

**MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – NOVEMBER 15, 2023
HYBRID REGULAR MEETING – 7:00 P.M.**

Item 1. Call to Order. Chairman Anderson called the regular meeting of the Scarborough Town Council to order at 7:00 p.m.

Item 2. Pledge of Allegiance.

Item 3. Swearing-in of newly elected officials. Yolande P. Justice, Town Clerk, swore in Jonathan Anderson, Jean-Marie Caterina and Donald Cushing, Jr., as Town Councilors with terms to expire in 2026. The Sanitary District Trustees: Jason Greenleaf, Benjamin McDougal and Ruth Summers, with terms to expire in 2026, would be sworn in at a later date.

Order No. 23-126. Act on the request for nominations and election of a new Town Council Chair. [Town Clerk] The Town Clerk called for nominations of a new Town Council Chair. Only one nomination was made.

Motion by Councilor Anderson, seconded by Councilor Caterina, to move approval of the nomination of Councilor McGee as the new Town Council Chair.

Vote: 7 Yeas. Motion Passes.

Order No. 22-127. Act on the request for nominations and election of a new Town Council Vice-Chair. [Town Clerk] Chairman McGee called for nominations of a new Town Council Vice Chair. Only one nomination was made.

Motion by Councilor Caterina, seconded by Councilor Anderson, to move approval of the nomination of Councilor Sither as the new Town Council Vice Chair.

Vote: 7 Yeas. Motion Passes.

Item 4. Roll Call. Roll was called by Yolande P. Justice, Town Clerk. Thomas J. Hall, Town Manager and Liam Gallagher, Assistant Town Manager, were also present. Those Councilors present:

| | |
|---------------------------------------|--------------------------------|
| Councilor April V. Sither -Vice Chair | Councilor Jean-Marie Caterina |
| Councilor Donald W. Cushing, Jr. | Councilor Donald R. Hamill |
| Councilor Karin B. Shupe | Councilor Jonathan E. Anderson |
| Chairman Nicholas S. McGee | |

Item 5. General Public Comments.

- Richard Hayes, Martin Avenue, commented on the outcome of the elections and the land deal and felt that the Council should not move forward on the Land Option Agreement.

Item 6. Minutes: November 8, 2023 - Town Council Meeting. Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the minutes from the November 8, 2023, regular Town Council meeting, as written.

Vote: 7 Yeas. Motion Passes.

Item 7. Adjustment to the Agenda. None at this time.

Item 8. Items to be signed: a. Treasurer's Warrants. Treasurer's Warrants were signed prior to the meeting.

Item 9. Town Manager Report. Thomas J. Hall, Town Manager, gave the following updates:

- Costco grand opening is scheduled for this coming Friday at 7:15 a.m.
- The dredge project is underway and he would keep the Council updated as to the progress.

At this point the Town Manager asked the Assistant Town Manager to give an update on the Cannabis Moratorium.

- **Cannabis Moratorium Update** – Liam Gallagher, Assistant Town Manager, gave an update on the Cannabis Odor and the Moratorium that is in place. He then noted the number of odor complaints that had been filed- Pleasant Hill Road Corridor – 9 Reports over 8 days and Pine Point 27 reports or 17 days. At this time, the Assistant Town Manager does not recommend ending the moratorium.

Chairman McGee would like to gather additional data from abutters to determine if there has been an improvement from where they started 9 months ago.

Mr. Gallagher responded to questions from the Town Council.

Resolution 23-005. Act on the request to approve Resolution 23-005, entitled “Land Option Agreement Path Forward.” [Councilor Anderson] Councilor Anderson gave a brief overview on this Resolution. The following individuals spoke:

- Jack Faye of Mulberry Lane, did not agree with the survey, it's a waste of time – “no” means “no”. The voters have spoken and cancel the agreement.
- Heather Deignan of Sawyer Road, spoke against the resolve and did not agree with a survey. She too agreed that the Town Council should cancel the agreement.
- Tim Lambert of Iris Drive, noted that the purchase agreement should be terminated. The voters have spoken.
- Meghan Condry of Track View Terrace, also spoke on the Resolve. The voters have said No – listen to the voters. The Council does not need to continue with the purchase agreement and there is no need to conduct a survey.
- Alyson Bristol of Bayview Avenue, spoke on the resolution and what she felt needed to be removed. She agreed that purchase option agreement be made null and void.
- Nina McKee of Black Point Road, stated there does need a solution for the schools. She felt the agreement should be canceled. She did not understand why all the zone changes, when the school isn't going to be build there.
- Liam Somers of Holmes Road, stated that he did not agree with this Resolve and the voters have been explicit with a No vote.
- Jim Pritchard of Maple Avenue, agreed with the previous speakers. How much money has been spent and where did it come from? What is the cost of the new survey and where is the funding coming from and how would the funds be replenished?
- Ken Goldstein of Juneberry Lane, felt the Council was doing something that is an injustice. Cut your losses, cut the agreement and not survey.
- Karen Smith of Philips Street, stated that she put her trust in the Council to work for her. She rejected the School and went on to further voice her concerns on this topic. It is time to walk away from the Downs and start new.

- Marvin Gates of Black Point Road, did not support the resolve and hoped that the Council would not support it as well. He felt the Council was not hearing the voters.
- Neil Gregoire of King Street, thanked Councilor Hamill for the article that he wrote in the newsletter. He did not support the resolve, but knew that the Council would pass it anyway. He asked the Council who they really represent?

