

**AGENDA**  
**Ordinance Committee Meeting**  
**Hybrid Meeting**

**Wednesday, October 09, 2024 – 6:00 P.M.**  
**Public Safety Classroom**

**TO VIEW THE ORDINANCE COMMITTEE MEETING AND OFFER PUBLIC COMMENT:**

<https://scarboroughmaine.zoom.us/j/83418961810>

**TO VIEW THE ORDINANCE MEETING ONLY:**

<https://www.youtube.com/watch?v=MmsudOtPxgM>

- Item 1.** Call to Order.
- Item 2.** Roll Call.
- Item 3.** Approval of minutes from September 11, 2024.
- Item 4.** Public Comment.
- Item 5.** Discussion on Food Truck Courts.
- Item 6.** Discussion on Environmental Standards.
- Item 7.** Future Agenda Items.
- Item 8.** Adjournment.

# MEMO

**To: Ordinance Committee**

**From: Autumn Speer, Director of Planning and Codes**

**Date: October 1, 2024**

**Re: Mobile Food Vendor Ordinance and License Proposal**

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## BACKGROUND

Planning staff has received a request to consider a new use to allow for a mobile food vendor court. We have also received many requests in the past several years to allow for mobile food vending in some form. We currently have a policy to permit mobile food trucks for one-time events, private events and catered events.

The attached draft is a proposal that creates a new use “mobile food vendor *court*” that would be permitted in all non-residential districts currently permitting restaurants. The new use would fall under the commercial site plan ordinance requirements in much the same way a restaurant would. Each vendor space would be shown on the site plan as a pad site. Mobile food *vendors* would be subject to license requirements and would need to provide the approved location as part of the license requirements. This proposal does not contemplate mobile food vendors who would drive from site to site.

## PROCESS TIMELINE

- Long Range Planning Committee Review: August 9, 2024
- Long Range Planning Committee Review: September 13, 2024
- Restaurant Survey: September 2024
- Online Zoom Meeting with Restaurant Owners: October 1, 2024

## ATTACHMENTS

1. Draft Ordinance Amendments and License Requirements
2. Mobile Food Vendor Presentation

**Ordinance Committee Draft 10.9.24**

**Public Safety Redlines**

**Mobile Food Vendors Draft Ordinance**

**Information Only - Review Authority**

1. Mobile Food Vendor Court (two or more) – Planning Board Site Plan Review and License Requirements
2. Mobile Food Vendor License – Town Clerk and Town Council

**Add to Chapter 405 Zoning Ordinance Section VI Definitions:**

1. **Mobile Food Vendor.** A vehicle, trailer, cart or stand designed and constructed to transport, prepare, sell or serve food and/or beverages and capable of being moved from its serving site at any time. Mobile food vendors are subject to Chapter 1015.A Mobile Food Vendor License Ordinance.
2. **Mobile Food Vendor Court.** A collection of two or more mobile food vendors in a common outdoor plaza or site providing a common area for self-serve dining. For the purpose of this definition the mobile food vendor court may be an accessory use to the primary use of the site or the primary use of the site. Mobile food vendors courts are subject to Chapter 405 Zoning Ordinance use standards and applicable performance standards and Chapter 405B Site Plan review requirements.

**Add Use to Chapter 405 Zoning Ordinance (districts that currently permit restaurants):**

New Use	PERFORMANCE STANDARDS APPLY	TVC (2,3, 4)	HP	CPD	RH	B2	B3	BOR	I
Mobile Food Vendor Court (two or more pad sites) Drive-through or drive-in service is prohibited	Section IX.BB.	P	P	P	P	P	P	P	P

**Section XVIII.A Town and Village Centers District TVC**

**Section XVIII.C Town and Village Centers District TVC2**

**Section XVIII.D Town and Village Centers District TVC3**

**Section XVIII.E Town and Village Centers District TVC4**

**Section XVIII.B Haigis Parkway District (HP)**

**Section XIX Regional Business District (B2)**

**Section XIXA General Business District (B3)**

**Section XX Business Office Research District (BOR)**

**Section XX.A Running Hill – Gorham Rd Mixed Use District (RH)**

**Section XX.C Crossroads Planned Development (CPD)**

**Section XX.I Industrial District (I)**

**Information Only: Chapter 405B Site Plan Requirements Apply the same as for a traditional restaurant except as noted below:**

- A. Site Utilization and Layout Standards Apply
- B. Landscape and Screening Standards Apply
- C. Stormwater Management Standards Apply
- D. Outdoor Lighting Standards Apply
- E. Architectural Design Standards – Does not apply to mobile food vendor units, but does apply to permanent structures
- F. Sign Standards Apply
- G. Public and Private Utilities Apply for permanent facilities

**Add to Chapter 405 Zoning Ordinance Section IX Performance Standards**

**BB. Mobile Food Vendor Court** The establishment of a mobile food vendor court shall be through the site plan process. In addition, all mobile food vendors in the mobile food vendor court shall adhere to licensing requirements found in Chapter 1015.A Mobile Food Vendor License Ordinance.

The following standards shall apply to all mobile food vendor courts:

1. Minimum setbacks for the zoning district the mobile food vendor court is located in shall apply to all mobile food vendor pad sites.
2. Each mobile food vendor pad site shall be equipped with electrical connections.
3. Mobile food vendor pad sites shall be designed to maintain a five (5) foot clear space around each mobile food vendor.
4. Mobile food vendor pad sites shall be designed so that mobile food vendors shall be parked on paved or other approved surfaces. Appropriate spill control and counter-measures plan with sufficient materials to address typical spills is required.
5. Mobile food vendor pad sites shall be designed so that no mobile food vendor is set-up within any ADA accessible parking space.
6. Mobile food vendor pad sites shall be designed so that no mobile food vendor is set up within any designated sight triangle/vehicle clear-zone or within twenty (20) feet of fire lanes, fire hydrants or fire connections.

