

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MAY 4, 2016**  
**COUNCIL WORKSHOP TO REVIEW COUNCIL GOALS– 6:30 P.M**  
**REGULAR MEETING – 7:00 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.
- Item 4.** General Public Comments.\*
- Item 5.** Minutes: April 20, 2016 – Regular 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. 16-023, 7:00 p.m. Public Hearing and second reading** on the amendment to the Town of Scarborough Official Zoning Map to rezone the parcel located at 11 Willowdale Road and identified as Map U39, Lot 41 as shown on the Town Assessor’s Map from the General Business District (B3) to the Residential 4 District (R4).

**Order No. 16-024, 7:00 p.m. Public Hearing** on the on the proposed FY2017 Municipal/School Budget.

**OLD BUSINESS:** None at this time.

**NEW BUSINESS:**

**Order No. 16-033.** First reading and refer to the Planning Board on the proposed third amendment to Contract Zone V – Scarborough Realty, LLC [Mercedes-Benz Dealership] located at 137 US Route One.

**Order No. 16-034.** First reading and refer to the Planning Board on the proposed third amendment to Contract Zone I – Frank R. Goodwin, E & F Limited Liability Company and Raymond C. Field [Land Rover Dealership], located at 371 US Route One.

**Order No. 16-035.** Act to authorize the Town Manager enter into a “Use Agreement” with the City of South Portland to establish a bus stop to be located on Gallery Blvd.

**Order No. 16-036.** Act to authorize the Town Manager to sign documents authorizing acceptance of \$8,353.00 or any portion thereof, to be placed in the Asset Forfeiture Account. [This money is the Police Department’s equitable share for its contribution to the investigation of criminal cases].

- 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 – MAY 4, 2016**  
**REGULAR MEETING – 7:00 P.M.**

**Order No. 16-023.** Move approval on the amendment to the Town of Scarborough Official Zoning Map to rezone the parcel located at 11 Willowdale Road and identified as Map U39, Lot 41 as shown on the Town Assessor's Map from the General Business District (B3) to the Residential 4 District (R4), as follows:



**TO:** Scarborough Town Council  
**FROM:** Karen Martin, SEDCO  
**DATE:** March 31, 2016  
**SUBJECT:** Zone Change Request,  
11 Willowdale Road

The property owner of 11 Willowdale Road, Mr. Paul Rousseau, requests a zone change from B3 – General Business to R4 – residential. The property (Map U039041) is 1.67 acres with a 1,366 square foot single family home, which has been used recently as an office. The property is served by public water and sewer.

As shown on the attached map, this property abuts the R4 zone to the south. The property to the north is zoned B3, but the structure on the property is a single family home and is used as such. The land directly across the street from the property is zoned B3, but is an occupied single family house with an antique barn. The property drops off in the back. From the edge of the property, you can see the back façade of Cliff's.

Mr. Rousseau is requesting the Zone Change in order to build duplex units. The current zoning (B3) would allow dwelling units in a mixed use building or in Live Work Units. Standard duplex units would not be allowed under B3.

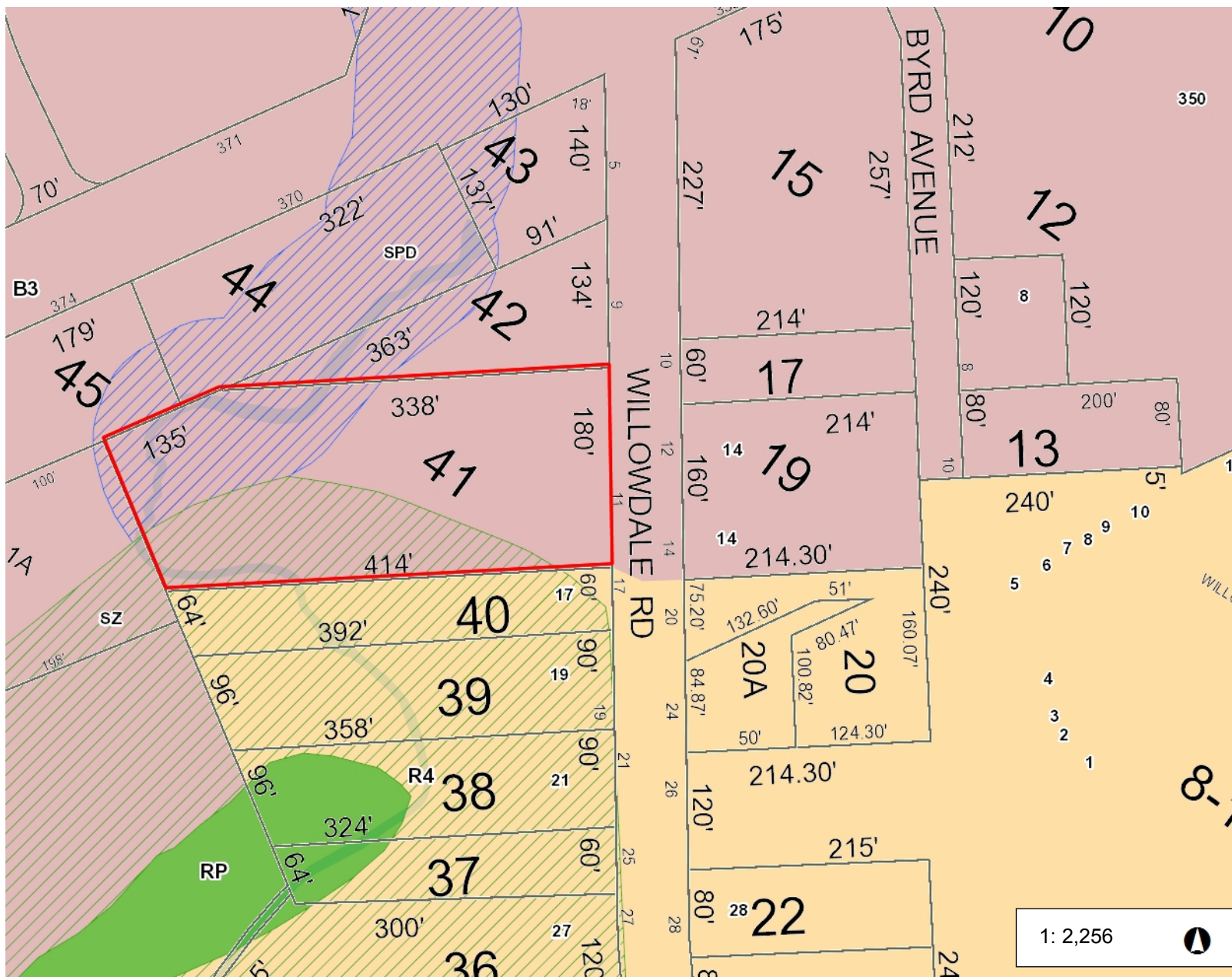
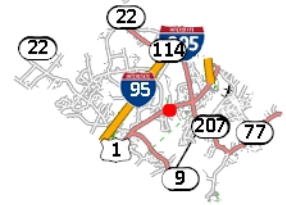
Under the R4 zoning district, 2-family units are permitted. Mr. Rousseau is proposing to keep the original house and construct two 2-family homes for a total of 5 units. Should the zone change be approved, he would then need to go to the Planning Board for Subdivision approval to build the units.

The proposed re-zoning was presented to the Long Range Planning Committee in March. While the LRPC was supportive, they requested that we evaluate changing the zoning for other similarly situated properties on lots 17, 19 and 42. We reached out to each of the property owners. The owner of lot 19 preferred to remain in B3. We have not heard from owners of lots 17 and 42. At this time we are only recommending that lot 41 be rezoned.





# Willowdale Road: Proposed Rezoning



## Legend

- Address Points
- Parcels with Owner Info
- Shoreland Zoning
- Stream Protection Zoning
  - Stream Protection Overlay
  - Stream Protection 2 Overlay
- Zoning
  - B1 - Local Business
  - B2 - Regional Business
  - B3 - General Business
  - CPD - Crossroads Planned Devel
  - BOR - Business Office Research
  - DVR - Dunstan Village Residentie
  - HPZ - Haigis Parkway
  - I - Industrial
  - LI - Light Industrial
  - R2 - Residential 2
  - R3 - Residential 3
  - R4 - Residential 4
  - R4A - Residential 4A
  - TND - Traditional Neighborhood
  - RF - Rural Residence, Farming
  - RFM - Rural Residence, Farming
  - RH - Running Hill Mixed Use
  - RH2 - Running Hill Transition

## Notes

Lot to be rezoned is outlined in red. If approved, this lot will move from B3 to R4

3/31/2016

1: 2,256



## Disclaimer

This map is a user generated static output from the Town of Scarborough internet mapping site (WebGIS) and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

0.1 0 0.04 0.1 Miles

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
Town of Scarborough, Maine

**PORTION OF PLANNING BOARD MINUTES  
OF APRIL 25, 2017**

4. The Planning Board will conduct a public hearing to receive comment on amendments to the Zoning Map. This zoning map amendment proposes to property identified on the Scarborough Tax Maps as U39, Lot 41 from General Business District (B3) to Residential 4 (R4). The property is further identified as 11 Willowdale Rd.\*

Mr. Bacon explained to the Board that the applicant would like to change the current zoning from B3 (General Business District) to R4 (Residential District). Mr. Bacon informed the Board that the item has been before the Long Range Planning Committee and to the Council for first reading.

Karen Martin, SEDCO, explained to the Board that she has been working with the applicant, Mr. Rousseau over the past year. The property currently has a residential dwelling and Mr. Rousseau would like to rezone the property for possible future development of duplexes.

Mr. Fellows opened the public comment; there was no public comment. Mr. Fellows closed the public comment.

The Board was in favor of the zoning request; the consensus by the Board was any future development on the site would be back before them for review.

Mr. Fellows stated the Board showed favorable support for the item.

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MAY 4, 2016**  
**REGULAR MEETING – 7:00 P.M.**

**Order No. 16-024.** The second reading on the on the proposed FY2017 Municipal/School Budget, will be scheduled for the next Town Council meeting on Wednesday, May 18, 2016.

## Budget Order for Fiscal Year 2017

Be it ordered that the Scarborough Town Council will schedule the second reading on the Fiscal Year 2017 Budget for **Wednesday, May 18, 2016**, on the line item appropriations and expenditures for all offices, agencies and departments of the Town as follows, and approves other additional operating expenditures which may result from the receipt of Federal or State funds or other grants and subsidies not requiring local taxation:

SUMMARY MUNICIPAL OPERATING BUDGET 2017	
TOTAL ADMINISTRATION	\$ 1,348,187
TOTAL TOWN CLERK/ELECTIONS	193,957
TOTAL HUMAN RESOURCE/GENERAL ASSISTANCE	320,015
TOTAL FINANCE ALL DIVISIONS	1,024,430
TOTAL MUNICIPAL INFORMATION SYSTEMS	1,183,430
TOTAL PLANNING DEPARTMENT ALL DIVISIONS	951,269
TOTAL COMMUNITY SERVICES ALL DIVISIONS	2,753,340
TOTAL LIBRARY NET – TOWN APPROPRIATION	1,099,898
TOTAL SEDCO	224,694
TOTAL FIRE ALL DIVISIONS	4,641,596
TOTAL POLICE ALL DIVISIONS	6,228,611
TOTAL PUBLIC WORKS ALL DIVISIONS	6,748,940
TOTAL DEBT (Town Only)	<u>4,875,093</u>
MUNICIPAL TOTALS	\$31,593,460

Be it further ordered, that the Scarborough Town Council hereby appropriates the sum of **\$75,000** for Resident Senior Property Tax Relief as authorized under – Chapter 313 – Property Tax Assistance Ordinance; and,

Be it further ordered, that the Scarborough Town Council hereby appropriates, for school purposes, the Education Operating Budget (including Adult Education, Food Services and school debt), the sum of **\$47,508,938** and the Town of Scarborough raises as the local share for the Education Operating Budget, the sum of **\$39,833,562** and,

Be it further ordered, that the Town Council hereby authorizes the Chairperson of the Town Council to sign the Municipal Expenditure Warrant approving all expenditures paid at the regular meetings of the Town Council and;

Be it further ordered, that the Town of Scarborough hereby adopts the **Schedule of License, Permit and Application Fees** as presented and attached hereto – Chapter 311 – Town of Scarborough, Schedule of License, Permit and Application Fees, for Budget Presentation FY 2017; and,

Be it further ordered, that the Town of Scarborough hereby appropriates the Town's due portion of the County Tax, in the amount of **\$2,568,852** for the period July 1, 2016 through June 30, 2017; and,

Be it further ordered, that the Scarborough Town Council hereby appropriates for capital purposes, the sum of **\$1,380,830** for school capital programs and **\$1,194,470** for town capital equipment and **\$2,194,132** for town capital improvements; for a total Capital Budget of **\$4,769,432** to be funded from property taxes, lease and bond arrangements and other local, state and federal sources; and,

Be it further ordered, that the Total Gross Budget of **\$87,586,082** this total less estimated revenues and other credits of **\$27,188,603** result in a Net Appropriation of **\$60,397,479**, which shall be raised from taxation. The Scarborough Town Council further fixes **Monday, October 17, 2016**, and **Wednesday, March 15, 2017**, as the dates upon each of which one-half of such tax is due and payable, and pursuant to 36 M.R.S.A. Section 505.4 with interest to accrue upon taxes due and unpaid after each such date at the rate of **7.00%** per annum.

