



Pine Point Residents Group

To: Council Chairman Messer and Members of the Town Council

From: Representatives of the Residents Group, Pine Point
Harold Hutchinson, Jack Callahan, Judy Shirk, Elaine Richer, John Thurlow

Date: February 25, 2008

Reg: Town approval for the Lighthouse Motel to sell 22 condominium units

Thank you Chairman Messer for your response to our request for a formal investigation into what we perceive as significant irregularities in the approval process regarding the Lighthouse Motel's conversion to 22 condominiums on 1/3 acre of land. We interpret your request to the Town Manager, dated February 16, 2008, as a favorable response to our request which we hope will be followed by further Council attention and action. We urge you to direct the Town Manager to inform the Motel owners that the Council is looking into this matter and suggest that they make no sales until a final Town Council resolution is made.

Mr. Owens requested on February 19th that we provide a "...concise listing of the just the questions contained in [your] email." Those are itemized within along with support information for his convenience.

Chairman Messer's request of the Town Manager stated, "I'm formally requesting (via this email) that the Town Manager provide a report on the questions raised within your email and a summary of events concerning this issue." (emphasis added). While we will be grateful for answers to our questions, we also strongly agree with Chairman Messer's approach regarding the **summary of events**. This issue became a controversial public matter over three years ago when the Council at that time entertained a proposal to exchange public land with the Lighthouse Motel to facilitate its conversion to **six** condominiums. The events which have occurred since should be summarized in sufficient detail so the new Town Council, which now has the burden of addressing it, will be fully informed. As a group of over 80 residents we have been closely involved throughout this long process. After you receive your report, we would appreciate participating in your examination since we can also provide information and perhaps alternative perspectives which you deserve to hear from constituents. We strongly believe that this is not an administrative matter but one of important public policy deserving of your time and wisdom.

Thank you.

Disclaimer: The "Residents Group" is an informal group of citizens who gather to deliberate local issues and present Position Statements to government officials. We only represent our members' collective positions. The Pine Point Ladies Auxiliary, Friends of Pine Point (formerly the Pine Point Association), Pillsbury Shores Association, and the various local established homeowners associations are different organizations. The Group also maintains an e-mail list to share information with members and non-members. We do not release the addresses of members on the list unless requested or authorized to do so by our members.

To Ron Owens, Town Manager
February 25, 2008
Regarding Your Request for Questions

As promised we have summarized our group's questions concerning the Lighthouse Inn/Condominium matter. You will recall that we asked 19 specific questions in the body of our February 11th email. Those are included here along with others from the text of the email. We've also included, where appropriate, relevant excerpts from documents which we hope you will find helpful. Please address your responses to the five representatives of the Pine Point Residents Group.

1. The attorneys for the Lighthouse Inn wrote to the Town on July 25, 2006 asking the Code Enforcement Officer to confirm that "no permits or approvals are required" for their plan to sell 22 motel rooms as condo units. The Town attorney responded on August 3, 2006 advising that he did not "think the town should confirm that no permits or approvals are required for the proposed change."

QUESTION: Has the Town Attorney's position changed? If so, please explain and cite specific language in their amended documents which apparently has satisfied the Town attorney.

QUESTION: How was the decision made and who made it which reversed the Town's formerly strong position that selling motel rooms as condo is a Change of Use requiring Town approval?

2. The Declarations filed by the owners establishing the "Lighthouse Inn Condominiums" was modified by a "First Amendment" by the 2 owners on January 10, 2008.

QUESTION: Was it the language in this amendment which caused the Town to no longer consider the sale of units as a "Change of Use?"

3. In their original Declarations, in Article XI, Section B: Restrictions On Use and Occupancy there was very specific language requiring Town approval which read as follows: (boxed in red lines):

B. RESTRICTIONS ON USE AND OCCUPANCY

The use and occupancy regulations of the Town of Scarborough, Maine require that the individual units be restricted to residential motel and transient purpose only, with no person occupying any unit in excess of One Hundred Eighty-Six (186) days in any Three Hundred Sixty Five Days (365) day period, all as defined under the Scarborough Zoning Ordinance effective as of the date hereof. No unit may be used as a primary residence. Neither unit owners nor tenants may register a vehicle, register to vote, nor register children for school, using his or her unit as a primary residential address. The restrictions imposed by this section of the Declaration shall not be removed or modified without the prior written approval of the Town of Scarborough.

From the Original Declaration of Condominium, Lighthouse Motel

QUESTION: Why was this one sentence the only language deleted from the original Declarations when the Amendment replaced this entire section of the original?

