

AGENDA
SCARBOROUGH TOWN COUNCIL
THURSDAY – FEBRUARY 8, 2018
TOWN COUNCIL WORKSHOP RE:
CROSSROADS/SCARBOROUGH DOWNS – 5:30 P.M.
SPECIAL 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: January 17, 2018 – Regular Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer's Warrants.

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

Order No. 18-006, 7:00 p.m. Public Hearing and action on the new request for a Special Amusement Permit from Famous Dave's, located at 1 Cabela Blvd. *[Town Clerk]*

Order No. 18-007, 7:00 p.m. Public Hearing and action on the new requests for a Food Handlers License and an Innkeepers License from ABVI Scarborough LLC, d/b/a Americas Best Value Inn Millbrook Motel, located at 321 US Route One. *[Town Clerk]*

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 21, 2018 and Wednesday, March 7, 2018. [Tabled from the January 17, 2018, Town Council meeting.] *[Town Manager]*

NEW BUSINESS:

Order No. 18-008. First reading and waive the second reading on the request from the Town Manager to expend \$77,950 from the undesignated fund balance, for the Commercial/Industrial Revaluation. *[Town Manager]*

Order No. 18-009. Act on the request in support of a Community Development Block Grant (CDBG) Application on behalf of Habitat for Humanity, they are seeking a \$18,000 in CDBG funding to support final infrastructure improvements (i.e. final coat of paving) at the Carpenter Court subdivision. *[Planning Department]*

Order No. 18-010. Act on the request from the Scarborough Housing Alliance to utilize funds from the Affordable Housing Initiative Fund in the amount of \$100,000 toward the Bessey Commons II Project and authorize the Town Manager to sign any and all documents related to this order. *[Scarborough Housing Alliance]*

Order No. 18-011. Act on the request to approve the 2018 Town Council Goals. *[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
THURSDAY – FEBRUARY 8, 2018
SPECIAL MEETING – 7:00 P.M.

Order No. 18-006. Move approval on the new request for a Special Amusement Permit from Famous Dave’s, located at 1 Cabela Blvd. *[Town Clerk]*

Town Clerk

Ought to Pass

Sponsor

Recommendation

02/08/18 Vote:

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

TOWN OF SCARBOROUGH
Office of the Town Clerk
P.O. Box 360
Scarborough, Maine 04070-0360

TO: Town Council Members

FROM: Yolande P, Justice, Town Clerk

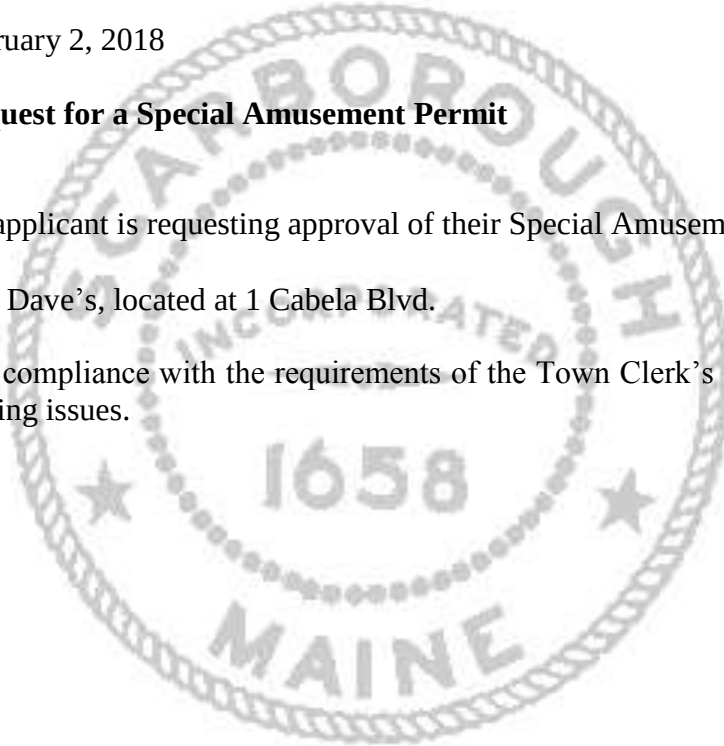
DATE: February 2, 2018

RE: Request for a Special Amusement Permit

The following applicant is requesting approval of their Special Amusement Permits:

- Famous Dave's, located at 1 Cabela Blvd.

Applicant is in compliance with the requirements of the Town Clerk's Office and there are no outstanding issues.



**AGENDA
SCARBOROUGH TOWN COUNCIL
THURSDAY – FEBRUARY 8, 2018
SPECIAL MEETING – 7:00 P.M.**

Order No. 18-007. Move approval on the new request for a Food Handlers License and an Innkeepers License from ABVI Scarborough LLC, d/b/a Americas Best Value Inn Millbrook Motel, located at 321 US Route One. *[Town Clerk]*

Town Clerk

Ought to Pass

Sponsor

Recommendation

02/08/18 Vote:

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

Town of Scarborough, Maine

Town Clerk's Office

259 US ROUTE ONE

PO BOX 360

SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: February 2, 2018

RE: **Requests for a Food Handlers License and an Innkeepers License**

The following applicant is seeking approval on a new request for a Food Handlers License and an Innkeepers License:

- ABVI Scarborough LLC, d/b/a Americas Best Value Inn Millbrook Motel, located at 321 US Route One.

The completed applications are on file with Clerk's Office and there are no outstanding issues and it is recommended that these licenses be approved. Licenses will be issued when applicants receive their Occupancy Permits.

AGENDA
SCARBOROUGH TOWN COUNCIL
THURSDAY – FEBRUARY 8, 2018
SPECIAL 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 21, 2018 and Wednesday, March 7, 2018.
[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 to Table to 02/08/18
02/08/18 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, January 17, 2018, and February 8, 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: February 8, 2018

MUNICIPAL OFFICERS OF THE
TOWN OF SCARBOROUGH

**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.

Witness

Charles P. Gendron

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 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

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 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 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; 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 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 January 11, 2018 (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. 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.*

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, 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. 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.*
- 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.

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**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**

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

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.

III. THE PUBLIC PATH EASEMENT.

A. Boundaries of the Public Path Easement.

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

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

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

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

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

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

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

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

1. Construction of travelled way over Public Path Easement.

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

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

1. Signage.

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

2. Remedial Action.

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

D. Use of the Public Path Easement.

Use of the Public Path Easement by the Grantee and the public shall 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.

