

**AGENDA  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JUNE 26, 2024  
WORKSHOP ON SHORT-TERM RENTALS – 5:30 P.M.  
HYBRID REGULAR MEETING – 7:00 P.M.**

**TO VIEW TOWN COUNCIL MEETING & OFFER PUBLIC COMMENT:**

<https://scarboroughmaine.zoom.us/j/84393859237>

**TO VIEW TOWN COUNCIL MEETING ONLY:**

<https://www.youtube.com/channel/UCD5Y8CFy5HpXMftV3xX73aw>

***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: June 5, 2024 - Town Council Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer's Warrants.
- Item 8.** Town Manager Report.

**\*Procedure for Addressing Council [Councilor Chair will explain process]**

**Order No. 24-050, 7:00 p.m. Public hearing** with the Town Council and the Planning Board to discuss the proposed Ninth Amendment to the Contract Zone Agreement for The Gateway at Scarborough. The amendment is proposed by DEEP Engineering Solutions for property located off of Cabela Boulevard (Assessor's Map R040, Lot 5). The proposed contract zone amendment includes a 120-unit hotel. *(Applicant, Planning Director)*

**Order No. 24-027, 7:00 p.m. Public hearing** and second reading on the proposed amendments to Chapter 311: the Town of Scarborough Schedule of License, Permit and Application Fees regarding the proposed Annual Mooring Wait List Fee. (Tabled from the March 20, 2024, Town Council meeting.) *[Town Staff]*

**Order No. 24-041, 7:00 p.m. Public hearing** and second reading on the proposed amendments to Chapter 405B Site Plan Review, IV Performance and Design Standards, D. Parking Areas; E. Pedestrian Ways, Space and Alternative Transportation; F. Landscape, Buffering and Greenspace; K. Outdoor Storage; Appendix Plant Material List; and Chapter 405B-1 Design Standards for Commercial Districts. *[Planning Director]*

## **OLD BUSINESS:**

**Order No. 24-042.** Second reading on the request to repeal in its entirety Chapter 415A Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement District; repeal in its entirety Chapter 415B Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement District, repeal in its entirety Chapter 410 Scarborough Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement Districts; and replace with amended Chapter 415 Impact Fee Ordinance with an effective date of July 1, 2024. *[Planning Director, Town Engineer]*

**Order No. 24-048.** Second reading, to extend the Town-wide Moratorium on Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities, that the Town Council approved on February 7, 2024. *[Assistant Town Manager]*

**Order No. 24-049.** Second reading to approve the expenditure, in an amount not to exceed, \$800,000 from the Land Acquisition Reserve Fund for the purpose of purchasing property located at 65 Hanson Road [Silver Brook Preserve II], identified by the Scarborough Tax Assessors Map R001/Lot 003, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town's interest. *[Parks and Conservation Land Board]*

## **NEW BUSINESS:**

**Order No. 24-051.** First reading and schedule a public hearing and second reading on the proposed amendments to Chapter 1018 – the Town of Scarborough Cannabis Establishment Licensing Ordinance. *[Assistant Town Manager]*

**Order No. 24-052.** Act on the request for a Mass Gathering Permit from Maine Vintage Race Car Association, located at 70 Holmes Road, on Sunday, July 28, 2024. *[Applicant]*

**Order No. 24-053.** Act on the request from the Town Clerk to Certify the June 11<sup>th</sup> Election Results for the School Budget Validation Referendum Election and the Board of Education Election. *[Town Clerk]*

**Order No. 24-054.** Act on the request to replace Councilor Anderson with Councilor Cushing as the Liaison to the Chamber of Commerce. *[Council Chair]*

**Item 9.** Non-Action Item.

**Item 10.** Standing and Special Committee Reports and Liaison Reports.

**Item 11.** Council Member Comments.

**Order No. 24-055.** Act on the request for an executive session pursuant to M.R.S.A. Title 1, §405(6)(D) regarding labor negotiations between the Town of Scarborough and the Scarborough Police Benevolent Association; the Scarborough Professional Dispatchers Unit of Scarborough Firefighter Association - IAFF #3894; the Scarborough Professional Firefighter Association IAFF Local #3894 and the Public Works Teamsters Union Local #340. *[Assistant Town Manager]*

**Item 12.** Adjournment.





To: Scarborough Town Council  
From: Thomas J. Hall, Town Manager  
RE: Town Manager's Report  
Date: June 26, 2024

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Below is an initial list of items that will be included in the Town Manager's Update at the regular public meeting of June 26, 2024. I will provide a verbal update on each of these items and will likely include other items of interest.

- **Affordable Housing Grand Openings** -
  - Village Commons - June 18th
  - Jocelyn Place - June 20th
- **Upcoming Workshops** -
  - June 26th - Short-Term Rentals
  - June 27th - School Building Committee Report/School Survey Results
  - July 17th - November Ballot Questions
  - August 21st - Community Center Presentation
- **Mooring Expansion** -
  - As many as 30 new mooring opportunities as a result of dredging project
- **Eastern Trail - Close The Gap** -
  - Agreement with CSX on Aerial Easement and Construction Agreement
  - Application with MDEP and Army Corps of Engineers
- **Gorham Connector** -
  - Tentative 2nd Public Meeting - July 18th, at Wentworth School
- **Alger Hall** -
  - Purchase and Sales Agreement negotiated - TC action on July 17th
  - Access License and Indemnity Agreement executed
- **State of Scarborough Address** -
  - Scarborough Chamber of Commerce- July 25th
- **Summer Schedule** - Per Council Rules only one meeting per month in the summer
  - July 17th
  - August 21th

- **Route One Traffic** - Activation of Adaptive Signals
- **Concerts In The Park** - Starts June 27th, every Thursday through August 1st
- **BoardDocs** - Active for the July 17th meeting
- **Ralph Masciovecchio** - SCC President's Award



**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-050, 7:00 p.m. Public hearing** with the Town Council and the Planning Board to discuss the proposed Ninth Amendment to the Contract Zone Agreement for The Gateway at Scarborough. The amendment is proposed by DEEP Engineering Solutions for property located off of Cabela Boulevard (Assessor’s Map R040, Lot 5). The proposed contract zone amendment includes a 120-unit hotel. (*Applicant, Planning Director*)

Move approval pursuant to Chapter 405 Section 4. Procedures – a- iii: advise the applicant:  
[COUNCIL TO CHOOSE ONE OF THE FOLLOWING OPTIONS]

- (1) to withdraw the request for contract zoning; or
- (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council; or
- (3) to revise and resubmit the application for contract zoning, under Section II(I)(4)(a)(i) above.

*Applicant, Planning Director*

*Ought to Pass*

\_\_\_\_\_  
Sponsor

\_\_\_\_\_  
Recommendation

N/A

\_\_\_\_\_  
First Reading/Vote

06/26/2024

\_\_\_\_\_  
Public Hearing

N/A

\_\_\_\_\_  
Second Reading/Final Approval/Vote

## Scarborough Town Council and Planning Board Joint Meeting

Meeting Date: June 26, 2024

**ACTION ITEM: Order No. 23-050.**

**SUBJECT:**

**7:00 p.m. Public hearing** with the Town Council and the Planning Board will conduct a Joint Workshop to discuss the proposed Ninth Amendment to the Contract Zone Agreement for The Gateway at Scarborough. The amendment is proposed by DEEP Engineering Solutions for property located off of Cabela Boulevard (Assessor's Map R040, Lot 5). The proposed contract zone amendment includes a 120-unit hotel. (*Applicant, Planning Director*)

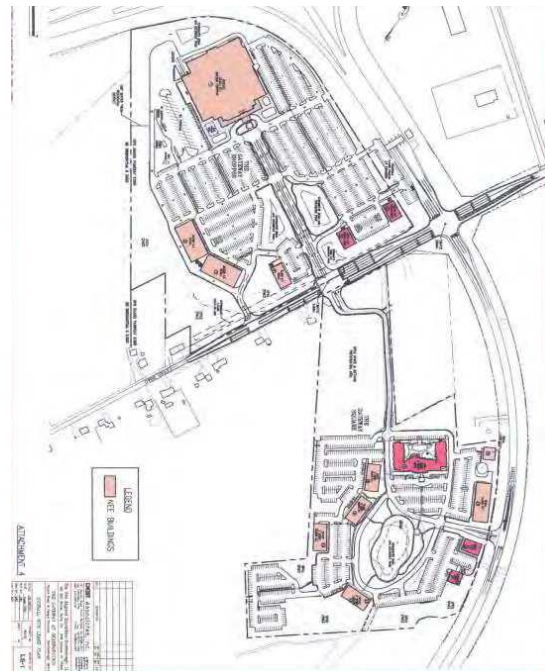
**PURPOSE:**

To discuss and consider the ninth amendment to The Gateway at Scarborough contract zone located off of Cabela Boulevard for the addition of a 120-unit hotel.

**BACKGROUND:**

The proposed contract zone amendment includes a 120-unit hotel ("Woodspring Suites"). The applicant is proposing to locate the hotel in the parking area located next to the park and ride facility. The hotel will utilize existing utilities to include water, electric, sewer, and gas.

The Gateway at Scarborough was originally approved on December 20, 2006, with the underlying zoning of Haigis Parkway District (HP). The original contract zone for the Cabela's project sought relief from the retail size limitation of 20,000 sq ft in the HP zone to allow up to 130,000 sq ft. The original contract zone also included specific sign allowances not permitted in the zoning ordinance.



The contract zone requires property to be developed in accordance with the site plan and subdivision plan as finally approved by the Planning board, as amended. The uses shall comply with the zoning ordinance and the contract can not prohibit uses that are permitted in the HP district.

“Any change to the development that results in either an increase in the size of the one hundred thirty thousand (130,000) square foot retail facility permitted hereunder or changes to the signage attached thereto or associated therewith, or any change with respect to the off-site signage permitted hereunder, shall require an amendment to this Agreement approved by the Scarborough Town Council and will also be subject to further Planning Board review, as required, except for any change to signage that results in the signage being in compliance with the requirements of Section XII of the Zoning Ordinance.”

**The Contract Zone has included eight amendments:**

- First - September 5, 2007 for sign amendments
- Second – November 7, 2007 for an educational facility use (permitted in HP)
- Third – April 30, 2008 for additional sign amendments
- Fourth – March 2010 to extend substantial completion timeframe
- Fifth – July 21, 2010 for additional signage changes and to add additional uses (restaurants that include drive-up or drive-thru service, craft shows and art shows)
- Sixth – January 19, 2011 for sign height amendment
- Seventh – March 6, 2013 to extend substantial completeness date
- Eighth – March 15, 2017 for the Gateway Apartments (included 700,000 towards the affordable housing fund)

The original approval of the contract zone was approved with the following findings:

“..that the Contract Zoning Agreement and authorizations therein are found to be consistent with the Town's Comprehensive Plan, consistent with the existing and permitted uses in the Haigis Parkway District, in the public interest, will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification;”

The only amendment that provided specific public benefit was the eighth amendment for the apartments. The apartment use required specific zoning relief and advancement of growth permits.

The proposed hotel use is permitted in the underlying zoning of the Contract Zone. No zoning relief is required. The HP zone permits hotels and motels, provided all guest rooms are accessed by interior corridors. One could conclude that since the use is permitted in the underlying zone, only Site Plan approval is required, however precedent has been set for Contract Zone amendments with site plan approval. Staff does not believe any additional public benefit is required for the use since no zoning relief is required.

Staff has also noted the underlying zoning shown on the Official Zoning Map states the property is zoned B3. This change was made in 2012, but has no bearing on the contract zone as it relies on the HP district as the underlying zone.

### **JOINT MEETING PROCESS**

The purpose of the joint meeting is to provide feedback to the applicant in terms of next steps. The joint Planning Board/Town Council meeting shall be conducted as follows:

- Presentation by the applicant
- Comments from Town staff
- Comments from members of the public
- Response or rebuttal from applicant
- Discussion among members of the Planning Board and the Town Council, which may include questions posed to the applicant, staff and the public
- Comments from members of the Planning Board concerning the land use implications of the proposed contract zoning agreement
- Preliminary Town Council discussion of contract zoning agreement.

The Joint Planning Board/Town Council meeting may be continued from time-to-time by vote of the Town Council until the Council has concluded its discussion and is prepared to give the applicant preliminary direction concerning the further processing of the contract zoning request.

At the conclusion of the discussion, the Council shall, by vote, advise the applicant:

- (1) to withdraw the request for contract zoning;
- (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council; or
- (3) to revise and resubmit the application for contract zoning.

The vote of the Town Council shall constitute direction from the Council to the applicant as to how to proceed, but shall not be binding on either the applicant or the Council, which reserves its sole and exclusive judgment as the elected legislative body of the Town of Scarborough until its final vote on the proposed contract zoning agreement.

### **NEXT STEPS**

1. Planning Board Plan Review Required for preliminary approvals
2. Town Council Action on the Contract Zoning Agreement
3. Final Planning Board Action

### **FISCAL IMPACT:**

Potential tax benefit to the Town

### **STATUS / PROCESS TO DATE:**

- Joint Meeting June 26, 2024

### **PROPOSED ACTION:**

Conduct a Joint Workshop to discuss the proposed Ninth Amendment to the Contract Zone Agreement for The Gateway at Scarborough. The amendment is proposed by DEEP Engineering Solutions for property located off of Cabela Boulevard (Assessor's Map R040, Lot 5)



**ATTACHMENTS:**

- Application Submittal
- Existing Contract Zone and Amendments
- Contract Zone Process



May 10, 2024

Mr. Eric Sanderson  
Senior Planner  
Town of Scarborough  
259 US Route One  
Scarborough, ME 04074

## **RE: Preliminary Joint Review of Application for Contract Zoning by Planning Board and Town Council**

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Dear Mr. Sanderson,

Thank you for the opportunity to provide the following package for consideration of the Planning Board and Town Council. We are available to provide any additional information, or answer any follow up questions. We look forward to your review.

### **Summary of Documentation Provided for the Contract Zone Amendment Process**

- Please find the attached PDF map showing contract zone 9, Assessor's Map R40, Lot 5. This is labeled Exhibit 1 and it is understood an E911 address will be determined in coordination with public safety as this application progresses.
- Project Owner  
Dinesh Patel  
1500 Main Street  
Suite 255  
P.O. Box 15503  
Springfield, MA 01115  
Ph: 413-627-9308

Project Representative

DEEP Engineering Solutions  
Michael Wallace, P.E.  
203 Anderson Street  
Portland, ME 04101

- Agreement of Sale is provided to show evidence of applicant's right, title and interest in the property.



- The applicant is proposing to construct a 120-unit hotel as a proposed new use which is consistent with other developments in this plaza and consistent with the Town of Scarborough's Comprehensive Plan. The hotel proposed is by WoodSpring Suites which is a Choice Hotel brand. The applicant is proposing to locate the hotel in the parking area located next to the Seadog restaurant. The hotel will utilize existing utilities to include water, electric, sewer and gas. The proposed hotel will benefit the community by providing a valued brand for stay and extended stay, in a location ideal which includes existing parking and its proximity to Exit 42 makes it highly desirable as a regional center for employment, entertainment, and cultural activities.

Hagis Parkway zoning HP currently allows hotels and motels as a permitted use for future development, provided all guest rooms are accessed by interior corridors. This proposed development in this HP District will be consistent with the Design Standards for Scarborough's Commercial Districts.

- As part of this application the applicant is providing the following sheet sets as conceptual development plans showing approximate layouts, parking areas and pathways to enter and exit.
  - The Architectural PDFs of hotel
  - The Hotel Plan showing location
  - The ALTA Survey Revision 2
  - The Plaza Parking Breakdown
  - The Plaza Utility Locations
  - The Phase 1 Environmental Assessment

As part of this proposal, the applicant understand they'll need to enter into a Contract Zoning Agreement which complies with the requirements of Scarborough's sections I & II Title and Zoning Ordinance. Section II(I)5 of that ordinance require the items described below and the applicant is acknowledging those requirements.

### *The Contract Zoning Agreement*

#### **a. Contents of the Agreement.**

The contract zoning agreement shall include a provision granting the Town of Scarborough the power to enforce all conditions and restrictions, both through enforcement action pursuant to this Ordinance and through legal action for specific performance. Conditions and restrictions imposed by the Town Council may include, but shall not be limited to, the following:

- 1. Limitations on the number and types of uses permitted.**
- 2. Restrictions on the scale and density of development.**
- 3. Specifications for the design and layout of buildings and other improvements, including landscaping.**
- 4. Schedules for commencement and completion of construction.**
- 5. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects.**
- 6. Preservation of open space and buffers, and protection of natural areas and historic sites.**

7. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewer, and special maintenance needs arising from the rezoning.

**8. Provisions for enforcement and remedies for breach of any conditions or restrictions.**

**9. Provisions for reservation or dedication of land for public purposes.**

The Town Council may impose conditions under this Section II(I) which are more restrictive than the otherwise applicable requirements of this Ordinance

**b. Effects of the Agreement.**

The conditions and restrictions set forth in the agreement shall run with the land and bind all future owners of the land and any other person who claims an interest in the property, and may be removed only by subsequent action of the Town Council expressly removing, relieving or discharging one or more of the specific conditions or restrictions. If the conditions and restrictions are not fulfilled or complied with within the specified time limits, the Town Council may extend the time limits or may initiate a rezoning to the original zoning district classification or to another zoning district classification.

**c. Modifications and Amendments.**

The contract zoning agreement may allow for changes or modifications to the development, but shall specify the procedure for approval of any such changes or modifications, setting forth categories of changes or modifications which would require Planning Board approval only, those which would require Town Council approval only, and those which would require both Planning Board and Town Council approval. Unless otherwise specified in the contract zoning agreement, a request to amend a contract zoning agreement shall be processed as stated in Section II(I)(4) above

**d. Performance Guarantees.**

As part of the contract zoning agreement, the Town Council may, but is not obligated to, require a bond, escrow agreement, irrevocable letter of credit, or other surety in such amount as is approved by the Town Manager as being reasonably necessary to ensure compliance with the conditions or restrictions required by the rezoning and, where necessary to ensure continued compliance, may require such surety to remain in effect after occupancy of the rezoned property. Such surety shall be posted before the agreement is recorded in the Registry of Deeds.

We look forward to working with the Town of Scarborough on this important project. Please reach out with any questions or concerns.

D.E.E.P. Engineering Solutions

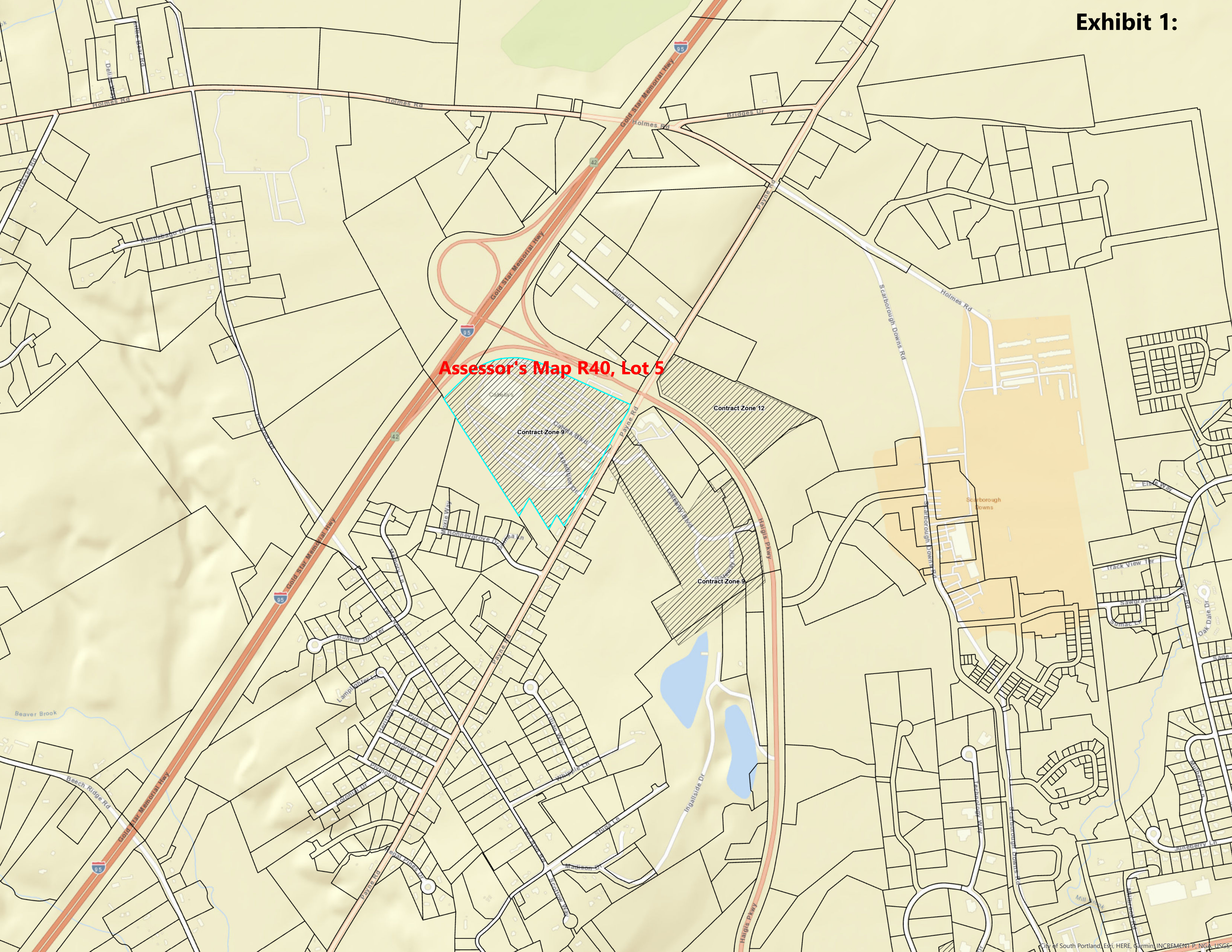
Michael R. Wallace, P.E., CEM



President & Principal Engineer

[Michael.wallace@deepengsolutions.com](mailto:Michael.wallace@deepengsolutions.com)





Assessor's Map R40, Lot 5



## AGREEMENT OF SALE

THIS AGREEMENT OF SALE is made this 5<sup>th</sup> day of March, 2024 between **THE NEW ENGLAND EXPEDITION – SCARBOROUGH LLC**, a Maine limited liability company (the “**Seller**”) and **DINESH PATEL**, his assignee or nominee, (the “**Purchaser**”). The term “**Agreement Date**” shall mean the date that this Agreement has been fully executed by all parties and Purchaser and Seller has each received a fully executed, original counterpart of the same.

## BACKGROUND

A. Seller is the Declarant of the Condominium referred to in Paragraph B below and intends to create a condominium unit to be known as condominium unit No. 6 pursuant to the exercise of Development Rights reserved in the Declaration of Condominium also referred to in Paragraph B below, which unit no. 6 comprises a portion of the land comprising the Condominium and is described more fully on the plan attached as **Exhibit “A”** hereto (the “**Land**”). The Land is currently unimproved and consists of approximately +/- 18,000 square feet of land (hereinafter referred to as the “**Real Property**”).

B. The Real Property comprising condominium unit No. 6 as aforesaid will be located in the condominium known as Gateway Shoppes Condominium (the “**Condominium**”), which Condominium was created pursuant to a Declaration of Gateway Shoppes Condominium dated September 9, 2022, and recorded on September 13, 2022, as Document 46913, Book 39712, Page 246, in the Cumberland County Registry of Deeds (the “**Condominium Declaration**”). The Condominium Declaration provided for the creation of a condominium association known as Gateway Shoppes Condominium Owners Association (the “**Association**”). The Association is governed by, among other things, Bylaws dated September 12, 2022 (the “**Bylaws**”). The Condominium Declaration, the Bylaws and all other rules and regulations and other documents creating and/or governing the Condominium and/or Association are hereinafter referred to as the “**Condominium Documents**”.

C. Condominium unit No. 6 will be created by the Seller as hereinabove provided following the receipt by Buyer of all required permits and approvals regarding the improvements proposed to be constructed on condominium unit No. 6 by Buyer, and the satisfaction of all other terms and conditions hereof. Seller desires to sell the Real Property to the Purchaser, and Purchaser desires to acquire the Real Property from Seller, upon the terms and conditions contained in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

**1. PURCHASE AND SALE OF PROPERTY.** Subject to the terms and conditions of this Agreement, the Seller hereby agrees to sell, transfer, convey and assign to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and accept, the Real Property, together with all of Seller’s right, title and interests, if any, in and to all Appurtenances (as hereinafter defined) pertaining thereto. The term “**Appurtenances**”, as used herein, shall mean all rights and interests appurtenant to condominium unit No. 6 as described or referred to in the Condominium Declaration.

Condominium unit No. 6 shall be conveyed subject to all terms, conditions and restrictions as set forth or referred to in the Condominium Declaration.

Hereinafter, the term “**Property**” shall be deemed to include the Real Property and all of the Appurtenances pertaining thereto subject to subject all terms, conditions and restrictions as set forth or referred to in the Condominium Declaration.

2. **PURCHASE PRICE.** [REDACTED]

3. **MANNER OF PAYMENT OF PURCHASE PRICE.** The Purchase Price shall be paid as follows:

A. [REDACTED]

**Paragraph 19.**

B. **Payment of Balance of Purchase Price.** At Closing, Purchaser shall pay to Seller the Purchase Price (subject to adjustments and apportionments set forth in this Agreement and less the Deposit) by certified check, bank check, title insurance company check or wire transfer of immediately available federal funds.

4. **INVESTIGATION PERIOD; FINANCING CONTINGENCY.**

**SUBSURFACE GEOTECHNICAL OR ENVIRONMENTAL INVESTIGATIONS OTHER THAN A PHASE I.** Purchaser shall hold Seller and the Association harmless and shall indemnify and defend Seller and the Association against any and all claims, including costs, fees, expenses and reasonable attorneys' fees, for or in respect of injuries (including death) or damage of any kind to the person or property of Seller, Purchaser or of any other person whomsoever caused by or in connection with Purchaser's entry onto the Property and/or such tests or related activities. All inspection fees, appraisal fees and other costs and expenses of any kind incurred by the Purchaser or Purchaser's representatives relating to such investigations of the Property and its other due diligence shall be at the sole expense of Purchaser. The provisions hereof shall survive termination of this Agreement.

B. **Right to Terminate in Investigation Period.** If at any time prior to 5:00 p.m. local time at the Property on the last day of Investigation Period, Purchaser determines that it is not satisfied for any reason, in its sole discretion, with the Condominium Documents and/or the results of its investigations, or the status of any other condition of or relating to the Property, whether known or unknown on the Agreement Date, and notifies Seller in writing of its election to terminate this Agreement, the Deposit shall be returned to Purchaser and this Agreement shall, without any further action by Purchaser or Seller, become null and void, and all of the parties to this Agreement shall be released from any and all further obligation or liability hereunder except for those obligations that expressly survive termination of this Agreement. TIME SHALL BE OF ESSENCE WITH RESPECT TO THE PURCHASER'S DELIVERY OF A TERMINATION NOTICE PURSUANT TO THIS SUB-PARAGRAPH B ON OR BEFORE THE EXPIRATION OF THE INVESTIGATION PERIOD.

C. **Cooperation by Seller.** Seller shall reasonably cooperate with Purchaser with respect to Purchaser's investigations and shall not act unreasonably to hinder, obstruct, delay or prevent the same. Seller shall cause its employees, management companies and other personnel to reasonably cooperate with Purchaser in its investigations, and to make Seller's records regarding the Property in its possession or control available to Purchaser upon request. Seller shall deliver to Purchaser within five (5) days after the Agreement Date all of the information listed on **Exhibit "B"** (the "**Property Information**").

D. **Permitting Period.** No later than one hundred twenty (120) days from the expiration of the Investigation Period (the "**Permits Period**"), Purchaser shall commence submissions to authorities having jurisdiction to obtain all requisite applications and all other applications and drawings required to obtain all building, plumbing, electrical and other permits, licenses and approvals required by governmental authorities having jurisdiction for the construction, use and operation of a hotel consisting of no more than 123 rooms (collectively, the "**Permits**"), at Purchaser's cost and expense; and Purchaser shall thereafter diligently and in good faith prosecute such applications to conclusion. Seller agrees, at no cost, expense or liability to Seller, to join in the aforesaid applications whenever such joinder shall be reasonably necessary and to cooperate with Purchaser in the processing of the aforesaid applications for any and all Permits. Purchaser shall be solely responsible for, and agrees to indemnify and hold Seller harmless from, any and all application fees, contributions and other charges imposed in connection with the issuance of any and all Permits required by Purchaser and all of its proposed improvements, or in connection with the provision of utility services thereto. In the event Purchaser fails to obtain the Permits on or before the expiration

of the Permits Period, Purchaser shall have the right to terminate this Agreement by written notice to Seller given prior to the expiration of the Permits Period, and upon such termination, the Deposit shall be returned to Purchaser whereupon there shall be no further rights, obligations or liabilities between the parties.

E. **Confidentiality.** Purchaser (and its affiliates partners, members, attorneys, agents, employees, underwriters and consultants) will each treat the transactions contemplated in this Agreement, the negotiations in connection herewith, and the information disclosed to such Purchaser by the Seller and/or the Association as confidential and shall disclose the foregoing only to its partners, members, attorneys, agents, employees, underwriters, consultants, financing sources, prospective financing sources, or otherwise as reasonably required in connection herewith and the transactions hereby (the “**Confidential Information**”), and shall direct such recipients to keep such information confidential, giving it the same care as its own confidential information, and shall make no use of any such Confidential Information not independently known to Purchaser, except (i) in connection with the transactions contemplated hereby, (ii) to the extent legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose the same, or (iii) to the extent required by any federal, state, local or foreign laws, or by any rules or regulations of the United States Securities and Exchange Commission (or its equivalent in any foreign country) or any domestic or foreign public stock exchange or stock quotation system, that may be applicable to Purchaser or any of its direct or indirect constituent owners or affiliates.

## **5. TITLE.**

A. **Title Report.** Purchaser shall order a current title report (the “**Title Report**”) from a title company selected by the Purchaser (“**Title Company**”) and a current ALTA/NSPS as-built survey of the Real Property (the “**Survey**”) within ten (10) days after the Agreement Date. Within ten (10) days after delivery of the Title Report to Purchaser and receipt by Purchaser of the Survey, Purchaser shall notify Seller in writing of any conditions, defects, liens, encumbrances or other items appearing as exceptions in the Title Report or Survey which are unsatisfactory to Purchaser (hereinafter referred to as “**Title Objections**”). Seller shall, within ten (10) days thereafter, notify Purchaser of which Title Objections, if any, it is unable or refuses to correct or otherwise cause to be removed from the Title Report or Survey at Closing (the “**Uncorrected Objections**”). In no event shall Seller be required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses, in order to attempt to eliminate any Title Objections or to otherwise cause title to the Property to be in accordance with the terms of this Agreement on the Closing Date.

Notwithstanding the foregoing, at Closing, Seller shall cure and remove all monetary liens or encumbrances which are recorded against the Property, including, but not limited to, mortgages or other liens securing financing, mechanics liens, judgments and delinquent taxes, assessments, sewer charges and water charges (“**Must Cure Title Objections**”). Within ten (10) days after receipt of Seller’s notice of the Uncorrected Objections, Purchaser shall either (1) waive such Uncorrected Objections in writing or (2) terminate this Agreement by giving written notice thereof to the Seller, in which event the Deposit shall be returned to Purchaser and this Agreement shall be null and void, and neither of the parties shall have any further obligations or liability under this Agreement except for those obligations that expressly survive termination of this Agreement. If Purchaser does not elect to terminate this Agreement, the Seller shall correct all of the Must Cure Title Objections except the Permitted Exceptions (as hereinafter defined) on or before the Closing Date.

B. **Status of Title.** The Property is to be conveyed and assigned free and clear of any liens, encumbrances, easements, restrictions and agreements, excepting only the Permitted Exceptions. With the exception of the Permitted Exceptions, title to the Property shall be good and marketable and such as will be insured by the Title Company at its regular rates for regular risks pursuant to an Owner’s policy of title insurance in a form acceptable to Purchaser in its sole discretion. The Seller shall furnish such customary title affidavits as the Title Company may require for the removal of standard title objections. The term “**Permitted Exceptions**” as used herein shall mean:

(i) any state of facts disclosed on the Survey, provided that such state of facts shall not prevent the current use of the Real Property;

(ii) real estate taxes, sewer rents and taxes, water rates and charges, vault charges and taxes, business improvement district taxes and assessments, special assessments and any other governmental taxes, charges or assessments levied or assessed against the Real Property, which are a lien but not yet due and payable, subject to apportionment in accordance with **Paragraph 8** hereof;

(iii) any laws, rules, regulations, statutes, ordinances, orders or other legal requirements affecting the Real Property, provided same are not violated by the current use of the Real Property;

(iv) all violations of laws, rules, regulations, statutes, ordinances, orders or requirements, now issued or noted or hereafter issued or noted relating to conditions existing on, prior to, or subsequent to the Agreement Date. Seller shall be responsible to pay all fines, penalties and interest imposed in connection with said violations;

(v) any public utility company rights, easements and franchises for electricity, water, steam, gas, telephone or other services or the right to use and maintain poles, lines, wires, cables, pipes, boxes and other fixtures and facilities in, over, under and upon the Real Property; and

(vi) any exceptions originally appearing in the Title Report which are not objected to in writing by the Purchaser or which are objected to, but which objections are thereafter waived as expressly provided above.



C. **Inability to Convey.** If Seller is unable or unwilling to convey title to the Property at Closing in accordance with the requirements of this Agreement, Purchaser shall have the option, in addition to any rights and remedies that Purchaser may have under this Agreement:

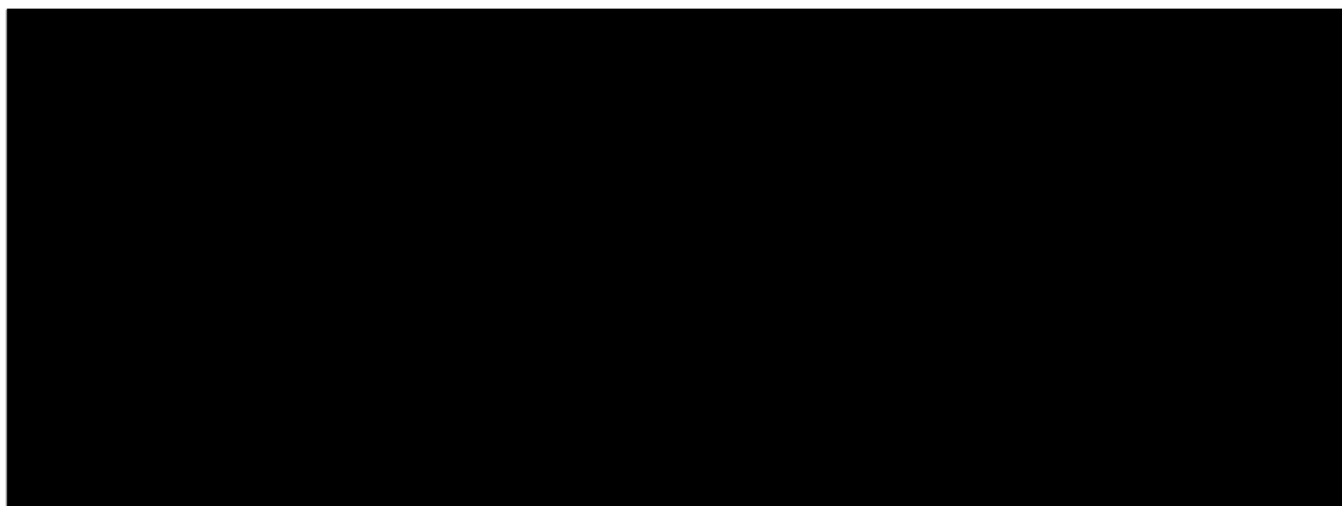
(1) Of taking such title to the Real Property as Seller is able to convey, without abatement of the Purchase Price; or

(2) Of terminating the Purchaser's obligations under this Agreement, in which event the Deposit shall be refunded to Purchaser, and this Agreement shall be null and void and neither party shall have any further obligations hereunder.

6. **CLOSING DATE.** Closing on the purchase of the Property (herein referred to as the "**Closing**") shall take place via escrow closing through the Escrow Agent or Title Company, on a date designated by Purchaser and agreed upon by Seller within thirty (30) days after the end of the Permitting Period which date shall be TIME OF THE ESSENCE against Purchaser provided that if said thirtieth (30<sup>th</sup>) day is not a Business Day then TIME SHALL BE OF THE ESSENCE on the first Business Day thereafter, as the same may be extended as provided in this Agreement (the "**Closing Date**").

7. **POSSESSION.** Possession of the Property free and clear of any tenants or occupants is to be given on the Closing Date by Quitclaim Deed with Covenant, subject only to the Permitted Exceptions.

8. **APPORTIONMENTS.** On the Closing Date, the following apportionments shall be made:



C. **Service Contracts.** Charges under existing service contracts applicable to the Real Property which will remain in effect after Closing, if any, shall be adjusted on a per diem basis at Closing.

D. **Closing Costs.** Purchaser and Seller shall share equally in the payment of any of Escrow Agent's escrow fees. Purchaser shall pay the base premium for Purchaser's title insurance policy, any lender's title policy and for any endorsements thereto required by Purchaser or its lender. Purchaser shall pay the cost to record the deed, and Seller shall pay the cost for recording all instruments necessary to deliver title as required herein. All other closing costs shall be paid by the parties in accordance with customs of the jurisdiction in which the Property is located.

E. **Condominium Charges.** All assessments and other charges due under the Condominium Documents for the period in which Closing occurs shall be prorated on a per diem basis.

F. **Survival.** The provisions of this **Paragraph 8** shall survive Closing.

9. **REPRESENTATIONS AND WARRANTIES; COVENANTS.**

A. **Representations and Warranties of Seller.** In order to induce the Purchaser to enter into this Agreement and purchase the Property, and with full knowledge that the Purchaser is relying thereon, the Seller hereby warrants and represents to the Purchaser as follows. All of the following representations and warranties shall survive Closing for a period of ninety (90) days unless otherwise specifically provided for herein:

(1) **Power to Perform.** The Seller has full power and authority to enter into and fulfill its obligations under this Agreement and to consummate the sale of the Property, and the execution, delivery and performance of this Agreement by the Seller constitutes a valid and binding obligation of the Seller in accordance with its terms. Except as otherwise set forth in this Agreement, no consent, waiver or approval by any other party or by any court is required in connection with the execution and delivery by the Seller of this Agreement or the performance by the Seller of the obligations to be performed by it under this Agreement or any instrument contemplated hereby. Neither the entering into of this Agreement nor the completion of such sale will constitute a violation or breach by the Seller of any contract or other instrument to which the Seller is a party or to which the Seller is subject or by which any of the Seller's assets or properties may be affected, or of any judgment, order, writ, injunction or decree issued against or imposed upon the Seller, nor will the said sale result in a violation of any applicable law, order, rule, or regulation of any governmental authority.

(2) **Liens.** Seller shall cause to be discharged all mechanic's or materialmen's liens arising from any labor or materials furnished to the Real Property prior to the Closing Date. From the Agreement Date through the Closing Date, the Seller shall not extend any of said contracts so that they cannot be terminated on the Closing Date, without Purchaser's prior written consent.

(3) **Condemnation.** Seller has not received any written notices of any condemnation proceedings pending or proposed with regard to the Real Property

(4) **Notices of Violations.** Seller has not received any written notices of violations of any applicable ordinances, regulations, or other laws with respect to the Real Property which are uncorrected of the Agreement Date (the "**Violation Notices**"). If any Violation Notices are received by Seller after the Agreement Date and prior to Closing, Seller shall pay the cost of complying with

such Violation Notices. Under no circumstances shall Seller be responsible for any fines or penalties which are imposed or become of record after the Closing Date regardless of the violations to which they relate or the date such violations were noted or noticed

(5) **Assessments.** There are not now any assessments for public improvements against the Real Property which are unpaid by Seller, nor is the Real Property subject to or affected by any special assessments for public improvements, whether or not presently a lien thereon. Any assessments or special assessments levied for public improvements between the Agreement Date and the Closing Date shall be paid by Seller provided, however if any assessments levied or imposed upon the Real Property are payable in installments, the installment for the current tax period shall be prorated in the manner set forth above and Purchaser hereby assumes the obligation to pay any such installments due on and after the Closing Date.

(6) **Litigation.** Seller has not received any notices of any action, proceeding, litigation or to the actual knowledge of the Seller is any litigation pending or threatened against Seller or the Real Property, that arises out of the ownership or leasing of the Real Property or that may materially and adversely affect the use, occupancy or operation of the Real Property for its present purpose, or affect the ability of Seller to perform its obligation under this Agreement, or which questions the validity or enforceability of this Agreement.

(7) **Contributions.** No commitments have been made by Seller to any governmental authority, utility company, association, or any other organization or group of individuals relating to the Real Property which would impose an obligation upon Purchaser to make any contribution or dedication of land, or to construct, install or maintain any improvements of a public or private nature on or off the Property.

For the purposes of this Agreement the term “**to Seller’s knowledge**”, and similar terms, shall be limited to the actual knowledge of Barry Feldman (the “**Seller Knowledge Party**”), who, Seller represents, is the individual primarily responsible for the operation and maintenance of the Real Property and the person most knowledgeable about the Real Property. The knowledge of others shall not be imputed to the Seller Knowledge Party. No other investigation, review or inquiry of any persons, or other action shall be required of the Seller Knowledge Party. The parties hereby agree that recourse under this Agreement is limited to Seller and no claim will be made against any Seller Knowledge Party individually or in his respective capacity as a Seller Knowledge Party.

Notwithstanding the foregoing, to the extent that Purchaser obtains actual knowledge prior to Closing that any of Seller’s representations or warranties were untrue when made, Purchaser shall be deemed to have knowledge of such misrepresentation, and Purchaser’s sole remedy as a result thereof shall be to terminate this Agreement and receive a refund of the Deposit and thereafter, Purchaser and Seller shall have no further rights or obligations under this Agreement except for those that are expressly provided in this Agreement to survive the termination hereof; and if, notwithstanding Purchaser’s knowledge of such breach of a representation or warranty, Purchaser elects to close the Transaction, Purchaser shall be deemed to have waived any right to recover damages from Seller with respect to such breach following the Closing.

B. **Representations and Warranties of Purchaser.** In order to induce the Seller to enter into this Agreement, the Purchaser hereby warrants and represents to the Seller as follows: (1) Purchaser has the full power and authority to enter into and fulfill its obligations under this Agreement; (2) the execution of this Agreement by the Purchaser constitutes the valid and binding obligation of the Purchaser in accordance with its terms; (3) no consent, waiver or approval by any other party or by any court is required in connection with the execution and delivery by the Purchaser of this Agreement or the performance by the Purchaser of the obligations to be performed by it under this Agreement or any instrument contemplated hereby; and (4) neither the entering into of this Agreement nor the completion of such sale will constitute a violation or breach by the Purchaser of any contract or other instrument to which the Purchaser is a party or to which the Purchaser is subject or by which any of the Purchaser's assets or properties may be affected, or of any judgment, order, writ, injunction or decree issued against or imposed upon the Purchaser, nor will the said sale result in a violation of any applicable law, order, rule, or regulation of any governmental authority. All of the foregoing representations and warranties shall survive Closing.

10. **OFAC.** A. Seller represents and warrants that (a) Seller and, to Seller's actual knowledge, each person or entity owning an interest in Seller is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "**List**"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an "Embargoed Person," (b) to Seller's actual knowledge, none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), and (c) to Seller's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in Seller (whether directly or indirectly). The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder. The foregoing representations and warranties shall survive Closing.

B. Purchaser represents and warrants that (a) Purchaser and, to Purchaser's actual knowledge, each person or entity owning an interest in Purchaser is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "**List**"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an "Embargoed Person," (b) to Purchaser's actual knowledge, none of the funds or other assets of Purchaser constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), and (c) to Purchaser's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in Purchaser (whether directly or indirectly). The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701

et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder. The foregoing representations and warranties shall survive Closing.

11. **As Is.** Purchaser hereby acknowledges that, except for the representations expressly set forth in this Agreement, Purchaser has not relied upon, and will not rely upon, either directly or indirectly, any information, representation or warranty of Seller, and further acknowledges that no such representations or warranties have been made. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate, and that it is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Real Property. Purchaser shall rely solely on its own independent investigation and inspection of the Property and shall conduct such inspections and investigations of the Property as Purchaser deems necessary. Upon Closing, Purchaser shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Purchaser's inspections and investigations. Purchaser acknowledges and agrees that before entering into this Agreement, Purchaser has been afforded the opportunity to examine the Real Property, the operation, income and expenses thereof and all other matters relating to this transaction as Purchaser deems necessary, that Purchaser has completed its due diligence investigation of the Property and that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the Property "as is, where is", with all faults, as of the date hereof. Purchaser further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Real Property by Seller. Seller is not liable or bound in any manner by any oral or written statements, projections representations, or information pertaining to the Real Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein. Purchaser acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Real Property. Purchaser has fully reviewed the disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof.

12. **Condominium.** The Condominium Documents are unmodified and in full force and effect. Seller has received no notice that Seller or the Real Property is in default under or violates the Condominium Documents or that any assessments or other charges are due and unpaid. Seller is not aware of any special assessments being contemplated by the Association. Seller has provided Buyer with true copies of the Condominium Documents and all amendments thereto.

13. **Covenants of Seller.** The Seller hereby covenants that:

(1) **Maintenance of Property.** Prior to the Closing Date, Seller shall maintain the Real Property in the ordinary course of Seller's business and substantially in accordance with Seller's present practices, subject to ordinary wear and tear.

(2) **Contracts.** Prior to the Closing Date, Seller shall not enter into any contract for, on behalf of, or affecting the Property which cannot be terminated at will or prior to the Closing Date except as same may be necessary for the Condominium.

(3) **Notice of Suits.** Seller shall promptly deliver to Purchaser copies of any written notice received by Seller between the Agreement Date and the Closing Date regarding all actions, suits or other proceedings affecting the Property, or the use, possession or occupancy thereof, which may adversely effect Purchaser or the Property.

(4) **Title Imperfections.** Seller shall not enter into any contract, or take any action for, on behalf of, or affecting the Property, that may permit any liens, easements, encumbrances or other clouds on the title to the Property to be created (the “**Title Imperfections**”). If Seller creates or permits any Title Imperfections to be created in violation hereof, Seller shall promptly remove them prior to the Closing Date.

### **13. CONDITIONS PRECEDENT TO PURCHASER’S & SELLER’S OBLIGATIONS.**

A. **Conditions Precedent To Purchaser’s Obligations.** The obligation of the Purchaser to complete the purchase of the Real Property from the Seller in accordance with this Agreement is subject to satisfaction of each of the following conditions (the “**Conditions Precedent**”), any of which may be waived in whole or in part by the Purchaser on or prior to the Closing Date

(1) **Seller’s Representations and Warranties.** Each of the representations and warranties of the Seller contained in this Agreement shall be true and correct.

(2) **Compliance with Covenants.** The Seller shall have performed and complied with all of the terms, conditions and covenants required by this Agreement to be performed and complied with prior to or on the Closing Date.

(3) **Title Policy.** A title policy or unconditional commitment therefor meeting the requirements of **Paragraph 5.A.** hereof shall have been issued by the Title Company to the Purchaser.

(4) **No Bankruptcy.** Neither Tenant nor Seller shall have (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, or (iv) suffered the attachment or other judicial seizure of any of its assets.

B. **Purchaser’s Rights If Conditions Precedent Are Not Satisfied.** If, on the Closing Date, all of the Conditions Precedent to the Purchaser’s obligations which are set forth in this Agreement have not been satisfied, the Purchaser’s sole and exclusive option shall be to elect to either (1) waive such of those conditions as are unsatisfied; or (2) terminate this Agreement and receive a refund of the Deposit, whereupon this Agreement shall, without any further action by the Seller or Purchaser, become null and void, and all of the parties shall be released from any and all further obligation or liability hereunder except for obligations that expressly survive termination of this Agreement. The foregoing shall not affect Purchaser’s remedies under **Section 19.B** in the case that any of the Conditions Precedent are not satisfied by reason of Seller’s default.

C. **Conditions Precedent to Seller's Obligations.** In addition to the obligations set forth elsewhere in this Agreement, and without limiting any other provision of this Agreement, the following obligation shall be a condition precedent to Seller's obligation to close or perform under this Agreement, all or any portion of which obligation may be waived by Seller in writing in its sole discretion.

D. **Representations True.** All representations and warranties made by Purchaser in this Agreement shall be true, correct and complete on the Closing Date.

### 13. **CLOSING PROCEDURE.**

A. **Seller's Closing Documents.** At or before the Closing, Seller shall deliver to the Title Company, or cause to be delivered to Title Company the following:

(1) A duly executed Quitclaim Deed with Covenant for the Property, conveying in the form attached hereto as **Exhibit "C"** conveying good and marketable title to the Property, subject only to the Permitted Exceptions (the "**Deed**");

(2) Duly executed certificates required by Section 1445 of the Internal Revenue Code that Seller is not a foreign person within the meaning of said Section 1445;

(3) Documents of authority of Seller authorizing the transactions contemplated by this Agreement;

(4) Any other documents, instruments, records, correspondence or agreements required to be delivered by Seller hereunder which have not previously been delivered to Purchaser;

(5) Any other documents, instruments, records, correspondence or agreements relating to the Real Property as Purchaser or the Title Company may reasonably require to consummate the sale of the Property in accordance with the terms hereof; and

(6) A closing statement executed by Seller.

B. **Purchaser's Closing Documents.** At or before the Closing, Purchaser shall deliver or cause to be delivered to Seller, the following:

(1) The balance of the Purchase Price remaining due at time of Closing;

(2) The closing statement executed by Purchaser;

(3) Documents of authority of Purchaser authorizing the transactions contemplated by this Agreement; and

(4) Such other instruments as may be reasonably required by the Title Company or otherwise reasonably required to consummate the purchase of the Real Property in accordance with the terms hereof.

14. **RECORDING.** Neither this Agreement, nor any memorandum thereof, may be recorded by either party in any public place of recording.

15. **CONDEMNATION.** If after the Effective Date and prior to Closing all or any part of the Property is taken or threatened to be taken by eminent domain or condemnation, so as to negatively impact the number or size of Property, Purchaser may elect either (a) to terminate this Agreement whereupon the Deposit shall be returned to Purchaser, and both parties shall be relieved of all obligations under this Agreement, except those that expressly survive the expiration or termination of this Agreement or (b) to consummate Closing as herein provided, in which event Seller shall pay or assign all condemnation awards or payments in respect of the Property to Purchaser at Closing.

16. **REAL ESTATE BROKERS.** If, as and when Closing actually occurs hereunder, Seller will pay a commission to Malone Commercial Brokers, Inc. (collectively, "**Broker**") pursuant to a separate agreement between Seller and Broker. Seller and Purchaser respectively warrant to each other that, other than Brokers, no finders, real estate brokers or other persons entitled to claim a fee or commission have interested either of them in this transaction and that they have not had any dealings with any other person which may entitle that person to a fee or commission. The parties hereby agree to indemnify and hold the other harmless against any losses, costs or expenses (including attorney's fees) arising out of any claim of any broker or finder in conjunction with this transaction (other than the Brokers), the obligation for which was incurred by the breaching party. No Commissions shall become due or payable in the event Closing does not occur for any reason whatsoever, including, but not limited to Seller's or Purchaser's default. The terms of this **Paragraph 18** shall survive the Closing Date.

17. **DEFAULT.**

A. **Purchaser's Default.** If Purchaser defaults in the performance of any material obligation hereunder, and the same is not cured within ten (10) business days after written notice to Purchaser and Escrow Agent, then the Escrow Agent shall pay the Deposit to Seller as liquidated damages it being agreed that the damages by reason of Purchaser's default are difficult, if not impossible, to ascertain, such remedy being the Seller's sole legal and equitable remedy.

B. **Seller's Default.** If the Seller defaults in the performance of any of its obligations hereunder, the Purchaser shall have the right to terminate this Agreement and receive a refund of the Deposit or seek specific performance as Purchaser sees fit, such remedies being the Purchaser's sole legal and equitable remedies.

18. **ESCROW AGENT.** A. Purchaser and Seller have requested that the Deposit be held in escrow by the Escrow Agent, in a noninterest bearing escrow account, to be applied in accordance with this Agreement. The Escrow Agent is merely responsible for the safe-keeping of the Deposit and shall not be required to determine any questions of fact or law. The Escrow Agent shall dispose of the Deposit, together with any interest accrued thereon in accordance with the provisions of this Agreement. The Escrow Agent shall be protected in acting in good faith upon instruments or documents believed to have been signed by a proper person or persons, not only as to their due execution and the validity and effectiveness of their provisions, but also as to the truth



and acceptability of any information contained therein. The Escrow Agent shall not have any duties except those which are expressly set forth herein. The Escrow Agent shall not be bound by any notice of, or demand with respect to, any waiver, modification, or amendment of this Agreement unless in writing, signed by all of the parties to this Agreement and if the duties or responsibilities of the Escrow Agent are affected, unless the Escrow Agent shall have given its prior written consent thereto. The Escrow Agent shall not be entitled to a fee for its services as Escrow Agent, nor shall they have any liability to Purchaser or Seller for anything done or omitted to be done by it in good faith, its liability being limited solely to gross negligence or willful misconduct.

B. The Deposit shall be held in escrow by Escrow Agent in accordance with the provisions of this Agreement. The parties agree that the Deposit shall be invested in a non-interest bearing bank account(s) at an FDIC insured bank.

(a) The Escrow Agent will deliver the Deposit to Seller at the completion of Closing.

(b) Upon the filing of a written demand for the Deposit by Purchaser or Seller, the Escrow Agent shall promptly deliver, by Federal Express or like overnight courier, a copy thereof to the other party. The other party shall have the right to object to the delivery of the Deposit by delivery of written notice of such objection to the Escrow Agent and the other party, at any time within seven (7) days after the delivery of such copy to it, but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice, the Escrow Agent shall promptly deliver, by Federal Express or like overnight courier, a copy of such written objection to the party who filed the written demand for the Deposit.

(c) In the event the Escrow Agent shall have received the notice of objection provided for in clause (b) above and within the time therein prescribed, the Escrow Agent shall continue to hold the Deposit until (i) the Escrow Agent receives written notice from Seller and Purchaser directing the disbursement of said Deposit, in which case, the Escrow Agent shall then disburse said Deposit in accordance with said joint direction, or (ii) in the event of litigation between Seller and Purchaser, the Escrow Agent shall deliver the Deposit to the Clerk of the Court in which said litigation is pending, or (iii) the Escrow Agent takes such affirmative steps as the Escrow Agent may, in the Escrow Agent's sole discretion, elect in order to terminate the Escrow Agent's duties including, but not limited to, depositing the Deposit with the Clerk of the Court and bringing an action for interpleader, the costs thereof to be borne by whichever of Seller or Purchaser is the unsuccessful party. Upon the Escrow Agent taking any of the steps set forth in subclauses (i), (ii) and/or (iii) set forth in this clause (c), Escrow Agent shall be immediately discharged and released from all liability, except for liability resulting from its gross negligence or willful misconduct.

(d) The Escrow Agent may act upon any instrument or other writing believed by it in good faith to be genuine and to be signed and presented by the proper person and it shall not be liable in connection with the performance of any duties imposed upon the Escrow Agent by the provisions of this Agreement, except for damage caused by the Escrow Agent's own gross negligence or willful misconduct. The Escrow Agent shall have no duties or responsibilities except those set forth herein. The Escrow Agent shall not be bound by any

modification of this Agreement, unless the same is in writing and signed by Purchaser and Seller, and, if the Escrow Agent's duties hereunder are affected, unless Escrow Agent shall have given prior written consent thereto. In the event that the Escrow Agent shall be uncertain as to the Escrow Agent's duties or rights hereunder, or shall receive instructions from Purchaser or Seller which, in the Escrow Agent's opinion, are in conflict with any of the provisions hereof, the Escrow Agent shall be entitled to hold and apply the Deposit pursuant to clause (c) above and may decline to take any other action. Seller and Purchaser shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims, damages, liabilities and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Agent.

19. **DECLARATION AMENDMENT.** Purchaser acknowledges and agrees that the Declaration will be amended, prior to the Closing, to add a restriction on the use of the Units to include a standard requirement for the operation of a hotel including a minimum standard of 2.5 stars, functioning like a hotel and not a motel (meaning the rooms are accessed off an elevator core and interior hallways), operating in a first-class manner, with a lobby with some level of basic amenity (i.e. fitness room, dining area, etc. all as further described and detailed in the amendment.

20. **GENERAL PROVISIONS.**

A. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns. Purchaser shall have no right to assign this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Seller's consent shall not be required for an assignment of this Agreement to an entity affiliated with, or controlled by, controlling or under common control with, Purchaser.

B. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof. No amendment, waiver or discharge of any provision of this Agreement shall be effective against either party unless that party shall have consented thereto in writing.

C. **Governing Law.** This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Maine.

D. **Notices.** All notices or other communications required or permitted to be given under the terms of this Agreement shall be in writing, sent by e-mail (provided such notice is also sent via one of the other permitted methods of delivery), Certified Mail, postage prepaid, return receipt requested, or by private carrier guaranteeing next day service, addressed as follows:

(1) If to the Seller, addressed as follows:

The New England Expedition-Scarborough LLC  
12 Middlesex Road - Unit #67448

Chestnut Hill, MA 02467  
Att: Barry E. Feldman  
Email: [barry@feldcodevelopment.com](mailto:barry@feldcodevelopment.com)

With a copy to:

Craig M. Gruber, Esq.  
Salamon, Gruber, Blaymore & Strenger P.C.  
97 Powerhouse Road  
Roslyn Heights, NY 11577  
E-mail: [cgruber@sgnblaw.com](mailto:cgruber@sgnblaw.com)

(2) If to Purchaser, addressed as follows:

Dinesh Patel  
1500 Main Street  
Springfield, MA 01115

With a copy to:

Michael P. Ryan, Esq.  
Crevier & Ryan, LLP  
1500 Main Street  
Springfield, MA 01115  
Email: [Mryan@crevierandryan.com](mailto:Mryan@crevierandryan.com)

or to such other address or addresses and to the attention of such other person or persons as any of the parties hereto may notify the others in accordance with the provisions of this Agreement.

E. **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

F. **Time is of the Essence.** Time is of the essence of this Agreement and all of its terms and conditions.

G. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

H. **Business Days.** If the last day for performance of an obligation, or if any of the dates herein, falls on a day that is a Saturday, Sunday or national holiday, the date for such performance, on the date herein, shall be extended to the next business day.

I. **Counterparts; Electronic Signature.** This Agreement may be executed in counterparts, each of which shall be an original and all of which, taken together, shall constitute one and the same agreement. This Agreement may be executed and/or delivered via electronic mail or

other form of electronic delivery, including, without limitation, DocuSign, and such execution and/or delivery shall have the same force and effect as if the parties executed and/or delivered "wet ink" signatures to each other.

J. **Tax Free Exchange.** Purchaser or Seller may elect to effect the transfer and conveyance of the Premises as part of an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"). If Purchaser or Seller so elects, it shall provide notice to the other of such election, and thereafter may at any time at or prior to the Closing assign its rights (but such assignment shall not relieve the either of its obligations) under this Agreement with respect to the Premises to a "qualified intermediary" as defined in Treas. Reg. 1.1031(k)-1(g)(4), subject to all rights and obligations hereunder and such electing party shall promptly provide written notice of such assignment to the other. Each party shall cooperate with all reasonable requests of the other and the "qualified intermediary" in arranging and effecting the transfer of the Premises to the "qualified intermediary".

K. **Interpretation.** Unless specified to the contrary, references to Sections, Schedules, or Exhibits shall mean the particular Section, Exhibit, or Schedule to this Agreement and references to this Agreement include all Schedules and Exhibits hereto. Unless context clearly requires otherwise, whenever used in this Agreement: (i) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation;" (ii) the word "or" shall have its inclusive meaning of "and/or;" (iii) the word "notice" shall require notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement; (iv) the words "hereof," "herein," "hereunder," "hereby" and derivative or similar words refer to this Agreement (including any Schedules and Exhibits); (v) provisions that require that a party or the parties "agree," "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing; (vi) words of any gender include the other gender; (vii) words using the singular or plural number also include the plural or singular number, respectively; (viii) references to any specific law, or article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement thereof.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

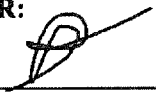
**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals hereto the day and year first above written.

**SELLER:**

**THE NEW ENGLAND EXPEDITION  
SCARBOROUGH, LLC**

By: Barry C. Feldman  
Name/Title: Barry C. Feldman  
MANAGING MEMBER

**PURCHASER:**

  
Dinesh Patel

**ACKNOWLEDGMENT OF ESCROW AGENT**

Salamon, Gruber, Blaymore & Strenger, PC, as Escrow Agent, hereby acknowledges receipt of the foregoing Agreement, and agrees to perform its duties as Escrow Agent in accordance with the terms and provisions of the Agreement.

Salamon, Gruber, Blaymore & Strenger, PC

By: \_\_\_\_\_  
Name: Craig Gruber  
Title: Partner

EXHIBIT "A"  
LEGAL DESCRIPTION

TO BZ Provided -

**EXHIBIT “B”**

**Property Documents**

- a. Environmental studies,
- b. Information concerning title to the property, including any existing title insurance policies,
- c. Any surveys or plans of the Property,
- d. Condominium Documents,
- e. Property tax information, including tax bills from the most recent year; and
- f. Any engineering studies of the Property.

**EXHIBIT “C”**

**QUITCLAIM DEED WITH COVENANT  
(Maine Statutory Short Form)**

THE NEW ENGLAND EXPEDITION - SCARBOROUGH, LLC, a Maine limited liability company with a mailing address of c/o Feldco Development Corp., 12 Middlesex Road, Unit # 67448, Chestnut Hill, MA 02467 (the “Grantor”), for consideration paid, grants to \_\_\_\_\_, a Maine limited liability company with a mailing address of \_\_\_\_\_, (the “Grantee”), WITH QUITCLAIM COVENANT, certain real estate situated in the Town of Scarborough, County of Cumberland and State of Maine, being more particularly described as follows:

Unit 6, in The Gateway Shoppes Condominium, a condominium situated on Payne Road in the Town of Scarborough, County of Cumberland and State of Maine, created pursuant to the Declaration of The Gateway Shoppes Condominium under the Maine Condominium Act of the Maine Revised Statutes Annotated, as amended, Title 33, Chapter 31 et seq., which Declaration is dated September 9, 2022, and recorded on September 13, 2022, as Document 46913, Book 39712, Page 246 (the “Declaration”), which Declaration is incorporated herein by reference.

Also hereby conveying to the Grantee, from whatever source acquired, all of the Grantor’s right, title and interest in and to the buildings and improvements situated on said Unit 6.

Any and all rights, easements, privileges and appurtenances belonging to said Unit is hereby conveyed.

This conveyance is subject to the terms, conditions, agreements, covenants, restrictions, obligations and easements contained in the above-referenced Declaration.

[End of page. Execution page follows.]



IN WITNESS WHEREOF, THE NEW ENGLAND EXPEDITION - SCARBOROUGH, LLC has caused this instrument to be executed by Barry E. Feldman, the Managing Member of Feldco Scarborough, LLC, being the Manager of THE NEW ENGLAND EXPEDITION - SCARBOROUGH, LLC, on \_\_\_\_\_, 2024, to be effective on \_\_\_\_ day of \_\_\_\_\_, 2024.

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC,  
Its Manager

\_\_\_\_\_

By: \_\_\_\_\_  
Barry E. Feldman  
Its Managing Member

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_, ss. \_\_\_\_\_, 2024

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

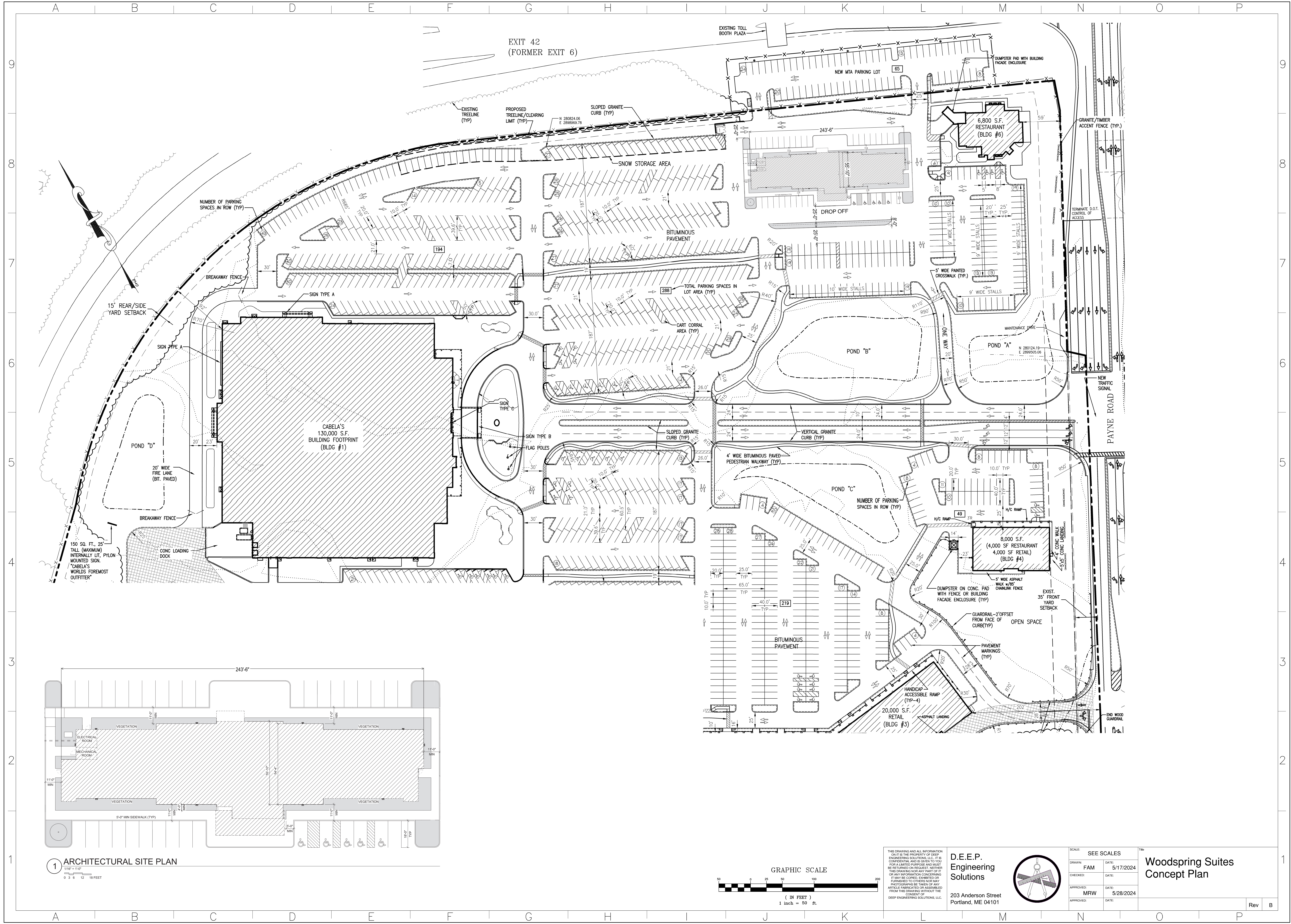
Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print name

My commission expires \_\_\_\_\_







COLOR SCHEDULE:  
A COLOR: SW7012 "CREAMY"  
B COLOR: SW6120 "BELIEVABLE BUFF"  
C COLOR: SW7594 "CARRIAGE DOOR"  
D COLOR: SW7026 "GRIFFIN"

COLOR SCHEDULE:  
A COLOR: SW9166 "DRIFT OF MIST"  
B COLOR: SW7658 "GRAY CLOUDS"  
C COLOR: SW9152 "LET IT RAIN"  
D COLOR: SW7076 "CYBERSPACE"

COLOR SCHEDULE:  
A COLOR: SW9109 "NATURAL LINEN"  
B COLOR: SW6201 "THUNDEROUS"  
C COLOR: SW7644 "GATEWAY GREY"  
D COLOR: SW7048 "URBANE BRONZE"

COLOR SCHEDULE:  
A COLOR: SW7004 "SNOWBOUND"  
B COLOR: SW7569 "STUCCO"  
C COLOR: SW9168 "ELEPHANT EAR"  
D COLOR: SW7675 "SEALSKIN"

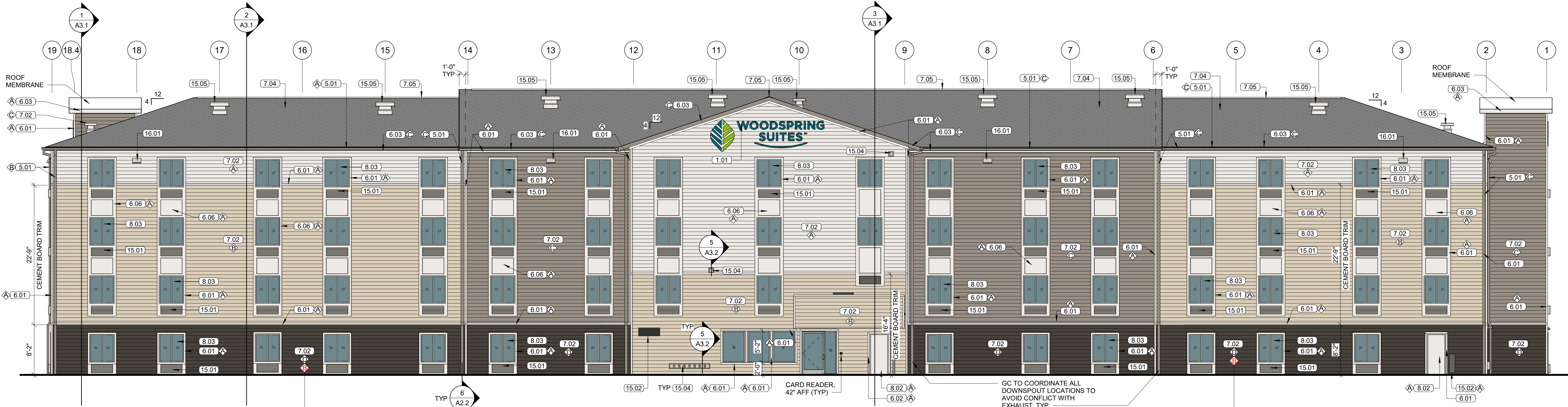
- NOTES:
- GC TO COORDINATE ELECTRICAL ROUGH IN WITH CONTRACTOR AND SIGN VENDOR PRIOR TO DRYWALL.
  - REFER TO SIGN PACKAGE FOR ALL BLOCKING AND MOUNTING DETAILS.
  - ALIGN EXHAUST VENTS BOTH VERTICAL AND HORIZONTAL.
  - EXTERIOR SIGNAGE: OWNER TO COORDINATE WITH SIGN VENDOR AND LOCAL JURISDICTION.
  - GUTTERS, DOWNSPOUTS, PARAPET CAP, AND FLASHING TO BE SELECTED FROM MANUFACTURERS STANDARD COLORS TO MATCH AS SCHEDULED, SUBMIT FOR APPROVAL.
  - ALL COLOR TRANSITIONS OCCUR AT INSIDE CORNERS NOT OUTSIDE CORNERS.

GENERAL NOTE:  
PROVIDE WEATHER BARRIER OVER ALL EXTERIOR SHEATHING PRIOR TO THE INSTALLATION OF ANY EXTERIOR FINISH MATERIAL. INSTALL PER MANUFACTURER'S SPECIFICATIONS AND PROVIDE ALL MANUFACTURER'S ACCESSORIES TO FULLY FLASH AND COUNTER-FLASH AT ALL WINDOWS, DOORS, AND EXTERIOR PENETRATIONS. PROVIDE A WEATHER TIGHT BARRIER AT ALL SURFACES. COORDINATE FLASHING WITH WINDOW, DOOR, VENT, ETC. MANUFACTURERS FOR A WEATHER TIGHT SEAL AT ALL OPENINGS.

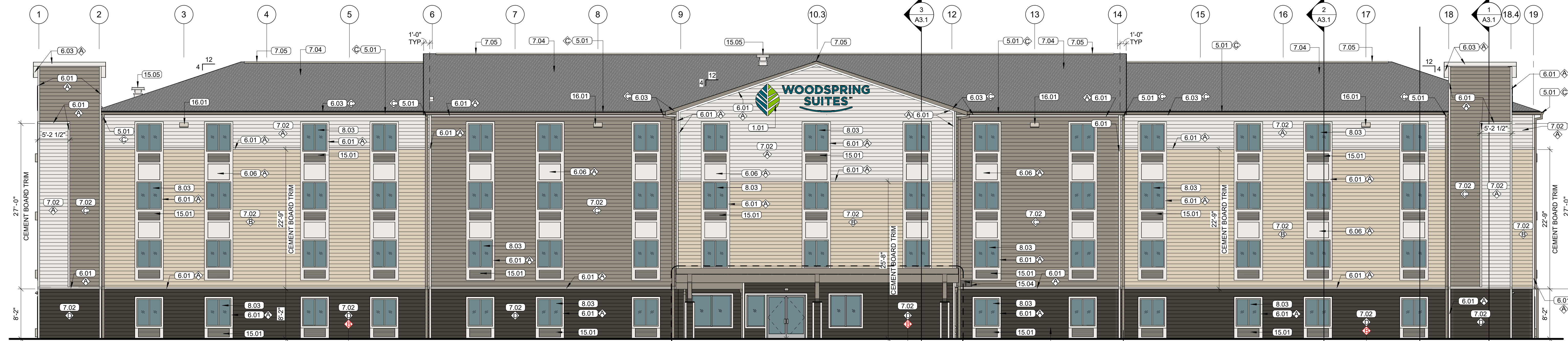
## KEYNOTE LEGEND

1.01	SIGNAGE BY OWNER; UNDER SEPARATE PERMIT. COORDINATE BLOCKING WITH SIGN MANUFACTURER
5.01	ALUMINUM GUTTERS AND DOWNSPOUTS
6.01	CEMENT BOARD TRIM: 5/4"x4" EIFS TRIM: 2-1/2"x4"
6.02	CEMENT BOARD TRIM AT STONE: 5/4"x4"
6.03	CEMENT BOARD PANEL / EIFS PANEL
7.02	7" EXPOSURE CEMENT BOARD LAP SIDING: SEE COLOR SCHEDULE
7.04	COMPOSITION SHINGLES
7.05	RIDGE VENT: REF SHEET A1.3 FOR DETAILS
8.02	HOLLOW METAL DOOR
8.03	SLIDING WINDOW
15.01	THRU-WALL PTAC, REF MECH
15.02	MECHANICAL LOUVERS: REF MECH
15.04	MECHANICAL VENT: REF MECH
15.05	EXHAUST VENT THRU ROOF: PAINTED TO MATCH COMPOSITION SHINGLES: REF MEP
16.01	LIGHT WALL PACK, MOUNT 35'-0" TO CENTER OF FIXTURE, REF ELEC. DWGS.

NOTE TO DESIGNER:  
REVISE KEYNOTES PER PROJECT



2 REAR ELEVATION  
1/8" = 1'-0"



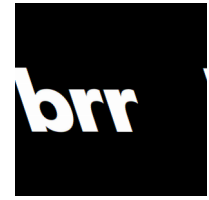
1 FRONT ELEVATION  
1/8" = 1'-0"

NOTE TO DESIGNER:  
FOREST AND DESERT SCHEME PAINT COLOR B, NOT D

NOTE TO DESIGNER:  
FOREST AND DESERT SCHEME PAINT COLOR B, NOT D

NOTE TO DESIGNER:  
FOREST AND DESERT SCHEME PAINT COLOR B, NOT D

NOTE: THIS SHEET IS  
INTENDED TO BE PRINTED  
IN COLOR FOR CLARITY.



Architect of Record:  
BRR Architecture, Inc.  
8131 METCALF AVE,  
SUITE 300  
OVERLAND PARK, KS 66204  
www.brrarch.com  
Tel: 913-262-9095  
Fax: 913-262-9044

### Consultants

### Copyright Notice

This drawing was prepared for use on a specific site contemporaneously with its issue date and it is not suitable for use on a different project, site or at a later time. Use of this drawing for reference or example on another project requires the services of properly licensed architects and engineers. Reproduction of this drawing for reuse on another project is not authorized and may be contrary to the law.

### Issues & Revisions

NO.	DATE	DESCRIPTION

### Project Name

WoodSpring Suites

### Project Address

Address, City, ST ZIP



### Drawn By:

Author

### Checked By:

Document Date:

MM/DD/YY

Protocol:

WSS\_v5\_2023.2 (12/12/23)

Bulletins Through:

WSS\_v2\_B08

Project No.

XXXXXXXX

Professional Seal

### Sheet Title

EXTERIOR  
ELEVATIONS

### Sheet No.

A2.1

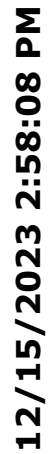
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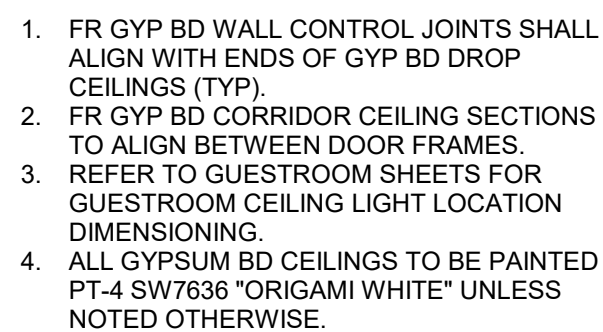


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**EXHIBIT 9 –**

**CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
THE NEW ENGLAND EXPEDITION – SCARBOROUGH LLC**

This Contract Zoning Agreement (hereinafter, this “Agreement”) is made as of the 3<sup>rd</sup> day of January, 2007 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition intends to purchase certain lots or parcels of land located on Payne Road and Haigis Parkway in Scarborough, Maine, consisting of (a) the premises currently owned by 262 Payne Road, LLC, et al., located at 262 and 274 Payne Road comprising Lots 8 and 11A shown on Town of Scarborough Tax Map R-40 and described in deeds to 262 Payne Road, LLC, et al., recorded in the Cumberland County Registry of Deeds in Book 3630, Page 199, Book 21070, Page 169 and Book 22791, Page 266, (b) the premises currently owned by TD Banknorth, N.A., located at 246, 248 and 250 Payne Road comprising Lots 5, 6 and 7 shown on Town of Scarborough Tax Map R-40 and described in deeds to Peoples Heritage Savings Bank, predecessor to TD Banknorth, N.A., recorded in the Cumberland County Registry of Deeds in Book 15215, Page 204 and Book 15272, Page 261, (c) the premises currently owned by 23 Spring Street, LLC located at 264 Payne Road comprising Lot 9 shown on Town of Scarborough Tax Map R-40 and described in deed to 23 Spring Street, LLC recorded in the Cumberland County Registry of Deeds in Book 18263, Page 310, and (d) the premises currently owned by GlennDonna, Inc. located on Haigis Parkway and Payne Road comprising Lot 14 shown on Town of Scarborough Tax Map R-40 and being a portion of the premises described in deed to GlennDonna, Inc. recorded in the Cumberland County Registry of Deeds in Book 7564, Page 223 (hereinafter, collectively referred to as the “Property”), the Property containing approximately seventy-four (74) acres; and

WHEREAS, New England Expedition intends to develop the Property as a single project to be known as “The Gateway at Scarborough” (hereinafter, the “Project”), with that portion of the Project located on the northwesterly side of Payne Road to be known as “The Gateway Shoppes at Scarborough” and that portion of the Project located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway to be known as “The Gateway Square at Scarborough”, with construction of the Project anticipated to proceed in phases commencing with The Gateway Shoppes at Scarborough and progressing to The Gateway Square at Scarborough; and

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

WHEREAS, the HP District presently allows, as a permitted use, among other uses, retail sales and services with less than twenty thousand (20,000) square feet of retail floor area per unit of occupancy; and

WHEREAS, New England Expedition desires to construct multiple facilities on the Property in which will be conducted various permitted uses including, but not limited to, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road for the retail sale of specialty hunting, fishing and other outdoor recreational equipment by Cabela’s Incorporated or its subsidiaries (hereinafter, “Cabela’s”), which facility will include, in addition to retail sales space, exhibit and education areas as well as an accessory restaurant for patrons; and



## EXHIBITS

WHEREAS, Cabela's requires a facility of one hundred thirty thousand (130,000) square feet of retail floor area in order to facilitate the manner in which such facility operates and displays its products and to accommodate the unique exhibit and educational components that are an integral part of such facility; and

WHEREAS, Cabela's requires certain specific signage attached to and associated with such facility that varies from signage permitted under Section XII of the Zoning Ordinance; and

WHEREAS, New England Expedition desires to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and

WHEREAS, the sign regulations under Section XII of the Zoning Ordinance impose limitations on the placement of off-site signage relating to the Project; and

WHEREAS, New England Expedition has requested that, notwithstanding the requirements of Section B6 of the HP District requirements and the sign regulations set forth in Section XII of the Zoning Ordinance, in addition to the other facilities proposed to be constructed on the Property, the Town permit New England Expedition to construct a facility to be occupied by Cabela's and utilized for the uses permitted under said Section B6 of the HP District requirements containing not more than one hundred thirty thousand (130,000) square feet of retail floor area on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road, together with certain specific signage attached to and associated with such facility, and to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; 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 the Cabela's facility, and the other facilities proposed for the Property, provided the operation is restricted to the density, scale and intensity proposed by New England Expedition and further provided that the restrictions, provisions and conditions of this Agreement and the site plan and subdivision approval are strictly observed; and

WHEREAS, the Scarborough Planning Board, pursuant to Section II, Paragraph G Subsection 3 of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberation thereon, recommended that New England Expedition be permitted to develop the Property so as to include, in addition to the other facilities proposed for the Property, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road to be occupied by Cabela's and utilized for the uses permitted under said Section B6 containing not more than one hundred thirty thousand (130,000) square feet of retail floor area, together with certain specific signage attached to and associated with such facility, and to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and

WHEREAS, the proposed uses of the Property, being in accordance with the requirements of the HP District, are consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (hereinafter, the "Comprehensive Plan") for the area of the Property; and

WHEREAS, the Town of Scarborough, by and through its Town Council, having determined that the said uses are pursuant to and consistent with the Comprehensive Plan and consistent with the permitted uses within the HP District, authorized the execution of this Agreement on December 20, 2006.

