

**AMENDED
AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
COUNCIL WORKSHOP RE: PROPOSED CONTRACT ZONE FOR
ACURA CAR DEALERSHIP ON PAYNE ROAD AND HAIGIS PARKWAY– 6:00 P.M.
REGULAR MEETING – 7:00 P.M.**

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

- Item 1.** Call to Order.
- Item 2.** Pledge of Allegiance.
- Item 3.** Roll Call.
- Item 4.** General Public Comments.*
- Item 5.** Minutes: October 4, 2017 – Regular Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer's Warrants.

***Procedure for Addressing Council** [Posted in Chambers.]

Order No. 17-104, 7:00 p.m. Public hearing and action on the request for a Food Handlers and a liquor license from BSN, LLC, d/b/a Portland Pie Company, located at 400 Expedition Drive. *[Town Clerk]*

OLD BUSINESS:

Order No. 17-095. Second reading on the proposed amendments to Chapter 901 – the Town of Scarborough Garbage and Recycling Collection and Disposal Ordinance, Article I Sections 1.09 and 1.10. *[Ordinance Committee]*

Order No. 17-105. Act on the request from Councilor Donovan to Reconsider **Order No. 17-087.** Second reading on the proposed amendment to the Town of Scarborough Official Zoning Map to rezone the parcel located in the Enterprise Business Park identified as Map U39 Lot 4701 as shown on the Town Assessor's Map from the General Business District (B3) to the Haigis Parkway District (HP). If the motion to reconsider prevails, the information on Order No. 17-087 will be handed out at the meeting. *[SEDCO]*

NEW BUSINESS:

Order No. 17-106. First reading and schedule a public hearing on the request to amend the Town Ordinances as noted below to gender/neutral content; due to the number of pages in this Order, an attested copy of the proposed changes are on file in the Town Clerk's Office for review: *[Ordinance Committee]*
Chapter 304 - Purchasing Policy Ordinance

Chapter 306 - Fire Lanes Established

Chapter 313A - Town of Scarborough Property Tax Assistance Ordinance

Chapter 404A - Plumbing Ordinance

Chapter 405 – Zoning Ordinance [Section VI and Section IX]

Chapter 405B - Site Plan Review Ordinance

Chapter 405C - Shoreland Zoning

Chapter 406 - Subdivision Ordinance

Chapter 407 - Septic Tank Disposal Ordinance

Chapter 408 - Extractive Industry and Land Reclamation Ordinance

Chapter 410 - Road Impact Fee Ordinance

Chapter 413 - Growth Ordinance
Chapter 500 - Trailer and Trailer Camps
Chapter 601 - Traffic Ordinance
Chapter 602 - Public Assembly Ordinance
Chapter 602A - Mass Gathering Ordinance
Chapter 606 - ATV Ordinance
Chapter 607 - Alarm Systems Ordinance
Chapter 607A - Fire Suppression and Detection Ordinance
Chapter 608 - Fireworks Ordinance
Chapter 613 - Emergency Management Ordinance
Chapter 615 - Blasting Ordinance
Chapter 701 - Street Acceptance Ordinance
Chapter 702 - Street Opening Ordinance
Chapter 900 - Public and Private Dump Ordinance
Chapter 901 - Garbage and Recycling Collection and Disposal Ordinance
Chapter 1004 - Taxicab Ordinance
Chapter 1005 - Innkeepers License Ordinance
Chapter 1007 - Cable TV Ordinance
Chapter 1008 - Special Amusement Ordinance
Chapter 1009 - Coin Operated Game Ordinance
Chapter 1015 - Food - Food Handlers Ordinance
Chapter 1017 - Pawnbroker Ordinance
Chapter 1202 - Scarborough Memorial and Dunstan Cemeteries Ordinance
Chapter 1401 - Harbor Ordinance

Order No. 17-107. First reading and schedule a public hearing and second reading on the proposed amendment to Chapter 604A 0 the Town of Scarborough Horse Beach Permit Ordinance, Section 604A-Regulation of Horses on the Beach, to extend the deadline for the implementation of the containment device for Horses on the beach to October 1, 2018. *[Councilor Donovan]*

Order No. 17-108. Act on the request from the Energy Committee to approve the updated Comprehensive Energy Plan. *[Energy Committee]*

Order No. 17-109. Act on the request for the Scarborough Town Council to Order the Discontinuance of all portions of Avenue 2 located southerly of King Street with no damages awarded to the abutting landowners; and to file said Order with the Town Clerk; and, to send abutting property owners notice of this action; and schedule the public hearing for Wednesday, November 1, 2017 and Wednesday, November 15, 2017. *[Town Manager]*

Order No. 17-110. Act on the appointment of David G. Sawyer, d/b/a Sawyer Valuation Services, on an interim basis as the Assessor for the Town of Scarborough, effective October 19, 2017 and to continue to such time as the Council appoints a successor.

Item 8. Non Action Items:

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

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-104. Move approval on the request for a Food Handlers and a liquor license from BSN, LLC, d/b/a Portland Pie Company, located at 400 Expedition Drive.
[Town Clerk]

Town Clerk

Sponsor

10/18/17

First Reading/Vote/Public Hearing

Ought to Pass

Recommendation

N/A

Second Reading/Final Approval/Vote

Town of Scarborough, Maine
Town Clerk's Office
259 US ROUTE ONE
PO BOX 360
SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: October 13, 2017

RE: Requests for a Food Handlers License and Liquor License

The following applicant is seeking approval for a Food Handlers License and a Liquor License:

- BSN, LLC d/b/a Portland Pie Company, located at 400 Expedition Drive

Due to a change in ownership it required that new licenses be obtained. The completed applications are on file with Town Clerk's Office and there are no outstanding issues. It is recommended that the licenses be approved.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-095. Move approval of the second reading on the proposed amendments to Chapter 901 – the Town of Scarborough Garbage and Recycling Collection and Disposal Ordinance, Article I Sections 1.09 and 1.10. [*Ordinance Committee*]

Ordinance Committee

Ought to Pass

Sponsor

Recommendation

09/06/17

Vote: 4 Yeas.

3 Nays [Councilors Foley, Hayes and St. Clair]

10/04/17 *Public Hearing*

10/18/17

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

AMENDMENT TO CHAPTER 901
THE SCARBOROUGH GARBAGE AND RECYCLING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 901, the Garbage and Recycling Collection Ordinance of the Town of Scarborough is amended, as follows:

Section 1.098 TOWN TO PROVIDE CARTS

A. All garbage and recycling carts required by this Article shall be designated, provided and owned by the Town of Scarborough; all residences receiving ~~municipal-Town~~ solid waste collection services are required to use only the Town-provided carts for weekly garbage collection. The standard carts hold a capacity of up to 65 gallons and shall not be filled to a gross weight of more than 150 pounds each. Each residential unit will be allowed one Town-designated cart per pickup. Decisions to permit a second cart will be made on a case-by-case basis for exceptionally large households, and in those cases, only after a solid waste inspection by a Scarborough Public Works staff member to determine that the need remains when maximum recycling is being done. Residents may choose to mark their cart with the street address that the cart was assigned to for identification purposes. Under no other circumstance should the carts be defaced by the use of markers, stickers or paint. A cart that has been defaced will be replaced at cost to the resident to whom the cart was assigned and may be subject to further penalties under Article VI.

B. All residential buildings of 6 or more units, nonresidential or commercial users shall provide adequate carts for the weekly garbage generated by the business conducted on the premise. At a minimum, the owner shall provide a secured container or containers with closable covers to minimize the stacking and spreading of the garbage generated by the subject business. The cost of collecting commercial waste is the Property Owner's responsibility.

