AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 17, 2018
TOWN COUNCIL GOALS WORKSHOP – 6:00 P.M.
REGULAR MEETING – 7:00 P.M.

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

Item 1. Call to Order.

Item 2. Pledge of Allegiance.

Item 3. Roll Call.

Item 4. General Public Comments.*

Item 5. Minutes: December 19, 2017 - Special Town Council Meeting.
December 20, 2017- Regular Town Council Meeting.

Item 6. Adjustment to the Agenda.

Item 7. Items to be signed: a. Treasurer's Warrants.

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

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, February 7, 2018 and Wednesday, February 21, 2018. [Tabled from the December 6, 2017, Town Council meeting.] *[Town Manager]*

NEW BUSINESS:

Order No. 18-001. First reading and refer to the Planning Board the proposed amendments to the Higgins Beach Character-Based Zoning Districts. *[Long Range Planning Committee]*

Order No. 18-002. First reading and refer to the Planning Board the proposed amendments to the Town of Scarborough Zoning Map. *[Long Range Planning Committee]*

Order No. 18-003. First reading and refer to the Planning Board the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu Fee - (f). *[Housing Alliance Committee]*

Order No. 18-004. Act on the request from the Shellfish Commission to approve the Allocations of Shellfish Licenses for 2018**.** *[Shellfish Conservation Commission]*

Order No. 18-005. Act to approve the Resolve to accept donations for the Fuel Assistance Program. *{Town Council]*

Item 8. Non Action Items:

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

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 17, 2018
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, February 7, 2018 and Wednesday, February 21, 2018. [Tabled from the December 6, 2017, Town Council meeting.] *[Town Manager]*

Town Manager	*Ought to Pass*
Sponsor	Recommendation

10/18/17 Vote to Table to 12/06/17
12/06/17 Vote to Table to 01/17/18
01/17/18 Vote

First Reading/Vote/Public Hearing	Second Reading/Final Approval/Vote

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

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

WHEREAS, the Municipal Officers have met to discuss the proposed discontinuance of the Way at public meetings held on February 1, 2017, May 3, 2017, October 4, 2017, October 18, 2017, and January 17, 2018;

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

A. Discontinuance of the Way.

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

B. Names of Abutters.

The names of the Abutters are as follows:

Charles P. Gendron;

The Gables on the Sea Condominium Association; and

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

Unit 1:	Craig Garbarini, Doug Garbarini, Jan Garbarini, Karen Leventis, and Lynn Willscher;
Unit 2:	Jere L. Dearborn and Sally S. Dearborn;
Unit 3:	Harold F. Hutchinson, III and Jeffrey Hutchinson in their capacity as Trustees of the Harold F. Hutchinson, Jr. Trust;
Unit 4:	Mary Ann D. Scaccia;
Unit 5:	Joan A. Payden in her capacity as the Trustee of the Joan A. Payden Trust;
Unit 6:	Richard Iovino and Cynthia Iovino; and
Unit 7:	James P. Karen and Jayme P. Karen

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

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

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

D. Retention of Public Easement.

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

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

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

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

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

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

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

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

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

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

1. record at the Cumberland County Registry of Deeds an attested certificate of discontinuance describing the Way, the Deeds of Public Path Easement and Public Conservation Easement from Charles P. Gendron and from the Gables on the Sea Condominium; and

2. provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

Dated: January 17, 2018

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 _____, 2018.

GABLES ON THE SEA CONDOMINIUM ASSOCIATION

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_____ _____

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. _____, 2018

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

DRAFT

STATE OF MAINE
Cumberland, ss. _____, 2018

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 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.

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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.

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

1. Signage.

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

2. Remedial Action.

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

D. Use of the Public Path Easement.

Use of the Public Path Easement by the Grantee and the public shall comply with all applicable town ordinances, including but not limited to Chapter 612 of the Town of Scarborough Code of Ordinances, and shall be limited to: (a) foot traffic by pedestrians, in common with Grantor, its members and assigns, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan; and (b) travel by emergency vehicles owned and operated by Grantee, while the emergency vehicles are being operated for the purpose of providing emergency services authorized by Grantee, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean as shown on the Plan, which emergency vehicles shall be limited to vehicles in the nature of ATV's or other similarly small vehicles that are capable of travelling on sand and/or other unpaved surfaces. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to 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.

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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.

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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. The Grantee shall place, at Grantee's expense, two small signs within the Northerly Public Conservation Easement indicating that the area within said easement is "Sensitive Dune Area."

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.

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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. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to 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.

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

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

B. The Southerly Public Conservation Easement.

1. Boundaries of the Southerly Public Conservation Easement.

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

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

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

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

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

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

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

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

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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. Grantee's law enforcement officers shall retain the sole and exclusive responsibility and right to 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."

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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.

E. Except for the restrictions and conditions above, including the sole and exclusive right of Grantee's law enforcement officers to eject users from the easement, Grantor retains the usual and customary right to enforce all other aspects of this easement in all manners prescribed by applicable law.