7. Mobile food vendor pad sites shall be designed so that no mobile food vendor is located in the public right-of-way, impedes traffic, interferes with the general ingress and egress to and from any property, public or otherwise, or presents an unsafe condition for patrons, pedestrians, or other vehicles.
8. Mobile food vendor courts shall provide temporary or permanent public restroom facilities.

**Add to Chapter 405 Zoning Ordinance Section XI Parking Regulations**

Mobile Food Vendor Court	1 per mobile food vendor pad site; not including the required parking spaces for any other use on site. ADA parking shall be provided. Parking requirements shall be subject to Planning Board site plan approval.
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Table 1. EV Charging Infrastructure Requirements - **None**

(Table based on table in section B.1)

USE	Number of Parking Spaces Required *FA = Floor Area *GLA = Gross Leasable Area	Electric Vehicle Charging Station (EVCS) Requirements				
		EVCS-installed parking spaces	EVCS-ready parking spaces	EVCS-capable parking spaces	TOTAL SPACES	Minimum type of EVCS
<b>Commercial</b>						
Mobile Food Vendor Court	1 per mobile food vendor pad site	--	--	--	--	NA

## **NEW: CHAPTER 1015.A MOBILE FOOD VENDOR LICENSE ORDINANCE**

### **A. Applicability**

No person shall carry on the business of operating to sell food or beverage from a mobile food vending unit within the limits of the Town of Scarborough without first having obtained a license from the Town of Scarborough. ~~unless otherwise exempt by this ordinance.~~ Mobile food vending may only occur on locations in Section B below. ~~on an approved Mobile Food Vendor Court, or on exempted locations below.~~

### **B. Permitted Mobile Food Vendor Locations and Exemptions**

Approved Mobile Food Vendor Court. Mobile food vendors may operate at approved Mobile Food Vendor Courts with permission of the property owner.

**One-time Events.** Mobile food vendors ~~may operate located~~ on private property for a private one-time event ~~are not required to obtain a Mobile Food Vendor License,~~ provided the unit is not operational for more than thirty-six (36) hours. All other required licenses and permissions must be obtained (i.e. Special Event Permit, Mass Gathering Permit).

**Private Catered Events.** Mobile food vendors may operate at a private catered event. A private catered event is an event that sells food and beverages coinciding with an event and only to the attendees of the event. Private catered events are not open to the general public and advertising to the public is prohibited. ~~A town issued mobile food vendor license is not required to operate as a private catered event.~~

**Town Sponsored Events.** Mobile food vendors may operate at participating in Town sponsored events ~~are not required to obtain a Mobile Food Vendor License.~~ Site locations s shall be approved by Public Safety Departments.

### **C. Definitions**

**Mobile Food Vendor.** A vehicle, trailer, cart or stand designed and constructed to transport, prepare, sell or serve food and/or beverages and capable of being moved from its serving site at any time.

**Mobile Food Vendor Court.** A collection of two or more mobile food vendors in a common outdoor plaza or site providing a common area for self-serve dining. For the purpose of this definition the mobile food vendor court may be an accessory use to the primary use of the site or the primary use of the site.

### **D. Application Process**

Every mobile food vendor shall obtain a license issued by the Town Clerk to conduct business in the Town. Each mobile food vending unit requires a separate license.

A complete and signed application shall require the following information from the applicant to be considered:

- 1) Name of applicant, as well as physical street address, mailing address, telephone number(s), and e-mail address.
- 2) Legal name of business or entity.
- 3) Mobile food vendors shall provide proof of a State of Maine health certificate at the time of application
- 4) Signed permission form, or provide notarized affidavit from the private property owner granting permission for unit placement.
- 5) Phone number for the private property owner on which the mobile food vendor unit will be placed.
- 6) Name, phone number and driver's license number of business owner and all employees operating within the mobile food vendor unit.
- 7) Valid and current vehicle/trailer registration of mobile food unit.
- 8) Description of product being sold and menu.
- 9) Provide the name of the approved mobile food vendor court and identify which space will be utilized.
- 10) Identify where the food prep operations will occur. If a commissary kitchen is located in the Town of Scarborough, it will be inspected as well.

#### **E. Public Hearing Required**

The Town Council shall hold a public hearing on all new applications for mobile food vendor licenses. Notice of the hearing shall be advertised in a local daily newspaper, at least seven (7) days prior to the hearing, at the expense of the applicant.

#### **F. Approval Authority**

The application, when submitted to the Town Council shall bear the recommendation for approval or disapproval with reasons noted by the Code Enforcement Officer, the Police Chief, the Fire Chief and the Tax Collector.

A license shall be granted if the property in question complies with all Federal, State and local laws and the applicant demonstrates that the premises will be conducted in a healthful and sanitary manner so as not to jeopardize the public health, safety and welfare and that the applicant is not delinquent in the payment of any personal taxes or fees owed to the Town of Scarborough.

An initial license to operate as a mobile food vendor within Scarborough must be approved by the Town Council.

#### **G. License Renewal**

The Town Clerk shall renew a license issued under Section F above to operate a mobile food vendor unit on or before May 1st of each year, provided the applicant must still meet all of the licensing standards set forth in this ordinance.

The applicant must submit the application and the renewal fee within 30 days before expiration of the license or must reapply as a new applicant.

#### **H. License Revocation**

If information is provided to the office of the Town Clerk that a current licensee has violated one or more of the standards set forth in this Ordinance and this fact is verified by the Police Department, Fire department or Code Enforcement Department, the Clerk

shall issue a notice of suspension or revocation of an existing license. A licensee who has received such notice is entitled to a hearing before the Town Council before the suspension or revocation takes effect. The Council shall apply the standards of this Ordinance to determine whether license should be suspended or revoked.

In addition, the Town Council may revoke or suspend the license of any owner or operator who violates the conditions of the license, makes a material misstatement on the application for the license, keeps or operates her/his mobile food vending unit in an unsafe, unclean or unsatisfactory condition.