Motion by Councilor Anderson, seconded by Councilor Sither, to move approval of Resolution 23-005, entitled “Land Option Agreement Path Forward” as follows:

Resolution 23-005

LAND OPTION AGREEMENT PATH FORWARD

BE IT RESOLVED by the Council of the Town of Scarborough, Maine, in Town Council assembled that,

WHEREAS, the Crossroads Holding LLC is the owner of certain parcels of land located between Payne Road, Haigis Parkway and Route One in the Town of Scarborough that consist of approximately 274.02 acres; and,

WHEREAS, the Crossroads Holding LLC and the Town of Scarborough are parties to a Credit Enhancement Agreement dated December 12, 2018 related to the development of the Property (the “CEA”), which requires the Seller to reserve land within the Property for the Buyer’s option to purchase for the development of a school or a community center; and,

WHEREAS, the School Building Committee was established by the Board of Education to study the needs of the Scarborough Public Schools facilities, conducted a year-long site selection search, evaluating 46 sites and recommended that the Town construct a unified K-3 school on a site located within the Property; and

WHEREAS, the Board of Education approved and recommended a site located within the Property to the Town of Scarborough to pursue a land Option Agreement to support the construction of a school solution; and

WHEREAS, Crossroads Holding LC and the Town of Scarborough executed Purchase Option Agreement dated September 6, 2023 to purchase 21.87 acres of land for a school, community center or municipal playground or fields at the cost of \$7.21M recommended by a third party appraiser hired by the Town of Scarborough and contemplated an additional \$3M in off-site roadway construction within the property; and,

WHEREAS, the Purchase Option Agreement states the Town of Scarborough shall undertake reasonable efforts by October 31st 2023 to make Zoning, CPD buffer, Tax Increment Financing and Credit Enhancement Agreement adjustments as outlined in the agreement; and

WHEREAS, the Town demonstrated reasonable efforts, completing first reading on all the items prior to October 31, 2023; and,

WHEREAS, on November 7th the K-8 Strategic School Solution requesting up to \$160MM failed at referendum with 5,813 voting NO and 3,364 voting YES, which included the \$10.21M of costs contemplated within the Purchase Option Agreement; and,

WHEREAS, the School Building Committee needs time to understand from the public the reasoning behind the failed referendum, determine a plan forward and propose a modified solution, which may still require the purchase of land where the proposed site may still be the best location for a school solution; and,

WHEREAS, the Town of Scarborough has an active Ad Hoc Community Center Committee that will need to undergo a site selection process to develop a design and cost estimates to come to voters with a future referendum request for a Community Center; and,

WHEREAS, the Town of Scarborough completed a Parks and Facilities Master Plan that indicates the need for additional recreational fields to meet community needs; and,

WHEREAS, the Purchase Option Agreement contemplated multiple attempts at referendum for a school solution and stated “In the event the voters of the Town do not approve the Project by referendum before December 31, 2024, Crossroads Holding LLC agrees to identify a parcel within the Property of approximately 5-10 acres to be determined by , which if acceptable in design and configuration to the Parties, is to be conveyed to the Buyer at a purchase price to be reasonably determined by the Parties through the joint appraisal process set forth in Section 1.2 of the LOI (the terms of which are incorporated herein by reference) or via such other means as the Parties may agree. Any Option Fee paid under this Agreement shall be applied to the purchase price of the Reserve Parcel;” and,

WHEREAS, as agreed to in the Purchase Option Agreement “ In the event that: 1) this Agreement automatically terminates due to Buyer’s failure to obtain approval of the Project by the voters of the Town at a referendum on or before December 31, 2024, or 2) this Agreement automatically terminates due to Buyer’s failure to satisfy the conditions to close as set forth in Section 8 below by March 29, 2024, or 3) if the Buyer elects not to purchase the Reserve Parcel, then in any such case the Buyer agrees to release the Seller from all existing obligations under Section 8.16 of the CEA thereafter.”

NOW, THEREFORE, BE IT RESOLVED, by the Scarborough Town Council, in Town Council assembled, the Town Council will execute the following plan to honor the commitments in the Option Agreement and make a decision on whether to proceed with the Purchase Option Agreement to purchase land for school, community center, municipal playgrounds or field use by January 17th, 2024:

November 2023:

- Table all actions related to the Purchase Option Agreement until January 17th, 2024 when a survey is completed
- Consult with the School and School Building Committee to deploy a survey as soon as possible to obtain public feedback to understand why the referendum failed; including the role the site and Purchase Option Agreement played; and
- Request Crossroads Holding LLC provide a non-binding sketch plan that indicates potential land use plans for the currently zoned VR4 parcel to allow the Town to more accurately estimate financial impact to be validated by a third party hired by the Town of Scarborough and to further inform CPD buffer requirements in the event the Council proceeds with the Option Agreement; and

December 2023:

- Table the CEA Action at the December 6th meeting until January 17, 2024.
- Act on Tax Increment Financing to expand the Scarborough Downtown Omnibus TIF Development Program to include parcels as outlined in the Purchase Option Agreement, plus additional parcels contiguous to the existing boundaries (Cottages at Sawyer and aspects of Enterprise Business Park) that may be in the Town’s best interest based on adherence to analysis required in 103.1 Credit Enhancement Policy; and

January 2024:

- With the survey feedback, the Council will make a “Go/No-Go” decision to proceed with the Option Agreement
- The Town Council will act on the Option Fee Payments, Zoning, CPD Buffers and the CEA changes on January 17, 2024; understanding that canceling the Purchase Option Agreement will result in 8.16 in the CEA being met.

Signed and sealed this 15th day of November 2023, on behalf of the Scarborough Town Council and the Town Manager of Scarborough, Maine. Signed by the Council Chair and attested by the Town Clerk.

Vote: 7 Nays. Motion Fails.

Order No. 23-104, 7:00 p.m. Public hearing and second reading on the proposed amendments to Chapter 405 Zoning Ordinance Section XX.C Crossroads Planned Development (CPD), Subsection D.2. Planned Developments relating to buffers. [Planning Director] [Tabled from the November 8th Town Council meeting]. Thomas J. Hall, gave a brief overview on this Order. Chairman McGee opened the public hearing. The following individual spoke:

- Tim Lambert, Iris Drive, spoke against this Order.

There being no further comments either for or against the hearing was closed at 8:28 p.m.

Motion by Councilor Caterina, seconded by Councilor Andersons, to move approval of the second reading on the proposed amendments to Chapter 405 Zoning Ordinance Section XX.C Crossroads Planned Development (CPD), Subsection D.2. Planned Developments relating to buffers, as follows:
BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 405- the Town of Scarborough Zoning Ordinance, Section XX.C Crossroads Planned Development (CPD), be and hereby is amended, as follows (additions are underlined; deletions are struck through):

SECTION XX.C. CROSSROADS PLANNED DEVELOPMENT (CPD)

[Adopted 08/21/13; Amended 10/07/15; Amended 05/16/18; Amended 05/20/2020; Amended 04/21/2021; amended 05/17/2023]

D. SPACE AND BULK REGULATIONS (CPD)

1. Conventional Developments

The space and bulk regulations of the B2 Regional Business District are applicable to all conventional developments.