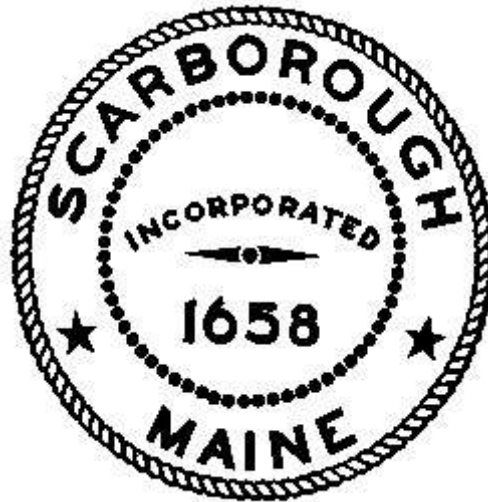
Be it further ordered, that in accordance with 36 M.R.S.A Section 506, the Tax Collector/Treasurer is authorized to accept prepayment of taxes not yet committed or prior to any due date and pay no interest thereon.

In accordance with 36 M.R.S.A. Section 506-A, a taxpayer that pays an amount in excess of that finally assessed shall be repaid the amount of overpayment plus interest from the date of overpayment at the annual rate of **3.00%**.

Be it further ordered, that the Town Council hereby authorizes the Finance Director-Tax Collector/Treasurer or Deputy Tax Collector/Treasurer to withhold monies payable to the Town of Scarborough to cover taxes due pursuant to M.R.S.A. Title 36, Section 905; to sign on behalf of the Town, the necessary deeds and liens and tax settlements; and to invest funds in accordance with M.R.S.A. Title 30-A, Section 5706; in accordance with 36 M.R.S.A. Section 906, the Tax Collector/Treasurer is authorized to apply any tax payment received as payment for any property tax against outstanding or delinquent taxes due on that property in chronological order beginning with the oldest unpaid tax bill and processed in the order of liens and fees, interest and then to principal and, after the date of perfection of the tax, the Tax Collector/Treasurer is authorized to discharge any obligation to collect unpaid property taxes in the amount of \$5.00 or less and remove same from the municipal books, pursuant to 36 M.R.S.A. Section 970-A.

Be it further ordered, that in the event that that the 2017 Municipal Budget exceeds the Property Tax Levy Limit for fiscal 2017, pursuant to Title 30-A, Section 5721-A of the Maine Revised Statutes, as amended, it is the intent of the Town Council to increase the commitment to greater than the Property Tax Levy Limit.

**CHAPTER 311  
TOWN OF SCARBOROUGH  
SCHEDULE OF LICENSE, PERMIT AND APPLICATION FEES**



Adopted September 6, 1995  
Amended February 28, 1996  
Amended March 21, 1996  
Amended March 5, 1997  
Amended June 18, 1997  
Amended October 1, 1997  
Amended March 18, 1998  
Amended January 20, 1999  
Amended May 16, 2001  
Amended December 5, 2001  
Amended May 1, 2002  
Amended October 2, 2002  
Amended November 20, 2002  
Amended February 5, 2003  
Amended May 7, 2003  
Amended June 18, 2003  
Amended November 5, 2003  
Amended May 5, 2004  
Amended June 2, 2004  
Amended September 2, 2004  
Amended October 6, 2004  
Amended November 3, 2004  
Amended February 2, 2005  
Amended April 6, 2005  
Amended May 3, 2005  
Amended June 15, 2005  
Amended February 1, 2006  
Amended February 16, 2006

Amended March 15, 2006  
Amended May 3, 2006  
Amended June 21, 2006  
Amended September 6, 2006  
Amended March 7, 2007  
Amended May 2, 2007  
Amended July 18, 2007  
Amended May 21, 2008  
Amended August 20, 2008  
Amended May 6, 2009  
Amended September 16, 2009  
Amended February 17, 2010  
Amended May 5, 2010  
Amended May 19, 2010  
Amended February 16, 2011  
Amended May 4, 2011  
Amended May 18, 2011  
Amended December 7, 2011  
Amended January 18, 2012  
Amended May 2, 2012  
Amended June 6, 2012  
Amended February 20, 2013  
Amended May 1, 2013  
Amended November 6, 2013  
Amended May 7, 2014  
Amended May 20, 2015

<b><u>Chapter 402a – Electrical Permit Fees</u></b>	<b><u>Fee</u></b>
Administrative Fee [for each application] (adopted 05/06/09)	\$30.00
<b><u>RESIDENTIAL</u></b>	
Minimum Fee (amended 05/06/09)	\$30.00
Square footage of any structure (adopted 05/06/09)	\$0.05
Service Inspection (adopted 05/06/09)	\$30.00
Each Garage – Under, Attached, Unattached (amended 05/06/09)	\$30.00
<b><u>RENOVATIONS</u></b>	
Rewiring Complete Existing Home – Same as New	
Each Room (amended 05/05/04)	\$15.00
Meter and Panel Upgrade (amended 05/06/09)	\$30.00
Alarm/Low Voltage (adopted 05/06/09)	\$30.00
Pools, In-Ground or Above (amended 05/06/09)	\$30.00
Storage or Utility Buildings (amended 05/06/09)	\$30.00
<b><u>COMMERCIAL</u></b>	
Minimum Fee	\$30.00
Square Footage of Any Structure (adopted 05/06/09)	\$0.05
All Signs – Each (amended 05/05/04) (amended 05/06/09)	\$30.00
Yard Lights – Up to 6 (amended 05/05/04) (amended 05/06/09)	\$40.00
Each Additional over 6 Yard Lights (amended 05/06/09)	\$10.00

<b><u>Chapter 404a – Local Plumbing Permit Fees Internal Permit Fee Schedule</u></b>	<b><u>Fee</u></b>
Administrative Fee [for internal permit applications](adopted 05/07/2014)	\$20.00
1. The minimum permit fee is: (amended 05/06/09)(amended 02/16/2011)	\$40.00
2. The fixture fee for all fixtures is per fixture and is: The fixture fees are no longer on a sliding scale. (amended 05/06/09)(amended 02/16/2011)	\$10.00 ea.
<b><u>EXTERNAL PERMIT FEE SCHEDULE COMPLETE SYSTEM</u></b>	
Non-engineered System (amended 05/06/09)(amended 02/16/2011)	\$250.00
Primitive Disposal System (includes alternative toilet) (amended 05/06/09)	\$130.00
Engineered System (amended 05/06/09)	\$250.00
<b><u>SYSTEM COMPONENTS (INSTALLED SEPARATELY)</u></b>	
Treatment Tank (amended 05/06/09)(amended 02/16/2011)	\$150.00
Holding Tank (amended 05/06/09)	\$130.00
Alternative Toilet (amended 05/06/09)	\$65.00
Disposal Area (amended 05/06/09)(amended 02/16/2011)	\$150.00
Engineered Disposal Area (amended 05/06/09)	\$200.00
Separated Laundry Disposal Area (amended 05/06/09)	\$50.00
<b><u>OTHER</u></b>	
External Permit Amendments (adopted 05/07/2014)	\$75.00
Seasonal Conversion Permit (amended 05/06/09)	\$65.00

<b><u>Chapter 405 – Zoning</u></b>	<b><u>Fee</u></b>
Requests for Zoning Amendments (Not from Planning Board or Town Council)	\$250.00
Contract Zoning – Non-Refundable Application Fee (11/20/02)(amended 05/05/04)	\$500.00
Zoning Determination Letter (adopted 05/07/2014)	\$35.00
Planning Administrative Review Fee (adopted 05/07/2014)	\$75.00

Review Fee for Private Way Registration (amended 06/02/04)	\$100.00
One (1) Dwelling Unit Credit ( <i>as per Section VIID(E)I, Development Transfer Provisions</i> ) (July 18, 2007)	
Affordable Housing In-Lieu Fee Per Dwelling Unit [Adopted 11/06/2013]	\$20,000
<b>CODE ENFORCEMENT -</b>	
Building Permit Fees [-a minimum of] (amended 05/06/09)	\$35.00
Residential / Commercial Unfinished, per square foot (amended 05/05/04) (amended 05/03/06)	\$0.20
Residential / Commercial Finished, per square foot (amended 05/05/04) (amended 05/03/06)	\$0.40
Renovations/Remodels/Alterations/Minor Additions, Residential/Commercial (adopted 05/07/2014)	\$10.00 per \$1,000 of est. cost of construction
Sheds less than 250 SF(adopted 05/07/2014)	\$35.00
Minimum Application Fee - Will be applied toward the building permit when issued. Applies to new construction and renovations over 1,000 square feet.	\$110.00
First Offense <b>Double</b> the Permit Fee	
Each Offense Thereafter <b>Triple</b> the Permit Fee	
Demolition Permit Fees (amended 05/05/04) (amended 05/06/09)(amended 05/02/2012)	\$50.00
Zoning Board Of Appeals - Per Appeal (amended 05/05/04)	\$250.00
Certificate of Occupancy/Change of Use Fee [no charge if in conjunction with other active permits) (adopted 05/06/09) (amended 05/07/2014)	\$50.00
Sign Permit Fees	
Permanent Signs – each (amended 05/05/04) (amended 05/06/09)	\$35.00
Temporary Signs – each (amended 05/05/04) (amended 05/06/09)	\$35.00
Plus Deposit Required (refundable deposit for removal of sign) (10/02/02)	\$300.00
Temporary Storage Containers - Per Application (10/01/97) (amended 05/05/04)	\$25.00
Heating Appliance Permit (adopted 05/07/2014)	\$35.00
The fees for electrical permits, plumbing permits and building permits shall include one inspection of the work covered by each permit. Typically permits include the following inspections: A) Foundation; B) Bed bottom for leech fields; C) Leech bed; D) Electrical; E) Plumbing; F) Framing; and, G) Certificate of Occupancy. For each re-inspection thereafter, per-permit, a fee of \$50 shall be charged. If a re-inspection is required because the permit holder called for an inspection before the work was ready for inspection, such re-inspection shall not occur for at least two (2) weeks, unless the permit holder pays a surcharge of \$200 in addition to the \$50 re-inspection fee. For after the fact Certification of Occupancy/Change of Use Permits and Inspections, the fee is doubled (amended 10/06/04) (amended 05/07/2014)	

<b><u>Chapter 405A - Floodplain Management</u></b>	<b><u>Fee</u></b>
Non-Refundable Permit Application Fee	\$50.00

<b><u>Chapter 405B - Site Plan Review</u></b>	<b><u>Fee</u></b>
Site Plan Application Fee (plus fee per Square Feet)(adopted 05/07/2014)	\$500.00
Site Plan Amendment Fee (plus fee per Square Feet)(adopted 05/07/2014)	\$250.00
Under 1,000 Square Feet (amended 05/07/2014)	\$0.00
1,000 to 2,000 Square Feet (amended 05/07/2014)	\$250.00



>2,000 to 5,000 Square Feet (amended 05/07/2014)	\$500.00
>5,000 to 10,000 Square Feet (amended 05/07/2014)	\$1,000.00
>10,000 Square feet and over, plus \$25.00 per 1,000 above 10,000 square feet (amended 05/07/2014)	\$1,000.00

