

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 6, 2019
REGULAR MEETING – 6:00 P.M.

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

Item 1. Call to Order.

Item 2. Pledge of Allegiance.

Item 3. Roll Call.

Order No 19-012. Act on the request for an executive session pursuant to Title 1, M.R.S.A. §405(6)(E) for consultation with legal counsel regarding the potential sale of the Pine Point Co-Op. *[Town Manager]*

Item 4. General Public Comments.*

Item 5. Minutes: February 20, 2019 - Town Council Meeting.

Item 6. Adjustment to the Agenda.

Item 7. Items to be signed: a. Treasurer's Warrants.

***Procedure for Addressing Council** [Posted in Chambers.]

Order No. 18-018, 7:00 p.m. Public Hearing and schedule the second reading on the proposed Contract Zone Request from Patriot Acura Dealership located at the corner of Payne Road and Haigis Parkway. *[Town Planner/Town Manager]*

Order No. 19-013, 7:00 p.m. Public hearing and action on the following new request for a Combined Massage Establishment/Massage Therapist License from Marie Ann Dittmer d/b/a Focal Point Manual Therapies, located at 25 Plaza Drive, #6. *[Town Clerk]*

OLD BUSINESS:

Order No. 19-003. Second reading on the proposed changes to Chapter 405 – the Zoning Ordinance of the Town of Scarborough, Section XVIII.B Haigis Parkway District. *[Long Range Planning Committee]*

Order No. 19-006. Second reading on the proposed amendments to Chapter 901 – the Town of Scarborough Garbage and Recycling Collection & Disposal Ordinance, Article I, Section 1.02., Section 1.10. & Section 1.12. and Article III, Section 3.01. *[Ordinance Committee]*

NEW BUSINESS:

Order No. 19-014. First reading and schedule a public hearing on the proposed amendments to Chapter 304, Town of Scarborough Purchasing Policy. *[Ordinance Committee]*

Order No. 19-015. Act on the request from the Council Chair to adopt 2019 Goals and Norms. *[Council Chair]*

Item 8. Non Action Items.

Item 9. Standing and Special Committee Reports and Liaison Reports.

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – MARCH 6, 2019

REGULAR MEETING – 6:00 P.M.

Order No 19-012. Move approval on the request for an executive session pursuant to Title 1, M.R.S.A. §405(6)(E) for consultation with legal counsel regarding the potential sale of the Pine Point Co-Op. [*Town Manager*]

Town Manager

Ought to Pass

Sponsor

Recommendation

03/06/2019 – *Vote:*

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – MARCH 6, 2019

REGULAR MEETING – 6:00 P.M.

Order No. 18-018. The second reading on the proposed Contract Zone Request from Patriot Acura Dealership located at the corner of Payne Road and Haigis Parkway is scheduled for Wednesday, March 20, 2019. *[Town Planner/Town Manager]*

Town Planner/Town Manager

Ought to Pass

Sponsor

Recommendation

02/20/2019 – Vote: 6 Yeas.

[Councilor Donovan Absent]

First Reading/Vote

03/06/2019

Public Hearing

03/20/2019 – Vote:

Second Reading/Final Approval/Vote

February 15, 2019

Chairman Hayes and Members of the
Scarborough Town Council
Town of Scarborough
259 U. S. Route One
Scarborough, Maine 04074

Re: Patriot Realty – Saco, LLC
Contract Zoning Agreement for Proposed Acura Dealership
285 Payne Road and 1000 Haigis Parkway
Scarborough, Maine

Chairman Hayes and Members of the Scarborough Town Council:

We represent Patriot Realty – Saco, LLC (“Patriot Realty”) in connection with the above-referenced project (the “Project”) and the request by Patriot Realty for a Contract Zoning Agreement with respect thereto and are hereby submitting this letter, along with a revised draft of the proposed Contract Zoning Agreement, in connection with the Council’s February 20, 2019 meeting that will commence Phase 3 of the contract zoning process mandated under the Town of Scarborough Zoning Ordinance (the “Zoning Ordinance”). The zoning background relating to this request is as follows.

The Project is located in the Haigis Parkway District, HP (the “HP District”) as described in Section XVIII B. of the Zoning Ordinance. Pursuant to Section B of the provisions of the Zoning Ordinance relating to the HP District, uses permitted in the HP District include, among others, “retail sales and services” excluding, however, “car washes, automobile repair and service facilities, and outdoor sales and services”. The Zoning Ordinance defines “outdoor sales and services” to include “new or used car dealerships which are not fully enclosed”. Since the Project will include an indoor facility for washing cars, an automobile repair and service facility typical of an automobile dealership, and outdoor sales and related services, i.e., the display of automobiles and the sale of same to the general public, Patriot Realty is requesting that the Town agree to a rezoning of the Property pursuant to the attached Contract Zoning Agreement so as to permit the construction and operation of the Project as proposed. We note, as background, that the Mercedes Benz facility and the Jaguar/Land Rover facility located on Route One in Scarborough also required Contract Zoning Agreements with the Town for essentially the same reasons.

As the Council is aware, the provisions of the Zoning Ordinance governing contract zoning requests break the process down into four phases as follows:

Phase 1 - Preliminary Joint Review by Planning Board and Town Council;

Phase 2 - Planning Board Plan Review;

Phase 3 - Town Council Action; and

Phase 4 - Final Planning Board Action

The joint Council/Planning Board meeting required under Phase 1 was held on March 7, 2018. Following Patriot Realty's presentation of the Project, comments from Town Staff, comments from members of the public during a public hearing conducted by the Planning Board, and discussion among the members of the Council and the Planning Board, the Council voted unanimously to advise Patriot Realty to continue to process the request for contract zoning.

As required under Phase 2, Patriot Realty then proceeded with its Site Plan Application for the Project before the Planning Board and on February 4, 2019, received preliminary approval from the Board.

Phase 3 of the contract zoning process requires Council action on the contract zoning request. Before taking a final vote on the request, the Council is required to determine that the rezoning of the property as set forth in the proposed Contract Zoning Agreement (1) is consistent with the Town of Scarborough Comprehensive Plan, (2) is consistent with the existing and permitted uses within the existing zoning district classification with respect to the property, (3) is in the public interest, and (4) will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification. The remainder of the letter will address those four matters.

Matters (1) and (2) - Consistency with the Comprehensive Plan and Existing and Permitted Uses within the HP District.

The 2006 Update of the Scarborough Comprehensive Plan adopted by the Town Council on July 19, 2006 (the "Comprehensive Plan") designated the HP District as a Development Area within the Growth Areas of the Town.¹ The Comprehensive Plan described "Growth Areas" as "areas of Scarborough where the Town desires to see the majority of new residential development and virtually all non-residential development occur". *Comprehensive Plan, Part B, Chapter 6, Article IV*. The Comprehensive Plan envisioned the HP District as, among other things, a "regional center for employment" with development of "a high quality with campus-style architectural and landscape design". Allowed uses were anticipated to include, among others,

¹ We note that, since 2006, that portion of the HP District located between the west side of Payne Road and the Maine Turnpike has been rezoned to the General Business District B-3.

retail uses subject to a maximum of 20,000 square feet.² Development was to be of a “high quality” and “well planned”. *Haigis Parkway District, Comprehensive Plan at Page 6-38.*

We also note that under the Zoning Ordinance, uses in the HP District do, in fact, include, among others, “retail sales and services with less than 20,000 square feet of retail floor area per unit of occupancy”, excluding “car washes, automobile repair and service facilities, and outdoor sales and services”. As noted above, “outdoor sales and services” are defined to include “new or used car dealerships which are not fully enclosed” and hence the request by Patriot Realty for the Contract Zoning Agreement.

The Project, being a retail use, is thus consistent with both the Comprehensive Plan and the Zoning Ordinance.

Lastly, we note that actual uses in the vicinity of the Project within the HP District include the Golf & Ski Warehouse on the opposite corner of Haigis Parkway, and the multi-building residential rental project adjacent to the Golf & Ski Warehouse which we understand was permitted under a Contract Zoning Agreement. We note that there are also the Cabela’s Plaza located on the west side of Payne Road adjacent to Exit 42 which was also the subject of a Contract Zoning Agreement, the Dunkin Donuts/Irving Oil convenience store and gasoline filling facility on the opposite side of Payne Road from the Project, and the RC Moore trucking facility and other similar facilities also located on the opposite side of Payne Road from the Project and adjacent to the Dunkin Donuts/Irving Oil facility. The area where these facilities are located was formerly within the HP District and is now in the General Business District B-3. While somewhat of a varied type of uses, all of these facilities generally fall into the “commercial use/business use” category as does the Project, including the multi-building residential rental project which we understand is owned by and operated by a single entity. As such, the Project is consistent with such uses.

Matters (3) and (4) – In the Public Interest/Beneficial Effects on the Town.

There are a number of factors/aspects of the Project as well as with respect to Patriot Realty that speak, to a greater or lesser extent, to these matters and we list them below in no particular order.

1. The Project site is a highly visible “entrance” to Scarborough and an ideal location for an appropriate Town “welcoming sign”. Patriot Realty is willing to grant the Town the right to construct such a sign in an appropriate location on the Project site and to make a “payment in lieu of construction” of such a sign so as to allow the Town to proceed with the design and installation of the sign at the Town’s pace in conjunction with the development of the Project.
2. The acquisition of the Project site by Patriot Realty will result in the payment of an outstanding public works assessment against the site of over Two Hundred Thousand Dollars (\$200,000).

² The retail floor area within the building on the Project site contains less than 20,000 square feet.