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. 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 January 11, 2018 (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. 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.

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

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

B. The Southerly Public Conservation Easement.

1. Boundaries of the Southerly Public Conservation Easement.

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

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

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

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

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

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

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

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

Notwithstanding the foregoing, Grantor reserves within the Southerly Public Conservation Easement the rights (a) to engage in customary residential uses of the Southerly Public Conservation Easement, provided that such uses shall include neither the placement of permanent man-made structures 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.”
- 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.

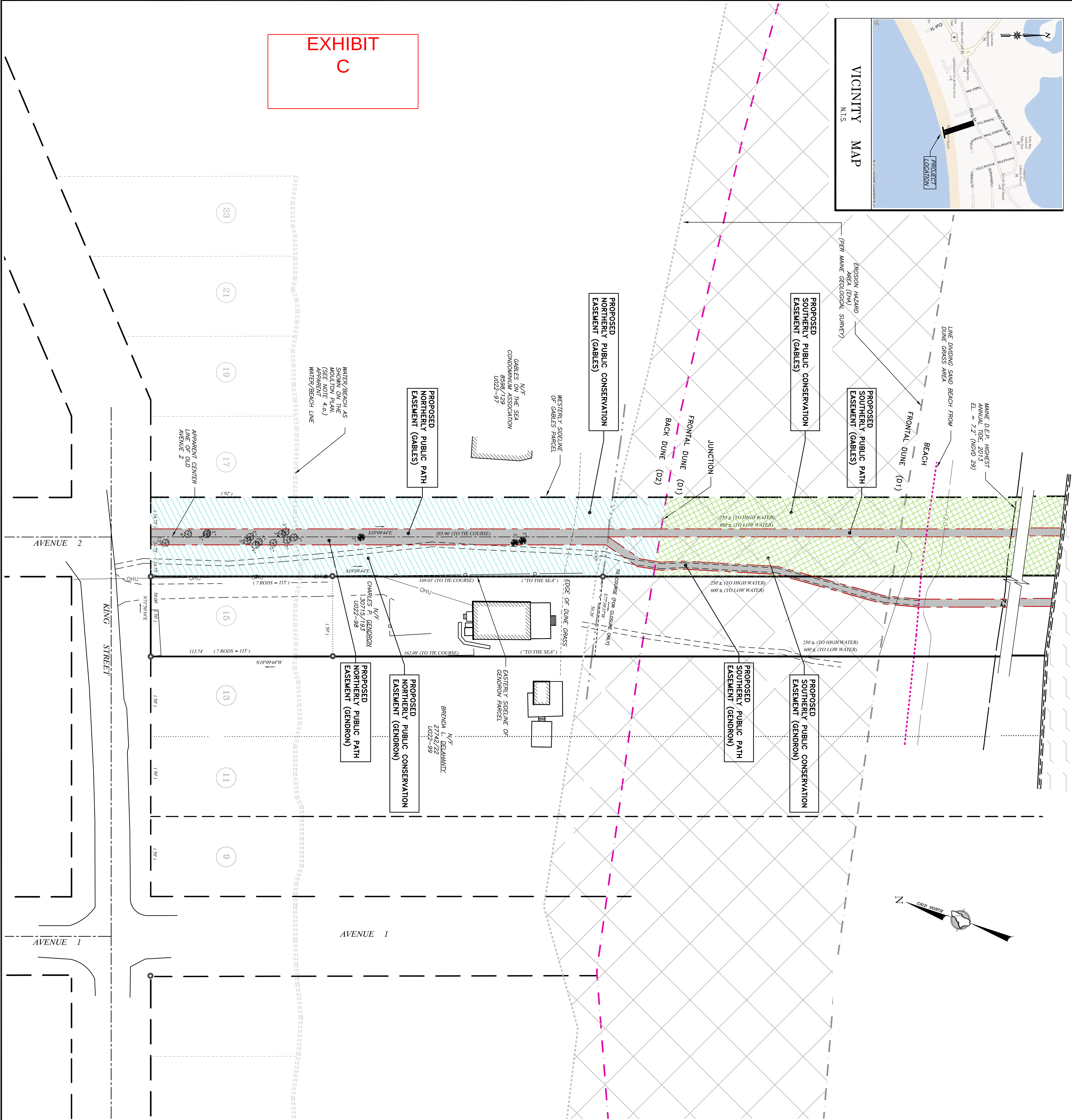
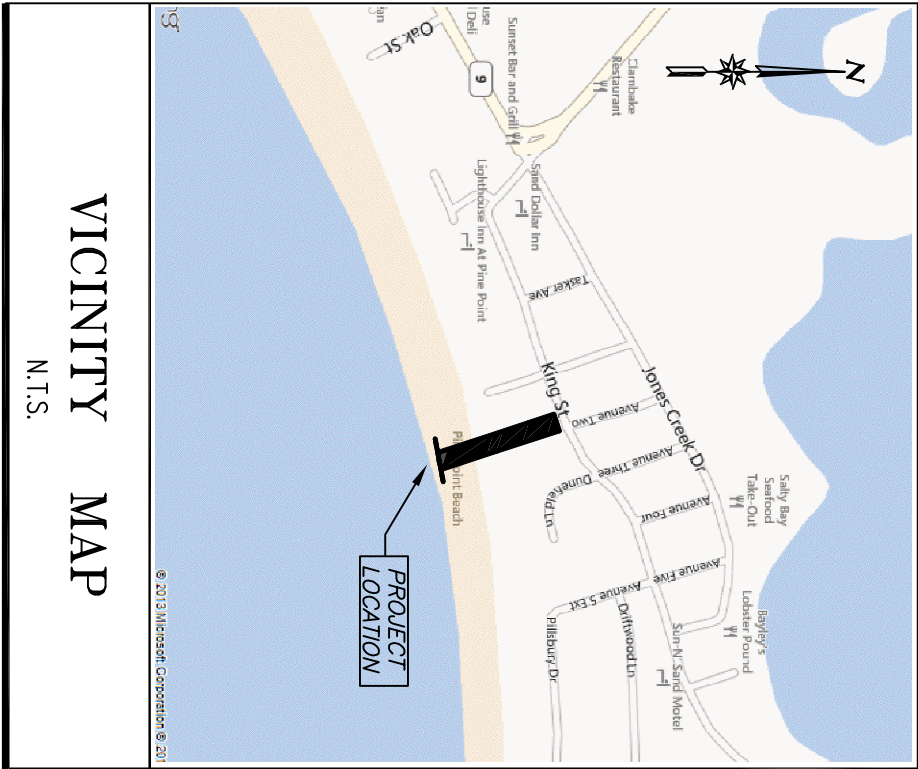
Notwithstanding the foregoing, it is Grantor's express intention that the Public Path Easement granted in Paragraph III of this instrument shall and does hereby convey to Grantee and the public at large a perpetual, irrevocable right of access (subject to the use limitations expressly set forth in Paragraph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