Section 1.1009 CARTS REQUIRED; HOURS FOR PLACEMENT AND REMOVAL; REPLACEMENT OR ADDITIONAL CARTS; OVERFLOW WASTE

A. It shall be the responsibility of the Town to provide and make available suitable and sufficient carts as described by § 1.08.09 to receive the accumulation of weekly household waste. Each cart shall be placed as instructed by the Town or its designated garbage collector along the street, sidewalk or roadside for automated collection. Town-designated garbage carts may be set out for collection the evening or day before, but must be set out by 7:00A.M. the morning of collection, and should be removed from the Town's right of way the day of collection.

B. Should a Town-owned cart be damaged, defaced, or lost by a household, the Town will make another such cart available for replacement at a fee.

C. Residents who have "overflow waste," defined as garbage set out for collection that exceeds the amount contained in the Town-provided collection cart, may take it to the Department of Public Works for disposal.

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WEDNESDAY – OCTOBER 18, 2017
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Order No. 17-105. Move approval on the request from Councilor Donovan to Reconsider **Order No. 17-087.** Second reading on the proposed amendment to the Town of Scarborough Official Zoning Map to rezone the parcel located in the Enterprise Business Park identified as Map U39 Lot 4701 as shown on the Town Assessor's Map from the General Business District (B3) to the Haigis Parkway District (HP). [SEDCO] If the motion to reconsider prevails, the information on Order No. 17-087 will handed out at the meeting.

Councilor Donovan

Sponsor

10/18/17

First Reading/Vote/Public Hearing

Recommendation

N/A

Second Reading/Final Approval/Vote

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-106. Move approval of the first reading on the request to amend the Town Ordinances as noted below to gender/neutral content and refer to the Planning Board Chapter 405 – the Zoning Ordinance and Chapter 405C – the Shoreland Zoning Ordinance and schedule a public hearing for all proposed changes upon receipt of the Planning Boards recommendations on Chapter 405 and 405C, due to the number of pages in this Order, an attested copy of the proposed changes are on file in the Town Clerk's Office for review: *[Ordinance Committee]*

- Chapter 304 - Purchasing Policy Ordinance
- Chapter 306 - Fire Lanes Established
- Chapter 313A - Town of Scarborough Property Tax Assistance Ordinance
- Chapter 404A - Plumbing Ordinance
- Chapter 405B - Site Plan Review Ordinance
- Chapter 405C - Shoreland Zoning
- Chapter 406 - Subdivision Ordinance
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- Chapter 408 - Extractive Industry and Land Reclamation Ordinance
- Chapter 410 - Road Impact Fee Ordinance
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- Chapter 607 - Alarm Systems Ordinance
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- Chapter 701 - Street Acceptance Ordinance
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- Chapter 900 - Public and Private Dump Ordinance
- Chapter 901 - Garbage and Recycling Collection and Disposal Ordinance
- Chapter 1004 - Taxicab Ordinance
- Chapter 1005 - Innkeepers License Ordinance
- Chapter 1007 - Cable TV Ordinance
- Chapter 1008 - Special Amusement Ordinance
- Chapter 1009 - Coin Operated Game Ordinance

Chapter 1015 - Food - Food Handlers Ordinance

Chapter 1017 - Pawnbroker Ordinance

Chapter 1202 - Scarborough Memorial and Dunstan Cemeteries Ordinance

Chapter 1401 - Harbor Ordinance

Ordinance Committee

Ought to Pass

Sponsor

Recommendation

10/18/17

11/01/17 Public Hearing

11/15/17

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-107. Move approval of the first reading on the proposed amendment to Chapter 604A 0 the Town of Scarborough Horse Beach Permit Ordinance, Section 604A-Regulation of Horses on the Beach, to extend the deadline for the implementation of the containment device for Horses on the beach to October 1, 2018 and schedule a public hearing for Wednesday, November 1, 2017. *[Councilor Donovan]*

Councilor Donovan

Ought to Pass

Sponsor

Recommendation

10/18/17

11/01/17 Public Hearing

11/15/17

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

**CHAPTER 604A
TOWN OF SCARBOROUGH
HORSE BEACH PERMIT ORDINANCE**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 604a, the Horse Beach Permit Ordinance of the Town of Scarborough, Maine is amended by adding the underlined text and deleting the text shown in strikeover type, as shown below:

604A-6 Regulation of Horses on the Beach

1. Horses are allowed on the beach only from October 1st through March 31st.
2. Except for gaining access to and egress from the beach, horses are allowed only in the intertidal zone (between the mean high tide line and the mean low water line).
3. Parking of horse trailers is limited to Hurd Park in the Town of Scarborough and the Milliken Street Municipal Parking Lot in the Town of Old Orchard Beach.
4. Any rider or owner who allows a horse to be present on the beach must remove and dispose of animal waste as required by Section 604-9 of the Town of Scarborough Animal Control Ordinance. Violation of Section 604-9 constitutes a violation of this Ordinance. Effective October 1, 2018 ~~t~~The owner, operator or driver of horses, or horse-drawn carriages operating on the beach shall be required to attach a containment device to the rear of each and every horse so operated, to be maintained and emptied so that manure is completely contained therein, cannot and does not fall upon any surface while operating under the Permit provided for herein, and is carried away for proper disposal.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-108. Move approval on the request from the Energy Committee to approve the updated Comprehensive Energy Plan. *[Energy Committee]*

Energy Committee

Ought to Pass

Sponsor

Recommendation

10/18/17

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

Vision Statement: This Comprehensive Energy and Sustainability Plan will guide the Town of Scarborough toward an energy management system that is financially and environmentally sustainable.

A. Scarborough Sustainability

Purpose: Support a Sustainability Department as a clearing house for all seeking information on town sustainable initiatives and sustainable practices town-wide.

Sustainability Definition: Balancing the values of energy and environmental stewardship, social responsibility and economic vitality to meet present needs while ensuring the ability of future residents to meet their needs. The definition in this document may be referenced as sustainable practices, sustainable measures and sustainable initiatives.

The Town of Scarborough strives to enhance ecological integrity, livability, economic vitality, and resiliency to ensure high quality of life for all. The Town is committed to working with residents and businesses as well as regional partners as a leader in sustainability. The Town intends to be a recognized model for sustainable practices in municipal operations, to lead our community by example, and promote sustainable policies, regulations and practices where practicable.

Outcome I: Demonstrate an increase in community engagement for sustainable practices

Action I: Community engagement

- Develop a basic community engagement program which can be presented to the Town Council, Department Heads and employees as well as local businesses, residents, and other stakeholders
- Utilize media and Town website to disseminate sustainability information on a regular basis

Outcome II: Sustainability Coordinator as a resource for citizens, businesses and municipal government

Action II: Maintain a clearinghouse of sustainability information

- Coordinate with municipal departments on sustainability measures including; purchasing, recycling, cleaning products and energy options
- Collaborate with Town Planning Department on applications for planning review to provide opportunity to inform citizens and businesses on sustainable measures
- Obtain grants to offset the cost of sustainable energy measures through state, federal and private grant sources
- Staff Energy Committee and serve as a liaison between the committee and Town staff

Outcome III: Supporting professional development of Sustainability Coordinator

Action III: Building Professional Capacity

- Establish strong relationships with organizations that can inform and support municipal energy goals
- Build networks with municipal staff, residents, SEDCO, stakeholders and others to keep informed about sustainability measures
- Divert energy savings (at a rate to be determined by Scarborough Town Council) into a reserve account for Sustainability initiatives

B. Sustainable Infrastructure

Purpose: Take advantage of long-term savings by implementing sustainable practices where practicable for existing and new construction projects.