## EXHIBITS

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

1. The Town will amend the Zoning Map of the Town of Scarborough by adopting the map change amendment shown on Attachment 1.
2. Notwithstanding the provisions of Section B6 of the HP District requirements, New England Expedition shall be permitted to develop the Property so as to include, in addition to the other facilities proposed for the Property, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road to be occupied by Cabela's and utilized for the uses permitted under Section B6 of the HP District requirements containing not more than one hundred thirty thousand (130,000) square feet of retail floor area.
3. New England Expedition is authorized to construct the Cabela's facility to be used in accordance with the requirements of the HP District, except as amended by this Agreement, together with the other facilities proposed for the Property containing such other uses as are permitted in the HP District.
4. Notwithstanding the provisions of Section XII of the Zoning Ordinance, New England Expedition shall be permitted to include signage attached to and associated with the Cabela's facility as more particularly described and shown on Attachment 2.
5. Notwithstanding the provisions of Section XII of the Zoning Ordinance, New England Expedition shall be permitted to install certain signage, together with related improvements, lighting and landscaping, which signage is generally depicted on Attachment 3, for the purpose of identifying the Project, on the property located between that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway and said Payne Road and Haigis Parkway, or within the right of way of said Payne Road or Haigis Parkway adjacent to said property, subject, however, to the terms and provisions of any agreements entered into with the owners of said property and/or the Town of Scarborough relating to such signage including, but not limited to, the following terms and provisions:
  - a. Such signage shall be built in accordance with the Town of Scarborough's specifications and at the expense of New England Expedition;
  - b. Such signage shall be maintained by New England Expedition; and
  - c. Except as otherwise amended by this Agreement, such signage shall comply with the requirements of Section XII of the Zoning Ordinance and all other applicable local and state regulations applicable thereto.
6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance") and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the "Subdivision Ordinance"), with construction anticipated to proceed in phases commencing with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway. The phasing of the construction as outlined above shall

be subject to the additional requirement that New England Expedition shall “substantially complete” the construction of that portion of the Project which includes the ten (10) buildings and related improvements to be constructed by New England Expedition, (collectively, the “NEE Buildings”), the NEE Buildings designated and shown on Attachment 4. The NEE Buildings shall be substantially complete within two (2) years from the date that New England Expedition receives Planning Board approval for the Project. For purposes hereof, “substantially complete” shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, the installation of utilities, storm drains and sanitary sewer lines and the completion and approval of the foundations for the NEE Buildings. In the event that New England Expedition requires additional time to attain substantial completion as described herein, the Town Planner, or if the Town Planner chooses, the Scarborough Planning Board, may, for good cause shown, grant New England Expedition an additional one (1) year period for such purpose.

7. New England Expedition shall record this Agreement in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

8. The provisions of this Agreement shall be deemed restrictions on the use of the Property except as this Agreement may be amended by future written agreement of the Town of Scarborough and New England Expedition, or their successors or assigns.

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

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

11. Notwithstanding anything to the contrary set forth herein or in the Zoning Ordinance, in the event that Cabela’s shall, for any reason following its initial occupancy of the facility containing not more than one hundred thirty thousand (130,000) square feet of retail floor area as permitted hereunder to be located on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road, fail to continue to operate its business therein, then:

a. New England Expedition shall, within sixty (60) days of the date that Cabela’s ceases its business operations at the facility, remove the signage unique to Cabela’s from the buildings and as otherwise permitted under this Agreement;

b. New England Expedition shall, within sixty (60) days of the date that Cabela’s ceases its business operations at the facility, report to the Scarborough Town Council on

## EXHIBITS

the status of New England Expedition's efforts to secure a substitute tenant, and will continue to update the Council regarding such efforts at intervals not later than every sixty (60) days thereafter, so as to afford the Council the opportunity to comment on any such proposed substitute tenant; and

c. New England Expedition shall have the right to substitute another retailer in such facility so long as such substitute retailer is not a discount store, wholesale club, or home improvement center, the substitute retailer to be subject to such approvals as may be required from the Scarborough Planning Board under applicable Ordinances and regulations and any other State or Federal regulatory bodies having jurisdiction over the development, and provided further, that in the event New England Expedition should seek to substitute another retailer in such facility within the first five (5) years following the date Cabela's commences business operations at the facility, such substitute retailer shall be subject to the review and approval of the Scarborough Town Council, which approval shall not be unreasonably withheld, conditioned or delayed.

12. Any change to the development that results in either an increase in the size of the one hundred thirty thousand (130,000) square foot retail facility permitted hereunder or changes to the signage attached thereto or associated therewith, or any change with respect to the off-site signage permitted hereunder, shall require an amendment to this Agreement approved by the Scarborough Town Council and will also be subject to further Planning Board review, as required, except for any change to signage that results in the signage being in compliance with the requirements of Section XII of the Zoning Ordinance.

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

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

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

EXHIBITS

WITNESS:

TOWN OF SCARBOROUGH

/s/ Joseph F. Ziepniewski

By: /s/ Ronald W. Owens

its Town Manager (duly authorized by vote of the  
Scarborough Town Council on December 20,  
2006)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

January 3, 2007

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

Before me,

/s/ Cheryl G. Profenno

Notary Public/Attorney at Law

WITNESS:

THE NEW ENGLAND EXPEDITION –  
SCARBOROUGH, LLC

/s/ Richard A. Shinay

By: /s/ Barry E. Feldman

Its Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

January 4, 2007

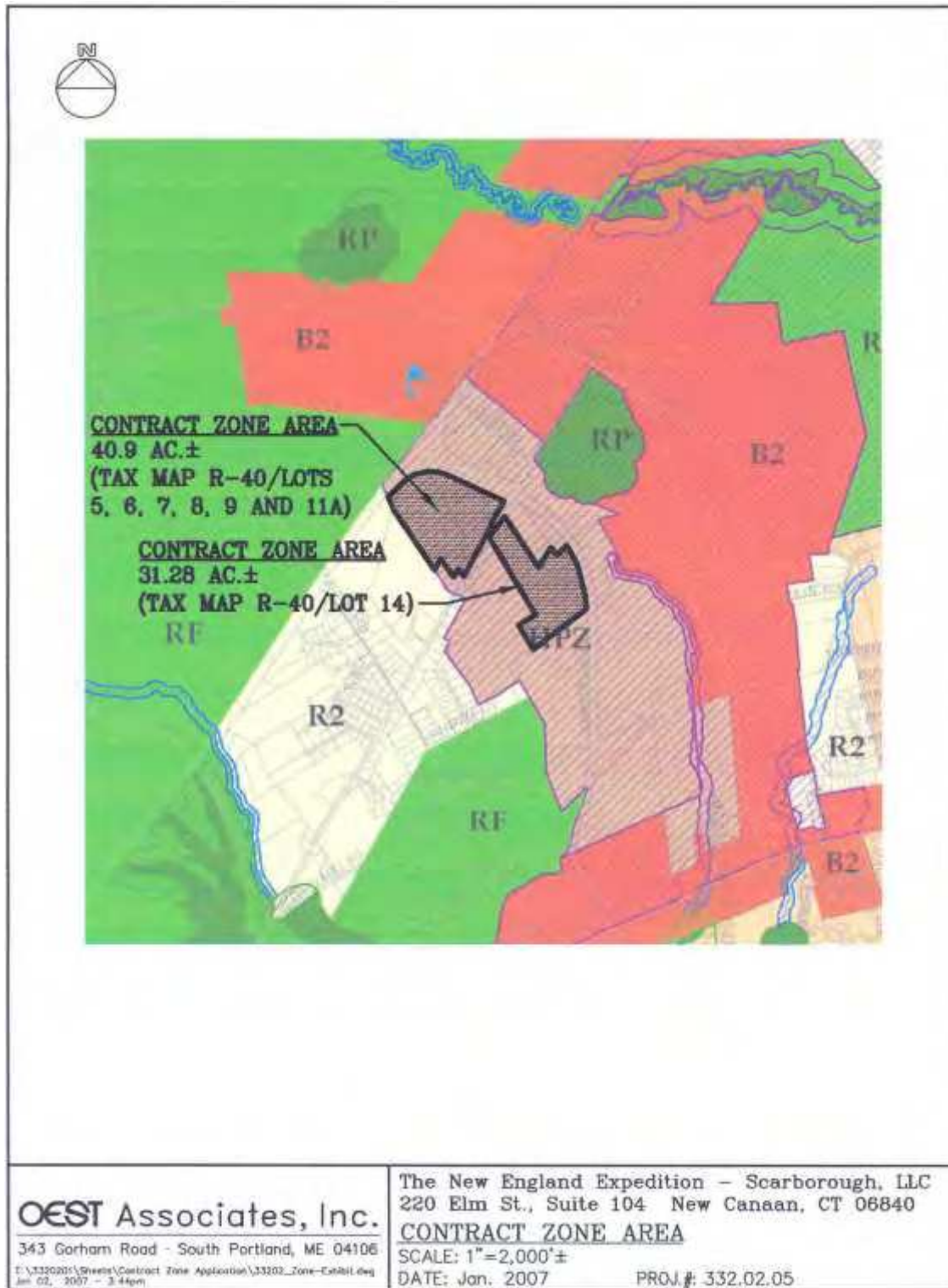
Personally appeared the above named Barry E. Feldman, Member of The New England  
Expedition – Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in  
his said capacity and the free act and deed of said Town of Scarborough.

Before me,

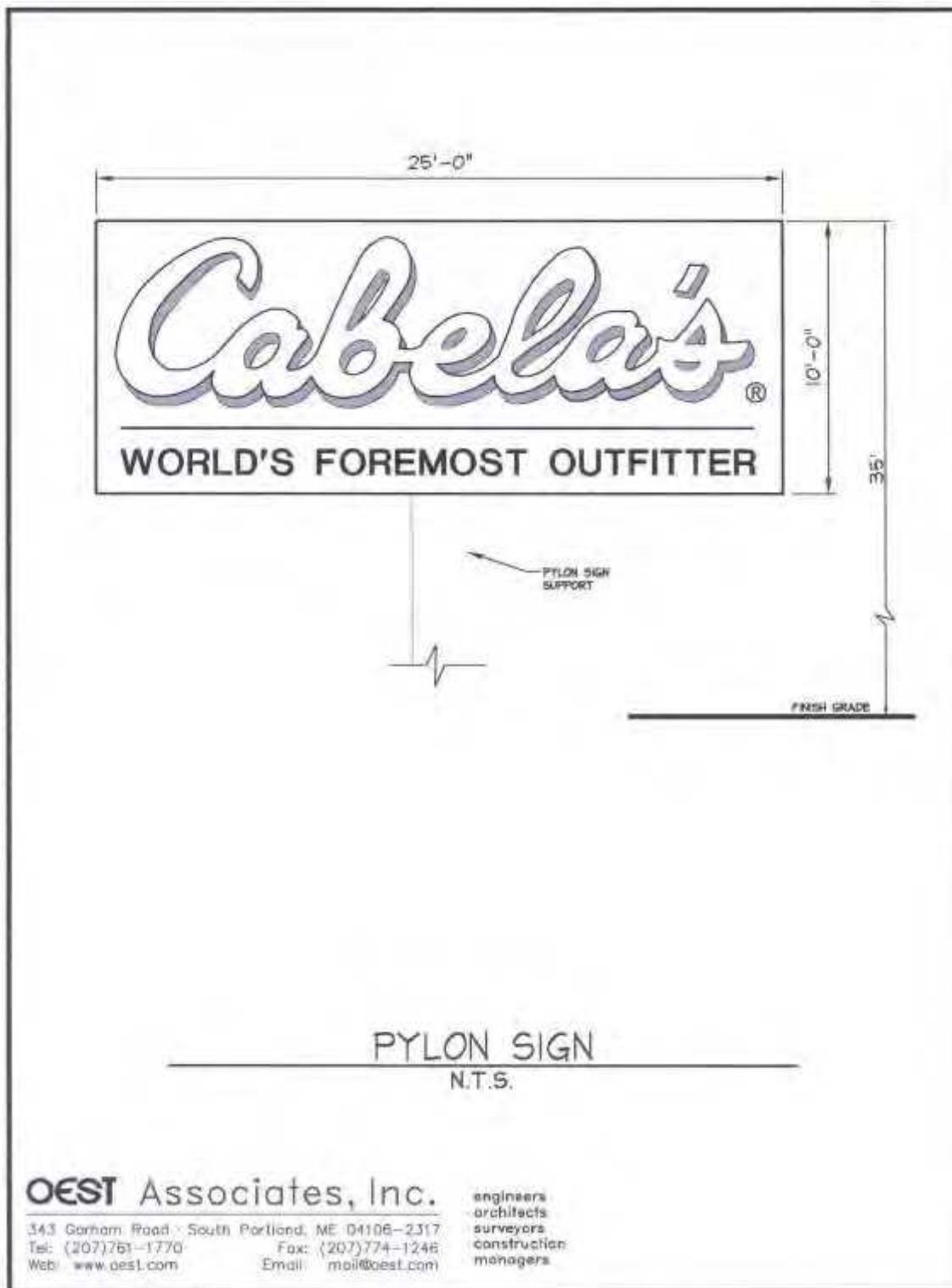
/s/ Richard A. Shinay

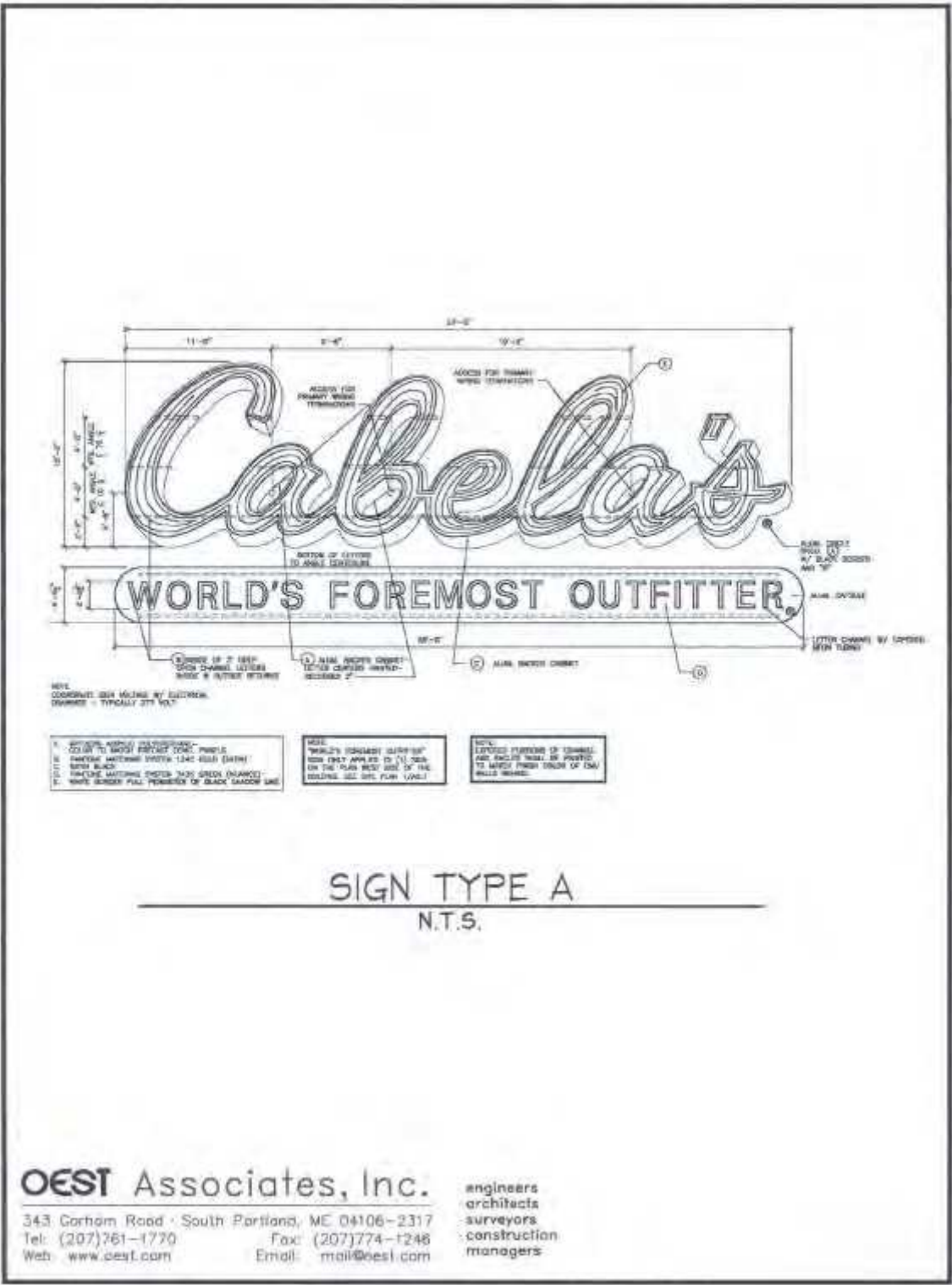
Notary Public/Attorney at Law

Attachment 1  
Map Change Amendment consisting of one (1) page.

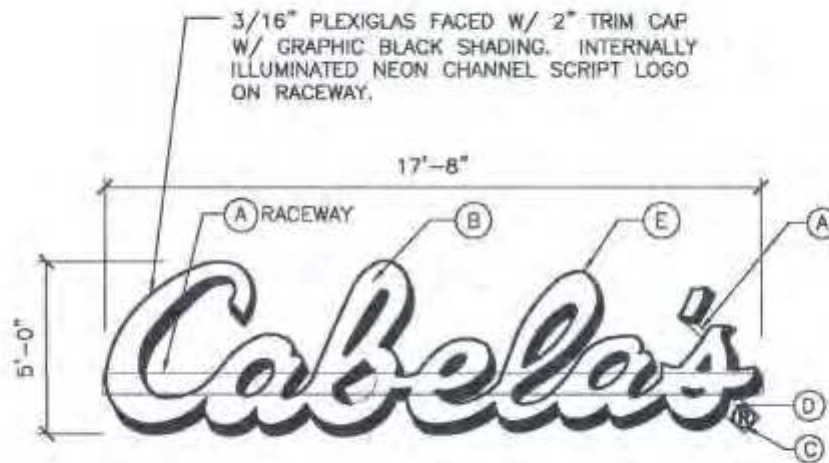


Attachment 2  
Cabela's signage depiction consisting of five (5) pages.









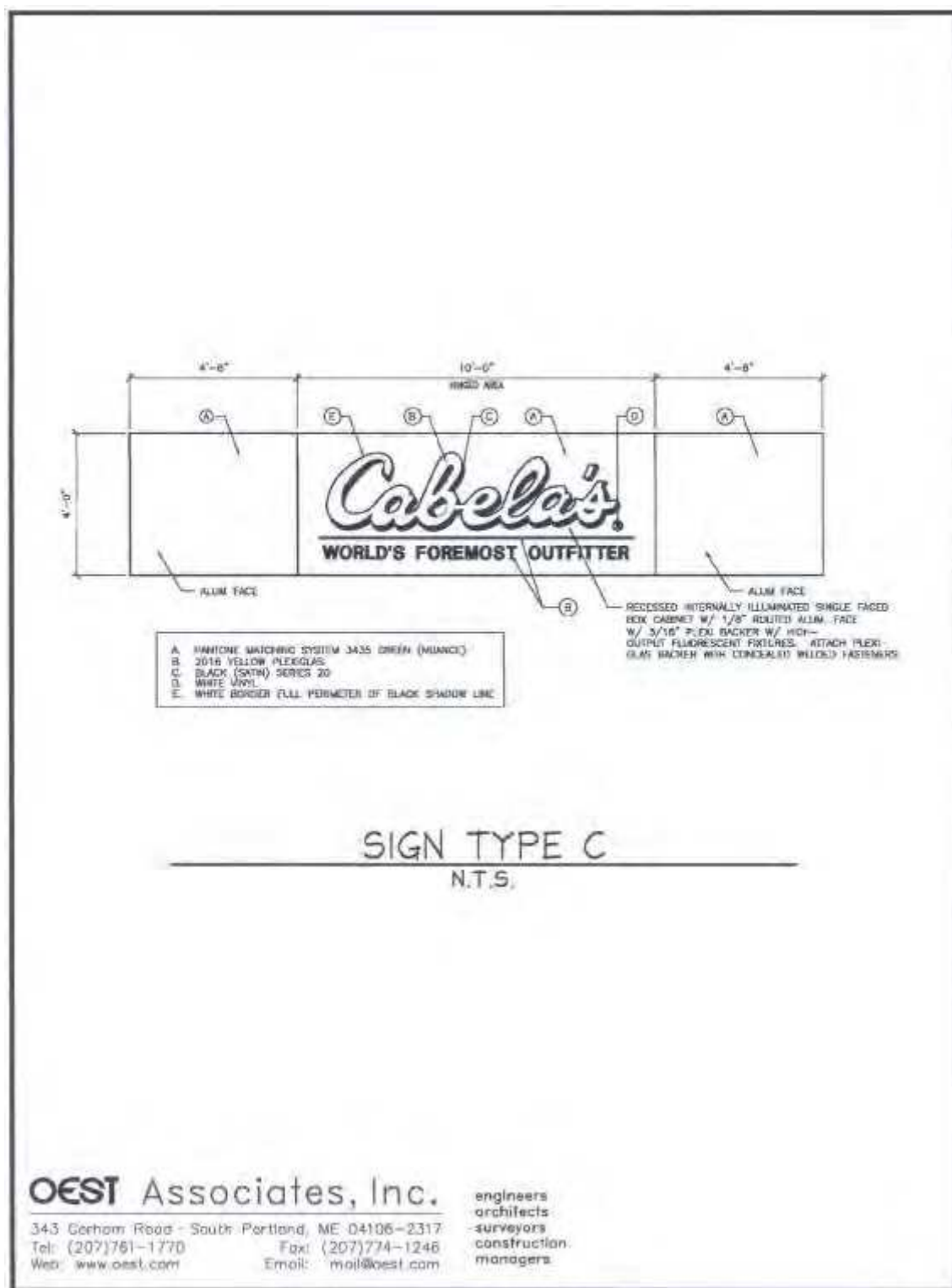
- |    |   |
|----|---|
| A. | MATCH COLOR OF WOOD STAIN @ LOGS                    |
| B. | 2016 YELLOW PLEXIGLAS                               |
| C. | BLACK VINYL   |
| D. | .063 WHITE ALUM.                                    |
| E. | WHITE BORDER FULL PERIMETER OF<br>BLACK SHADOW LINE |

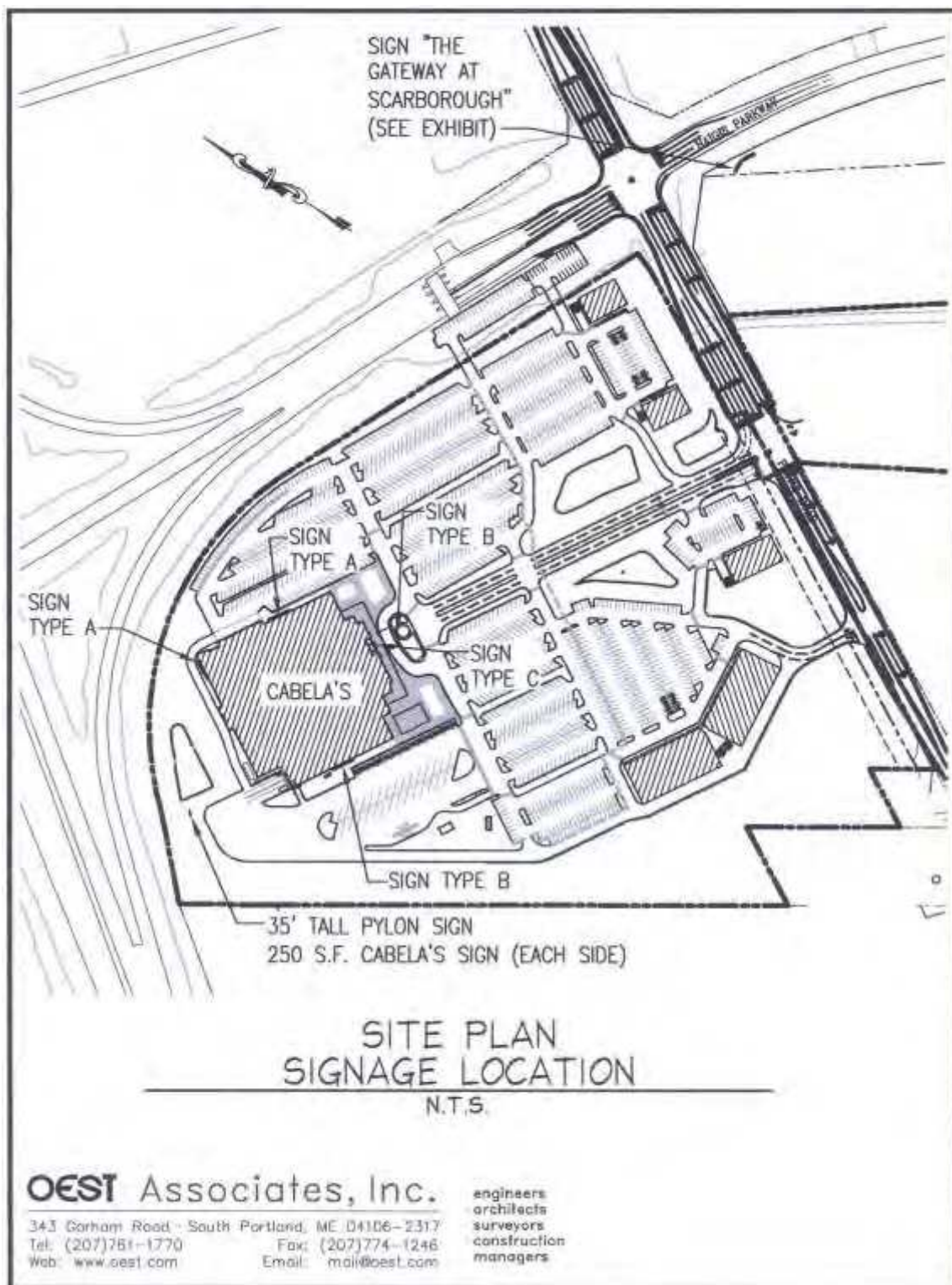
SIGN TYPE B  
N.T.S.

**OEST Associates, Inc.**

343 Gorham Road - South Portland, ME 04106-2317  
Tel: (207)761-1770 Fax: (207)774-1246  
Web: [www.oest.com](http://www.oest.com) Email: [mail@oest.com](mailto:mail@oest.com)

engineers  
architects  
surveyors  
construction  
managers





Attachment 3  
Project off-site signage depiction consisting of one (1) page.

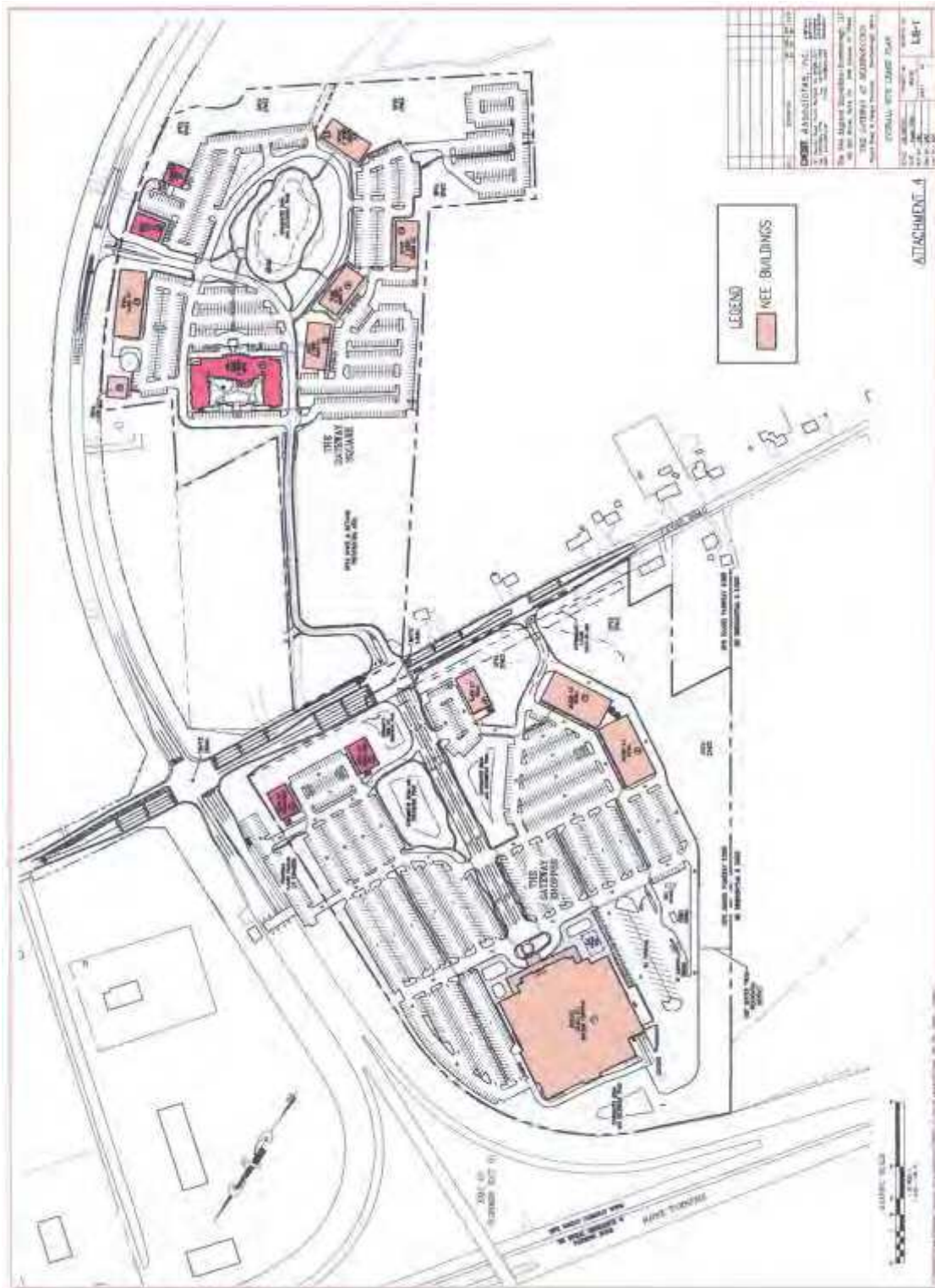




## EXHIBITS

## Attachment 4

Plan of NEE Buildings consisting of one (1) page.



**FIRST AMENDMENT TO EXHIBIT 9**

**AMENDMENTS TO  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
THE NEW ENGLAND EXPEDITION – SCARBOROUGH LLC**

This First Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2007 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, this “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, among other modifications of the provisions of the Zoning Ordinance, the Agreement allows for certain specific signage relating to the Cabela’s building described in the Agreement that varies from signage permitted under Section XII of the Zoning Ordinance; and

WHEREAS, Cabela’s has proposed modifications to the number of signs, size and location thereof on its building as currently allowed under the Agreement; and

WHEREAS, the signage requirements of other tenants proposed for the buildings to be constructed within the District vary from the signage otherwise permitted under Section XII of the Zoning Ordinance; and

WHEREAS, New England Expedition has requested that the Town approve this Amendment to the Agreement (a) modifying the number of signs, size and location thereof relating to the Cabela’s building as currently allowed under the Agreement, and (b) permitting certain signage relating to tenants for the proposed buildings to be constructed within the District that varies from the signage otherwise permitted under Section XII of the Zoning Ordinance.

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

1. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, New England Expedition shall be permitted to include signage attached to and associated with the Cabela’s building as more particularly described and shown on Attachment 2 to the Agreement, as modified as described and shown on Attachment 1 to this Amendment.
2. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, New England Expedition shall be permitted to install certain signage hereinafter described, together with related improvements, lighting and landscaping, relating to the tenants to be located in the buildings to be constructed within the Project as hereinafter provided:
  - a. With respect to buildings containing multiple tenants, two (2) wall signs per tenant, each of said signs not to exceed one hundred (100) square feet, one to be located

EXHIBITS

on the front wall of the building and one to be located on the rear wall of the building, except that in the case of end units within a building, the second wall sign may be located on the end wall of the building rather than on the rear wall of the building; and

b. With respect to single-tenant buildings, two (2) wall signs, each sign not to exceed one hundred (100) square feet, one to be located on the front wall of the building and one to be located on a second wall of the tenant's choosing, except that in the case of single-tenant buildings to be located in that portion of the Project known as "The Gateway Shoppes at Scarborough", said buildings may have up to four (4) wall signs not to exceed one hundred (100) square feet each, with no more than one (1) such wall sign per wall; and

c. With respect to both multiple tenant and single-tenant buildings, the total gross area of all wall signs shall not exceed 10% of the wall area on which they are located.

3. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.

4. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. New England Expedition shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

/s/ Laurel R. Nadeau

TOWN OF SCARBOROUGH

By: /s/ Ronald W. Owens

its Town Manager (duly authorized by vote of the Scarborough Town Council on September 5, 2007)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

September 18, 2007

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

Before me,

/s/ Yolanda P. Justice

Notary Public

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

/s/ Richard A. Shinay

/s/ Barry E. Feldman

Its Managing Member

EXHIBITS

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

September 12, 2007, 2007

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

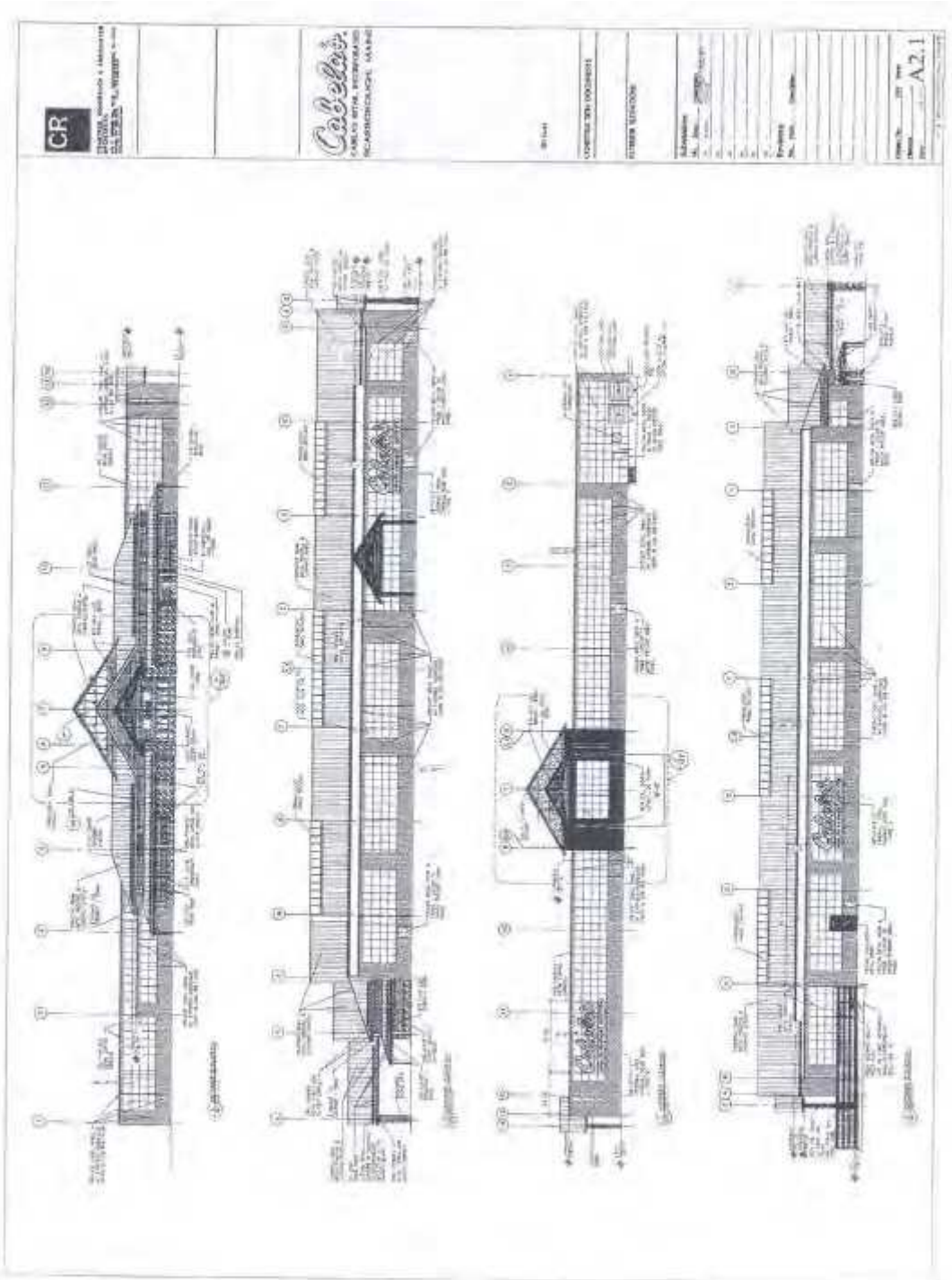
Before me,

/s/ Richard A. Shinay

Notary Public



Modification of Cabela's signage depiction consisting of one (1) page.



**SECOND AMENDMENT TO EXHIBIT 9**  
**AMENDMENTS TO**  
**CONTRACT ZONING AGREEMENT**  
**BETWEEN THE TOWN OF SCARBOROUGH AND**  
**THE NEW ENGLAND EXPEDITION – SCARBOROUGH LLC**

This Second Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2007 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, this “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201; and

WHEREAS, the Haigis Parkway District, HP, the underlying District within which the land subject to the Agreement is located, allows for the use of property located therein for “Educational Institutions” only pursuant to a contract zoning agreement; and

WHEREAS, New England Expedition desires to construct one of more buildings to be located in that portion of the Project known as “The Gateway Square at Scarborough” in which will be located an educational institution and being hereinafter referred to as the “Facility”; and

WHEREAS, New England Expedition has requested that the Town approve this Amendment to the Agreement so as to allow for an “Educational Institution” use within the Facility; and

WHEREAS, New England Expedition agrees that use of the Facility by an educational institution will not qualify the Facility for exemption from property taxes under 36 M.R.S.A. § 652 as long as the Facility is owned by a for-profit entity.

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

1. “Educational Institution” use shall be a permitted use in that portion of Contract Zoning District Number 9 which the Facility is located.
2. New England Expedition agrees for itself and for any future owner of the Facility that use of the Facility by an educational institution will not qualify the Facility for exemption from property taxes under 36 M.R.S.A. § 652 as long as the Facility is owned by a for-profit entity, and further, that should the Facility ever qualify for a tax exempt status under 36 M.R.S.A. § 652, as it may be amended from time to time or as otherwise may become law by virtue of its use as an Educational Institution and the nature of the ownership entity, then New England Expedition or the then owner will pay to the Town annually, at the same time property taxes are due, an amount equivalent to one hundred percent (100%) of the property taxes that would be imposed

EXHIBITS

on the facility if it did not qualify for exempt status. Such payments shall be subject to the same interest charges and penalties for late payment or non-payment as are applicable under Maine law for non-payment of property taxes and New England Expedition or any future owner of the Facility shall have the same rights to dispute valuation and seek abatements as if such payments were assessed as property taxes.

3. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, remains consistent with the Comprehensive Plan.

4. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. New England Expedition shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

\_\_\_\_\_

TOWN OF SCARBOROUGH

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

Ronald W. Owens, its Town Manager

(duly authorized by vote of the Scarborough Town Council on November 7, 2007)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2007

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

Before me,

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

\_\_\_\_\_  
Print name

WITNESS:

\_\_\_\_\_

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

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

Barry E. Feldman

Its Managing Member

STATE OF MAINE

EXHIBITS

COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2007

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

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

\_\_\_\_\_  
Print name

**THIRD AMENDMENT TO EXHIBIT 9**

**THIRD AMENDMENT  
TO  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND EXPEDITION –  
SCARBOROUGH, LLC  
THE GATEWAY AT SCARBOROUGH**

This Third Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 30th day of April, 2008 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5<sup>th</sup> day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7<sup>th</sup> day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, Cabela’s proposes to modify the pylon sign permitted under the Agreement relating to the Cabela’s building described in the Agreement; and

WHEREAS, New England Expedition proposes that banners be allowed to be affixed to light poles within the District; and

WHEREAS, New England Expedition has requested that the Town approve this Amendment to the Agreement (a) permitting a modification of the Cabela’s pylon sign, and (d) permitting banners to be affixed to light poles within the District.

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

1. The first page of Attachment 2 to the Agreement depicting the Cabela’s pylon sign is hereby deleted and the modified version of the Cabela’s pylon sign depicted on Attachment 1 to this Amendment is substituted in its place.
2. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, banners depicting seasonal or decorative scenes or images, and general or seasonal messages and greetings may be affixed to light poles within the District. Banners announcing the opening of specific businesses within the District and/or promoting sales of products by specific

EXHIBITS

retailers within the District may be affixed to those types of light poles within the District as depicted on Attachment 2 to this Amendment provided, however, that such types of banners may remain in place for not more than one hundred and eighty (180) cumulative days per calendar year. Banners shall not be allowed to deteriorate in appearance so as to become unsightly.

3. New England Expedition, its lessees, and future owners of all or any portion of the property within the District acquire no property interests in the use of banners as allowed by this Amendment and use of banners will not confer lawful non-conforming use status in the event that the provisions of this Amendment are amended or repealed by the Scarborough Town Council pursuant to this Section 3. Within forty-five (45) days following the first (1<sup>st</sup>) anniversary of the date of adoption of this Amendment by the Scarborough Town Council, the Town Council shall review the experience with banners and may amend or repeal Section 2 above if it should be determined by the Town Council that (a) the banners have been allowed to deteriorate in appearance so as to become unsightly, or (b) the banners pose a distraction to motorists so as to cause unsafe traffic conditions.

4. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.

5. The Agreement, as amended by this Amendment and as previously amended by the First Amendment and the Second Amendment, remains consistent with the Comprehensive Plan.

6. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

7. New England Expedition shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

/s/ Laurel R. Nadeau

TOWN OF SCARBOROUGH

By: /s/ Ronald W. Owens

Its Town Manager (duly authorized by vote of the Scarborough Town Council on April 30, 2008)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

May 2, 2008

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

Before me,

/s/ Yolande P. Justice

Notary Public/Attorney at Law

Yolande P. Justice

Notary Public

WITNESS:

THE NEW ENGLAND EXPEDITION-

EXHIBITS

SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its

Manager

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

Barry E. Feldman

Its Managing Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

May \_\_\_\_, 2008

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

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

\_\_\_\_\_  
Print name

Attachment 1

Modification of Cabela's pylon sign consisting of one (1) page.

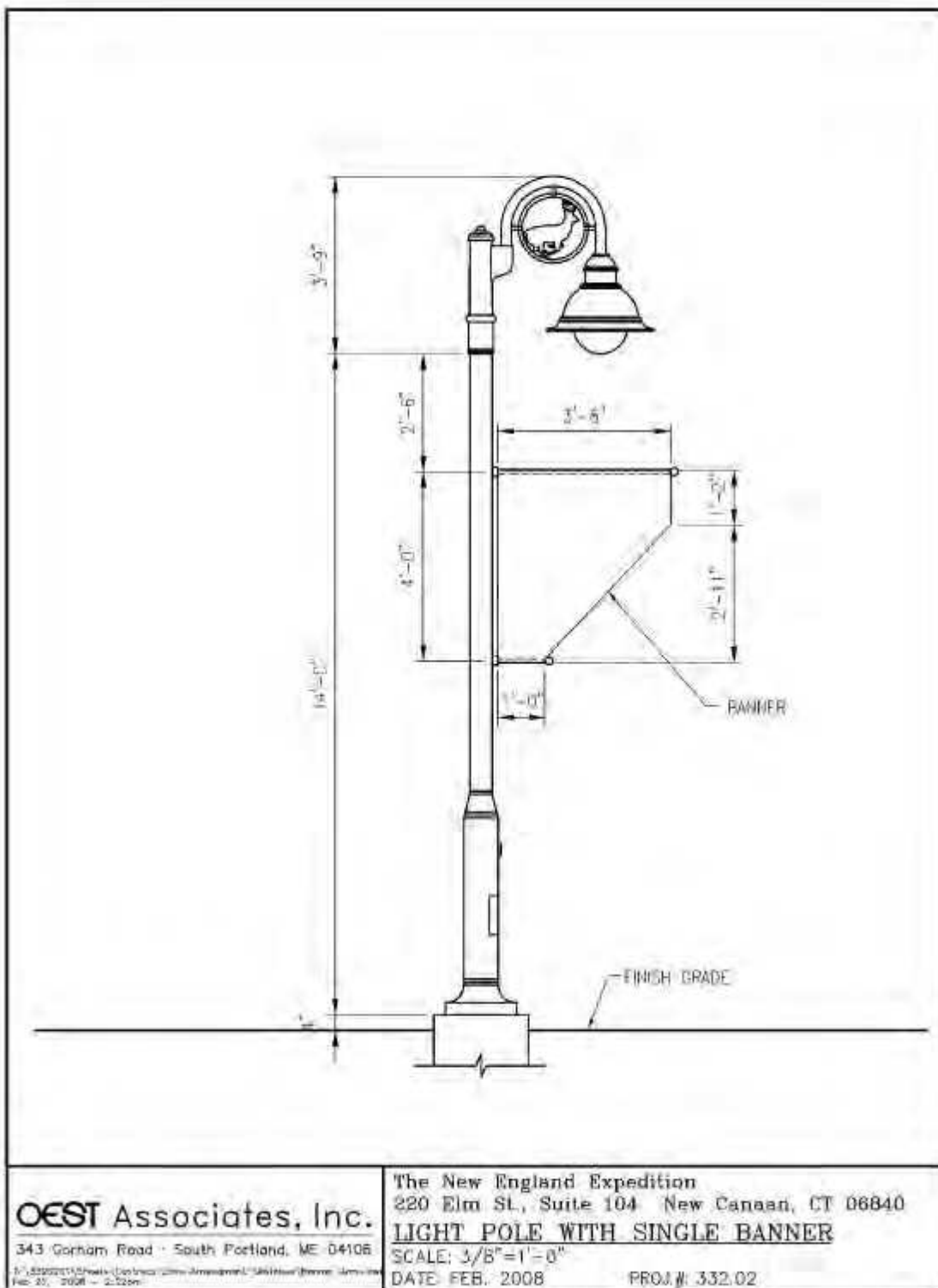


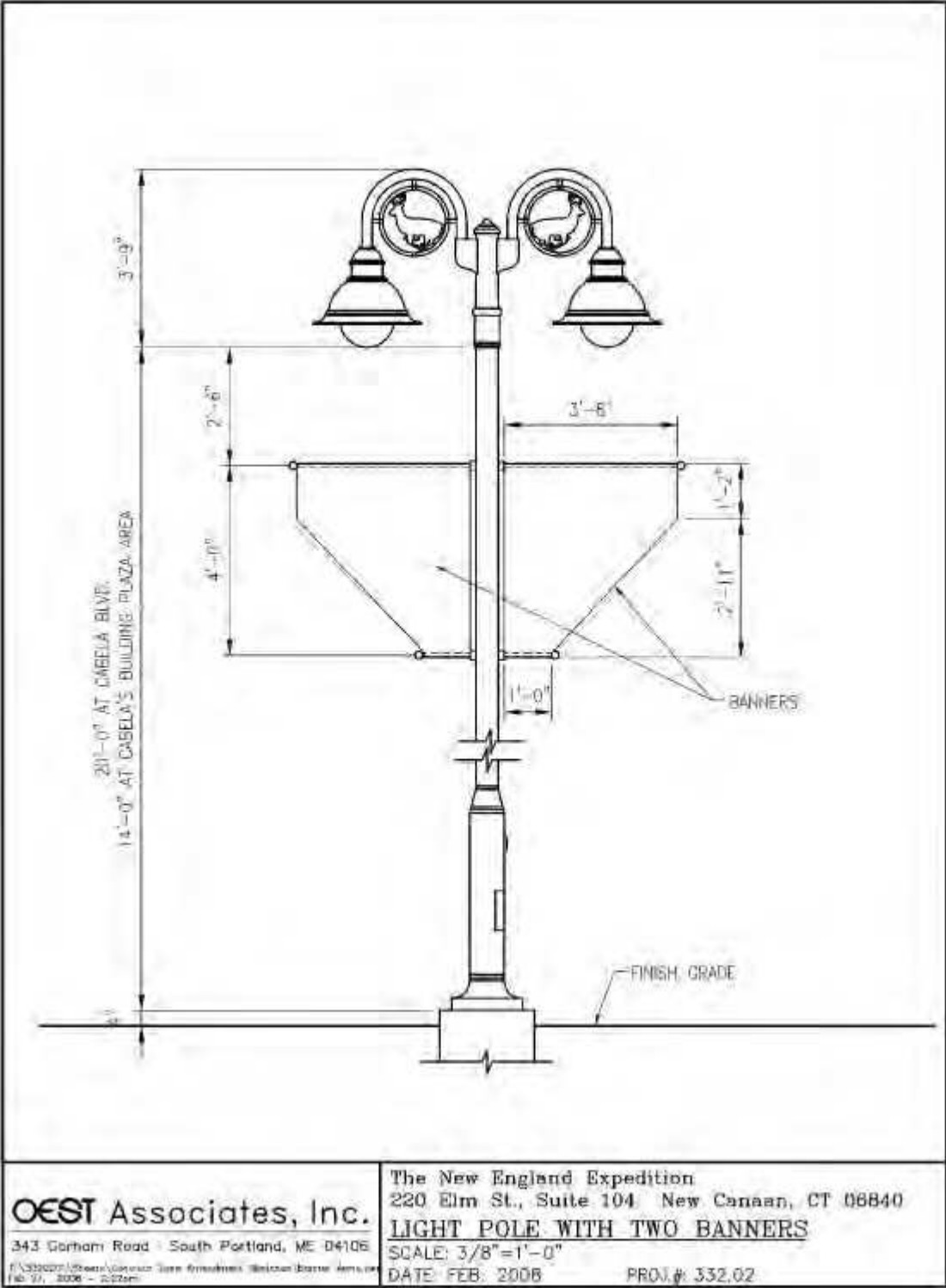


## EXHIBITS

## Attachment 2

Types of light poles on which temporary banners may be affixed consisting of two (2) pages.





**FOURTH AMENDMENT TO EXHIBIT 9**

**TO CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC  
THE GATEWAY AT SCARBOROUGH**

This Fourth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 3<sup>rd</sup> day of March, 2010 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and,

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5<sup>th</sup> day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7<sup>th</sup> day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30<sup>th</sup> day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and,

WHEREAS, Section 6 of the Agreement provided that certain improvements within that portion of the Property located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway known as “The Gateway Square at Scarborough” be “substantially complete,” as that term is defined in said Section 6 of the Agreement, within two (2) years from the date that New England Expedition received Planning Board approval for the Project; and,

WHEREAS, the Town Planner extended said “substantial completion” deadline to March 12, 2010, pursuant to authority granted the Town Planner under said Section 6 of the Agreement; and,

WHEREAS that portion of the Property known as The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and,

EXHIBITS

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to Section 6 of the Agreement (a) further extending said “substantial completion” deadline for an additional three (3) years to March 12, 2013, and (b) amending the definition of “substantially complete” as set forth therein.

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

1. Section 6 of the Agreement is hereby amended in its entirety to read as follows:
  6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the “Site Plan Ordinance”) and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the “Subdivision Ordinance”), with construction anticipated to proceed in phases commencing with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway. The phasing of the construction as outlined above shall be subject to the additional requirement that construction of that portion of the Project comprising The Gateway Square at Scarborough shall be “substantially complete” no later than March 12, 2013. For purposes hereof, “substantially complete” shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, the installation of utilities, storm drains and sanitary sewer lines and the completion and approval of the foundations for one or more buildings containing in the aggregate not less than one hundred thousand (100,000.00) square feet of gross leaseable area.
2. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment and the Third Amendment, remains consistent with the Comprehensive Plan.
3. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
4. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

TOWN OF SCARBOROUGH

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

\_\_\_\_\_  
Thomas J. Hall, its Town Manager (duly authorized by vote of the Scarborough Town Council on March 3, 2010)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

March \_\_\_\_, 2010

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

Before me,

EXHIBITS

WITNESS:

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

\_\_\_\_\_  
Print name

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

By: \_\_\_\_\_  
Barry E. Feldman  
Its Managing Member

\_\_\_\_\_  
STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

March \_\_\_\_, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

By: \_\_\_\_\_  
Barry E. Feldman  
Its Managing Member

\_\_\_\_\_  
STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

March \_\_\_\_, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print name

**FIFTH AMENDMENT TO EXHIBIT 9**

**TO CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC  
THE GATEWAY AT SCARBOROUGH**

**FIFTH AMENDMENT  
TO  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND EXPEDITION –  
SCARBOROUGH, LLC  
THE GATEWAY AT SCARBOROUGH**

This Fifth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 21<sup>st</sup> day of July, 2010 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5<sup>th</sup> day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7<sup>th</sup> day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30<sup>th</sup> day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition

## EXHIBITS

and New England Expedition II dated as of the 3<sup>rd</sup> day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the “Fourth Amendment”); and

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to the Agreement regarding (a) signage and banners, and (b) certain uses within the District.

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

1. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, in addition to the wall signs permitted under Section 2 of the First Amendment, one (1) additional doorway sign not exceeding fifteen (15) square feet, which sign may be two-sided and, in the case of a two-sided sign, not exceeding fifteen (15) square feet for each face with the width of such two-sided sign between such faces not to exceed one (1) foot, indicating the location of any entrance to a restaurant at which “pick-up,” “take-out” or “to-go” orders can be picked up, may be affixed to the exterior of the building either parallel or perpendicular to the building wall, either attached directly to the building wall or attached to one or more supports attached to the building wall, and located over any such entrance, which sign may not extend more than three (3) feet from the building wall.
2. Section 2 and Section 3 of the Third Amendment are hereby deleted in their entirety.
3. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, banners depicting seasonal or decorative scenes or images, and general or seasonal messages and greetings, may be affixed to those light poles within the District designated “Seasonal Banner Light Pole (Typ.)” on Attachment 1 to this Amendment. Banners promoting sales of products by specific retailers within the District may be affixed to those types of light poles within the District depicted on Attachment 2 to the Third Amendment. Banners shall not be allowed to deteriorate in appearance so as to become unsightly.
4. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the existing Cabela’s pylon sign depicted on Attachment 1 to the Third Amendment and located where shown on Attachment 1 to this Amendment may be modified so as to include one (1) additional sign for advertising purposes for one or more businesses that may be located within that portion of the District comprising The Gateway Shoppes subject to the following conditions:
  - a. Said pylon sign shall not be increased in height; and
  - b. Said additional sign shall not be greater in size than seventy-five percent (75%) of the size of the existing Cabela’s sign as shown on said Attachment 1 to the Third Amendment.

This Section 4 shall not be deemed to eliminate the need to comply with applicable State law regarding signage located adjacent to the Maine Turnpike.

5. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the following additional signage shall be permitted:
  - a. One (1) business directory sign not exceeding one hundred fifty (150) square feet, which sign may be two-sided and, in the case of a two-sided sign, not exceeding one hundred fifty (150) square feet for each face, advertising the businesses located within that portion of the District comprising The Gateway Shoppes, may be located within the area designated “Shoppes Business Directory Sign Area” on Attachment 2 to this Amendment;



## EXHIBITS

- b. Two (2) signs not exceeding thirty-two (32) square feet each, which signs may be two-sided and, in the case of a two-sided sign, not exceeding thirty-two (32) square feet for each face, designating the secondary entrance to The Gateway Shoppes on Payne Road for employees, trucks, buses, recreational vehicles, service vehicles, and delivery vehicles for deliveries to one or more named tenants, one of which may be located within the area designated “Shoppes Secondary Entrance Sign One Area” and one of which may be located within the area designated “Shoppes Secondary Entrance Sign Two Area” on Attachment 2 to this Amendment;
- c. Two (2) business directory signs not exceeding one hundred fifty (150) square feet, which signs may be two-sided and, in the case of a two-sided signs, not exceeding one hundred fifty (150) square feet for each face, advertising the businesses located within that portion of the District comprising The Gateway Square, one of which may be located within the area designated “Square Business Directory Sign One Area” and one of which may be located within the area designated “Square Business Directory Sign Two Area” on Attachment 3 to this Amendment; and
- d. Signs indicating the name of the project and/or the names of not more than three (3) of the businesses located therein may be affixed to the faces of the existing rock walls located on either side of the main entrances on Payne Road and Haigis Parkway to that portion of the District comprising The Gateway Square as shown and designated “Existing Stone Walls” on Attachment 3 to this Amendment.

The signage referred to in this Section 5 shall otherwise comply with all requirements of Section XII of the Zoning Ordinance, as it may be amended from time to time.

6. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.

7. The following additional uses and related signage shall be permitted within that portion of the District comprising The Gateway Shoppes:

- a. Restaurants that include drive-up or drive-thru service windows to be located within the areas designated “Restaurants with Drive-Ups and Drive-Thrus” on Attachment 4 to this Amendment, the design of which shall be architecturally compatible with the existing buildings, provided that this provision shall not be deemed to prohibit the number of restaurants within the District that do not include drive-up or drive-thru service windows;
- b. Craft shows and art shows, including the sale of items displayed therein, that may be conducted within any building or outdoors and that need not be related to, or accessory to, any existing building or use, which craft shows and art shows conducted outdoors shall be conducted within the areas designated “Special Events” on Attachment 5 to this Amendment, together with temporary signs meeting the requirement of Section XII of the Zoning Ordinance advertising such events and directing persons thereto that may be located within the areas designated “Temporary Sign Areas” on Attachment 5 to this Amendment the day or days of the event; and
- c. Outdoors sales and tent sales that need not be related to, or accessory to, any existing building or use, which outdoor sales and tent sales shall be conducted within the areas designated “Special Events” on Attachment 5 to this Amendment, together with temporary signs meeting the requirements of Section XII of the Zoning Ordinance

## EXHIBITS

advertising such events and directing persons thereto that may be located within the areas designated "Temporary Sign Areas" on Attachment 5 to this Amendment the day or days of the event.

- d. Not more than an aggregate total of six (6) craft shows, art shows, outdoor sales and tent sales, which shall not exceed three (3) consecutive days each, excluding time for setup, dismantling and cleanup which may occur on the day immediately before the commencement of the event and on the day immediately after the conclusion of the event unless additional time is required due to inclement weather or other circumstances beyond the reasonable control of the business or organization conducting the event, may be conducted within a calendar year.

8. Craft shows, art shows, outdoor sales and tent sales described in Section 7 above that are not being conducted by on-site businesses shall be subject to the review and approval by the Code Enforcement Officer and the Chief of the Scarborough Fire Department in accordance with the following procedure:

- a. No later than twenty-one (21) days prior to the date of commencement of the event, the Code Enforcement Officer and the Chief of the Scarborough Fire Department shall be provided with written notification of the event, which notification shall contain the following information:
  - i. The type of event;
  - ii. The name, address and telephone number of the business or organization conducting the event, together with the name of an individual associated with such business or organization who can be contacted regarding the event;
  - iii. A sketch plan showing in which Special Events areas the event will be conducted and the approximate layout of the event facilities within those areas; and
  - iv. The date or dates during which the event will be conducted.
- b. If the proposed event is anticipated to be repeated on multiple dates such as, by way of example, an art show that occurs on multiple Sundays each week during the months of June through October, only a single notification in accordance with Subsection 8. a. above need be provided to the Code Enforcement Officer and the Chief of the Scarborough Fire Department prior to the date of the first of such multiple repetitive events.
- c. Any temporary structures such as tents shall require a permit be obtained not less than seven (7) days prior to the date or dates of the event from the Chief of the Scarborough Fire Department.
- d. The event shall comply with all National Fire Protection Association and Town fire safety standards and requirements as applicable.
- e. In the event that the Code Enforcement Officer and/or the Chief of the Scarborough Fire Department should reasonably determine that the event fails to comply with the terms and conditions set forth herein, the Code Enforcement Officer and/or the Chief of the Scarborough Fire Department shall provide written notice to the notifying party indicating in what manner the event fails to so comply. In the event the Code Enforcement Officer and/or the Chief of the Scarborough Fire Department should fail to provide such notice to the notifying party within fourteen (14) days following the Code

EXHIBITS

Enforcement Officer's and the Chief of the Scarborough Fire Department's receipt of the notification required in Subsection 8. a. above, the event shall be deemed approved.

f. No other Town permits or approvals shall be required for such events.

9. The terms and conditions of this Amendment including, but not limited to, the review and approval process described in Section 8 above for craft shows, art shows, outdoor sales and tent sales that are not being conducted by on-site businesses, shall not be applicable to craft shows, art shows, outdoor sales and tent sales that are that are otherwise allowed to be conducted by on-site businesses in accordance with the Zoning Ordinance and other applicable Town regulations and procedures.

10. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, remains consistent with the Comprehensive Plan.

11. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

12. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

TOWN OF SCARBOROUGH

By: \_\_\_\_\_  
Thomas J. Hall, its Town Manager (duly  
authorized by vote of the Scarborough Town  
Council on July 21, 2010)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

July \_\_\_\_, 2010

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

Before me,

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

\_\_\_\_\_  
Print name

EXHIBITS

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

By: \_\_\_\_\_  
Barry E. Feldman  
Its Managing Member

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

July \_\_\_\_, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

By: \_\_\_\_\_  
Barry E. Feldman  
Its Managing Member

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

July \_\_\_\_, 2010

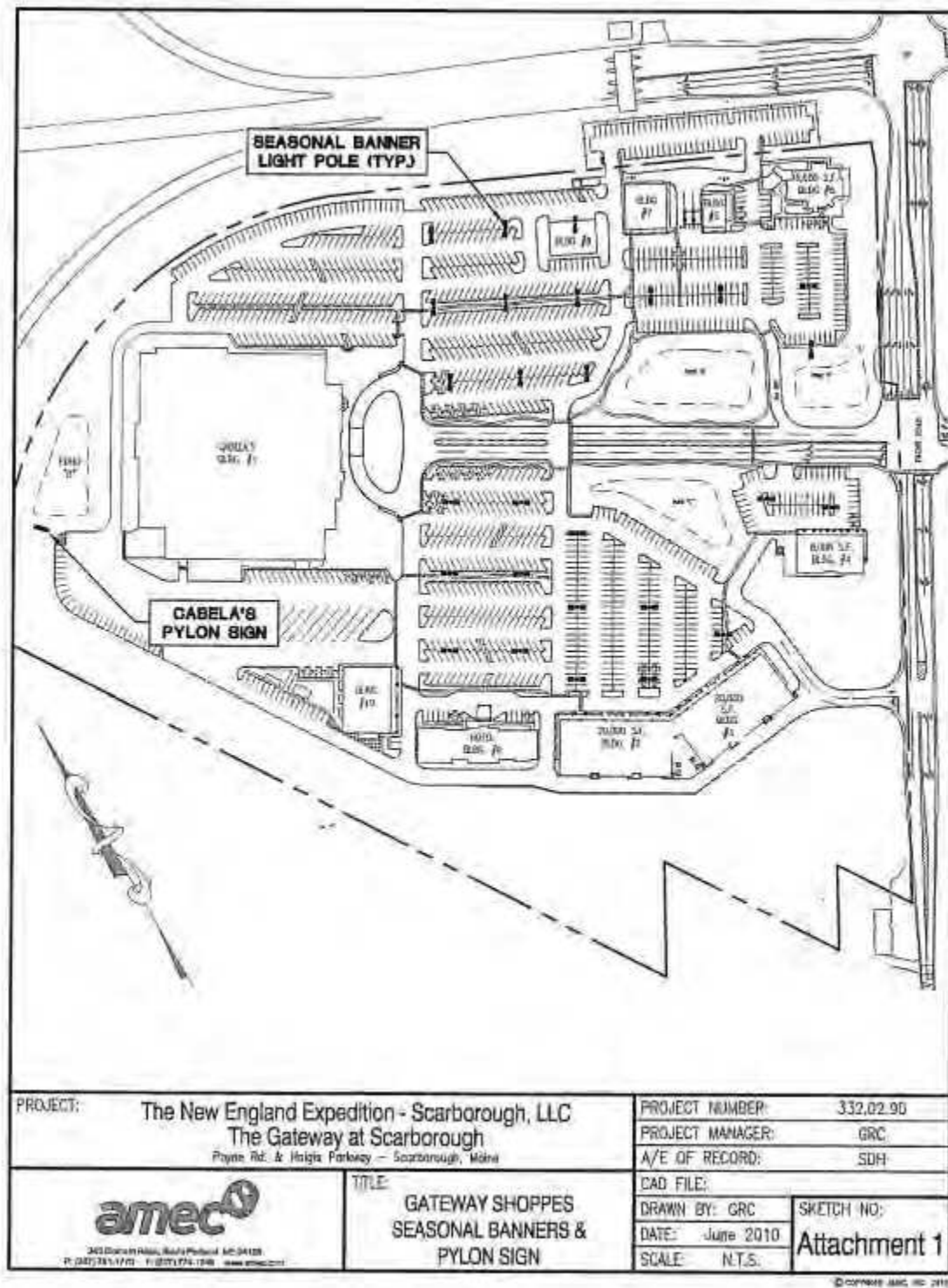
Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

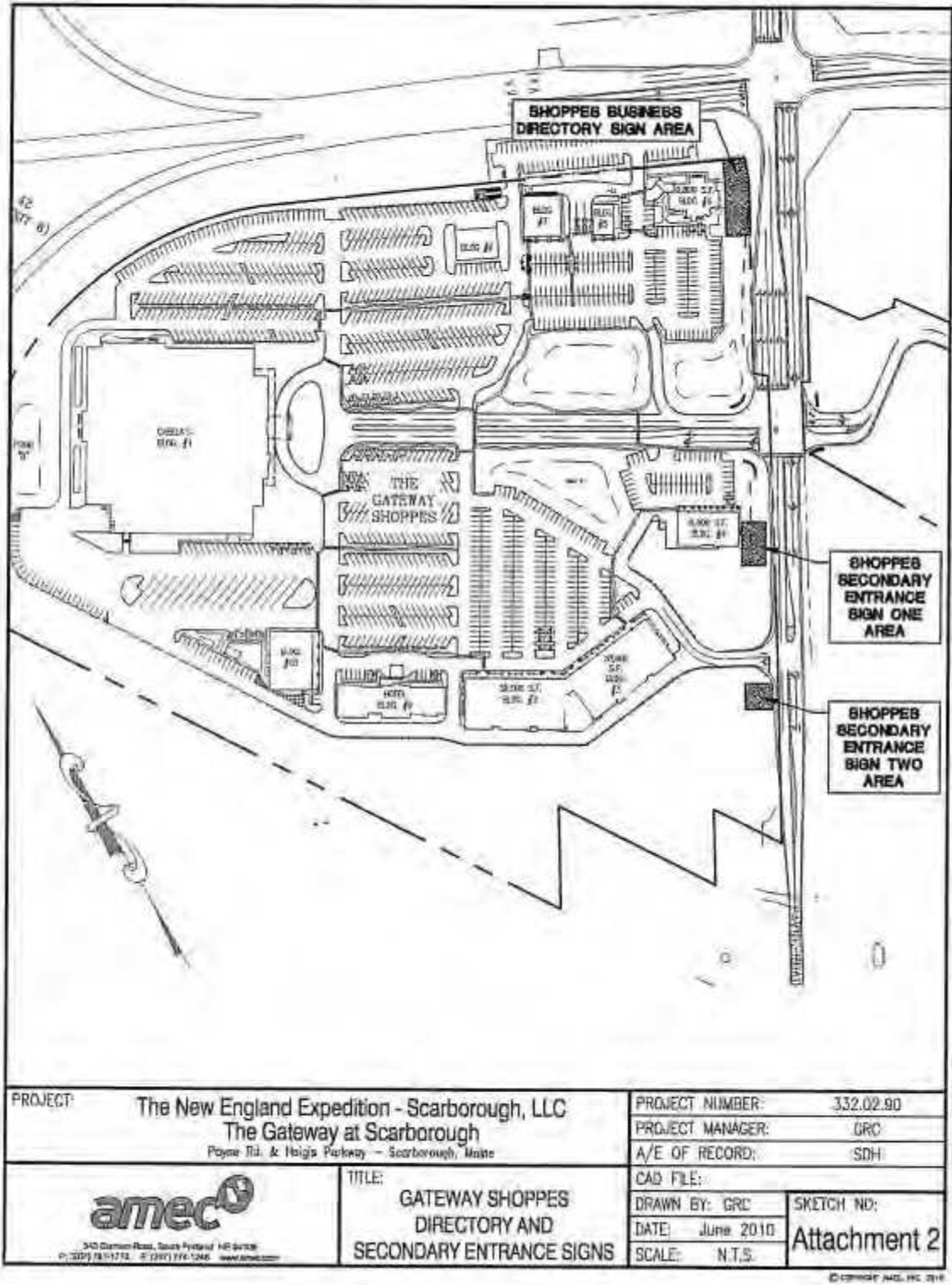
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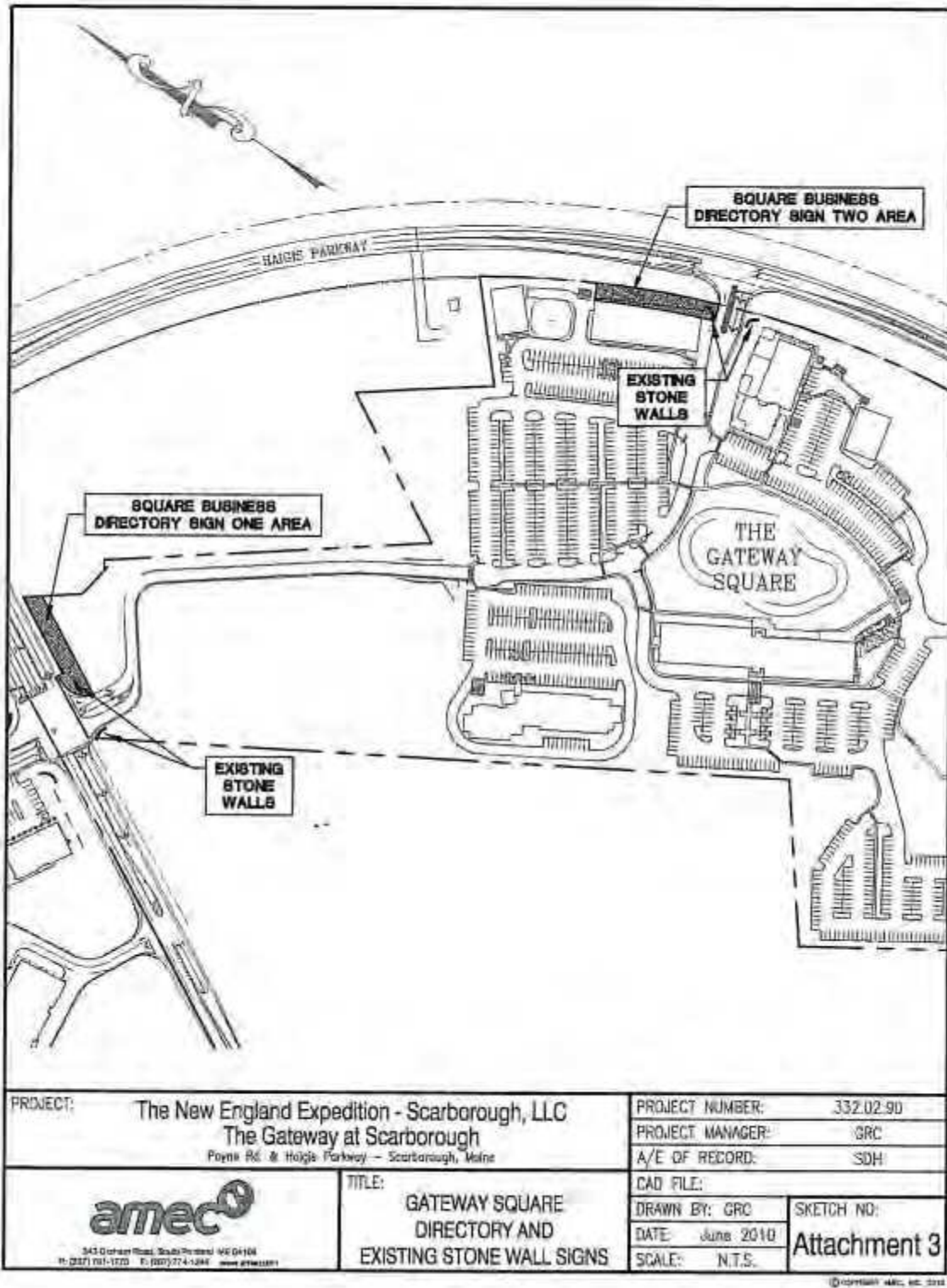
\_\_\_\_\_  
Notary Public

\_\_\_\_\_

Print name

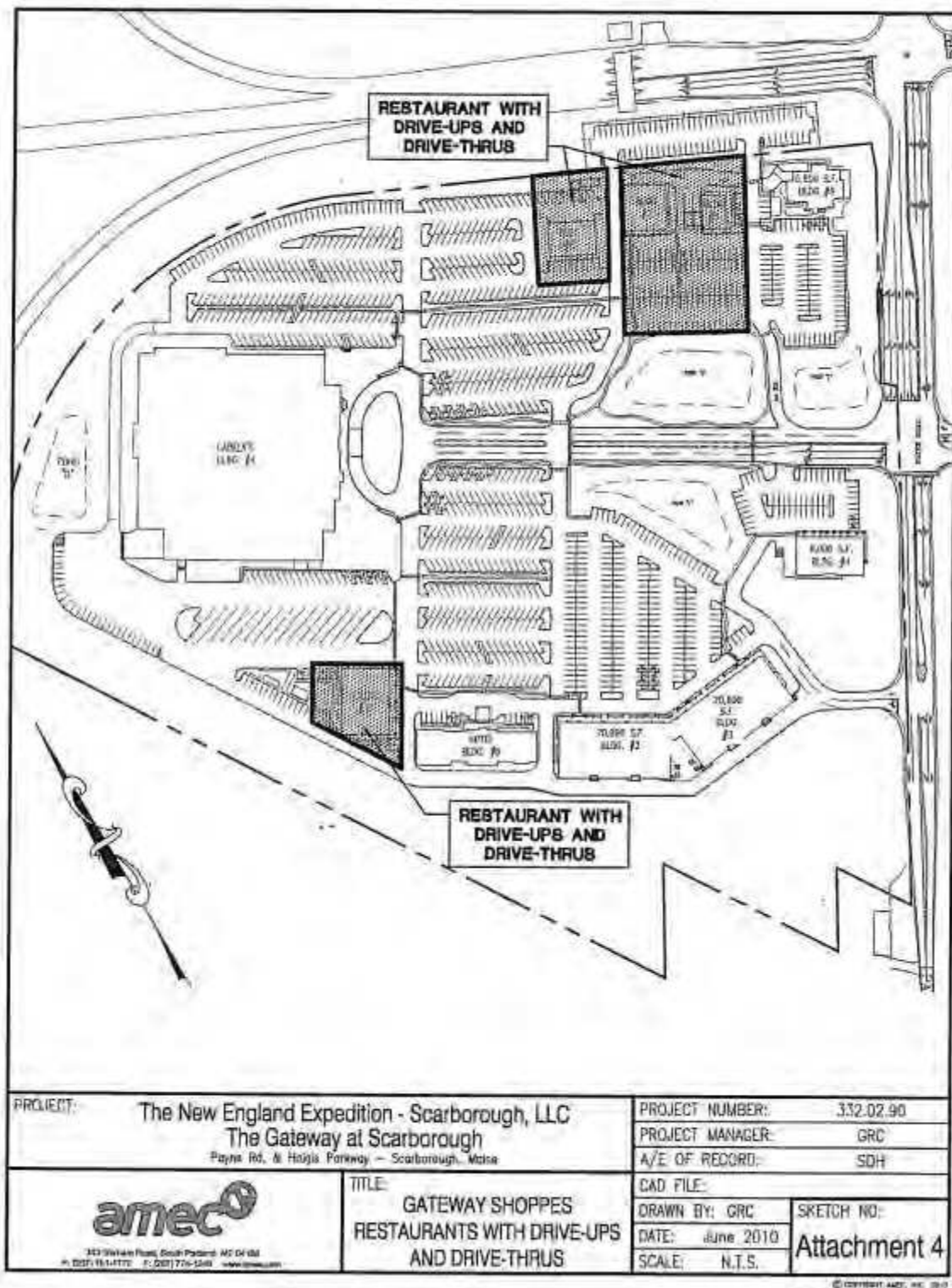


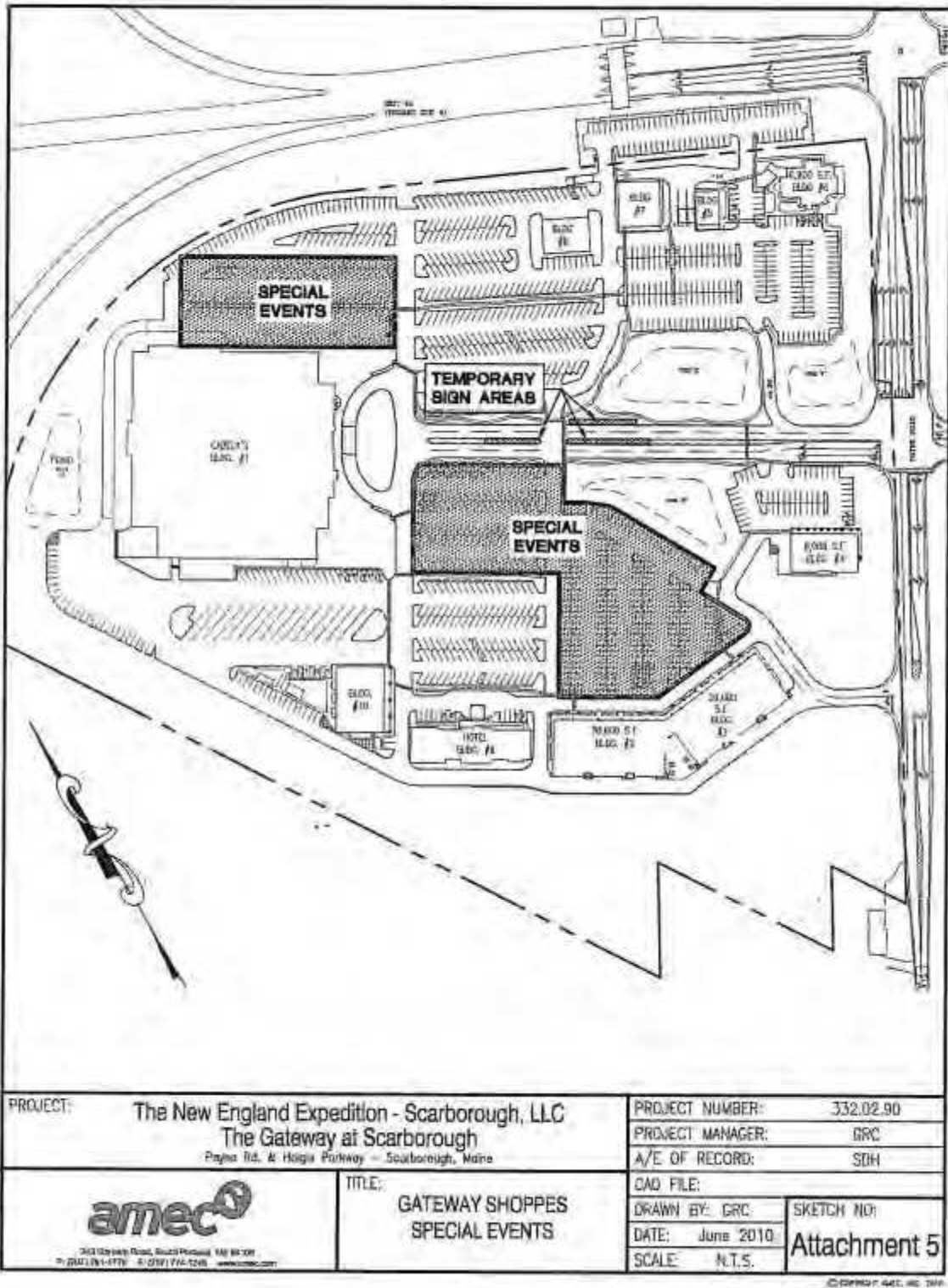






## EXHIBITS





**SIXTH AMENDMENT TO EXHIBIT 9**

**TO  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND EXPEDITION –  
SCARBOROUGH, LLC**

**THE GATEWAY AT SCARBOROUGH**

This Sixth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5<sup>th</sup> day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7<sup>th</sup> day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30<sup>th</sup> day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3<sup>rd</sup> day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the “Fourth Amendment”); and

EXHIBITS

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 21<sup>st</sup> day of July, 2010, and recorded in said Registry of Deeds in Book 27960, Page 322 (the "Fifth Amendment"); and

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to the Agreement regarding the height of the business directory signs permitted within the District.

