



# Pine Point Residents Group

## Update to Members: May 2007

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

We hope you've all had a fine winter and wish you a happy spring. There has not been a lot of news to report to you over the winter, but there have been some recent developments which you may want to be aware of. We will try to summarize them in this update, and apologize for the length of this message, but we would like you to have as much information as possible. If you have any questions, please don't hesitate to reply to one of us and we will respond.

The new email address for this mail group is [Pine-Point-Beach@maine.rr.com](mailto:Pine-Point-Beach@maine.rr.com) and the website address is [www.pinepointbeach.com](http://www.pinepointbeach.com).

## Review of 2005-2006

The follow accomplishments were made in 2005-6:

- Slowed the process of approval of the Lighthouse condo conversion so the public could participate in the decision to exchange public land and have input to the Zoning Board on design standards (starting in February of 2005).
- Participated in the redesign process of the Lighthouse condo plan and endorsed "Plan D" for FIVE units, an additional story, with parking in the rear, elimination of the parking strip, and promoted several conditions in our Position Statements to the Town Council.
- Participated in the Town Council's Special Committee to design an "Ocean Gateway" on Depot Street (they are now calling the end of the Pine Point Rd. in front of the Lighthouse motel "Depot Street" – it's official name) to reclaim that street for shore access for the public. This committee was cancelled when the Lighthouse owners withdrew their plan after 8 months of meetings.
- Worked with developer Paul Hollis and encouraged him to contribute land from the vacant lot across from the motel to the Town. This was accomplished in November of 2006 with a deed to the Town for a 3400 SF parcel. Also worked with Hollis to place various restrictions on his proposed house lots to preserve the public views. Made presentations to the Planning Board. Hollis agreed to all of our requests for deed restrictions.

- Attempted to get the seasonal Barriers on Depot Street removed; the Town Manager chose to make them permanent in the spring of 2006 with a bermed curb design, but the Town Council reversed the Town Manager's decision and ordered the removal of most of the permanent barrier, leaving a small portion where motel guests park. The Council was appreciative of our role and participation. Depot Street is now much more visibly accessible, although not entirely.
- Requested the Town Council to reinstate the Special Committee to continue work on the Ocean Gateway concept on Depot Street. The Council chose to delay the study until the Town's Comprehensive Plan implementation process would begin.
- Monitored developments through the falloff 2006 and this winter. Discovered, just by chance, that the Lighthouse Motel was planning to convert to 22 condos (rather than the 5 they had previously agreed to), and that they did not believe they needed Town approval to do so based on vague language in the Zoning Ordinance. Will be participating in the development of a new ordinance governing condo conversions of non-conforming lodging places.
- Increased our list of members to 130, most of which receive email notices. Also send communications to other interested parties even if they don't belong or agree with our group's positions.

**The following are details of the developments that have happened in the past few months.**

### **Lighthouse Motel Proposes To Sell All 22 Units as Condominiums**

As you may recall, last summer we just happened to learn from the Code Enforcement Officer that the owners of the Lighthouse Motel were planning to convert their non-conforming business to what is known as a "Condo-Motel." We requested and were provided with letters between their attorneys and the Town. Basically, they intended to do what they called a "change of ownership" by selling their 22 units as individually-owned condominiums. Their lawyers argued that this would only use be a change of ownership and not a change of use under the governing ordinances of the Town for non-conforming places of business. The Town has taken the position that this scheme would indeed be a change of use and would require approval by the Zoning Board of Appeals. In our discussions with David Grysk, the Code Enforcement Officer, and Ron Owens, Town Manager, we were assured that the Town would not permit the change of use nor would they grant occupancy permits for individually owned units without Zoning Board approval. We believed that we could represent the Pine Point Residents Group when we told Mr. Owens that we supported the Town's position in this matter and would absolutely expect that this conversion would require the same public process through the Zoning Board of Appeals that the Lighthouse Motel was required to go through two years ago. We reminded the Town Manager that a great many residents participated in that process when the Motel owners were developing their plan to renovate the Motel and convert it into five condominiums. You will recall that the final plan developed by their architects called for an addition to the building of a third floor with garages on the first level, a total of five units, parking in the rear, elimination of the existing office building, and redevelopment of Depot Street which runs in front of the motel (including elimination of the parking strip across the street from the Motel). What had yet to be determined at that time were other restrictions and concessions which our group promoted. You will remember that it was our position that, because the owners of the Motel required the Town's assistance in order to achieve their conversion goals, they should reciprocate by accepting certain reasonable conditions and by accepting a proportional land exchange with the Town of

