

JUDY SHIRK  
Avenue Three  
Pine Point

June 20, 2010

To Members of the Planning Board

It has been almost five years since the Planning Board approved this controversial subdivision. Seven years ago the developer, Paul Hollis, swooped into Town to convince everyone he wanted to work with the neighbors and town to make a first class development and he would listen to the people.

Since then he's been bankrupt, sued, and reportedly charged with crimes. He defaulted on his payment to the Town for his performance bond leaving the Town exposed to the wrath of the investors, although it was their own fault for buying \$600,000 lots without checking that detail.

There have been tens of thousands of dollars in legal costs expended by the taxpayers to resolve this legal nightmare and it has been the investors, all of whom failed to perform due diligence, who have been made whole. In a settlement, the Town had to agree to pave the Beachwalk's private road as a result of accepting a personal check for the performance bond which later bounced. The minutes of the Planning Board's meeting indicated the developer would provide a sidewalk from Claudia Way to East Grand Ave. which was never done. The Town recently installed one of its own, but no reimbursement came from the developer or homeowners association. Construction of the road and homes was to occur in the off-season, but it was not enforced and the contractor actually broke the town's water main causing all of Pine Point to be without water during a day in July that year.

Of course, all of this is on the public record. Citizens like those who were active in the Pine Point Association had to file Freedom of Information requests to get public information.

Now there are five enormous homes, with four more to go. These obviously have affected the public's and abutters' view of the ocean. But the debate over whether these homes should ever have been allowed is long over. You should know, however that the people of this town were promised that views remaining would be protected when the Planning Board approved this subdivision and that included strict restrictions on fence and vegetation height.

The homes are beautiful and so is the landscaping. The park next to them is also beautiful, thanks to the taxpayers who spent upward of \$200,000 to create it.

But it was predicted long ago that once these homes were built, once those who could afford summer cottages for \$1.4 million dollars, once the Town Park abutting this subdivision was done and people in bathing suits began to stroll by their mansions, that this Homeowner's Association would race back to you to ask for modifications. And one of them would be height restrictions.

Please do not permit even the slightest allowance. It will not end there. The patio fence has not been legal since it was installed two years ago.

Mr. Fisher states on page 2, under the subheading "FENCE", paragraph 2 in the last sentence: "The note regarding the fence height restriction was aimed at preserving the view corridors of the other lot owners in the development, and this fence on lot 6 does not impede any of those corridors." That is an untruth that not only this engineer knows full well but any person who has followed this. Note S-31 says "abutters AND lot owners." Abutters includes the Town of Scarborough whose park directly abuts the subdivision. Abutter has a broader definition in the ordinance, to include all those persons who received a Dear Abutter letter notifying them of this item. It is simply not true that the restrictions on height would benefit only the lot owners. It's absurd to suggest so in a letter to you.

Notice that this request asks you to approve something that is not even legal since the covenants themselves have not been modified and cannot be modified. The 48 inch restriction, which was later changed to 42 inches, was specifically agreed to prevent stockade style privacy fencing or vegetation which would provide the same result.

The investors in this project never had their attorneys confirm that the performance bond was in place even though they spent an average of \$600,000 on each lot. They went into this venture with their former friend Mr. Hollis and they lost a fortune. Since then the Town and taxpayers have paved their road, rebated a portion of their lost bond funds, installed their sidewalk, gave them a beautiful neighborhood park called Snowberry Ocean View Park, and put its own deed restrictions on the Park and Lighthouse Motel property with height limits for fencing and vegetation.

The Town Council's ordinance committee has also been considering a scenic vista fence ordinance to prevent the very thing waterfront owners want to do. Keep the beauty of the shore for themselves.

If you make a favorable decision tonight you will have done so without learning the important history of how this all evolved and all the relevant facts. If you think this is just a minor adjustment, you will see that this development will become a gated, fenced community that will once and for all remove every remaining view by the public and an eyesore to the community. And you will violate an unchangeable covenant and subdivision restriction which will set a precedent the next time you are approached. Please deny this application and honor the integrity of your process and members of the Board from the past who saw the importance of these restrictions. Don't let this attempt to slip by something minor by the developer and engineer because they know you are new Planning Board without the history.