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

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

A. The existence, lack of existence, or availability of any legal or equitable remedy to protect private rights associated with Avenue 2, including the right to access, use, or otherwise exercise any legal interest in, on, or over, the area of said Avenue 2; or

B. The determination or establishment of any legal interest in Pine Point Beach, including but not limited to title in fee or any easement held by Gables on the Sea Condominium Association, the public at large, or by any other party.

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

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EXHIBIT B

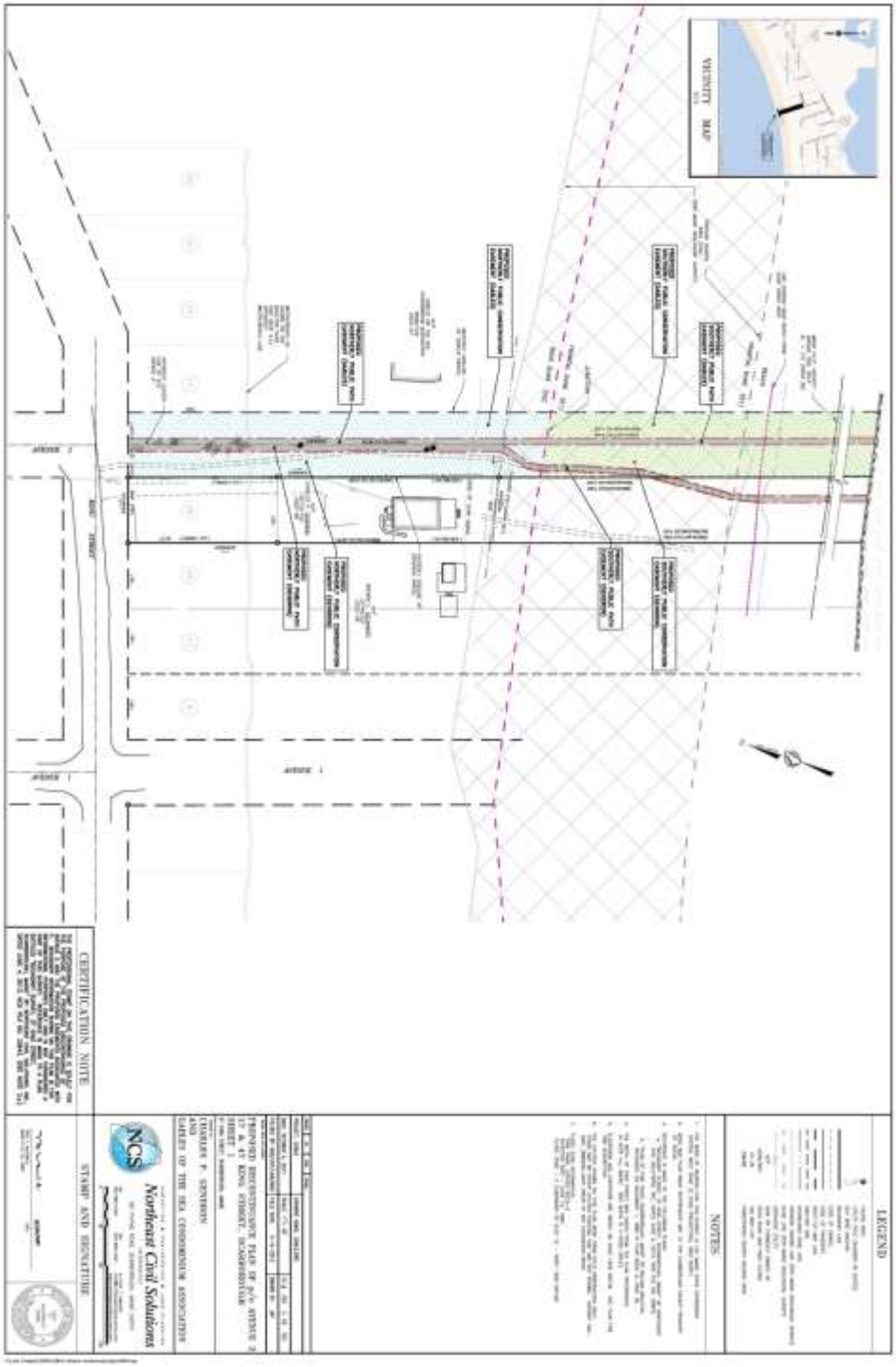


EXHIBIT C


KING STREET
RELOCATED PATH ENTRANCE
EXISTING DRIVEWAY
PROPOSED 10' EASEMENT
APPROXIMATE LOCATION OF EXISTING MEANDERING SAND PATH
STRUCTURE FREE AREA
RELOCATED PATH (NATURAL SAND SURFACE)
EXISTING VEGETATION TO REMAIN FOR BUFFER
9 TRANSPLANTED TREES FROM GENERON SIDE OF THE PATH EASEMENT
3 SMALL PINE
1 DWARF PEACH
1 DWARF APPLE
S-1
Planting Plan
tjd&a

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 _____, 2018~~7~~.

