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MEMORANDUM

TO: Mayor Lovell and City Council
FROM: Kevin L. Sutherland, City Administrator
DATE: November 12, 2019
RE: **Administrative Update**

60 Bay View Road

I've reviewed the claims and questions made by members of the public regarding 60 Bay View Road (also known as "Gerry's Cottages") with City Staff. This project has grown somewhat contentious over time and is a matter for the planning board, but now that it has come to Council and shared as a part of the public record, I would like to address the Council (and general public) in explaining this project and the actions that have been necessary for staff.

There are many pieces of misinformation that are being represented in this letter which I have not dedicated the time to respond to, (as nearly all of them have been answered in follow ups between staff and residents over the course of almost a year and many of the answers can be found in the documents provided by the accusing party).

The site had been a lawful nonconforming use for decades. The site had nearly a dozen old small cottages that were both no longer a permitted use post zoning enactment, and which buildings were also built within traditional setbacks, i.e. they were not only nonconforming uses, but were nonconforming structures as well. The developer proposed to maintain a nonconforming use (seasonal cottages) on site but to both reduce the number of buildings and eliminate all the nonconforming structures. As an aside, zoning favors a reduction in nonconformity. So, this project would be seen favorably by the Courts since it eliminates all the existing nonconforming structures.

It did this by replacing buildings that were within setbacks, and siting an initially proposed 8, now 6, revamped cottages in places on site where all setbacks can be met. Courts will view that very favorably as a total elimination of nonconformance as to the structures.

The heart of the dispute and concern relates more to the nonconforming use versus the nonconforming structures. As you may know, zoning opposes any expansion of nonconformity. The neighbors view the project as expanding nonconformity as to use. The City team has worked quite carefully to make sure the

nonconforming use is not expanded. So, for example, the City saw in the initial plan that the dozen or so rental units were to be reduced to 8 cottages. So, less intensity of use. The pushback is that initially the developer increased the “living area” of these units beyond what had been previously on site (arguably an increase in nonconformity). That led to the reduction from 8 cottages to 6 so that the living area remained the same as or lesser than what was on site. So, I think the City team is comfortable now that the area of nonconforming use has not been expanded via the actual buildings themselves.

The other expansion of use is the fear, not yet a reality, that what were once seasonal cottages, will now become by virtue of modern construction standards, full year-round homes and use, not snowbird cottages as designed. What rightly concerns the neighbors is that the old cottages were by their construction and character “self policing”. By that I mean, as they were uninsulated, unheated old style cottages, they really could not be occupied into the winter. These new buildings will have basements and second floors (decorative) and heating plants. So, the logical fear is that even if there are only six units, those units will become full year-round homes as the “self-policing” limitations inherent in the condition and construction of the old cottages has been removed, and new buildings capable of year-round use are being offered up.

To combat this possibility, the City team insisted upon very strong deed covenants prohibiting year-round use, and a requirement that all units be disconnected from water on or before 10/31 of each year, and no reconnections until 5/1. The City Planner has confirmed with Maine Water that this can be effectively accomplished and enforced. We also asked for plan conditions that require the disconnection of electrical power on the same date/time as the water but the developer has pushed back on that requirement, but each of these steps is designed to assure that no winter occupancy/use will occur. These steps are designed to assure that the “seasonality” of the former cottages is maintained.

The City attorney have been involved with this project since it first arrived in Code Enforcement as it was necessary to seek out legal guidance as to the interplay between nonconforming structures and nonconforming use. By Attorney Murphy’s accounts, Mr. Lambert has fairly and appropriately applied the rules as he and I both understand them. Subsequently, Emily Cole Prescott has been involved in assisting the Planning Board to review the project. She, as well, has fairly applied the rules and standards in reviewing the application, and in assisting the Planning Board. I am entirely confident this project has been treated and reviewed in the same manner and fashion as other projects before the City.