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CERTIFICATION NOTE

THE PROFESSIONAL STAMP ON THIS DRAWING IS SOLELY FOR THE PURPOSE OF THE PROPOSED DISCONTINUANCE OF AVENUE 2 AND THE PROPOSED EASEMENTS ASSOCIATED WITH IT. BOUNDARY INFORMATION SHOWN ON THIS PLAN IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT CONSIDERED A PART OF THIS SURVEY. REFERENCE IS MADE TO A PLAN DATED JUNE 4, 2013, NCS FILE NO. 33843. (SEE NOTE 3.a.)

- LEGEND**
- FOUND IRON
 - UTILITY POLE (NUMBER AS NOTED)
 - GUY WIRE ANCHOR
 - BOUNDARY LINE
 - EDGE OF GRAVEL
 - EDGE OF PAVEMENT
 - RIGHT-OF-WAY LINE
 - ABUTTER LINE
 - SHORELAND ZONE LINE
 - EROSION HAZARD ZONE LINE (PER MAINE GEOLOGICAL SURVEY)
 - DUNE LINE (PER MAINE GEOLOGICAL SURVEY)
 - OVERHEAD UTILITY
 - NOW OR FORMERLY OWNED BY DEED BOOK AND PAGE (CCRD)
 - TAX MAP--LOT
 - PARENTHESIS DENOTE RECORD DATA

- NOTES**
1. THE BASIS OF BEARING FOR THIS SURVEY IS THE MAINE STATE COORDINATE SYSTEM, WEST ZONE (2 ZONE PROJECTION), GRID NORTH.
 2. DEED AND PLAN BOOK REFERENCES ARE TO THE CUMBERLAND COUNTY REGISTRY OF DEEDS.
 3. REFERENCE IS MADE TO THE FOLLOWING PLANS:
 - a. "BOUNDARY SURVEY, 37 KING STREET, SCARBOROUGH, MAINE" BY NORTHEAST CIVIL SOLUTIONS, INC., DATED JUNE 4, 2013, NCS FILE NO. 33843.
 - b. "PLAN OF PINE POINT, SCARBOROUGH, MAINE" BY WILLIAM MOLITON, RECORDED ON DECEMBER 1, 1888 IN PLAN BOOK 6, PAGE 36.
 4. THE WIDTH OF KING STREET WAS TAKEN FROM THE PLAN REFERENCED IN NOTE 4.a. ABOVE. SAND WIDTH IS 3 RODS (48.5').
 5. ELEVATIONS AND CONTOURS ARE BASED ON NAD 1929 DATUM. SEE PLAN FOR TBW DESCRIPTION.
 6. THE UTILITIES SHOWN ON THIS PLAN WERE FROM FIELD OBSERVATION ONLY. THERE MAY BE OTHER UTILITIES EXISTING THAT ARE NOT SHOWN. CONTACT DIG-SAFE (888)DIG-SAFE PRIOR TO ANY EXCAVATION WORK.
 7. FLOOD ZONE INFORMATION:
 - FIRM PANEL 230052-0023-0
 - EFFECTIVE DATE - JUNE 19, 1985
 - FLOOD ZONE - C (LANDWARD OF ELEV 12 - NAD 1929 DATUM)

Revised:	By:	Date:	Change:
PROJECT: 33843 DRAWING NAME: 33843.DWG			
DATE: OCTOBER 4, 2017		SCALE: 1"= 30'	FB # 252 E. TB YES
FILED BY: MJB/JAP/JAW/JAC		FIELD DATE: 5-14-2013	DRAWN BY: JAP

Drawn: MJB and JAP

**PROPOSED DISCONTINUANCE PLAN OF P/O AVENUE 2
17 & 47 KING STREET, SCARBOROUGH
SHEET 1**

37 KING STREET, SCARBOROUGH, MAINE

Prepared for:
**CHARLES P. GENDRON
AND
GABLES OF THE SEA CONDOMINIUM ASSOCIATION**

NCS
SURVEYING • ENGINEERING LAND PLANNING
Northeast Civil Solutions
INCORPORATED
381 PAYNE ROAD, SCARBOROUGH, MAINE 04074
Tel: 207.863.1000 Fax: 207.863.1001
info@northeastcivilsolutions.com
www.northeastcivilsolutions.com

STAMP AND SIGNATURE

TROY E. MCQUINN
MAINE P.L.S. No. 2080
DATE: 10/04/2017

AGENDA
SCARBOROUGH TOWN COUNCIL
THURSDAY – FEBRUARY 8, 2018
SPECIAL MEETING – 7:00 P.M.

Order No. 18-008. Move approval of the first reading and waive the second reading on the request from the Town Manager to expend \$77,950 from the undesignated fund balance, for the Commercial/Industrial Revaluation. *[Town Manager]*

Town Manager

Ought to Pass

Sponsor

Recommendation

02/08/18 Vote:

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

Town of Scarborough

Manager's Office Memorandum

To: Members of the Town Council
From: Thomas J. Hall,  Town Manager
Re: Proposed Commercial/Industrial Revaluation
Date: January 30, 2018

The Town of Scarborough assesses real property in three classes, commercial, industrial, and residential. Every year as a part of the annual tax commitment process we conduct a thorough sales ratio analysis and the most recent analysis again confirmed a trend that we have been aware of for several years. This analysis identifies certain aspects of the residential portion of the tax base to be out-of-line with market values, but it confirms that the discrepancy is most pronounced in the commercial and industrial segments of our tax base. In fact, the entire class of commercial and industrial assessments have an average sales ratio of 76% of their market value, with a median ratio of 80%. Please see the attached analysis suggesting that conservatively there is \$175M in value that is unrealized from the commercial and industrial sectors. The Maine Constitution requires that property assessments be reflective of 100% of market value, and further requires a revaluation to recalibrate values when the assessments fall to 70% of market value; however, as equity is the cornerstone of any ad valorem tax system it is common practice and good form to correct for inequities when properly documented and when a sound methodology and process can be established.