Scarborough. We felt that the Motel, as converted, would have sufficient landscaping in the front of their building, but that Depot Street could be widened by the land exchange thereby offering the Town many possibilities for improving access for the public. This would also result in the elimination of the barricades, another position our group advocated. The Town Council created the ad hoc committee so that Town officials, the owners of the Motel, citizens and abutters could work together to find a solution that would work for everyone. The committee met for eight months until the owners of the Motel abruptly decided to withdraw their proposal. We then learned, five months later, that they were going to attempt to convert the existing building to 22 condominiums without seeking approvals of any kind. Their attorneys argued that an ownership change did not require it, as stated earlier.

Despite the Town's reply to their inquiry, they proceeded with their plan. We learned about this through our own research at the Cumberland County Registry of Deeds. The Lighthouse Motel actually recorded Condominium Declarations at the Registry of Deeds along with Association Bylaws just days before the Town Council was to act on a new ordinance (more on that later). These documents indicate that all 22 units will be sold for condominium ownership. We informed the Town Manager of our discovery and he indicated that the Town's attorney would review it. We asked if the Town would take action by filing a notice in the Registry, and Ron Owens indicated that the Town would be recording its own declaration. This will alert any potential buyers of the Town's policy and have the effect of halting any condo sales because of title questions. We followed up and did find the Town's declaration at the Registry of Deeds which was recorded on April 4<sup>th</sup> of this year.

Our group has not taken a formal position on this specific proposal, but as your representatives we have indicated to the Town that our group's position has always been that there should be full public disclosure, adequate notice and time for citizen participation, and that the residents' voices should be heard – all residents. The Lighthouse Motel remains a seriously nonconforming enterprise located in the sensitive Shoreland zone. It is a commercial operation in a residential area, and a highly visible one. What happens to that facility is a matter of significant public importance. The Town has a practice of supporting businesses which are not conforming to their zones to become “more conforming” which is why the 5 condo plan they presented had general support. It replaced a 22 unit motel with a much more residential use. This plan simply converts the existing building to 22 condos, and is arguably much more non-conforming. So, in the near future we believe that the Residents Group will need to formulate an official position once we know the details of what they intend to do and what the Town plans to do. In the meantime we continue to promote the positions we've taken in the past regarding their plan to convert to 5 units (Plan D, so called) and we will be watchful and persistent and keep you informed.

### **Town Council to Consider an Ordinance Governing These Matters**

We recently learned that there are other lodging-type businesses which are interested in converting to condominiums. Because this is becoming a trend here and elsewhere, and because the existing ordinance is are not particularly clear, the question as to whether a “change of ownership” constitutes a “change of use” for non-conforming lodging places is left to the interpretation of the Code Enforcement Officer who must examine each case and make a decision. His decision is based on the specific grandfathering of the property when zoning was implemented, among other things. The Town Manager decided that more specific guidelines were needed, and proposed an amendment to the Zoning Ordinance which would codify in more detail what would constitute a change of use and what would not. Remember, a change of use of a

non-conforming enterprise would simply mean that the applicant would be required to apply to the Zoning Board of Appeals for approval. But as we saw with the Lighthouse Motel's last effort to convert, the Zoning Board is guided by strict standards, given the non-conforming status of various properties in Town. It is not an easy process for an applicant to go through which is likely why the Motel owners were seeking to avoid that process through this change of ownership strategy. Nevertheless, the owners of another lodging establishment, the Dunes at Pine Point, did appeal to the Zoning Board on April 11<sup>th</sup>. They were not successful at this first attempt but were encouraged to return to the Board for a specific appeal.