<b><u>Chapter 405C – Shoreland Zoning</u></b>	<b><u>Fee</u></b>
Planning Board Review (adopted 05/07/2014)	\$250.00
<b><u>Chapter 406 - Subdivision Review</u></b>	<b><u>Fee</u></b>
Subdivision Application Fee (plus fee per lot) (adopted 05/07/2014)	\$750.00
Subdivision Amendment Application Fee (plus fee per lot) (adopted 05/07/2014)	\$250.00
Charge Per Lot (amended 05/05/04)	\$175.00

<b><u>Chapter 407 - Septic Tank Sludge Disposal Fees</u></b>	<b><u>Fee</u></b>
Field Spread - per gal. (amended 05/05/04)	\$0.04
Holding Tank - per gal. (amended 05/05/04)	\$0.08
Disposal Of Treatment Plant Sludge S.S.D. Only - per gal. (amended 05/05/04)	\$0.08
Disposal Of Industrial Sludge & Wastes - per gal. (amended 05/05/04)	\$0.08
Grey Water 2,000 Gallons, Maximum Load - per load (amended 05/05/04)	\$4.00

<b><u>Chapter 408 - Extractive Industry, Waste Control, Landfill, And Land Reclamation</u></b>	<b><u>Fee</u></b>
Plan Review Fee - Minimum fee (amended 05/05/04) (amended 05/07/2014)	\$250.00
Additional Fee Per Acre In Excess Of 10 Acres - Per additional acre over 10 acres (amended 05/05/04)	\$15.00

<b><u>Chapter 410 - Road Impact Fee Ordinance And Designating Approved Projects</u></b>			
The following fees and charges are established for development and the following projects are designated as eligible for funding from the Highway Impact Fee Trust Fund:			
Fees	Peak Hour Trips		Cost of Trip
A. District 1	N	X	\$149.43
B. District 2	N	X	\$292.42
C. District 3	N	X	\$499.05
D. District 5	N	X	\$1,024.52
Where N = Estimated number of peak hour trips. Total trips generated during the p.m. peak hour for a development can typically be determined by trip rates presented in the 1987 Institute of Transportation Engineers (ITE) “ <u>Trip Generation</u> ” handbook, or estimated by field measurements collected at similar type developments. If, however, the ITE handbook does not have applicable rates, then the rates should be based on sufficient field data collected at a similar site. There are several types of development (i.e., fast food, shopping plazas, convenience stores, etc.) that simply redirect existing pass-by trips already on the existing roadway system; these trips should not be included in the assessment system. Only “new” trips to the system roadways should be assessed a development fee.			
The total Impact Fee for a project shall be the sum of the fees for each district affected.			
Projects eligible for funding from the Road Impact Fee Trust Funds are those projects depicted on the 100 scale aerial photographs titled “Long Range Transportation Improvement Program” (April 1989), prepared by Vanasse Hangen Brustling, Inc. as part of the 1988 Maine Mall/Jetport Area Traffic Study conducted for the Portland Area Comprehensive Transportation Study (PACTS) and the Maine Department of Transportation.			



[adopted 06/06/2012]	
<b><u>Chapter 607 - Alarm Systems</u></b>	<b><u>Fee</u></b>
False Alarm Fee - per occurrence after third false alarm within one year (amended 05/05/04)	\$250.00
<b><u>Chapter 608 – Fireworks Ordinance</u></b>	<b><u>Fee</u></b>
Non-Refundable Local Fireworks Display Permit Application Fee (amended 06/15/05)	\$50.00
<b><u>Chapter 612 – Rules &amp; Regulations for Use of Parks &amp; Recreation Facilities</u></b>	<b><u>Fee</u></b>
Application Fee	\$100.00
Application Fee for Non-Profit or Service Groups	\$50.00
<b><u>Chapter 702 - Street Opening, Fees</u></b>	<b><u>Fee</u></b>
Excavator License Fee Annual (amended 05/07/2014)	\$125.00
Excavation Permit Fee - Each Excavation (amended 05/05/04)	\$50.00
Renewal Of Excavation Permit (amended 05/05/04)	\$50.00
<b><u>Other Charges</u></b>	
1. Removing and replacing regulatory signs	\$50.00 each
2. Removing and replacing street name and stop signs	\$50.00 each
3. Reinstalling street and right of way granite monuments	\$800.00 each
4. Long-term maintenance reserve for bituminous street openings	\$25.00 per sq. yd.
<b><u>Chapter 901 – Refuse collection Fee</u></b>	<b><u>Fee</u></b>
1. Commercial Hauler	\$500.00 each
2. Residential Hauler	\$500.00 each
Applications for license renewal received after March 1 <sup>st</sup> shall pay a late fee in the amount of \$100.00 in addition to the regular application fee. (05/03/2006)	
<b><u>Chapter 1002 - Shellfish Ordinance, Fees</u></b>	<b><u>Fee</u></b>
Resident Commercial	\$200.00
Non-resident Non-reciprocating Commercial	\$400.00
Resident Student Commercial	\$100.00
Non-resident Student Commercial	\$200.00
Over - 60 Years Resident Commercial (Bushel)	\$100.00
Resident Recreational - (Over 65 Free)	\$25.00
All Day Licenses – Resident and Non-resident (amended 04/06/05)	\$10.00
<b><u>Chapter 1003 – Hawkers &amp; Peddlers</u></b>	<b><u>Fee</u></b>
License Fee for Hawkers & Peddlers License (05/21/2008)	\$110.00
<b><u>Chapter 1004 - Taxicab Licenses</u></b>	<b><u>Fee</u></b>
Annual License - Each Taxicab (amended 05/05/04) (amended 05/06/09)	\$150.00
Annual License - Each Operator (amended 05/05/04) (amended 05/06/09)	\$50.00
<b><u>Chapter 1005 - Innkeepers Licenses (06/21/2006)</u></b>	<b><u>Fee</u></b>
Application Fee	\$50.00

Per Room Fee	\$3.00 per room
Maximum Fee Not to Exceed	\$350.00
<b><u>Chapter 1006 - Ferry Beach/Hurd Park Fees Season Passes</u></b>	<b><u>Fee</u></b>
Resident and/or Taxpayer Season Pass - (includes Ferry Beach, Higgins Beach and Hurd Park) (amended 05/05/04; 05/18/11)(amended 05/02/2012) (amended 05/07/2014)	\$40.00
Resident - Additional Vehicle Registered to the Same Address	\$5.00
Non-Resident Season Beach Pass - (includes Ferry Beach Higgins Beach and Hurd Park) (amended 05/05/04) (amended 05/02/2012) (amended 05/07/2014)	\$75.00
Resident Commercial Fisherman Season Beach Pass - (Ferry Beach <u>only</u> , <i>must</i> show State Commercial Fisherman License)	FREE
Resident Senior Citizen Season Pass - (includes both Ferry Beach, Higgins Beach and Hurd Park)	FREE
Resident Veteran Lifetime Season Pass – Applications must be filed and applicant must meet the following criteria: must be a resident of the Town of Scarborough and must have received an honorable discharge or general discharge under honorable conditions [copy of DD214 must accompany application]. This pass will not expire and is valid for the lifetime of the holder. (Please note that any Scarborough Veteran age 60 years or older will not be issued a Resident Veteran Season Pass as they are automatically entitled to a free Resident Senior Citizen Season Pass.) (Adopted 05/19/2010)	FREE
<b><u>DAILY PARKING RATES (WITHOUT PASS)</u></b>	
Daily Parking: Ferry Beach, Higgins Beach And Hurd Park (amended 05/05/04) [amended 05/02/2012]	\$10.00
End of Day Parking Fee (e.g. Passenger Vehicles, Motor Bikes) – 3 PM to 5 PM (amended 05/03/05)	\$5.00
Larger Vehicle Daily Parking Fee - (R.V.'s, Campers and Buses) (amended 05/05/04)	\$35.00
<b><u>BOAT LAUNCHING FEE</u></b>	
Launching from any town facility, includes Ferry Beach Boat Launch and Co-op Boat Launch (Note – Ferry Beach – parking is not included)	
Resident – Daily Boat Launching Fee (amended 05/05/04)	\$10.00
Resident – Seasonal Boat Launching Fee	\$25.00
<u>Resident - Additional Boat Launching Fee Registered to the Same Address</u>	<u>\$5.00</u>
Resident Commercial Fisherman Seasonal Boat Launch Pass	Free
Non-Resident – Daily Boat Launching Fee (amended 05/05/04)	\$20.00
Non-Resident – Seasonal Boat Launching Fee	\$50.00
<b><u>Chapter 1007 - C.A.T.V. (Cable T.V.) Operators Fees</u></b>	<b><u>Fee</u></b>
Franchise Filing Fee (Amended 05/04/2011)	\$1,000.00
<b><u>Chapter 1008 - Special Amusement Operator License Fees</u></b>	<b><u>Fee</u></b>
Annual License Fee	\$110.00
<b><u>Chapter 1009 – Coin Operated Game License Fees</u></b>	<b><u>Fee</u></b>
Annual License Fee - Per Machine (B-2 Zone)	\$110.00

Annual Video Arcade License Campgrounds (R-F Zone) Maximum of 25 machines (amended 05/03/06)	\$1,500.00
--	------------

<b><u>Chapter 1010 - Massage Establishment Annual License Fees</u></b>	<b><u>Fee</u></b>
Massage Establishment	\$55.00
Combined Massage Establishment/Massage Therapist	\$35.00
Massage Therapist	\$30.00

<b><u>Chapter 1011 - Para-Massage Establishment Annual License Fees</u></b>	<b><u>Fee</u></b>
Para-Massage Establishment License	\$55.00
Para-Massager License	\$30.00
Combined Para-Massager Est./Para-Massager License	\$35.00

<b><u>Chapter 1012 - Adult Business - Viewing Booth Annual License Fees</u></b>	<b><u>Fee</u></b>
Annual License For Each Viewing Booth	\$110.00

<b><u>Chapter 1013 - Ice Cream Trucks (06/18/97)</u></b>	<b><u>Fee</u></b>
Application Fee	\$110.00
Each Additional Truck	\$30.00

<b><u>Chapter 1017 – Pawnbroker Fees/Secondhand Dealer Fees (02/17/2010)</u></b>	<b><u>Fee</u></b>
Application Fee	\$100.00
SBI Check	\$25.00

<b><u>Chapter 1201 - Cemetery Fees</u></b>	<b><u>Fee</u></b>
Sale Of Lots -	
Scarborough Memorial Cemetery Per Grave (amended 05/05/04)	\$400.00
Scarborough Memorial Cemetery – Section D, Lots for Cremations Only (adopted 02/16/2011)	\$220.00
Grave Opening Charges	
Regular Burial (amended 05/05/04 – 05/04/2011)	\$450.00
Cremations/Other (Weekends) (amended 05/05/04 – 05/04/2011)	\$125.00

<b><u>Chapter 1401 – Coastal Water and Harbor Fees [amended 02-20-13]</u></b>	<b><u>Fee</u></b>
<b>Annual Mooring Fee</b>	
Resident And/Or Taxpayer (amended 05/05/04)	\$50.00
Non-Resident (amended 05/05/04)	\$100.00
<b>Annual Pier Maintenance Fee</b>	
Commercial User	\$100.00
Non-Commercial User	\$50.00

<b><u>Assessing Office Charges</u></b>	<b><u>Fee</u></b>
<b><u>Printouts</u></b>	
Name/Location/Map & Lot	\$25.00
Name/Address/Location/Map & Lot	\$50.00
Name/Location/Map & Lot/Assessment	\$75.00
Name/Address/Location/Map/Lot/Assess	\$75.00

Name/Address/Location/Map/Lot/Assess/Ref.	\$100.00
Valuation Report – Printout per page	\$2.00
Mailing Labels - Each	\$.05
Copy of Property Card	\$2.00
Large Map	\$5.00
Reduced Map	\$2.50
Reduced Set of Maps	\$200.00