Why Now?

These inequities should come as no surprise as we have been conducting annual sales analyses and the trend has been confirmed year after year. In fact, ever since the defeat of the referendum in 2014 for a town wide revaluation, I have been considering when is the best time to advance this priority. Two things have changed that cause me to have confidence to propose a commercial and industrial revaluation at this time. First, we have sound documentation that the entire class of commercial and industrial properties is severely under-valued. Any inequity in the system presents a situation where some tax payers are paying less than their fair share and all the other tax payers are paying more than they should. This trend is so well documented that any further delays will only exacerbate the situation and make the inequities more acute. Second, and the most direct reason for this proposal at this time, is the fact that I now have adequate capacity in the Assessing Office to undertake such a project. Unfortunately, for the past couple of years I have not had consistent leadership and capacity and therefore have been unwilling to advance this initiative until I had proper staffing and oversight to ensure a thorough and fair process. With the appointment of Dave Bouffard as Assessor and the assembly of a competent staff around him, I now am confident that we can advance this project.

It could be argued that we wait for a full town-wide revaluation, but the inequities will only get greater with time and I present this to you now as an opportunity to advance the first phase of what is widely acknowledge as something that must be done sooner than later.

How do we correct the inequity?

In many communities these projects are undertaken in-house, and although I have the proper team in place, I strongly recommend using outside consultants to conduct this process. Establishing proper valuation for commercial and industrial is more complex than residential properties in that in addition to the simple sales approach to value, there is often more reliance on the income and cost methodologies to establishing value which require a higher level of expertise. To this end, I explored the marketplace to see if any qualified consulting firms would be available to provide these services in time for the next tax commitment. To my surprise, there were two highly qualified and respected firms that responded to my request-for-proposal. I am recommending KRT Appraisal for this project as they are qualified, had the most competitive cost proposal and can complete the project on our stated timeline.

Is there any risk in proceeding in two phases?

I trust that all would agree that revaluation of all properties is necessary and appropriate to re-establish equity in the system. As stated earlier, of course we could conduct a town-wide revaluation so all properties are considered at the same time, but that will require delays that will produce further inequities. It is fairly common practice for communities to revalue different classes of properties at different times. In our case, if there is any "silver-lining" with the tax appeal cases that we continue to litigate is that the Law Court confirmed that partial revaluations are not just acceptable, but required. This proposal provides one additional level of protection in that we are proposing to consider the entire classes of commercial and industrial properties, rather than just portions. I am extremely confident that conducting the revaluation in two phases is reasonable and appropriate and can withstand any legal challenge.

What about the residential portion of the tax base?

Our annual sales analysis clearly identifies inequities in the residential segments of the tax base. Further, we have long known that our building schedules are antiquated and land schedules need recalibration, so we recognize that the residential portion needs attention as well. To this end, I intend to seek funding in the FY 2019 budget for a residential revaluation to ensure that it immediately follows. I hope the Town Council will embrace this request and make it a priority in the next funding cycle.

Publicity

Clearly we will need to do some direct outreach to advise and educate regarding this initiative. We can expect some pushback as there is predictable concern whenever a revaluation is proposed. I will look to coordinate these efforts through the Scarborough Community Chamber and enlist the support of SEDCO to host a series of informational sessions this spring.

Software Conversion

For some time we have understood that our assessing software must be replaced and in fact have secure nearly all the required funding through two different budget cycles for the purchase of a new software system and conversion of the data. However, we have been unwilling to advance this conversion as an independent initiative as it is best to accomplish the upgrade coincident with a revaluation. Therefore, as a part of this proposal we intend to upgrade the assessing software to Vision software, which will provide much greater in-house capability and equally important, produce enhanced information and capability for the public.

What is needed to advance this proposal?

The cost of the commercial and industrial revaluation by KRT Appraisal is \$66,000. The updated cost for Vision software and the associated data conversion, including web hosting is \$70,450, this cost includes conversion to Vision Appraisal software and the full scope of work performed by KRT. The breakdown of costs and funding sources is as follows:

KRT Appraisal- C/I Revaluation Cost	\$66,000
Vision Appraisal software/date conversion	<u>\$70,450</u>
Subtotal:	\$136,450
Existing Budget Authorization	<u>(58,500)</u>
Additional Appropriation Needed:	\$77,950

To advance these initiatives as proposed, I need additional authorization of \$77,950 to fund the commercial and industrial revaluation and the additional cost of the software upgrade and associated data conversion. Since these monies are not included in the current budget, the source is from the undesignated fund balance. Beyond the value of starting the process to re-establish equity, the return on this investment makes a very compelling case. In order to advance this initiative in time for use in the next tax commitment, it is essential that I secure authorization for the additional funding at the February 7, 2018 meeting so this project can get underway as soon as possible.

Attachment: Estimate of Unrealized C/I Value

CC: Dave Bouffard, Assessor
Sue Russo, Deputy Assessor

	<u>@76% of Value</u>	<u>@100% of Value</u>
Commercial	547,216,742	720,022,029
Industrial	116,603,000	153,425,000
Total	<u>663,819,742</u>	<u>873,447,029</u>

FY 2018 Value:	3,785,488,342
Valuation Increase	<u>209,627,287</u>
Estim Value	<u>3,995,115,629</u>

	<u>@80% of Value</u>	<u>@100% of Value</u>
Commercial	576,017,623	720,022,029
Industrial	122,740,000	153,425,000
Total	<u>698,757,623</u>	<u>873,447,029</u>

FY 2018 Value:	3,785,488,342
Valuation Increase	<u>174,689,406</u>
Estim Value	<u>3,960,177,748</u>

AGENDA
SCARBOROUGH TOWN COUNCIL
THURSDAY – FEBRUARY 8, 2018
SPECIAL MEETING – 7:00 P.M.