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

1. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the business directory signs permitted within the District under Section 5.a. and Section 5.c. of the Fifth Amendment may be up to sixteen (16) feet in height as measured from the base of such signs at ground level.
2. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.
3. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, remains consistent with the Comprehensive Plan.
4. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
5. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

TOWN OF SCARBOROUGH

By: \_\_\_\_\_  
Thomas J. Hall, its Town Manager (duly authorized by vote of the Scarborough Town Council on \_\_\_\_\_, 2011)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2011

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

Before me,

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

EXHIBITS

\_\_\_\_\_  
Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Barry E. Feldman  
It's Managing Member

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

\_\_\_\_\_, 2011

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Barry E. Feldman  
It's Managing Member

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

\_\_\_\_\_, 2011

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

Before me,

EXHIBITS

Notary Public

---

Print name



Date: 4/23/09	Scale: 1/2" = 1'
Drawing #: 4	Sales Rep: DF
Rev #: 14	Rev Date: 11/17/10

Approved by:

**The Gateway Shoppes**

- \*Internally Illuminated Tenant Pylon sign
- \*Internally Illuminated sign cabinet w/ 3/16" white Lexan faces
- \*Custom fabricated "roof"
- \*Custom stone pylons to match existing Cabells's colors

This design is the exclusive property of Sign Concepts, LLC, and cannot be copied, exhibited, or shown to anyone outside of your organization without the prior consent of Sign Concepts, LLC. Copyright © 2010.



**SEVENTH AMENDMENT TO EXHIBIT 9**

**CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND  
EXPEDITION – SCARBOROUGH, LLC**

**THE GATEWAY AT SCARBOROUGH**

This Seventh Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 6 day of March, 2013 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND - SCARBOROUGH, LLC, a Maine Limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, new Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and,

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5<sup>th</sup> day of September 2007, and recorded in said Registry of Deeds in Book 25482. Page 201 (the “First Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30<sup>th</sup> day of April, 2008, and recorded in said Registry of Deeds in Book 26060. Page 162 (the “Third Amendment”); and,

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed with Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3<sup>rd</sup> day of March, 2010, and recorded in said Registry of Deeds in Book 27642, page 85 (the “Fourth Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 19<sup>th</sup> day of January, 2011, and recorded in said Registry of Deeds in Book 28464, page 260 (the “Sixth Amendment”); and,

WHEREAS, Section 6 of the Agreement, as amended pursuant to said Fourth Amendment to Contract Zoning Agreement, provides that certain improvements within that portion of the Property located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway known as “The Gateway Square at Scarborough” be substantially complete,” as that term is defined in said Section 6 of the Agreement as amended, no later than March 12, 2013; and,

EXHIBITS

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Seventh Amendment to Contract Zoning Agreement further amending the definition of “substantially complete” as set forth in Section 6 of the Agreement, as previously amended, to eliminate the requirement that by March 12, 2013, foundations for one or more buildings containing in the aggregate not less than one hundred thousand (100,000.00) square feet of gross leasable area be completed and approved within The Gateway Square at Scarborough.

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

1. Section 6 of the Agreement is hereby further amended in its entirety to read as follows:
  6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the “Site Plan Ordinance”) and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the “Subdivision Ordinance”), with construction anticipated to proceed in phases commencing with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway. The phasing of the construction as outlined above shall be subject to the additional requirement that construction of that portion of the Project comprising The Gateway Square at Scarborough shall be “substantially complete” no later than March 12, 2013. For purposes hereof, “substantially complete” shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, and the installation of utilities, storm drains and sanitary sewer lines.
2. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, remains consistent with the Comprehensive Plan.
3. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
4. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

\_\_\_\_\_

TOWN OF SCARBOROUGH

By: \_\_\_\_\_  
Thomas J. Hall, its Town Manager  
(duly authorized by vote of the  
Scarborough Town Council on  
\_\_\_\_\_, 2013)

EXHIBITS

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2013

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

Before me.

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

\_\_\_\_\_  
Print Name

WITNESS:

THE NEW ENGLAND EXPENDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC its  
Manager

By:\_\_\_\_\_  
Barry E. Feldman  
Its Managing Member

\_\_\_\_\_, 2013

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD, ss.

\_\_\_\_\_, 2013

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of New England Expedition-Scarborough, LLC and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition-Scarborough, LLC.

Before me.

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

\_\_\_\_\_  
Print Name

EXHIBITS

WITNESS:

THE NEW ENGLAND EXPENDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC its  
Manager

By: \_\_\_\_\_  
Barry E. Feldman  
Its Managing Member

\_\_\_\_\_, 2013

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

\_\_\_\_\_, 2013

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of New England Expedition-Scarborough, LLC and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition-Scarborough, LLC.

Before me.

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

\_\_\_\_\_  
Print Name

**EIGHTH AMENDMENT TO EXHIBIT 9**

Doc# 14701 Bk:33913 Pg: 213

EIGHTH AMENDMENT TO CONTRACT ZONING AGREEMENT  
AMONG THE TOWN OF SCARBOROUGH, EXIT 42 HAIGIS PARKWAY LLC, AND  
DEVINE CAPITAL, LLC  
THE GATEWAY AT SCARBOROUGH

This Eighth Amendment to Contract Zoning Agreement (hereinafter, this "Eighth Amendment") is made as of the 29<sup>th</sup> day of March, 2017 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the "Town"), EXIT 42 HAIGIS PARKWAY LLC, a Maine limited liability company, with an office at 11 Bartlett Road, Gorham, Maine 04038 (hereinafter, "Exit 42 HP"), and DEVINE CAPITAL, LLC, a Massachusetts limited liability company with a mailing address of 2 Monument Square, Seventh Floor, Portland, Maine 04101 (hereinafter, "Devine Capital"), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, The New England Expedition – Scarborough, LLC, a Maine limited liability company with an office at 222 Newbury Street, 4<sup>th</sup> Floor, Boston Massachusetts 02116 (hereinafter, "New England Expedition"), entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, the "Agreement") creating Contract Zoning District Number 9 (hereinafter, the "District") as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5<sup>th</sup> day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the "First Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7<sup>th</sup> day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the "Second Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30<sup>th</sup> day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the "Third Amendment"); and

WHEREAS, that portion of the Property comprising "The Gateway Square at Scarborough" was conveyed by New England Expedition to The New England Expedition – Scarborough II, LLC (hereinafter, "New England Expedition II") by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the "Fourth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 21st day of July, 2010, and recorded in said Registry of Deeds in Book 27960, Page 322 (the "Fifth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Sixth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 19<sup>th</sup> day of January, 2011, and recorded in said Registry of Deeds in Book 28464, Page 260 (the "Sixth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Seventh Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 6<sup>th</sup> day of March, 2013, and recorded in said Registry of Deeds in Book 30462, Page 162 (the "Seventh Amendment"); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by Deed In Lieu of Foreclosure With Covenant from New England Expedition – Scarborough, LLC to GlennDonna, Inc. and to R.J. Grondin & Sons dated as of the 26<sup>th</sup> day of September, 2014, and recorded in said Registry of Deeds in Book 31987, Page 197; and was subsequently conveyed to Exit 42 HP by Quitclaim Deed With Covenant from GlennDonna, Inc. and R.J. Grondin & Sons dated November 13, 2014, and recorded in said Registry of Deeds in Book 31987, Page 206; and

WHEREAS, Devine Capital intends to purchase of The Gateway Square at Scarborough from Exit 42 HP;

WHEREAS, the Haigis Parkway District, HP (hereinafter, the "HP District"), the underlying Zoning District in which The Gateway Square at Scarborough is located, as described in Section XVIII.B of the Zoning District, presently allows, as a permitted use, multi-family residential dwellings/units provided such dwellings/units are developed as part of a mixed-use building or mixed-use planned development;

WHEREAS, the HP District limits multi-family dwellings to a maximum building footprint of 12,500 square feet, a maximum of 5 dwelling units per acre of net lot area, and limits the floor area of all residential uses within a planned development to a maximum of 40% of the total floor area of all the building floor area within a planned development;

WHEREAS, the Town's Growth Management Ordinance, Chapter 413, requires the issuance of growth permits in order to obtain building permits to construct dwelling units and requires that growth permits be issued either from the annual allocation of growth permits or from a reserve pool of growth permits;

WHEREAS, Devine Capital desires to develop The Gateway Square at Scarborough as a multi-family residential development project;

WHEREAS, Devine Capital proposes to construct up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, consisting of up to 30,000 square feet of floor area for residential purposes, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building the ("Project");

WHEREAS, the residential unit development mix of the Project will foster the commercial and mixed-use activities and amenities desired within the underlying HP District, consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (the "Comprehensive Plan");

WHEREAS, the 2006 Update of the Comprehensive Plan of the Town of Scarborough includes an objective that ten percent of new housing units in the community be affordable to low and moderate income households, and Section VII.C, Residential Density and Affordable Housing Provisions, of the Zoning Ordinance enables developments in certain districts to contain additional density by providing an affordable housing in-lieu fee and Devine Capital proposes to provide an in-lieu payment to the Town of Scarborough's Affordable Housing Initiative Fund, and the Town Council will work with the Scarborough Housing Alliance to develop a plan by October 1<sup>st</sup>, 2017 to establish priorities and utilize the Affordable Housing Fund to enable the Town to make progress in meeting this affordable housing objective;

WHEREAS, the Devine Capital project includes a variety of active and passive recreational amenities, including a clubhouse with a fitness center and pool and outdoor active and passive recreation space, that will serve the health and recreational needs of the development's residents;

WHEREAS, the Devine Capital project will comply with Chapters 410, 415, 415A, and 415B consisting of the Town's Development and Traffic-Related Impact Fees and will pay these fees to compensate for the project's proportionate impact and demand on Town's school facilities, intersections, and roadway corridors.

WHEREAS, Exit 42 HP and Devine Capital have requested that the Town approve this Eighth Amendment to the Agreement to permit the multi-family residential development project within The Gateway Square at Scarborough as described herein, including the allocation of necessary growth permits from the reserve pool to permit the issuance of building permits for the Project.

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

1. Notwithstanding the provisions of Section XVIII.B HP District, in the Zoning Ordinance, as may be amended from time to time, Devine Capital, its successor and assigns, are hereby permitted to develop within The Gateway Square at Scarborough up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, resulting in a maximum number of residential units of two hundred eighty-eight (288) and consisting of up to



30,000 square feet of floor area for residential purposes per building, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building, without regard to the requirement that any such dwelling units be part of a mixed-use building or part of a mixed-use planned development and without regard to any conflicting lot area, dimensional, and density requirements otherwise applicable within the HP District.

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

3. Pursuant to Section 7(G)(5)(a) of the Town's Growth Management Ordinance, Chapter 413, the Town hereby authorizes the use of growth permits from the reserve pool for the Project and authorizes the Planning Board to so allocate from the reserve pool the appropriate number of growth permits to allow Devine Capital, its successor and assigns, to obtain the requisite building permits for the Project.

4. Devine Capital, its successor and assigns, shall pay a total of \$700,000 into the Town of Scarborough's Affordable Housing Initiative Fund for the two hundred eighty-eight (288) dwelling unit project. This affordable housing in-lieu fee requirement shall be paid to the Town proportionally by building at the time of building permit issuance with \$2,430.56 due per dwelling unit.

5. Given the active and passive recreational amenities provided within the development project, including the clubhouse with a fitness center and pool and outdoor active and passive recreation space, the Town determines that adequate recreational facilities have been provided for on-site and that a recreation contribution is not required.

6. The Agreement, as amended by this Eighth Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and the Seventh Amendment, remains consistent with the Comprehensive Plan and consistent and compatible with the existing and permitted uses within the existing zoning district classification.

7. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

8. The Town acknowledges and agrees that (a) any breach of the restrictions, provisions and conditions of the Agreement relating to The Gateway Square at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Shoppes at Scarborough, and (b) any breach of the restrictions, provisions and conditions of the Agreement relating to The Gateway Shoppes at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Square at Scarborough.

## EXHIBITS

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9. This Eighth Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

*[Signature Page Follows]*

10. The Scarborough Town Council shall be authorized to execute and deliver the foregoing instrument.

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

WITNESS:

TOWN OF SCARBOROUGH

Collette Matheson

By: Thomas J. Hall  
Thomas J. Hall, its Town Manager\*  
(\* Duly authorized by vote of the  
Scarborough Town Council on March 15  
    , 2017)

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

March 22, 2017

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

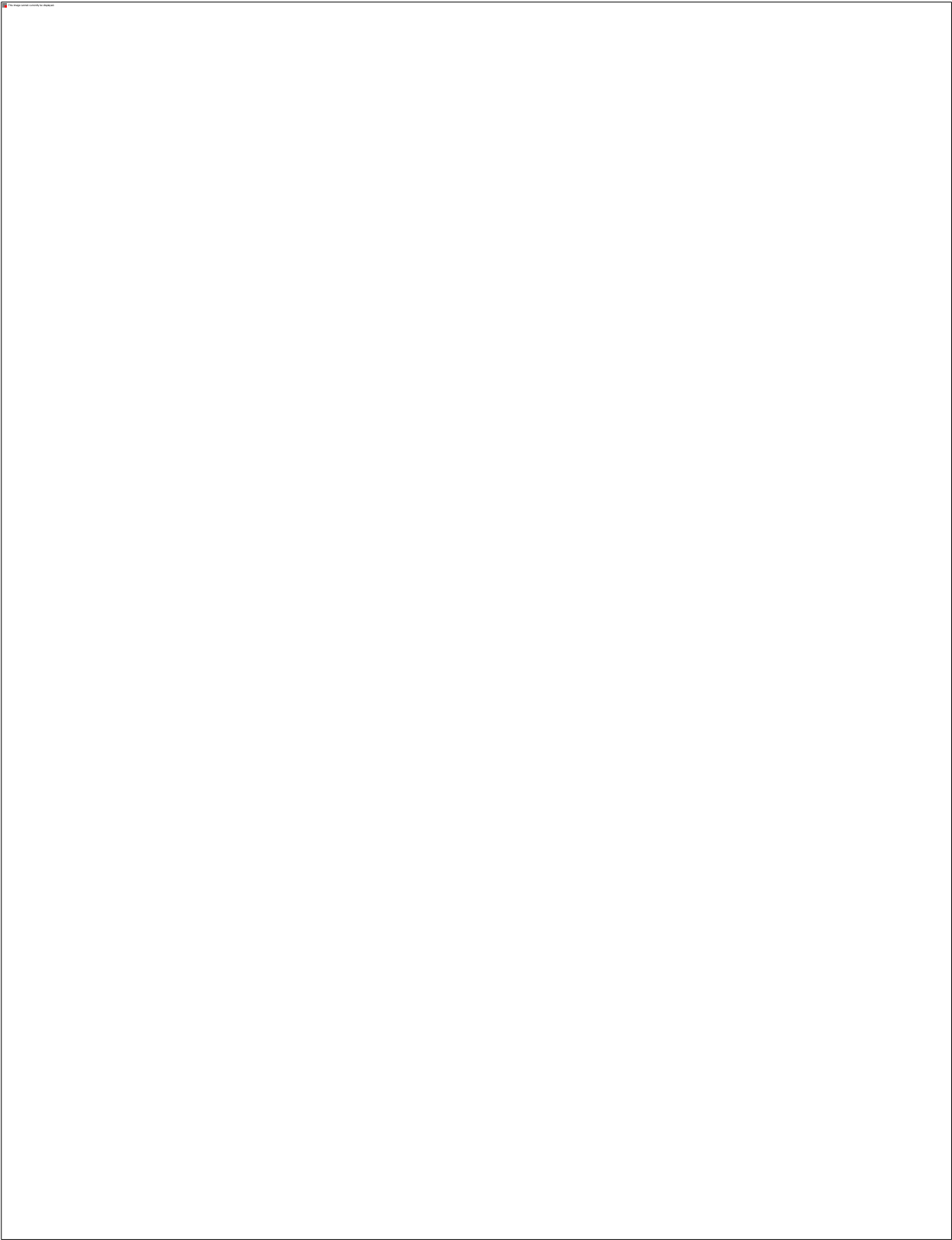
Before me,

Yolande Justice  
Notary Public/Attorney at Law  
Print Name: \_\_\_\_\_

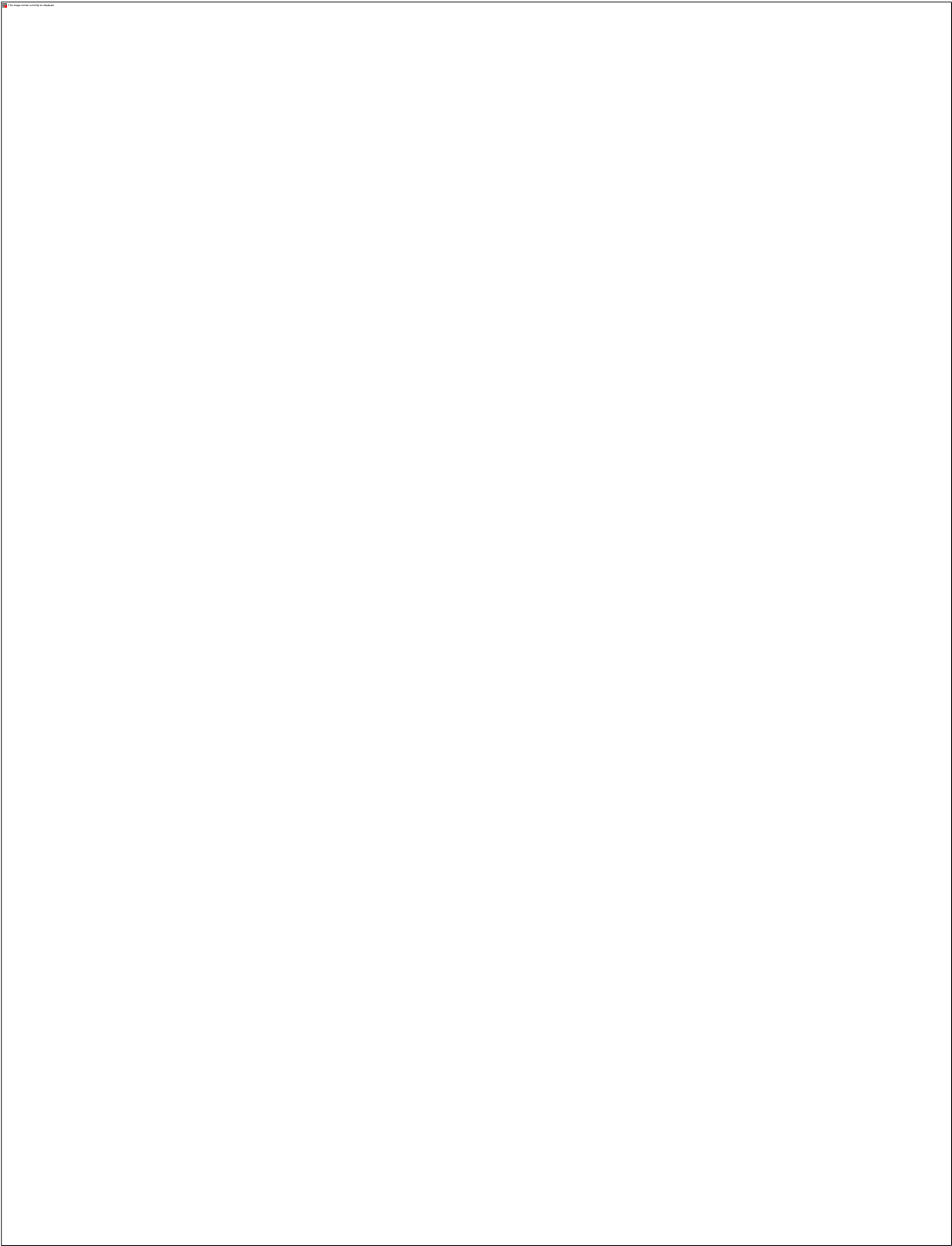
SEAL

YOLANDE P. JUSTICE  
Notary Public, Maine  
My Commission Expires October 31, 2022

EXHIBITS



EXHIBITS





In advance of the joint meeting, Board members may wish to review the Contract Zone requirements as established in Section II.(I) of the Zoning Ordinance. This section of the Ordinance details both the procedures and review criteria for contract zones. Below is an excerpt of the procedural requirements for the joint hearing:

*In accordance with the Zoning Ordinance, Section II(I)4(a.)iii, the joint Planning Board/Town Council meeting shall be conducted as follows:*

- *Presentation by the applicant.*
- *Comments from Town staff.*
- *Comments from members of the public. (This shall constitute the public hearing by the municipal reviewing authority required by 30-A M.R.S.A. § 4352(8).)*
- *Response or rebuttal from applicant.*
- *Discussion among members of the Planning Board and the Town Council, which may include questions posed to the applicant, staff and the public.*
- *Comments from members of the Planning Board concerning the land use implications of the proposed contract zoning amendment.*
- *Preliminary Town Council discussion of contract zoning amendment.*

*The Joint Planning Board/Town Council meeting may be continued from time-to-time by vote of the Town Council until the Council has concluded its discussion and is prepared to give the applicant preliminary direction concerning the further processing of the contract zoning request. At the conclusion of the discussion, the Council shall, by vote, advise the applicant: (1) to withdraw the request for contract zoning; (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council; or (3) to revise and resubmit the application for contract zoning, under Section II(I)4(a)(i) above. The vote of the Town Council shall constitute direction from the Council to the applicant as to how to proceed, but shall not be binding on either the applicant or the Council, which reserves its sole and exclusive judgment as the elected legislative body of the Town of Scarborough until its final vote on the proposed contract zoning amendment.*

Accompanying this memo is the “Summary of Procedural Steps for Contract Zoning” as established in Zoning Ordinance [Appendix B]. As highlighted, the application is in Phase I, Step Three of the review process which is a preliminary review by the Council and Board.

## **Attachment A**

### **Zoning Ordinance Excerpt**

#### **Appendix B- Summary of Procedural Steps for Contract Zoning**

This summary is intended to provide a shorthand guide to the contract zoning process for applicants, Town officials and the public. This summary does not substitute for the text of Section II(I) of the Zoning Ordinance, which governs the process for contract zoning.

#### **Phase 1 – Preliminary Joint Review by Planning Board and Town Council**

Step One: The applicant files an application for contract zoning with the Town Planner.

Step Two: The Town Planner evaluates the application for completeness.

Step Three: The Planning Board and Town Council conduct a joint meeting for preliminary review of the contract zoning application. The joint meeting includes:

- a. Public hearing under 30-A M.R.S.A. § 4352(8).
- b. Planning Board comments on the land use implications of the proposed contract zoning.
- c. Council discussion of the proposed contract zoning.
- d. Council's preliminary direction to the applicant concerning further proceedings on the contract zoning request.

#### **Phase 2 – Planning Board Plan Review**

Step Four: The applicant files the application for site plan approval (and subdivision approval, if required).

Step Five: After public hearing, the Planning Board grants preliminary, provisional approval to the site plan (and subdivision plan, if required).

#### **Phase 3 – Town Council Action**

Step Six: The Town Council holds the first reading of the contract zoning amendment.

Step Seven: The Town Council holds a public hearing.

Step Eight: The Town Council holds the second reading and votes on the contract zoning amendment.

Step Nine: The applicant records the contract zoning agreement in the registry of deeds.

#### **Phase 4 – Final Planning Board Action**

Step Ten: The Planning Board grants final site plan approval (and subdivision approval, if required).



**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-027.** Move approval of the second reading on the proposed amendments to Chapter 311: the Town of Scarborough Schedule of License, Permit and Application Fees regarding the proposed Annual Mooring Wait List Fee.(Tabled from the March 20, 2024, Town Council meeting.) [*Town Staff*]

*Town Staff*

*Ought to Pass*

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Sponsor

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Recommendation

*06/05/2024 - Vote:*  
(Originally Tabled from the March 20, 2024, Town Council meeting.)

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First Reading/Vote

*06/26/2024*

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Public Hearing

*06/26/2024 - Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

<b>ACTION ITEM: Order No. 24-027.</b>
<b>SUBJECT:</b> <b>7:00 p.m. Public hearing</b> and second reading on the proposed amendments to Chapter 311: the Town of Scarborough Schedule of License, Permit and Application Fees. (Tabled from the March 20, 2024 Town Council meeting.) <i>[Town Staff]</i>
<b>PURPOSE:</b> To make adjustments to certain fees as deem necessary.
<b>BACKGROUND:</b> <u>Mooring Fees - Mooring Waiting List, Yearly Fee:</u> <p>This proposed annual fee would maintain your name on the waiting [recreational &amp; commercial] list of \$35. The fee would cover the administrative cost for the Town Clerk's office to ensure that your name stays active on the list and that any correspondence that needs to be sent to you to maintain your name, the cost is covered.</p> <p>When you are pulled from the mooring waitlist, that year's mooring waitlist fee will be applied towards that year's mooring cost.</p> <p>In the State of Maine, moorings are in very high demand and it is important that we engage with those on our waitlist. This fee would hold those accountable to ensure the information in the Town Clerk's office is current and accurate and is in compliance with the Town's ordinance.</p> <p>This item was tabled and referred to the Coastal Waters/Harbor Committee for review and recommendation. The Committee discussed this at their May 14, 2024, meeting and the following recommendation was made:</p> <p style="padding-left: 40px;">Recommend \$35 yearly waiting list fee; yearly fee applied over course of time on waiting list to the first year's mooring fee once you are allocated a mooring; whatever you paid, up to the mooring fee, will be credited</p>
<b>FISCAL IMPACT:</b> \$35 per application on the wait list.
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"> <li>• Recommendation on Mooring Wait List Fee: February 8, 2024 - February 14, 2024</li> <li>• First reading before the Town Council: March 20, 2024 – Tabled and referred to Coastal Waters/Harbor Committee</li> <li>• Discussion and recommendation by Coastal Waters/Harbor Committee: May 14, 2024</li> <li>• First reading before the Town Council: June 5, 2024</li> <li>• Public hearing and Second Reading before the Town Council: June 26, 2024</li> </ul>
<b>PROPOSED ACTION:</b> Recommend move approval of the first reading on Order No. 24-027.
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"> <li>• Original recommendation from Staff</li> <li>• Recommendation from the Coastal Waters/Harbor Committee</li> </ul>

**Chapter 311 – the Town of Scarborough  
Schedule of Fees Ordinance  
as approved at first reading**

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

<b>Chapter 1401 – Coastal Water and Harbor Fees</b> [amended 02-20-13]	<b>Fee</b>
<b>Annual Mooring &amp; Pier Use Fees</b>	
Recreational Pier Use - Resident and/or Taxpayer (amended 05/05/04; 12/20/17; 02/15/23)	\$250.00
Recreational Pier Use - Non-Resident (amended 05/05/04; amended 12/20/17; 02/15/23)	\$500.00
Commercial Pier User – Resident and/or Taxpayer (amended 12/20/17; 02/15/23)	\$450.00
Commercial Pier User – Non-Resident (amended 12/20/17; 02/15/23; 05/03/2023)	\$700.00
Recreational Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$300.00
Recreational Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$500.00
Commercial Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$500.00
Commercial Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$700.00
One Time Pier Use Fee Resident (adopted 02/15/23; amended 05/03/2023)	\$150.00
One Time Pier Use Fee Non-Resident (adopted 02/15/23)	\$350.00
<u>Mooring Wait List Annual Fee: Annual fee will be applied over the course of time on waiting list. Once the mooring is issued and what monies have been paid while on the wait list will be credited, not to exceed the annual mooring fee, for the first year only.</u>	<u>\$35.00</u>

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

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

<b>Chapter 1401 – Coastal Water and Harbor Fees</b> [amended 02-20-13]	<b>Fee</b>
<b>Annual Mooring &amp; Pier Use Fees</b>	
Recreational Pier Use - Resident and/or Taxpayer (amended 05/05/04; 12/20/17; 02/15/23)	\$250.00
Recreational Pier Use - Non-Resident (amended 05/05/04; amended 12/20/17; 02/15/23)	\$500.00
Commercial Pier User – Resident and/or Taxpayer (amended 12/20/17; 02/15/23)	\$450.00
Commercial Pier User – Non-Resident (amended 12/20/17; 02/15/23; 05/03/2023)	\$700.00
Recreational Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$300.00
Recreational Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$500.00
Commercial Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$500.00
Commercial Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$700.00
One Time Pier Use Fee Resident (adopted 02/15/23; amended 05/03/2023)	\$150.00
One Time Pier Use Fee Non-Resident (adopted 02/15/23)	\$350.00
<u>Mooring Wait List Annual Fee [Once spot is available the wait list fee that is paid for the current year will be applied as a credit toward the regular mooring permit fee.</u>	<u>\$35.00</u>

### Recommended from Coastal Waters/Harbor Committee:

<b>Chapter 1401 – Coastal Water and Harbor Fees</b> [amended 02-20-13]	<b>Fee</b>
<b>Annual Mooring &amp; Pier Use Fees</b>	
Recreational Pier Use - Resident and/or Taxpayer (amended 05/05/04; 12/20/17; 02/15/23)	\$250.00
Recreational Pier Use - Non-Resident (amended 05/05/04; amended 12/20/17; 02/15/23)	\$500.00
Commercial Pier User – Resident and/or Taxpayer (amended 12/20/17; 02/15/23)	\$450.00
Commercial Pier User – Non-Resident (amended 12/20/17; 02/15/23; 05/03/2023)	\$700.00
Recreational Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$300.00
Recreational Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$500.00
Commercial Mooring & Pier Use Fee – Resident and/or Taxpayer (amended 12/20/17; 02/15/23; 05/03/2023)	\$500.00
Commercial Mooring & Pier Use Fee – Non-Resident (amended 12/20/17; 02/15/23)	\$700.00
One Time Pier Use Fee Resident (adopted 02/15/23; amended 05/03/2023)	\$150.00
One Time Pier Use Fee Non-Resident (adopted 02/15/23)	\$350.00
<u>Mooring Wait List Annual Fee: Annual fee will be applied over the course of time on waiting list. Once the mooring is issued and what monies have been paid while on the wait list will be credited, not to exceed the annual mooring fee, for the first year only.</u>	<u>\$35.00</u>

**PORTION OF MINUTES FROM THE**  
**COASTAL WATERS AND HARBOR COMMITTEE MEETING**  
**HELD ON MAY 14, 2024**

**Item 6. Old Business:**

- Mooring waitlist fee structure
  - \$35/year to stay on waitlist
    - Fees are related to costs of maintaining list
  - Don wants to see the numbers and how they play out over time
    - Which is why we need the accounting from town manager
  - D. Granata to look at the fee structure

**Motion by Daryen Granata** to recommend \$35 yearly waiting list fee; yearly fee applied over course of time on waiting list to the first year's mooring fee once you are allocated a mooring; whatever you paid, up the mooring fee will be credited.

**Andrew Fortunato seconded: unanimous vote.**

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-041, 7:00 p.m. Public hearing** and second reading on the proposed amendments to Chapter 405B Site Plan Review, IV Performance and Design Standards, D. Parking Areas; E. Pedestrian Ways, Space and Alternative Transportation; F. Landscape, Buffering and Greenspace; K. Outdoor Storage; Appendix Plant Material List; and Chapter 405B-1 Design Standards for Commercial Districts. *[Planning Director]*

*Planning Director*

*Ought to Pass*

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Sponsor

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Recommendation

*05/01/2024 - Vote: 6 Yeas. [Councilor Shupe Absent]*

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First Reading/Vote

*06/26/2024*

---

Public Hearing

*06/26/2024 - Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

**ACTION ITEM: Order No. 24-041.**

**SUBJECT:**

7:00 p.m. public hearing and second reading the proposed amendments to Chapter 405B Site Plan Review, IV Performance and Design Standards, D. Parking Areas; E. Pedestrian Ways, Space and Alternative Transportation; F. Landscape, Buffering and Greenspace; K. Outdoor Storage; Appendix Plant Material List; and Chapter 405B-1 Design Standards for Commercial Districts. *[Planning Director]*

**PURPOSE:**

To review ordinance amendments updating Chapter 405B Site Plan Ordinance with revised and consolidated landscaping and screening requirements and repealing landscape section from Chapter 405B-1 Commercial Design Standards.

**BACKGROUND:**

The Comprehensive Plan identifies five *Visions* for the Town of Scarborough:

***Vision 3: Our ordinances will support the diversity and characteristics of existing and emerging neighborhoods, centers and open spaces. – Simplify Zoning Ordinance***

In 2023 the Planning Department in coordination with the LRPC began working on a long-term project that includes simplifying our existing ordinances (Vision 3) and finding opportunities to incorporate changes where recommended with these consolidations.

The project includes reviewing the Zoning Ordinance, Site Plan Ordinance, Commercial Design Guidelines, Subdivision Ordinance and other policies in the Town for opportunities to consolidate/merge ideas and review and enhance existing requirements. The overall goal is to create a more cohesive set of standards, while removing ambiguity and subjectivity in the review process.

These efforts also consider the other visions of the Comprehensive Plan and Town goals and seeks to incorporate those ideas as well.

The **Zoning Ordinance**, Chapter 405 includes the following related elements:

- Uses and Bulk Standards
- Buffers
- Performance Standards
- Signage
- Parking

The **Site Plan Ordinance** Chapter 405 B Includes the following related elements:

- Site Design and Access
- Parking Areas and Circulation

- Pedestrian Spaces and Transportation
- Landscape and Buffers
- Stormwater Management
- Lighting
- Architectural Standards
- Signage
- Utilities
- Outdoor Storage
- Preservation and of Resources
- Environmental Considerations

The **Design Standards for Commercial Districts** published in 2001, amended in 2009 includes the following elements:

- Circulation Planning
- Parking Areas
- Pedestrian Spaces
- Sidewalks
- Service Areas
- Buffering and Screening
- Stormwater Management
- Architectural Standards
- Materials
- Landscape Standards
- Plant List
- Sign Standards
- Lighting

## REVIEW PROCESS

The current section for review is the proposed **Landscape and Screening Standards** that will be incorporated in Chapter 405B Site Plan Review ordinance. The landscape and screening standards found in Design Standards for Commercial Districts will be repealed. Over time, the Design Standards for Commercial Districts will be repealed in its entirety and its contents will be merged into Chapter 405B Site Plan ordinance or other applicable sections.

The Long Range Planning Committee (LRPC) reviewed the drafts on June 6, July 12, August 9. On September 15, 2023, the LRPC recommended the draft be moved forward to Ordinance Committee. Also included in this draft is an expanded version of the Conservation Commissions recommendation to the plant list that they recommended for approval on April 10, 2023. Staff has also sought landscape profession input.

Staff presented these amendments to the Ordinance Committee on October 12, 2023 and again on February 14, 2024.



The changes proposed include:

- Clarified applicability, adding language to ensure redevelopment must comply with standards
- Added definitions
- Added specific requirements for minimum landscaping required based on the type of use proposed
- Established specific distances and planting required for residential adjacency
- Provided specific parking lot landscape requirements, including screening and parking lot islands
- Defined foundation planting requirements
- Defined screening requirements for service, mechanical areas and outdoor storage
- Provided requirements for tree preservation, if proposed
- Included site amenity requirements and bicycle facility specifications
- Included snow storage requirements and expanded location requirements
- Updated the approved plant species list, including native and North American species
- Defined what percentages are required and provided opportunity for some flexibility in planting
- Updated the minimum size requirements for plantings
- Consolidated the installation, guarantee and maintenance requirements as well as included time limits for installation
- Added specific requirements for the landscaping plan and provided a table to be included on all plans, enabling a much more efficient staff and Planning Board review
- Added specific waivers that are available with Planning Board approval

The Planning Board held a public hearing on May 20, 2024. No public comments were made. The Board discussed simplifying the bicycle facilities and including a waiver for the number of bicycle spaces required. One member expressed a concern about continuing to require public seating, but this sentiment was not shared by the rest of the Board.

The proposed amendments are as follows:

#### **14. Alternative Transportation and Bicycle Facilities**

Bicycle parking facilities are required for non-residential and multi-family uses. One (1) bicycle parking facility must be provided for every ten (10) vehicle parking spaces required. Bicycle parking design must follow **recognized professional** standards ~~recommended by the Association of Professional and Bicycle Professionals~~. The location of bicycle facilities is subject to the approval by the Planning Board during the site plan process.

#### **19. Waivers Landscape and Screening Standards**

The Planning Board may review and approve requests for waivers to landscaping standards for the following:

h. The Planning Board may consider waivers for the number of bicycle parking facilities for parking lots with 50 or more parking spaces provided.

**FISCAL IMPACT:**

NA

**STATUS / PROCESS TO DATE:**

- Conservation Commission (plant list only): April 10, 2023
- Long Range Planning Committee: June 6, 2023
- Long Range Planning Committee: July 12, 2023
- Long Range Planning Committee: August 9, 2023
- Long Range Planning Committee: September 15, 2023
- Ordinance Committee: October 12, 2023
- Ordinance Committee: February 14, 2024
- Town Council First Reading May 1, 2024
- Planning Board Public Hearing: May 20, 2024

**PROPOSED ACTION:**

First reading and refer to the Planning Board, the proposed amendments to Chapter 405B Site Plan Review, IV Performance and Design Standards, D. Parking Areas; E. Pedestrian Ways, Space and Alternative Transportation; F. Landscape, Buffering and Greenspace; K. Outdoor Storage; Appendix Plant Material List; and Chapter 405B-1 Design Standards for Commercial Districts.

**ATTACHMENTS:**

- Planning Board Recommendations
- Planning Board Amendment
- Redlines Chapter 405B Site Plan Ordinance
- Redlined Chapter 405B-1 Commercial Design Standards

### **Planning Board Recommendation**

Hearing Date: May 20, 2024

RE: Proposed amendment to Chapter 405B Site Plan Review Ordinance Section IV.D. Parking Areas; E. Pedestrian Ways, Space and Alternative Transportation; F. Landscape, Buffering and Greenspace; K. Outdoor Storage; Appendix Plant Material List; and Chapter 405B-1 Design Standards for Commercial Districts

Chairman McGee and members of the Town Council,

On May 20, 2024, in accordance with the Town of Scarborough Zoning Ordinance, the Planning Board held a public hearing and reviewed the proposed amendments to the Chapter 405B Site Plan Review Ordinance and 405B-1 Design Standards for Commercial Districts regarding landscape standards and screening requirements. The Zoning Ordinance requires that the Planning Board give its recommendation to the Town Council regarding the land use implications of the request.

The Board discussed simplifying bicycle facilities and including a waiver for the number of bicycle spaces required as well as ensuring required entry way plantings do not impede sight distance. One member expressed concern about continuing to require public seating, but this sentiment was not shared by the rest of the Board. Section 19.h. has been added under Waivers for Landscape and Screening Standards to permit waivers for the number of bicycle parking facilities.

If you would like further clarification or discussion on these items, the Planning Department would be happy to provide any requested information in consultation with the Planning Board.

Sincerely,



---

Autumn Speer  
Director of Planning & Code Enforcement

The proposed Planning Board amendments are as follows:

#### **14. Alternative Transportation and Bicycle Facilities**

Bicycle parking facilities are required for non-residential and multi-family uses. One (1) bicycle parking facility must be provided for every ten (10) vehicle parking spaces required. Bicycle parking design must follow **recognized professional** standards ~~recommended by the Association of Professional and Bicycle Professionals~~. The location of bicycle facilities is subject to the approval by the Planning Board during the site plan process.

#### **19. Waivers Landscape and Screening Standards**

The Planning Board may review and approve requests for waivers to landscaping standards for the following:

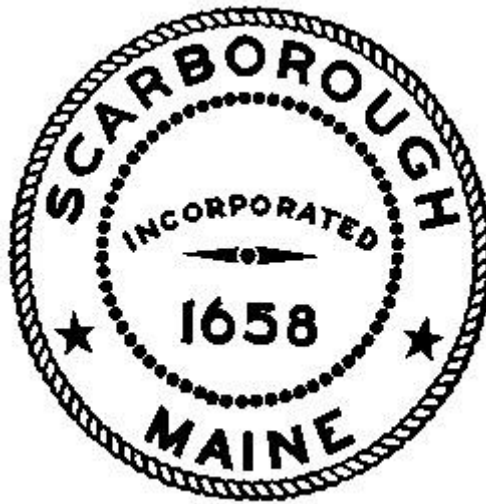
- h. The Planning Board may consider waivers for the number of bicycle parking facilities for parking lots with 50 or more parking spaces provided.**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 405B Town of Scarborough Site Plan Review Ordinance is amended as recommended by the Planning Director, as follows (additions are underlined; deletions are struck through):

# **CHAPTER 405B**

## **SITE PLAN REVIEW ORDINANCE**

### **TOWN OF SCARBOROUGH**



*Revised as of August 17, 2005*  
**Amended November 7, 2007 - Amended January 6, 2010**  
**Amended May 5, 2010 - Amended March 19, 2014**  
**Amended March 18, 2015 - Amended November 1, 2017**  
**Amended June 5, 2019 - Amended April 21, 2021**  
**Amended January 4, 2023 – Amended July 19, 2023**  
**Amended October 18, 2023 Amended June xxx, 2024**

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**CHAPTER 405B  
TOWN OF SCARBOROUGH  
SITE PLAN REVIEW**

**I. Purpose**

The Town of Scarborough finds that uses and structures for which site plan submissions are required are potentially significant additions to the community's built and natural environment as well as to the residential, commercial or industrial neighborhood in which they are proposed. The purpose of site plan review is to ensure that the design, layout and construction of these additions to the community constitute suitable development and will not result in a detriment to the neighborhood, community or environment. The standards and requirements of this ordinance are intended to assure that adequate provisions are made for: traffic safety, access and circulation; emergency access and response; stormwater management; protection of natural features and the environment; water supply and sewage disposal; and minimizing impacts to abutting properties or uses.

**II. Applicability**

**A. Activities Requiring Site Plan Review [amended 04/21/2021]**

Site Plan approval is required before any building or structure is erected or externally enlarged and before any parking, loading, or vehicular or pedestrian use is established, enlarged or changed, with the exception of the activities found below in Section II(B). Activities subject to site plan review shall be divided into two classes: Major Development Review and Minor Development Review.

1. Major Development Review. Planning Board approval is required for any activity described above, except for any activity that may be eligible for Minor Development Review outlined below, or as exempt as provided in Section II.B.
2. Minor Development Review. Town Planner approval is required for any permitted uses in the Industrial District, the Light Industrial District, and those uses in the Crossroads Planned Development District which are permitted only within the "inclusionary area" as outlined in Section XX.C.I.B.iv of the Scarborough Zoning Ordinance.

Notwithstanding the above, the following activities in the Industrial District, the Light Industrial District, and those uses in the Crossroads Planned Development District which are permitted only within the "inclusionary area" as outlined in Section XX.C.I.B.iv require Major Development Review from the Planning Board:

- a. Activities with one-acre or more of disturbance;
- b. Activities that are forecasted to generate more than 35 trip ends during any peak hour; and
- c. Activities that require amendments to state or federal permits.

The Town Planner (or designee) may refer approval of a permitted use defined as requiring minor development review to the Planning Board for Major Development Review when the nature of the application warrants a public hearing or poses the potential for significant

impacts on municipal facilities or natural resources, as determined by the Town Planner (or designee). Additionally, an applicant may request that a project be reviewed by the Planning Board through Major Development Review instead of Minor Development Review for any reason.

#### **B. Activities Exempt from Site Plan Review [amended 05/05/2010; 01/04/2023]**

The following activities shall not require site plan approval; however, such activities may require building permits, plumbing permits or other local or State approvals:

1. The construction of, or addition to, single and two-family dwellings and their accessory buildings, structures and areas for parking and vehicular or pedestrian use. More than one single family or two-family dwellings developed on a single lot under unified ownership, as defined in Section II(d)(9) of the Zoning Ordinance, are not exempt from Site Plan Review.
2. Alterations to a building which in total do not increase the floor area of the building by more than 100 square feet.
3. Municipal buildings or uses, but shall be reviewed by the Planning Board for an advisory opinion to the Town Council or the applicable Town Department.
4. Buildings, structures and areas of impervious surface, the principal use of which is the conduct of accessory agriculture, commercial agriculture, or commercial animal husbandry, as are defined in Section VI. Definitions of the Town of Scarborough Zoning Ordinance.
5. Farm stands with no more than 400 square feet of retail sales area.
6. Temporary use of accessory storage containers.
7. Timber harvesting.

### **III. Application & Review Procedures [amended 04/21/2021; 07/19/2023]**

The following procedures and application requirements shall govern development proposals for major and minor development review.

#### **A. Major Development Review [amended 04/21/2021]**

##### **1. Sketch Plan Review**

Prior to submitting a formal site plan review application, the applicant may submit a sketch plan for review by the Planning Board. The sketch plan shall be conceptual and sketch plan review shall be considered an informal, informational review and discussion. The purpose of the sketch plan review process is to enable the applicant to present a concept plan for a development to the Planning Board in order for the Board to understand the type and scale of the proposed development as well as the associated on and off-site issues. Further, this process is intended to provide the applicant with preliminary feedback from the Board in order to identify any issues or revisions that should be addressed in the site plan review application.

The following information should be submitted or presented for discussion during sketch plan review:



- a. The proposed site, including its boundaries, size, location, and landscape.
- b. The environmental characteristics or constraints of the site, such as waterbodies, wetlands, floodways, steep slopes, etc.
- c. The proposed use and scale of development, including a conceptual site plan, landscape plan, and building elevations.
- d. Total disturbed area.
- e. An overview of any traffic issues or implications.
- f. An overview of the local regulations and State permits that may apply to the proposed project and any requested waivers of such regulations.

The sketch plan review shall be conceptual and informational, and there shall be no formal action by the Planning Board. Further, the submittal and review of a sketch plan shall not be considered the creation of a pending proceeding under 1 M.R.S.A. § 302. Following sketch plan review, an applicant must submit a formal site plan review application in order to seek site plan approval.

## **2. Site Plan Application Procedures & Action [amended 06/05/19]**

- a. An application for site plan review shall be submitted to the Planning Department with the requisite fees and submission requirements, as outlined in Section VI.A of this ordinance. Upon receipt of any application that meets the submission requirements the Town Planner shall schedule the site plan for review on the next available Planning Board meeting agenda. An initial determination as to the completeness of the application shall be made by the Town Planner and Town Engineer, subject to final determination by the Planning Board. The Planning Board reserves the right to request additional plans or information, as stated in Section III(3)(i), depending on the nature of the proposal and its anticipated impacts. The Planning Board may also engage the services of one or more professional consultants to review the materials submitted by the applicant, the cost of which shall be paid by the applicant as provided in Section VI(B) of this ordinance.
- b. When an application for site plan review is determined to be complete, the Planning Department shall, at the applicant's expense, give written notification to all abutting property owners within five-hundred (500) feet of the parcel on which the proposed development is located of the date, time, and place of the meeting at which the application will be considered. Notification shall be sent at least ten (10) days prior to the first meeting at which the complete application is to be reviewed. Failure of any property owner to receive the notification shall not necessitate another hearing or invalidate any action of the Board. For purposes of this section, the owners of the abutting properties shall be considered to be the parties listed by the tax assessor for the Town of Scarborough. The Planning Board shall provide an opportunity for public comment prior to taking action on any site plan application.

- c. No application for site plan review shall be considered complete nor acted upon by the Planning Board until all special exceptions or variances which may be required for a development have been approved. The Planning Board may conduct its shoreland zoning or subdivision review concurrently with a project's site plan review.
- d. The Planning Board may make a decision at the initial Planning Board meeting at which a site plan is heard or may request additional meetings to receive revised plans or additional information pertaining to the proposal, and then issue a decision. The Planning Board may deny the application, approve the site plan as submitted, or approve the site plan with such conditions as the Board finds necessary to ensure compliance with the standards of this ordinance and other applicable ordinances of the Town of Scarborough.
- e. If a site plan application is denied, a substantially similar application shall not be brought before the Planning Board within one (1) year from the date of the denial of the original application. This limitation may be waived if the majority of the Board finds that substantial new evidence exists or an error or mistake of law or misinformation concerning the original application is identified.
- f. Any appeal of a Planning Board decision on an application for site plan review shall be taken directly to Cumberland County Superior Court. Decisions of the Planning Board are not appealable to the Scarborough Board of Appeals.
- g. Upon written request, the Town Planner may approve transfer of Site Plan approval granted to the project owner to an alternative developer or property owner, or the Planner may refer any request for transfer to the Planning Board for decision. A transfer shall be approved only if the new developer or owner has the financial and technical capacity to comply with the requirements of the site plan approval.
- h. Final approval shall expire one (1) year from the date of such approval unless the applicant has started substantial construction. The Town Planner may extend final approval for one (1) additional year for good cause, provided a written request for extension is submitted before the expiration of the approval. At her/his option, the Town Planner may refer any request for extension to the Planning Board for decision. [amended 11/01/17]
- i. The property shown on the approved site plan may be developed and used only as shown on the plan. All elements and features of the plan and all representations made by the applicant which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended site plan is approved by the Planning Board. Minor deviations that do not alter the essential nature of the approval or affect approval criteria may be approved by the Town Planner (or designee) and with endorsement of the Planning Board Chair.
- j. The text of paragraph (i), above, shall be included as a note on the approved site plan.

- k. A request to amend an approved site plan shall be processed in the same manner as an application for site plan review, except that the Town Planner may grant preliminary waivers of submission requirements, subject to review of such waivers by the Planning Board when the Board takes up the request for amendment.

### **3. Submission Requirements**

The applicant shall submit to the Planning Board the following plans and information in a form required by the Planning Department:

- a. A boundary survey prepared by a professional land surveyor licensed by the State of Maine indicating the boundary lines, dimensions, encumbrances, water bodies, water features, zoning designation(s) and topography of the site. This boundary survey shall be prepared at a scale no greater than one (1) inch = forty (40) feet. Plans showing engineering details submitted as part of the site plan application may be prepared by either a professional land surveyor or by a professional engineer.
- b. A site plan(s), at a scale no greater than one (1) inch = forty (40) feet, showing all existing and proposed buildings, contour elevations, structures, parking spaces and layout, driveways, driveway openings, service areas, proposed outside display or vending areas, proposed grades and drainage facilities, proposed water and sewage facilities or connections, landscaping plan including proposed trees and planting areas, proposed locations of fences, walls, signs and advertising features, proposed walkways and pedestrian amenities, total disturbed areas, and a lighting plan. The site plan shall also include a locus map showing the relationship of the project to the surrounding area at a scale no greater than one inch equals 2,000 feet. The site plan shall also show all contiguous land owned by the applicant or the owner of the land proposed for development.
- c. Building plans showing the floor plans, an outside access plan, and all elevations. The elevations shall indicate the proposed material and color of all of the proposed principal buildings and structures. The Planning Board may also require elevations of the accessory buildings and structures depending on their size and location.
- d. Stormwater management systems, details and calculations in compliance with Section IV.G of this Ordinance.
- e. An erosion and sedimentation control plan and narrative in accordance to Chapter 420 - Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.
- f. A written statement prepared by a Maine Licensed Professional Engineer that describes the potential traffic flow patterns into and upon the site for both vehicles and pedestrians, the expected peak hour trip generation associated with the proposal, and the measured sight distance of each proposed driveway access. A traffic impact study shall be submitted for any project forecasted to generate 35 or more trip ends during any peak hour or if a project is forecasted to cause an existing access with less than 35 peak hour trip ends to exceed this threshold. The

Planning Board or Town staff may also require a traffic study if specific safety or capacity issues have been identified for the general vicinity of the development. The scope of the study shall be determined based on discussions with the Town's Traffic Engineer and be completed by a Registered Professional Engineer with significant experience in traffic engineering. The study should be appropriate for the level of impact. At a minimum the study shall contain the following information: collision history at the intersection of the proposed street/driveway, capacity evaluation at the proposed driveway, sight distance analysis, Road Impact Fee calculations and the need for improvements such as turning lanes, signalization, etc. In compiling a traffic study, trip generation shall be based upon the most recent edition of the ITE's "Trip Generation" Manual and shall include an evaluation of each peak hour condition.

- g. Any proposed off-site improvements to roads, sidewalks, natural areas or other infrastructure as may be necessary to accommodate the proposed development.
- h. A lighting plan in compliance with Section IV(H) of this ordinance.
- i. Reports from the Police Chief, Fire Chief, and to the extent applicable, from the Water District and Sanitary District, containing their requirements or recommendations.
- j. Such other information or plans as may be necessary to enable the Town Planner, Town Engineer, Code Enforcement Officer, and Planning Board to determine that the proposed structure and use of the land will conform to the provisions of this ordinance, the Scarborough Zoning Ordinance and, where applicable, the Scarborough Shoreland Zoning Ordinance and all other applicable Town Ordinances.
- k. A list of any requested waivers of required submissions and waivers from the standards of this ordinance.
- l. A description of method to be used to permanently delineate wetlands and wetland buffers to prevent encroachment. [08/17/2005]
- m. The location and description of all historic and archeological resources on the parcel as identified by the Maine State Historic Preservation Office, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance together with a narrative describing how these resources can be preserved and incorporated into the development plan. If an identified resource will be removed, altered, or not included as part of the development plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the development plan. [03/19/2014][Amended 03/18/2015]

The Planning Board may waive any of the above submission requirements if the Board finds that the required information is not necessary due to special circumstances of a particular site plan, or the nature or scale of the proposed development. Requirements set forth in Chapter 419 Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance and in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction

Sites Ordinance are required by the Maine Department of Environmental Protection and the Environmental Protection Agency and are not waivable.

**B. Minor Development Review [amended 04/21/2021]**

1. An application for site plan review shall be submitted to the Planning Department with the requisite fees and submission requirements, as outlined in Section VI.A of this Ordinance. The Town Planner (or designee) reserves the right to request additional plans or information, as stated in Section III.A(3)(i), depending on the nature of the proposal and its anticipated impacts. The Town Planner (or designee) may also engage the services of one or more professional consultants to review the materials submitted by the applicant, the cost of which shall be paid by the applicant as provided in Section VI.B of this ordinance.
2. After the Town Planner (or designee) determines that an application is complete, the applications are distributed to the Town Engineer, Zoning Administrator, Fire Chief (or designee), Police Chief (or designee), and the Director of Public Works (or designee) for review and comment.
3. The Planning Department shall also, at the applicant's expense, give written notification to all abutting property owners within five hundred (500) feet of the parcel on which the proposed development is located, and must include a brief description of the proposed project, the name of the applicant, the location where the application is available for inspection, how written comments on the application may be submitted. Failure of any property owner to receive the notification shall not invalidate any action of the Town Planner. For purposes of this section, the owners of the abutting properties shall be considered to be the parties listed by the tax assessor for the Town of Scarborough.
4. Within 30 days of determining the application complete, and after a ten (10) day public comment period following mailing of the notice to abutting property owners, the Town Planner (or designee) shall review all submitted comments and act on the application to either: a. send the application to Major Development Review; or b. approve, approve conditionally, or deny the application. The decision of the Town Planner (or designee) shall be provided in writing to the applicant.
5. If a site plan application is denied, a substantially similar application shall not be brought before the Town Planner (or designee) within one (1) year from the date of the denial of the original application. This limitation may be waived if the Town Planner finds that substantial new evidence exists or an error or mistake of law or misinformation concerning the original application is identified.
6. Any appeal of the Town Planner's decision on an application for Minor Development Review shall be taken directly to the Planning Board; provided the appeal is made within 30 days of the issuance of the decision. Upon such an appeal, the Planning Board shall review the application as a Major Development Review; including all procedures and submission requirements of section III.A.
7. Upon written request, the Town Planner may approve transfer of Minor Development Site Plan approval granted to the project owner to an alternative developer or property owner, or the Planner may refer any request for transfer to the Planning Board for

decision. A transfer shall be approved only if the new developer or owner has the financial and technical capacity to comply with the requirements of the site plan approval.

8. Final approval shall expire one (1) year from the date of such approval unless the applicant has started substantial construction. The Town Planner may extend final approval for one (1) additional year for good cause, provided a written request for extension is submitted before the expiration of the approval. At her/his option, the Town Planner may refer any request for extension to the Planning Board for decision.
9. The property shown on the approved site plan may be developed and used only as shown on the plan. All elements and features of the plan and all representations made by the applicant which appear in the application are conditions of approval. No change from the conditions of approval is permitted unless an amended site plan is approved by the Town Planner (or designee). Minor deviations that do not alter the essential nature of the approval or affect approval criteria may be approved by the Town Planner (or designee).
10. The text of paragraph 9, above, shall be included as a note on the approved site plan.
11. A request to amend an approved site plan shall be processed in the same manner as an application for site plan review, except that the Town Planner (or designee) may grant preliminary waivers of submission requirements.

#### **IV. Performance & Design Standards [amended 04/21/2021; 07/19/2023]**

The following minimum performance and design standards shall apply to all site plans and shall serve as the minimum requirements for approval of any application. However, where the Planning Board or Town Planner (together the “Applicable Reviewing Authority”) as applicable finds that due to the nature or special circumstances of a particular plan the requirements of certain standards are not requisite to the interest of public health, safety and general welfare, the Applicable Review Authority may waive such requirements, subject to appropriate conditions to achieve the intent of this ordinance. Requirements set forth in Chapter 419 Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance and in Chapter 420 Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance are required by the Maine Department of Environmental Protection and the Environmental Protection Agency and are not waivable.

##### **A. Site Utilization & Layout**

The primary goal of the site plan review process is to produce attractive and functional sites that compliment and conform to both the natural and built environment in which they are proposed. To this end, the built portions of a site shall be laid out in only the most environmentally suitable locations for development. Structures and impervious areas shall be designed around, and away from, resource areas such as wetlands, steep slopes, water bodies and other unique natural features. Once the build-able portion of a site is identified, the principal building(s) is the most critical amenity to orient and position, as it is the focal point of the site in regards to use, visitation, and aesthetics. The principal building(s) shall be oriented on the site in a way that is compatible with neighboring structures and the development pattern in the vicinity. The building(s) shall also be positioned to provide an aesthetic and functional relationship with surrounding streets and sidewalks to ensure

attractive and efficient vehicle and pedestrian access. Parking areas, driveways, access points and sidewalks shall be designed around, and to serve, the principal building(s) and shall also compliment the neighboring development patterns and transportation networks as well as the Comprehensive Plan guidelines.

## **B. Site Access [amended 04/21/2021]**

Vehicle access to and from the site shall be safe and convenient, shall minimize conflict with the existing flow of traffic, and shall be from roads that have adequate capacity to accommodate the additional traffic generated by the development. Access management techniques such as limiting the number of driveways and combining driveways preserves mobility and improves safety, and shall be incorporated to the extent feasible.

As used in this Section IV(B), the term “street or driveway” includes both public and private local, collector and arterial streets, as well as entrance roads.

### **1. Entrance Location & Design**

- a. Any street or driveway access shall be separated from any other street or driveway, existing or proposed, on-site or off-site, in accordance with the following table. The Applicable Reviewing Authority may relax these standards only upon finding, based on a traffic study, that the location of the street or driveway closer than these minimums is necessary for effective utilization of the site or to enable the sharing of an access with an adjacent lot to reduce the total number of necessary curb cuts, and will not cause unreasonable congestion or unreasonable safety hazards. Driveway separation shall be measured from the edge of the proposed street/driveway entrance to the edge of the alternative entrance, excluding the radii.

The location of the site’s access shall also consider the existing location of driveways and entrances across a road or highway and shall attempt to meet the same separation standards established below. Entrances having the same centerline and situated directly across a road or highway from a proposed street or driveway shall not apply to this spacing requirement.

<b>POSTED SPEED IN M.P.H.</b>	<b>SEPARATION IN FEET</b>
25 or less	90’
30	105’
35	130’
40	175’
45	265’
50	350’

55 or more	525'
------------	------

- b. Any street or driveway access shall be so designed in profile and grading and so located as to provide the minimum sight distance measured in each direction as specified in the Maine Department of Transportation's "Entrance Rules - Chapter 299, Part B" (as may be amended from time to time).
- c. Driveway grades at street intersections shall not be more than five percent (5%) up or down for the first fifty (50) feet from the street, unless otherwise approved by the Applicable Reviewing Authority.
- d. Streets and driveways shall be located not less than 125 feet from the tangent point of the curb radius of any intersection. However, a greater distance or movement restrictions shall be provided if necessary based on the results of a vehicle queuing analysis at the intersection.
- e. When serving an individual site, no part of any street or driveway shall be located within a minimum of ten (10) feet of a side property line. Alternatively, when a street or driveway serves two (2) or more adjacent sites, the Applicable Reviewing Authority may allow the street or driveway to be located on or within ten (10) feet of a side property line between the sites. The sharing of street or driveway accesses between sites should be incorporated whenever feasible to limit curb cuts.
- f. Where a site has frontage on two or more streets, the Applicable Reviewing Authority will require that the access to the site be provide off the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. For developments with significant traffic volumes of 50 or more peak trips, the Applicable Reviewing Authority will consider access to more than one street, providing a traffic study clearly demonstrates a traffic safety and congestion benefit will result.
- g. There shall be no more than one full service street or driveway connection from any lot to any street, except when an additional entrance/exit must be provided to prevent traffic hazards or congestion. If two curb cuts are found to be necessary for congestion or safety reasons they shall be separated in accordance with the separation requirements in Section IV(B)(1)(a), above.
- h. Streets and driveways shall intersect the road at an angle as near to ninety (90) degrees as site conditions will permit and in no case less than seventy-five (75) degrees.
- i. Streets and driveways intersecting collector and arterial roadways shall be adequately lit.
- j. The level of service at a proposed signalized intersection shall be "D" or better. At an existing signalized intersection, the level of service shall not be reduced below "D" by the development. If an existing signalized intersection is operating below a LOS "D" pre-development, then the development shall not increase the



delay at the intersection, unless this standard is waived by the Applicable Reviewing Authority. At an un-signalized intersection, if the level of service is forecasted to be less than a “D” post-development, than the installation of a traffic signal and/or additional turning lanes shall be investigated. If these improvements are found not to be warranted, then a level of service less than “D” may be acceptable.

### **C. Internal Vehicular Circulation [amended 04/21/2021]**

The layout and circulation pattern within the site shall provide for the safe and convenient movement of passenger, service, and emergency vehicles through the site. The circulation layout shall also provide a safe, accessible pedestrian environment as well as encourage intra-parcel travel, minimizing curb cuts and unnecessary roadway travel in keeping with the access management goals of section B.

1. Street and driveway dimensions. The dimensions of streets and driveways shall be designed to adequately accommodate the volume and character of vehicles anticipated to visit the site on a daily basis. The required minimum and maximum dimensions for driveways are indicated below. Streets and driveways serving large volumes of daily traffic or truck traffic shall be required to establish high to maximum dimensions.

<b>LAND USE</b>	<b>ONE-WAY WIDTH (FEET)</b>	<b>TWO-WAY WIDTH (FEET)</b>
Residential	12 to 14	20 to 24
Commercial & Industrial generating between 10 - 50 truck trips per hour	15 to 25	26 to 30
Commercial & Industrial generating 50 or more truck trips per hour	Maine DOT Criteria to Apply	Maine DOT Criteria to Apply

2. A site development access driveway profile shall be designed to conform to the natural topographic features of the site, to the extent feasible. Driveways serving residential development shall be between 0.75% and 15% up or down. Driveways serving commercial or industrial developments shall be between 0.75% and 8% up or down.
3. The construction and materials used for a driveway, street, parking lot and drainage infrastructure shall comply with the latest standard specifications issued by The State of Maine Department of Transportation and as approved by the Applicable Reviewing Authority. Specific construction details for this infrastructure shall also be approved by the Applicable Reviewing Authority.

4. The layout and design of driveways and parking areas shall provide for safe and convenient circulation of vehicles throughout the site and shall provide the necessary curbing, directional markings, and signage to achieve this requirement. The layout, design and circulation pattern must also provide for pedestrians and cyclists as well as emergency, delivery, and service vehicles.
5. Traffic calming measures shall be included where appropriate to discourage speeding within the site and between abutting sites. Measures may include speed tables, on-street parking, raised crosswalks, vertical curbing, curvilinear road alignments, roadside plantings, neck-downs, curbed islands, signage or other traffic calming techniques.
6. Where feasible, connections between parking lots and driveways on adjacent parcels shall be provided to facilitate deliveries and minimize turning movements onto primary roads. Internal connections shall be designed to provide safe, direct access between adjacent lots in a manner that prevents their use as vehicle shortcuts. The site plan shall show stub outs, or other driveway or parking lot linkages, anticipating future vehicular connections to abutting undeveloped property.
7. Identifiable routes of access for emergency and service vehicles shall be provided to and around the buildings on the site.
8. Drive-through lanes shall minimize conflicts with pedestrian circulation routes. Motorists shall be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving or other devices. The site plan shall be designed to minimize queuing in parking lots or other areas which would cause congestion or unsafe conditions.
9. Service drives shall be separated from internal walkways, parking areas, or pedestrian use areas by landscaped islands, grade changes or other devices to minimize pedestrian contact.

#### **D. Parking Areas [amended 04/21/2021]**

Parking lots shall be designed to complement adjacent buildings, the site, and the neighborhood by not being a dominant visual element. Every effort shall be made to reduce the scale of parking lots for aesthetic and stormwater reasons. Parking areas shall balance the needs of both vehicles and pedestrians. Parking lots shall be accessible and organized to serve the motorist, while being safe and pedestrian-friendly.

1. Off-street parking shall conform to Section XI., Off-Street Parking & Loading Requirements, of the Zoning Ordinance.
  - a. If an applicant can demonstrate to the Applicable Reviewing Authority that the nature or operation of the proposed use will not necessitate the minimum parking space requirements found in Section XI., the Applicable Reviewing Authority shall have the authority to approve a site plan showing fewer parking spaces than are required. This allowance may only be provided, however, if the site plan incorporates a landscaped area that is feasible and adequate to accommodate the requisite parking under Section XI., should there be a future change in the nature or operation of the use necessitating the required parking.

- b. The Board of Appeals may also permit a reduction in the required parking spaces as per Section XI(F) of the Zoning Ordinance.
  - c. For uses that experience high turn-over traffic volumes (i.e. typical visitation is less than one-hour) the Applicable Reviewing Authority may require the dimensions of parking spaces in close proximity of the building entrance to be 10 feet wide by 20 feet long.
  - d. The Applicable Reviewing Authority may approve parking spaces for use by employees or residential parking to be 8 feet wide. All 8 foot wide parking spaces that are provided for employees and residential uses must be in physically segregated parking areas and the design of such parking areas must be shown on an approved site plan. No more than 10% of off-street parking spaces may be designed with a width of less than 9 feet.
2. There shall be adequate provisions for ingress and egress to all parking spaces. The following aisle widths shall be required to ensure adequate and safe access to parking spaces. Only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than ninety (90) degrees.

<b>PARKING ANGLE DEGREE</b>	<b>MINIMUM AISLE WIDTH (FEET)</b>
0° parallel parking	12'
30°	12'
45°	13'
60°	18'
90° perpendicular parking	25'

3. Parking lots shall be designed as part of the overall plan for the site, and shall be coordinated with building entrances, lighting, and landscaping.
- ~~a. Whenever feasible, the majority of parking areas shall be located at the rear or sides of the building(s) being served, except where parking would be located adjacent to a residential neighborhood or when the parking is part of a multi-building site. Where such placement is not possible, the parking area shall be screened with evergreen trees, earth berms, fences, or shrubs.~~
4. There shall be adequate provisions made for handicap parking in accordance with the ADA Standards for Accessible Design and marked by the international symbol of accessibility. Handicap accessible spaces shall be designated in the closest located spaces on a site to the accessible entrances. Such spaces shall be provided in accordance with the following table and shall be designed in accordance with the ADA Design Standards.

<b>TOTAL SPACES</b>	<b>TOTAL ACCESSIBLE SPACES REQUIRED COLUMN A</b>	<b>SPACES WITH 60" WIDE ACCESSIBLE AISLE</b>	<b>VAN ACCESSIBLE SPACES WITH 96" WIDE ACCESSIBLE AISLE</b>
1 to 25	1	0	1
26 to 50	2	1	1
51 to 75	3	2	1
76 to 100	4	3	1
101 to 150	5	4	1
151 to 200	6	5	1
201 to 300	7	6	1
301 to 400	8	7	1
401 to 500	9	7	2
501 to 1000	2% of total parking provided	7/8 of column A	1/8 of column A
1001 and over	20 plus 1 for each 100 over 1000	7/8 of column A	1/8 of column A

*This table is in accordance with the ADA Design Guide, U.S. Department of Justice, Civil Rights Division, Disability Rights Section*

- ~~5. Parking areas shall be landscaped and screened in accordance with the following standards:~~
- ~~a. Paved surfaces of parking areas shall be separated from buildings by a minimum of five (5) feet of landscaping and a five (5) foot walkway. Beyond the 5 foot minimum, the width of the landscaping shall be proportional to the height of the building.~~
  - ~~b. The scale and impervious area of parking lots with more than 15 spaces shall be broken up with trees, landscaped islands, grade changes, low walls, or other features.~~
  - ~~c. At a minimum, between 10% and 15% of the parking lot shall be landscaped. The higher percentage (15%) shall be used for larger parking lots consisting of 40 or~~

~~more spaces. The lower percentage of 10% shall be used for smaller parking lots containing fewer than 40 parking spaces. Planting islands shall be a minimum of 9 feet in width. All parking lot landscaping shall be hearty and appropriate for parking lot conditions. Existing natural groupings or clusters of trees shall also be preserved.~~

- ~~d. Where front parking is permitted between the building and the road it shall be screened by trees, berms, fencing, shrubs, low walls, perennial masses, or a combination of these elements. The height of the screening shall be approximately 3 feet to minimize the view of the parking lot and vehicles, while providing a clear view of the building and signage.~~
5. Parking areas with a single point of access are strongly discouraged. Dead-end parking lots shall not contain more than ten (10) spaces. Where dead-end lots must be used, adequate space shall be provided to safely turn a vehicle around to avoid backing out.
6. Directional signage and markers shall be utilized in diagonal parking lot arrangements.
- ~~7. Provisions shall be made for snow storage in the design of all parking areas. The areas shall be shown on the site plan to avoid conflicts with landscaping, visibility, drainage, or icing during the winter season.~~

#### **E. Pedestrian Ways, Space & Alternative Transportation**

**[amended 11/07/2007; 04/21/2021]**

Developments shall provide attractive, safe, and functional walkways within the site and for connection of the site to the Town's sidewalk system when a public sidewalk exists or is planned in the vicinity of the site. Walkways shall be designed to direct pedestrians to the main entrances of the buildings from the public right-of-ways, abutting properties and businesses, and the parking areas on the site. Entrances to buildings shall also be designed to provide some outdoor space for pedestrian use, such as seating, dining, or lawn area.

1. Continuous internal walkways shall be provided from any existing or planned public sidewalk in the street(s) adjacent to the site to the principal customer entrances on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as transit stops, street crossings, and building entrances.
2. If a sidewalk does not exist in the street(s) adjacent to the site but the Town has identified the construction of a sidewalk for this portion of the street(s) in the Town Wide Transportation Study (March 2005) the applicant shall be responsible for the construction of a sidewalk along the full width of the frontage or in a location otherwise determined by the Applicable Reviewing Authority. The applicant shall not be responsible for the construction of a sidewalk in a location for which the Town Council has already adopted and funded a Sidewalk Capital Improvement Plan.
3. If a sidewalk is required to be constructed, the sidewalk shall be located within the right-of-way of the public street unless the width of the right-of-way will not allow for this. In this case, the sidewalk shall be located on the parcel in the area immediately adjacent to the street right-of-way unless the topography or natural

characteristics of the site or existing development make this impractical. When determining the location and alignment of new sidewalks, existing street trees shall be avoided and preserved to the extent possible. ~~to further the goals of “subsection F Landscaping, Buffering and Greenspace” of this Ordinance.~~

4. If the sidewalk will be located outside of the street right-of-way, the applicant shall convey an easement to the Town for the sidewalk area.
5. When a sidewalk is constructed wholly within the street right-of-way it must conform to the design and construction requirements set forth in the Town’s Street Acceptance Ordinance (Chapter 701) for the class of street. When a sidewalk is constructed wholly or partly outside of the street right-of-way the location and design of the sidewalk must be approved by the Applicable Reviewing Authority as part of the site plan approval.
6. Internal walkways shall be a minimum of 4 feet in width for ADA compliance and shall be raised and separated from vehicular traffic by 6 inch curbing except at crosswalks and access areas.
7. Within larger parking lots where the main building entrance will be 50+ feet from at least half of the parking spaces, a network of walkways shall be provided. These walkways shall be separated from parking bays and travel aisles by raised curbing or landscape buffering and shall be aligned with the main entry or a focal point on the building for way finding. The width of these internal parking lot walkways shall be five feet or more to enable the use of shopping carts or heavy pedestrian traffic.
8. Walkways shall be located where motorists can anticipate pedestrians. Likewise, walkways shall be designed to give pedestrians a view of oncoming vehicles and shall avoid bisecting drive-through lanes, access and service drives, and other high-traffic routes.
9. Internal crosswalks shall be provided and marked by a change in pavement texture, pattern, or color to maximize pedestrian safety. The materials selected shall be highly durable and low maintenance. Raised crosswalks shall be considered at key locations as a traffic calming device as well as to make crosswalks more visible.
- ~~10. Areas adjacent to walkways shall be landscaped with trees, shrubs, ground cover, benches or other materials. Walkways in parking areas shall include landscaped islands for visual relief, shade, and scale.~~
- ~~11. All walkways and sidewalks shall be designed for efficient snow removal to enable year-round use.~~
- ~~12. Major entrances to new or renovated buildings shall be complemented with outdoor seating or use areas. Canopies, recessed entrances, seating areas, decorative plantings, lawn areas and other elements may be incorporated around the building entry to serve as pedestrian space or gathering areas.~~
- ~~13. Provisions shall be made for alternative transportation if the site is located on a bus or bicycle route. Such provisions may consist of bus shelters, bicycle racks, or individual travel lanes for either mode of transportation.~~

## **~~F. Landscaping, Buffering & Greenspace [amended 04/21/2021]~~**

~~Landscaping shall be used to complement the architecture, enhance the human scale, reinforce circulation paths, highlight entrances, provide shade, and add color and seasonal interest. Buffering shall be used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Greenspace shall be designated to preserve the natural features or resources of a site, to provide areas for active or passive recreation, or for visual and aesthetic benefits.~~

- ~~1. Native species shall be used to the greatest extent possible in all landscaping designs. If site improvements will create ten (10) or more new parking spaces or create 2,000 sq. ft. or more of new building footprint, a landscape plan shall be prepared by a landscape architect registered in Maine.~~
- ~~2. The applicant shall use plant material and species that require a low degree of maintenance and that are hearty and resistant to insect infestation, drought, disease, road salt, and auto emissions, and are tolerant of local winter conditions.~~
- ~~3. Wherever practical, existing specimen trees, tree clusters or other significant vegetation shall be preserved. The landscape plan shall illustrate which vegetation will be preserved and what protection measures will be implemented. Further, transplanting and reusing on-site trees and other vegetation is strongly encouraged.~~
- ~~4. A varying, but simple, collection of plant materials and species is encouraged to create a distinctive, yet low maintenance environment. A list of suggested plantings in Scarborough is included in an appendix to this ordinance. Plant materials shall meet the following minimum sizes, unless alternative sizes are required given a particular site or location:~~

<b>VEGETATION</b>	<b>MINIMUM SIZE</b>
Canopy Trees	<del>2 ½" caliper</del>
Flowering Trees	<del>2" caliper</del>
Evergreen Trees	<del>5 to 7' in height</del>
Deciduous Shrubs	<del>24" in height</del>
Evergreen Shrubs	<del>18" height / spread</del>
Perennials	<del>2-year clumps</del>
Ornamental Grasses	<del>2-year clumps</del>
Ground Covers	<del>3" pots</del>

- ~~5. Landscaping is necessary in parking lots to enhance their appearance, lessen the scale of paved areas, define edges, and provide shade and cover. The following standards shall apply within parking areas:
  - ~~a. At a minimum, between 10% and 15% of the parking lot shall be landscaped. The higher percentage (15%) shall be used for larger parking lots consisting of 40 or more spaces. The lower percentage of 10% shall be used for smaller parking lots containing fewer than 40 parking spaces. Planting islands shall be a minimum of 9 feet in width. All parking lot landscaping shall be hearty and appropriate for parking lot conditions and snow storage.~~
  - ~~b. Trees in parking lots shall be planted in informal groups, straight rows, or concentrated in certain areas. Trees shall be planted at least five feet from the end of parking lot islands for both motorist visibility and tree health.~~
  - ~~c. Plantings, trees, and other landscape elements shall separate parking lots from neighboring streets to minimize views of vehicles and paved areas, while still enabling views of the building.~~
  - ~~d. Trees and shrubs in and near parking areas shall be trimmed and maintained so that they do not block views needed for safe movement of motorists and pedestrians.~~~~
- ~~6. Trees and plantings shall be coordinated with the on site architecture by complementing the building elevations without blocking storefronts, signs, or lighting.~~
- ~~7. Large spreading deciduous trees shall be planted in appropriate locations along town roads and private access drives to define the edge of the travelway, provide shade for pedestrians, clean the air, and add scale to transportation corridors and commercial developments.~~
- ~~8. Landscape plans presented to the Applicable Reviewing Authority shall anticipate a 3 to 8 year growing cycle to achieve maturity for shrubs and 15 to 20+ years for trees. The plan shall be designed and plantings selected with due consideration for maintenance requirements.
  - ~~a. A written maintenance plan shall be provided for the landscape elements to be installed on the site. The plan shall include initial installation, guarantee period, replacement policy, annual maintenance, and irrigation provisions. All lawns and plant materials shall be guaranteed for a period of not less than 2 years.~~
  - ~~b. The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. Vegetation to consider includes drought resistance, tolerance to auto emissions, disease resistance, and relatively light leaf litter.~~~~
- ~~9. Buffers shall be provided to shield structures and uses from the view of abutting properties, where the abutting properties would otherwise be adversely impacted. In particular, buffers shall be used to screen garbage collection areas, loading areas, waste storage, commercial vehicle parking and the like. Buffers may include fences,~~



~~plantings, berms, and walls used to minimize any adverse impacts and nuisances on a given site or abutter.~~

~~10. Special landscaping and buffer requirements pertain to development along the Route One Corridor. Sites abutting Route One shall provide a green strip buffer along Route One at a depth of no less than 15 feet from the sideline of Route One. This 15 ft. may include trees, grass, plantings, berms, and mounds as well as sidewalks, fences or other landscape elements. The trees and plant materials within this buffer shall also conform to the planting schedule of the document entitled: Guiding Growth & Public Improvement on Route One, Scarborough, Maine, authored by Terrence J. Dewan & Associates, dated June 1993.~~

~~11. In cases where the Scarborough Zoning Ordinance requires buffers for commercial or industrial developments that abut residential zoning districts or uses, the Applicable Reviewing Authority may require evergreen or deciduous trees within these buffer areas. An evergreen buffer requires three (3) rows of staggered plantings. The rows shall be eight (8) feet apart and the evergreens planted six (6) feet on center. Deciduous buffers require trees with a minimum of 3 inch caliper and rows and spacing to be determined by the Board based on the characteristics of the site and uses.~~

## **F. Landscape and Screening Standards [amended 04/21/2021; amended 06/05/2024]**

### **1. Purpose**

Landscaping shall be used to complement the architecture, enhance the human scale, reinforce circulation paths, highlight entrances, provide shade, and add color and seasonal interest. Greenspace shall be designated to preserve the natural features or resources of a site, to provide areas for active or passive recreation, or for visual and aesthetic benefits.