<b><u>Fire Department Fees</u></b>	
<b><u>Fire Department Construction Permit &amp; Plans Review Fees</u></b>	<b><u>Fee</u></b>
A Fire Department construction permit is required for any new construction, or remodeling of existing commercial space, or erection of any temporary structures for commercial purposes. The permit allows us to review important information concerning life safety issues, the buildings alarm & suppression systems, utility connections, heating system information, water supply, hazardous materials, fire lanes, and a variety of other items prior to the start of construction. (amended 11/05/03)	
Minimum <u>Construction Permit</u> Fee	<del>\$25.00</del> <del>\$35.00</del>
Construction permit fees for all commercial buildings shall be	\$0.10 per sq. ft.
Commercial structures include any building that is non-residential, or any residential complex that has three or more living units.	
Construction permit fees cover the following services:	
Initial conference and fact finding discussion	
Concept plans review for compliance with local ordinances	
Site Plan review	
Construction plans review	
Follow-up meetings with contractors, architects, and building owners	
Structural building inspections as necessary during construction	
One (1) comprehensive alarm system and fire suppression system test to be scheduled after coordination of reporting information with the Fire Department, and after all components have been installed to the applicable codes and pre-tested through to the monitoring company.	
One (1) final Certificate of Occupancy inspection to be scheduled when all Federal State and Local codes have been met and the building is ready for occupancy.	
<b><u>Additional Fire Dept. Construction Permits &amp; Plans Review Fees</u></b>	
Re-inspection of alarm & fire suppression system testing required due to improper pre-testing, installation, or lack of coordination with the Fire Department concerning appropriate reporting requirements. (amended 05/05/04) (amended 05/06/09)	\$100.00 first occurrence and \$200.00 for second and any subsequent occurrence
Re-inspection fee for Certificate of Occupancy (amended 05/05/04) (amended 05/06/09)	\$100.00 first occurrence and \$200.00 for second and any subsequent occurrence
Commercial Fire Alarm Plan Review & Permit Fees (adopted 05/06/09)	<del>\$100.00</del>

<u>Minimum Permit Fee</u>	<u>\$35.00</u>
<u>New Fire Alarm Control Panel</u>	<u>\$100.00</u>
<u>Replacement of Fire Alarm Panel with Existing Devices</u>	<u>\$100.00</u>
<u>New Initiation or Notification Devices</u>	<u>\$50.00</u>
Commercial Sprinkler System Plan Review & Permit Fees (adopted 05/06/09)	<del>\$100.00</del>
<u>Minimum Permit Fee</u>	<u>\$35.00</u>
<u>New Sprinkler Heads</u>	<u>\$1.00/Head</u>
<u>Relocation of Sprinkler Heads</u>	<u>\$0.50/Head</u>
<u>Fire Pump Installations</u>	<u>\$100.00 Each</u>
<u>Fuel Canopy Installations</u>	<u>\$100.00 Each</u>
<u>Kitchen Suppression System Installations</u>	<u>\$100.00 Each</u>
Blasting Permit Fee (adopted 05/06/09)	\$50.00
<b><u>Fire Department Fees</u></b>	<b><u>Fee Per Hour</u></b>
Aerial / Ladder Truck	\$150.00
Pumper Truck	\$125.00
Squad Truck	\$125.00
Command Van	\$100.00
Rescue Unit	\$100.00
Tank Truck 4 x 4/Marine Rescue Boat (amended 05/07/2014)	\$75.00
Utility Truck/Chief or Duty Officers SUV (amended 05/07/2014)	\$50.00
All-Terrain Vehicles (amended 05/07/2014)	\$25.00
Personnel Labor [amended 05/01/2013]	\$45.00
<b><u>Fire Department Rescue Charges</u></b>	<b><u>Fee</u></b>
<b><u>Base Rescue Charges:</u></b>	
Based on bundled rate plan adopted May 1, 2013, these rates shall automatically adjust when and by the same % as those established and approved by the Centers for Medicare & Medicaid Services (CMS).	
Basic Life Support Non-Emergency (adopted 05/01/2013) (amended 05/07/2014)(05/20/15)	<del>\$533.91</del> <u>\$531.77</u>
Basic Life Support Emergency (adopted 05/01/2013)(amended 05/07/2014) (05/20/15)	<del>\$533.91</del> <u>\$531.77</u>
Advance Life Support Level 1 Emergency (adopted 05/01/2013) (amended 05/07/2014) (05/20/15)	<del>\$823.68</del> <u>\$820.39</u>
Advance Life Support Level 2 Emergency (adopted 05/01/2013) (amended 05/07/2014) (05/20/15)	<del>\$1,168.67</del> <u>\$1,164.00</u>
<b><u>Additional Rescue Charges:</u></b>	
Mileage (adopted 05/07/2014) (05/20/15)	<del>\$9.04</del> <u>\$9.00</u>
No Transport (amended 05/05/04)(amended 05/06/09)(amended 01/18/12)	\$125.00
Paramedic Intercept Fee (05/21/2008)	\$300.00
Fees are set by State Statutes – pursuant to Title 22, Health and Welfare, subtitle 2, §1711, pertaining to <i>Fees charges</i> , and as amended from time to time. (adopted 05/07/2014)	
<b><u>Chapter 1015 -Food Handlers Registration Fee</u></b> <b><u>(adopted 05/03/06)(amended 05/21/08)(amended 05/05/2010)</u></b>	
Food handlers Registration Fee – Year Round Business	\$220.00

Seasonal, catering and in-home food handlers [Seasonal - 6 months or less]	\$110.00
<b><u>Chapter 1016 - Garage/Yard Sale (adopted 03/07/2007)</u></b>	<b><u>Fee</u></b>
Garage/Yard Sale Permit	\$5.00 per sale
<b><u>Horse Beach Permit (per rider) (adopted 10/02/02)</u></b>	<b><u>Fee</u></b>
All Permits (amended 05/06/09; amended 09/16/09)	\$20.00
<b><u>Interest Penalties (adopted 05/02/2007)</u></b>	<b><u>Penalty</u></b>
Interest on fees, charges or payments owed to the Town which are more than 30-days past due	1.5% per month
<b><u>Miscellaneous Fees (adopted 05/03/05) (amended 02/15/06)</u></b>	<b><u>Fee</u></b>
Marriage Ceremonies Performed (amended 02/15/06)	\$50.00
Miscellaneous Administrative Fees – Town Clerk’s Office (amended 05/06/09)	\$15.00
Replacement Fee for all Applications and Licenses/Permits (adopted 05/04/2011)	\$5.00
Genealogy / Research – \$3.00 per name, whether or not a record is found, this includes a photocopy. For an attested copy, the fee is as set by the State of Maine Office of Vital Records.	
Dog License Late Fee – Upon receipt of the rabies certificate(s) from the State of Maine the Town Clerk’s Office will notify owner(s) they need to register their dog(s) within 10-days. If a resident fails to license their dog(s) within 10-days of notification from the Town Clerk’s Office a late fee will be charged for each dog. (05/21/2008) (amended 05/07/2014)	\$25.00 per dog
Non-sufficient Funds (adopted 05/07/2014)	\$30.00
<b><u>Notary Fee (amended 3/6/96; 05/05/04; 05/21/2008)</u></b>	<b><u>Fee</u></b>
First 3-pages	\$10.00
Any Documents more than 3-pages	15.00
<b><u>Photocopies</u></b>	<b><u>Fee</u></b>
Single Sheets - Their Original	
8 ½ x 11 Regular, each copy	\$0.25
8 ½ x 14 Legal, each copy	\$1.00
11 x 17 Ledger, each copy	\$1.50
<b><u>Photocopies (amended 3/6/96)</u></b>	<b><u>Fee</u></b>
Single Sheets - Our Document	
8 ½ x 11 or 14 or 17, first page	\$2.00
Each Additional Page	\$0.50
Maps, each copy	\$5.00
Meeting DVD [Copying]	\$25.00
Electronic Responses to Requests (adopted 05/07/2014)	\$15.00 per hour [or any part thereof]
<b><u>Police Department Charges</u></b>	<b><u>Fee</u></b>
Special Police Charge, Per Hour (amended 05/05/04; 05/02/07; 05/21/2008; 05/04/2011)	\$43.90
Police Cruiser Charge (adopted 05/07/2014)	\$46.35 per every



	four hours
Notice of minimum charge if event is canceled without proper notice	
Police Reports	
First Page (amended 05/05/04)	\$12.00
Each Additional Page (amended 05/05/04)	\$1.50
Fingerprinting	
For Civilians' Personal Use (not criminal), each set	\$3.00
Copy Of Video Tape	
Blank Tape Provided (amended 05/05/04)	\$12.00
No Tape Provided (amended 05/05/04)	\$15.00

<b><u>Public Works Department Charges</u></b>	<b><u>Fee</u></b>
Fee for Building Coordination Form (05/05/04)	\$25.00

<b><u>Voter Registration Fees (amended 09/06/2006)</u></b>	<b><u>Fee</u></b>
Fees are as set by the Secretary of State's Office pursuant to Title 21-A, Section 2, §4, <i>Fees</i> , and as amended from time to time.	

<b><u>Vehicle Registration Fee</u></b>	<b><u>Fee</u></b>
Fees are set by the Secretary of State's Office, Department of Motor Vehicles pursuant to Title 29-A, Subchapter 2 §, <i>Fees</i> , and as amended from time to time. [amended 05/02/2012]	

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MAY 4, 2016**  
**REGULAR MEETING – 7:00 P.M.**

**Order No. 16-033.** Move approval of the first reading and refer to the Planning Board on the proposed third amendment to Contact Zone V – Scarborough Realty, LLC [Mercedes-Benz Dealership] located at 137 US Route One and schedule a Town Council public hearing and second reading upon the filing of the Planning Boards recommendations.

# **F.K.N. Chowdry Chartered, LLC**

ATTORNEYS AND COUNSELLORS AT LAW

Two Monument Square ♦ Suite 704 ♦ Portland, Maine 04101  
T: 207-805-1041 ♦ F: 207-805-1046 ♦ [www.chowdrylaw.com](http://www.chowdrylaw.com)

Frank K. N. Chowdry, Esq.  
[fchowdry@chowdrylaw.com](mailto:fchowdry@chowdrylaw.com)

April 27, 2016

**VIA EMAIL ONLY (c/o vjustice@ci.scarborough.me.us)**

Ms. William Donovan, Chair  
and Members of the Town Council  
Scarborough Municipal Building  
259 U.S. Route 1  
P.O. Box 360  
Scarborough, Maine 04074-0360

RE: Prime Motor Group / Mercedes-Benz and Sprinter Showroom Expansion Project

Dear Chairman Donovan and Members of the Town Council:

I represent the Prime Motor Group. Please find enclosed a draft Third Amendment to Contract Zoning Agreement without Exhibits. Please note that Exhibit 1 is the original contract zone agreement of August 21, 2002 and Exhibit 2 is the Second Amendment to the contract zone dated April 30, 2015. Exhibit 2A, the site plan, is in the municipal review process. We will be certain to submit the final approved site plan as soon as it is available. We will, of course, also include the other exhibits with the final document. For the time being, I also enclose a draft site plan and a rendering of the site.

I would be pleased to respond to any questions or comments whatsoever. My client greatly appreciates the Council's consideration of this proposed Third Amendment.

Very truly yours,



Frank K. N. Chowdry

FKNC/nla  
Attachment

Copy to: Daniel Doucette, Prime Motor Group  
Thomas Hall, Town Manager

Mr. William Donovan and  
Members of the Town Council  
April 27, 2016  
Page 2 of 2

Tody Justice, Town Clerk  
Daniel Bacon, Town Planner  
David Richards, RA, Gawron Turgeon Architects

**THIRD AMENDMENT TO  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH  
AND 137 U.S. ROUTE ONE SCARBOROUGH REALTY, LLC  
(formerly First Scarborough Realty of Maine, LLC)**

**THIS CONTRACT ZONING AGREEMENT** is made by and between the Town of Scarborough, a Maine municipality with its principal office located at the Scarborough Municipal Building, 259 U.S. Route 1, Scarborough, Maine (the "Town") and 137 U.S. Route One Scarborough Realty, LLC, a Maine limited liability company with a principal office located at 137 U.S. Route One, Scarborough, Maine ("137 US Route One").

