

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
SWEARING-IN CEREMONY FOR NEWLY ELECTED OFFICIALS
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. Swearing in of newly elected officials.

Order No. 17-117. Act on the request for nominations and election of a new Town Council Chair.
[Town Clerk]

Order No. 17-118. Act on the request for nominations and election of a new Town Council Vice-Chair. *[Town Clerk]*

Item 4. Roll Call.

Item 5. General Public Comments.*

Item 6. Minutes: November 15, 2017 – Regular Meeting.

Item 7. Adjustment to the Agenda.

Item 8. Items to be signed: a. Treasurer's Warrants.

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

Order No. 17-111, 7:00 p.m. Public hearing and schedule a second reading on the proposed amendments to Chapter 311- the Town of Scarborough Schedule of Fees. *[Ordinance Committee]*

Order No. 17-112, 7:00 p.m. Public hearing and schedule a second reading on the proposed amendments to Chapter 601- the Town of Scarborough Traffic Ordinance, Section 25.A.Parking Restrictions. *[Ordinance Committee]*

Order No. 17-114, 7:00 p.m. Public hearing and schedule a second reading on the request for discontinuance of a portion of Beech Ridge Road. *[Town Engineer]*

OLD BUSINESS:

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, January 3, 2018 and Wednesday, January 17, 2018. Tabled from the October 10, 2017, Town Council meeting. *[Town Manager]*

Order No. 17-113. Second reading on the Bond Order for the 2018 Municipal and School Capital Improvements and the refunding of certain general obligation bonds of the town. *[Town Manager]*

NEW BUSINESS:

Order No. 17-119. Act on the request to extend the duties of the Ad-Hoc Public Safety Complex Building Committee to after the completion of the new facility. *[Town Manager]*

Item 9. Non Action Items:

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

Item 11. Town Manager Report.

Item 12. Council Member Comments.

Item 13. Adjournment.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-117. Move approval on the request for nominations and election of a new Town Council Chair. [*Town Clerk*]

Town Clerk

Ought to Pass

Sponsor

Recommendation

12/06/17 *Vote:*

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-118. Move approval on the request for nominations and election of a new Town Council Vice-Chair. *[Town Clerk]*

Town Clerk

Sponsor

12/06/17 *Vote:*

First Reading/Vote/Public Hearing

Ought to Pass

Recommendation

N/A

Second Reading/Final Approval/Vote

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-111. The second reading on the proposed amendments to Chapter 311- the Town of Scarborough Schedule of Fees will be held on Wednesday, September 20, 2017. [*Ordinance Committee*]

Ordinance Committee

Sponsor

11/15/17 *Vote: 6 Yeas*
12/06/17 *Public Hearing*

First Reading/Vote/Public Hearing

Ought to Pass

Recommendation

12/20/17 *Vote:*

Second Reading/Final Approval/Vote

**CHAPTER 311
TOWN OF SCARBOROUGH
SCHEDULE OF LICENSE, PERMIT AND APPLICATION FEES**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 311, Schedule of License, Permit and Application Fees of the Town of Scarborough, Maine is amended by adding the underlined text and strikethrough, as shown below:

<u>Chapter 1006 - Ferry Beach/Hurd Park Fees Season Passes</u>	<u>Fee</u>
Resident And/Or Taxpayer Season Pass - (includes Ferry Beach, Higgins Beach and Hurd Park) (amended 05/05/04; 05/18/11)(amended 05/02/2012) (amended 05/07/2014)	\$40.00
Resident - Additional Vehicle Registered to the Same Address	\$5.00
Non-Resident Season Beach Pass - (includes Ferry Beach Higgins Beach and Hurd Park) (amended 05/05/04) (amended 05/02/2012) (amended 05/07/2014)	~~\$75.00~~ <u>\$150.00</u>
Higgins Beach – Metered parking spaces on Bayview Avenue Fee [adopted 05/17/17]	\$1.00 Hourly
<u>Pass Card for Meters</u>	<u>\$1.00</u>
Resident Commercial Fisherman Season Beach Pass - (Ferry Beach <u>only</u> , <i>must</i> show State Commercial Fisherman License)	FREE
Resident Senior Citizen Season Pass - (includes both Ferry Beach, Higgins Beach and Hurd Park)	FREE
Resident Veteran Lifetime Season Pass – Applications must be filed and applicant must meet the following criteria: must be a resident of the Town of Scarborough and must have received an honorable discharge or general discharge under honorable conditions [copy of DD214 must accompany application]. This pass will not expire and is valid for the lifetime of the holder. (Please note that any Scarborough Veteran age 60 years or older will not be issued a Resident Veteran Season Pass as they are automatically entitled to a free Resident Senior Citizen Season Pass.) (Adopted 05/19/2010)	FREE
<u>DAILY PARKING RATES (WITHOUT PASS)</u>	
Daily Parking: Ferry Beach, Higgins Beach And Hurd Park (amended 05/05/04) [amended 05/02/2012]	~~\$10.00~~ <u>\$15.00</u>
<u>Morning Parking Fee (e.g. Passenger Vehicles, Motor Bikes) – 5:30 AM to 9:00 AM</u>	<u>\$5.00</u>
End of Day Parking Fee (e.g. Passenger Vehicles, Motor Bikes) – 3 PM to 5 PM (amended 05/03/05)	\$5.00
Larger Vehicle Daily Parking Fee - (R.V.'s, Campers and Buses) (amended 05/05/04)	\$35.00
<u>BOAT LAUNCHING FEE</u>	
Launching from any town facility, includes Ferry Beach Boat Launch and	

Co-op Boat Launch (Note – Ferry Beach – parking is not included)	
Resident – Daily Boat Launching Fee (amended 05/05/04)	\$10.00
Resident – Seasonal Boat Launching Fee	\$25.00
Resident – Additional Boat Launching Fee Registered to the Same Address [Amended 05/18/16]	\$5.00
Resident Commercial Fisherman Seasonal Boat Launch Pass	Free
Non-Resident – Daily Boat Launching Fee (amended 05/05/04)	\$20.00
Non-Resident – Seasonal Boat Launching Fee	~~\$50.00~~ <u>\$75.00</u>

Chapter 1401 – Coastal Water and Harbor Fees [amended 02-20-13]	Fee
Annual Mooring & Pier Use Fee	
<u>Recreational Pier Use - Resident and/Or Taxpayer</u> (amended 05/05/04)	\$50.00
<u>Recreational Pier Use - Non-Resident</u> (amended 05/05/04)	~~\$100.00~~ <u>\$150.00</u>
~~Annual Pier Maintenance Fee~~	
Commercial <u>Pier User – Resident and/or Taxpayer</u>	\$100.00
Non-Commercial <u>Pier User—Non Resident</u>	~~\$100.00~~ <u>\$300.00</u>
<u>Recreational Mooring & Pier Use Fee – Resident and/or Taxpayer</u>	\$100.00
<u>Recreational Mooring & Pier Use Fee – Non Resident</u>	<u>\$250.00</u>
<u>Commercial Mooring & Pier Use Fee – Resident and/or Taxpayer</u>	\$150.00
<u>Commercial Mooring & Pier Use Fee – Non Resident</u>	<u>\$400.00</u>

2018 Scarborough Waterfront, Parking & Launch Fees

Recommend by Ordinance Review Committee,
proposed changes highlighted in red.