3. Patriot Realty will be a substantial taxpayer requiring virtually no public services.
4. Values of surrounding properties will likely be positively influenced by the development of the Project.
5. Patriot Realty anticipates further investment in Scarborough by the future development on the remaining undeveloped portion of the Project site.
6. Patriot Realty is seeking no financial assistance from the Town by way of tax increment financing.
7. Patriot Realty has a strong track record of community service and expects to continue such service in Scarborough. The company intends to actively engage and participate with many businesses and charities to create a variety of events at the facility. Here is just a sampling of the types of events the company has held at its other facilities:

Red Cross Blood Drives
Dog Adoptions
Dog Wash To Support Shelters
Loves Pets Day
Food Drives Supporting Local Pantries
Kevin On The Roof To Support STRIVE
Toys For Tots Annual Holiday Drive
Business After Hour Chamber Hosts
Take A Bike - Portland Trail
Cars and Coffee Car Shows
Childrens Literacy Support / Family Magic Shows
Cub Scouts Pinewood Derby Host
Bone Marrow - Be The Match Registration
Halloween Pumpkin Painting For Families
Organic Garden tended by staff & customers - Share Produce
Community Breakfasts with Charities - Awareness/Fundraiser
Community BBQ's with Charities - Awareness/Fundraiser
Earth Day Fundraiser for Shade Trees - And we help plant!
Habitat For Humanity - Patriot associates on Scarborough build site
Patriot Riders Chapter One Fundraiser / Wreaths Across America
High School Musicians/ Support for Youth Arts/ In-store performance
Support for Winterkids program

8. Patriot Realty intends to use local construction and architecture businesses as much as possible and will request that the General Contractor for the Project use local subcontractors as well as much as possible.

9. Upon opening of the business, Patriot Realty expects a payroll of approximately Two Million Dollars (\$2,000,000) among approximately thirty – three (33) employees, many of whom it hopes will be Scarborough residents. The average compensation is anticipated to be approximately Sixty-One Thousand Dollars (\$61,000) plus benefits.
10. Patriot Realty will seek to have third-party spending for services needed by the Project to be to local vendors and servicers as much as possible.
11. No residential component of the Project is, of course, proposed, and thus none of the additional impacts on the Town associated with a residential project.
12. Patriot Realty has a policy of employing a diverse group of people. The company takes particular pride in employing a high ratio of women. It is the longest tenured team in the auto industry in Saco and is determined to achieve the same result in Scarborough. Many of the company's associates are anticipated to live and raise their families in Scarborough and to contribute to the community.
13. The building and related aspects will be a very attractive, high quality addition to the community and to this gateway to Scarborough. It will be a facility that Patriot Realty believes the community will be proud of.
14. Patriot Realty prides itself on the protection of the environment in connection with its developments. Its current facilities have received awards for environmentally conscious development, most notably, the Green Dealer Eco Friendly Certification, Recipient of Energy Star Small Business Award, and Eco Maine Business of the Year. Patriot Realty hopes to achieve similar results with the Project.
15. Patriot Realty expects to make indoor and outdoor space available for public meetings and public gatherings as reasonably possible in its continuing effort to give back to the community.
16. Development of the Project site will preserve sensitive areas by preservation of the land or by the use of buffers to protect areas such as the stream crossing along the southerly end of the site and throughout the site utilizing buffers to protect existing wetland areas.
17. As noted above, Project site is a highly visible corner at the intersection of Haigis Parkway and Payne Road and will be developed in manner to maximize the building's prominence and enhance the blending of architecture and landscaping to present a business and a facility that will be a cornerstone for further development along Haigis Parkway and setting the marketability of the remaining land for smart development within the HP District, a goal that the Town has been pursuing for many years.
18. Traffic pattern enhancements associated with the Project are anticipated to have a significant benefit to the overall traffic flow within the area.

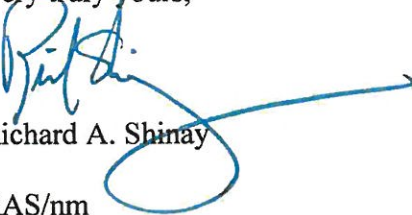
Chairman Hayes and Members of the
Scarborough Town Council
February 13, 2019
Page 6

19. This will be the first and currently only Acura dealer in Maine. With Mercedes Benz, Jaguar and Land Rover in Town, the addition of the highly desirable Acura line will be an enhancement to the Scarborough automobile sales environment.

Attached is an updated version of the proposed Contract Zoning Agreement which has been revised to reflect, among other changes, changes intended to generally incorporate the matters discussed above. Redlined and clean versions are attached. The changes are against the version submitted at the joint Council/Planning Board meeting held on March 7, 2018. We, of course, welcome input from the Council on this draft.

We very much appreciate the Council's consideration of Patriot Realty's request and we look forward to a favorable decision on the request.

Very truly yours,


Richard A. Shinay

RAS/nm

cc/enc.: Adam Arens
James Seymour
Karen Martin

Draft 02/15/19

**CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH
AND
PATRIOT REALTY – SACO, LLC**

This Contract Zoning Agreement (hereinafter, this “Agreement”) is made as of the ____ day of _____, ~~2018~~2019 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and PATRIOT REALTY – SACO, LLC, a Maine limited liability company with a mailing address of c/o Adam S. Arens, 702 S. Lakeside Drive, Lake Worth, Florida 33460 (hereinafter, “Patriot Realty”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, Patriot Realty intends to purchase a certain lot or parcel of land, with the buildings and improvements thereon, situated on the northeasterly side of Haigis Parkway and the southeasterly side of Payne Road in the Town of Scarborough, County of Cumberland, and State of Maine, consisting of the premises currently owned Jacqueline A. Curlew comprising approximately 16.52 acres and located at 285 Payne Road, also known as 1000 Haigis Parkway, being Lot 5 as shown on Town of Scarborough Tax Map R052, and described in a Warranty Deed from Ray L. Littlefield to George E. Curlew and Jacqueline A. Curlew, as joint tenants, dated December 4, 1964 and recorded in the Cumberland County Registry of Deeds in Book 2871, Page 25 (hereinafter, the “Property”), said George E. Curlew having died on November 19, 2015, leaving said Jacqueline A. Curlew as surviving joint tenant and sole owner of the Property; and

WHEREAS, Patriot Realty desires to construct and operate an automobile sales and service facility on the Property selling as its primary brand of automobile those in the Acura line, which facility will include the outdoor display of vehicles, a repair and service facility, and an internal area for washing vehicles sold and/or serviced on site (hereinafter, the “Facility”); and

WHEREAS, the Property is located in the Haigis Parkway District, HP (hereinafter, the “HP District”) as described in Section XVIII B. of the Zoning Ordinance; and

WHEREAS, pursuant to Section B of the provisions of the Zoning Ordinance relating to the HP District, uses permitted in the HP District include, among others, retail sales and services excluding, however, “car washes, automobile repair and service facilities, and outdoor sales and services”; and

WHEREAS, “outdoor sales and services” as defined in the Zoning Ordinance includes “new or used car dealerships which are not fully enclosed”; and

WHEREAS, Patriot Realty has requested that, notwithstanding the limitations under Section B of the Zoning Ordinance relating to the HP District, the Town agree to a rezoning of the Property so as to permit Patriot Realty to construct and operate the Facility thereon; and

WHEREAS, the size, location, configuration and topography of the Property permit a level of buffering, landscaping and site design which will mitigate what might otherwise be adverse impacts of the Facility, provided the Facility is restricted to the density, scale and intensity proposed by Patriot Realty and further provided that any restrictions, provisions and conditions of this Agreement and the site plan approval by the Scarborough Planning Board are strictly observed; and

WHEREAS, the Scarborough Town Council and the Scarborough Planning Board, pursuant to the Contract Zoning provisions of the Zoning Ordinance, held a joint meeting on March 7, 2018 at which meeting the Planning Board conducted a public hearing on the proposed contract zoning request, and at which meeting the Council voted unanimously to advise Patriot Realty to continue to process the contract zoning request, pursuant to Section II, Paragraph G-Subsection 3 of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberation thereon, recommended that the Property be rezoned to permit Patriot Realty to construct and operate the Facility thereon; and

WHEREAS, Patriot Realty received preliminary site plan approval from the Planning Board at the Board's February 4, 2019 meeting; and

WHEREAS, the proposed use of the Property, being in accordance with the requirements of the HP District, is consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (hereinafter, the "Comprehensive Plan") for the area of the Property, as well as with the existing and permitted uses within the HP District, and in the adjacent General Business District B-3 that was formerly within the HP District, reference being made to the determinations set forth in Schedule A attached hereto and made a part hereof; and

WHEREAS, the proposed use of the Property, if developed by Patriot Realty in accordance with this Agreement, is in the public interest, and will have beneficial effects on the Town as a whole which would not result if the Property were developed under the existing zoning requirements, reference being made to the findings set forth in Schedule B attached hereto and made a part hereof; and

WHEREAS, the Town of Scarborough, by and through its Town Council, having determined that the said use is pursuant to and consistent with the Town of Scarborough Comprehensive Plan, the existing and permitted uses within the HP District as well as in the adjacent General Business District B-3 that was formerly within the HP District, is in the public interest, and will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification~~the Comprehensive Plan and consistent with the permitted uses within the HP District,~~ authorized the execution of this Agreement on _____, ~~2018~~2019.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Map of the Town of Scarborough by adopting the map change amendment shown on Attachment 1 hereto.