**RECITALS**

**WHEREAS**, First Scarborough Realty of Maine, LLC, a Maine limited liability company ("First Scarborough Realty") is a predecessor in interest and in title to 137 U.S. Route One; and

**WHEREAS**, First Scarborough Realty entered into a Contract Zoning Agreement with the Town on August 21, 2002, subsequently amended by an amendment dated on or about September 16, 2004 (hereinafter and taken together "First Agreement") in connection with certain improvements made to property located at 137 U.S. Route One and more particularly described in the First Agreement; and

**WHEREAS**, the First Agreement (together with all exhibits and schedules appended thereto) is appended to this Agreement as *Exhibit 1*; and

**WHEREAS**, First Scarborough Realty conveyed its interest to 137 US Route One by deed dated April 26, 2005 and recorded in the Cumberland County Registry of Deeds at Book 22565, Page 326, the premises and all improvements situated thereon hereinafter referred to as the "Original Parcel";

**WHEREAS**, 137 US Route One acquired additional property adjoining the Original Parcel, more particularly described in a deed from SRAM Corp. to 137 U.S. Route One Scarborough, LLC dated June 16, 2015 and recorded in the Cumberland County Registry of Deeds at Book 32352, Page 208 (the "New Parcel") for the purpose of expanding and improving the existing automobile dealership showroom located on the Original Parcel and other related purposes (together referred to as the "Property"); and

**WHEREAS**, 137 US Route One and the Town entered into a Second Amendment to Contract Zoning Agreement dated April 30, 2015 and recorded in the Cumberland County Registry of Deeds at Book 32238, Page 198 (the "Second Amendment"), a copy of which is attached to this Third Amendment as *Exhibit 2*; and

**WHEREAS**, the rezoning and inclusion of the New Parcel into the Contract Zoning District (“the District”) is pursuant to and consistent with the Town’s Comprehensive Plan and with the existing and permitted uses within the original zoning district classification; and

**WHEREAS**, by operation of this Third Amendment to Contract Zoning Agreement (the “Third Amendment”), 137 US Route One desires to increase the size of the footprint of building to be located on the New Parcel also pursuant to and consistent with the Town’s Comprehensive Plan and with the existing and permitted uses within the original zoning district classification.

**NOW, THEREFORE**, in consideration of the mutual promises made by each party to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as received by each, the parties covenant and agree as follows:

1. All terms, conditions, covenants, representations, warranties, benefits and burdens set forth in the First Agreement and Second Amendment (including all exhibits and schedules appended thereto) are affirmed, adopted, ratified and accepted by the Town and 137 US Route One and incorporated herein as if restated in full, subject to any conflict or inconsistency between the First Agreement, the Second Amendment and this Third Amendment, in which case this Third Amendment shall govern and control.
2. 137 US Route One is authorized to make the improvements and modifications to the Property as described in a certain "Site Plan - Proposed Contract Zone Amendment for Prime Motor Mercedes Benz - Sprinter" prepared by Gawron Turgeon Architects, Scarborough, Maine, revised through April 27, 2016 (the “Site Plan”) attached as *Exhibit 2B*. Within this authorization is specific authorization to permit the maximum allowable building footprint for the building to be constructed on the New Parcel to be 26,290 ± square feet. Construction of the improvements shall be subject to the following conditions:
  - a. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, one additional business sign is permitted as shown on the Site Plan.
  - b. Notwithstanding the landscaping requirements in Section XVIII.A of the Zoning Ordinance, as it may be amended from time to time, a reduction in the required 15’ green strip buffer is permitted to the extent shown on the Site Plan.
  - c. The uses allowed shall be limited to an automobile dealership with outdoor sales, display and storage of motor vehicles and indoor sales, service and display.
  - d. Special events and assembly activities may be conducted within any building as an accessory use, subject to any other required codes and approvals.
  - e. The Property subject to this Agreement shall be developed and used only in accordance with the Site Plan, to be approved by the Scarborough Planning Board, as that site plan

may be amended from time to time.

3. 137 US Route One shall record this Agreement within 30 days after its approval by the Scarborough Town Council.
4. 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 and 137 US Route One or its successors in interest.
5. This is the sole zoning for the Property, and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying TVC Zoning District shall apply. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind 137 US Route One, its successors in interest and assigns, and shall inure to the benefit of and be enforceable by the Town.
6. 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 of the Town and any applicable amendments thereto or replacement thereof.
7. In the event that 137 US Route One or its successors or assigns fail to develop the Property in accordance with this Agreement, or in the event of any other breach hereof, 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 as are otherwise allowed by law.
8. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Scarborough Zoning Ordinance and through legal action for specific performance of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_, 2016

**WITNESS:**

**137 ROUTE ONE  
SCARBOROUGH REALTY, LLC**

By: \_\_\_\_\_  
Ira Rosenberg  
Its Manager

**TOWN OF SCARBOROUGH**

\_\_\_\_\_

By: \_\_\_\_\_  
Thomas Hall  
Its Town Manager

STATE OF MAINE  
Cumberland, ss.

Date: \_\_\_\_\_

PERSONALLY APPEARED the above-named Ira Rosenberg, in his capacity as Manager of 137 US Route One Scarborough Realty, LLC and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said limited liability company.

Before me,

Notary Public/Attorney at Law

STATE OF MAINE  
Cumberland, ss.

Date: \_\_\_\_\_

PERSONALLY APPEARED the above-named Thomas Hall, in his capacity as Town Manager of the Town of Scarborough, Maine and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said Town.

Before me,

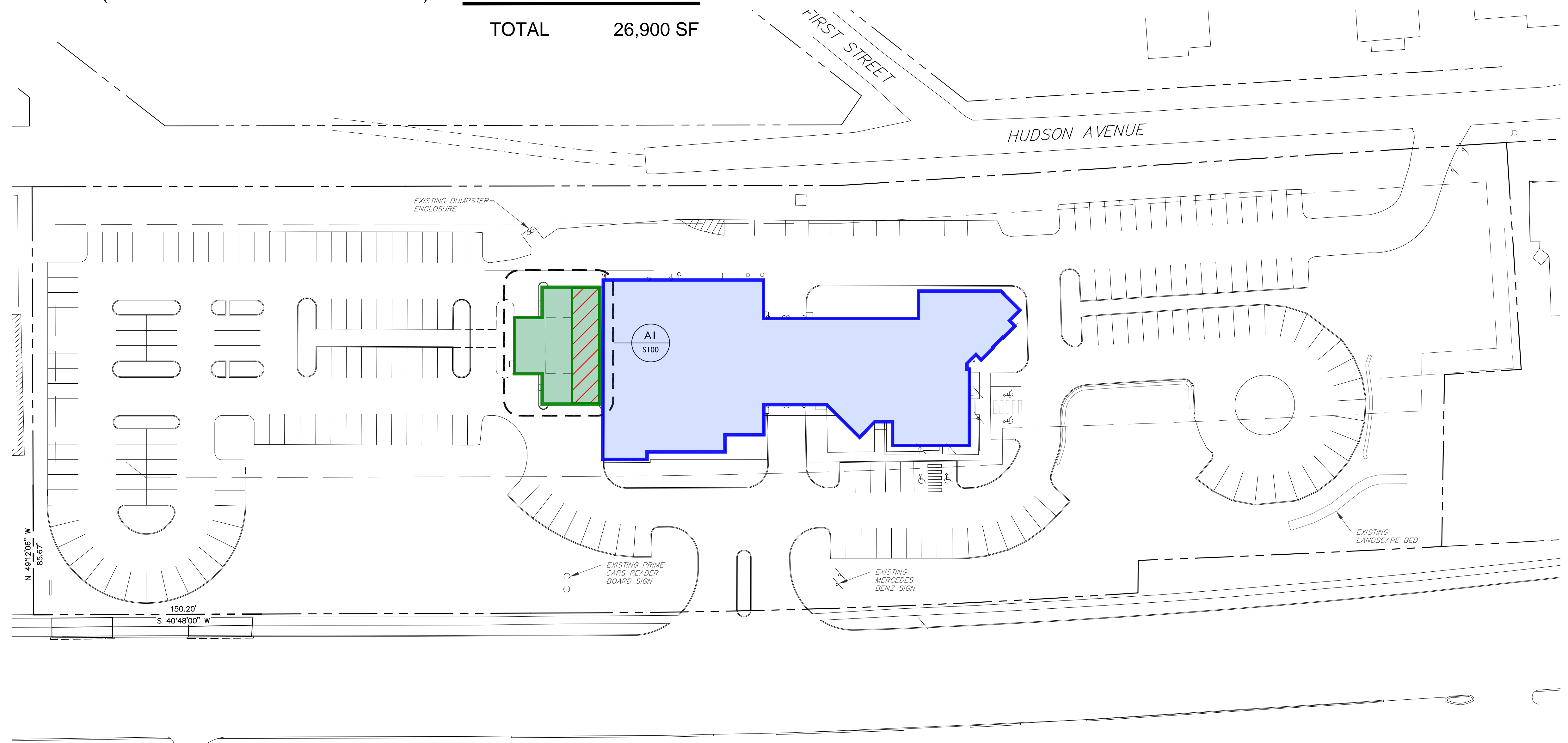
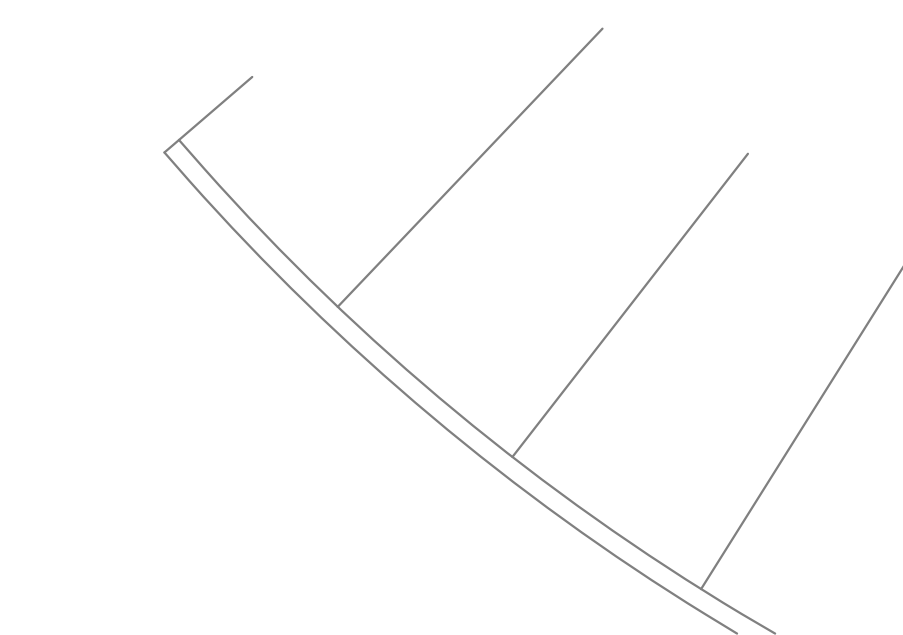
Notary Public/Attorney at Law