Order No. 18-009. Move approval on the request in support of a Community Development Block Grant (CDBG) Application on behalf of Habitat for Humanity, they are seeking a \$18,000 in CDBG funding to support final infrastructure improvements (i.e. final coat of paving) at the Carpenter Court subdivision. [*Planning Department*]

Planning Department

Ought to Pass

Sponsor

Recommendation

02/08/18 Vote:

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote



To: Town Council

From: Jay Chace, Planning Director

Date: February 1, 2018

RE: Cumberland County Community Development Block Grant Application

The Town of Scarborough has been approached by Habitat for Humanity of Greater to support a Community Development Block Grant (CDBG) application on their behalf. Habitat is seeking \$18,000 in CDBG funding to support final infrastructure improvements (i.e. final coat of paving) at the Carpenter Court subdivision.

Carpenter Court subdivision is a 13 lot residential subdivision for low and moderate income households. The creation of the subdivision has been a partnership between the Town of Scarborough and Habitat for Humanity of Greater Portland. The Town has facilitated the development through assistance with land conveyance, project design and sewer connection. The project design and sewer connections were additionally supported by prior CDBG program funding awards.

The proposed paving project is eligible for 2018 program year funding through a competitive grant application processes. The Town is consider the "host" community for Habitat's application and the Council's endorsement of this proposal is a requirement of the County program.

Habitat has prepared, with some assistance from Planning Dept. staff, the attached grant application. Other than some administrative time in support of the application Town Council action in support of the application will not result in additional funding or construction responsibilities from the Town.

Cumberland County Community Development Block Grant Program

General Program Application

Program Year 2018

Final Applications Due: 4:00pm, Thursday February 1, 2018

**Cumberland County
Community Development Office
142 Federal Street, Suite 102
Portland, Maine 04101
Tel. 207- 699-1906
Fax 207- 871- 8292**

*An electronic copy of this application is available at
<http://cumberlandcounty.org/168/Applicant-Information>*

Cumberland County Community Development Program
2018 CDBG General Program Application
Community Cover Page

Project Title Town of Scarborough Affordable Housing Infrastructure Road
Paving on behalf of Habitat for Humanity of Greater Portland

Lead Community Town of Scarborough

Additional Communities _____

Contact Information Name Jay Chace – Town Planner

Address P. O. Box 360, Scarborough ME 04070-0306

Email jaychace@scarboroughmaine.org Tel (207) 730-4042

Program Category

Public Infrastructure/Facility X Downtown Revitalization _____

Housing X Economic Development _____

CDBG “National Objective”

Low/Moderate Income: Area-Wide X Limited Clientele _____

Direct Benefit: Presumed Group Low/moderate income 1st
time home buyers (Identify Group)

Slum/Blight: Area-Wide _____ Spot Basis _____

Amount of CDBG Funds Requested \$18,000

Total Estimated Project Cost \$22,500

Name of Authorized Official Thomas Hall – Town Manager

Signature of Authorized Official _____

Cumberland County Community Development Program

2018 General Application Questions

Respond to the narrative questions in a maximum of six pages (economic development & non-economic development project applications) or seven pages (multi-jurisdictional project applications.)

1. Provide a **brief summary** (400 words maximum) of the proposed project.
- 10 points.

Focus your answer on issues *such as, but not limited to*: What will be built? What will happen? Where will it happen? Who's in charge? Who will be served?

On behalf of Habitat for Humanity of Greater Portland (HFHGP), the Town of Scarborough is seeking an \$18,000 CDBG program grant to provide funding for an infrastructure improvement project. The funds will be used to provide a final coat of paving on Carpenter Court, the access road for a 13-home affordable housing community situated on land purchased by the Town from the Maine Turnpike Authority. Carpenter Court is located at 75 Broadturn Rd. in the Dunstan area of Scarborough. The paving project will be managed by HFHGP in conjunction with the Town.

Eight homes will be sold to families earning up to 80% of the greater Portland-metro area median family income (AMI) designated by U. S. Department of Housing and Urban Development (HUD) guidelines. Five of the homes will be sold to families earning up to 120% of the greater Portland-metro AMI.

Construction began in December 2015. Five homes have been completed and sold. Three homes are under construction with scheduled completion dates in spring 2018. The final five homes have scheduled completion dates in 2019.

2. Provide a response to the four questions below defining and justifying the **need for the activity**. - 20 points

- a. Convey the magnitude and severity of the issue to be addressed. The Town of Scarborough has been concerned about the lack of affordable housing options available to low- and moderate- income families who live and/or work in Scarborough for a number of years. In 2005, the Town commissioned Bruce C. Mayberry, Planning Consultant, to conduct a needs analysis. This "Affordable Housing Needs Analysis" identified two major issues that have contributed to the lack of affordable housing in Scarborough.

The first issue is the robust job growth in Scarborough since 2000. As of the latest Census in 2010, Scarborough had the third largest number of jobs within

the Portland-metro area after Portland and South Portland. The principal growth areas have been in the highest paying (professional) and the lowest paying (retail, trade) sectors.

The second issue is the high median home price in Scarborough. In 2005, Maine State Housing estimated that the median home price was \$290,000, while the purchase price affordable to median income households was \$215,000, a \$75,000 price gap. The 2016 Maine State Housing data shows an even larger gap of \$88,600 between a home families' can afford and the median-home price. This significant affordability gap needs, and can be, addressed with homes priced in the \$175,000 to \$235,000 range, which Habitat is able to supply.

<http://www.mainehousing.org/>

b. Identify the total number of people affected by the issue. According to 2016 Maine State Housing data, 64.6% of households in Scarborough cannot afford a median priced home in Town (5,101 out of 7,892 households). This translates to 12,850 people based on 2012 - 2016 US Census data for Scarborough (2.52 persons per household).

<https://www.census.gov/quickfacts/fact/table/scarboroughtowncumberlandcountymaine/INC110216>

i. Out of the total number of people affected, identify the number of people from low/moderate income households.

This project will affect 13 households or approximately 33 individuals based on 2.52 persons per household. Of the homes sold to date, the average number of people per household has been four; based on this estimate means approximately 52 individuals will be affected.

c. Describe to what extent the project makes in the long-term measurable difference in the economic and social health of the region.

The major economic benefit to the region is wealth development through helping low- to moderate- income households build home equity, a major source of family wealth. A secondary source of economic development is lower commuting costs since families can now afford housing in town. For example, cutting 20 miles off of a round-trip commute could lower transportation costs by \$2,725 per commuter (20 miles per day for 250 days per year at \$.545/mile, the 2018 I.R.S. reimbursement rate).

