

MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – OCTOBER 1, 2008
REGULAR MEETING – 7:30 P.M.

Item 1. Call to Order. Chairman Messer called the regular meeting of the Scarborough Town Council to order at 7:34 p.m.

Item 2. Pledge of Allegiance.

Item 3. Roll Call. Roll was called by Yolande P. Justice, Town Clerk. Ronald W. Owens, Town Manager, was also present.

Ronald D. Ahlquist, Vice Chair	Michael J. Wood
Carol S. Rancourt	Judith L. Roy
Richard J. Sullivan, Jr.	Sylvia J. Most
Jeffrey A. Messer, Chair	

Item 4. Minutes: September 19, 2008 - Regular Meeting and September 24, 2008 - Special Meeting. Motion by Councillor Most, seconded by Councillor Ahlquist, to move approval of the minutes of September 19, 2008, the regular meeting of the Scarborough Town Council, as written.

Vote: 7 yeas.

Motion by Councillor Most, seconded by Councillor Rancourt, to move approval of the minutes of September 24, 2008, the special meeting of the Scarborough Town Council, as written.

Vote 7 yeas.

Item 5. Items to be signed: a. Treasurer's Warrants. Treasurer's warrants were signed during the meeting.

Item 6. Presentation by Richard Feeney on behalf of the Cumberland County Commissioners. On behalf of the Cumberland County Board of Commissioners, Commissioner Feeney presented the Town with an Official Resolution recognizing the 350th Anniversary of the Town of Scarborough.

Order No. 08-130, 7:30 p.m. Public hearing on the following renewal applications for Junkyards:

<u>Business</u>	<u>Address</u>
1. Meserve & Sons	224 Black Point Road
2. Goldstein Steel Company Inc.	36 Running Hill Road
3. A. Gagnon or E. Perry Iron & Metal	Rigby Road
4. John B. Dickinson	34 Running Hill Road
5. Scarborough Auto Parts	40 Holmes Road
6. Speedway Auto	343 Payne Road

Chairman Messer opened the public hearing. As there were no comments either for or against the hearing was closed at 7:38 p.m. Chairman Messer noted that he would divide the question on the recommendation for renewal.

Motion by Chairman Messer, seconded by Councillor Rancourt, to move approval on the renewal requests from Goldstein Steel Company Inc., located at 36 Running Hill Road; A. Gagnon or E. Perry Iron & Metal and Rigby Road Speedway Auto, located at 343 Payne Road.

Vote: 7 yeas.

Motion by Chairman Messer, seconded by Councillor Wood, to move approval on the renewal requests from Meserve & Sons, located at 224 Black Point Road; John B. Dickinson, located at 34 Running Hill Road and Scarborough Auto Parts, located at 40 Holmes Road, with the condition that the permits not be issued until the final inspection has been conducted.

Vote: 7 yeas.

Order No. 08-131, 7:30 p.m. Public Hearing on the new request for a Massage Therapist License for Maureen Sedgwick-Glidden doing business at Calm Water Spa & Salon, located at 144 U.S. Route One. Chairman Messer opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:40 p.m.

Motion by Chairman Messer, seconded by Councillor Rancourt, to move approval on the new request for a Massage Therapist License for Maureen Sedgwick-Glidden doing business at Calm Water Spa & Salon, located at 144 U.S. Route One.

Vote: 7 yeas.

OLD BUSINESS:

Order No. 08-127. Second reading on the proposed amendments the Library's CIP Budget for FY 2009. Councillor Ahlquist gave an overview on the discussion that had taken place at the Finance Committee just prior to the Council meeting and the Finance Committee would recommend to the Council that the amount of \$378,000 be approved.

Motion by Chairman Messer, seconded by Councillor Most to move approval on the proposed amendments the Library's CIP Budget for FY 2009.

Motion by Chairman Messer, seconded by Councillor Ahlquist, to move approval to amend the main motion to approve the \$378,000 that is being recommended by the Finance Committee.

Vote on Amendment: 7 yeas.

Main motion as amended:

Roll Call Vote:	Councillor Ahlquist – yea	Councillor Wood – yea
	Councillor Sullivan – yea	Councillor Roy – yea
	Councillor Rancourt – yea	Councillor Most – yea
	Chairman Messer – yea	

NEW BUSINESS:

Order No. 08-132. First reading and refer to the Planning Board the proposed amendments to Chapter 405, the Zoning Ordinance for a new application for a Contract Zone from Harvest Development, LLC. Chairman Messer gave a brief overview as to the process followed by the applicant in order to reach this point and pointed out the recommendations of the Planning Board. At

this point Chairman Messer introduced Owen McCullough, Project Manager from Sebago Technics; Melissa Leclerc of Curry Architecture and Chris DiMatteo, Project Planner from Sebago Technics. Mr. McCullough gave a power point presentation on the proposed application.

The following individuals spoke on this order: Nancy Crowell of South Portland; Jeannine Uzzi of 13 Sunset Road; Mike Silvius of 29 Maple Avenue; Frank Suszczynski of 26 Meeting House Road; Audie Harris of 8 Second Avenue and Ann Marie Silvius of 29 Maple Avenue.

Representatives for the applicant responded to questions and concerns from those who spoke as well as from the Council.

