

**MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 12, 2014
REGULAR MEETING – 6:30 P.M.**

Item 1. Call to Order. Chairman Sullivan called the regular meeting of the Scarborough Town Council at 6:30 p.m.

Item 2. Pledge of Allegiance.

Item 3. Roll Call. Roll was called by Thomas J. Hall, Town Manager.

Jessica L. Holbrook, Vice Chair	Katherine A. St. Clair [Left Early]
William J. Donovan [Absentee]	Edward NMI Blaise , III
Jean-Marie Caterina	James E. Benedict
Richard J. Sullivan, Jr., Council Chair	

Order No. 14-08. Act on the request for an executive session pursuant to Title 1, of the M.R.S.A. §405(6)(C) regarding a personnel matter relating to the Town Manager’s Evaluation. Motion by Councilor Holbrook, seconded by Councilor Caterina, to move approval on the request for an executive session pursuant to Title 1, of the M.R.S.A. §405(6)(C) regarding a personnel matter relating to the Town Manager’s Evaluation.

Vote: 6 Yeas.

Chairman Sullivan reconvened the meeting at 7:00 p.m. and he stated that due to illness Councilor St. Clair left the meeting right after the executive session.

Item 4. General Public Comments.

- Martin Tripp of Oceanwood Drive spoke on the Benjamin Farm property and the cost that comes with purchasing it. He also mentioned that Sawyer Road Development being proposed and the new park could potentially be built and wondered why this park would be built so closed to Veterans’ Park. He would not support a dog park, but felt if there is one in the works the dog owners should pay for it. He spoke on the dredging that is to take place.
- Liam Summers of Holmes Road spoke his concerns regarding the Ad-Hoc Animal Control Committee and felt the committee had been stacked and felt that it had not been a fair process. He had noted that there were several freedom of access requests still pending pertaining to the dog issue and he went on to ask the Council to consider the action they take from this point forward.
- Robert Rovner of King Street spoke of what the definition of “ethical” and “integrity”. He understands where Councilor Donovan stands and requested that Town Council ask that Mr. Donovan recuse himself on any final decision that is brought forward from the Committee. Please think of your decision carefully and felt that it was the Council’s responsibility to be fair.

Item 5. Minutes: January 15, 2014 – Regular Meeting. Motion by Councilor Blaise, seconded by Councilor Benedict, to move approval of the minutes of the January 15, 2014, regular Town Council meeting.

Vote: 5 Yeas.

Item 6. Adjustment to the Agenda. Councilor Holbrook noted that she would like to add Resolution 14-02, a resolve to urge the Maine State Legislation to provide and enable Property Tax Relief Programs. This item will follow Item 8.

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

Item 8. Non Action Items.

a. Update from Project GRACE regarding the Fuel Assistance Program. Stephanie Cox, Director of Project GRACE gave a brief overview on the fund raising event that had been held Saturday, February 8th at the Oak Hill Fire Station. They reached the \$10,000 goal that had been set and she went on to recognized several town employees who assisted on this event and also recognized the staff from all the schools.

Thomas Hall, Town Manager noted that the employees held a silent auction at their Winter Party this year and raised over 1,100 to be donated to charity. He then introduced Jaclyn Mandrake, Director of Human Resources and Gina Clucky, Assistant Finance Director who were here this evening to present checks to the two charities.

Jaclyn Mandrake, Director of Human Resources listed the individuals who had donated items for the silent auction and noted that Project GRACE and the Scarborough Food Pantry were the two charities that would receive the money raised and presented Stephanie Cox of Project GRACE and Ellen Parenteau of the Scarborough Food Pantry with checks.

Councilor Holbrook stated that she had asked the Town Manager's Assistant to setup a Clynk Account for the Fuel Assistance Program and she would like to challenge the Councilors to see how many Clynk bags they can fill for the program. The Town Manager noted that the bags would be distributed at the February 19th meeting [with stickers already applied to the bags].