_____ _____
Witness Charles P. Gendron

TOWN OF SCARBOROUGH

_____ _____
Witness By: Thomas Hall
Its Town Manager, hereunto duly authorized

DRAFT

STATE OF MAINE
Cumberland, ss. _____, 2018~~7~~

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. _____, 2018~~7~~

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

DRAFT

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;

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Thence in a generally southeasterly direction 30' ± 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'± 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°50'16"W 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 easterly 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 S71°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").

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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.

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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 ~~PATH~~ 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 comply with all applicable town ordinances, including but not limited to Chapter 612 of the Town of Scarborough Code of Ordinances, and 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 shall retain the sole and exclusive responsibility and right to 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

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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.

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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.

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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 shall retain the sole and exclusive responsibility and right to 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.*

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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;

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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, or 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 shall retain the sole and exclusive responsibility and right to 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.*

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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.

E. Except for the restrictions and conditions above, including the sole and exclusive right of Grantee's law enforcement officers to eject users from the easement, Grantor retains the usual and customary right to enforce all other aspects of this easement in all manners prescribed by applicable law.

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.

EXHIBIT B

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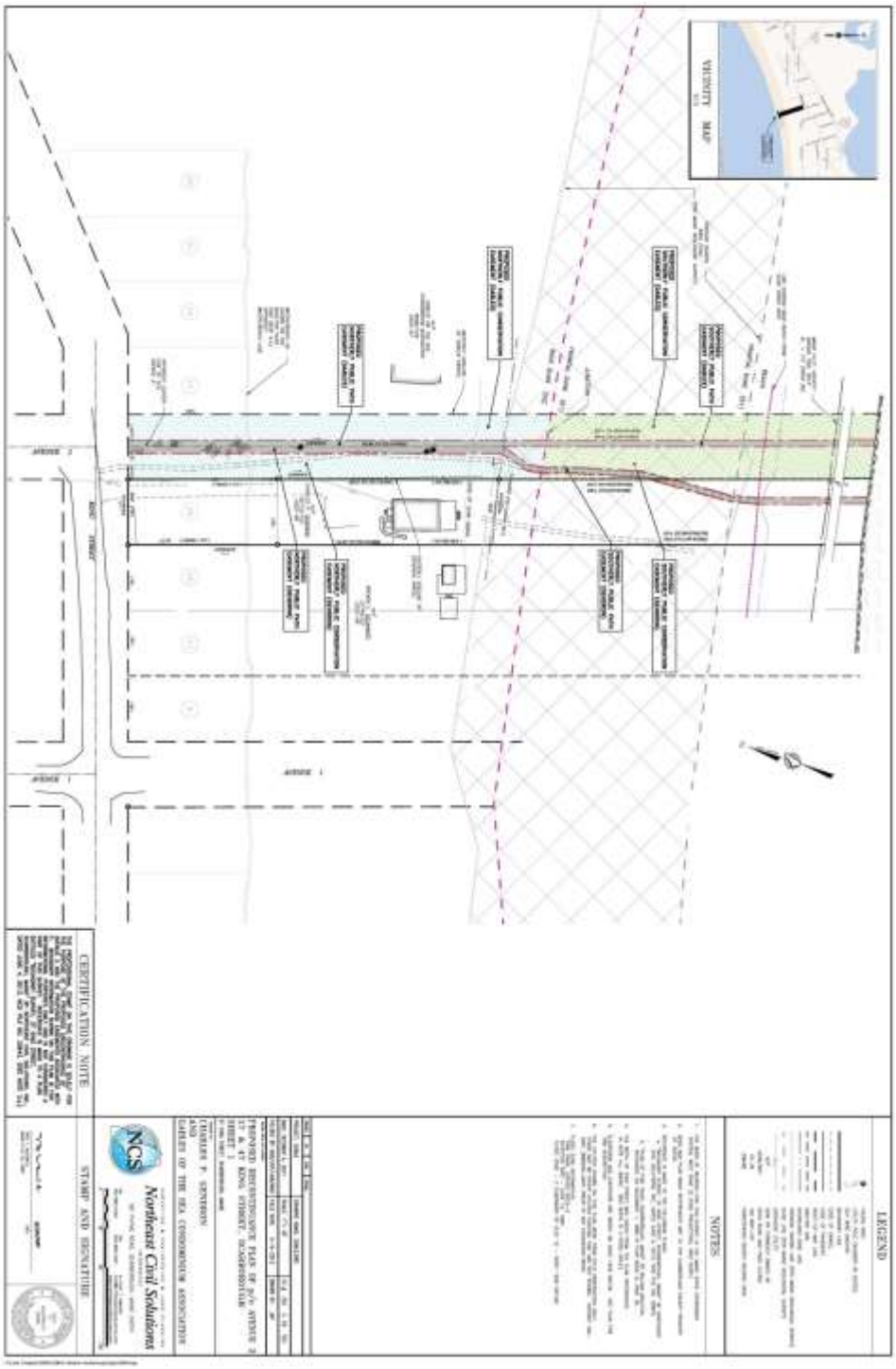
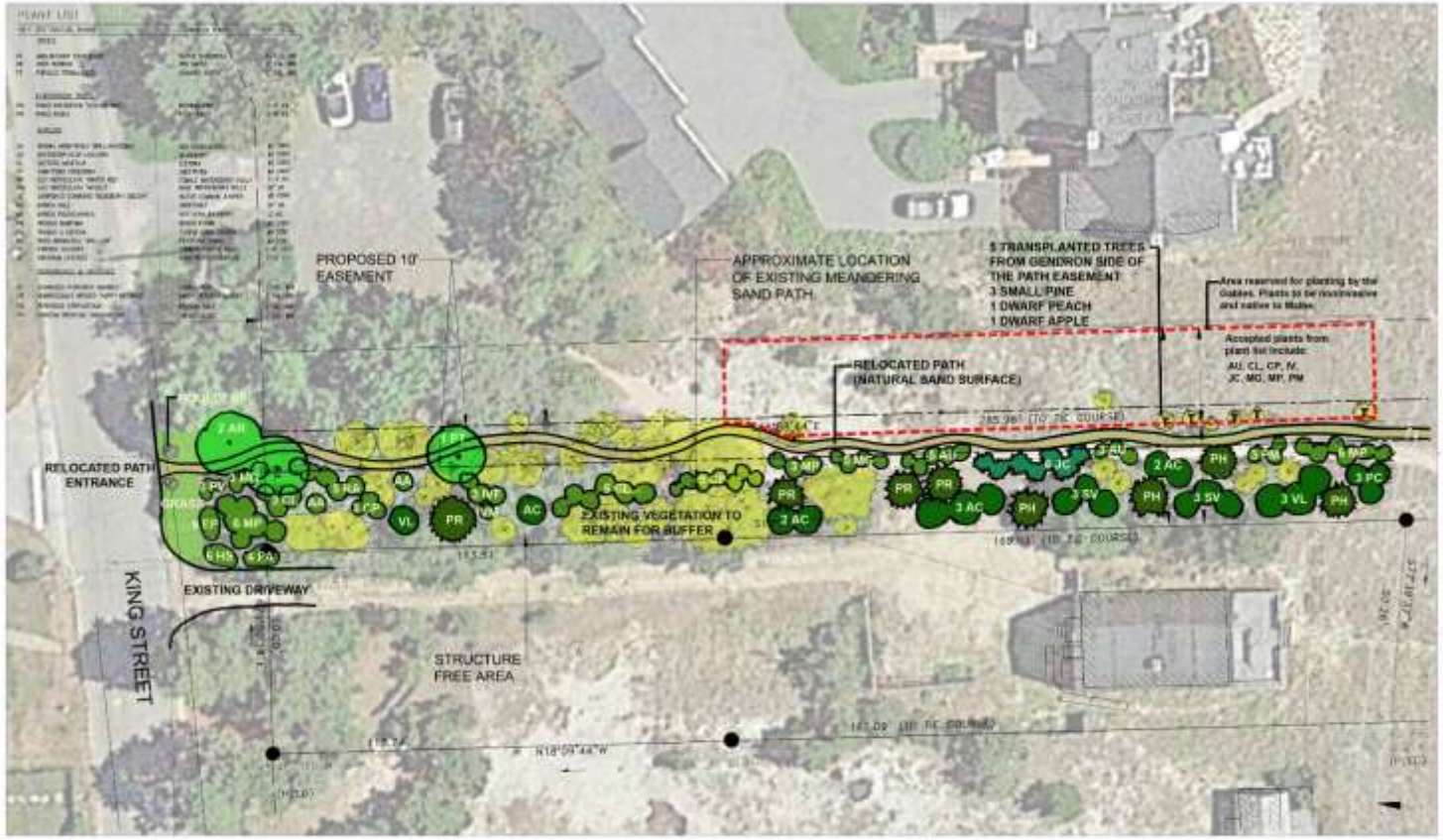


EXHIBIT C



11.29.17	Planting Plan	Discontinuance of Avenue 2 Southerly of King Street Scarborough, Maine		NOTES: Survey provided by Northeast Civil Solutions updated September 2017 and aerial image from Google Earth September 2018.	tjd&a
S-1					