2. Planned Developments

The space and bulk standards applicable to planned developments and the individual lots and buildings within an approved planned development shall be the development standards set forth in the approved Master Plan for the planned development subject to the following limits:

Maximum Net Residential Density The Residential Density Factors in Section VIIC. apply to all residential uses in this district. The maximum allowed residential density is 20 units per net residential acre.

Maximum Building Height 75 feet, except that any portion of a building located within 150 feet of a residential district shall be limited to 35 feet in height. [Amended 05/20/2020]

Maximum Impervious Surface Ratio 75 percent

Buildings and related parking and access drives must be setback from the boundary of the CPD District in accordance with the following standards and the minimum required setback area shall be treated as a buffer in accordance with Section VIII. if applicable. This requirement shall not preclude the construction of streets or utilities that cross the buffer strip. (Amended 05/16/18)

| Adjacent Zoning District | Land Use in CPD | Minimum Setback |
|---|--|-----------------|
| “Residential District” or “Natural Resource District” | <u>Municipal Buildings or Uses; Elementary and secondary schools; Residential Uses</u> | 15 feet |
| “Residential District” or “Natural Resource District” | <u>All other Land Uses</u> | 100 feet |

Vote: 7 Nays. Motion Fails.

Order No. 23-114, 7:00 p.m. Public Hearing and second reading on the proposed amendments to Chapter 405 – the Zoning Ordinance, Section XII. Sign Regulations G. Electronic Message and Time/Temperatures Signs. [Planning Director] Autumn Speer, gave a brief overview on this Order. Chairman McGee opened the public hearing. As there were no comments either for or against, the hearing was closed at 8:30 p.m.

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the second reading on the proposed amendments to Chapter 405 – the Zoning Ordinance, Section XII. Sign Regulations G. Electronic Message and Time/Temperatures Signs, as follows:

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 405 the Zoning Ordinance, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

SECTION XII. SIGN REGULATIONS.

G. ELECTRONIC MESSAGE AND TIME/TEMPERATURE SIGNS

Electronic message and time and/or temperature signs are permitted only in the B1, B2, B3, BO-R, RH, RH2, I, I-O, L-I, CPD and TVC, TVC-2, TVC-3, TVC-4 Districts subject to the following standards:

- 1. Electronic Message Signs are required to comply with the following conditions:**

- a. An electronic message sign may only be used as a reader board on a free-standing sign. Electronic message signs may not be used as stand-alone signs.
- b. An electronic message sign must not give the appearance of motion, flashing, blinking, or shimmering. When the display changes, it must change as rapidly as is technologically practicable with no phasing, rolling, scrolling, flashing, or blending.
- c. The message may be changed no more frequently than twice in each 60 minute period. [Amended 08/19/09]
- ~~d. Electronic message sign lettering or numbering height shall be a minimum of 8” and a maximum of 12” and where any industry standard for colors does not exist, may consist only of white or gold lettering or numbering on a black background. [Adopted 08/19/09][09/21/2011]~~

Vote: 7 Yeas. Motion Passes.

Order No. 23-115, 7:00 p.m. Public Hearing and second reading on the proposed amendments to Chapter 405 Zoning Ordinance Section VI Definitions and Chapter 405 Zoning Ordinance Section XX.C Crossroads Planned Development (CPD), Subsection B. Permitted Uses ii relating to coffee house use. [Planning Director] Autumn Speer, gave a brief overview on this Order. Chairman McGee opened the public hearing. The following individuals spoke:

- Neil Gregoire of King Street, spoke against the proposed amendments.
- Jack Faye of Mulberry Lane, spoke against the proposed amendments.
- Dan Bacon on behalf of Crossroads, spoke on this Order and thank the Planning Board for its recommendations.

There being no further comments either for or against the hearing was closed at 8:38 p.m.

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the second reading on the proposed amendments to Chapter 405 Zoning Ordinance Section VI Definitions and Chapter 405 Zoning Ordinance Section XX.C Crossroads Planned Development (CPD), Subsection B. Permitted Uses ii relating to coffee house use.

Motion by Councilor Anderson, seconded by Councilor Caterina, to amend the main motion to include the following verbiage in Section XX.C. I Basic Standards. B Permitted Uses:

Coffee Houses, drive-through service permitted. Coffee Houses with drive-through service must be compatible with the character of the specific district subject to Planning Board review.

Vote on amendment: 7 Yeas. Motion Passes.

Main Motion as Amended:

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 405 the Zoning Ordinance, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

SECTION VI. DEFINITIONS

Except where specifically defined herein, all words used in this Ordinance shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the word “shall”

is always mandatory; “occupied” or “used” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied”; the terms “building inspector” and “code enforcement officer” are synonymous. [12/01/04][10/04/17]

Coffee House:

An informal restaurant primarily offering coffee, tea, and other beverages, and where light refreshments and limited menu meals may also be sold.

Restaurant:

A business the principal activity of which is serving food to the public. [11/16/94]

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 405 the Zoning Ordinance, of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

SECTION XX.C. CROSSROADS PLANNED DEVELOPMENT (CPD)

I. BASIC STANDARDS

A. PURPOSE (CPD)

The purpose of the Crossroads Planned Development District is to allow a mix of uses, guided by design standards and a conceptual master plan, which results in a vibrant center for development located in the heart of Scarborough. This largely undeveloped area, within the center of the town, offers a unique opportunity for town representatives to work cooperatively with the area’s single land-owner, allowing mixed use development to evolve, while ensuring open space, preservation of natural resources, an efficient land use pattern for pedestrian, bicycle and transit use, a coordinated street plan and a cost effective extension of needed utilities. The mix of uses and efficient land development patterns are also intended to promote a number of community places, where people can gather, meet and cross paths.