	2017	2018
Daily Parking Fee	\$10.00	\$15.00
Daily Parking Fee - (5:30am-9:00am)	N/A	\$5.00
Daily Parking Fee - (3:00pm-5:00pm)	\$5.00	\$5.00
Daily Parks Fee - RV's	\$35.00	\$35.00
Hourly Parking Fee - (Meters)	\$1.00	\$1.00
Season Parking Pass - Resident	\$40.00	\$40.00
Season Parking Pass - Resident Additional	\$5.00	\$5.00
Season Parking Pass - Non Resident	\$75.00	\$150.00
Season Parking Pass - Senior	\$0.00	\$0.00
Daily Boat Launch Fee - Resident	\$10.00	\$10.00
Daily Boat Launch Fee - Non Resident	\$20.00	\$20.00
Season Boat Launch Pass - Resident	\$25.00	\$25.00
Season Boat Launch Pass - Resident Additional	\$5.00	\$5.00
Season Boat Launch Pass - Non Resident	\$50.00	\$75.00
Recreational Pier Use - Resident	\$50.00	\$50.00
Recreational Pier Use - Non Resident	\$50.00	\$150.00
Commercial Pier Use - Resident	\$100.00	\$100.00
Commercial Pier Use - Non Resident	\$100.00	\$300.00
Recreational Mooring & Pier Use Fee - Resident	\$100.00	\$100.00
Recreational Mooring & Pier Use Fee - Non Resident	\$150.00	\$250.00
Commercial Mooring & Pier Use Fee - Resident	\$150.00	\$150.00
Commercial Mooring & Pier Use Fee - Non Resident	\$200.00	\$400.00

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-112. The second reading on the proposed amendments to Chapter 601- the Town of Scarborough Traffic Ordinance, Section 25.A.Parking Restrictions will be held on Wednesday, December 20, 2017. [*Ordinance Committee*]

Ordinance Committee

Ought to Pass

Sponsor

Recommendation

11/15/17 *Vote: 4 Yeas*
 2 Nays [Councilors Hayes and Foley]

12/06/17 *Public Hearing*

12/20/17 *Vote:*

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

**CHAPTER 601
TOWN OF SCARBOROUGH
TRAFFIC ORDINANCE**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 601, the Traffic Ordinance of the Town of Scarborough, Maine is amended by adding the underlined text (18.), as shown below:

Section 25. Parking Restrictions.

A. PARKING RESTRICTIONS

I. NO PARKING AT ANY TIME.

No person shall park a vehicle in any of the following places except when necessary to avoid conflict with other traffic or in compliance with direction of a police officer or authorized person or traffic control device. [Amended 07/16/14]

(18) No parking on North side of Gorham Road from 183 Gorham Road to the intersection of Gorham Road and Spring Street at number 209. [Temporary restriction – expires April 1, 2018.]

[As amended on November 15, 2017]

Town of Scarborough, Maine

Planning and Code Enforcement

MEMORANDUM

TO: Scarborough Town Council

FROM: Angela Blanchette, PE, Town Engineer
(on behalf of the Transportation Committee)

DATE: December 6, 2017

RE: Gorham Road Proposed Parking Restrictions
Transportation Committee Meeting Summary

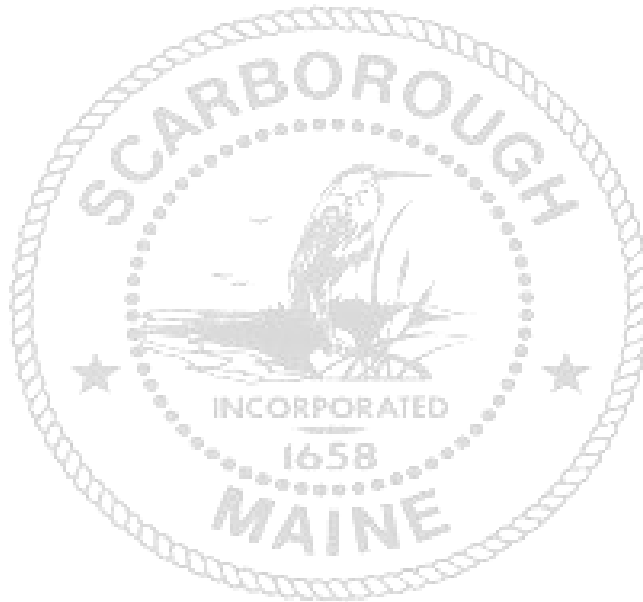
On Tuesday, November 28, 2017 the Transportation Committee (Committee) reviewed the proposal to amend Section 25 of the Scarborough Ordinance, Parking Restrictions. The Committee reviewed the proposed Council amendment, which would restrict parking on the east side of Gorham Road from 183 Gorham Road to the intersection of Gorham Road and Spring Street at number 209. After a lengthy discussion and background provided by Town staff: Jay Chace, Planning Director, Sargent John O'Malley, Scarborough Police Department, and Angela Blanchette, Town Engineer, the Committee voted (4-2) to endorse the Council's Ordinance amendment with the following recommendations:

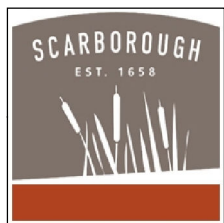
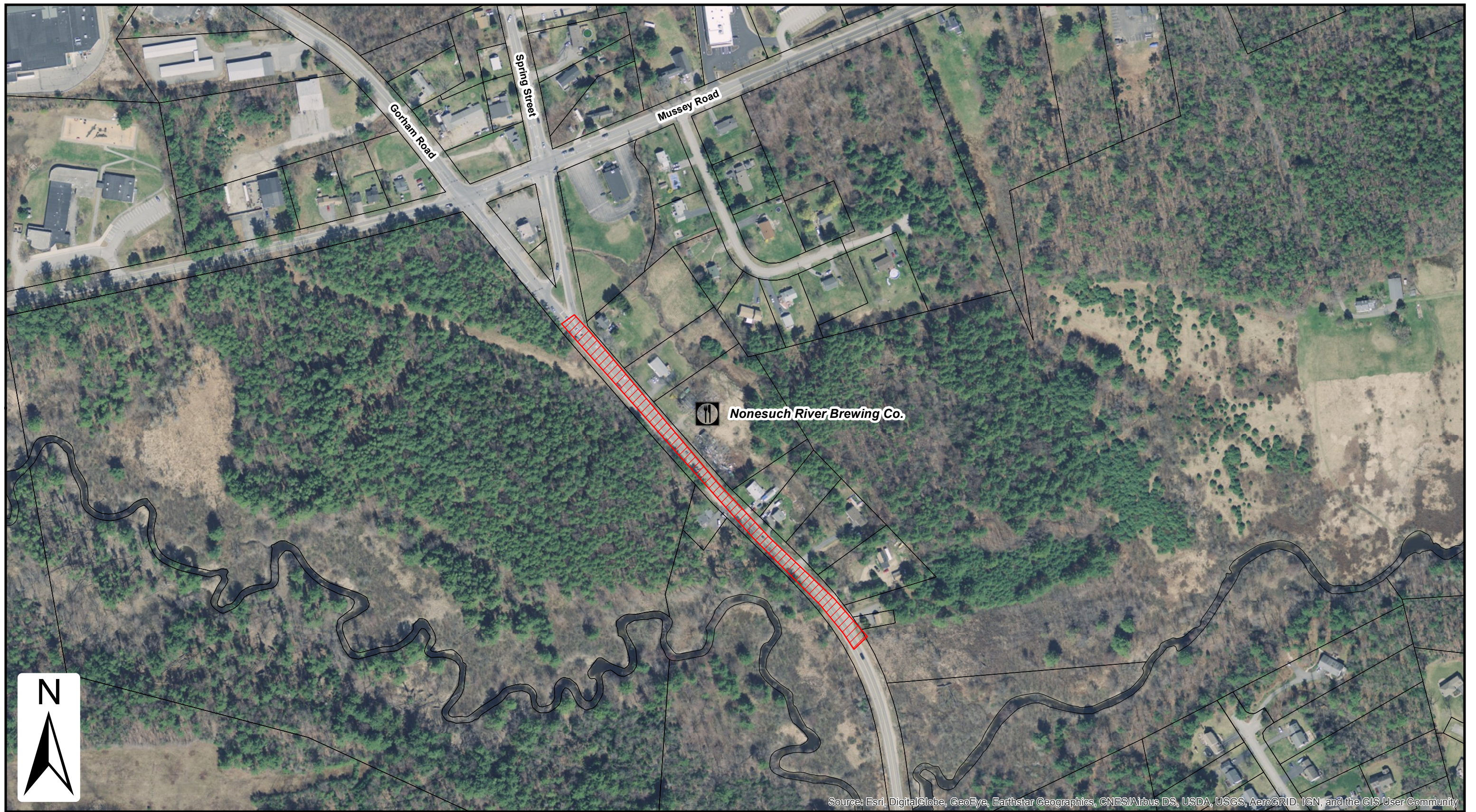
1. The installation of street lighting along this section of Gorham Road. Committee recommends Staff review appropriate location of additional light fixture(s) to be added to existing utility pole(s)
2. Signage alerting drivers to "Watch for Pedestrians" be installed in the area