Outcome I: Demonstrate an increase in sustainable energy measures for municipal infrastructure

Action I: Monitor opportunities and ideas to encourage the incorporation of sustainable development

- Support the installation of LED blubs in municipal streetlights for significant energy savings; using resources from municipalities in Maine that have succeeded in LED streetlight conversions
- Create energy guidelines for all municipal construction and renovation projects to assure that all projects maximize opportunities to minimize energy use
- Provide input on energy saving measures to the planning committee for municipal building construction projects

Outcome II: Provide information about sustainable energy options to residents, businesses and Town of Scarborough

Action II: Maintain a clearinghouse of sustainable energy options

- Develop municipal program to incentivize sustainable energy measures for Scarborough businesses
- Collaborate with Town Planning Department on applications for planning review to provide opportunity to inform citizens and businesses on sustainable measures
- Work with SEDCO to attract sustainable businesses to Scarborough

C. Transportation

Purpose: Take advantage of long-term savings by implementing sustainable measures where practicable for transportation and infrastructure in Scarborough.

Outcome I: Purchase low-emission fuel efficient vehicles for municipal use whenever such vehicles are commercially available and practicable

Action I: Enhance municipal vehicle fleet as low-emission technology improves

- Participate in Greater Portland Council of Governments (GPCOG) Maine Clean Communities workgroup to learn about clean fuel vehicles and reducing petroleum consumption
- Participate in GPCOG Electric Vehicle (EV) workgroup and other working groups as appropriate to learn about advances in electric vehicle technology
- Collaborate with Public Works Department and Fleet Supervisor on enhancing municipal vehicle fleet as EV and hybrid technology improves
- Obtain funding for EV charging stations for Public Safety and Public Works buildings
- Develop Municipal vehicle and “over the road” equipment metrics regarding energy usage.

Outcome II: Provide information about sustainable transportation options to residents, businesses and Town of Scarborough

Action II: Maintain a clearinghouse of sustainable transportation options

- Coordinate with Town Engineer on transportation planning and understanding new developments in the regional transportation system through the Town’s participation in the Portland Area Comprehensive Transportation System (PACTS)
- Participate in regional bus discussions and promote an expanded regional bus infrastructure in Scarborough

Outcome III: Reduce vehicle emissions where possible through diverse measures in Scarborough

Action III: Limit idling at schools and at stoplights

- Support the installation GPS devices on school busses in order to track location to alert parents for bus stop drop off purposes
- Develop “no idling” policy for school pick up and drop off
- Work with other municipal boards and committees to develop policies and strategies that reduce car-dependence by strengthening existing growth areas and preserving rural areas
- Advocate for synchronized traffic lights along Route 1 leveraging the work PACTS is doing to address idling

D. Benchmarking

Purpose: Establish an on-going assessment of energy, environmental and waste metrics for municipal facilities assets.

Outcome I: Compile energy metrics for each municipal facility for the last three years, and maintain them indefinitely as the plan is implemented

Action I: Metrics

Municipal

- Continually review municipal utility bills for opportunities and areas of savings
- Install building automation systems and sub-metering strategies for all municipal and school facilities
- Adopt benchmarking system to track energy usage for all municipal facilities
- Conduct a municipal greenhouse gas emissions inventory

Commercial

- Adopt benchmarking system to track energy usage for all commercial facilities
- Conduct a commercial building greenhouse gas emissions inventory
- Create incentives for business to participate

Outcome II: Compile municipal waste metrics for the Town of Scarborough and maintain records indefinitely as the plan is implemented

Action II: Waste Metrics

- Track municipal waste metrics; collaborate with ecomaine
- Promote composting in municipal facilities; work with school groups to educate
- Increase town-wide recycling rate from 32% to 50% by 2022 through diverting food waste from the waste stream
- Promote recycling at town-sponsored events; provide recycling and food waste disposal at events

Outcome III: Promote benchmarking measures to Scarborough residents, businesses, and stakeholders

Action III: Communicate data to residents, businesses, and stakeholders in Scarborough

- Utilize media and Town website to disseminate data, trends and analysis on a regular basis
- Develop web tool where residents, businesses, and stakeholders can track energy data
- Promote successes in utility savings, waste and climate change initiatives to residents, businesses, and stakeholders in Scarborough

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-109. Move approval on the request for the Scarborough Town Council to Order the Discontinuance of all portions of Avenue 2 located southerly of King Street with no damages awarded to the abutting landowners; and to file said Order with the Town Clerk; and, to send abutting property owners notice of this action; and schedule the public hearing for Wednesday, November 1, 2017 and Wednesday, November 15, 2017. *[Town Manager]*

Town Manager

Ought to Pass

Sponsor

Recommendation

10/18/17

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

ORDER OF DISCONTINUANCE PURSUANT TO 23 M.R.S.A. § 3026-A

WHEREAS, the Town Council of the Town of Scarborough, Maine (hereafter the “Municipal Officers”) have given best practicable notice of the proposed discontinuance of all portions of Avenue 2 located southerly of King Street (hereafter the “Way”) to all owners of property abutting the Way (hereafter the “Abutters”); and

WHEREAS, the Municipal Officers have met to discuss the proposed discontinuance of the Way at public meetings held on February 1, 2017, May 3, 2017, October 4, 2017, and October 18, 2017;

NOW, THEREFORE, the Municipal Officers hereby Order the discontinuance of all portions of Avenue 2 located southerly of King Street as follows:

A. Discontinuance of the Way.

Pursuant to the provisions of 23 M.R.S.A. § 3026-A, the Town does hereby discontinue and terminate all its interests in the Way, the location of which is described in Exhibits A and B attached to this Order, excepting and reserving the public easements and public utility easement described in Part D of this Order.

B. Names of Abutters.

The names of the Abutters are as follows:

Charles P. Gendron;

The Gables on the Sea Condominium Association; and

The following owners of each unit within The Gables on the Sea, A Condominium:

Unit 1: Craig Garbarini, Doug Garbarini, Jan Garbarini, Karen Leventis, and Lynn Willscher;

Unit 2: Jere L. Dearborn and Sally S. Dearborn;

Unit 3: Harold F. Hutchinson, III and Jeffrey Hutchinson in their capacity as Trustees of the Harold F. Hutchinson, Jr. Trust;

Unit 4: Mary Ann D. Scaccia;

Unit 5: Joan A. Payden in her capacity as the Trustee of the Joan A. Payden Trust;

Unit 6: Richard Iovino and Cynthia Iovino; and

Unit 7: James P. Karen and Jayme P. Karen

C. Amount of Damages, if Any to be Paid to Each Abutter; Future Valuation.

The Municipal Officers find as a fact, with respect to each and every one of the Abutters named in Part B of this Order, that the fair market value of the Abutter's property immediately after the discontinuance of the Way will be no less than the fair market value of the Abutter's property immediately before the discontinuance of the Way. Therefore, the Municipal Officers award no damages to any Abutter and appropriate no money to pay any such damages.

The Town's decision to not award damages due to the discontinuance of the Way shall have *no effect* on the ability of the Town's assessor to assess any private property resulting from said discontinuance in the legally prescribed manner.

D. Retention of Public Easement.

In lieu of retaining any other public easement in the Way, as allowed pursuant to 23 M.R.S.A. § 3026-A(2)(D), the Municipal Officers hereby accept the delivery of:

1. the Deed of Public Path Easement and Public Conservation Easement from Charles P. Gendron to the Town of Scarborough, a copy of which is attached to this Order as Exhibit A, and
2. the Deed of Public Path Easement and Public Conservation Easement from the Gables on the Sea Condominium Association to the Town of Scarborough, a copy of which is attached to this Order as Exhibit B,

The areas of the Public Path Easements and the Public Conservation Easements attached to this Order as Exhibits A and B are shown on the "Discontinuance Plan of P/O Avenue 2, Lots 37 and 47 King Street, Scarborough," by Northeast Civil Solutions dated October 4, 2017 attached to this Order as Exhibit C.

Except for the interests granted to the Town by the Public Path Easements and the Public Conservation Easements attached to this Order as Exhibits A and B, all interests of the Town in the discontinued Way hereby pass to the Abutters in fee simple to the center of the Way.

