

ASSOCIATION UPDATE JUNE 3, 2009

To members of the Pine Point Residents Association and others on the Pine Point Mailing List:

Welcome back to what will surely be a wonderful summer in Pine Point!

We'd like to welcome 24 new members to our group! Judy has been working hard to recruit more neighbors and interested people to join our efforts and those who just want to be kept informed of important news.

We are writing to let you know, while things had been relatively quiet in Pine Point last winter, there have been some important developments lately. You can read details at www.pinepointbeach.com and we will report on the issues below.

This Wednesday, June 3, 2009, the Association will be presenting a statement to the Town Council at its regularly scheduled meeting. Other residents may also be speaking. There are several issues, but the most urgent one is a potential land swap with the Lighthouse Motel. We learned of this a few weeks ago and have tried to get information ever since, but know little about the discussions because they have been cloaked in secrecy. So we have written the Town Council and will be speaking during the public comment portion of the meeting Wednesday night. Any resident can speak for five minutes, so if you are inclined to do so, it is your right to.

We are having a full membership meeting of the Association on WEDNESDAY, JUNE 24th at 6:30 at ENGINE 4 FIRE STATION. We will present a slide show as we do each year to update everyone on the issues, then debate position statements to submit to the Town. We're working hard to recruit more members so our collective voice grows stronger. Please try to attend. At the end of the meeting we will lead a tour of the Town-owned land abutting the Beachwalk and explaining the green paint markings along the road nearby so you can get a sense of what the road reconstruction project will look like. We also may have more information about the land swap by then to share.

Here is a detailed update of what's been happening in the last few months. Again, you can find more details and visuals on our website at www.pinepointbeach.com.

Thank you.

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

The Town Council's Pine Point Study Committee

This committee completed its work late last fall on the road reconstruction design for the end of the Pine Point Rd. (between Jones Creek Drive and King Street, abutting the Beachwalk subdivision). You may recall that our Association asked the Council for this study after learning at the very last minute that the Town was about to reconstruct this section of road and re-establish the barrier to Depot Street

(along the front of the Lighthouse motel) during the spring of 2008. We successfully had the project stopped so the neighborhood could understand what was about to happen.

The Committee was approved and met all fall. It consisted of town employees, abutters and two residents, one of which represented the Association. We were not fully successful achieving the goals of our group - primarily full and open access to Depot Street to the shore and creation of an attractive and accessible plan for use of the new town land abutting the homes at the Beachwalk. The reconstructed road will be narrower than we wanted (you can see the green lines painted there to understand this change) and the most recent engineering design we recently received calls for a much larger barrier across Depot Street by the Lighthouse Motel. The plan shows a concrete curb, a five to six foot grass esplanade like the new ones at Dunstan corner, and a five foot sidewalk ACROSS the road with the exception of a 20 +/- foot entrance next to the motel's stone wall. If constructed, this will be the most formidable barrier to this public street that we believe has ever existed.

A presentation was made to the Town Council January 9th. Along with the change in the committee's proposal stated above, the Town Manager retained a landscape architect to create a design for the new town-owned land abutting the Beachwalk. You may recall we worked hard to acquire that shorefront land for the benefit of the public. The Beachwalk homeowners' representative, predictably, demanded it be left "open space," but the committee recommended it be accessible, identified as Town Property and its future use decided at a later time.

The landscape architect, however, created a design that prohibited access to all but a tiny portion of the land by the road (the whole parcel is very small to begin with but is priceless insofar as it eliminated a house lot there, maintained a view corridor to the ocean, and allowed future opportunities for the Town). The architect recommended establishing dune grass on most of the parcel with robust plantings on the five foot access easement to prevent public access.

Obviously we objected strongly since this plan would essentially create a sensitive habitat from what is currently graveled composition and which, according to the DEP, would forever prevent the land from being used by the public for recreational development, such as a mini-park or part of a future shorefront drop-off and vehicle turnaround we have promoted for several years.

We also objected to the process. The Council members created this committee; charged it with coming up with a plan for use of this parcel, and made it clear that they wanted to see it used for public purposes so a repeat of the Black Point Park debacle would not occur.

By way of background, you may be interested to learn that two years ago the Town began to create a public recreational area next to St. Max's Catholic Church on the Black Point Rd. The parcel of land had been conveyed to the Town by a developer, exactly like the Pine Point parcel next to the Beachwalk was. This allowed the developer to benefit from relief of certain zoning requirements, exactly as the Beachwalk developer did. The land at Black Point lay dormant for some time when the Town, without any public notification, began bringing in fill to create ball fields and parking areas. The neighborhood was understandably upset because they had never been informed of the plan for the land. The neighborhood organized (sound familiar?) and a long, controversial debate ultimately resulted in a scaled-back plan more suitable to the neighborhood. The Council at the time made certain that the public had a voice.

Members of the Town Council, when voting to create the Pine Point Study Committee last summer, made it clear they did not want that situation repeated. Town land is for the benefit of the public and it should be very clear to abutters and neighbors that it is accessible public property.

