

**To:** John Wiggins, Paul Hollis

**From:** Jack Callahan, John Thurlow, Judy Shirk, Elaine Richer, Harold Hutchinson

**Cc:** Town Manager Ron Owens, Town Council Chairman Jeff Messer  
Planning Board Chair Susan Auglis

**Reg:** Discussion of Beachwalk Subdivision

**Date:** July 15, 2007

Thank you for agreeing to meet with us on **Thursday, July 26<sup>th</sup> at 6:00** at the Fire Station in Pine Point.

As we discussed, here is a list of ideas for solutions to this problem for both the lot owners and the neighborhood. We hope if our ideas are received favorably, they could be presented to the Town for its consideration. We appreciate the opportunity to work through this as there are a great many concerns in the neighborhood. The water main break on Saturday, July 21<sup>st</sup> affecting the entire peninsula has elevated these concerns, to say the least.

We believe that once agreements are reached, an amendment to the approved site plan can be submitted to the Planning Board, hopefully with the support of all parties.

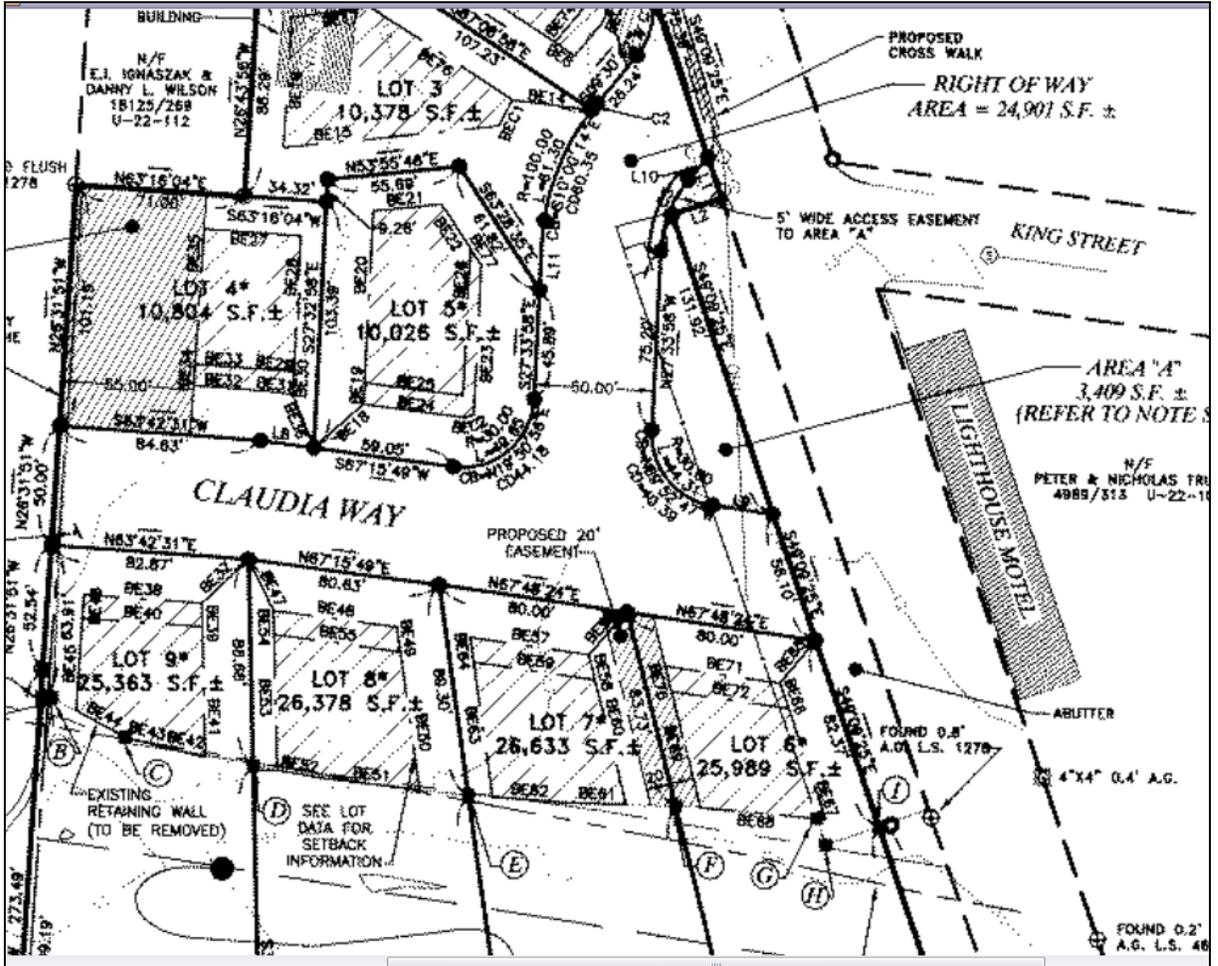
This document includes:

Copy of a portion of the final recorded plat

Some points to be considered as to the approval process and violations

Ideas we have for solutions

# From Final Plat



## Our Points Concerning the Process

***Default on the Performance Guarantee Voids Approval under Section 9 of the Subdivision Ordinance. The Final Plan should not have been signed or recorded, now work commenced. The Town must enforce its own ordinances.***

### ***From The Plat...***

S-5. THE PERFORMANCE GUARANTEE REQUIRED BY SECTION 9:1 OF THE TOWN OF SCARBOROUGH SUBDIVISION ORDINANCE SHALL BE FURNISHED SEPARATELY FOR EACH PHASE. NO LOTS WITHIN ANY PHASE SHALL BE SOLD OR BUILT UPON UNTIL THE PERFORMANCE GUARANTEE FOR THAT PHASE, IN AN AMOUNT AND IN A FORM ACCEPTABLE TO AND APPROVED BY THE PLANNING BOARD AND TOWN TREASURER, HAS BEEN TENDERED BY THE SUBDIVIDER.

Failure to fund the performance guarantee is a violation of the Planning Board's conditions of approval and therefore no permits should have been issued for demolition, street opening, sewer, etc. See Subdivision Note S-5

### ***From the Ordinance***

#### **SUBDIVISION ORDINANCE: SECTION 9. PERFORMANCE GUARANTEES**

9:1 In order to insure completion of all improvements required by the Town of Scarborough, Maine the **subdivider shall furnish to the Town Treasurer a performance guarantee prior to the recording of the Final Plan. Said performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit** in a form and from an issuer acceptable to the Town Treasurer. In determining the acceptability of the issuer, the Town Treasurer may rely on any published information available concerning the issuer's financial condition and projected financial condition during the term of the letter of credit. The determination of the Town Treasurer on the acceptability of the issuer is final and not appealable. The amount of such performance guarantee (the "Stated Amount") shall be approved by the Board and the Town Treasurer, and shall be **in an amount at least equal to the total cost of furnishing, installing, connecting and completing all of the street grading, paving, storm drainage and utilities or other improvements specified** and shall be conditioned on the completion of all such specified improvements within 30-months of the date the Performance Guarantee is furnished. The performance guarantee may allow for, but shall not require, periodic reductions of the State Amount as portions of the specified improvements are determined by the Town Engineer to be complete, provided that each such reduction shall be limited to 85 percent of the cost of the improvements for which the reduction is allowed. In no event shall the performance guarantee be reduced to less than 15 percent of the Stated Amount until all the specified improvements have been completed and inspected and all fees due under Section 11 below or pursuant to any conditions of approval have been paid in full.