E. Public Hearing; Final Vote; Execution of Documents; Certificate of Discontinuance.

Two public hearings regarding this Order shall be scheduled for November 1, 2017 and November 15, 2017. A final vote of the Town Council shall be scheduled no fewer than ten (10) business days following the conclusion of the second public hearing.

Should the Town Council, acting as the Town's duly-authorized legislative body, vote in the affirmative to approve this Order of Discontinuance, the Deeds of Public Path

Easement and Public Conservation Easement from Charles P. Gendron and from the Gables on the Sea Condominium, referred to in Part D above, (the “Deeds”) shall be executed and delivered to the Municipal Clerk contemporaneously thereto.

Further, upon the receipt of the Deeds the Municipal Clerk shall promptly:

1. record at the Cumberland County Registry of Deeds an attested certificate of discontinuance describing the Way, the Deeds of Public Path Easement and Public Conservation Easement from Charles P. Gendron and from the Gables on the Sea Condominium; and
2. provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

Dated: October 18, 2017

MUNICIPAL OFFICERS OF THE
TOWN OF SCARBOROUGH

**DEED OF PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION
EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS THAT **GABLES ON THE SEA CONDOMINIUM ASSOCIATION**, a Maine nonprofit corporation with an office at Scarborough, County of Cumberland, and State of Maine ("Grantor"), grants to **THE TOWN OF SCARBOROUGH**, a Maine municipal corporation located in the County of Cumberland and State of Maine ("Grantee"), the Public Path Easement and Public Conservation Easement more particularly described in **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, **GABLES ON THE SEA CONDOMINIUM ASSOCIATION** has signed this instrument on this ____ day of _____, 2017.

**GABLES ON THE SEA CONDOMINIUM
ASSOCIATION**

Witness

By: Nicholas C. Scaccia
Its President, hereunto duly authorized

STATE OF MAINE
Cumberland, ss.

_____, 2017

Then personally appeared before me the above named Nicholas C. Scaccia, President of the Gables on the Sea Condominium Association and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the corporation.

Before me,

Attorney at Law/Notary Public

Printed Name

EXHIBIT A

I. PURPOSE OF THE PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION EASEMENT.

It is the purpose of the Public Path Easement and Public Conservation Easement set forth in this instrument to clarify the legal status of Avenue 2, located within the Town of Scarborough, County of Cumberland, State of Maine, to protect in perpetuity the right of the public to utilize a portion of Avenue 2 as a means of access to Pine Point Beach and the Atlantic Ocean, and to both clarify and perpetually restrict the right of the Grantor, its members and assigns, to develop or otherwise augment the natural state of Avenue 2 as it currently exists.

II. GRANTEE'S RELEASE OF EXISTING INTERESTS.

By acceptance of this instrument, Grantee releases to Grantor all right, title, or interest, if any, of the Grantee in any and all land within the boundaries of the way currently known as "Avenue 2" located east of the centerline of Avenue 2 and south of the southerly sideline of King Street as shown on the "Discontinuance Plan of P/O Avenue 2, 17 and 47 King Street, Scarborough," by Northeast Civil Solutions dated October 4, 2017 to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan") that Grantee may previously have acquired, as of the date of this deed, by dedication and acceptance, layout and taking, grant, prescription, custom, or any other means.

III. THE PUBLIC PATH EASEMENT.

A. Boundaries of the Public Path Easement.

The Public Path Easement shall be more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located N71°50'16"E 5' from the centerline of "Old Avenue 2" as shown on the Plan;

Thence S18°09'44"E 886'± to the low water mark of the Atlantic Ocean;

Thence generally westerly along the low water mark of the Atlantic Ocean 5' ± to the centerline of "Old Avenue 2" as shown on the Plan;

Thence S18°09'44"E 886'± along the centerline of "Old Avenue 2" as shown on the Plan to the southerly sideline of King Street as shown on the Plan;

Thence N71°50'16"E along the southerly sideline of King Street as shown on the Plan 5' to the point of beginning.

B. Grantor's Rights and Responsibilities Concerning the Public Path Easement.

Except as may be otherwise expressly provided in this instrument, Grantor shall neither place structures of any kind on, nor alter in any way, the existing surface of any portion of the Public Path Easement.

1. Construction of travelled way over Public Path Easement.

Grantor grants to Grantee and/or its agents or assigns (including, but not limited to, Charles P. Gendron, his heirs and assigns, acting pursuant to Paragraph III(B) of a Deed of Public Path Easement and Public Conservation Easement from Charles P. Gendron to the Town of Scarborough of near or even date) a perpetual and irrevocable license to construct, repair, maintain, and replace, at their sole cost, a travelled way within the boundaries of the Public Path Easement established under this instrument. Any such travelled way shall not be considered a "structure" for the purposes of this Public Path Easement. After completion of the travelled way, Grantor shall not alter that travelled way in any respect.

C. Grantee's Additional Rights Under the Public Path Easement.

1. Signage.

Grantee shall post at the intersection of the Public Path Easement with the southerly sideline of King Street a sign stating, in substance, the following: "PUBLIC WAY TO PINE POINT BEACH / Use of Motorized Vehicles Is Strictly Prohibited."

2. Remedial Action.

Should Grantor place any structures of any kind on the Public Path Easement or alter in any respect any travelled way constructed within the Public Path Easement as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor, enter upon the Public Path Easement for the purposes of (1) removing any such structures; and (2) restoring to its original condition any portion of the travelled way within the Public Path Easement that Grantor has altered in any respect; and may charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

D. Use of the Public Path Easement.

Use of the Public Path Easement by the Grantee and the public shall be limited to: (a) foot traffic by pedestrians, in common with Grantor, its members and assigns, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan; and (b) travel by emergency vehicles owned and operated by Grantee, while the emergency vehicles are being operated for the purpose of providing emergency services authorized by Grantee, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan, which emergency vehicles shall be limited to vehicles in the nature of ATV's or other similarly small vehicles that are capable of travelling on sand and/or other unpaved surfaces. Both Grantor and Grantee shall have the right to eject and/or to have Grantee's law enforcement officers eject from the Public Path Easement any person or persons using the Public Path Easement for any unauthorized purpose.

After the travelled way within the bounds of the Public Path Easement is completed, Grantee shall neither place structures of any kind within that travelled way nor alter that travelled way except for the purpose of maintaining and/or repairing that travelled way.

E. Protection of Grantor from Liability Arising from Public Use of the Public Path Easement.

By acceptance of this deed, Grantee agrees on behalf of itself, its agents, employees, invitees, and the public that all public use of the Public Path Easement (including, but not limited to, use of the Public Path Easement by emergency vehicles as authorized above) shall be deemed a "recreational activity" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; that Grantor, its members and assigns shall be deemed "an owner, lessee, manager, holder of an easement or occupant of premises" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; and that Grantor, its members and assigns are entitled to all protections extended to such an "owner, lessee, manager, holder of an easement or occupant of premises" under 14 M.R.S.A. § 159-A as now and hereafter amended.

Without limiting the generality of the foregoing, by acceptance of this Deed, Grantee further agrees on behalf of itself, its agents, employees, invitees, and the public (hereafter the "Indemnifying Parties") to save, indemnify, protect, and hold Grantor, its members and assigns, harmless from any and all claims, demands, causes of action, and/or defense costs arising, directly or indirectly or in whole or in part, from the condition or the use of the Public Path Easement, although such indemnification shall be limited to injuries arising out of uses expressly allowed on the Public Path Easement under Paragraph III(D) of this instrument; that the Indemnifying Parties expressly assume all risks associated with their use

of the Public Path Easement; that Grantor, its members and assigns make no representations or warranties whatsoever, express or implied, as to the use or suitability of the Public Path Easement for pedestrian or vehicular travel and hereby disclaim any and all such warranties; and that Grantor, its members and assigns shall have no duty to maintain the Public Path Easement either in a reasonably safe condition or in any other condition.