Resolution 14-02. Resolve to urge the Maine State Legislation to provide and enable Property Tax Relief Programs. Motion by Councilor Holbrook, seconded by Councilor Caterina, to move approval of Resolution 14-02. Resolve urging the Maine State Legislation to provide and enable Property Tax Relief Programs, as follows:

Resolution 14-02
Urging the Maine State Legislature
to Provide and Enable Property Tax Relief Programs

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

WHEREAS, in 1987 the so-called "Circuit Breaker" program was established as a way to provide relief for property taxpayers; and,

WHEREAS, with the enactment of the state budget in 2013 (PL 2013, chapter 368, Par L), the 126th Legislature terminated the Circuit Breaker program and installed the Property Tax Fairness Income Tax Credit, which impose more restrictive income requirements and significantly limited the maximum rebate; and,

WHEREAS, the more stringent requirements of the new Property Tax Fairness Tax Credit are likely to limit the number of Maine residents eligible for the credit and thereby significantly reduce the amount of property tax relief provided; and,

WHEREAS, in addition to the sweeping changes to the program, Part L of the state budget enacted in 2013 inadvertently removed the authority for municipalities to sponsor local property tax relief programs; and,

WHEREAS, LD 1607, An Act To Reinstate Statutory Authority for Local Property Tax Assistance Programs, was drafted to correct the error and provide the authority for local property tax relief programs and is pending in the current legislative session; and,

WHEREAS, in view of the significant and reductions in revenue to municipalities that have occurred or are pending action by this Legislature (cuts to municipal revenue sharing), which result in increases in local property taxes, the changes to the Circuit Breaker program only further burdens the taxpayers of Scarborough.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Town Council in Town Council assembled as follows:

THAT, it is of critical importance that the Legislature reconsider and create a structure similar to the former Circuit Breaker program, that targets a similar population of Maine property taxpayers; and,

THAT, it is essential that municipalities be granted the authority to operate a locally funded property tax relief program at their discretion; and,

THAT, the Town Council urges the local Legislative delegation to support the reinstatement of a state operated and funded property tax relief program similar to the former Circuit Breaker program and provide full support to the adoption of LD 1607.

Signed and dated this 12th day of February 2014, on behalf of the Scarborough Town Council and the Town Manager of Scarborough, Maine. Signed by Richard J. Sullivan, Jr., Council Chair and attested by Town Clerk.

Vote: 5 Yeas.

Order No. 14-09, 7:00 p.m. Public Hearing and action on the request from Ballantyne Development Inc., to extend the TND Overlay District to include property located at 38 Westwood Avenue – Map U43/Lot 24 [currently zoned R4]. Prior to the public hearing the following request had been read into the record:

Dan Bacon, Town Planner, gave a brief overview on the proposed changes. He noted the Mr. Anderson, the developer was present and could respond to any questions.

Mr. Anderson representing Ballantyne Development, Inc. gave a brief overview on when he had first approached the Town and presented this development. He then references the parcel that he is asking to be re-zoned. In this request the only ways into the development would be Ward Street, Commerce Drive and Eastern Trail. The parcel being asked to be re-zoned would be developed sooner than later.

Chairman Sullivan opened the public hearing. The following individuals spoke on this Order:

- Stephanie Dickey Ruel of 21 Fairfield Road spoke in opposition of the proposed request. She stated that the through streets in this area are already used as a through street. If this item receives approval it would pitiful. She felt that she should have been notified as others were. She then asked if Chairman Sullivan to recuse himself as he is an abutter to the property.
- Lorraine Libby of Westwood Avenue spoke in opposition of this proposal. She agreed with all the comments that Mrs. Ruel made.

- Jon Cahill of Westwood Avenue stated that he would not want to see Westwood Avenue be made into a throughway – his concern was with the future and whether it would change. He would like to maintain the integrity of the neighborhood

There being no further comments the hearing was closed at 7:56 p.m.

Mr. Anderson stated on the record that Westwood Avenue would not be used and the ways into the neighborhood would be as stated before. The Town Planner and Mr. Anderson responded to questions from the Town Council.

Motion by Councilor Holbrook, seconded by Councilor Blaise, to move approval on the request from Ballantyne Development Inc., to extend the TND Overlay District to include property located at 38 Westwood Avenue – Map U43/Lot 24 [currently zoned R4].

Chairman Sullivan noted that he was not a direct abutter to the Anderson property and that he has not monetary gain. All members of the Council felt that there was no conflict of interest with Chairman Sullivan relating to this order and felt that he should vote.

Vote: 4 Yeas. 1 Nay [Councilor Benedict].

Order No. 14-10, 7:00 p.m. Public Hearing and action on the new request for a liquor license from Arthur P. Gikas d/b/a Pizza Plus, Inc., located at 491 Payne Road. Chairman Sullivan opened the public hearing, as there were no comments either for or against the hearing was closed at 8:29 p.m.

Motion by Councilor Holbrook, seconded by Councilor Caterina, to move approval on the new request for a liquor license from Arthur P. Gikas d/b/a Pizza Plus, Inc., located at 491 Payne Road.

Vote: 5 Yeas.

Order No. 14-11, 7:00 p.m. Public Hearing and action on the new request for a Food Handlers License from Douglas & Linda DuVall, d/b/a Mamie's Farmhouse, located at 97 County Road. Chairman Sullivan opened the public hearing, as there were no comments either for or against the hearing was closed at 8:30 p.m.

Motion by Councilor Holbrook, seconded by Councilor Caterina, to move approval on the new request for a Food Handlers License from Douglas & Linda DuVall, d/b/a Mamie's Farmhouse, located at 97 County Road.

Vote: 5 Yeas.

OLD BUSINESS:

Order No. 14-12. Act on the names posted to the various committees/board as recommended by the Appointments Committee on January 15, 2014. Prior to action on this item, Councilor Holbrook stated that she would recuse herself from the vote on this item as she is related to one of the individuals being approved for appointment.

Motion by Councilor Caterina, seconded by Councilor Blaise, to move approval on the names posted to the various committees/board, as follows:

- **Shellfish Conservation Commission:** Re-appointment of Terry Twomey and Robert Willette, with terms to expire in 2016 and move David Green, the 1st Alternate to a full voting member with a term to expire in 2014.

Vote: 4 Yeas.

NEW BUSINESS:

Order No. 14-13. First reading and refer to the Planning Board on the proposed amendment to Chapter 405 – the Zoning Ordinance to repeal Contract Zone District 4 - between the Town of Scarborough and Harold P. Burnham II. Dan Bacon, Town Planner, gave a brief overview on the proposed changes.

Motion by Councilor Caterina, seconded by Councilor Holbrook, to move approval of the first reading and refer to the Planning Board on the proposed amendment to Chapter 405 – the Zoning Ordinance to repeal Contract Zone District 4 - between the Town of Scarborough and Harold P. Burnham II and schedule the public hearing and second reading following the filing of the recommendations of the Planning Board, as follows:

Proposed Amendments to the Zoning Ordinance to Repeal Contract Zone 4:

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to the Zoning Ordinance of the Town of Scarborough, Maine, be and hereby are adopted:

Amend SECTION XXIII. CONTRACT ZONING DISTRICTS by repealing subsection 4 in its entirety as follows (additions are underlined; deletions are struck through):

4. CONTRACT ZONING DISTRICT NUMBER 4

~~Contract Zoning District Number 4 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 4 is subject to the regulations applicable in the Industrial Zone, I, as modified by the Contract Zoning Agreement between the Town of Scarborough and Harold P. Burnham II, dated November 5, 1997 and attached to this ordinance as Exhibit 4. (November 5, 1997)~~

EXHIBIT 4

CONTRACT ZONING AGREEMENT BETWEEN THE TOWN OF SCARBOROUGH AND HAROLD P. BURNHAM, II

~~This Contract Zoning Agreement made the 5th day of November, 1997, 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 Harold P. Burnham II, of said Scarborough in the County of Cumberland and State of Maine.~~

