



Pine Point Residents Group

To Town Council Chairman Jeffrey Messer

**Request for Council Agenda Item for
June 18, 2008**

June 3, 2008

From the Pine Point Residents Group



Pine Point Residents Group

June 2, 2008

Jeff Messer, Chairman
Scarborough Town Council
Scarborough, Maine

Dear Chairman Messer:

We are writing to ask you to please place an item on your June 18th agenda concerning reinstatement of the Pine Point Study Committee which the Council created in 2006.

Three years ago you were instrumental in helping interested residents of Pine Point who wanted to develop a plan for the Depot Street area. As you recall, at that time the Lighthouse Motel had applied for variances to convert their business to five condominiums. Our Residents Group formed to participate in the public approval process ultimately endorsed their plan for five units on the 1/3 acre parcel. Our group then approached the Council in August of 2005, when you were chairman, and advocated strongly in support of your idea to create a study committee which would involve the motel owners, Residents Group, abutters, and Town officials. The goal, in your words, was to develop a plan that would be a win-win for everyone.

The committee met under the leadership of the Town Manager for eight months and did some excellent work. The Town traffic engineer firm created several plans for our review, and we deliberated many features of a plan which Mr. Owens coined as the "Ocean Gateway."

The motel owners withdrew their plan in April of 2006 at a point when the Town had just crafted a draft written agreement spelling out details of the plan. As a result of their decision to not proceed, the Town Manager suspended the committee work, although our group urged him to let the process continue.

Soon thereafter the issue of the barricade across the Pine Point Rd. at Depot Street became controversial. One of the residents' strong feelings was that the time had come for an alternative to barricading the public street since it served primarily to privatize a public road. The Study Committee had included the removal of that barrier in its work. A month after the committee was suspended, the Town Manager designed a new barricade which became a paved berm and was not only permanent (year-round where the previous orange barrels were seasonal) but the new berm was longer and, we believed, was more restrictive than the seasonal one. We objected to the design but it was under construction and almost completed when it appeared on your agenda that spring for your approval. When asked why, the Town Manager indicated that it was a Council decision in 1989 and he felt that any modification to it should receive Council approval. Despite our involvement for several weeks, we were not informed that it was on the Council agenda, so we were not present to make our concerns known. The Council deliberated for about five minutes and voted to approve the design.

That fall, we asked the Council to reconsider the design and you voted in October to order it reduced in size substantially, a compromise you personally brokered and one which our Group was supportive of.

Also that fall of 2006 we asked to meet with the Council to propose that the study of this area be continued and we provided the Council with a detailed proposal outlining why a study was needed and providing information from the previous study. It is important to note that no minutes of that first committee were taken nor was a report of the committee's 8 months of work every reported to the Council in public session. Our 27 page document sought to at least document what had occurred during those months. Also, a new subdivision on Depot St. had been proposed and was going through the approval process at this time, so there were new players to be involved in a study. Finally, we learned at that time that the motel owners had approached the Town about converting their business to 22 condos rather than five (which they later did despite the Town's position that it would create a "change of use" requiring Zoning Board approval.

The Council, in its wisdom, decided to wait until the spring of 2007 to study the matter. Councilor Sylvia Most indicated that the Comprehensive Plan Implementation Committee could consider this in the context of the revised Comprehensive Plan during the next year.

It is now one year later than that goal. When we learned last month that the Town Engineer had designed and proposed a reconstruction of the end of the Pine Point Rd. (which included yet another change to the barricade on Depot St.) we became alarmed primarily due to the timing. As you know, the agreement made by the developer of the new Beachwalk Subdivision was to do no infrastructure during the summer. When he defaulted on his performance bond (the Town had held his business check for several months and it was returned for insufficient funds when it was ultimately deposited), the investors of those expensive but unbuildable lots formed their homeowners association and modified the covenants so they could do the road construction both in the public streets and on the private road last summer. That was the only way they could obtain growth and building permits so they could try to sell their investments.

Since the Planning Dept. erroneously neglected to make the prohibition of summer construction part of the conditions of approval, and since staff took the position that they could not enforce the developer's representations (which appear in the minutes of the Planning Board), the investors, led by John Wiggin, one of the homeowners, were granted permission to open the roads in June, July and August. We learned from the Town Manager that the Town did violate its own ordinance by accepting and holding the developer's check for the performance guaranty (which, as stated above, bounced) and Mr. Owens stated that he was trying to work with the investors who were affected by the developer's default.