B. PERMITTED USES (CPD)

i. The following uses are permitted in both conventional and planned developments:

1. Harness racing facilities.
2. Commercial outdoor recreation uses.
3. Fully enclosed places of assembly, amusement, culture and government, exclusive of video gambling, casino gambling and slot machine facilities.
4. Municipal buildings and uses.
5. Public utility facilities.
6. Accessory uses.

ii. The following uses are permitted only in planned developments:

7. Single-family dwellings but only as part of a planned development that includes a variety of housing types.
8. Two-family dwellings but only as part of a planned development that includes a variety of housing types.
9. Multifamily dwellings.
10. Multiplex dwellings.

- 11. Townhouses, limited to no more than eight (8) dwelling units per building.
- 12. Senior housing.
- 13. Residential and long-term care facilities for the ill, aged, or disabled. If the facility includes dwelling units, then the regulations governing the particular type of dwelling shall apply.
- 14. Dwelling units in a mixed use building.
- 15. Live/work units.
- 16. Accessory units.
- 17. Retail business and service establishments.
- 18. Personal service establishments.
- 19. Restaurants with no drive-through service, excluding coffee houses.
Coffee Houses, drive-through service permitted. Coffee Houses with drive-through service must be compatible with the character of the specific district subject to Planning Board review.

- ~~210.~~ Hotels and motels.
- ~~221.~~ Business and professional offices.
- ~~232.~~ Financial, insurance and real estate offices.
- ~~243.~~ Business services.
- ~~254.~~ Medical/diagnostic facilities.
- ~~265.~~ Health clubs.
- ~~267.~~ Non-municipal government buildings and uses.
- ~~287.~~ Elementary and secondary schools.
- ~~298.~~ Instructional and educational services.
- ~~3029.~~ Libraries.
- ~~310.~~ Museums.
- ~~321.~~ Non-residential institutional uses, including educational, religious, philanthropic, fraternal, or social institutions.
- ~~332.~~ Funeral homes.
- ~~343.~~ Places of worship.
- ~~354.~~ Adjunct uses, Place of worship.
- ~~365.~~ Golf courses.
- ~~376.~~ Casinos or slot machine facilities, as defined in Chapter 31 of Title 8 of the Maine Revised Statutes, that are located within the same planned development as a harness racing facility and are licensed by the State of Maine in accordance with the requirements of Chapter 31 of Title 8 of the Maine Revised Statutes, including the requirements that the casino or slot machine facility must be approved by the voters of the Town in a municipal referendum and that the Town Council has entered into a revenue-sharing agreement with the owner and/or operator of the casino or slot machine facility.
- ~~387.~~ Pet care facilities. [Adopted 05/16/18]

iii. The following uses are permitted only in planned developments and are subject to specific performance standards set forth in Section IX.

- ~~398.~~ Home occupations.
- ~~4039.~~ High technology facilities.
- ~~410.~~ Family day care homes.
- ~~421.~~ Group day care homes and day care facilities.
- ~~432.~~ Nursery schools.
- ~~443.~~ Passenger transportation facilities.
- ~~454.~~ Small-scale energy facilities.
- ~~465.~~ Telecommunication facilities.

476. Small Batch Processing Facilities, subject to the performance standards of Section IX.(M.3.) of this Ordinance with the exception of size limitation. Small batch processing facilities shall be limited to no more than 10,000 square feet of floor area included any accessory uses, such as retail area, a tap room, sampling area, storage or warehousing. [Adopted 10/07/15; amended 05/17/2023]

487. Research, development and light industrial. [Adopted 05/16/18]

498. Gasoline filling stations whether as a principal or accessory use and located so that all fueling facilities are located within one thousand (1,000) feet of the point of intersection of the centerlines of Payne Road and Holmes Road. Gasoline filling stations shall also be subject to the performance standards of Section IX.(X.) of this Ordinance. [Adopted 05/16/18]

iv. The following uses are permitted only in planned developments and are subject to the additional development standards of subsection D, of this district, including the standards on location and buffers under subsection D.14.: [Adopted 05/16/18]

5049. Manufacturing and assembly.

519. Food processing facilities.

521. Mini-warehouse/storage facilities.

532. Contractors offices, shops and storage yards.

543. Motor vehicle repair and service facilities including auto body shops, facilities for the repair or recreational vehicles, small engine repair facilities and vehicle sales accessory to these uses.

554. Sale, rental and/or service of heavy equipment or specialized motor vehicles (other than passenger cars).

565. Marijuana Manufacturing Facility. [Adopted 01/08/2020]

576. Marijuana Testing Facility. [Adopted 01/08/2020]

Vote: 5 Yeas. 2 Nays [Councilor Hamill and Shupe]. Motion Passes.

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval to move Order No. 23-122, to follow Order No. 23-120.

Vote: 7 Yeas. Motion Passes.

Chairman McGee stated that public comments could be made on the next three Orders: Order No 23-119, Order No. 23-120 and Order No. 23-122.

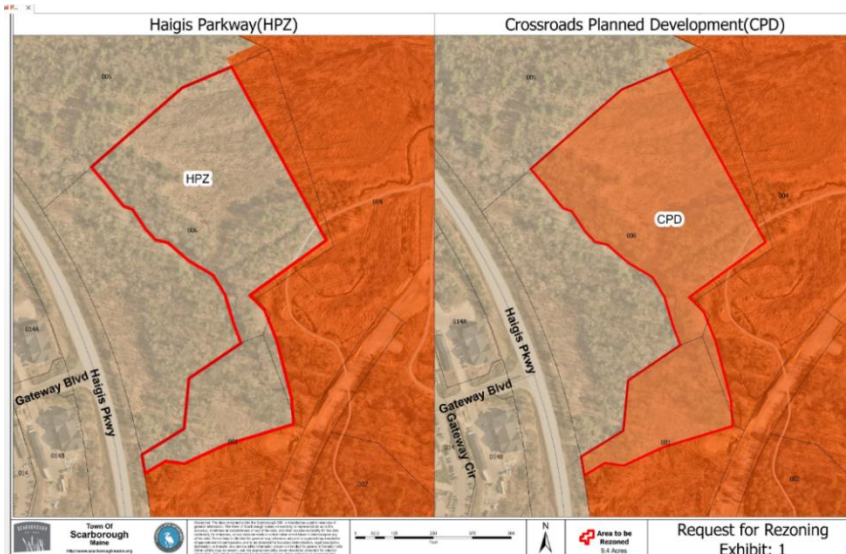
The following individuals spoke on the next three Orders:

- Jack Faye of Mulberry Lane, spoke against the Order No; 23-120 and 23-122.
- Alyson Bristol of Bayview Avenue, spoke against Orders No. 23-119 and 23-120.
- Nina McGee of Black Point Road, commented on these recommendation.
- Neil Gregoire, of King Street, stated the Council needs to bite the bullet, cut our losses and move forward. He is opposed to the next three items. Start the new year with a new plan.
- Liam Somers of Holmes Road. thanked the Council for listening

There be no further comments the public hearings were closed at 8:53 p.m.

