

AMENDED

**AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 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. 18-021. Act on the request for an executive session pursuant to Title 1, M.R.S.A. §405(6)(E) and §405(6)(c) for the purposes of consultation with legal counsel regarding the pending litigation related to the Higgins Beach-Pine Point-Prouts Neck Tax Abatement Appeals and regarding a personnel matter relating to the Town Manager's evaluation and compensation.

Item 4. General Public Comments.*

Item 5. Minutes: March 7, 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. 18-022, 7:00 p.m. Public hearing and action on the new requests for a Food Handlers License, a Liquor License, an Innkeepers License and a Special Amusement License from Brian and Jennifer Brenerman d/b/a Dunstan Tap & Table, located at 6 Stewart Drive. *[Town Clerk]*

Order No. 18-023, 7:00 p.m. Public hearing and action on the new request for a Massage Establishment License from Ashlie Voteur, d/b/a Scarborough Nail & Hair Spa, located at 311 Beech Ridge Road *[Town Clerk]*

OLD BUSINESS:

Order No. 17-109. Second reading 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. *[Town Manager]*

Order No. 18-024. Act on the request to move approval of the names posted to the various town committees/board by the Appointments/Negotiations Committee at the March 7, 2018, Town Council meeting. *[Appointments/Negotiations Committee]*

NEW BUSINESS:

Order No. 18-025. First reading and schedule a public hearing on the proposed amendments Chapter 313-A, the Town of Scarborough Property Tax Assistance Ordinance, Section 5. Determination of Eligibility and Amount of Eligibility; subsection 2. Eligibility for Renters and update the application form. *[Ordinance Committee]*

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 – MARCH 21, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-022. Move approval the new requests for a Food Handlers License, a Liquor License, Innkeepers License and a Special Amusement License from Brian and Jennifer Brenerman d/b/a Dunstan Tap & Table, located at 6 Stewart Drive. *[Town Clerk]*

Town Clerk

Ought to Pass

Sponsor

Recommendation

03/21/18 - Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Town of Scarborough, Maine

Town Clerk's Office

259 US ROUTE ONE

PO BOX 360

SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: March 16, 2018

RE: **Requests for a Food Handlers License, a Liquor License, and a Special Amusement Permit**

The following applicant is seeking approval on a new request for a Food Handlers License, a Liquor License and a Special Amusement Permit:

- a. Brian and Jennifer Brenerman, d/b/a Dunstan Tap & Table, Located at 6 Stewart Drive.

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

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 21, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-023. Move approval on the new request for a Massage Establishment License from Ashlie Votaur, d/b/a Scarborough Nail & Hair Spa, located at 311 Beech Ridge Road [*Town Clerk*]

Town Clerk

Ought to Pass

Sponsor

Recommendation

03/21/18 – Vote:

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Town of Scarborough, Maine

Town Clerk's Office

259 US ROUTE ONE

PO BOX 360

SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: March 16, 2018

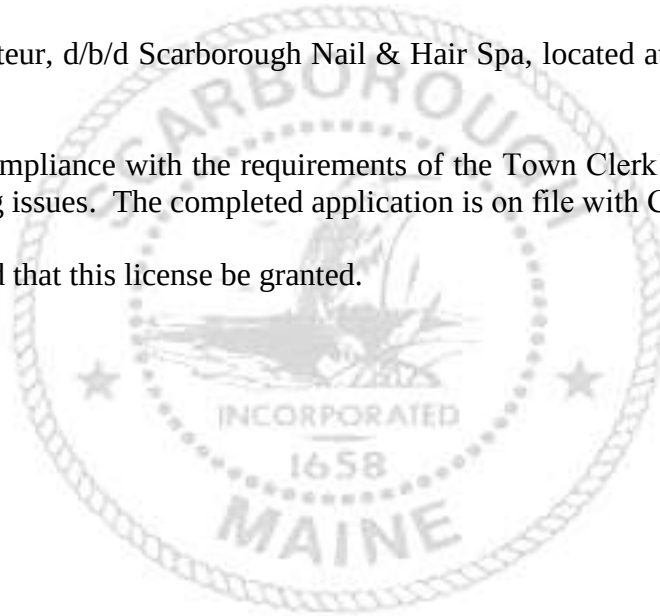
RE: New Request for a Massage Establishment License

The following applicant is requesting approval on the Massage Establishment License:

- Ashlie Votour, d/b/d Scarborough Nail & Hair Spa, located at 311 Beech Ridge Road.