PLANT LIST

KEY	BOTANICAL NAME	COMMON NAME	PROP. SIZE
	TREES		
AC	AMELANCHIER CANADENSIS	NATIVE SHADBUSH	6–7' CLUMP
AR	ACER RUBRUM	RED MAPLE	2" CAL. MIN.
PT	POPULUS TREMULOIDES	QUAKING ASPEN	2" CAL. MIN.
	EVERGREEN TREES		
PH	PINUS HELDREICHII 'LEUCODERMIS'	BOSNIAN PINE	4–5' HT.
PR	PINUS RIGIDA	PITCH PINE	5–6' HT.
	SHRUBS		
AA	ARONIA ARBUTIFOLIA 'BRILLIANTISSIMA'	RED CHOKEBERRY	#2 CONT.
AU	ARCTOSTAPHYLOS UVA–URSI	BEARBERRY	#2 CONT.
CL	CLETHRA ALNIFOLIA	CLETHRA	#2 CONT.
CP	COMPTONIA PEREGRINA	SWEETFERN	#2 CONT.
IVF	ILEX VERTICILLATA 'WINTER RED'	FEMALE WINTERBERRY HOLLY	2–3' HT.
IVM	ILEX VERTICILLATA 'APOLLO'	MALE WINTERBERRY HOLLY	18" HT
JC	JUNIPERUS COMMUNIS 'BLUEBERRY DELIGHT'	NATIVE COMMON JUNIPER	#2 CONT.
MG	MYRICA GALE	SWEETGALE	18" HT.
MP	MYRICA PENSYLVANICA	NORTHERN BAYBERRY	2' HT.
PM	PRUNUS MARITIMA	BEACH PLUMB	#5 CONT.
PC	PRUNUS X CISTENA	PURPLE SAND CHERRY	#5 CONT.
RA	RHUS AROMATICA 'GRO–LOW'	FRAGRANT SUMAC	#3 CONT.
SV	SYRINGA VULGARIS	COMMON PURPLE LILAC	4–5' HT.
VL	VIBURNUM LENTAGO	NANNYBERRY VIBURNUM	2'–3' HT.
	PERENNIALS & GRASSES		
EP	ECHINACEA PURPUREA 'MAGNUS'	COMEFLOWER	2 GAL. MIN.
HS	HEMEROCALLIS SPECIES 'HAPPY RETURNS'	HAPPY RETURNS DAYLILY	2 GAL. MIN.
PA	PEROVSKIA ATRIPLICIFOLIA	RUSSIAN SAGE	2 GAL. MIN.
PV	PANICUM VIRGATUM 'SHENANDOAH'	SWITCH GRASS	2 GAL. MIN.

PROPOSED 10' EASEMENT

APPROXIMATE LOCATION OF EXISTING MEANDERING SAND PATH

RELOCATED PATH (NATURAL SAND SURFACE)

Area reserved for planting by the Gables. Plants to be noninvasive.

5 TRANSPLANTED TREES FROM GENDRON SIDE OF THE PATH EASEMENT
3 SMALL PINE
1 DWARF PEACH
1 DWARF APPLE

N/F GABLES ON THE GREEN CONDOMINIUM 8598/129 U022–97

OLD AVENUE 2

GRADE STAKE SET, TYP.

BOULDERS

RELOCATED PATH ENTRANCE

GRASS

EXISTING VEGETATION TO REMAIN FOR BUFFER

EXISTING DRIVEWAY

EXISTING GRAVEL DRIVEWAY

KING STREET

STRUCTURE FREE AREA

49.50'

S18°09'44"E 285.96' (TO TIE COURSE)

113.51'

S18° 2 AC "

169.03' (TO TIE COURSE)

#5 REBAR 0.3' B.G.

N71°50'16"E 50.00'

113.74'

N18°09'44"W

162.09' (TO TIE COURSE)

#5 REBAR 0.4' A.G. (HELD)

1" IRON PIF 0.4' A.G.

#5 REBAR 0.6' A.G.

S77°39'37"W 50.26'

#5 REE 0.3' A.G. (HELD)

N/F CHARLES P. GENDRON 30715/193 U022–98

2 STORY DWELLING

DECK

EDGE OF DUNE GRASS

A

B

01.11.18 S-1	Planting Plan	Discontinuance of Avenue 2 Southerly of King Street Scarborough, Maine	LICENSED LANDSCAPE ARCHITECT Keith B. Smith No. 2595 STATE OF MAINE	NOTES: Survey provided by Northeast Civil Solutions updated September 2017 and aerial image from Google Earth September 2015	tjd&a Terrence J. DeWan & Associates Landscape Architects & Planners 121 West Main Street, Yarmouth, ME 04096 T: 207.846.0727 F: 207.846.0670 w: tjda.net

NORTH

GRAPHIC SCALE
10 0 50 10 20 40
(IN FEET)

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 17, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-001. Move approval of the first reading and refer to the Planning Board the proposed amendments to the Higgins Beach Character-Based Zoning Districts, and schedule a public hearing upon receipt of the recommendations of the Planning Board. *[Long Range Planning Committee]*

Long Range Planning Committee	*Ought to Pass*
Sponsor	Recommendation
01/17/18 Vote:	
First Reading/Vote/Public Hearing	Second Reading/Final Approval/Vote

To: Tom Hall
From: Jay Chace, Planning Director
Subject: Higgins Beach Audit— Zoning Language Amendment
Date: December 26, 2017

The audit process identified that applying the Higgins Beach District requirements to existing non-conforming structures had been challenging because the Code did not have any built-in provisions for enabling modest improvements to these structures without the need to comply entirely with the Code or otherwise require approval from the Board of Appeals.