The Committee also discussed the safety concerns with installing a formal crosswalk or designated location for pedestrians, as this would provide a false sense of security for pedestrians that would not likely follow along the busy travelway from their parked car to a crosswalk before crossing Gorham Road. Further it would cause drivers to be looking for pedestrians only in the crosswalk and not for likely "J-walkers" in the roadway.

In addition, the Committee discussed the speed study performed by the Scarborough Police Department where the 85th percentile was shown as 41 mph along this section of Gorham Road. Based on this recently collected data, it is most likely that a request to the Maine Department of Transportation (MDOT) to lower the speed limit on this State collector road would have the opposite desired effect and result in an increase to the speed limit from 35 mph (currently posted) to 40 mph due to the rigid Federal Highway standard, which MDOT uses to evaluate speed limit change requests. The Committee was in agreement that the best course of action in this regard is to include traffic calming measures in the Gorham Road Complete Streets project. The Committee

will be part of the review process for all phases of this Capital Improvement Project and has the opportunity to shape this area of town into a walkable, bikeable, mixed-use neighborhood, which the Town Village Center (TVC) zones are intended to create. Ultimately, the Committee viewed the proposed parking restriction as a temporary measure until Gorham Road can be fully improved, at which time on-street parking design, traffic calming measures, sidewalks, bike lanes, and other amenities can be explored in conjunction with a holistic look at the parking along the entire corridor so that the Committee can reassess the parking restrictions and determine where there is adequate room for parking and it is deemed safe.





Proposed Parking Restriction Area

Gorham Road
November 2017



AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-114. The second reading on the request for discontinuance of a portion of Beech Ridge Road will be held on Wednesday, December 20, 2017. *[Town Engineer]*

Town Engineer

Sponsor

11/15/17 *Vote: 6 Yeas.*
12/06/17 *Public Hearing*

First Reading/Vote/Public Hearing

Ought to Pass

Recommendation

12/20/17 *Vote:*

Second Reading/Final Approval/Vote

Town of Scarborough, Maine

Planning and Code Enforcement

MEMORANDUM

TO: Scarborough Town Council

FROM: Angela Blanchette, PE, Town Engineer

DATE: November 15, 2017

RE: Discontinuance of a portion of a public right-of-way
43 Beech Ridge Road

Pursuant to Title 23 MRSA 3026, Pamela Dillon has submitted a petition for discontinuance of a portion of the Beech Ridge Road right-of-way.

The portion of the Beech Ridge Road right-of-way in the area abutting the property of Pamela J. Dillon, **Tax Map R41, Lot 16** was originally laid out over 200 years ago. Subsequently, the right-of-way has been expanded multiple times (1940's and in 2000) to accommodate the realignment of the roadway associated with the Maine Turnpike overpass. As such, the right-of-way in the area of the subject property is in excess of 150 feet in overall width.

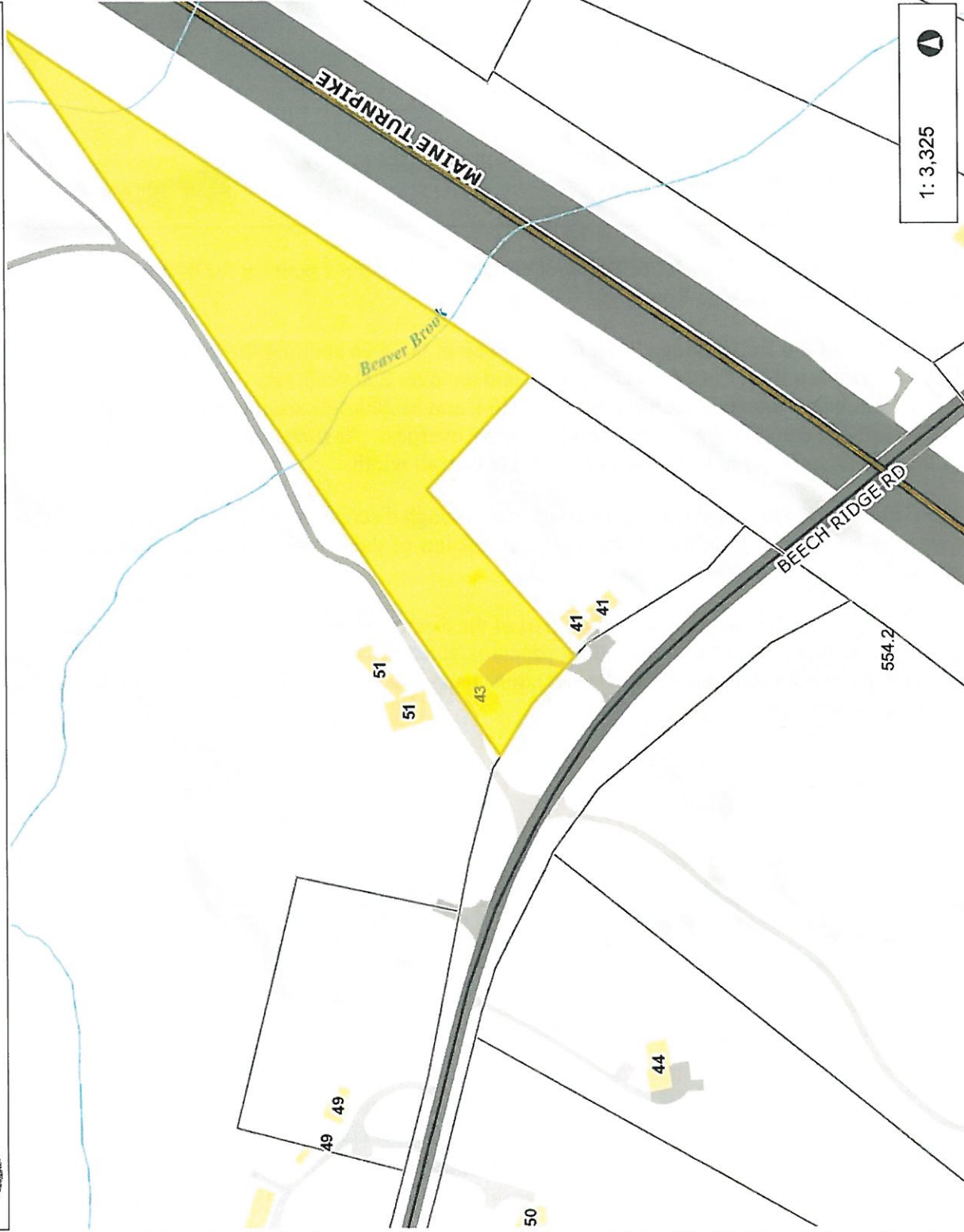
The Dillons have requested that the Town of Scarborough discontinue **5,225 sf** of the Beech Ridge right-of-way in order to allow for the future expansion of their front porch, which would not be allowed within the current front yard setback.