The summer construction was a nightmare for residents and visitors, as many will attest. The contractor broke a water main on a Saturday in July which left the entire peninsula without water for much of the day. The larger issue was, however, how changes could be made to the developer's representations made through the Planning Board process. This matter placed the integrity of the Planning Board process in jeopardy. As it states in our ordinance and in this subdivision's approval notes:

S-6 THE PROPERTY SHOWN ON THIS PLAN MAY BE DEVELOPED AND USED ONLY AS DEPICTED ON THIS APPROVED PLAN. ALL ELEMENTS AND FEATURES OF THE PLAN AND ALL REPRESENTATIONS MADE BY THE APPLICANT CONCERNING THE DEVELOPMENT AND USE OF THE PROPERTY WHICH APPEAR IN THE RECORD OF THE PLANNING BOARD PROCEEDINGS ARE CONDITIONS OF APPROVAL. NO CHANGE FROM THE CONDITIONS OF APPROVAL IS PERMITTED UNLESS AN AMENDED SUBDIVISION PLAN IS FIRST SUBMITTED TO AND APPROVED BY THE PLANNING BOARD. (Emphasis added)

Nevertheless, when we learned of Mr. Wendell's design, and learned from residents Mr. Shaw spoke to that construction was scheduled for June, we asked for a meeting to learn more details of the plan so we could communicate with the residents. The meeting was very productive and at no time did the four representatives indicate that we objected to the details of the plan; we told them that we would take the information back to the Residents Group and then let our position be known. We saw Mr. Owens after the meeting and thanked him for Mr. Wendell and Mr. Shaw's time. He did not mention that the plan was on the agenda for that very night's Council meeting.

That evening, the Town Manager stated to you: "as you might expect we've not been able to reach any kind of consensus or buy in on any of the improvements..." suggesting that the four representatives were not in favor of it. We clarified with a follow up email to you to explain the matter because we did not want the Council or our neighbors to think we would attempt to stop what may be a wonderful improvement. We simply needed to gather information, particularly as to the timing.

Our request for an agenda item was denied by the Town Manager, but we appeal to you because he misunderstood the reason for the request.

What we would like to do is what we did twice before; discuss the merits of reconvening a committee to finish the work begun three years ago, consistent with the Council's desire to study it in the context of the Comprehensive Plan last year. We did not expect the Council to deliberate the details of Mr. Wendell's plan; we simply saw that as yet another important piece of the larger pie.

And we felt that the Wendell plan provided an excellent invitation to resume the study. We also felt the timing was critical; Mr. Shaw indicated that about \$45,000 was earmarked for the Wendell plan, it would take only two weeks to complete, and we did not want to see that funding allocated to another project when it could remain earmarked for improvements at this corner. We feel that the nature of those improvements ought to be considered in relationship with the Depot Street plans, the barricade issue, and the Beachwalk Subdivision's obligations (they are required to provide a public sidewalk based on their approvals and do landscaping. Most importantly, the Town acquired a 3200 SF parcel from the Beachwalk subdivision and the developer was required to work with the Town to create a plan for that piece relative to access and landscaping. That has still not been done. Furthermore, Mr. Wendell's plan, which included the sidewalk along the end of the Pine Point Rd., did not extend into that public property which we did not understand. The Residents advocated strongly for that parcel to ameliorate the impact of the subdivision somewhat and to preserve a public view corridor and provide green space. Eventually our hope was that a land exchange would occur with the motel when they were ready to negotiate and this precious little parcel would then abut Depot St. creating a wonderful public space.

The administration has taken the position that there is nothing that can be done on Depot St. or with the 3200 SF parcel until the motel owners make a decision. We don't agree. At the very least we have argued that handicap parking could be provided there, and a method of turning around. We also feel that leaving the 3200 SF parcel unused will create the impression that it is part of the Beachwalk subdivision and will, like Depot St. become essentially "privatized." The investors of those lots should understand from the beginning that this is public property given to the Town so the developer could take advantage of Section 7 of the Ordinance and is not simply open space. The best way to ensure that is for a plan to be developed for its use, passive or active, and the committee we propose can do just that.

