

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

Item 1. Call to Order. Chairman Donovan called the regular meeting of the Scarborough Town Council to order at 7:02 p.m.

Item 2. Pledge of Allegiance.

Item 3. Roll Call. Roll was called by Yolande P. Justice, Town Clerk. Thomas J. Hall, Town Manager was also present. The following Councilors were present:

Shawn A. Babine, Vice-Chair	Katherine A. St. Clair
Robert W. Rowan	Peter F. Hayes
Jean-Marie Caterina	Christopher J. Caiazzo
William J. Donovan, Chairman	

Item 4. General Public Comments. None at this time.

Item 5. Minutes: April 20, 2016 – Regular Meeting. Motion by Councilor Rowan, seconded by Councilor Babine, to move approval of the minutes of the April 20, 2016, Town Council meeting.

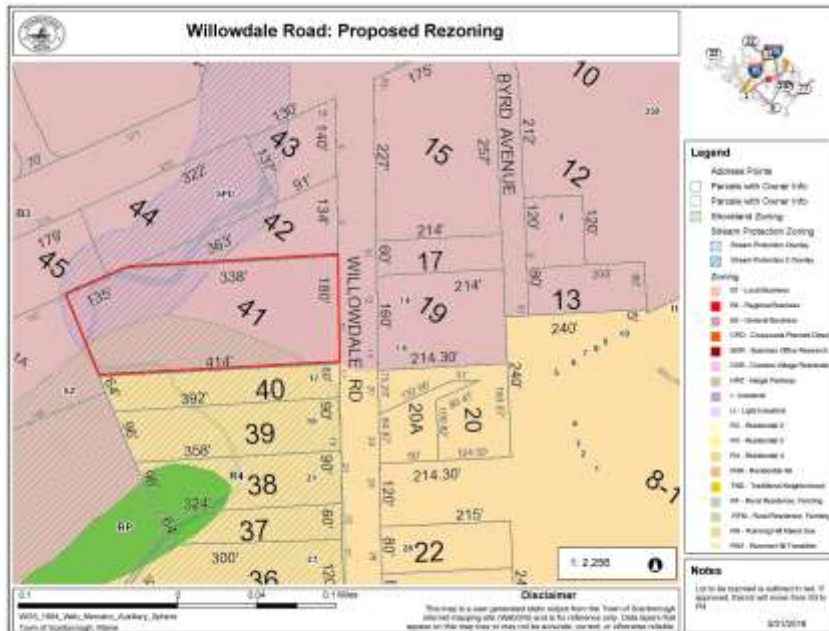
Vote: 7 Yeas.

Item 6. Adjustment to the Agenda. Chairman Donovan stated that if there is no objection by the Town Council, he would like to have Resolution 16-003 added to the agenda – right after the two public hearings. There was no objection.

Item 7. Items to be signed: a. Treasurer’s Warrants. Treasurer’s Warrants were signed during the meeting.

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). Prior to the public hearing, Karen Martin, Executive Director of SEDCO, gave a brief overview on this proposal and responded to questions, from the Town Council. Chairman Donovan opened the public hearing. There being no comments either for or against the hearing was closed at 7:09 p.m.

Motion by Councilor Babine, seconded by Councilor Caterina, to move approval of the 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), as follows:



Vote: 7 Yeas.

Order No. 16-024, 7:00 p.m. Public Hearing on the on the proposed FY2017 Municipal/School Budget. Chairman Donovan opened the public hearing. There being not comments either for or against the hearing was closed at 7:13 p.m. The second reading on the FY 2017 Municipal/School Budget is scheduled for Wednesday, May 18, 2016. Councilor Babine, Chair of the Town’s Finance Committee, gave an update on upcoming meeting dates.

Resolution 16-003. Act on the request to move approval of Resolution 16-003 to recognize the second full week in May as *Women’s Lung Health Week.* Motion by Councilor Babine, seconded by Councilor Caterina, to move approval of Resolution 16-003 recognizing the second full week in May as *Women’s Lung Health Week*”, as follows:

Resolution 16-003
Proclamation in Recognizing
the Second Full Week of May as
“Women’s Lung Health Week”

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

WHEREAS, every eight minutes, one woman in the U.S. loses her battle with lung cancer; and,

WHEREAS, lung cancer is the #1 cancer killer of women and men in the U.S.; and,

WHEREAS, the number of women dying from lung cancer has nearly doubled over the past 30 years; and,

WHEREAS, advocacy and increased awareness will result in more and better treatments and early detection for people with lung cancer that will ultimately save lives; and,

WHEREAS, LUNG FORCE is a fast-growing initiative led by the American Lung Association, with the mission of making lung cancer history—uniting the nation in the fight against lung cancer.