To address this issue, new language was adopted in the Fall of 2017 as part of the Audit process which enables these structures to become more conforming, but perhaps not entirely conforming, through an administrative review process and without needing Board of Appeals approval.

However as Staff has continued to work with the language it has been noted that there is a distinct difference within the adopted Code which has made the Higgins Beach Districts more restrictive than any other zoning district.

Article 5.C.2.h states that if any non-conforming structure were damaged or destroyed to the extent of more than 50% of replacement value, the structure would not be able to be rebuilt or restored under any circumstance without coming into conformance. The Zoning Ordinance enables all other properties, outside the H.B. districts, the opportunity to rebuild or restore non-conforming structures within one year if the structure is damaged by causes outside the owners control.

Upon reviewing the provisions of Zoning and Shoreland Ordinances, the Long Range Planning Committee is recommending the Council consider deleting Article 5.C.2.h from the H.B District, thereby treating all non-conforming structures which are damaged or destroyed by any means beyond the act of the property owner similarly throughout the community. The remainder of Article 5.C.2 would remain as previously adopted which would continue to meet the intent of the amendments adopted in the Fall.

AMENDMENTS TO CHAPTER 405 THE ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 405 - the Zoning Ordinance of the Town of Scarborough, Maine is amended as follows

Amend SECTION XVI.B. HIGGINS BEACH CHARACTER-BASED ZONING DISTRICTS AND BUILDING STANDARDS, by deleting the text as shown below:

Article 5.C.2

~~h. Restoration of Damaged Structures is permitted as follows:~~

~~i. When a nonconforming structure is damaged or destroyed to the extent of 50% or more of its replacement value, the structure may be repaired or rebuilt only if it conforms to the provisions of this Ordinance.~~

~~ii. When a nonconforming structure is damaged or destroyed to the extent of less than 50% of its replacement value, it may be repaired and rebuilt to its previous condition, so long as the cause of damage was not by any means within the control of the owner, the nonconformity is not expanded, and no new nonconformity is created.~~

~~iii. A Zoning Permit for repairs or reconstruction must be granted within one year of the date of damage or destruction, unless an additional one year extension is granted by the Zoning Administrator.~~

~~iv. When a structure containing a nonconforming use is damaged or destroyed, and the cause of damage was not by any means within the control of the owner, the nonconforming use may be reestablished provided that the above standards are met and the degree of the previous nonconforming use is not increased.~~

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 17, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-002. Move approval of the first reading and refer to the Planning Board the proposed amendments to the Town of Scarborough Zoning Map and schedule a public hearing upon receipt of the recommendations of the Planning Board. *[Long Range Planning Committee]*

Long Range Planning Committee	*Ought to Pass*
Sponsor	Recommendation
01/17/18 Vote:	
First Reading/Vote/Public Hearing	Second Reading/Final Approval/Vote

To: Tom Hall
From: Jay Chace, Planning Director
Subject: Higgins Beach Audit—Zoning Map Amendment
Date: December 26, 2017

Based on feedback at the Public Open House and further inspection of the properties, the LRPC and has expressed interest in exploring updates to the standards that apply specifically to the properties along Ocean Ave, between Spurwink and Kelly Ln. These properties have been identified has being unique from the area of the neighborhood beyond Kelly Ln. in that these properties have a different development pattern, larger lot sizes, as well as being along a more heavily travelled corridor serving as the entrance to the inner neighborhood.