The major social health benefit comes from providing stable housing for low- to moderate- income families who often live in unsafe and / or overcrowded environments. Research has shown that having a safe, uncrowded, and stable living environment improves the mental, physical, and academic lives of children

and teens. In an article published in the *American Journal of Public Health*, (Cutts, 2011), crowded living conditions were negatively correlated in young children with “mental health status, ability to cope with stress, child and parent interaction, social relationships, and sleep. It also increases the risk for childhood injuries, elevated blood pressure, respiratory conditions, and exposure to infectious disease.” For teens, frequent moves are negatively correlated with “mental health concerns, substance abuse, increased behavior problems, poor school performance, and increased risk of teen pregnancy.”

Cutts, D. B., Meyers, A. F., Black, M. M., Casey, P. H., Chilton, M., Cook, J. T., & ... Frank, D. A. (2011). US housing insecurity and the health of very young children. *American Journal of Public Health*, 101(8), 1508-1514.

- d. Construction related activities: Convey how the project relates to the community’s long-range planning and capital improvement needs.

This project helps Scarborough’s long-range planning goal of providing affordable housing to its citizens. It is unacceptable that 64.6% of households in our community cannot afford a median priced home. In addition, local housing stock for residents who work in the Town is critical to the long-term viability of our transportation infrastructure since it will lessen the impact on our roads.

3. Provide a response to the three questions concerning **management of the proposed activity** – 10 points

- a. Define *who* will manage the grant funded project and *how* they will manage it.

The Town of Scarborough will work in conjunction with HFHGP to manage the bid and construction process for the paving.

- b. Explain the experience of the applicant in undertaking projects of similar complexity.

The Town staff has significant experience managing and overseeing public infrastructure projects since these are core duties and responsibilities of the Town’s departments. In addition, Habitat also has experience managing similar projects, as demonstrated by their completed communities in Portland, Westbrook, and Freeport. The Town and Habitat have worked together to bring infrastructure improvements to the neighborhood such as sewer, water, and road services and the requested funds for the final coat of road paving will help Habitat maximize their limited funding towards additional housing.

- c. Demonstrate that an ongoing commitment exists to continue the maintenance and operation of the activity or facility.

The Town is committed to maintaining the access street for the Scarborough affordable housing community as public infrastructure.

4. Demonstrate that the project is **ready to proceed** – 20 points

For construction related projects:

- Describe the steps that have *been* completed or must *be* completed to bring the project to construction start. These may include: site control, design, engineering, cost estimates, procurement of permits, testing, consultations concerning life safety, ADA, or other special requirements, traffic studies, zoning, Planning Board approval.
- Describe any existing and/or potential impediments to project initiation.

The base road is complete and is ready for the final paving. Five homes in the Scarborough affordable housing community have been sold. There are three homes currently under construction with the final five homes slated to begin construction in 2018. At this point the Town and Habitat do not see any impediments that would prevent this project from being completed, especially if this additional CDBG grant funding can be secured.

For non-construction related projects:

- Describe the steps that have been completed or must be completed to initiate the project. These may include: community support, staffing, securing an appropriate location, marketing and networking.
- Describe any existing and/or potential impediments to project initiation

For projects requiring a match:

County sponsored projects do not require a match. Community sponsored applicants require a threshold 20% match in cash, donated land or building materials, or contracted project development services. In-kind contributions are allowed, but need to be documented, quantifiable services for work performed.

- List sources and amounts of matching funds on match sheet provided (*Appendix III*).
- Are the funds secured?
 - If yes: Provide documentation
 - If no: Describe what is pending or next steps

Funds to cover the \$4,500 match are available now because HFHGP has secured loans from Gorham Savings Bank and Genesis Fund to provide a steady cash flow allowing construction to continue while funds are being raised. Sales from ReStore also provides cash flow for construction.

HFHGP will raise funds for the match by the end of the project in 2019, because the loans need to be repaid. The matching funds will be raised through grant applications and building partnerships with local businesses and philanthropic groups.

The financial model and funding sources for HFHGP are discussed in Question 7A. Since its founding in 1985, HFHGP has raised funds for over 81 homes and is confident that the \$4,500 in matching funds needed to repay the constructions loans will be raised by the time the community is finished in late 2018.

5. **Budget for project.** Fill in the attached budget form *and provide the basis for determination of budget amounts (Appendix IV).* - **5 points**

- Describe how funds, including match when applicable, will be distributed between project elements.
- Limit the budget and budget description to that portion of your program that is applicable to this application.

Applications will not be accepted without a completed budget.

As demonstrated in Appendix IV, this application is for \$18,000 of the \$22,500 needed to pave the road (Carpenter Court) for the affordable housing community. The cost is based on a quote obtained by Habitat for Humanity of Greater Portland in December 2017 from a local contractor.

6. **Implementation schedule** for project: Fill in the attached schedule form (Appendix III). - **5 points**

Attached

7. **7A) NON-ECONOMIC DEVELOPMENT ONLY**

Provide a response to the three questions demonstrating the **need for CDBG program funds** - **15 points**

- a. Why are CDBG funds critical for the commencement and ultimate success of the project?
- b. Have you, or will you, seek funds from other sources? If so, what are those funding sources?
- c. What is the impact on the project if CDBG funds are not received or if only partial CDBG funds are received?

The CDBG funds are critical because the federal government is the largest source of funding for low- and moderate-income housing. This grant represents 26% of the cash funds that Habitat needs to raise to build one home. The road will be paved without the CDGB funds, but the additional \$18,000 that HFHGP would need to fund will delay the completion of the Scarborough community and the start of the Habitat community in Gorham that is in the early planning stage.

HFHGP is always seeking funds from other sources. The financial model used by HFHGP has three funding components: cash donations (business, individuals, grant awards); home sale proceeds; and in-kind donations. The Scarborough project has an additional funding component; the Town forgives the loan for the cost of the land when the house is sold. The breakdown for the Scarborough low- and moderate-income housing project is:

Funding Source	Amt per house
Habitat fund-raising (grants, cash donations)	\$ 70,225
Proceeds from home sales	\$168,465
Town of Scarborough Loan Forgiveness - Land	\$ 21,500
In-kind donations or cost reductions	\$ 12,310
Total cost of one home	\$272,500

Private sector grants for low- and moderate-income housing are rare and fund only a small portion of construction costs. HFHGP has received consistent funding from four foundations over the last six years:

Foundation	Amt per year
Bank of America Charitable Foundation	\$20,000
Wells Fargo Maine Giving	\$10,000
Margaret E. Burnham Charitable Trust	\$5,000
Gene R. Cohen Foundation	\$1,000

These four grant awards provide 51% of the cash needed for one home; they provide 13% of the cash needed for the four homes built each year. Even though these are the most reliable grants, Habitat continues to apply for other grant awards such as the State Farm Good Neighbor Grant (\$6,000 in 2017); Wells Fargo Maine Giving (\$10,000 in 2015); TD Bank Housing for Everyone (no awards to date); Samuel L. Cohen Foundation (\$10,000 in 2015); and Simmons Foundation (no awards to-date).