IV. THE PUBLIC CONSERVATION EASEMENT

The Public Conservation Easement granted by this instrument shall be divided into two areas: the “Northerly Public Conservation Easement” and the “Southerly Public Conservation Easement.”

A. The Northerly Public Conservation Easement.

1. Boundaries of the Northerly Public Conservation Easement.

The boundaries of the Northerly Public Conservation Easement are more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located N71°05'16"E 5' from the centerline of “Old Avenue 2” as shown on the Plan, which point also marks the intersection between the southerly sideline of King Street and the easterly sideline of the Public Path Easement;

Thence S18°09'44"E along the easterly sideline of the Public Path Easement 311'± to the intersection of the easterly sideline of the Public Path Easement with the Junction as shown on the Plan;

Thence N77°39'37"E 19.97' along the Junction as shown on the Plan to the westerly boundary of the land described in the deed from Nicholas C. Scaccia and Clinton I. Strout to Gables on the Sea, Inc. dated December 20, 1988 and recorded at the Cumberland County Registry of Deeds in Book 8598, Page 129 (hereafter the “Condominium Parcel”) as shown on the Plan;

Thence N18°09'44"W along the westerly boundary of the Condominium Parcel 315'± to the intersection of the westerly boundary of the Condominium Parcel and the southerly sideline of King Street as shown on the Plan;

THENCE S71°50'16"W along the southerly sideline of King Street 19.75 ' to the point of beginning.

2. Limitations on Grantor's use of the Northerly Public Conservation Easement.

Within the Northerly Public Conservation Easement, Grantor shall place no permanent man-made structures of any kind either on or in the ground, with the exception that Grantor may construct, maintain, repair, and replace one wooden, post-and-rail style fence along the easterly sideline of the Northerly Public Path Easement.

Notwithstanding the foregoing, Grantor reserves within the Northerly Public Conservation Easement: (a) the right to remove, replace, and plant trees, shrubs, grasses, and other vegetation, provided that no such vegetation is be planted as to construct a natural hedge, and to install other forms of landscaping and vegetative buffers (none of which vegetation, landscaping, or buffers shall be deemed a "permanent man-made structure" within the meaning of this paragraph) so long as such work is substantially consistent with the (i) plan entitled "Planting Plan, Discontinuance of Avenue 2 Southerly of King Street, by Terrence J. DeWan & Associates dated October 4, 2017 (hereafter the "Planting Plan"), a copy of which is attached to this instrument as Exhibit A and incorporated by reference herein; (b) the right, but not the obligation, to replace any of that vegetation that dies or becomes diseased or damaged after initial planting; (c) to engage in customary residential uses of the land, including but not limited to light recreation, light horticulture, and other similar low-impact activities, provided that such uses shall include neither the placement of permanent man-made structures of any kind either on or in the ground nor the storage of personal property of any kind; and (d) all other rights as the fee owner of the land within the bounds of the Northerly Public Conservation Easement that are not specifically prohibited or by this instrument.

If Grantor hereafter proposes to make a customary residential use of the Northerly Public Conservation Easement, not specifically allowed by this instrument, that would be materially inconsistent with the Planting Plan, then at least 30 days before Grantor commences such use, Grantor shall deliver to Grantee written notice of Grantor's intention to commence such proposed use, which notice shall include a reasonably detailed description of the nature of such proposed use and the area within the Northerly Public Conservation Easement in which such proposed use would take place. If Grantee does not, within 30 days after receiving such written notice, notify Grantor in writing that Grantee intends to prohibit such proposed use, such proposed use shall be deemed authorized by this instrument.

3. Grantee's limited right of access to the Northerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Northerly Public Conservation Easement. Both Grantor and Grantee shall have the right to eject and/or to have Grantee's law enforcement officers eject from the Northerly Public Conservation Easement any person or persons using the Northerly Public Conservation Easement for any unauthorized purpose.

Should Grantor place any permanent man-made structures of any kind, other than the above-described wooden, post-and-rail style fence, either on or in the ground within the Northerly Public Conservation Area; or if Grantor installs the above-described wooden, post-and-rail style fence so that it is westerly of the easterly sideline of the Public Path Easement, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Northerly Public Conservation area; (2) remove any such permanent man-made structures and/or any portion of the above-described wooden, post-and-rail style fence that is located westerly of the easterly sideline of the Public Path Easement; and (3) charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

In the event that Grantee exercises any or all of the above rights, Grantee shall keep an accurate accounting of the expenses incurred in performing the above-described actions and shall send to Grantor an invoice for the payment of said expenses.

If Grantor fails to make adequate payment of said expenses within sixty (60) days of receiving notice of the same, then Grantee shall retain the right to place and record a lien on Grantor's real property equal to the amount of said expenses, consistent with the requirements laid out in 36 M.R.S.A. § 942, *et seq.*

B. The Southerly Public Conservation Easement.

1. Boundaries of the Southerly Public Conservation Easement.

The area of this Public Conservation Easement hereafter referenced as the "Southerly Public Conservation Easement" is more particularly described as follows:

Beginning at the intersection of the westerly boundary of the Condominium Parcel with the Junction as shown on the Plan;

Thence S18°09'44"E along the westerly boundary of the Condominium Parcel 575'± to the low water mark of the Atlantic Ocean;

THENCE generally westerly along the low water mark of the Atlantic Ocean 20± to the easterly sideline of the Public Path Easement;

THENCE N18°09'44"W along the easterly sideline of the Public Path Easement 575'± to the intersection of the easterly sideline of the Public Path Easement with the Junction as shown on the Plan;

THENCE N77°39'37"E along the Junction 19.97' to the point of beginning;

2. Limitations on Grantor's use of the Southerly Public Conservation Easement.

Within the Southerly Public Conservation Easement, Grantor shall neither place any permanent man-made structures of any kind nor alter the existing natural topography and/or vegetation in any manner except as may be necessary either to (a) prevent or repair damage, to areas within the boundaries of the Southerly Public Conservation Easement and/or the Condominium Parcel caused by storms, flooding, sea-level rise, or other natural forces; and/or (b) vegetate or revegetate with dune grass any portion of the Southerly Public Conservation Easement.

Notwithstanding the foregoing, Grantor reserves within the Southerly Public Conservation Easement the rights (a) to engage in customary residential uses of the Southerly Public Conservation Easement provided that such uses shall include neither the placement of permanent man-made structures, the storage of personal property of any kind, nor alterations to the existing topography or vegetation except to the extent permitted by Paragraph IV(B)(2) of this instrument; and (b) all other rights as the fee owner of the land within the boundaries of the Southerly Public Conservation Easement that are not specifically prohibited by this instrument.

3. Grantee's Limited Right of Access to the Southerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Southerly Public Conservation Easement. Both Grantor and Grantee shall have the right to eject and/or to have Grantee's law enforcement officers eject from the Southerly Public Conservation Easement any person or persons using the Southerly Public Conservation Easement for any unauthorized purpose.

Should Grantor fail to abide by the restrictions set forth in Paragraph IV(B)(2) of this instrument, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Southerly Public Conservation Easement; and (2) remove any such permanent man-made structures and/or prevent or repair any alterations to the existing natural topography and/or vegetation within the Southerly Public Conservation Easement. Should Grantee resort to its limited right of access in this regard, Grantee shall abide by the procedure and be entitled to reimbursement according to the terms set forth in Paragraph IV(A)(3) of this instrument.

V. GENERAL

- A. This Public Easement shall be binding in perpetuity on the parties, their heirs, assigns, and successors in interest.
- B. Notwithstanding the use of the term “conservation” within this instrument, this instrument shall not create, or be considered to be, a “conservation easement” created under and governed by 33 M.R.S.A. § 476, *et seq.*
- C. Grantee shall retain the right to clean, maintain, and patrol all areas of the beach that are located seaward of the line shown on the Plan as dividing the “Edge of Dune Grass” and the “Edge of Sand Beach.”
- D. Within all areas of the beach located seaward of the line shown on the Plan as dividing the “Edge of Dune Grass” and the “Edge of Sand Beach,” the Grantee and the Public shall have the right to continue in perpetuity the historical use of those areas for normal beach-going activities.

