

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

Item 1. Call to Order. Chairman Donovan 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 Thomas J. Hall, Town Manager.

Shawn A. Babine	Jean-Marie Caterina
Robert W. Rowan	Peter F. Hayes - Absent
Kathleen M. Foley	Christopher J. Caiazzo – Vice Chair - Absent
William J. Donovan, Chairman	

Item 4. General Public Comments. None at this time.

Item 5. Minutes: February 21, 2018 - Regular Town Council Meeting and March 1, 2018 – Special Town Council Meeting. Motion by Councilor Caterina, seconded by Councilor Babine, to move approval of the minutes for the February 21, 2018 - Regular Town Council Meeting and the March 1, 2018 – Special Town Council Meeting.

Vote: 5 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. 18-018, 7:00 p.m. Public hearing with the Planning Board and the Town Council on the proposed Contract Zone Request from Patriot Acura Dealership located at the corner of Payne Road and Haigis Parkway. [Town Planner/Town Manager] Chairman Donovan gave a brief overview on this hearing, noting the hearing would meet the requirement of the Contract Zone process for the Planning Board and the Town Council. Those present:

Planning Board Members

Corey Fellows, Planning Board Chair
Jay Chace, Town Planner
Nick McKee
Susan Auglis
Robyn Saunders
Jamel Torres, Assistant Town Planner

Town Council Member

William Donovan, Town Council Chair
Thomas Hall, Town Manager
Shawn Babine
Jean-Marie Caterina
Will Rowan
Katy Foley

Applicant Contingent

James Seymour, Senior Project Manager
Matthew Phillips, Division Manager
Brian Beattie
Thomas Talbot
Rick Shinay, Attorney
David Richards, Gawron Turgeon Architects.

[For full content of discussion, please review the Town Council meeting tape, located on scarboroughmaine.org]

Chairman Donovan then turned the meeting over to Mr. Fellows, Chairman of the Planning Board.

Mr. Fellows gave a brief overview as to the process that would be followed: 1. Presentation by the applicant, 2. Comments from town staff, 3. Comments from members of the public (this shall constitute the public hearing by the municipal reviewing authority required by 30-A M.R.S.A. §4352(8).); 3. Response or rebuttal from applicant; 4. Discussion among members of the planning board and the town council, which may include questions posed to the applicant, staff and the public; 5. Comments from members of the planning board concerning the land use implications of the proposed contract zoning amendment and 6. Preliminary town council discussion of contract zoning amendment. Mr. Fellows turned the meeting over to the applicant.

PRESENTATION BY THE APPLICANT

Mr. James Seymour and members to the team presented the Planning Board and the Town Council with the proposal for a contract zone on approximately 16.52 acres of land at the corner of Haigis Parkway and Payne Road. The Project, referred to as “Patriot Acura Automobile Dealership,” would involve the construction of an Acura Automobile Dealership and Service Facility with an outdoor display of car inventory.

The Project would consist of a building containing the showroom, sales, and service for the first Acura Dealership located in Southern Maine with a footprint of approximately 20,000 square feet, which could be further reduced to reduce costs. The showroom exterior is highlighted by large expanses of glass set between a series of columns. The surface of the columns and the showroom exterior walls are synthetic stucco with bands of accent colors.

The Project would include proposed amenities throughout the site to include paved parking/inventory areas at the rear of the site for customers, employees and vehicles for sale/display. Access to the facility would be from both the Payne Road and the Haigis Parkway. They intend to include preservation of land for wetland protection, stream buffering, and landscaping enhancements along the roadside that would aide in the visual aesthetics, especially at the Wet Gateway to Scarborough.

We as the applicants anticipates the Project to be the corner piece for the Gateway into Scarborough as one would exit the Maine Turnpike off Exit 42. For a more detailed look at what is being proposed the Contract Zone Application can be reviewed at Town Hall.

COMMENTS FROM TOWN STAFF

Jay Chace, Town Planner, gave a brief overview, noting that the Town attorney would review the contract zone agreement after this process has been completed. He referred to a couple of memos on that had been provided earlier to the applicant, the Planning Board and the Council regarding this proposal. This is one of the gateways to the community and building placement is important. He made further comments on site design and orientation, architectural standard and traffic.

COMMENTS FROM MEMBERS OF THE PUBLIC (This shall constitute the public hearing by the municipal reviewing authority required by 30-A M.R.S.A. § 4352(8).)

Mr. Fellows, Chair of the Planning Board, opened the public hearing:

- Mr. Larry Hartwell of Puritan Drive spoke on this proposal and felt that this was a good fit for the town and had low impact on the town. He felt that this was a top-of-line car dealership and

felt that it was a positive thing for the community. The only downside is the amount of paving at this site. He does support this and hoped the town would also.

- Mark Loring of South Portland, owns the abutting property and spoke in support of the proposal and felt that this would be a good fit. As a direct abuttor he fully supports this proposal.

There being no further comments the hearing was closed at 7:37 p.m.

RESPONSE OR REBUTTAL FROM APPLICANT No rebuttal from Applicant.

DISCUSSION AMONG MEMBERS OF THE PLANNING BOARD AND THE TOWN COUNCIL, WHICH MAY INCLUDE QUESTIONS POSED TO THE APPLICANT, STAFF AND THE PUBLIC

Mr. Fellows, Planning Board Chair then opened it up for Planning Board comments.

S. Auglis stated that she did not like Contract Zoning; however, she felt that it was the best place for this for this business. She had major concerns relating to the landscaping and would complement the building. She commented on the traffic impact and possible buffering toward the back due to the development to the Crossroads Development. She felt the timing is really great as this project can work together on developing this area. She liked the phrase “Standup People.”

N. McGee also did not like Contract Zoning either. Is this the vision for Haigis Parkway and is it what we want people to see the first this coming into Scarborough; would this be the only car dealership in this area and why not rezone?

R. Saunders stated that this is her first go round with Contract Zoning and public benefit and what eco benefit would we have? She felt that this could be mutual beneficial and would be looking for some real creativity. We still have time to review and make this work for both the town and applicant.

C. Fellows echoed what his fellow members stated. He noted that in the benefit impact section it listed housing and he felt that this was not a burden to the town and that housing was not a benefit.

At this point in the meeting Mr. Fellows asked if there were any Town Council comments.

Councilor Foley felt that the Town had an extremely talented Planning Board and agreed with what had been stated by members of the Planning Board.

Councilor Rowan shared his concerns about the impervious surface and also agreed with what had been stated earlier. He commented on whether there was fiber on Payne Road and it was noted that it was just telephone.

Councilor Babine no problem with Contract Zoning, as long as it was beneficial to the town. He also added that the vision for the Haigis Parkway had changed over the years.

Councilor Caterina also stated that she was not a fan of Contract Zoning, but does see the benefit. She too felt that the town has a great Planning Board that will ensure that everything is taken care of.

Chairman Donovan stated that this group has an excellent reputation – very respected and the presentation this evening was excellent and thanked the team. He went on to mention the various projects that this group had assisted with. He was interested in the visual appearance as that would be very important.

COMMENTS FROM MEMBERS OF THE PLANNING BOARD CONCERNING THE LAND USE IMPLICATIONS OF THE PROPOSED CONTRACT ZONING AMENDMENT

R. Saunders voiced her concerns with changing land use to strictly impervious surface [parking area]. Would like to see wetland mitigations and noted that there would be discussions on wetland inventory and maybe a peer review. She would be going back to review what had been said here this evening.

There were further discussions on the wetlands and other benefits this project could bring to the area. There were comments regarding the sewer assessment in this area and how public sewer could be made as a public benefit.

PRELIMINARY TOWN COUNCIL DISCUSSION OF CONTRACT ZONING AMENDMENT

Chairman Donovan asked the town manager to give an overview on what the Town Council next step would be. He further stated that some of the comments made this evening could be worked in to the document. Encouraged those present to let us know of other items that you might want to add.

After a brief discussion the following motion was made:

Motion by Councilor Caterina, seconded by Councilor Babine, to move approval pursuant to Chapter 405 Section I. Sub-section 4. Procedures – a- iii: advise the applicant; (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council.

Vote: 5 Yeas.

Order No. 17-109, 7:00 p.m. Public hearing on the request for the Scarborough Town Council to Order the Discontinuance of all portions of Avenue 2 located southerly of King Street with no damages awarded to the abutting landowners; and to file said Order with the Town Clerk. [The second reading is scheduled for Wednesday, March 21, 2018.] [Town Manager] Chairman Donovan asked Attorney McCall to give a brief summary on this Order.

- Ben McCall, Town Attorney gave an update on this Order for those individuals who may still have questions on this item. This process has been ongoing since 2014. He went on to review the process and discussions that brought this item before the Town Council. He also reviewed the documents that had been presented to the Town Council and the public.

Chairman Donovan opened the public hearing. The following individual spoke on this Order:

- Larry Hartwell of Puritan Drive did not agree with the town giving the away this property. He felt the town could have handled this process differently and that Mr. Gendron could have asked for a variance. He commented on the land that is being given away is considered waste land.

There being no further comments either for or against, the hearing was closed at 8:37 p.m. The second reading on this Order will be held on Wednesday, March 21, 2018.

OLD BUSINESS:

Order No. 18-001. Second reading on the proposed amendments to the Higgins Beach Character-Based Zoning Districts. [Long Range Planning Committee] Chairman Donovan gave a brief overview on this order.

Motion by Councilor Babine, seconded by Councilor Caterina, to move approval of the second reading on the proposed amendments to the Higgins Beach Character-Based Zoning Districts, and schedule a public hearing upon receipt of the recommendations of the Planning Board, as follows:

AMENDMENTS TO CHAPTER 405 THE ZONING ORDINANCE

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

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

Article 5.C.2

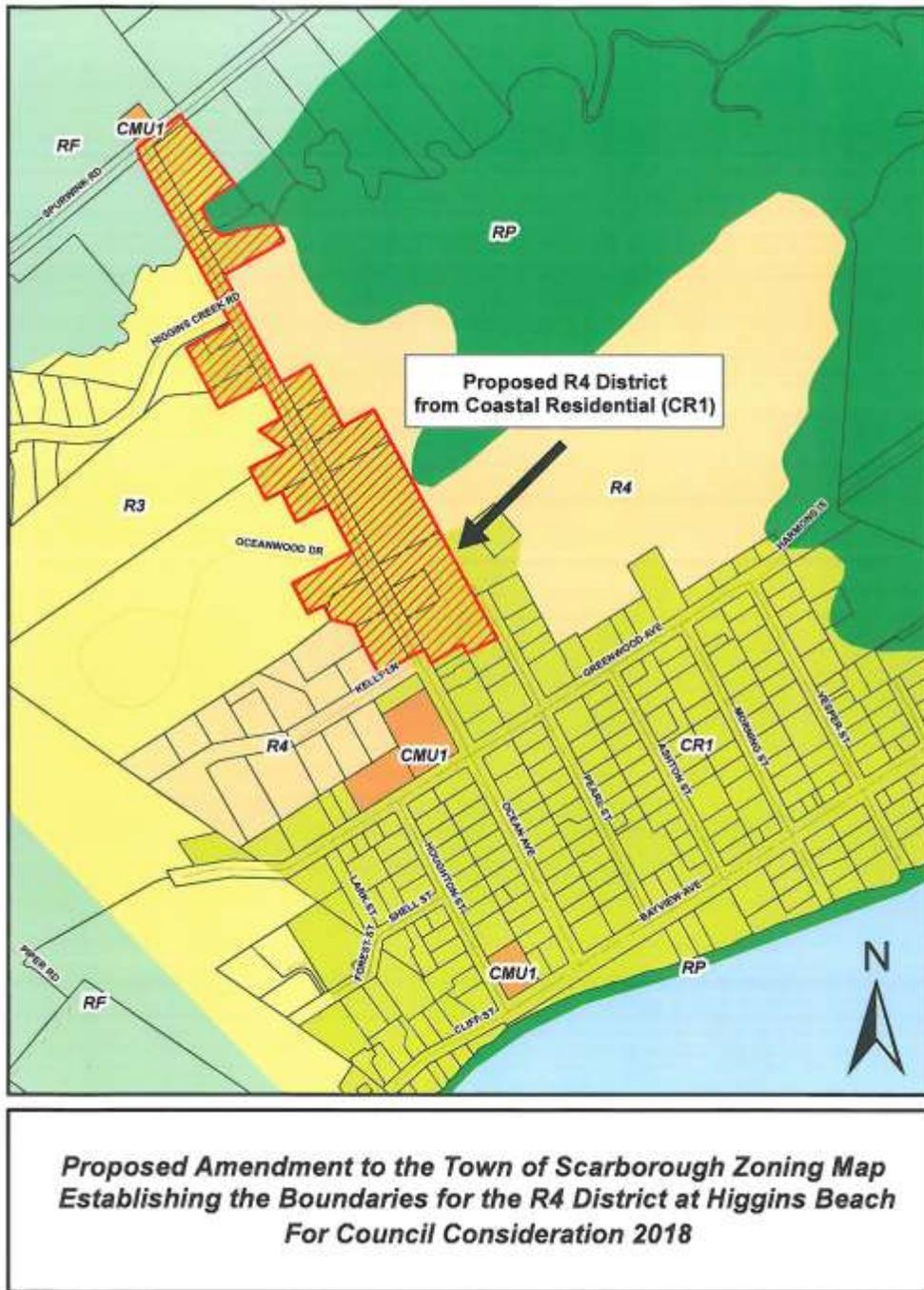
~~h. Restoration of Damaged Structures is permitted as follows:~~

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

Vote: 5 Yeas.

Order No. 18-002. Second reading on the proposed amendments to the Town of Scarborough Zoning Map. [Long Range Planning Committee] Chairman Donovan gave a brief overview on this Order.

Motion by Councilor Caterina, seconded by Councilor Babine, to move approval of the second on the proposed amendments to the Town of Scarborough Zoning Map and schedule a public hearing upon receipt of the recommendations of the Planning Board, as follows:



Vote: 5 Yeas.

Order No. 18-003. Second reading on the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu Fee - (f). [Housing Alliance Committee] Chairman Donovan gave a brief overview on this Order.

Motion by Councilor Babine, seconded by Councilor Caterina, to move approval of the second reading on the proposed amendments to Chapter 405 – Town of Scarborough Zoning Ordinance, Section VIIC. Residential Density and Affordable Housing Provisions, sub-section B. Affordable Housing In Lieu

Fee - (f) and schedule a public hearing upon receipt of the recommendations of the Planning Board, as follows:

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

SECTION VIIC. RESIDENTIAL DENSITY AND AFFORDABLE HOUSING PROVISIONS
[06/06/2007][amended 11/06/2013]

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

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

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

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

More specifically, these funds may be used for the land acquisition, infrastructure, and/or building construction costs of an affordable housing project.

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

Vote: 5 Yeas.

NEW BUSINESS:

Order No. 18-019. Act to authorize the Town Manager to execute a Temporary Construction Easement to Thomas and Terry Hegerle of 39 Ocean Avenue, to allow access during the construction of a new home on their property, via Town owned land identified as Map U002 , Lot 4, on Scarborough Tax Assessor's Map, subject to the conditions that such access is limited to that portion of the Town owned land on the ocean side of the existing stockade fence and that the area be restored to the pre-construction condition. [Town Manager] Thomas J. Hall, Town Manager, gave a brief overview on this Order.

Motion by Councilor Babine, seconded by Councilor Caterina, to move approval to authorize the Town Manager to execute a Temporary Construction Easement to Thomas and Terry Hegerle of 39 Ocean Avenue, to allow access during the construction of a new home on their property, via Town owned land identified as Map U002 , Lot 4, on Scarborough Tax Assessor's Map, subject to the conditions that such access is limited to that portion of the Town owned land on the ocean side of the existing stockade fence and that the area be restored to the pre-construction condition.

Vote: 5 Yeas.

Order No. 18-020. Act on the request from the Scarborough Housing Alliance to award a grant from the Affordable Housing Initiative Fund in the amount of \$100,000 toward the Avesta Housing Project to offset unexpected environmental remediation costs and authorize the Town Manager to sign any and all documents related to this order. [Scarborough Housing Alliance] Councilor Rowan, Liaison to the Housing Alliance, gave a brief overview on this Order.

Motion by Councilor Caterina, seconded by Councilor Babine, to move approval on the request from the Scarborough Housing Alliance to award a grant from the Affordable Housing Initiative Fund in the

amount of \$100,000 toward the Avesta Housing Project to offset unexpected environmental remediation costs and authorize the Town Manager to sign any and all documents related to this order.

Vote: 5 Yeas.

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

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

- Councilor Caterina gave an update on the Long Range Planning Committee; the Communications Committee and the Ordinance Committee.
- Councilor Foley gave an update on the Eastern trail Alliance.
- Councilor Rowan gave an update on the Housing Alliance and the Historic Implementation Preservation Committee.
- Councilor Babine noted that the Appointments/Negotiations Committee had met earlier and would like to post the following:

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

Chairman Donovan – Metro Coalition

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

- Public Safety Building update: we have received two offers that are being reviewed with the potential of another offer tomorrow. He would keep the Council updated.

Item 11. Council Member Comments.

- Councilor Caterina commented on events that are currently in Scarborough and asked everyone to please be kind to one another.
- Councilor Foley echoed Councilor Caterina's comments and further stated that in certain circumstance we as a public cannot know everything due to the situation.
- Councilor Rowan asked everyone to drive carefully and announced that Scarborough Schools have been canceled.
- Councilor Babine gave a shout out to David Jackson, a resident in town, on his retirement from the Portland Fire Department. He too made comments on the current situation with the Board of Education.

- Chairman Donovan commented on the issues the community was currently going through. He went on to congratulate Deb McDonough, a Scarborough resident, who won the ecoExcellence Award.

Item 12. Adjournment. Motion by Councilor Babine, seconded by Councilor Rowan, to move approval to adjourn the regular meeting of the Scarborough.

Vote: 5 Yeas

Meeting adjourned at 9:04 p.m.

Respectfully submitted,

Yolande P. Justice
Town Clerk