9:2 The Board may grant one or more extensions of up to exceed 12 months beyond the guaranteed performance period when the subdivider can demonstrate, to the satisfaction of the Board good cause for

such extension; provided, however, that the performance guarantee shall remain in full force and effect during any such extension period and that the total duration of the original performance guarantee and any extensions granted under this Section 9.2 shall not exceed five years from the date on which the original performance guarantee was furnished. The Planning Board may not grant an extension if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town. NOTE: The Town has a lien against another parcel

9:3 Before a subdivider may be released from any obligation required by his guarantee of performance, the Board shall require certification from the various departments and agencies concerned to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, State and Local codes and ordinances.

9:4 At the time of approval of the final plan, the Planning Board may approve the construction of the subdivision in specifically identified phases and allow the subdivider to furnish separate performance guarantees for each phase prior to commencement of construction of each phase, provided that the performance guarantee furnished for any individual phase must secure the construction of all required improvements within such phase plus any improvements located in other phases which are necessary in order for the phase being constructed to comply with the requirements of this Ordinance should subsequent phases not be constructed. The time limits of sections 9:1 and 9:2 shall apply separately to each phase. In addition, the time limits of section 9:1 and 9:2 may be modified for a phased subdivision pursuant to a contract zoning agreement approved by the Scarborough Town Council under the Scarborough Zoning Ordinance.

## Violations

- The construction of the infrastructure, including work in the public street, at the peak of the summer season was a breach of the commitments made. **Subdivision Note S-20** was based on a clear intent but was not worded correctly and was interpreted literally by the Town. Mr. Hollis was very clear that he would not disrupt the summer season.

S-20. THE CONSTRUCTION OF CLAUDIA WAY (ROAD) WILL NOT COMMENCE UNTIL OCTOBER 1, 2006.

Also, the construction schedule was very clear in the Covenants recorded at the Registry.

## *Exhibit B*

### *Home Construction Schedule*

1. General Construction Schedule:
  - a. No roadway construction at the Subdivision will commence before October 1, 2006, including the construction of the sidewalk from East Grand Avenue to the parking area of the Lighthouse Inn at Pine Point.
  - b. All underground utilities, storm water management systems, roadway (excluding the brick work of the roadway), and granite curbing will be completed by June 1, 2007.
  - c. All roadway construction will be completed by June 1, 2007 with the exception of (1) the brickwork and landscaping of the roadway and (2) the landscaping of the abutting open space. Work hours for said excepted work will be from 8:00 a.m. to 4:00 p.m.

- Granite Monuments were not installed as required by Subdivision Note S-21 prior to construction commencing on the infrastructure.

S-21. GRANITE MONUMENTS AS SHOWN ON THIS PLAN SHALL BE INSTALLED PRIOR TO THE COMMENCEMENT OF CONSTRUCTION TO DEMARCATÉ THE DEVELOPED AREA

- A road opening permit was not obtained (or at least our request for a copy was unanswered).

***There are several affected parties, all of whom should contribute to a solution***

- The developer Paul Hollis who has vested his declarant rights to the Association, but seeks to be involved and work toward fulfillment of his commitments to the owners, Town, Abutters and neighborhood.
- The Investors/Lot Owners of the 9 lots in the subdivision
- The Direct abutters, including the Citizens of Scarborough who have title to the open space "A" surrounded by Claudia Lane
- The Town of Scarborough, its Administration, Planning Board and Town Council
- The Residents Group which worked with Paul Hollis throughout the approval process
- Neighbors who are not affiliated with the Residents Group
- Citizens at large

***At the very least, a Site Plan Amendment needs to be presented to the Planning Board***

- The integrity of the Planning Board process must be upheld
- Oversights in documenting important commitments need to be rectified
- The Site Plan amendment should come from the Association

## ***Town's Role***

- The Town admits that it did not ensure that the performance guarantee was made prior to permits being issued.
- The Town has attempted to solve the problem
- The Town has received a portion of the funds from Paul Hollis
- The Town has made agreements with the Investors/Lot Owners concerning the timing of the construction, installation of the sidewalk, and others which we had no knowledge of.