2. Notwithstanding the limitations under Section B of the Zoning Ordinance relating to the HP District, Patriot Realty shall be permitted to construct and operate an automobile sales and service facility on the Property, which facility will include the outdoor display of vehicles, a repair and service facility, and an internal area for washing vehicles sold and/or serviced on site

3. Patriot Realty is authorized to construct and operate the Facility to be used in accordance with the requirements of the HP District, except as amended by this Agreement.

4. The Property shall be developed and used only in accordance with the site plan as finally approved by the Scarborough Planning Board, and as said approved site plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance").

5. Patriot Realty will grant the Town the right to construct a "welcome to Scarborough sign" in an appropriate location on the Facility site and make a "payment in lieu of construction" of such a sign so as to allow the Town to proceed with the design and installation of the sign at the Town's pace in conjunction with the development of the Facility.

~~56.~~ The provisions of this Agreement shall be deemed restrictions on the use of the Property except as this Agreement may be amended by future written agreement of the Town of Scarborough and Patriot Realty, or their successors or assigns.

~~67.~~ Except as the provisions of the HP District of the Zoning Ordinance have been amended by this Agreement, and subject to any other restrictions, provisions and conditions set forth herein regarding the development and use of the Property, all other requirements of the underlying HP District of the Zoning Ordinance shall apply and shall govern the use and development of the Property. Any such restrictions, provisions and conditions are an essential part of the aforesaid modification of the HP District provisions of the Zoning Ordinance as set forth herein, shall run with the Property, shall bind Patriot Realty, its successors and assigns of the Property or any part thereof.

~~78.~~ Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance and any applicable amendments thereto and nothing contained in this Agreement shall be deemed to prohibit or limit the development and use of the Property, or any portion thereof, in any other manner so long as such development and use is in compliance with the applicable provisions of the Zoning Ordinance and otherwise approved pursuant to the Site Plan Ordinance and/or other applicable Scarborough Ordinances and, if applicable, State and Federal laws, ordinances and regulations.

~~89.~~ Nothing set forth in this Agreement shall be deemed to prohibit or limit the right of Patriot Realty, or any tenant or subsequent owner of the Property, to sell as the primary brand of automobile, one or more brands other than those in the Acura line.

~~910.~~ The Town of Scarborough shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Zoning Ordinance and through legal action for specific performance of this Agreement. In the event that Patriot Realty or its successors or assigns fail to develop and operate the Facility in accordance with this Agreement, or in the event of any other breach hereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach, or in the event such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if Patriot Realty, its successors or assigns, fail to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time taking into account the nature of such failure or breach and the action necessary to cure or remedy same, then this Agreement may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses and according to such zoning requirements as are otherwise allowed by law.

~~1011.~~ In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

~~1112.~~ Patriot Realty shall record this Agreement in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

[End of page. Execution pages follow.]

WITNESS:

TOWN OF SCARBOROUGH

By: _____
Thomas J. Hall, its Town
Manager (duly authorized by
vote of the Scarborough Town
Council on _____,
~~2018~~2019)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, ~~2018~~2019

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law

Print name

My Commission expires _____

WITNESS:

PATRIOT REALTY – SACO, LLC

By: _____
Adam S. Arens
Its Manager

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, ~~2018~~2019

Personally appeared the above named Adam S. Arens, Manager of Patriot Realty – Saco, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Patriot Realty – Saco, LLC.

Before me,

Notary Public/Attorney at Law

Print name

My Commission expires _____

Schedule A

Determination of consistency with the Comprehensive Plan and existing and permitted uses within the HP District and adjacent General Business District B-3 that was formerly within the HP District.

The 2006 Update of the Scarborough Comprehensive Plan adopted by the Town Council on July 19, 2006 (the "Comprehensive Plan") designated the HP District as a Development Area within the Growth Areas of the Town. The Comprehensive Plan described "Growth Areas" as "areas of Scarborough where the Town desires to see the majority of new residential development and virtually all non-residential development occur". Comprehensive Plan, Part B, Chapter 6, Article IV. The Comprehensive Plan envisioned the HP District as, among other things, a "regional center for employment" with development of "a high quality with campus-style architectural and landscape design". Allowed uses were anticipated to include, among others, retail uses subject to a maximum of 20,000 square feet. Development was to be of a "high quality" and "well planned". Haigis Parkway District, Comprehensive Plan at Page 6-38.

Under the Zoning Ordinance, uses in the HP District include, among others, "retail sales and services with less than 20,000 square feet of retail floor area per unit of occupancy", excluding "car washes, automobile repair and service facilities, and outdoor sales and services". "Outdoor sales and services" are defined to include "new or used car dealerships which are not fully enclosed".

The Facility, being a retail use, is thus consistent with both the Comprehensive Plan and the Zoning Ordinance.

The actual uses in the vicinity of the Project within the HP District include the Golf & Ski Warehouse on the opposite corner of Haigis Parkway, and the multi-building residential rental project adjacent to the Golf & Ski Warehouse which we understand was permitted under a Contract Zoning Agreement. There are also the Cabela's Plaza located on the west side of Payne Road adjacent to Exit 42 which was also the subject of a Contract Zoning Agreement, the Dunkin Donuts/Irving Oil convenience store and gasoline filling facility on the opposite side of Payne Road from the Project, and the RC Moore trucking facility and other similar facilities also located on the opposite side of Payne Road from the Project and adjacent to the Dunkin Donuts/Irving Oil facility. The area where these facilities are located was formerly within the HP District and is now in the General Business District B-3. While somewhat of a varied type of uses, all of these facilities generally fall into the "commercial use/business use" category as does the Project, including the multi-building residential rental project which we understand is owned by and operated by a single entity. As such, the Project is consistent with such uses.

Schedule B

In the Public Interest/Beneficial Effects on the Town.

1. The Facility site is a highly visible “entrance” to Scarborough and an ideal location for an appropriate Town “welcoming sign”. Patriot Realty is willing to grant the Town the right to construct such a sign in an appropriate location on the Facility site and to make a “payment in lieu of construction” of such a sign so as to allow the Town to proceed with the design and installation of the sign at the Town’s pace in conjunction with the development of the Facility.

2. The acquisition of the Facility site by Patriot Realty will result in the payment of an outstanding public works assessment against the site of over Two Hundred Thousand Dollars (\$200,000).

3. Patriot Realty will be a substantial taxpayer requiring virtually no public services.

4. Values of surrounding properties will likely be positively influenced by the development of the Facility.

5. Patriot Realty anticipates further investment in Scarborough by the future development on the remaining undeveloped portion of the Facility site.

6. Patriot Realty is seeking no financial assistance from the Town by way of tax increment financing.

7. Patriot Realty has a strong track record of community service and expects to continue such service in Scarborough. The company intends to actively engage and participate with many businesses and charities to create a variety of events at the facility. Here is just a sampling of the types of events the company has held at its other facilities:

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Dog Adoptions

Dog Wash To Support Shelters

Loves Pets Day

Food Drives Supporting Local Pantries

Kevin On The Roof To Support STRIVE

Toys For Tots Annual Holiday Drive

Business After Hour Chamber Hosts

Take A Bike - Portland Trail

Cars and Coffee Car Shows

Childrens Literacy Support / Family Magic Shows

Cub Scouts Pinewood Derby Host

Bone Marrow - Be The Match Registration

Halloween Pumpkin Painting For Families

Organic Garden tended by staff & customers - Share Produce
Community Breakfasts with Charities - Awareness/Fundraiser
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Earth Day Fundraiser for Shade Trees - And we help plant!
Habitat For Humanity - Patriot associates on Scarborough build site
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High School Musicians/ Support for Youth Arts/ In-store performance
Support for Winterkids program

8. Patriot Realty intends to use local construction and architecture businesses as much as possible and will request that the General Contractor for the Facility use local subcontractors as well as much as possible.

9. Upon opening of the business, Patriot Realty expects a payroll of approximately Two Million Dollars (\$2,000,000) among approximately thirty – three (33) employees, many of whom it hopes will be Scarborough residents. The average compensation is anticipated to be approximately Sixty-One Thousand Dollars (\$61,000) plus benefits.

10. Patriot Realty will seek to have third-party spending for services needed by the Facility to be to local venders and servicers as much as possible.

11. No residential component of the Facility is, of course, proposed, and thus none of the additional impacts on the Town associated with a residential project.

12. Patriot Realty has a policy of employing a diverse group of people. The company takes particular pride in employing a high ratio of women. It is the longest tenured team in the auto industry in Saco and is determined to achieve the same result in Scarborough. Many of the company's associates are anticipated to live and raise their families in Scarborough and to contribute to the community.

13. The building and related aspects will be a very attractive, high quality addition to the community and to this gateway to Scarborough. It will be a facility that Patriot Realty believes the community will be proud of.

14. Patriot Realty prides itself on the protection of the environment in connection with its developments. Its current facilities have received awards for environmentally conscious development, most notably, the Green Dealer Eco Friendly Certification, Recipient of Energy Star Small Business Award, and Eco Maine Business of the Year. Patriot Realty hopes to achieve similar results with the Facility.

15. Patriot Realty expects to make indoor and outdoor space available for public meetings and public gatherings as reasonably possible in its continuing effort to give back to the community.

16. Development of the Facility site will preserve sensitive areas by preservation of the land or by the use of buffers to protect areas such as the stream crossing along the southerly end of the site and throughout the site utilizing buffers to protect existing wetland areas.