In closing, we know you are leaving the Council because of term limits, but you have the opportunity to act now to move this process ahead. The Truman's have made their decisions and there will apparently be 22 owners of that facility who can only occupy their rooms for six months each year. It is not reasonable to think we should wait longer to develop the vision you put forth when you conceived of the idea of a study so long ago. Mr. Owens himself had a vision he called the "Ocean Gateway" there, and Councilor Most's practical view of studying this last year in the context of the Comprehensive Plan made sense. Let's begin now.

We could postpone it longer and argue that we should because we will have a new Council and a new Town Manager, but part of the study should include collecting data on vehicle and pedestrian traffic there during the peak season – this July and August. It will be important to have that information when we consider options for the public road to present to the Council. The new Councilors and Town Manager will certainly be brought up to speed and become integral to the process, but the worker bees of the committee could do much this summer and through the fall to collect data, look at old and new designs, and record its work this time around. The Town Planner has history here, is very well-respected, and would make an ideal facilitator for the study. Furthermore, the demographics of Pine Point continue to change and many very interested residents are seasonal.

They deserve to have input as well. As do citizens from all parts of Town because this very visible and beautiful corner of Pine Point is treasured by us all, not just abutters or neighbors.

Thank you for reading this and please consider leaving as one of your many legacies a process that will have great hope for the development of a wonderful community resource. We would be grateful to attend your next meeting on June 18th and briefly present these views in support of the agenda item.

Yours Truly,

Representatives of the Residents Group

Harold Hutchinson, Judy Shirk, Jack Callahan, Judy Mushial, Sue Perrino, John Thurlow, Elaine Richer

Enc: additional information

This article appeared in the Forecaster in September of 2006. It is an accurate summary of the issues and is useful to read.

FORECASTER

September 7, 2006

Council Postpones Pine Point Study

By Peggy Roberts

SCARBOROUGH - After much discussion Wednesday night, town councilors postponed organization of a new road study for Depot Street, also known as Pine Point Road.

Four representatives of the Pine Point Residents Group presented their 27-page proposal to the council at Wednesday's meeting. Speaking on behalf of the nearly 100 members of the group, Jack Callahan, Judy Shirk, Harold Hutchinson and John Thurlow called for a study that would take another look at the traffic barriers at Pine Point, study ways to improve public access to the beach from Depot Street and plan ways to best use the 3,400-square-foot piece of land that developer Paul Hollis intends to donate to the town from part of his proposed Beach Walk subdivision.

The donated land abuts a portion of the Lighthouse Motor Inn's parking strip. Although Thurlow said he would like to determine a use for the property in Phase I of the study, Town Manager Ron Owens reminded him that the town does not yet own the land.

The group also brought up last year's proposed land exchange between the town and owners of the Lighthouse Motor Inn, Nick and Peter Truman. As part of the Trumans' 2005 plan, their motel would have been converted to five condominium units and the existing parking strip would have been traded to the town for a piece of land that would have given them better access to the new units.

Although the deal is off the table for now after the Truman's decision to withdraw their conversion plan, Thurlow encouraged the town to be "proactive" in seeking a proportional land exchange, suggesting a 2-1 ratio in the town's favor.

But Owens said the discussion was premature at this point, since the Trumans had changed their minds. In addition, he said any committee that might be formed in the future would need to include the Trumans although, at this time, they are unwilling to be involved.

"I don't think there's any disagreement on what we'd like to do with the end of Depot Street; it's how we get there," Owens said. "We need to have all parties represented and participating."

Though the Lighthouse Inn's possible conversion is not a component of the group's proposed study, apprehension over the future of the Trumans' property continues to hover over any discussion of changes at

Pine Point.

Most recently, the residents' group has rallied against the Trumans' current idea of converting the motel into 22 "condotel" units, a plan that the town's attorney has determined would be a "change of use," requiring approval by the Zoning Board of Appeals. Though, for now, the Pine Point group has chosen not to comment on this newest possibility, Thurlow said he's "confident the group will be taking a position on it" if it should go to the board.

After a period of debate at Wednesday's meeting, Councilor Sylvia Most suggested tabling the discussion of a study group until next year at this time, when the Comprehensive Plan Implementation Committee will take up Pine Point.

"That would give a cooling off period to the Truman's but won't give so much time that we'll lose sight of the discussion," she said.