## ***Commitments & Representations made that should be incorporated into Planning Board re-approval***

- Commitments by Paul Hollis came in several forms
  - statements made during neighborhood meetings
  - in presentations before the Planning Board
  - found in the minutes of Planning Board proceedings
  - outlined in the recorded Covenants
  - found on the recorded subdivision plan signed by the Planning Board

What follows is not an all-inclusive list. A comprehensive review of the Planning Board proceedings, minutes, covenants and final approval documents needs to be done to identify the conditions that should be added to the final approval. We rely on subdivision note **S-6** as justification for this (scanned from the recorded plat).

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.

- **Architectural Style**
  - The developer showed the residents and Planning Board photos of the style of home he would approve as the Declarant. He has vested his rights to an

Association so that they now control the styles themselves. This results in a loss of control over the size and style of homes. Find a legal way to ensure that the home designs are consistent with the promises made.

- **Landscape Plan**
  - The developer was required to submit a landscape plan for Town approval for the area known as Area “A”
- **Trail Consolidation**
  - The several trails in the frontal dune were to be abandoned and re-vegetated with the exception of one common trail for residents use. The subdivision note S-15 did not properly document the condition that the trails that are abandoned be re-vegetated.
- **Fence Style**
  - A traditional open-rail fence of natural material design was represented and should be required as the only fence style permitted in and around the subdivision
- **Plover Protection**
  - Incorporate the commitments made concerning Plover protection into the subdivision notes.
- **Granite Monumentation**
  - Add requirement to install the granite markers on the lot corners as well as the no disturb area.
- **Crosswalk**
  - A crosswalk over Claudia Lane to the Town land is “proposed” on the plat. Should be made a requirement.
- **Covenant Items**
  - Several items in the covenants should have been made conditions of approval to the extent that they affect the character of the neighborhood. These should be identified and included in the site plan amendment so they are unalterable by the Association. This is protection for the lot owners and the community.
- **Other...**
  - Do a thorough analysis to identify others.

- Resolve the process of how the transferred “Declarant Rights” will be noted upon. The Covenants call for 2/3 approval of amendments, but there is no provision for how the Association will act upon those rights transferred by Hollis to the Association; voting by simple majority, by 2/3 votes, delegated to the President, etc. Since the architectural style is among the major decisions reserved by the “Declarant” this question needs to be resolved.

## Ideas to Benefit the Lot Owners, Town and Neighborhood

AGREE TO...	BENEFIT TO THE INVESTORS	BENEFIT TO THE COMMUNITY
Permit construction of infrastructure, including street openings during the summer months 2007 (already done).	Ability to end delay, seek growth permits, sell or build.	No benefit: construction during the summer is a burden. No summer construction was a commitment made.
Agree to upgrade the road to meet public road standards and request the Town accept it as a public road once completed. Allow developer to modify surface to pavement, not brick. Hammerhead required – install on town parcel.	Eliminates perpetual maintenance. Saves the cost of Belgian pavers. Ocean Gateway will be an enhancement to the development in the future. Public safety enforcement. Summer police presence at Pine Point.	Would allow access to the road for the public’s use of the town-owned land that the road surrounds, rather than just the very limited 5 foot easement. Provides opportunities in the long term for realization of the Ocean Gateway vision.
Grant relief for the full cost of the sidewalk from East Grand Ave. to Claudia Lane; developer to install granite curbing as shown on the plat, town to complete the sidewalk as apparently was discussed.	Cost savings, relief from the timing of installation.	None. The developer was required to install the sidewalk at his expense. The sidewalk, however, will be a benefit to the public and improve safety.