The Town Council gave a first reading of the ordinance amendment on March 7<sup>th</sup>. When we learned about it we requested a meeting with Ron Owens to find out how the ordinance would affect the Lighthouse Motel, Depot Street, and the new parcel of land which Paul Hollis donated to the Town. Our goal continues to be full, accessible access to the shore and preservation of public views of the ocean. Mr. Owens indicated to us that the ordinance, as drafted, would preclude the Lighthouse Motel from merely changing ownership and avoiding the Zoning Board of Appeals. The problem, however, is that the language in the ordinance might have also precluded other businesses from converting to condominiums even though they may indeed be excellent candidates for converting – in other words, their conversion might be more conforming to the neighborhood. The challenge for the Town, therefore, is to carefully craft the ordinance so that those businesses for which a conversion to condominiums would be a benefit to their respective neighborhoods would be permitted to, while those for which conversion might have an adverse effect on the neighborhood would be required to go through the Zoning Board of Appeals process. Criteria will need to be established that is both fair and specific enough to guide the Town's policies. There is also the option that ALL of these non-conforming lodging places would be required to go to the Board. The benefit of that approach is the ability for abutters and citizens to play a role through the Board's obligatory public hearings.

We attended the Town Council meeting and read a statement encouraging the Council to take its time in crafting this amendment to the ordinance. The members of the Council were already inclined to refer this to their Ordinance Committee which is chaired by Councilor Sylvia Most. Sylvia has indicated that she would accept public comment as her committee deliberates the language of this ordinance. This will happen Monday, May 7<sup>th</sup> at 7:00 p.m. at Town Hall. We intend to be there to read a statement which appears later in this document.

You may be wondering how a new ordinance can delineate fairly between one business and another. Some of the things which may be considered include the extent of non-conformity of the property. For example, some places of lodging have ample land, sufficient parking that is on-site, kitchens, and have traditionally rented year-round. These rentals typically consisted of transient guests during the summer, with winter rentals during the off-season. There is an argument that for those type of places, selling units as condominiums may indeed make their properties more conforming to their neighborhood where condos are more residential in nature than are Motel rooms. There are other properties, however, such as the Lighthouse Motel, which have very little property relative to the buildings located there. In this example, this business has operated as a Motel for decades but has never rented during the off-season. The units have no kitchen facilities, insufficient parking, a public street bisecting the building and the parking area, and its status in the Shoreland zone precludes improvements without the Zoning Board of Appeals granting several variances.

We're hopeful that an ordinance can be crafted that will be fair and fairly implemented. But we are recommending to the Residents Group that it take the position that a conversion of the Lighthouse Motel

to condominiums must go through the Zoning Board of Appeals process so the public can participate just as it did before. That is not to say that this ordinance should somehow single out that property, although it can be argued that the unique circumstances there singles it out nonetheless. But if there are like properties in Town with those same conditions then we believe they should also go through the public process of Zoning Board Approval. Other facilities may very well be candidates for conversion without the necessity of Zoning Board approval because through the conversion process they would become, as stated earlier, more conforming to a residential neighborhood.

The Town Council Ordinance Committee met April 4th to deliberate. There are very different opinions among the members of the committee. They did not resolve anything that night but will be holding the meeting mentioned above (this Monday, May 7<sup>th</sup>) and will accept public input. The meetings are televised on the local access channel 3.

We believe that we have your trust and support as we participate on your behalf through this new process, and that we can rely upon our earlier official positions to provide input consistent with our group goals. If you have any concerns in that regard please let us know.

### **The Barricades**

You are probably all aware of the Town Manager's decision to remove the orange barrels and replace those barricades with a permanent curb. We worked with him throughout April of 2006 without success and then took our cause directly to the Town Council last summer. The final outcome was that the Council ordered the reduction of the barricade curbing significantly. The solution was a compromise between the goals of the public for full access to the public road and the need to protect the guests who park across the street from the Motel. Once again, if we are someday successful in seeing that parking strip eliminated, then we believe the barricades will be replaced by one of the turnaround designs that the Council's Special Committee worked on for those eight months. We now have the other parcel of land donated by Paul Hollis, and so the possibilities for enhancing public access and preserving public views are tremendous. But we do need to be vigilant as to what will become of the Lighthouse Motel.

### **Paul Hollis's Subdivision – The Beach Walk at Pine Point**

As you know we worked with developer Paul Hollis to promote the ideas we had and he ultimately agreed to the donation of 3400 feet of land to the Town of Scarborough. Paul also benefited from this conveyance with some concessions on setbacks for his lots in the nine home subdivision he calls "Beach Walk." He has conveyed to the Town the deeds for that parcel and for the intertidal zone along with an easement which grants public access to that space in perpetuity. The next step was for him to design a plan for fencing and landscaping that property and for appropriate signage that would indicate it is public property. With these conveyances we believe that our group was successful just as we were in helping to influence removal of much of the barricade.