BE IT RESOLVED, that the Town of Scarborough, Maine hereby designates the second full week in May as *Women’s Lung Health Week* throughout the Town of Scarborough, Maine, and encourages all residents of Town of Scarborough, Maine to learn more about the detection and treatment of lung cancer.

Signed and sealed this the 4th day of May 2016, on behalf of the Scarborough Town Council and the Town Manager of Scarborough, Maine. Signed by William Donovan, Council Chair and attested by the Town Clerk.

Vote: 7 Yeas.

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 Contact Zone V – Scarborough Realty, LLC [Mercedes-Benz Dealership] located at 137 US Route One. Dan Bacon, Town Planner, gave a brief overview on this item and reviewed the process that would be followed. Mr. Daniel Doucette, Prime Motor Group and Mr. David Richards of R.A. Gawron Turgeon Architects reviewed the proposed changes and responded to questions from the Town Council.

Motion by Councilor Babine, seconded by Councilor Rowan, to 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 to and schedule a Town Council public hearing and second reading upon the filing of the Planning Boards recommendations, as follows:

**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"; and,

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
It's 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)

Vote: 7 Yeas.

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. Dan Bacon, Town Planner gave a brief overview on this item. Mr. William Conway of Landscape Architect with Sebago Technics and Mr. Ryan Senator also of Sebago Technics reviewed the proposed changes.

Motion by Councilor Rowan, seconded by Councilor Babine, to 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 to and schedule a Town Council public hearing and second reading upon the filing of the Planning Boards recommendations, as follows:

**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 15th 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 setbacks, 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 14,730 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

Vote: 7 Yeas.

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. Thomas J. Hall, Town Manager, gave a brief overview on this Order and responded to questions from the Town Council.

Motions by Councilor Babine, seconded by Councilor Caterina, 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.

Vote: 7 Yeas.

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]. Thomas J. Hall, Town Manager, gave a brief overview on this Order. Police Chief Moulton gave a brief overview on what the money could be spent on and responded to questions from the Town Council.

Motion by Councilor Rowan, seconded by Councilor St. Clair, 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.

Vote: 7 Yeas.

Item 8. Non Action Items. None at this time.

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

- Councilor Caiazzo gave an update on the Energy Committee and the School Board.
- Councilor Babine gave an update on the Library Board of Trustees and the Town Council Finance Committee.
- Councilor Rowan gave an update on the Housing Alliance Committee and the Historic Implementation Preservation Committee
- Councilor Caterina gave an update on the Chamber of Commerce.

Item 10. Town Manager Report. Thomas J. Hall, Town Manager, gave the following updates:

- The Community Chamber's Annual Dinner is scheduled for Tuesday, May 10th at the Bellavita Facility at 6:00 p.m.
- The Eastern Trail "Close the Gap Campaign" is under way and to find out more, the Eastern Trail's Annual Meeting is scheduled for Wednesday, May 25th at the Clambake from 5:30 to 7:30 p.m.
- SEDCO will be hosting an All Boards and Committee Forum on Monday, May 23rd at the Wentworth Café starting at 6:30 p.m.

Item 11. Council Member Comments.

- Councilor Rowan spoke on the budget forum and thanked everyone involved. The Land trust Cleanup is scheduled for Saturday, May 7th from 9:00 a.m. to noon for more information you can send an email to admin@scarboroughlandtrust.org
- Councilor Caterina thanked Chairman Donovan for meeting with Pine Point Residents regarding the Avenue two issue. She found it stunning that no one had not gotten up to speak on the budget, which was a good sign.
- Councilor Hayes also mentioned the Eastern Trail Annual meeting and urged those interested to attend to find out more on how you can help complete the trail.
- Councilor Caiazzo also was surprised as to no comment on the budget. The lack of comments endorses that we are doing the right thing.
- Chairman Donovan spoke on his meeting with residents of Pine Point relating to the Avenue 2 issue. He mentioned that the compost centers are open; they are located at Walmart, Pine Tree Waste and the Maine Veterans Home – let us make this a successful endeavor. He commented on the workshop that had been held earlier which he felt went really great and went on mentioned the Scarborough Calendar. He too commented on the budget forum and felt that residents were getting the information they needed.

Item 12. Adjournment. Motion by Councilor Babine, seconded by Councilor Rowan, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 7 Yeas.

Meeting adjourned at 8:17 p.m.

Respectfully submitted,

Yolande P. Justice

Town Clerk