Your hometown newspaper	R	Article in Forecaster 12-3-09: Note Highlighted Portion
NEWS SPORTS OPINION POLICE BEAT COMMU Home Mid-Coast Northern Portland Southern		The working plan shows a boardwalk-patterned, stamped concrete walkway that meanders toward the water. A circular pavilion with an arbor and curved bench seating is just off the path, and a bike rack, cedar picket fencing, benches, a foot-washing area and mixed planting beds are some of the components that line the walkway. A two-car drop-off spot is off the bend in the roadway.
<sup>ome</sup> Scarborough council gets preliminary pl beach access	an for Pine Point	The drop-off holds some concern for Town Engineer Jim Wendel, who said Thursday morning that it could cause traffic problems. "If it gets highly used, such that you get a high frequency of cars backed up that are trying to use the
Published: Dec 03, 2009 11:01 am - By Peggy Roberts	E-mail and share	space, then you're going to be pushing traffic back into the travel lane and the potential is there to block the Beach Walk Drive," he said. "I couldn't say it will be unsafe, but it has the potential to become a traffic jam."
SCARBOROUGH — The town manager Wednesday introduced a working design for a controversial public area at Pine Point. The sketch by Terrance DeWann & Associates is the result of	Concept plan	Wendel said he expressed his opinion to the task force, but it was decided that the emphasis should be on pedestrian and bicycle access, as opposed to vehicle traffic. "We feel this location is a secondary access point to the beach from Hurd Park," he said. "We're not
work by Town Manager Tom Hall's task force, a group made up of two Pine Point Residents Association members, a resident of Beach Walk subdivision, and several town staff.		going to advertise this space. It's just going to be there for the local people to know – frequent users of the beach as opposed to putting up signage to draw people to it."
The panel was appointed by the manager to come up with a plan for two small parcels of adjoining land – a strip the town will receive from Lighthouse Motel owners when a land swap is completed and a piece donated to the town by the Beach	photo by: Scarborough Town Manager Tom Hall introduced this "Pine Point	considering a petition for a referendum that, if passed, would clear the way to recall councilors who voted in favor of the swap. Some of the association members have asked the new council to overturn last summer's decision.
Nalk developer. During the next couple of months, the town will hold three open houses, including two at the Pine Point Fire Barn, to	Beach Access Preliminary Concept Plan for Public Discussion" during Wednesday night's council meeting. The	And many residents in the association have not been happy with the work or the composition of the task force. Two weeks ago, Judy Shirk, of Avenue Three, said she thought the town manager should have included residents who live closer to the property.
allow the public to view details of the plan and make suggestions, Hall said.	design includes pedestrian- friendly and aesthetic elements for the small common area at the	"There were parties more impacted that would have liked to have been on the task force that were not allowed to be," she said.
After the open houses, a final plan will be presented to the council at the end of January or in early February, with a eye to seeking bids by early March. Money has already been allocated for related roadwork and Hall said he hopes to	beach, which incorporates a small parcel donated by the developer of the Beach Walk subdivision and a strip the town will receive in last	At noon on Monday, Dec. 7, the Planning Board will hold a site walk of the property the motel received from the town, which is slated for a new parking lot. Motel owners will go before the board again on Monday, Dec. 14, seeking site plan approval for the parking lot reconfiguration.
identify funding to complete at least some of the components by next summer.	summer's controversial "land swap" with owners of the Lighthouse Motel.	From comments at the board's last meeting, integration of the parking lot plan and task force plan will be key to an approval. Peggy Roberts can be reached at 781-3661 ext. 125 or proberts@theforecaster.net.

"This (plan) is truly a starting point as opposed to a finish line," he emphasized to the Town Council.

# Lighthouse Condos Stone Wall Structure Encroachment Safety Issue

#### **Dear Planning Board Members**

This Fact Sheet offers a clarification on the issue of the stone wall structure encroachment at the Lighthouse Condotel, Mr. Truman, if quoted accurately in the Current (see excerpt on right), is incorrect with respect to this wall being a replacement of one by the previous owners.