VI. EFFECT OF THIS INSTRUMENT ON PRIVATE RIGHTS AND BEACH OWNERSHIP

This instrument, along with the attached maps, plans, and other visual depictions shall *not affect in any way*:

- A. The existence, lack of existence, or availability of any legal or equitable remedy to protect private rights associated with Avenue 2, including the right to access, use, or otherwise exercise any legal interest in, on, or over, the area of said Avenue 2; or
- B. The determination or establishment of any legal interest in Pine Point Beach, including but not limited to title in fee or any easement held by Gables on the Sea Condominium Association, the public at large, or by any other party.

Notwithstanding the foregoing, it is Grantor's express intention that the Public Path Easement granted in Paragraph III of this instrument shall and does hereby convey to Grantee and the public at large a perpetual, irrevocable right of access (subject to the use limitations expressly set forth in Paragraph III of this instrument) to Pine Point Beach as far as the low water mark of the Atlantic Ocean.

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DRAFT

**DEED OF PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION
EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS THAT **CHARLES P. GENDRON** of Scarborough, County of Cumberland, and State of Maine ("Grantor"), grants to **THE TOWN OF SCARBOROUGH**, a Maine municipal corporation located in the County of Cumberland and State of Maine ("Grantee"), the Public Path Easement and Public Conservation Easement more particularly described in **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, **CHARLES P. GENDRON** has signed this instrument on this ____ day of _____, 2017.

Witness

Charles P. Gendron

STATE OF MAINE
Cumberland, ss.

_____, 2017

Then personally appeared before me the above named CHARLES P. GENDRON and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Attorney at Law/Notary Public

Printed Name

EXHIBIT A

I. PURPOSE OF THE PUBLIC PATH EASEMENT AND PUBLIC CONSERVATION EASEMENT.

It is the purpose of the Public Path Easement and Public Conservation Easement set forth in this instrument to clarify the legal status of Avenue 2, located within the Town of Scarborough, County of Cumberland, State of Maine, to protect in perpetuity the right of the public to utilize a portion of Avenue 2 as a means of access to Pine Point Beach and the Atlantic Ocean, and to both clarify and perpetually restrict the right of the Grantor, his heirs and assigns, to develop or otherwise augment the natural state of Avenue 2 as it currently exists.

II. GRANTEE'S RELEASE OF EXISTING INTERESTS.

By acceptance of this instrument, Grantee releases to Grantor all right, title, or interest, if any, of the Grantee in any and all land within the boundaries of the way currently known as "Avenue 2" located west of the centerline of "Old Avenue 2" and south of the southerly sideline of King Street as shown on the "Discontinuance Plan of P/O Avenue 2, 17 and 47 King Street, Scarborough," by Northeast Civil Solutions dated October 4, 2017 to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan") that Grantee may previously have acquired, as of the date of this deed, by dedication and acceptance, layout and taking, grant, prescription, custom, or any other means.

III. THE PUBLIC PATH EASEMENT.

A. Boundaries of the Public Path Easement.

The Public Path Easement shall have a uniform width of 5' and a centerline more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located S71°50'16"W 2.5' from the centerline of "Old Avenue 2" as shown on the Plan,

Thence S18°09'44"E 286'± to a point located N77°39'37"W 22.47' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" on the easterly boundary of land of Charles P. Gendron described in the deed from Lorraine R. Johnson to Charles P. Gendron dated June 6, 2013 and recorded at the Cumberland County Registry of Deeds in Book 30715, Page 193 (hereafter the "Gendron Parcel") as shown on the Plan;

Thence in a generally southeasterly direction $30' \pm$ to the point on the centerline of the "Sand Path to Beach" as shown on the Plan (hereafter the "Southerly Sand Path") where the centerline of the Southerly Sand Path intersects the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan (hereafter the "Junction");

Thence in a generally southerly direction along the centerline of the Southerly Sand Path extended $575' \pm$ to the low water mark of the Atlantic Ocean;

PROVIDED, that if, in compliance with Paragraph III(B)(2) of this instrument, Grantor elects to apply for and in fact obtains all federal, state, or municipal governmental permits, licenses, or other approvals necessary to move the Southerly Sand Path from its present location so that it is adjacent to the centerline of "Old Avenue 2" as shown on the Plan, thereafter the Public Path Easement shall be more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located $S71^{\circ}50'16''W$ 5' from the centerline of "Old Avenue 2" as shown on the Plan,

Thence $S18^{\circ}09'44''E$ $886' \pm$ to the low water mark of the Atlantic Ocean;

Thence generally easterly along the low water mark of the Atlantic Ocean $5' \pm$ to the centerline of "Old Avenue 2" as shown on the Plan;

Thence $S18^{\circ}09'44''E$ $886' \pm$ along the centerline of "Old Avenue 2" as shown on the Plan to the southerly sideline of King Street as shown on the Plan;

Thence $S71^{\circ}50'16''W$ 5' along the southerly sideline of King Street as shown on the Plan to the point of beginning.

B. Grantor's Rights and Responsibilities Concerning the Public Path Easement.

Except as may be otherwise expressly provided in this instrument, Grantor shall neither place structures of any kind on, nor alter in any way, the existing surface of any portion of the Public Path Easement located southerly of the Junction (hereafter the "Southerly Public Path Easement"). Grantor shall place no structures of any kind within any portion of the Public Path Easement located northerly of the Junction (hereafter the "Northerly Public Path Easement").

1. Construction of travelled way over Northerly Public Path Easement

Grantor shall construct a travelled way within the boundaries of (a) the Northerly Public Path Easement described in this instrument and/or the (b) Public Path Easement described in the Deed of Public Path Easement and Conservation Easement from The Gables On the Sea Condominium Association to the Grantee of near or even date; provided, that Grantor shall construct all portions of that travelled way of natural earth materials and shall not apply bituminous or similar manufactured paving materials to any portion of that traveled way. That travelled way shall not constitute a “structure” for the purposes of this Northerly Public Path Easement. After completing construction of that travelled way, Grantor shall have the right, but not the obligation, to maintain and repair that travelled way. Grantor shall be solely responsible for (a) obtaining all federal, state, or municipal governmental permits, licenses, or other approvals necessary to construct or otherwise establish that travelled way; (b) all costs of obtaining those permits, licenses, or other approvals, and (c) all costs of initially constructing that travelled way.

Grantor grants to Grantee and the public a temporary license to continue using the existing sandy path located outside the bounds of the Northerly Public Path Easement until Grantor completes construction of a travelled way within the bounds of the Northerly Public Path Easement, at which time all public use of the existing sandy path located outside the bounds of the Northerly Public Path Easement shall cease.

2. Relocation of Southerly Public Path Easement.

Grantor shall have the right, but not the obligation, to relocate the Southerly Public Path Easement from its present location so that its centerline is located 2.5' westerly of the centerline of “Old Avenue 2” as shown on the Plan.

If Grantor so relocates the Southerly Public Path Easement, Grantor shall construct a travelled way within the relocated boundaries of the Southerly Public Path Easement described in this instrument and/or the Public Path Easement described in the Public Path and Conservation Easement Deed from The Gables On the Sea Condominium Association to the Grantee of near or even date; provided, Grantor shall construct all portions of that travelled way of natural earth materials and shall not apply bituminous or similar manufactured paving materials to any portion of that traveled way. That travelled way shall not constitute a “structure” for the purposes of this Southerly Public Path Easement. After completing construction of that travelled way, Grantor shall have the right, but not the obligation, to maintain and repair that travelled way.