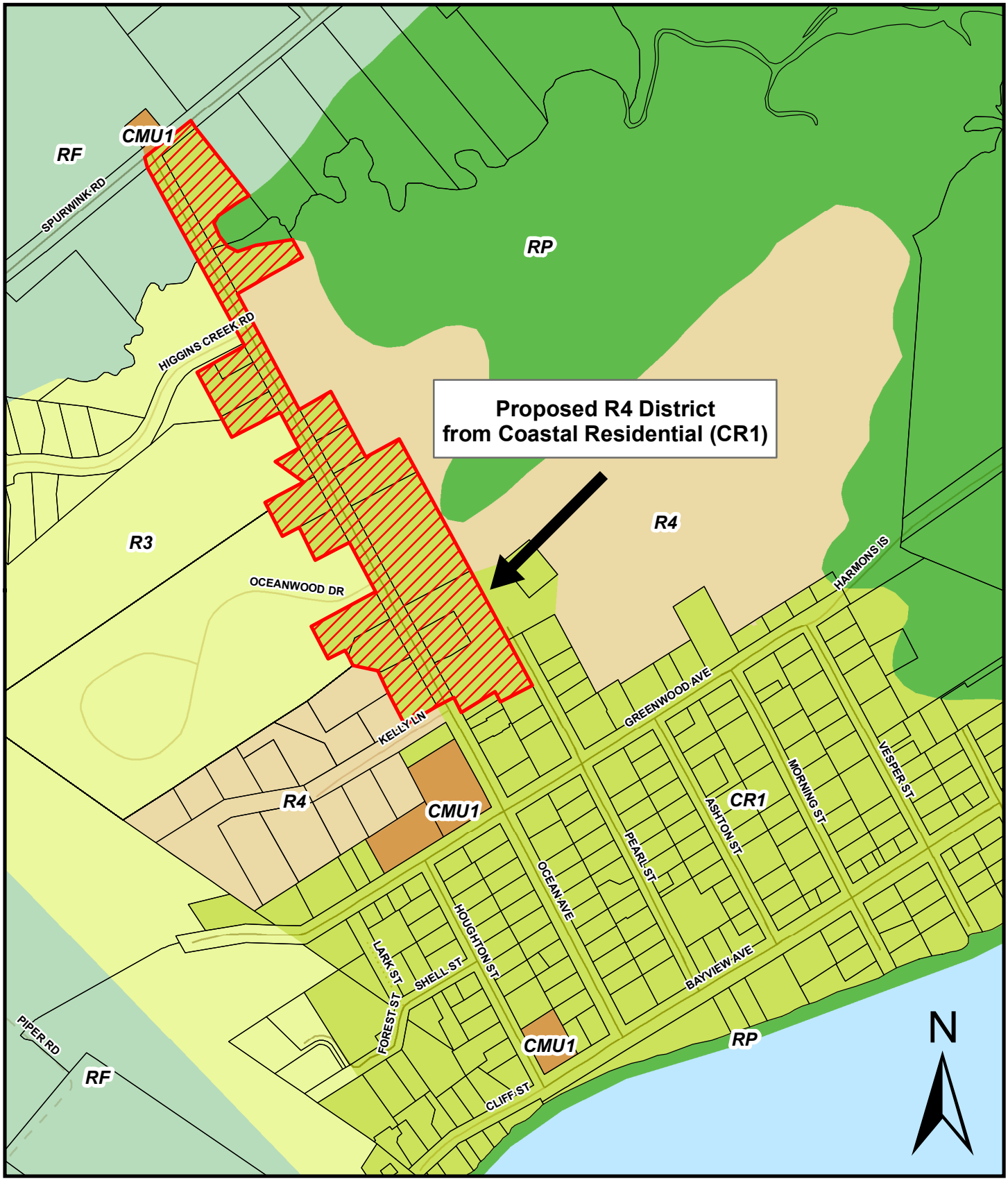
The majority of the homes were originally developed prior to the current Character Code, but unlike the properties beyond the Kelly Ln., the primary design and pattern seems to have been developed more in keeping with the prior zoning standards of the R4 District. The structures sit deeper on the lots and the design is more typically of suburban home pattern. By in large, the development pattern in this area conflicts with the space and bulk standards of the Code, particularly as related to front and rear yard setbacks. Also, most of the homes are not served by public sewer, which more greatly impacts utilization of the space on the parcel.

Also as mentioned, the utilization of the street and the public space along this stretch of Ocean Ave. differs from the rest of the neighborhood. The road is the primary/only way in and out of Higgins Beach, so expectedly traffic is heavier and moves at a greater speed.

In reviewing the information and public feedback, it appears as though goal of the Higgins Beach Code to align the zoning with the prevailing development pattern was not achieved on these properties. Rather than making more homes conforming, the Code has essential converted conforming structures into non-conforming structures.

Based on residents' feedback and further inspection of the properties, the LRPC is proposing the Ocean Ave. area zoning be reverted back to the R-4 District as it was previously zoned prior to December 2015 when the zoning map amendments associated with the adoption of the Code were established. See accompanying zoning map amendment document.

A letter has been sent to all property owners informing them of the proposed amendments and, to date, the Committee has received only positive feedback.



Proposed Amendment to the Town of Scarborough Zoning Map Establishing the Boundaries for the R4 District at Higgins Beach For Council Consideration 2018

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 17, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-003. Move approval of the first reading and refer to the Planning Board the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu Fee - (f) and schedule a public hearing upon receipt of the recommendations of the Planning Board. *[Housing Alliance Committee]*

Housing Alliance Committee	*Ought to Pass*
Sponsor	Recommendation
01/17/18 Vote:	
First Reading/Vote/Public Hearing	Second Reading/Final Approval/Vote

AMENDMENTS TO CHAPTER 405 THE ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 405 - the Zoning Ordinance of the Town of Scarborough, Maine is amended as follows

Amend SECTION XIIC. RESIDENTIAL DENSITY AND AFFORDABLE HOUSING PROVISIONS, by adding the text as shown below:

B. AFFORDABLE HOUSIN IN LIEU FEE [adopted 11/06/2013]

This mechanism enables developments in designated zoning districts to contain additional residential density if a fee is paid per additional dwelling unit to support the creation of affordable housing within the community. These provisions may only be applied to residential developments that require subdivision and/or site plan review by the Planning Board within zoning districts that explicitly allow for the affordable housing in-lieu fee.