### **I. License Posting Required**

Every required license shall be displayed at all times in a conspicuous place where they can be read by the general public on the mobile food vendor unit.

### **J. License Requirements: General Standards**

- Mobile food vendors must meet all State of Maine Health Department regulations.
- Mobile food vendors must hold a State of Maine Eating Place Mobile License.
- Mobile food vendors shall comply with the State of Maine rules relating to eating and lodging places, as periodically amended, and shall not operate without a Town issued mobile food vendor license, unless exempt by this ordinance.
- Mobile food vendors shall not sell anything other than food, beverages and associated related and incidental goods.

### **K. License Requirements: Equipment**

- Use of petroleum fuel powered generators is prohibited on mobile food vendor courts.
- Mobile food vendors shall ensure the vehicle/cart is attended at all times during operating hours.
- The allowable dimensions of a mobile food vendor (including all attachments, except hinged canopies that open to reveal food serving areas) shall no more than 30 feet long, 13 feet tall, and eight feet wide.
- Mobile food vendor units shall have a gray water holding tank.
- Mobile food vendor operators shall ensure that there is an adequate supply of potable water for cleaning equipment and the preparation of foods.
- Mobile food vendor operators shall ensure there is an adequate and safe source of electrical power.
- Mobile food vendor operators shall ensure all storage of food supplies and other business material is within the vehicle or other container secured to the vehicle. No loose material shall be permitted outside of the vehicle.
- The trailer, or vehicle, being used shall be registered, in good upkeep, and provide a neat appearance.



#### **L. License Requirements: Inspections Required**

- All cooking, heating and electrical equipment and all cooking practices must comply with applicable safety regulations, including but not limited to applicable fire and electrical codes and any other safety requirements imposed by the Town.
- If the cooking procedures involve producing grease laden vapors, a hood suppression system with a class k fire extinguisher must be in place in the food truck with current inspection tags attached.
- Mobile food vendors conducting cooking operations shall obtain an annual fire inspection from the Fire Department prior to operating its business.
- Open flame cooking, either within or outside a food vendor, is prohibited, except where such activity is specifically permitted by the Fire Department.
- The mobile food vendor will be subject to inspection upon submission of the license application through the Code Enforcement Department and the Fire Department, and may be subject to random inspection and upon reissuance of the permit. The inspection must be completed by April 15<sup>th</sup>.

#### **M. License Requirements: Refuse and Waste**

- Mobile food vendors are responsible for the proper disposal of waste and trash associated with the operation and shall remove all generated waste and trash from their approved location at the end of each day or as needed to maintain the public health and safety.
- No liquid waste or grease is to be disposed of in tree pits, storm drains, sanitary sewers, onto the sidewalks, streets or other public or private space.
- A written waste management plan indicating plans for waste handling, sanitation, litter collection/prevention, recycling, and daily cleanup procedures shall be submitted with the license application.

#### **N. License Requirements: Signage**

- Mobile food vendors shall not place signs/banners in or alongside the public right-of-way or across roadways.
- Mobile food vendor signs must be permanently affixed to or painted on the mobile food vehicle; sandwich boards are acceptable if placed directly in front of the mobile food vendor they are advertising for.

#### **O. License Requirements: Noise, Lighting and Odors**

Mobile food vendors shall not emit sounds, outcry, speaker, amplifier or announcements and amplified music or sounds may not at any time unreasonably disturb nearby businesses, pedestrians, or vehicles.

#### **P. Hours of operation**

Mobile food vendors may operate beginning at 5:00 AM and ending at 9:00 PM, unless otherwise qualified or limited by the municipal review authority.

### **Q. License Fee Required**

The initial fee and renewal fee payable for a mobile food vendor license shall be as specified in Chapter 311, the *Schedule of License, Permit and Application Fees* established by the Town Council. (\$250 proposed)

### **R. Insurance Required**

Mobile food vendors shall provide, at their expense, and keep in force during the term of their contract, with a responsible insurance company or companies authorized to do business in the state, commercial general liability insurance in the amount of at least \$1,000,000. The mobile food vendor shall deliver certificates of such insurance to the town at the time of application.

### **S. License Expiration**

A new license, when granted, shall be valid until May 31<sup>st</sup>, immediately following said granting of said license, except that new licenses granted during April and May shall be valid until May 31<sup>st</sup> of the following calendar year. A license issued under this section is not transferable.

# Mobile Food Vendor Proposal

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TOWN OF SCARBOROUGH

OCTOBER 1, 2024

# Why Now?

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- Policy to permit at events and catering
- On-going pressure to permit food trucks at events and activities in Town
- Specific request to permit mobile food courts



# Process to Date

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- Long Range Planning Committee
  - August 9, 2024
  - September 13, 2024
- SEDCO survey
  - September 6, 2024
  - September 19, 2024





# Multi-Part Ordinance Change

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- Defining the uses
- Determining where to permit the uses (zoning districts)
- Create license requirements



# Mobile Food Vendors - Definitions

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**Mobile Food Vendor.** A vehicle, trailer, cart or stand designed and constructed to transport, prepare, sell or serve food and/or beverages and capable of being moved from its serving site at any time.

**Mobile Food Vendor Court.** A collection of two or more mobile food vendors in a common outdoor plaza or site providing a common area for self-serve dining. For the purpose of this definition the mobile food vendor court may be an accessory use to the primary use of the site or the primary use of the site.

# Zoning Considerations

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Mobile Food Vendor Courts allowed in non-residential districts that currently permit restaurants:

- Town and Village Center Districts
- Haigis Parkway
- The Downs
- Running Hill Mixed Use
- Regional Business
- General Business
- Business Office Research
- Industrial





# Exempt Locations (license required)

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**One-time Events.** Mobile food vendors may operate on private property for a private one-time event provided the unit is not operational for more than thirty-six (36) hours.

**Private Catered Events.** Mobile food vendors may operate at a private catered event. A private catered event is an event that sells food and beverages coinciding with an event and only to the attendees of the event. Private catered events are not open to the general public and advertising to the public is prohibited.

**Town Sponsored Events** Mobile food vendors may operate at Town sponsored events.

# NOT Permitted

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This ordinance does not allow for mobile food vendors who drive from site to site during the day and/or stop in parking lots



# Site Plan Standards Mobile Food Vendor Court

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***Chapter 405B Site Plan Requirements Apply the same as for a traditional restaurant except as noted below:***

- A. Site Utilization and Layout Standards Apply
- B. Landscape and Screening Standards Apply
- C. Stormwater Management Standards Apply
- D. Outdoor Lighting Standards Apply
- E. Architectural Design Standards – Does not apply to mobile food vendor units, but does apply to permanent structures
- F. Sign Standards Apply
- G. Public and Private Utilities Apply for permanent facilities



# Performance Standards Mobile Food Vendor Court

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- Minimum setbacks for the zoning district apply
- Electrical connections required for each pad
- 10' separation between vendors
- Pads shall be paved or other approved surfaces
- Provide temporary or permanent public restroom facilities
- EV Parking standards – do not apply





# License Requirements

## Mobile Food Vendor

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- Applies to all food trucks operating in Scarborough (regardless of location)
- Takes the place of a food handlers permit
- Approval - Town Clerk and Town Council



# License Requirements - General

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- Meet all State of Maine Health Department regulations
- Hold a State of Maine Eating Place Mobile License
- Comply with the State of Maine rules relating to eating and lodging places
- Sell only food, beverages and associated related and incidental goods



# License Requirements - Equipment

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- No fuel powered generators on mobile food vendor courts
- Vehicle/cart must be attended during operating hours
- Dimensions - shall no more than 30 feet long, 13 feet tall, and eight feet wide
- Gray water holding tank required
- Potable water supply required
- Electrical power required
- Self contained – no outdoor storage, etc.
- Trailer, or vehicle, must be registered and in good shape





# License Requirements - Additional

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- Inspections Required
- Refuse and waste plan
- No outside signage
- No amplified noises
- License fee requires - \$250
- Insurance required





# Next Steps

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- Ordinance Committee Review – October 9, 2024
- Town Council First Reading - TBD
- Town Council Public Hearing - TBD
- Planning Board Public Hearing - TBD
- Town Council Second Reading - TBD

# Questions and Discussion

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# MEMO

**To: Ordinance Committee**

**From: Autumn Speer, Director of Planning and Codes**

**Date: October 1, 2024**

**Re: Environmental Standards Ordinance – Wetland Setbacks**

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## PROPOSED AMENDMENTS

In collaboration with the Conservation Commission, the Planning Department proposes wetland standards be added to Chapter 405B, Site Plan Review Ordinance and Chapter 406 Subdivision Ordinance, to enhance protections to Scarborough's wetlands.

Several Town Ordinances mention a desire to protect environmental resources. However, outside of the Shoreland Zoning Ordinance and Conservation Subdivisions, requirements are not consistent or specific in regards to resource protection. During the development process, staff and Planning Board often find themselves in a situation where state agencies have permitted a development plan that is not in line with the Town vision. Providing clear requirements for resource protections will create understanding with Developers, Staff and the Planning Board.

## EXISTING TOWN REGULATIONS

### Chapter 405 Zoning Ordinance

- **Section VII Conservation Subdivision Standards**

*1. The open space areas shall be contiguous areas that encompass and buffer the wetlands, watercourses, water bodies and other natural features within the subdivision. In addition to these wetlands and natural features, the open space may also include agricultural fields, farming activities, forest lands, wildlife corridors and habitat areas, or recreation areas that will be preserved or established as part of the subdivision as well as land designed to buffer these areas. In order to be counted toward the 50% requirement, an open space area must be at least one acre in size and include a*

## Planning & Code Enforcement

minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary.

- **Section IX Performance Standards – Private Way Residential Development**

No-disturb buffer: An area within 25 feet, horizontal distance, of the upland edge of a wetland, as defined under Section VIIA(l), which is not otherwise regulated under the Town of Scarborough Shoreland Zoning Ordinance. Disturbance of the no-disturb buffer by clearing, mowing or construction of a structure is prohibited. The no-disturb buffer shall be delineated in compliance with Section IX(l)(9)(1) below.

- **Section XIV Village Residential Districts VR4**

*7. In the VR4 District development shall be clustered away from wetlands, watercourses and water bodies and impacts to these resources shall be avoided. Contiguous wetland areas of 15,000 square feet or greater shall be protected as common open space. These open space areas shall include a minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary. The open space lands may include a trail system for walking, hiking, biking or similar activities subject to Planning Board approval. Where no practical alternative exists, the Planning Board may allow the crossing of wetlands for roads, driveways or utilities to provide access to, or use of, an upland area within a development.*

#### **Chapter 406 Subdivision Ordinance**

Section 4 Review Criteria below requires identification for wetlands, stream, rivers or brooks and floodplain delineation. However, no specific parameters are required for the protection of such.

- K. *Whenever situated in whole or in part, within 250 feet of any pond, lake, stream, river, wetland or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or wetland or unreasonably affect the shoreline of such body of water or wetland;*
- L. *The proposed subdivision will not, alone or in conjunction with existing activities, Adversely affect the quality or quantity of ground water;*
- M. *Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board shall determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;*
- N. *All wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district. Boundary locations of wetlands must be permanently marked;*
- O. *Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38 M.R.S.A., section 480-B, subsection 9;*

## Chapter 405B Site Plan Review Ordinance

Submission requirements include a description of method to delineate wetlands and buffer. However, no specific parameters are required for the protection of such.

- L. *A description of method to be used to permanently delineate wetlands and wetland buffers to prevent encroachment. [08/17/2005]*

Performance and Design Standards include goals concerning site layout in regard to wetlands, but again have no specific parameters defined.

### 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.*

## Chapter 405C Shoreland Zoning Ordinance

The Shoreland zoning ordinance applies to all land areas within 250 feet, horizontal distance, of the

- *normal high-water line of any great pond or river*
- *upland edge of a coastal wetland, including all areas affected by tidal action, or*
- *upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream*

.....as shown in the Stream Protection Overlay District, Stream Protection 2 Overlay District Shoreland and Resource Protection districts.

- *Stream Protection Overlay District and Stream Protection 2 Overlay District apply in addition to the Zoning Ordinance*
- *Resource Protection District, this Ordinance applies in place of the Scarborough Zoning Ordinance*

Shoreland Zoning stipulates activities that are permitted in the different districts.

## ORIGINAL ORDINANCE PROPOSAL

The **ORIGINAL** proposal presented in April of this year included the following:

- Protections for all new development requiring site plan or subdivision approval
- Definitions relating to natural resources
- Natural resource setbacks for wetlands, vernal pools, rivers, streams and brooks, coastal marshes and coastal bluffs

- Vegetated buffers for wetlands, vernal pools, rivers, streams and brooks, coastal marshes and coastal bluffs
- Permitted activities within natural resource setbacks and vegetated buffer areas
- Specifications for natural resource protection plan
- Placeholder for potential waivers

The proposed ordinance designated specific distances from a natural resource for the overall natural resource setback and the vegetated buffer. The ordinance also specified what is permitted in each.

Environmental Resource	Vegetated Buffer	Natural Resource Setback (includes vegetated buffer)
Contiguous Wetlands $\leq$ 1,000 SF	15'	25'
Contiguous Wetlands $\geq$ 1,000 SF $\leq$ 10,000 SF	25'	50'
Contiguous Wetlands $\geq$ 10,000 SF	75'	100'
Vernal Pools	100% of Natural Resource Setback	250'
Coastal Bluff Zone (unstable or unmapped)	35'	HAT + 4' + 150'
Coastal Bluff Zone (stable)	25'	HAT + 4' + 100'
River, stream or brook	75'	100'
Marsh Migration Zone	100% of Natural Resource Setback	HAT + 4' or HAT + 250' (whichever is greater)

### REVISED ORDINANCE PROPOSAL

After the developer forum and subsequent round table meeting between development engineers, Town Staff and Conservation Commission members, a revised proposal was recommended to be brought forward to the Ordinance Committee. The group also agreed to reconvene in January to further discuss environmental resource protections.

The **REVISED** proposal focuses only on protections aimed at constructability near wetlands and includes the following:

- Wetland protections for all new development requiring site plan or subdivision approval
- Definitions relating to natural resources
- Natural resource setbacks for wetlands
- Vegetated buffers for wetlands
- Permitted activities within wetland setbacks and vegetated buffer areas
- Wetland Crossing waivers

The proposed ordinance designates specific distances from a wetland for the overall natural setback and the vegetated buffer. The ordinance also specifies what is permitted in each.

The following setback and minimum vegetated buffer width standards apply:

Environmental Resource Type	Vegetated Buffer	Wetland Setback (includes vegetated buffer)
Wetlands	15'	25'

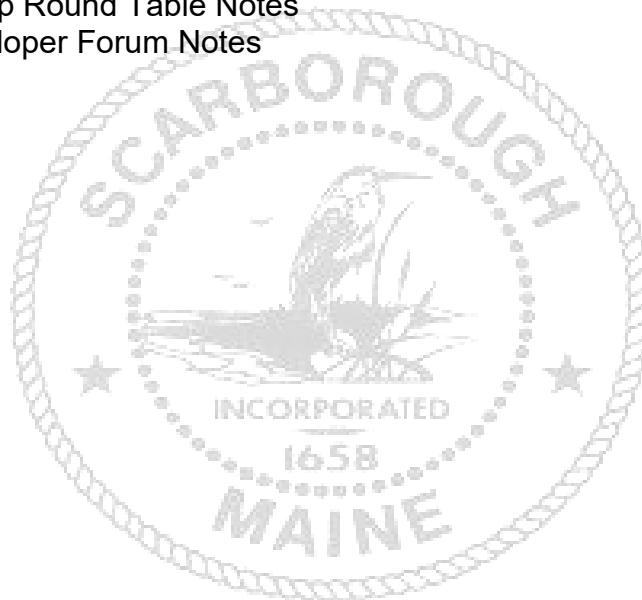
Permitted Activity	Setback Area – Inside of Vegetated Buffer	Setback Area - Outside of Vegetated Buffer
Pesticides Permitted	NO	NO
Fertilizer Permitted	NO	P
Tree Cutting or Vegetation Removal	NO	P
Forest Management Activities	NO	P
Invasive Species Control	P	P
Planting/establishment of Non-invasive species	P	P
Outdoor Lighting	NO	P
Fences	NO	P
Stormwater Retention or Detention Basin	NO	NO
Stormwater Conveyance Structures	NO	P
Sewage Disposal Facilities	NO	NO
Soil Erosion and Sediment Control Measures	NO	P
Shoreline Stabilization	NO	NO
Living Shorelines	P	P
Maintenance to existing structures and improvements within existing footprint	P	P
Repair, maintenance and improvements to existing public rights-of-way, utilities and sidewalks	P	P
Installation of piers or docks, provided that all required local, state, and federal approvals have been granted	P	P
Wildlife refuges, parks and recreational uses, conservation nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations	P	P
Trailhead Parking	NO	NO
Grading, Fill or Excavation Activities	NO	Only for permitted activities listed above

## PROCESS TIMELINE

- Conservation Commission: August 9, 2023
- Conservation Commission: October 16, 2023
- Conservation Commission: November 13, 2023
- Conservation Commission: December 11, 2023
- Conservation Commission: January 24, 2024 - voted to recommend the final draft be presented to Ordinance Committee
- SEDCO Board Presentation: March 21, 2024
- Ordinance Committee: April 10, 2024
- SEDCO Developer Forum: May 23, 2024
- Working Group Round Table: August 28, 2024

## ATTACHMENTS

1. Draft Wetland Setbacks
2. Working Group Round Table Notes
3. SEDCO Developer Forum Notes





## **Proposed Amendments to Ordinance Committee 10.9.24**

### **WETLAND SETBACKS – (Add to Site Plan and Subdivision Chapters)**

Wetland setback requirements shall apply to all **new development requiring site plan or subdivision approval**. Redevelopment projects shall maintain the minimum wetland setbacks under this Ordinance or that which was previously permitted at the property.

### **DEFINITIONS**

**Coastal Wetlands:** Coastal Wetland means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest astronomical in which an activity is proposed. Coastal wetlands may include portions of coastal sand dunes.

**Forested Wetland:** Forested wetland means a regulated wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.

**Fresh Water Wetland:** Freshwater wetland means freshwater swamps, marshes, bogs, and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and not considered part of a great pond, coastal wetland, river, stream, or brook.

**Vegetated Buffer:** A vegetated buffer is part of the natural resource setback area that maintains the natural vegetation cover from the natural resource for a specified distance. Limited activity may take place in the vegetated buffer.

### **WETLAND SETBACK AND BUFFER REQUIRED**

A wetland setback is a defined distance between a coastal wetland, freshwater wetland or forested wetland, and any upland development. The wetland setback also includes a vegetated buffer.

The required minimum vegetated buffer is a portion of the wetland setback area directly adjacent to the wetland and maintains the natural vegetation cover from the wetland for a specified distance. Lawn areas are not permitted in the vegetated buffer.

All wetland setbacks and vegetated buffers shall be marked with permanent pins every 50-100' and signage as determined by the Planning Board. All required boundary markers shall be installed before project construction commences.

The following setback and minimum vegetated buffer width standards apply:

Environmental Resource Type	Vegetated Buffer	Wetland Setback (includes vegetated buffer)
Wetlands	15'	25'

\*Where any provision of this Section conflicts with a state or federal law or regulation, another section of this Site Plan Ordinance, Zoning Ordinance, or another local ordinance or regulation, the more restrictive provision shall apply.

### PERMITTED ACTIVITIES

Activities that do not involve the erection or construction of any structure or impervious surface, will not alter the natural surface configuration by the addition of fill or by dredging, will not result in site alterations, and is otherwise permitted by the Zoning Ordinance are permitted as shown in the following table. Uses not specifically identified shall be prohibited.

Standards and Permitted Activity use table abbreviations are as follows:

- P – Permitted by Right
- NO – Not a Permitted Activity

Permitted Activity	Setback Area – Inside of Vegetated Buffer	Setback Area - Outside of Vegetated Buffer
Pesticides Permitted	NO	NO
Fertilizer Permitted	NO	P
Tree Cutting or Vegetation Removal	NO	P
Forest Management Activities	NO	P
Invasive Species Control	P	P
Planting/establishment of Non-invasive species	P	P
Outdoor Lighting	NO	P
Fences	NO	P
Stormwater Retention or Detention Basin	NO	NO
Stormwater Conveyance Structures	NO	P
Sewage Disposal Facilities	NO	NO
Soil Erosion and Sediment Control Measures	NO	P
Shoreline Stabilization	NO	NO
Living Shorelines	P	P
Maintenance to existing structures and improvements within existing footprint	P	P

Repair, maintenance and improvements to existing public rights-of-way, utilities and sidewalks	P	P
Installation of piers or docks, provided that all required local, state, and federal approvals have been granted	P	P
Wildlife refuges, parks and recreational uses, conservation nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations	P	P
Trailhead Parking	NO	NO
Grading, Fill or Excavation Activities	NO	Only for permitted activities listed above

Permitted fertilizers must be low phosphate slow release in areas of fresh water impact and slow release nitrogen in areas of coastal water impacts, both at a rate recommended from a soil test.

Depending on the buffer type, revegetation of buffers must use appropriate native plants.

Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional.

When forest management activities are permitted, harvesting up to 20% of the total volume of each acre of trees 4.5 inches DBH or greater in any 10-year period is allowed.

Reconstruction and modifications of existing structures is permitted; however, footprint expansion must move landward to the greatest extent practical.

Fences may be constructed along the vegetated buffer line; however, they must have no footings and no ground disturbance within five feet (5') of the vegetated buffer.

### **WAIVERS – WETLAND SETBACKS**

The Planning Board may review waivers to wetland setbacks for the following:

1. Wetland Crossings
  - a. The crossing must be located at the narrowest span of wetlands, and
  - b. The crossing must be designed to move flow between the segregated wetlands, and
  - c. Minimum footprint of the roadway or utility crossing must be demonstrated to reduce wetland impacts, and
  - d. Open bottom culverts shall be included every 25 feet, and
  - e. It is demonstrated that no other alternative route is feasible

# Environmental Standards Roundtable

August 28, 2024 | 4:00 – 6:00 p.m. | Town Council Chambers B

## *Meeting Notes*

### **In attendance:**

Town Committees: Randi Hogan, Conservation Commission; Robyn Saunders, Long Range Planning Committee; Pete Slovinsky, Conservation Commission

Consultants: Drew Gagnon, Gorrill Palmer; Kiley Mason, Sebago Technics; Jon Whitten, Haley Ward

Town Councilors: Jon Anderson, Jean-Marie Caterina, Karin Shupe

Staff: Angela Blanchette, Town Engineer; Jami Fitch, Sustainability Manager; Emerson Goodrich, Sustainability Fellow; Autumn Speer, Planning Director

### **Background and Purpose**

- DEP has been pushing for more protections on a local level because state regulations aren't strong enough. There will be mandated changes coming down from DEP soon for Scarborough and other MS4 stormwater communities.
- Town surveys point to environmental protection as a priority of residents.
- Environmental standards presented at the Developer Forum were an ideal scenario. Staff hopes to find common ground in order to address gaps in resource protection in the Town.

### **Conservation Commission Remarks**

- Looked at what other municipalities and jurisdictions have done to address setbacks across the country. Hoping to avoid severe water quality issues that other communities have experiences, such as in communities in the Chesapeake Bay watershed and others that share similarities with Scarborough. Limiting impervious surfaces, regulating forest clearing, and establishing buffers around natural resources are part of the approaches taken to minimize impact, but stormwater runoff persists as a severe issue. Scarborough has the opportunity to get ahead of negative impacts, rather than trying to fix environmental damage.
- Scarborough is unique because of the presence of the Marsh as well as other connected water systems and wetlands in the area. The Marsh and the wetlands serve as buffers and flood storage areas. The more these buffers are conserved and protected from impervious surface, the less will runoff into the Marsh.
- Scarborough's designated growth areas are adjacent to the Marsh and often include large wetland areas, which must be reconciled to be able to move forward and protect resources.
- Recommendations coming from the Conservation Commission are based on scientific facts and best practices and have been worked on extensively by staff as well as the Commission.
- Wetlands have previously not been considered valuable resources. Environmental standards can serve to alleviate this conflict and optimize Town goals.

## **Town of Scarborough**

- Conditions and climate are changing, and setbacks also provide room for habitats to change over time, such as marsh migration and increased precipitation.
- Established local standards will help provide consistency and predictability for developers.
- Standards are not meant to apply to redevelopment.
- Will there be a process to help landowners who lose the ability to develop their land? The Zoning Board of Appeals is one option. There were exemptions/grandfathering processes in areas of Maryland that can be looked at as examples.
- Standards were developed for several reasons:
  1. Natural resource protection
  2. Constructability (designing sites up to the edge of the wetland leaves no room for error)
  3. Chronic noncompliance at construction sites
- If standards are being scaled back, Council should see the science showing the reduced standards will still benefit natural resources.
- Need to better understand the impact of the proposed standards. The GIS model that was developed shows entire parcels being impacted by the standards even if only a small portion of the parcel won't be able to be developed.
- Priorities:
  1. Health of Scarborough Marsh
  2. Health of rivers and streams
  3. Protection of vernal pools
  4. Standards that are stronger than State minimums
  5. Predictability and consistency

### **Engineer Remarks**

- Affected landowners and developers should have the same discussion as this roundtable.
- Available GIS is not representative of natural resources on sites. For example, not all wetlands are mapped in GIS.
- Can other standards be put in place that could achieve similar goals rather than restricting land that can be developed?
- How the site is designed and the stormwater is treated is asserted as the most important concern. This can include more informed stormwater treatment selection.
- Low-impact development (LID) is not as broad as assumed by engineers. LID needs to begin with the site planning and design process.
- Rules make it easy to set a tone with development. Clarity is key. The proposed standards are far outside the other regulatory agencies (DEP and ACOE).
- Standards don't align with the plans and priorities for the Scarborough's downtown districts. Look at where the standards should be applied.
- There need to be exceptions for downtown areas and redevelopment.
  - Clarification: these standards would not apply to redevelopment.
- Assumptions:
  1. If standards are passed, development will leave Scarborough.
  2. Engineers will use required buffers as stormwater treatment and direct runoff to them.
- Priorities:

1. Maximize value of a site
2. Continue to be able to develop
3. Clear rules
4. Relief for exceptions
5. Integrate monitoring

## **Discussion**

- Conditions are changing. Buffers and setbacks are needed to allow resources space to move.
- Should the Town focus standards on the Marsh? Ordinance could to focus on priority areas (e.g., Marsh, impaired streams, etc.)
- Redevelopment should improve existing site conditions but the full standards will not apply to redevelopment.
- South Portland has a setback impact fee. Consider a similar model for Scarborough.
- DEP uses impervious cover (IC) as a surrogate for pollution. The Town could tighten IC limits on development, which will likely limit development on parcels. Setting buffers and setbacks around natural resources provides more flexibility in site design than limiting IC.
- When an entire parcel is developed, it leaves no room for error.
- Wetland crossings need to be allowed in the standards.
- Goal of the standards is to develop more responsibly to protect natural resources. There may be other adjustments that can be made to accommodate the proposed setbacks. For example, required front setbacks could be reduced to offset the additional setback and buffer widths in the environmental standards.
- The Comp Plan designates growth areas in sensitive areas (urban impaired watersheds).
- Look at applying standards around the marsh and in impaired and threatened watersheds.
- At a minimum, to minimize wetland impacts during construction, staff would like to see a 25-foot setback and a 15-foot buffer around wetlands. The group is open to reconvening at a later date to look at additional requirements, including low impact development standards that may be coming from DEP.
- Engineers would like stormwater outfalls to be allowed within the setback.
- Councilor Anderson suggests holding a Councilor Corner Live on this topic to help inform the public of proposed changes.
- DEP tracks filled wetlands in each municipality. Between 2015 and 2020, 8 acres of wetlands were filled in Scarborough.
- Conservation Commission would like assurance that the process will not end with the 25-foot setback and a 15-foot buffer around wetlands. The group of Commissioners, engineers, Councilors, and staff are open to reconvening in January to continue discussing environmental standards and other State-mandated ordinance changes that may be coming.
- Pete suggests focusing next efforts on the marsh, the largest tributaries to the marsh, and impaired streams. Will need to reconcile overlap of designated growth areas and impaired watersheds.