17. As noted above, Facility site is a highly visible corner at the intersection of Haigis Parkway and Payne Road and will be developed in manner to maximize the building's prominence and enhance the blending of architecture and landscaping to present a business and a facility that will be a cornerstone for further development along Haigis Parkway and setting the marketability of the remaining land for smart development within the HP District, a goal that the Town has been pursuing for many years.

18. Traffic pattern enhancements associated with the Facility are anticipated to have a significant benefit to the overall traffic flow within the area.

19. This will be the first and currently only Acura dealer in Maine. With Mercedes Benz, Jaguar and Land Rover in Town, the addition of the highly desirable Acura line will be an enhancement to the Scarborough automobile sales environment.

Attachment 1

Map Change Amendment consisting of one (1) page.



February 15, 2019
17465

Members of the Scarborough Town Council
Town of Scarborough
259 U. S. Route One
Scarborough, Maine 04074

Re: Patriot Realty – Saco, LLC
CZA for Proposed Acura Dealership
Planning Board Update and Summary
Corner of Payne Road & Haigis Parkway
Scarborough, Maine

Ladies and Gentlemen:

Patriot Realty-Saco, LLC has presented an updated site plan review package for the proposed Patriot Acura Dealership, located at the corner of Haigis Parkway and Payne Road. Starting in late October, the applicant presented the project to the Planning Board as a preliminary plan application. And has since provided more definitive information on traffic, details relating to buffers and landscaping at the gateway corner of Payne Road and Haigis Parkway and through the process has revised the layout, to incorporate suggestions by the planning Board. The results have procured us with a preliminary approval of the Site Plan with conditions to further work with Town consultants, and staff to selectively work on the final details of the site in preparation of both the Council review of the overall contract and the Planning Board's eventual final review for approvals.

The enclosed Site Plan is a product of several reviews and ongoing work as it relates to the proposed site development on the approximately 16.52 acre parcel of land located on property commonly referred to as the Curlew Residence located at the subject parcel referenced above. The property is identified as Parcel #RO5205 within the Scarborough Tax Map Parcel and recorded at the Cumberland Co. Registry of Deeds in Deed Book/Page 2871/25. The project, referred to as "**Patriot Acura Automobile Dealership**," involves the construction of an Acura Automobile Dealership and Service Facility with outdoor display of car inventory, customer and employee parking for a proposed 350+ car inventory and parking spaces.

The Project consists of a single building, containing the showroom, sales, service and car wash for the first Acura Dealership located in southern Maine. The proposed Acura Dealership is shown currently with a footprint of 21,265 square feet. The building is comprised of two main elements, the sales showroom and client/retail area comprising just over 13,000 SF, and the remainder is with the service area/car wash of just about 8000 SF. The focal point will be the main entrance facing the Haigis Parkway and Payne Road corridors, while presenting service areas and carwash access to the rear side, away from the intersection's public visibility.

We have attached updated architectural elevation views, and footprint of the proposed Acura Automobile Dealership as provided by Gawron-Turgeon Architects. The Applicant anticipates construction of this high quality build-out as shown along with landscaping enhancements to further improve the visual quality and public view. We intend to review those at the site plan meeting, again to bring the Board along with the building design and material changes as was suggested earlier during the meeting in the fall. As discussed with the Planning Board, the underlying soils consist of deep silt clays that have very poor bearing capacity and liquefy very easy once disturbed. Estimates place the soil depth of close to 100 feet depth until bedrock refusal. Current construction plans will incorporate a deep steel pile design for the foundation support. These conditions have greatly impacted the overall cost of the project, with the escalation of building materials already.

The Project will utilize the existing road and traffic infrastructure within Payne Road and Haigis Parkway area. We have provided the Town with the updated traffic information, counts, and data as well as we have met with Planning Staff, and the Town's Traffic Consultant, William Bray PE, to review the potential issues with the entrance locations on Haigis and Payne, as well as improvements likely necessary with the impacts based on future corridor development. Based on the analysis provide the highest peak hour of generated traffic will be 85 trips on Saturday, while peak weekday hour traffic impacts range between 40 and 62 for the AM and PM peak periods.

Based on the trip generation and need for car carrier usage, the project supports a second entrance off Payne Road for a right in, right out design, based on safety considerations. The right in right out design will eliminate any site generation of traffic making rights at the light for exiting project traffic routing north on Payne Road, reducing impacts at the intersection, as well as splitting traffic entering the site as approaching from the Turnpike, reducing potential left turns into the site which are considered less safe. Once into the site from that entrance, dealership operations for car loading and unloading can be conducted safely within the sites longest straight internal access section, without incident or conflicts to street traffic. The divided highway island/curbing on Payne will restrict any opportunities for a full service access point onto Payne Road and reduce any opportunity for an exit movement attempt, to take a left or head west on Payne Road.

The proposed entrance off Haigis Parkway has been relocated such, it will now set further south on Haigis Parkway, and will meet the Town Standards for acceptable driveway separation. The revisions to the traffic driveway separation require 265 feet from the nearest driveway which is the one serving First Look Plaza. The new location will also make turning lane improvements to accommodate left turns south bound into the Acura site, as well as incorporate a shared lane to allow left turns northbound into the First Look Plaza. Relocation, as now proposed further south, offers improved safety, less conflicts with utilities and poles, and contains all improvements to one side of Haigis. Another benefit for the shift in the entrance is the buffering on Haigis will further shield public view of the buildings side and rear parking.

We are currently in the process of coordinating the relocation of the driveway with MDOT, and based on conversations there seems to be little issue with a relocated access driveway. Our latest plans in review include a widening taper along the subject parcel side of the parkway that extends approximately a 1000ft which would extend from the intersection to the improvement recently made for the Gateway Commons project. Overall the site will be required to provide a compensation of \$49,293.68 for the impacts of trip assignment.

We have provided updated landscaping enhancements along the roadside in combination of retaining much of the mature vegetation to provide a balance of existing buffers and enhanced landscaped buffering of display and parking areas. The majority of proposed parking has been located to the rear of the proposed Automobile dealership building or out of site from public view. We have anticipated that the project will be a major visual corner piece for the Gateway into Scarborough, for visitors traveling south off the Maine Turnpike Exit 42 into Scarborough.

Being community oriented as both a business and neighbor, Patriot Acura wishes to provide the opportunity for improvement for a corner signature feature. An approximate 80 foot long curved stone wall placement along the corner, with landscaping enhancements complimenting the proposed building setting and provide an equal satisfying visual presentation for both the customer and citizens of Scarborough. During our discussion with Planning Staff it was discussed that we can show this wall feature but that during the Contract Zoning process it may be beneficial for the Applicant to provide an estimate for the wall and improvements, and that the Town actually select the materials and installation.

During the Planning Board hearings we have heard the need to be sensitive to wetlands and stormwater impacts to adjacent streams and estuaries. By using multiple filtration ponds with underdrains, provided the opportunity to maintain the general natural outlets for stormwater to adjacent wetland and stream/ resources, which all flow in a southerly direction to the upper thread of Willowdale Brook tributaries. This approach will be reviewed simultaneously with the Planning Board and by the Maine DEP for a Stormwater Management Permit. We will continue to meet and discuss with Town and state engineers ways to improve the impacts, to the environment using current Best Management Practices for effective stormwater treatment of the proposed sites 4.6 acres of new impervious/non vegetated surfaces. Since our last meeting we have added restrictions on wetland corridors to be placed in conservation easements, and landscape buffers restrictions that are located on the project as well as adding added landscaping per the request of the Board concerned breaking up large impervious areas, and providing more shade and buffering.

We hope you find this information and discussion of items and the related attachments helpful in your review of this projects Contract Zone discussion and ongoing Site Plan process. Concurrently we are preparing to file a Stormwater Management Permit and Wetland Alteration permit for filling and disturbance onsite wetlands associated with the site's proposed development, with the Maine DEP. We hope to have all permit approvals near the end of spring, at about the time we are hopeful to complete all the portions of the Site Plan Review and Contract Zoning execution with the Town.

We look forward to discussing this exciting project with you at the next Town Council Meeting scheduled on February 20th. We fully intend to bring various renderings and displays showcasing the site and progress we have made since our last meeting with the Council in 2018. In the meantime, please do not hesitate to contact us with any review questions or comments, or if needed, additional information.

