

**AMENDED
AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 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.

Order No. 18-012. Act on the request for an executive session pursuant to Title 1, of the M.R.S.A. §405(6)(C) regarding a personnel matter relating to the Town Manager's Evaluation.

Item 4. General Public Comments.*

Item 5. Minutes: February 8, 2018 - Regular Town Council Meeting.

Item 6. Adjustment to the Agenda.

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

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

Order No. 17-109, 7:00 p.m. Public hearing 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. [Second Public hearing scheduled for Wednesday, March 7, 2018.] *[Town Manager]*

Order No. 18-001, 7:00 p.m. Public hearing on the proposed amendments to the Higgins Beach Character-Based Zoning Districts. *[Long Range Planning Committee]*

Order No. 18-002, 7:00 p.m. Public hearing on the proposed amendments to the Town of Scarborough Zoning Map. *[Long Range Planning Committee]*

Order No. 18-003, 7:00 p.m. Public hearing on the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu Fee - (f). *[Housing Alliance Committee]*

Order No. 18-013, 7:00 p.m. public hearing and action on the request to extend the six month moratorium on Retail Marijuana Establishments and Retail Marijuana Social Clubs for another six months from March 19, 2018 to September 15, 2018. [Original date was September 20, 2017]. *[Town Manager]*

OLD BUSINESS:

Order No. 18-008. 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. 18-014. Act on the request to approve the names posted to the various committees/board on Wednesday, February 8, 2018, as recommended by the Appointments/Negotiations Committee. *[Appointments/Negotiations Committee]*

NEW BUSINESS:

Order No. 18-015. Act on the annual "Seasonal Road Posting" for weight restrictions, if necessary, from March 5th to May 7th. *[Director of Public Works]*

Order No. 18-016. Act on the following request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance of the following streets Trillium Way located in the Trillium Subdivision off Ash Swamp Road and Memory Lane [extension] located in the Theberge Subdivision off Two Rod Road. *[Town Engineer]*

Item 8. Non Action Items:

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

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-012. Move approval on the request for an executive session pursuant to Title 1, of the M.R.S.A. §405(6)(C) regarding a personnel matter relating to the Town Manager's Evaluation. [*Town Council*]

Town Council

Ought to Pass

Sponsor

Recommendation

02/21/18 - Vote

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 17-109. The second public hearing 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 – will be held on 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 02/07/18
02/07/18 - Scheduled two public hearings

First Reading/Vote

02/21/18 - Public Hearing #1
03/07/18 - Public Hearing #2

Public Hearing

03/21/18

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

Karleen M. Foley

Robert M. Brown

Sergei

Wesley Brown

Jean-Marie Cal

Peter Hays

Christoph Flanagan

**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.

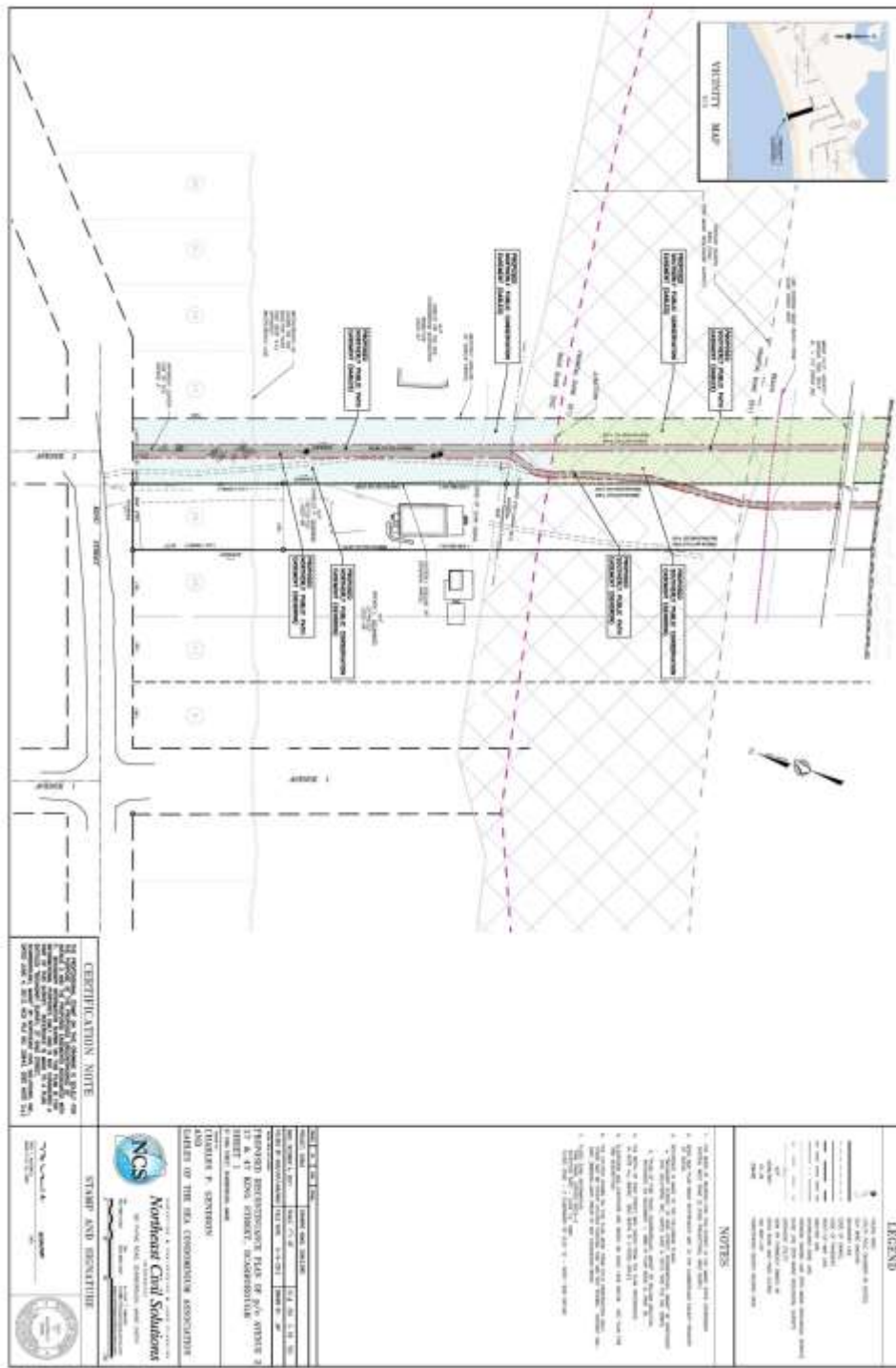
VI. EFFECT OF THIS INSTRUMENT ON PRIVATE RIGHTS AND BEACH OWNERSHIP

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.