The council commended the residents' group for the time and effort they put into their proposal and presentation but, ultimately, decided to delay a new study and to consider many of the issues brought forward as part of the Comprehensive Plan process.

"(Depot Road) is one area for the committee to study and to make recommendations on changes to policy that would affect the area," Owens said Thursday.

As for the Hollis land conveyance, Owens said determinations on its use do not need to be made until spring as it's unlikely the developer would be starting work on the project before that time.

Peggy Roberts can be reached at 781-3661 ext 125 or proberts@theforecaster.net.

Pine Point Rd. – Depot St. Study Committee

Mission: to gather data and examine options for creating a Master Plan, consistent with the Town's Comprehensive Plan, for the Depot Street – Pine Point Rd. area from Jones Creek Drive to the Beach.

Membership: similar to the previous study: abutters, residents, town officials, citizens, possibly facilitated jointly by a citizen and the Town Planner.

Records: minutes of the meetings should be recorded and distributed and agenda published in advance. The previous study was hindered by the absence of these important tools.

Areas of Study:

- Depot Street from the end of the Pine Point Rd. to the Beach
- The barricade on Depot Street
- The use of Depot Street and issues of safety of guests, drivers, bikers and pedestrians
- The need for handicap accessibility to beach parking
- The end of the Pine Point Rd. from Jones Creek to Depot St. and thereabouts (including the Wendell Plan for regarding, reconstruction, drainage, sidewalks, etc.)
- The Beachwalk Subdivision as it relates to public way and the status of its approvals
- The 3200 SF Town Parcel surrounded by Claudia Way in the Beachwalk Subdivision and accessed by a five foot easement.
- A portion of King Street from the Pine Point Rd. to Tasker Avenue where drainage concerns and safety have been of concern for years

Reasons for Initiating the Study this Summer

- Doing a study beginning this summer will permit seasonal residents to participate. Pine Point has changed as more and more property owners are seasonal but want to participate in the process. This is the beginning of the 4th year of issues related to the motel, barricade, Beachwalk, public beach access and use of Depot St.
- There is apparently approximately \$45,000 earmarked for the "Wendell Plan" according to Mike Shaw, Public Works Director. The fiscal year changes July 1, so the question of funding should be addressed. How can those funds be preserved for projects which the committee may propose for FY 2008-09 if approved?

- The Beachwalk Association has some financial obligations regarding the sidewalk and landscaping of the Town parcel which are spelled out in the minutes and approvals by the Planning Board. These should be accomplished in a timely manner so the integrity of the approval process is not called into question.
- Our group has asked for a “Traffic and Use Study” of Depot Street several times over the past four years but to date none has been done. The only evidence of how the road is used by the public is anecdotal or photos taken over the years. If the committee began its work this summer then it could consider some type of more formal data collection of traffic patterns, safety of pedestrians, private vs. public uses of the road, etc. The absence of sound data during the peak season hampered the work of the previous committee, many believe. The time to gather data is this summer.

Time Line of Relevant Events

12-01-04	Town Council Adopts the Practical Difficulty Variance
12/01 – 05	Town Council meets to discuss road swap with Trumans (can't find in minutes)
02-22-05	Planning Board Meeting: Favorable opinion of road swap, we're told
03-09-05	Hotel Conversion project heard at Zoning Board of Appeals
04-20-05.1	Second meeting of conversion at Zoning Board – tabled
Summer 05	Neighborhood meetings with Hotel architects on conversion
8-10-05	Residents Group representatives present to Town Council in workshop. Present Position Statement #1 on Conversion details and road issues Council agrees to Residents Group's request to create a committee.
9-10-05	Special Committee Meeting #1
9-21-05	Residents Group presents Position Statement #2 on details of the Road Design "Plan A" presented by Ron Owens on 9-10-05
10-04-05	Special Committee Meeting #2
10-14-05	Letter from Hotel Owners' Architect to Ron Owens regarding road design Concern stated about costs and timing
10-18-05	Special Committee Meeting #3
10-31-05	Town Council deadline for Committee Report
11-07-05	Letter from Hotel Owners to Ron Owens: Putting project "on hold"
11-08-05	Special Committee Meeting #4 (rescheduled from 11/1)
11-16/29-05	Residents Group response to Hotel Owners' letter of Nov. 7th Position Statement #3 to continue the study; presented alternative plans
11-29-05	Letter Hotel Owners to Ron Owens: Financial information response