The Public Works Department has been a part of the discussion and has no concerns with vacating this small section of land to the abutting property, since the remaining right-of-way will remain 105 feet in overall width and due to the elevation change over this portion of land, it has little value to the operation of the roadway.

259 US ROUTE ONE, PO BOX 360
SCARBOROUGH, MAINE 04070-0360
PHONE: 207-730-4040 FAX: 207-730-4046
WWW.SCARBOROUGHMAINE.ORG



43 Beech Ridge Road



1: 3,325

401 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere

Town of Scarborough, Maine

Disclaimer

This map is a user generated static output from the Town of Scarborough Internet mapping site (WebGIS) and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



Legend

- Parcels with Owner Info
- Parcels with Owner Informatic
- Roads
 - MTA
 - MTA
 - MDOT
 - PUBLIC
 - PENDING PUBLIC; PRIVATE; PF
 - CEMETERY; NOT YET BUILT; P.
- Railroad
- Building Footprints
- High Resolution 30cm Imagery
- Building Footprints
- Driveways
 - Paved Driveway
 - Unpaved Driveway
- Road Surfaces
 - Paved Road
 - Unpaved Road
- Parking Lots
 - Paved Parking
 - Unpaved Parking
- Coastline
- Treeline
- Town_Townline_Polygons_α
- Surrounding Towns

Notes

11/9/2017

PETITION FOR DISCONTINUANCE

To the Municipal Officers of the Town/City of Scarborough : The undersigned respectfully represent(s) that a section of a Town Way, being the former location of Beech Ridge Road is no longer of public use and necessity and it is requested that the same be discontinued as provided in Title 23 M.R.S. Section 3026, et. seq.

Dated this 30 day of MAY, 2017.

Patricia A. Francoeur
Witness

Pamela J. Dillon
PAMELA J. DILLON

Witness

Description of the section to be discontinued:

That section of Beech Ridge Road as shown on "Proposed Discontinuance of a Portion of Beech Ridge Road at Beech Ridge Road, Scarborough, Maine made for record owner Pamela J. Dillon" dated March 28, 2017 by Owen Haskell, Inc. and being more fully described as follows:

A certain lot or parcel of land situated on the northeasterly side of Beech Ridge Road in the Town of Scarborough, County of Cumberland and State of Maine described as follows:

Beginning at a point on the northerly sideline of Beech Ridge Road as described in Vol 1 Page 215, at the common line of land between Richard S. Waterhouse as described in Deed Book 3189 Page 818 and Pamela J. Dillon as described in Deed Book 21540 page 183;

Thence, S 57°04'15" E along said northerly sideline of Beech Ridge Road 105.01 feet;

Thence, S 45°22'21" E along said northerly sideline of Beech Ridge Road 53.18 feet to land of Stephanie Williams as described in Deed Book 13113 Page 189;

Thence S 37°53'39" W along land of said Williams 8.31 feet to a capped iron rod to be set and the northerly sideline of said Beech Ridge Road as shown on "Maine Turnpike Authority, Maine Turnpike Section 1-Kittery to Portland

Property Plan, Town of Scarborough, Cumberland County" Supplemental Sheet 6, October 1946 by Howard, Needles, Tammen & Bergendoff;

Thence, the following courses and distances through the current Beech Ridge Road Right of Way:

S 37°53'39" W 24.92 feet to a mag. nail to be set;
N 45°22'21" W 53.70 feet a capped iron rod to be set;
N 57°04'15" W 101.13 feet to a capped iron rod to be set;
N 23°42'12" E 25.07 feet to an iron pipe at the northerly line of said Beech Ridge Road as shown on said Supplemental Sheet 6 and land of said Waterhouse;

Thence N 56°02'40" E along land of said Waterhouse 8.97 feet to the northerly sideline of Beech Ridge Road as described in Volume 1 Page 215 and the point of beginning.

Containing approximately 5,225 square feet.

Excepting and reserving to the State of Maine the perpetual right to maintain any and all highway slopes and drainage structures that may be located upon or within the above-described section of road.

[It is requested that the Town/City of Scarborough not retain a public easement over the above-described discontinued area, as provided in Title 23 M.R.S. 3026.*]

***Note:** If the above paragraph is not used, the public's right to travel over the road is retained.

Note to Municipal Officers: Upon completion of the discontinuance procedure please forward a copy of the town clerk's Certificate of Discontinuance to the Maine Department of Transportation, Property Office, 16 State House Station, Augusta, ME 04333-0016.

43 Beech Ridge Road

Portion of Beech Ridge Road To Be Discontinued

A certain lot or parcel of land situated on the northeasterly side of Beech Ridge Road in the Town of Scarborough, County of Cumberland and State of Maine described as follows:

Beginning at a point on the northerly sideline of Beech Ridge Road as described in Vol 1 Page 215, at the common line of land between Richard S. Waterhouse as described in Deed Book 3189 Page 818 and Pamela J. Dillon as described in Deed Book 21540 page 183;

Thence, S 57°04'15" E along said northerly sideline of Beech Ridge Road 105.01 feet;

Thence, S 45°22'21" E along said northerly sideline of Beech Ridge Road 53.18 feet to land of Stephanie Williams as described in Deed Book 13113 Page 189;

Thence S 37°53'39" W along land of said Williams 8.31 feet to a capped iron rod to be set and the northerly sideline of said Beech Ridge Road as shown on "Maine Turnpike Authority, Maine Turnpike Section 1-Kittery to Portland Property Plan, Town of Scarboro, Cumberland County" Supplemental Sheet 6, October 1946 by Howard, Needles, Tammen & Bergendoff;

Thence, the following courses and distances through the current Beech Ridge Road Right of Way:

S 37°53'39" W 24.92 feet to a mag. nail to be set;

N 45°22'21" W 53.70 feet a capped iron rod to be set;

N 57°04'15" W 101.13 feet to a capped iron rod to be set;

N 23°42'12" E 25.07 feet to an iron pipe at the northerly line of said Beech Ridge Road as shown on said Supplemental Sheet 6 and land of said Waterhouse;

Thence N 56°02'40" E along land of said Waterhouse 8.97 feet to the northerly sideline of Beech Ridge Road as described in Volume 1 Page 215 and the point of beginning containing 5,225 SF more or less.

The above described parcel of land is shown on "Proposed Discontinuance of a Portion of Beech Ridge Road at Beech Ridge Road, Scarborough, Maine made for record owner Pamela J. Dillon" dated March 28, 2017 by Owen Haskell, Inc.