The use of this mechanism requires Planning Board review and approval in accordance with the following provisions:

1. An application for use of the affordable housing in-lieu fee shall be submitted by the applicant as an element of their overall submission for subdivision and/or site plan review and approval. This submission shall include the number of additional dwelling units proposed utilizing the affordable housing in-lieu fee, the proposed dwelling unit types, and the overall residential density.

2. The payment of an in-lieu fell shall be required for each additional dwelling unit permitted through this provision, unless the zoning district in which the project is located allows for density to be determined on a bedroom and square footage basis in accordance with Section VII.C.(A) Residential Density. In these cases, the payment of a fraction of the fee shall be required for each unit in the same proportion as the density requirement for the type and size of the unit proposed (For example, a unit that is counted as half (0.5) a dwelling unit for density purposed required half (0.5) the fee amount as a full dwelling unit). The affordable housing in-lieu fee amount is listed in the Town of Scarborough Schedule of License, Permit and Application Fees (Chapter 311).

3. The total amount of the affordable housing in-lieu fees for the development may either be apportioned to each development phase for multi-phase projects or each dwelling unit or residential building lot within the development. In these cases the fees shall be paid prior to the commencement of construction of each phase of development or prior to the issuance of a building permit for each unit or lot. This scheduled of payment shall be established as part of the Planning Board approval for the development

4. These fees shall be paid to the Town of Scarborough.

5. Affordable housing in-lieu fees collected by the Town shall be deposited into a specific account, segregated from the Town's general revenue, and created for supporting the

creation of affordable housing with Scarborough. These funds shall be used in accordance with the following:

a. The funds contributed to the specific account, entitled the Affordable Housing Initiative Fund, shall be used to further the establishment of affordable housing within the Town. More specifically, these funds may be used for the land acquisition, infrastructure, and/or building construction costs of an affordable housing project.

b. A portion of these funds may also be used for administrative, legal, engineering or other costs related to the planning, design, permitting, and property acquisition for an affordable housing project.

c. A portion of these funds may also be used to establish a revolving loan program to provide direct financial assistance to qualified homebuyers with down payments and other financing needs for purchasing affordable housing units.

d. The Affordable Housing Trust Fund may be used in combination with other Town funds, and other private, non-profit, and government funding for establishing affordable housing within the community.

e. The in-lieu fees contributed by a development shall not be used by the same or other developments to fund the construction of affordable housing required to meet a residential density bonus for the creation of affordable housing.

f. The in-lieu fees collected by the Town shall not be utilized to fund affordable housing portions of a development which are otherwise required to include affordable housing in order to meet minimum zoning standards.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 17, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-004. Act on the request from the Shellfish Commission to approve the Allocations of Shellfish Licenses for 2018**.** *[Shellfish Conservation Commission]*

Shellfish Conservation Commission	*Ought to Pass*
Sponsor	Recommendation
01/17/18 Vote:	
First Reading/Vote/Public Hearing	Second Reading/Final Approval/Vote

TOWN OF SCARBOROUGH

Office of the Town Clerk
P.O. Box 360
Scarborough, ME 04070-0360
207-730-4020
Fax: 207-730-4033

TO: Members of the Scarborough Town Council

FROM: Scarborough Shellfish Commission

RE: 2018 Shellfish Allocations

DATE: January 12, 2018

At the Shellfish Conservation Commission meeting held on Tuesday, January 8, 2018, the Commission approved the following Shellfish Allocations for 2016. The proposed allocation are as follows:

	2017 Allocations	**2018 Proposed Allocations**
• **Resident Commercial License:**	31	31
• **Non – Resident Commercial Licenses:**	4	4
• **Over 60 Commercial Bushel Licenses:**	2	2
• **Resident Student Commercial License:**	10	10
• **Non- Resident Student Commercial License:**	1	1
• **Resident Recreational Licenses:**	200	200
• **Non- Resident Recreational License:**	20	20
• **Day Permits:**	10 per day	10 per day

This request will be submitted to the Department of Marine Resources for approval once the Town Council takes action.

If you have any questions, please contact me at 730-4020. Thank you.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JANUARY 17, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-005. Move approval of the Resolve to accept donations for the Fuel Assistance Program. *[Town Council]*

Town Council	*Ought to Pass*
Sponsor	Recommendation
01/17/18 Vote:	
First Reading/Vote/Public Hearing	Second Reading/Final Approval/Vote

Town of Scarborough, Maine
US Route One, PO Box 360
Scarborough, Maine • 04070-0360

TOWN OF SCARBOROUGH

IN TOWN COUNCIL ASSEMBLED

RESOLVE Accepting Donations for the Fuel Assistance Program.

BE IT HEREBY RESOLVED BY THE TOWN COUNCIL AS FOLLOWS:

THAT THE Town of Scarborough gratefully accepts the pledges and donations from the following businesses and/or persons, that have been collected to date, to be used for the Fuel Assistance Program:

Mr. & Mrs. Jeffrey Ertman

AND, be it further Resolved that each business, organization and/or person be recognized for their generous donations as a token of the Town's appreciation.

Sponsor: Town Council
Originator: Town Council