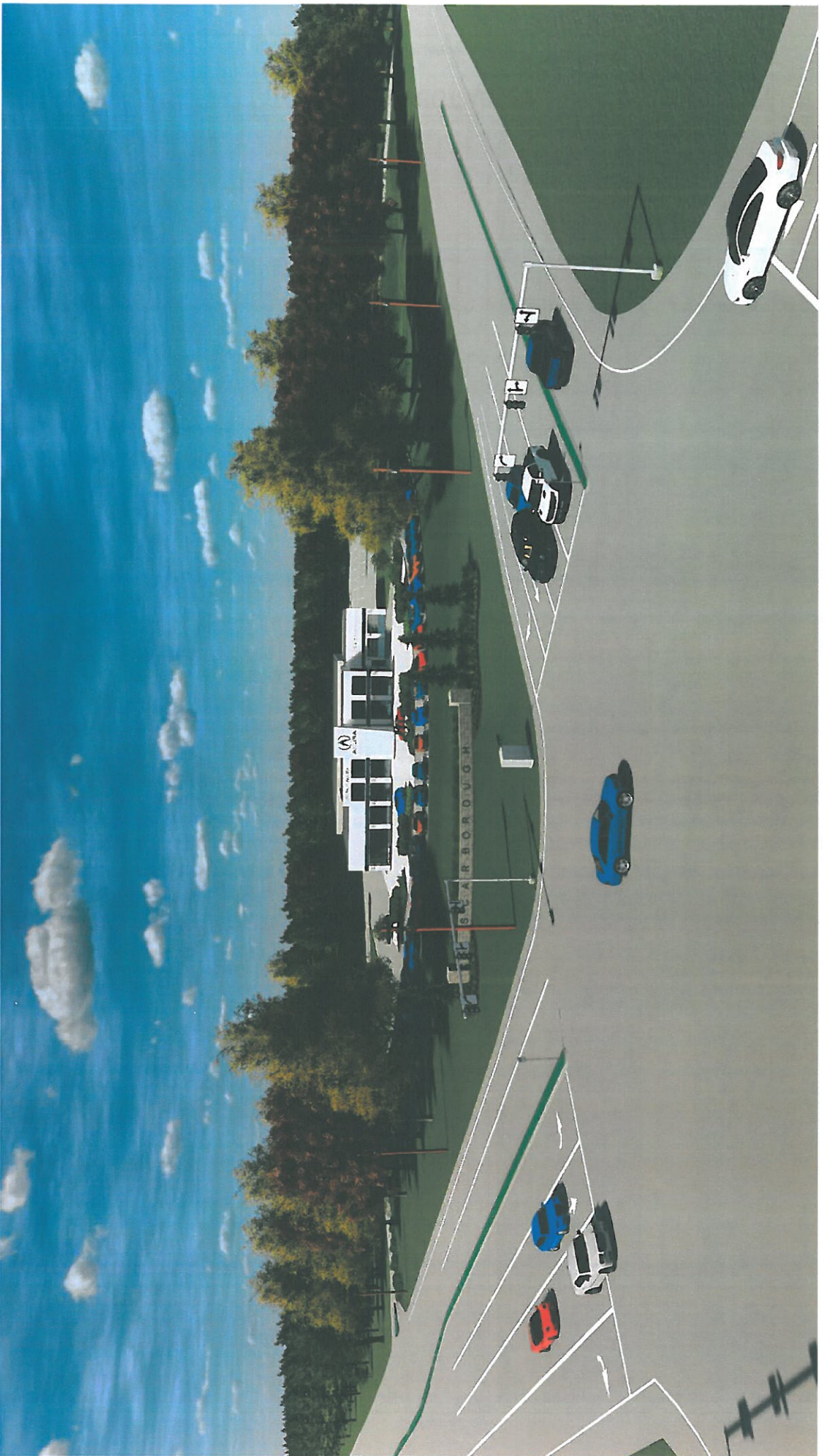
Sincerely,

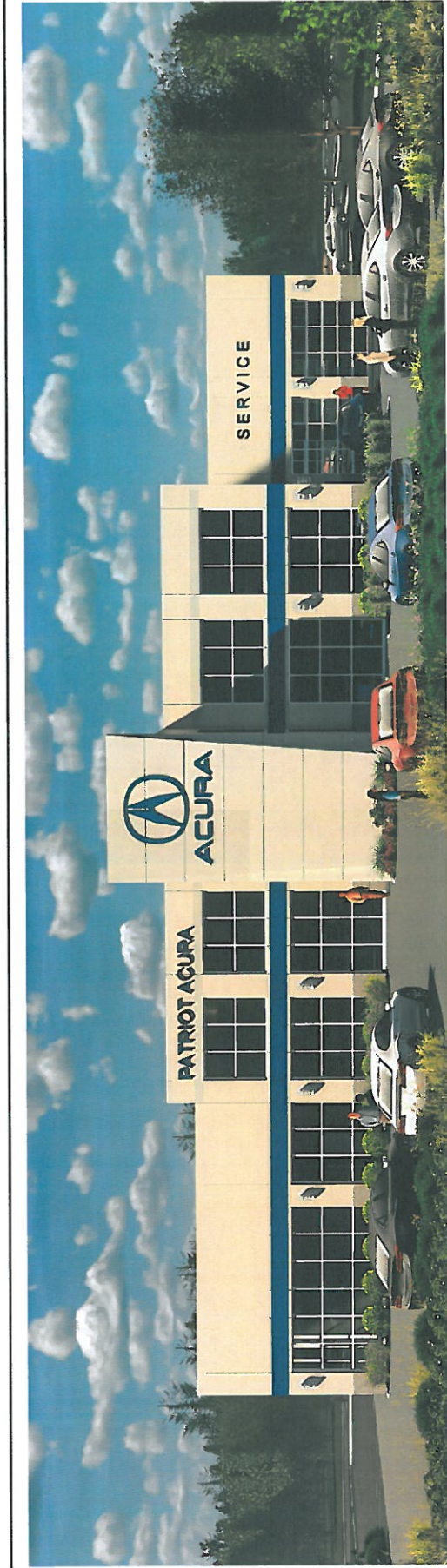
SEBAGO TECHNICS, Inc.



James R. Seymour
Sr. Project Manager
jrs//

cc: Adam Arens - President/Owner- Patriot Realty-Saco LLC
Richard Shinay Esq – Drummond/Woodsum Attorneys





K1 RENDERING 1



F1 RENDERING 2



A1 RENDERING 1

F11 RENDERING 3

PATRIOT ACURA
SCARBOROUGH, MAINE

GAWRON
TURGEON
ARCHITECTS, P.C.

REVISIONS	
NO.	DESCRIPTION

DATE	10-10-18
PROJECT #	181001
DRAWN BY	DNA
CHECKED BY	DNA
DRAWING SCALE	

SHEET TITLE	
RENDERINGS	

A102

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AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – MARCH 6, 2019

REGULAR MEETING – 6:00 P.M.

Order No. 19-013. Move approval on the following new request for a Combined Massage Establishment/Massage Therapist License from Marie Ann Dittmer d/b/a Focal Point Manual Therapies, located at 25 Plaza Drive, #6. *[Town Clerk]*

Town Clerk

Ought to Pass

Sponsor

Recommendation

03/06/2019 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Town of Scarborough, Maine

Town Clerk's Office

259 US ROUTE ONE

PO BOX 360

SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: March 1, 2019

RE: Request for a Combined Massage Establishment/Massage Therapist License

The following applicant is requesting approval on the Combined Massage Establishment/Massage Therapist License:

- Marie Ann Dittmer, d/b/a Focal Point Manual Therapies, located at 25 Plaza Drive #6

Applicant is in compliance with the requirements of the Town Clerk's Office and there are no outstanding issues. The completed application is on file with Clerk's Office.

It is recommended that this license be granted.

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – MARCH 6, 2019

REGULAR MEETING – 6:00 P.M.

Order No. 19-003. Move approval of the second reading on the proposed changes to Chapter 405 – the Zoning Ordinance of the Town of Scarborough, Section XVIII.B Haigis Parkway District. *[Long Range Planning Committee]*

Long Range Planning Committee

Ought to Pass

Sponsor

Recommendation

01/16/2019 - Vote: 6 Yeas.

[Councilor Donovan Absent]

First Reading/Vote

02/20/2019

Public Hearing

03/06/2019 - Vote:

Second Reading/Final Approval/Vote

To: Town Council
From: Jay Chace, on behalf of the Long Range Planning Committee
Date: January 9, 2019

RE: Amendments to Haigis Parkway District: Commercial/Residential Use Ratios

Through the fall and winter the Long Range Planning Committee has been reviewing the existing provisions in the Haigis Parkway District (HP) which regulate how the ratio of residential activity is determined in relation to commercial activity. This issue came to attention of the LRPC by way of a challenging review process identified by Staff, the Planning Board and a developer during the first attempt to apply the current provisions to a development application. The LRPC is proposing language which seeks to clarify process; the language is not aimed at changing the underlying policy.

Overview

In 2012 the Council adopted updates to the HP District with an eye towards modernizing the zone and broadening the allowed uses to facilitate new development in the district, while at the same time maintaining the goals for the Parkway as a growth area for high-quality, high value commercial development. As part of this process limited residential uses (e.g. multi-family, mixed-use buildings & live/work units) were written into the district as permitted uses through the Planned Development review process only. To ensure the goal of maintaining the HP as a primarily commercial district, language was added to the regulatory provisions which simply states, *"Given that the HP District is principally a business district, the floor area of all residential uses within a planned development shall be a maximum of 40% of the total floor area of all the building floor area within the planned development."*

The Issue

When the current provisions are applied to a project that will be built out over time (i.e. with various phases of development) it is permissible for the residential use to build out faster than the commercial uses. However, in working with the current provisions the Planning Board identified that the language does not provide clear guidance with respect to how to determine the build-out ratio for a phased development. In the first application of this provision the Board and applicant struggled with an approach that would work. For this reason the LRPC was asked to review the issue and provide clarity to the language to ease the administrative burden of the Board.

Recommendation

The LRPC considered and deliberated on this matter of the course of a few months. The proposed language modifications below provides a regulatory approach for the Planning Board to determine the max. amount residential development at the outset of the development through the Planned Development review process.