EXHIBIT B



13



**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.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-001. The second reading on the proposed amendments to the Higgins Beach Character-Based Zoning Districts will be held on Wednesday, March 7, 2018.
[Long Range Planning Committee]

Long Range Planning Committee

Ought to Pass

Sponsor

Recommendation

*01/17/18 – Vote: 7 Yeas on first reading and
refer to Planning Board*

First Reading/Vote

02/21/18 – Public Hearing

Public Hearing

03/07/18

Second Reading/Final Approval/Vote

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

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

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

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

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

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

AMENDMENTS TO CHAPTER 405 THE ZONING ORDINANCE

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

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

Article 5.C.2

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

- ~~i. When a nonconforming structure is damaged or destroyed to the extent of 50% or more of its replacement value, the structure may be repaired or rebuilt only if it conforms to the provisions of this Ordinance.~~
- ~~ii. When a nonconforming structure is damaged or destroyed to the extent of less than 50% of its replacement value, it may be repaired and rebuilt to its previous condition, so long as the cause of damage was not by any means within the control of the owner, the nonconformity is not expanded, and no new nonconformity is created.~~
- ~~iii. A Zoning Permit for repairs or reconstruction must be granted within one year of the date of damage or destruction, unless an additional one year extension is granted by the Zoning Administrator.~~
- ~~iv. When a structure containing a nonconforming use is damaged or destroyed, and the cause of damage was not by any means within the control of the owner, the nonconforming use may be reestablished provided that the above standards are met and the degree of the previous nonconforming use is not increased.~~

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-002. The second reading on the proposed amendments to the Town of Scarborough Zoning Map will be held on Wednesday, March 7, 2018. [*Long Range Planning Committee*]

Long Range Planning Committee

Ought to Pass

Sponsor

Recommendation

*01/17/18 – Vote: 7 Yeas on first reading and
refer to Planning Board*

First Reading/Vote

02/21/18 – Public Hearing

Public Hearing

03/07/18

Second Reading/Final Approval/Vote

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

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

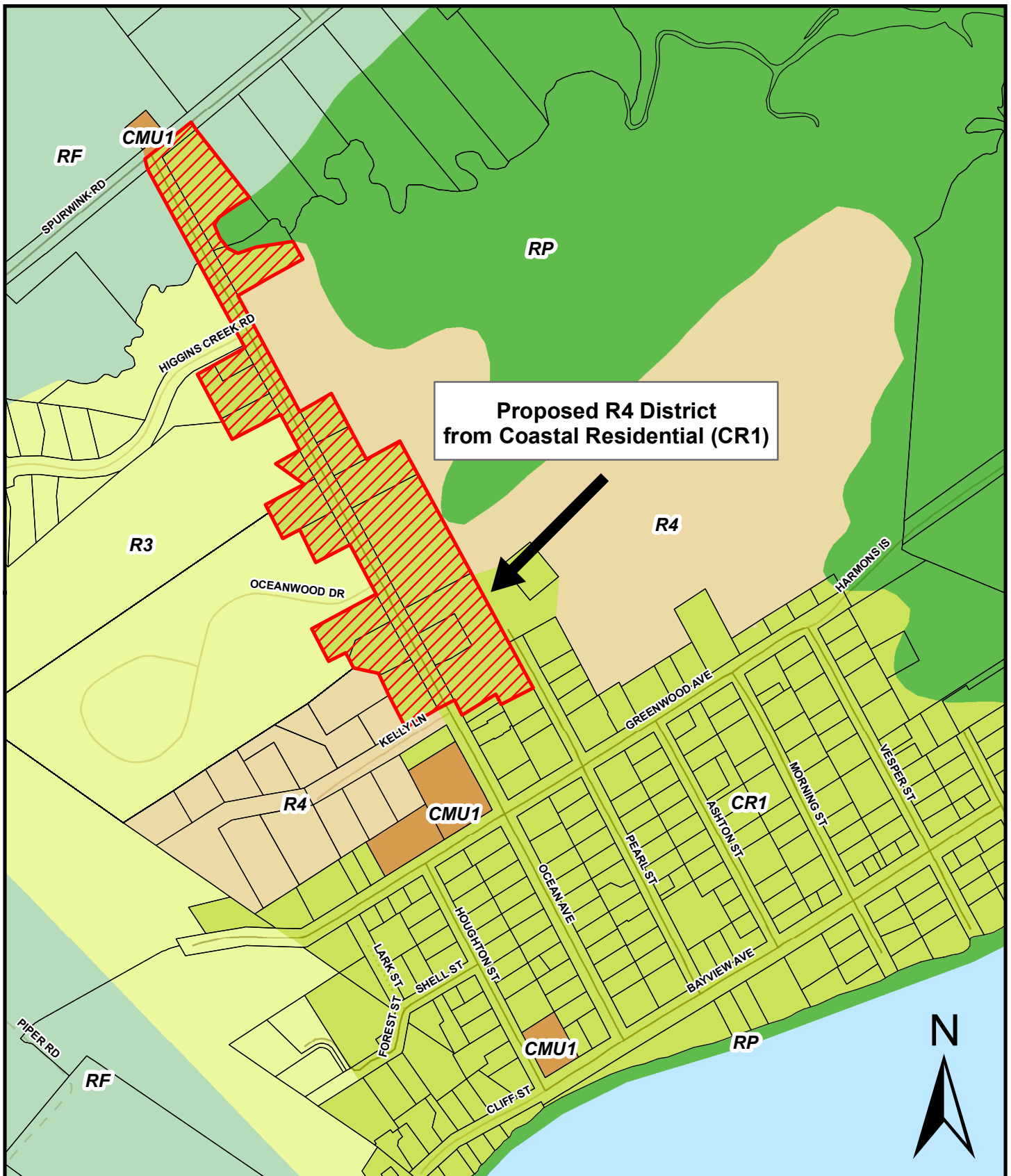
The majority of the homes were originally developed prior to the current Character Code, but unlike the properties beyond the Kelly Ln., the primary design and pattern seems to have been developed more in keeping with the prior zoning standards of the R4 District. The structures sit deeper on the lots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