If CDBG funds are not awarded for this project, HFHGP will need to either raise an additional \$18,000 which may delay the completion of the Scarborough community and the start of the Habitat community in Gorham that is in the early planning stage or raise the price of the remaining six homes by \$3,000 to cover the additional cost.

8. **Distress Score**

Each community will be ***assigned*** a score from **0 to 10 points** based upon two factors:

- a. Percent of low/moderate income community residents of the total community population.
- b. Percent of low/moderate income residents in the 25 communities of the Cumberland County Entitlement Jurisdiction that reside in the applicant community.

County sponsored projects serving region-wide initiatives will receive a distress score of **6 points**.

The Town of Scarborough's distress score is 3.

Appendix I: 2018 Community Distress Scores

Community	Distress Score
Long Island	10
Westbrook	10
Casco	7
Windham	7
Harrison	7
Gray	6
Standish	4
Sebago	4
Naples	4
Raymond	4
Harpswell	4
Freeport	3
Scarborough	3
Baldwin	3
New Gloucester	3
Gorham	2
Cape Elizabeth	1
Pownal	1
Yarmouth	1
North Yarmouth	1
Chebeague Island	0
Falmouth	0
Cumberland	0

Appendix II: Rule List

2018 Exception

City/Town	Census Tract	Block Group	LMI Pop.	Total Pop.	% LMI
Westbrook	002900	1	680	710	95.77%
South Portland	003000	4	1,980	2,470	80.16%
South Portland	003100	3	565	725	77.93%
Freeport	004502	5	495	705	70.21%
Long Island	002400	3	240	360	66.67%
Westbrook	002800	2	955	1,475	64.75%
South Portland	003100	1	360	560	64.29%
South Portland	003000	3	615	990	62.12%
Westbrook	002800	1	760	1,225	62.04%
Westbrook	002900	3	470	765	61.44%
Bridgton	016000	1	700	1,165	60.09%
South Portland	003200	3	415	720	57.64%
South Portland	003500	2	1,040	1,830	56.83%
Harpswell	017102	1	570	1,010	56.44%
Westbrook	002900	2	820	1,455	56.36%
Casco	013000	2	345	625	55.20%
Westbrook	002700	1	885	1,610	54.97%
Gray	004702	2	345	630	54.76%
Casco	013000	3	860	1,580	54.43%
New Gloucester	011500	1	770	1,425	54.04%
Gray	004702	4	885	1,675	52.84%
Freeport	004502	2	340	645	52.71%
Windham	004802	2	505	970	52.06%
Windham	004803	2	1,150	2,240	51.34%
Windham	004802	3	895	1,770	50.56%
Casco	013000	1	380	760	50.00%
Harrison	015000	2	805	1,610	50.00%
Bridgton	016000	3	385	770	50.00%
Harrison	015000	1	525	1,055	49.76%
South Portland	003100	4	390	785	49.68%
Naples	014000	3	535	1,085	49.31%
Standish	017001	1	1,005	2,090	48.09%
Gray	004702	3	800	1,675	47.76%
Bridgton	016000	2	475	1,005	47.26%
Windham	004801	3	705	1,515	46.53%

Appendix III: Project Implementation Schedule

There are many types of potential CDBG funded projects, each with their own set of typical activities and timelines. The lists below contain typical activities for different types of projects and are not exhaustive; *your own individual project may have other activities that you'll want to identify and include.*

Some activities, e.g. construction of a building, infrastructure, or a planning project will be linear. Others, like housing rehabilitation may be repetitive as more projects are undertaken.

Fill in the activities that will occur and your best estimates of the time frame. A two year time horizon is provided in the table; however, you may include in additional table page if needed. You are not required to fill in two years of activities if your project will take less time.

Examples of Project Specific Activities

<u>Construction Projects</u>	Implementation of rehabilitation activities
Local approvals & permits	
Matching funds	
Procurement of architect/engineer	
Design phase	
Specification development	
Contract bid	
Contract award	
Contract start	
Construction	
Construction wrap-up	
Final completion & final payment	

Housing Rehabilitation

Development of services RFP
Selection of service contractor
Solicitation of rehabilitation contractors
Marketing of program
Client intake and screening
Home inspections, project development

<u>Project Implementation Schedule</u>								
<u>Activity</u>	Q #1 J – S 2018	Q #2 O – D 2018	Q #3 J – M 2019	Q #4 A – J 2019	Q #5 J – S 2019	Q #6 O – D 2019	Q #7 J – M 2020	Q #8 A – J 2020
Specification Development	X							
Contract Bid	X							
Contract Award	X							
Contract Start	X							
Construction	X							
Construction wrap-up		X						
Final completion & final payment		X						
Reporting			X					
Project Completed:			X					

Type of Funding	Match Amount		Source of Match	How is the match calculated?	Is the match secured? Please circle yes or no.	If yes, please attach relevant documentation. ¹	If no, please outline and attach future steps to secure match. ²
Cash	Municipal Cash	\$			Yes / No		
	Other Cash	\$4,500	Grant awards & donations	20% of total bid	Yes <u>No</u>		Pending B of A grant (\$20,000); other grant applications; cash donations
	Other Cash	\$			Yes / No		
	Other Cash	\$			Yes / No		
In-Kind/ Donation	Municipal In-Kind & Donation	\$			Yes / No		
	Other In-Kind & Donation	\$			Yes / No		
	Other In-Kind & Donation	\$			Yes / No		
	Other In-Kind & Donation	\$			Yes / No		
TOTAL MATCH		\$4,500					

¹ Please feel free to attach up to 1 page of additional documentation demonstrating secured match.

² Please feel free to attach up to 1 page explaining the future steps that will be taken to secure matches.