Below is the proposed Zoning Ordinance amendments:

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 405 - the Zoning Ordinance of the Town of Scarborough, Maine Section XVIII.B Haigis Parkway District, is amended as follows:

Subsection C. Planned Development Standards

4. Required of Planned Developments Incorporating Live/Work Units, Residential Dwellings within a Mixed-Use Building and/or Multi-family Dwellings

Live/work units, residential dwellings within a mixed-use building and multifamily dwellings are allowed as part of a planned development provided they meet the requirements of this section. In reviewing a planned development with residential uses, the Planning Board shall only permit residential uses that are designed in a manner and sited in locations that are appropriate and conducive to housing. Accordingly, the Planning Board shall find that residential uses within a planned development meet each of the following standards:

- a. ~~Given the HP District is principally a business district, the maximum amount of residential use(s) shall not exceed 40% of the non-residential use(s) at full build-out. Determination of the full build out use ratio is calculated as described below: the floor area of all residential uses within a planned development shall be a maximum of 40% of the total floor area of all the building floor area within the planned development.~~
 - i. ~~For planned development projects that consist of a single lot or building, the floor area of all residential uses shall be a maximum of 40% of the total non-residential use floor area at the time of approval.~~
 - ii. ~~For planned development projects that consist of multiple lots or buildings the maximum amount of residential use is based on the amount of total non-residential use floor area that can be accommodated on the lots and/or buildings, as determined by the applicant and approved by the Planning Board. In determining the total non-residential floor area the applicant shall complete a conceptual build-out analysis for each lot and/or building, including all typical and necessary supporting infrastructure associated with the assumed building size; including, but not limited to, parking fields, stormwater facilities, landscaping, etc. The Planning Board shall verify the applicant's analysis, and may require modifications, prior to approval.~~
- b. The proposed residential dwellings are sufficiently setback and/or buffered from major roadways as well as major internal circulation routes and large parking areas so as to ensure a safe, sanitary, and healthful environment for residents.
- c. Any other non-residential uses within the planned development are compatible with residential uses with respect to noise, odors, intensity of use, health and safety, and aesthetics.
- d. Residential uses are designed with outdoor amenities, open spaces or common spaces usable for the active or passive recreation. Such spaces can be a community green or common; plaza; court; square; pocket park or some variation of each.

**MINUTES
PLANNING BOARD MEETING
MONDAY, FEBRUARY 4, 2019 – 7:00 P.M.**

Members Present:

Mr. Nicolas McGee - Chair
Ms. Rachel Hendrickson – Vice Chair
Mr. Roger Beeley - Secretary
Ms. Robyn Saunders

Staff Present:

Mr. Jay Chace, Town Planner
Mr. Jamel Torres, Assistant Town Planner
Ms. Angela Blanchette, Town Engineer
Ms. Doreen Christ, Recording Secretary

- 1. Call to Order.** Nicolas McGee - Chair called the meeting to order at 7:00 p.m.
- 2. Pledge of Allegiance.**
- 3. Roll Call.** Roll was called by the Recording Secretary. It shall be noted that Richard DuPerre – 1st Alternate was absent at this meeting.
- 4. Approval of Minutes (December 10, 2018, December 18, 2018, and January 14, 2019).** The following motion was made.
MOTION: *by Nicolas McGee, seconded by Rachel Hendrickson, to move approval of the meeting minutes of the December 10, 2018 regular Planning Board meeting, December 18, 2018 Workshop meeting, and January 14, 2019 regular Planning Board meeting, as written.*
VOTED: 4-0 (Passed).

5. The Planning Board will conduct a Public Hearing to receive comments on the proposed amendments to Chapter 405, the Zoning Ordinance, to amend Section XVIII.B Haigis Parkway District.* Jay Chace presented this item. As stated in his memorandum, the Long Range Planning Committee (LRPC) has been reviewing the existing provisions in the Haigis Parkway District (HP), which regulate how the ratio of residential activity is determined in relation to commercial activity. The LRPC is proposing language which seeks to clarify the process. Their proposed language modifications provides a regulatory approach for this board to determine the maximum amount of residential development at the outset of the development through the Planned Development review process. Included in board member packets was the proposed Zoning Ordinance amendments for Section XVIII.B. Haigis Parkway District.

Nicolas McGee opened the Public Hearing giving an opportunity for public comment. There was no public comment. Nicolas McGee closed the public portion of this hearing.

Nicolas McGee opened this item up to the board. He said he appreciates the LRPC for their input. This is a guideline. Roger Beeley had a clarity question, which Jay Chace responded to. After deliberation, Nicolas McGee stated the board is providing a favorable response to the Town Council.

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – MARCH 6, 2019

REGULAR MEETING – 6:00 P.M.

Order No. 19-006. Move approval of the second reading on the proposed amendments to Chapter 901 – the Town of Scarborough Garbage and Recycling Collection & Disposal Ordinance, Article I, Section 1.02., Section 1.10. & Section 1.12. and Article III, Section 3.01. [*Ordinance Committee*]

Ordinance Committee

Ought to Pass

Sponsor

Recommendation

02/06/2019 – Vote: 7 Yeas.

First Reading/Vote

02/20/2019

Public Hearing

03/06/2019 – Vote:

Second Reading/Final Approval/Vote

CHAPTER 901
TOWN OF SCARBOROUGH
Garbage and Recycling Collection and Disposal Ordinance

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 901, the Garbage and Recycling Collection Ordinance of the Town of Scarborough is amended, as follows:

ARTICLE I. GENERAL PROVISIONS

Section 1.01 PURPOSE

The purpose of this Ordinance is to protect the health, safety and general well-being of the citizens of Scarborough: enhance and maintain the quality of the environment, conserve natural resources and prevent water and air pollution by providing for a comprehensive, rational and effective means of regulating the disposal of solid waste in the Town of Scarborough in accordance with the provisions of Title 38 M.R.S.A. §§ 1304-B and 1305, as amended.

Section 1.02 DEFINITIONS

1. CART:

”Cart” means a wheeled receptacle distributed by the Town of Scarborough to Scarborough residents for the purpose of facilitating the collection of garbage and recyclable materials at the curb.

2. CONSTRUCTION OR DEMOLITION DEBRIS:

”Construction or demolition debris” means solid waste resulting from construction, remodeling, repair, and demolition of structures. It includes but is not limited to: building materials, discarded furniture, asphalt, wall board, pipes, and metal conduits. It excludes: partially filled containers of glues, tars, solvents, resins, paints, or caulking compounds; friable asbestos; and other special wastes.

3. CONTAINERS:

”Containers” means items including glass bottles and jars, plastic bottles and jugs, and metal cans.

4. DISPOSAL:

”Disposal” means the discharge, deposit, dumping or placing of any solid waste into or on any land.

5. ECOMAINE DISPOSAL FACILITY

”**ecomaine** Disposal Facility” means any land or structure or combination of land area and structures, including dumps and transfer stations, owned or operated by **ecomaine**, or any

other site designated by **ecomaine**, used for storing, salvaging, reducing, incinerating or disposing of solid wastes.

6. GARBAGE:

"Garbage" means solid waste which the Town Public Works Director and/or his/her designee shall designate on a list of items that are acceptable for garbage collection posted on the Town web page.

7. HAZARDOUS WASTE:

"Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection under 38 MRSA section 1319-O or by the terms of a certain Waste Handling Agreement between the Town and **ecomaine**. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or a part or a constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

8. OVERFLOW:

"Overflow" means garbage set out for collection that exceeds the amount contained in the Town-provided collection cart; applies only to those solid wastes considered acceptable in the curbside collection program.

9. PERSON:

"Person" means any person, firm, partnership, corporation, association, company, or organization of any kind.

10. RECYCLABLE MATERIALS or RECYCLABLES:

"Recyclable Materials" or "Recyclables" means solid waste designated by the Town Manager or his/her designee as suitable for inclusion in the Town's recycling program. These items are as follows: newspapers, magazines, office paper, paperboard, cardboard, glass bottles, glass jars, #1-7 plastics, aluminum cans, aluminum foil, tin cans, steel cans and milk and juice cartons. These items are subject to change and are in reference to the materials accepted by **ecomaine**. [amended 11/01/17]

11. RECYCLING VEHICLE:

"Recycling vehicle" means a vehicle utilized by the Town of Scarborough or its designated agent to collect recyclable materials at the curb from all residential uses on a Town-maintained public way.

12. RESIDENTIAL USES:

"Residential uses" means, for the purpose of providing solid waste collection, single-family, duplex and multifamily dwellings (up to and including five units) on public ways. Residential uses may include home occupations as defined in the Town Zoning Ordinance, but not other mixed commercial and residential uses.

13. SOLID WASTE:

“Solid waste” shall mean useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitations, rubbish, garbage, scrap materials, junk, inert fill material and landscaping refuse, and including material that may have value or other use or may be sold or exchanged, but not including septage tank sludge nor agricultural or hazardous wastes.

14. SOLID WASTE DISPOSAL FACILITY or DISPOSAL FACILITY:

“Solid Waste Disposal Facility” or “Disposal Facility” means any land or structure or combination of land area and structures, including dumps and transfer stations and any other site used for storing, salvaging, reducing, incinerating or disposing of solid wastes, including the **ecomaine** disposal facility.

15. TOWN:

“Town” means the Town of Scarborough, Maine.

16. UNIVERSAL WASTE:

“Universal waste” means any waste listed in section 3.A(13)(b) of Chapter 850, the Maine Hazardous Waste Management Rules, including but not limited to cathode ray tubes; mercury-containing lamps; mercury-containing thermostats; and totally enclosed, non-leaking polychlorinated biphenyl (PCB) ballasts.

17. WOOD WASTES:

“Wood wastes” means brush, stumps, lumber, bark, wood chips, shavings, slabs, edgings, slash, sawdust and wood from production rejects, that are not mixed with other solid or liquid waste. For the purposes of this definition, “lumber” is entirely made of wood and is free from metal, plastics and coatings.

18. YARD WASTE:

“Yard waste” means earthen fill, soil, sand, grass clippings, leaves, and other vegetal matter other than wood wastes and land clearing debris.