**EXHIBIT 1**  
**(THE FIRST AGREEMENT)**

**EXHIBIT 2**  
**(SECOND AMENDMENT TO CONTRACT ZONE AGREEMENT)**

**EXHIBIT 2B  
(SITE PLAN)**



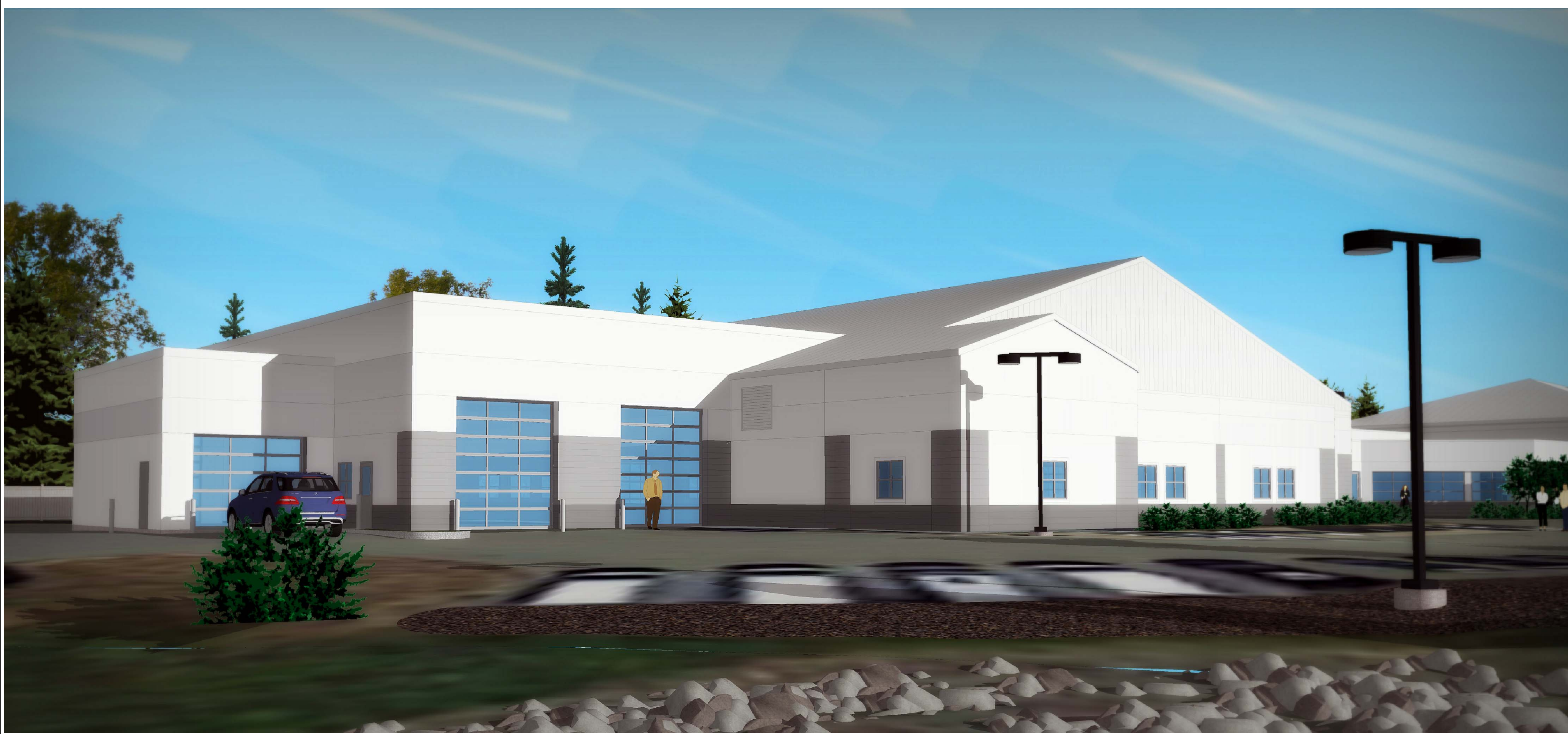




Q1 AREIAL - OVERALL  
PREVIOUSLY APPROVED



Q15 AREIAL - WEST LOOKING EAST  
PREVIOUSLY APPROVED



H1 SKETCH RENDERING - PROPOSED ADDITION  
PROPOSED



L15 AREIAL - WEST LOOKING EAST  
PROPOSED



H15 EYE LEVEL - WEST LOOKING EAST  
PROPOSED



H20 AREIAL - WEST LOOKING EAST  
PROPOSED



A1 AREIAL - OVERALL  
PROPOSED

29 BLACK POINT ROAD  
SCARBOROUGH, MAINE 04074  
207-883-6307  
WWW.GAWRONTURGEON.COM

**GAWRON  
TURGEON  
ARCHITECTS**

**PRIME MOTOR MERCEDES BENZ**  
**ADDITION & SITE RENOVATIONS**  
SCARBOROUGH, MAINE

REVISIONS		
#	DATE	DESCRIPTION
1	04.27.15	PLANNING BOARD SUBMISSION
2	07.31.15	ISSUED FOR BID
3	08.27.15	RE-ISSUED FOR BID
4	03.17.16	ISSUED FOR CONSTRUCTION
5	04.27.16	ISSUED FOR CONTRACT ZONE AMENDMENT

DATE:	04.27.16
PROJECT #	090214
DRAWN BY:	DMR
CHECKED BY:	DMR
DRAWING SCALE	AS NOTED

SHEET TITLE
SKETCH RENDERINGS PROPOSED ADDITION & PREVIOUSLY APPROVED ADDITION

**R100**

© COPYRIGHT 1985-2016  
REPRODUCTION OR RESALE OF THIS  
DOCUMENT WITHOUT THE WRITTEN  
PERMISSION OF GAWRON TURGEON  
ARCHITECTS IS PROHIBITED.



**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MAY 4, 2016**  
**REGULAR MEETING – 7:00 P.M.**

**Order No. 16-034.** Move approval of the first reading and refer to the Planning Board on the proposed third amendment to Contract Zone I – Frank R. Goodwin, E & F Limited Liability Company and Raymond C. Field [Land Rover Dealership], located at 371 US Route One and schedule a Town Council public hearing and second reading upon the filing of the Planning Boards recommendations.



April 27, 2016  
03401

Thomas Hall, Town Manager  
Members of the Scarborough Town Council  
Town of Scarborough  
259 U.S. Route One  
Scarborough, Maine 04070

**Request for Contract Zoning Agreement Amendment**  
**Scarborough Jaguar / Land Rover dba E&F Limited Liability Company**

Dear Mr. Hall and Council Members,

On behalf of E&F Limited Liability Company (E&F), we are pleased to submit this request for your consideration. This request pertains to a proposed building renovation and minor expansion of the Jaguar / Land Rover automobile dealership located at 371 U.S. Route One. The purpose of the proposed project is to renovate the existing building to comply with the current branding of these international automobile manufacturers, who periodically require the dealerships to comply with current company standards.

This project proposes a new building façade facing U.S. Route One and a renovation of the showroom, sales and customer services spaces within the building. No changes are proposed in the vehicle repair / service areas in the rear of the building. In addition, this proposal includes removal of a portion of the existing stone drive track on the site in order to add parking spaces near the front of the building.

This site was initially developed in 1996 under a contract zoning agreement with the Town. Since that time, the Town has agreed to two amendments in 2000 and 2004, respectively.

This request would be the Third Amended Contract Zoning Agreement. Currently in force, the Second Amended Contract Zoning Agreement allows a building area of 13,730 square feet and 108 parking spaces, of which 16 spaces are visible from U.S. Route One. This current request would increase the allowable building area to 14,730 square feet and to add 7 parking spaces which would be visible from U.S. Route One.

To assist you in your consideration of this request, we enclose the following exhibits for your review:

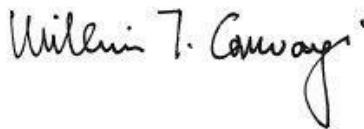
- Photograph of Existing Building
- Proposed Building Elevation

- Proposed Conceptual Site Plan
- Edited Copy of Current Contract Agreement

We look forward to meeting with the Council at the May 4, 2016 meeting to discuss this request in greater detail. Thank you for your time and consideration.

Sincerely,

SEBAGO TECHNICS, Inc.

A handwritten signature in black ink that reads "William T. Conway". The signature is written in a cursive style with a large, stylized 'W' and 'C'.

William T. Conway, RLA / LEED AP  
Vice President, Landscape Architecture

cc: Christopher Goodwin  
Enc.

WTC /llg









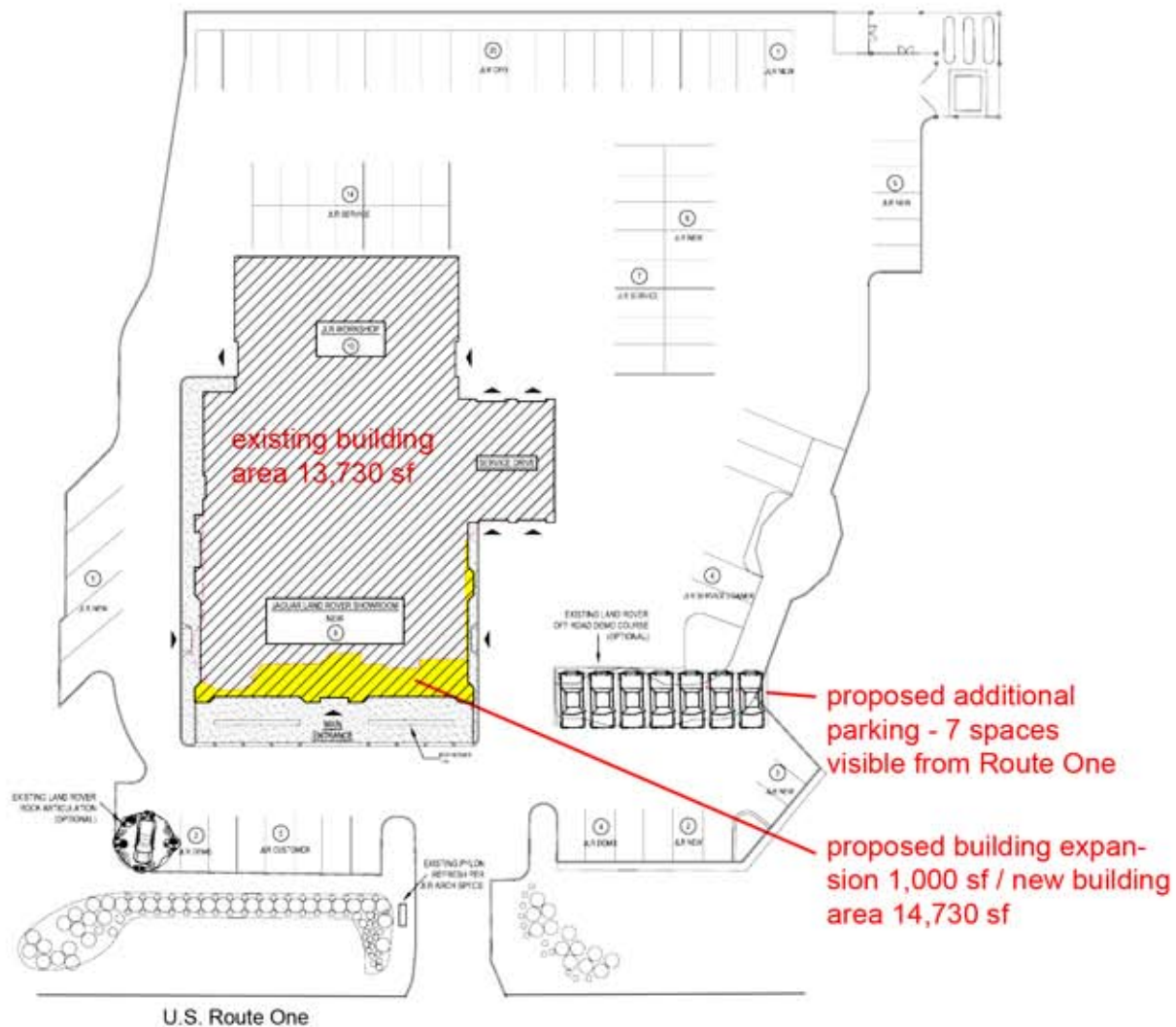
SCARBOROUGH, MAINE

APRIL 5, 2016



PROPOSED ELEVATION AS VIEWED FROM ROUTE ONE





**THIRD AMENDMENT TO EXHIBIT I  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
FRANK R. GOODWIN, E & F LIMITED LIABILITY COMPANY  
AND RAYMOND C. FIELD**

**WHEREAS**, E & F Limited Liability Company (“E & F”) entered into a Contract Zoning Agreement with the Town of Scarborough on the 15<sup>th</sup> day of July 1996 (the “Contract”), a copy of which is attached hereto as Schedule A; and,

**WHEREAS**, E & F acquired certain real estate from Raymond C. Field by two deeds dated June 21, 1996 and recorded in the Cumberland County Registry of Deeds at Book 12576 Page 54 and by Corrective Warranty Deed dated October 27, 1997, recorded in the Cumberland County Registry of Deeds at Book 13402, Page 45; and,

**WHEREAS**, E & F built a 3,826 square foot addition to its existing building on the north side of the building away from U.S. Route One, which addition is used for the purposes of automobile sales and service pursuant to a First Amendment to the Contract, dated October 2, 2000, a copy of which is attached hereto as Schedule B; and,

**WHEREAS**, in order to have the proper set backs, E & F acquired an approximate additional 17,070 square feet by deed of KDA LLC (successor to Raymond Field), which deed was dated April 10, 2000 and recorded in the Cumberland County Registry of Deeds at Book 15410, Page 322; and,

**WHEREAS**, the Amended Contract, Schedule B, at paragraph 3(a), states that E & F was authorized to have an automobile dealership with the structure of 13,730 square feet; and,

**WHEREAS**, the current initial structure is 13,730 square feet and the anticipated additions to the structure will be 1000 square feet for a total building footprint of 14730 square feet; and,

**WHEREAS**, the addition to the automobile dealership will also involve an increase in the square footage of the area utilized for outdoor display, storage or parking of vehicles. An additional 7 parking spaces, 7 new spaces being visible from the road will bring the total number of parking spaces to 115, 23 of which will be visible from the road. The relocation of outdoor vehicle storage and display or parking areas to parts of the site closer to the property boundaries or road sidelines than shown on the originally approved site plan is contemplated; and,

**WHEREAS**, the size, location, configuration and topography of this site permit a level of buffering, landscaping and site design which will mitigate what might otherwise be adverse impacts of outdoor displays, storage and sales, because the additional square footage of the building is away from U.S. Route One.

