

**MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – AUGUST 16, 2017
REGULAR MEETING – 7:00 P.M.**

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

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:

William J. Donovan	Katherine A. St. Clair, Vice-Chair
Robert W. Rowan	Peter F. Hayes
Kathleen M. Foley	Christopher J. Caiazzo
Shawn A. Babine, Chairman	

Item 4. General Public Comments.

- Michael Doyle of Falmouth and owner of Falmouth Today, noted that he has done a number of articles on Scarborough and spoke of a book that he had published regarding all the articles and commented on a court case.
- Marjorie DeSanctis of Beech Ridge Road spoke about public comments and that an individual does get a second chance at speaking and if you do, please do not criticize those who do not agree with your point of view.
- Carol Rancourt, Chair of Senior Advisory Committee, stated that the senior group had already outgrown the Martin's Point facility and the need for a Senior Center is growing. She then asked that the Council please hold sale of the public safety building so the Senior's group could utilize the space until a permanent location could be found.
- Susan Hamill of Bay Street spoke on a letter that had been written by the Town Manager regarding the budget. She spoke on what she felt was the lack of transparency. She went on to speak on the tax abatement case that had gone through the court system. She felt that council were not listening to the public.
- Larry Hartwell of Puritan Drive asked if there would be a chance to speak on the Budget Order.
- Michael Doyle of Falmouth and owner of Falmouth Today, commented on the Council rules and whether they are legal or not. He then went on to comment about information that he had compiled on Scarborough.

Item 5. Minutes: July 19, 2017 – Regular Meeting, August 2, 2017 – Special Meeting and August 8, 2017 - Special Meeting. Motion by Councilor St. Clair, seconded by Councilor Rowan, to move approval of the meeting minutes for the Regular Meeting, August 2, 2017 – Special Meeting and August 8, 2017 - Special Meeting.

Vote: 7 Yeas.

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

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

Order No. 17-055, 7:00 p.m. Public hearing on the proposed fourth 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. [Planning Department] Chairman Babine opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:13 p.m. The second reading will be held on Wednesday, September 6, 2017.

Order No. 17-064, 7:00 p.m. Public hearing and action on the new request for a Food Handlers License from James Morande d/b/a Fairhaven Dunes, located at 3 East Grand Avenue. Tabled from the July 19, 2017, Town Council Meeting. [Town Clerk] Chairman Babine opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:14 p.m.

Motion by Councilor St. Clair, seconded by Councilor Rowan, to move approval of the new request for a Food Handlers License from James Morande d/b/a Fairhaven Dunes, located at 3 East Grand Avenue.

Vote: 7 Yeas.

Order No. 17-065, 7:00 p.m. Public hearing on the proposed amendments to the Higgins Beach Character-Based Zoning Districts. [Planning Department] Chairman Babine asked that prior to the public hearing, that Jay Chace, Town Planner give a brief overview on this Order. Councilors Donovan and Caiazzo also commented on this Order.

Chairman Babine opened the public hearing. The following individuals spoke on this Order:

- Walter Wilson of Design Company spoke on the proposed amendments to the Character-Based Zoning Districts in particular the design criteria. He felt that this ordinance puts one in a box and that is not what Higgins Beach Community is.
- Melissa Carifio of Higgins Beach had been following this item, but had not been aware of the final document being available.
- Regina Day of Ocean Avenue state that she too had been in attendance at the workshops on this item. She asked that the Council consider the uniqueness of Higgins Beach

As there were no further comments either for or against, the hearing was closed at 7:28 p.m. The second reading will be held on Wednesday, September 6, 2017.

Order No. 17-066, 7:00 p.m. Public hearing on the proposed amendments to Chapter 405, the Town of Scarborough Zoning Ordinance, Section XII. Sign Regulations. [Ordinance Committee] Chairman Babine asked the Chair of the Ordinance Committee spoke on the process that was being followed and gave an overview of what the Ordinance Committee had done.

Chairman Babine then opened the public hearing. The following individuals spoke on this Order:

- Michael Doyle of Falmouth spoke on this item and added that a challenge from the public would be costly.
- Larry Hartwell of Puritan Drive spoke what he felt these changes were addressing the political signs and went on to voice his concerns.
- Ben Howard of Windsor Pines spoke on this item and the infringement of free speech. He went on to read court cases that related to this topic.
- Jean-Marie Caterina of Gorham Road voiced her concerns with the temporary signs and went on to comment on the scenic view. Who is going to enforce these changes? The Maine DOT already has rules out for political signs, keep one set of rules.

- Susan Hamill of Bay Street spoke on the changes and felt that targets the political signs in particular as well as any temporary signs. She felt that timing of these changes were a result of the current budget issue.

As there were no further comments either for or against, the hearing was closed at 7:52 p.m. The second reading will be held on Wednesday, September 6, 2017.

Order No. 17-067, 7:00 p.m. Public hearing on the proposed amendments to Chapter 601, Town of Scarborough Traffic Ordinance, Section 25-Parking Restrictions. [Ordinance Committee] Thomas J. Hall, Town Manager gave a brief over on this and Councilor Donovan also made Comments. Chairman Babine opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:55 p.m. The second reading will be held on Wednesday, September 6, 2017.

Order No. 17-068, 7:00 p.m. Public hearing on the proposed amendments to Chapter 604A, Town of Scarborough Horse Beach Permit Ordinance, Section 604A-6. Regulations of Horses on the Beach. [Ordinance Committee] Thomas J. Hall, gave a brief overview on this Order. Chairman Babine opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:56 p.m. The second reading will be held on Wednesday, September 6, 2017.

Order No. 17-073, 7:00 p.m. Public hearing and action on the new request for a Special Amusement Permit from D.J. Ingersoll, Jr., d/b/a Salty Bay Seafood Take Out and Tavern, located at 66 Jones Creek Drive. [Town Clerk] Chairman Babine stated, at the applicants request this item has been withdrawn and no further action is required.

Order No. 17-074, 7:00 p.m. Public hearing and action on the new request for a Food Handlers Permit from P & E Fitness, d/b/a Lifestyles Fitness Center, located at 29 Pleasant Hill Road. [Town Clerk] Chairman Babine opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:56 p.m.

Motion by Councilor Rowan, seconded by Councilor Foley, to move approval of the new request for a Food Handlers Permit from P & E Fitness, d/b/a Lifestyles Fitness Center, located at 29 Pleasant Hill Road.

Vote: 7 Yeas.

OLD BUSINESS:

Order No. 17-071. Second reading on the FY2018 School Budget. [Town Manager] The following individuals spoke on this Order:

- Larry Hartwell of Puritan Drive spoke on the School Budget and hoped that we could do better next year.
- Elaine Richer of East Grand Avenue spoke on the lack of communication from the School Board. If a no vote prevails those individuals are vilified by some of the public.
- Marjorie DeSanctis of Beech Ridge Road noted that the School Board came in at 2.89% - Augusta should be the focus, be mad at your Representatives, they are the ones reducing the funding.
- Wallace Fengler of Holmes Road referenced the Comp Plan and the comment to do more with less. He had read in the paper where there is a new position for a Career Coordinator at the cost of over \$70,000, why couldn't a coach or an existing teacher receive a stipend for this.

- Larry Hartwell of Puritan Drive stated that there was \$2.1 million available to help reduce the budget this year and it will not be there next year. Next year will be a tough budget year.
- Jess Libby of Black Point Road felt frustrated with the process. We need to pass the budget and have no more back and forth.
- Hillory Durgin of Sequoia Lane supported the school budget and supported the Board and felt they had presented a great budget. Please do not reduce any more, adding that she would vote against if there were any further reductions..

Motion by Chairman Babine, seconded by Councilor Caiazzo, to move approval of the second reading on the FY2018 School Budget, as follows:

Budget Order No. 17-071 – FY2018 School Budget

Be it ordered that the Scarborough Town Council moves approval of the second reading on the Fiscal Year 2018 Budget, as follows:

WHEREAS, the Scarborough Town Council adopted FY2018 Operational and Capital Budgets for the Town and the School on May 17th, with the passage of Order No. 17-030; and,

WHEREAS, pursuant to State law, the School Budget must be validated by the voters and it failed at a Special School Budget Validation Election held on June 13, 2017; and,

WHEREAS, the Scarborough Town Council adopted an amended FY2018 Operational and Capital Budgets for the Town and the School on July 5, 2017, with the passage of Order No. 17-063; and,

WHEREAS, pursuant to State law, the School Budget must be validated by the voters and it failed at a Special School Budget Validation Election held on July 25, 2017; and,

WHEREAS, the Town Council must resubmit an adjusted School Budget to the Voters for validation no less than ten (10) days and no more than forty-five (45) days from July 25, 2017, with the next School Budget Validation Referendum Election date consistent with any approval of Order 17-071; and,

WHEREAS, the budget is as follows: the Education Operating Budget in the sum of \$47,175,168, resulting in the Town of Scarborough raising the sum of \$42,254,017 as the local share for the Education Operating Budget; and a Town Operating Budget of \$32,589,519, resulting in the local share for the municipal budget, the sum of \$18,167,935, resulting in a Total Net Budget of \$62,724,112, with a projected property tax rate increase of 2.99%; and,

NOW THEREFORE, BE IT ORDERED, that the Scarborough Town Council moves approval of the amended Fiscal Year 2018 Town and School Budget in first reading; and,

BE IT FURTHER ORDERED, that School Budget be reduced by a total of **\$50,000** and therefore the Scarborough Town Council hereby appropriates, for school purposes, the Education Operating Budget, the new sum of **\$47,125,168**, resulting in the Town of Scarborough raising the sum of **\$42,204,017**, as the local share for the Education Operating Budget.

BE IT FURTHER ORDERED, that the final result of these changes produces a new Total Net Budget of \$62,674,112, resulting in a projected tax rate increase of 2.91%.

Roll Call Vote:

Councilor Caiazzo - Yea Councilor Hayes – Yea
Councilor St. Clair - Yea Councilor Foley – Yea
Councilor Rowan - Yea Councilor Donovan - Yea
Chairman Babine – Yea

Chairman Babine called for a brief recess at 8:34 p.m. The meeting was reconvened at 8:40 p.m.

NEW BUSINESS:

Order No. 17-075. First reading and refer to the Planning Board on the proposed Amendment to the second Contract Zoning Agreement between the Town of Scarborough and Robert Tgettis and Lucinda P. Malbon. [Planning Department] Karen Martin, Director of SEDCO, gave a brief overview on this Order.

Motion by Councilor St, Clair, seconded by Councilor Rowan, to move approval of first reading and refer to the Planning Board on the proposed Amendment to the second Contract Zoning Agreement between the Town of Scarborough and Robert Tgettis and Lucinda P. Malbon, to come back for a public hearing upon receipt of the Planning Board recommendations, as follows:

SECOND AMENDMENT TO EXHIBIT 2
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
ROBERT TGETTIS AND LUCINDA P. MALBON

This Second Amendment to Contract Zoning Agreement (hereinafter, this "Amendment") is made as of the XXXX, 20017, by and between the Town of Scarborough, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter "the Town"), and Robert Tgettis and Lucinda P. Malbon of Scarborough, Maine, ("Tgettis and Malbon) pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, Tgettis and Malbon entered into a Contract Zoning Agreement with the Town dates as of the 6th day of January 1997, subsequently amended by an amendment dated September 19, 2007, (hereinafter, this "Agreement") creating Contract Zoning District Number II (hereinafter, the "District") as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 12903, Page 122, and;

WHEREAS, Tgettis and Malbon wish to expand their existing skin and nail care business on the Property to include hair care, and;

WHEREAS, Tgettis and Malbon have requested that the Town approve this Amendment to the Agreement; to allow hair care as an approved service;

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

1. Section 2 is amended to insert hair care as an allowable use, to read as follows: "Tgettis and Malbon are authorized to operate a skin, hair and nail care business at the Property..."
2. Section 2(b) is amended to read as follows: "The uses allowed on the Property shall be skin, hair and nail care, and those uses otherwise allowable in the Rural Residence and Farming District"
3. Section 2(h)(i) is amended to read as follows: "Any increase in the square footage of the area utilized for the skin, hair and nail care business, and"
4. Section 2(h)(i) is amended to read as follows: "As used in this Contract Zoning Amendment, the term skin, hair and nail care includes:"
5. Section 2(h)(i)(i) is amended to insert "hair care" as an allowable use, and will read as follows: "(i) manicure and pedicure treatments, meaning applying the hands or mechanical or electrical apparatus with or without cosmetic preparations, lotions, creams or antiseptics to cut, trim, shape polish, color, or trim or apply artificial nails to the nails of any person or to massage, cleanse or beautify the hands or feet of any person, including application of nail art; (ii) skin treatments, meaning beautifying, massaging, cleansing, stimulating, toning, or manipulating or exercising the skin of the human body by the use of cosmetic preparations, tonics, lotions, creams, antiseptics, or clays or any device electrical or otherwise, for the care of the skin, including facial treatments; (iii) coloring treatments, including applying makeup or eyelashes, to the eyelashes or eyebrows; (iv) hair removal, by wax treatments, electrolysis or other means; (v) massage therapy as defined in state statute, 32 M.R.S.A. § 14302(4), administered by a massage

therapist certified under the state statute and licensed under the Town of Scarborough Massage Establishment Ordinance; and, (vi) hair care (vii) any other procedures, techniques or advancements for accomplishing the treatments above which may in the future become generally accepted and recognized in the fields of skin, hair and nail care.”

6. Section 2(h)(i)(i) is further amended to delete the following sentence: “The term “skin and nail care” does not include arranging, dressing, curling, waving, cleansing, cutting, trimming, singeing, bleaching or similarly treating human hair wigs, wiglets or hairpieces.”
7. The sole intent of this amendment is to allow hair care as an acceptable use. Except as specifically amended herein, all terms and conditions of the original Contract Zoning Agreement, as amended, shall remain in full force and effect.
8. Tgetis and Malbon shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH:

/s/ Thomas Hall, its Town Manager

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

Vote: 7 Yeas.

Order No. 17-076. Act on the request, pursuant to Title 23 MRSA §3025 and to the requirements of Section 4 of Scarborough Street Acceptance Ordinance to accept the right-of-way on Honan Road associated with the Carrier Woods Development, as depicted in Planning Board approval documents dated, July 17, 2017 and to authorize the Town Manager to sign any necessary document. [Town Engineer] Angela Blanchard, Town Engineer, gave a brief overview on this Order.

Motion by Councilor St. Clair, seconded by Councilor Hayes, to move approval on the request, pursuant to Title 23 MRSA §3025 and to the requirements of Section 4 of Scarborough Street Acceptance Ordinance to accept the right-of-way on Honan Road associated with the Carrier Woods Development, as depicted in Planning Board approval documents dated, July 17, 2017 and to authorize the Town Manager to sign any necessary document.

Vote: 7 Yeas.

Order No. 17-077. Act on the request to authorize the Town Manager to enter into a Service Agreement with the Town of Kennebunk for vehicle maintenance and to sign any and all documents. *[Town Manager]* Thomas J. Hall, Town Manager, gave a brief overview on this Order.

Motion by Councilor St, Clair, seconded by Councilor Caiazzo, to move approval on the request to authorize the Town Manager to enter into a Service Agreement with the Town of Kennebunk for vehicle maintenance and to sign any and all documents.

Vote: 7 Yeas.

Order No. 17-078. Act to submit the referendum question to construct and equip a new Public Safety Building to the November 7, 2017, Election. *[Town Manager]* Thomas J. Hall, Town Manager, gave a brief overview on this Order. Fire Chief Thurlow and Police Chief Moulton responded to questions from the Town Council.

Motion by Councilor St. Clair, seconded by Councilor Hayes, to move approval on the request to submit the referendum question to construct and equip a new Public Safety Building to the November 7, 2017.

Motion y Councilor Rowan, seconded by Councilor Foley, to move approval to table Order No. 17-078 to the September 6, 2017, Town Council meeting.

Vote to table: 6 Yeas. 1 Nay [Councilor St. Clair].

Order No. 17-079. Act regarding tax commitment if third School Budget Validation Vote fails. *[Town Manager]* Thomas J. Hall, Town Manager, gave a brief overview on this Order.

Motion by Councilor Caiazzo, seconded by Councilor Hayes, to move approval on the request regarding tax commitment if third School Budget Validation Vote fails, as follows:

Order Regarding Tax Commitment if Third School Budget Validation Vote Fails

WHEREAS, the Town of Scarborough has failed to pass a school budget validation vote two times during the summer of 2017; and,

WHEREAS, in the event that the planned third school budget validation vote on September 5, 2017 fails, the Town will not be able to fulfill its financial obligations because of the delay in committing property taxes which in turn delays property tax collections; and,

WHEREAS, the Town has the authority pursuant to Title 20-A M.R.S.A. § 1487 to find that property taxes must be committed based on a school budget that has not been approved by the budget validation process; and,

WHEREAS, the Town Council finds that if the third school budget validation vote fails, the Town shall use such authority pursuant to Title 20-A M.R.S.A. § 1487; and,

NOW THEREFORE, THE TOWN COUNCIL ORDERS:

1. If the School Budget Validation Vote planned for September 5, 2017 fails, then the Town Assessor is authorized to commit the property taxes on the basis of the latest budget approved by this Council and submitted to the voters.
2. In such circumstance, the commitment must be undertaken in this fashion in order to be timely.

3. In such circumstance, any finally approved school budget will serve as the spending authorization limit for the fiscal year and any additional amount that was raised in property taxes beyond the approved budget would go to the fund balance and be available to reduce the tax levy for the following year.

Vote: 7 Yeas.

Order No. 17-080. Act to create an Ad-hoc Budget Advisory Committee. [*Councilor Foley*] Councilor Foley gave a brief overview on this Order. The following individuals spoke:

- Larry Hartwell of Puritan Drive felt that the concept of this type of Committee was good and felt the Council should give it a try.
- Sara Mullen of Gunstock Road asked what an ad-hoc committee is and how it would work in conjunction with the budget process. Chairman Babine went on to give an explanation and that a positive action this evening would form the committee. Ms. Mullen then felt that more time is needed.
- Susan Hamill of Bay Street was pleased to see this on the agenda and felt that the committee would have an impact on the budget process.
- Ben Howard of Windsor Pines also felt it was a great idea to form this committee.
- Hillory Durgin of Sequoia Lane asked who picked the 4 other members and other questions, but would wait until Council discussion before asking them.

Motion by Councilor Foley, seconded by Councilor Hayes, to move approval to create an Ad-Hoc Budget Advisory Committee.

Motion by Councilor Foley, seconded by Councilor Donovan, to move approval to table Order No. 17-080 and schedule at workshop to discuss this item further.

Councilors Foley and Donovan withdrew their motion to table.

After further comments and discussion the following motion was made.

Motion by Chairman Babine, seconded by Councilor Donovan, to move approval to table Order No. 17-080, to the September 20, 2017, Town Council Meeting.

Vote to Table: 7 Yeas.

Order No. 17-081. Act to approve the Town Manager's recommendations for the Implementation of metered parking fees. [*Town Manager*] Thomas J. Hall, Town Manager, gave a brief overview on this Order. The following individual spoke on this Order:

- Jane Wagner of Spurwink Road spoke against the proposed charge. She had concerns with the police officers that are also on the beach and the amount of money the town pays out. She urged the Town Council to really think about this before they take action.

Motion by Councilor Donovan, seconded by Councilor Caiazzo, to move approval to approve the Town Manager's recommendations for the Implementation of metered parking fees.

Motion by Councilor St. Clair, seconded by Councilor Foley, to move approval to amend the main motion to modify the Town Manager's recommendations for metered parking fees to require payment only between the hours of 9:00 a.m. to 5:00 p.m.

Vote on Amendment: 3 Yeas. 4 Nays [Chairman Babine, Councilors, Donovan, Rowan & Caiazzo]
Motion fails.

Vote on main motion as amended: 4 Yeas. 3 Nays [Councilors Hayes, St. Clair & Foley]

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

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

- Councilor Caiazzo gave an update on the Comprehensive Plan Committee.
- Councilor Donovan gave an update on the Planning Board.
- Councilor Rowan gave an update on the Housing Alliance and the Senior Advisory Committee.
- Councilor Foley gave an update on the Communications Committee.
- Chairman Babine handed out the 2017 Council Goals for Council members to review and get back to him on how they would rank each one.

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

- The new Human Resource Director was announced: Liam Gallagher who will officially start on September 11th.
- FEMA Flood Maps are being reissued and would be available soon.
- He commented on the beach raking at Pine Point – working on doing twice a-day
- He noted that there is paving schedule on the town’s website for upcoming projects and urged residents to please check it out.
- He then recognized Richard “Tiny” Moulton, a long-time resident and town volunteer who passed away last week. He sent condolences to the family.

Item 11. Council Member Comments.

- Councilor Caiazzo reminded everyone of Summerfest this Friday.
- Chairman Babine stated that absentee balloting is available in Town Clerk’s Office during regular business hours. He sent condolences to the Moulton Family on the loss of Richard “Tiny” Moulton.

Item 12. Adjournment. Motion by Councilor St. Clair, seconded by Councilor Rowan, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 7 Yeas.

Meeting adjourned at 10:27 p.m.

Respectfully submitted,

Yolande P. Justice
Town Clerk