Grantor shall be solely responsible for (a) obtaining all federal, state, or municipal governmental permits, licenses, or other approvals necessary to relocate, construct, or otherwise establish that travelled way; (b) all costs of obtaining those permits, licenses, or other approvals, and (c) all costs of initially constructing that travelled way.

Unless and until Grantor obtains all federal, state, or municipal governmental permits, licenses, or other approvals necessary to relocate, construct, or otherwise establish a travelled way over the relocated Southerly Public Path Easement, Grantor shall not alter the initial location of the Southerly Public Path Easement described in Paragraphs III(A) and (B) of this instrument in any way.

C. Grantee's Additional Rights Under the Public Path Easement.

1. Signage.

Grantee shall post at the intersection of the Northerly Public Path Easement with the southerly sideline of King Street a sign stating, in substance, the following: "PUBLIC WAY TO PINE POINT BEACH / Use of Motorized Vehicles Is Strictly Prohibited."

2. Remedial Action.

Should Grantor place any structures of any kind on the Public Path Easement; alter, in any way not expressly authorized by this instrument, the existing surface of any portion of the Southerly Public Path Easement; and/or fail to construct a travelled way over the Public Path Easement in compliance with all conditions set forth Paragraphs III(B)(1) and/or III(B)(2) of this instrument, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor, enter upon the Public Path Easement for the purposes of (1) removing any such structures; (2) restoring to its original condition any portion of the surface of the Southerly Public Path Easement that Grantor has altered in a manner not authorized by Paragraph III(B)(2) of this instrument; and (3) constructing a travelled way over the Public Path Easement in compliance with all conditions set forth in Paragraphs III(B)(1) and III(B)(2) of this instrument; and may charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

D. Use of the Public Path Easement.

Use of the Public Path Easement by the Grantee and the public shall be limited to: (a) foot traffic by pedestrians, in common with Grantor, his heirs and assigns, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean

as shown on the Plan; and (b) travel by emergency vehicles owned and operated by Grantee, while the emergency vehicles are being operated for the purpose of providing emergency services authorized by Grantee, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan, which emergency vehicles shall be limited to vehicles in the nature of ATV's or other similarly small vehicles that are capable of travelling on sand and/or other unpaved surfaces. Both Grantor and Grantee shall have the right to eject and/or to have Grantee's law enforcement officers eject from the Public Path Easement any person or persons using the Public Path Easement for any unauthorized purpose.

After Grantor completes construction of any travelled way within the bounds of the Public Path Easement, Grantee shall neither place structures of any kind within that travelled way nor alter that travelled way except for the purpose of maintaining and/or repairing that travelled way.

E. Protection of Grantor from Liability Arising from Public Use of the Public Path Easement.

By acceptance of this instrument, Grantee agrees on behalf of itself, its agents, employees, invitees, and the public that all public use of the Public Path Easement (including, but not limited to, use of the Public Path Easement by emergency vehicles as authorized above) shall be deemed a "recreational activity" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; that Grantor, his heirs and assigns shall be deemed "an owner, lessee, manager, holder of an easement or occupant of premises" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; and that Grantor, his heirs and assigns are entitled to all protections extended to such an "owner, lessee, manager, holder of an easement or occupant of premises" under 14 M.R.S.A. § 159-A as now and hereafter amended.

Without limiting the generality of the foregoing, by acceptance of this Deed, Grantee further agrees on behalf of itself, its agents, employees, invitees, and the public (hereafter the "Indemnifying Parties") to save, indemnify, protect, and hold Grantor, his heirs and assigns, harmless from any and all claims, demands, causes of action, and/or defense costs arising, directly or indirectly or in whole or in part, from the condition or the use of the Public Path Easement, although such indemnification shall be limited to injuries arising out of uses expressly allowed on the Public Path Easement under Paragraph III(D) of this instrument; that the Indemnifying Parties expressly assume all risks associated with their use of the Public Path Easement; that Grantor, his heirs and assigns make no representations or warranties whatsoever, express or implied, as to the use or suitability of the Public Path Easement for pedestrian or vehicular travel and hereby disclaim any and all such warranties;

and that Grantor, his heirs and assigns shall have no duty to maintain the Public Path Easement either in a reasonably safe condition or in any other condition.

IV. THE PUBLIC CONSERVATION EASEMENT.

The Public Conservation Easement granted by this instrument shall be divided into two areas: the “Northerly Public Conservation Easement” and the “Southerly Public Conservation Easement.”

A. The Northerly Public Conservation Easement.

1. Boundaries of the Northerly Public Conservation Easement.

The boundaries of the Northerly Public Conservation Easement are more particularly described as follows:

AREA 1

Beginning at a #5 rebar with plastic cap stamped “NCS, INC. PLS 1314” located at the intersection of the southerly sideline of King Street and the easterly sideline of the Gendron Parcel as shown on the Plan;

Thence S18°09’44”E along the easterly boundary of the Gendron Parcel 308’± to the intersection between easterly boundary of the Gendron Parcel and the Junction;

Thence N77°39’37”E 5’± along the Junction to the westerly sideline of the Northerly Public Path Easement;

Thence generally northerly along the westerly sideline of the Northerly Public Path Easement 20’± to a point on the westerly sideline of the Northerly Public Path Easement, which point is located S18°09’44”E 169.03’ from the southerly sideline of King Street as shown on the Plan;

Thence N18°09’44”W 169.03’ along the westerly sideline of the Northerly Public Path Easement to the intersection of Northerly Public Path Easement and the southerly sideline of King Street as shown on the Plan;

Thence S71°50’16”W 19.75’ to the point of beginning.

AREA 2

Beginning at the intersection between the easterly sideline of the Northerly Public Path Easement and the Junction as shown on the Plan;

Thence N77°39'37"E 15'± along the Junction to the centerline of "Old Avenue 2" as shown on the Plan;

Thence N18°09'44"W 25'± to a point on the centerline of "Old Avenue 2" where the easterly sideline of the Northerly Public Path Easement joins the centerline of "Old Avenue 2" as shown on the Plan;

Thence generally southerly along the easterly sideline of the Northerly Public Path Easement to the point of beginning.

2. Limitations on Grantor's use of the Northerly Public Conservation Easement.

Within the Northerly Public Conservation Easement, Grantor shall place no permanent man-made structures of any kind either on or in the ground.

Notwithstanding the foregoing, Grantor reserves within the Northerly Public Conservation Easement: (a) the right to remove, replace, and plant trees, shrubs, grasses, and other vegetation, provided that no such vegetation is be planted as to construct a natural hedge, and to install other forms of landscaping and vegetative buffers (none of which vegetation, landscaping, or buffers shall be deemed a "permanent man-made structure" within the meaning of this paragraph) so long as such work is substantially consistent with the plan entitled "Planting Plan, Discontinuance of Avenue 2 Southerly of King Street, by Terrence J. DeWan & Associates dated October 4, 2017 (hereafter the "Planting Plan"), a copy of which is attached to this instrument as Exhibit A and incorporated by reference herein; (b) the right, but not the obligation, to replace any of that vegetation that dies or becomes diseased or damaged after initial planting; (c) the right to engage in customary residential uses of the land, provided that such uses shall not include the placement of permanent man-made structures of any kind either on or in the ground, **the storage of personal property of any kind**, or landscaping that is not substantially consistent with the Planting Plan; and (d) all other rights as the fee owner of the land within the boundaries of the Northerly Public Conservation Easement that are not specifically prohibited by this instrument.

If Grantor hereafter proposes to make a customary residential use of the Northerly Public Conservation Easement, not specifically allowed by this instrument, that would be

materially inconsistent with the Planting Plan, then at least 30 days before Grantor commences such use, Grantor shall deliver to Grantee written notice of Grantor's intention to commence such proposed use, which notice shall include a reasonably detailed description of the nature of such proposed use and the area within the Northerly Public Conservation Easement in which such proposed use would take place. If Grantee does not, within 30 days after receiving such written notice, notify Grantor in writing that Grantee intends to prohibit such proposed use, such proposed use shall be deemed authorized by this instrument.