During the approval process with the Planning Board, and during the neighborhood meetings Paul invited us to last winter and spring, several promises were made and our group ultimately adopted a supportive position for the subdivision proposal. We did, however, closely monitor the documents that would ensure

these promises were kept. For example, we asked that the covenants for the subdivision be approved by the Town's Planning Board as a condition of site plan approval for the subdivision. We asked that notes be made on the subdivision plan concerning some of the restrictions that were important to the public, such as height limits on plantings, open fencing, and consistent New England architectural style throughout the development. All of these things and many more can be found in the final set of covenants and deed restrictions approved by the Town and recorded at the Registry the Deeds.

One of the promises made was that the construction of the road for this development would not begin until October of 2006 to avoid disruption during the tourist season. When October came and went and there was no visible sign of activity on the infrastructure, we begin to wonder what was happening. We were unable to reach Paul and simply assumed that he was still attempting to sell the lots and that the infrastructure was just delayed. Then, a few weeks ago, we learned that some of the lots were going to be auctioned. We investigated further and when we met with Ron Owens we asked him directly what was happening with the subdivision and how it might affect our efforts.

Ron confirmed what we had heard; that Paul Hollis was having some financial challenges and that some of the lots were being auctioned or sold by the investors who purchased them. At the same time we've learned that there are several investors who bought the lots in anticipation of a quick turnover once the development was ready for building permits. Obviously no building permits will be issued until the infrastructure is in place. We've learned that the new investor-owners are working with the Town to try to solve this problem, and Ron Owens indicated that Paul Hollis still has some role although it's not clearly defined. We also understand that the owners of the parcels have created a homeowners association and may want to alter some of the covenants that were approved by the Town. We don't know exactly what this means but we'll continue our conversation with the Town Manager so we can keep our group informed. We asked him directly if all requirements that were placed upon subdivision by the Planning Board would be in force and he stated that they would unless the owners came to the Board with a request to amend the site plan. We will be watching for that also.

One concept that Ron Owens talked about was the possibility that the Town would assess a fee to each of the nine landowners representing 1/9 of the cost the infrastructure. By infrastructure we mean all the common area improvements as well as the road, electrical utilities, landscaping, etc. The Town would perform the work or perhaps contract it out with the cost being born by the landowners. The landowners would likely try to collect those funds from the developer through some action. We asked the question if it were still possible, given this situation, for this road to be a public road rather than a private road. We did ask Paul Hollis about this possibility earlier in the process but he felt that a private road would be more marketable, although he stated that it would not be a gated community. Ron indicated that this was brought up and during some of his conversations as one possibility. We strongly encouraged him to pursue that because having "Claudia Lane," as it is called, as a public road surrounding the 3400 foot parcel of public land the Town now holds - right next to Depot Street - would be a wonderfully large open space that would be publicly accessible and preserve public views of the ocean.

### **Changes in Town Council**

Two new Town Council members were elected last November; Ron Ahlquist who served previously, and Richard Sullivan. We met with Richard on April 6<sup>th</sup> to review the history of these issues and ask for his consideration of our views. He indicated that he would follow up on the recent matters and follow the ordinance committee process. We haven't asked Ron Ahlquist to meet yet, but would like to soon. The

leaders believe that it's important to communicate directly with our elected officials. They have been very supportive and helpful. Jeff Messer has returned in his role as Chairman and has been helpful to us from the very start.

### **In Closing**

While it was a relatively quiet winter you can see that there have been some developments lately. All of these matters should be of great importance to everyone who loves Pine Point and is concerned about its future. We will continue to keep everyone informed and hope to have a meeting early in the summer to formulate our collective positions. We are pleased with what we've been able to accomplish as a group and feel that we have the respect of the Town for the way we have presented our views. But we must say that we still come under attack by some individuals who truly believe that this is a personal vendetta rather than a group of concerned neighbors who not only have a right to participate in the public process, but who should be invited to do so for the benefit of our community. We continue to believe that these are just attempts to discredit us in the eyes of decision-makers, but we know why we are doing what we're doing and it's been an honorable effort. We believe Town of Scarborough officials also know our motivation, so we remain unconcerned about claims of personal attacks where none exists.