4. The two owners of the Lighthouse Motel are now the only owners of the 22 units and therefore were able to amend their original Declarations in January 2008.

QUESTION: How does the Town intend to monitor future amendments to these Declarations to insure that the future owners do not modify them by removing language the Town required?

5. The so-called “six month rule” definition of a hotel/motel in the Zoning Ordinance has been one of the arguments supporting the view that this facility is not changing its use. The Zoning Ordinance was amended to include this definition in 1994 and, according to Dave Grysk, the ordinance was amended to facilitate the Residence Inn and similar conforming lodging places which wanted to build in Scarborough. It was not intended, he stated, to define existing non-conforming motels. The new Ordinance draft which was tabled by the Council last fall clearly confirms that view (see excerpt below).

QUESTION: Why is this 1994 definition referenced in the amendment, and has the Town accepted it as part of what it required to reverse its “Change of Use” position?

QUESTION: Was there a previous definition for a motel or hotel when the Lighthouse Motel became non-conforming, and if so why wouldn’t that definition apply when determining whether their condo plan is a Change of Use?

QUESTION: Why are two competing definitional phrases used in the Declaration Amendment? Section 3a states “six months” while 2a refers to the current language in the Zoning Ordinance.

**G. CHANGE OF OWNERSHIP OF GUEST ROOMS IN
NONCONFORMING HOTELS OR MOTELS**

1. As used in this subsection G, the term “hotel or motel” includes any facility offering lodging accommodations for hire in guest rooms, including hotels, motels, inns, tourist courts, motor courts, motor lodges, guest cabins and any other establishments subject to licensing under the Town of Scarborough Innkeepers License Ordinance. The term “non-conforming hotel or motel” means an existing hotel or motel which is not an allowed use in the zoning district where it is located. A nonconforming hotel or motel shall not be defined by or governed by the definition of “hotel/motel” in section VI, which is intended to apply only to new uses.

From the Town Council Ordinance Draft, Order 07-79-
Tabled and referred to the Ordinance Committee

Hotel/Motel:

A building or group of buildings containing six or more guest rooms and offering lodging accommodations (which may include such accessory services as food and beverages, meeting rooms, entertainment and recreation) to transient guests. A hotel may provide kitchens or kitchenettes in guest rooms and will not, as a result, be considered a dwelling under this ordinance, so long as the hotel is occupied exclusively by transient guests. A transient guest is a person who occupies the hotel for no more than 186 days in any 365-day period. (11/02/94)

Definition of Hotel/Motel From the Scarborough Zoning Ordinance

6. The definition above indicates that kitchens are permitted “so long as the hotel is occupied exclusively (emphasis added) by transient guests.” Once again, Mr. Grysk indicated that he determines “Change of Use” based on the nature of the operation of a business at the time it became non-conforming. The Lighthouse never had kitchens and still does not.

QUESTION: Would you agree with Mr. Grysk that the definition above does not apply to the Lighthouse Motel, and the owners would have been unable to install kitchens in the past since doing so would have been a change of use from the original operation when it became nonconforming?

7. The Lighthouse Motel, as stated above, has never had kitchens (arguably because that would have required Zoning Board approval and significant facility upgrades for life safety). There was no mention of kitchens in their original Condominium Declarations, but they did include language in their First Amendment, filed last January 10, 2008 (see below). This amendment essentially defines “kitchen” where no definition exists in our Zoning Ordinance. Indeed, the only mention of the word “kitchen” in our Zoning Ordinance is in the definition of a hotel (above).

office to be available as an office for the hotel manager. Not kitchens shall be installed in any of the units. A unit is considered to have a kitchen if the unit has cooking facilities which include both a cook-top with gas burners or electric heating elements and a gas or electric oven, together with the necessary piping and/or wiring to operate both.

From the 1st Amendment to the Declaration of Condominium, Lighthouse Motel

QUESTION: Does the town support the “kitchen” definition found in the Lighthouse Condominiums January 2008 Amendment? Please explain.

QUESTION: Would the “kitchen” definition in this Amendment permit a unit owner to install all of these; 1) Refrigerator, 2) Freezer, 3) Microwave Oven, 4) Dishwasher, 5) Garbage Disposal, 6) Assorted Kitchen appliances such as toasters, blenders, table top grills and coffee makers, and 7) either a cooktop OR oven (but not both)?

QUESTION: If such items were installed, wouldn't that really be a Kitchen for all intents and purposes, and would it be allowed by the Town under this definition? Does it pass the straight face test? And would it be safe?

8. When you compare the original language in the Lighthouse Condominium Declarations with the new language in the First Amendment, you discover that the words are virtually the same with few exceptions. The language requiring Town approval was eliminated, as stated earlier, the “Closure” date was modified from 6 to 4 months, and a typo was added. One exception is the new paragraph below found on page two of the Amendment (this includes the excerpt from the previous question). We must assume that it is, in part, this language that “satisfied” the Town attorney since few other changes were made.

QUESTION: Is that true? Please explain.

The Town of Scarborough considers the Property to be a “grandfathered” nonconforming hotel/motel, and the allowed use of the units is hotel rooms, not dwelling units. However, unit owners are not prohibited from occupying the rooms for their own use when they are not being rented as hotel rooms. The Association shall appoint a hotel manager, who may be a unit owner, a person employed by the Association, or a person employed by a management company engaged by the Association, to manage the Property. Any unit owner wishing to rent out his or her unit as a transient lodging on a nightly or weekly basis must do so through the hotel manager. The Association shall maintain the existing hotel office to be available as an office for the hotel manager. Not kitchens shall be installed in any of the units. A unit is considered to have a kitchen if the unit has cooking facilities which include both a cook-top with gas burners or electric heating elements and a gas or electric oven, together with the necessary piping and/or wiring to operate both.

From the 1st Amendment to the Declaration of Condominium. Lighthouse Inn

9. Calling your attention to the same paragraph above, we read that the “allowed use of the units is hotel rooms, not dwelling units.” The definition of a Dwelling Unit from the Scarborough Zoning Ordinance is below. The Amendment goes on to read that “unit owners are not prohibited from occupying the rooms for their own use when they are not being rented as hotel rooms.” Skipping the next sentence, we read that “any unit owner wishing (emphasis added) to rent out his or her unit as a transient lodging...”

Dwelling Unit:

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

From the Scarborough Zoning Ordinance

QUESTION: Since this language does not require owners to rent their “motel” rooms (just those “wishing to”) for any portion of the six month period (as the New Ordinance Draft did -see top of next page), is it possible that owners could legally occupy the units for all six months if they chose; or occupy the units for a portion of that time and leave them vacant for the remainder? If that is possible, how can the enterprise continue as a motel?

(a) At least half of the rooms must be offered to and actually be available for occupancy by members of the general public for at least 180 days in any 365-day period.

From the Town Council Ordinance Draft Order 07-79-
Tabled and referred to the Ordinance Committee
Intent was to insure that the motel remained a motel

QUESTION: If the answer to the previous question is “yes,” would it be legal under these Declarations, as amended, for unit owners to permit relatives or friends or friends of friends to occupy their units?

QUESTION: Given these scenarios, is it possible that the 22 units could, in fact, not be available as motel rooms at all? If so, doesn't that become a de facto CHANGE in the use of the nonconforming motel?

QUESTION: Would you agree the language in this paragraph - the only substantive change from the original Declarations - is poorly constructed and extremely weak from a Town enforcement point of view?

QUESTION: Where in the documents should there be explanations for such practical details as who owns and cleans the linen and rooms when they are privately owned? Who owns the furniture? Who removes trash, and maintains an environment appealing to the public. How will an owner be held accountable for leaving his or her property uninhabitable for transient guests?

10. The Lighthouse Motel owners filed Condominium Declarations and Bylaws at the Registry of Deeds on 3-19-07, after they were informed of the Town's decision that they would need to apply for approval. This filing was 11 days before the Town Council was to give the New Ordinance its first reading. The Town almost immediately filed a response at the Registry (3/30/07) which stated:

NOTICE REGARDING THE LIGHTHOUSE INN CONDOMINIUM

“To prospective purchasers of units in the above-referenced condominium: You are hereby notified of the requirements of Section IV(G)(1)(b) of the Zoning Ordinance of the Town of Scarborough, Maine, which reads as follows:

Prior to any change in the ownership or tenancy of a building or structure other than a single-family, two family or multifamily dwelling (emphasis added), the owner of the building or structure (or the prospective new owner or tenant with the written authorization of the owner) shall obtain a new certificate of occupancy. The new owner or tenant shall not occupy the building or structure until it is brought into compliance with the requirements of this ordinance and any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant.

QUESTION: Was that establishment no longer considered a hotel/motel as of that date by the Town up until now?

QUESTION: Does this language apply since “motel rooms” are not included in the exceptions?

QUESTION: Assuming it does apply, and based on Mr. Grysk’s inspection of all units at the Lighthouse Motel last month, please itemize what a new owner must do to bring rooms “into compliance with the requirements of this ordinance and any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant” prior to being issued an occupancy permit?

QUESTION: Will owners of rooms or their “tenants” realistically apply for a new Certificate of Occupancy for every changing tenancy as required by the language above?

QUESTION: Will the entire facility be required to bring the “common elements” and “limited common elements” into compliance upon the first unit sale? (these common areas are outlined in the original declarations).

QUESTION: Since Fire & Life Safety codes are not grandfathered, will the following be accomplished upon sale of the first unit/room prior to the issuance of an occupancy permit?

Will a sprinkler system be required?

Will fire alarm pull stations be required?

Will a hard-wired, interconnected smoke detection system be installed?

Will fire escapes be installed?

Will egress windows be installed as required by current code?

QUESTION: Will these other basic upgrades be done to the “common elements?”

Will the exposed asbestos shingles be removed?

Will the asbestos shingles beneath the vinyl siding be removed?

Will ADA requirements be met?

QUESTION: Did the owners apply for and receive an Innkeepers license subsequent to 3-19-07? If so, was it obtained prior to the annual filing deadline?

QUESTION: Was this facility subjected to the Town’s Innkeeper inspection and licensing procedures subsequent to 3-19-07? If so, please provide reports of the inspections.

QUESTION: Will the facility continue to be subject to licensing requirements such as those outlined in the new Ordinance draft? (see top of next page for an excerpt).

The hotel or motel must maintain a license under 30-A M.R.S.A. § 3811 and the Town of Scarborough Innkeepers License Ordinance.

From the Town Council Ordinance Draft Order 07-79-
Tabled and referred to the Ordinance Committee
Intent was to insure that the motel remained a motel

QUESTION: If so, what will be licensed: the individually-owned units, the entity, the management firm; and where is this specified?

QUESTION: Will the Town have the authority to inspect individually owned units under the Innkeeper Licensing rules without violating private owners' constitutional rights? Please explain.

11. In your response to our inquiries, dated, 2.7.2008, you wrote, "... the Trumans revised their documents to satisfy all of the requirements that the Town Attorney had set out at the beginning of this process to avoid being considered a change of use." (see below)

No action was required of the Council since the Trumans revised their documents to satisfy all of the requirements that the Town Attorney had set out at the beginning of this process to avoid being considered a change of use. Documents are in the process of being filed by the

From Town Manager's E-mail of February 7, 2008

QUESTION: What were the requirements set out by the Town Attorney?

QUESTION: It was acknowledged in the Council's public session that the "New Ordinance" draft came about because the Lighthouse Motel was the first nonconforming motel which sought to convert to condos by bypassing the Zoning Board, and other owners had expressed interest in converting (indeed, two other lodging places in Pine Point followed the existing ordinance and received approval from the ZBA last summer). Mr. Grysk stated that he had never approved such a plan in his tenure here prior to those two conversions. Why, if the New Ordinance was drafted by the Town attorney did he not require the Lighthouse Motel to abide by those proposed rules even though they had not been yet enacted by the Town Council?

QUESTION: Can adjacent rooms be combined?

QUESTION: Has the Fire Department given its blessing on this change of ownership given that it is possible for all units to be occupied for all six months by the same residents and its current condition with regards to life safety systems?

QUESTION: The Declarations are silent on the issue of multiple ownership of one unit? Will that be allowed and what are the implications?

QUESTIONS: Regarding the process

Q: The Residents Group has been very involved for three years in matters concerning the Lighthouse conversion plans, Depot St., the barricade issue, and the Beachwalk subdivision. Its representative participated in the Town Council Study for eight months. Please explain why we were not given the courtesy of being told of the latest development, particularly after 10 members of the group testified at the Council's public hearing on the New Ordinance?

Q: Many articles about this issue appeared in four local newspapers. Has the local press been informed of the resolution allowing the sales of individual units?

Q: Did the Town Council deliberate as a body on this decision in public or take any action? If not, please explain why, given the pending Ordinance on the table and the Council's previous involvement.

Q: Did the Ordinance Committee continue its work from last fall on the New Ordinance to regulate change of ownership of guest rooms in nonconforming hotels and motels?

Q: Hypothetically, if the Council had enacted the last draft of that ordinance, would the Town permit sales of rooms at the Lighthouse motel as it is now or would it withhold occupancy permits when a change of ownership occurred?

Q: Has there been any official written communication to the motel owners or their attorneys confirming that the Town of Scarborough no longer considers their plan a "Change of Use." If so, please include a copy with your response.

Q: What are the implications should the Town Council rescind that decision and require the motel to abide by existing ordinance?

Q: Is there any plan to remove the New Ordinance consideration from the table and dispense with it?