### **2. Applicability**

All landscaping approved after the date of effect of this Ordinance shall comply with these requirements. This includes, but is not limited to, new landscape, replacement planting, or any other landscaping proposed through the Site Plan or Subdivision process.

The provisions of this section shall not apply to individual single and two-family dwellings and their accessory buildings, structures and areas for parking.

Replacement planting for projects approved prior to this ordinance shall adhere to the plant species list in Section F.16. for vegetation selection.

### **3. General Standards**

Trees and plantings shall be coordinated with the on-site architecture by complementing the building elevations without blocking storefronts, signs, or lighting and reinforce wayfinding by emphasizing entrances and circulation patterns.

A varying, but simple, collection of plant materials and species is encouraged to create a distinctive, yet low maintenance environment. Plantings plans shall strike a balance between monoculture (the use of a single species) and too much variety.

Shrubs, perennials, annuals, ornamental grasses, etc. used along the roadways should be planted in masses or 'drifts' that emphasize colors and textures, rather than used as single specimens.

Native species should be selected for their benefits of conserving water, protecting soil from erosion, and creating habitat and providing food for many different animals including birds, pollinators, and small mammals. Invasive species are prohibited.

#### **4. Definitions**

**Bare-Root Plants:** Bare-root plants are grown in the field, then harvested. The soil is washed or shaken from their roots after digging. Nearly all are dormant.

**Balled-and-Burlapped Plants:** Balled-and-burlapped (or B&B) trees and shrubs are grown in nursery rows.

**Buffer:** Landscaped areas, berms, fencing, walls or other physical features that are planted or installed to physically and visually separate land uses.

**Container Grown Plants:** Container-grown refers to a plant that has been grown in a container or one that has been transplanted into a container from the field.

**Diameter at Breast Height (DBH):** DBH is the diameter of a tree measured 4.5 feet above the ground.

**Greenspace:** Greenspaces are pervious areas of grass, trees or other vegetation, for recreation or aesthetic purposes.

**Invasive Plants:** An invasive plant is defined as a plant that is not native to a particular ecosystem, whose introduction does or is likely to cause economic or environmental harm or harm to human health.

**Landscape Plan:** A component of a development plan which shows the quantity, species, and size of all pro- posed vegetation.

**Native Plants:** A native or indigenous plant species is one that occurs in a particular place without the aid of humans. They are well adapted to the climate, light, and soil conditions that characterize their ecosystem. Species native to North America are generally recognized as those occurring on the continent prior to European settlement.

**Site Furniture:** Constructed, above-ground objects, such as outdoor seating, kiosks, bus shelters, sculpture, tree grids, trash receptacles, and fountains that have the potential for enlivening and giving variety to streets, sidewalks, plazas, and other outdoor spaces used by the public.

#### **5. Minimum Landscaping Required**

A minimum percentage of the total area being developed shall be landscaped in accordance with the following percentages:

- a. Multifamily dwellings: 15%
- b. Mixed-use buildings, commercial, retail and lodging use: 15%
- c. Office and professional uses: 15%

- d. Institutional and civic uses: 15%
- e. Industrial and manufacturing uses: 10%

Tree and shrub requirements for multi-family, commercial, institutional and civic uses:

- a. For every 500 square feet of landscaping required, or portion thereof, at least one (1) large tree and two (2) shrubs are required.
- b. Two (2) small ornamental trees may be substituted for one (1) required large tree, not to exceed 50% of the required large trees.

Tree and shrub requirements for industrial and manufacturing uses:

- a. For every 1,000 square feet of landscaping required, or portion thereof, at least one (1) large tree and two (2) shrubs are required.
- b. Two (2) small ornamental trees may be substituted for one (1) required large tree, not to exceed 50% of the required large trees.

Each development shall provide at least two (2) different species. No more than 50% of all trees, per development, shall be of the same species. This standard applies only to trees being planted to meet requirements, not to existing trees.

Ground cover is required. Landscaped area that is not planted with trees and shrubs must be planted in ground cover plants, which may include grasses and lawn areas. Mulch (as a ground cover) must be confined to areas underneath plants and is not a substitute for ground cover plants.

Stormwater treatment areas including retention and detention areas shall not be counted toward the required minimum landscaped area.

## **6. Buffer Yard - Streetscape**

Planting plans shall emphasize large shade trees within or near the right-of-way in order to create a more unified streetscape. Large spreading deciduous trees shall be planted in appropriate locations along town roads and private access drives to define the edge of the travel way, provide shade for pedestrians, clean the air, and add scale to transportation corridors and commercial developments.

A vegetated buffer yard shall be established and/or maintained along the front property line of a lot where it abuts a public street as defined in the specific Zoning District for which the property is located. The minimum streetscape buffer yard shall be 10' deep for all streets not specifically designated.

Within a required buffer yard large trees shall be required at a rate of one (1) per thirty (30) feet. Trees may be planted in irregular groupings to accommodate utility conflicts and/or allow for design flexibility.

A buffer yard may be crossed by access roads or driveways and may include pedestrian and public utility facilities provided that the buffer function of the strip is maintained. Parking, internal roadways, structures, stormwater treatment areas and storage or service facilities may not be located within the buffer strip.

Trees and other landscaping planted at intersections shall preserve an adequate sight

triangle as determined by the traffic engineer.

Landscape buffer strip requirements may be used to meet the overall landscape requirements established in Section F.5.

## **7. Buffer Yard – Residential Adjacency**

Buffering shall be used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Buffers shall be provided to shield structures and uses from the view of abutting properties, where the abutting properties would otherwise be adversely impacted.

A residential adjacency buffer yard is required when a side or rear yard abuts a residential district as defined in the specific Zoning District for which the property is located.

Buffer yards shall be installed by the more intense use. All required buffer yards abutting residential uses or districts shall maintain the district boundary in its natural state. Where no natural buffering can be maintained all side and rear yards abutting residential uses or districts shall be landscaped to provide a visual screen between districts.

Buffers may include fences, plantings, berms, grade changes and walls used to minimize any adverse impacts and nuisances on a given site or abutter.

Where residential adjacency buffers are required, the Planning Board may require evergreen or deciduous trees within these buffer areas as follows:

- a. Evergreen buffers require three (3) rows of staggered plantings. The rows shall be eight (8) feet apart and the evergreens planted six (6) feet on center.
- b. Deciduous buffers require trees with a minimum of 3-inch caliper and rows and spacing to be determined by the Board based on the characteristics of the site and uses.

## **8. Parking Lot Landscaping Required**

Landscaping is necessary in parking lots to enhance their appearance, lessen the scale of paved areas, define edges, and provide shade and cover.

**Parking Lot Screening.** Plantings, trees, and other landscape elements shall separate parking lots from neighboring streets to minimize views of vehicles and paved areas, while still enabling views of the building. Where parking is provided between the building and the street, it shall be screened in accordance with the following:

- a. Landscape screening shall contain a continuous screen not less than three (3) feet in height in a minimum planting bed depth of five (5) feet. The five (5) foot planting bed is in addition to the depth required for the streetscape buffer yard.

The continuous screen may be comprised of:

- a. Shrubs provided every four (4) to six (6) linear feet within the required planting strip
- b. Three (3) feet tall fence or boulders in combination with shrubs; or
- c. Combination of the above

Planted screening must be capable of providing a screen of at least thirty-six (36) inches in height in two years.

**Parking Lot Landscaping Required.** Parking lot landscaping shall be in accordance with the following:

- a. Planting islands shall be included at a rate of one (1) island per fifteen (15) spaces.
- b. Landscape islands shall be required on both ends of all parking aisles, both single and double loaded, if such spaces are not adjacent to another landscaped area or entryway.
- c. Landscape islands shall be a minimum of 160 square feet, typically nine (9) feet wide and eighteen (18) feet deep, and shall contain at least one (1) large tree and four (4) shrubs.
- d. Parking lot entryways shall contain at least one (1) large tree and four (4) shrubs on each side.
- e. Vehicular use areas including drive aisles and/or parking space shall be screened from all abutting property by a continuous landscaped area not less than five (5) feet deep. Stormwater treatment may be located in these areas upon approval by the Town Engineer.
- f. Trees in parking lots shall be planted in informal groups, straight rows, or concentrated in certain areas. Large trees shall be planted at least five feet from the end of parking lot islands for both motorist visibility and tree health.
- g. Areas adjacent to walkways shall be landscaped with trees, shrubs, ground cover, benches or other materials. Walkways in parking areas shall include landscaped islands for visual relief, shade, and scale.

Parking Lot Landscaping requirements may be used to meet the overall landscape requirements established in Section F.5.

## **9. Foundation Landscaping Required**

Trees and plantings shall be coordinated with the on-site architecture by complementing the building elevations without blocking storefronts, signs, or lighting and reinforce wayfinding by emphasizing entrances and circulation patterns.

Planting beds are required along exposed building edges, foundations and uninterrupted walls. Plantings shall provide either a formal pattern or a naturalistic blend of heights, colors, and textures for visual relief.

In addition, all paved surfaces, excluding those adjacent to service areas and/or the rear of buildings, of parking areas shall be separated from buildings by a minimum five (5) feet landscape strip and a five (5) foot walkway.

- a. A minimum of one (1) shrub shall be provided every four (4) to six (6) linear feet within the required planting strip. Shrubs may be clustered to avoid utility conflicts.

- b. Small ornamental trees may be provided in the planting strip and substitute for four (4) shrubs.

Plantings shall be massed to soften edges, corners, and pavement areas, and to integrate the building into the landscape.

Large rocks may be used as landscape elements sparingly and as accents in mass plantings. Where used, they shall be buried for at least one third of their depth.

Where mulch is used, it shall consist of dark, decomposed shredded bark, with pieces less than one (1) inch in any one dimension.

Foundation landscaping requirements may be used to meet the overall landscape requirements established in Section F.5.

#### **10. Screening – Service and Mechanical Areas**

Refuse containers or disposal areas shall be screened from view by placement of a solid wood or vinyl fence or masonry wall as tall as the refuse containers, but no less than five (5) feet in height. All refuse materials shall be contained within the refuse area. Refuse containers and disposal areas shall be located to the side or rear of buildings, and in no instance shall be located in the front setback of a site.

- a. Structural screens and fencing shall complement the design of the main structure by repetition of materials, detailing, scale, and color.
- b. Where chain link fencing is required for safety, it shall be painted black or a similar dark color, or coated with dark vinyl. Plastic slats in chain link fencing are not permitted.
- c. Gates shall be designed to prevent sagging.
- d. Screening may be further enhanced with evergreen trees, shrubs, and earth berms.

All mechanical equipment, transformers, propane tanks and similar shall be screened from any public right-of way or adjacent residential use or zoning districts. Fencing, landscape or a combination shall be required

Screening requirements may be used to meet the overall landscape requirements established in Section F.5.

#### **11. Screening – Outdoor Storage**

Outdoor storage shall be permitted only as allowed by the Scarborough Zoning Ordinance.

The outside storage of goods, materials, merchandise, automobiles, automobile parts, containers, and the like shall be located to the side or rear of sites and screened from view, subject to the review and approval by the Planning Board. The Planning Board may require additional screening elements.

Areas for outdoor storage or containers shall be designed as an integral part of the site, landscaping, and architectural plan and shall be setback and screened from public and private ways, main entrances, public spaces, and abutting residential neighborhoods.

Screening requirements may be used to meet the overall landscape requirements established in Section F.5.

## **12. Landscape Preservation and Protection**

Wherever practical, existing specimen trees, native species over 20" at DBH, tree clusters or other significant vegetation shall be preserved. Further, transplanting and reusing on-site trees and other vegetation is strongly encouraged.

When preservation is proposed, a tree inventory and survey showing the location, size, species and condition of existing protected trees on a lot, must be submitted and approved with the site plan application. The landscape plan shall illustrate which vegetation will be preserved and what protection measures will be implemented including the following minimums:

- a. Site features must be designed to minimize disturbance to protected trees.
- b. Tree wells or cut areas may be used to preserve the original grade around the tree. Raising the grade around protected tree trunks is prohibited.
- c. In the drip line of protected trees, no cut or fill may be at least four (4) inches deep unless a qualified arborist or forester evaluates and approves the disturbance.
- d. Finished grades must slope away from trunks to avoid water concentrated at tree bases.
- e. During construction, perimeter fencing must be erected around protected trees, at least six (6) feet from the trunk or one-half of the drip line, whichever is more.
- f. Storage or movement of equipment, material, debris, or fill in the tree protection zone is prohibited.
- g. Damaging attachments, wires, signs or permits cannot be fastened to protected trees.
- h. The developer is responsible for coordination with utility companies when trenching near protected trees. Trenches or footings should be at least eight (8) feet from trunk bases. Tunneling under large diameter roots may be required to prevent root damage.

Preserved landscaping may be used to meet the overall landscape requirements established in Section F.5.

## **13. Site Amenities**

Public entrances to new or renovated buildings shall be complemented with outdoor seating or use areas. Canopies, recessed entrances, seating areas, decorative plantings, lawn areas and other elements shall be incorporated around the building entry to serve as pedestrian space or gathering areas.

## **14. Alternative Transportation and Bicycle Facilities**



Provisions shall be made for alternative transportation if the site is located on a bus or bicycle route. Such provisions may consist of bus shelters, bicycle racks, or individual travel lanes for either mode of transportation.

Bicycle parking facilities are required for non-residential and multi-family uses. One (1) bicycle parking facility must be provided for every ten (10) vehicle parking spaces required. Bicycle parking design must follow standards recommended by the Association of Professional and Bicycle Professionals. The location of bicycle facilities is subject to the approval by the Planning Board during the site plan process.

## **15. Snow Storage**

Provisions shall be made for snow storage in the design of all parking areas. The areas shall be shown on the site plan to avoid conflicts with landscaping, visibility, drainage, or icing during the winter season.

Landscape materials surrounding parking lots and in islands shall be able to tolerate large quantities of snow stored during winter months. Delicate plant material shall not be used in areas where they are likely to be buried under snow.

All walkways and sidewalks shall be designed for efficient snow removal to enable year-round use.

Designated snow storage locations shall be required as follows:

- a. Located near the sides or rear of parking areas and driveways, away from primary street frontage.
- b. Located to maximize solar exposure to the greatest extent possible.
- c. Located so that snow moving equipment is not required to enter the public streets to move snow to the storage areas.
- d. Located in a manner to preserve sight lines of vehicles entering and exiting the site.
- e. Shall not block any required access, sidewalk, bicycle facility, trail or public path.
  - i. Shall not block drainage areas.
  - ii. Shall not be located in or near any stormwater treatment areas including retention and detention areas.
  - iii. May be located within parking areas, but such areas may not be counted towards required off-street parking.
  - iv. May be located within required landscaping areas, but the areas shall be planted with landscaping tolerant of snow storage.
  - v. Snow storage areas shall be located to avoid piling of snow against existing trees.

## **16. Approved Plant Species List**



Plant material shall be selected with consideration to public health and safety. Plants to be avoided include those with poisonous fruits, large thorns, or shrubs that could provide hiding places along pathways or block the view of moving vehicles. The applicant shall use plant material and species that require a low degree of maintenance and that are resistant to insect infestation, drought, disease, road salt, and auto emissions, and are tolerant of local winter conditions.

All parking lot landscaping shall be appropriate for parking lot conditions. Trees that may damage automobiles (dripping sap, messy fruit, or hard seeds such as acorns) are discouraged in or around parking lots.

Invasive species shall not be used. The Do Not Sell Invasive plant list can be found here: [Maine Natural Areas Program Invasive Plant Fact Sheets](#)

The plants on the plant species list below have been derived from a number of sources to increase the use of native plants in Scarborough. This list is subject to periodic review based on factors that may change the viability or appropriateness of plantings.

All required trees shall be selected from the preferred or acceptable alternative list below, based on the size required for the landscape element. A minimum of sixty (60) percent of the total number of required trees shall be selected from the preferred species list.

When the ordinance requires a shrub, only plants classified as shrubs, perennials, ferns and grasses may be used. A minimum of forty (40) percent of the total number of shrubs shall be selected from the preferred species lists. Up to twenty-five (25%) percent of shrubs may be selected from an unlisted species subject to Site Plan approval. The [Maine Audubon Society](#) and the [University of Maine Cooperative Extension](#) provide extensive plant lists appropriate for Maine.

LARGE DECIDUOUS TREES		
Preferred Species		
Scientific Name	Common Name	Mature Height
Acer x freemanii	Armstrong Maple	40-55'
Acer rubrum	Red Maple	50-60'
Acer saccharinum	Silver Maple	60-80'
Acer saccharum	Sugar Maple	60-70'
Betula alleghaniensis	Yellow Birch	70-85'
Betula borealis	Northern Birch	30-60'
Betula nigra	River Birch	40-70'
Betula papyrifera	Paper Birch	60-70'
Betula populifolia	Gray Birch	20-40'
Carya ovata	Shagbark Hickory	70-90'
Cladrastis kentukea	Yellowwood	30-50'
Fagus grandifolia	American Beech	50-100'
Larix laricina	Larch, Hackmatack, Tamarack	50-60'
Nyssa sylvatica	Tupelo Black Gum	40-70'
Platanus occidentalis	Sycamore American Buttonwood	60-80'
Prunus serotina	Black Cherry	50-80'
Quercus alba	White Oak	60-70'
Quercus bicolor	Swamp Oak	50-60'
Quercus coccinea	Scarlet Oak	30-50'
Quercus macrocarpa	Bur Oak	60-100'
Quercus rubra	Northern Red Oak	60-80'
Tilia americana	American Basswood, American Linden	60-80'
Ulmus americana	Princeton American Elm	60-70'

LARGE DECIDUOUS TREES		
Acceptable Alternative Species		
Scientific Name	Common Name	Mature Height
Aesculus x carnea	Red Horse Chestnut	30-40'
Aesculus hippocastanum	Horse Chestnut	50-75'
Betula jacquemonti	Himalayan Birch	30-40'
Catalpa speciosa	Catalpa	40-60'
Carpinus betulus	European Hornbeam	40-60'
Cercidiphyllum japonicum	Katsura Tree	40-60'
Fagus sylvatica	European Beech	50-60'
Ginkgo biloba	Maidenhair Tree	60-100'
Gleditsia triacanthos	Thornless Honey Locust	65-100'
Gymnocladus dioicus	Kentucky Coffee Tree	60-80'
Juglans nigra	Black Walnut	50-90'
Liriodendron tulipifera	Tulip Poplar Tree	60-90'
Liquidambar styraciflua	American Sweetgum	50-60'
Magnolia acuminata	Cucumber Tree	40-70'
Metasequoia glyptostroboides	Dawn Redwood	75-100'
Platanus x acerfolia	London Planetree	70-100'
Quercus palustris	Pin Oak	50-70'
Quercus robur	English Oak	40-70'
Salix alba 'Tristis'	Weeping Willow	50-75'
Taxodium distichum	Bald Cypress	35-100'
Tilia cordata	Littleleaf Linden	50-70'
Tilia tomentosa	Silver Linden	50-70'
Zelkova serrata	Zelkova	80-100'

LARGE EVERGREEN TREES		
Preferred Species		
Scientific Name	Common Name	Mature Height
<i>Abies balsamea</i>	Balsam Fir	60-70'
<i>Abies concolor</i>	White Fir	30-50'
<i>Abies fraseri</i>	Fraser Fir	30-50'
<i>Chamaecyparis thyoides</i>	Atlantic White Cedar	30-50'
<i>Juniperus virginiana</i>	Eastern Red Cedar	20-60'
<i>Picea glauca</i>	White Spruce	60-90'
<i>Picea rubens</i>	Red Spruce	60-80'
<i>Picea mariana</i>	Black Spruce	50-70'
<i>Pinus banksiana</i>	Jack Pine	50-60'
<i>Pinus rigida</i>	Pitch Pine	30-40'
<i>Pinus resinosa</i>	Red/Norway Pine	60-80'
<i>Pinus strobus</i>	Eastern White Pine	70-80'
<i>Thuja occidentalis</i>	Cedar Northern White	20-40'
LARGE EVERGREEN TREES		
Acceptable Alternative Species		
Scientific Name	Common Name	Mature Height
<i>Chamaecyparis</i> spp.	Cypress	10-60'
<i>Picea abies</i>	Norway Spruce	70-120'
<i>Picea engelmannii</i>	Engelmann Spruce	80-130'
<i>Picea omorika</i>	Serbian Spruce	50-60'
<i>Picea pungens</i>	Colorado Spruce	30-60'
<i>Pinus flexilis</i>	Limber Pine	60-80'
<i>Pinus nigra</i>	Austrian Pine	60-180'
<i>Pinus sylvestris</i>	Scots Pine	30-80'
<i>Thuja plicata</i>	Western Red Cedar/Arborvitae	50-70'

SMALL ORNAMENTAL TREES		
Preferred Species		
Scientific Name	Common Name	Mature Height
<i>Acer pensylvanicum</i>	Striped Maple	15-25'
<i>Amelanchier canadensis</i>	Eastern Serviceberry	30-40'
<i>Amelanchier arborea</i>	Downy Serviceberry	20-40'
<i>Amelanchier x grandiflora</i>	Apple Serviceberry	15-25'
<i>Amelanchier laevis</i>	Alleghany Serviceberry	15-40'
<i>Carpinus caroliniana</i>	American Hornbeam	10-25'
<i>Cercis canadensis</i>	Eastern Redbud	20-30'
<i>Cornus alternifolia</i>	Alternate Leaf Dogwood	15-25'
<i>Cornus florida</i>	Flowering Dogwood	12-20'
<i>Corylus Americana</i>	American Hazelnut	8-12' (also shrub)
<i>Crataegus crus-galli</i>	Cockspur Hawthorn	15-30'
<i>Hamamelis virginiana</i>	Common Witch-Hazel	15-20'
<i>Ostrya virginiana</i>	Eastern Hop Hornbeam	20-30'
<i>Oxydendrum arboretum</i>	Sourwood	20-25'
<i>Prunus virginiana</i>	Common Chokeberry	20-30'
<i>Sorbus americana</i>	American Mountain Ash	10-30'
<i>Cornus alternifolia</i>	Pagoda Dogwood	10-20'
<i>Viburnum lentago</i>	Nannyberry	10-30' (also shrub)

SMALL ORNAMENTAL TREES		
Acceptable Alternative Species		
Scientific Name	Common Name	Mature Height
<i>Acer campestre</i>	Hedge Maple	20-25'
<i>Acer griseum</i>	Paperbark Maple	20-30'
<i>Acer palmatum</i>	Japanese Maple	10-25'
<i>Acer triflorum</i>	Three Flower Maple	25-30'
<i>Amelanchier alnifolia</i>	Western Serviceberry	10-15'
<i>Chionanthus Virginicus</i>	American Fringetree	12-20'
<i>Cornus kousa</i>	Kousa Dogwood	20-30'
<i>Cornus mas</i>	Cornealian Cherry Dogwood	15-25'
<i>Cotinus obovatus</i>	American Smoketree	20-30'
<i>Crataegus viridis</i>	Winter King Hawthorne	20-35'
<i>Halesia Carolina</i>	Carolina Silverbell	30-40'
<i>Hamamelis vernalis</i>	Witchhazel	6-10' (also shrub)
<i>Hamamelis x intermedia</i>	Witchhazel	12-15'
<i>Maackia amurensis</i>	Amur Maackia	20-30'
<i>Magnolia x liliiflora</i>	Lily Magnolia	8-12' (also shrub)
<i>Magnolia loebneri</i>	Loebner Magnolia	20-30'
<i>Magnolia soulangiana</i>	Saucer Magnolia	20-25'
<i>Magnolia stellata</i>	Star Magnolia	15-20'
<i>Malus species</i>	Flowering Crabapple	15-25'
<i>Pinus mugo</i>	Mugo Pine	20-25'
<i>Prunus x accolade</i>	Accolade Flowering Cherry	20-25'
<i>Prunus sargentii</i>	Sargent Cherry	20-40'
<i>Stewartia pseudocamellia</i>	Stewartia	20-40'
<i>Syringa reticulata</i>	Japanese Tree Lilac	20-30'

SHRUBS			
Preferred Species			
Scientific Name	Common Name	Scientific Name	Common Name
Aesculus parviflora	Bottlebrush Buckeye	Leucothoe fontanesiana	Drooping Laurel
Amelanchier arborea	Downy Serviceberry	Lindera benzoin	Spicebush
Amelanchier canadensis	Canadian Serviceberry	Myrica gale	Sweet Gale
Amelanchier stolonifera	Running Serviceberry	Myrica pennsylvanica	Bayberry
Aronia arbutifolia	Red Chokeberry	Physocarpus opulifolius	Ninebark
Aronia melanocarpa	Black Chokeberry	Prunus maritima	Beach Plum
Ceanothus americanus	New Jersey Tea, Redroot	Rhus aromatica	Fragrant Sumac
Cephalanthus occidentalis	Buttonbush	Rhus hirta	Smooth Sumac
Clethra alnifolia	Sweet Pepperbush	Rhus typhina	Staghorn Sumac
Comptonia peregrina	Sweetfern	Rosa carolina	Pasture Rose, Carolina Rose
Corylus Americana	American Hazelnut	Rosa palustris	Swamp rose
Cornus racemosa	Gray Dogwood	Rosa virginiana	Virginia Rose
Cornus sericea	Redosier Dogwood	Rubus odoratus	Flowering Raspberry
Diervilla lonicera	Bush Honeysuckle	Sambucus	Elderberry
Illex glabra	Inkberry	Vaccinium corymbosum	Highbush Blueberry
Ilex verticillata	Winterberry	Viburnum spp.	Viburnum
Juniperus communis	Common Juniper	Xanthorhiza simplicissima	Yellowroot
Kalmia angustifolia	Sheep Laurel		
SHRUBS			
Acceptable Alternative Species			
Scientific Name	Common Name	Scientific Name	Common Name
Azalea spp.	Azalea	Hydrangea spp.	Hydrangea
Buxus spp.	Boxwood	Pieris spp.	Andromeda
Cotoneaster spp.	Cotoneaster	Rhododendron spp.	Rhododendron
Deutzia gracilis	Slender Deutzia	Rose spp.	Rose
Enkianthus campanulat.	Redveined Enkianthus	Salix spp.	Willow
Fothergilla gardenia	Dwarf Fothergilla	Spiraea spp.	Spiraea
Fothergilla major	Bottlebrush Bush	Syringa spp.	Lilac
Forsythia spp.	Forsythia	Weigela spp.	Weigela

PERENNIALS			
Preferred Species			
Scientific Name	Common Name	Scientific Name	Common Name
<i>Achillea millefolium</i>	Yarrow	<i>Iris versicolor</i>	Blue Flag Iris
<i>Actaea rubra</i> , <i>Actaea pachypoda</i>	Red Baneberry, White baneberry	<i>Liatris spicata</i>	Gayfeather
<i>Anemone canadensis</i>	Canadian Anemone	<i>Lobelia cardinalis</i>	Cardinal Flower
<i>Aquilegia canadensis</i>	Eastern Red Columbine	<i>Lupinus perennis</i>	Wild Lupine
<i>Asclepias tuberosa</i>	Butterfly weed	<i>Monarda didyma</i>	Scarlet Bee Balm, Oswego Tea
<i>Columbine aquilegia</i>	Columbine	<i>Monarda fistulosa</i>	Wild Bergamot
<i>Coreopsis lanceolata</i>	Lanceleaf Coreopsis	<i>Polygonatum pubescens</i>	Solomon's Seal
<i>Coreopsis verticillata</i>	Moonbeam Coreopsis	<i>Rudbeckia hirta</i>	Black-Eyed Susan
<i>Echinacea purpurea</i>	Purple coneflower	<i>Symphyotrichum novae-angliae</i>	New England Aster
<i>Eutrochium purpureum</i>	Joe Pye Weed	<i>Symphyotrichum novi-belgii</i>	New York Aster
PERENNIALS			
Acceptable Alternative Species			
Scientific Name	Common Name	Scientific Name	Common Name
<i>Astilbe varieteis</i>	Astilbe	<i>Hosta</i> spp.	Hosta
<i>Agastache</i>	Anise Hyssop	<i>Leucanthemum</i>	Ox-eye Daisy
<i>Aruncus dioicus</i>	Goatsbeard	<i>Malva alcea</i> 'fastigiata'	Hollyhock Mallow
<i>Baptisia</i>	Wild Indigo	<i>Nepeta x faassenii</i>	Walker's Low Catmint
<i>Epimedium</i>	Barrenwort	<i>Perovskia atriplicifolia</i>	Russian Sage
<i>Geranium</i> spp.	Geraniums	<i>Phlox</i> spp.	Garden Phlox
<i>Hemerocallis</i> species	Daylilies	<i>Sedum telephium</i>	Autumn Joy Sedum
<i>Heuchera</i> spp.	Coral Bells		
FERNS			
Preferred and Acceptable Species			
Scientific Name	Common Name	Scientific Name	Common Name
<i>Adiantum pedatum</i>	Maidenhair Fern	<i>Osmundastrum cinnamomeum</i>	Cinnamon Fern
<i>Athyrium angustum</i>	Lady Fern	<i>Osmunda claytoniana</i>	Interrupted Fern
<i>Dennstaedtia punctilobula</i>	Hayscented Fern	<i>Osmunda regalis</i> var. <i>spectabilis</i>	Royal Fern
<i>Matteuccia struthiopteris</i> var. <i>pensylvanica</i>	Ostrich Fern	<i>Polystichum acrostichoides</i>	Christmas Fern
<i>Onoclea sensibilis</i>	Sensitive Fern		



GRASSES			
Preferred Species			
Scientific Name	Common Name	Scientific Name	Common Name
<i>Ammophila breviligulata</i>	Beachgrass	<i>Deschampsia cespitosa</i>	Tufted Hairgrass
<i>Andropogon gerardii</i>	Big Bluestem	<i>Deschampsia flexuosa</i>	Crinkled Hairgrass
<i>Carex appalachica</i>	Appalachian Sedge	<i>Panicum virgatum</i>	Switchgrass
<i>Carex pensylvanica</i>	Pennsylvania Sedge	<i>Juncus</i> spp.	Rush
<i>Chasmanthium latifolium</i>	Northern Sea Oats	<i>Schizachyrium scoparium</i>	Little Bluestem
<i>Eragrostis spectabilis</i>	Purple Lovegrass	<i>Sporobolus heterolepis</i>	Prairie Dropseed
GRASSES			
Acceptable Alternative Species			
Scientific Name	Common Name	Scientific Name	Common Name
<i>Calamagrostis x acutiflora</i>	Feather-Reed Grass	<i>Miscanthus sinensis</i>	Maiden Grass
<i>Calamagrostis brachytricha</i>	Feather-Reed Grass	<i>Molinia caerulea</i> subsp. <i>Arundin</i>	Moor Grass
<i>Festuca glauca</i>	Blue Fescue	<i>Pennisetum alopecuroides</i>	Fountain Grass
<i>Hakonechloa macra</i>	Hakone Grass		
GROUNDCOVERS			
Preferred and Acceptable Species			
Scientific Name	Common Name	Scientific Name	Common Name
<i>Arctostaphylos uva-ursi</i>	Bearberry	<i>Juniperus horizontalis</i>	Creeping Juniper
<i>Cornus canadensis</i>	Bunchberry	<i>Mitchella repens</i>	Partridgeberry
<i>Gaultheria procumbens</i>	Checkerberry, Wintergreen	<i>Vaccinium angustifolium</i>	Lowbush blueberry

Plant materials shall meet the following minimum sizes, unless alternative sizes are required given a particular site or location:

Landscape Element	Minimum Size
Large Deciduous Trees	2 ½" caliper
Large Evergreen Trees	5-7' in height
Small Ornamental Trees	2" caliper
Shrubs	3 gallons
Perennials	1 gallon
Ferns	1 gallon
Grasses	1 gallon
Groundcovers (plugs acceptable)	1 gallon

The Planning Board may require larger plants for special locations, such as within the Route One right-of-way and along Haigis Parkway.

## **17. Installation, Guarantee and Maintenance**

**Installation.** The ultimate form and height of plantings shall be considered so they will not create unsafe conditions or block sight lines for pedestrians, bicyclists, or motorists as they mature.

Trees shall be planted in locations where their root development and branching patterns will not interfere with window displays, signage, underground or overhead utilities, streets, and sidewalks.

The installation of underground irrigation is encouraged in front setbacks, public spaces, and other highly visible areas. It shall be coordinated so it does not cause overflow or flooding in pedestrian use areas, such as walkways, sidewalks, or parking lots.

The Town recognizes the seasonal nature of landscape installation; however, all landscaping shall be installed according to the approved site plan prior to Certificate of Occupancy or within six (6) months after the Certificate of Occupancy has been issued and a performance guarantee has been provided and accepted by the Town.

**Maintenance.** Landscape plans shall anticipate a three (3) to eight (8) year growing cycle to achieve maturity for shrubs and fifteen (15) to twenty (20) plus years for trees. The plan shall be designed and plantings selected with due consideration for maintenance requirements.

A written maintenance plan shall be provided for the landscape elements to be installed on the site. The plan shall include initial installation, guarantee period, replacement policy, annual maintenance, and irrigation provisions. Maintenance plans shall include alternatives to regular mowing and pesticide use if possible. This may be established on the landscape plan with standard notes.

Trees and shrubs in and near parking areas and walkways shall be trimmed and maintained so that they do not block views needed for safe movement of motorists and pedestrians. Vertical clearances of at least eight (8) feet shall be maintained. Shrubs in parking lot islands shall not exceed three (3) feet in height to avoid blocking visibility.

All plant material shall be allowed to achieve their natural forms without excessive pruning. Shaping evergreen shrubs into tight geometrical forms shall be avoided.

**Guarantee.** All lawns and plant materials shall be guaranteed for a period of not less than two (2) years. The developer shall submit a copy of a guarantee and a contract with the landscape contractor, indicating the terms of the guarantee period, or may obtain a letter of credit. The guarantee period does not begin until all landscaping has been installed.

Where plant materials specified on the planting plan do not survive or are damaged, they shall be replaced and/or reinforced in accordance with the two-year performance guarantee to maintain conformance with the approved planting plan and to provide the necessary landscape effect.

Plants that die must be replaced in kind, unless another species is more appropriate given the site's growing conditions. A fine may be levied if the landscaping has not been maintained, and new plants required to be planted.

### 18. Landscape Plan Required

If site improvements will create ten (10) or more new parking spaces or create 2,000 sq. ft. or more of new building footprint, a landscape plan shall be prepared by a landscape architect registered in Maine.

The Planning Board, at their discretion, may require a peer review of landscape plans.

Landscaping for multiple building developments shall be coordinated with all other elements of the site. As part of the application for Site Plan approval, applicants shall submit a master landscape plan that shows how landscaping will be used to complement proposed buildings, reinforce circulation paths, help define pedestrian use areas, highlight entrances, provide shade, and add seasonal interest to the landscape.

Plantings used in stormwater treatment facilities should be designed by a qualified professional.

The planting plan shall illustrate how plantings shall be coordinated with the location of underground and overhead utilities and lighting.

Each landscape plan shall include the following table filled out for the specific site:

Minimum Landscape Required	Required	Provided
Minimum Landscape Area (square feet)		
Minimum Trees Required		
Trees (Preferred Species)	Min 60% = ##	% and #
Trees (Alternative Species)	Max 40% = ##	% and #
Minimum Shrubs Required		
Shrubs (Preferred Species)	Min 40% = ##	% and #
Shrubs (Alternative Species)	Max 60% = ##	% and #
Shrubs (Unlisted)	Max 25% = ##	% and #

Buffer Yard - Streetscape	Required	Provided
Street Name		
Street Frontage Depth		
Street Frontage Length (excluding entryways) (linear feet)		
Street Frontage Area (square feet)		
Street Trees		
Buffer Yard - Residential Adjacency (if required)	Required	Provided
RA Type Required		
RA Buffer Depth (feet)		
RA Buffer Length (linear feet)		
RA Buffer Area (square feet)		
RA Buffer Trees		
Parking Lot Screening (if required)	Required	Provided
Parking Lot Screen Depth (feet)		
Parking Lot Screen Length (excluding entryways) (linear feet)		
Parking Lot Screen Area (square feet)		
Parking Lot Screening Shrubs		
Parking Lot Landscape	Required	Provided
Parking Calculation Type		
Parking Spaces		
Parking Islands (number)		
Parking Islands Total Area (square feet)		
Parking Island Trees		
Parking Island Shrubs		
Entryway Trees		
Entryway Shrubs		
Continuous 5' Landscape Area - All Applicable Sides (square feet)		
Foundation Landscape	Required	Provided
Landscape Bed Depth (feet)		
Landscape Bed Length - All Applicable Sides (linear feet)		
Landscape Bed Area - All Applicable Sides (square feet)		
Landscape Bed Shrubs		
Landscape Bed Ornamental		

Trees (if provided)		
<b>Additional Screening (if required)</b>	<b>Required</b>	<b>Provided</b>
Dumpster Area Fence		
Dumpster Areas Shrubs		
Mechanical Screening Fence		
Mechanical Screening Shrubs		

## 19. Waivers Landscape and Screening Standards

The Planning Board may review and approve requests for waivers to landscaping standards for the following:

- a. The Planning Board may reduce the amount of landscaping required for parking lots if additional landscaping of equal or greater value is provided on other areas on site.
- b. The Planning Board may approve an alternative interior parking island design to address stormwater runoff if recommended for approval by the Town Engineer.
- c. The Planning Board may approve stormwater treatment areas located in the streetscape buffer yard if recommended for approval by the Town Engineer.
- d. The Planning Board may approve an alternative planting plan if the site is not able to accommodate the required plantings, only as follows:
  - i. One large tree may be substituted by two (2) ornamental trees
- e. The Planning Board may waive or decrease the five (5) foot landscape strip requirement between all parking areas and buildings if the development is in an urban setting.
- f. The Planning Board may waive residential adjacency buffer requirements if the site is in conjunction with a master planned development or within a mixed-use district.
- g. The Planning Board may waive the required snow storage areas if a snow storage management plan is submitted and approved by the Town that includes the following:
  - i. Designated temporary or interim snow storage areas that do not interfere with more than one-third (1/3) of the project required minimum parking.
  - ii. Interim snow storage shall be removed within five (5) calendar days following a storm cycle.
  - iii. Interim snow storage shall not be in a location that will damage trees, landscape or other facilities.
  - iv. Interim snow storage shall not block any required access, sidewalk, trail or public way.

- v. Snow shall be hauled to approved and permitted locations. The location shall be provided.
- vi. Snow hauling shall generally be completed during non-business hours.
- vii. The snow management plan shall designate the removal methods.

#### **G. Stormwater Management [amended 04/21/2021]**

Adequate provisions shall be made for the control, collection and disposal of all stormwater runoff from the site. Drainage plans, details, and calculations shall address the two, ten and twenty-five year, twenty-four hour storm events. These plans shall be designed to compliment the hydrology and natural features of the site and shall not cause adverse impacts to abutters, downstream properties, or receiving waters. Post-development stormwater flow rates must be equal to or less than pre-development stormwater flow rates.

1. Stormwater management areas shall be treated as integral, attractive and natural parts of the landscape. Natural areas shall be used to retain and drain stormwater to the extent possible.
2. When areas of the site are to be paved they may be designed and constructed with pervious and semi-pervious alternatives to bituminous pavement. Alternative parking surfaces, such as porous pavement, are intended to minimize storm water run-off and facilitate infiltration and natural hydrological functions to the extent feasible.
3. Stormwater treatment basins shall be patterned after natural features and shall avoid hard geometric shapes. These basins shall be planted with wetland species to improve their aesthetic and habitat values.
4. Abrupt changes to natural drainage ways and grades shall be avoided. Natural drainage ways shall not be filled unless specifically permitted by the Applicable Reviewing Authority and transitional grading shall be used to blend all earthworks into the natural contours of the site.
5. Drainage systems shall be designed so as to not impact streets, adjacent properties, downstream properties, and local soils and vegetation. The system shall also consider and incorporate the upstream runoff that may pass over the site. Systems should include green infrastructure and low impact development practices.
6. The water quality of receiving waters shall not be degraded by the stormwater runoff from the site. Oil and grease traps, on-site vegetated waterways, drainage swales, and vegetated buffer strips shall be utilized as needed to aid in the prevention of degraded receiving waters.
7. Where ground protection and rip rap is necessary in visible locations it shall be constructed of hand-placed rock or geo-grid, rather than course rip-rap.
8. Wherever feasible, drainage basins shall be designed to be shared between abutting properties to lessen the amount of land area devoted to stormwater management.

9. If applicable, the site must comply with and submit all documentation required in accordance to Chapter 419 – Town of Scarborough Post-Construction Stormwater Infrastructure Management Ordinance.
10. Erosion and sedimentation control plan and narrative is required in accordance to Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.

## **H. Outdoor Lighting Standards [amended 04/21/2021; 10/18/2023]**

### **1. Purpose**

Outdoor lighting shall be designed to balance visibility and safety on the site, while respecting abutting properties and minimizing light pollution and sky glow. Function, safety, energy consumption and demand, and aesthetic goals shall be achieved with fixtures, color rendering and locations that are planned as part of the overall site design.

### **2. Applicability**

All outdoor lighting installed after the date of effect of this Ordinance shall comply with these requirements. This includes, but is not limited to, new lighting, replacement lighting, or any other lighting whether attached to structures, poles, the earth, or any other location.

The provisions of this section shall not apply to individual single and two-family dwellings and their accessory buildings, structures, and areas for parking.

The provisions of this section shall not apply to streetlights installed in public rights-of-way. See the Town of Scarborough Streetlight policy.

Temporary outdoor decorative lighting (including lighting for temporary uses, special events, and seasonal holiday lighting) is exempt where the lighting does not exceed sixty (60) consecutive days or more than 120 days during any one-year period and does not cause undue burden on adjacent properties.

### **3. General Standards**

The location, design, and color of fixtures (poles and luminaries) shall complement the architecture, landscaping, parking areas, and street furnishings of the site to be developed or redeveloped in terms of form, style, and placement.

Lighting shall not cause spillover onto neighboring residential properties or create dangerous conditions due to glare on adjacent roadways.

### **4. Definitions**

**Astronomic Time Switch:** An automatic lighting control device that switches outdoor lighting relative to time of solar day with time of year correction.

**Decorative Lighting:** Lighting that does not impact the function and safety of an area but is purely decorative, or used to illuminate architecture and/or landscaping, and installed for aesthetic effect.

**Footcandle:** The unit of measure expressing the quantity of light received on a surface.



**Full cut-off fixture:** Full-cutoff fixtures permit zero light intensity at or above horizontal (90° above nadir) and limited to a value not exceeding 10% of lamp lumens at or above 80°.

**Glare:** Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

**IES:** Illuminating Engineering Society.

**Lamp:** A generic term for a source of optical radiation (i.e. “light”), often called a “bulb” or “tube”.

**Light Pollution:** Any adverse effect of artificial light including, but not limited to, glare, light trespass, skyglow, energy waste, compromised safety and security, and impacts on the nocturnal environment.

**Light Trespass:** Light that falls beyond the property it is intended to illuminate.

**Luminaire:** The complete lighting unit (fixture), consisting of a lamp, or lamps and ballast(s) (when applicable), together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

**Mounting Height:** The height of the photometric center of a luminaire above grade level.

**Sky Glow:** The brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Skyglow is caused by light directed or reflected upwards or sideways and reduces one’s ability to view the night sky.

**Uplight:** For an exterior luminaire, light directed in the hemisphere at or above the horizontal plane.

**Vertical Illuminance:** Illuminance measured or calculated in a plane perpendicular to the site boundary or property line.

## **5. Lighting Plan Required**

A lighting plan shall be furnished with all site plan applications or amended site plan applications. It shall include the following:

- a. Narrative that describes the hierarchy of site lighting, how lighting will be used to provide safety and security, and aesthetic effects. The lighting plan narrative shall describe how the facades of individual buildings and/or landscaping will be lit (if at all) and the design intent behind such lighting.
- b. Photometric diagram showing the illumination levels that will result from the proposed lighting; including the location of all lighting fixtures proposed to illuminate the buildings, entryways, travelways, loading areas, service areas, walkways and landscaping on the site.
- c. Calculation Summary indicating foot-candle levels on the lighting plan, noting the maximum, average, and minimum, as well as the uniformity ratio of maximum to minimum and average to minimum levels to avoid “hot” spots of light.

- d. Summary of the IES lighting standards applied to the site and table showing compliance not exceeding minimum requirements.
- e. Lighting manufacturer-supplied specifications that include photographs of the fixtures, lamp source type, lumen output, color rendering and wattage. This specification must contain the exact make and model number of the light fixture.
- f. Mounting height with distance noted to the nearest property line for each luminaire. All façade mounted lights are also required to be shown on the architectural elevations.
- g. Permanently installed decorative outdoor lighting, such as string lights or patio lights, must be included on the lighting plan submitted with site plan submittals.
- h. Types of timing devices used to control the hours set for illumination, as well as the proposed hours when each fixture will be operated.
- i. An environmental impact statement may be required as to the impact of the exterior lighting proposed on adjacent open space or waterways to include flora, fauna, and the night sky. Location of species sensitive to light at night needs to be indicated.
- j. A note stating no substitutions, additions, or changes may be made without prior approval by the governing authority; and that all lighting not on the plan shall be removed and no additional lighting shall be installed without prior approvals.
- k. Maintenance and Replacement Plan discussing lighting maintenance.

## **6. Lighting Levels**

For safety and energy conservation purposes, illumination levels shall not exceed the current recommended minimums by the [Illuminating Engineering Society](#) (IES) except as outlined below:

- a. Light levels at the property line should not exceed 0.1 foot-candles (fc) adjacent to business properties, and 0.05 fc at residential property boundaries.

## **7. Permitted Lighting**

- a. All lamps source to be used on site are required to be classified as dark sky compliant and full cutoff, except as otherwise permitted in this ordinance.
- b. Exterior light sources shall be LED or the current highest efficiency available.
- c. Warm lighting color temperature is to be specified for all exterior light applications. Provide a maximum color temperature of 3000K, with a color rendering index (CRI) of 80.

## **8. Time Limits for Outdoor Lighting**

- a. All outdoor lighting located more than 30 feet from any building or outdoor product display or storage area shall be turned off no later than 30 minutes after the business closes and remain off for the remainder of the night or until the

business reopens. All exterior lights that remain on during after-hours must be dimmed to fifty (50) percent of their total lumen output until 30 minutes before business reopens. An astronomic time switch or other permanent lighting control device must be provided to facilitate controlled dimming.

- b. All landscape lighting must be turned off when the business is closed.
- c. All temporary or permanent decorative outdoor lights must be turned off when the business is closed. Temporary decorative lights not related to the functionality of the business that are seasonal and/or related to a Federal Holiday may remain on at the business' discretion.

## **9. Fixture Height and Placement**

The location and alignment of fixtures shall be coordinated with the orientation of buildings, the layout of parking and landscaped islands, and the driveway patterns. Light fixtures shall be sited within raised landscaped areas to avoid damage from vehicles and plows. Light poles must not obstruct sidewalks or bicycle paths.

The following requirements apply:

- a. Façade mounted lights adjacent to driveways or access ways shall not exceed 25 feet in height from ground level.
- b. Façade mounted lights adjacent to sidewalks shall be a minimum of twelve (12) feet high from ground level and not exceed sixteen (16) feet from ground level.
- c. Indirect landscape lighting (uplighting and washes) may be used.
- d. High branch-mounted flood-lights aimed toward the ground are prohibited.
- e. Bollard fixtures (full cutoff) are permitted up to 3-4 feet in height from ground level.
- f. Ornamental fixtures are permitted up to 12 feet in height from ground level upon approval by the Planning Board.
- g. Parking Areas light fixtures shall have a maximum overall pole height of 20 feet from grade level to the top of the fixture.

## **10. Outdoor Recreation Facilities**

- a. Any light source permitted by this Ordinance may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, or show areas, provided all of the following conditions are met:
- b. All fixtures used for event lighting shall be fully shielded, or be designed or provided with full cut-off capability, so as to minimize up-light, spill-light, and glare.
- c. All events shall be scheduled so as to complete all activity before or as near to 10:30 p.m. as practical, but under no circumstances shall any illumination of the

playing field, court, or track be permitted after 11:00 p.m. except to conclude a scheduled event that was in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.

- d. The maximum height permitted is to be determined during the site plan process as approved by the Planning Board.

### **11. Prohibited Fixtures and Lighting**

- a. Bare lamps are not allowed, unless permitted as temporary outdoor lighting or approved as permanent decorative lighting by the Planning Board through the waiver process.
- b. Neon tubes as lighting features are not allowed on building exteriors. The use of internally illuminated bands of color and/or light is prohibited.
- c. Non-cutoff fixtures, other than those specifically permitted by this ordinance.
- d. Mercury vapor lamps.
- e. Outdoor floodlighting by flood light projection above the horizontal plane.
- f. Search lights, flood lights, laser source lights, or any similar high intensity light, except in emergencies by police, fire, or medical personnel or at their direction; or for meteorological data gathering purposes.
- g. Any lighting device located on the exterior of a building or on the inside of a window which is visible beyond the boundaries of the lot or parcel with intermittent fading, flashing, blinking, rotating or strobe light illumination.

### **12. Waivers**

The Planning Board may review waivers to lighting standards for the following:

- a. Maximum pole and fixture height greater than 20' for large parking lots over 150 spaces if the increase in height can significantly reduce the number of fixtures necessary. Under no circumstances shall the combined height of the pole and light exceed 30' in height. Poles within 200' of residential property lines shall not exceed 20' in height.
- b. Non-cut-off fixtures, such as decorative or historic lamps, may be allowed by the Planning Board where they are designed to be lower luminance, limited in number, or distant from abutting residential uses.
- c. Nonconforming (exposed lamps) permanent decorative lighting may be permitted by the Planning Board where they are limited in number, or distant from abutting residential uses.

### **13. Signs**

Standards for external and internal sign illumination are provided in Section XII of the Zoning Ordinance. Lighting used for the external illumination of signs is included toward the Total Outdoor Light Output standards.

## **I. Architecture & Signage**

The architecture of the building(s) and the aesthetics of the signage on a site shall follow traditional New England building forms and shall be designed to complement the neighborhood or village in which the site is located.

1. The signage for a site shall comply with Section XII, Sign Regulations of the Zoning Ordinance and shall be reviewed in conjunction with the site plan.
2. Buildings shall present an inviting, human-scaled façade to the street, internal drives, parking areas, and abutting properties. Wherever possible, entrances shall be clearly visible from the street and reinforced through site and architectural features designed to direct visitors to the building.
3. Building materials shall be treated as important design elements that define the appearance of the structure and strengthen the sense of identity throughout Scarborough. The use of materials that give the appearance of New England architectural forms are strongly encouraged.
4. Rooflines shall be designed to provide diversity in the form of the building and add visual interest to the streetscape. Specifically, rooflines shall be designed to reduce the mass of large buildings, emphasize building entrances, provide shelter or shade for pedestrians, and incorporate elements unique to Maine and New England.
5. Large retail buildings, linear commercial buildings, national franchise buildings, and service stations shall all comply with the specific requirements for such structures found in the *Design Standards for Scarborough's Commercial Districts, January 27, 2003*.

## **J. Public & Private Utilities [amended 04/21/2021]**

1. The Applicable Reviewing Authority may require electric, cable television, and telephone lines to be underground. If these services are underground in the street or on adjoining properties, the new service shall be placed underground. Any utility installations permitted above ground shall be designed and located so as to have a harmonious relation to both neighboring properties and the site.
2. The site shall be served by an adequate supply of drinking water as well as sufficient flows for fire suppression. If a development intends to be served by a public water supply, the applicant shall furnish a written statement from the water supplier confirming that the project can be served.
3. The project shall provide for an adequate means of sewage disposal, whether it is on-site or tied into the public sewage collection and treatment system. An on-site system shall be in conformance with Scarborough's Local Plumbing Ordinance, Chapter 404A. If a development intends to be served by a public sewage system, the applicant shall furnish a written statement from the sanitary district confirming the project can be served.

## **K. Outdoor Storage**

~~Outdoor storage shall be permitted only as allowed by the Scarborough Zoning Ordinance. The outside storage of goods, materials, merchandise, automobiles, automobile parts, waste collection facilities, dumpsters, containers, and the like shall be located to the side or rear of sites and screened from view, if feasible.~~

- ~~1. Fencing or vegetation shall be used to screen dumpsters or recycling areas from view. These facilities shall be consolidated where possible.~~
- ~~2. Areas for outdoor storage or containers shall be designed as an integral part of the site, landscaping, and architectural plan and shall be setback and screened from public and private ways, main entrances, public spaces, and abutting residential neighborhoods.~~

## **K. Design Standards for Commercial Districts [amended 04/21/2021]**

In addition to complying with the foregoing performance and design standards, all site plans for properties located in the Residence and Professional Office District (RPO), the Local Business District (B-1), the Town and Village Centers District (TVC), the General Business District (B-2), the Highway Business District (B-H), the Haigis Parkway District (HP), and any commercial uses within the Traditional Neighborhood Development Overlay (TND) shall comply with the more specific Design Standards for Scarborough's Commercial Districts. In determining whether a project is designed in accordance with the Commercial Design Standards, the Applicable Reviewing Authority may engage the services of appropriate professionals to review (at the applicant's expense) the materials submitted. In the event of a conflict or inconsistency between any requirement of the Design Standards and a requirement of this Ordinance, the Scarborough Zoning Ordinance, the Scarborough Shoreland Zoning Ordinance, or the Scarborough Subdivision Regulations, the more restrictive requirement shall apply.

## **L. L. Preservation of Historic and Archeological Resources**

Any historic or archeological resource that has been identified by the Maine Historic Preservation Commission, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance should be preserved and incorporated into the development plan in a manner that retains its historic or archeological value if feasible. If an identified resource will be removed or will be altered in a manner that diminishes its historic or archeological value, the burden is on the applicant to demonstrate that options for preserving the resource have been explored. The Planning Board, Planning Department, and the applicant may consult the State Historic Preservation Office, the Scarborough Historical Society, or similar organizations with the mission of historic and archeological preservation on options for preserving the resource. If the resource will be removed, the applicant must demonstrate that reasonable efforts have been made to preserve the resource value or relocate it to another location. [03/19/2014][Amended 03/18/2015]

## **M. Municipal Capacity and State Agency Review**

Within the Town's designated growth areas as depicted in the current version of the Comprehensive Plan, the Town of Scarborough's Planning Board has municipal capacity to review development activities that otherwise would require review by the Maine Department

of Environmental Protection under the Site Location of Development Law. This authority has been provided for under 38 M.R.S.A. Section 488(19). Municipal capacity shall only apply to development projects that are located wholly within the Town of Scarborough and wholly within a designated growth area. All other development projects that meet or exceed the thresholds for Site Location of Development Law shall be reviewed by the Maine Department of Environmental Protection accordingly. Municipal capacity within the Town's growth areas shall apply to both new development projects and modifications to past development projects that may have existing Site Location of Development approvals.

In addition to meeting, the standards and requirements of this Ordinance, the Scarborough Zoning Ordinance, and any other applicable local ordinances, site plans that include a minimum of three (3) acres or more of building and impervious coverage shall also be submitted and reviewed by the State of Maine regarding significant wildlife and fisheries habitat and natural resources and significant historic and archeological resources as follows:

1. The Maine Department of Inland Fisheries and Wildlife shall be provided with a complete site plan application and shall have the ability to review and provide advisory comments on the site plan's impact on any significant wildlife habitat, aquatic habitat, fisheries habitat, or wildlife travel corridor. The Planning Board shall not issue a final decision on a site plan application until it receives comments from the Maine Department of Inland Fisheries and Wildlife or thirty (30) days from the submission of the application to the department, whichever comes first. [03/19/2014]
2. The Maine Historic Preservation Commission shall be provided with a complete site plan application and shall have the ability to review and provide advisory comments on the presence of any significant historic or archeological resources that may exist on the site. The Planning Board shall not issue a final decision on a site plan application until it receives comments from the Maine Historic Preservation Commission or thirty (30) days from the submission of the application to the department, whichever comes first. [03/19/2014]

## **V. Site Conditions & Environmental Considerations**

Before and during construction, the applicant or developer shall abide by the following conservation, erosion, and sediment control measures as well as the site construction, safety, and hazardous waste standards.

### **A. Conservation, Erosion, & Sediment Control [amended 04/21/2021]**

1. All sites must comply with Chapter 420 – Town of Scarborough Erosion and Sedimentation Control at Construction Sites Ordinance.
2. Stripping of vegetation, re-grading and other development shall be performed in such a way as to minimize erosion.
3. Development shall preserve prominent natural features, keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water run-off.
4. Wherever feasible, natural vegetation shall be retained, protected, and supplemented.



5. The extent of disturbed area and the duration of exposure shall be proposed by the applicant for consideration by the Applicable Reviewing Authority. The proposal shall conform to time schedules acceptable to the Applicable Reviewing Authority or to the Town Planner and Town Engineer if the Applicable Reviewing Authority so directs.
6. Disturbed soils shall be stabilized as efficiently as possible.
7. Temporary vegetation or mulching shall be used to protect exposed critical areas during development.
8. The permanent vegetation and mechanical erosion control measures shall be installed in conformance with a specified schedule as approved by the Applicable Reviewing Authority or by the Town Planner and Town Engineer if the Applicable Reviewing Authority so directs.
9. Until the disturbed area is stabilized, sediment in the runoff shall be trapped and contained by the use of debris basins, sediment basins, silt traps, silt fencing or other acceptable measures.
10. Whenever sedimentation is caused by stripping vegetation, re-grading or other development, it shall be the responsibility of the developer causing the sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any resulting damages in an efficient manner.
11. Any developer conducting an activity on or across a stream, watercourse or swale or upon a floodway or right-of-way thereof shall maintain, as nearly as possible, the state of the stream, watercourse, swale, floodway or right-of-way during the activity. Following the activity, the water feature shall be returned to its original, or equal, condition.
12. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

## **B. Site Conditions**

1. During construction, the site shall be maintained and left each day in a safe and sanitary manner. Any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon order by the Code Enforcement Officer or other authorized personnel. The developer shall make provisions for the disposal of oil, grease, and any other materials or equipment which may pose a threat to public health and safety. The site shall be regularly sprayed to control dust from construction activity.
2. Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials. Such material shall be removed or destroyed upon the request, and to the satisfaction, of the Code Enforcement Officer and must be accomplished prior to the issuance of an occupancy permit.
3. No substantial change shall be made in the elevation or contour of any lot or site by the removal or addition of earth, except as shown on an approved site plan. Minimal

changes in elevations may be made only after approval by the Code Enforcement Officer. All permitted changes necessitated by field conditions shall be shown on the as built plans.

4. Prior to or during construction, the Code Enforcement Officer may require the installation or construction of improvements in order to prevent or correct a temporary condition on the site that could cause personal injury, damage to property, erosion, flooding, heavy construction traffic, creation of steep grades, or pollution. Required improvements may include berms, mulching, sediment traps, detention and retention basins, grading, plantings, retaining walls, culverts, pipes, guardrails, temporary roads, and other improvements specific to a condition. All temporary improvements shall remain in place and operation until otherwise directed by the Code Enforcement Officer.

## **VI. Fees**

### **A. Application Fee**

At the time of submission of a site plan review application, the applicant shall pay to the Town Treasurer an application fee. Said fee shall be non-refundable and shall be computed as specified in the *Schedule of Licenses, Permit and Application Fees* established by the Town Council.

### **B. Development Review and Construction Inspection Fee**

Prior to the issuance of a building permit for the construction authorized by the site plan approval, the applicant shall pay to the Town Treasurer a Development Review and Construction Inspection Fee. Said fee shall be non-refundable and shall be computed and paid as follows:

1. The amount of the fee shall be determined by the Town Engineer, and shall include the actual costs incurred by the Town to engage consultants to undertake review of the applicant's site plan submissions plus the estimated cost to the Town of retaining the services of a qualified construction or site inspector under the employ of a licensed professional engineer to observe and inspect any improvements associated with the site plan approval.
2. If, upon completion of the required improvements, the actual cost of monitoring and inspection exceeds the amount paid at the time of issuance of the building permit, the applicant shall pay the additional amount to the Town Treasurer before the certificate of occupancy for the building or site shall be issued. If, upon completion of the required improvements, the actual cost of monitoring and inspection is less than the amount paid the Town shall return the unused portion to the applicant.

## **VII. Enforcement, Occupancy and Performance Guaranty**

**[amended 04/21/2021]**

This ordinance shall be enforced by the Town of Scarborough Code Enforcement Officer. It shall be a violation of this ordinance (1) to undertake an activity requiring site plan review without first obtaining site plan approval from the Applicable Reviewing Authority, (2) to develop or use any property for which a site plan has been approved except in the manner shown on the

approved site plan and as per Section III(B)(8) of this ordinance, or (3) to violate any condition of approval of an approved site plan. Any person who violates this ordinance shall be penalized pursuant to 30-A M.R.S.A. section 4452. Each day a violation exists constitutes a separate violation.

#### **A. Occupancy Permit and Performance Guaranty**

An occupancy permit for the use or occupancy of any land, building, structure or part thereof requiring site plan approval shall be issued in accordance with Section IV(G), Certificate of Occupancy, of the Town of Scarborough Zoning Ordinance.

No occupancy for full or partial occupancy shall be issued by the Code Enforcement Officer until the Town Engineer, Town Planner or their designee are satisfied that the property has been constructed in accordance with the approved site plan and conditions of approval, or that the Town has received a performance guarantee for the completion of specific outstanding site elements within a specified timeframe, as well as final documentation required in all applicable Town ordinances including but not limited to as-builts.

A performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit in a form and from an issuer acceptable to the Town Treasurer. The amount of a performance guarantee shall be determined by the Town Engineer or her/his designee, following the submission of a cost estimate by the applicant, and shall be in an amount at least equal to the total cost of the remaining work to be completed. [amended 11/01/17]

As-built plans shall be prepared by an engineer, architect, landscape architect, or land surveyor registered in Maine. Prior to the release of the letter of credit and inspection fee account, the developer shall submit to the Planning Office a digital copy of the final site plan approved by the Planning Board, including all approved amendments to the plan during construction. The digital data shall be a single composite AutoCAD (up to Release 2019) drawing file as well as a .pdf file may be submitted via e-mail, or other format acceptable to the Town Engineer. The following standards shall be followed:

1. Plan units: decimal feet, NAD83, Maine State Plane West, vertical datum NAVD1988. (2) Georeferencing: drawing features should be tied into state plane coordinates.
2. Rotation of grid north maintained. Plan data should not be "rotated" in any way which might compromise data coordinate integrity. (Alternately, a "dview twist" or similar CAD display operation will allow for convenient plotting/layout fitting while still properly maintaining spatial reference.)
3. Coordinates shall be shown on at least four corners of the site plan. Coordinates shall be referenced to the Maine State Coordinate System.
4. AutoCAD (up to Release 2019) drawing or equivalent.
5. Any dependent external referenced (xref's) should be bound to the drawing file(s).
6. Drawing layers should be named in a logical fashion to allow identification of features; preferably, all drawings should be accompanied by a file that describes the layer structure.

7. Significant proposed polygon features, i.e., building footprints, parking areas, and driveways, should be closed 2-D polylines (looped for closure).

## **VIII. Severability and Conflicts**

### **A. Severability**

In the event that any section, subsection or any portion of this ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection, or other portion of this ordinance.

### **B. Conflict**

In the event that any provision of this ordinance is in conflict with or inconsistent with any provision of any other ordinance of the Town of Scarborough, the provision which establishes the most stringent requirement shall prevail.

## **IX. Meanings of Words**

Where words or terms used in this ordinance are defined in the Town of Scarborough Zoning Ordinance, the Town of Scarborough Subdivision Ordinance or the Town of Scarborough Shoreland Zoning Ordinance, such definitions shall apply to this ordinance as well. Words or terms not so defined shall have their ordinary, customary meanings.

## Appendix—Plant Materials List

The plants on this list have been derived from a number of sources to inspire a greater landscape variety in Scarborough. The final selection of materials shall consider the specific growing requirements and characteristics of each plant and the conditions of the site.

STREET TREES		ORNAMENTAL TREES	
Aesculus hippocastan	Baumanii Horsechest	Acer campestre	Hedge Maple
Acer campestre	Hedge Maple	Acer ginnala	Amur Maple
Acer ginnala	Amur Maple	Aesculus carnea	Red Horsechestnut
Acer x. freemanii	Armstrong Maple	Amelanchier canadensis	Serviceberry
Acer x. freemanii	Autumn Blaze Maple	Carpinus betulus	European Hornbeam
Acer rubrum	Red Maple	Carpinus carolinianum	American Hornbeam
Acer saccharum	Sugar Maple	Celtis occidentalis	Hackberry
Acer tataricum	Tartarian Maple	Cornus kousa	Kousa Dogwood
Acer triflorum	Three-flower Maple	Cornus mas	Cornealancherry Dogwood
Amelanchier	Shadblow	Cotinus obovatus	American Smoketree
Betula nigra	River Birch	Crataegus crus-galli	Cockspur Hawthorne
Carpinus betula fastig.	Upright Hornbeam	Crataegus viridis	Winter King Hawthorne
Carpinus caroliniana	American Hornbeam	Halesia carolina	Carolina Silverbell
Cercidiphyllum japon.	Katsura Tree	Maackia amurensis	Maackia
Cladrastis lutea	Yellowwood	Magnolia loebneri	Loebner Magnolia
Corylus colurna	Turkish Filbert	Magnolia stellata	Star Magnolia
Crataegus crusgalli	Cockspur Hawthorn	Malus species	Crabapple
Fraxinus americana	White Ash	Nyssa sylvatica	Tupelo
Ginkgo biloba	Maidenhair Tree	Ostrya virginiana	Ironwood
Gleditsia triacanthos	Thornless Honey Locust	Phellodendron arboretum	Amur Corktree
Gymnocladus dioicus	Kentucky Coffee Tree	Prunus sargentii	Sargent Cherry
Liriodendron tulipifera	Tulip Poplar Tree	Prunus subhirtell	Higan Cherry
Magnolia acuminate	Cucumber Tree	Pyrus calleryana	Bradford Pear
Prunus accolade	Accolade Cheery	Sorbus alnifolia	Korean Mountain Ash
Prunus maackii	Amur Chokecherry	Syringa reticulata	Tree Lilac 'Ivory Silk'
Quercus alba	White Oak		
Quercus bicolor	Swamp White Oak	EVERGREEN TREES	
Quercus coccinea	Scarlet Oak	Abies concolor	White Fir
Quercus imbricaria	Shingle Oak	Abies fraseri	Fraser Fir

<i>Quercus palustris</i>	Pin Oak	<i>Picea abies</i>	Norway Spruce
<i>Quercus robur</i>	Upright English Oak	<i>Picea glauca</i>	White Spruce
<i>Quercus rubra</i>	Red Oak	<i>Picea omorika</i>	Serbian Spruce
<i>Quercus shumardi</i>	Shumard Red Oak	<i>Picea pungens</i>	Colorado Spruce
<i>Sophora japonica</i>	Regent Scholartree	<i>Pinus resinosa</i>	Red/Norway Pine
<i>Tilia cordata</i>	Littleleaf Linden	<i>Pinus strobus</i>	Eastern White Pine
<i>Ulmus parvifolia</i>	Lacebark Elm	<i>Thuja occidentalis</i>	American Arborvitae
<i>Ulmus americana</i>	Princeton American Elm	<i>Tsuga canadensis</i>	Canadian Hemlock
<i>Zelkova serrata</i>	Greenvase Zelkova	<i>Tsuga caroliniana</i>	Carolina Hemlock

FLOWERING & ORNAMENTAL SHRUBS		PERENNIALS	
<i>Aesculus parviflora</i>	Bottlebrush Buckeye	<i>Achillea millefolium</i>	Yarrow
<i>Aronia arbutifolia</i>	Red Chokeberry	<i>Aster x frikartii</i>	New England Aster
<i>Cotinus coggygria</i>	Common Smoketree	<i>Astilbe varieteis</i>	Astilbe
<i>Cotoneaster adpressa</i>	Creeping Cotoneaster	<i>Coreopsis verticillata</i>	Moonbeam Coreopsis
<i>Deutzia gracilis</i>	Slender Deutzia	<i>Echinacea purpurea</i>	Purple coneflower
<i>Enkianthus campanulat.</i>	Redveined Enkianthus	<i>Hemerocallis species</i>	Daylilies
<i>Forsythia 'Sunrise'</i>	Sunrise Forsythia	<i>Liatris spicata</i>	Gayfeather
<i>Hydrangea paniculata</i>	Panicle Hydrangea	<i>Malva alcea 'fastigiata'</i>	Hollyhock Mallow
<i>Ilex verticillata</i>	Winterberry	<i>Perovskia atriplicifolia</i>	Russian Sage
<i>Myrica pensylvanica</i>	Bayberry	<i>Rudbeckia 'Goldsturm'</i>	Black Eyed Susan
<i>Potentilla fruticosa</i>	Bush Cinquefoil	<i>Sedum telephium</i>	Autumn Joy Sedum
<i>Prunus maritima</i>	Beach Plum		
<i>Rhododendron species</i>	Rhododendron Species	ORNAMENTAL GRASSES	
<i>Rosa rugosa</i>	Beach Rose	<i>Deschampsia caespitosa</i>	Tufted hair Grass
<i>Viburnum prunifolium</i>	Blackhaw Viburnum	<i>Miscanthus sinensis</i>	Purple Silver Grass
<i>Viburnum sargentii</i>	Sargent Viburnum		
<i>Viburnum trilobum</i>	Amer. Cranberrybush		
<i>Xanthorrhiza simplicissima</i>	Yellowroot		



BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the Design Standards for Scarborough's Commercial Districts is amended as recommended by the Planning Director, as follows (additions are underlined; deletions are struck through):

## DESIGN STANDARDS for Scarborough's Commercial Districts



Adopted July 16, 2001

[Amended February 18, 2009]

[Amended October 18, 2023; Lighting Standards Repealed,

See Chapter 405B Section H]

[Amended June 26, 2024; Landscape Standards Repealed, See Chapter 405B Section F]



### Planning Board Policy Approving Site Planning Goals

The Planning Board approves the attached Site Planning Goals as guidelines to assist applicants in designing proposals which will comply with the standards of Section C of the Site Plan Review Ordinance. Proposals that are designed in accordance with the Site Planning Goals will be presumed to comply with the standards of Section C. Proposals that are not designed in accordance with the Site Planning Goals will need to demonstrate compliance with each of the standards of Section C. In determining whether a project is designed in accordance with the Site Planning Goals or meets the standards of Section C, the Planning Board may engage the services of appropriate professionals to review, at the applicant's expense, the materials submitted by the applicant.

### DEFINITION OF TERMS

**These definitions are provided to assist the reader while using Scarborough's Design Standards.**

**Adaptive Reuse** - The development of a new use for a preexisting building. If a historic structure is involved, the conversion strives to maintain the structure's historic character.

**Americans with Disabilities Act.** A 1990 federal law designed to bring disabled Americans into the economic mainstream to provide them equal access to jobs, transportation, public facilities, and services.

**Architectural Feature** -A prominent or significant part or element of a building, structure or site.

**Bollards** -Posts used in the landscape for functional (e.g., separation of pedestrian and vehicular traffic) or decorative purposes.

~~**Buffering** -Landscaped areas, berms, fencing, walls or other physical features that are planted or installed to physically and visually separate land uses.~~

**Building Mass** The height, width, and depth of a structure.

**Cape Cod Curbs** -A relatively low fiat asphalt curb, typically used at the edge of parking lots or roadways to minimize snow plow damage.

**Community Character** - The image of a community as defined by such factors as its built environment, natural features, open space, architectural styles of houses and buildings, infrastructure, and the type and quality of public facilities and services.

**Compact Parking** -A parking space with a dimension of 8' in width and 15 feet in depth.

**Cross Easement** \_The reciprocal legal right to pass from one property to another.

**Curb Cut** - The opening along the curb line at which point vehicles may enter or leave the roadway.

**Fenestration** - Window treatment in a building or on a building facade.

**Gateways** -Entrances into recognizable places or areas of significant changes in land use.

**Human Scale.** The relationships of a development and/or its elements in terms of size, height, bulk, intensity, and aesthetics, to human beings.

~~**Landscape Plan** -A component of a development plan which shows the quantity, species, and size of all proposed vegetation.~~

**Massing** - The grouping of three-dimensional forms to achieve variation (as in a building or landscape planting).

**Mixed-Use Development** -The combination of two or more land uses within one building, project, or site. The most common combination of uses is business/retail and residential.

**Modular Pavers** -Preformed paving blocks that are installed on the ground to form patterns.

**Neckdowns** -Located at the openings of curb lines, the curb width is extended, usually 7-8", to decrease the distance between opposing curb lines and to prohibit parking. Sometimes referred to as "bump outs."

**Outdoor Storage** - The keeping, in an unenclosed area, of any goods, materials, merchandise, junk, or vehicles in the same place for more than twenty-four hours.

**Parapet** - The extension of the main walls of a building above the roof line.

**Peer Review** - The use of qualified professionals to review specific aspects of a Site Plan application for conformance with the Town's Ordinances or Design Standards.

**Performance Guarantee** -Any security that may be accepted by a municipality to assure that improvements required as part of an application for development will be satisfactorily completed.

**Reader boards** -A sign affiliated with a business or institution that contains temporary announcements about events or activities occurring on the premises.

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**Redevelopment** - The reconstruction, reuse or change in use of any developed property including an increase in intensity of use or structural enlargement.

**Rehabilitation/Renovation/Restoration** - To construct an addition, make alterations, or to upgrade to the design and layout of a building.

**Scale** .The relationships of a development and/or its elements in terms of size, height, bulk, intensity, and aesthetics, to one another and the surroundings.

**Service Areas** -A designated area, either attached to or separated from the main commercial building, where a business accommodates services such as product shipping and delivery, trash pickup, machinery and equipment repair, utility storage, etc.

**Sight Triangle** -A triangular shaped portion of land established at street intersections in which nothing is erected, placed, or planted that would limit or obstruct the motorists vision as they enter or depart the intersection.

~~**Site Furniture** -Constructed, above-ground objects, such as outdoor seating, kiosks, bus shelters, sculpture, tree grids, trash receptacles, and fountains that have the potential for enlivening and giving variety to streets, sidewalks, plazas, and other outdoor spaces used by the public.~~

**Strip Commercial Centers**- Continuous or intermittent linear roadside development, generally one store deep and characterized by multiple roadway access points, highly visible off-street parking and an assortment of commercial uses with direct access to abutting roads.

**Stacking Lanes** -A designated area of a parking lot that accommodates the queuing of cars (for instance, at a drive-through restaurant).

**Temporary Signs** -A sign which is installed for a limited time and is not constructed or intended for long-term use.

**Vernacular Architecture** -Architectural forms which are indigenous to an area, having developed in response to available materials, environmental conditions, and local cultural traditions.

## INTRODUCTION

Each property within Scarborough's commercial district is unique. Development plans should be based upon a careful understanding of the site in order to meet the **requirements of the business while improving the** functionality, safety, and visual character of Scarborough's commercial community.

### Site Planning Goals

- Distinctive, attractive gateways that welcome people to Scarborough.
- Quality development that respects the uniqueness of each property and reinforces Scarborough's sense of place and character.
- Public open space throughout the commercial area to enhance its appearance and support pedestrian use.
- An attractive, functional, and safe environment that is conducive to commerce and other permitted activities.
- Quality redevelopment of transitional or substandard properties.
- Protection for abutting residential properties through sensitive site planning, buffering, and architectural design.
- Upgrading the visual character and human scale of commercial districts through particular attention to architecture, site planning, signage, and lighting.
- Encourage increased walking and cycling activity within commercial district's by providing safe, attractive, interconnected facilities.
- Universal accessibility for all that meets the Americans with Disabilities Act (ADA).
- Sound access management throughout the commercial district to maintain efficient traffic flow and high levels of safety.

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*The preservation of mature trees, combined with masses of plantings, create a distinctive, attractive environment the landscape buffer also helps separate the cars from the pedestrian path to the right.*

## OBJECTIVES

Good site planning shall result in an attractive, safe, and economically viable relationship between buildings, parking, signage, lighting, landscaping, and the surrounding environment. Site plans shall minimize the visual effects of parking, feature high-quality landscaping, accommodate pedestrian movement where possible, and encourage connections to nearby properties.

## DESIGN STANDARDS

### Proximity of Buildings to Roadways.

Buildings shall be located as close to the front property line as possible to provide scale and interest to the auto and pedestrian environment. The majority of parking shall be located at the rear or side of the building.

### Relationships to Residential Properties.

The facades of buildings which abut or are visible from residential neighborhoods shall use forms, materials, and details which are residential in nature and appearance. Services areas, parking lots, outdoor storage yards, and other similar features shall avoid facing residential neighborhoods.

**Licensed Professionals.** All plans for development/redevelopment shall be designed by appropriate licensed professionals (e.g., architects, landscape architects, civil engineers, traffic engineers) to address issues of public health, safety, and welfare.

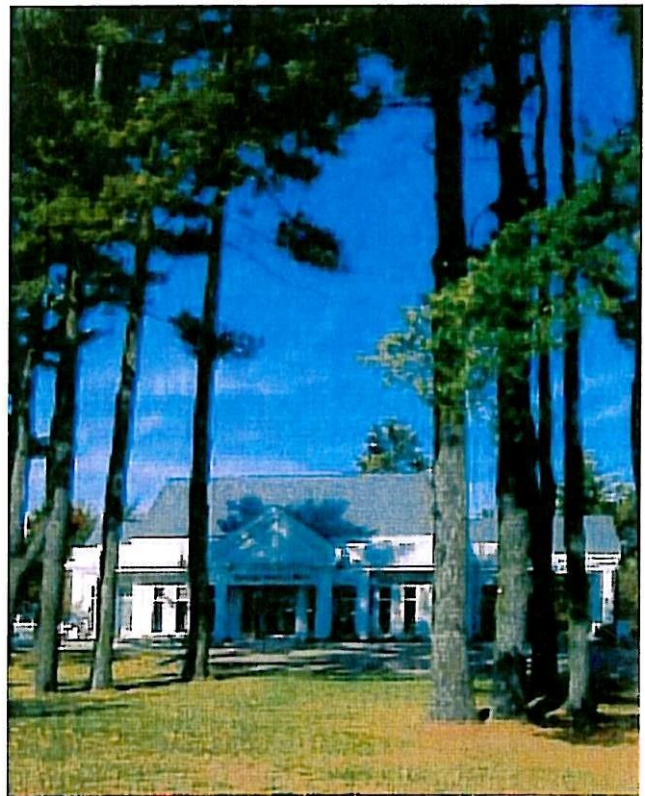
**Access Management.** Site plan involving curb cuts onto major roadways shall demonstrate an adherence to sound access management principles to promote efficient traffic flow and maintain a high level of safety for pedestrians and motorists.

~~**Landscaping.** The Space between the roadway and the front of the building shall be attractively landscaped with trees, flowering shrubs, fencing, stone walls, and other elements. Existing healthy trees and shrubs shall be preserved or transplanted~~

~~to another area of the site wherever possible. Properties located along Route One shall comply with the recommendations of Guiding Growth and Public Improvements on Route One.~~

**Standard Note.** All plans submitted for Planning Board Approval shall contain the following standard note:

*The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant concerning the development and use of the property which appear in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.*



*Preservation of the mature pines add visual interest and reduce the impact of front parking.*





*Pedestrian walkways are clearly identified through changes in color and materials.*



*An example of a high-quality contemporary office building that has retained many of the natural features of the site.*



*The proportions and site features give this building a strong sense of scale. The stone wall, plantings, and walkway lighting create a welcome entrance. The building used to be a flat-roofed commercial structure.*



*A human-scaled shopping plaza that offers a variety of interesting and inviting exterior spaces*



*This well-detailed outdoor space provided an attractive opportunity for pedestrians. The wooden trellis and landscaping complement the building and add human scale.*

## OBJECTIVES

All development activities shall be characterized by safe, user-friendly, and efficient traffic flow. Access management principles shall be followed to reduce the number of curb cuts, provide a safer vehicular and pedestrian environment, encourage intra-parcel travel, and minimize the number of trips on roadways.

## DESIGN STANDARDS

**Curb Cuts on Major Roads.** Site plans shall be designed to minimize the number of curb cuts on major roadways to increase vehicular and pedestrian safety.

**Shared Access.** Entrances to abutting commercial properties shall be combined to the maximum extent possible.

**Internal Traffic Flow.** To ensure the safety of motorists, delivery trucks, and pedestrians, the site plan shall clearly delineate internal traffic patterns. Site plans shall be designed by a professional engineer familiar with the Scarborough Ordinances. Parking space, directional arrows, crosswalks, and other markings on the ground shall be delineated with pavement paint or other suitable material to ensure safe circulation.

**Internal Connections.** Where feasible, connections between parking lots and driveways on adjacent parcels shall be provided to facilitate deliveries and minimize turning movements onto major roadways. Internal connections shall provide safe, direct access between adjacent lots in a manner that prevents them from becoming vehicular shortcuts. Cross easements shall be provided as required to facilitate circulation. The site plan shall anticipate future vehicular connections to abutting undeveloped property.

**Internal Pedestrian Connections.** Safe pedestrian connections between abutting land uses shall be provided where possible to encourage foot traffic and minimize vehicular movement.

**Traffic Calming.** Traffic calming measures shall be included where appropriate to discourage speeding within the site and between abutting properties. Measures may include speed tables, on-street

parking, raised crosswalks, vertical curbing, curvilinear road alignment, roadside plantings, neck-downs, curbed islands, and signage.

**Drive-Throughs.** Access routes leading to or from takeout windows or other drive-throughs shall minimize conflicts with pedestrian circulation routes. Motorists shall be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving, or other devices. The site plan shall be designed to prevent queuing in parking lots or other areas which would cause congestion or unsafe conditions.

**Pedestrian and Bicycle Movement.** The circulation plan shall provide safe pedestrian and bicycle movement within the site. The plan shall demonstrate how linkages can be made to adjacent properties, both developed and undeveloped. Pedestrian and bicycle connections between abutting properties shall be coordinated with vehicular routes to encourage foot traffic and minimize vehicular movement.

**Refuge Zones.** Pedestrian islands (five feet minimum width) shall be installed in driveways and streets where the crossing distance is greater than 32 ft.



*This curbed, landscaped island divides entering and exiting traffic. The identification sign is located away from the intersection to avoid interfering with the motorists' line of sight.*



**Outparcel Development.** Plans for multi-building developments shall accommodate future buildings, access roads, sidewalks, esplanades, and signage in a coordinated fashion. See *Mull/Building Development pp. 14-15*, for further standards.

**Service Drives.** Service drives shall be separated from internal walkways, parking areas, or pedestrian use areas by landscaped islands, grade changes, or other devices to minimize pedestrian contact.



*This planted bed serves as an attractive way to separate entering and exiting traffic. The planting bed has also helped preserved a large, mature tree located on the site.*



*This fast-food restaurant is an 011tparcel of a larger commercial retail development. Circulation, including drive-through, parking, and pedestrian access, has been carefully integrated into the surrounding site.*



*An island provides a refuge zone for pedestrians crossing this wide driveway. Permanent crosswalks would have minimized annual maintenance costs.*



*The predominance of curb cuts along this roadway creates an unsafe/uninviting environment for the pedestrian.*

## OBJECTIVES

Parking lots shall be designed to complement adjacent buildings, the site, and the commercial district without becoming a dominant visual element. Every effort shall be made to reduce the scale of parking lots by minimizing the total amount of paved surface visible from the road.

Parking lots shall be designed as inviting, pedestrian-friendly places by careful attention to landscaping, lighting, and internal walkways. With proper planning, parking lots can balance the needs of both the vehicle and the pedestrian.

## DESIGN STANDARDS

**Siting.** Whenever possible, the majority of parking areas shall be located at the rear or sides of commercial buildings, except where parking would be located adjacent to a residential neighborhood, or when included as part of a multi-building site plan (see pp. 13-14). Where land use conflicts occur, (e.g., unavoidable siting of a parking lot next to a home) the lot shall be screened with evergreen trees, earth berms, fences, or shrubs.

**Orientation.** Parking lots shall be designed as part of the overall plan for the site, and coordinated with building entrances, lighting, and landscaping.

**Scale.** The scale of parking areas with more than 1s spaces shall be broken up with trees, landscaped islands, grade changes, low walls, or other appropriate features. See Landscaping for specific standards regarding parking areas.

~~**Relationship to Buildings.** Paved surfaces of parking lots shall be separated from buildings by a minimum of five feet of landscaping and/or a paved walkway. The width of the landscaping shall be proportional to the height of the building.~~

~~**Screening.** Where front parking is permitted between the building and the road, it shall be screened by berms, fencing, low walls, trees, shrubs, perennial masses, or a combination of elements. The~~

~~ultimate height of the screen shall be 3± feet to minimize the view of the vehicle while still providing a clear view of the building and signage.~~

~~**Landscaping in Parking Lots.** Between 10% and 15% of the parking lot shall be landscaped. The higher percentage shall be used for larger lots (more than 40 cars) and those that are most exposed to public view. Planting islands shall be a minimum of 9' in width. All parking lot landscaping shall be hearty and appropriate for parking lot conditions. Natural groupings or clusters of trees are also encouraged. See Landscaping for further standards.~~

**Dead End Parking Lots.** Parking lots with a single point of access are strongly discouraged. Dead-end parking lots shall not contain more than ten spaces. Where dead-end lots are unavoidable, space shall be provided to safely turn a vehicle around without having to back out.

**Shared Parking.** Shared parking is strongly encouraged where appropriate, particularly where abutting land uses have differing hours of peak parking demand. Cross easements may be required to allow shared parking.

**Safety.** Crosswalks shall be marked by a change in pavement texture, pattern, or color to maximize



*An attractively landscaped parking lot that is a positive asset to the surrounding commercial area. Bike racks are conveniently situated near surrounding shops.*



~~pedestrian safety in parking areas and other potentially hazardous areas. Care shall be taken in the selection of shrubs, ornamental grasses, walls, or other landscape elements to maintain visibility.~~

**Side Lot Parking.** Parking on the side of buildings shall not extend closer to the street than the front facade. The space between the end of the parking lot and the roadway shall be landscaped according to an overall plan for the property.

~~**Snow Storage.** Provisions shall be made for snow storage in the design of all parking areas. The areas shall be shown on the Site Plan to avoid conflicts with landscaping, visibility, drainage, or icing during winter months.~~

**Buildings in Existing Parking Lots.** The development of smaller commercial buildings on out-parcels is strongly encouraged to break up the scale of large parking areas.



~~Landscaped islands should have been used here to provide scale, reinforce internal circulation, and guide pedestrians.~~



~~Wide parking lot islands provide ample room for tree growth and snow storage.~~



~~A low wall and ornamental plantings effectively screen this parking lot from view.~~



~~While asphalt curbing is inexpensive to install, it is very prone to snowplow damage.~~



## OBJECTIVES

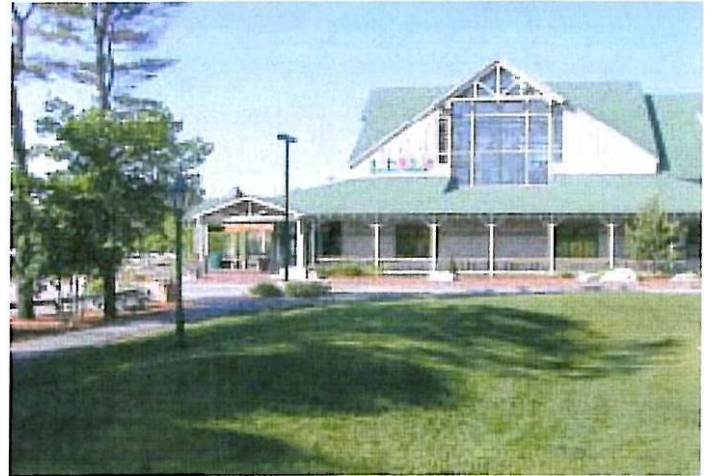
Entrances to buildings shall be designed to provide outdoor spaces for a variety of uses—seating/resting, dining, displays, and aesthetic enhancement—to create a pedestrian-friendly environment.

## DESIGN STANDARDS

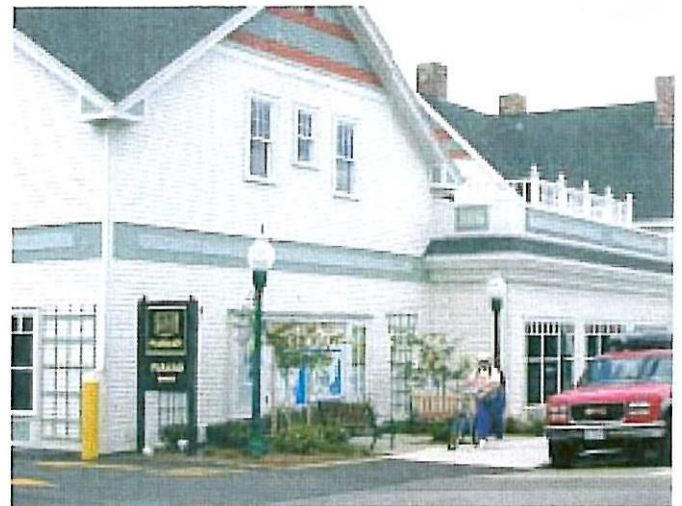
**Planning.** Outdoor use areas should be located in sunny, highly visible locations and sized to fit the anticipated uses. The design should be a collaborative effort between architect, landscape architect, engineers, artists, and other design professionals.

**Materials.** Outdoor use areas shall be constructed of high-quality, easily maintained materials. All elements within the space shall be coordinated with the architecture and site elements to achieve a unified look. The use of decorative paving is encouraged for sifting areas, pedestrian plazas, building entrances, or other designed open spaces. See Landscaping for plantings and street furniture standards.

**Entrances.** Major entrances to new or renovated buildings shall be emphasized through the use of canopies, recessed entries, seating areas, decorative plantings and lighting, sculpture, and other elements.



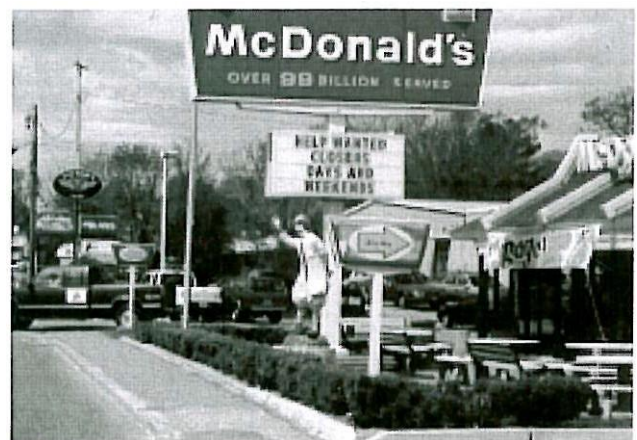
*welcome visual relief and all opportunity for programmed activities.*



*A small sitting area next to a new drug store offers a place to meet and relax in a commercial environment*



*An informal dining area in front of a deli provides an attractive setting for customers. Parking is screened by an attractive wooden fence. An informal lawn area provides*



*An outdoor eating area located within the front setback is separated from traffic by a subtle grade change and a hedge. However, advertising features visually overwhelm the space.*

## OBJECTIVES

Public sidewalks should be provided wherever possible throughout Scarborough's commercial areas. Existing and proposed road corridors should include sidewalks, planted esplanades, crosswalks, and pedestrian amenities to encourage a safe flow of non-motorized traffic.

There are many areas in Scarborough's commercial areas which are currently not pedestrian or bicycle friendly. The long-term objective is to encourage an interconnected network of sidewalks that encourage exercise for the general population.

## DESIGN STANDARDS

**Public Sidewalks.** Wherever possible, sidewalks and planted esplanades shall be provided within or near the right-of-way on both sides of all streets to encourage safe pedestrian movement. Facilities shall be coordinated with abutting land uses to create interconnections throughout the commercial area and linkages to surrounding residential neighborhoods. lighting and other amenities abutting walkways should be at human scale.

**Coordination with Site Plan.** All new sidewalks shall be coordinated with the Site Plan to avoid conflicts with landscaping, utilities, grading, drainage structures, signs, and other elements. MI walks shall be designed to facilitate snow removal and allow year-round use. Sheet flow of stormwater across sidewalks shall be avoided. Underground storm drainage systems are strongly encouraged.

**Material Selection.** Concrete sidewalks with granite curbing shall be used on sidewalks within the public ROW.

**Crosswalks.** Where sidewalks intersect with commercial drives or roads, crosswalks shall be installed to alert the motorist and improve visibility. Crosswalks shall offer a noticeable change in texture and color. Materials for crosswalks shall be highly durable and slip resistant.

**Lighting.** Sidewalks shall be lit to the minimum standards recommended by the Illuminating Engineering Society of North America (IESNA) to promote safe use during evening hours.

**Accessibility.** All new and renovated facilities shall be located, designed, and detailed in full compliance with the Americans with Disabilities Act (ADA), as revised.



*This photo simulation, illustrates the improvements sidewalks and pedestrian amenities can add to a public roadway.*



## OBJECTIVES

Commercial properties shall provide attractive, safe, and functional walkways between the public right-of-way and the main entrance. Internal walkways shall invite pedestrians onto the property and make them feel welcome.

## DESIGN STANDARDS

**Internal Walkways.** Continuous internal walkways shall be provided from the public sidewalk to the principal customer entrance of all principal buildings on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, and building entrances.

**Location.** Walkways shall be located where motorists can anticipate pedestrians and react accordingly. Likewise, walkways shall be designed to give the pedestrian a full view of oncoming vehicles, with minimal interference from trees, shrubs, and parked cars. Walkways shall avoid drive-through lanes, access and service drives, and other high-traffic routes. Traffic control signs, light fixtures, trees, or other potential obstacles shall be located far enough from walkways to prevent interference with pedestrian movement.



*An internal walkway that is an integral part of the site plan.*

**Orientation.** Walkways in parking lots shall be aligned with the main entry or a focal point on the building to assist in wayfinding.

**Curbing.** Internal walkways shall be separated from parking bays and/or travel lanes by raised curbing. Granite is preferred for its longevity, low maintenance, and appearance.

**Width.** Internal walkways shall be a minimum of five feet wide to allow two people to pass comfortably. Additional width may be necessary in certain conditions, e.g., where shopping carts may be used, where heavy pedestrian traffic is anticipated, or where cars overhang the walkway.



*This circulation system results in excessive width in front of the storefronts and creates an auto-oriented environment. The painted walkway offers little contrast and leads to tire parking aisle.*



*This raised walkway provides a high level of contrast with the surrounding parking lot. However the width is compromised by the overhang of cars, making pedestrian movement difficult.*

**Coordination with Landscaping.** Areas adjacent to walkways shall be landscaped with trees, shrubs, benches, flower beds, ground covers, or other such materials. Walkways in parking lots shall include landscaped islands to provide visual relief, shade, and scale. Shrubs shall be used with care to avoid blind spots. Special features, such as benches, flower beds, planters, and artwork can be used to enhance the walkway. Trees along all walkways shall be trimmed to provide adequate sight distance and to remove potential obstacles. Vertical clearances of at least eight feet shall be maintained.



*An internal walkway oriented toward the main entry of a restaurant. The planting strips with ornamental grasses and perennials separate the pathway from vehicles.*

**Crosswalks.** Internal crosswalks shall be marked by a change in pavement texture, pattern, or color to maximize pedestrian safety in parking areas and other potentially hazardous areas. The materials selected for road crossings shall be highly durable and low maintenance. Raised crosswalks shall be considered at key locations as a traffic calming device to make crosswalks more visible. Signs may be warranted in certain situations as determined by the Institute for Traffic Engineers (ITE). Materials selected for crosswalks shall allow safe bicycle movement across the surface.

**Drainage.** Sheet flow of stormwater across walkways shall be avoided. Culverts shall be sized to prevent ponding and provide uninterrupted use of the walkway.

**Maintenance.** All internal walkways shall be designed to facilitate maintenance by the property owner. The site plan shall coordinate the location of walkways with utilities, plantings, drainage, and other site elements that could affect long-term maintenance.



*Decorative plantings can add to the attractiveness of walkways while helping to set them apart from parking lots.*



*A wide walkway that provides a well-marked, attractive pathway to the main entrance. Separated walkways are more desirable than systems that end behind parked cars.*



**Snow Storage.** All walkways shall be designed for ease of snow removal to encourage year-round use. Site plans shall indicate locations for snow storage in areas where they will not interfere with pedestrian movement, block visibility, or cause dangerous conditions from freezing meltwater.

**Accessibility.** Walkways shall be located, designed, and detailed in full compliance with the Americans with Disabilities Act (ADA), as revised.



*The walkway in the parking lot leads to a well-defined crosswalk to maintain continuity.*



*The pedestrian circulation system in this shopping center includes well marked crosswalks and sidewalks.*



*This internal walkway crosses over a curb, making access difficult for people with disabilities.*



*A highly visible internal crosswalk that effectively connects the parking lot to the storefronts.*

## OBJECTIVES

Multiple building developments shall exhibit a high degree of coordination in site planning, architectural design, site design, and site detailing. MB physical components shall be designed to complement an overall plan.

## DESIGN STANDARDS

**Master Plan.** For multi-building developments (MBD's), a conceptual master plan shall be prepared to show the Town the general location of future buildings, parking lots, roads and driveways, walkways, common open spaces, utilities, service areas, stormwater management, and other components of site development. The master plan shall also show how traffic, stormwater, and utilities will be coordinated with adjacent properties. The plan shall also illustrate the measures that will be taken to preserve significant natural or cultural features, such as wetlands, specimen trees, or stone walls.

**Phasing \_Plan.** As part of the Site Plan application, the applicant shall provide a phasing plan that illustrates the sequence of development and what steps will be taken to ensure compatibility between current and future activities.

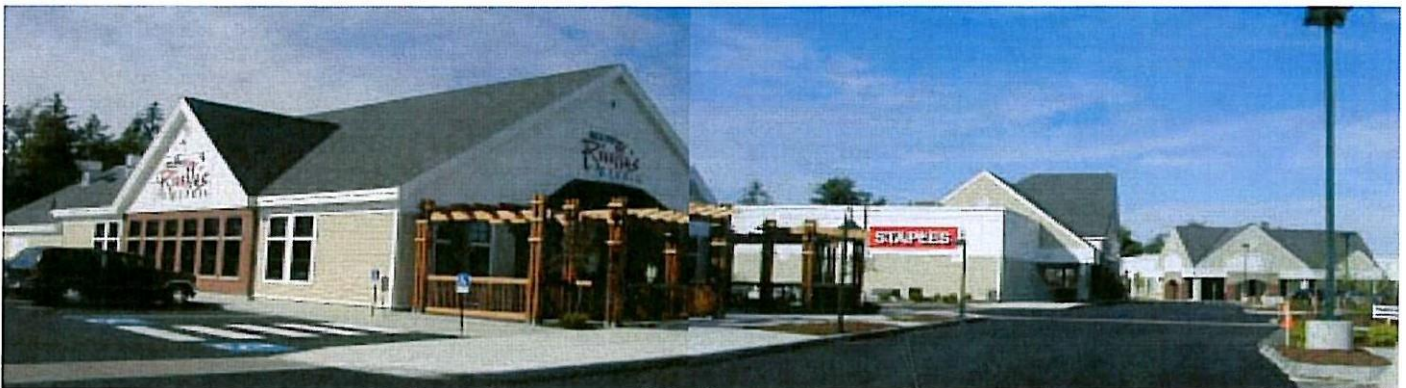
**Building Orientation.** All buildings in MBD's shall be oriented to create usable, safe and attractive pedestrian spaces, preserve significant site features and minimize the appearance of parking areas.



*The buildings in this MBD have been sited to reinforce pedestrian circulation patterns and reduce the scale of the overall development.*

**Focal Points.** In MBD's, a limited number of buildings or other elements shall be designed as focal points. These structures shall be visually more prominent, enhanced by height, massing, distinctive architectural treatment, lighting, landscaping, or other distinguishing features.

**Outdoor Spaces.** MBD's shall include outdoor use areas such as greens, plazas, and courtyards. Buildings may be oriented toward open spaces rather than roadways. In these situations, buildings shall have a major access on the space as well as a secondary access point(s) oriented to parking areas. Outdoor spaces shall be coordinated with the pedestrian circulation plan to encourage pedestrian use, with provisions for seating and outdoor activities. Outdoor spaces shall be designed to separate pedestrian and vehicular traffic with landscaping, grade changes, and other site features.



*Similar roof pitches, pedestrian use areas, and traditional building materials help unify this multi-building development.*

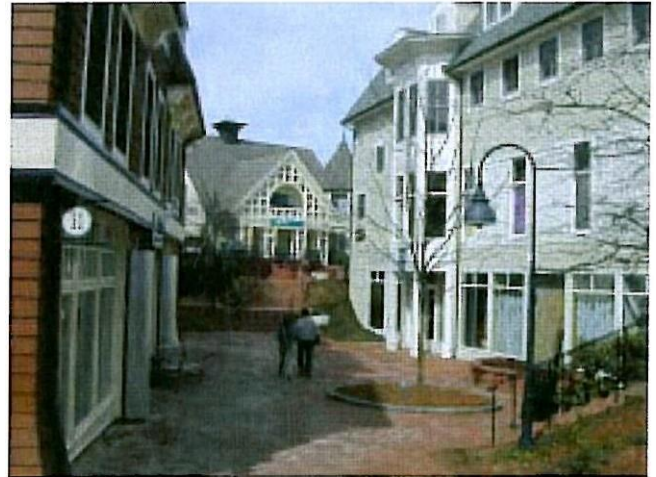


**Drive Through Facilities.** Where drive-through facilities are a component of a MBD, the building and site plan shall emphasize pedestrian access.

**Signage Plan.** Applicants for MBD's shall submit a master signage plan that shows how graphics will complement and unify the proposed development. See **Signage**.

~~**Landscape Plan.** Landscaping for MBD's shall be coordinated with all other elements of the site. As part of the application for Site Plan approval, applicants shall submit a master landscape plan that shows how landscaping will be used to complement proposed buildings, reinforce circulation paths, help define pedestrian use areas, highlight entrances, provides shade, and adds seasonal interest to the landscape. See **Landscape Chapter** for further standards on landscape materials.~~

~~**Shared Stormwater Management.** Wherever appropriate, treatment basins shall be designed to be shared by multiple building sites to minimize the land area devoted to stormwater management. (See Stormwater Management, p. 19 for further details).~~



*This MBD encourages pedestrian use and enjoyment through well-connected sidewalks, mature landscaping, high quality lighting and paved public plaza.*



*This MBD is unified by a common architectural style and coordinated landscaping, lighting, and outdoor spaces.*



*Buildings in this multi-building development are oriented to a grid pattern, with strong pedestrian circulation.*

## OBJECTIVES

Service areas shall be integrated into the overall site plan. They shall be designed to meet the functional needs of the facility while minimizing any traffic or visual conflicts, audible noise, or smells.

## DESIGN STANDARDS

**Locations.** All facilities for service, including waste collection and storage facilities, off-street loading and unloading areas, loading docks, storage facilities, dumpsters, fueling areas, and vehicle service and maintenance areas, shall be located at the side or rear of the principal building. Locations that face public roadways or abutting residential properties shall be avoided. Overhead doors or other vehicle entrances or exits shall not be located on any facade that faces a public street or residential neighborhood.

**Design.** Service areas shall be sized to fit the specific needs of the building and its intended operations. The smallest size needed to meet the building's requirements is encouraged.

~~**Screening.** Service areas shall be screened to minimize visibility from sensitive viewpoints such as public and private roadways, main entrances, abutting neighborhoods, public open spaces, and pathways in these situations. Service areas shall be screened with architectural elements such as walls or fences. Screening may be further enhanced with evergreen trees, shrubs, and earth berms.~~

~~**Screening Design.** Structural screens and fencing shall complement the design of the main structure by repetition of materials, detailing, scale, and color. Where chain link fencing is required for safety, it shall be landscaped and painted black or a similar dark color, or coated with dark vinyl. Plastic slats in chain link fencing are not permitted. Gates shall be designed to prevent sagging.~~

**Service Access.** Service areas shall be sited to accommodate the turning movements of vehicles used for trash pickup, deliveries, and similar functions without conflicting with other vehicles.

**Coordination.** Prior to Town submittal, the applicant shall contact the representatives of utility companies, fuel suppliers, trash haulers, the fire department, and others who may have input into the design and siting of service areas and facilities.

**Protection.** Where architectural screening or freestanding fencing is used for screening, it shall be protected with granite posts or concrete filled steel bollards, or reinforced in a manner that will prevent damage from service vehicles.

**Recycling Facilities.** The installation and use of recycling bins is encouraged. All recycling facilities shall be screened in a manner similar to other service areas. Dumpsters and recycling areas shall be consolidated where possible.



~~*A variable height fence used to provide visual separation between a convenience store and its residential neighbor. The fence is attractive on both sides.*~~





*This service area is effectively integrated into the side of the building. The evergreen buffer acts as an appropriate and attractive screen.*



*This service area is screened by a solid wall topped by a trellis structure that repeats design elements used elsewhere.*

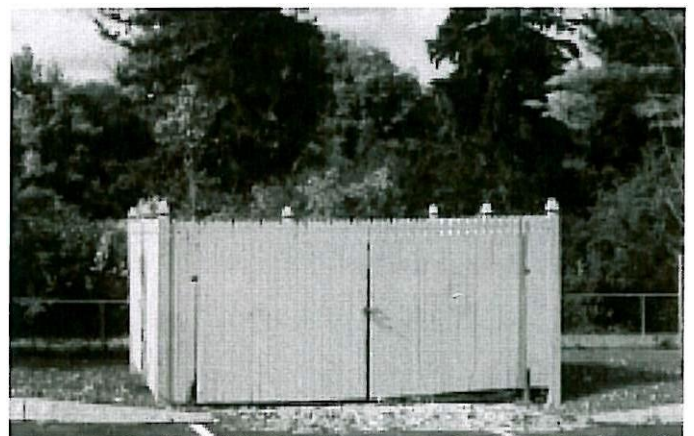


*This service area is effectively buffered by grade changes and evergreen trees.*

## OBEDESIGN STANDARDS



*This trash enclosure was not properly sized to handle the dumpster needed for the facility.*



*A typical trash enclosure that could be improved by plantings, detailing to match nearby buildings, reinforcing the design.*

## OBJECTIVES

~~Buffering or screening will be required in certain areas to ensure compatibility between unharmonious land uses, particularly between commercial and residential properties. Plantings, earth berms, Stone walls, grade changes, fences, distance, and other means can be used effectively to create the necessary visual and psychological separation.~~

## DESIGN STANDARDS

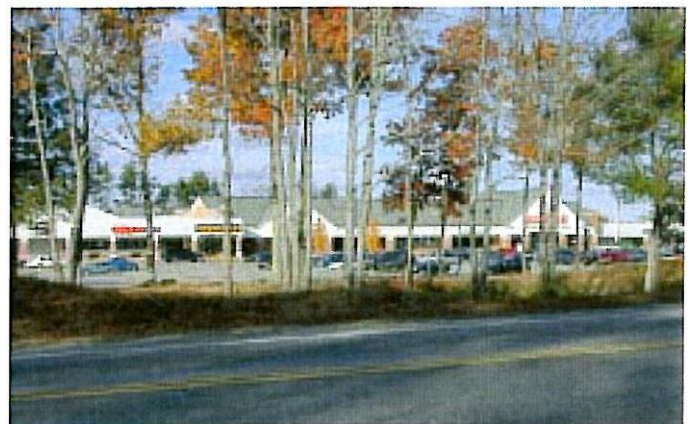
~~**Appropriateness.** The selection of the proper type of buffer shall result from a thorough understanding of existing site conditions, distances to property lines, the intensity of the proposed land use, and the degree of concern expressed by the Planning Department, Planning Board, and abutting landowners. Discussions regarding the need for buffers and appropriate sizes and types shall begin at the sketch plan review.~~

~~**Design.** Buffers and screens shall be considered an integral part of the Site Plan. Stone walls, plantings, fencing, land forms, etc. used for buffers shall be similar in form, texture, scale, and appearance to other landscape elements. Structural measures (e.g., screening walls) shall likewise be related to the architecture in terms of scale, materials, forms, and surface treatment.~~

~~**Maintenance.** Buffers shall be maintained in a condition that assures their continual effectiveness. Where plantings do not survive, or grow to a point where they no longer serve as effective buffers, they shall be replaced to meet the intent of the approved plan. Walls, fencing, or other forms of screening likewise shall be maintained in good condition.~~



~~Landscape buffers can separate land uses and soften the presence of buildings.~~



~~This stand of trees creates an effective visual buffer between the road and the plaza parking lot.~~



## OBJECTIVES

To comply with Town requirements and MeDEP Stormwater Management law, site plans may be required to incorporate treatment basins or other measures to maintain the quality of stormwater runoff. All stormwater management areas shall be treated as integral and attractive parts of the landscape.

## DESIGN STANDARDS

**Location.** Where stormwater treatment basins or other related facilities are required, they shall be located in the least visible portion of the site. Where visible, they should be graded to conform to natural contours and planted to integrate them into the natural landscape.

**Design.** Stormwater treatment basins shall be patterned after naturalistic landforms, avoiding hard geometric shapes. Side slopes shall be landscaped with appropriate plantings to reduce erosion and screen the basin. Islands can be effective in breaking up the mass of a treatment pond while increasing habitat opportunities.

**Grading.** Abrupt changes in grades and steep side slopes (>3:1) shall be avoided. Transitional grading shall be used to blend all earthworks into the natural contours of the land where possible.

**Structures.** Man-made drainage structures (e.g., culverts, manholes, and outfalls) that are visible from roadways or residential neighborhoods shall be screened with vegetation or treated to reduce their visibility and integrate them into the landscape.

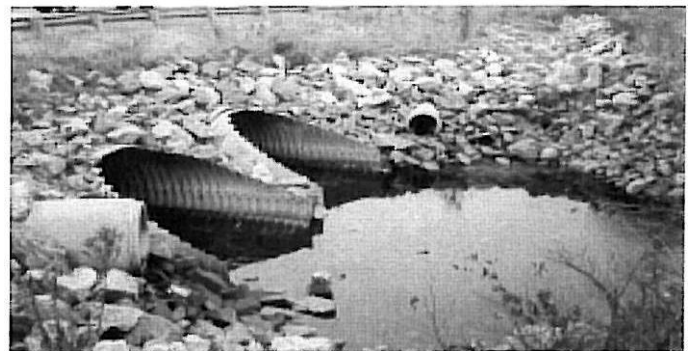
**Planting Design.** Plantings used in stormwater treatment ponds should be designed by a qualified professional familiar with the growing requirements of wetland species.

**Shared Basins.** Wherever appropriate, treatment basins shall be designed to be shared by abutting properties to minimize the amount of land area devoted to stormwater management.

**Rip-Rap.** Where ground protection is necessary in highly visible locations (e.g., at spillways and culverts), it shall be constructed of hand placed rock or geo-grid, rather than coarse rip-rap. The use of coarse crushed rock in visible roadside ditches is discouraged. The use of Permeon (Desert Varnish) is encouraged to hasten the weathering process on rip-rap and other stone surfaces.



*Stormwater treatment ponds can be designed to create attractive focal points in the landscape.*



*Rip-rap is often necessary to control erosion and stabilize slopes. Hand-placed stone or natural landscaping would have improved the appearance of this treatment pond.*



*A stormwater treatment pond that is contoured to blend into the surrounding landscape.*

## INTRODUCTION

These Design Standards establish criteria for new or renovated buildings in Scarborough's commercial districts. They anticipate a greater sense of continuity and identity by illustrating high quality architectural design. They are not intended to dictate building styles.

### Architectural Goals

Architecture that offers a positive experience from three perspectives: by the motorist driving along the road corridor, by the pedestrian viewing the buildings up close, and in relation to surrounding buildings that tie into the community's identity.

- Good neighborhood buildings that thoughtfully consider scale, form, orientation, height, setback, massing, materials, and architectural features.
- Buildings that are designed to human scale that address the comfort, enjoyment, and safety of the users.
- Buildings that are designed as permanent, positive additions to the commercial district, constructed of high quality, long lasting materials.
- Street corners that are treated as special places.
- Architecture that utilizes energy conservation measures wherever possible.
- Older buildings that are restored and/or reused to maintain the integrity of Scarborough's historic heritage.

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*Drawing from traditional forms, the scale of this commercial building is reduced by variations in roofline, massing, and high-quality architectural details.*

## OBJECTIVES

The purpose of these standards is to encourage architecture within Scarborough's commercial districts that draw its inspiration from traditional New England examples. Building design shall reinforce a human scaled environment through careful consideration of architectural forms, massing, detailing, number and use of materials, and color.

## DESIGN STANDARDS

**Design.** New buildings shall be designed to fit the individual characteristics of their particular site. The architecture shall be influenced by traditional New England building forms and town-making patterns, the specific needs of the intended users, the nature of the intended use, and other site-specific factors. Contemporary architectural styles are appropriate, provided they meet these standards.

**Human Scale.** Buildings and site elements shall be designed to human scale. The forms, massing, and openings of buildings shall be proportional to the size of a human figure. Many architectural elements can add scale to a building: water tables, integral planters, recessed openings, windows with divided panes, building mounted light fixtures, dormers, cupolas, projecting rooflines, covered walkways, colonnades, and similar features.

**Licensed Architects.** Any structure subject to site plan review shall be designed by an architect licensed in the State of Maine.

**Freestanding Accessory Structures.** Non-habitable structures, such as freestanding ATMs, garages, service stations, canopies, storage units, recycling sheds, trash enclosures, cart corrals, and utility buildings shall meet the same design standards as the principal building(s) on the site. The design of freestanding structures shall be coordinated with the principal building through repetition of architectural forms, materials, colors, and detailing.

**Energy Conscious Design.** Commercial architecture and site planning shall promote energy conservation wherever possible. Consideration shall be given to solar orientation and siting, use of maximum insulating materials, reduced lighting loads, and landscaping for windbreaks and shading.



*Examples of high-quality Maine architecture -a medical office, a retail store, and a library -that have been designed at human scale and fit their unique sites.*





Three examples of buildings that have little reference to traditional New England forms or materials.

Finely detailed commercial buildings using traditional New England forms and materials. Entrances are well marked and provide users with areas for shelter and/or interaction.





*A free standing ATM and remote teller located in the rear of the building designed to complement the main bank building in color scale, and detailing.*



*This restaurant occupies a highly visible corner location, yet provides the public with a scale less, blank wall that does not contribute to the aesthetics of the street.*



*A free-standing canopy designed with the same form and detailing as the main building. The signage is well integrated into the facades.*



*A commercial building that lacks scale. There are virtually no distinguishing features to give the structure character or relate it to the context of New England.*



*All office complex that offers a variety of exterior spaces and relates well to surrounding residential areas by paying particular attention to design, scale, and details.*



*This car wash does not reflect the architectural treatment of the large retail establishment and appears out of place in the parking lot.*

## OBJECTIVES

Many existing commercial buildings may be coming before the Planning Board for Site Plan approval as they undergo major renovations or additions. This is an opportunity to add visual interest to the building and to strengthen its relationship with the site and nearby structures. The Town expects high quality architectural and site design for all renovated structures.

## DESIGN STANDARDS

**Alterations.** Where the existing building currently meets the design standards, proposed renovations must be designed to respect the proportions, fenestration patterns, and details of the original building. Where the existing building does not meet the design standards, the owner is strongly encouraged to upgrade the entire structure.

**Design.** Applications to the Planning Board that involve renovations and additions shall show all improvements as well as the existing structure. A narrative shall accompany the application which explains the designer's intent to relate the old with the new.

**Materials.** Where existing buildings meet the design standards, additions or renovations shall complement or match the materials, form, color, and detailing of the original structure. Where the original building does not meet the standards, the owner shall demonstrate how the materials used in the renovation will complement the existing structure.

**Architectural Features.** Renovations shall retain any distinctive architectural features or examples of skilled craftsmanship.

**Architectural Features.** Renovations shall retain any distinctive architectural features or examples of skilled craftsmanship.



*The repetition of architectural and landscape details help to integrate a shopping center with a historic building.*



*A shingle-style renovation transformed a small nondescript building into a noteworthy restaurant.*



*The additions on both sides of this restaurant do not relate to the form of the central structure.*



## OBJECTIVES

All buildings shall present an inviting, human scaled facade to the street, internal drives, parking areas, and surrounding neighborhoods. Wherever possible, entrances shall be clearly visible from the street and reinforced through site and architectural features.

## DESIGN STANDARDS

**Facade Treatment.** The facade containing the main entrance shall be treated as a front facade and shall be designed in a manner that is consistent with the design standards. Building entrances shall be designed to be visible from the street and provide unobstructed areas for pedestrians. The front facade shall contain a clearly defined, highly visible customer entrance and three or more of the following elements to add scale to the building:

- canopies
- overhanging rooflines to provide shelter for pedestrians
- recesses or projections in keeping with the scale of the building
- arcades
- raised corniced parapets over entrances
- gables and donners
- pilasters
- peaked roof forms
- outdoor sifting or dining areas
- display windows that are visible from the sidewalk
- architectural details such as moldings which are integrated into the building design
- other features which are designed to add scale and visual interest to the facade.

For retail structures, the front facade or any other facade that faces a public or private street shall have display windows, entry areas, or other transparent features along 40% or more of its horizontal length. This standard may be waived if other architectural elements are used to provide scale and visual interest to the front facade in keeping with these Design Standards.

**Offsets.** No uninterrupted length of any facade shall exceed 100 horizontal feet. Facades greater than 100

feet in length shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade and extending at least 20 percent of the length of the facade. Where the plane of a wall is broken, the offset shall be proportional to the building's height and length. Strong shadow lines, changes in rooflines, pilasters and other architectural details, patterns in the surface material, and wall openings can all be effectively used to add visual interest and scale to the facade. Projections used to break up the mass of the building shall extend to the ground.

**Rear and Side Facades.** Blank walls facing public roads, residential neighborhoods, or abutting properties are prohibited. Where rear or side facades are visible from adjacent properties or roadways they shall be designed to match or complement the architectural treatment of the primary facade to give it scale and visual interest.



*Facade treatments on these two commercial buildings wrap around the corners to present a unified design from all visible faces.*

**Site Design.** Signage, lighting, landscaping, and other exterior elements shall all be designed to complement and be in scale with the facade, avoid visual or functional conflicts, and retain visibility.

**Trim.** Windows, door openings, ventilation openings, and other forms of exterior fenestration in frame construction shall be trimmed.

**Window Shapes.** Windows should be vertical in orientation, or square.

**Shutters.** If shutters are used, they must be sized to fit the openings and provided for all windows on a given wall.



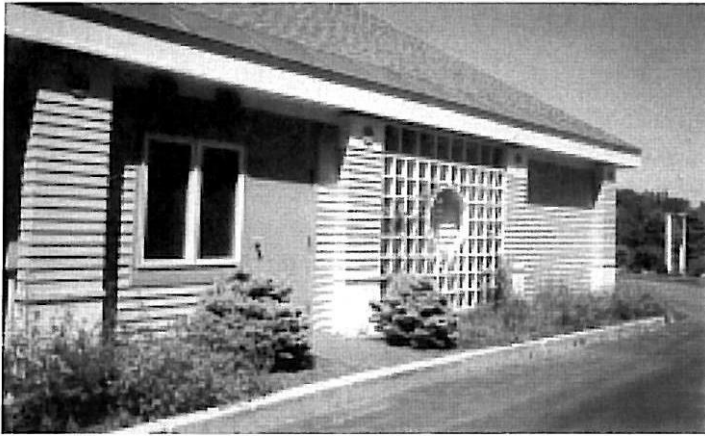
While the front plane of the wall of this building is broken, the offset does not contribute to the overall. The projection becomes a billboard and the building is seen as a large box.



The scale of this 'big box' has been effectively reduced by architectural elements and detailing. The overhang provides protection for pedestrians and emphasizes the entrance.

Three views of a branch bank set in a mixed-use village setting. All facades were treated with equal importance. The front (top) faces the street and is built to the sidewalk, encouraging pedestrian traffic. The side of the building (middle) facing a single-family home is residential in scale and design. The canopy at the rear (bottom) provides a transition area between the parking lot and the back entrance.





*Small scale buildings, especially those viewed at close range, offer all opportunity to display a high level of detailing to enrich the pedestrian environment.*



*Highly articulated windows work successfully as design details in the front facade of this contemporary medical building.*



*This building & ventilation equipment and service connections are highly visible, adding unnecessary clutter*

**Functional Elements.** All vents, downspouts, flashing, electrical conduits, meters, HVAC equipment, service areas, loading docks, service connections, and other functional elements shall be treated as integral parts of the architecture, starting at the conceptual building design phase. When these elements need to be part of the facade (e.g., downspouts, vents) they shall be incorporated into the architecture through detailing or matching colors. Meters, utility banks, HVAC equipment, and other exterior service elements shall be contained in service closets, behind walls, or located out of view from the public. Building elevations presented for Planning Board review shall show the location and treatment of all functional elements.

**Vending Machines.** Where vending machines are provided, they shall be sited in locations that are not visible from the street. The site plan and architectural elevations shall show the location of all vending machines.

**Illustrations.** All elevations of proposed buildings shall be evaluated as part of the design review. The Planning Board may request perspectives of the building to illustrate the three-dimensional relationship between the front and side elevations. Elevations and perspective drawings shall include all landscape elements (trees, shrubs, lighting, street furnishings, etc.) that will be seen in conjunction with the facade.



*The building's meters and service connections are located out of sight in this service cabinet.*

## OBJECTIVES

Building materials shall be treated as significant design elements that define the appearance of the structure and strengthen the sense of identity throughout Scarborough. The use of materials that give the appearance of New England architecture is strongly encouraged.

## DESIGN STANDARDS

**Materials Encouraged.** Traditional, high-quality building materials common to northern New England (e.g., brick, clapboard, shingles or other similar products) shall be used as the primary siding material. Contemporary materials that have the same visual characteristics (e.g., cement plank clapboards or vinyl siding) are acceptable if attention is paid to detailing (e.g., comers, trim at openings, changes in material). Painted MDO plywood is acceptable when used in combination with traditional materials to give it scale. Long-term maintenance needs shall be a consideration in the selection of all building materials.

**Materials Prohibited.** Highly reflective or processed materials (e.g., metal or plastic panels, brushed aluminum, bronzed glass, concrete block, T-111, untreated plywood, dryvit, etc.) and multicolored brick (incorporating occasional white bricks in a random pattern) shall not be used on the primary or front-facing facade.

**Colors.** Traditional colors commonly found in New England villages are appropriate for all components of the building. Facade colors shall be low reflectance. The use of high intensity, high reflectance, chrome, metallic, or fluorescent colors or black is prohibited as the primary color.



*Cement plank clapboard is a new material that resembles traditional wooden siding with less maintenance.*

**Trim.** Where trim is used, it shall be a color that complements to the building's primary color. Neon tubing shall not be allowed as an exterior trim or accent material.

**Detailing.** Arbitrary changes in materials or embellishments that are not in keeping with the rest of the building are discouraged.



*Three building that use traditional materials: brick, granite, and wood.*





*Reflective metallic siding*



*Metal panels*



*Multicolored brick*



*Split face block*



*Highly reflective glazed tile with bright plastic accents*



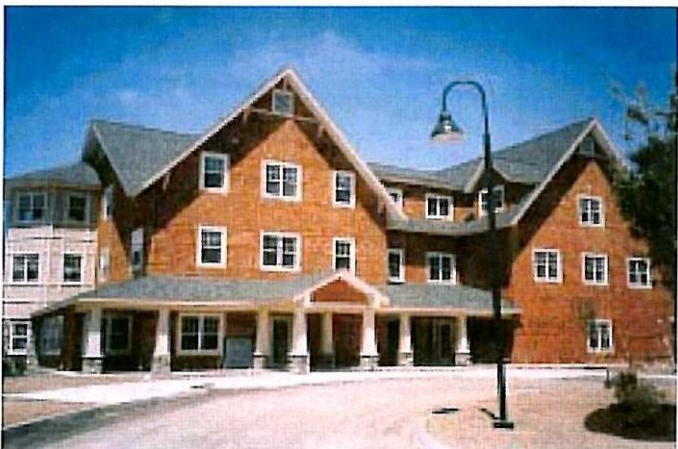
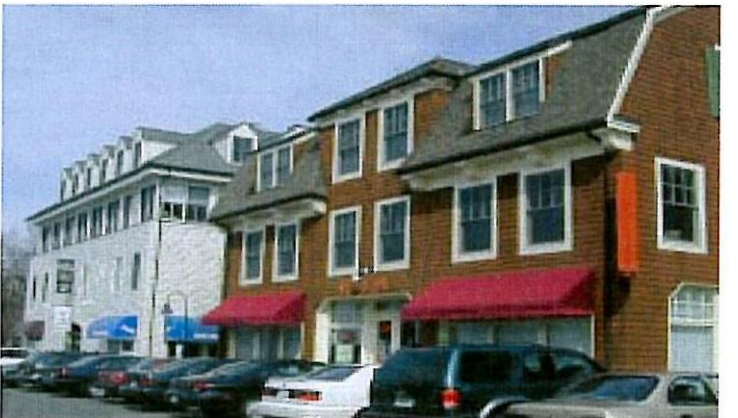
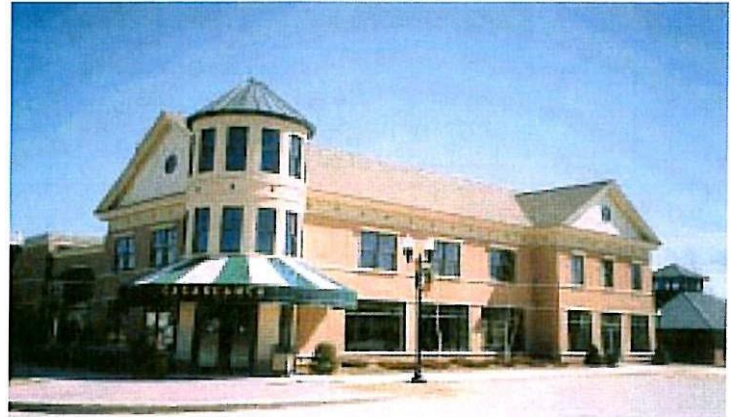
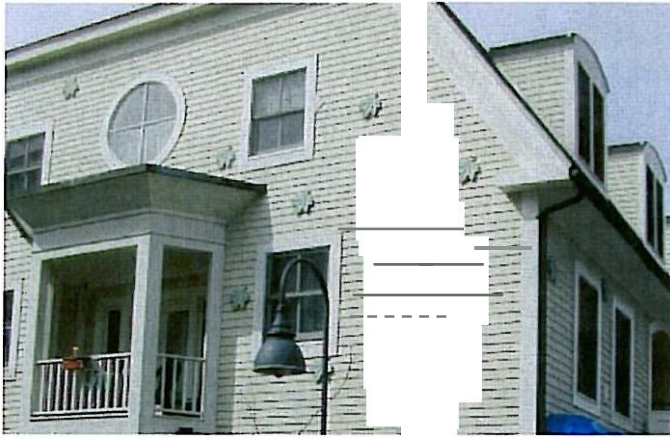
*Textured plywood and arbitrary changes in materials*



*Painted concrete block*

*Examples of primary building materials and treatments that are prohibited in Scarborough's commercial districts.*





*Examples of the richness and variety of traditional New England color schemes.*



## OBJECTIVES

Awnings and canopies can enhance the appearance and function of a building by providing shade, shelter, shadow patterns, and visual interest. Where awnings are used, they shall complement the design, materials, color, and appearance of the building.

## DESIGN STANDARDS

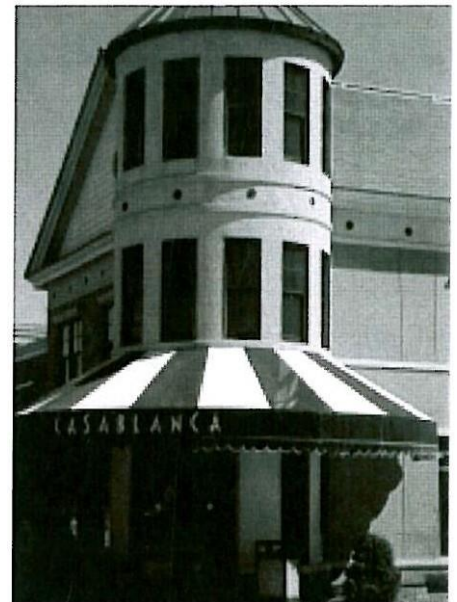
**Location.** Where awnings are used, both fixed or retractable, they shall be an integral element of the architecture. Awnings shall be located directly over windows or doors to provide protection from the elements.

**Materials.** Awnings and canopies shall not be made of reflective materials, such as metal or plastic. Their color shall match or complement the facade of the building.

**Design Elements.** Graphics used on awnings for identification or advertising shall be designed as an integral part of the signage program for the property, and shall be coordinated with other sign elements in terms of typeface, color, and spacing. Awnings shall not be used as advertising features or light sources. Backlit awnings are prohibited. Graphics on canopies are counted toward the total signage area.



*Canopies over the doorways emphasize the main entrance and provide effective protection from the elements.*



*Backlit, highly reflective canopies are not appropriate in Scarborough. These canopies (above and to the right) function primarily as a large sign, which is not acceptable.*

## OBJECTIVES

Rooflines shall be designed to provide diversity in the form of the building and add visual interest to the streetscape. When used properly, rooflines can reduce the mass of large buildings, emphasize entrances, and provide shelter and shade for the pedestrian.

## DESIGN STANDARDS

**Pitched Roofs.** Buildings with pitched roofs are strongly encouraged. Where pitched roofs are used, the minimal pitch shall be at least **5/12**. Projecting rooflines shall be designed to create strong shade/shadow patterns.

**Shapes to be Avoided.** False mansard, A-frames, and other non-traditional roof forms shall not be used as the primary roofline.

**Flat Roofs.** Flat roofs, especially on single-story isolated buildings, are discouraged in most applications. Where flat rooflines are used, the design shall create no horizontal line greater than 100 feet without a break, using features found on traditional New England buildings. See pp. 15-16 *Large Scale Buildings* for additional design standards. Flat roofs on multi-story office buildings are appropriate when designed in conformance with the *Office Building* design standards.

**Parapets.** Where parapets are used to break up a flat roofline, the height of the parapet shall be at least five percent of the total length of the wall.

**Preferred Materials for Pitched Roofs.** Composite asphalt shingles and standing-seam non-glare metal are preferred for visible roofing. High gloss roofing materials shall not be used. Roofing materials shall complement the color and texture of the building's facade. Roof colors shall be muted earth tones or a color that is darker than the facade. Stripes and patterns on the roof are strongly discouraged.

**Roof-Mounted Equipment.** Mechanical and other equipment mounted on rooftops must be screened from public view or grouped in a location where visibility is limited. Where used, screening for roof-mounted equipment shall be designed as an integral part of the architecture to complement the building's mass and appearance.

**Roof-Mounted Signs.** Roof mounted signs are prohibited by the Sign Regulations in the Zoning Ordinance.



*The scale of this linear shopping plaza has been effectively reduced through variations in roof planes, dormers and a cupola.*



*Standing seam metal roofing is a traditional material common in older commercial buildings in New England.*



*A cupola projecting from this steeply pitched roof is an example of traditional forms used in a contemporary structure. Roof-mounted mechanical equipment has been effectively screened by balustrades.*

## OBJECTIVES

Buildings located on comers are particularly important because they help define the character of two streets. These high-visibility locations shall be emphasized by quality architecture and site development.

## DESIGN STANDARDS [Amended 02-18-09]

**Siting on Corner Lots.** A building on the corner of two public streets shall be located close to the intersection and shall exhibit a strong relationship to both streets that it fronts. Where zoning allows, the Planning Board may permit a limited amount of parking and vehicular travel ways between the building and the property lines along one or more of the streets, but the majority of the parking shall be located to the side or rear of the building. The amount of parking and vehicular travel ways permitted between the building and the property lines along each street shall depend on both the zoning district and the context of the site.

**Corner Buildings.** Buildings on comers shall be a minimum of two stories or twenty feet (20') in height to add mass and visual prominence to the street.

**Facade Treatment.** Both facades of comer buildings shall be designed according to the standards in Facade Design, p. 5. Blank or unadorned facades facing streets on comer buildings are prohibited. The facade of the upper floor(s) shall be visually related to the ground floor through repetition of design elements, e.g., color, materials, window treatment, and detailing that will unify the structure and help frame the ground floor.

**Corner Treatment.** The architectural treatment of the street comer of the building shall emphasize its prominent position. This can be accomplished by greater massing and height, unique detailing, lighting, and other facade treatment to emphasize the front comer of the building. This comer treatment shall be designed to be visible from both streets. Where practical, an entrance to the building shall be located on the comer.

**Focal Points.** Comer locations offer opportunities to create dynamic focal points in the streetscape. These

can take the form of distinctive architectural elements, signs, sculpture, lighting, or landscaping. Focal points shall be visually related to the building as a whole, providing an accent without overwhelming it.



*A retail building that is well-sited in its corner location. Attention to design detail gives the building human scale and visual interest.*



## OBJECTIVES

National franchises (e.g., restaurants, service stations, retail stores) are a welcome and permitted use within Scarborough's commercial districts. However, the design of these buildings can contribute to the loss of identity for Scarborough by the repetition of generic architectural forms that are found throughout the country. Buildings for these types of uses shall reflect an awareness of New England architectural traditions in their form, detailing, and materials.

## DESIGN STANDARDS

**Franchise Styles.** Architectural forms primarily derived from building styles from other regions of the country are prohibited. New England regional prototypes from national franchises are permitted, provided they meet the Design Standards. Buildings that are stylized to the point where the structure is a form of advertising are not acceptable.

**Coordination of Site Features.** Applicants shall provide the Planning Board with illustrations that demonstrate how site features and accessory structures will be coordinated with the principle building. These may include dumpster screens, storage buildings, refrigeration lockers, playgrounds, signage, and lighting.



*A fast food restaurant t/rat was designed to complement t/re vision for a /highway corridor*



*An addition to house an indoor playground bears 110 relationship to the existing structure.*



*The designs used for national franchises are often repeated across the country. Generic architecture has little or no reference to traditional New England forms and can further the loss of identity in Scarborough.*





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Examples of building forms used for national franchises (left column). Examples of architecture fit to the same franchises which have been designed to local design standards (right column).

## OBJECTIVES

Due to their visibility and mass, large scale buildings (20,000 square feet or greater), such as 'big box' retail or grocery stores, can greatly enhance or detract from the visual character of the commercial district. These buildings shall be designed as attractive pieces of commercial architecture that are consistent with the scale and form found in Scarborough traditional buildings.

## DESIGN STANDARDS

**Design and Massing.** Large structures shall be designed to break up their mass into smaller visual components through the use of projections, recesses, and varied facade treatments. (See pp. 5-8, *Facade Treatment*).

**Site Design.** Scale reductions of large buildings shall be reinforced by appropriate site features such as pedestrian shelters, large trees, clearly-defined entrances, and site furnishings.

**Architectural Details.** Architectural details shall be used to reduce the scale and uniformity of large buildings. Elements such as colonnades, pilasters, gable ends, canopies, display windows, and light fixtures can be effective measures to add human scale.

**Facades and Exterior Walls.** Horizontal facades greater than too feet in length shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade and extending at least 20% of the length of the facade. Nor uninterrupted length of any facade shall exceed 100 horizontal feet.

Other devices to add interest to long walls include strong shadow lines, changes in rooflines, pilasters and architectural details, patterns in the surface material, and wall openings. All facade elements shall be coordinated with the landscape plan to ensure balance, proportion, and continuity.

Ground floor facades that face public streets shall have display windows, entry areas, or other such transparent features along 40% or more of their horizontal length.



*The mass of this large building has been reduced by a columns and subtle changes in geometry.*



*Main entrances on large-scale buildings shall be designed as prominent focal points to orient customers.*



*A large retail establishment that still projects the image of a big box, despite the canopy and entrance treatment.*



**Smaller Retail Stores.** Where principal buildings contain additional, separate stores which in total occupy less than 20,000 square feet of gross floor area, with separate, exterior customer entrances, the following standards shall apply:

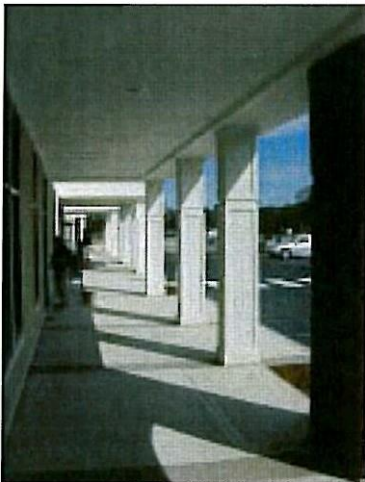
- The street level facade of such stores shall be transparent between the height of three feet and eight feet above the walkway grade for no less than 40% of the horizontal length of the building facade of such additional stores.
- Windows shall be trimmed and include visually prominent sills, shutters or other such forms of framing.

**Entryways.** Each principal building shall have a clearly defined, highly visible customer entrance featuring three or more of the following:

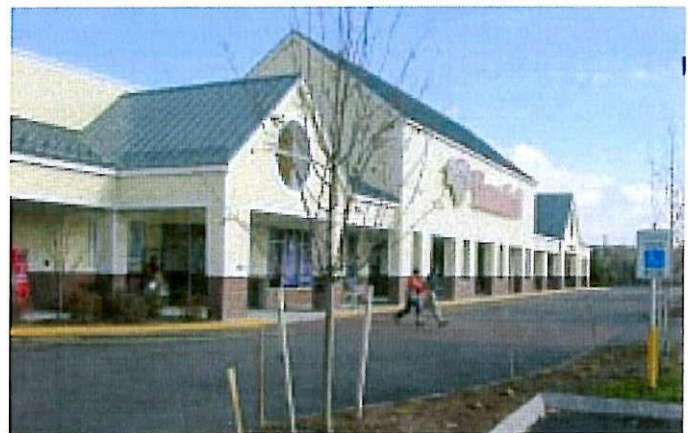
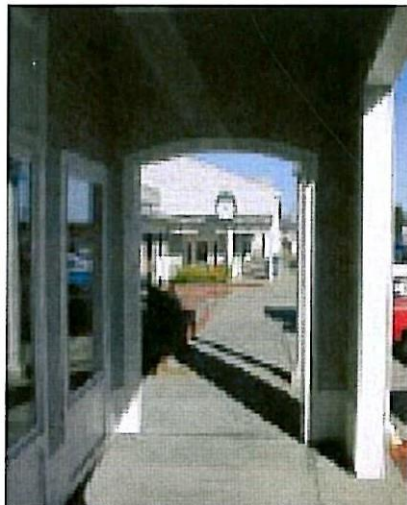
- Canopies
- Overhangs or recesses provide shelter
- Arcades that lead to entrances
- Raised corniced parapets over the door
- Peaked roof forms
- Outdoor patios
- Architectural details such as tile work and moldings which are integrated into the building structure and design, or
- Other features which are designed to add scale and visual interest to the buildings.

Where additional stores are located in the principal building, and customer entrances to such stores are outdoors, each additional store shall conform to the above requirements. All components used to enhance entranceways or provide a distinctive look shall be designed or detailed as integral parts of the whole building.

**Multiple Entrances.** All sides of a large scaled building that face an abutting public or private street shall feature at least one customer entrance to facilitate pedestrian access, minimize walking distances from cars, and reduce the scale of facades. Where a building abuts more than two streets, this requirement shall apply to only two sides of the building, including the side facing the primary public street and another side facing a second street.



*Arcades call be an effective way to add little scale to large buildings. Architectural detailing and shadow patterns creates an inviting space.*



*The entrances to this larger grocery store are emphasized by projecting canopies, distinctive openings, and a covered arcade.*

**Features and Amenities.** Large scale buildings shall contribute to the establishment or enhancement of the pedestrian environment by providing at least two of the following:

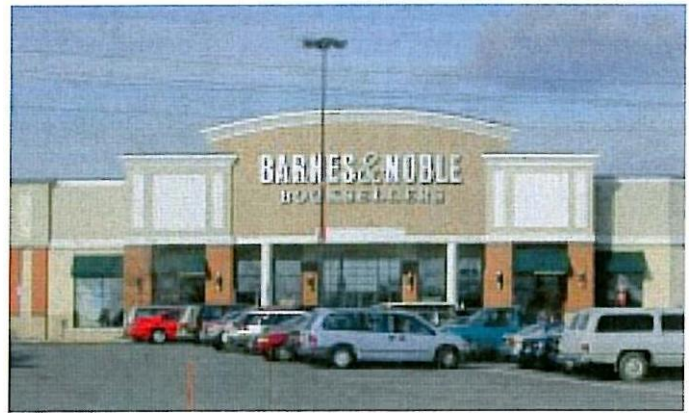
- Patio/seating area
- Pedestrian area with benches
- Window shopping walkway
- Outdoor playground area
- Kiosk area
- Water fountain
- Clock tower
- Other focal features or amenities that enhance the pedestrian environment.

Any such area shall have direct access to the public sidewalk. Such features shall be constructed of materials that are equivalent in quality to the building and landscape.

**Outdoor Sales and Storage.** Where allowable, areas for outdoor sales, storage, or service shall be designed as an integral part of the site and architectural plan, and shall meet the Service Areas standards (See Site Planning, *Service Areas*).

**Cart Storage.** Shopping carts must be stored inside the building, or in 'cart corrals', out of the way of pedestrian circulation. Cart storage areas shall meet the standards for accessory structures.

(See *General/Architectural Principles*, p. 2)



*Examples of large retail buildings that have been effectively designed to avoid the appearance of a 'big box'.*



*This retail store, attached to a large grocery store, has been designed as a11 individual building, with a separate entrance and architectural detailing. A covered walkway connects all the storejw1ts.*



## OBJECTIVES

Linear commercial structures (e.g., strip shopping centers, multi-tenant offices, or commercial buildings) shall be designed with facade and roofline elements that reduce their scale and add architectural interest.

## DESIGN STANDARDS

**Design.** Buildings with multiple storefronts (e.g., strip shopping centers, one story office buildings) shall be visually unified through the use of complimentary architectural forms, similar materials and colors, consistent details, and coordinated signage. Variations in the front setbacks are strongly encouraged to add visual interest,

create spaces for common entries, outdoor eating / social spaces, and landscaped spaces.

**Scale.** Linear structures shall include architectural elements designed to provide shelter, encourage pedestrian movement, and visually unite the building. These can include covered walkways, open colonnades, arcades, and similar features.

**Entrances.** Pedestrian entrances to each building shall be clearly delineated to convey a sense of individuality. This can be accomplished by architectural detailing, roofline breaks, landscaping, lighting or a combination of these elements. Where covered walkways are used, they should extend the full length of the facade.



*Covered walkways add a shadow line which can reduce the scale of a long building and unify the facade.*

**Rooflines.** Variations in rooflines, detailing, and building heights shall be included to break up the scale of connected linear buildings.

**Focal Points.** Linear commercial buildings shall include a focal point \_such as raised entrance way, clock tower, or other architectural elements - to add visual interest and help reduce the scale of the building.



*Colonnades add visual interest to linear buildings, while providing scale and protection from the elements.*



*A commercial building that uses a clock tower as a focal point. Offset in the roofline helps to break up the mass of the building*



*A multi-tenant building with no variation in the roofline or facades to break up the scale.*





*A linear building that has been effectively scaled down by variations in the roofline and facade. Each storefront is treated as a separate entity. Variety in the use of materials adds visual interest to all facades. The covered walkway encourages pedestrian movement and window shopping.*

## OBJECTIVES

Service stations, car washes, and convenience stores shall be designed with facade and roofline elements that reduce their scale and add architectural interest.

## DESIGN STANDARDS

**Orientation.** Service stations, convenience stores, and similar uses shall be sited to face the street. Pump islands and canopies shall be located in the rear so the primary building is the major feature seen from the road.

**Architecture.** The architecture shall be designed so all four sides are in compliance with these design guidelines. Windows or other forms of fenestration shall be included on the facade facing the street which shall be treated as a front facade (see *Facade Design*, p. 6-7). The front facade shall include a pedestrian entrance from the street.

**Canopies.** Service station canopies shall be visually compatible with the main structure through consistency in roof pitch, architectural detailing, materials, and color. Pitched roofs and fascia trim are preferred for canopies. Bands of bold color on the canopy and backlighting inside the canopy are prohibited.

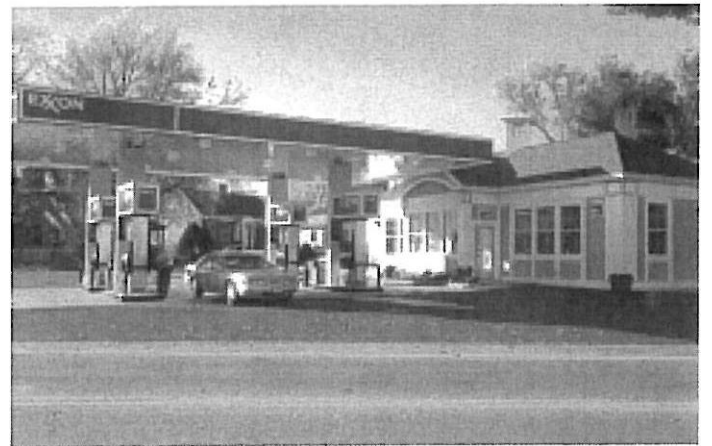
**Large Openings.** Openings for car washes or service bays must be integrated with the design of the building and sited so they are not directly visible from public roadways or adjacent residential areas.

**Site Design.** The site design must address the issues of off-site noise exposure, underground drainage systems to keep water off public streets (in the case of car washes), snow storage, circulation patterns, room for vehicle stacking, and other issues peculiar to these uses.

**Pedestrian Circulation.** Connections to the public sidewalk shall be included in the site plan to encourage pedestrian use. Access routes leading to or from service stations and convenience stores shall minimize conflicts with pedestrian circulation.



*This service station canopy is designed to be an extension of the building. The columns, roofline, details, and signage contribute to a sense of continuity in the architecture.*



*The flat-roofed canopy bears no design relationship to the well-detailed convenience store in terms of form, materials, or architectural style. The store was designed to fit into its residential surroundings.*



## OBJECTIVES

In the HP, RH and BOR Districts, large scale, multi-story office, research and hi-tech buildings (40,000 square feet or greater) are allowed and encouraged. These buildings shall be designed as attractive pieces of commercial architecture that help define the Town of Scarborough. Given the context and type of development in the HP, RH and BOR Districts, the Planning Board may apply alternative design standards to large scale office, research and hi-tech buildings which vary from a few specific sections of the Design Standards. These alternative standards are outline below. Other than these alternatives, the remainder of the Design Standards for Scarborough's Commercial Districts shall apply.

## DESIGN STANDARDS

**Permitted Materials.** Metal panels and brushed aluminum are contemporary materials used in large scale office, research and hi-tech building construction. The Planning Board may allow non-reflective metal panels and brushed aluminum to be incorporated into the facade design of these structures. These materials shall be supplemented with the tradition, high quality building materials common to northern New England to maintain a regional vernacular and sense of identity throughout Scarborough.

**Roof Treatment.** Under the Flat Roofs Standard in the ROOFLINE Section (pp. 13), flat roofs are discouraged in most applications. In the HP, RH and BOR Districts, flat roofs are anticipated and acceptable on office, research and hi-tech buildings which are three or more stories in height. In these instances, changes in the roofline, pilasters, trim and other architectural detailing shall be used to vary and break up a flat roofline. Further, roof-mounted equipment must be screen from public view in accordance with the Roof-Mounted Equipment Standard on pp. 13.



*Examples of multi-story office, research and hi-tech buildings that have employed metal panels and brushed aluminum, coupled with brick and other traditional northern New England building materials.*



*Each of these buildings exhibit predominately flat roofs, but the roof lines vary with the introduction of different roofline elevations and screened roof top equipment and mechanicals.*



## OBJECTIVES

Drive-throughs shall be subordinate to the design of the main building to maintain the pedestrian orientation of the structure. Architectural design and circulation planning for buildings with drive-throughs require careful consideration to integrate them into the Scarborough environment. Drive-through operations and other automobile-oriented facilities shall be designed with facade and roofline elements that reduce their scale and add architectural interest.

## DESIGN STANDARDS

**Drive-Throughs.** Where drive-through windows are allowed, they shall be incorporated into the design of the building through their scale, color, detailing, massing, and other architectural treatments.

**Location.** Drive-throughs shall avoid facing public or private roadways and shall generally be located at the side or rear of the building. Where drive-throughs are located at the rear, the site should be designed to ensure the safety of the employees and patrons.

**Canopies.** Drive-through canopies shall be visually compatible with the main structure. This can be accomplished through consistency in roof pitch, architectural detailing, materials, and color. Pitched roofs and fascia trim are preferred for canopies. Bands of bold color on the canopy and backlighting inside the canopy are prohibited.

**Pedestrian Circulation.** Access routes leading to or from drive-through facilities shall minimize conflicts with pedestrian circulation. Where walkways must cross driveways, motorists shall be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving, or other devices.



*These banks' drive-through windows have been designed as integral parts of the buildings. They repeat the rooflines, forms, and materials.*



## BACKGROUND

Landscaping shall be an integral part of all site plan developments. Trees, shrubs, and other landscape elements can be used to accentuate buildings, create a sense of identity, and provide human scale. The applicant shall carefully evaluate the physical characteristics of each site and each plant when making the final selection to ensure that the plantings will survive and thrive in their selected location.

A Scarborough Plant Materials List has been developed to encourage property owners to look at many options in both form and species (see pp. 9-10). The list shall be considered a starting point in selecting plants.

### Landscape Goals

- Reinforce the identity of Scarborough's commercial districts through the use of plant materials in scale with their surroundings.
- Enhance the attractiveness and scale of commercial development through the use of colorful plant materials with interesting forms and massing.
- Help define areas where pedestrians are safely separated from the road.
- Reinforce wayfinding by emphasizing entrances and circulation patterns.
- Increase the attractiveness of parking lots by reducing their scale, providing shade, and adding seasonal interest.
- Provide screening for less attractive parts of a site or incompatible land uses.

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*Landscaping is an integral part of site development. With proper planning, trees, shrubs, and other plantings can provide shade, emphasize entrances, screen undesirable views, and add yearlong color and interest.*



## OBJECTIVES

~~Landscaping shall be used to complement the architecture, enhance human scale, reinforce circulation paths, highlight entrances, provide shade, and add seasonal interest. Scarborough's commercial districts shall be unified by a rich variety of street trees, flowering shrubs, and masses of color.~~

## DESIGN STANDARDS

**Preparation.** ~~As part of the Site Plan application for site improvements involving parking lots with more than ten cars and/or more than 2,000-SF of building, a landscape plan shall be prepared by a landscape architect registered in Maine, or other qualified professional familiar with local growing conditions. The Planning Board, at their discretion, may require a peer review of landscape plans.~~

**Selection.** ~~The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. All plantings shall be resistant to insect infestation, drought, disease, roadside salt, and auto emissions, and hardy to Maine winters.~~

~~Plant material shall be selected with consideration to public health and safety. Plants to be avoided include those with poisonous fruits, large thorns, or invasive growth patterns, or shrubs that could provide hiding places along pathways or block the view of moving vehicles.~~

**Coordination with Utilities.** ~~The planting plan shall illustrate how plantings shall be coordinated with the location of underground and overhead utilities and lighting. The planting plan shall show screening for transformers, propane tanks, and similar utilitarian elements.~~

**Variety.** ~~A variety of plant materials that exhibit seasonal color and interesting texture is encouraged to create a distinctive, yet low maintenance environment. Plantings plans shall strike a balance between monoculture (the use of a single species) and too much variety. A list of suggested plant is included on pages 9-10.~~

**Simplicity.** ~~Planting design shall stress simplicity in form and limit the number of species. Shrubs, perennials, annuals, ornamental grasses, etc. used along the roadways should be planted in masses or 'drifts' that emphasize colors and textures, rather than used as single specimens.~~

**Irrigation.** ~~The installation of underground irrigation is encouraged in front setbacks, public spaces, and other highly visible areas. It shall be coordinated so it does not cause overflow or flooding in pedestrian use areas, such as walkways, sidewalks, or parking lots.~~

**Integration.** ~~Plantings shall be massed to soften edges, corners, and pavement areas, and to integrate the building into the landscape.~~

**Boulevard Effect.** ~~Large spreading deciduous trees shall be planted in appropriate locations along Scarborough's roads to define the edge of the travel way, provide shade for pedestrians, clean the air, and add scale to commercial corridors.~~

**Existing Trees / Plants.** ~~Wherever practical, existing or unique trees or other significant plantings shall be preserved. The landscape plan shall illustrate which vegetation will be preserved and what protection measures will be taken during construction. Transplanting and reusing trees and other plantings is strongly encouraged.~~



*An example of a simple planting plan that features drifts of perennials and ornamental grasses to accentuate the front of a medical office building.*

**Safety.** The ultimate form and height of plantings shall be considered so they will not create unsafe conditions or block sight lines for pedestrians, bicyclists, or motorists as they mature.

**Rocks.** Large rocks shall be used as landscape elements very sparingly and only as accents in mass plantings. Where used, they shall be buried for at least half of their depth.

**Ground Cover.** Extensive areas of bark mulch shall not be used as a substitute for live ground cover. Where mulch is used, it shall consist of dark, decomposed shredded bark, with pieces less than 1" in any one dimension.

**Buffers & Screening.** Plant materials and other landscape elements shall be used to create suitable buffers between residential and commercial properties. The design of buffers shall consider the appearance from both commercial and residential viewpoints. Evergreen plantings are particularly effective for year round buffering.

**Minimum Plant Sizes.** Unless otherwise required by site conditions, plant materials shall meet the following minimum sizes:

Canopy Trees	2-1/2" caliper
Flowering Trees	2" caliper
Evergreen Trees	5-7' height
Deciduous Shrubs	24" height
Evergreen Shrubs	18" ht/spread
Perennials	2-year clumps
Ornamental Grasses	2-year clumps
Ground Covers	3" pots



*Existing trees were presented to maintain visual interest, provide shade, and retain site character.*

The Planning Board may require larger plants for special locations, such as within the Route One ROW and along Haigus Parkway. The use of bare root plant material shall be avoided.

**Guarantee Period.** All lawns and plant materials shall be guaranteed for a period of not less than 2 years. The developer shall submit a copy of a guarantee and a contract with the landscape contractor, indicating the terms of the guarantee period, or may obtain a letter of credit.

**Resources.** The following sources are recommended for additional information on the planting and care of trees:

Architectural Graphic Standards. Planting Details, James Urban, ASIA. pp. 178-182. 1998.

Principles and Practice of Planting Trees and Shrubs. International Society of Arboriculture. 1997.

American Standard for Nursery Stock: ANSI Z60.1-1996. American Association of Nurserymen. 1997.



*The entrance to this medical building is reinforced by plantings that provide seasonal interest.*





*Examples of landscape improvements for large office and warehouse buildings. The emphasis is on preservation of existing trees, simple plantings, and earth berms to help reduce the scale of the buildings.*



## OBJECTIVES

Landscaping is necessary in parking lots to improve the visual appearance, reduce the scale of paved areas, define edges, provide shade, and add seasonal interest. Trees, shrubs, and ornamentals shall be planted in large groups, or drifts, appropriate to the scale of the space.

## DESIGN STANDARDS

**Total Landscape Area.** 10-15% of the total area of a parking lot shall be landscaped. In general, larger and more visible parking lots shall have more intensive landscape treatments. Driveways leading into and around parking lots are not calculated in determining the area of a lot. The Planning Board will have discretion in the amount of landscaping required.

**Undesirable Plant Materials.** Trees that may damage automobiles (dripping sap, messy fruit, or hard seeds such as acorns) are discouraged in or around parking lots.

**Location of Trees.** Trees in parking lots shall be planted in informal groups, straight rows, or irregular groupings as space permits, or concentrated in certain areas. Trees shall be planted a minimum of five feet from the end of parking lot islands.

**Screening.** Parking lots shall be separated from the street by plantings, earth berms, walls, and/or other landscape elements to minimize the view of vehicles, while still allowing the public to see the building.

**Safety.** Where trees abut pedestrian walkways or places where people will be walking in parking lots, their lower branches shall be pruned to at least eight feet above the paved surface to avoid becoming an obstacle. Shrubs in parking lot islands shall not exceed 3' in height to avoid blocking visibility.

**Parking Stall Separation.** Landscaped areas used for separation between banks of parking stalls shall be a minimum of nine feet in width.

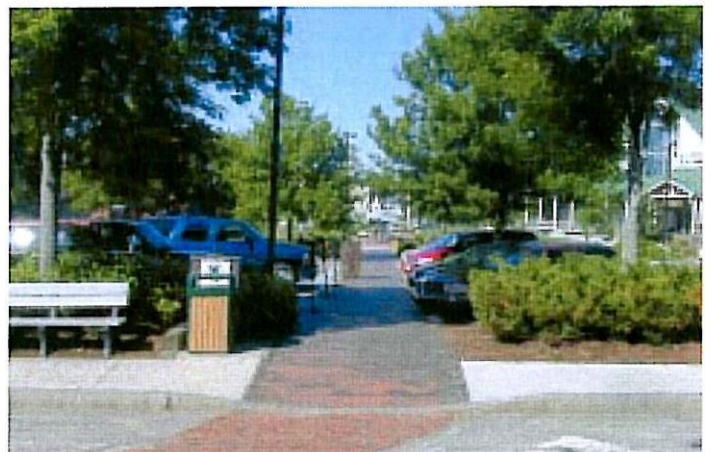
**Snow Storage.** Landscape materials surrounding parking lots and in islands shall be able to tolerate large quantities of snow stored during winter months. Delicate plant material shall not be used in areas where they are likely to be buried under snow.