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

It is recommended that this license be granted.



AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 21, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 17-109. Move approval of the second reading 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. *[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 - Vote: 5 Yeas, 2 Nays [Councilors Foley & Hayes] To move approval on the request for the Scarborough Town Council to Order the Discontinuance of all portions of Avenue 2 located southerly of King Street with no damages awarded to the abutting landowners; and to file said Order with the Town Clerk; and, to send abutting property owners notice of this action; and schedule the public hearing for Wednesday, February 21, 2018 and Wednesday, March 7, 2018.

First Reading/Vote

02/21/18 - Public Hearing #1

03/07/18 - Public Hearing #2

Public Hearing

03/21/18 – Vote

Second Reading/Final Approval/Vote

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

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

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

Seiji

Wesley Brown

Jean-Marie Côté

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.

12



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.

15

16



**AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 21, 2018
REGULAR MEETING – 7:00 P.M.**

Order No. 18-024. Move approval on the request to move approval of the names posted to the various town committees/board by the Appointments/Negotiations Committee at the March 7, 2018, Town Council meeting, as follows:

Energy Committee:

Pursuant to Chapter 200 – Town Charter, Section 204-1 - Michael Wallace be removed from the committee due to lack of attendance and appoint Deborah McDonough as a full voting member, to fill a term to expire in 2019.

Housing Alliance:

Pursuant to Chapter 200 – Town Charter, Section 204-1 Tim Peters be removed from the committee due to lack of attendance.

Planning Board:

Move Susan Auglis from full voting member to 1st Alternate, with a term to expire 2019 and move Rachel Hendrickson from 1st Alternate to a full voting member, with a term to expire in 2019

Shellfish Conservation Commission:

Appoint Tim Downs as a full voting member with a term to expire in 2019

Zoning Board of Appeals:

Move Ed Blaise from a full voting member to 1st Alternate, with a term to expire in 2018 and move Karen Shupe from 1st Alternate to a full voting member, with a term to expire in 2018 and appoint Melina Torrens as the 2nd Alternate, with a term to expire in 2019

Town Clerk

Ought to Pass

Sponsor

Recommendation

03/21/18 – Vote:

First Reading/Vote

N/A

N/A

Public Hearing

Second Reading

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 21, 2018
REGULAR MEETING – 7:00 P.M.

Order No. 18-025. Move approval of the first reading and schedule a public hearing on the proposed amendments Chapter 313-A, the Town of Scarborough Property Tax Assistance Ordinance, Section 5. Determination of Eligibility and Amount of Eligibility; subsection 2. Eligibility for Renters and update the application form. [*Ordinance Committee*]

Ordinance Committee

Ought to Pass

Sponsor

Recommendation

03/21/18 - Vote:

First Reading/Vote

Public Hearing

Second Reading/Final Approval/Vote

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 313-A - the Town of Scarborough Property Tax Assistance Ordinance, be and hereby is amended, as follows (*additions are underlined; deletions are struck through*):

CHAPTER 313-A
TOWN OF SCARBOROUGH PROPERTY TAX ASSISTANCE ORDINANCE

Section 5. Determination of eligibility and amount of eligibility [amended 11/07/17]

1. Eligibility for Homeowners

If the Tax Assessor determines that the applicant is eligible to participate in the Program, he/she shall determine the amount of the benefit paid. The amount shall be the least of the following:

- a. The amount, if any, by which (i) the taxes assessed for fiscal year of the Town beginning on July 1 of the preceding calendar year exceeds (ii) 5% of the federal adjusted gross income of the applicant (plus that of any other adult members of the applicant's household); or
- b. A pro-rata share of the available monies in the Program Fund, including any amount in the Property Tax Assistance Reserve Account, allocated based on the amount of the refunds determined under sub-section a for all eligible applicants; or
- c. \$600.00. [06/07/17]

In the case of applicants who did not file federal income tax returns, the Tax Assessor, upon presentation of adequate information returns and other information, shall calculate the federal adjusted gross income.

2. Eligibility for Renters

In the case of renters, the tax assessed for purposes of Section 5.1.a(i) shall be deemed to ~~be~~ include 18% of the rent payable from own funds by applicant (and other adult members of applicant's household) in the preceding calendar year. The Tax Assessor, upon presentation of adequate documents and other information, shall determine the amount of rent.