EXHIBIT C

WAIVER AND INEMNITY

RECITALS

WHEREAS, Pamela Dillon has requested the Town of Scarborough to discontinue a portion of Beech Ridge Road, so called, pursuant to 23 M.R.S.A. § 3026;

WHEREAS, the Town of Scarborough as a condition precedent to any discontinuance of the town way requires a waiver of any claims which Pamela Dillon may have against the Town of Scarborough for such discontinuance and, further, requires indemnity against any claim of abutters or other third persons arising out of or resulting from the discontinuance of said town way;

1. Pamela Dillon hereby waives any claims for damages which she may have against the Town of Scarborough arising out of or resulting from the discontinuance of such town way by the Town pursuant to 23 M.R.S.A. § 3026;
2. Pamela Dillon hereby agrees to indemnify and hold harmless the Town of Scarborough against any claims arising from abutting property owners or any other third persons against the Town of Scarborough for damages arising out of or resulting from the discontinuance of such town way by the Town of Scarborough pursuant to said statute.

Dated: 11/13/17

Pamela J. Dillon

STATE OF MAINE
Cumberland, ss.

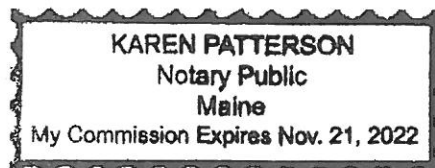
Then personally appeared the above-named [name of abutter] and acknowledged the foregoing instrument to be his/her free act and deed.

Before me,

Karen Patterson

Notary

Public





Paul R. LePage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

David Bernhardt
COMMISSIONER

PROPERTY OFFICE Tel: (207)624-3034 Fax: (207)624-3545
TTY Users Dial Maine Relay 711
April 6, 2017

Thomas Hall, Town Manager
Town of Scarborough
P.O. Box 360
Scarborough, ME 04070

Dear Mr. Hall:

This letter is to advise the Town of Scarborough that the Maine Department of Transportation no longer has any property interest in, or jurisdiction over, that portion of Beech Ridge Road adjacent to property owned by Stephanie Williams. Ms. Williams' property is identified on Tax Map R041, Lot 17 and described in a deed recorded in Book 13113, Page 189 in the Cumberland County Registry of Deeds.

The portion of Beech Ridge Road that abuts the subject property was laid out by the Cumberland County Commissioners well over 200 years ago. The road has been moved southerly away from its original location twice since then, once in the late 1940's to accommodate an overpass over the newly built Maine Turnpike, and again around 2000 when the Turnpike overpass was moved. When the road was relocated, the State's jurisdiction moved southerly as well, and by operation of statute, responsibility for old section of road reverted back to the County. Further changes to the statutes moved jurisdiction over the old road to the Town. Accordingly, MaineDOT makes no claim to any residual interest in the section of the old county road in front of Ms. Williams' property.

I understand that Stephanie Williams will submit a Petition for Discontinuance for the Town's consideration in the near future. If you should have any questions, please contact me at the number above.

Sincerely,

Amy E. Hughes
Legal Administrator

cc: Stephanie Williams ✓
John W. Swan, PLS, Owen Haskell, Inc.
Kyle Hall, P.E., MaineDOT Southern Region Engineer
Christopher Knight, PLS MaineDOT Southern Region



PRINTED ON RECYCLED PAPER

**AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 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, January 3, 2018 and Wednesday, January 17, 2018.
[Town Manager]

Town Manager

Sponsor

12/06/17 *Vote:*
01/03/18 *Public Hearing*
01/17/18 *Public Hearing*

First Reading/Vote/Public Hearing

Ought to Pass

Recommendation

02/07/18 *Vote:*

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, October 18, 2017, and December 6, 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.

At least one public hearing regarding this Order shall be scheduled. A final vote of the Town Council shall be scheduled no fewer than ten (10) business days following the conclusion of the 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: December 6, 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

The undersigned municipality hereby accepts this Deed rights set forth in Section II of Exhibit A

TOWN OF SCARBOROUGH

Witness

By: Thomas Hall
Its Town Manager, 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

STATE OF MAINE
Cumberland, ss.

_____, 2017

Then personally appeared before me the above named Thomas Hall, Manager of the Town of Scarborough and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said Town

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, as amended, to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan"), a reduced copy of which is attached hereto as Exhibit B 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 PATH 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 **from dawn to dusk**; 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. **The use of drugs and alcoholic beverages, camping and fires on the Public Path Easement shall be prohibited.** 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 and the Grantor may place no more than two (2) signs upon said fence, measuring no more than two (2) feet by two (2) feet in size, asking users to respect the privacy of the Grantor's members and that the use of alcoholic beverages, drugs, camping and fires are prohibited.

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 November 29, 2017 (hereafter the "Planting Plan"), a reduced copy of which is attached to this instrument as Exhibit C 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 and signage as set forth above, 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 that the Grantor may place no more than two (2) signs upon the post-and-rail style fence allowed in Paragraph IV(A)(2) above, measuring no more than two (2) feet by two feet (2) in size, asking users to respect the privacy of the Grantor's members and that the use of alcoholic beverages, drugs, camping and fires are prohibited and such alterations 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 except signage as provided above, 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 within the area forming part of the Southerly Public Conservation Easement area and the Southerly Public Path Easement 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 within the area forming part of the Southerly Public Conservation Easement area and the Southerly Public Path Easement 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.