*Plants selected for parking lots shall be able to withstand severe growing conditions and weather*



*A low earth berm effectively screens a parking lot of Ornamental trees or plantings added to the berm would provide a greater degree of attractiveness, as well as separation from the roadway.*



*These trees have been pruned so they minimize interference at*  
**Landscaping/5**

eye level for both drivers and pedestrians.







*Parking lot islands shall be large enough for frees to achieve full maturity and to prevent damage from car doors and snowplows.*



*This island of hostas adds a spot of color to the parking lot and can withstand harsh winter conditions.*



*Parking lot islands provide an opportunity to use a variety of plant species to break up the mass of pavement and introduce interesting textures.*



*Large groups of shrubs plus more trees would have screened the parking lot and resulted in a more attractive setting.*



## OBJECTIVES

Trees shall be used throughout Scarborough's commercial district, planted within the right of way, near buildings, and throughout parking lots. Trees shall be sited to achieve full maturity and display their natural form. Planting plans shall emphasize large shade trees within or near the rights of way in order to create a more unified streetscape.

## DESIGN STANDARDS

**Suitability.** Trees shall be resistant to insect infestation, drought, disease, roadside salt, and auto emissions. All plant material shall be suitable to Scarborough's growing conditions. A list of street trees for Scarborough is included in the Scarborough Plant Materials List, *pp.9-10*.

**Coordination with Route One Plans.** Planting plans for commercial properties along Route One shall be coordinated with the recommendations in Guiding Growth and Public Improvements on Route One, which was adopted as part of the Scarborough Comprehensive Plan, 1994.

**Coordination with Architecture.** Trees shall be carefully selected and located to complement the building elevation without blocking storefronts, signs, or lighting.

**Roadside Plantings.** Trees shall be planted a minimum of 5' from the edge of the roadway. Trees and other landscaping planted at intersections shall preserve an adequate sight triangle as determined by the traffic engineer.

**Pedestrian Movement.** The lower branches of trees planted near pathways and sidewalks shall be at least eight feet above the pavement to minimize interference with pedestrian movement throughout the year.

**Root Zones.** Trees shall be planted in locations where their root development and branching patterns will not interfere with window displays, signage, underground or overhead utilities, streets, and sidewalks.



*Trees have been pruned to prevent interference with pedestrian movement. An adequate amount of room has been provided to accommodate root development.*



*Masses of trees can help tie buildings into the site and provide attractive patterns of light and shade.*



*These mature maples were carefully saved during the development of this shopping area. The trees add character, visual interest, and shade.*

## OBJECTIVES

A variety of appropriate shrubs and ornamental plantings shall be used throughout the commercial districts to add seasonal color, provide visual interest, help define spaces, screen undesirable elements, and emphasize circulation routes.

## DESIGN STANDARDS

**Variety in Plantings.** The use of flowering shrubs, evergreen shrubs, perennials, annuals, vines, ornamental grasses, and other plant material is highly recommended, in addition to street trees, evergreen trees, and ornamental trees. A listing of plantings that is suitable for Scarborough is provided at the end of this chapter. See **Scarborough Plant Materials List**, pp. 10-11.

**Selection.** The selection of plantings shall consider ultimate height and spread, maintenance, pest and disease tolerance and their nuisance potential (severe thorns, excessive leaf litter, etc.). Invasive species shall not be used.

**Foundation & Wall Plantings.** Planting beds are recommended along exposed building edges, foundations and uninterrupted walls. Plantings shall provide either a formal pattern or a naturalistic blend of heights, colors, and textures for visual relief.

**Accent Plantings.** The installation of special planting beds is encouraged in appropriate areas for visual accents in the landscape. These can include daylily beds, butterfly gardens, bog gardens, fragrant gardens, shade gardens, yellow foliage gardens, early blooming gardens, texture gardens, etc.



*Ornamental grasses can provide an effective, low maintenance way to add year round texture.*

**Mass Plantings.** Shrubs and perennials shall generally be planted in large masses or 'drifts,' rather than as individual specimens, to provide a pleasing effect for both motorists and pedestrians.

**Safety.** Plant material shall be selected with due consideration to public health and safety. Avoid plants with poisonous or messy fruits or leaves, large thorns, or overly aggressive growth patterns. Large shrubs which could provide hiding places along pathways or block the view of moving vehicles shall be avoided.



*Masses of daylilies (above) or groups of flowering shrubs (below) make a bright, colorful statement in front of these commercial buildings.*



## OBJECTIVES

The planting plans presented to the Planning Board shall anticipate a 3-8 year growing cycle to achieve maturity for shrubs, and ~~15-20~~ 20 years or more for trees. Proper maintenance shall be assured so the site continues to improve as the landscaping achieves maturity. The Site Plan shall be designed and plantings selected with due consideration for maintenance requirements.

## DESIGN STANDARDS

**Maintenance Plan.** As part of the Site Plan application for buildings > 2,000 SF, a written maintenance plan shall be provided for all landscape elements to be installed on the property.

**Details of Plan.** Topics to be addressed shall include (but not be limited to) initial installation, guarantee period, replacement policy, periodic and seasonal maintenance, special considerations, use of pesticides and fertilizers, irrigation, and seasonal displays.



*Shrubs have been excessively pruned so their natural form is no longer apparent.*



*A mature shrubs next to a driveway could cause problems with visibility for cars exiting the driveway.*

**Natural Forms.** All plant material shall be allowed to achieve their natural forms without excessive pruning. Shaping evergreen shrubs into tight geometrical forms shall be avoided.

**Low Maintenance Materials.** The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. Planting characteristics to be considered include: drought resistance (except where irrigated), tolerance to auto emissions, disease and insect resistance, lack of thorns that could trap debris, and relatively light leaf litter for ease of fall cleanups.

**Replacement Planting.** Where plant materials specified on the planting plan do not survive or are damaged, they shall be replaced and/or reinforced in accordance with the two-year performance guarantee to maintain conformance with the approved planting plan and to provide the necessary landscape effect.



*Care must be taken to insure that trees are given room to achieve full maturity and natural form, illustrated at right. Tight planting pockets and installation too close to buildings may put stress on trees and plants and can present a problem when removing dead materials (below).*



## OBJECTIVES

The plants on this list have been derived from a number of sources to inspire a greater landscape variety in Scarborough. The final selection of materials shall consider the specific growing requirements and characteristics of each plant and the conditions present within the site.

## STREET TREES

Aesculus hippocastanum	Baumanii Horsechest.
Acer campestre	Hedge Maple
Acer ginnala	Amur Maple
Acer x. freemanii	Armstrong Maple
Acer x. freemanii	Autumn Blaze Maple
Acer rubrum	Red Maple
Acer saccharum	Sugar Maple
Acer tataricum	Tartarian Maple
Acer triflorum	Three-flower Maple
Amelanchier	Shadblow
Betula nigra	River Birch
Carpinus betula fastig.	Upright Hornbeam
Carpinus caroliniana	American Hornbeam
Cercidiphyllum japon.	Katsura Tree
Cladrastis lutea	Yellowwood
Corylus colurna	Turkish Filbert
Crataegus crusgalli	Cockspur Hawthorn
Fraxinus Americana	White Ash: 'Aut. Purp'
	'Aut. Applause'
Ginkgo biloba	Maidenhair Tree (m)
Gleditsia triacanthos	Thornless Honey Locust
Gymnocladus dioica	Kentucky Coffee Tree
Liriodendron tulipifera	Tulip Poplar tree
Magnolia acuminata	Cucumber tree
Prunus accolade	Accolade Cherry
Prunus maackii	Amur Chokecherry
Pyrus calleryana	Cleveland Pear
Quercus alba	White Oak
Quercus bicolor	Swamp White Oak
Quercus coccinea	Scarlet Oak
Quercus imbricaria	Shingle Oak
Quercus palustris	Pin Oak
Quercus robur	Upright English Oak
Quercus rubra	Red Oak
Quercus shumardi	Shumard Red Oak
Sophora japonica	Regent Scholartree
Tilia cordata	Littleleaf Linden
Ulmus parvifolia	Lacebark Elm
Ulmus Americana	Princeton American
Elm; Frontier Elm	
Zelkova serrata	Greenvase Zelkova

## ORNAMENTAL TREES

Acer campestre	Hedge Maple
Acer ginnala	Amur Maple
Aesculus carnea	Red Horsechestnut
Amelanchier Canadensis	Serviceberry
Carpinus betulus	European Hornbeam
Carpinus carolinianum	American Hornbeam
Celtis occidentalis	Hackberry
Cornus kousa	Kousa Dogwood
Cornus mas	Cornealancherry
	Dogwood
Cotinus obovatus	American Smoketree
Crataegus crus galli	Cockspur Hawthorne
inermis 'cruzam'	
Crataegus viridis	Winter King Hawthorn
Halesia Carolina	Carolina Silverbell
Maaeki amurensis	Maaekia
Magnolia loebneri	Loehner Magnolia
Magnolia stellata	Star Magnolia
Malus species	Crabapple
Nyssa sylvatica	Tupelo
Ostrya virginiana	Ironwood
Phellodendron arboretum	Amur Corktree
Prunus sargentii	Sargent Cherry
Prunus subhirtell	Higan Cherry
'Autumnal is'	
Pyrus calleryana	Bradford Pear
Sorbus alnifolia	Korean Mountain Ash
Syringa reticulata	Tree Lilac 'Ivory Silk'



## EVERGREEN TREES

Abies concolor	White Fir
Abies fraseri	Fraser Fir
Picea abies	Norway Spruce



~~Picea glauca~~  
~~Picea omorika~~  
~~Picea pungens~~  
~~Pinus resinosa~~  
~~Pinus strobes~~  
~~Thuja occidentalis~~  
~~Tsuga Canadensis~~  
~~Tsuga caroliniana~~

~~White Spruce~~  
~~Serbian Spruce~~  
~~Colorado Spruce~~  
~~Red/Norway Pine~~  
~~Eastern White Pine~~  
~~American Arborvitae~~  
~~Candian Hemlock~~  
~~Carolina Hemlock~~



## FLOWERING AND ORNAMENTAL SHRUBS

~~Aesculus parviflora~~  
~~Aronia arbutifolia~~  
~~Berberis thunbergii~~  
~~'Crimson Pygmy'~~

~~Bottlebrush Buckeye~~  
~~Red Chokeberry~~  
~~Barberry~~

~~Cotinus coggygria~~  
~~Cotoneaster adpressa~~  
~~Cotoneaster divaricatus~~  
~~Cotoneaster horizontalis~~  
~~Deutzia gracilis~~  
~~Enkianthus campanulat.~~  
~~Eunymus alatus comp.~~  
~~Forsythia 'Sunrise'~~  
~~Hydrangea paniculata~~  
~~Ilex verticillata~~  
~~Myrica pensylvanica~~  
~~Potentilla fruticosa~~  
~~Prunus maritime~~  
~~Rhododendron species~~  
~~Rosa rugosa~~  
~~Viburnum prunifolium~~  
~~Viburnum sargentii~~  
~~Viburnum trilobum~~  
~~Xanthorhiza~~  
~~simplicissima~~

~~Common Smoketree~~  
~~Creeping cotoneaster~~  
~~Spreading cotoneaster~~  
~~Rockspray Cotoneaster~~  
~~Slender Deutzia~~  
~~Redveined Enkianthus~~  
~~Dwarf Burning Bush~~  
~~Sunrise Forsythia~~  
~~Panicle Hydrangea~~  
~~Winterberry~~  
~~Bayberry~~  
~~Bush Cinquefoil~~  
~~Beach Plum~~  
~~Rhododendron species~~  
~~Beach Rose~~  
~~Blackhaw Viburnum~~  
~~Sargent Viburnum~~  
~~Amer. Cranberrybush~~  
~~Yellowroot~~  
~~Deschampsia~~

## PERENNIALS

~~Achillea millefolium~~  
~~Aster x frikartii~~  
~~Astilbe varieties~~  
~~Coreopsis vertidillata~~  
~~Echinacea purpurea~~  
~~Hemerocallis species~~  
~~Liatris spicata~~  
~~Malva alcea 'Fastigiata'~~  
~~Perovskia atriplicifolia~~  
~~Rudbeckia 'Goldsturm'~~  
~~Sedum telephium~~

~~Yarrow~~  
~~New England Aster~~  
~~Astilbe~~  
~~Moonbeam Coreopsis~~  
~~Purple coneflower~~  
~~Daylilies~~  
~~Gayfeather~~  
~~Hollyhock Mallow~~  
~~Russian Sage~~  
~~Black Eyed Susan~~  
~~Autumn Joy Sedum~~



## ORNAMENTAL GRASSES

~~caespitosa Festuca~~  
~~ovina 'glauca'~~  
~~Miscanthus sinensis~~

~~Tufted Hair Grass~~  
~~Purple Silver Grass~~





## BACKGROUND

Signs play a central role in providing information, wayfinding, and setting the tone for Scarborough's commercial districts. They inform motorists and pedestrians, while having a direct effect on the overall appearance of the roadway.

### Signage Goals

- Provide basic, legible information about commercial establishments with attractive, highly legible signage.
- Encourage forethought in the design, size, placement, and graphic format of all signage used in the commercial areas of Scarborough.
- Create distinctive commercial corridors and nodes, where signage is compatible with quality architecture and site design.
- Reduce visual clutter along Scarborough's major roadways.
- Protect the investment of commercial interests throughout Scarborough by establishing a quality benchmark for future signage, in keeping with the design standards.

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*A simple, attractive sign that relates to the buildings style and materials.*



## OBJECTIVES

Commercial uses in Scarborough shall be identified by attractive, legible signs that serve the needs of the individual business, complement the site and the architecture, and are legible to both the motorist and pedestrian. All new and replacement signs erected within Scarborough's commercial districts shall be designed to meet these standards.

## DESIGN STANDARDS

**Signage Plan.** A Signage Plan shall be submitted as part of the Site Plan application. It shall be developed by design professionals experienced in commercial signage or environmental graphics. The applicant shall expect to resubmit the plan to the planning staff if the building's tenant is unknown at the time of application.

**Compatibility.** Sign shall be designed to achieve a high level of visual compatibility with the building(s) and its surroundings through the use of similar detailing, form, color, lighting, and materials.

**Design.** The shape of the sign shall complement the architectural features on the building. Simple geometric shapes are preferred for all signage. Signs shall be trimmed and detailed to complement the building.

**Lettering Size.** As a general rule, the minimum lettering size for identification signs shall be six inches in height. Smaller letters are generally unreadable at high speeds and may require motorists to slow down to read them, which could potentially be a safety hazard.

**Location.** Signs shall be mounted in locations that do not block motorists' line of sight or create a hazard for pedestrians or bicyclists. Roof mounted signs are strongly discouraged. Roof mounted signs that project above the roofline are prohibited.

**Street Numbers.** The principal site identification sign shall contain the street address shown in a prominent location to facilitate wayfinding and 911 emergency response.

**Advertising Features.** Objects other than signs designed primarily to attract public attention are prohibited in the commercial district because they distract motorists and contribute to visual clutter. Examples of prohibited advertising features include greater-than-life size models of food or other products, replicas of spokes-people associated with commercial products, rows of flags or banners, and internally-lit bands of color.

**Standard Note.** Any modifications to signage that has been approved by the Planning Board shall comply with the Standard Note. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.



*These discreet facade-mounted signs are well-integrated into their commercial buildings.*







*Highly legible signs near roadways characterized by simplicity in materials, forms, and letting.*



*Internally lit letters and logos are preferred over whole panels. Signage is scaled to the architectural elements that surrounds it.*

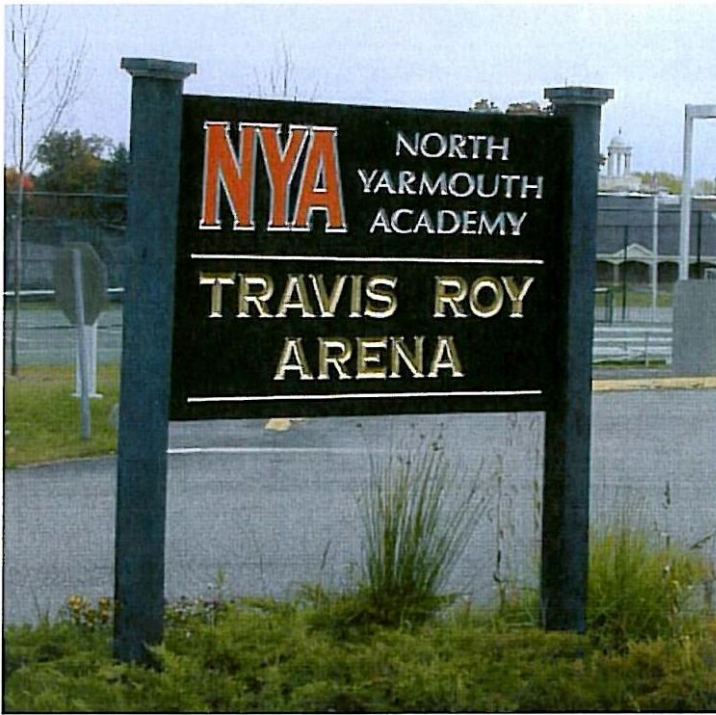


*This site directional clearly identifies destinations with a minimum of wording, allowing motorists to make decisions without having to stop.*



*The main sign provides enough information to orient people. The sign would be more legible without the lower panels.*





*These signs achieve compatibility through the repetition of form, detailing, and materials.*

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A tall, black signpost for 'Speedy Gas Stop' stands in a parking lot. The sign features a red octagonal logo with 'SPEEDY GAS STOP' in white. Below the logo, a yellow sign displays 'REGULAR UNLEADED' and 'Cash Price' next to a large red '1.52'. Further down, a white sign shows 'UNLEADED PLUS' and 'Self Serve' next to a large black '1.60', and 'SUPER UNLEADED' and 'Self Serve' next to a large black '1.66'. A red sign below that says 'FREE AIR'. At the bottom, a white sign reads 'CASH &amp; CREDIT' and 'Same Low Price'. To the left of the signpost is a green and white vending machine with 'Spring' logos. In the background, a white van is parked, and a building with a 'ARMY STORE' sign is visible. The scene is set against a backdrop of trees and a clear sky.

**Signage/5**



## OBJECTIVES

Signs used to identify a business shall be kept simple and direct in message and content. They shall convey only the most essential information about the business. Motorists should not be distracted by signs containing excessive information.

## DESIGN STANDARDS

**Content.** Identification signs shall contain a maximum of either 30 letters or 7 bits of information. A bit can be a syllable or a symbol. Repetitious information between signs and buildings shall be avoided, regardless of the sign area allowed.

**Advertising.** The use of 'sponsor' logos, slogans, or other messages on a tenant sign to promote products or services other than the primary tenant, is strongly discouraged. If a sign is sponsored, the name of the sponsor and/or its logo shall not occupy more than 25% of the total face of the sign.

**Readerboards.** Readerboards, with stationary or electronic text, are strongly discouraged within Scarborough's commercial districts, and prohibited within the HPZ district. Where readerboards are part of a permanent sign, they shall contain no more than three lines of text. Lettering height shall be a maximum of 6". The readerboard shall be fully integrated into the overall sign design by virtue of its form, scale, color, and detailing. Readerboards will be considered part of the total signage area.



*Readerboards are strongly discouraged throughout the commercial districts.*



*A sign where the sponsor covers 75% of the sign area.*



*A typical sign treatment for a large retailer*



*National chains respond favorably to design standards.*



## OBJECTIVES

Facade mounted signs used to identify commercial properties shall provide the necessary information without overwhelming the building.

## DESIGN STANDARDS

**Design.** Facade mounted signs shall be designed as an integral element of the architecture. The shape and materials of the sign shall complement the architectural features on the building.

**Location.** Signs shall not be mounted in locations that obscure architectural details on the building. Signage shall be mounted on vertical surfaces without projecting above the fascia trim. In general, signs shall be located a minimum of 18" from the corner of the building.

**Hardware.** Signage shall be mounted with concealed hardware. Metal hardware shall be stainless steel or galvanized to prevent rust and corrosion that could stain or discolor the building. Where hardware will be painted to blend with the sign, rust inhibiting paint shall be used to prevent rust streaks.



*This sign is well integrated with the architecture, using only the essential information about the retailer.*



*For the same type of establishment, the sign in the lower example serves as a billboard, with extraneous information.*



*This facade-mounted sign integrates well with the building design. Its placement emphasizes the corner entrance.*



*Mounting hardware can emphasize a sign and greatly enhance the building's appearance.*

## OBJECTIVES

Multi-tenant commercial properties shall provide legible, attractive signs that help people identify the property without contributing to the visual clutter in the commercial district. Signage shall stress the identity of the place and de-emphasize individual tenants that occupy it.

## DESIGN STANDARDS

**Hierarchy of Signs.** A hierarchy of sign age shall be established to facilitate wayfinding and minimize site clutter. Multi-tenant properties shall be identified by a simple identification sign in a highly visible location.

**Identification Signs.** Multi-tenant buildings or multi-building sites shall have one identification sign conveying an overall identity for the property. This sign shall be located near the main entrance to reinforce circulation patterns and minimize visual clutter.

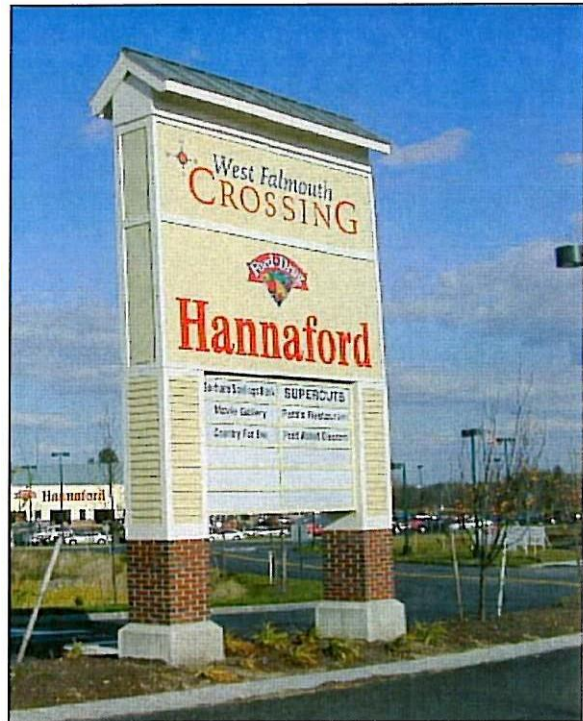
Identification signs that also list multiple tenants shall exhibit a logical hierarchy in the display of information (i.e., address, name of building/development, primary tenant, other tenants). Only essential information (the name of the tenant) shall be displayed on the main sign. Phone numbers, hours of operation, advertising slogans, etc. should not be listed.

**Street Numbers.** The main identification sign for multi-tenant properties shall incorporate the street address into the sign to facilitate wayfinding and 911 emergency response.

**Compatibility.** The design of multi-tenant signs shall be coordinated with the design of the principle building(s) in terms of color, materials, detailing, and style.

**Color Consistency.** Multi-tenant signs shall conform to a simple color and graphic palette in order to minimize the confusion and clutter of the sign. In general, multi-tenant signs shall have no more than three colors.

**Landscaping.** Landscaping surrounding signs for multi-tenant buildings shall be consistent with the landscape treatment for the entire property.



*Multi-tenant signs that establish a clear hierarchy within their shopping complexes. The detailing matches that found in the architecture. The lower sign is somewhat over scaled.*





The shopping center -c logo (at top) is overpowered by the individual signs below. There is too much information for a motorist to absorb while driving.



A multi-tenant sign with a clear hierarchy of information. The name of the plaza is at the top in bolder lettering. Individual tenants are listed on contrasting backgrounds for legibility.



The names of individual tenants on these signs (both above) compete for attention, making it easy difficult to read while driving by.



## OBJECTIVES

Lighting for externally-lit signs shall be designed as an integral part of the sign design. Lighting shall not create glare that would distract motorists or pedestrians, nor shall the degree of illumination disturb the surrounding residential areas or contribute to light pollution. See **Lighting Chapter** for additional information.

## DESIGN STANDARDS

**Light Level.** The illumination level on the vertical surface of the sign shall be bright enough to provide a noticeable contrast with the surrounding building or landscape without causing undue glare or reflection.

**Lighting.** Lighting fixtures shall be carefully located, aimed, and shielded so that light is directed only onto the sign facade. Lights shall not be aimed toward adjacent streets, sidewalks, or abutting properties. Ground-mounted lighting shall be screened or partially buried to minimize the view of the light source.

**Light Sources.** Top-mounted lighting fixtures shall be used if they are directed downward in a manner that hides the light source. Uplighting may be used if the fixture can be aimed to prevent spillage beyond the sign.

**Design.** Light fixtures and mounting devices shall be selected to complement the color and design of the sign and the architecture. Concealed light sources are strongly encouraged.



*In both examples above and below the top-mounted light fixtures are well-located, aimed, and shielded so that only the sign is lit*



*The lighting fixtures compliment the signs and the buildings*



*These top-mounted light fixtures are not well shielded nor integrated into the sign.*



## OBJECTIVES

Internally lit signs shall consist of light lettering and/or symbols on a dark background, and shall not act as light fixtures in their own right.

## DESIGN STANDARDS

**Design.** Internally-lit signs shall consist of light lettering and/or symbols set against a dark background to minimize the amount of light emanating from the sign. Internally-lit letters and symbols are preferred over whole panels that are internally lit. Letters and/or symbols on panels shall constitute no more than 40% of the sign's surface area.

**Mounting Systems.** Signs shall be mounted in a manner that provides adequate support for the weight of the sign. Mounting systems shall be designed to be compatible with the architecture in terms of color, forms, and style. Electrical connections, wiring, junction boxes, and other similar devices shall not be visible from pedestrian pathways or roadways.

**Intensity.** Internally-lit signs shall not act as light fixtures or cause glare on nearby pathways or roadways. Lighting levels shall not exceed 1 fc of illumination measured 10 feet from the base.

**Maintenance.** Signs shall be located where they can be easily maintained. Non-functioning bulbs shall be replaced immediately.



*An effective use of individual internally-lit letters to create a simple identity for a commercial building.*



*The sign's dark background and light lettering emphasize the bank's name while minimizing glare. Information occupies about 40% of the sign.*



*The white background of this sign will increase glow*

## OBJECTIVES

Most commercial uses in Scarborough's commercial districts rely upon temporary signs on occasion to convey specific information, alert the public to special events, or announce new businesses. The design and placement of temporary signs shall be closely related to existing sign systems, landscape improvements, and the building design to avoid visual clutter.

## DESIGN STANDARDS

**Content and Design.** The same standards established for the content and design of permanent signs shall be applied to temporary signage.

**Location.** Temporary signs shall be installed in locations that do not create a hazard for pedestrians or vehicles.

**Size.** The total size of temporary signs, regardless of function, shall not exceed 20% of the business' total signage area.

**Lighting.** Temporary signs shall not include any additional source of illumination, either internal or external.



*Examples of temporary signs that are prohibited.*

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-042.** Move approval of the second reading on the request to repeal in its entirety Chapter 415A Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement District; repeal in its entirety Chapter 415B Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement District, repeal in its entirety Chapter 410 Scarborough Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement Districts; and replace with amended Chapter 415 Impact Fee Ordinance with an effective date of July 1, 2024. *[Planning Director, Town Engineer]*

<i>Planning Director</i>	<i>Ought to Pass</i>
<hr/>	<hr/>
Sponsor	Recommendation
 <i>05/01/2024 - Vote: 6 Yeas. [Councilor Shupe Absent]</i>	
<hr/>	
First Reading/Vote	
 <i>06/26/2024</i>	
<hr/>	
Public Hearing	
 <i>06/26/2024 - Vote:</i>	
<hr/>	
Second Reading/Final Approval/Vote	

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

**ACTION ITEM: Order No. 24-042.****SUBJECT:**

Second reading on the to repeal, in its entirety, Chapter 415A Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement District; repeal in its entirety Chapter 415B Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement District, repeal in its entirety Chapter 410 Scarborough Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement Districts; and replace with amended Chapter 415 Impact Fee Ordinance with an effective date of July 1, 2024. *[Planning Director, Town Engineer]*

**PURPOSE:**

To review ordinance amendments to consolidate existing impact fees into one chapter, create a new recreation impact fee, repeal three Payne Road Impact fees and establish two new roadway impact fees with an effective date of July 1, 2024.

**BACKGROUND:**

State Statute 4354 Impact Fees (1987) authorizes municipality's to require construction of off-site capital improvements or the payment of impact fees instead. A municipality may impose an impact fee either before or after completing the infrastructure improvement.

The requirements may include construction of capital improvements or impact fees instead of capital improvements including the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities.

Applicable Infrastructure Facilities May Include:

- Wastewater collection and treatment facilities
- Municipal water facilities
- Solid waste facilities
- Public safety equipment and facilities
- Roads and traffic control devices
- Parks & other open space or recreational areas, and
- School facilities

Impact fees are intended to pay for the portion of new capital improvements that are needed to service growth. Fees must be reasonably related to the development's share of the cost of infrastructure or, if the improvements were constructed prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development. Fees are designed to pay for capital improvements, not maintenance, operating costs or service delivery.



Impact fee funds must be segregated from general revenues and a schedule to use the funds consistent with the capital investment component of the comprehensive plan must be established. A mechanism to refund impact fees that exceed costs or that were not used must also be established.

### **EXISTING ORDINANCES**

Scarborough began imposing impact fees on development in 1990 with traffic/roadway improvement fees that applied to the Payne Road corridor, which was part of a PACTS Regional approach to the corridor. Additional traffic impact fees have been added over the last 30 years.

The School Impact Fee was added in 2002. Many existing fees are outdated, or soon will be, as the improvements contemplated as the basis for the fee will be completed

- Chapter 415 Impact Fee Ordinance (2002, 2020)
  - Chapter 1 - General Provisions
  - Chapter 2 - School Impact Fees
- Chapter 415 A – Dunstan Corner Capital Improvement District (2006, 2011)
- Chapter 415 B – Haigis Parkway / Route One Capital Improvement District (2011)
- Chapter 410 Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement District (1990, 2017)

### **PROPOSED AMENDMENTS**

- Chapter 415 – Impact Fee Ordinance
  - Section I - General Provisions - Combined from all
  - Section II – School Impact Fees
  - Section III – Recreation Impact Fees (New)
  - Section IV - Reserved for Open Space
  - Section V - Roadway Impact Fees –
    - General Roadway Impact Fee Standards – Consolidated
    - Dunstan Corner District (MOVED)
    - Haigis Parkway / Route One District (MOVED)
    - Payne Road Area District 5 (MOVED)
    - Payne Road / Ginn Road District (NEW)
    - Payne Road / Nonesuch River District (NEW)
- Repeal Chapter 415 A – Dunstan Corner Capital Improvement District
- Repeal Chapter 415 B – Haigis Parkway / Route One Capital Improvement District
- Repeal Chapter 410 Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement District (includes Area 1, 2, and 3)

### **NEW TRANSPORTATION IMPACT FEE ANALYSIS**

As presented, the draft ordinance will require new development to pay 50% of the overall design and construction costs associated with capacity improvements along two areas on the Payne Road corridor. The existing Traffic Impact Fee Ordinance does not require new development to pay towards the significant traffic that is anticipated to utilize the Maine Turnpike Exit 42 to travel north on Payne Road to Scarborough's new developments. Improvements within Payne

Road Districts 1, 2, 3 and 4 will soon be complete, and these Districts will be repealed. Impact fees from the development community will now shift to the next pinch points in our transportation network along this essential corridor.

Requiring a Traffic Impact Fee that is 50% of the estimated overall design and construction costs for the two new Payne Road Traffic Impact Fee Districts is based on the following factors:

- 1) It is anticipated that projects of this magnitude would require funding through a combination of Developer, Town, State, and Federal funding sources. Responsibility of the equitable share from each stakeholder would be based on the impacts that the development or other factors have on the districts.
- 2) The business community has voiced concerns that the Town should not only look to new development to fund the cost of services that benefit all residents or which have external factors of commuting thru-traffic on our local roadways.
- 3) Staff looked at initial cost estimates for necessary mitigation work associated with the Scarborough Downs development. The Maine Department of Transportation issued a Traffic Movement Permit outlining offsite projects to mitigate impacts from the approximately 3,000 trips generated by this new development. Analysis of the breakdown of the cost share for this project showed that the developer paid for 59% of the total project cost. The cost estimates for this work were developed in 2021 and totaled \$14,000,000. Actual project costs have been significantly higher than the 2021 estimates, therefore the 59% cost share for the developer is considered extremely low. This analysis is considered conservative when predicting the cost of project design and construction.

#### **SEDCO DEVELOPER FORUM INPUT**

Staff presented at a SEDCO sponsored Developers Forum to discuss the proposed Impact Fees on May 23, 2024. A summary of comments is attached.

#### **FISCAL IMPACT:**

TBD

#### **STATUS / PROCESS TO DATE:**

- Town Council Workshop: October 4, 2023
- Ordinance Committee: March 13, 2024
- SEDCO Presentation: March 21, 2024
- Transportation Committee Review: March 26, 2024
- Town Council First Reading: May 1, 2024
- Town Council Public Hearing: May 15, 2024
- SEDCO Developer Forum: May 23, 2024
- Town Council Second Reading: June 5, 2024

#### **PROPOSED ACTION:**

Move approval of the second reading on Order No. 24-042, as recommended by the Planning Director.

**ATTACHMENTS:**

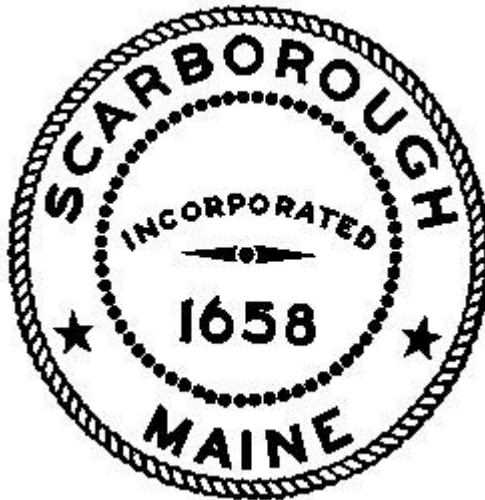
- Proposed Chapter 415 Impact Fee Ordinance
- Repealed Chapter 410
- Repealed Chapter 415A
- Repealed Chapter 415B
- Recreation Impact Fee Methodology
- Impact Fee Calculations – Payne Road and Ginn Road
- Impact Fee Calculations – Payne Road Nonesuch River
- Traffic Impact Fee Comparison
- Recreation Fee Waiver Amendment
- SEDCO Developer Forum Comments

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 415 Town of Scarborough Impact Fee Ordinance is amended as recommended by the Planning Director.

# **CHAPTER 415**

## **TOWN OF SCARBOROUGH**

### **IMPACT FEE ORDINANCE**



**ADOPTED JANUARY 02, 2002; EFFECTIVE JANUARY 03, 2002**  
**AMENDED MARCH 3, 2003; UPDATED FEBRUARY 01, 2020**  
**UPDATED xx, 2024**



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**CHAPTER 415  
TOWN OF SCARBOROUGH  
DEVELOPMENT IMPACT FEE ORDINANCE**

**SECTION 1. IMPACT FEE GENERAL PROVISIONS**~~CHAPTER I – General Provisions~~

**A. Authority.**

This ordinance is enacted pursuant to the authority of 30-A M.R.S.A. § 4354 and 30-A M.R.S.A. § 3001.

**B. Purpose.**

The Scarborough Town Council, ~~having commissioned and reviewed an Impact Fee Feasibility Analysis dated September 2001,~~ has determined that new development creates demands on municipal government to provide new public facilities and to expand, improve or replace existing public facilities. The Town Council concludes that in order to provide an equitable source of funding for such new, expanded, improved or replacement facilities, it is appropriate to establish a program of development impact fees and to charge a proportionate share of the costs of new, expanded, improved or replacement facilities to the developers and/or occupants of the developments which make the new, expanded, improved or replacement infrastructure necessary.

**C. Definitions.**

Unless otherwise defined in this ordinance, terms used in this ordinance shall have the same meanings as defined terms in Chapter 405, Zoning Ordinance of the Town of Scarborough, Maine. ~~(“Zoning Ordinance”). The following terms shall have the following meanings:~~

~~**Affordable Housing Unit:** A dwelling unit developed by a governmental agency or by a non-profit housing corporation (as defined in 30-A M.R.S.A. § 5002) which is permanently restricted by recorded deed restriction or covenant and/or regulatory restriction to occupancy only by lower income households, as that term is defined in 30-A M.R.S.A. § 5002.~~

**D. Use of Impact Fees.**

~~**D.**~~

Impact fees collected by the Town pursuant to this ordinance may be used only for financing facility improvements which the Town Council has determined are made necessary by new development. The Town Council has determined that fees imposed by schedules in subsequent ~~chapters~~ sections of this ordinance are reasonably related to the demands created by new development and are reasonably related to the portion or percentage of existing infrastructure used by new development. Impact fees collected pursuant to this ordinance shall be used exclusively for capital improvements, and shall not be used for operational expenses. The Town of Scarborough shall expend funds collected from impact fees solely for the purposes for which they were collected.

**E. Segregation of Impact Fees from General Revenues.**

Impact fees collected pursuant to this ordinance shall be maintained by the Town Treasurer in a separate impact fee account and shall be segregated from the Town's general revenues. The Town Treasurer shall deposit impact fees in special non-lapsing accounts dedicated for funding of the improvements for which the fee is collected.

## **F. Collection of Impact Fees.**

### **~~a. — Payment of Impact Fees~~**

The Code Enforcement Officer of the Town of Scarborough shall not issue any building permit required under the Zoning Ordinance until the applicant has paid any impact fees required by this ordinance ~~or has recorded an agreement for deferral of impact fees pursuant to Chapter 1, Section 6, Subsection (b) below.~~ Upon collecting such impact fee, the Code Enforcement Officer shall remit the funds to the Town Treasurer who shall deposit the funds as required in Section ~~E5~~ above. The Code Enforcement Officer shall make a record of the name and mailing address of the applicant paying the impact fee, the tax map and lot numbers of the property for which the impact fee is collected, the amount collected, and the date the impact fee is received, and shall maintain such record in the files relating to the property for which the impact fee was paid.

### **~~b. — Deferral of Impact Fees~~**

~~Where the applicant for a building permit is over 55 years of age, has owned and occupied an existing single-family dwelling in Scarborough at any time during the previous 12 months and seeks the building permit in order to construct a new single-family dwelling which the applicant will own and occupy in place of the existing dwelling, the Town treasurer may enter into an agreement to defer collection of all or part of the impact fees imposed by this ordinance until such time as ownership of the new dwelling is transferred to any person except a person who is a surviving joint tenant or heir of the applicant and is both over 55 years of age and a resident of the dwelling at the time of the transfer. Such agreement shall be in writing, shall be joined by all owners of the property, including mortgagees and lien holders of record at the time of execution of the agreement, shall by its terms create a consensual lien on the property, shall be binding on the applicant's heirs, successors and assigns, and shall be recorded in the Cumberland County Registry of Deeds by the applicant prior to the issuance of the building permit.~~

## **G. Refund of Unused Impact Fees.**

Impact fees collected pursuant to this ordinance shall be utilized by the Town according to the schedules specified in subsequent ~~sections chapters~~ of this ordinance for the completion of specific capital improvements, but in no event later than ten years after the date upon which the impact fee was collected. Any impact fees which are not so utilized and any impact fees collected which exceed the Town's actual costs of implementing the infrastructure improvements for which such fees were collected ~~may shall~~ be refunded. The process for requesting refunds is outlined in each subsequent impact fee section. ~~Refunds shall be paid to the owner of record of the property for which the impact fee was collected, determined as of the date the refund is made.~~

## **H. Amendment of Fees.**

The impact fees established in this ordinance are based upon the Town Council's best estimates of the costs of the construction of the facilities for which the fees are collected and, where appropriate, upon estimates of state and/or federal funding contributions. The Council may, by amendments to this ordinance, change the amounts of the impact fees from time to time as warranted by new information or changed circumstances.

#### **H.I. A. Inflation Adjustment.**

The School and Recreation impact fees established by the Town Council in this ordinance shall be adjusted annually by the Town Treasurer to account for inflation. Commencing on February 1, 2003 and on each February 1<sup>st</sup> thereafter, the Treasurer shall increase each impact fee by the dollar amount (rounded to the nearest ten dollar increment) obtained by multiplying the amount of the fee then-in-effect by the inflation rate. As used in this paragraph, the term "inflation rate" means the percentage increase, if any, during the previous calendar year in the Consumer Price Index – All Urban Consumers, Northeast Urban Area, All Items, base period 1982-84 = 100 (not seasonally adjusted) published by the United States Department of Labor Bureau of Labor Statistics. If there has been no such increase, there shall be no adjustment under this paragraph. Each year on February 1<sup>st</sup>, the Treasurer shall publish a schedule of impact fees adjusted pursuant to this paragraph (the "adjusted impact fees") and provide a copy of such schedule to the Code Enforcement Officer. The adjusted impact fees shall apply to all building permits issued on or after March 5 in the calendar year 2003 and on or after February 1<sup>st</sup> of each calendar year thereafter, whether or not the applications for building permits were filed prior to such dates. ~~[March 3, 2003].~~

#### **I.J. Impact Fee Not Required for Replacement Dwelling Units.**

An impact fee shall not be required for:

1. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which was located on the same lot at any time between January 3, 2000 and January 3, 2002;
2. the placement on a mobile home park site of a mobile home which replaces a mobile home which was located on the same site at any time between January 3, 2000 and January 3, 2002;
3. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which is or was located on the same lot and for which an impact fee has already been paid under this ordinance; or
4. the placement on a mobile home park site of a mobile home which replaces an existing mobile home which is or was located on the same site and for which an impact fee has already been paid under this ordinance.

#### **K. Schedule of Fees.**

All impact fee and charges established herein shall be specified in Chapter 311 Schedule of License, Permit and Application Fees established by the Town Council.

#### **J.L. Severability.**



Should any section or provision of this ordinance be determined in a court to be unconstitutional, invalid or unenforceable, such determination shall not affect the validity of any other portion of the ordinance or of the remainder of the ordinance as a whole.

## **SECTION II. SCHOOL IMPACT FEES**

### **—CHAPTER II—School Impact Fees**

#### **K.A. Use of School Impact Fees.**

The fees collected under this ~~section chapter~~ of this ordinance shall be used to fund one or more of those projects identified in the major capital improvement applications submitted to the Maine Department of Education, dated July 26, 2001, for the Scarborough Middle School, the Scarborough High School, the Wentworth Intermediate School and the primary schools, the Town Council having determined that a portion of the costs of such school projects is made necessary by the projected increases in enrollment due to anticipated new residential housing construction. Those improvements are scheduled to be completed by January 3, 2012, unless the completion dates are extended by order of the Town Council.

#### **L.B. Calculation and Collection of School Impact Fees. [Updated 02/26/2020]**

Prior to the issuance of a building permit for any new dwelling unit, the Code Enforcement Officer shall collect a school impact fee according to the following schedule:

<b>Type of Dwelling</b>	<b>Amount</b>
Single family dwelling	\$4,630
Two-family dwelling	\$1,770 per unit
Multiplex	\$1,150 per unit
Mobile home in a mobile home park	\$1,150
Affordable housing unit	\$2,330

#### **M.C. Exemptions.**

~~4.~~ A school impact fee is not required for a dwelling unit within a development consisting of three or more dwelling units all of which are permanently restricted by recorded deed restriction or covenant and/or regulatory restriction to occupancy by elderly households only. For this purpose, “elderly household” means a household which includes at least one person aged 55 or older and no occupant less than 55 years of age other than a full-time caregiver to or a spouse or companion of the elderly person(s).

#### **N.D. Impact Fees to Terminate Upon Completion of Projects.**

When the school projects identified in Chapter ~~415H~~, Section ~~II1-above~~ have been completed and all debt incurred in connection therewith has been repaid, the Town Council shall amend this ordinance either by repeal of this chapter, or by amendment of this chapter if circumstances at the time warrant the continuation of school impact fees.

### **SECTION III. RECREATION IMPACT FEES**

#### **A. Use of Recreation Impact Fees.**

Impact fees collected under the provisions of this ordinance shall only be used to pay for the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities as identified in the Parks and Facilities Master Plan accepted March 1, 2023, by the Scarborough Town Council. Those improvements are scheduled to be completed by June 30, 2034, unless the completion dates are extended by order of the Town Council. No portion of the fee shall be used for routine maintenance or operation activities.

#### **B. Applicability.**

This Ordinance shall apply to the issuance of any building permit for a new residential structure within the Town of Scarborough with the following exceptions:

1. This Ordinance shall not apply to the issuance of a building permit for the repair, replacement or reconstruction of a residential structure that was unintentionally damaged or destroyed by fire, flood or other natural disaster, provided the number of dwelling units is not increased.
2. This Ordinance shall not apply to additions to residential structures existing at the time of the adoption of this ordinance.

#### **C. Calculation and Collection of Recreation Impact Fees.**

The amount of the recreation impact must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.

The recreation impact shall be based upon the number of bedrooms per residential unit, and shall be based upon the Town's impact fee calculation methodology. This methodology has been adopted by the Town Council and is on file and available for review in the Town Planner's office.

Prior to the issuance of a building permit for any new dwelling unit, the Code Enforcement Officer shall collect a recreation impact fee according to the following schedule:

<b><u>Type of Dwelling</u></b>	<b><u>Amount</u></b>
<u>Single Family Dwelling</u>	<u>\$400 per bedroom, not to exceed \$1,600</u>
<u>Two-Family Dwelling</u>	<u>\$400 per bedroom, per unit</u>
<u>Multifamily</u>	<u>\$400 per bedroom</u>

<u>Senior Housing Unit</u>	<u>\$400 per bedroom</u>
<u>Affordable Housing Unit</u>	<u>\$400 per bedroom</u>

#### **D. Waiver of Impact Fees.**

The Town Council may, by formal vote following a public hearing, waive the payment of a required Recreation Impact fee, in whole or in part, if it finds that:

1. The developer or property owner who would otherwise be responsible for the payment of the impact fee voluntarily agrees to construct an improvement for which the impact fee would be collected, or an equivalent improvement approved by the Town Council.
2. The developer of a subdivision offers to dedicate and/or improve public lands or recreational amenities and the Town Council finds these public lands or recreational amenities to be of town-wide benefit.

#### **E. Refund of Fees.**

1. If a building permit or other relevant permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance. A request for a refund shall be made in writing to the Town Planner, and shall occur within ninety (90) days of the expiration of the permit.
2. If the funds collected annually are not expended or obligated by contract for their intended purpose by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid, the prorated share of the funds shall be returned to the current owner of the property for which the fee was paid, provided that a request is made in writing to the Town Planner within one hundred eighty (180) days of the expiration of the ten (10) year period.

### **SECTION IV. RESERVED**

### **SECTION V. ROADWAY IMPACT FEES**

#### **A. Roadway Impact Fee Applicability**

This ordinance shall apply to all new development seeking subdivision or site plan approval, the expansion of previously approved subdivisions or site plans, all new extractive industry operations, and to any change in use requiring site plan approval, when the proposed development, whether located within or outside of a designated Roadway Impact Fee District generates additional traffic within said district.

#### **B. Roadway Impact Fee Exemptions**

The following development and construction shall be exempt from this ordinance:

1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.
2. Construction of accessory buildings or structures which do not generate additional vehicle trips.
3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

### **C. Roadway Impact Fee Procedures**

1. Any person who seeks a permit or approval for any development, activity or use described in Section V(A) of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.
2. Preliminary determinations regarding whether a proposed development will generate traffic within a designated Roadway Impact Fee District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis in accordance with Section V(D) of this ordinance, which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.

### **D. Roadway Impact Fee Calculations**

A roadway impact fee shall be applied to development projects located in whole or in part within the Town of Scarborough that generate additional traffic within a designated Roadway Impact Fee District. Impact fees are structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A., §4354. The process for impact fee calculation is as follows:

1. As per Section V(C) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through a designated Roadway Impact Fee District in the P.M. peak commuter hour.
2. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers "Trip Generation" Handbook of traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).



3. The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through a designated Roadway Impact Fee District within the P.M. peak commuter hour. All new trips that pass through a designated Roadway Impact Fee District, regardless of whether they pass through the specific intersections, shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.
4. For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to the specific roadway impact fee district, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.
5. For any development not requiring Planning Board review but requiring the payment of an impact fee under this ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to the specific roadway impact fee district.
6. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.

#### **E. Roadway Impact Fee Payment**

The roadway impact fee amount, as determined in accordance with the specific roadway impact fee district of this ordinance, shall be paid to the Town according to the payment schedule established under Section V(D), except as follows:

1. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.

Payments shall be tendered to the Town Engineer. Upon determining that the payment is the correct amount, the Town Engineer shall issue a receipt for the payment and deliver the payment to the Town Treasurer.

## **F. Use of Roadway Impact Fee Funds**

1. Funds generated by this ordinance will be used for the purpose of completing the capital improvements identified in the specific master plan for roadway infrastructure improvements within each Roadway Impact Fee District.
2. No funds shall be used for periodic or routine maintenance.
3. In the event that bonds or similar debt instruments are issued for advanced provision of capital improvements for which roadway impact fees may be expended, impact fee funds may be used to pay debt service on such bonds or similar debt instruments to the extent that the improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section V(F.1) of this ordinance.
4. Funds may be used to provide refunds in accordance with Section V(G) below.
5. Funds shall not be used to pay for any site specific geometry improvements at a developments entrance, etc., that are required of a development project that is proposed and constructed within a public right-of-way or on any lot abutting a roadway section within a designated Roadway Impact Fee District. Such project and site specific improvements shall be the responsibility of the developer.

## **G. Refund of Roadway Impact Fees**

1. If a building permit, site plan, subdivision plan, private way or extractive industries plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the specific roadway impact fee paid as required by this ordinance. The developer must submit a formal application request for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan, private way or extractive industries approval.
2. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following twenty (20) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the twenty (20) year period.

## **H. Roadway Impact Fee District - Dunstan Corner District**

1. **Purpose.** Dunstan Corner is one of Scarborough's town centers within which four locally and regionally significant roads intersect. The capacity of Route One, and it's intersections with Pine Point Road (Route 9), Broadturn Road and Payne Road, are critical to the mobility of regional vehicular traffic through Dunstan Corner and the access of local vehicular traffic to destinations within Dunstan Corner. In order for Dunstan Corner to continue to serve and evolve as a town center, while also maintaining and increasing vehicular mobility and access,

the area was in need of adequate roadway infrastructure to support future development and the accompanying traffic generation and demands.

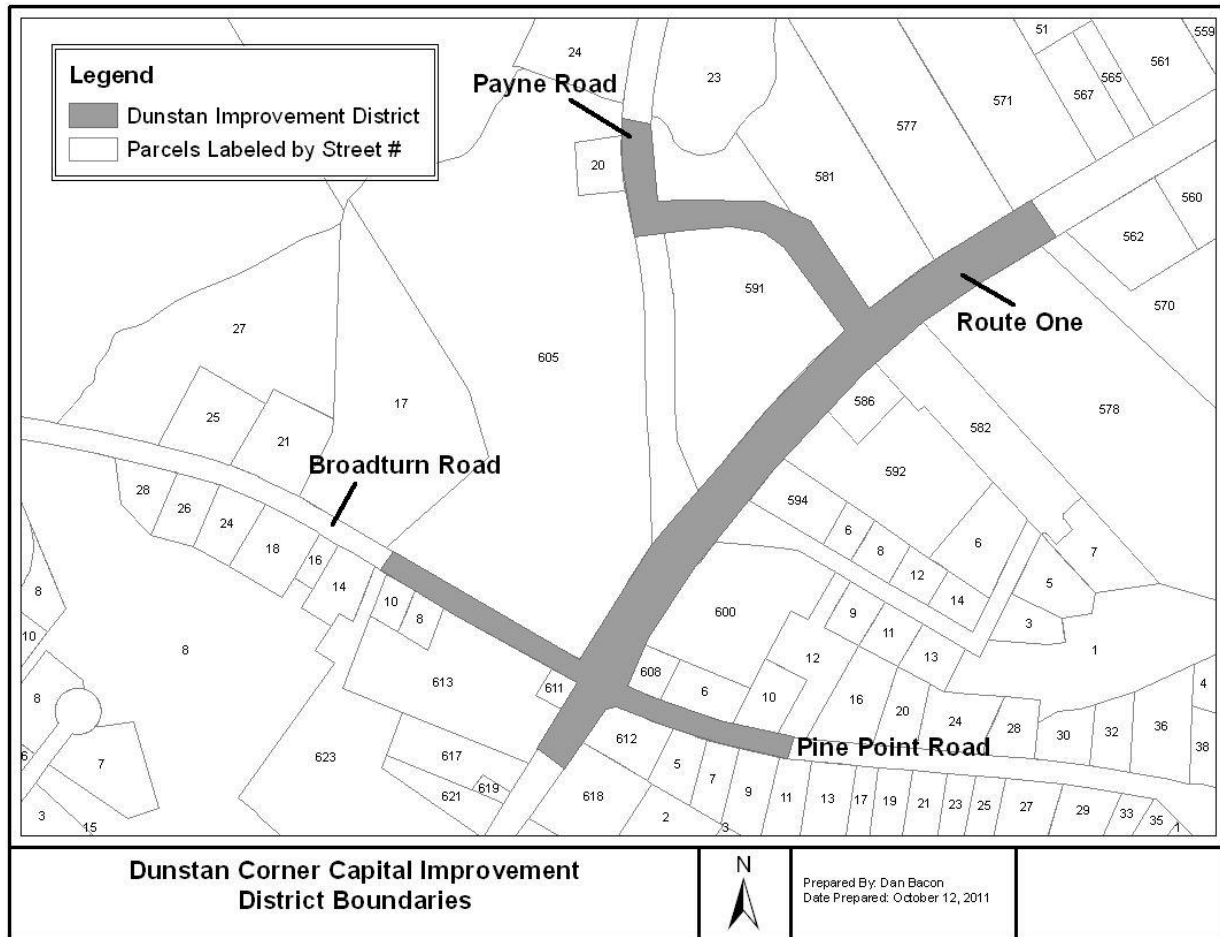
2. **Master Plan.** The Town has completed a master plan for roadway infrastructure improvements that accommodates the traffic growth projected through 2026 which established the additional vehicular capacity and adequate levels of service necessary to serve, accommodate and benefit new development. The purpose of the Dunstan Corner District is to procure the Town's share of the cost of implementing these roadway infrastructure improvements from future development projects that are benefiting from the increased capacity. The remaining roadway infrastructure improvement costs were funded through cost sharing between PACTS (Portland Area Comprehensive Transportation System) and the Maine Department of Transportation.

As per Section V(F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

- a. Dunstan Corner, Scarborough, Maine, PIN 17343.00, September 28, 2011, Preliminary Design Scale 1" - 40', HNTB Corporation. (amended 11/16/2011)
- b. The above cited plans may be amended by the Town Council, in accordance with Chapter 302, Scarborough Town Council Rules, Policies and Procedures Manual, if the amendments to the master plan are consistent with and further the purpose of this ordinance.

3. **Dunstan Corner District Boundaries.** The Dunstan Corner District is depicted on the map below and encompasses the following sections of roadway:

- a. Route 1 beginning 550 feet south of Broadturn Road extending northerly 2000 feet.
- b. Pine Point Road beginning at its intersection with Route 1 extending easterly 850 feet.
- c. Payne Road beginning at its proposed relocated intersection with Route 1 extending 1550 feet to align with the existing Payne Road.
- d. A proposed roadway beginning at Route 1 opposite the relocated Payne Road, westerly to Higgins Street.
- e. All of Harlow Street and Higgins Street.



**4. Dunstan Corner District Fee.** The Dunstan Corner District fee determination shall be based on the following:

- The Town cost of the master plan for roadway infrastructure improvements in the Dunstan Corner District will amount to \$1,430,000, which is to be funded from this impact fee ordinance. (amended 02/07/2007)(amended 11/16/2011)
- The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1020 trip ends in the P.M. peak commuter hour of traffic.
- Each additional trip generated by new development will benefit from the 1020 trip ends of capacity and will utilize one trip end of that additional capacity.
- The fee per trip, therefore, shall be \$1,402. This fee per trip equals \$1,430,000 / 1020 trip ends. (amended 02/07/2007)(amended 11/16/2011)

**5. Impact Fee Trust Funds.** There is hereby established a Dunstan Corner District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general



revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section V(F) of this ordinance.

## **I. Roadway Impact Fee District – Haigis Parkway / Route One District**

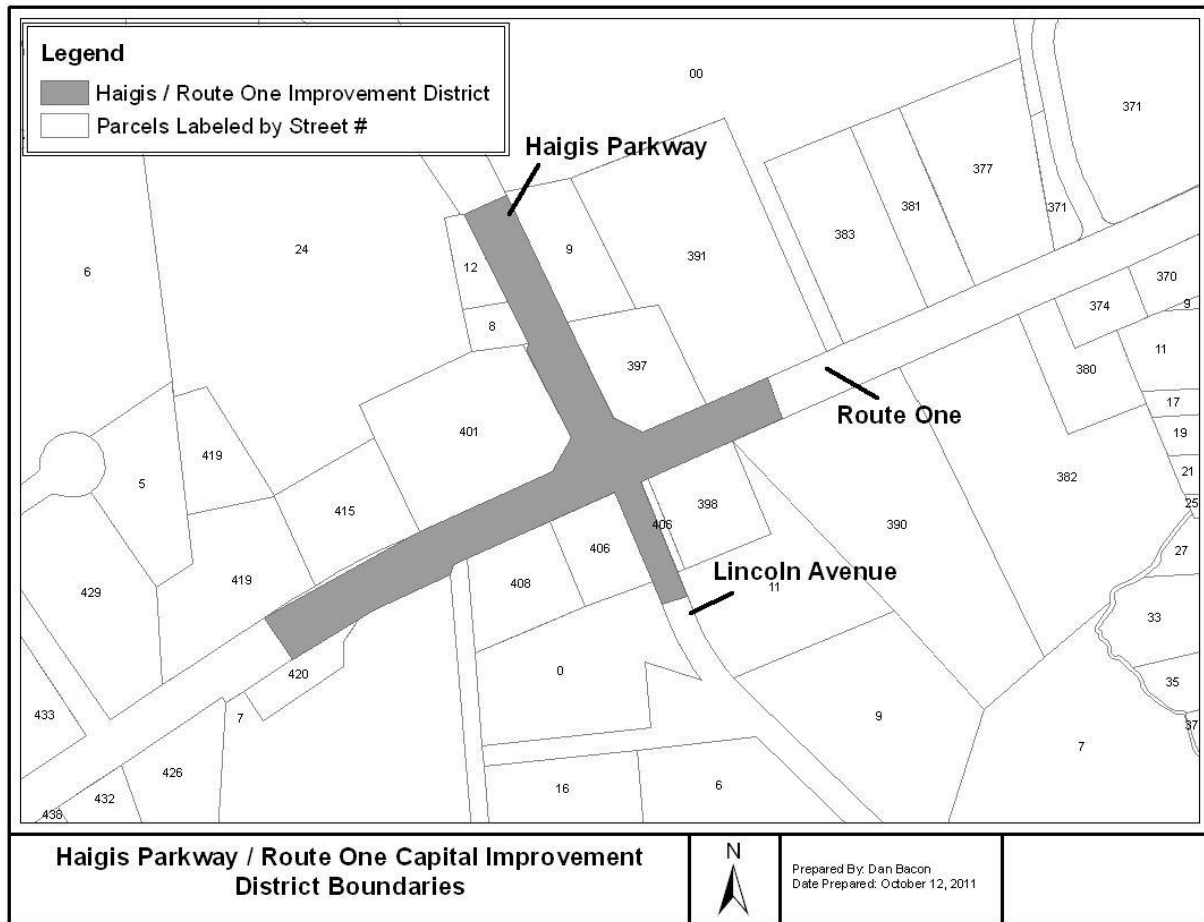
1. **Purpose.** The Haigis Parkway / Route One / Lincoln Avenue intersection is one of the most significant intersections in the Town of Scarborough and is critical to the current and future mobility of local and regional motorists. This intersection currently serves local and regional travel on Route One, the Haigis Parkway, and Lincoln Avenue and provides important connections to Payne Road, the Maine Turnpike and the Scarborough industrial park. In addition, this intersection is an important facility for managing future traffic demands, both to provide an alternative to the high traffic volumes on Payne Road as well as to accommodate the future growth and development that is planned for land accessible from the Haigis Parkway and Route One.

In order for the Haigis Parkway / Route One / Lincoln Avenue intersection to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and the accompanying traffic generation and demands, roadway infrastructure improvements were warranted. These improvements are highlighted in the Town-Wide Transportation Study and in the Transportation Policy Objectives of the Town's Comprehensive Plan.

2. **Master Plan.** To that end the Town has completed a master plan for roadway infrastructure improvements that accommodates the traffic growth projected through 2026 and which established the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. These roadway infrastructure improvements also include provisions for pedestrians in order to enhance the walk-ability and pedestrian safety of this section of Route One. The purpose of the Haigis Parkway / Route One District is to reimburse the portion of the Town's cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

As per Section V(F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

- a. Drawing Name: "Intersection Improvements Route 1 & Haigis Parkway, Scarborough, Maine, Cumberland County" dated August 2010 and prepared by Gorrill-Palmer Consulting Engineers, Inc.
3. **Haigis Parkway / Route One District Boundaries.** The Haigis Parkway / Route One District is depicted on the map below:



**4. Haigis Parkway / Route One District Fee.** The fee determination shall be based on the following:

- a. The Town cost of the master plan for roadway infrastructure improvements in the Haigis Parkway / Route One District amounts to \$1,005,000, which is to be funded from this impact fee ordinance. \*(This cost total is less than the total project cost for the Fiscal Year 2010 CIP Project because the improvements associated with the Dunstan Corner intersection plan, the Southgate intersection plan, landscaping enhancements, and the Haigis/Scottow Hill Rd. and Route One/Enterprise Dr. improvements were not included).
- b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1015 trip ends in the P.M. peak commuter hour of traffic.
- c. Each additional trip generated by new development will benefit from the 1,015 trip ends of capacity and will utilize one trip end of that additional capacity.
- d. The fee per trip, therefore, shall be \$990.00. This fee per trip equals \$1,005,000 / 1,015 trip ends.

5. **Impact Fee Trust Funds.** There is hereby established a Haigis Parkway / Route One District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section V(F) of this ordinance.

#### **J. Roadway Impact Fee District – Payne Road District 5**

1. **Purpose.** The Town must expand and maximize the efficiencies of its road system in order to provide adequate levels of service in the Payne Road Area of the Town so that new development in the Payne Road, Gorham Road, and County Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare.
2. **Master Plan.** The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs of additional rights-of-way, road construction and road improvements, and traffic signal upgrades in the Town. Further refinement of the District scope of work has taken place through public engagement, as well as with State and Regional Agencies, which is incorporated into the preliminary design included in the "North Scarborough Three Intersection Design, Draft Preliminary Design" dated August 2019, which alleviates constraints on the Gorham Rd and ultimately on the Payne Rd District. A portion of the improvements are being paid for by a private developer through their individual Traffic Movement Permit requirements with the Maine Department of Transportation.
3. **Payne Road District 5 Boundaries.** The Payne Road District 5 encompasses the following sections of roadway:
  - a. **District 5 - Route 114, between Maine Turnpike and Beech Ridge Road, which are directly impacted by the two County Road intersections at Saco St and Gorham Rd.**
4. **Payne Road District 5 Fee.** At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.
  - a. **The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.**
  - b. **Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.**

- c. Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.
  - d. Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.
  - e. Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use.
5. **Impact Fee Trust Funds.** There is hereby established a Payne Road District 5 Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section V(F) of this ordinance.

#### **K. Roadway Impact Fee District – Payne Road / Ginn Road District**

1. **Purpose.** The intersection of Payne Road at Ginn Road is a critical intersection along the Payne Road corridor for future roadway improvements. Payne Road is an important North/South corridor in the Town, and is particularly valuable as an alternative corridor to Route 1 and mitigating traffic on the Route 1 corridor. It is also important to the future development of the Scarborough Downs neighborhood and in connecting Haigis Parkway and Exit 42 from the Maine Turnpike to Scarborough Downs and the Maine Mall area.

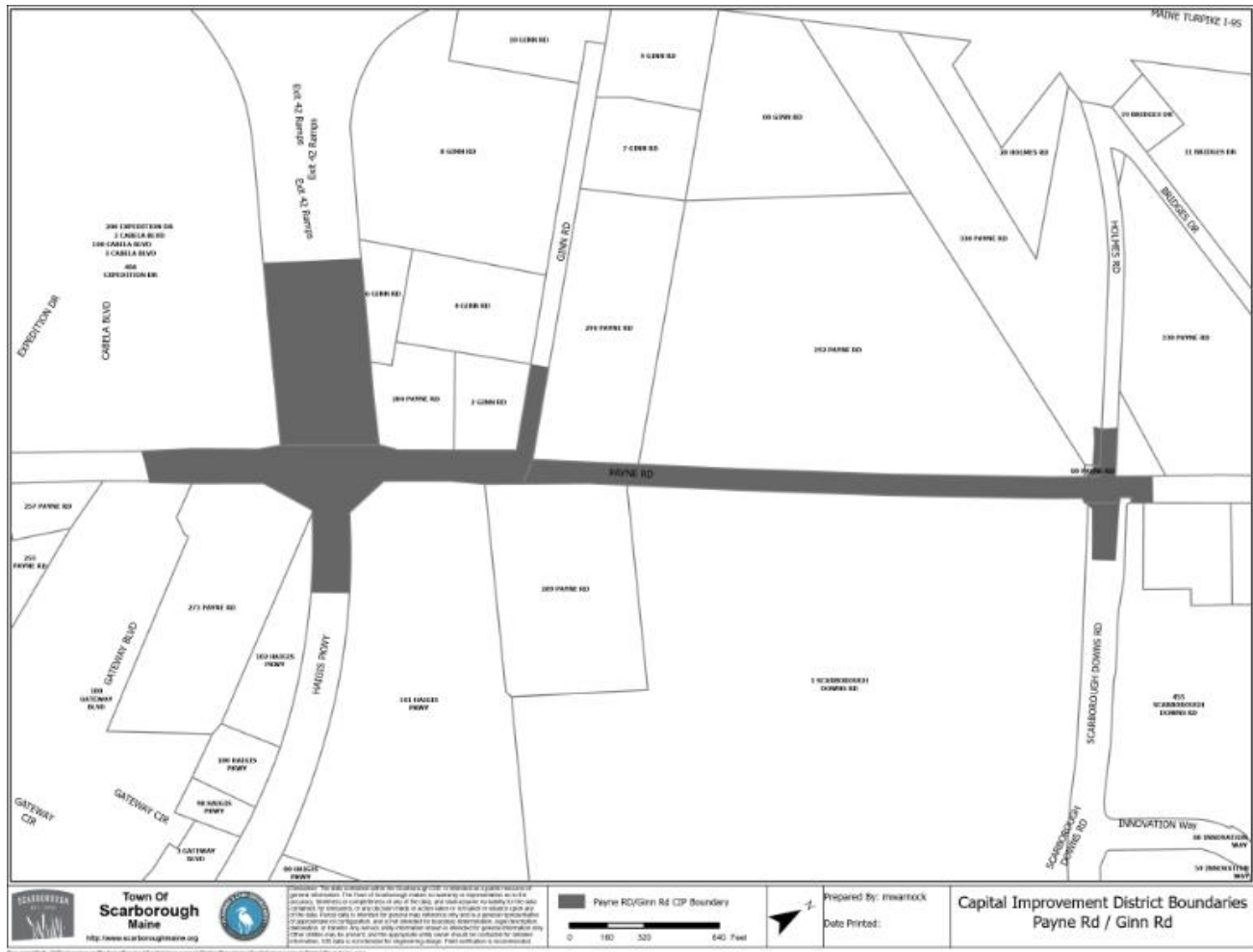
In order to accommodate future development and pedestrian, cyclist, and traffic growth needs in the Town of Scarborough, the intersection of Payne Road and Ginn Road will need to be improved to support multimodal traffic along this corridor. The proposed improvements are included in the 2024 Town Wide Transportation Study.

2. **Master Plan.** To that end the Town has finalized a Master Plan for roadway infrastructure improvements that will accommodate future traffic growth and will provide space for pedestrians and cyclists to safely travel along Payne Road. These improvements will benefit new development on and around the Payne Road corridor, as well as alleviating some of the congestion on Route 1.

As per Section V (F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the "Payne Road Conceptual Plan" prepared by Barton & Loguidice, dated December 2023, which following master plan: sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for costs of additional rights-of-way, road construction and road improvements in the Town.



**3. Payne Road / Ginn Road District Boundaries.** The Payne Road / Ginn Road District Boundary is depicted on the map below:



**4. Payne Road / Ginn Road District Fee.** The fee determination shall be based on the following:

- a. The Town cost of the master plan for roadway infrastructure improvements in the Payne Road / Ginn Road District will amount to \$9,832,898, which is to be funded from this impact fee ordinance.
- b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1,766 trip ends in the P.M. peak commuter hour of traffic.
- c. Each additional trip generated by new development will benefit from the 1,766 trip ends of capacity and will utilize one trip end of that additional capacity.

d. The total fee per trip, therefore, shall be \$5,568. The developer portion for the fee per trip shall be 50% of the total per trip cost or \$2,784.

5. **Impact Fee Trust Funds.** There is hereby established a Payne Road / Ginn Road District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section V(F) of this ordinance.

**L. Roadway Impact Fee District – Payne Road / Nonesuch River District**

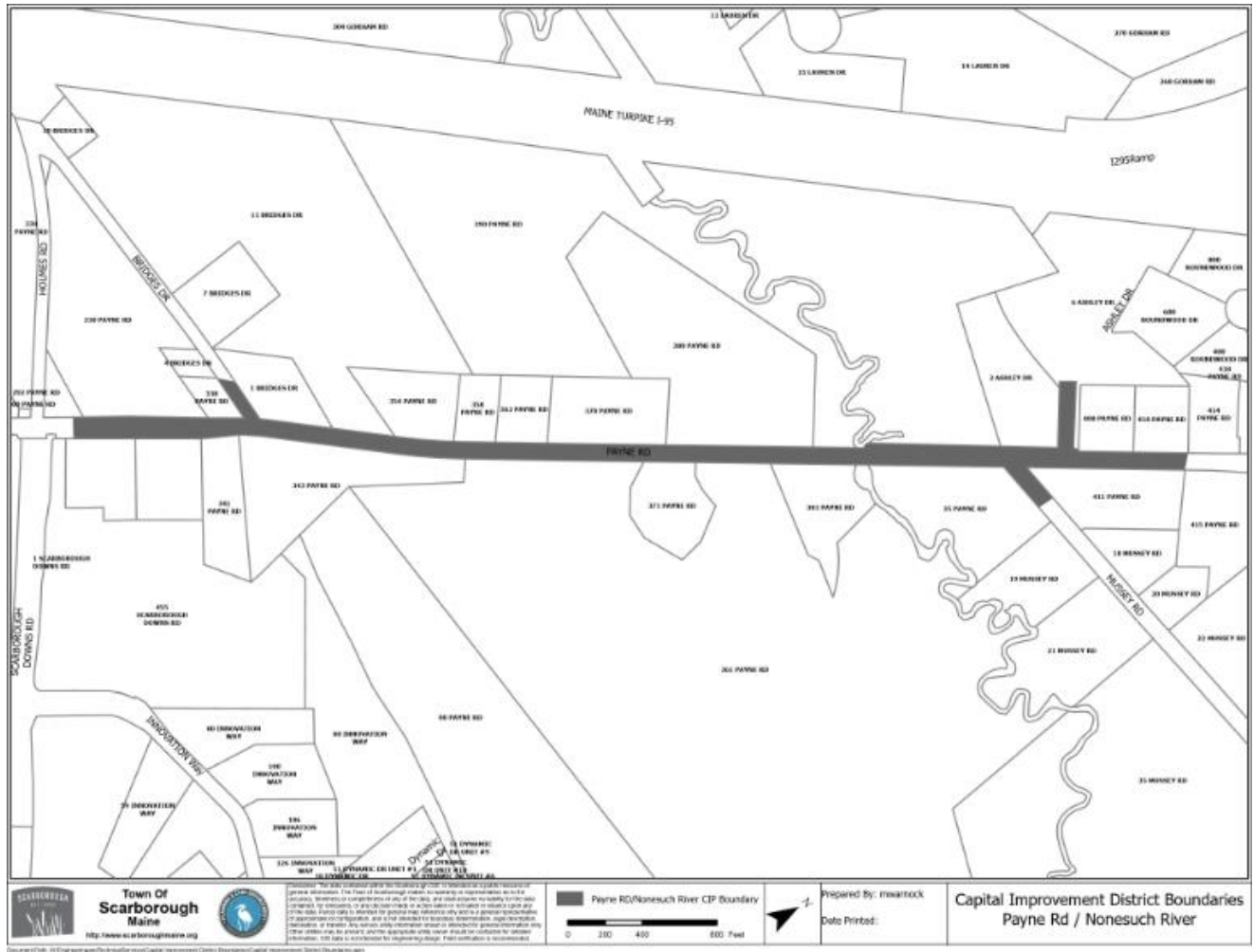
1. **Purpose.** Libby Bridge on Payne Road over the Nonesuch River, and the associated approaches to the bridge, is a critical segment of the Payne Road corridor for future roadway improvements. Payne Road is an important North/South corridor in the Town, and is particularly valuable as an alternative corridor to Route 1 and mitigating traffic on the Route 1 corridor. It is also important to the future development of the Scarborough Downs neighborhood and in connecting Haigis Parkway and Exit 42 from the Maine Turnpike to Scarborough Downs and the Maine Mall area.

In order to accommodate future development and pedestrian, cyclist, and traffic growth needs in the Town of Scarborough, Libby Bridge and the approaches to Libby Bridge will need to be improved to support multimodal traffic along this corridor. The proposed improvements are included in the 2024 Town Wide Transportation Study.

2. **Master Plan.** To that end the Town has completed a Master Plan for roadway infrastructure improvements that will accommodate future traffic growth and will provide space for pedestrians and cyclists to safely travel along Payne Road. These improvements will benefit new development on and around the Payne Road corridor, as well as alleviating some of the congestion on Route 1.

As per Section V(F1) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the "Payne Road Conceptual Plan" prepared by Barton & Loguidice, dated December 2023, which sets forth in more detail a reasonable methodology and analysis for the determination of the impact of new development on the need for costs of additional rights-of-way, road construction and road improvements in the Town.

3. **Payne Road / Nonesuch River District Boundaries.** The Payne Road / Nonesuch River District Boundary is depicted on the map below:



**4. Payne Road / Nonesuch River District Fee.** The fee determination shall be based on the following:

- a. The Town cost of the master plan for roadway infrastructure improvements in the Payne Road / Nonesuch River District will amount to \$23,913,345, which is to be funded from this impact fee ordinance.
- b. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 3,337 trip ends in the P.M. peak commuter hour of traffic.
- c. Each additional trip generated by new development will benefit from the 3,337 trip ends of capacity and will utilize one trip end of that additional capacity.
- d. The total fee per trip, therefore, shall be \$7,166. The developer portion for the fee per trip shall be 50% of the total per trip cost or \$3,583.

5. **Impact Fee Trust Funds.** There is hereby established a Payne Road / Ginn Road District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues. Funds withdrawn from this trust fund account shall be used in accordance with Section V(F) of this ordinance.

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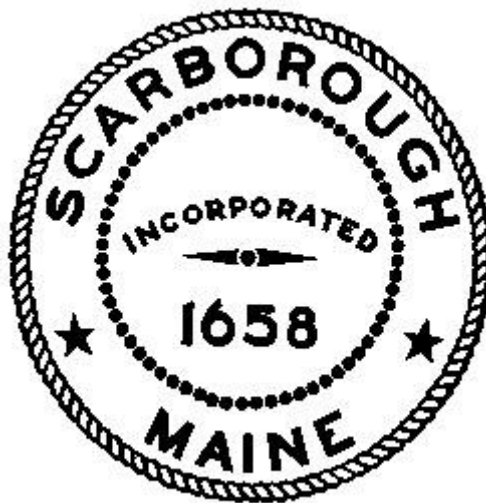
BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 410 Town of Scarborough Roadway Impact Fee Ordinance: Payne Road Area Capital Improvement Districts is hereby repealed in its entirety and is replaced with amendments to Chapter 415 Town of Scarborough Impact Fee Ordinance as recommended by the Planning Director.

## **CHAPTER 410**

### **TOWN OF SCARBOROUGH**

#### **SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:**

#### **PAYNE ROAD AREA CAPITAL IMPROVEMENT DISTRICTS**



**ADOPTED OCTOBER 17, 1990  
AMENDED SEPTEMBER 6, 1995  
AMENDED DECEMBER 7, 2011  
AMENDED NOVEMBER 1, 2017**

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**CHAPTER 410  
TOWN OF SCARBOROUGH  
ROAD IMPACT FEE ORDINANCE**

**BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF  
SCARBOROUGH, MAINE, IN TOWN COUNCIL ASSEMBLED:**

**Section One: Purpose**

This Ordinance imposes an impact fee on land development requiring review under the Town's subdivision or site plan regulations for providing new roads and related facilities necessitated by new development that impacts traffic in the Payne Road Area of the Town as defined herein. It also provides for the placement of impact fee revenues into road impact fee trust funds established for that purpose and for the administration of the impact fee ordinance, including the expenditure of funds derived from road impact fees and the refunds of unexpended funds.

**Section Two: Legislative Findings**

The Town Council of Scarborough, Maine finds, determines and declares as follows:

A. The Town must expand its road system in order to provide adequate levels of service in the Payne Road Area of the Town if new development in the Payne Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare;

B. The State of Maine has authorized municipalities to adopt impact fees for various purposes, including the construction of off-site capital improvements, such as roads and traffic control devices pursuant to 30-A M.R.S.A. 4354;

C. The imposition of impact fees is a preferred method of insuring that new development bears a proportionate share of the cost of capital investments necessary to accommodate such development. Appropriate locations for new development in the Town and the capital improvements necessary to accommodate such development are identified in the Town's Comprehensive Plan and capital improvements program.

D. New development generates additional traffic, necessitating the acquisition of rights-of-way, road construction and road improvements;

E. The fees established by Section Six hereof are derived from, are based upon, and do not exceed the costs of providing additional rights-of-way, road construction and road improvements necessitated by the new developments for which the fees are levied.

F. The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology

and analysis for the determination of the impact of new development on the need for an costs of additional rights-of-way, road construction and road improvements in the Town.

### **Section Three: Title, Authority, and Applicability**

#### **A. Title.**

This Ordinance shall be known and may be cited as the “Scarborough Road Impact Fee Ordinance”.

#### **B. Authority.**

The Town Council of the Town of Scarborough, has the authority to enact this ordinance pursuant to 30-A M.R.S.A. 4354, and its statutory and constitutional home rule powers.

#### **C. Applicability.**

This ordinance shall apply to all new development seeking subdivision or site plan approval or the extension of previously approved subdivisions or site plans or to any change in use when the proposed development impacts traffic in the “Payne Road Area” if a building permit is issued on or after the date this Ordinance is enacted.

### **Section Four: Definitions**

#### **A. “Developer”**

Is a person commencing a land development activity which generates or attracts traffic in the Payne Road Area and which requires subdivision or site plan approval from the Town of Scarborough.

#### **B. “Capital improvement”**

Includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project, including but not limited to:

- (1) construction of new through lanes
- (2) construction of new turn lanes
- (3) construction of new bridges
- (4) construction of new drainage facilities in conjunction with new roadway construction
- (5) purchase and installation of traffic signalization (including new and upgraded signalization)
- (6) construction of curbs, medians, and shoulders
- (7) relocating utilities to accommodate new roadway construction

Capital improvements do not include site-related improvements defined herein.



C. "Development"

Means any change in land use or any construction of buildings or structures or any change in the use of any structure that procedures vehicle trips within the Payne Road Area.