This photo of the building when owned by the previous proprietors, Mr. Snow and Mr. Berry, had no such structure. The Town right-of-way was not impeded. Any number of long-time residents could testify that the stone wall, backfill, wiring and signs placed there did not exist prior to their installation in the 90's.

The primary concern about this stone wall was safety given the dangerous, heavily traveled curve. The encroachment itself was also a concern since it went far beyond the typical encroachment by the public of lawns, bushes,, etc.

The Town's reconstruction plan for this section of road did not include removing the obstruction which will result in a narrower road and additional safety considerations. The Task Force plan calls for a tiny piece to be moved, which is also evidence that the Municipal projects and the Truman's Site Plans are integrated and should receive your full review and approval.

You are urged to require as a condition of approval for the site plan removal of all encroachments and restoration of pavement on the right of way for the safety of pedestrians, bicyclists and motorists.



The Town Survey (just completed) showing the significant encroachment of the stone wall and backfill. The yellow line is the property line.



Pine Point inn parking lot proposal has hearing Posted Wednesday, November 4, 2009 11:10 am | Updated: 11:21 am Wed Nov 4, 2009

#### Excerpt from November 4<sup>th</sup> Current article

By Tess Nacelewicz |

Some board members also said they were concerned with a stone planter that the Trumans installed in the public right of way along the King Street side of their inn.

But Nick Truman said that in 1995 they simply replaced an existing stone planter that had been in the same spot since the previous owner put it there decades ago. And Truman said other neighbors on King Street also have plantings and other constructions in the 15-foot-wide right of way.

#### Correction: 50-foot right of way

**RED LINE** SHOWS

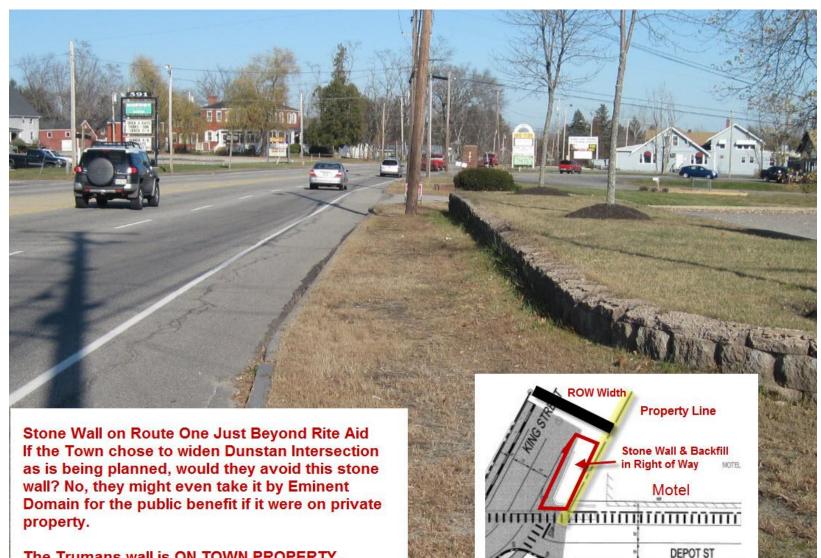
STONE

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STRUCTURE YELLOW A COME D PROPERTY MOTEL MULCH ALL PROPO



The Trumans wall is ON TOWN PROPERTY.

# Potential Loss Of Beautiful Views for the Public

## **LOST VIEWS**

## Parking Lot Simulation FENCING & VEGETATION

In an effort to rebut the argument that views will not be lost, residents staged a simulation of what a future parking lot would look like on Depot Street. Here is the result.

For comparison, look at the sign near the dunes which can be seen in both photos.

The Board is urged to require parking for the condos be directly in front of each unit with perhaps a small buffer. This will maintain public views as shown in the photo on the bottom right.

Parking in front of building is permitted and in the case of the condos safer. Below is the Hospice building on Route 1.







# **Parking Requirements**

# Expanding a Non-conforming Commercial Use in a Residential Zone

## PARKING

#### **Dear Planning Board Members**

At your December 2, 2009 meeting, Mr. Chase was asked about the number of parking spaces required for the 22-unit motel. His response was accurate; 1 space per unit. Arguably there should be a requirement in the ordinance for employee parking. Nevertheless, the Board should know that the Motel filed condominium declarations in 2007 and have actively marketed the units as "Studios" on their website and broker's materials.