When we watched the January 2009 presentation of the landscape architects design, which was clearly inconsistent with the Committee's recommendation and absolutely contrary to the Council's direction, we were astonished. We questioned why a plan was commissioned after the committee concluded its work. The Town Manager explained that the architects plan has not been funded and will therefore not be done, which generates even more questions. So the fate of this public property is still unknown.

Finally, we have asked repeatedly if there have been any further discussions about a land swap with the Lighthouse Motel and were told there had been none. You may remember five years ago this issue surfaced and neighbors learned about it just by chance. For years the public had complained about the infamous orange barrels that were placed across Depot Street to discourage public use of the street. The Lighthouse Motel was planning to convert their 22-unit motel to 8 high-end condominiums and would be able to expand their large structure (which only rests on 1/3 acre of land) if the town conveyed part of the public street in front of the motel to them in exchange for land the motel owns across the street for parking. The 3 story structure they proposed was almost universally condemned as totally out of character with the neighborhood (pictures of it appear on our website). And the land exchange provided no benefit to the citizens of the Town. It was then that our Association organized to promote a careful, thoughtful approach to what would have been an impulsive and permanent decision to sacrifice public land at the shore.

We've been doing the same for five years and history is now repeating itself. We learned in March that the owners of the motel did, indeed, approach the Town with a land swap proposal and the Town did entertain it. We've attempted to learn details of the conversations for two months but they have been kept confidential. We were promised we would be brought into the process "at the right time," but learned as recently as last Friday, May 29th, that a tentative plan had been formulated, the Town engineer had been working on it, and the lawyers for the town and motel were working out details. In an email to the Association last Friday we learned that a proposal was tentative and the earliest it would be on the Town Council's agenda would be June 17th!

That is obviously not sufficient time for the representatives of the Association to distribute the plan to the neighborhood and respond. And when one detail was communicated which indicated much of Depot Street would be presumably used for motel parking with the town obtaining the motel parking strip, we were once again flabbergasted. Of course, it is difficult to react to a plan when very little information is provided, but this small detail was sufficient to alarm us and cause us to once again approach the Town Council for a reasoned approach.

What is mystifying is that any plan to swap land would make some of the work of the Study Committee obsolete before it was ever constructed. Much of the engineer's design would undoubtedly have to be altered. Furthermore, the Council, when the Association urged that Depot Street be part of the study, chose to narrow the focus of the committee's work to the road reconstruction. Members of the Council, including Chairman Mike Wood, expressed a desire to see the committee meet with success on a smaller scale study and then move on to Depot Street. It is inconceivable that any discussions would be entertained about a land swap only weeks after the Committee made its recommendations (the motel owners were part of the Study, by the way).

So we have formally asked the Council to intervene and do just as a previous Council had done in 2005 – assign this to a group of affected parties, including the citizens and reject any plan that has not been fully vetted to the community. This is consistent with our Association’s position over the years and it is the right thing to do. We are waiting for the next step, and still waiting to be brought into the administrative-level discussions.

It is important to point out that we have never absolutely opposed a land exchange of any kind. In fact, we supported one in 2005 which would have benefitted the motel and the town had it been implemented. That history is well-documented on the website and that brings us to our most important position. There is a long, complex, and controversial history here and with the passage of time it can easily be forgotten. There are new Council members, a new Town Manager, investors at the new Beachwalk subdivision and new residents of Pine Point. But there is a large core group of community members in our Association who continue to promote a fair and open process when it comes to giving away priceless public property. We must insure that the past is not forgotten because to ignore the history is to repeat mistakes of the past.

Some people wonder why there is so much interest and controversy surrounding this one issue. There are many reasons. Pine Point has limited access to the shore. Depot Street has been considered private by all intents and purposes due to the barricades that have been placed there for two decades. This area of Pine Point is the most visible access point to the shore. The street is used extensively in the off-season by horse owners, bird watchers, and fishermen checking the weather or collecting gear washed upon the shore. There is very little open space in Pine Point which is a densely populated neighborhood. And it is simply the right of the public to travel a public road.

But the larger issue is the obligation of town officials to consider issues of public policy in an open and transparent way and to involve the citizens in decisions affecting their neighborhood and their property values. They clearly know that there will be no absence of involvement by Pine Pointers when they are brought into the process. Yet over the past several years many decisions have been made which the public has to RESPOND and REACT to rather than be invited into the decision making process.

Are there other examples? Absolutely.

Number 1: The Town sold a 10,000 square foot section of Hurd Park to a developer last year (a part of the so-called overflow, grassed, parking area between Avenue 4 and 5) with absolutely no public notification. Our Town spends large sums of taxpayers’ dollars supporting the wonderful work of the Land Trust so the community can acquire open space. Yet in a neighborhood where little exists, a portion of a public park was sold off.

Number 2: A new commercial pier was proposed for the co-op area, a project that may be a wonderful help to fishermen and the local economy. But the project was conceived, engineered and will begin this fall without any effort by the Town to present the idea to the neighborhood. We read about it in a couple of articles in the local weeklies long after the decisions were made. It was our Association which obtained the plan and its design has had mixed results because it will alter the character of this scenic part of our neighborhood. We don’t want to be misunderstood; the pier as it is designed may be the very best option for fishermen and the community, but its design was not influenced by an open, public process.