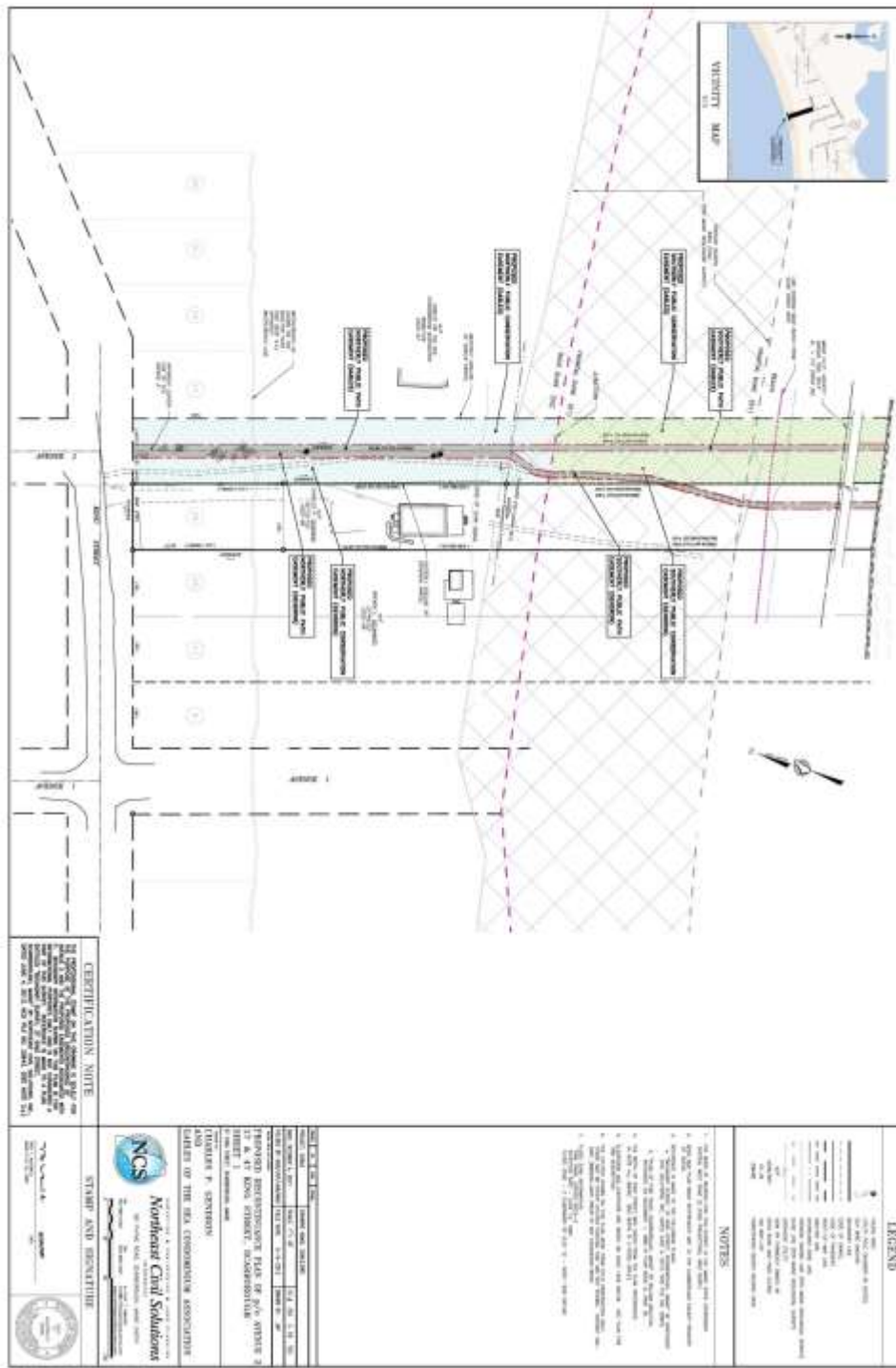
VI. EFFECT OF THIS INSTRUMENT ON PRIVATE RIGHTS AND BEACH OWNERSHIP

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.

EXHIBIT B



PROPOSED 10' EASEMENT

RELOCATED PATH (NATURAL SAND SURFACE)

STRUCTURE FREE AREA

EXISTING DRIVEWAY

RELOCATED PATH ENTRANCE

KING STREET

APPROXIMATE LOCATION OF EXISTING MEANDERING SAND PATH

3 TRANSPLANTED TREES FROM EXISTING SITE OF THE PATH EASEMENT

3 SMALL PINE

1 DWARF PEACH

1 DWARF APPLE

Notes:

- 3 TRANSPLANTED TREES FROM EXISTING SITE OF THE PATH EASEMENT
- 3 SMALL PINE
- 1 DWARF PEACH
- 1 DWARF APPLE

Legend:

- RELOCATED PATH (NATURAL SAND SURFACE)
- STRUCTURE FREE AREA
- EXISTING DRIVEWAY
- RELOCATED PATH ENTRANCE
- KING STREET
- APPROXIMATE LOCATION OF EXISTING MEANDERING SAND PATH
- 3 TRANSPLANTED TREES FROM EXISTING SITE OF THE PATH EASEMENT
- 3 SMALL PINE
- 1 DWARF PEACH
- 1 DWARF APPLE

Scale: 1" = 20'

North Arrow: [Symbol]

Notes:

- 3 TRANSPLANTED TREES FROM EXISTING SITE OF THE PATH EASEMENT
- 3 SMALL PINE
- 1 DWARF PEACH
- 1 DWARF APPLE

Legend:

- RELOCATED PATH (NATURAL SAND SURFACE)
- STRUCTURE FREE AREA
- EXISTING DRIVEWAY
- RELOCATED PATH ENTRANCE
- KING STREET
- APPROXIMATE LOCATION OF EXISTING MEANDERING SAND PATH
- 3 TRANSPLANTED TREES FROM EXISTING SITE OF THE PATH EASEMENT
- 3 SMALL PINE
- 1 DWARF PEACH
- 1 DWARF APPLE

Scale: 1" = 20'

North Arrow: [Symbol]

**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

TOWN OF SCARBOROUGH

Witness

By: Thomas Hall
Its Town Manager, hereunto duly authorized

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

STATE OF MAINE

Cumberland, ss.

_____, 2017

Then personally appeared before me the above named Thomas Hall, Manager of the Town of Scarborough and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said Town

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, as amended, to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan"), a reduced copy of which is attached hereto as Exhibit B 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 from dawn to dusk; 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. The use of drugs and alcoholic beverages, camping, and fires on the Public Path Easement shall be prohibited. 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 November 29, 2017 (hereafter the "Planting Plan"), a reduced copy of which is attached to this instrument as Exhibit C 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.

15

EXHIBIT C



AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-113. Move approval of the second reading on the Bond Order for the 2018 Municipal and School Capital Improvements and the refunding of certain general obligation bonds of the town. *[Town Manager]*

Town Manager

Sponsor

11/15/17 Vote: 6 Yeas.

First Reading/Vote/Public Hearing

Ought to Pass

Recommendation

12/06/17 Roll Call Vote:

Second Reading/Final Approval/Vote

Town of Scarborough, Maine

259 US ROUTE ONE, P O BOX 360
SCARBOROUGH, MAINE • 04070-0360

BOND ORDER FOR 2018 MUNICIPAL AND SCHOOL CAPITAL IMPROVEMENTS, A NEW PUBLIC SAFETY BUILDING AND THE REFUNDING OF CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE TOWN

BE IT ORDERED, That under and pursuant to the provisions of Title 30-A, Sections 5721-5729 and 5772 of the Maine Revised Statutes, as amended, and the Charter of the Town of Scarborough, Maine, the following Municipal and School Capital Improvement Projects are hereby approved for funding:

2017-2018 Municipal - Equipment & Projects

F.D. Major Apparatus Refurbishing	50,000
F.D. Rescue Power Stretcher Replacement Program	42,500
F.D. Replace staff vehicles (replacement schedule)	40,000
F.D. New Safety & Personal Protective Equipment	86,250
C.S. Infield Drag Rake	20,000
C.S. Mini Bus (purchased this instead of dump truck)	53,850
Cruiser Thermal Image Camera	18,985
Plow Truck # 4001	205,000
Pickup Truck/w lift gate # 4060	37,000
Heavy Truck Lifts	37,000
HVAC Upgrades Phase 2	82,000
C.S. Cable Room Upgrade	65,000
259 US Rte 1 - Hot Water Pump Upgrade	30,000
Comprehensive Plan Update Process	80,000
Mid-Level Road Rehabilitation	300,000
Subsurface Drainage Assessment Project	118,750
LED Street Light Retrofit project	701,100
Subtotal	<u><u>1,967,435</u></u>

2017-2018 Municipal - School

School Bus Replacement Schedule	316,050
GMC Box Truck #315116	34,350
Kitchen Equip & Furnishings Replace & Renew	40,000
HS Athletics Equipment	25,000
Facilities Support Equipment	25,000
MS Tech Refresh	199,200
IT Tech Refresh - moved back to CIP	100,000
Long-range Planning	40,000
Building envelope Maintenance	70,000
HVAC Repairs MS & K2	100,000
Roof Restoration	92,183
Subtotal	<u><u>1,041,783</u></u>

2016-2017 Municipal - Projects

PL Eastern Trail Improvements (Local Match)	110,000
PW Fuel Station Replacement	687,482
Subtotal	797,482

2016-2017 Municipal - School

Furnishings Replace & Renew	50,000
Energy Efficiency Upgrades	18,300
HVAC Repairs MS & K2	50,000
Subtotal	118,300

Totals**3,925,000**

BE IT FURTHER ORDERED, That a sum, not to exceed \$3,925,000, is hereby appropriated to provide for the costs of said Municipal and School Capital Improvement Projects and expenses associated with said projects; and,

BE IT FURTHER ORDERED, That to fund said \$3,925,000 appropriation, the Treasurer and the Chairman of the Town Council are hereby authorized to issue, at one time or from time to time, general obligation securities of the Town of Scarborough, Maine, including temporary notes in anticipation of the sale thereof, in an aggregate principal amount not to exceed \$3,925,000 and the discretion to fix the date(s), maturity(ies), denomination(s), interest rate(s), place(s) of payment, call(s) for redemption, refunding, form(s), and other details of said securities, including execution and delivery of said securities against payment therefore, and to provide for the sale thereof, is hereby delegated to the Treasurer and the Chairman of the Town Council; and,