These are <u>dwellings</u> and therefore require two spaces for each unit by today's standards. If the Lighthouse Condos choose to, they can seek a variance for parking from the Zoning Board just as the Sun & Sand Motel did when it converted to condos two years ago.

The Board is urged to consider that more than one handicap individual may become an owner of the units and would therefore require handicap parking.

The Board is urged to limit the number of parking spaces to 11, two per unit as required. The owners would obviously have to reduce the number of units or obtain more land for parking, but to do otherwise would <u>be AN EXPANSION</u> <u>OF A NON-CONFORMING USE (the parking area will be expanded, doubled essentially) and the goal of zoning is for non-conforming properties to become MORE conforming.</u>

#### From Definitions, Section VI, in Zoning Ordinance

#### Dwelling Unit:

A building or portion thereof providing complete housekeeping facilities for one family. Then term shall not be deemed to include trailer.

Number	File Date	Туре	# Pgs.	Book/Vol/Page	Town	
16655	03/19/2007 00:00:00	MISCELLANEOUS	32	S/24934/47	SCARBORO	
	-	TRUMAN NICHOLAS	· ·			
Grantor(s)		LIGHTHOUSE INN CONDOMINIUM ASSN				
		LIGHTHOUSE INN CONDOMINIUM				
		TRUMAN PETER J				

#### Section XI. OFF-STREET PARKING AND LOADING REGULATIONS.

Off-street parking, either by means of open air spaces or by garage space, in addition to being a permitted use, shall be considered as an accessory use when required or provided to serve conforming uses located in any district.

A. Off-street parking shall be designed, constructed and maintained as follows:

1. For retail stores, each off-street parking space must have an area no less than 10 feet wide by 20 feet long.

2. For all other uses, each off-street parking space must have an area no less than 10 feet wide by 20 feet long, except that the size of spaces may be reduced to no less than 9 feet wide by 18 feet long provided that landscaped area equal to the total amount by which the size of parking spaces has been reduced is provided on the lot. Such landscaped area shall be in addition to any landscaped areas or buffers required by any other provision of this ordinance or the Town of Scarborough Site Plan Review Ordinance.

3. Where retail stores and other uses are located on the same lot or in the same development, all parking spaces on the lot or within the development must have an area no less than 10 feet wide by 20 feet long. If, however, separate, physically segregated parking areas are provided for the non-retail uses and the design of such parking areas is approved by the Planning Board under the provisions of the Town of Scarborough Site Plan Review Ordinance, then the spaces within such separate parking areas for the non-retail uses may be reduced in size as provided in subsection (2) above.

4. For all uses, parking spaces must be adequately served by isles and drives.

**B.** The following minimum off-street parking and loading requirements shall be provided and maintained in case of new construction, alterations and changes of use.

Board Care Facilities for the Elderly	1 parking space per 3 beds and 1 parking space for each employee based on the expected average employee occupancy.
Dwellings	2 parking spaces for each dwelling unit.
Golf Courses	The number of parking spaces required shall be determined by the Planning Board during site plan review, based on the nature of the proposed golf course (public or private, 9 hole or 18 hole, etc.), the intensity of the proposed use and the parking demand expected