Section 1.08 UNLAWFUL TO PLACE, DEPOSIT GARBAGE IN VIOLATION OF ORDINANCE

It shall be unlawful for any person to place, deposit or allow to be placed or deposited on his premises any garbage, except in the manner permitted by the provisions of this Ordinance.

Section 1.10 CARTS REQUIRED; HOURS FOR PLACEMENT AND REMOVAL; REPLACEMENT OR ADDITIONAL CARTS; OVERFLOW WASTE [Amended 10/18/17-Effective 04/18/18]

A. It shall be the responsibility of the Town to provide and make available suitable and sufficient carts as described by §1.09 to receive the accumulation of weekly household waste.

Each cart shall be placed as instructed by the Town or its designated garbage collector along the street, sidewalk or roadside for automated collection. Town-designated garbage carts may be set out for collection the evening or day before, but must be set out by 7:00A.M. the morning of collection, and ~~should~~ shall be removed from the Town's right of way the day of collection.

B. Should a Town-owned cart be damaged, defaced or lost by a household, the Town will make another such cart available for replacement at a fee.

C. Residents who have "overflow waste," defined as garbage set out for collection that exceeds the amount contained in the Town-provided collection cart, may take it to the Department of Public Works for disposal.

Section 1.12 UNLAWFUL TO ~~RAKE LEAVES~~ PUT ANY YARD WASTE OR WOOD WASTES INTO STREETS OR TOWN RIGHTS OF WAY

It shall be unlawful to ~~rake-leaves~~ put any yard waste or wood wastes into any paved street or the Town's ~~or~~ right of way.

ARTICLE III. COLLECTION AND REMOVAL

Section 3.01 ACCUMULATION OF GARBAGE PROHIBITED

1) Each household or business is responsible for preventing accumulation of garbage. On the designated day of pickup, all residential garbage must be set out in a Town designated cart for garbage collection. Each household unit should contain its waste in carts as described in § 1.10. Pursuant to § 1.10, each cart shall be placed as instructed by the garbage collector along the street, sidewalk or roadside for automated collection. Town-designated garbage carts may be set out for collection the evening or day before, and ~~should~~ shall be removed from the street or roadside ~~after~~ on the day of collection, in no event more than 24 hours thereafter. No person shall cause or permit any accumulation of garbage which, in the opinion of the Health Officer or Health Inspector, is unsanitary or hazardous to the health of the public or, in the judgment of the Fire Chief of the Fire Department, constitutes a fire hazard.

2) Dumping prohibited. No person shall throw or place any garbage; recyclable materials, including paper, glass, nails, wire, bottles, and cans; yard waste, including brush, branches, and earthen fill; construction or demolition debris; garbage carts; litter or other debris in any ditch, stream, river or retention basin that regularly or periodically carries surface water runoff. Any person who deposits any of the above shall remove it or cause it to be removed immediately. The Code Enforcement Officer, the Public Works Director or any one else designated by either shall be responsible for the enforcement of this provision.

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – MARCH 6, 2019

REGULAR MEETING – 6:00 P.M.

Order No. 19-014. Move approval of the first reading on the proposed amendments to Chapter 304, Town of Scarborough Purchasing Policy and schedule a public hearing for Wednesday, March 20, 2019; as follows: [*Ordinance Committee*]

Ordinance Committee

Ought to Pass

Sponsor

Recommendation

03/06/2019 – Vote:

First Reading/Vote

03/20/2019

Public Hearing

04/03/2019 – Vote:

Second Reading/Final Approval/Vote

**CHAPTER 304
TOWN OF SCARBOROUGH
MUNICIPAL PURCHASING POLICY**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 304 - the Town of Scarborough Municipal Purchasing Policy, by adding the underlined text and deleting the text shown in strikeover type, as follows:

Section 1. Purpose

The purposes of the regulation are to standardize the purchasing procedure of the Town of Scarborough thereby securing for the town the advantages of a centralized and uniform purchasing policy saving the taxpayers' money and increasing public confidence in the procedures for municipal purchasing; to promote the fair and equitable treatment of all suppliers of goods and services; and to set forth the duties and responsibilities of the department heads and the Purchasing Agent, thereby fostering interdepartmental cooperation and trust in the purchasing system.

Section 2. Definitions

1. Approved vendors.

~~“Approved vendors” means those vendors identified by each department head to the Purchasing Agent, who maintains a list of approved vendors for bidding purposes. The Purchasing Agent shall keep detailed lists for each department on file at all times.~~

2. Bid most advantageous to the Town.

“Bid most advantageous to the Town” means a bid chosen on the basis of price, quality of merchandise, suitability of merchandise, and service reputation of the vendor, and therefore may not necessarily mean the lowest bid received.

3. Competitive bidding.

“Competitive bidding” means the process of obtaining the bid most advantageous to the Town for any purchase, whether through formal or informal bidding procedures.

4. Informal bid.

“Informal bid” means a written or oral quotation obtained from an approved vendor but not required to be opened publicly at a specified day, place and time.

5. Field purchase.

“Field purchase” means an informal purchase of supplies needed in small quantities for day-to-day operation made directly by a Department Head or her/his designated representative from any vendor. [Amended 11/02/17]

6. Formal bid.

“Formal bid” means a written quotation obtained in a sealed envelope from an approved vendor or through advertisement and opened at a specific day, place and time.

7. Cooperative purchase.

“Cooperative purchase” means a purchase made by the Town in conjunction with or from another governmental or quasi-governmental agency, such as but not limited to, the State of Maine, Greater Portland Council of Governments, the School Department, the Sanitary District or another municipality.

~~8.~~ 7. Purchase.

“Purchase” means buying, renting, leasing, or otherwise acquiring supplies or services for a price.

~~9.~~ 8. Purchasing Agent.

“Purchasing Agent” means the Assistant Town Manager or the Assistant Town Manager’s designee.

~~10.~~ 9. Services.

“Services” means the lease or rental of all grounds, buildings, offices, space or equipment required by the Town, the repair or maintenance of equipment or real property owned by or the responsibility of the Town and all labor furnished to the Town by persons, firms, individuals or corporations not part of or connected with the Town government. “Services” shall not include professional services provided to or for the Town by lawyers, architects, engineers, auditors and consultants. Nor shall “services” include utilities such as electricity, water, and phone services.

~~11.~~ 10. Specifications.

“Specifications” means standards, including quality, set by department heads as a guide to the Purchasing Agent and as a measure of that which successful vendors must achieve. Specifications shall be either technical specifications for bids, which shall state formulations as broadly as practicable, yet shall be specific enough to describe the requirements of the department or non-technical specifications for bids, which shall state the quality required in general terms.

~~12.~~ 11. Supplies.

“Supplies” shall mean all supplies, materials and equipment.

Section 3. Applicability

This regulation shall apply to purchases made by departments and agencies of the Town, except as otherwise specified herein.

Section 4. Appropriation

Neither the Purchasing Agent nor any Department Head shall make any purchase or allow any purchase to be made until an appropriation therefore has been approved by the Town Council.

Section 5. Purchase Limits

1. A Department Head or the Department Head’s designated representative may make field purchases when the total purchase price for the goods or services being purchased is less than \$500.00 ~~200.00;~~ ~~provided the field purchases are reported to the Purchasing Agent in writing within 3 days thereafter.~~ (amended 09/17/03)

2. A Department Head may execute written orders when the total purchase price is \$5,000.00 or less and the requirements of this Purchasing Policy are complied with by the Department Head or her/his designee. Any purchase of computer hardware or software requires consultation with the IT Department prior to purchase. (amended 09/17/03)[amended 11/01/17]

3. The Purchasing Agent shall make any purchase when the total purchase price exceeds \$5,000.00 up to an amount within the municipal operating budget. (amended 04/18/01). (amended 09/17/03)

4. The Town Council shall approve and authorize any purchase beyond the amount as approved in the municipal operating budget. (amended 04/18/01).

Section 6. Competitive Bidding

1. Competitive bids shall be required for all purchases in excess of \$2,500.00 unless specifically exempted by this Policy or by action of the Town Council.

2. Informal bidding procedures shall be allowed when a purchase is required to be by competitive bidding if the total purchase price is less than \$10,000.00 ~~7,500.00~~, unless the Purchasing Agent recommends use of formal bidding procedures.

3. Formal bidding procedures shall be followed by the Purchasing Agent in all other cases when competitive bidding is required by this Policy.

4. The Purchasing Agent may make cooperative purchases without competitive bidding if the Purchasing Agent determines the purchase is being made after competitive bidding by the cooperative entity or at price more advantageous than the Town would be likely to obtain by competitive bidding.

5. The Purchasing Agent may waive the requirements for competitive bidding for purchases of \$25,000.00 or less in cases of emergency or when the purchase is inappropriate for competitive bidding due to the nature of the item, time constraints or other factors, provided that the Purchasing Agent shall file a full and complete statement of the reasons for waiving competitive bidding.

6. Purchases of computer hardware or software will be reviewed with the IT Department for approval prior to the bidding process.

Section 7. Procedure for Formal Bidding

The procedure for formal bidding shall be as follows:

1. Invitation for Bids. The Department Head or Purchasing Agent shall prepare the invitation for bids, describing the Town's requirements clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related (whether attached or incorporated by reference) material furnished prospective bidders for the purpose of submitting sealed bids. The Purchasing Agent shall determine that the requirements of the Town are clearly and accurately and completely stated within the invitation to bid. Every invitation to bid shall note that all purchases are subject to the conditions set forth in Section 9 hereof.