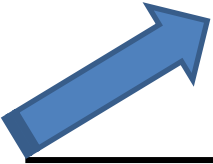
Judy Shirk

**DECLARATION  
OF RIGHTS, RESTRICTIONS, COVENANTS & EASEMENTS  
FOR**

***Beachwalk at Pine Point Subdivision***

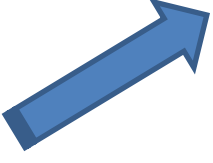
Located at  
Pine Point Road, Town of Scarborough, Cumberland County, Maine

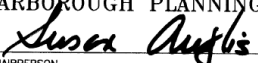

4.12. View Corridors. All plantings and fencing within the perimeter of the subdivision ("within the perimeter of the subdivision" includes all area located on individual lots), shall not exceed a height of 4 feet to protect the views of the abutting properties, except for plantings in the front of each home whereas, the home itself already lies within that view corridor. Declarant will work diligently with Abutters and Lot Owners of the subdivision when considering Plantings and Fencing, to not unnecessarily obstruct any views to the ocean and beyond. **This Specific Covenant, 4.12., cannot be changed by a vote of the Homeowners Association**



**SUBDIVISION PLAN – BEACHWALK AT PINE POINT  
PINE POINT, SCARBOROUGH, MAINE**

S-31 VIEW CORRIDORS: ALL PLANTINGS AND FENCING WITHIN THE PERIMETER OF THE SUBDIVISION ("WITHIN THE PERIMETER OF THE SUBDIVISION" INCLUDES ALL AREA LOCATED ON INDIVIDUAL LOTS), SHALL NOT EXCEED A HEIGHT OF 42" TO PROTECT THE VIEWS OF THE ABUTTING PROPERTIES, EXCEPT FOR PLANTINGS IN THE FRONT OF EACH HOME WHEREAS, THE HOME ITSELF ALREADY LIES WITHIN THAT VIEW CORRIDOR. DECLARANT WILL WORK DILIGENTLY WITH ABUTTERS AND LOT OWNERS OF THE SUBDIVISION WHEN CONSIDERING PLANTINGS AND FENCING, TO NOT UNNECESSARILY OBSTRUCT ANY VIEWS TO THE OCEAN AND BEYOND. THIS SPECIFIC COVENANT CANNOT BE CHANGED BY A VOTE OF THE HOMEOWNERS ASSOCIATION.



APPROVED BY THE TOWN OF  
SCARBOROUGH PLANNING BOARD  
 10/10/2006  
CHAIRPERSON DATE  
  
William T. Paul  
Mike T. Paul  
Chris E. Colligan

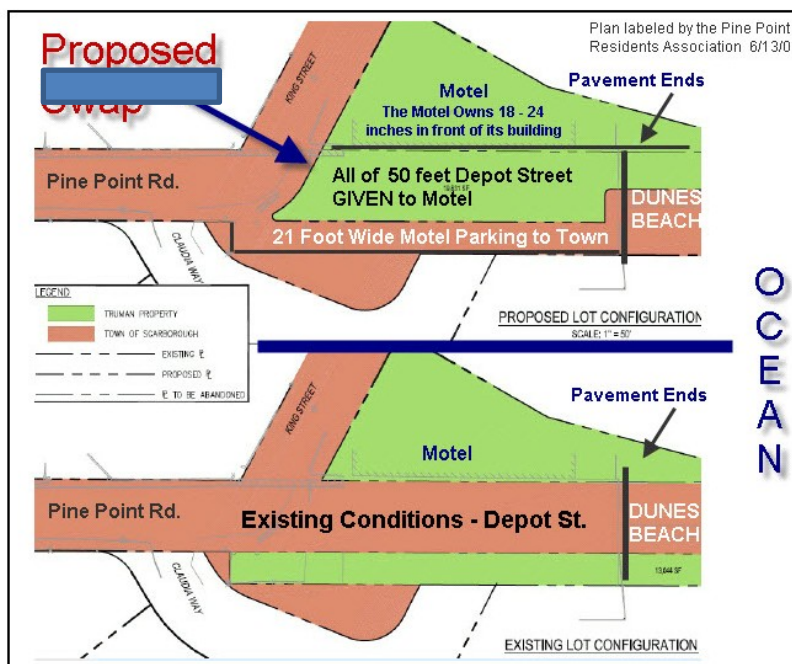
# The Stockade Fence

In an obvious effort to leverage the Town to swap land, the owners of the motel obliterated public vistas of the shore by erecting a stockade fence. The town ultimately traded land giving the motel owners the 50 foot road to the shore in exchange for their 21 foot parking strip. The town removed the fence once it traded the land. Residents have feared for years the Beachwalk would attempt to surround its subdivision with privacy fencing which is why they lobbied for permanent restrictions.



## The Land Swap

There once was a 50 foot wide road to the beach the citizens of Scarborough enjoyed for three centuries. On a 4-3 vote, the Town swapped the road for a 21 foot parking strip and gave away precious town land. The Beachwalk benefitted because the motel's parking lot was relocated away from their homes.