Condo Declarations

# **Excessive Curb Cuts and Road Narrowing**

# Dangerous Combination?

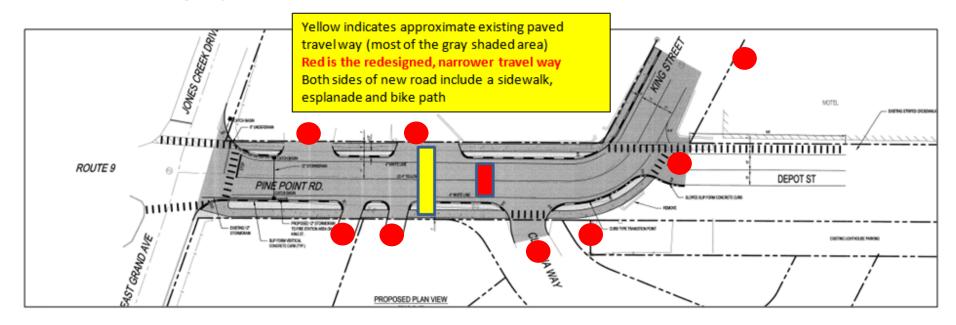
#### **CURB CUTS & ROAD NARROWING**

#### **Dear Planning Board Members**

We believe you are very wise to consider the convergence of four major developments as they relate to the Lighthouse Condos site plan application. Below left you see Mr. Wendel's road reconstruction plan which also shows three curb cuts into the Beachwalk subdivision. The red dots indicate all curb cuts in this short piece of road which is the gateway to Pine Point and is heavily traveled by commercial traffic, boat, RV, Trolley, pedestrian, beachgoers destined for Hurd Park and, of course, Engine 4 which is just around the corner. The Lighthouse Condos Site Plan, we believe, should be considered in its relationship to the new road design (a much narrower paved travel lane), the Town's proposed walkway design, the Beachwalk's curb cuts, the proposed crosswalks, and the "drop off" design at the intersection.



#### Wendel Plan: May 19, 2009 based on 2008 Committee's Final Recommendation.



# Deed Restrictions Inadequate

Planning Board Can Provide Effective Restrictions

#### **Deed Restrictions**

#### BERNSTEIN SHUR

COUNSELORS AT LAW

207 774-1200 main 207 774-1127 facsimile bernsteinshur.com

100 Middle Street PO Box 9729 Portland, ME 04104-5029

Amanda A. Meader ameader@bernsteinshur.com

The Town Manager promoted deed restrictions during the debate over the land exchange. However, they are considered very inadequate. The four foot height requirement is not restrictive enough. 3 feet or lower should be the maximum height of any obstruction to public views. Also, the restrictions should be less vague, such as the type of walls and fences permitted.

Closed, picket fences four feet high obstruct views and do not allow for wind and sand to pass. They present a boxed-in appearance. The Board is urged to go beyond these woefully inadequate deed restrictions with their own conditions.

Items 2-5 are unnecessary because rules already exist which prevent any such attempt to restrict public recreation. June 17, 2009

Scarborough Town Council Town of Scarborough 259 US Route 1, PO Box 360 Scarborough, Maine 04070-0360

Re: Pine Point Road

Dear Members of the Town Council:

I am writing regarding the proposed discontinuance of a portion of Pine Point Road and a land swap arrangement related to the discontinuance. In particular, the Council is being asked to consider whether to approve the land swap with Peter and Nicolas Truman as proposed in Council Orders 09-88, 09-89 and 09-90, as well as whether to discontinue the portion of Pine Point Road formerly known as Depot Street as proposed in Council Order 09-91.

I understand that if the Council approves Order 09-90 then the Council would like the following restrictions included in the deed to Peter and Nicholas Truman:

- For the purpose of maintaining a public view corridor, no structures (including walls and fences) or vegetation shall exceed 4 feet in height, with the exception of lamp posts.
- The Town shall retain the right to clean, maintain and patrol the sand beach and the intertidal zone.
- The public has the right to use the intertidal zone and the sand beach for normal beach going activities, continuing the historical use.
- No fences, barricades or any other impediments to public access shall be installed in the intertidal zone or on the sand beach.
- 5. Dune grass shall not be removed or disturbed.

Very truly yours,

Amanda a. Meader

Amanda A. Meader

# Comprehensive Plan

# **Vision for Marine Access**

# **Comprehensive Plan**

Planning Board Members:

A great many human resources have been devoted to the development of the new Comprehensive Plan.

Several specific marine-related items are contained in it.

Please be guided by these principals as you do all you can to ensure maximum public access and views through conditions of approval.

## Scarborough's Comprehensive Plan

Excerpts relating to Marine Resources demonstrate importance of access and maintenance.

Chapter 5: Policy Objectives and Actions

D. Marine Resources

Our Vision for Scarborough's Marine Resources

Objective D.3. Maintain the existing public marine related facilities and access points, and expand the number of access points and facilities when feasible.