OLD
APPLICATION

M/L: _____

Act #: _____

Dept Approval: _____



Town of Scarborough, Maine

Assessor's Office

P O B O X 3 6 0

S C A R B O R O U G H , M A I N E • 0 4 0 7 0 - 0 3 6 0

Property Tax Assistance Program

Determination of Eligibility and Benefits

For Property Tax Assessed as of April 1, 2016

Application Deadline – October 16, 2017

1. Name of owner(s): _____ Phone: _____
2. Address of Property: _____ E-Mail: _____
2a. Mailing address (if different): _____
3. Date of Birth: _____ **Document Presented:** _____ ME Drivers License/ID
Applicants must be 62 on 10/15/2017 _____ US Passport
Born on/before 10/15/1955 _____ Other _____
4. Resident of Scarborough **Document Presented:** _____ Assessing Record
For at least 10 years on 10/15/2017 _____ Other _____
5. Federal Adjusted Gross Income **Document Presented:** _____ 1040
From Filed Federal Tax Return _____ Social Sec. Benefit Statement
Form 1040, 1040-A, or 1040-EZ _____
6. Additional income of other adults in household _____
7. Total Income (Line 5 plus Line 6) _____
8. Income Limit \$50,000
a. If line 7 exceeds line 8: STOP: No benefit paid
9. Benefit Threshold _____
5% of Line 7
10. Real Estate Tax Assessed _____
July 1, 2016 through June 30, 2017 (FY 2017)
11. Excess of Tax Assessed over Benefit Threshold _____
Line 10 minus Line 9. If line 10 does not exceed
Line 9: STOP: No benefit paid
12. Benefit Cap \$500
13. Benefit Determined (Check Mailed by 12/15/2017) _____
Lesser of Excess Tax or Benefit Cap
(Lesser of Line 11 or Line 12)

Important note: Items 3, 4, & 5 above require documentation to be presented to Assessing staff. IF you did not file a Federal Tax Return Please bring your 2016 Social Security Benefit statement.

Oath: I certify that the information contained herein is accurate to the best of my knowledge and belief, under penalties of perjury.

Signed: _____ Date: _____

Approved by: _____ Date: _____

Town of Scarborough, Maine

Assessor's Office

PO Box 360 Scarborough, Maine 04070

**NEW
APPLICATION**

M/L: _____

Acct #: _____

Dept Approval: _____

Property Tax Assistance Program -Owner

Determination of Eligibility and Benefits for Property Tax Assessed as of April 1, 2017

Application Deadline – October 15, 2018

1. Name of Owner(s): _____ Phone: _____
2. Address of Property: _____ E-Mail: _____
2a. Mailing address (*if different*): _____
3. Date of Birth: _____ **Document Presented:** _____ ME Driver's License/ID
Applicants must be 62 on 10/15/2018 _____ US Passport
Born on/before 10/15/1956 _____ Other _____
4. Resident of Scarborough **Document Presented:** _____ Assessing Record
For at least 10 years on 10/15/2018 _____ MH Park Rent if Applicable
_____ Other _____
_____ Oath _____
5. Federal Adjusted Gross Income **Document Presented:** _____ 1040
From Filed Federal Tax Return _____ Social Sec. Benefit Statement
Form 1040, 1040-A, or 1040-EZ _____
6. Additional income of other adults in household _____
7. Total Income (Line 5 plus Line 6) _____
8. Income Limit \$50,000
a. If line 7 exceeds line 8: STOP: No benefit paid
9. Benefit Threshold _____
5% of Line 7 _____
10. Real Estate Tax Assessed _____
July 1, 2017 through June 30, 2018 (FY2018) _____
11. Residential MH Park Rent (If Applicable) _____
July 1, 2017 through June 30, 2018 (FY2018) _____
12. Tax attributed to rent: 18% of Line 11 _____
13. Total Tax Attributable to Property _____
(Line 10 plus Line 12) _____
14. Excess of Tax Assessed over Benefit Threshold _____
Line 13 minus Line 9. If line 14 does not exceed _____
Line 9: STOP: No benefit paid _____
15. Benefit Cap \$600
16. Benefit Determined (Check Mailed by 12/15/2018) _____
Lesser of Excess Tax or Benefit Cap _____
(Lesser of Line 14 or Line 15) _____

Important note: Items 3, 4, & 5 above require documentation to be presented to Assessing staff. IF you did not file a Federal Tax Return please bring your 2017 Social Security Benefit statement.

Oath: I certify that the information contained herein is accurate to the best of my knowledge and belief, under penalties of perjury.

Signed: _____ Date: _____

Approved by: _____ Date: _____