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June 3, 2011

153 U.S. Route 1

Scarborough

Maine 04074

Dan Bacon, Planner  
Town of Scarborough  
PO Box 360  
Scarborough, ME 04070-0360

tel

207.883.1000

800.882.2227

RE: Beachwalk Subdivision Plan Revisions

Dear Dan:

fax

207.883.1001

On behalf of John Wiggin and the Beachwalk Owners' Association, we are pleased to submit the attached application, narrative, and plans regarding three minor revisions to the originally approved development. These revisions include a redesigned drainage system at the easterly end of Claudia Way; the inclusion and location of five street trees along the easterly side of the development; and the location of a small fence on lot 6. The development is comprised of nine residential house lots in the R-4A zone at the end of Pine Point Road, identified as lots 1092- 1099 on assessment map U-22.

Approved by the Planning Board in 2006, the lots are mostly built out, with the road and utility infrastructure in place. The town has also completed additional work in the area, creating a fully landscaped stone walkway running from King Street to the beach (to benefit the public) which is immediately adjacent to this development. Now that much of the construction in the development has been completed, we are seeking Board approval for these revisions that are more practical and aesthetically pleasing for the neighborhood. We would like to meet with the Planning Board on June 20, 2011 to review this project.

### **DRAINAGE**

Beachwalk subdivision was originally designed with curbing along Claudia Way, the purpose of which was to channel stormwater from the road to a small man-made swale between lots 6 and 7. That swale would discharge the stormwater into the dune area where it would be absorbed through the sand. Most of the land on which the development was built had originally been a paved parking lot, so NCS designed the drainage system with road curbing to direct the water to an area of sand that would absorb the stormwater. However, upon removal of the asphalt on the site the contractor discovered that the old parking lot had literally been



constructed by simply pouring asphalt onto sand, and with its subsequent removal the entire site was thus sand without subsurface materials in place that would otherwise impede stormwater absorption. Therefore, NCS suggested elimination of road curbing to encourage maximum absorption immediately adjacent to the roadways, and elimination of the designed swale that would thus reduce the environmental impact to the dunes. Further, to address any stormwater that would not immediately be absorbed, we have designed a dry well at the end of Claudia Way that will accept stormwater overflow and encourage dissipation into the sand on site and not in the dunes.

### **TREES**

NCS has indicated the location of five street trees on the revised plan. Planting details are also provided. The trees are situated in such a way as to enhance the overall aesthetics of the area.

### **FENCE**

The owners of lot 6 have erected a small fence around the patio that is immediately adjacent to their house on its easterly side. Because the house was constructed to be above the flood plain, with the sill elevation above current grade, the patio (comprised of dry-stacked stones) was constructed on a small amount of fill that allowed its surface to be at a level that is close to the level of the dwelling (two steps down from it). This patio and side of the house are very close to the public walkway, and to create a modicum of privacy between the private property and the public walkway, a small 39" high fence was added around a portion of the patio.

A note on the original subdivision plan indicated that no fences should be erected on the site that are higher than 42". The existing fence is indeed shorter than 42", but due to the raised patio the overall height from the old existing grade to the top of the fence is 60". The note regarding the fence height restriction was added to the plan by the original developer to avoid a profligacy of fences throughout the development that might impede sitelines. At the time of approval, however, there was already a 6'-tall stockade fence along the property line closest to where this new fence has been erected. The note regarding the fence height restriction was aimed at preserving the view corridors of the other lot owners in the development, and this fence on lot 6 does not impede any of those corridors.

In conjunction with site development and the town's involvement with creating the relocated public easement adjacent to lot six, the original 6'-high fence was removed and later replaced by this patio fence (which, unlike the original fence that was located on the property line, is wholly on the lot 6 property). Not only is the current fence lower than its predecessor, it is also lower than many vehicle heights; such vehicles will be parked all along the adjacent parking lot (see attached site photos) and will thus completely obscure the fence from any views of this area by people using King Street or from anyone across the King Street right-of-way.

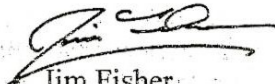
*Dan Bacon, Planner  
Town of Scarborough  
June 3, 2011  
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Additionally, the preponderance of adults accessing the beach along the public walkway are taller than the top of the existing fence, and landscaping (trees throughout the development and the town's new pergola recently placed along the public walkway) are all taller than the existing fence.

While the fence itself does not appear to be contentious, because the overall height from original grade is taller than 42" as described in note S-31 on the originally approved plan, we request that the height requirement be changed to a not-to-exceed height of 62".

The Beachwalk development, along with the new public walkway to the beach, makes this area one of the more aesthetically pleasing areas of Scarborough. The revised drainage pattern, addition of street trees, and the decorative fence significantly enhance the overall practicality and beauty of Pine Point. We look forward to discussing this project with the Planning Board, and if you have any questions in the interim, please contact us. Thank you.

Sincerely,  
Northeast Civil Solutions, Inc.



Jim Fisher  
President