Q: If so, please confirm that the section of that ordinance which would prevent the Lighthouse motel from being exempt from it (because they filed their Declarations 11 days before the first reading of the ordinance) would still apply if the Council took it off the table?

5. Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this section III.G shall apply to proceedings pending at the time of its passage.

From the Town Council Ordinance Draft Order 07-79-
Tabled and referred to the Ordinance Committee
Intent was to insure that the motel remained a motel

Q: Have the new members of the Town Council been fully briefed on the 3 year history of this issue?

Q: Was there any discussion about a land exchange during this latest round of negotiations?

Q: If not, do you anticipate that the parking lot across the public road will forever remain where it is despite the ongoing and long-standing safety issues there?

Q: If there is no land exchange then what will the Town be able to do with the 3200 SF parcel donated by the Beachwalk developer to the Town which abuts the parking strip and is surrounded by a private road?

Q: Was there any discussion during the latest round of negotiations about the fence installed by the Lighthouse Motel which obliterated public views of the ocean?



Q: Did the Town attempt to use its leverage to have the fence removed for the benefit of the public? (examples of leverage include ordering the Motel’s substantial stone wall structure removed from its location several feet inside the public right-of-way (on a dangerous curve), enforcement of the “living quarters restriction” imposed by the 1989 Planning Board for the office building, which has been occupied as living quarters every year since, a plan to erect a Town fence in front of the motel, and others).

Q: Would it be legal for the Town to erect a fence, of similar design, in front of the Motel, on Town property, to protect guests from walking into the public street and to end the long-standing private use of the street for loading and unloading cars, playground-like activities, motel maintenance vehicle parking, etc.?

Q: Is the Town attorney and Town Council aware that this may eliminate forever the possibility of a proportional exchange of land, leaving the only option that of a 1:1 ratio (in other words, simply moving the parking area to front of the motel)?

Q: Is the Town attorney and Town Council aware that there are only 26 parking spaces for 22 units plus management and staff, and that the Zoning Ordinance requires two spaces? (Note: the Zoning Board required 1.5 spaces for the other conversions they approved last summer)

Scenarios

Q: If Owner A installs a full kitchen without a permit how will Code Enforcement know and what action would they take if they learned of it from another unit owner, for example?

Q: What procedures are in place, or will be in place, by the Town to monitor this “unique operation” after one or more units are sold?

Q: Who on the town payroll will be auditing the guest register and monitoring compliance with the restrictions in the Declarations to insure that it is operating as a motel? Who will the Town assign to examine Motel receipts, occupancy schedules, reservations, and other compliance issues?

Q: If there are violations who will be assessed fines or other penalties – the owner (or multiple owners in the “Timeshare” scenario), the Association, the management firm?

Q: With respect to the restrictions on these units being used as primary residences, explain how the Town Clerk will know that a unit owner is not eligible to vote here, or the Excise Department will know that a unit owner cannot register a car here, or the School Department will know that a child may not enroll in school here?

Q: How will a central management entity be able to monitor how owners are using their units? For example, if an owner chooses to rent her unit herself, or make a deal with a relative or friend, how can the management possibly monitor that?

Q: Has the Town set a precedent for other non-conforming motels to use the same loopholes, if you will, to create this unusual hybrid operation?

Q: Have we contacted the State to examine whether any statutes exist which supersede our ordinances, particularly those relating to life safety in condominiums?

Q: If an owner “leases” his or her room, as allowed in Article XI of the original declarations, and the tenant refuses to “quit” the premises prior to the date of building closure, what legal entanglements do you perceive given that tenants rights to due process in eviction are guaranteed and the process timely? And who evicts? The owner or the management? Who has the legal right to evict?

Q: If a unit owner enters into a short-term lease with a family with children during the fall season, for example (landlords may not discriminate in housing with respect to children), those children are obviously required to attend school yet cannot enroll based on the restrictions in the Declarations. How will that be handled?

Q: How will property taxes be assessed and apportioned since there is no precedent for this sort of operation?

Q: Given the possibility that all of these units can be occupied by the owners, by multiple owners, by the owner's family and friends, and friends of friends, or left vacant at the discretion of the owner, then the requirement that this enterprise must "remain" a motel really does not mean anything? Do you agree? Please tell us why you do or do not.

Q: If it turned out that none, or very few true motel guests rented rooms in the future, would you then consider the operation a Change of Use?

Finally, what will the Town Manager be recommending to the Town Council regarding its role in this at this point?

Thank you very much.

NOTE: the numbering system of these questions was simply to make referring to them simpler.