Number 3: The Lighthouse motel, after having abandoned its high-end condo plan in 2005, which had considerable support once its design and density was the subject of public meetings held by the owners and which resulted in an attractive plan, decided to convert their 22-unit motel to 22 little condominium dwellings. That building rests on one-third acre of land. 22 homes (in what today would be called a multiplex requiring five acres of land at a minimum) with individual ownership is a much different use than a seasonal motel that is a grandfathered use. Given the controversy over the first condo plan in 2004 with 8 units (later reduced to 5), town officials could have anticipated public outcry at allowing this change of use without the required Zoning Board of Appeals approval and oversight. Two other lodging places in Pine Point had to endure the rigorous process of Zoning Board review to convert, just as all non-conforming properties must when a change of use is proposed. The Zoning Board exists to ensure preservation of neighborhoods' characters. Yet the Town learned of the conversion plan by letter from the motel owners' attorney which would convert the structure to a so-called "condotel" and the Town did not notify abutters or residents of this dramatic change. Once again, learning about it by chance through the Code Enforcement officer, the residents were forced to react. We urged the Town Council to craft an ordinance governing condotels like many communities have, but the effort failed and the Lighthouse motel, through legal maneuvering and public threats of promised litigation in the Council's chambers, was allowed to convert. They have been unable to sell their 320 square foot homes, priced at over \$200,000, in the past two years, and we can only speculate that their recent approach to the Town for a land swap means they have another plan. We just don't know what it is, and if the Town does, they aren't telling the public.

Number 4: The Beachwalk subdivision of nine lots across from the motel was approved by the Planning Board. This land was owned by the family which owned the Lighthouse Motel. The property was conveyed by the family to the developer, Paul Hollis, after the Planning Board's approval and Mr. Hollis conveyed individual lots to investor friends the very same day. What no one could have predicted, including the investors who failed to perform due diligence when they agreed to pay an average of \$600,000 for their lots, was Mr. Hollis was soon to be bankrupt. That was unfortunate because it began a series of events which has become somewhat of a local humiliation for the Town. You see, we have clear ordinances which require developers to post "performance guarantees" in the form of certified funds or letters of credit which provide insurance against cases like Hollis's. If a developer goes belly-up, then the Town has the necessary capital to have the infrastructure completed by other contractors thereby protecting the Town from abandoned developments.

But it has now been disclosed that Mr. Hollis did not provide a performance guarantee because his check, which was not certified, was held for some time by the Town and then bounced after Hollis's financial situation tanked. No road was built, no sewer, water or power installed, and nine investors were holding the bag. Notwithstanding that they bought these lots on speculation at reduced prices, the investors apparently began a series of discussions with the Town which ultimately led to the execution of three secret legal agreements. We tried in vain to obtain these since this was clearly an important issue to the public, but were denied them until the new Town Manager recently provided them (they are on our website).

In the interim, one of the lot owners duped by Mr. Hollis took charge of the development and in a meeting with the Association members during the summer of 2007 revealed that the lot owners were all paying a share of the infrastructure costs so they could get building permits. If they failed to meet the conditions of the Planning Board's approval and meet all other ordinances governing subdivisions, they would not be issued building permits and their lots would be of little value.

It was during this time residents became alarmed when bulldozers arrived on the site just as the summer of 2007 began. One of the conditions of approval was that no construction would occur during the summer months. But we learned that the homeowners association modified its own restrictive covenants to alter this self-imposed restriction, and the Town took the position that it could not prevent it due to a technicality in the language of the approval. So the owners were permitted to disrupt that summer with construction both within the subdivision but, even more disturbing, in the public streets. In fact, one beautiful Saturday in July the contractor broke the water main servicing all of the homes and businesses in the Pine Point peninsula.

More concessions were made as time went on. The sidewalk they were required to install from East Grand Avenue to the entrance to their subdivision still does not exist, for example. But what we learned from release of the three legal agreements Ron Owens signed was that the Town, presumably due to its own negligence regarding the performance guarantee, agreed to spend taxpayers' funds to pave the private road for the investors. They were also provided funds by the town which we assume were ultimately collected by Mr. Hollis. While not mentioned in the legal agreements, we have discovered that the four oceanfront lots in the subdivision were assessed for property tax purposes at a rate significantly below the rate the town assesses oceanfront land just a few lots away on King Street. This information is all available on the Town's web site (see Assessor's Database).

And now, five years later, we are faced with the potential of a land exchange deal which we cannot learn any details about to judge whether it would be a good thing for the neighborhood or not.

If you've read this far then you may realize why the members of the Association have been so frustrated over the years. But we are committed to seeing this through because as Town Councils change and a new administration assumes control, we remain a constant and vigilant presence to make sure policy makers don't make decisions which will forever affect the character of Pine Point, such as giving away public land.

Thank you for taking the time to read this and please remain or become involved in our grass roots effort. Our neighborhood depends on everyone's commitment.