**WHEREAS**, the Amendment to the Contract Zoning Agreement would be consistent with the policies and future land use plan of part three of the Scarborough Comprehensive Plan and is permitted pursuant to the Zoning Ordinance and Maine Law and is consistent with the existing and permitted uses within the original zoning classification.

**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 shown on Schedule C hereto.
2. All references in the original Contract Zoning Agreement, the First Amendment to the Contract and the Second Amendment to the Contract, and the Third Amendment to the Contract to the “site plan” shall hereafter mean the amended site plan approved by the Scarborough Planning Board on (TBD), 2016, attached hereto as Schedule D.

3. Upon approval of an amended site plan by the Scarborough Planning Board, E & F Limited Liability Company is authorized to construct the addition to the automobile dealership as portrayed on the Attached Schedule C. The additional construction will be completed within 12 months after execution of this Agreement. Construction of the addition shall be subject to the following conditions:
  - a. The maximum allowable building footprint for the building shall be 13730 square feet and the maximum building height shall be two stories.
  - b. Building design, style and materials for the addition shall be substantially as depicted on the building elevation submitted during site plan review.
  - c. No trees or other vegetation existing on the date of this Agreement shall be removed except as indicated in the approved addition site plan.
4. Except as amended hereby, E & F Limited Liability Company reaffirms each and every provision of the Contract Zoning Agreement, Schedule A and the First Amendment, Schedule B.
5. E & F Limited Liability Company shall record this Amendment to Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after its approval by the Scarborough Town Council.

**IN WITNESS WHEREOF**, the parties hereto have executed this Third Amendment to Contract Zoning Agreement this \_\_\_\_ day of \_\_\_\_\_, 2016.

WITNESS:

**TOWN OF SCARBOROUGH**

By: \_\_\_\_\_

Its: Town Manager (duly authorized by a vote of the Scarborough Town Council on (TBD), 2016)

**E & F LIMITED LIABILITY COMPANY**

By: \_\_\_\_\_

Frank R. Goodwin

Its: Managing Member

STATE OF MAINE

COUNTY OF CUMBERLAND

\_\_\_\_\_, 2016

Personally appeared the above named \_\_\_\_\_, in his/her capacity as Scarborough Town Manager and acknowledged the foregoing instrument to be his/her free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, 2016

Personally appeared the above named Frank R. Goodwin in his capacity as Managing Member of E & F Limited Liability Company and acknowledged the foregoing instrument to be his free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MAY 4, 2016**  
**REGULAR MEETING – 7:00 P.M.**

**Order No. 16-035.** Move approval to authorize the Town Manager enter into a “Use Agreement” with the City of South Portland to establish a bus stop to be located on Gallery Blvd, as follows:

## USE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF SOUTH PORTLAND, a municipal corporation organized and existing under the laws of the State of Maine and located in South Portland, County of Cumberland, State of Maine (the “City”), and the TOWN OF SCARBOROUGH, a municipal corporation organized and existing under the laws of the State of Maine and located in Scarborough, County of Cumberland, State of Maine (the “Town”).

WHEREAS, a Town right-of-way known as Gallery Boulevard is located in Scarborough, Maine and is further shown as “Gallery Blvd” on Assessor’s Tax Map R37 as of the April 1, 2015 assessment date, a copy of which is attached hereto and incorporated herein as *Exhibit A*;

WHEREAS, the City has requested permission from the Town to install a bus shelter and use those portions of Gallery Boulevard shown on Exhibit A as “Shelter” (the “Property”) for the installation and maintenance of a new Bus Shelter provided that such use shall not interfere with the use of Gallery Boulevard by vehicular or pedestrian traffic (“Permitted Use”).

NOW, THEREFORE, in consideration of the mutual promises and obligations undertaken herein, the parties hereby agree as follows:

1. Permission to Use the Property. The Town hereby permits the City to use the Property for the Permitted Use, subject to the terms and conditions set forth in this Agreement. No other use of the Property is hereby permitted under this Agreement. This is a limited license and not a lease.
2. Term and Termination. The City’s use of the Property shall be permitted for so long as the City continues to have a bus stop on the Property; provided, however, that the Town may terminate this Agreement immediately if default shall be made by the City in the performance or compliance with any of the terms of this Agreement and not cured by the City within a reasonable time after notice of default, or upon ninety (90) days advance written notice.
3. Fee. There shall be no fee for use of the Property during the term of this Agreement.
4. Condition and Use of Property.
  - (a) The City shall inspect the Property and accept it “as is” prior to placing the Bus Shelter on the Property. The City agrees that the Town shall have no duty to

maintain or care for the Bus Shelter, report any unsafe conditions or provide any security or services.

(b) The City shall obtain all necessary licenses, permits and approvals for the Bus Shelter, and shall comply with all applicable laws, ordinances and regulations.

(c) The Bus Shelter shall be kept and maintained by the City in a clean and safe condition, all at the City's sole risk and expense.

(d) The City agrees upon termination of this Agreement to remove the Bus Shelter from the Property and return the Property to the reasonably same condition it was on the date hereof. If not removed within 30 days after termination, the Bus Shelter shall, at the Town's option, become the property of the Town or be removed by the Town at the City's expense.

5. Work. The City shall be responsible for the installation of a new 5' x 10' bus shelter at its sole cost and expense. Prior to the City conducting such work, the Town is responsible for the installation of a new 5" thick, 6' x 16' cement pad level with, and connecting to, the existing sidewalk at its sole cost and expense. All such shall be performed in a safe, diligent and workmanlike manner and in compliance with all applicable laws.
6. Indemnity. The City shall defend, indemnify and hold harmless the Town, its officers, agents and employees, from and against all losses, claims, damages or liabilities arising out of or resulting from any injury (including death) to any person or persons or any damage to property anywhere occasioned by any negligence or intentional misconduct of the City, its officers, agents and employees, arising directly or indirectly from the possession, use or control of the Property (unless such injury or damage is caused by any willful act or negligence of the Town). This indemnity shall survive the term hereof for any negligence or intentional misconduct occurring during the term hereof. Nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to the City, its officers, agents and employees, pursuant to the Maine Tort Claims Act or as otherwise provided by law.
7. Insurance. The City shall maintain with respect to its activities a policy of commercial general liability insurance in the amount of Four Hundred Thousand Dollars (\$400,000) per occurrence for causes of action pursuant to the Maine Tort Claims Act and in the amount of One Million Dollars (\$1,000,000) per occurrence for causes of action pursuant to federal law or state law for which immunity is not provided under the Maine Torts Claims Act, insuring the Town as well as the City against injury to persons or damage to the Property. Such policy shall be issued



by a company qualified to do business in the State of Maine and may not be changed or canceled without prior written notice to the Town and shall otherwise be in a form acceptable to the Town. The City shall furnish the Town a certificate of such insurance at least seven (7) days prior to the start of the term.

8. Assignment. The City may not assign this Agreement or sublicense the Property.
9. Miscellaneous. This instrument contains the entire agreement between the parties with respect to the Property and shall be modified only by a written agreement. If any provision of this Agreement (or the application thereof to any person or circumstance) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (and the application of such provision to other persons or circumstances) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**CITY OF SOUTH PORTLAND**

By: \_\_\_\_\_  
James H. Gailey  
Its City Manager, duly authorized

**TOWN OF SCARBOROUGH**

By: \_\_\_\_\_  
Thomas Hall  
Its Town Manager, duly authorized

PENGAD-Bayonne, N. J.





**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MAY 4, 2016**  
**REGULAR MEETING – 7:00 P.M.**

**Order No. 16-036.** Move approval to authorize the Town Manager to sign documents authorizing acceptance of \$8,353.00 or any portion thereof, to be placed in the Asset Forfeiture Account. [This money is the Police Department's equitable share for its contribution to the investigation of criminal cases], as follows:

# *Scarborough Police Department*

## *Memorandum*

**To:** Thomas Hall, Town Manager  
**From:** Robert Moulton, Chief of Police  
**Date:** Friday, April 29, 2016  
**Ref:** Forfeiture  
**CC:** File



During the summer of 2015, our Special Enforcement Unit received information that drugs were being sold out of a residence on Route 1. The unit began surveillance of the residence and was able to see activity that appeared to confirm this information. On August 11, 2015 the SEU, assisted by the DEA-HIDTA task force, conducted a specific operation to interrupt this distribution. The unit was able to seize an individual leaving the residence in possession of crack cocaine that was purchased from an individual inside of the targeted residence. With this information, the unit applied for and was granted a search warrant for the residence. During the execution of the search warrant two males and one female were placed under arrest. The unit also seized 54 grams of heroin valued at \$10,000, 48 grams of crack cocaine valued at \$5,000 and \$8,353.00 in cash that was clearly proceeds from drug transactions. The unit also seized six cell phones that were submitted for forensic analysis. All parties were charged with Class A aggravated drug trafficking.

The main target, Shawn Myers, has since plead guilty to state charges of trafficking in heroin and has received a one year sentence.

As a result, the Cumberland County District Attorney's office is now preparing to transfer ownership of the money (\$8,353.00) to the Town of Scarborough. Accordingly, I have attached a copy of the cover letter as well as the original approval form which needs to be signed by a municipal officer of the town in order to secure the court order for transfer of ownership.

I would respectfully request that the Scarborough Town Council approve the acceptance of these funds.

As it has been some time since we have dealt with a state forfeiture, I thought it might be helpful to include a brief explanation of the various types of forfeiture processes. Although the document was created a few years ago and has yet to be updated with current expenditures, I thought it might provide some helpful insight.

## **Federal Forfeitures:**

Several years ago we were approached about participating in a federal, state, and local task force. The task force was initiated when the Office of National Drug Control Policy (ONDCP) designated Southern & Central Maine as a High Intensity Drug Trafficking Area (HIDTA). This came as a result of the concentrated flow of cocaine and heroin from the Lawrence, Lowell, Haverhill areas into the Southern and Central areas of Maine. After discussions with the Town Manager, it was decided that we would participate and have had an agent assigned since that time.

Whenever our agent participates in an investigation that results in a forfeiture of assets, a DAG 71 form is processed as a request for sharing of the asset. The percentage of sharing is generally in direct correlation to the amount of work performed by our agent and the number of agencies involved.

In the first few cases that we were involved in, the DAG 71 forms were brought to the council for authorization to make the request. There is also a place for the town's legal counsel to sign an acknowledgement of the process. It became clear quite quickly that these forms were going to need to be signed on a fairly routine basis.

Due to the time constraints on the forms and the logistical issues with getting the forms authorized by the town council and then forwarded to the town's legal counsel, the town council at the time voted to give the police chief the authorization to sign the forms and forward them directly to the town's legal counsel. This practice has been in place for several years now and seems to work fine.

Once the forms are processed and the legal action is taken, the funds are electronically deposited into a special interest bearing account that the finance department has set up. In the police department budget each year, I include an estimate of revenues to be collected through this process.

At the end of each fiscal year, the finance department does a journal transfer of funds to the revenue account that I projected revenues to. Funds in excess of the amount that I have estimated stay in the interest bearing account and have in the past been used to buy equipment or resources that the department has not been able to budget for.

I have attached a copy of the federal guide to equitable sharing which explains the entire process. In that document, I have highlighted the section that deals with how the funds can be used. Although the guides are fairly lengthy, the principal point in terms of how the funds may be used is that they may be used for law enforcement purposes and only to supplement but never supplant a budget.

As an aside, I would also point out that when we first assigned an officer to the HIDTA task force, I got reports back from our officer that the task force officers were having

their issued cell phones shut off and their issued vehicles repossessed due to non-payment.

When I met with then Director George Festa, he explained to me that because HIDTA is a program and not an agency or an entity, they can not act as their own fiduciary and must rely on a separate entity to provide that service. At that time they were using a State (not Maine) to provide that service. Unfortunately, that state had a very cumbersome billing and payment process which often lead to payments being several months late. He also pointed out that agents were experiencing similar delays on reimbursement of traveling and other work related expenses. Obviously, this had a huge impact on both efficiency and morale.