## **Identify Common Ground**

- Scarborough Marsh is a jewel and should be protected.
- Finding ways to maximize value with the least amount of impact on natural resources.
- Finding ways to allow for exceptions (e.g., wetland crossings).

- Establishing priority areas and resources (e.g., Marsh, major marsh tributaries, impaired streams)
- A 25-foot setback and 15-foot vegetated buffer around all wetlands is acceptable to all, as a first step.

**Next Steps**

1. Update wetland buffer widths to 15-feet and setbacks to 25-feet, allow for wetland crossings.
2. Share updated language with the group for review.
3. Bring ordinance to the Ordinance Committee in October.
4. Reconvene group in January to discuss additional environmental standards and upcoming LID requirements.



**TO:** Tom Hall  
**FROM:** Karen Martin, SEDCO Executive Director  
**DATE:** July 19, 2024  
**SUBJECT:** Comments from Developer's Forum on Environmental Standards

### **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 proposed additions to environmental standards in the site plan review ordinance. This memo summarizes comments regarding the new environmental standards. Comments on impact fees were summarized in a separate memo.

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 from the attendees.

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 Planner Director presented to the group on both the impact fees and environmental standards. These slides highlighted the proposed changes and allowed for discussion by those in attendance and online.

Autumn Speer, our Planning Director, outlined the reviews to-date for the proposed environmental standards including:

Conservation Commission, SEDCO Board, Initial Ordinance Committee and Long Range Planning Committee.

Councilors Jean-Marie Caterina and Jon Anderson started the discussion with a comment that their desire is to have the proposed changes to the ordinance thoroughly vetted and reviewed before it comes back to Ordinance Committee.

The May 23 forum was one more way to engage the community on the proposed standards.

The process and next steps for the proposed standards would be to return to the Town Council Ordinance Committee. After the Ordinance Committee, the proposed standards would go through the standard process:

- Town Council First Reading
- Planning Board Public Hearing
- Town Council Public Hearing
- Town Council Second Reading

### **Top Level Summary**



After an hour's discussion on both general and detailed aspects on the proposed standards, the group aligned on some suggestions to move forward.

The group agreed that there were many competing interests to balance in developing an approach to new environmental standards.

Councilors Caterina and Anderson suggested that a working group be assembled with representatives from the Conservation Commission, the development community and other parties to explore how to align on these competing interests.

Councilor Anderson further added that the group needs to align on a clear problem statement and goal. In addition, what are the criteria for success?

Comments from the attendees questioned whether everyone had a solid baseline understanding of the current regulations and processes that developers had to follow to develop in Scarborough. A white paper outlining current standards and describing the pressures on the community to do more, including positions from State and Federal sources. Such an approach would help the Council and the community understand the competing interests and the parties involved.

## **Detailed Comments**

The conversation covered a wide assortment of comments including:

- 1) *On vernal pools, why can't we use the State's definition? In general, why do we need to be more restrictive than the State?*

Angela Blanchette, Town Engineer, explained that the State is asking communities with higher levels of development to do more, particularly with the issues of cumulative development. Angela anticipates that the State will evolve into a more tiered approach to stormwater. As Scarborough is an MS4 community and reports annually to the State, the comments are increasingly about doing more. If we fail to address state and federal comments, there can be associated fines.

In addition, the Conservation Commission looked at the Comprehensive Plan and its focus on the Marsh. They developed the standards that they believe will best protect the Marsh into the future.

From a staff perspective, some level of a setback is imperative. Currently, development is designed around the wetland as if the line on the plan is exact and well defined. The reality is that the wetland delineation can be slightly different in the field. With no set back, there is no room to account for the inevitable difference between the line on the map and the actual border of the wetland. In addition, managing the development project with no disturbance is extremely difficult when you are working right up to the wetland. Staff needs breathing room during construction to make sure the wetland remains healthy. Finally, other communities are working on additional standards and approaches, such as South Portland and Portland. If the Town acts now to improve our standards, Scarborough has the ability to be proactive in our approach rather than reactive like other developed communities.

- 2) *On Current standards, does everyone understand how much is already done during the development process?*

The concept of a white paper to make sure everyone is on a level playing field was suggested.

- 3) *There are competing interests in the Comprehensive Plan. How are we balancing the Conservation Commission's approach with the other identified needs such as housing and economic development?*  
Staff and Council agree that there are many competing interests. The concept of the working group as discussed above is one way to bring the competing interests together to develop a compromise that addresses these varied needs and wants of the Town. Staff identified the current evolution of the Rate of Growth Ordinance as an example of multiple priorities. The ordinance moved the Town away from a one-size-fits-all approach to a 3-tiered approach, treating identified growth areas differently. Councilor Anderson said that we need to identify what is the right balance that can move us forward in protecting our natural resources, allowing for better management in the field for staff and allowing for our growth areas to reasonably develop.
- 4) *What is that reasonable first step? If these are not the right standards, what is the right balance that moves everything forward. What is the next step?*  
Can there be a working group of stakeholders to meet, to discuss the current proposal and to develop a unified approach. We need a healthy balance that improves our protection of the environment and allows folks to reasonably develop their property if they choose.
- 5) *The proposed ordinance treats everything as the highest priority? Is there a way to acknowledge that some wetlands are of a higher priority? Can we better define what we are looking for the set backs to accomplish?*  
Staff agreed and pointed to other ordinances that basically establish priority areas such as the Rate of Growth Ordinance.
- 6) *Maine is behind other areas of the country in how we look at infiltration. It's difficult to make grades work in Scarborough. Is there a way to build in more flexibility at the Planning Board, perhaps with waivers?*  
Staff explained that the preferred method is to have infiltration all over the site rather than build the site high and drain to one point.

The balance of the discussion focused on the concept of the white paper describing what standards development projects currently follow and explaining the pressures from State and Federal sources to improve those current standards.

The problem statement should be outlined with the various competing interests identified.

The idea of the working group was also discussed to ensure that all sides of the issue can be shared.