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

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

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

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



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

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-003. The second reading on the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu Fee - (f), will be held on Wednesday, March 7, 2018. [*Housing Alliance Committee*]

Housing Alliance Committee

Ought to Pass

Sponsor

Recommendation

*01/17/18 – Vote: 7 Yeas on first reading and
refer to Planning Board*

First Reading/Vote

02/21/18 – Public Hearing

Public Hearing

03/07/18

Second Reading/Final Approval/Vote

AMENDMENTS TO CHAPTER 405 THE ZONING ORDINANCE

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

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

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

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

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

1. An application for use of the affordable housing in-lieu fee shall be submitted by the applicant as an element of their overall submission for subdivision and/or site plan review and approval. This submission shall include the number of additional dwelling units proposed utilizing the affordable housing in-lieu fee, the proposed dwelling unit types, and the overall residential density.
2. The payment of an in-lieu fell shall be required for each additional dwelling unit permitted through this provision, unless the zoning district in which the project is located allows for density to be determined on a bedroom and square footage basis in accordance with Section VII.C.(A) Residential Density. In these cases, the payment of a fraction of the fee shall be required for each unit in the same proportion as the density requirement for the type and size of the unit proposed (For example, a unit that is counted as half (0.5) a dwelling unit for density purposed required half (0.5) the fee amount as a full dwelling unit). The affordable housing in-lieu fee amount is listed in the Town of Scarborough Schedule of License, Permit and Application Fees (Chapter 311).
3. The total amount of the affordable housing in-lieu fees for the development may either be apportioned to each development phase for multi-phase projects or each dwelling unit or residential building lot within the development. In these cases the fees shall be paid prior to the commencement of construction of each phase of development or prior to the issuance of a building permit for each unit or lot. This scheduled of payment shall be established as part of the Planning Board approval for the development
4. These fees shall be paid to the Town of Scarborough.
5. Affordable housing in-lieu fees collected by the Town shall be deposited into a specific account, segregated from the Town's general revenue, and created for supporting the

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

- a. The funds contributed to the specific account, entitled the Affordable Housing Initiative Fund, shall be used to further the establishment of affordable housing within the Town. More specifically, these funds may be used for the land acquisition, infrastructure, and/or building construction costs of an affordable housing project.
- b. A portion of these funds may also be used for administrative, legal, engineering or other costs related to the planning, design, permitting, and property acquisition for an affordable housing project.
- c. A portion of these funds may also be used to establish a revolving loan program to provide direct financial assistance to qualified homebuyers with down payments and other financing needs for purchasing affordable housing units.
- d. The Affordable Housing Trust Fund may be used in combination with other Town funds, and other private, non-profit, and government funding for establishing affordable housing within the community.
- e. The in-lieu fees contributed by a development shall not be used by the same or other developments to fund the construction of affordable housing required to meet a residential density bonus for the creation of affordable housing.
- f. The in-lieu fees collected by the Town shall not be utilized to fund affordable housing portions of a development which are otherwise required to include affordable housing in order to meet minimum zoning standards.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No, 18-013. Move approval on the request to extend the six month moratorium on Retail Marijuana Establishments and Retail Marijuana Social Clubs for another six months from March 19, 2018 to September 15, 2018. [Original date was September 20, 2017]. *[Town Manager]*

**TOWN OF SCARBOROUGH
ORDINANCE ESTABLISHING A MORATORIUM ON RETAIL MARIJUANA
ESTABLISHMENTS AND RETAIL MARIJUANA SOCIAL CLUBS**

WHEREAS, a referendum on legislation titled the Marijuana Legalization Act, codified at 7 M.R.S.A. Chapter 417, was approved, subject to recount, by the voters of the State of Maine on November 8, 2016; and,

WHEREAS, as enacted by the voters, the Marijuana Legalization Act will authorize the licensure and operation of retail marijuana establishments and retail marijuana social clubs as a regulated program of the State of Maine; and

WHEREAS, the Maine Department of Agriculture, Conservation and Forestry is required to adopt rules for the proper regulation and control of the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products and for the enforcement of the Act no later than February 2018; and,

WHEREAS, 7 M.R.S.A. Section 2449, Local Licensing, allows municipalities to regulate the location, operation and licensing of retail marijuana establishments and retail marijuana social clubs and to adopt and enforce regulations for such uses; and,

WHEREAS, operations related to retail marijuana establishments and retail marijuana social clubs raise a number of concerns related to public safety and welfare, including, but not limited to, potential adverse effects on neighborhoods, security of the facilities, and odors that may create a public nuisance or hazard; and,

WHEREAS, there has been an increasing number of requests regarding the establishment of facilities for the cultivation and/or retail sales of marijuana; and,

WHEREAS, the Town's existing ordinances do not provide an adequate mechanism to regulate and control the location and operation of retail marijuana establishments and retail marijuana social clubs and are inadequate to prevent the potential for serious public harm from the future establishment of retail marijuana establishments and retail marijuana social clubs; and,

WHEREAS, the Town needs a reasonable amount of time to study the land use implications of retail marijuana establishments and retail marijuana social clubs, to review the rules and regulations to be developed by the Maine Department of Agriculture, Conservation and Forestry and to develop reasonable regulations governing their location and operation; and,

WHEREAS, during the period of this Moratorium, the Town will work on developing appropriate land use regulations concerning retail marijuana establishments and retail marijuana social clubs; and,

NOW THEREFORE, pursuant to the authority granted to it by 30-A M.R.S. § 4356, be it hereby ordained by the Scarborough Town Council, assembled as the legislative body of the Town, as follows:

1. DEFINITIONS. As used in this Ordinance, the following terms have the following meanings as defined in the Marijuana Legalization Act:

“Marijuana”: means cannabis.