3. Grantee's Limited Right of Access to the Northerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Northerly Public Conservation Easement. Both Grantor and Grantee shall have the right to eject and/or to have Grantee's law enforcement officers eject from the Northerly Public Conservation Easement any person or persons using the Northerly Public Conservation Easement for any unauthorized purpose.

Should Grantor place any permanent man-made structures of any kind either on or in the ground within the Northerly Public Conservation Easement, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Northerly Public Conservation Easement; (2) remove any such permanent man-made structures; and (3) charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

In the event that Grantee exercises any or all of the above rights, Grantee shall keep an accurate accounting of the expenses incurred in performing the above-described actions and shall send to Grantor an invoice for the payment of said expenses.

If Grantor fails to make adequate payment of said expenses within sixty (60) days of receiving notice of the same, then Grantee shall retain the right to place and record a lien on Grantor's real property equal to the amount of said expenses, consistent with the requirements laid out in 36 M.R.S.A. § 942, *et seq.*

B. The Southerly Public Conservation Easement.

1. Boundaries of the Southerly Public Conservation Easement.

The area of this Public Conservation Easement hereafter referenced as the “Southerly Public Conservation Easement” is more particularly described as follows:

AREA 1

Beginning at the intersection of the centerline of “Old Avenue 2” as shown on the Plan with the Junction as shown on the Plan;

Thence S18°09’44”E along the centerline of “Old Avenue 2” as shown on the Plan 575’± to the low water mark of the Atlantic Ocean as shown on the Plan;

Thence generally westerly along the low water mark of the Atlantic Ocean 25’± to the easterly boundary of the Gendron Parcel as shown on the Plan;

Thence N18°09’44”W along the centerline of “Old Avenue 2” as shown on the Plan 485”± to the intersection between the easterly sideline of Gendron Parcel as shown on the Plan and the easterly sideline of the Southerly Public Path Easement;

Thence generally north along the easterly sideline of the Southerly Public Path Easement 90’± to the intersection between the easterly sideline of the Southerly Public Path Easement and the Junction as shown on the Plan;

Thence N77°39’37”E 15’± to the point of beginning.

AREA 2

Beginning at the intersection of the easterly boundary of the Gendron Parcel with the Junction as shown on the Plan;

Thence S18°09’44”E along the easterly boundary of the Gendron Parcel 82’± to the intersection of the easterly boundary of the Gendron Parcel with the westerly sideline of the Southerly Public Path Easement;

Thence generally northerly along the westerly sideline of the Southerly Public Path Easement to the Junction as shown on the Plan;

Thence S77°39'37"W along the Junction as shown on the Plan a distance of 5'± to the point of beginning;

PROVIDED, that if, in compliance with Paragraph III(B)(2) above, Grantor elects to apply for and in fact obtains all federal, state, or municipal governmental permits, licenses, or other approvals necessary to move the Southerly Public Path Easement from its present location to a location adjacent to the centerline of "Old Avenue 2" as shown on the Plan, the boundaries of the entire Southerly Public Conservation Easement shall be as follows:

Beginning at the intersection between the easterly boundary of the Gendron Parcel and the Junction as shown on the Plan;

Thence S18°09'44"E along the easterly boundary of the Gendron Parcel 575'± to the low water mark of the Atlantic Ocean;

Thence generally easterly along the low water mark of the Atlantic Ocean 20'± to the westerly sideline of the Southerly Public Path Easement;

Thence N18°09'44"W along the westerly sideline of the Southerly Public Path Easement 570'± to the Junction as shown on the Plan;

Thence S77°39'37"W along the Junction as shown on the Plan 19.97'± to the point of beginning.

2. Limitations on Grantor's use of the Southerly Public Conservation Easement.

Within the Southerly Public Conservation Easement, Grantor shall neither place any permanent man-made structures of any kind nor alter the existing natural topography and/or vegetation in any manner except as may be necessary either to (a) prevent or repair damage, to areas within the boundaries of the Southerly Public Conservation Easement and/or the Gendron Parcel caused by storms, flooding, sea-level rise, or other natural forces; (b) vegetate or revegetate with dune grass any portion of the Southerly Public Conservation Easement; or (c) relocate and/or construct a travelled way over any relocation of the Southerly Public Path Easement made in compliance with Paragraph III(B)(2) of this instrument.

Notwithstanding the foregoing, Grantor reserves within the Southerly Public Conservation Easement the rights (a) to engage in customary residential uses of the Southerly Public Conservation Easement provided that such uses shall include neither the placement of permanent man-made structures, the storage of personal property of any kind, nor alterations to the existing topography or vegetation except to the extent permitted by Paragraph IV(B)(2) of this instrument; and (b) all other rights as the fee owner of the land within the boundaries of the Southerly Public Conservation Easement that are not specifically prohibited by this instrument.

3. Grantee's Limited Right of Access to the Southerly Public Conservation Easement.

Except as provided below, neither the Grantee nor the public may enter upon, occupy, or use any portion of the Southerly Public Conservation Easement. Both Grantor and Grantee shall have the right to eject and/or to have Grantee's law enforcement officers eject from the Southerly Public Conservation Easement any person or persons using the Southerly Public Conservation Easement for any unauthorized purpose.

Should Grantor fail to abide by the restrictions set forth in Paragraph IV(B)(2) of this instrument, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Southerly Public Conservation Easement and (2) remove any such permanent man-made structures and/or prevent or repair any alterations to the existing natural topography and/or vegetation within the Southerly Public Conservation Easement not authorized by Paragraph IV(B)(2) of this instrument. Should Grantee resort to its limited right of access in this regard, Grantee shall abide by the procedure and be entitled to reimbursement according to the terms set forth in Paragraph IV(A)(3) of this instrument.

V. GENERAL

- A. This Public Easement shall be binding in perpetuity on the parties, their heirs, assigns, and successors in interest.
- B. Notwithstanding the use of the term "conservation" within this instrument, this instrument shall not create, or be considered to be a "conservation easement" created under and governed by 33 M.R.S.A. § 476, *et seq.*
- C. Grantee shall retain the right to clean, maintain, and patrol all areas of the beach that are located seaward of the line shown on the Plan as dividing the "Edge of Dune Grass" and the "Edge of Sand Beach."

- D. Within all areas of the beach located seaward of the line shown on the Plan as dividing the “Edge of Dune Grass” and the “Edge of Sand Beach,” the Grantee and the public shall have the right to continue in perpetuity the historical use of those areas for normal beach-going activities.

VI. EFFECT OF THIS INSTRUMENT ON PRIVATE RIGHTS AND BEACH OWNERSHIP.

This instrument, along with the attached maps, plans, and other visual depictions shall *not affect in any way*:

- A. The existence, lack of existence, or availability of any legal or equitable remedy to protect private rights associated with Avenue 2, including the right to access, use, or otherwise exercise any legal interest in, on, or over, the area of said Avenue 2; or
- B. The determination or establishment of any legal interest in Pine Point Beach, including but not limited to title in fee or any easement held by Charles P. Gendron, the public at large, or by any other party.

Notwithstanding the foregoing, it is Grantor’s express intention that the Public Path Easement granted in Paragraph III of this instrument shall and does hereby convey to Grantee and the public at large a perpetual, irrevocable right of access (subject to the use limitations expressly set forth in Paragraph III of this instrument) to Pine Point Beach as far as the low water mark of the Atlantic Ocean.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 18, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-110. Move approval on the appointment of David Sawyer, d/b/a Sawyer Valuation Services, on an interim basis as the Assessor for the Town of Scarborough, effective October 19, 2017 and to continue to such time as the Council appoints a successor.

Town Manager

Ought to Pass

Sponsor

Recommendation

10/18/17

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote