

**MINUTES  
SCARBOROUGH TOWN COUNCIL  
WEDNESDAY – JUNE 15, 2016  
REGULAR MEETING – 7:00 P.M.**

**Item 1. Call to Order.** Chairman Donovan called the regular meeting of the Scarborough Town Council at 7:00 p.m.

Prior to the Pledge of Allegiance, Chairman Donovan called for a moment of silence for the victims in Orlando Florida.

**Item 2. Pledge of Allegiance.**

**Item 3. Roll Call.** Roll was called by Yolande P. Justice, Town Clerk. Thomas J. Hall, Town Manager was also present. The following Town Councilors were present:

Shawn A. Babine, Vice-Chair	Katherine A. St. Clair
Robert W. Rowan	Peter F. Hayes
Jean-Marie Caterina	Christopher J. Caiazzo
William J. Donovan, Chairman	

**Item 4. General Public Comments.**

- Judy Roy of thanked the Council for asking her to accept the Recognition Award for the TRI Gen Project on behalf of the Town. The Chair thanked Ms. Roy and the Committee for working on this project for best practices in improved Municipal Services, sustainability and cost-effective management for their tri-generation facility.

**Item 5. Minutes: June 1, 2016 – Regular Meeting.** Motion by Councilor St. Clair, seconded by Councilor Babine, to move approval on the meeting minutes of the June 1, 2016, Town Council meeting, as written.

Vote: 6 Yeas. 1 Abstention – Councilor Caiazzo.

**Item 6. Adjustment to the Agenda.** None at this time.

**Item 7. Items to be signed: a. Treasurer’s Warrants.** Warrants were signed during the meeting.

**Order No. 16-033, 7:00 p.m. Public hearing and second reading on the proposed third amendment to Contact Zone V – Scarborough Realty, LLC [Mercedes-Benz Dealership] located at 137 US Route One.** Thomas J. hall, Town Manager, gave a brief overview on this Order. Chairman Donovan opened the public hearing. The following individuals spoke on this issue:

- Robert Cook of First street – stated the problem is not with the company, but with the Town Staff and address the issues that there is
- Barbara Foley of First Street voiced her concerns with the issues relating to violations by the Prime Dealership with their contract zone.
- Judy Roy of Second Avenue stated that she could attest to what the prior speakers stated. She encouraged individuals to call the police department so there is a record.

As there were no further comments either for or against the hearing was closed at 7:12 p.m.

Mr. Dan Doucette General Manager stated that the Company wanted to be good neighbors and the first he had heard of the issues had been at the Planning Board and they have been addressed.

Motion by Councilor St. Clair, seconded by Councilor Babine, to move approval of the second reading on the proposed third amendment to Contact Zone V – Scarborough Realty, LLC [Mercedes-Benz Dealership] located at 137 US Route One, as follows:

**THIRD AMENDMENT TO  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH  
AND 137 U.S. ROUTE ONE SCARBOROUGH REALTY, LLC  
(formerly First Scarborough Realty of Maine, LLC)**

**THIS CONTRACT ZONING AGREEMENT** is made by and between the Town of Scarborough, a Maine municipality with its principal office located at the Scarborough Municipal Building, 259 U.S. Route 1, Scarborough, Maine (the "Town") and 137 U.S. Route One Scarborough Realty, LLC, a Maine limited liability company with a principal office located at 137 U.S. Route One, Scarborough, Maine ("137 US Route One").

**RECITALS**

**WHEREAS**, First Scarborough Realty of Maine, LLC, a Maine limited liability company ("First Scarborough Realty") is a predecessor in interest and in title to 137 U.S. Route One; and,

**WHEREAS**, First Scarborough Realty entered into a Contract Zoning Agreement with the Town on August 21, 2002, subsequently amended by an amendment dated on or about September 16, 2004 (hereinafter and taken together "First Agreement") in connection with certain improvements made to property located at 137 U.S. Route One and more particularly described in the First Agreement; and,

**WHEREAS**, the First Agreement (together with all exhibits and schedules appended thereto) is appended to this Agreement as *Exhibit 1*; and,

**WHEREAS**, First Scarborough Realty conveyed its interest to 137 US Route One by deed dated April 26, 2005 and recorded in the Cumberland County Registry of Deeds at Book 22565, Page 326, the premises and all improvements situated thereon hereinafter referred to as the "Original Parcel"; and,

**WHEREAS**, 137 US Route One acquired additional property adjoining the Original Parcel, more particularly described in a deed from SRAM Corp. to 137 U.S. Route One Scarborough, LLC dated June 16, 2015 and recorded in the Cumberland County Registry of Deeds at Book 32352, Page 208 (the "New Parcel") for the purpose of expanding and improving the existing automobile dealership showroom located on the Original Parcel and other related purposes (together referred to as the "Property"); and,

**WHEREAS**, 137 US Route One and the Town entered into a Second Amendment to Contract Zoning Agreement dated April 30, 2015 and recorded in the Cumberland County Registry of Deeds at Book 32238, Page 198 (the "Second Amendment"), a copy of which is attached to this Third Amendment as *Exhibit 2*; and,

**WHEREAS**, the rezoning and inclusion of the New Parcel into the Contract Zoning District ("the District") is pursuant to and consistent with the Town's Comprehensive Plan and with the existing and permitted uses within the original zoning district classification; and,

**WHEREAS**, by operation of this Third Amendment to Contract Zoning Agreement (the "Third Amendment"), 137 US Route One desires to increase the size of the footprint of building to be located on the New Parcel also pursuant to and consistent with the Town's Comprehensive Plan and with the existing and permitted uses within the original zoning district classification.

**NOW, THEREFORE,** in consideration of the mutual promises made by each party to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as received by each, the parties covenant and agree as follows:

1. All terms, conditions, covenants, representations, warranties, benefits and burdens set forth in the First Agreement and Second Amendment (including all exhibits and schedules appended thereto) are affirmed, adopted, ratified and accepted by the Town and 137 US Route One and incorporated herein as if restated in full, subject to any conflict or inconsistency between the First Agreement, the Second Amendment and this Third Amendment, in which case this Third Amendment shall govern and control.
2. 137 US Route One is authorized to make the improvements and modifications to the Property as described in a certain "Site Plan - Proposed Contract Zone Amendment for Prime Motor Mercedes Benz - Sprinter" prepared by Gawron Turgeon Architects, Scarborough, Maine, revised through April 27, 2016 (the "Site Plan") attached as *Exhibit 2B*. Within this authorization is specific authorization to permit the maximum allowable building footprint for the building to be constructed on the New Parcel to be 26,290 ± square feet. Construction of the improvements shall be subject to the following conditions:
  - a. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, one additional business sign is permitted as shown on the Site Plan.
  - b. Notwithstanding the landscaping requirements in Section XVIII.A of the Zoning Ordinance, as it may be amended from time to time, a reduction in the required 15' green strip buffer is permitted to the extent shown on the Site Plan.
  - c. The uses allowed shall be limited to an automobile dealership with outdoor sales, display and storage of motor vehicles and indoor sales, service and display.
  - d. Special events and assembly activities may be conducted within any building as an accessory use, subject to any other required codes and approvals.
  - e. The Property subject to this Agreement shall be developed and used only in accordance with the Site Plan, to be approved by the Scarborough Planning Board, as that site plan may be amended from time to time.
3. 137 US Route One shall record this Agreement within 30 days after its approval by the Scarborough Town Council.
4. The provisions of this Agreement shall be deemed restrictions on the use of the Property, except as this Agreement may be amended by future written agreement of the Town and 137 US Route One or its successors in interest.
5. This is the sole zoning for the Property, and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying TVC Zoning District shall apply. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind 137 US Route One, its successors in interest and assigns, and shall inure to the benefit of and be enforceable by the Town.
6. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance of the Town and any applicable amendments thereto or replacement thereof.
7. In the event that 137 US Route One or its successors or assigns fail to develop the Property in accordance with this Agreement or in the event of any other breach hereof, this Agreement may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses as are otherwise allowed by law.
8. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Scarborough Zoning Ordinance and

through legal action for specific performance of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_ day of \_\_, 2016  
WITNESS:

137 ROUTE ONE SCARBOROUGH  
REALTY, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Ira Rosenberg Its  
Manager

\_\_\_\_\_

TOWN OF SCARBOROUGH  
By: \_\_\_\_\_  
Thomas Hall  
It's Town Manager

STATE OF MAINE  
Cumberland, ss.

Date: \_\_\_\_\_

PERSONALLY APPEARED the above-named Ira Rosenberg, in his capacity as Manager of 137 US Route One Scarborough Realty, LLC and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said limited liability company.

Before me,  
Notary Public/Attorney at Law

STATE OF MAINE  
Cumberland, ss.

Date: \_\_\_\_\_

PERSONALLY APPEARED the above-named Thomas Hall, in his capacity as Town Manager of the Town of Scarborough, Maine and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said Town.

Before me,  
Notary Public/Attorney at Law

EXHIBIT 1  
(THE FIRST AGREEMENT)

EXHIBIT 2  
(SECOND AMENDMENT TO CONTRACT ZONE AGREEMENT)

EXHIBIT 2B  
(SITE PLAN)

Vote: 7 yeas

**Order No. 16-034, 7:00 p.m. Public hearing and second reading on the proposed third amendment to Contract Zone I – Frank R. Goodwin, E & F Limited Liability Company and Raymond C. Field [Land Rover Dealership], located at 371 US Route One.** Thomas J. Hall, Town Manager, gave a brief overview on this Order. Chairman Donovan opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:20 p.m.

Motion by Councilor Rowan, seconded by Councilor Caterina, to move approval of the second reading on the proposed third amendment to Contract Zone I – Frank R. Goodwin, E & F Limited Liability Company and Raymond C. Field [Land Rover Dealership], located at 371 US Route One.

Motion by Councilor St. Clair, seconded by Councilor Babine, to move approval to amend the main motion to page two, section 3.b and add the following: ...elevation plans prepared by Ryan Senatore Architecture dated May 13, 2016, submitted during site plan review.

Vote on Amendment: 7 Yeas.

Vote on Main Motion as Amended:

**THIRD AMENDMENT TO EXHIBIT I  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
FRANK R. GOODWIN, E & F LIMITED LIABILITY COMPANY  
AND RAYMOND C. FIELD**

**WHEREAS**, E & F Limited Liability Company (“E & F”) entered into a Contract Zoning Agreement with the Town of Scarborough on the 15<sup>th</sup> day of July 1996 (the “Contract”), a copy of which is attached hereto as Schedule A; and,

**WHEREAS**, E & F acquired certain real estate from Raymond C. Field by two deeds dated June 21, 1996 and recorded in the Cumberland County Registry of Deeds at Book 12576 Page 54 and by Corrective Warranty Deed dated October 27, 1997, recorded in the Cumberland County Registry of Deeds at Book 13402, Page 45; and,

**WHEREAS**, E & F built a 3,826 square foot addition to its existing building on the north side of the building away from U.S. Route One, which addition is used for the purposes of automobile sales and service pursuant to a First Amendment to the Contract, dated October 2, 2000, a copy of which is attached hereto as Schedule B; and,

**WHEREAS**, in order to have the proper setbacks, E & F acquired an approximate additional 17,070 square feet by deed of KDA LLC (successor to Raymond Field), which deed was dated April 10, 2000 and recorded in the Cumberland County Registry of Deeds at Book 15410, Page 322; and,

**WHEREAS**, the Amended Contract, Schedule B, at paragraph 3(a), states that E & F was authorized to have an automobile dealership with the structure of 13,730 square feet; and,

**WHEREAS**, the current initial structure is 13,730 square feet and the anticipated additions to the structure will be 1000 square feet for a total building footprint of 14730 square feet; and,

**WHEREAS**, the addition to the automobile dealership will also involve an increase in the square footage of the area utilized for outdoor display, storage or parking of vehicles. An additional 7 parking spaces, 7 new spaces being visible from the road will bring the total number of parking spaces to 115, 23 of which will be visible from the road. The relocation of outdoor vehicle storage and display or parking areas to parts of the site closer to the property boundaries or road sidelines than shown on the originally approved site plan is contemplated; and,

**WHEREAS**, the size, location, configuration and topography of this site permit a level of buffering, landscaping and site design which will mitigate what might otherwise be adverse impacts of outdoor displays, storage and sales, because the additional square footage of the building is away from U.S. Route One.