BE IT FURTHER ORDERED, That in furtherance of the voter-approved referendum question authorizing issuance of up to \$19,500,000 in general obligation bonds of the Town of Scarborough to fund costs for a new public safety building, (a) a public safety building project including expenses associated with said public safety building project is hereby approved, (b) a sum not to exceed \$19,500,000 is hereby appropriated to provide for the costs of said public safety building project, and (c) to fund such appropriation, the Treasurer and the Chairman of the Town Council are hereby authorized to issue, at one time or from time to time, general obligation securities of the Town of Scarborough, Maine, including temporary notes in anticipation of the sale thereof, in an aggregate principal amount not to exceed **\$15,000,000** and the discretion to fix the date(s), maturity(ies), denomination(s), interest rate(s), place(s) of payment, call(s) for redemption, refunding, form(s), and other details of said securities, including execution and delivery of said securities against payment therefore, and to provide for the sale thereof, is hereby delegated to the Treasurer and the Chairman of the Town Council; and,

BE IT FURTHER ORDERED, That the Treasurer and the Chairman of the Town Council are hereby authorized to issue, at one time or from time to time, general obligation securities of the Town of Scarborough, Maine, in an aggregate principal amount not to exceed \$13,250,000 to refund, on an advance basis, all or a portion of the remaining outstanding 2010, 2012 and 2013 General Obligation Bonds of the Town of Scarborough, Maine, and the discretion to fix the date(s), maturity(ies), denomination(s), interest rate(s), place(s) of payment, call(s) for redemption, form(s), and other details of said securities, including execution and delivery of said securities against payment therefore, and to provide for the sale thereof, is hereby delegated to the Treasurer and the Chairman of the Town Council.

Town of Scarborough General Obligation Refunding and New Money Bonds As of November 13, 2017							
New Money	2017 CIP	2017 Pub Safety	Refunding	2010 GO Ref	2012 GO Ref	2013 GO Ref	Total Refunding Results
Par Amount	\$ 3,605,000	\$ 14,085,000	Par Amount	\$ 1,845,000	\$ 8,390,000	\$ 2,665,000	\$ 12,900,000
Premium	\$ 354,335	\$ 1,057,135	Arb Yield	2.73%	2.73%	2.73%	2.73%
Last Maturity	11/1/2037	11/1/2047	Escrow Yield	2.00%	2.00%	2.00%	2.00%
Arb Yield	2.73%	2.73%	Negative Arbitrage	52,811	288,482	96,328	437,621
TIC	2.28%	3.15%	Call Date (Refunded Bonds)	11/1/2020	11/1/2022	11/1/2023	
Avg. Coupon	4.15%	3.71%	WAM Refunding Bonds	7.10	11.41	8.40	10.15
WAM	5.69	15.33	WAM Refunded Bonds	6.80	11.14	8.21	9.91
Total Debt Service	4,432,950	22,301,759	Refunded Bonds	1,975,000	8,560,000	2,770,000	13,305,000
Max Ann Debt Service	571,800	1,025,338	PV Savings	96,891	406,456	103,286	606,632
Avg Ann Debt Service	142,998	719,412	PV Savings %	4.91%	4.75%	3.73%	4.56%
Annual Debt Service			Cashflow Savings	\$ 101,488	\$ 421,375	\$ 106,275	\$ 629,138
FY 2018	34,600	135,672	FY 2018	18,238	92,850	30,375	141,463
2019	571,800	542,688	2019	49,038	281,050	36,600	366,688
2020	558,600	1,025,338	2020	2,900	5,050	875	8,825
2021	540,475	1,010,638	2021	2,538	4,375	5,550	12,463
2022	520,350	993,488	2022	2,500	3,775	5,200	11,475
2023	483,550	973,888	2023	2,450	3,325	4,800	10,575
2024	255,475	946,963	2024	3,400	1,900	4,300	9,600
2025	235,975	922,713	2025	825	4,600	2,375	7,800
2026	221,850	898,463	2026	3,375	2,650	5,575	11,600
2027	207,975	874,213	2027	5,025	1,200	5,325	11,550
2028	195,200	852,388	2028	400	1,000	200	1,600
2029	144,300	832,988	2029	400	1,800	5,100	7,300
2030	139,300	813,588	2030	5,300	2,600	-	7,900
2031	85,300	794,188	2031	5,100	3,400	-	8,500
2032	82,300	774,788	2032	-	4,200	-	4,200
2033	79,300	755,388	2033	-	100	-	100
2034	17,500	735,988	2034	-	2,575	-	2,575
2035	16,900	716,588	2035	-	1,425	-	1,425
2036	16,300	697,188	2036	-	75	-	75
2037	15,700	677,788	2037	-	3,425	-	3,425
2038	10,200	658,388	2038	-	-	-	-
2039	-	640,503	2039	-	-	-	-
2040	-	624,134	2040	-	-	-	-
2041	-	607,766	2041	-	-	-	-
2042	-	591,397	2042	-	-	-	-
2043	-	575,028	2043	-	-	-	-
2044	-	558,659	2044	-	-	-	-
2045	-	542,291	2045	-	-	-	-
2046	-	525,922	2046	-	-	-	-
2047	-	509,553	2047	-	-	-	-
2048	-	493,184	2048	-	-	-	-

SOURCES AND USES OF FUNDS

Town of Scarborough, Maine
General Obligation Refunding Bonds, 2018
Market as of November 13, 2017
Preliminary and Subject to Change

Sources:	2017 CIP	Public Safety	Refunding of Series 2010	Refunding of Series 2012	Refunding of Series 2013	Total
Bond Proceeds:						
Par Amount	3,605,000.00	14,085,000.00	1,845,000.00	8,390,000.00	2,665,000.00	30,590,000.00
Net Premium/OID	354,335.25	1,057,135.10	284,601.60	1,221,882.65	518,353.15	3,436,307.75
	3,959,335.25	15,142,135.10	2,129,601.60	9,611,882.65	3,183,353.15	34,026,307.75
Uses:	2017 CIP	Public Safety	Refunding of Series 2010	Refunding of Series 2012	Refunding of Series 2013	Total
Project Fund Deposits:						
Project Fund	3,925,000.00	15,000,000.00	-	-	-	18,925,000.00
Refunding Escrow Deposits:						
Cash Deposit	-	-	0.11	0.18	0.68	0.97
SLGS Purchases	-	-	2,109,402.00	9,526,367.00	3,152,576.00	14,788,345.00
	-	-	2,109,402.11	9,526,367.18	3,152,576.68	14,788,345.97
Delivery Date Expenses:						
Cost of Issuance	15,732.83	61,469.35	8,051.90	36,615.40	11,630.52	133,500.00
Underwriter's Discount	17,763.84	77,825.46	9,582.23	47,178.74	15,297.25	167,647.52
	33,496.67	139,294.81	17,634.13	83,794.14	26,927.77	301,147.52
Other Uses of Funds:						
Additional Proceeds	838.58	2,840.29	2,565.36	1,721.33	3,848.70	11,814.26
	3,959,335.25	15,142,135.10	2,129,601.60	9,611,882.65	3,183,353.15	34,026,307.75

SUMMARY OF REFUNDING RESULTS

Town of Scarborough, Maine
General Obligation Refunding Bonds, 2018
Market as of November 13, 2017
Preliminary and Subject to Change