D. "Expansion of road capacity"

Means all road and intersection capacity enhancements, including but not limited to: extensions, widening, intersection improvements, upgrading signalization, and expansion of bridges.

E. "Roads"

Means and includes arterial streets and transportation facilities associated with the arterial and state-aid highway network within the Payne Road Area of the Town and under the jurisdiction of the Town or the State of Maine.

F. "Site-related improvements"

Are capital improvements and right-of-way dedications for direct access improvements to and/or within the development in question. Direct access improvements include but are not limited to the following:

- (1) access roads leading to the development
- (2) driveways and roads within the development
- (3) acceleration and deceleration lanes, and right and left turn lanes leading to those roads and driveways
- (4) traffic control measurers for those roads and driveways

G. "Independent Fee Calculation Study"

Means the traffic engineering and/or economic documentation prepared by a developer to allow the determination of the impact fee other than by the use of the methodology outlined in Section Six of this Ordinance.

H. "Mandatory or Required right-of-way dedications and/or roadway improvements"

Means such non-compensated dedications and/or roadway improvements required by the Town during subdivision or site plan review.

I. "Payne Road Area"

Means the area of Scarborough, including Payne Road and State Route 114 as follows:

District 1 - Payne Road, South Portland line to I-295 Bridge

District 2 - Payne Road, I-295 Bridge through Route 114 intersection

District 3 - Payne Road, South of Route 114 to Holmes Road

District 4 - This District was repealed by the Scarborough Town Council on December 7, 2011, because the improvements in this district were accomplished.

District 5 - Route 114, between Maine Turnpike and Beech Ridge Road

## **Section Five: Imposition of Road Impact Fee**

A. Any person who, after the effective date of this ordinance, seeks to develop land by applying for subdivision or site plan approval, or for an extension of subdivision or site plan approval issued prior to the effective date hereof, to make an improvement to land or to change the use of any land or building which will generate additional traffic in the Payne Road Area, regardless of whether the development itself is located within the Payne Road Area is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance. Preliminary determinations regarding whether a proposed development will generate traffic in the Payne Road Area shall be made by the Town Planner and the Town's consulting traffic engineer. Actual impacts shall be determined by a traffic study prepared by a traffic engineer at the developer's expense and approved by the Town's consulting engineer, unless the developer agrees with the Town's determination.

B. No new building permit for any activity requiring payment of an impact fee pursuant to this Ordinance shall be issued or renewed unless and until the road impact fee hereby required has been paid.

C. No extension of a building permit issued prior to the effective date of this ordinance, for any activity requiring payment of an impact fee pursuant to this Ordinance shall be granted unless and until the road impact fee hereby required has been paid.

## **Section Six: Computation of Road Impact Fee**

A. At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.

(1) The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.

(2) Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.

(3) Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

(4) Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.

(5) Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall

be based upon the net positive increase in the impact fee for the new use as compared to the previous use.

**B. Alternative method for computation of fees**

A developer may prepare and submit an independent fee calculation study for the land development activity. The independent fee calculation shall be prepared and presented by professionals and shall establish to a reasonable certainty that the impact of the proposed activity differs substantially from other land use activity for which fees have been established. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town shall consider the documentation submitted by the developer but is not required to accept any documentation which it deems to be inaccurate or unreliable and may require the developer to submit additional or different documentation for consideration. If the independent fee calculation study is approved, the Town shall adjust the fee in accordance with that calculation. Appeals of action of the Town pursuant to this section may be taken to the Town Manager by filing a written request within 10 days of final determination.

**Section Seven: Payment of Fee**

A. The developer shall pay the road impact fee required by this ordinance to the Building Inspector or her/his designee prior to the issuance of a building permit. [amended 11/01/17]

B. All funds collected shall be properly identified by road impact fee district and promptly transferred for deposit in the appropriate Road Impact Fee Trust Fund to be held in separate accounts as determined in Section Nine of this Ordinance and used solely for the purposes specified in this Ordinance.

**Section Eight: Road Impact Fee Districts**

A. There are hereby established four (4) road impact fee districts as defined in Section 4(I) of this Ordinance.

**Section Nine: Road Impact Fee Trust Funds Established**

A. There are hereby established four (4) separate Road Impact Fee Trust Funds, one for each road impact fee district established by Section Eight of this Ordinance.

B. Funds withdrawn from these accounts must be used in accordance with the provisions of Section Ten of this Ordinance.

**Section Ten: Use of Funds**

A. Funds collected from road impact fees shall be used for the purpose of capital improvements to and expansion of transportation facilities associated with the Payne Road Area.

B. No funds shall be used for periodic or routine maintenance.

C. Funds shall be used exclusively for capital improvements or expansion within the road impact fee district, including district boundary roads, as identified in the Report entitled Computation Procedure, from which the funds were collected or for projects in other road impact districts which are of benefit to the road impact district from which the funds were collected. Funds shall be expended in the order in which they are collected.

D. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which road impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in paragraph A of this section and are located within the appropriate impact fee districts created by this Ordinance or as provided in paragraph C of this section.

E. At least once each fiscal period the Town Manager shall present to the Town Council a proposed capital improvement program for roads, assigning funds, including any accrued interest, from the several Road Impact Fee Trust Funds to specific road improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Road Impact Fee Trust Funds until the next fiscal period except as provided by the refund provisions of this Ordinance.

F. Funds may be used to provide refunds as described in Section Eleven.

#### **Section Eleven: Refund of Fees**

A. If a building permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition for its issuance except that the Town shall retain three (3) percent of the impact fee paid to offset a portion of the costs of collection. The developer must submit an application for such a refund to the Code Enforcement Officer not later than fifteen (15) days after the expiration of the permit.

B. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application of the developer, be returned to the developer, provided that the developer submits an application for a refund to the Code Enforcement Officer within 180 days of the ten (10) year period.

#### **Section Twelve: Exemptions**

A. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips shall be exempt from payment of the traffic impact fee.

B. Construction of accessory buildings or structures which do not generate additional vehicle trips shall be exempt from the payment of traffic impact fees.

C. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use shall be exempt from the payment of the impact fee.



Any claim of exemption shall be made prior to the time for payment of the impact fee. Any claim not so made shall be deemed waived.

### **Section Thirteen: Credits**

A. Credit for the dedication of land for rights of way shall be valued at the most recent assessed value by the Town Assessor or by fair market value established by private appraisers acceptable to the Town. Credit for the dedication of land shall be provided when property has been conveyed at no charge to, and accepted by, the Town in a manner satisfactory to the Town Council.

B. Credit for construction of capital improvements shall be given only where:

(1) the Town and applicant agree in writing that it would be more cost effective or expeditious for the applicant to construct improvements authorized for funding under this Ordinance, or

(2) for the cost of constructing capital improvements as a condition of Planning Board approval under the Site Plan or subdivision ordinance of the Town, provided such capital improvements would be eligible for designation by the Town Council for funding under this Ordinance. In such cases, the applicant shall submit acceptable engineering drawings and specifications, and construction cost estimates to the Town which shall determine credit for construction based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates, if the Town determines that estimates submitted by the applicant are either unreliable or inaccurate. Upon final determination of all credits, the Town shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate and return such signed document to the Town before credit will be given. The failure of the applicant to sign, date and return such document with the balance of the impact fees and building permit fees within 60 days shall nullify the credit.

C. Except as otherwise provided in subparagraph D, credit against impact fees otherwise due will remain provisional until:

(1) construction is completed and accepted by the Town or the State, whichever is applicable, and

(2) a suitable maintenance and warranty bond is received and approved by the Town, were applicable.

D. Security shall be given for provisional credit in the form of a performance bond, irrevocable letter of credit or escrow agreement posted with and approved by the Town Manager and Town Attorney in an amount determined by the Town Manager. If the Project will not be constructed within two years of the acceptance of the offer by the Town, the amount of the

security shall be increased by 10% compounded for each year of life of the security. If the construction project is not to be completed within five years of the date of the developer's offer, the Town Council must approve the construction project and its scheduled completion date prior to the acceptance of the offer by the Town. The security or replacement shall state the date for commencement of the project and the time period for estimated completion. This date and/or time period may be extended by the Town for good cause shown conditioned upon extension of the security.

E. Credit may also be given for the costs of constructing capital improvements required as a condition of Planning Board subdivision approval or a Department of Environmental Protection Site Location of Development License if the development was approved prior to enactment of this ordinance but building permits are issued after enactment. Credit shall be in an amount determined by the Planning Board, based upon the scope of the development approved by the Planning Board and/or DEP and the value of the capital improvements actually constructed. Credit shall be given only to the extent that the traffic impact of the proposed development, as determined at the time of construction, does not exceed the impacts anticipated by the subdivision or site location of development approval. The developer shall have the burden of establishing the cost of capital improvements constructed.

F. Any claim for credit must be made prior to the time for payment of impact fees. Any claim not so made shall be deemed waived.

G. Credits shall not be transferred from one project or development to another without the approval of the Town Council.

H. Determination pursuant to this Paragraph may be appealed to the Town manager by filing a written request with the Town Manager within 30 days of the determination

## **ORDER SETTING IMPACT FEES**

### **AND DESIGNATING APPROVED PROJECTS**

**BE IT ORDERED** by the Scarborough Town Council that pursuant to the Town of Scarborough Road Impact Fee Ordinance, the fees and charges shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council for development from the Highway Impact Fee Trust Fund.

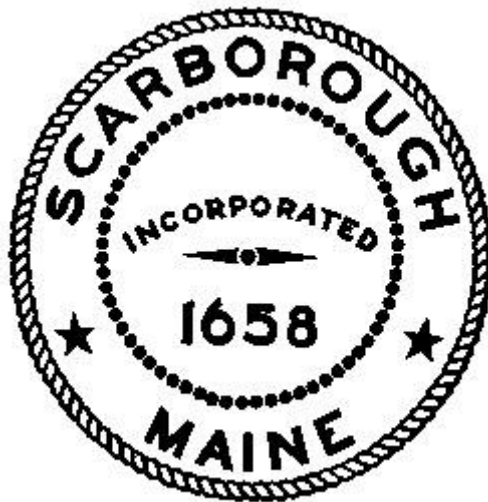
BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 415A Town of Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement Districts is hereby repealed in its entirety and is replaced with amendments to Chapter 415 Town of Scarborough Impact Fee Ordinance as recommended by the Planning Director.

## **CHAPTER 415A**

### **TOWN OF SCARBOROUGH**

**SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:**

**DUNSTAN CORNER CAPITAL IMPROVEMENT DISTRICT**



**ADOPTED AUGUST 16, 2006  
AMENDED FEBRUARY 7, 2007  
AMENDED NOVEMBER 16, 2011**



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**ROADWAY IMPACT FEE ORDINANCE:  
DUNSTAN CORNER CAPITAL IMPROVEMENT DISTRICT  
TOWN OF SCARBOROUGH**

**Section I. Title**

This Ordinance shall be known and may be cited as the “Scarborough Roadway Impact Fee Ordinance: Dunstan Corner Capital Improvement District”. It is adopted under the authority of Title 30-A M.R.S.A., § 4354, and the Town’s statutory and constitutional home rule powers.

**Section II. Purpose**

Dunstan Corner is one of Scarborough’s town centers within which four locally and regionally significant roads intersect. The capacity of Route One, and it’s intersections with Pine Point Road (Route 9), Broadturn Road and Payne Road, are critical to the mobility of regional vehicular traffic through Dunstan Corner and the access of local vehicular traffic to destinations within Dunstan Corner. In order for Dunstan Corner to continue to serve and evolve as a town center, while also maintaining and increasing vehicular mobility and access, the area is in need of adequate roadway infrastructure to support future development and the accompanying traffic generation and demands.

The Town has completed a master plan for roadway infrastructure improvements that will accommodate the traffic growth projected for the next twenty years and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate and benefit new development. The purpose of the Dunstan Corner Capital Improvement District is to procure the Town’s share of the cost of implementing these roadway infrastructure improvements from future development projects. The remaining roadway infrastructure improvement costs will be funded through cost sharing between PACTS (Portland Area Comprehensive Transportation System) and the Maine Department of Transportation. (amended 02/07/2007)(amended 11/16/2011)

**Section III. Applicability**

- A.** This ordinance shall apply to all new development seeking subdivision or site plan approval, the expansion of previously approved subdivisions or site plans, all new extractive industry operations, and to any change in use requiring site plan approval when the proposed development, whether located within or without the Dunstan Corner Capital Improvement District, generates additional traffic within the Dunstan Corner Capital Improvement District. (amended 02/07/2007)
- B.** The following development and construction shall be exempt from this ordinance:
  - 1.** Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.
  - 2.** Construction of accessory buildings or structures which do not generate additional vehicle trips.

3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

#### **Section IV. Impact Fee Procedures**

- A. Any person who seeks a permit or approval for any development, activity or use described in Section III(A) of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance. (amended 02/07/2007)
- B. Preliminary determinations regarding whether a proposed development will generate traffic within the Dunstan Corner Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis (in accordance with Section V of this ordinance), which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.

#### **Section V. Impact Fee Calculations**

An impact fee shall be applied to development projects located in whole or in part within the Town of Scarborough that generate additional traffic within the Dunstan Corner Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A., §4354. The process for this impact fee calculation is as follows:

- A. As per Section IV(B) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the Dunstan Corner Capital Improvement District in the P.M. peak commuter hour.
- B. The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers "Trip Generation" Handbook of traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).
- C. The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through the Dunstan Corner Capital Improvement District within the P.M. peak commuter hour. All new trips that pass through the District, regardless of whether they pass through the Dunstan Corner or

Payne Road/Route One intersections, shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.

**D.** The fee determination shall be based on the following:

1. The Town cost of the master plan for roadway infrastructure improvements in the Dunstan Corner Capital Improvement District will amount to \$1,430,000, which is to be funded from this impact fee ordinance. (amended 02/07/2007)(amended 11/16/2011)
2. The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1020 trip ends in the P.M. peak commuter hour of traffic.
3. Each additional trip generated by new development will benefit from the 1020 trip ends of capacity and will utilize one trip end of that additional capacity.
4. The fee per trip, therefore, shall be \$1,402. This fee per trip equals \$1,430,000 / 1020 trip ends. (amended 02/07/2007)(amended 11/16/2011)

**E.** For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to Section V, subsections A through D above, and then shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.

**F.** For any development not requiring Planning Board review but requiring the payment of an impact fee under this ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to Section V, subsections A through E above.

**G.** If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.



## **Section VI. Impact Fee Payment (amended 02/07/2007)**

The impact fee amount, as determined in accordance with Sections IV and V of this ordinance, shall be paid to the Town according to the payment schedule established under Section V, except as follows:

- A. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.

Payments shall be tendered to the Town Engineer. Upon determining that the payment is in the correct amount, the Town Engineer shall issue a receipt for the payment and deliver the payment to the Town Treasurer.

## **Section VII. Dunstan Corner Capital Improvement District Boundaries**

The Dunstan Corner Capital Improvement District is depicted on the map attached to this Ordinance as Appendix A and encompasses the following sections of roadway:

- Route 1 beginning 550 feet south of Broadturn Road extending northerly 2000 feet.
- Pine Point Road beginning at its intersection with Route 1 extending easterly 850 feet.
- Payne Road beginning at its proposed relocated intersection with Route 1 extending 1550 feet to align with the existing Payne Road.
- A proposed roadway beginning at Route 1 opposite the relocated Payne Road, westerly to Higgins Street.
- All of Harlow Street and Higgins Street.

## **Section VIII. Impact Fee Trust Fund**

- A. There is hereby established a Dunstan Corner Capital Improvement District Trust Fund to segregate the impact fee revenue generated by this ordinance from the Town's general revenues.
- B. Funds withdrawn from this trust fund account shall be used in accordance with Section IX of this ordinance.

## **Section IX. Use of Impact Fee Funds**

- A. Funds generated by this ordinance will be used for the purpose of completing the capital improvements identified in the master plan for roadway infrastructure improvements within Dunstan Corner Capital Improvement District.
- B. No funds shall be used for periodic or routine maintenance.
- C. In the event that bonds or similar debt instruments are issued for advanced provision of capital improvements for which road impact fees may be expended, impact fee funds may be used to pay debt service on such bonds or similar debt instruments to the extent that

the improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section IX(A) of this ordinance.

- D.** Funds may be used to provide refunds in accordance with Section X.
- E.** Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the Dunstan Corner Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer.

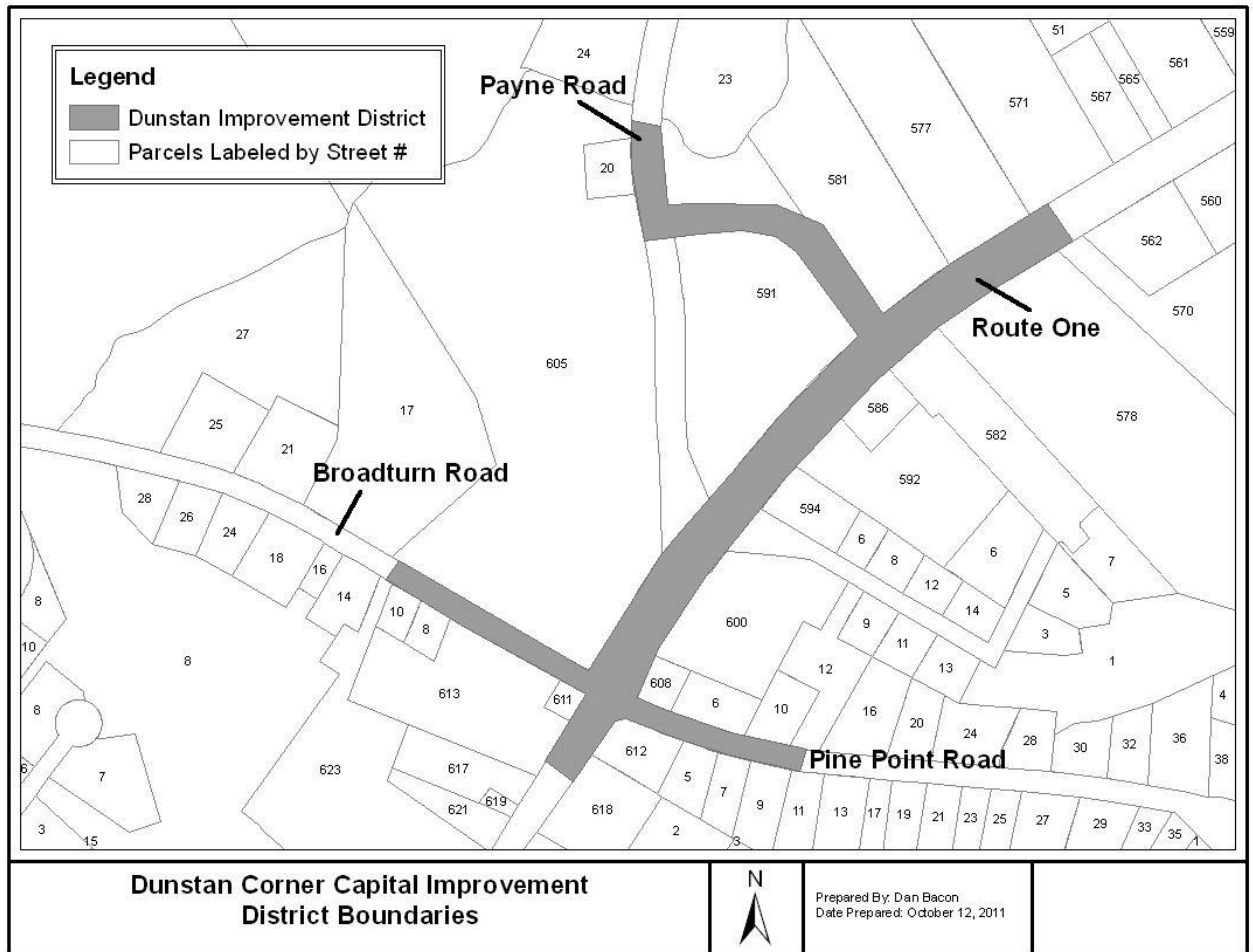
## **Section X. Refund of Impact Fees**

- A.** If a building permit or site plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the impact fee paid as required by this ordinance. The developer must submit an application for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan or extractive industries approval.
- B.** Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the ten (10) year period.

## **Section XI. Master Plan for Roadway Infrastructure Improvements**

- A.** As per Section IX(A) of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:  
  
Dunstan Corner, Scarborough, Maine, PIN 17343.00, September 28, 2011, Preliminary Design Scale 1" = 40', HNTB Corporation. (amended 11/16/2011)
- B.** The above cited plans may be amended by the Town Council, in accordance with Chapter 302, Scarborough Town Council Rules, Policies and Procedures Manual, if the amendments to the master plan are consistent with and further the purpose of this ordinance.

## Appendix A.



BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following Chapter 415B Town of Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement Districts is hereby repealed in its entirety and is replaced with amendments to Chapter 415 Town of Scarborough Impact Fee Ordinance as recommended by the Planning Director.

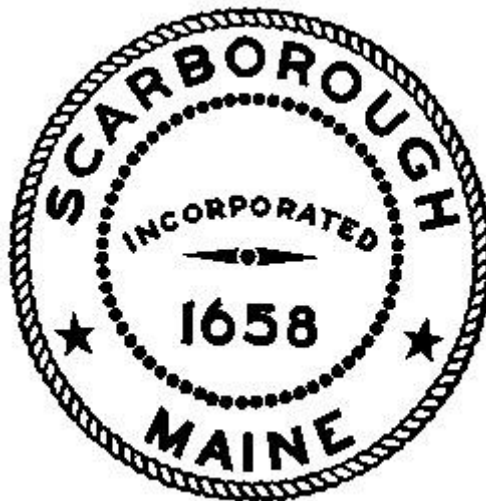
## **CHAPTER 415B**

### **TOWN OF SCARBOROUGH**

#### **SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:**

#### **HAIGIS PARKWAY / ROUTE ONE CAPITAL IMPROVEMENT**

#### **DISTRICT**



**ADOPTED November 2, 2011**



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# **HAIGIS PARKWAY / ROUTE ONE CAPITAL IMPROVEMENT DISTRICT TOWN OF SCARBOROUGH**

## **Section I. Title**

This Ordinance shall be known and may be cited as the “Scarborough Roadway Impact Fee Ordinance: Haigis Parkway / Route One Capital Improvement District”. It is adopted under the authority of Title 30-A M.R.S.A., § 4354, and the Town’s statutory and constitutional home rule powers.

## **Section II. Purpose**

The Haigis Parkway / Route One / Lincoln Avenue intersection is one of the most significant intersections in the Town of Scarborough and is critical to the current and future mobility of local and regional motorists. This intersection currently serves local and regional travel on Route One, the Haigis Parkway, and Lincoln Avenue and provides important connections to Payne Road, the Maine Turnpike and the Scarborough industrial park. In addition, this intersection is an important facility for managing future traffic demands, both to provide an alternative to the high traffic volumes on Payne Road as well as to accommodate the future growth and development that is planned for land accessible from the Haigis Parkway and Route One.

In order for the Haigis Parkway / Route One / Lincoln Avenue intersection to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and the accompanying traffic generation and demands, roadway infrastructure improvements are warranted. These improvements are highlighted in the Town-Wide Transportation Study and in the Transportation Policy Objectives of the Town’s Comprehensive Plan.

To that end the Town has completed a master plan for roadway infrastructure improvements that will accommodate the traffic growth projected for the next fifteen years and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. These roadway infrastructure improvements also include provisions for pedestrians in order to enhance the walk-ability and pedestrian safety of this section of Route One. The purpose of the Haigis Parkway / Route One Capital Improvement District is to reimburse the portion of the Town’s cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

## **Section III. Applicability**

- A.** This Ordinance shall apply to all new development seeking subdivision or site plan approval, the expansion of previously approved subdivisions or site plans, new development enabled by land divisions exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), all new extractive industry operations, and to any change in use when the proposed development, whether located within or

outside the Haigis Parkway / Route One Capital Improvement District, generates additional traffic within the Haigis Parkway / Route One Capital Improvement District.

**B.** The following development and construction shall be exempt from this ordinance:

1. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.
2. Construction of accessory buildings or structures which do not generate additional vehicle trips.
3. The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.

#### **Section IV. Impact Fee Procedures**

- A.** Any person who seeks a permit or approval for any development, activity or use described in Section III.A of this Ordinance is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.
- B.** Preliminary determinations regarding whether a proposed development will generate traffic within the Haigis Parkway / Route One Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined through a traffic analysis (in accordance with Section V. of this ordinance), which may accompany a more comprehensive traffic impact study depending on the scope of the development, prepared by a Registered Professional Engineer with significant experience in traffic engineering and to be paid for by the developer. This traffic analysis shall be reviewed and approved by the Town's consulting engineer and shall be incorporated into the review and approval of a development project by the Planning Board, or the Planning and Code Enforcement Department when applicable.

#### **Section V. Impact Fee Calculations**

An impact fee shall be applied to development projects located in whole or in part within the Town of Scarborough that generate additional traffic within the Haigis Parkway / Route One Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A., §4354. The process for this impact fee calculation is as follows:

- A.** As per Section IV(B) above, a traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by

additional vehicle trips to be generated by a development project that pass through the Haigis Parkway / Route One Capital Improvement District in the P.M. peak commuter hour.

- B.** The impact fee calculation for individual development projects shall use generally accepted standards, such as the most current Institute of Transportation Engineers “Trip Generation” Handbook of traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the P.M. peak commuter hour of traffic (between 3:00 and 6:00 PM on a weekday).
- C.** The costs assigned to trips shall be based upon a fee per new trip (a.k.a. primary trip) to be generated by a development project that passes through the Haigis Parkway / Route One Capital Improvement District within the P.M. peak commuter hour. All new trips that pass through the District shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (a.k.a. pass-by trips) or trips in the area that are rerouted (a.k.a. diverted trips) shall not be utilized in the assessment.
- D.** The fee determination shall be based on the following:

  - 1.** The Town cost of the master plan for roadway infrastructure improvements in the Haigis Parkway / Route One Capital Improvement District amounts to \$1,005,000, which is to be funded from this impact fee ordinance.  
\*(This cost total is less than the total project cost for the Fiscal Year 2010 CIP Project because the improvements associated with the Dunstan Corner intersection plan, the Southgate intersection plan, landscaping enhancements, and the Haigis/Scottow Hill Rd. and Route One/Enterprise Dr. improvements were not included).
  - 2.** The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 1015 trip ends in the P.M. peak commuter hour of traffic.
  - 3.** Each additional trip generated by new development will benefit from the 1015 trip ends of capacity and will utilize one trip end of that additional capacity.
  - 4.** The fee per trip, therefore, shall be \$990.00. This fee per trip equals \$1,005,000 / 1015 trip ends.
- E.** For any development requiring subdivision review, site plan review or other Planning Board review, the Planning Board shall determine the total impact fee for the development calculated pursuant to Section V, subsections A through D above, and then shall establish a payment schedule which apportions the impact

fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, a building, a dwelling unit (as defined in the Scarborough Zoning Ordinance), a unit of occupancy (as defined in the Scarborough Zoning Ordinance), or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development.

- F.** For any development not requiring Planning Board review but requiring the payment of an impact fee under this Ordinance, the Town Engineer shall determine the impact fee and payment schedule, pursuant to Section V, subsections A through E above.
- G.** If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.

## **Section VI. Impact Fee Payment**

The impact fee amount, as determined in accordance with Sections IV and V of this Ordinance, shall be paid to the Town according to the payment schedule established under Section V, except as follows:

- A.** For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.
- B.** For a new residential dwelling(s) proposed on a lot(s) created by a land division(s) exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), the impact fee amount shall be paid prior to the issuance of a building permit for construction.

Payments shall be tendered to the Town Engineer. Upon determining that the payment is in the correct amount, the Town Engineer shall issue a receipt for the payment and deliver the payment to the Town Treasurer.

## **Section VII. Haigis Parkway / Route One Capital Improvement District Boundaries**

The Haigis Parkway / Route One Capital Improvement District is depicted on the map attached to this Ordinance as Appendix A.



## **Section VIII. Impact Fee Trust Fund**

- A.** There is hereby established a Haigis Parkway / Route One Capital Improvement District Trust Fund to segregate the impact fee revenue generated by this Ordinance from the Town's general revenues.
- B.** Funds withdrawn from this trust fund account shall be used in accordance with Section IX. of this ordinance.

## **Section IX. Use of Impact Fee Funds**

- A.** Funds generated by this ordinance will be used for the purpose of financing the capital improvements identified in the master plan for roadway infrastructure improvements within the Haigis Parkway / Route One Capital Improvement District.
- B.** No funds shall be used for periodic or routine maintenance.
- C.** Given that bonds may be issued to finance the implementation of the capital improvements identified in the master plan for roadway infrastructure improvements within the Haigis Parkway / Route One Capital Improvement District, impact fee funds may be used to pay debt service on such bonds to the extent that the improvements provided are a component of the master plan for roadway infrastructure improvements, as per Section IX. A. of this ordinance.
- D.** Funds may be used to provide refunds in accordance with Section X.
- E.** Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the Haigis Parkway / Route One Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer.

## **Section X. Refund of Impact Fees**

- A.** If a building permit or site plan is surrendered or expires without commencement of construction; or a subdivision plan or extractive industries approval expires without recordation of the plan at the registry of deeds, the developer shall be entitled to a refund, without interest, of the impact fee paid as required by this ordinance. The developer must submit an application for such a refund to the Town Engineer not later than fifteen (15) days after the expiration of the building permit, site plan, subdivision plan or extractive industries approval.
- B.** Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall,

upon application for a refund by the developer, be returned to the developer without interest, provided that the developer submits an application for a refund to the Town Engineer within 180 days after expiration of the ten (10) year period.

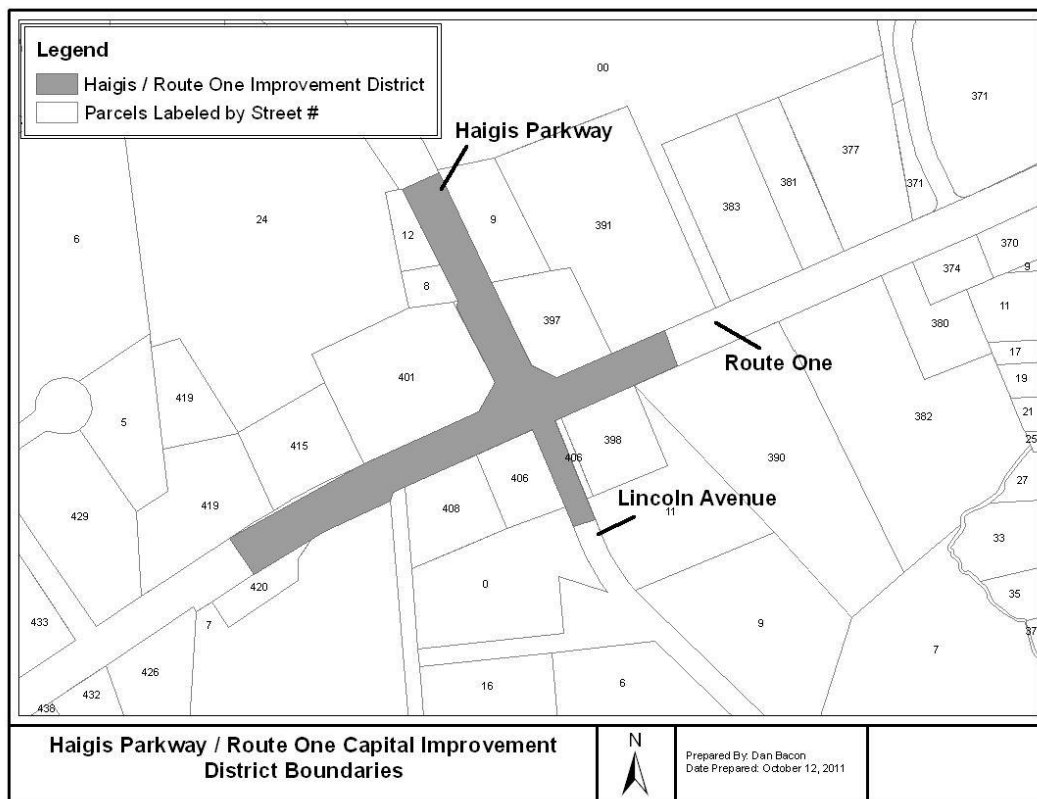
## Section XI. Master Plan for Roadway Infrastructure Improvements

- A. As per Section IX. A. of this ordinance, the funds generated by this ordinance will be used to accomplish the improvements identified in the following master plan:

Drawing Name: "Intersection Improvements Route 1 & Haigis Parkway, Scarborough, Maine, Cumberland County" dated August 2010 and prepared by Gorrill-Palmer Consulting Engineers, Inc.

- B. The above cited plans may be amended by the Town Council, in accordance with Chapter 302, Scarborough Town Council Rules, Policies and Procedures Manual, if the amendments to the master plan are consistent with and further the purpose of this ordinance.

### Appendix A.



## TOWN OF SCARBOROUGH RECREATION IMPACT FEE METHODOLOGY

This methodology sets out the procedure for determining the impact fee that should be paid by development for recreational facilities and open space.

The amount of the recreation impact must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.

### **Parks and Facilities Master Plan Applicable Cost: \$10,859,900**

New Projects:	\$5,262,700
Expansion Projects:	\$526,500
Replacement Projects:	\$5,070,700

### **Percentage of Total Cost Assigned to New Development: 20% - \$2,171,980**

Total Units Per Year (10 years) – 2,610
Total Bedrooms Per Year (10 years)(assumes 3 br and under) – 5,330
Total Cost Per Bedroom (10 Years) - \$408
Total Persons per Year (10 Years) – 5,234
Total Cost Per Person (10 Years) - \$415

### **Recreation Impact Fee: \$400 per bedroom**

### **Total Potential Captured (10 years): \$2,132,000**

### **Summary of Calculation Assumptions:**

<b>Permit Allocation Estimates Based on 2023 Rate of Growth</b>	<b>Average Annual Permits</b>	<b>3 Bedroom Limits</b>	<b>3 Bedroom Allowed</b>
Area 1 Rural outside of Growth Areas - 25 per year	25	None	25
Area 2 In Designated Growth Areas 210 per three years	70	35%	25
Area 3 In Designated Growth Area, The Downs - 400 per three years	133	35%	47
Affordable & Workforce 100 per three years	33	20%	7

<b>Permit Allocation Estimates by Bedroom Size</b>	<b>0-1 Bedroom</b>	<b>2 Bedroom</b>	<b>3+ Bedrooms</b>
Area 1 Rural outside of Growth Areas - 25 per year	0%_	0%	100%
Area 2 In Designated Growth Areas 210 per three years	35%	30%	35%
Area 3 In Designated Growth Area, The Downs - 400 per three years	34%	36%	30%
Affordable & Workforce 100 per three years	40%	45%	15%
<b>Annual Totals</b>	<b>0-1 Bedroom</b>	<b>2 Bedroom</b>	<b>3+ Bedrooms</b>
Total Units Per Year	83	81	97
Household Size Per Unit Type	1.41	2.13	2.42
Persons Per Year	117.03	172.53	234.74

<b>10 Year Totals</b>	
Permits 10 years	<b>2,610</b>
Persons 10 Years	<b>5,243</b>
2021 ACS Population	<b>21,539</b>
Population Percentage of New	<b>20%</b>

**Impact Fee Area 1: Intersection of Payne Road and Ginn Road**  
**Scarborough, Maine**  
**Preliminary Cost Estimate**  
**February 2024**

Item Number	Item Description	Unit	Quantity	Cost/Unit	Total Cost
1	Roadway	SF	79,762.65	\$ 14.00	\$ 1,116,677.10
2	Sidewalk	SF	28,277.27	\$ 6.00	\$ 169,663.62
3	Esplanade	SF	14,802.11	\$ 5.00	\$ 74,010.55
4	Curb Type 1	LF	2,981.29	\$ 200.00	\$ 596,258.00
5	Pedestrian Traffic Items	LS	1.00	\$ 72,000.00	\$ 72,000.00
6	Clearing	AC	1.02	\$ 26,000.00	\$ 26,520.00
7	Minor Items (10% of Above)	LS	1.00	\$ 205,512.93	\$ 205,512.93
8	Right of Way	SF	45,823.58	\$ 13.00	\$ 595,706.54
				Subtotal	\$ 2,856,348.74
9	Mobilization (10%)	LS	1.00	\$ 285,634.87	\$ 285,634.87
10	Maintenance of Traffic (10%)	LS	1.00	\$ 285,634.87	\$ 285,634.87
11	Erosion Control (5%)	LS	1.00	\$ 142,817.44	\$ 142,817.44
12	Contingency (20%)	LS	1.00	\$ 571,269.75	\$ 571,269.75
				Subtotal	\$ 4,141,705.67
13	Engineering Design (10%)	LS	1.00	\$ 414,170.57	\$ 414,170.57
14	Construction Engineering (10%)	LS	1.00	\$ 414,170.57	\$ 414,170.57
15	Traffic Signals Design by Sebago	LS	1.00	\$ 779,045.00	\$ 779,045.00
				Project Total	\$ 5,749,091.80

Construction Cost Estimate Projected to 2035			
Annual % difference	Decimal	Cost in 2024	Cost in 2035
5.00%	0.05	\$ 5,749,091.80	\$ 9,832,897.98

Per Trip Impact Fee Summary					
Annual % Difference	Cost in 2035	Existing Trips	Proposed Trips	Change in Trips	Cost Per Trip
5.00%	\$9,832,897.98	2611	4377	1766	\$ 5,567.89

Funding of Improvements - Cost Sharing			
Anticipated Funding Source	Percentage	Cost per Trip	Total Contribution
State and Local Contribution	50%	\$ 5,567.89	\$ 2,783.95
New Development	50%	\$ 5,567.89	\$ 2,783.95

\* Note that these costs do not include any considerations for bonding or outside funding sources as part of the project total, the projected costs, or the cost per trip.



**Impact Fee Area 2: Payne Road Nonesuch River**  
**Scarborough, Maine**  
**Preliminary Cost Estimate**  
**February 2024**

Item Number	Item Description	Unit	Quantity	Cost/Unit	Total Cost
1	Roadway	SF	192,789.32	\$ 14.00	\$ 2,699,050.48
2	Sidewalk	SF	59,215.49	\$ 6.00	\$ 355,292.94
3	Esplanade	SF	25,175.99	\$ 5.00	\$ 125,879.95
4	Curb Type 1	LF	6,135.99	\$ 200.00	\$ 1,227,198.00
5	Curb Type 5	LF	4,379.36	\$ 75.00	\$ 328,452.00
6	Paved Median	SF	1,266.03	\$ 12.00	\$ 15,192.36
7	Grassed Median	SF	18,337.10	\$ 10.00	\$ 183,371.00
8	Clearing	AC	2.96	\$ 26,000.00	\$ 76,960.00
9	Minor Items (10% of Above)	LS	1.00	\$ 501,139.67	\$ 501,139.67
10	ROW - Bridges to Mussey	SF	75,598.26	\$ 4.50	\$ 340,192.17
11	ROW - Mussey to Gorham	SF	12,526.59	\$ 16.00	\$ 200,425.44
				Subtotal	\$ 6,053,154.01
12	Mobilization (10%)	LS	1.00	\$ 605,315.40	\$ 605,315.40
13	Maintenance of Traffic (10%)	LS	1.00	\$ 605,315.40	\$ 605,315.40
14	Erosion Control (5%)	LS	1.00	\$ 302,657.70	\$ 302,657.70
15	Contingency (20%)	LS	1.00	\$ 1,210,630.80	\$ 1,210,630.80
				Subtotal	\$ 8,777,073.32
16	Engineering Design (10%)	LS	1.00	\$ 877,707.33	\$ 877,707.33
17	Construction Engineering (10%)	LS	1.00	\$ 877,707.33	\$ 877,707.33
18	Bridge Estimate	LS	1.00	\$ 3,449,150.00	\$ 3,449,150.00
				Project Total	\$ 13,981,637.98

Construction Cost Estimate Projected to 2035			
Annual % difference	Decimal	Cost in 2024	Cost in 2035
5.00%	0.05	\$ 13,981,637.98	\$ 23,913,345.73

Per Trip Impact Fee Summary					
Annual % Difference	Cost in 2035	Existing Trips	Proposed Trips	Change in Trips	Cost Per Trip
5.00%	\$23,913,345.73	2833	6170	3337	\$ 7,166.12

Funding of Improvements - Cost Sharing			
Anticipated Funding Source	Percentage	Cost per Trip	Total Contribution
State and Local Contribution	50%	\$ 7,166.12	\$ 3,583.06
New Development	50%	\$ 7,166.12	\$ 3,583.06

\* Note that these costs do not include any considerations for bonding or outside funding sources as part of the project total, the projected costs, or the cost per trip.

**TRAFFIC IMPACT FEES COMPARISON**  
**Scarborough, Maine**

AR Building Development Project on Mussey Road (120 housing units)				
Impact Fee Districts	Current Ordinance Impact Fee	Proposed Ordinance Impact Fee	Difference	% Increase
Haigis District Fee	\$ 5,940.00	\$ 5,940.00	\$ -	0%
Dunstan District Fee	\$ 8,412.00	\$ 8,412.00	\$ -	0%
Oak Hill Mitigation Fee	\$ 13,590.00	\$ 13,590.00	\$ -	0%
Payne Rd District #1 Fee	\$ 448.29	\$ -	\$ (448.29)	-100%
Payne Rd District #2 Fee	\$ 5,263.56	\$ -	\$ (5,263.56)	-100%
Payne Rd District #3 Fee	\$ 4,491.45	\$ -	\$ (4,491.45)	-100%
Payne Rd District #5	\$ 15,367.80	\$ 15,367.80	\$ -	0%
Payne Rd - Ginn Rd District Fee	\$ -	\$ 25,055.55	\$ 25,055.55	100%
Payne Rd - Nonesuch District Fee	\$ -	\$ 32,247.54	\$ 32,247.54	100%
	<b>\$ 53,513.10</b>	<b>\$ 100,612.96</b>	<b>\$ 47,099.79</b>	<b>88%</b>

**Note: Cost per Unit with new Ordinance will be \$838.44**

Oak Hill Plaza Apartment Bldg (approved in 2019)				
Impact Fee Districts	Current Ordinance Impact Fee	Proposed Ordinance Impact Fee	Difference	% Increase
Haigis District Fee	\$ 11,880.00	\$ 11,880.00	\$ -	0%
Dunstan District Fee	\$ 8,412.00	\$ 8,412.00	\$ -	0%
Oak Hill Mitigation Fee	\$ 14,345.00	\$ 14,345.00	\$ -	0%
Payne Rd District #1 Fee	\$ -	\$ -	\$ -	0%
Payne Rd District #2 Fee	\$ 584.84	\$ -	\$ (584.84)	-100%
Payne Rd District #3 Fee	\$ -	\$ -	\$ -	0%
Payne Rd District #5	\$ 2,049.04	\$ 2,049.04	\$ -	0%
Payne Rd - Ginn Rd District Fee	\$ -	\$ -	\$ -	0%
Payne Rd - Nonesuch District Fee	\$ -	\$ -	\$ -	0%
	<b>\$ 37,270.88</b>	<b>\$ 36,686.04</b>	<b>\$ (584.84)</b>	<b>-2%</b>

Mussey Road Hotel (126 units)				
Impact Fee Districts	Current Ordinance Impact Fee	Proposed Ordinance Impact Fee	Difference	% Increase
Haigis District Fee	\$ -	\$ -	\$ -	0%
Dunstan District Fee	\$ -	\$ -	\$ -	0%
Oak Hill Mitigation Fee	\$ -	\$ -	\$ -	0%
Payne Rd District #1 Fee	\$ 1,344.87	\$ -	\$ (1,344.87)	-100%
Payne Rd District #2 Fee	\$ 3,509.04	\$ -	\$ (3,509.04)	-100%
Payne Rd District #3 Fee	\$ 7,485.75	\$ -	\$ (7,485.75)	-100%
Payne Rd District #5	\$ 3,073.26	\$ 3,073.26	\$ -	0%
Payne Rd - Ginn Rd District Fee	\$ -	\$ 38,975.30	\$ 38,975.30	0%
Payne Rd - Nonesuch District Fee	\$ -	\$ 50,162.84	\$ 50,162.84	0%
	<b>\$ 15,412.92</b>	<b>\$ 92,211.40</b>	<b>\$ 76,798.48</b>	<b>498%</b>

**Note: Cost per Unit with new Ordinance will be \$731.84**

Downs Development Traffic Movement Permit Required Improvements				
Impact Fee Districts	Total Cost of Offsites	Approx Trips Covered by TMP	Cost per trip**	Cost Sharing %
<b>Cost of Offsite Improvements*</b>	<b>\$ 14,000,000.00</b>	<b>3,000</b>	<b>\$ 4,666.67</b>	
DOT Share of Project	\$ 3,000,000.00			21%
Town Share	\$ 2,800,000.00			20%
Developer Share	\$ 8,200,000.00			<b>59%</b>

**\* Engineers Estimate of Downs Development Offsite Improvements in 2021**

**\*\* Downs Development still paying for Impacts to Dunstan and Haigis Parkway Districts in addition to these numbers**

## **Proposed Amendment 1. Council Input**

### **SECTION III. RECREATION IMPACT FEES**

#### **D. Waiver of Impact Fees.**

The ~~Town Council~~ Planning Board may, by formal vote following a public hearing, waive the payment of a required Recreation Impact fee, in whole or in part, if it finds that:

1. The developer or property owner who would otherwise be responsible for the payment of the impact fee voluntarily agrees to construct an improvement for which the impact fee would be collected, or an equivalent improvement approved by the ~~Town Council~~ Planning Board.
2. The developer of a subdivision offers to dedicate and/or improve public lands or recreational amenities and the ~~Town Council~~ Planning Board finds these public lands or recreational amenities to be of town-wide benefit.

## **Proposed Amendment 2 - From Developer Forum**

### **SECTION V. ROADWAY IMPACT FEES**

#### **H. Roadway Impact Fee Credits**

Credit for the dedication of land for rights of way shall be valued at the most recent assessed value by the Town Assessor or by fair market value established by private appraisers acceptable to the Town. Credit for the dedication of land shall be provided when property has been conveyed at no charge to, and accepted by, the Town in a manner satisfactory to the Town Council.

1. Credit for construction of capital improvements shall be given only where:
  - a. the Town and applicant agree in writing that it would be more cost effective or expeditious for the applicant to construct improvements authorized for funding under this Ordinance, or
  - b. for the cost of constructing capital improvements as a condition of Planning Board approval under the Site Plan or subdivision ordinance of the Town, provided such capital improvements would be eligible for designation by the Town Council for funding under this Ordinance. In such cases, the applicant shall submit acceptable engineering drawings and specifications, and construction cost estimates to the Town which shall determine credit for construction based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates, if the Town determines that estimates submitted by the applicant are either unreliable or inaccurate. Upon final determination of all credits, the Town shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and the legal description or other adequate

description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate and return such signed document to the Town before credit will be given. The failure of the applicant to sign, date and return such document with the balance of the impact fees and building permit fees within 60 days shall nullify the credit.

2. Except as otherwise provided in Section 3 below, credit against impact fees otherwise due will remain provisional until:
  - a. construction is completed and accepted by the Town or the State, whichever is applicable, and
  - b. a suitable maintenance and warranty bond is received and approved by the Town, were applicable.
3. Security shall be given for provisional credit in the form of a performance bond, irrevocable letter of credit or escrow agreement posted with and approved by the Town Manager and Town Attorney in an amount determined by the Town Manager. If the Project will not be constructed within two years of the acceptance of the offer by the Town, the amount of the security shall be increased by 10% compounded for each year of life of the security. If the construction project is not to be completed within five years of the date of the developer's offer, the Town Council must approve the construction project and its scheduled completion date prior to the acceptance of the offer by the Town. The security or replacement shall state the date for commencement of the project and the time period for estimated completion. This date and/or time period may be extended by the Town for good cause shown conditioned upon extension of the security.
4. Credit may also be given for the costs of constructing capital improvements required as a condition of Planning Board subdivision approval or a Department of Environmental Protection Site Location of Development License if the development was approved prior to enactment of this ordinance but building permits are issued after enactment. Credit shall be in an amount determined by the Planning Board, based upon the scope of the development approved by the Planning Board and/or DEP and the value of the capital improvements actually constructed. Credit shall be given only to the extent that the traffic impact of the proposed development, as determined at the time of construction, does not exceed the impacts anticipated by the subdivision or site location of development approval. The developer shall have the burden of establishing the cost of capital improvements constructed.
5. Any claim for credit must be made prior to the time for payment of impact fees. Any claim not so made shall be deemed waived.
6. Credits shall not be transferred from one project or development to another without the approval of the Town Council.

7. Determination pursuant to this Paragraph may be appealed to the Town manager by filing a written request with the Town Manager within 30 days of the determination





**TO:** Scarborough Town Council  
**FROM:** Karen Martin, SEDCO Executive Director  
**DATE:** May 29, 2024  
**SUBJECT:** Comments from Developer's Forum on Impact Fees

## **Overview:**

On Thursday May 23, SEDCO organized an informational forum with folks in the development community to communicate proposed changes in the Impact fee ordinance and associated new fees, along with proposed additions to environmental standards in the site plan review ordinance. This memo summarizes comments regarding new impact fees. Comments on environmental standards will be summarized separately.

The forum had two purposes 1) to allow Town staff to present the proposed changes along with the reasons behind the changes and 2) to discuss the changes and prepare comments for Council.

Thirty-one participants (including 4 staff and 2 councilors) attended the forum, which was held at 7:45 am in the conference room at Landry French. Participants could join in person or online. A list of participants is attached to this memo. The meeting can be viewed at the following link:

<https://www.youtube.com/watch?v=IUINX2O3cbM>

## **Summary**

The Town Engineer and Town Planner presented to the group using the slides that were shown to Council on May 5. These slides highlighted the existing impact fee ordinances, proposed new impacts fees and the rationale behind the fees. They also included example calculations based on actual projects.

## **Questions and Discussion**

### **What is the big picture - is there a plan for when these projects will be built? What is the public process for determining what actually gets built?**

*Response: There are preliminary plans for each project that were presented to the Transportation Committee. It may be helpful to this group if staff provides a landing page with the plans and cost estimates. The details can help this group better understand how the costs were derived. Those details will be provided online. Please note that the estimates do include construction cost increases but do not include bonding fees and interest. <https://www.scarboroughmaine.org/stay-connected/municipal-projects/impact-fees>*

### **Are the project costs for today or ten years from now?**

*Response: The plan is to build in ten years, putting up as much money as we have and asking DOT to do a project with us. We are not going to get to \$23 million in ten years, but we will have funds to come to the table to work with DOT.*

### **How did you calculate the delta between any existing deficiencies in roadways and those created by new development? New development should not have to pay for existing deficiencies.**

*Response: Those considerations were addressed. The Town Engineer will make the calculations available online for folks to review. The more detailed information is now available. <https://www.scarboroughmaine.org/stay-connected/municipal-projects/impact-fees>*

**Will the Gorham Connector affect the number of trips used to generate the impact fees on Payne Road?**

Response: The Maine Turnpike Authority modeling has not suggested that there would be significant impact on Payne Road.

**Can a developer build a project or parts of a project in lieu of the fee? Given that these fees are 2 to 4 times what we are currently paying, it may be cheaper for the developer to build and pay for a project that meets their time frame rather than paying into the system?**

*Response: Staff will double check, but this option is thought to still be in place.*

**Comments/Suggestions**

Looking at the rough numbers, the fees per trip are a major change in project costs. These are extraordinary fees. Perhaps as much four times what we (developers) are paying now.

It seems like collecting fees to do work later has not worked. It did work doing an improvement and then paying down the debt, which was the approach in Dunstan. Doesn't it make more sense for the Town to build the project, then execute the impact fees to pay back the costs? It lowers everyone's costs and gets the project done at today's costs.

The Town should figure out what needs to be done, put it out to bid and then charge us for it. It's cleaner and more efficient.

**Additional Comments Shared after the Forum**

*Alternative to Current Proposal (Submitted by Dan Bacon):*

Where the Town has had success before is performing the transportation improvements at the front end of establishing an impact fee program and paying down debt overtime with impact fee proceeds. This has been successful in the Payne Rd corridor between 114 and the South Portland line; Dunstan Corner and at Haigis Parkway. It has been successful for the following reasons:

- Improvements get done upfront, before there is a crisis
- Construction costs are actually known and managed/value engineered by the Town, so the impact fee is fair and the per trip fees are within reason
- Improvements are actually made, as the Town has had very little success collecting fees and doing the improvements later – at the frustration of everyone (developers, town, motoring public)
- MDOT has provided matching funds for past Town impact fee programs that have taken this approach, both at Payne Rd and Dunstan Corner
- This approach is much more appealing to economic development, as businesses see improvements have been made to accommodate them and a reasonable fee is set and provides predictability and clarity for what it goes to
- Reduces the overall project cost
- Improvements made up front with right sized impact fees can ensure a revenue stream. If fees are too high, no development happens, and no revenue is realized to fix the system

## Developers' Forum May 23, 2024 (In Attendance)

<b>Name</b>	<b>Company</b>	<b>In Person/Online</b>
Adam Berg	Alpha Management	In Person
Drew Gagnon	Gorill Palmer	In Person
John Whitten Jr.	Haley Ward	In Person
Drew Olehowski	Haley Ward	Online
Steven Calocerinos	LaBella PC	Online
Kevin Freeman	Landry French/SEDCO	In Person
Dan Bacon	M&R Holdings	In Person
Jake Michaud	M&R Holdings	In Person
Roccy Risbara	M&R Holdings	In Person
Celina Daniell	M&R Holdings	In Person
Arthur Ledue	MTR Holdings LLC/KCV Holdings LLC	In Person
Mathew Orr	Sebago Technics	In Person
Nancy St Clair	St Clair Associates	Online
Joe Frustacci	Star Homes	In Person
Eric Higgins	LRHiggins	In Person
Caitlyn Abbott	Sebago Technics	In Person
Daniel Dickinson	SVRNE, LLC	in Person
Jon Anderson	SEDCO Council Liaison, LRPC and Transportation	Online
Jean- Marie Caterina	Council Ordinance Committee Chair	Online
Jon Crasnick	Chair, SEDCO	In Person
Rick Shinay	SEDCO/LRPC member	online
Kerry Anderson	KDA Development	online
Rhonda Anderson	KDA Development	online
Cyndy Taylor	Housing Initiatives of New England	online
Autumn Speer	Planning Director	In Person
Angela Blanchette	Town Engineer	In Person
Karen Martin	SEDCO Executive Director	In Person
Magda Slawiec	SEDCO Staff	In Person
Denis Garriepy	COO- Landry French	In Person
Mason Rowell	Landry French, Director of Preconstruction	In Person
Ken Cianchette	Erik's Church Bar & Grill/Land Owner	Submitted comments

Note that Cyndy Taylor, Kerry Anderson and Rhonda Anderson were online but chose not to be a panelist.



To: Town Council Members; Tom Hall, Town Manager; Autumn Speer, Planning Director; Angela Blanchette, Town Engineer

From: Dan Bacon, Development Director and Crossroads Holdings LLC

Date: June 11, 2024

Re: **Feedback on the Proposed Impact Fees and Impacts on Economic Development**

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Thank you for providing additional time to review and comment on the new roadway impact fees proposed for the Payne Rd corridor. From a public policy perspective, Crossroads Holdings supports the use of impact fees if structured for success. To be successful, the impact fee cost (per trip fee in the case of traffic fees) needs to be right sized to enable commercial projects and economic development to be able to continue, while also providing meaningful developer funding to enable a public-private partnership to accomplish these transportation improvements.

Based on our review and analysis, the new impact fee per trip costs will double and triple the impact fees new businesses and end-users will have to pay at the Downs in the future after our currently permitted trips are used. This significant cost increase will become a barrier to new economic development, as our current traffic costs coupled with all other fees and development costs already create financial headwinds for new projects. Adding significantly more cost will prevent new commercial projects from proceeding.

In order to address this issue, while still delivering these important transportation initiatives in the next five to ten year period, we offer the following comments, questions and recommendations. We look forward to collaborating further in order to establish a fee structure and improvement plans that work for everyone.

**Comments Regarding the Proposed Impact Fee Area 1 – Payne at Ginn**

- This segment of Payne Rd exhibits very auto-oriented land uses coupled with expansive wetlands and has little potential for additional development. Given the lack of pedestrian destinations, both now and in the future, it is surprising that both a 12' multi-use path and a 6' sidewalk are proposed. To minimize impacts to wetlands, reduce overall impervious coverage and to focus costs on project needs, we request these bike-ped improvements be scaled back. An 8' multi-use path on one side of the road will more than adequately serve this corridor and will reduce environmental impacts. This change would be a cost reduction that could help make this impact fee cost more feasible for payers and future economic development while still providing a major upgrade for cyclists and pedestrians.
- The traffic signal proposed at Ginn Rd appears to serve a dead-end industrial roadway, bank and gas station and a previously permitted retail plaza on the south side of Payne Rd. Such a traffic signal needed for convenient access in and out of two dead end development areas is customarily the responsibility of these side street projects and not an impact fee on development town-wide.

The Cabelas project and the Downs new Market St signalized intersections are nearby examples of developer responsibility for a new signal system that otherwise has limited benefit for other development projects. Removing this cost from the responsibility of the broader development community appears appropriate.

- Completing this portion of the Payne Rd corridor improvements with partnership funding between the Town and Crossroads Holdings thru impact fees (and other development) in the next 4-5 years should be strongly considered. Setting a 4-5 year project delivery can make roadway improvements before congestion occurs and would lower the costs of construction for all parties. This can reduce town borrowing costs as well as set a more viable per trip fee for new development.

### **Comments Regarding Proposed Impact Fee Area 2 -Libby Bridge**

- The limits of improvements for this impact fee district are unclear. Where do the improvements begin along Payne Rd in the vicinity of the Downs/Payne/Holmes intersection? Is widening at the Holmes/Downs/Payne intersection included to accommodate thru traffic and the new four lane section included in the impact fee program?
- Similar to the Payne Rd segment from Ginn to Downs Rd, this portion of the corridor is sparsely developed, exhibits industrial uses and significant wetlands. An 8' multi-use path would be more than adequate and would reduce environmental impacts and significant costs, especially for a very expensive new bridge. If the amount and nature of development along this corridor dramatically changes, additional sidewalks can be required of site development along the corridor. This has historically been done throughout the town and is appropriate here.
- What is the purpose of the wide grassed center median (outside of the necessary taper limits)? This element adds significant cost of construction, shifting of utility poles, environmental impacts as well as land acquisition for a much wider right-of-way. Landscaped islands have been successful in Town at intersection locations, but adding such a significant center island and associated on-going maintenance costs doesn't seem like a necessity nor should be the responsibility of the impact fee. Eliminating this center island will lower costs for all parties and help establish a viable per trip fee.

### **Comments on Partnership Funding Sources**

- In addition to the cost savings measures noted above, there are variety of public and quasi-public funding sources that can supplement developer and Town expenses and lower costs for everyone. More specifically, the bridge replacement is the largest single project expense and is rarely carried by new development or Town only funding. Given the significance of the Nonesuch River and surrounding land trust property and habitat, Federal funding is highly likely for such infrastructure and should be pursued for both transportation but also resiliency and environmental benefits and the developer share of this infrastructure commensurately reduced. Crossroads would be pleased to assist in pursuing such funding with our State's congressional delegation.



- Using a portion of the Town's sheltered revenue from the Downtown TIF District is another measure for the community to invest in transportation improvements for the benefit of the entire community, while also enabling economic development to continue with the Downtown TIF boundaries and at the Downs. Enabling the positive revenue stream to continue to increase by enabling economic development to continue and delivering transportation improvements in the near term would be a win-win for the Town.

In summary, we'd like to work with the Town further on the project scope for these important corridor improvements so that these transportation enhancements are something that all parties can afford to design, permit, and construct with Town and developer impact fee funding, coupled with other funding opportunities and creative thinking. With some adjustments to the plan and framework, a workable impact fee is very possible. Thank you.

# Memorandum

**To:** Tom Hall, Town Manager

**From:** Angela Blanchette, PE, Town Engineer  
Autumn Speer, Planning Director

**Date:** June 17, 2024

**RE:** Traffic Impact Fee Proposal Clarifications

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The Planning Department and Engineering & Technical Services Departments have reviewed the feedback submitted by the development community related to the proposal in front of Town Council for closing and reestablishing Traffic Impact Fee Districts in Town. Based on this feedback it appears that a few items may need to be clarified for the general public.

First, in order to establish a Traffic Impact Fee District a general concept of improvements needs to be established. This concept is not an engineered design and should not be construed as such. With past Traffic Impact Fee Districts the cost per trip was based on a general narrative. In order to better define elements of the Complete Streets, which is defined for our projects through the Comprehensive Plan, staff has established a concept plan. The specific details around this plan should not be taken as finite. Changes to the concept, such as reducing bike and ped facility dimensions or the elimination of safety related infrastructure would be fully vetted during the design process. The overall concept establishes a benchmark by which we can calculate a cost per trip. Minor changes as described in the Memo received will not significantly change the total anticipated costs. This is especially true, as the proposal already contemplates a fifty percent reduction in total cost per trip for the fee.

We believe that the full design of the projects should not be the focus of the discussion at this time. We understand that the development community has concerns related to contributing 50% to the escalated construction costs over the next 10 years. The idea of constructing the improvements now at the lower cost to build is a good one, however the Finance Dept has determined that constructing the projects up front through a Town CIP and being reimbursed to pay down the bond would result in similar overall costs based on the financing of these projects over 30 years.

Lastly, it should be noted that the traffic signal at Ginn Road is warranted by the increased through volumes along the Payne Road corridor. It is beneficial to future development at this intersection, however that is not the driver. A significant issue is created with pass through traffic when no gaps are created. Without this intersection upgrade, the added volumes on the Payne Road corridor at this intersection and adjacent roadway will likely become a high crash location and require more investment.

We certainly appreciate the large price tag of the needed improvements for these proposed impact fee districts. We would recommend that the discussion with Council focus on appropriate percentages for each stakeholder group (Development Community, Town through CIPs, and State grant opportunities), rather than reducing the scope of the concept plans.

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-048.** Move approval of the second reading, to extend the Town-wide Moratorium on Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities, that the Town Council approved on February 7, 2024. *[Assistant Town Manager]*

*Assistant Town Manager*

*Ought to Pass*

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Sponsor

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Recommendation

*05/01/2024 - Vote: 6 Yeas. 1 Nay [Councilor Hamill]*

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First Reading/Vote

*N/A*

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Public Hearing

*06/26/2024 - Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

**ACTION ITEM: Order No. 24-048.**

**SUBJECT:**

Second reading to extend the Town-wide Moratorium on Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities, that the Town Council approved on February 7, 2024. *[Assistant Town Manager]*

**PURPOSE:**

Expansion of existing, cannabis cultivation licenses until October 24, 2024 so that further changes to the Cannabis Licensing Ordinance can be considered.

**BACKGROUND:**

Following three (3) successive moratoriums to restrict cannabis licensing, and the enactment of increased odor mitigation standards and a revised enforcement provisions, the Town continues to receive odor reports. As a result, the Ordinance Committee and Town Council have expressed interest in considering additional revisions to the Cannabis Licensing Ordinance which may include odor mitigation requirements, enforcement, and zoning.

**FISCAL IMPACT:**

N/A

**STATUS / PROCESS TO DATE:**

- Long-standing concerns with cannabis odor in the Pine Point Overlay District, as well as increased concerns in the Pleasant Hill Road corridor, has resulted in two previous emergency moratoriums and the convening of a marijuana working group to study and recommend changes to the licensing ordinance. Despite revisions to the Licensing Ordinance, concerns persist.
- First reading before the Town Council: June 5, 2024
- Second reading before the Town Council: June 26, 2024

**PROPOSED ACTION:**

Recommend approval of the second reading on Order No. 24-048.

**ATTACHMENTS:**

- Proposed New moratorium on Cannabis Cultivation Licenses through October 24, 2024

**TOWN OF SCARBOROUGH ORDINANCE EXTENDING THE MORATORIUM  
ON ADULT USE CANNABIS CULTIVATION FACILITIES AND MEDICAL  
CANNABIS CULTIVATION FACILITIES**

WHEREAS, on February 7, 2024, the Town Council adopted a 180-day moratorium on the acceptance, processing, or acting upon any application for any approval, including but not limited to a building permit, certificate of occupancy, site plan review, conditional use, license or any other approval, relating to the establishment, operation, or expansion of a business or operation for a Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities (“the Moratorium”); and

WHEREAS, the Town Council is currently in the process of revising and developing appropriate land use regulations concerning Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities; and

WHEREAS, during the term of the Moratorium, the Town Council has continued to review and develop adequate regulations to prevent serious public harm from the development Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities in the Town;

WHEREAS, the Moratorium will expire on June 30, 2024;

WHEREAS, State law requires a moratorium to be of a definite term of not more than 180 days, which may be extended for additional 180 day periods, upon a finding that:

- A. The problem giving rise to the need for the moratorium still exists; and
- B. Reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium;

WHEREAS, the Town Council finds that the problem giving rise to the need for the Moratorium still exists; and



WHEREAS, during the term of the Moratorium the Town Council has made reasonable progress to alleviate the problem giving rise to the need for the Moratorium, and has held numerous workshops and meetings with stakeholders, but requires an additional amount to develop regulations governing the location and operation of Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities; and

WHEREAS during the period of this extension of the Moratorium, the Town will continue to diligently work to develop and adopt appropriate land use regulations concerning Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities; and

NOW THEREFORE, pursuant to the authority granted to it by 30-A M.R.S. § 4356, be it hereby ordained by the Town Council of the Town of Scarborough, Maine, as follows:

The Moratorium on Adult Use Cannabis Cultivation Facilities and Medical Cannabis Cultivation Facilities adopted by the Town Council on February 7, 2024, is hereby extended for an additional 120 days until October 24, 2024, unless earlier extended, repealed or modified by the Town Council.

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-049.** Move approval of the second reading to approve the expenditure, in an amount not to exceed, \$800,000 from the Land Acquisition Reserve Fund for the purpose of purchasing property located at 65 Hanson Road [Silver Brook Preserve II), identified by the Scarborough Tax Assessors Map R001/Lot 003, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town’s interest. [*Parks and Conservation Land Board*]

*Parks and Conservation Land Board*

*Ought to Pass*

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Sponsor

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Recommendation

*05/01/2024 - Vote: 6 Yeas. 1 Nay [Councilor Hamill]*

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First Reading/Vote

*N/A*

---

Public Hearing

*06/26/2024 - Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

### **ACTION ITEM: Order No. 24-049.**

#### **SUBJECT:**

Second reading, to approve the expenditure, in an amount not to exceed, \$800,000 from the Land Acquisition Reserve Fund for the purpose of purchasing property located at 65 Hanson Road [Silver Brook Preserve II), identified by the Scarborough Tax Assessors Map R001/Lot 003, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town's interest. *[Parks and Conservation Land Board]*

#### **PURPOSE:**

To assist in the preservation of land for open space within the Town of Scarborough for public benefit.

#### **BACKGROUND:**

The Scarborough Land Trust is a non-profit community-based organization and conserve land where natural resources, scenic vistas and historical significance offer unique value to the community.

In November of 2019, the voters approved an additional \$2.5 million for land conservation and historic preservation. The Parks and Conservation Land Board was created to evaluate properties for conservation and recommend to the Town Council on the use of land bond monies for the purpose of acquisition and stewardship of conserved land.

An application for the subject property was reviewed by the Parks and Conservation Land Board, who have provided a positive recommendation for purchase.

#### **FISCAL IMPACT:**

\$2,500,000 Voter Approved Land Bond (TC Order #19-060)  
 (\$ 396,099) Alger Hall Building (649 US Rt 1) TC Order #21-052  
 (\$ 200,000) Libby Property (196 Gorham Rd) TC Order #21-088  
 (\$ 140,000) 91 Burnham Road TC Order #22-113  
 (\$ 260,000) 80 Beech Ridge Road TC Order #23-053  
 (\$ 130,000) Gorham Road [located at the end of Finch Way] TC Order #23-083  
 (\$ 210,000) 50 Hanson Road (R001/Lot 007), TC Order #23-132  
 (\$ 350,000) 162 Spurwink Road TC Order #24-037  
**\$ 813,901 Unspent Land Bond Funds**  
 (\$210,000) 380 Payne Road, approved per TC Order #22-066 – did not close

#### **STATUS / PROCESS TO DATE:**

- Letter of Recommendation from the Parks & Conservation Land Board: May 29, 2024
- First Reading before the Town Council: June 5, 2024
- Second Reading before the Town Council: June 26, 2024

**PROPOSED ACTION:**

Move approval of the first reading, to approve the expenditure, in an amount not to exceed, \$800,000 from the Land Acquisition Reserve Fund for the purpose of purchasing property located at 65 Hanson Road [Silver Brook Preserve II], identified by the Scarborough Tax Assessors Map R001/Lot 003, as recommended by the Parks and Conservation Land Board, and authorize the Town Manager, to execute any and all documents as are necessary to protect the Town's interest and schedule the second reading for Wednesday June 26, 2024.

**ATTACHMENTS:**

- Letter of Recommendation from the Parks and Conservation Land Board.
- Application Packet from the Scarborough Land Trust.

# PARKS AND CONSERVATION LAND BOARD

Town of Scarborough, Maine

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May 29, 2024

Nick McGee, Town Council Chair  
Honorable Town Councilors and Town Manager  
Town of Scarborough, Maine

Dear Chairman McGee and Friends,

## Board Members

Suzanne Foley-Ferguson  
Rachel Hendrickson  
Richard Murphy  
Noah Perlut  
Jessica Sargent  
Maggie Vishneau  
Douglas Williams

Staff Liaison  
Todd Souza

Council Liaison  
Karin Shupe

The Parks and Conservation Land Board met on May 9, 2024, and voted to recommend that the Town Council authorize \$800,000 be spent from already approved Land Bonds to assist the Scarborough Land Trust (SLT) in purchasing 129.7 acres located at 65 Hanson Road (Silver Brook Preserve II).

This property will connect to 813 acres of contiguous conserved lands in Scarborough, Saco, and Buxton, expanding the size of this area to 943 acres (Appendix III - Map). The purchase will protect approximately 50 acres of upland forests, 75 acres of wetlands, and 3,200 ft. of frontage along Silver Brook and an unnamed brook that feeds into Silver Brook. Large land blocks support the Town's goals of increasing access to land for recreation in the form of trails and connections, as well as protecting habitats for the greatest number of species.

In addition to connectivity, the property itself provides important wildlife habitat. As SLT described in the application (Appendix II - Application):

- Protecting this property will help support continued populations of **wild trout**, as well as American Eel, Blacknosed Dace, Golden Shiner, Lake Chub, and White Sucker.
- The Maine Department of Inland Fisheries and Wildlife (MDIFW) has identified 33 acres as **Deer Wintering Habitat**.
- The Maine Natural Areas Program (MNAP) has identified the property as part of the Greater Maine **New England Cottontail** (NEC) Focal Area. NEC is considered endangered in Maine.
- The Maine **endangered Little Brown Bat** has been observed on SLT's adjacent Broadturn Farm, and it is possible these bats are present on this property as well.
- Nature's Network, a 13-state collaborative effort to identify and conserve connecting intact ecosystems that support imperiled species, has identified **30 acres of the property as Core Habitat** for Imperiled Species and considers the property excellent habitat for the Maine threatened Spotted Turtle.



SLT will create recreational opportunities for hiking, skiing, snowshoeing, wildlife observation, hunting, and fishing

The PCLB reviewed the property in one meeting. The property evaluation score as compared to similarly sized parcels is below:

Warren Woods	161.5 acres	737 points
Benjamin Farm/Pleasant Hill Preserve	136 acres	870 points
Fuller Farm	180 acres	905 points
Libby River Farm	120 acres	910 points
<b>Silver Brook Preserve II</b>	<b>129.7 acres</b>	<b>922 points</b>

The total project cost is \$1,760,811, so the Town's contribution to the project will be 45 percent of the project (Appendix II - Budget). Importantly, the SLT was awarded \$580,000 towards the purchase price and \$25,000 for stewardship from Land for Maine's Future (LMF). This is the first award from LMF for a property in Scarborough in over a decade. A community effort led by SLT will fundraise the remaining portion of the project.

This project is outstanding for all of the aforementioned reasons, and the photos attached provide a glimpse of what will be protected (Appendix IV - Photos).

The Board recommends the purchase and that the development rights on the property be extinguished legally by attaching conditions to the contribution and/or placing a conservation easement on the property. These details are typically negotiated between town and land trust staff and other contributing organizations, and should be included in the Council's direction to the manager.

If you have any questions regarding this property, a representative will be available at your meeting. Scarborough continues to be a leader in conservation, and I am proud to help in that regard. I hope you will be as well.

Sincerely,

Jessica Sargent  
Chair, Scarborough Parks and Conservation Land Board

Attachments:

Appendix I - Application to the PCLB

Appendix II - Project Budget

Appendix III - Map of Parcel and Protected Adjacent Land

Appendix IV – Photos

Town of Scarborough, Maine

## LAND ACQUISITION APPLICATION FORM

Property Name: Silver Brook Preserve II Date: 4-30-24

Applicant Name: Scarborough Land Trust

**GENERAL INFORMATION:**

Property Address: 65 Hanson Rd

Scarborough, Maine 04074

Mailing Address: \_\_\_\_\_

PO Box 1237

Scarborough, ME 04074

Contact Person: Scott Kunkler

Phone # 207-289-1199 e-mail: skunkler@scarboroughlandtrust.org

Landowner(s) -please list full name of all owners (and lien holders, if any)

Roland Libby

Deed type: Release Deed Book / page# 10224/ 214

Current Assessed Value \$501,000

Recent appraised value (if available) \$1,450,000

Existing boundary survey? ☒ Y ☐ N (circle)

Potential boundary disputes? Y / ☒ N (circle) (if yes, attach explanation)

Any hazardous waste on the property? Y / ☒ N An environmental assessment will be completed.

**LAND DESCRIPTION:** Tax Map # R001 Lot # 003 Zoning District RF

Total Acres: 129.7 Proposed purchase acres: 129.7 Proposed easement acres 0

Are there any buildings on the property? (Please circle) yes / ☒ no

If yes, are they a part of the proposed purchase? Y / N

## BRIEF PROJECT DESCRIPTION:

(Please provide information regarding the suitability for public acquisition, special features, and proximity to existing public lands; include the value to the people of Scarborough and any current or potential uses)

SLT is requesting funding to purchase and conserve 129.7 acres of undeveloped forests, grassland, wetlands, and streams located along Hanson and Tapley roads. The property connects to 813 acres of contiguous conserved lands in Scarborough, Saco, and Buxton, expanding the size of this area to 943 acres. The purchase will protect ~50 acres of upland forests, 75 acres of wetlands, and 3,200 ft. of frontage along Silver Brook and an unnamed brook that feeds into Silver Brook. The wetlands consist of emergent and forested wetlands, both types considered a decreasing wetland type by USFWS. The wetlands are crucial for absorbing impacts of flooding and drought, and provide essential habitat for amphibians, reptiles, and other wildlife. Silver Brook is known by MDIFW to support a population of wild Brook Trout, as well as American Eel, Blacknosed Dace, Golden Shiner, Lake Chub, and White Sucker. MDIFW's website states, "Brook trout populations are heavily influenced by their environment ... they are incredibly resilient in their undisturbed habitats." Protecting this property will help support continued populations of wild trout. The upland forests provide critical terrestrial habitat and food sources for reptiles, amphibians, birds, mammals, and invertebrate, and act as an important migratory stopover for songbirds. The property also provides habitat for deer, turkey, and other game species. MDIFW has identified 33 acres as Deer Wintering Habitat. MNAP has identified the property as part of the Greater Maine New England Cottontail (NEC) Focal Area. NEC is considered endangered in Maine. MDIFW believes the property could support NEC in the thickets and shrubs. A survey of bats on SLT's Broadturn Farm, located adjacent to the property, identified the Maine endangered Little Brown Bat (*Myotis lucifugus*). It is possible these bats are present on this property as well. Nature's Network, a coalition lead by USFWS, has identified 30 acres of the property as Core Habitat for Imperiled Species and considers the property excellent habitat for the Maine threatened Spotted Turtle (*Clemmys guttata*). According to MNAP, the entire property consists of geophysical settings that are under-represented across the Northeast and are key drivers for biodiversity. Vision #1 of the Town of Scarborough's Comprehensive Plan identifies the importance of our open space lands. As part of its action plan, the Town states, "significant natural resources, agricultural land, and open space should be protected, and an interconnected network of public open space developed where feasible." The purchase of this property will help to further this vision, as well as advance the Town's 30 x 30 goal. SLT plans to provide for recreational opportunities such as hiking, skiing, snowshoeing, wildlife observation, hunting, and fishing. SLT will also provide educational programs for people of all ages that bring awareness of the values of Silver Brook, the forests and wetlands that surround it, as well as understand the property's role in mitigating the impacts of climate change.

Do you (the presenter) believe that there will be a willing seller(s) of this site?

Please explain: We recently purchased 50 Hanson Rd from the same owner as this property, and have been in discussions with the family for over a year. In that time, we worked together to determine the area they would like to conserve and completed a survey that reflects that area.

Please attach the following:

- Site Location Map (map provided)
- Assessors Map (with abutting properties)
- Photo(s) (no more than 1 page please)

Directions to the property from Town Hall:

South on US Route 1 to Broadturn Rd. Go west on Broadturn to Hanson Rd. Turn left and go south to the property on the right.

**Important Note:** The Town Council of the Town of Scarborough requires that all owners of land being proposed for town purchase are willing sellers and have full knowledge that their property is being presented to them for consideration. When and if the Parks and Conservation Land Board recommend a purchase, the owners of the property will be asked to sign below to indicate their willingness to sell. *A signed letter stating the above is also acceptable.*

\_\_\_\_\_  
Owner #1

\_\_\_\_\_  
date

**Site Description** (To be filled out by Applicant or Representative)

Directions: Please check all that apply to the parcel that is proposed for purchase. If unsure, leave blank.