The Town over the years has invested in rest rooms, showers, and changing facilities at both Pine Point and Ferry Beach where the Town operates parking lots. Those facilities should be maintained and not allowed to deteriorate over time. Existing access points, including boat ramps and launches, also need to be maintained in good condition so they remain safe and usable for the public. In instances where the use of existing public access points and/or facilities is impeded, clarification of property rights needs to be addressed so that these access points are not blocked or become off-limits to the public. The Town should also pursue, when feasible, additional points of public access to the marine environment for recreational and/or commercial use, as well as additional facilities such as parking lots, boat launches, restrooms, showers, and changing rooms.

Action D.3.g. The Town should annually review all existing public access points and facilities for any issues relating to property rights and/or infringement by abutters to the public's use of those access points and facilities. Any issues need to be addressed so as to maintain and protect public access.

Action D.3.h. The Town should study the possibility of introducing language into the Town's Subdivision Ordinance that would require the reservation of, at a minimum, a pedestrian access easement to the marine environment through any proposed subdivision which borders tidal waters that merit being accessed.

Action D.3.f. Investigate the possibility of developing a drop-off point at Higgins Beach, in addition to any reservation of a long-term parking area.

# **Emergency Access Lost**

# Fire Lane Recommended By Fire Chief Not Part of Plan

## FIRE LANE

Planning Board Members:

The Fire Chief was clear in his memo that a fire lane was very important in this area. Neither the Truman Site Plan nor the Task Force's Concept Plan includes one which meets the standard. Depot Street, before its closure, does.

It has been said that a fire lane will be provided on the Lighthouse Site Plan but that is not possible. Nor is it sound public policy for a fire lane to access public area go through private property.

If a horse rider had an accident at the end of the beach trail the existing vehicle access will be gone.

You are urged to require parking for the condotel be directly in front of the units and a public easement for vehicle access be granted by the Trumans for a fire lane.

TO:	TOM HALL, TOWN MANAGER
FROM:	B. MICHAEL THURLOW, FIRE CHIEF
SUBJECT:	DEPOT STREET ACCESS TO THE BEACH
DATE:	6/17/2009



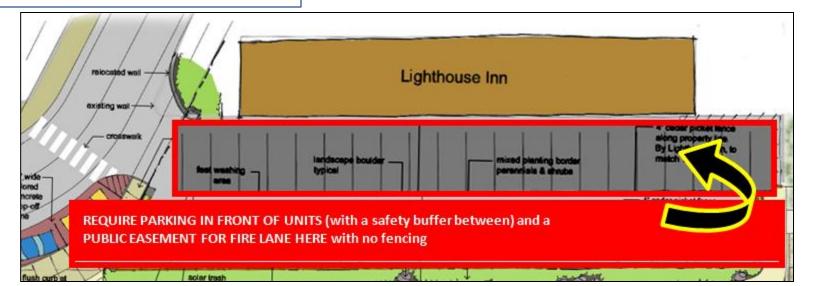
Even though the department would likely not access the beach from Depot Street I believe it would be very important to maintain a fire lane for access as close to the beach as possible at that location in any design plans that are being considered for this area.

#### 0. Fire Protection Infrastructure Standards

 Fire protection infrastructure standards shall be required when a road is required to be constructed by Section IX(I)4d and shall be in compliance with the following National Fire Protection standards.

#### a. Access

- A private way shall provide a minimum unobstructed width of 20 feet with an unobstructed vertical clearance of 13 feet-6 inches.
- The road within the private way shall provide sufficient width for fire apparatus to execute a turning maneuver with a minimum 50 feet outside radius.
- Any dead-end private way greater than 150 feet in length shall provide a hammerhead turnaround.
- iv. The road shall be able to support the imposed fire apparatus load of 70,000 lbs.
- v. If fire protection infrastructure for the project requires underground fire tanks, a 30 ft by 50 ft easement to the Town shall be required.



## **Emergency Beach Access Sites**

Planning Board Members: please require parking directly in front of the motel and require a public easement for a fire lane between the condo parking and the town's beach access. There should be about 30 feet between the two areas. Allow no fencing to limit access of emergency vehicles. This aerial photo shows the long distances between the two emergency beach access points if no fire lane is preserved.