Finally, we have passed the two-year mark since that first appearance before the Zoning Board of appeals. Now there are several issues on the table and the four of us could really use some help with a couple more people who could assist with some legwork, the communication with those who don't use of e-mail, and with bringing more ideas to the table. If any of you would be willing to join the four of us in a leadership position in that we've had entrusted to us we would be very grateful if you would let us now.

Once again, we apologize for the length of this, but hope you found it informative.

Best wishes,

Jack Callahan, Judy Shirk, John Thurlow, Harold Hutchinson



## **ADDENDUM**

Below is our statement to the Town Council presented by Judy Shirk on March 21, 2007 concerning the ordinance issue.

Statement to the Town Council Concerning the Proposed Ordinance: 3/21/07

I would like to thank the members of the Town Council for the opportunity to speak on this proposed ordinance. My name is Judy Shirk and I live on Avenue 3 in Pine Point. I am also one of the leaders of the Pine Point Residents Group who came before you last fall about the Depot Street matter.

For Councilors Ahlquist and Sullivan, our Group has been working for the last two years on issues important to the Pine Point neighborhood. We became involved in the proposal put forth almost two years ago to convert the Lighthouse motel from 22 hotel rooms to five condominiums. This proposal went to the Zoning Board, but was ultimately withdrawn by the applicants. Our group, at that time, supported the proposal although we were urging the Town to set some reasonable conditions and negotiate a fair exchange of land in return for helping out the developers. This one proposal was, in my view, very complicated and required careful, thoughtful deliberation. In fact, the Town Council created an ad-hoc committee to address the many issues which came about. It points out that this is not a simple issue but one which can be very complex.

Our group has also been active in encouraging the Town to open Depot Street by removing the barricades that had been installed there for the past 18 summers. We appreciated the Town Council's decision to eliminate a large portion of that barricade so the public road to the beach would be more visible and accessible to the public. Finally, we were very active in developer Paul Hollis's efforts as he went through the approval process for the subdivision across the street from the Lighthouse Motel. The final outcome of that approval was the donation of a 3400 square foot parcel of land at the shore to the Town of Scarborough. This will be a great asset to the town in the future.

I am here tonight because this proposed ordinance is another issue, like those above, which could have a profound effect on our neighborhood. Our group of over 130 residents will want to offer our input to the Town Council just as we have on the other issues I mentioned. You've always listened to us and we appreciate that. But we have not had the time as a group to consider the complex issues that this ordinance presents, and we would like to gather more information so we can give you our feedback to consider.

We do know that there are several properties that rent rooms to the public and which are not conforming to the zone they are in. Some of these property owners may want to convert to condominiums. Others may not. In some cases a conversion might be very desirable and enhance the neighborhood. In other cases, due to the unique characteristics of a property, conversion might very negatively affect the character of the neighborhood. In fact, it might make the property inadvertently even more non-conforming.

There are so many variables to be considered. For example, has the property been rented year-round in the past or only rented during the tourist season? If units of a seasonal motel were individually owned, wouldn't it be likely that the owners would want to rent their units for the rest of the year, when in the past it was closed for the winter? Wouldn't that scenario have an impact the community, bringing in a new population of transient guests



during the off season? Other questions come to mind. Do the units already have kitchen facilities? Is there sufficient on-site parking? Just how non-conforming is the property compared to others as far as building lot coverage, road setbacks, and other zoning requirements. We need to have an ordinance that will set clear and specific standards and establish guidelines that govern which of these non-conforming businesses would be eligible to become more conforming through a conversion to condominiums, and which would not. One size does not fit all.

In closing, one of our group's consistent positions has been that it is important to gather information, involve the public, and communicate openly so we have good public policies. I can speak for the Residents Group when I urge you to refer this complicated issue to the Ordinance Committee and ask them to invite the public to participate in their process.

Thank you again for your time and for your service to our town.

Judy Shirk, Jack Callahan, John Thurlow, Harold Hutchinson

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If you wish to be removed from this e-mail list, please reply. If you forward it to others, please invite them to email us to be added to our list. We apologize for any duplications.

**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.