“Retail Marijuana Establishments”: a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility or a retail marijuana testing facility.

“Retail Marijuana Cultivation Facility”: an entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs.

“Retail Marijuana Products Manufacturing Facility”: an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

“Retail Marijuana Social Club”: An entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

“Retail Marijuana Store”: an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

“Retail Marijuana Testing Facility”: an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

2. APPLICABILITY AND PURPOSE.

This moratorium shall apply to retail marijuana establishments and retail marijuana social clubs, as defined above, that are proposed to be located within the Town of Scarborough on or after the effective date of this Ordinance. Notwithstanding anything to the contrary in 1 M.R.S.A. § 302 or any other law, this Ordinance applies to any application relating to the establishment or operation of a proposed retail marijuana establishment and retail marijuana social club, whether or not such application had become a “pending proceeding” as defined in 1 M.R.S.A. § 302 prior to the enactment of this Ordinance.

3. PROHIBITION.

During the time this Ordinance is in effect, no official, officer, board, body, agency, agent or employee of the Town of Scarborough shall accept, process or act upon any application for any approval, including but not limited to a building permit, certificate of occupancy, site plan review, conditional use, or any other approval, received after the effective date of this Ordinance relating to the establishment or operation of a business or operation of a retail marijuana establishment and/or retail marijuana social club. No person shall establish or operate a business or operation of a retail marijuana establishment and/or retail marijuana social club within the Town of Scarborough that was proposed on or after the effective date of this Ordinance.

4. ENFORCEMENT, VIOLATION AND PENALTIES.

This Ordinance shall be enforced by the Scarborough Code Enforcement Officer. Any person who violates Section 3 of this ordinance shall be subject to civil penalties and other remedies as provided in 30-A M.R.S.A. § 4452.

5. EFFECTIVE DATE.

This Ordinance takes effect immediately upon adoption and shall expire on the 180th day thereafter, unless earlier extended by the Scarborough Town Council.

6. SEVERABILITY.

Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-008. Move approval of 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: 7 Yeas.

First Reading/Vote

N/A

Public Hearing

02/21/18 – Vote:

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
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-014. Move approval on the request to approve the names posted to the various committees/board on Wednesday, February 8, 2018, as recommended by the Appointments/Negotiations Committee. *[Appointments/Negotiations Committee]*

Appointments/Negotiations Committee

Ought to Pass

Sponsor

Recommendation

02/21/18 – Vote:

First Reading/Vote

02/21/18 – Public Hearing & Action

Public Hearing

N/A

Second Reading/Final Approval/Vote

The following names were posted for approval:

Board of Assessment Review:

Re-appoint Alan Peoples & Christopher Herrick as full voting members, with terms to expire in 2020

Move Hugh O'Shea from 1st Alternate to a full voting member, current term expires in 2018

Move Marjorie DeSanctis from 2nd Alternate to a full voting member, current term expires in 2019

Leaving 2 Vacancies [1st and 2nd Alternate Positions]

Coastal Waters & Harbor Advisory Committee:

Move Michael Lynch from 1st Alternate to a full voting member, current term expires in 2018

Appoint Steve DeCrosta as a full voting member with a term to expire in 2020

Leaving 3 Vacancies [1 Full Voting Member and 1st & 2nd Alternates]

Community Services/Rec Advisory Board:

Re-appoint Leory Crockett as full voting members with a term to expire in 2020

Move Liam Somers, from 1st Alternate to a full voting member, current term expires in 2019.

Appoint Tim Lindsay to 1st Alternate, with a term to expire in 2020

Leaving no vacancies.

Conservation Commission:

Re-appoint Ben Keller & Suzan Nixon, as a full voting members with a term to expire in 2020

Appoint Steve DeCrosta as a full voting member with a term to expire in 2020

Leaving no vacancies.

Energy Committee:

Re-appoint Anton Bodor & Judy Roy as full voting members, with terms to expire in 2020

Leaving no vacancies.

Housing Alliance:

Re-appoint Marjorie. DeSanctis & Kimberly Fowler as full voting members, with terms to expire in 2020

Appoint Hugh O'Shea as a full voting member, with a term to expire in 2018

Leaving no vacancies.

Parks and Conservation Land Board:

Re-appoint Sean Flaherty, Richard Murphy and Jane Palmer, as full voting members, with terms to expire in 2020.

Leaving no vacancies.

Personnel Appeals Board:

Re-appoint Jennifer Beedy as a full voting member with a term to expire in 2020

Move Emily Ward from 1st Alternate to a full voting member with a term to expire in 2020

Move Art Dillon, from 2nd Alternate to the 1st Alternate position with a current term to expire in 2019

Leaving 1 Vacancy [2nd Alternate]

Pest Management Advisory Board:

Appoint Richard Sullivan as Arborist/Horticulturalist with a term to expire in 2020

Appoint Tim Lindsay as the Community Services Representative with a term to expire in 2020

Appoint Rita Breton as the Member-at-Large to fill a term to expire in 2018

Leaving no vacancies.

Planning Board:

Re-appoint Roger Beeley, as full voting member, with terms to expire in 2020

Re-appoint Richard DuPerre as 2nd Alternate, with a term to expire in 2020

Leaving no vacancies.

Senior Advisory Board:

Re-appoint Donnamarie Collins & Kenneth Simons, as full voting members with terms to expire in 2020

Move Jane Palmer from 1st Alternate to full voting member with a current term to expire in 2019

Appoint Hugh O'Shea as a full voting member with a term to expire in 2020

Appoint Carol Spencer as 1st Alternate to fill a term to expire in 2018

Leaving 1 vacancy [2nd Alternate].

Shellfish Conservation Commission:

Re-appoint Will Hamill and move him from 1st Alternate to a full voting member, with a term to expire in 2020

Appoint Andy Blanchard as a full voting member, with a term expire in 2020

Appoint Nate Orff as 1st Alternate with a term to expire in 2020

Leaving no vacancies.

Zoning Board of Appeals:

Re-appoint Mark Maroon & Rick Loisel as full voting members with terms to expire in 2020

Leaving 1 vacancy [2nd Alternate].

Cable Television Committee - 7 vacancies

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-015. Move approval on the annual "Seasonal Road Posting" for weight restrictions, if necessary, from March 5th to May 7th. [*Director of Public Works*]

Director of Public Works

Ought to Pass

Sponsor

Recommendation

02/21/18 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote



MEMO

TO: Tom Hall, Town Manager
FROM: Mike Shaw, Director of Public Works
DATE: February 20, 2018

A handwritten signature in black ink, appearing to read "Mike Shaw".

RE: **2018 ROAD POSTING**

To prevent heavy vehicle damage to the town's road network it is in Scarborough's best interest to post roads each year during the annual spring thaw,

Therefore, I am requesting permission to post the roads on the attached list as well as additional roads, as necessary due to weather conditions.

The posting period will be from **03/05/2018** to **05/07/2018**.



SCARBOROUGH, MAINE

NOTICE of 2018 POSTED ROADS

In an effort to minimize damage to Scarborough roads, it is the town's policy to post roads during the annual spring thaw. During the 2018 season roads will be posted in early March and may continue to May 11th, or, until road conditions stabilize. *Look for signs indicating a road is posted.*

The following list of posted roads is subject to change at the discretion of the Public Works Director.

Road conditions become variable due to weather. Therefore, on a daily basis we may allow access to posted roads with limitations usually to morning hours. If you have questions regarding access to a posted roads: call **730-4400** and Press 2, after 6:00am any day of the week.

Town of Scarborough
Posted Roads
2018

The following roads will be posted through Friday, May 11, 2018 or until posting is lifted by the Scarborough Public Works Department.

Access to posted roads may be granted as weather permits.
Road conditions are evaluated on a ***daily*** basis during this time period.

To check on a road's status:
Call 730-4400 & Press 2
Any Day of the Week AFTER 6:00 am

Ash Swamp Road	All
Bridges Drive	All
Burnham Road	All
Chamberlain Road	All
Commerce Drive	All
Coulthard Farms Road	All
Dresser Road	All
Fogg Road	All
Hanson Road	All
Hearn Road	All
Highland Avenue	Chamberlain Road to South Portland Line
Holmes Road	Beechridge Speedway to Saco Line
Jasper Street	All
Jones Creek Drive	All
King Street	All
Longmeadow Road	All
Milliken Mills Road	All
Mitchell Hill Road	All
New Road	All
Ocean Avenue	All
Old Blue Point Road	All
Pineledge Road	All
Ross Road	All
Sawyer Road	All
Tapley Road	All
Two Rod Road	Payne Road to Holmes Road
Woodfield Drive	All

Note: Other roads may be posted as deemed necessary by the Public Works Director.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 21, 2018
REGULAR MEETING – 6:00 P.M.

Order No. 18-016. Move approval on the following request, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance of the following streets Trillium Way located in the Trillium Subdivision off Ash Swamp Road and Memory Lane [extension] located in the Theberge Subdivision off Two Rod Road and authorize the Town Manger to sign any or all documents, if applicable. [*Town Engineer*]

Town Engineer

Ought to Pass

Sponsor

Recommendation

02/21/18 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Town of Scarborough, Maine

Planning and Code Enforcement

MEMORANDUM

TO: Scarborough Town Council

FROM: Angela Blanchette, PE, Town Engineer

DATE: February 21, 2018

RE: Street Acceptance – Trillium Way
Trillium Subdivision

Pursuant to 23 MRSA 3025 and to the requirements of Section 4 of Scarborough Street Acceptance Ordinance, Woods Edge Scarborough, LLC petitions the Scarborough Town Council to accept the public infrastructure within the Trillium Subdivision, as shown on the plan approved by the Planning Board on May 12, 2014.

Town Staff has reviewed the submitted materials and has concluded that Woods Edge Scarborough, LLC has met the requirements under the Town of Scarborough Ordinance and recommends that the Town Council accept Trillium Way.

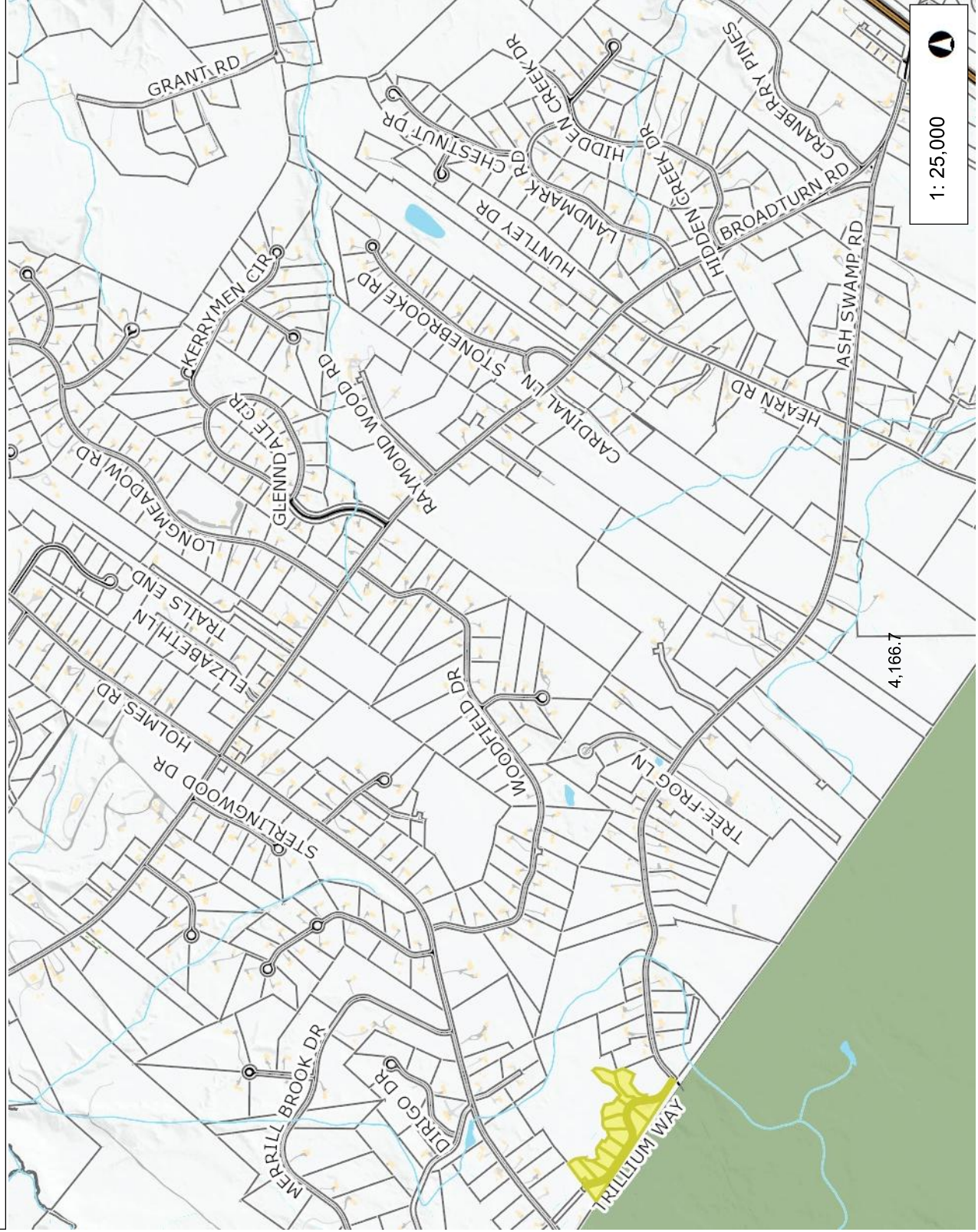
The public infrastructure has been inspected by this office and a 3rd-party engineering consultant during construction. Based on these inspections and supplemental documentation provided by the applicant, it has been determined that the work associated with the project is in compliance with the Planning Board Subdivision approval and the Street Acceptance Ordinance specifications. Further, all necessary documents have been submitted, reviewed by Town staff, and are found to be satisfactory.

Attached for your review is an excerpt from the Town's GIS database, and a reduced copy of the subdivision as-built plans.

c: Mike Shaw, Public Works Director
Tody Justice, Town Clerk
Steve Colucci, Woods Edge Scarborough, LLC



Trillium Way



WGS_1984_Web_Mercator_Auxiliary_Sphere
Town of Scarborough, Maine

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



Legend

- Parcels with Owner Info
- Parcels with Owner Informatic
- Roads
 - MTA
 - MTA
 - MDOT
 - PUBLIC
 - PENDING PUBLIC; PRIVATE; PF
 - CEMETERY; NOT YET BUILT; P
- Ponds
- Swamps
- Streams Intermittent
- Railroad
- Roads - Surrounding Towns
 - Toll hwy, Urban; Toll hwy, Rural
 - State aid, Rural; State hwy, Rural
 - hwy, Urban
 - Town Road
 - Private Road
- Coastline
- Treeline
- Town_Townline_Polygons_α
- Surrounding Towns
- Scarborough

1: 25,000

Notes

2/16/2018

Town of Scarborough, Maine

Planning and Code Enforcement

MEMORANDUM

TO: Scarborough Town Council

FROM: Angela Blanchette, PE, Town Engineer

DATE: February 21, 2018

RE: Street Acceptance – Memory Lane Extension
Theberge Subdivision

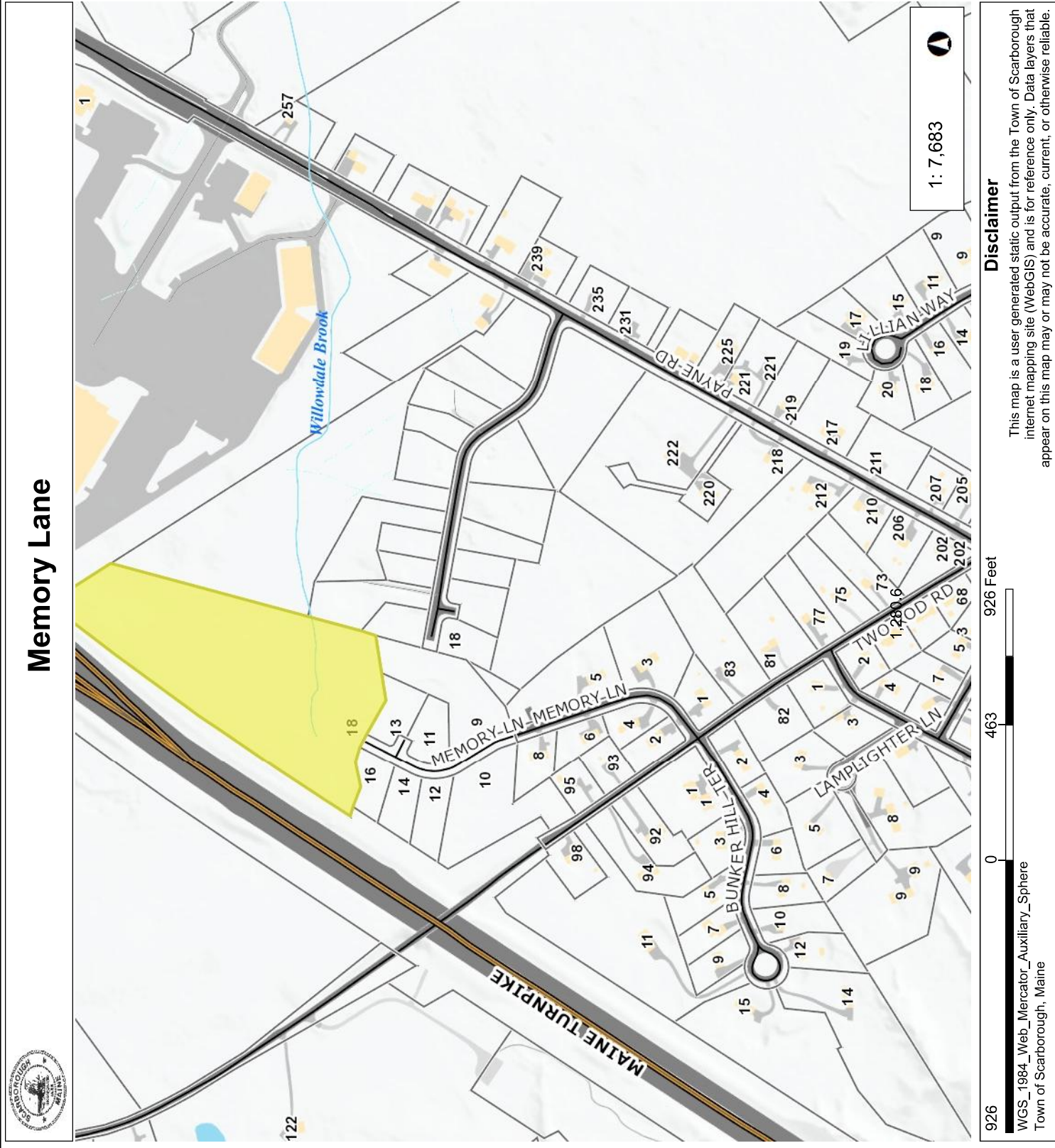
Pursuant to 23 MRSA 3025 and to the requirements of Section 4 of Scarborough Street Acceptance Ordinance, Risbara Brothers Construction, Inc. petitions the Scarborough Town Council to accept the public infrastructure within the Theberge Subdivision, as shown on the plan approved by the Planning Board on September 14, 2015.

Town Staff has reviewed the submitted materials and has concluded that Risbara Brothers Construction, Inc. has met the requirements under the Town of Scarborough Ordinance and recommends that the Town Council accept Memory Lane (extension).

The public infrastructure has been inspected by this office and a 3rd-party engineering consultant during construction. Based on these inspections and supplemental documentation provided by the applicant, it has been determined that the work associated with the project is in compliance with the Planning Board Subdivision approval and the Street Acceptance Ordinance specifications. Further, all necessary documents have been submitted, reviewed by Town staff, and are found to be satisfactory.

Attached for your review is an excerpt from the Town's GIS database, and a reduced copy of the subdivision as-built plan.

c: Mike Shaw, Public Works Director
Tody Justice, Town Clerk
Rocco Risbara III, Risbara Brothers Construction, Inc.



Legend	
	Parcels with Owner Info
	Parcels with Owner Informatic
Roads	
	MTA
	MTA
	MDOT
	PUBLIC
	PENDING PUBLIC; PRIVATE; PF
	CEMETERY; NOT YET BUILT; P.
Ponds	
	Ponds
Swamps	
	Swamps Intermittent
Railroad	
	Railroad
Building Footprints	
	Building Footprints
Driveways	
	Paved Driveway
	Unpaved Driveway
Road Surfaces	
	Paved Road
	Unpaved Road
Parking Lots	
	Paved Parking
	Unpaved Parking
Coastline	
	Coastline
	Tree Line

Notes

2/16/2018

Disclaimer

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WGS_1984_Web_Mercator_Auxiliary_Sphere
Town of Scarborough, Maine

ST. CLAIR ASSOCIATES

LAND SURVEYING AND CIVIL ENGINEERING

34 Forest Lane
Cumberland, ME 04021
Tel (207) 829-5558

DCS
CHKD
NJS
NJS
DCS

PROJECT NO.

FIELD BOOK

DESIGN

14025

REV:

BY:

DATE:

STATUS:

C

DCS

11-13-17

REVISIONS PER TOWN REVIEW COMMENTS

B

DCS

11-13-17

FOR TOWN REVIEW

A

DCS

12-12-16

FOR INTERNAL REVIEW

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ST. CLAIR ASSOCIATES ANY ALTERATIONS AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ST. CLAIR ASSOCIATES

PLAN & PROFILE: STA 6+00 - 12+09 AS-BUILT

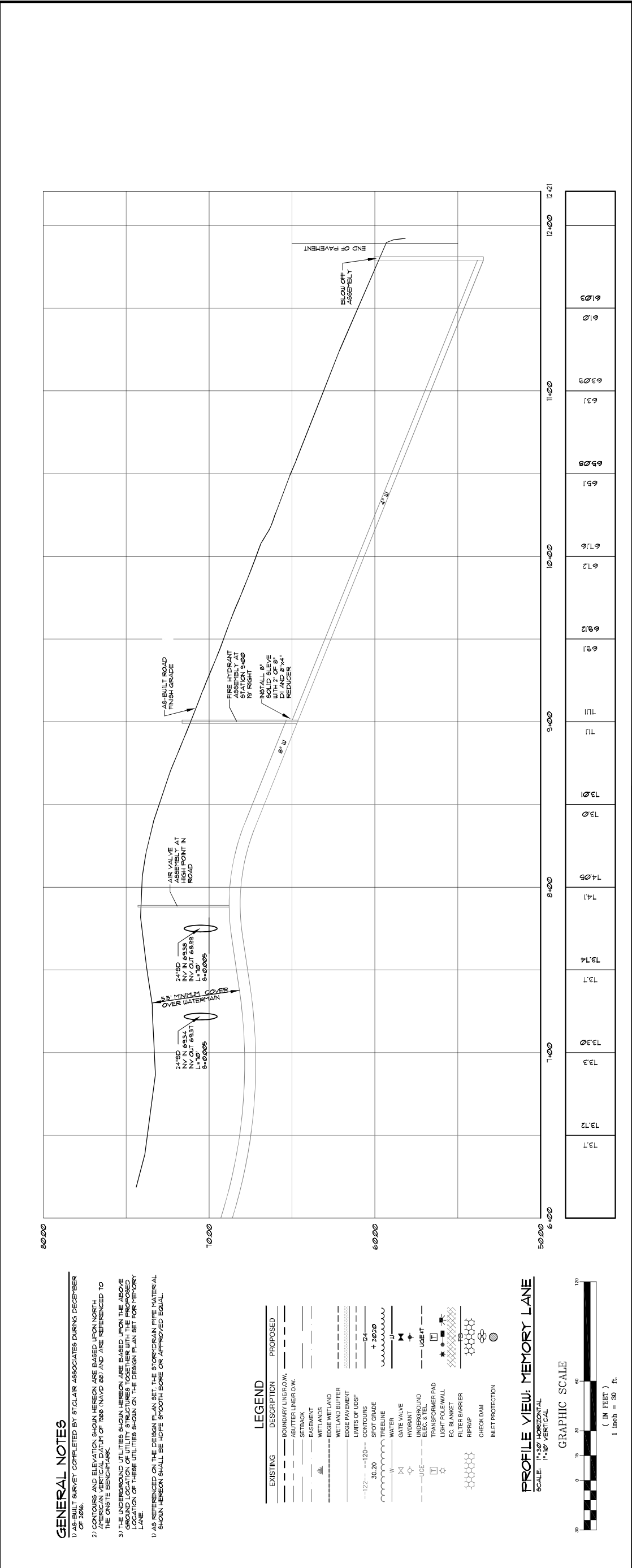
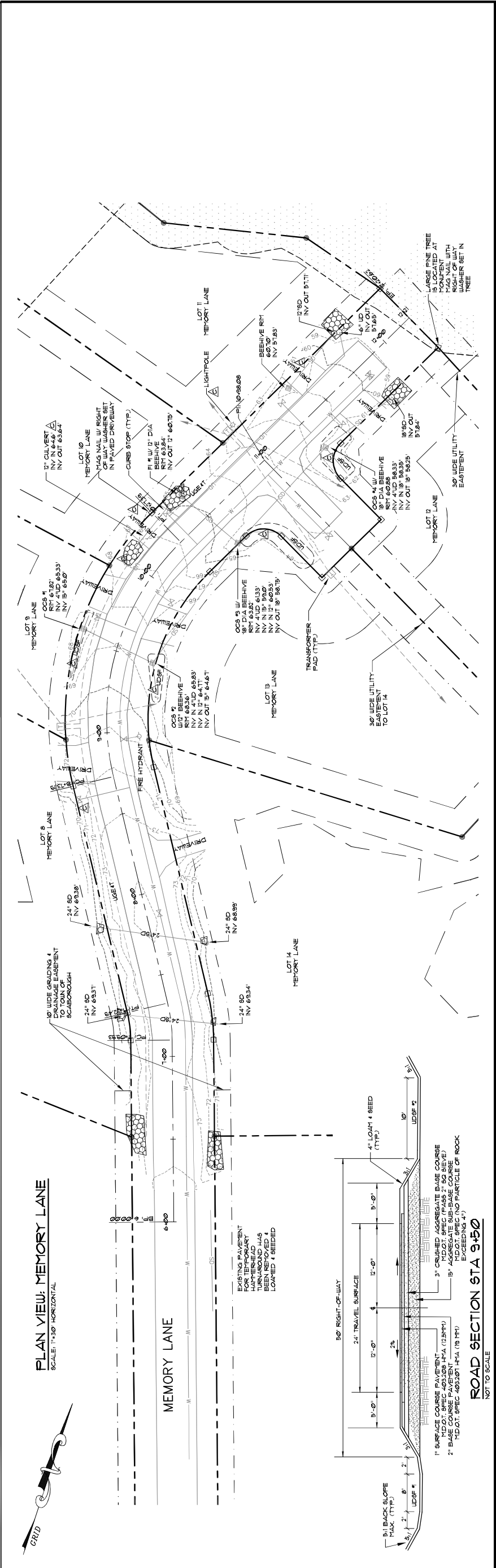
OF:
MEMORY LANE
SCARBOROUGH, MAINE
RISBARA BROS. CONST. CO. INC.
P.O. BOX 485
SCARBOROUGH, ME 04070-0485

14025AB

SHEET 1

DATE
9-13-14

SCALE
AS NOTED



GENERAL NOTES

- AS-BUILT SURVEY COMPLETED BY ST. CLAIR ASSOCIATES DURING DECEMBER OF 2016.
- CONTOURS AND ELEVATION SHOWN HEREON ARE BASED UPON NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88) AND ARE REFERENCED TO THE ON-SITE BENCHMARK.
- THE UNDERGROUND UTILITIES SHOWN HEREON ARE BASED UPON THE ABOVE GROUND LOCATION OF UTILITY STRUCTURES TOGETHER WITH THE PROPOSED LOCATION OF THESE UTILITIES SHOWN ON THE DESIGN PLAN SET FOR MEMORY LANE.
- AS REFERENCED ON THE DESIGN PLAN SET, THE STORMWATER PIPE MATERIAL SHOWN HEREON SHALL BE HOPE SMOOTH BORE OR APPROVED EQUAL.

LEGEND

EXISTING	DESCRIPTION	PROPOSED
---	BOUNDARY LINE/ROW	---
---	ADJUTER LINE/ROW	---
---	SETBACK	---
---	EASEMENT	---
---	WETLANDS	---
---	EDGE WETLAND	---
---	WETLAND BUFFER	---
---	EDGE PAVEMENT	---
---	LIMITS OF USE	---
---	CONTOURS	---
---	SPOT GRADE	---
---	TREELINE	---
---	WATER	---
---	GATE VALVE	---
---	UNDERGROUND	---
---	ELEC. & TEL.	---
---	USE IT	---
---	TRANSFORMER PAD	---
---	LIGHT POLE WALL	---
---	EC. BLANKET	---
---	FILTER BARRIER	---
---	RIPRAP	---
---	CHECK DAM	---
---	INLET PROTECTION	---

GRAPHIC SCALE