~~—Pursuant to the contract zoning provisions of Section II, subsection I of the Scarborough Zoning Ordinance, whereas Burnham intends to purchase a parcel of six (6) acres, more or less at the end of Bickford Street in said Scarborough, and~~

~~—WHEREAS, the property is currently zoned Industrial (I) under the Scarborough Zoning Ordinance, and~~

~~—WHEREAS, the Industrial zone does not allow for residential uses, and~~

~~WHEREAS, the property is not readily developable for an industrial purpose due to wetland and other issues, and~~

~~WHEREAS, Burnham wishes to develop said property for one (1) single family residential house lot; and~~

~~WHEREAS, Burnham has requested a rezoning of the property to permit said single family house lots, and~~

~~WHEREAS, the size, location and configuration of topography of said site would permit such residence to be constructed thereon, and~~

~~WHEREAS, the Scarborough Town Planning Board, pursuant to Section II, paragraph G, subsection III of Zoning Ordinance and 30 A M.R.S.A. §4352(8) after notice of hearing and due deliberation thereon, recommended the rezoning of said property as aforesaid on September 22, 1997, and~~

~~WHEREAS, said rezoning would be consistent with the policies and future land use plan of Part III of the Scarborough Comprehensive Plan, and~~

~~WHEREAS, the Town of Scarborough, by and through its Town Council, has determined that said rezoning would be pursuant to and consistent with the Town's Comprehensive Plan and consistent with existing permitted uses within the original zoning district classification and has authorized the execution of this Contract Zoning Agreement;~~

~~NOW, THEREFORE, in consideration of mutual promises made by each party to the other, the parties 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. Burnham is authorized to construct one (1) single family residence on the property, said structure to be constructed within one (1) year after execution of this agreement. No further subdivision by lot or building shall be allowed on the property and no other uses shall be allowed on the property, except for structures and uses accessory to the one single family residence.~~
- ~~3. Burnham shall record this Contract Zoning Agreement in Cumberland County Registry of Deeds within thirty (30) days after approval by the Scarborough Town Council.~~
- ~~4. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the property except as this Contract Zoning Agreement may be amended by future written agreement of the Town of Scarborough and said Burnham.~~
- ~~5. This is the sole zoning for the property and except as otherwise set forth in this contract all other requirements of the underlying zoning district shall apply. These restrictions, provisions and conditions are an essential part of the rezoning and shall run with the property and bind Burnham and his heirs and assigns of said property and shall inure to the benefit of and be enforceable by the Town of Scarborough. Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the zoning ordinance of the Town of Scarborough and any applicable amendments thereto or replacement thereof.~~

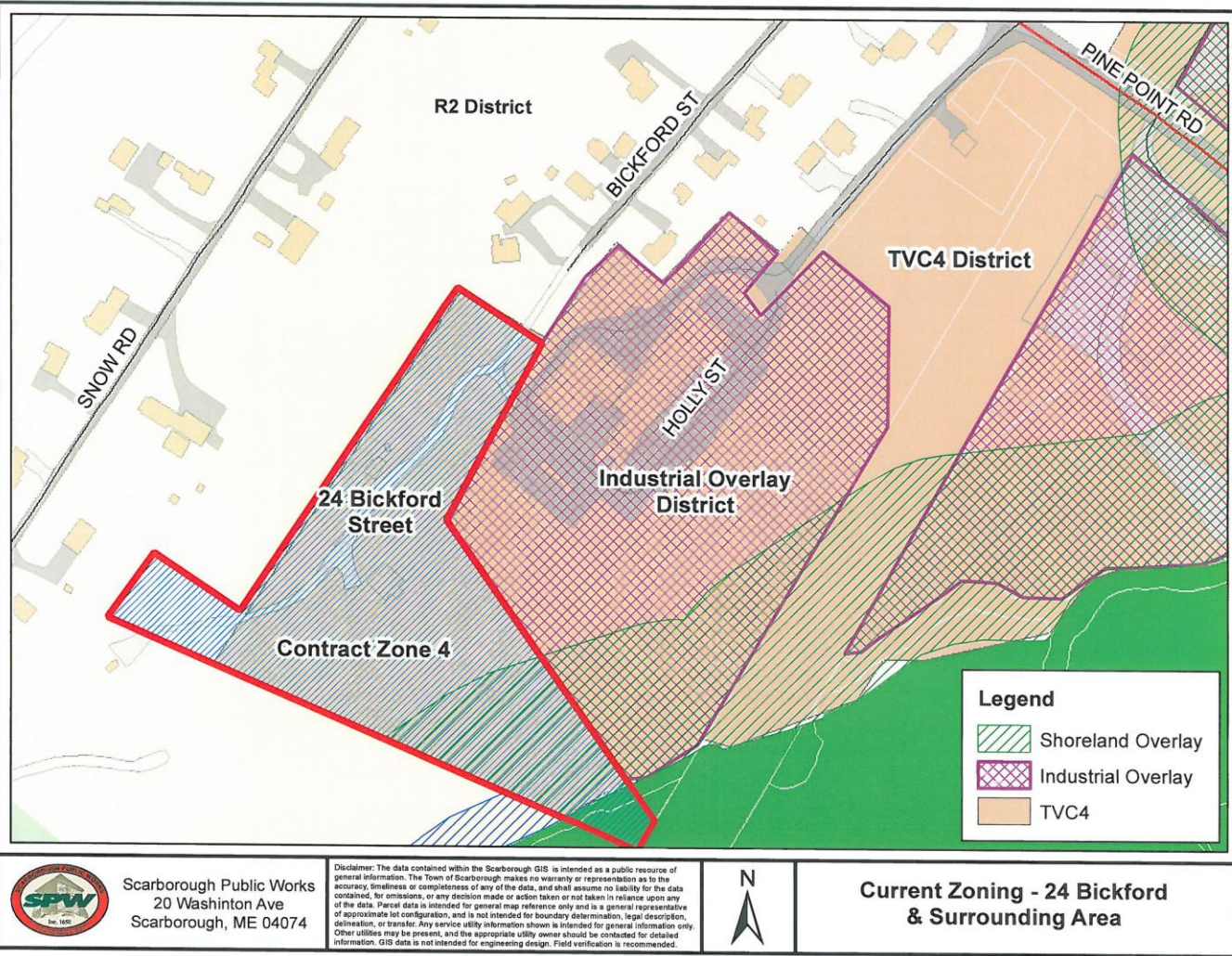
6. ~~In the event that said Burnham or his heirs and assigns shall fail to develop said residence in accordance with this contract or in the event of any other breach hereof, this contract may be terminated by the Scarborough Town Council. In that event, the property may then be used for only such uses as are otherwise allowed by law.~~