2. The Department Head or Purchasing Agent shall publicize the invitation for bids through distribution to prospective bidders, posting on the ~~bulletin board at Town Hall and~~ purchasing page of the Town's website, posting notice in the office of the department(s) involved, ~~advertising in a newspaper with local and/or regional circulation,~~ or such other means as the Purchasing Agent determines is appropriate at least ten calendar days prior to the time set for public opening of sealed bids. While no preference shall be made for local vendors, every attempt shall be made to ensure that appropriate local vendors are notified of applicable advertised bids.

3. Bidders shall submit sealed bids to the Town prior to the date and time specified for the opening of bids. Late bids shall not be accepted and no bidder shall be permitted to withdraw a bid after the deadline for bids specified in the invitation to bidders.

4. Bids shall be publicly opened at the time and place specified in the invitation to bid. A contract shall be awarded to the responsible bidder whose bid conforms to the invitation to bid and will be the most advantageous to the Town. Award may be delayed pending verification of a bidder's credentials and references or review of the bids received.

5. Nothing in this section shall preclude the Town from rejecting any and all bids as provided in Section 9 of this Policy.

Section 8. Procedure for Informal Bidding.

1. The Department Head or the Purchasing Agent shall solicit competitive bids either by written notice sent to ~~approved~~ vendors, ~~and by~~ posting on appropriate Town bulletin boards and the purchasing page of the Town's website ~~or by advertisement in a newspaper(s) having at least local circulation~~. The notice shall contain specifications as to quantity and quality required, the availability of bid packages or other details, and the date and time when bids must be received. If bids will be opened publicly and read, the notice shall also specify the date, time and location where they will be opened and read. Any solicitation or advertisement shall note that all purchases are subject to the conditions set forth in Section 9.

2. All bids shall quote delivered prices, terms of payment and cash discounts if applicable. If oral quotations are accepted, the Purchasing Agent or the Department Head shall make a record of the quotation. The person from whom the quote is received, and the date and time the quote is received by the Town shall be recorded.

3. The Purchasing Agent or Department Head shall attempt to solicit at least three approved vendors on every purchase subject to informal bidding procedures. If less than three bids are received, or if in the opinion of the Department Head or the Purchasing Agent no bids are acceptable, rebidding may required.

4. In all cases the bid most advantageous to the Town, price, quality, and other factors being considered, shall be awarded.

Section 9. Administrative Procedures and Conditions

Competitive Bids shall be administered by the Purchasing Agent and shall be subject to the following conditions:

1. The Department Head or Purchasing Agent shall keep a record of all bids submitted and such records shall be opened to proper inspection by any person.

2. All bidders shall be notified in writing of bid results within ten days after the bids are opened.

3. Tie bids shall be resolved by the Town Manager except that if the price exceeds \$25,000.00, the Town Council shall resolve the tie.

4. All bids shall be awarded on the basis of the bid most advantageous to the Town.

5. The Town reserves the right to accept or reject any or all bids, to investigate the qualifications of any bidder, and to waive or not waive any and all informalities in the bids when making an award.

6. If an award is made to other than the low bidder, the Purchasing Agent shall file a full and complete statement of the reasons for determining that the low bid was not the bid most advantageous to the Town, together with all papers relating the bidding process.

7. The Town retain custody of all bids submitted to the Town pursuant to this policy.

Section 10. Duties of Department Heads

1. Determine acceptable quality of commodities and supplies to be purchased.

~~2. Cooperate with the Purchasing Agent in establishing lists of approved specifications and vendors.~~

~~3.~~ 2. Share knowledge of special factors which will implement a policy designed to enable the Town to minimize cost and maximize quality.

~~4. Supply the Purchasing Agent with a list of estimated annual requirements of frequently used supplies, thereby fostering cooperative purchasing.~~

~~5.~~ 3. Prepare requisitions with an eye toward cooperative purchasing and keep corresponding records to facilitate correct accounting charges.

~~6.~~ 4. Be empowered to reject any unacceptable supply or commodity on the ground of high cost or low quality, and provide the Town Purchasing Agent a written detailed report of any rejection.

~~7. Department Heads shall choose vendors on the basis of responsibility and quality and shall submit a list of approved vendors to the Purchasing Agent. Department Heads shall notify the Purchasing Agent in writing regarding any additions or deletions to this list and shall give reasons for deletions.~~

~~8. Report to the Purchasing Agent the Following:~~

~~Items beyond use~~

~~Items being replaced or to be replaced~~

~~Items no longer of use to department operations~~

~~9.~~ 5. Foster ~~regular~~ planned bulk or cooperative purchasing to minimize direct purchases.

Section 11: Ethical Purchases and Procurement Process (adopted 09/17/03)

It is in the interest of the Town of Scarborough to purchase and procure items of apparel, textiles and recreational equipment from responsible and ethical contractors who provide quality goods and services at a competitive price and who generally adhere to international conventions on wages, workplace health and safety, forced labor, child labor and freedom of association.

1. Application of Purchasing Code of Conduct.

This subchapter applies to competitive bids for the purchase of apparel, footwear or textiles pursuant to Chapter 304. Every purchase of apparel, footwear or textiles shall be accompanied by a signed affidavit stating that the bidder has complied with the municipal purchasing code of conduct established under Section 11 and that, to the best of the bidder's knowledge, the supplier at the point of assembly of the goods subject to the bid process is in compliance with the municipal purchasing code of conduct. The Purchasing Agent shall submit a series of questions (Exhibit A, Sample Form) to the vendor to determine the manufacturing facilities in which the products under consideration are made, to ascertain working conditions at these manufacturing facilities and to demonstrate that working conditions are of concern in the Town's purchasing decisions. Contract award will favor those retailers, suppliers, wholesalers, distributors and manufacturers who operate in accordance with established codes of corporate conduct regarding wages, workplace health and safety, forced labor, child labor, and

freedom of association, as embodied in United Nations (U.N.) and International Labor Organization (I.L.O.) conventions.

2. Statement of belief; protection of local interests.

The affidavit provided by the municipal purchasing agent to bidders for contracts to provide goods covered by this subchapter must include a copy of the following statement:

“Scarborough is a town that believes employers should fairly compensate hard work, that the health and safety of working people should be protected and that no form of unlawful discrimination or abuse should be tolerated. Scarborough citizens are aware that law and regulations designed to safeguard basic tenets of ethical business practice are disregarded in many workplaces, commonly referred to as “sweatshops.”

3. Information Retained.

The Town’s Purchasing Agent, or designee, shall retain records of all information for 25 months regarding manufacturing working conditions supplied by the vendors replying to all purchase or bid solicitations. Any additional information used by the Purchasing Agent in making a bid award shall also be retained with the bid documentation. All records will be available to the public.

4. Report.

The Municipal Purchasing Agent shall submit a report to the Finance Committee by September 15 of each year concerning the administrative and financial impact of these requirements, the degree of voluntary compliance with the municipal purchasing code of conduct by the vendors; the number of vendors who agreed to and the number that declined to comply with the provisions of this subchapter; and any other information relevant to the municipal purchasing code of conduct.

**TOWN OF SCARBOROUGH, MAINE
DISCLOSURE OF MANUFACTURER'S WORKING CONDITIONS**

Vendor's Name _____
Address _____
Telephone _____ **Email** _____
Website _____
Information Provider – Name _____ **Title** _____

SOURCE OF PRODUCTS

Manufacturer _____ **Website** _____

Address _____

Contact Person _____ **Telephone** _____ **Email** _____

Products Provided _____

Production Facility _____ **Website** _____

Address _____

Contact Person _____ **Telephone** _____ **Email** _____

1. Does the manufacturer comply with applicable laws of the country of origin? Yes ___ No ___
2. Is there any known child, forced, or indentured labor within the manufacturing facility? Yes ___ No ___
3. Are manufacturing employees free to speak up about working conditions without fear of reprisals? Yes ___ No ___
Are worker's unionized? Yes ___ No ___
4. The average wage for full-time production workers at the facility is _____ excluding benefits.
5. Do full-time production workers receive health insurance? Yes ___ No ___
6. Comments (e.g., other benefits, health and safety, environmental issues) _____

Verified by (information provider)

Name _____ **Title** _____

Signature _____ **Date** _____

Note: This form is to be submitted with any bid proposal solicitation or as directed by the Town's Purchasing Agent or Department making an apparel purchase. Additional pages can be attached if necessary.

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – MARCH 6, 2019

REGULAR MEETING – 6:00 P.M.

Order No. 19-015. Move approval on the request from the Council Chair to adopt 2019 Goals and Norms; as follows: *[Council Chair]*

Council Chair

Ought to Pass

Sponsor

Recommendation

03/06/2019 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Scarborough Town Council 2019 Norms/Goals

Norms:

- ✓ Acknowledge one another's thoughts and positions and be curious about them. Seek to understand.
- ✓ Be civil and respectful during dialogues.
- ✓ Begin and end with what's best for community in mind [listening and acknowledging community input and considerations during the process].
- ✓ Improve internal Town Council communications.
- ✓ Actively practice humility.

Goals:

- ✓ Community Relations
 - Work to understand differing views.
 - Continue to build trust.
 - Determine the most effective methods for engaging our community.
- ✓ Budget
 - Tax Rate increase not to exceed 3%.
 - Tax rate projection will adhere to policy regarding valuation increases and the impact of the residential revaluation shall not be considered in these projections.
 - Clear and consistent messaging regarding the factors to be considered in the projection of estimated tax rate.