<p>Review and document all representations made by Paul Hollis to the neighbors, Planning Board, Town Staff and in the covenants; agree to submit an amendment to the site plan approval to add certain conditions that were not included in the subdivision notes. Add items outlined within this document that are agreed to - as conditions. See Note 1 below for examples.</p>	<p>Lot owners are still bound by a set of covenants which were designed to protect their investment as well as the character of the neighborhood. Agreeing to properly document the commitments made would only disadvantage the investors/lot owners if they intended to modify the covenants after they were reviewed by the Planning Board at approval.</p>	<p>Allows for public enforceability of those commitments which were not documented. Provides protection of the public views in perpetuity, and ensures that the agreements made would be honored and ensure that they preserve the character of the neighborhood.</p>
<p>Lot Owner of Lot 6 grant the Town an easement for a walking trail of 60" inches along the boundary of Lot 6 which abuts the hotel parking lot strip - from the Town property "A" to the Town beach area "B" and include a split rail fence on both sides to identify the walking trail and provide privacy to the lot owner of Lot 6</p>	<p>No affect on lots other than Lot 6. This would be a 60" path running along a parking lot, so the impact is arguably negligible given that the hotel parking lot abuts this lot. Other owners could reach an agreement with the owner of Lot 6 on consideration.</p>	<p>A walking trail to the beach from the town parcel would permit beachgoers to walk along the sidewalk from East Grand Ave. to the crosswalk at Claudia Lane, then enter the Town land which is surrounded by Claudia Lane, and proceed to the beach safely. This is a safer alternative to Depot St. and controls people from accessing the neighborhood.</p>
<p>Change the name of the road to better reflect the area. Allow neighbors and lot owners to submit ideas for naming the road. Beachwalk cannot be used because it conflicts with other street names.</p>	<p>A more suitable address for lot owners</p>	<p>A more suitable identity consistent with other street names like Jones Creek Drive, Dunefield Lane, River Sands Drive, and Driftwood Lane.</p>
<p>Resolve the confusion over the tree buffer along Lot 1 where it abuts East Grand Ave. There may not be a maximum height limit of "vegetation" allowed at that boundary. Permit a higher buffer than the 42 inches allowed elsewhere, but not</p>	<p>Still provides a privacy buffer for that lot owner but does not obliterate views as residents travel down Blue Point Hill</p>	<p>Eliminates the possibility of unlimited height of evergreens and is more consistent with the 42 inch restriction of vegetation throughout the subdivision.</p>

<p>to exceed 72 inches at that boundary only. See Addendum 2</p>		
<p>Utilities: provide necessary utility stubs to the Town owned parcel for future use, including electrical, water and sewer while the infrastructure is completed. This would be difficult with the limitation of the existing 5 foot easement, and doing it now would be more cost effective.</p>	<p>No disadvantage. The eventual cost of utilities use would be borne by the Town.</p>	<p>The Town would have the ability to use these utilities depending upon what it eventually designs for this public area. A lighted sign and flagpole, a water fountain, low-level security lighting are among the possibilities discussed in the Special Committee of 2005</p>
<p>Grant relief from designing and landscaping the town-owned parcel which was required by the Planning Board.</p>	<p>Costs saving.</p>	<p>None.</p>
<p>OTHER IDEAS...</p>		

## Addendum 2

See Section C (from the construction schedule at the end of the Covenants.

5. Other Agreements and Restrictions:

- a. Debris containers and/or dumpsters will be placed on the side or rear of lots 1 through 5 on a temporary basis during general construction of each house.
- b. Debris containers and/or dumpsters will be placed on the front of lots 6-9 on a temporary basis during general construction of each house.
- c. Landscaping and fencing will be limited to 42 inches on the subdivision with the exception of landscaping on the line of which the subdivision borders East Grand Avenue, where trees may be planted, and with the exception of the front and back yards of each lot where trees may be planted.
- d. Electrical pole transformers for the Subdivision will be limited to the East Grand Avenue boundary side.
- e. Subject to CMP approval, two (2) wooden electrical poles will be removed. One of these poles is currently located on the vacant lot and the other abuts the vacant lot.

Received  
Recorded Register of Deeds  
Nov 09, 2006 01:09:56P  
Cumberland County  
John B. O'Brien