After getting further explanation of exactly what was involved, including the average number of transactions, I met with then Town Manager Ron Owens to see if he would have any interest in having the Town of Scarborough provide the fiduciary services for a negotiated fee. Town Manager Owens expressed some interest and after some discussion agreed to provide the service for 3% of HIDTA's annual budget of \$3,000,000.00. Although HIDTA's budget has remained flat at the 3 million dollar mark, we did negotiate a one percent increase to our fee approximately two years ago. We continue to provide that service at 4% or approximately \$130,000.00 for the 11/12 budget cycle. It should be noted that this number is slightly higher than 4% of \$3,000,000 due to the fact that our fees are based on dollars spent and the program has the ability to spend carry forward dollars from the previous 5 years.

### **State Forfeitures:**

When there is a forfeiture that comes as a result of a case that goes through the state court system, we will receive a letter from the district attorney's office explaining that the state is moving on our behalf to have an asset forfeited. The district attorney's office that is involved will also forward a form to be signed by a municipal officer of the municipality. For those cases that have been processed through the Cumberland County DA's office, the interpretation has been that the town manager is a municipal officer and can sign the form provided. For those cases that have been processed through the York County DA's office the interpretation is that the form must be signed by the town council after a formal public vote is taken.

I have attached a copy of Title 15, Section 5826 of the Maine Revised Statutes Annotated, which outlines this process.

### **Expenditures:**

Generally, I have used these funds to purchase items that I feel would be useful for the department but have no other funding source. Below, I have listed expenditures from the past few years with brief explanations.

## **FY 2008**

We joined with Community Services to purchase a used 6 wheel Gator type vehicle, primarily for use at Pine Point Beach. Community Services uses the vehicle for trash collection and our reserve officers use it to patrol or respond to emergencies on the beach. The Fire Department purchased a slide in tank and stretcher platform for extinguishing small fires or carrying a patient off the beach or other remote area.

We also purchased a Bushmaster 14.5” Carbine rifle for use by the regional SWAT team.

## **FY 2009**

We used funds to cover the transportation costs of delivering a military surplus, fully armored HUMVEE which was obtained, at no cost, for use by the regional SWAT Team. This vehicle allows for the safe transportation and deployment of officers during high risk operations.

During this fiscal year we suffered a catastrophic failure of one of the hard drives on the device that records all emergency telephone and radio traffic. The age of the machine made replacement parts very difficult to obtain and technicians advised us that other failures were imminent. Rather than take that chance and add a capital request to the next year’s budget, we used forfeiture funds to purchase a new recorder.

## **FY 2010**

We used funds to cover the renovation of the armored HUMVEE that we had previously obtained and had shipped to us.

During this fiscal year we also used funds to supplement a Justice Assistance Grant for the purchase of new light bars for all of the marked units. The light bars that we had were several years old and had become a maintenance issue as well as a difficult draw on the vehicles charging system. By using a combination of grant and forfeiture funds we were able to make a much need update without asking for a capital expenditure.

## **FY 2011**

Since the passage of a new law requiring the audio/video recording of all suspects of major crimes, it was essential that we purchase a new recording system both to ensure compliance with the new law and also to enhance the efficiency of the interview process. Originally, when this law went in to effect, we were engaged in discussions over a new facility. At that time we decided to wait to see if this could be packaged with that project. As the building project was put on hold, we felt the need to replace the equipment sooner than later. By using forfeiture funds we were able to make this important upgrade without asking for a capital expenditure.



In discussions with various department heads, it was decided that the town would move forward with a sharepoint product that would provide an excellent collaborative platform to be used townwide. We used funds from this account to join other departments in funding this important project.

It should also be noted that there are a few minor purchases in the past two years (three in FY 09 totaling \$382.68 and three in FY 10 totaling 642.53) which on the surface might raise a question about why funds from this account were used.

Midway through FY 2009, I was approached by the Executive Director of HIDTA. He explained to me that there are times when they need to make small purchases, such as refreshments for executive board meetings or training sessions that are held in the field, plaques of appreciation, flowers for a funeral, or some other like expense. In the federal system, with this type of program, there are no provisions made for this type of minor miscellaneous expense. Given the fact that we have been very fortunate to have a substantial revenue stream as a result of our affiliation with HIDTA I felt comfortable agreeing to reimburse minor, reasonable expenses using the funds that come directly from forfeitures.

## Maine Revised Statutes

### Title 15: COURT PROCEDURE -- CRIMINAL

#### Chapter 517: ASSET FORFEITURE HEADING: PL 1987, c. 420, §2 (new)

#### §5826. CRIMINAL FORFEITURE

**1. Property subject to criminal forfeiture.** Notwithstanding any other provision of law, a person convicted of a violation of Title 17-A, chapter 45 forfeits to the State all rights, privileges, interests and claims to property that is subject to forfeiture pursuant to section 5821. All rights, privileges, interest and title in property subject to forfeiture under this section vests in the State upon the commission of the act giving rise to forfeiture pursuant to section 5821.

[ 1995, c. 421, §1 (NEW) . ]

**2. Commencement of criminal forfeiture action.** Property subject to forfeiture may be proceeded against by indictment of the grand jury or by complaint in the District Court in any related criminal proceeding in which a person with an interest in the property has been simultaneously charged with a violation of Title 17-A, chapter 45. At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that property is subject to criminal forfeiture. Discovery in the criminal action must be as provided for by the Maine Rules of Criminal Procedure.

[ 1999, c. 408, §3 (AMD) . ]

**3. Seizure upon indictment.** Property subject to forfeiture that has been indicted by the grand jury pursuant to this section may be seized pursuant to section 5822, subsection 6, except that real property subject to forfeiture pursuant to section 5821, subsection 7 may not be seized without prior notice to and opportunity to be heard by all owners of record or upon a finding by probable cause that prior notice to one or more of the owners is likely to result in the destruction, diminution of value or alienation of interest of the property.

[ 1995, c. 421, §1 (NEW) . ]

**4. Trial proceedings.** Trial against property charged by indictment, information or complaint may be by jury and must be held in a single proceeding together with the trial of the related criminal violation.

A. Forfeiture of the property must be proved by the State by a preponderance of the evidence. [ 1999, c. 408, §3 (NEW) . ]

B. The court, in its discretion, may allow any defendant with an interest in property charged pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. [ 1999, c. 408, §3 (NEW) . ]

C. At trial by jury, the court, upon motion of a defendant or the State, shall separate the trial of the matter against the defendant from the trial of the matter against the property subject to criminal forfeiture. If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of defendants to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues. If the jury finds a defendant guilty of the related criminal offense, the court shall instruct and submit to the jury the issue of the forfeiture of the property. [ 1999, c. 408, §3 (NEW) . ]

[ 1999, c. 408, §3 (AMD) . ]

**5. Ancillary hearing of 3rd-party interests.** A person not charged in the indictment may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property, within 30 days of the date of receipt of the notice, may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim and the relief sought. Upon the filing of any petition for hearing, the hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require but in no event may the hearing be scheduled later than 6 months after the petition is filed or after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than in any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the acts that gave rise to the forfeiture of the property under this section; or [1995, c. 421, §1 (NEW).]

B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section. [1995, c. 421, §1 (NEW).]

[ 2011, c. 559, Pt. A, §14 (AMD) .]

**6. Final order of disposition of property.** Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record and following the court's disposition of all petitions for hearing timely filed by 3rd parties, the State has clear title to property that is the subject of the indictment, information or complaint. The final order must provide for the deposit of the property or the proceeds from the disposition of the property, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, in the General Fund, except that, to the extent that the court finds it reasonable, the court may order forfeiture of as much of the property as is appropriate, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, to a municipality, county or state agency that has made a substantial contribution to the investigation or prosecution of a related criminal case.

[ 1999, c. 408, §3 (AMD) .]

**7. Default proceedings.** Upon motion of the State, the court having jurisdiction over a criminal forfeiture matter may declare a default judgment of forfeiture if the court finds as follows:

A. By clear and convincing evidence that:

- (1) There was probable cause to support the seizure of the property at the time of its seizure;
- (2) The interested party has knowledge of the seizure of the property or the property was seized under circumstances in which a reasonable person would have knowledge of the seizure of that person's property; and

(3) The interested party has failed to appear for any court appearance in accordance with Title 17-A, chapter 45 for a violation that forms the basis of the forfeiture, and that a warrant of arrest for the interested party for such failure to appear has been outstanding for 6 months or more; and [ 1999 , c. 395 , §1 (NEW) . ]

B. By a preponderance of the evidence that the State is entitled to a judgment of forfeiture pursuant to chapter 517. [1999 , c. 395 , §1 (NEW) . ]

The State may meet its burden under paragraphs A and B by presentation of testimony or affidavit.

The interested party has 30 days from the date of the declaration of default judgment of forfeiture to appear before the court in person, submit to its jurisdiction on the companion criminal charge and to petition the court to remove the default judgment.

Post-default proceedings are governed by section 5825.

[ 1999 , c. 395 , §1 (NEW) . ]

**7. (REALLOCATED TO T. 15, §5826, sub-§8) Equitable transfer of forfeited assets.**

[ 1999 , c. 1 , §24 (RAL) ; 1999 , c. 408 , §4 (NEW) . ]

**8. (REALLOCATED FROM T. 15, §5826, sub-§7) Equitable transfer of forfeited assets.** In the case of any asset forfeited under this section to any entity other than the State, transfer of title to the asset may not occur until the transfer is approved by:

A. In the case of an agency or department of a county, a majority of the commissioners of the county; and [1999 , c. 1 , §24 (RAL) . ]

B. In the case of an agency or department of a municipality, the municipal officers of the municipality. [1999 , c. 1 , §24 (RAL) . ]

When property is forfeited and transferred to a municipality in accordance with this section, the municipal officers of the municipality shall determine the disposition of the property. When property is forfeited and transferred to a county in accordance with this section, the county commissioners shall determine the disposition of the property.

[ 1999 , c. 1 , §24 (RAL) . ]

**SECTION HISTORY**

1995 , c. 421 , §1 (NEW) . RR 1999 , c. 1 , §24 (COR) . 1999 , c. 395 , §1 (AMD) . 1999 , c. 408 , §§3,4 (AMD) . 2011 , c. 559 , Pt. A , §14 (AMD) .

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular Session of the 127th Maine Legislature and is current through October 15, 2015. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



**OFFICE OF THE DISTRICT ATTORNEY  
CUMBERLAND COUNTY**

Stephanie Anderson  
District Attorney

142 Federal Street, Portland, Maine, 04101  
101 Meadows Road, West Bath, Maine, 04530-9704

Portland  
(207) 871-8384

Bath  
(207) 443-5104

April 25, 2016

Chief Robert Moulton  
Scarborough Police Department  
246 US Route 1  
Scarborough, ME 04074

**RE:** State v. Shawn Myers, CR-15-4798 and \$8,353.00 US Currency  
City of Scarborough Approval

Dear Chief:

Enclosed please find a City of Scarborough Approval form for the forfeiture of the money seized in this case. As you can see, the City/Town Council, or a representative thereof, needs to sign this form and return it to me so that I can provide you with a court order that will transfer the money that was seized to the City/Town. Please let me know if you have any questions for me.

Thank you.

Sincerely,

**DEPARTMENT OF THE ATTORNEY GENERAL**

State of Maine

By: 

Lea-Anne Sutton

Assistant Attorney General

STATE OF MAINE  
Cumberland, SS

State of Maine

v.

Shawn Myers,  
Defendant

AND

\$8,353.00 US CURRENCY

DEFENDANT IN REM #1

UNIFIED CRIMINAL DOCKET  
Criminal Action  
Docket No. CR-15-4798

}  
}  
}  
}  
}  
}  
}  
}  
}

City/Town Of Scarborough  
Approval Of Transfer  
15 M.R.S.A. §5824(3)  
and §5826(6)

**NOW COMES** the City/Town of Scarborough, Maine, by and through its legislative body, the City/Town Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes Annotated, to the transfer of the above captioned Defendant(s) *In Rem*, namely \$8,353.00 US Currency, on grounds that the City/Town of Scarborough Police Department did make a substantial contribution to the investigation of this or a related criminal case.

**WHEREFORE**, the City/Town of Scarborough Town/City Council does hereby approve of the transfer of the Defendant(s) *In Rem* to the City/Town of Scarborough, Maine pursuant to 15 M.R.S.A. §5824(3) and §5826(6).

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)