Order No. 23-119, 7:00 p.m. Public hearing and second reading on the proposed Zoning Map change for a portion of R052006 and U056001, being an approximately 9.4-acre parcel located off of Haigis Parkway, currently zoned Haigis Parkway (HP) to Crossroads Planned Development (CPD). [Planning Director] [Tabled from the November 8th Town Council meeting.]

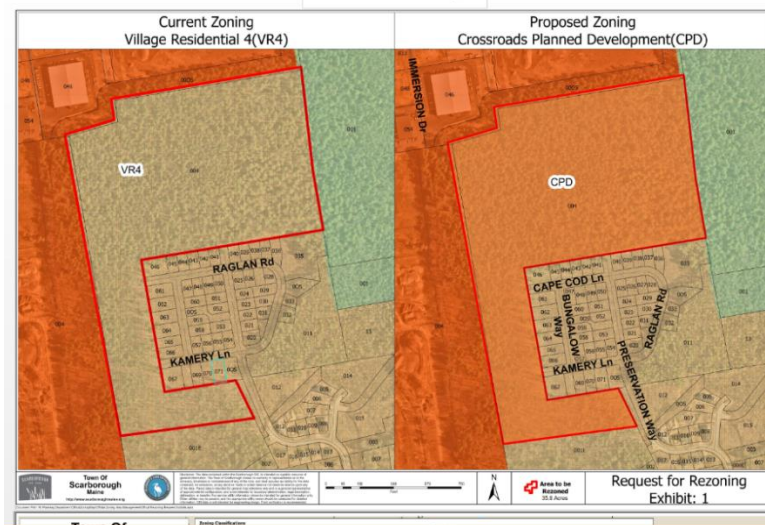
Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the second reading on the proposed Zoning Map change for a portion of R052006 and U056001, being an approximately 9.4-acre parcel located off of Haigis Parkway, currently zoned Haigis Parkway (HP) to Crossroads Planned Development (CPD), as follows:



Vote: 7 Nays. Motion Fails.

Order No. 23-120, 7:00 p.m. Public hearing and second reading to the proposed changes to the official zoning map for R053004, being an approximately 35.8-acre parcel located off of Preservation Way, currently zoned Village Residential 4 (VR-4) to Crossroads Planned Development (CPD). [Planning Director] [Tabled from the November 8th Town Council meeting.].

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval of the second reading on the proposed changes to the official zoning map for R053004, being an approximately 35.8-acre parcel located off of Preservation Way, currently zoned Village Residential 4 (VR-4) to Crossroads Planned Development (CPD), as follows:



Vote: 7 Nays. Motion Fails.

Order No. 23-122. Second reading on the request to use School Impact Fees to make the FY2023 required payments to Crossroads Holdings, LLC beginning on December 1, 2023 through November 2024, or until the Town closes on the purchase of the property with a total maximum exposure of \$175,000. [Town Manager]

Motion by Councilor Caterina, seconded by Councilor Sither, to move approval to approval the second reading on the request to use School Impact Fees to make the FY2023 required payments to Crossroads Holdings, LLC beginning on December 1, 2023 through November 2024, or until the Town closes on the purchase of the property with a total maximum exposure of \$175,000.

Vote: 7 Nays. Motion Fails.

Prior to Old Business, the Chair called for a brief minute recess at 8:58 p.m. the meeting was reconvened at 9:04 p.m.

OLD BUSINESS:

Order No. 23-105. First reading and schedule a public hearing and second reading on the request from 3iHoMe/POAH to enter into a Credit Enhancement Agreement with the Town of Scarborough, to develop a state of the art accessible apartment community in the Town Center at The Downs. [Housing Alliance] [Tabled from the September 20th Town Council meeting.] Thomas J. Hall, Town Manager, gave a brief overview on this Order. Corey Fellows, of POAH and a resident of Scarborough spoke on this Order. He then went on to speak on the process and the application that had been submitted.

The following individuals spoke on this Order:

- Alyson Bristol of Bayview Avenue, thought the project was a great thing; however, she felt that this would benefit the Developer.
- Susan Hamill of Bay Street, spoke against the project and went on to explain why. She urged the Council to vote no.
- Mitch Sturgeon of a member of the Board of Directors of 3iHoMe and lives with a disability, spoke in support of this project.
- Neil Gregoire of King Street, asked if the group was a non-profit and the response was yes as a 501c3 Non-profit. Was very sensitive with what this group was doing, and felt that the Downs should be making the guarantee.
- Corey Fellows responded to concerns that had been voiced.
- Paul Linett of 3iHoMe, spoke on the attention that this project has gotten. There is a desperate need for affordable housing.
- Susan Hamill, Bay Street, made further comments regarding this Order.

Motion by Councilor Caterina, seconded by Councilor Anderson, to move approval first reading on the request from 3iHoMe/POAH to enter into a Credit Enhancement Agreement with the Town of Scarborough, to develop a state of the art accessible apartment community in the Town Center at The Downs and schedule a public hearing and second reading for Wednesday, December 6, 2023.

Vote: 6 Yeas. 1 Nay [Councilor Hamill]. Motion Passes.

Order No. 23-116. Second reading on the proposed Chapter 602B - the Town of Scarborough Temporary Event Overflow Parking Ordinance. [Planning Director] Autumn Speer, Planning Director, gave a brief overview on this Order.

The following individuals spoke on this Order:

- Matthew Manahan, Attorney representing the Prouts Neck Improvement Association, stated that his client is requesting additional notification to the public by increasing notification to public.
- Dan Warren, Attorney representing Greg Wilfert – One Beach Corporation, stated that they did not support the proposed amendment and felt the proposed Ordinance was sufficient.
- Marvin Gates of Black Point Road, spoke in support of the proposed amendment.
- Susan Hamill of Bay Street how does this apply to overflow parking at Pine Point? The Planning Director responded that this Ordinance would not apply to the area.