Appendix IV: Budget

<u>Construction Projects</u>				
Cost Category	CDBG Funds	Municipal Funds	Other Funds	Total
Design/Engineering				
Land Costs				
Materials/Supplies	\$15,300			\$15,300
Construction Costs	\$2,700		\$4,500	\$7,200
Project Management				
Other				
1.				
2.				
3.				
4.				
Total Costs	\$18,000		\$4,500	\$22,500
Provide the basis for determination of budget amounts: Quotation from Moulton Paving and Construction, Yarmouth, Maine, to HDHGP.				

Appendix VI: Current Income Limits

HUD/CDBG program qualifying low/moderate income limits adjusted for household size – Effective April 14, 2017. Limits represent 80% of Area Median Income, adjusted for household size.

Communities of:

Baldwin, Bridgton, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago

Household Size:	1	2	3	4	5	6	7	8
Income Limit \$\$:	40,600	46,400	52,200	58,000	62,650	67,300	71,950	76,600

Communities of:

Cape Elizabeth, Casco, Chebeague Island, Cumberland, Falmouth, Freeport, Gorham, Gray, Long Island, North Yarmouth, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth

Household Size:	1	2	3	4	5	6	7	8
Income Limit \$\$:	46,000	52,600	59,150	65,700	71,000	76,250	81,500	86,750

AGENDA
SCARBOROUGH TOWN COUNCIL
THURSDAY – FEBRUARY 8, 2018
SPECIAL MEETING – 7:00 P.M.

Order No. 18-010. Move approval on the request from the Scarborough Housing Alliance to utilize funds from the Affordable Housing Initiative Fund in the amount of \$100,000 toward the Bessey Commons II Project and authorize the Town Manager to sign any and all documents related to this order. *[Scarborough Housing Alliance]*

Scarborough Housing Alliance

Ought to Pass

Sponsor

Recommendation

02/08/18 Vote:

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

February 7, 2018

To: Scarborough Town Council

From: Scarborough Housing Alliance

In our report of October 4, 2017, SHA had outlined our plans for the coming year.

You have before you the Request for Proposal that we hope to release shortly with your approval. We have carved out two projects that were already in process; Avesta Southgate Project and Bessey Commons II Expansion Project.

The SHA also reported that we would use the funds in the Scarborough Housing Fund from the collection of In-Lieu fees to assist projects for affordable housing. We have determined that a grant of \$100,000 toward Bessey Commons II would qualify them for an additional one point in the scoring system and therefore enhance the potential of success. The Bessey Commons application is due 2/8/18. We ask for your approval to confirm this grant so that it may be included in the application.

The Fund currently has a balance of \$308,408.99.

Thank you, Marj DeSanctis, Chair SHA

October 4, 2017

To: Scarborough Town Council

From: Scarborough Housing Alliance

As requested, we are reporting our plan for use of in-lieu fees. Below please find our plan to engage developers for the purpose of expanding our affordable housing objectives.

- Strategy: We intend to partner with affordable housing developers and not to be the provider. This method will leverage our money for our partners to proactively submit projects for affordable housing in Scarborough. This will apply to both non-profit and private developers. This plan will not be targeted to a particular population for more flexibility.
- Plan:
 - Using existing VIIIC section B5 – use of in-lieu fees for Affordable Housing as follows:
 - Fees will be used to further the establishment of affordable housing and may be used for land acquisition, infrastructure, and/or building construction costs
 - A portion of these funds may also be used for administrative, legal, engineering or other costs related to planning, design, permitting, and property acquisition
 - A portion may also be used to establish a revolving loan program to provide direct financial assistance to qualified homebuyers with down payments or other financial needs to purchase affordable housing units
 - The Affordable Housing Trust Fund may be used in combination with other town funds, and other private, non-profit, and government funding
 - The in-lieu fees contributed by a developer shall not be used by the same developer or other developers to fund construction required to meet density bonus
 - We hope to add “Inclusionary Zones” to this last item
 - Current Projects needing funds:
 - Avesta Southgate House - approved
 - Bessey Commons Expansion – in application stage
 - SHA will prepare an open and competitive Request for Proposal (RFP):
 - Definitions will be provided for such terms as “Units”, “Affordable” at 80% or less of AMI, “Growth Areas” etc.
 - RFP will be limited to growth areas
 - Award not to exceed \$TBD per unit or \$TBD total (\$20k in-lieu fee limit)
 - Award will be time sensitive
 - Length of Award Reservation not to exceed 36 months
 - Standard legal language will be included (caveats, decisions, discretion, etc.)
 - RFP release – SHA will align our RFP with the Affordable Housing Programs and available funds. This will include due date plus six month reply by date.
 - Current QAP pre-applications are due November 2017 with final applications due February 2018.
 - SHA will target recommendations to Council with sufficient time for reply to applicant.
 - All awards will be recommended by SHA, final awards will be at the discretion of the Town Council.

SHA will prepare the RFP for early 2018 and release RFP depending on availability of funds. Our current balance in the Scarborough Affordable Housing Initiative Fund is \$191,000 prior to any Divine Capital payments.

AGENDA
SCARBOROUGH TOWN COUNCIL
THURSDAY – FEBRUARY 8, 2018
SPECIAL MEETING – 7:00 P.M.

Order No. 18-011. Move approval on the request to approve the 2018 Town Council Goals. *[Town Council]*

Town Council

Ought to Pass

Sponsor

Recommendation

02/08/18 Vote:

N/A

First Reading/Vote/Public Hearing

Second Reading/Final Approval/Vote

Town Council Goals

2018

SCARBOROUGH
MAINE



1. Finance/Taxes/Budget

- Create a financial strategy that manages the Town's fiscal health
- Means-based tax relief for Seniors and others in need
- Keep tax increase below 3%
- Approve budget at first vote



2. Community Relations

- Continue to build trust with constituents
- Continue to communicate more effectively with Public
- Help Public offer their input in respectful ways
- Continue to involve & engage community more in budget and other issues so there is greater understanding of how \$ is spent and the value of services
- Continue to find a collaborative way to develop and gain support for the budget



3. Planning/Comprehensive Plan

- Adopt a quality comprehensive plan
- Work with Scarborough Downs developers to make sure plan is good for town
- Continue to work on increasing affordable housing, environmental resiliency and historic preservation



4. Senior Issues

- Make Scarborough more Senior friendly
- Consider participation in AARP's "Age-Friendly Community" Program
- Focus on 55+ residential development