**WHEREAS**, the Amendment to the Contract Zoning Agreement would be consistent with the policies and future land use plan of part three of the Scarborough Comprehensive Plan and is permitted

pursuant to the Zoning Ordinance and Maine Law and is consistent with the existing and permitted uses within the original zoning classification.

**NOW THEREFORE**, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Map of the Town of Scarborough by adopting the map change shown on Schedule C hereto.
2. All references in the original Contract Zoning Agreement, the First Amendment to the Contract and the Second Amendment to the Contract, and the Third Amendment to the Contract to the "site plan" shall hereafter mean the amended site plan approved by the Scarborough Planning Board on (TBD), 2016, attached hereto as Schedule D.
3. Upon approval of an amended site plan by the Scarborough Planning Board, E & F Limited Liability Company is authorized to construct the addition to the automobile dealership as portrayed on the Attached Schedule C. The additional construction will be completed within 12 months after execution of this Agreement. Construction of the addition shall be subject to the following conditions:
  - a. The maximum allowable building footprint for the building shall be 14,730 square feet and the maximum building height shall be two stories.
  - b. Building design, style and materials for the addition shall be substantially as depicted on the building elevation plans prepared by Ryan Senatore Architecture dated May 13, 2016, submitted during site plan review.
  - c. No trees or other vegetation existing on the date of this Agreement shall be removed except as indicated in the approved addition site plan.
4. Except as amended hereby, E & F Limited Liability Company reaffirms each and every provision of the Contract Zoning Agreement, Schedule A and the First Amendment, Schedule B.
5. E & F Limited Liability Company shall record this Amendment to Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after its approval by the Scarborough Town Council.

**IN WITNESS WHEREOF**, the parties hereto have executed this Third Amendment to Contract Zoning Agreement this \_\_\_\_ day of \_\_\_\_\_, 2016.

WITNESS:

\_\_\_\_\_  
  
\_\_\_\_\_

**TOWN OF SCARBOROUGH**

By: \_\_\_\_\_

Its: Town Manager (duly authorized by a vote of the Scarborough Town Council on (TBD), 2016

**E & F LIMITED LIABILITY COMPANY**

By: \_\_\_\_\_

Frank R. Goodwin

Its: Managing Member

STATE OF MAINE

COUNTY OF CUMBERLAND

\_\_\_\_\_, 2016

Personally appeared the above named \_\_\_\_\_, in his/her capacity as Scarborough Town Manager and acknowledged the foregoing instrument to be his/her free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE

COUNTY OF \_\_\_\_\_, 2016

Personally appeared the above named Frank R. Goodwin in his capacity as Managing Member of E & F Limited Liability Company and acknowledged the foregoing instrument to be his free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

Vote: 7 Yeas.

**OLD BUSINESS:** None at this time.

**NEW BUSINESS:**

**Order No. 16-044. Act to authorize the Town Manager to enter into an Interlocal Agreement with the Town Old Orchard Beach and the City of Westbrook for shared vehicle maintenance and repair services.** Thomas J. Hall, Town Manager, gave a brief overview on this Order.

Motion by Councilor St. Clair, seconded by Councilor Babine, to move approval to authorize the Town Manager to enter into an Interlocal Agreement with the Town Old Orchard Beach and the City of Westbrook for shared vehicle maintenance and repair services and to allow the Town Manger to insert certain language pertaining to penalties for late payment and insurances.

Vote: 7 Yeas.

**Order No. 16-045. Act to authorize the Town Manager to enter into a License Agreement for use of the Town's Parking lot at Pine Point [Hurd Park] for overflow parking by Bayley's Lobster Pound.** Thomas J. Hall, Town Manager, gave a brief overview on this Order.

Motion by Councilor St. Clair, seconded by Councilor Babine, to move approval to authorize the Town Manager to enter into a License Agreement for use of the Town's Parking lot at Pine Point [Hurd Park] for overflow parking by Bayley's Lobster Pound.

Vote: 7 Yeas.

**Order No. 16-046. Act to authorize the Town Manager to sign a Quit Claim Deed on property located at 362 Payne Road relating to an old tax lien from 1938.** Thomas J. Hall, Town Manager, gave a brief overview on this Order.

Motion by Councilor St. Clair, seconded by Councilor Babine, to move approval to authorize the Town Manager to sign a Quit Claim Deed on property located at 362 Payne Road relating to an old tax lien from 1938.

Vote: 7 Yeas.

**Order No. 16-047. Act on the request from the Town Clerk to certify the results of the School Budget Validation Referendum Election.** Motion by Councilor Babine, seconded by Councilor St. Clair, to move approval on the request from the Town Clerk to certify the results of the School Budget Validation Referendum Election, as follows:

**Question 1:** Do you favor approving the Scarborough School budget for the upcoming school year that was adopted at the latest Town of Scarborough budget meeting?

**YEAS: 1,972\***

**NAYS: 1,544**

**BLANKS: 1**

**Question 2:** Do you wish to continue the budget validation referendum process in the Scarborough School Administrative unit for an additional three years?

**YEAS: 2,344\***

**NAYS: 1,134**

**BLANKS: 20**

3,517 cast ballots; [15,734 total active voters - 22% voter turnout]

Vote: 7 Yeas.

**Item 8. Non Action Items.** None at this time.

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

- Councilor Babine gave a brief overview on the Finance Committee meetings; the Library – Annual Book Sale; the ecomaine annual meeting and the Cumberland County review of Jail’s Budget.
- Councilor Rowan noted that the Historic Implementation Committee would be taking the summer off.
- Councilor Caterina gave a brief update on the next Ordnance Committee meeting; there would be a joint meeting of Long range Planning and Conservation Commission and the Chamber’s Annual meeting would be on June 29<sup>th</sup>.
- Councilor Hayes gave an update on the Eastern Trail Group; the Shellfish Conservation Commission and the Harbor Committee. He also commented on “Operation Dry Water” a boat safety course that would be held of the next couple of weekend.
- Councilor Caiazzo gave an update on the Energy Committee adding that the committee would not be meeting during the summer.
- Chairman Donovan – CPCOG [Greater Portland Council of Government] – The fire department received an award for its internship program.

**Item 10. Town Manager Report.** Thomas J. Hall, Town Manager gave the following updates:

- Letter from Chief Thurlow stating that the Fire Department receives improved insurance rating [ISO Rating].
- Paving Projects: Black Point Road; Oak Hill intersection. Revised traffic pattern – please be aware. The Eastern Road will have new striping plan. Please review the town’s homepage for further information.
- Reminder of the summer meeting dates July 20<sup>th</sup> and August 17<sup>th</sup>

**Item 11. Council Member Comments.**

- Councilor Caiazzo thanked everyone for coming out to vote either in person or by absentee ballot and went on to thank all those who were participates in preparing the budget and bringing it forward for the vote.
- Councilor Hayes also commented on the budget and the process that was followed.
- Councilor St. Clair commented on the budget and how people are behaving in politics. She hoped that people would be kinder when not in agreement with others.
- Councilor Caterina also commented on the communication piece of letting people know what is going on in the local government.

- Councilor Rowan thanked the voters of Scarborough for coming out to vote adding that the surrounding communities did not even come close to the turnout here in Scarborough. He thank Chairman Donovan for his leadership. He reminded everyone about the composting and what his family is doing.
- Councilor Babine congratulated Jim Daly on his selection as the new assistant county manager for Cumberland County. He too commented about the budget process and the leadership that had been shown throughout the process. He would be at the Dirigo Boys State this coming week. He mentioned the Superintendent’s retirement. He commented on the incident in Orlando and how things need to change.
- Chairman Donovan commented on “civility” and comments from the public about the town council. He went on to comment on an editorial that showed in the paper and the name calling was unacceptable. Not everyone will be in agreement.

**Item 12. Adjournment.** Motion by Councilor Babine, seconded by Councilor Rowan, to move approve to adjourn the regular meeting of the Scarborough Town Council.

Meeting adjourned at 8:48 p.m.

Vote: 7 Yeas.

Respectfully submitted,

Yolande P. Justice  
Town Clerk