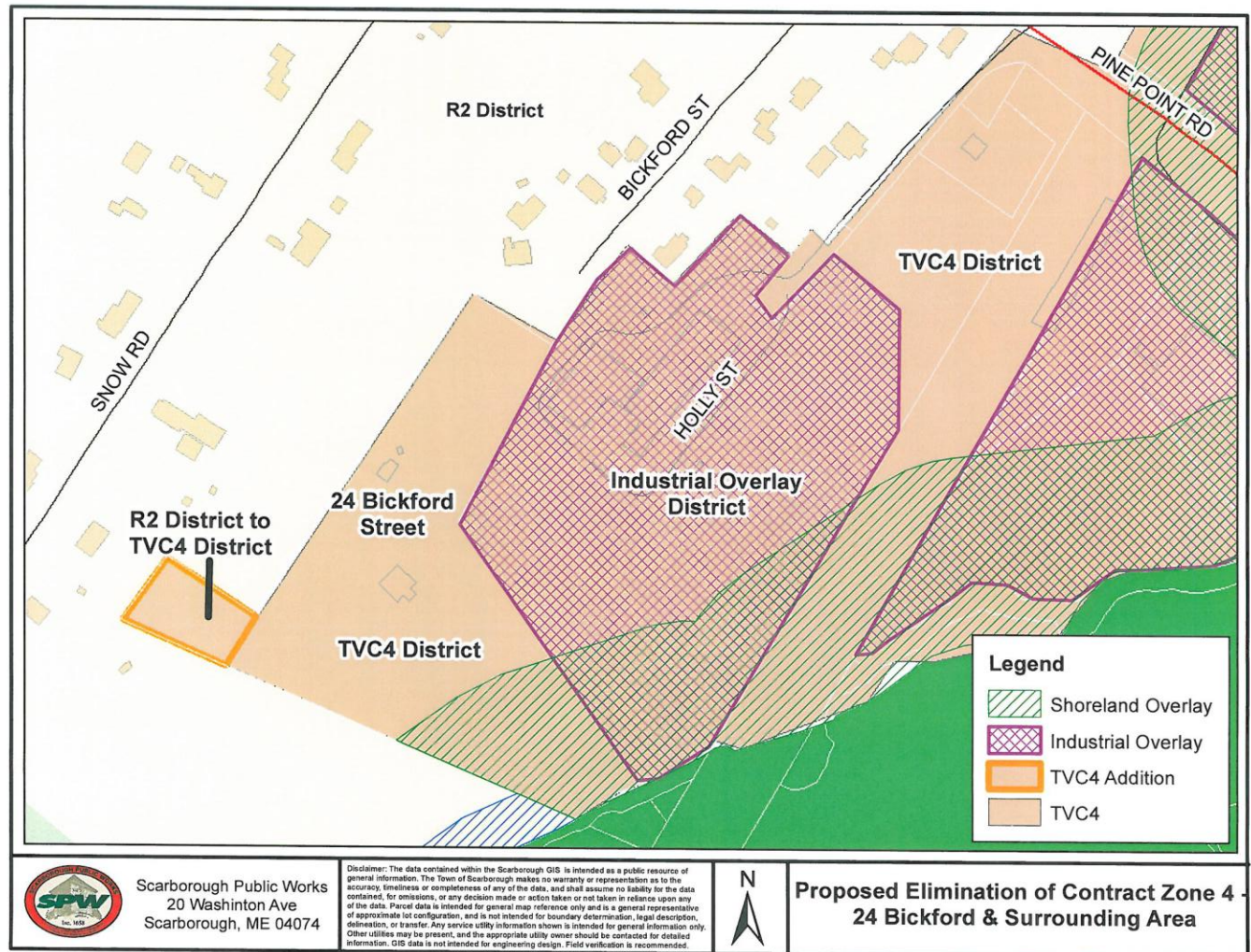
WITNESS: _____ TOWN OF SCARBOROUGH

/s/ Laurel R. Nadeau _____ /s/ Carl L. Betterley, Its Town Manager

_____ duly authorized by vote of the Scarborough Town

_____ Council on November 5, 1997





Vote: 5 Yeas.

Order No. 14-14. Act on the request to accept the \$5,000 donation from the estate of Louis and Tina Fineberg to the Scarborough Fire Department. B. Michael Thurlow, Fire Chief, gave a brief overview on the donation given by the estate of Mr. and Mrs. Fineberg.

Motion by Councilor Holbrook, seconded by Councilor Caterina, to accept the \$5,000 donation from the estate of Louis and Tina Fineberg to the Scarborough Fire Department.

Vote: 5 Yeas.

Order No. 14-15. Act on the request to accept the following street, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Homer Sands Drive, located in the Cascade Falls Subdivision. Motion by Councilor Benedict, seconded by Councilor Caterina, to move approval on the request to accept the following street, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Homer Sands Drive, located in the Cascade Falls Subdivision.

Vote: 5 Yeas.