	Refunding of Series 2010	Refunding of Series 2012	Refunding of Series 2013	Total
Dated Date	02/01/2018	02/01/2018	02/01/2018	02/01/2018
Delivery Date	02/01/2018	02/01/2018	02/01/2018	02/01/2018
Arbitrage Yield	2.734064%	2.734064%	2.734064%	2.734064%
Escrow Yield	2.000842%	2.000842%	2.000842%	2.000842%
Value of Negative Arbitrage	52,811.01	288,482.20	96,328.05	437,621.26
Bond Par Amount	1,845,000.00	8,390,000.00	2,665,000.00	12,900,000.00
True Interest Cost	2.184530%	2.808230%	2.237512%	2.641664%
Net Interest Cost	2.380014%	3.032663%	2.467469%	2.872910%
All-In TIC	2.246619%	2.850101%	2.289451%	2.687294%
Average Coupon	4.488452%	4.241299%	4.709376%	4.344762%
Average Life	7.070	11.584	8.420	10.285
Weighted Average Maturity	7.101	11.411	8.398	10.153
Par amount of refunded bonds	1,975,000.00	8,560,000.00	2,770,000.00	13,305,000.00
Average coupon of refunded bonds	3.977889%	4.495393%	4.500603%	4.443150%
Average life of refunded bonds	6.841	11.126	8.237	9.888
Remaining weighted average maturity of refunded bonds	6.801	11.141	8.212	9.913
PV of prior debt	2,144,437.43	10,034,753.76	3,158,378.05	15,337,569.24
Net PV Savings	96,891.02	406,455.60	103,285.81	606,632.43
Percentage savings of refunded bonds	4.905874%	4.748313%	3.728730%	4.559432%
Percentage savings of refunding bonds	5.251546%	4.844524%	3.875640%	4.702577%

BOND SUMMARY STATISTICS

Town of Scarborough, Maine
General Obligation Refunding Bonds, 2018
Market as of November 13, 2017
Preliminary and Subject to Change

Dated Date	02/01/2018
Delivery Date	02/01/2018
Last Maturity	11/01/2047
Arbitrage Yield	2.734064%
True Interest Cost (TIC)	2.900391%
Net Interest Cost (NIC)	3.083933%
All-In TIC	2.942597%
Average Coupon	3.957410%
Average Life (years)	12.233
Weighted Average Maturity (years)	11.937
Duration of Issue (years)	9.506
Par Amount	30,590,000.00
Bond Proceeds	34,026,307.75
Total Interest	14,809,121.93
Net Interest	11,540,461.70
Total Debt Service	45,399,121.93
Maximum Annual Debt Service	3,377,387.50
Average Annual Debt Service	1,526,020.91
Underwriter's Fees (per \$1000)	
Average Takedown	3.488068
Other Fee	1.992400
Total Underwriter's Discount	5.480468
Bid Price	110.685388

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Serial Bonds	25,740,000.00	113.463	4.241%	9.780	20,065.65
Term Bond	1,940,000.00	100.041	3.375%	22.250	1,746.00
Term Bond 2	2,910,000.00	98.975	3.375%	27.250	5,354.40
	30,590,000.00			12.233	27,166.05

	TIC	All-In TIC	Arbitrage Yield
Par Value	30,590,000.00	30,590,000.00	30,590,000.00
+ Accrued Interest	-	-	-
+ Premium (Discount)	3,436,307.75	3,436,307.75	3,436,307.75
- Underwriter's Discount	-167,647.52	-167,647.52	
- Cost of Issuance Expense		-133,500.00	
- Other Amounts	-	-	-
Target Value	33,858,660.23	33,725,160.23	34,026,307.75
Target Date	02/01/2018	02/01/2018	02/01/2018
Yield	2.900391%	2.942597%	2.734064%

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 6, 2017
REGULAR MEETING – 7:00 P.M.

Order No. 17-119. Act on the request to extend the duties of the Ad-Hoc Public Safety Complex Building Committee to after the completion of the new facility. *[Town Manager]*

Town Manager

Ought to Pass

Sponsor

Recommendation

12/06/17 *Vote:*

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

Ad-Hoc Public Safety Complex Building Committee

[Adopted November 2, 2016, renewed July 19, 2017 and December 6, 2017]

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

WHEREAS, as the voters approved funding for the new Public Safety Complex on November 7, 2017 and efforts are underway to advance the project: and,

WHEREAS, in an effort to advance this important project , the Town Council relied on the resources of the community and established the Ad-Hoc Public Safety Complex Building Committee on November 2, 2016 and renewed its charge on July 19, 2017; and,

WHEREAS, the project has now moved to the detailed design and construction phase there is a desire to again renew the Committee with a modified charge.

NOW, THEREFORE, BE IT RESOLVED, by the Scarborough Town Council in Town Council assembled, that the Ad Hoc Public Safety Complex Building Committee be renewed to exist through completion of the project, the membership, terms, offices and duties shall be as follows:

1. **Purpose.** The purpose of the Building Committee is to work with staff, consultants and contractors in an effort to advise the design and construction for a new combined Police and Fire Public Safety Building. More specifically, the following is a general overview of the typical involvement of the Committee:
 - **Advisory Role-** The Committee shall serve as advisory to the staff and design team and provide direction on decisions affecting scope and cost.
 - **Feedback-** Provide feedback on design options, including exterior and interior materials and color choices.
 - **Energy Efficiency-Life-Cycle Costs Considered** – As specific physical plant systems are considered for the final design, the Committee is encouraged to evaluate the expected life-cycle costs of proposed systems and consider energy efficiency with an evaluation of return on investment
 - **Evaluate Change Orders-**During the construction phase the Committee may consider requested change orders affecting cost and scope of work and make recommendations to the Town Manager accordingly.
 - **Public Involvement** - The Committee shall incorporate public input into the design and construction process, involving periodic updates on the progress using the Town's communication tools.

The Committee's powers and duties shall not exceed those prescribed, herein or otherwise restricted by Town Council Rules, Policies and Charter.

2. **Membership.** To maintain consistency, the membership shall be consistent with prior appointment to the extent that members desire continued involvement. The Committee shall be as follows:

Fire Chief Mike Thurlow (or designee)
Police Chief Robbie Moulton (or designee)
Bruce Bell
Judy Roy
Kevin Freeman
Roger Chabot
Greg Hanscom
Rick Meinking
Dave Libby
Rocco Risbara

3. **Timeframe.** The Committee shall remain in place through the completion of the project.
4. **Staff Resources Available.** The Town Manager will serve as support to this Committee and all Town Departments will be made available as may be necessary for the Committee to complete its tasks. In particular, it is expected that the Committee will involve the Town Engineer, Planning Director and the Sustainability Coordinator to supplement their efforts.
5. **Vacancies and Removal.** Any vacancies shall be filled by the Town Council. The Town Council may remove any member of the Committee by vote of a majority of its members for misconduct or non-performance of duty.
6. **Officers.** The Committee shall elect a Chair and Recording Secretary from among its members. The Chair shall be counted to determine a quorum and shall have the same rights as other members of the Committee, including the right to vote.
7. **Quorum and Voting.** A quorum shall consist of four (4) members. The concurrence of a majority of the members present and voting shall be necessary to decide any question before the Committee.
8. **Meeting and Records.** The Committee shall meet often enough to complete its responsibilities within the deadline set and shall strive to meet at least monthly on a date and time to be coordinated with the design team. Other meetings may be called by the Chair, provided that the Chair shall call a meeting of the Committee upon the request of at least three (3) members. The Committee shall keep minutes of its meetings and submit them to the Town Clerk's Office.