Motion by Councilor Anderson, seconded by Councilor Caterina, to move approval of the second reading on the proposed Chapter 602B - the Town of Scarborough Temporary Event Overflow Parking Ordinance, as follows:

Motion by Councilor Anderson, seconded by Councilor Hamill, to move approval to amend the main motion to section F.3 Public Hearing to the following:

The Town Council shall hold a public hearing on all new applications for permit under this Ordinance. Notice of the hearing shall be advertised in a local daily newspaper, at least ~~seven (7) days~~ fourteen (14) days prior to the meeting at the expense of the applicant. Abutters within ~~500'~~ 1000 feet to the proposed site shall be notified in writing ~~10 days~~ 20 days prior to the public hearing.

Vote on amendment: 3 Yeas. 4 Nays [Councilors Caterina, Cushing, Shupe & Sither] Motion Fails.

Main Motion as Follows:

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 602B the Temporary Event Overflow Parking Ordinance, of the Town of Scarborough, Maine, be and hereby is adopted, as follows:

Chapter 602B – Town of Scarborough Temporary Event Overflow Parking Ordinance Adopted xxxx

ARTICLE I - TITLE, AUTHORITY, AND PURPOSE

A. TITLE

This Ordinance shall be known as and may be cited as the Temporary Event Overflow Parking Ordinance of the Town of Scarborough, Maine.

B. LEGAL AUTHORITY

This Ordinance is adopted pursuant to the home rule powers as provided for in VIII-A of the Maine Constitution and 30-A M.R.S.A. §3001.

C. PURPOSE

To allow for temporary event overflow parking. Accordingly, it is deemed necessary in the interests of public welfare to regulate the provision of temporary event overflow parking in order to protect the public health and safety.

Temporary event overflow parking areas used for special event parking (to accommodate occasional or seasonal overflow volumes) may be used with pervious ground cover where such cover can sustain the traffic and use volumes. The owner of the property shall be responsible for the maintenance of such parking in a clean, mud and dust-free condition. Grass and mulch are examples of pervious ground cover; gravel and pavement are examples of impervious surfaces.

D. PROHIBITIONS

No person shall permit on her/his property, temporary event overflow parking until a permit has been obtained from the Town Council.

E. DEFINITIONS

Any term not specifically defined herein shall be given its customary and ordinary meaning. For the purpose of this Ordinance, the following terms shall be defined as hereinafter set forth:

Disturbed Area:

Means all land areas of a Parcel that are stripped, graded, grubbed, filled, or excavated at any time during the Site preparation or removing vegetation for, or construction of, a project. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include redevelopment and new Impervious Areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

Operator:

"Operator" means the person responsible for the managing of the event for which the overflow parking area is requested. In the event that no Operator exists, the owner or, in the event of her/his non-availability, the lessee of the ground encompassing the event area, shall be deemed to be the Operator under these regulations.

Temporary Event Overflow Parking:

Temporary Event Overflow Parking areas shall be defined as off-street parking areas where the Operator of an event may temporarily provide parking for vehicles for a limited period of time. Temporary Event Overflow Parking areas shall not be used more than thirty (30) days per calendar year. Temporary Event Overflow Parking areas are not permitted greater than 40,000 square feet in size and may not contain more than 115 spaces, nor may any single event location utilize more than one Temporary Event Overflow Parking area. Applicants seeking to use this exception for site design shall provide information in the form of a signed, notarized letter stating the number of times per year that the overflow parking areas will be used. Number of uses per year shall be noted as part of the permit application.

F. PERMIT APPLICATION PROCESS

1. New Applications

New applicants may apply at any time during the year. Applications for a permit shall be procured from the Town Clerk, completed and signed by the applicant and filed with the Town Clerk, and when submitted to the Town Council shall bear the recommendation for approval or disapproval with reasons

noted by the Town Engineer, Public Works Director, Planning Director, Police Chief, Fire Chief and the Tax Collector.

2. Staff Review

Upon the filing of an application, Town staff shall review the application and notify the applicant by letter issued no later than fifteen (15) business days after the filing of the application as to whether the application is deemed complete, or if not, the specific provisions of this Ordinance for which additional information must be provided.

Upon receipt of each application request for a Temporary Event Overflow Parking License the following shall occur:

- (a) The Town Engineer, or designee, shall review the permit application submittal and narrative and shall report findings and any proposed conditions of approval in writing to the Town Clerk; and,
- (b) The Public Works Director, or designee, shall review the permit application submittal and narrative and shall report findings and any proposed conditions of approval in writing to the Town Clerk; and,
- (c) The Planning Director, or designee, shall review the permit application submittal and narrative and shall report findings and any proposed conditions of approval in writing to the Town Clerk; and,
- (d) The Police Chief, or designee, shall review the permit application submittal and narrative and shall report findings and any proposed conditions of approval in writing to the Town Clerk; and,
- (e) The Fire Chief, or designee, shall review the permit application submittal and narrative and shall report findings and any proposed conditions of approval in writing to the Town Clerk; and,
- (f) The Tax Assessor shall submit a report to the Town Clerk on any delinquencies or payments due the Town at the time the license is requested or renewed; and,
- (g) The Town Clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this ordinance and shall report such findings in writing to the Town Council.

If the applicant objects to the determination that its application is not complete, then the completeness of the application may be reviewed by the Town Council at its next regularly scheduled meeting for which adequate time for notice is available. Once the application has been deemed complete either by Town staff or by the Town Council, the application shall be considered as an agenda item at the next regularly scheduled Town Council meeting for which adequate time for notice is available.

3. Public Hearing

The Town Council shall hold a public hearing on all new applications for permit under this Ordinance. Notice of the hearing shall be advertised in a local daily newspaper, at least seven (7) days prior to the meeting at the expense of the applicant. Abutters within 500' to the proposed site shall be notified in writing 10 days prior to the public hearing.

4. Town Council Action and Notification

Within thirty (30) days after the Town Council first substantively considers the application (or longer with the agreement of the Operator) the Town Council shall either issue a Permit, with or without conditions, to the Operator or deny a Permit to the Operator. Any decision of the Town Council shall be in writing and shall set forth with specificity the reasons for the action taken, and in the case of denial, shall include a list of steps which, if followed by the Operator, would result in a Permit being issued, if in the judgement of the Council, the problems that resulted in denial can be cured.

The Town Council shall issue a permit for temporary event overflow parking only if it finds the standards in this Ordinance are met and the applicant demonstrates that the temporary event overflow parking will be conducted in a manner so as not to jeopardize the public health, safety and welfare and that the applicant is not delinquent in the payment of any taxes or fees owed to the Town of Scarborough. When considering the issuance of a permit, the Town Council may seek input from the Town Engineer, Public Works Director, Planning Director, Police Chief, Fire Chief, and other such officials or persons as it deems appropriate, and shall seek from them relevant information, including but not limited to any safety problems that arose at any event overflow parking areas within the previous two years (a) held at the same location or (b) managed or promoted by the operator or a related entity.

A new permit, when granted, shall be valid until December 30th, immediately following said granting of permit.

The Town Council shall deny a permit for event overflow parking if it finds that any of the standards set forth in this Ordinance are or would not be met. If the Town Council fails to either issue the permit or send a notice of denial within the time allowed, the permit shall be deemed to have been denied. A party aggrieved by the decision of the Town Council may appeal to the Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

5. Renewal Permits

Once granted, an existing permit may be renewed by the Town Clerk, provided that the holder of the existing permit makes application for renewal on or before December 30th. If the holder applies for renewal on or before December 30th, the existing permit shall remain in effect until final action on the renewal application. Otherwise, the existing permit shall expire on December 30th and an application for a new permit must be filed.

For renewal applications filed on or before December 30th, the Clerk shall process and issue renewal permits in the same manner as the Town Council processes and issues new permits, except that no public hearing is required for a renewal. The Clerk may renew a permit only if the Clerk is satisfied that the application meets all the requirements of this ordinance. If the Clerk is not satisfied that the application meets all the requirements of this ordinance, the Clerk shall refer the application to the Town Council, which shall process the application in the same manner as an application for a new permit.

G. PERMIT APPLICATION REQUIREMENTS

The permit application shall include the following:

1. An existing conditions plan, including curb cuts, utilities, trees, plantings, drainage features, wetlands and other site features.
2. A narrative and site plan describing the proposed event and temporary event parking area, including the location of proposed parking spaces and any proposed site changes and demonstrating how the proposal meets the requirements below:
 - a) The maximum size for proposed event overflow parking areas, including any disturbed area, shall not exceed 40,000 square feet, and any single event location may utilize no more than one Temporary Event Overflow Parking area.
 - b) The maximum number of days used shall be 30 per calendar year. The applicant is responsible for including the proposed days the parking area will be used.
 - c) The maximum number of vehicles parked shall not exceed 115 vehicles.
 - d) The proposed parking area shall not encroach on public rights-of-ways.

- e) Any temporary structure shall comply with the rules and policies of the Town. Grounds, buildings, and related facilities shall be constructed, maintained and used in a manner as to prevent fire and in accordance with the applicable State and local fire prevention regulations.
 - f) Temporary Event Overflow Parking areas may only be used between the hours of 9am and 9pm Sunday to Thursday and 9am to 10pm Friday and Saturday. The proposed time of use is required as part of the application.
 - g) If the parking area is to be used at night, provide a lighting plan including temporary illumination to provide for the safety of the persons parking. The parking area shall be adequately lighted, but the lighting shall not unreasonably reflect beyond the parking boundaries.
 - h) Service road(s) and parking spaces shall be located and developed to permit convenient and safe movement of vehicular and pedestrian traffic and free passage of emergency vehicles.
 - i) The proposed parking area shall not impede fire and emergency access nor block fire lanes.
 - j) Each temporary event parking area shall be well drained and so arranged to provide sufficient space for vehicles.
 - k) Trees, underbrush, large rocks and other natural features shall be left intact and undisturbed whenever possible, and natural vegetative cover will be retained, protected and maintained so far as possible to facilitate stormwater drainage, prevent erosion, and preserve scenic attributes.
 - l) Overflow parking areas shall not impact the natural drainage patterns on the site. The applicant must demonstrate that the use will not have an adverse impact on drainage patterns from or to an abutting property or public right-of-way.
 - m) The parking area shall be designed and maintained to prevent soil or debris from being tracked onto a public street and to prevent dust trespass onto neighboring properties. Exiting for overflow parking areas shall be arranged such that the vehicles must pass over an apron of crushed stone, asphalt or other approved surface to allow any mud to track off prior to vehicle entry onto a public street.
 - n) Dust control shall be applied as necessary to prevent dust trespass onto adjoining properties. Planned measures must be provided on the proposed plans.
 - o) The Operator shall ensure that adequate communication between local law enforcement, fire prevention, and emergency personnel and any private security personnel, including emergency response protocols is provided.
 - p) Grounds shall be maintained free from accumulations of refuse and any health and safety hazards constituting a nuisance. The area where vehicles are parked shall have one (1) fifty (50) gallon refuse container or its equivalent for every twenty-five (25) vehicles and an appropriate number of recycling containers.
 - q) All refuse shall be collected from the parking area at least once per day of use, or more often if necessary, and disposed of at a lawful disposal site. The Operator may submit a detailed alternative plan for refuse disposal to be reviewed and, if reasonable and appropriate, approved by the Town Council.
3. Provide a pedestrian access plan to demonstrate safe access for the ingress and egress of pedestrians from the overflow parking lot to the event location. This plan may include temporary signage and/or permanent improvements.
 4. Provide a vehicular access plan to demonstrate vehicle movement for the ingress and egress of vehicles from the overflow parking lot and the event location, and the proposed traffic measures that may be necessary. The plan may include temporary signage and/or permanent improvements.

5. Provide a traffic control plan/and or identify personnel required to insure safety to all members of the traveling public, including pedestrians, along all public roadways in the proximity of the event and/or along which the public is likely to travel to reach the event shall be provided.
6. Provide an Operation & Maintenance Plan detailing the measures that will be taken during and after the event to stabilize, revegetate, aerate, and repair the parking area or related access ways.

Information submitted by the applicant is to be reviewed by the Town Engineer, Public Works Director, Planning Director, Police Chief, and Fire Chief to determine whether these standards have been demonstrated. Additional materials may be required to ensure compliance with the standards of this ordinance.

Temporary Event Overflow Parking permits are subject to conditions of approval that may be required for any of the above based on the specific site and request.

H. PERMIT FEES.

Fees for this Ordinance shall be set forth as specified in Chapter 311, *Schedule of License, Permit and Application fees*.

I. BOND AND INSURANCE.

The Operator shall carry public liability insurance in at least the following amounts: \$1,000,000 Bodily Injury (per person); \$1,000,000 Bodily Injury (per occurrence); and \$1,000,000 property damage. A copy of the insurance policy shall be provided to the Town at the time of the filing of the application. Additionally, if the Operator carries public liability insurance in an amount greater than the figures set forth in this Section, then the Town shall be named as an additional insured.

J. PENALTIES.

Any person, including the Operator, violating this Ordinance shall be punished by a civil penalty of at least \$500.00 but not more than \$1,000.00. The failure to comply with conditions imposed upon the issuance of a temporary event overlay parking permit shall be a violation of this Ordinance. Each violation shall be considered a separate offense, and each day a violation is allowed to exist shall be considered a separate offense. The civil penalty provided for in this Section 602B shall be in addition to any other penalty provisions provided within this Ordinance, and shall be in addition to all other remedies to the Town of Scarborough at law and in equity. The provisions of this Ordinance shall be enforced by the Town Manager or such other municipal official or employee as the Town Manager shall designate in writing.

K. REVOCATION.

The Council may revoke a temporary event overflow parking permit issued pursuant to this Ordinance upon finding that the Operator has violated one or more of the provisions of its temporary event overflow parking permit, if the Council finds that the violations are likely to occur again in future temporary event overflow parking sites sponsored by the Operator at the temporary event overflow parking area subject to the permit and where the previous violations occurred. The Council may revoke a permit only after the Operator has been given notice and an opportunity to be heard. In the case of a revocation, the Operator must receive notice of the proposed revocation at least fourteen (14) days prior to the revocation hearing. A decision by the Council to revoke a permit shall not take effect until fourteen (14) days after the Operator has actual notice of the decision. The Council may, however, shorten any of the time periods prescribed in this Section if the Council finds that an emergency posing an imminent threat to

the public health, safety or welfare exists and requires immediate action. The decision of the Council to revoke a permit is not appealable to any other board or agency within the Town of Scarborough.

L. SEVERABILITY.

The invalidity of any provision of this Ordinance shall not invalidate any other part thereof.

M. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption of the same by the Town Council of the Town of Scarborough.

Vote: 6 Yeas. 1 Nay [Councilor Hamill] Motion Passes.

Motion by Councilor Caterina, seconded by Councilor Anderson, to move approval to go past 10:00 pm. deadline to take up new business.

Vote: 7 Yeas. Motion Passes.

NEW BUSINESS:

Order No. 23-128. First reading and schedule a public hearing and second reading on the proposed amendments to Chapter 311 – the Schedule of Fees. [Planning Director] Autumn Speer, Planning Director, gave a brief overview on this Order.

Motion by Councilor Caterina, seconded by Councilor Anderson, to move approval of the first reading on the proposed amendments to Chapter 311 – the Schedule of Fees and schedule a public hearing and second reading for Wednesday, December 6, 2023.

Motion by Councilor Anderson, seconded by Councilor Caterina, to amend the main motion to change the \$500 amount to \$300.

Vote on amendment: 7 Yeas. Motion Passes.

Main motion as amended:

**Chapter 311 – the Town of Scarborough
Schedule of Fees Ordinance**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 311 – the Town of Scarborough Schedule of Fees Ordinance, be and hereby is amended, by adding the following new section (additions are underlined; deletions are struck through):

| | |
|---|---|
| <u>Chapter 602B – Temporary Overflow Parking Ordinance</u> | <u>Fee</u> |
| <u>Parking Permit Fee</u> | <u>\$300 500 per day requested Not to Exceed \$5,000</u> |

Vote 7 Yeas. Motion Passes.

Order No. 23-129. First reading on the new request for a Cannabis Establishment License from Nickolas Levasseur, d/b/a Pine Point Medical, LLC, located at 137 Pleasant Hill Road for a Medical Cannabis Products Manufacturing Facility and schedule a public hearing and second reading. *[Assistant Town Manager]* Liam Gallagher, Assistant Town Manager, gave a brief overview on this Order.

Motion by Councilor Caterina, seconded by Councilor Anderson, to move approval of the first reading on the new request for a Cannabis Establishment License from Nickolas Levasseur, d/b/a Pine Point Medical, LLC, located at 137 Pleasant Hill Road for a Medical Cannabis Products Manufacturing Facility and schedule a public hearing and second reading for Wednesday, December 6, 2023.

Vote: 7 Yeas. Motion Passes.

Item 10. Non-Action Item. None at this time.

Item 11. Standing and Special Committee Reports and Liaison Reports.

- Councilor Anderson gave an update on a meeting that he had had with Maple Avenue residents. The Police Chief and staff were also present to answer questions.
- Councilor Caterina commented on Councilor Chair appointments.
- Chairman McGee asked that Councilors send him what you would be interested.
- Councilor Sither reminded the Council of the School Board meeting/workshop and the Communications Committee has asked that Councilor Cushing to writ

Item 12. Council Member Comments.

- Councilor Anderson congratulate Councilor Cushing and Councilor Caterina on being elected to serve on the Council and to Chairman McGee and Vice Chair Sither.
- Councilor Cushing thanked Councilor Anderson for his kind words. He hopes to find some way to engage participation in these meetings of a broader segment of the community.
- Chairman McGee thanked Councilor Anderson for his role as chair this past year and appreciated all the work that goes into it. Happy Thanksgiving to everyone.

Item 13. Adjournment. Motion by Councilor Caterina, seconded by Councilor ,Sither to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 7 Yeas. Motion Passes.

Meeting adjourned at 10:15 p.m.

Respectfully submitted,

Yolande P. Justice
Town Clerk