- ☒ Rare, or endangered species
- ☒ Freshwater rivers, streams, vernal pools
- ☐ Ocean, tidal or estuary
- ☐ Working Farm or Forest
- ☒ Saltmarsh / other wetlands
  
- ☒ Creates link between public or protected parcels or trails
- ☒ Provides buffer for river, streams or brooks
  
- ☒ Public access to beaches, marshes, waterways, or other natural areas
- ☒ Public access to trails or other public lands
  
- ☐ Existing active recreation (ball fields, motorized vehicles, etc.)
- ☐ Potential active recreation
- ☐ Existing passive recreation (birding, hiking, horseback riding, skiing, etc.)
- ☒ Potential passive recreation
  
- ☒ Scenic views
- ☐ Historical significance (cemetery, monument, archeological site)
  
- Possibilities for
- ☒ Purchase
- ☐ Easement
- ☐ Donation

*Note: This is a quick summary of the Detailed Assessment Form that the committee will be using to evaluate your parcel. The detailed form is available upon request and is based on a point system. The full evaluation has subjective components, as well.*

**V** Site Visit Scheduled: (to be filled out by committee) \_\_\_\_\_

**Acquisition of Silver Brook Preserve II  
Scarborough Land Trust**

<i>Expense</i>	<i>Estimate</i>	<i>Actual</i>
Purchase price of property		\$1,595,000
Appraisal		\$2,500
Environmental Review	\$2,200	
Survey		\$0
Legal Fees	\$4,000	
Closing costs including title policy	\$3,500	
Stewardship		\$100,000
Land Protection Staff Costs	\$16,640	
Overhead and Administration	\$36,971	
<b>Total</b>		<b>\$1,760,811</b>

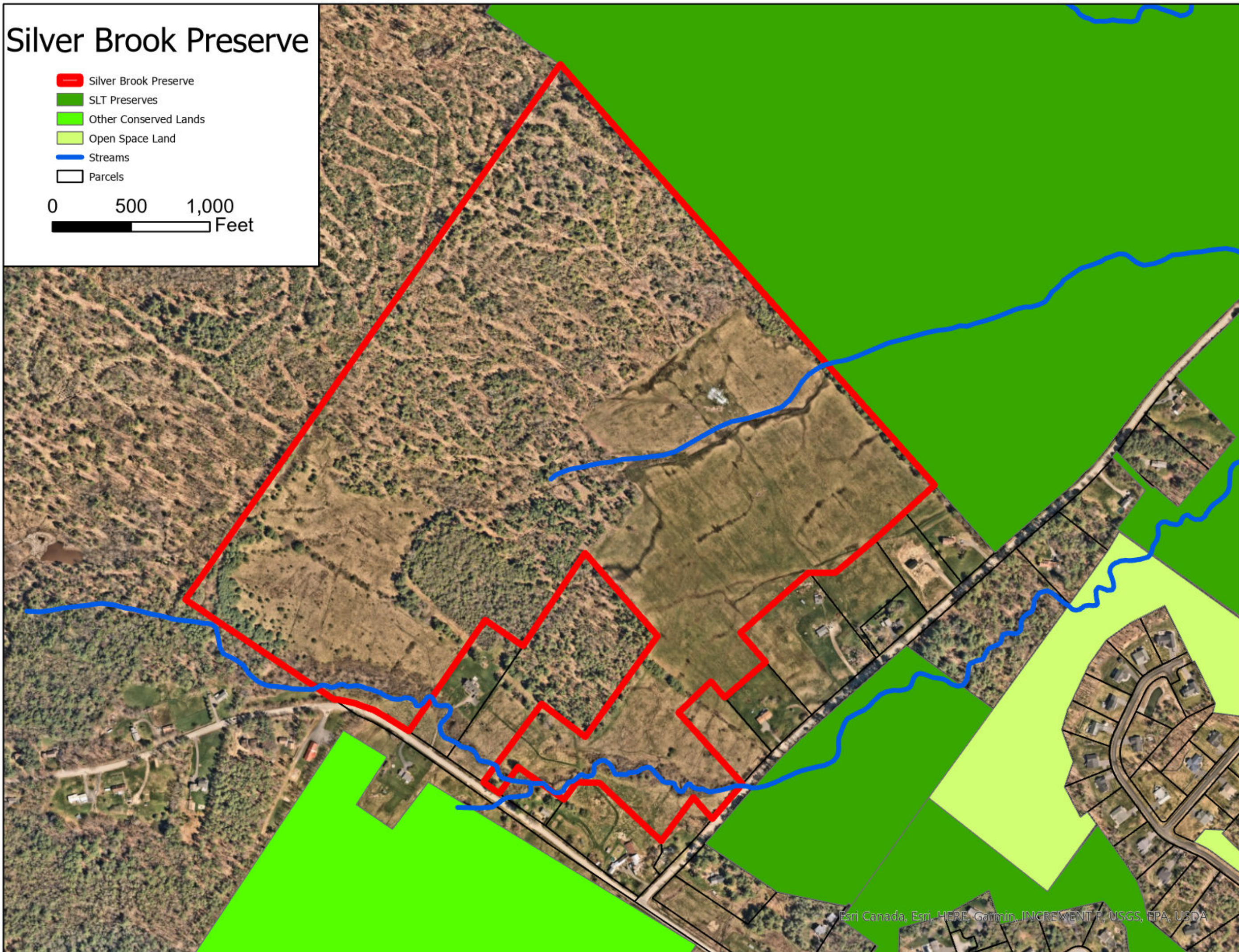
<i>Revenue</i>	SLT funding	Land for Maine's Future	Town of Scarborough Land Bond	Total
Purchase price of property	\$215,000	\$580,000	\$800,000	\$1,595,000
Appraisal	\$2,500	\$0	\$0	\$2,500
Environmental Review	\$2,200	\$0	\$0	\$2,200
Survey	\$0	\$0	\$0	\$0
Legal Fees	\$4,000	\$0	\$0	\$4,000
Closing costs including title policy	\$3,500	\$0	\$0	\$3,500
Stewardship costs- Long-term	\$75,000	\$25,000	\$0	\$100,000
Land Protection Staff Costs	\$16,640	\$0	\$0	\$16,640
Overhead and Administration	\$36,971	\$0	\$0	\$36,971
<b>Totals</b>	<b>\$355,811</b>	<b>\$605,000</b>	<b>\$800,000</b>	<b>\$1,760,811</b>



# Silver Brook Preserve

-  Silver Brook Preserve
-  SLT Preserves
-  Other Conserved Lands
-  Open Space Land
-  Streams
-  Parcels

0 500 1,000  
Feet

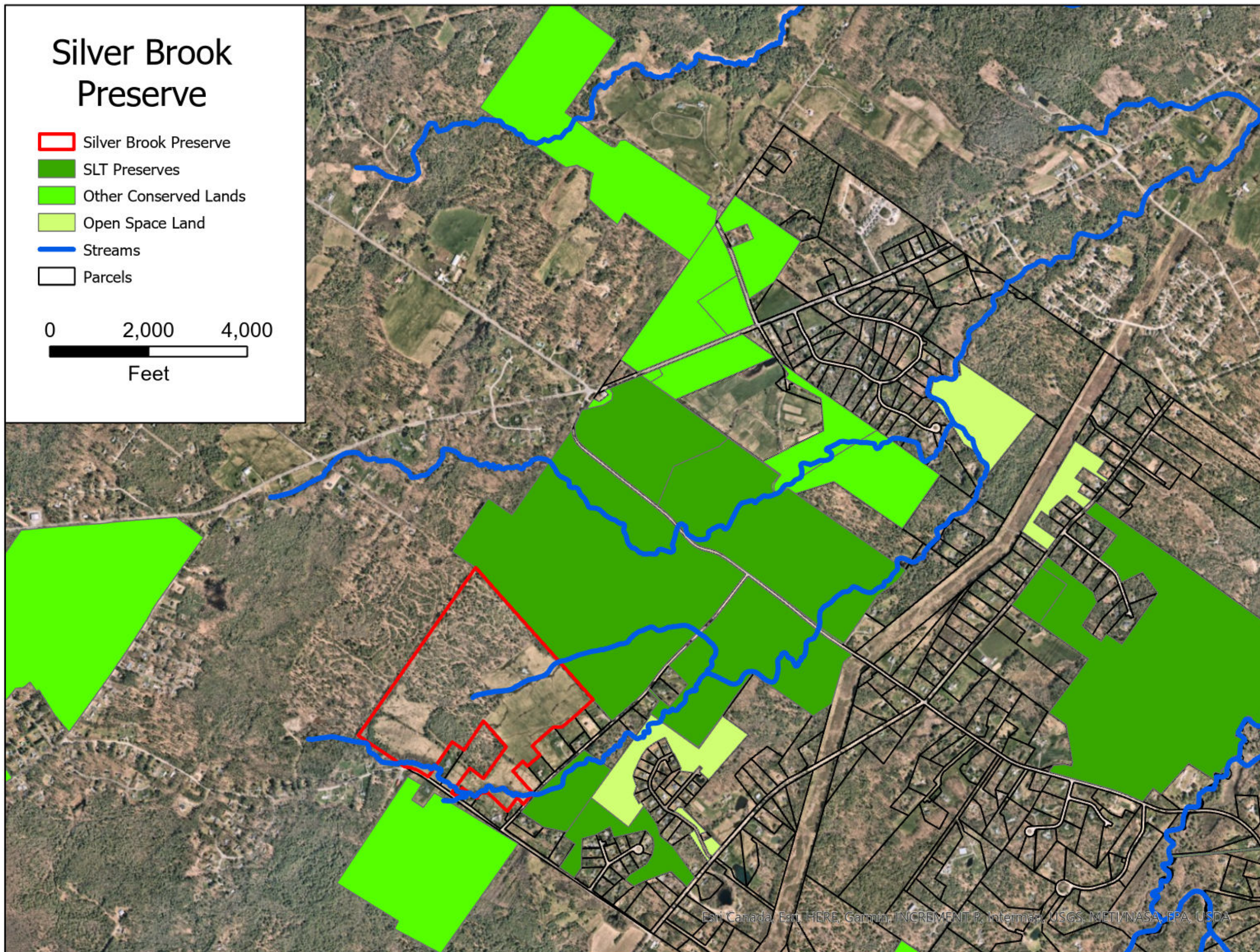




# Silver Brook Preserve

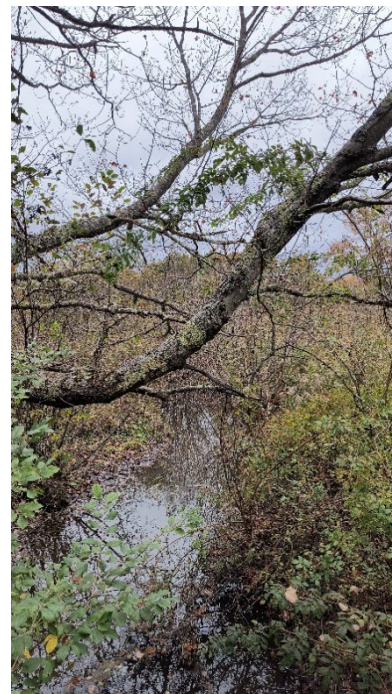
-  Silver Brook Preserve
-  SLT Preserves
-  Other Conserved Lands
-  Open Space Land
-  Streams
-  Parcels

0 2,000 4,000  
Feet





## Silver Brook Preserve II













**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-051.** Move approval of the first reading on the proposed amendments to Chapter 1018 – the Town of Scarborough Cannabis Establishment Licensing Ordinance and schedule a public hearing and second reading for Wednesday, July 17, 2024. *[Assistant Town Manager]*

*Planning Director*

*Ought to Pass*

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Sponsor

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Recommendation

*05/01/2024 - Vote:*

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First Reading/Vote

*07/17/2024*

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Public Hearing

*08/21/2024 - Vote:*

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Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

**ACTION ITEM: Order No. 24-051.****SUBJECT:**

First reading and schedule a public hearing and second reading on the proposed changes to Chapter 1018 – the Town of Scarborough Cannabis Establishment Licensing Ordinance. *[Assistant Town Manager]*

**PURPOSE:**

Revise Section 11: Odor Observation and Enforcement. The revised language is modeled after language within the Good Neighbor Ordinance, expands the enforcement authority to the Police Department, and includes provisions that refer licenses back to the Town Council following five (5) verified odor reports within the 12 month licensing period. The proposed language also includes a new Cannabis Property Registration which will become a requirement of any property owner leasing space to a cannabis establishment.

**BACKGROUND:**

Despite Cannabis Licensing changes adopted in August, 2023 the Town continues to receive reports of Odor from residential abutters to cannabis cultivation establishments. The enforcement language adopted in August, 2023 contained a very specific report threshold prior to the reports being verified by a Town official. These changes are made in an effort to dispatch Town officials (Police Officer, Code Enforcement Officer, or their designee) upon receipt of a singular complaint. Once a 5 complaint threshold is met, the license or registration will be referred to Council for a suspension or revocation hearing. Any suspension or revocation will require 5 votes from Council.

The proposed changes also include a new Cannabis Property Registration process for all facilities seeking to lease or house space to cannabis businesses. The additional registration process will directly expand the responsibility for compliance with the Cannabis Licensing Ordinance requirements to property owners in addition to licensees.

**FISCAL IMPACT: N/A****STATUS / PROCESS TO DATE:**

- Discussion and consideration at Ordinance Committee in June [referred back to Ordinance from the Town Council at their June 5, 2024 meeting].
- Ordinance Committee recommended to Town Council: June 12, 2024
- First reading before the Town Council: June 26, 2024

**PROPOSED ACTION:**

Move approval of the first reading on the proposed changes to Chapter 1018 – the Town of Scarborough Marijuana Establishment Licensing Ordinance and schedule the public hearing and second reading for Wednesday, July 17, 2024.

**ATTACHMENTS:**

- Proposed amendments to Chapter 1018: Cannabis Licensing Ordinance

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 1018 - the Town of Scarborough Cannabis Establishment Licensing Ordinance Amendments, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

## **Chapter 1018 Town of Scarborough Cannabis Establishments Licensing Ordinance**

### **Section 1. Purpose.**

The purpose of this Ordinance is to regulate and license Cannabis Establishments as defined in this Ordinance and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. Chapter 1, and the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C, as may be amended, in order to promote the health, safety, and general welfare of the residents of Scarborough. [Amended 08/16/2023]

Persons or entities wishing to establish a Cannabis Establishment within the Town of Scarborough shall first obtain a license from the Scarborough Town Council (hereinafter “the Town Council”), be located in a Registered Cannabis Property, and shall be subject to the provisions of this Ordinance. [Amended 08/16/2023]

### **Section 2. Authority.**

This Ordinance is adopted pursuant to the authority granted by 28-B M.R.S.A. §401 *et seq.*, as may be amended, and 22 M.R.S.A. §2421 *et seq.*, as may be amended.

### **Section 3. Definitions.**

The following definitions shall apply to this Ordinance:

*Adult use cannabis* shall mean “adult use cannabis” as that term is defined in 28-B M.R.S.A. §102(1), as may be amended. [Amended 08/16/2023]

*Adult Use Cannabis Cultivation Facility* shall mean a “cultivation facility” as that term is defined in 28-B M.R.S.A. §102(13), as may be amended. [Amended 08/16/2023]

*Adult use cannabis product* shall mean “adult use cannabis product” as that term is defined in 28-B M.R.S.A. §102(2), as may be amended. [Amended 08/16/2023]

*Adult Use Cannabis Products Manufacturing Facility* shall mean a “products manufacturing facility” as that term is defined in 28-B M.R.S.A. §102(43), as may be amended. [Amended 08/16/2023]

*Adult Use Cannabis Testing Facility* shall mean a “testing facility” as that term is defined in 28-B M.R.S.A. §102(54), as may be amended. [Amended 08/16/2023]

*Applicant* shall mean a person that has submitted an application for licensure as a Cannabis

Establishment pursuant to this Ordinance. [Amended 08/16/2023]

*Cannabis Odor Panel* shall mean the panel of municipal staff tasked with investigating odor complaints in sections 11; 3 and 11;4. The Odor Panel shall include three of the following positions; Assistant Town Manager, a representative of the Fire Department, a representative of the Police Department, the Zoning Administrator, and a Code Enforcement Officer. [Adopted 08/16/2023]

*Cannabis Property shall mean a lot, building, or facility where licensed Cannabis Establishments are located.*

*Cultivate* or *cultivation* shall mean the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of Cannabis for use or sale. It does not include manufacturing. [Amended 08/16/2023]

*De Minimis changes* shall mean minor changes to a submitted floor plan of less-~~that than~~ -50%, improvements to odor mitigation plans, enhancements to security plans, or changes to ownership interest or officers of not greater than 50%. [Adopted 08/18/2021]

*Licensed premises* shall mean the premises, or facility, specified in an application for a State or Local License pursuant to this Ordinance that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use cannabis, adult use ~~Cannabis products~~ **cannabis products**, medical cannabis or medical cannabis products in accordance with the provisions of this Ordinance and the requirements of State law and regulations. [Amended 08/16/2023]

*Licensee* shall mean a person licensed pursuant to this Ordinance.

*Local License* shall mean any license required by and issued under the provisions of this Ordinance.

*Local Licensing Authority* shall mean the Town Council, as further specified in the provisions of this Ordinance.

*Manufacture or manufacturing* shall mean the production, blending, infusing, compounding or other preparation of cannabis products, including, but not limited to, cannabis extraction or preparation by means of chemical synthesis. It does not include cultivation. [Amended 08/16/2023]

*Cannabis* shall mean “cannabis” as that term is defined in 28-B M.R.S.A. §102(27) as may be amended. [Amended 08/16/2023]

*Cannabis concentrate* shall mean the resin extracted from any part of a cannabis plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. In determining the weight of cannabis concentrate in a cannabis product, the weight of any other ingredient combined with cannabis to prepare a cannabis product may not be included. [Amended 08/16/2023]

*Cannabis Establishment* shall mean an Adult Use Cannabis Cultivation Facility, an Adult Use Cannabis Products Manufacturing Facility, an Adult Use Cannabis Testing Facility, a Medical Cannabis Dispensary, a Medical Cannabis Testing Facility, a Medical Cannabis Manufacturing Product Facility, and a Medical Cannabis Cultivation Facility. A Cannabis Establishment does not include an Adult Use Cannabis Store or a Medical Cannabis Caregiver Retail Store, which are not permitted in the Town of Scarborough. [Amended 08/16/2023]

*Medical Cannabis* shall mean the medical use of cannabis, with the term “medical use” as defined in 22 M.R.S. §2422(5), as amended. [Amended 08/16/2023]

*Medical Cannabis caregiver* shall mean a “caregiver” as that term is defined in 22 M.R.S.A. §2422(8-A), as may be amended. [Amended 08/16/2023]

*Medical Cannabis Caregiver Retail Store* shall mean “caregiver retail store” as that term is defined in 22 M.R.S.A. §2422(1-F) as may be amended.

*Medical Cannabis cultivation area* shall mean a “cultivation area” as that term is defined in 22 M.R.S.A. §2422(3), as may be amended. [Amended 08/16/2023]

*Medical Cannabis Cultivation Facility* shall mean a medical cannabis cultivation area used or occupied by one or more medical cannabis registered caregivers and a facility licensed under this ordinance to cultivate, prepare and package medical cannabis at a location that is not the residence of the Registered Caregiver or Qualifying Patient. [Amended 08/16/2023]

*Medical Cannabis Dispensary* shall mean a “registered dispensary” as that term is defined in 22 M.R.S.A. §2422(6), as may be amended. [Amended 08/16/2023]

*Medical Cannabis product* shall mean a “cannabis product” as that term is defined in 22 M.R.S.A. §2442(4-L), as may be amended. [Amended 08/16/2023]

*Medical Cannabis Products Manufacturing Facility* shall mean a “manufacturing facility” as that term is defined in 22 M.R.S.A. §2422(4-R), as may be amended. [Amended 08/16/2023]

*Medical cannabis qualifying patient* shall mean a “qualifying patient” as that term is defined in 22 M.R.S.A. §2422(9), as may be amended. [Amended 08/16/2023]

*Medical cannabis registered caregiver* shall mean a “registered caregiver” as that term is defined in 22 M.R.S.A. §2422(11), as may be amended. [Amended 08/16/2023]

*Medical Cannabis Testing Facility* shall mean a “cannabis testing facility” as that term is defined in 22 M.R.S.A. §2422(5-C), as may be amended. [Amended 08/16/2023]

*Plant Canopy* shall mean “Plant canopy” as that term is defined in 28-B M.R.S.A. §102(41), as may be amended.

*Owner* shall mean a person whose beneficial interest in a Cannabis Establishment is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a Cannabis Establishment and/or has a controlling interest in a Cannabis Establishment. [Amended 08/16/2023]

*Person* shall mean a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. “Person” does not include any governmental organization.

*State License* shall mean any license, registration or certification issued by the State Licensing Authority.

*State Licensing Application* shall mean the application form and supporting materials required by the State for the purpose of a person obtaining a State license, registration or certification for the cultivation, manufacture, distribution, testing and sale of adult use Cannabis, adult use Cannabis products, medical Cannabis and/or medical Cannabis products in this State. [Amended 08/16/2023]



*State Licensing Authority* shall mean the authority (or authorities) created by the State for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of adult use Cannabis, adult use Cannabis products, medical Cannabis and/or medical Cannabis products in this State. [Amended 08/16/2023]

#### **Section 4. License Required.**

No person may establish, operate or maintain a Cannabis Establishment without first obtaining a license from the Town Council.

Any grandfathered use pursuant to Section 10.5.A of this Licensing Ordinance shall obtain a license from Town Council within 6 months of the adoption of this Ordinance; however, the standards of Section 10.A.(2, 3, 4) are not applicable to licensing process of these grandfathered activities.

#### **Section 5. License Application.** [Amended 08/16/2023]

An application for a license must be made on a form provided by the Town. All applicants must be qualified according to the provisions of this Ordinance. Applicants shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.

The application for a Cannabis Establishment license shall contain the following information:

##### **A. Name of Applicant.**

1. If the applicant is an individual: The individual shall state their legal name and any aliases and submit proof that they are at least twenty- one (21) years of age.
2. If the applicant is a partnership: The partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, submit a copy of the partnership agreement, if any, and submit proof that all partners are at least twenty-one (21) years of age.
3. If the applicant is a corporation: The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under State law, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, the address of the registered office for service of process, and submit proof that all officers, directors and principal stockholders are at least twenty-one (21) years of age.
4. If the applicant is a limited liability company (LLC): The LLC shall state its complete name, the date of its establishment, evidence that the LLC is in good standing under State law, the names and capacity of all members, a copy of its operating agreement, if any, the address of its registered office for service of process, and submit proof that all members are at least twenty-one (21) years of age.
5. If the applicant intends to operate the Cannabis Establishment under a name other than that of the applicant, they must state the Cannabis Establishment's name and submit the required registration documents.

##### **B. The applicant's mailing address and residential address.**

- C. Recent passport-style photograph(s) of the applicant(s)-or government issued photo identification  
~~The applicant's driver's license.~~
- E. A sketch showing the configuration of the subject premises, including building footprint, plant canopy square footage calculations, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.
- F. The location of the proposed Cannabis Establishment, including a legal description of the property, street address, and telephone number. The applicant must also demonstrate that the property meets the zoning requirements for the proposed use. [Amended 08/16/2023]
- G. If the applicant has had a previous license under this Ordinance or other similar Cannabis Establishment license applications in another town in Maine, in the Town of Scarborough, or in another state denied, suspended or revoked, they must list the name and location of the Cannabis Establishment for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and they must list whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is permitted/licensed under this Ordinance, whose license has previously been denied, suspended or revoked, listing the name and location of the Cannabis Establishment for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation. [Amended 08/16/2023]
- H. If the applicant holds any other permits/licenses under this Ordinance or other similar Cannabis Establishment license from another town, the Town of Scarborough, or state the applicant shall provide the names and locations of such other permitted/licensed businesses, including the current status of the license or permit and whether the license or permit has been revoked. [Amended 08/16/2023]
- I. The type of Cannabis Establishment for which the applicant is seeking a license and a general description of the business including hours of operation.
- J. Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the Cannabis Establishment pursuant to a lease, rental agreement, purchase and sale agreement or other arrangement for possession of the premises or by virtue of ownership of the premises. The applicant must also submit documentation that the Cannabis Establishment will be located in a Registered Cannabis Property, either through proof of registration or of a pending application for registration.
- K. A copy of a Town Tax Map depicting the property lines of any public or preexisting private ~~school within~~ school within one thousand (1000) feet of the subject property. ~~For the~~ For purposes the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program all as defined in 20-A M.R.S.A. ~~§1, or 1, or~~ any other educational facility that serves children from prekindergarten to grade 12, as well as any preschool or daycare facility licensed by the Maine Department of Health and Human Services.

- L. Evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.
- M. A copy of the security plan as required by Section 10(A)(6) of this Ordinance.
- N. A copy of the odor and ventilation mitigation plan as required by Section 10(A)(7) of this Ordinance.
- O. A copy of the operations plan, as required by Section 10(A)(8) of this Ordinance.
- P. Consent for the right to access the property as required by Section 10(B) of this Ordinance.
- Q. Evidence of insurance as required by Section 10(C)(1) of this Ordinance.
- R. Medical cannabis registered caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S.A. §2425-A(12), as may be amended, and the Maine Freedom of Access Act, 1 M.R.S.A. §402(3)(F), shall mark such information as confidential. [Amended 08/16/2023]

**Section 6. License Application and License Fees. [Amended 08/18/2021; 08/16/2023]**

- A. Applicant Fee. An applicant must pay a \$350 application fee upon submission. Applicants are also responsible for the Town's expenses associated with the review of an application, including the cost of any third-party review if necessary.
- B. License Fee. Local License fees are set forth below and shall be paid annually:
  - 1. Adult Use Cannabis Cultivation Facility:
    - (a) Tier 1: 0 to 500 SF of plant canopy: \$750.
    - (b) Tier 2: 501-2,000 SF of plant canopy: \$3,000.
    - (c) Tier 3: 2,001-7,000 SF of plant canopy: \$7,500.
    - (d) Tier 4: greater than 7,000SF of plant canopy: \$10,000
  - 2. Adult Use or Medical Cannabis Testing Facility: \$1,000
  - 3. Adult Use or Medical Cannabis Products Manufacturing Facility: \$2,500
  - 4. Medical Cannabis Cultivation Facility: \$750
- C. Application Change Fee: License holders seeking to make de minimum changes to an existing license: \$150. [Adopted 08/18/2021]

**Section 7. Licensing Authority and Procedure. [Amended 08/18/2021]**

- A. The initial application for a license shall be processed by the Town Clerk and reviewed and approved by the Town Council.
- B. Complete application. In the event that the Town Clerk determines that a submitted application is not complete, the Town Clerk shall notify the Applicant within ten (10) business

days that the application is not complete and shall inform the Applicant of the additional information required to process the application.

C. Public hearing.

1. A public hearing by the Town Council on an application for a license shall be scheduled after receipt of a completed application. The Town Clerk shall publish public notice of the hearing not less than ten (10) days prior to the hearing in a newspaper of general circulation in Cumberland County.
2. When an application is determined to be complete, the Town Clerk shall, at the applicant's expense, give written notification to all abutting property owners within five-hundred (500) feet of the parcel on which the proposed license is sought of the date, time, and place of the meeting at which the application will be considered. Notification shall be sent at least ten (10) days prior to the first meeting at which the complete application is to be reviewed. Failure ~~of any of any~~ property owner to receive the notification shall not necessitate another hearing or invalidate any action of the Board. For purposes of this section, the owners of the abutting properties shall be considered to be the parties listed by the tax assessor for the Town of Scarborough.

D. A renewal application shall be subject to the same application and review standards as applied to the initial issuance of the license. Renewal applications from applicants in good standing, with no change, or de minimis, to the original application, may be approved by the Town Manager or their designee, so long as all other criteria and requirements as outlined in this Section and Section 10, have been met. The Town as part of the renewal process, shall consider compliance from prior years, and based upon that review, may recommend conditions to any future license to correct, abate, or limit past problems to forward to the Town Council for action. [Amended 08/18/2021]

E. Responsibilities and review authority.

1. The Town Clerk shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this Ordinance. The Town Clerk shall consult with other Town Departments and any appropriate State Licensing Authority as part of this investigation.
2. No Local License shall be granted by the Town Council until the Police Chief, the Fire Chief, and the Code Enforcement Officer have all made the determination that the Applicant complies with this and all other local ordinance and state laws and provides a written recommendation to the Town Clerk. Where an agent of the Town determines that is necessary for the Town to consult with a third-party expert consultation to the applicant. Before doing so, however, the Town shall give reasonable notice to the applicant of its determination of need, including the basis for the determination; the third-party that the Town propose to engage; and then estimated fee for the third-party consultation. The applicant shall have the opportunity respond for up to (10) business days from receipt of the Town's notice before the Town engages the third-party. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any ordinance provision or State law, it shall be the duty of the Applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer,

official, or employee of the Town authorized to make the inspection at any reasonable time that admission is requested.

3. The Town Council shall have the authority to approve license and renewal applications, subject to the exception outlined in 7(D) above, and impose any conditions on a license that may be necessary to insure compliance with the requirements of this Chapter or to address concerns about operations that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the license. [Amended 08/18/2021]
4. The Town Manager, or designee, with the endorsement of the Council Chair, shall have the authority to approve de minimis changes to an existing license subject to continued compliance with this Section and Section 10 below. [Adopted 08/18/2021]

#### **Section 8. License Expiration and Renewal. [Amended 08/18/2021; 08/16/2023]**

- A. A new license, when granted, shall be valid until August 31<sup>st</sup>, immediately following said granting of said license, except that new licenses granted during July and August shall be valid until August 31<sup>st</sup> of the following calendar year. [Amended 08/16/2023]
- B. Renewal applications must be submitted at least 45 days prior to the date of expiration of the annual Local License. An application for the renewal of an expired license shall be treated as a new license application.
- C. Licenses issued under this Ordinance are not transferable to a new owner. A transfer in ownership interest, change in the officers of an owner, of greater than 50% of the ownership interest or officer shall require a new license. Licenses are limited to the location for which they are issued and shall not be transferable to a different location. A Licensee who seeks to operate in a new location shall acquire a new Local License for that location. [Amended 08/18/2021]

#### **Section 9. Denial, Suspension or Revocation of License or Registration.**

- A. A Local License under this Ordinance shall be denied to the following persons:
  1. A person who fails to meet the requirements of this Ordinance. Where an Applicant is an entity rather than a natural person, all natural persons with an ownership interest shall meet these requirements.
  2. A person who has had a license for a Cannabis Establishment revoked by the Town or by the State or a Cannabis Property Registration revoked by the Town. [Amended 08/16/2023]
  3. An Applicant who has not acquired all necessary State approvals and other required local approvals prior to the issuance of a Local License or registrations, as applicable.
- B. The Town may suspend or revoke a license or registration for any violation of this Chapter, Chapter 1000a, Chapter 405, or any other applicable building and life safety code requirements. The Town may suspend or revoke a license if the licensee has a State License for a Cannabis Establishment suspended or revoked by the State. The Licensee or Registrant shall be entitled to notice and a hearing prior to any suspension or revocation, except where the reason for suspension or revocation could reasonably threaten health, safety, or welfare, as long as notice and a hearing is provided as soon as practicable. [Amended 08/16/2023]



## **Section 10. Performance Standards for License** [amended 08/18/2021]

### **A. General.**

1. All Cannabis Establishments shall comply with applicable state and local laws and regulations. [Amended 08/16/2023]
2. Cannabis Establishments shall only be located within the zoning districts permitted in the Scarborough Zoning Ordinance. [Amended 08/16/2023]
3. Cannabis Establishments may not be located on property within 1,000 feet of the property line of a preexisting school as required and defined in Section 5(K) of this Ordinance. [Amended 08/16/2023]
4. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the property line of the parcel of land on which the Cannabis Establishment is located. If the Cannabis Establishment is located within a commercial subdivision, the required setback shall be measured from the closest portion of a building that is used for the Cannabis Establishment to the property line of the school. Presence of a town, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. [Amended 08/16/2023]
5. Pursuant to 22 M.R.S.A. §2429-D(3), Caregiver Retail Stores, Medical Cannabis Dispensaries, Medical Cannabis Testing Facilities, Medical Cannabis Manufacturing Facilities and Medical Cannabis Cultivation Facilities that were operating with Town approval prior to December 13, 2018, are grandfathered in their current location and current use and shall be treated as legally non-conforming uses in accordance with Article III of the Scarborough Zoning Ordinance, provided, however, that said Cannabis Establishments shall apply for and obtain a license. If any non-conforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by the Zoning Ordinance for the district in which such land is located. [Amended 08/16/2023]
6. Security measures at all Cannabis Establishment premises shall include, at a minimum, the following:
  - a. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with thirty (30) day video storage, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises; and
  - b. Door and window combination video and motion detector intrusion system and contact sensors with audible alarm and remotely accessible ~~smart-phone~~ monitoring, maintained in good working condition; and
  - c. A mounted and non-removable locking safe or locked room with a security door and contact alarm permanently affixed to the premises that is suitable for storage of all cannabis, cannabis products, and currency ~~cash~~ stored overnight on the licensed premises; and [Amended 08/16/2023]
  - d. Exterior lighting that illuminates the exterior walls of the licensed premises during dusk to dawn, that is either constantly on or activated by motion detectors, and

complies with applicable provisions of the lighting performance standards in the Town of Scarborough Zoning Ordinance and the Good Neighbor Ordinance; and

- e. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks and bars or equipped with monitored glass-break sensors; and
- f. Methods to ensure that no person under the age of twenty-one (21) shall have access to cannabis and cannabis products. [Amended 08/16/2023]

**7. Odor and Ventilation.** All Cannabis Establishments shall have odor mitigation systems to ensure that the smell of Cannabis shall not be detectable beyond the property boundary, subject to the enforcement process outlined in Section 11. A Cannabis Establishment, and property owner, are responsible for taking any and all measures necessary to ensure this standard is met. Cannabis Cultivation Facilities, or other Cannabis Establishments with increased probability to emit odors, will be subject to the following stipulations:

- a. Install an activated carbon, or equivalent, odor mitigation system with a minimum air exchange rate of fifteen (15) air changes per hour in the following areas:
  - 1. mature flower rooms
  - 2. cure rooms
  - 3. trim rooms and packaging rooms
  - 4. hallways adjacent to the mature floor rooms
  - 5. other areas with high odor potential

Alternative odor control technologies may be considered with documentation of efficacy.

- b. Replace activated Carbon Media or other filters used to mitigate odor in accordance with the manufacturer's specifications but not less than an annual basis. Carbon Media includes but is not limited to carbon filters, carbon canister filters and pre-filters.
- c. All odor mitigation equipment used by an applicant or License holder shall always be in operation unless (1) the interruption is caused by a power outage or power failure; (2) the interruption is caused by routine maintenance, as recommended by the manufacturer, or emergency maintenance, to the odor mitigation equipment; or (3) the Town, in writing, permits otherwise. In the event there is a power outage or power failure, the License shall do whatever is reasonably necessary (e.g., informing Central Maine Power of any power disruption) to ensure power is restored to its facility as soon as reasonably practicable. For any disruption due to maintenance, the License holder shall ensure the odor mitigation equipment is returned to service or replaced as soon as reasonably practicable.
- d. No exterior venting of cannabis odor unless the applicant or License holder: (1) notifies the Town; (2) provides evidence of the cannabis odor being properly treated before exhausted outside; and (3) Town approves of the exterior venting of the cannabis odor. The Town shall not deny an applicant or License holder from venting odor outside unless either fails to provide sufficient evidence that the odor will be properly treated before its exhausted outside, or the License holder has been fined more than once by the Town for an odor violation.

- e. No window air conditioning units or window fans are permitted.
- f. All windows must always remain closed.
- g. Maintenance Records for all odor mitigation equipment shall be maintained for a period of two (2) years from the date of maintenance. Maintenance Records means records of purchases of replacement carbon filters or other odor mitigation equipment, performed maintenance tracking, documentation and notification of malfunctions or power outages, scheduled and performed training sessions, and monitoring of administrative controls. All Maintenance Records shall be made available for review, upon request from the Town.
- h. Submit an Odor Mitigation Plan at the initial application stage of seeking a License. A License holder shall not be required to re-submit an Odor Mitigation Plan upon renewing the License unless there have been changes to the facility floor plan or system design as described in the existing Odor Mitigation Plan. The Odor Mitigation Plan must, at a minimum, include the following information:

#### **1. FACILITY ODOR EMISSIONS INFORMATION**

- Facility floor plan. *This section should include a facility floor plan, with locations of odor-emitting activity(ies) and emissions specified. Relevant information may include, but is not limited to, the location of doors, windows, ventilation systems, and odor sources. If a facility has already provided the locations of specific odor-emitting activities and emissions in its business license application floor plan, it may instead reference the facility's business file number(s) and the relevant sections within such application where the floor plan is located.*
- System design. *The system design should describe the odor control technologies that are installed and operational at the facility (e.g., carbon filtration) and to which odor-emitting activities, sources, and locations they are applied (e.g., bud room exhaust).*
- Specific odor-emitting activity(ies). *This section should describe the odor-emitting activities or processes (e.g., cultivation) that take place at the facility, the source(s) (e.g., budding plants) of those odors, and the location(s) from which they are emitted (e.g., flowering room).*
- Phases (timing, length, etc.) of odor-emitting activities. *This section should describe the phases of the odor-emitting activities that take place at the facility (e.g., harvesting), with what frequency they take place (e.g., every two weeks on Tuesdays), and for how long they last (e.g., 48 hours).*
- Odor Mitigation Specification Template. *Form can be found on the Town's Cannabis Establishment License webpage.*

#### **2. ADMINISTRATIVE CONTROLS**

- Procedural Activities. *This section should describe activities such as building management responsibilities (e.g., isolating odor-emitting activities from other areas of the buildings through closing doors and windows).*
- Staff training procedures *This section should describe the organizational responsibility(ies) and the role/title(s) of the staff members who will be*

*trained about odor control; the specific administrative and engineering activities that the training will encompass; and the frequency, duration, and format of the training (e.g., 60 minute in-person training of X staff, including the importance of closing doors and windows and ensuring exhaust and filtration systems are running as required).*

- Recordkeeping systems and forms *This section should include a description of the records that will be maintained (e.g., records of purchases of replacement carbon filter, performed maintenance tracking, documentation and notification of malfunctions, scheduled and performed training sessions, and monitoring of administrative controls). Any examples of facility recordkeeping forms should be included as appendices to the Plan.*

8. Cannabis Waste and Disposal. No cannabis, cannabis products, cannabis plants, or other cannabis waste may be stored outside, other than in secured, locked containers. Any wastewater shall be treated such that it will not create excessive odors, contamination, or pollution. [amended 08/16/2023]

9. Signs. In addition to the sign regulations contained in Chapter 405, Zoning Ordinance, signage must comply with the requirements in 22 M.R.S.A. §2429-B and 28-B M.R.S.A. §702.

#### B. Right of Access /Inspection.

1. Every Cannabis Establishment shall allow the Scarborough Code Enforcement Officer (“CEO”), Fire Department, and Police Department to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and this Ordinance.
2. All Cannabis Establishments shall agree to be inspected annually by the Scarborough Fire Department and have a Knox Box installed at the structure's exterior entrance for emergency access. Knox Boxes shall be obtained and installed in coordination with the Scarborough Fire Department.

#### C. Insurance and Indemnification.

1. Each Cannabis ~~establishment~~ Establishment shall procure and maintain commercial general liability coverage in the minimum amount of \$1,000,000 per occurrence for bodily injury, death, and property damage.
2. By accepting a license issued pursuant to this Ordinance, the licensee knowingly and voluntarily waives and releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of any Cannabis Establishment owners, operators, employees, clients, or customers for a violation of local, State or federal laws, rules, or regulations.
3. By accepting a license issued pursuant to this Ordinance, the permittee/licensee agrees to indemnify, defend, and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, and insurers against all liability, claims, and demands on account of any injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of a licensed Cannabis Establishment.

#### D. State Law

In the event the State of Maine adopts any additional or stricter law or regulation governing the sale, cultivation, manufacture, distribution, or testing of Cannabis or Cannabis products, the additional or stricter regulation shall control the establishment or operation of any Cannabis Establishment in Scarborough.

Compliance with all applicable State laws and regulation shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with State laws or regulations shall be grounds for revocation or suspension of any license issued hereunder.

#### Section 11. Odor Observation and Enforcement [Adopted 08/16/2023]

Per Section 10(7), odor of cannabis by a Licensee shall not be detectable beyond the property boundary. Cannabis odor observation shall be undertaken to arrive at a determination that a cannabis odor exists beyond the property line. All cannabis odor observations made by the Town shall be made in writing. This Section only applies to Licensed Cannabis Establishments and Registered Cannabis Properties.

- A. This section of the Ordinance may be enforced by any Code Enforcement Officer, Law Enforcement officer, or their designee.
- B. No person shall interfere with, oppose, or resist any authorized person charged with the enforcement of this ordinance while such person is engaged in the performance of her/his duty.
- C. Violations of this Ordinance shall be prosecuted in the same manner as other civil violations enforced under the provisions in Section 12 of this Ordinance; provided, however, that for an initial violation of this Ordinance, a written notice of violation may be given to the alleged violating owner of the Licensed premises Cannabis Establishment which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken on the initial violation if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice of violation. If the cause of the violation is not abated or fully corrected within the time period specified in the written notice of violation, or if the licensee commits a subsequent violation of the same provision or provisions of this ordinance specified in the written notice, then no further action is required prior to prosecution of the civil violation. If, due to a multi-tenant situation or other the reasons, the alleged violating licensee cannot be identified in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violating licensee at her/his last known address or at the to the owner of the place licensed premises Registered Cannabis Property where the violation occurred, and shall be posted in a conspicuous location at that premises, in which event the specified time period for abating or appealing the violation shall commence at the date of the day following the mailing of such notice. All complaints provided to the Town regarding the same premises by individual residents within a twenty-four hour period, if a violation has been verified within that period, will count as one violation.

After the fifth (5<sup>th</sup>) violation within the license or registration period, the licensee(s) or registrations shall have their approval referred to the Town Council for a suspension or revocation hearing within thirty (30) days of the complaint being verified. All complaints and any related documentation associated with the investigation of the cannabis odor complaints shall be made available to the Licensee or Registrant within fourteen (14) days of the hearing. The



Council may only suspend or revoke a license or registration with a by super majority vote of five members of the Council. In the event the Council determines to revoke the license or registration, the licensee or registrant will have sixty (60) days to cease operations supported by the license or registration. During this time period, the license holder or registrant will continue to be subject to civil violations for further verified violations.

~~A cannabis odor complaint shall be defined as a receiving four (4) or more written cannabis complaints, from a minimum of two (2) parties, one of which must be from a residence or business within 750 feet of the suspected licensed premises emitting the odor. The four (4) complaints must be reported within four (4) days of each other.~~

- ~~1. Within forty eight (48) hours of receiving a cannabis odor complaint, as defined above, a Code Enforcement Officer shall investigate the complaint and notify the Licensee(s) and Landlord of the licensed premises that a cannabis odor complaint has been received. The Code Enforcement Officer's investigation shall include an initial inspection and, if odor is not detected, a second inspection of the abutting properties to investigate whether the cannabis odor is present. If odor is not detected at either of the two inspections, the complaint will be recorded as unconfirmed and Licensee(s) and Landlord will be notified of this finding. If cannabis odor is detected, the Licensee(s) and Landlord will be notified that the complaint has been verified and the CEO shall provide verbal notice of violation and instruct the Licensee or Landlord to comply with this Ordinance. The Licensee or Landlord will be required to notify the Code Enforcement Department, in writing, of corrective action taken to resolve the violation within ten business days of receiving the verbal notice of violation. Failure of the Licensee and/or Landlord to provide written notification of corrective action taken within 10 business days of the verbal notice will result in penalties assessed for each day thereafter until written notice of corrective action taken is received.~~
- ~~2. If a second cannabis odor complaint, as defined above, attributed to the same Licensee or Licensed Premises is received, the process outlined in one (1) above, will be followed.~~
- ~~3. If a third cannabis odor complaint, as defined above, attributable to the same Licensee or Licensed Premises is received, the Cannabis Odor Panel ("Odor Panel") will be convened to investigate the cannabis odor complaint. The Licensee (if known) and the Landlord must be notified of the date and time when the Odor Panel will meet, and be permitted to witness the Odor Panel's investigation. The Licensee and/or Landlord may send a representative to meet the Odor Panel on their behalf. The investigation of the complaint shall include an initial inspection and, if odor is not detected, a second inspection shall be conducted by a minimum of three (3) Odor Panel members within four (4) days of receiving the third complaint. If odor is not detected at either of the two inspections, the complaint will be recorded as unconfirmed and Licensee(s) and Landlord will be notified of this finding. If cannabis odor is detected at either inspection, the Licensee(s) and Landlord will be notified and subject to the following:
  - ~~a. Notify the Licensee of the third violation in writing;~~
  - ~~b. Assess a fine for the violation, and;~~
  - ~~c. Require the Licensee to submit a written report from a mechanical engineer or odor management specialist with recommendations for modification/improvement of the odor mitigation system within thirty(30) days of receipt of notice of violation, and;~~~~

- ~~d. Require implementation of recommendations within sixty (60) days.~~
- ~~e. Unless an extension to submit the report and/or notice of compliance is granted by the Code Enforcement Department, failure of the Licensee to meet the deadlines for steps e. or d. shall result in an immediate suspension of the Local License until the report or notice of compliance is submitted to the Code Enforcement Department.~~

- ~~4. If, after completing the process outlined in step three (3) above, a fourth complaint is received, the Cannabis Odor Panel will be convened to investigate the cannabis odor complaint. The Licensee (if known) and the Landlord must be notified of the date and time when the Odor Panel will meet, and be permitted to witness the Odor Panel's investigation. The Licensee and/or Landlord may send a representative to meet the Odor Panel on their behalf. The investigation of the complaint shall include an initial inspection and, if odor is not detected, a second inspection shall be conducted by a minimum of three (3) Odor Panel members within four (4) days of receiving the third complaint. If odor is not detected at either of the two inspections, the complaint will be recorded as unconfirmed and Licensee(s) and Landlord will be notified of this finding. If cannabis odor is detected at either inspection, the Licensee(s) and Landlord will be notified and the applicable licenses will be subject to a revocation hearing by the Town Council within 30 days of the complaint being verified.~~

~~While a licensee or landlord is within the administrative enforcement process, which shall be defined as the period between being notified a complaint has been verified and the required follow-up action or communication, complaints will continue to be verified by the CEO but they will not be subject to subsequent notices of violation or penalties.~~

~~All complaints and any related documentation associated with the investigation of the cannabis odor complaints shall be made available to the Licensee or Landlord, at no cost, within ten business days of the Town Council meeting to consider the Licensee's Local License or the Landlord's property.~~

~~In the event the Town Council suspends or revokes a Licensee's Local License, the Town Council shall give the Licensee, if permitted under State law, a reasonable period to remove all Cannabis from the Licensee's Licensed Premise. All odor mitigation equipment must remain in operation and in compliance with this Ordinance until the Cannabis is removed from the Licensed Premises. In the event the Town Council suspends and/or revokes the Licensee's Local License and the Licensee is operating as an Adult Use Cannabis Establishment, the Town shall notify the Office of Cannabis Policy of the suspension or revocation.~~

~~At any point the CEO or Odor Panel is unable to verify the odor complaints, the violation process reverts back to the previous completed step of the enforcement process as described herein. If a Landlord or Licensee has not received any verbal or written notice of violation under this Section for one year from the date of the last verbal or written notice of violation, the violation process reverts to the beginning of the violation process as described herein.~~

## **Section 12. Violations and Penalties.**

This Ordinance shall be enforced by the Code Enforcement Officer or her/his designees, who may institute any and all actions to be brought in the name of the Town.

- A. Any violation of this Ordinance, including the operation of a Cannabis Establishment or Cannabis Property without a valid Local License or registration ~~and failure and failure~~ to comply with any condition, shall be enforced under the provisions in 30-A M.R.S. § 4452 and subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500. Every day a violation exists constitutes a separate violation. Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions of this Ordinance. In any court action, the Town may seek injunctive relief in addition to penalties, and shall be entitled to recover its costs of enforcement, including its attorney's fees.
- B. In addition to any other remedies provided by this Ordinance, the Town may take all necessary steps to immediately shut down any Cannabis business and post the business and the space that it occupies against occupancy for the following violations: operating a Cannabis business without a Local License or State License; failure to allow entrance and inspection to any Town official on official business after a reasonable request; and any other violation that the Town determines as the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.
- C. The Town Manager shall inform members of the Town Council before instituting action in court, but need not obtain the consent of the Town Council, and the Town Manager may institute an action for injunctive relief without first informing members of the Town Council in circumstances where immediate relief is needed to prevent a serious public harm. In addition, the Town Manager may enter into administrative consent agreements in the name of the Town for the purposes of eliminating violations and recovering penalties without court action

### **Section 13. Appeals.**

- A. Any appeal of a decision of the Town Council to issue, issue with conditions, deny, or revoke a license shall be to the Superior Court in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.
- B. Any order, requirement, decision, or determination made, or failure to act, in the enforcement of this ordinance by the CEO or Police Chief is appealable to the Zoning Board of Appeals.

### **Section 14. Severability.**

The provisions of this Ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

### **Section 15. Other Laws.**

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in the Maine Medical Use of Cannabis Act, 22 M.R.S.A. Chapter 558-C, as may be amended and the Cannabis Legalization Act, 28-B M.R.S.A. Chapter 1, as may be amended. In the event of a conflict between the provisions of this Chapter and the provisions of the above laws or any other applicable State or local law or regulation, the more restrictive provision shall control.

**Section 16. Cannabis Properties. Licensed Cannabis Establishments must be located in a registered Cannabis Property.**

A. Application. An application for a Cannabis Property registration shall contain the following information:

1. Name of Applicant/Owner of Record of the Cannabis Property.

- a. If the applicant is an individual: The individual shall state their legal name and any aliases.
- b. If the applicant is a partnership: The partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, submit a copy of the partnership agreement, if any.
- c. If the applicant is a corporation: The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under State law, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, the address of the registered office for service of process.
- d. If the applicant is a limited liability company (LLC): The LLC shall state its complete name, the date of its establishment, evidence that the LLC is in good standing under State law, the names and capacity of all members, a copy of its operating agreement, if any, the address of its registered office for service of process.

2. The applicant's mailing address and residential address.

3. The location of the proposed Cannabis Property, including a legal description of the property, street address, and telephone number. The applicant must also demonstrate that the property meets the zoning requirements for the proposed use.

4. A copy of a Town Tax Map depicting the property lines of any public or preexisting private school within one thousand (1000) feet of the subject property. For the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program all as defined in 20-A M.R.S.A. §1, or any other educational facility that serves children from prekindergarten to grade 12, as well as any preschool or daycare facility licensed by the Maine Department of Health and Human Services.

5. Consent for the right to access the property as required by Section 10(B) of this Ordinance.

6. Security Measures. The applicant agrees to be duly accountable and ensure all licensed Cannabis Establishments within their property adhere to the standards outlined in Section 10(A)(6); 6 above.

7. Odor Mitigation and Ventilation. The applicant agrees to be duly accountable and ensure all licensed Cannabis Establishments within their property adhere to the standards outlined in Section 10(A)(7); 7 above.

B. Fee. An applicant must pay a \$100 registration fee upon submission. Applicants are also responsible for the Town's expenses associated with the review of an application, including the cost of any third-party review if necessary.

C. Duration of Registration. ~~{Will need to decide whether registrations are annual or a one time registration}~~ The registration will be valid from September 1 through August 31 and be subject to annual renewals pursuant to the provisions in Section 8

D. The Town Clerk shall have the authority to issue Cannabis Property Registrations. If the Clerk finds complaints against an applicant or premises, the Clerk shall refer the application to the Town Council for review a dissuance or denial under this subsection. ~~{Note for Committee will need to add additional requirements if desired, including the review and public hearing provisions under Section 7, renewals if annual registration required, etc.}~~



**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-052.** Move approval on the request from Maine Vintage Race Car Association, located at 70 Holmes Road, for a Mass Gathering Permit for an event scheduled on Sunday, July 28, 2024. *[Applicant]*

<i>Applicant</i>	<i>Ought to Pass</i>
<hr/> Sponsor	<hr/> Recommendation
<i>06/26/2024 - Vote:</i>	
<hr/> First Reading/Vote	
<i>N/A</i>	
<hr/> Public Hearing	
<i>N/A</i>	
<hr/> Second Reading/Final Approval/Vote	

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2022

<b>ACTION ITEM: Order No. 24-052.</b>
<b>SUBJECT:</b> Act on the request from Maine Vintage Race Car Association, located at 70 Holmes Road, for a Mass Gathering Permit for an event scheduled on Sunday, July 28, 2024. <i>[Applicant]</i>
<b>PURPOSE:</b> To consider approval, with recommended conditions, of a Mass Gathering Permit Vintage Race Car event.
<b>BACKGROUND:</b> The applicant Maine Vintage Race Car Association is requesting a Mass Gathering permit for a vintage race car event on Sunday, July 28, 2024, from 10:00 a.m. to 5:00 p.m. 70 Holmes Road [formerly Beech Ridge Speedway]. If approved, this permit will allow for a maximum attendance (including patrons, spectators, staff, and vendors) of 1400 people. Town staff from our internal Mass Gathering Permit review committee has reviewed and provided comment and recommended conditions for council to consider prior to final approval.
<b>FISCAL IMPACT: N/A</b>
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>• Received application for a Mass Gathering Permit: May 20, 2024</li><li>• Reviewed by the various Town Departments</li><li>• Presented to Council for action: June 26, 2024</li></ul>
<b>PROPOSED ACTION:</b> Recommendation is to move approval of this Order, with the condition[s] as noted in the memo from the Fire Chief.
<b>ATTACHMENTS:</b> <ul style="list-style-type: none"><li>• Memo from the Fire Chief.</li><li>• Application.</li></ul>



Town of Scarborough  
· FIRE DEPARTMENT  
275 US Route 1  
Scarborough, Maine 04074  
Tel: 207-883-4542  
Fax: 207-730-4270

**Rich C. Kindelan, Fire Chief/EMA Director**

**Kevin D. Duross, Deputy Fire Chief**

**Ian K. Tenney, Deputy Fire Chief**

**John S. Brennan, Deputy Fire Chief**

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June 18, 2024

To: Tom Hall, Town Manager  
From: Rich C. Kindelan, Fire Chief/EMA Director  
Cc: Kristen Barth, Katie Duross, Tody Justice, Town Clerks  
Re: Beech Ridge Motor Speedway Mass Gathering Permit

Tom,

On May 20, 2024 we received a mass gathering permit application from Dan Walker of Maine Vintage Car Association to host a car show event at the former Beech Ridge Motor Speedway on Holmes Road on July 28, 2024.

In accordance with Chapter 602A Mass Gathering ordinance, our internal committee made up of town staff was convened and review the event application in detail. All issues and concerns were addressed by the applicant promptly and to the satisfaction of the Mass Gathering Committee.

It is our recommendation to approve this Mass Gathering permit with one condition;

- *On the day of the event, all food trucks will require a fire prevention bureau inspection to ensure they are compliant with National Fire Protection Association life Safety codes.*

Thank you for your consideration. Reach out if you have any further questions.

Respectfully,

***Rich C. Kindelan***

Rich C. Kindelan  
Fire Chief/EMA Director

**Town of Scarborough**  
**MASS GATHERING PERMIT APPLICATION**

MAY 20 2024

A Mass Gathering Permit is required for any event of 1,000 or more persons within the Town of Scarborough. This completed application must be filed with the Town Clerk's office no less than 60 days prior to the proposed gathering date. Mass Gathering Permits are granted by Town Council action based on a recommendation by staff that all requirements in the Mass Gathering Ordinance Chapter 602A have or will be met by the applicant. Failure to provide the required information or meet all the requirements of the ordinance may result in the denial to issue or revocation of a permit.

Applicant Name: MAINE VINTAGE RACE CAR ASSOCIATION	Applicant Signature: <i>Daniel Walker</i>	
Mailing Address: 6 LOOKOUT LANE		
City: WINDHAM	State: ME	Zip: 04062
Point of Contact: DANIEL WALKER	Title: DIRECTOR	
Business Telephone: 207-939-8288	Email Address: dan112460@yahoo.com	
Event/Performer Name(s):		
Mass Gathering Event Address/Area: 70 HOLMES ROAD		
Date(s) of Event: JULY 28, 2024	Event Times: 10:00am - 5:00pm	
Maximum Attendance (including participants, patrons, spectators, staff, vendors, etc.):		

**Checklist for Required Materials required to be included with Permit Application:**

- ☒ This application has been submitted no later than 60 days prior to the scheduled gathering
- ☐ The insurance certificate has been included as specified in section 401 of the ordinance
- ☐ The non-refundable application fee has been included with the application

**Public Costs Escrow:**

- ☐ I understand the estimated public costs escrow amount must be received no later than 14 days prior to the mass gathering event.

Use the space provided on the following pages to describe in detail how the applicant plans to meet the various approval criteria as outlined in The Town of Scarborough Mass Gathering Ordinance Chapter 602A. If you have any questions during the application process contact the Town Clerk's office at 730-4020 and they will direct you to the appropriate department head for your question.

For Office Use Only: Application & Fee Received By: *05/20/24 KB*

Date: *05/20/24*



1. Please provide a list of police, fire, and EMS contacts/references (including names & phone numbers) from locations where you have hosted similar events over the past two years.

2. Please provide a detailed explanation/plan to deal with pedestrian and vehicular access to the proposed mass gathering site including signage, traffic control personnel & devices, as well as emergency access/egress considerations for first responders and emergency vehicles?

\*VEHICLES HAULING SHOW CARS WILL ENTER AT GATE ON TWO ROD ROAD  
\*VEHICLES FOR SPECTATORS WILL PARK IN LOT ON HOLMES ROAD  
\* PEDESTRIANS WILL ENTER FROM CROSSWALK AT HOLMES ROAD GATE  
\* ON SITE SECURITY WILL MONITOR PEDESTRIAN AND VEHICLE TRAFFIC/PARKING  
\* EMERGENCY ACCESS WILL BE AVAILABLE AT BOTH GATES LISTED ABOVE AT ALL TIMES  
\*

3. Please provide detailed information pertaining to the mass gathering grounds including drainage, lighting, parking, and any patron assembly areas to assure adequate space and egress locations are provided.

PARKING FOR SHOW VEHICLES WILL BE IN PIT AREA OFF TWO ROD ROAD  
PARKING FOR GUESTS WILL BE IN HOLMES ROAD LOT

THERE WILL BE NO PARKING ON STREETS OR ANY PROPERTY NOT OWNED BY CURRENT LAND OWNER

PATRON ACCESS AND SHOW WILL BE ON TRACK AND MIDDLE IN FIELD



4. Please explain how you intend to meet the potable water requirements outlined in the ordinance including the availability of hot water for any food vendors to prepare food and clean their equipment.

ON SITE FOOD TRUCKS HAVE BEEN TOLD TO CLEAN UP THEIR OWN ITEMS  
AND NO DISPOSING OF ANY MATERIAL ON THE GROUNDS

5. What is your sanitation plan including any contractors you will be using to meet the ordinance?

TRASH CANS WITH BAGS WE WILL DISPOSE OF OFF PROPERTY  
PORTABLE TOILETS WILL BE ON SITE  
THIRD PARTY WILL REMOVE ALL TRASH FROM THE PROPERTY WITH PROVIDED  
DUMPSTER

6. What is your plan for dealing with refuse disposal and vermin control including any contractors you will be using?

REFUSE DISPOSAL BY DUMPSTER PROVIDED BY THIRD PARTY

7. What type of electrical equipment will be required including any generation equipment, lighting, and the local licensed electrician that will be providing those services?

8. A minimum number of local law enforcement personnel are required to be on site per local ordinance. Please provide a detailed plan for security, crowd & traffic control, and whether you intend to make use of any private security firms, staff, or volunteers as part of your plan.

ON SITE SECURITY STAFF WILL PROVIDE SECURITY AND PARKING SUPPORT ALONG WITH MANY VOLUNTEERS

A SCARBOROUGH POLICE OFFICER WILL BE HIRED TO BE ON SITE SECURITY WILL BE FOR PARKING AND PATRON SAFETY. ALSO TO SECURE AREAS WHERE THERE IS NO ACCESS SUCH AS GRANDSTANDS.

9. Please provide a copy of your Emergency Operations Plan including contingencies for adverse weather, coordination/communications with local authorities, mass evacuation and emergency notifications.

THERE IS NO RAIN/MAKEUP DATE FOR THIS SHOW IN THE EVENT OF WEATHER EMERGENCY COMMUNICATIONS WILL BE VIA RADIOS ON SITE

10. Provide a detailed medical plan including the location and staffing of a first aid station if necessary, a communication plan so EMS personnel can communicate with event staff, and a history of EMS and fire related incidents at similar previously held events at other venues.

EMERGENCY COMMUNICATION WILL BE PHONED INTO SCARBOROUGH  
VIA 911 OR BY OFFICER ON SITE.

RADIOS WILL ALSO BE ON SITE TO EXPEDITE COMMUNICATIONS

11. Provide details of your sound management plan to meet the requirements of the local ordinance section 304.9.

THERE WILL BE A SMALL PA SYSTEM FOR ANNOUNCEMENTS.  
NO LOUD MUSIC OF ANY KIND WILL BE PLAYED

12. If you are planning to sell alcoholic beverages please provide a detailed plan of how you will control the sales and consumption location, liquor sales, and licensing of the vendor providing that service to assure it meets state laws and the local ordinance.

NO ALCOHOL WILL BE ALLOWED

13. Use this space to add any additional information not specifically requested above or that you feel would be helpful as the town's mass gathering committee reviews your application.



## ONE DAY EVENT AGREEMENT

26th **THIS ONE DAY EVENT AGREEMENT** (the "Agreement") is entered into as of the day of April, 2024, by and between **SETZER PROPERTIES PLD, LLC**, a Kentucky limited liability company (the "Party of First Part") and **MAINE VINTAGE RACE CAR ASSOCIATION**, a Maine non-profit corporation (the "Party of the Second Part"). The following recitals are a material part of this Agreement:

A. Party of the Second Part desires to use the property owned by the Party of the First Part located at 70 Holmes Road in the Town of Scarborough in Cumberland County, Maine (the "Property") for a "static car show" on July 28, 2024 (the "Event"). Party of the First Part has agreed to this under the conditions listed below.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, effective on the date of full execution of this Agreement, the parties hereto agree as follows with respect to the Event:

1. **Conditions of Use:** (1) grandstands will be closed; (2) no racing will be allowed on the track; (3) the Event will be strictly a "static car show".
2. **Hours of Use:** The Property may be used on Sunday, July 28, 2024 between the hours of 8:00 am and 5:00 pm.
3. **Event Representation:** Party of the Second Party will provide an Event representative who shall be present at the Property during the entire Event.
4. **Code Compliance:** (1) Party of the Second Part shall be required to comply with the requirements of all applicable city, county, state and federal codes (including health, fire and life safety), laws, regulations, as well as the ordinances and regulations of the Town of Scarborough, Cumberland County, Maine. If Party of the Second Part fails to comply with the above, then Party of the First Part shall have the right to cancel the Event; (2) Party of the Second Part will be required to provide evidence that it has obtained the appropriate permits (e.g. fire, health, tow zone, street closures) for the Event.
5. **Clean-up and Damage:** (1) Party of the Second Part will be responsible for clean-up of the Property and removal of all trash and debris; (2) beginning immediately after the Event, Party of the Second Part must remove all trash, litter, equipment and signage and must repair any damage to the Property caused by its activities; (3) all trash generated by the Event must be removed from the Property after the Event; (4) Party of the Second Part shall be responsible for any and all porta potties and/or any restroom facilities and the clean-up for this; (5) Party of the Second Part agrees to pay costs of repair or replacement for any and all damages to the Property, caused by the Party of the Second Part, its agents, employees, contractors (including independent contractors), exhibitors, vendors, registrants or other



persons attending the Event with the express or implied permission or invitation of Party of the Second Part. Such responsibility shall not cover damage caused by the negligence or willful misconduct of Party of the First Part, its officers, agents, contractors or employees. Any final repair costs to be paid by Party of the Second Part shall be determined by Party of the First Part in its sole discretion. In addition, Party of the First Part shall select and approve the contractors that will conduct any repair work at the Property, in Party of the First Part's sole discretion. All repair costs approved by Party of the First Part will be billed to Party of the Second Part and shall be paid by Party of the Second Part within one (1) week of receipt of such invoice; (6) in no case shall Party of the Second Part be permitted to physically alter the Property; and (7) if any repairs are needed for damages resulting from Party of the Second Part's activities, Party of the Second Part shall be solely responsible for all costs associated with the repairs.

6. **Insurance:** Party of the Second Part is required to obtain Commercial General liability insurance of \$1,000,000.00 per occurrence and General Aggregate of \$2,000,000.00 with respect to the Event and to provide the corresponding Certificate of Insurance to the Party of the First Part and name Party of the First Part as an Additional Insured on the insurance policy prior to the Event.
7. **Alcoholic Beverages:** The sale or service of alcoholic beverages shall not be allowed or permitted on the Property.
8. **Parking:** (1) Overnight parking is prohibited; (2) Party of the First Part is not responsible for the security of vehicles and or their contents while parked at the Property.
9. **Animals:** (1) Party of the Second Part may not bring or allow any animals to be brought onto the Property, except trained service animals.
10. **Additional Event Regulations:** (1) No person shall leave any items on the Property or parking lots overnight. Party of the First Part shall not be responsible for any loss, damage, or vandalism to any items placed or left on the Property; (2) Party of the First Part may establish the boundaries of areas which would be covered by the Event; (3) no skates, skateboards, bicycles, or similar devices may be used at the Property; (4) solicitation is not permitted on the Property or parking lots.
11. **Indemnity:** To the maximum extent permitted by law, in each case to the extent the same are related, directly or indirectly, to the Property or Party of the Second Part's use thereof and excluding any claims, expenses or liability arising from the negligence or intentional acts or omission of Party of the First Part, its employees, agents or contractors, Party of the Second Part shall, and hereby does, protect, defend, save, indemnify and forever hold harmless Party of the First Part, along with Party of the First Part's affiliates and the officers, directors, employees and agents of each from and against any claims, demands, liabilities, fines, suits, actions, proceedings, orders, decrees, judgments, losses, damages, costs and expenses, including, without limitation, reasonable attorney's fees, or other liability of whatever nature : (a) arising from any default, act, omission or negligence of Party of the Second Part, or any

officers, directors, employees and agents of each from and against any claims, demands,

- 2 -

liabilities, fines, suits, actions, proceedings, orders, decrees, judgments, losses, damages, costs and expenses, including, without limitation, reasonable attorney's fees, or other liability of whatever nature : (a) arising from any default, act, omission or negligence of Party of the Second Part, or any of Party of the Second Part's contractors, licensees, agents or employees, or the failure of Party of the Second Part or such persons to comply with any rule, order, regulation or lawful direction now or hereafter in force of any public authority, or (b) arising, directly or indirectly, from any accident, injury or damage, however caused, to any person including employees and/or contractors of Part of the Second Part or property on or about the Property; or (c) arising, directly or indirectly, out of default or breach of any duties, representations, warranties or covenants by Party of the Second Part or any of Party of the Second Part's agents, employees, licensees or contractors under any of the terms of this Agreement. This indemnity and hold harmless agreement shall include indemnity against all expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel acceptable to Party of the First Part or counsel selected by an insurance company which has accepted liability for any such claim.

## 12. Notices:

### Party of the First Part:

SETZER PROPERTIES PLD, LLC

Attn: Keith Fryman

354 Waller Ave., Suite 150

Lexington, KY 40504

[kfryman@setzerproperties.com](mailto:kfryman@setzerproperties.com)

With copy to:

Joshua J. Markham

354 Waller Ave., Suite 150

Lexington, KY 40504

[jmarkham@setzerproperties.com](mailto:jmarkham@setzerproperties.com)

### Party of the Second Part:

Maine Vintage Race Car Association

Attn: Daniel Walker

6 Lookout Lane

Windham, ME 04062

[dan112460@yahoo.com](mailto:dan112460@yahoo.com)

**PARTY OF THE FIRST PART:**

**SETZER PROPERTIES PLD, LLC,**  
a Kentucky limited liability company

By: SP PLD MANAGER, LLC, Manager

By:   
Keith Fryman, Manager

Date: April 29, 2024

**PARTY OF THE SECOND PART:**

**MAINE VINTAGE RACE CAR ASSOCIATION,**  
a Maine non-profit corporation

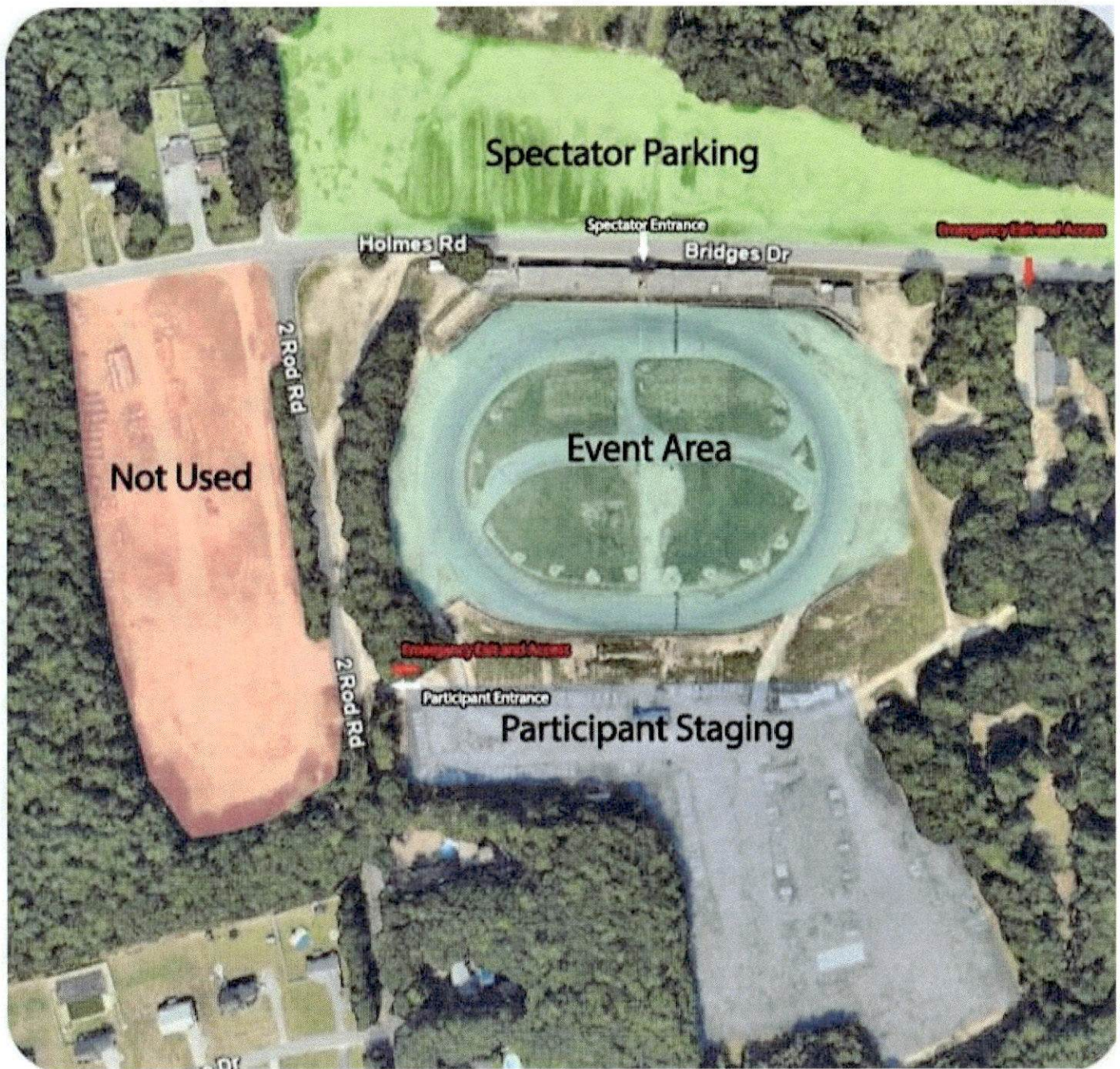
By: Daniel Walker

Printed Name: DANIEL WALKER

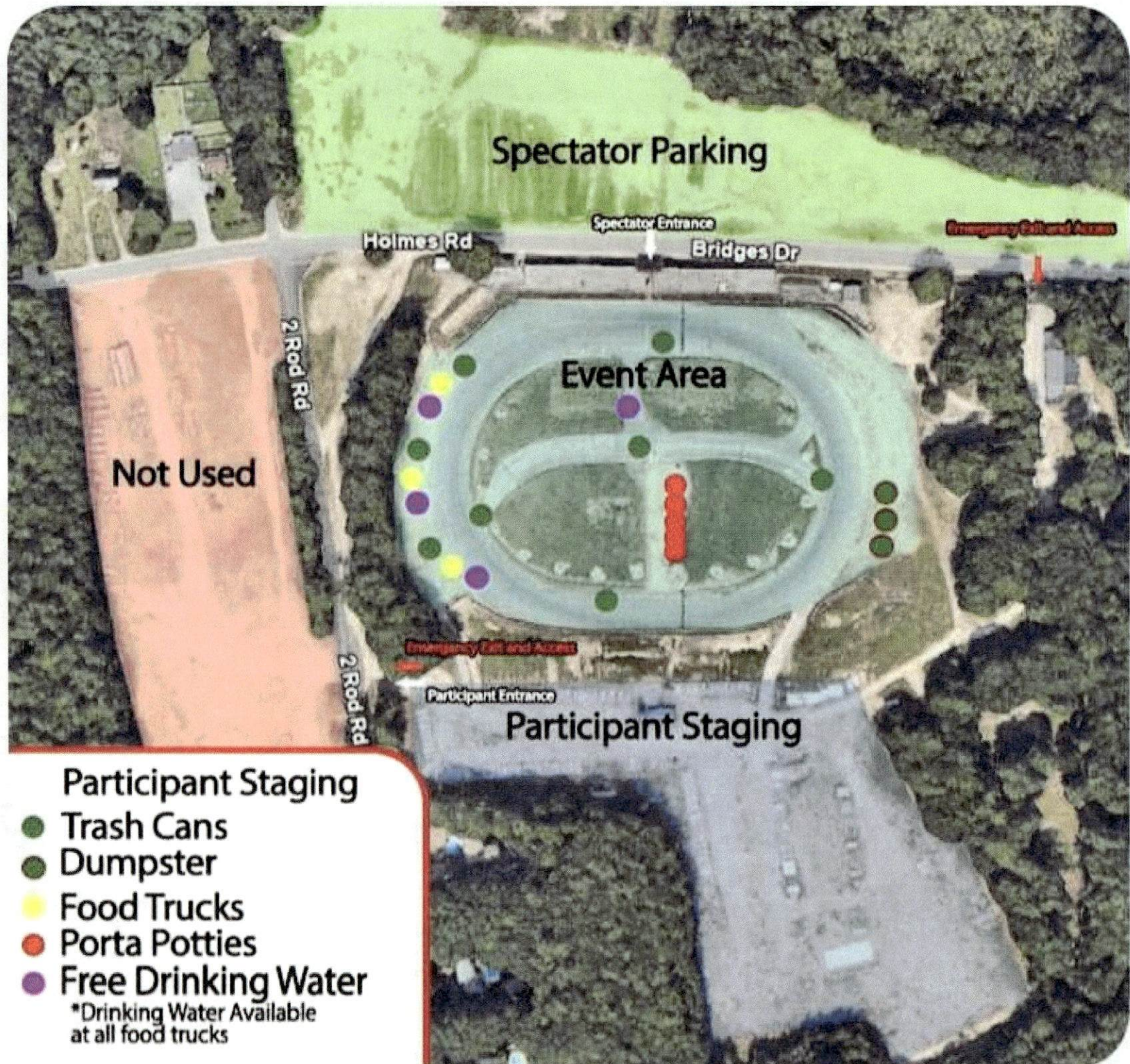
Title: DIRECTOR

Date: APRIL 26, 2024









**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-053.** Move approval on the request from the Town Clerk to Certify the June 11<sup>th</sup> Election Results for the School Budget Validation Referendum Election and the Board of Education Election. *[Town Clerk]*

*Town Clerk*

*Ought to Pass*

\_\_\_\_\_  
Sponsor

\_\_\_\_\_  
Recommendation

*06/26/2024 - Vote:*

\_\_\_\_\_  
First Reading/Vote

*N/A*

\_\_\_\_\_  
Public Hearing

*N/A*

\_\_\_\_\_  
Second Reading/Final Approval/Vote



## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

**ACTION ITEM: Order No. 24-053.**

**SUBJECT:**

Act on the request from the Town Clerk to Certify the June 11<sup>th</sup> Election Results for the School Budget Validation Referendum Election and the Board of Education Election. *[Town Clerk]*

**PURPOSE:**

To certify the election results of the School Budget for FY 2025 and the results of the Board of Education Election.

**BACKGROUND:**

Once the Town Council has approved the Budgets for the Town and School, the Schools portion of the budget must be voted on by the voters and the results must be certified by the Town Council pursuant to Section 807 of the Town Charter.

There was a Charter amendment that was approved by the Voters in 2022, which changed the term for the members of the Board of Education to June. Those members who were elected on or prior to November 8, 2022 shall continue to serve until their successors are elected and qualified at the Tuesday in June after their respective term expired. The June 2024 Election was the first for the new BOE Election cycle.

**FISCAL IMPACT:**

**STATUS / PROCESS TO DATE:**

- Town Council single item action: June 26, 2024

**PROPOSED ACTION:**

Recommend approval of this Order.

**ATTACHMENTS:**

- Memo from the Town Clerk.

TO: Members of the Town Council &  
The Town Manager

FROM: Yolande P. Justice, Town Clerk

RE: Certification of the June 11, 2024, Election Results for the School Budget Validation  
Referendum and the Board of Education

DATE: June 21, 2024

Presented for certification by the Town Council, are the election results for the School Budget Referendum Election and Board of Education Election that were held on Tuesday, June 11, 2024:

**QUESTION 1:  
SCHOOL BUDGET VALIDATION REFERENDUM ELECTION**

1,725 YES\*

1,276 NO

109 BLANKS

**BOARD OF EDUCATION – TERM TO EXPIRE IN 2027**

2,320 LINDSTROM, MARY SHANNON

2,248 PETERSON, ALISSA K.

1,652 BLANKS

There are approximately 17,410 active voters on our voter registration list for this Election [does not include same day registration]. There were 3,110 voters who cast ballots in the June 11<sup>th</sup> School Budget Validation Referendum Election and the Board of Education, of which 1,257 were absentee ballots. The percentage for overall voter turnout for this Election was 18%.

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-054.** Move approval on the request to replace Councilor Anderson with Councilor Cushing, as the Liaison to the Chamber of Commerce. [*Council Chair*]

*Council Chair*

*Ought to Pass*

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Sponsor

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Recommendation

06/26/2024 - Vote:

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First Reading/Vote

N/A

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Public Hearing

N/A

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Second Reading/Final Approval/Vote



## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

<b>ACTION ITEM: Order No. 24-054.</b>
<b>SUBJECT:</b> Act on the request to replace Councilor Anderson with Councilor Cushing as the Liaison to the Chamber of Commerce. <i>[Council Chair]</i>
<b>PURPOSE:</b> To maintain representation at the Chamber of Commerce meetings from an Elected Official from Scarborough.
<b>BACKGROUND:</b> Due to a conflict with the meeting schedule, Councilor Anderson is no longer able to attend the Chamber meetings.
<b>FISCAL IMPACT:</b> N/A
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>• Single action before Town Council: June 26, 2024</li></ul>
<b>PROPOSED ACTION:</b> Recommend approval of Order No. 24-054
<b>ATTACHMENTS:</b> N/A

**AGENDA**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JUNE 26, 2024**  
**HYBRID REGULAR MEETING – 7:00 P.M.**

**Order No. 24-055.** Move approval on the request for an executive session pursuant to M.R.S.A. Title 1, §405(6)(D) regarding labor negotiations between the Town of Scarborough and the Scarborough Police Benevolent Association; the Scarborough Professional Dispatchers Unit of Scarborough Firefighter Association - IAFF #3894; the Scarborough Professional Firefighter Association IAFF Local #3894 and the Public Works Teamsters Union Local #340; to open to public session to adjourn the meeting. *[Assistant Town Manager]*

*Assistant Town Manager*

*Ought to Pass*

\_\_\_\_\_  
Sponsor

\_\_\_\_\_  
Recommendation

*06/26/2024 - Vote:*

\_\_\_\_\_  
First Reading/Vote

*N/A*

\_\_\_\_\_  
Public Hearing

*N/A*

\_\_\_\_\_  
Second Reading/Final Approval/Vote

## Scarborough Town Council Meeting

Council Meeting Date: June 26, 2024

<b>ACTION ITEM:</b> Order No. 24-055.
<b>SUBJECT:</b> Act on the request for an executive session pursuant to M.R.S.A. Title 1, §405(6)(D) regarding labor negotiations between the Town of Scarborough and the Scarborough Police Benevolent Association; the Scarborough Professional Dispatchers Unit of Scarborough Firefighter Association - IAFF #3894; the Scarborough Professional Firefighter Association IAFF Local #3894 and the Public Works Teamsters Union Local #340. <i>[Assistant Town Manager]</i>
<b>PURPOSE:</b> To review labor negotiations between the 4 Union Groups noted above.
<b>BACKGROUND:</b> Contract negotiations happen every three years between the Town of Scarborough and the 4 Union Groups. The Town Council meets with HR to review the proposals being brought forward prior to final approval.
<b>FISCAL IMPACT:</b> N/A
<b>STATUS / PROCESS TO DATE:</b> <ul style="list-style-type: none"><li>Request before the Town Council: June 26, 2024.</li></ul>
<b>PROPOSED ACTION:</b> Recommendation is to move of Order No. 24-055.
<b>ATTACHMENTS:</b>