Order No. 14-16. Act on the request to accept the following Easement Deed, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Drainage Easement Deed on property located along Elmwood Avenue at the intersection with Greenacre Lane in the Greenacres Subdivision. Motion by Councilor Benedict, seconded by Councilor Caterina, to move approval on the request to accept the following Easement Deed, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Drainage Easement Deed on property located along Elmwood Avenue at the intersection with Greenacre Lane in the Greenacres Subdivision.

Vote: 5 Yeas.

Order No. 14-17. Act on the request from the Deputy Tax Collector to authorize the Town Manager to size a release deed on property located at 91 Ash Swamp Road – Map U3/Lot 31. Motion by Councilor Caterina, seconded by Councilor Blaise, to move approval on the request from the Deputy Tax Collector to authorize the Town Manager to size a release deed on property located at 91 Ash Swamp Road – Map U3/Lot 31.

Vote: 5 Yeas.

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

- Councilor Caterina gave updates on the following: PACTS Committee; Long Term Planning Committee; Conservation Commission Committee;
- Councilor Holbrook gave updates on the following: the Appointments Committee, which met prior to the Council meeting this evening and would like to post the re-appointment of Penny Asdourin-Whitney to the Personnel Appeals Board with a term to expire in 2016; the Housing Alliance is scheduled to meet on Thursday, February 23rd; the Historic Preservation Committee meets on March 3rd and the will present “the short list” at the next council meeting on Wednesday, February 19th and the Finance Committee will be holding a workshop on February 20th at 9:00 a.m. with the School Board Finance Committee.
- Chairman Sullivan noted that the Ordinance Committee had been postponed due to illness of Councilor St. Clair – as soon as a new dates has been selected it will be announce. He then asked the Town Manager to give an update on the Transportation Committee – the Town Manager noted that the committee is very close in making a presentation to the council.

Item 10. Town Manager Report. Thomas J. Hall, Town Manager, gave an update on the following:

- The Ad-Hoc Animal Control Advisory Committee had its final meeting and is now in the process of preparing a report that would be forth coming to the Town Council prior to the next Town Council meeting on Wednesday, February 19, 2014 at 6:00 p.m.
- Staff did meet with MDOT with regards to the bridge over the tracks on the Pine Point Road. He noted that there were three alternatives the MDOT suggested be done while the construct was being done; the first would be to construct bridge in half to keep one side open; second alternative was full closure for a fast build, which would be for 8 weeks and the third option of a temporary bridge which would be to build a temporary bridge that would accommodate regular traffic in both directions that would be right next to the new one being built. There would be a public meeting on this scheduled for Tuesday, March 11th at 6 p.m. here at the Municipal Building. The construction is scheduled for the fall of 2015 and would be completed in 13-14 months.
- Scarborough hit the big screen this past Saturday where the television show “Born to Explore” featured a local lobsterman, Marc Coulston and ended with a clam bake at Higgins Beach.

- Tax bills were set out and they due date is Monday, March 17th.
- He would be speaking to the Scarborough Community Chamber in the morning – which he does on an annually basis.
- The dredging had not started in earnest and he would investigate as to why.

Item 11. Council Member Comments.

- Councilor Blaise attended the SEDCO Board meeting and they presented their 2015 budget which had a 10% overall reduction.
- Councilor Caterina gave update on the Municipal Revenue Sharing Bill that is currently being debated in Augusta.
- Councilor Holbrook sent condolences to the families of Don Googins and Lee Beamis, Jr. In response to a letter the Council received requesting an item be sponsored on the agenda and invited this information be presented at the workshop and she would not sponsor this item for the Council Agenda.
- Chairman Sullivan felt the request that had been presented for an agenda item would under mind what the Ad Hoc Committee has done. He too sent condolences to the Beamis family and Googins Family.

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

Vote: 5 Yeas.

Meeting adjourned at 8:59 p.m.

Respectfully submitted,

Yolande P. Justice
Town Clerk