Motion by Chairman Messer, seconded by Councillor Ahlquist, to move approval of the first reading and refer to the Planning Board the proposed amendments to Chapter 405, the Zoning Ordinance for a new application for a Contract Zone from Harvest Development LLC and schedule a public hearing for the next regular meeting following the filing of the recommendations of the Planning Board and not to come back to the Council prior to November 19th, as follows:

**DRAFT CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
HARVEST DEVELOPMENT, LLC (or its assigns).**

This Contract Zoning Agreement made as of the ___ date of _____, 20___, 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 HARVEST DEVELOPMENT, LLC (or its assigns), a Washington Limited Liability Company, with an address of 9310 NE Vancouver Mall Dr., #200, Vancouver, WA (“Harvest Development”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Scarborough Zoning Ordinance:

WHEREAS, Harvest Development intends to purchase a parcel or real estate located north of Elwood Avenue at Third Avenue, Scarborough, Maine, consisting of approximately 65 acres, being shown as Parcel 1 on the Town’s Tax Map R057, (hereinafter the “Property”); and

WHEREAS, the Property is currently in part in the Residential (R-2) District and in part in the Resource Protection (R-P) District under the Scarborough Zoning Ordinance; and

WHEREAS, the R-2 District presently allow, as permitted uses, or special exceptions, various uses, including schools, family day care homes, group day care homes and hospices but not congregate retirement residences; and

WHEREAS, Harvest Development wishes to develop the Property as a Retirement Community, consisting of a Congregate Retirement Residence, Assisted Living Facility and Senior Housing which are not currently permitted in the R-2 Zone; and

WHEREAS, the Zoning Ordinance of the Town of Scarborough does not currently recognize Congregate Retirement Residence or Assisted Living Facilities as a defined use; and

WHEREAS, Harvest Development has requested a rezoning of the Property to permit a Retirement Community; and

WHEREAS, the Property contains an existing home that will be preserved in a good and craftsmen’s like manner, and a 250 foot landscaped buffer from Elmwood Avenue will be provided, and will include areas of extensive interior landscaping, all of which provide a unique amount and quality of vegetative buffering; and

WHEREAS, the size, location, configuration and topography of this site permit a level of buffering , landscaping, and site design which will be appropriate for a Retirement Community, provided the operation is restricted to the density, scale and intensity proposed by Harvest Development and further provided that the restrictions of this Contract Zoning Agreement are observed; and

WHEREAS, Harvest Development will dedicate approximately 33.48 acres of conservation/open space to the Town of Scarborough; and

WHEREAS, the Congregate Retirement Residence and cottages will be developed in one area of the site plus roadways totaling approximately 10 acres, the conservation dedication totals approximately 33 acres, an area for the existing home will be created of approximately 1.4 acres, thereby leaving approximately 21 acres of the parcel for further development to consist of an Assisted Living Facility and Senior Housing; and

WHEREAS, the Scarborough Planning Board, pursuant to Section II, Paragraph G, Subsection 3 of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid; and

WHEREAS, the Project will serve the Town’s objective of maintaining a diverse population in the Town (Chapter 5, Objective A.3. of the Comprehensive Plan) by constructing an alternative senior housing opportunity within a growth area; and

WHEREAS, the Project will serve the Town’s objective of expanding the number of access points to marine facilities (Chapter 5, Objective D.3. of the Comprehensive Plan) by constructing trailhead parking and a trail between Elmwood Avenue, the trailhead parking area and Woodspell Road, and providing easements where required for the road access, trailhead parking and trail; and

WHEREAS, the Project serves the goals of Chapter 5 (Objective A.2.) of the Comprehensive Plan by using public sewer and water facilities; and

WHEREAS, the Project fulfills the goals of Chapter 5 (Objective A.4.b.) of the Comprehensive Plan encouraging a choice of housing for residents of all ages and incomes by proving a type of retirement community not currently available in the Town; and

WHEREAS, the rezoning provided in this Agreement, therefore, would be consistent with the Policies and Future Land Use Plan of Part B of the Scarborough Comprehensive Plan; and

WHEREAS, the Town of Scarborough, by and through its Town Council, therefore, has determined that the said rezoning would be pursuant to and consistent with the Town’s local growth program and Comprehensive Plan adopted pursuant to Title 30-A, Maine Revised Statutes, Chapter 187, Sub-part 6-A, and consistent with the existing and permitted uses within the original zoning district classification and has authorized the executive of this Contract Zoning Agreement.

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 hereby amends the Zoning Map of the Town of Scarborough, by adopting the map change amendment shown on Attachment 1.

2. Harvest Development is authorized to create a Retirement Community, including a Congregate Retirement Residence as defined herein and cottages, Assisted Living Facilities and Senior Housing, at the Property. For purposes of this Agreement, a Congregate Retirement Residence means service-oriented housing complex for older people who want security and some assistance, but would like to retain as much independence as possible. The residents may live in private suite apartments, studio apartments, or rooms. Meals are usually served in a central dining facility, and other services offered may include housekeeping, line/laundry service, transportation, recreation, and possibly some personal care. Construction and use of the facility shall be subject to the following conditions:
- (a) Building Footprint and Height: The maximum allowable building footprint for the Congregate Retirement Residence buildings (including the main building, 10 cottages and garage structures) shall be 65,000 square feet and the maximum building height shall be three (3) stories and as shown on the Site Plan approved by the Town of Scarborough Planning Board. The main buildings shall be a maximum of 39 feet to the mid-point of the sloped or hip roofs and 45 feet to the ridge of the roof. Building Footprint and Height for the Assisted Living and Senior Housing shall be approved by the Planning Board as and when each phase is developed.
 - (b) Permitted Uses: The uses allowed or permitted on the Property shall be limited to (i) a Congregate Retirement Residence with 10 cottages, (ii) Assisted Living Facility, (iii) Senior Housing and accessory uses. Harvest Development also may either (a) retain and maintain the existing residence on the Property, the use of which will be consistent with and incidental to the Retirement Community use, such as guest rooms for guest visiting residents, equipment storage, security or maintenance, office and staff accommodations; or (b) sell or rent such residence for use as a single family residence.
 - (c) Building Design: Congregate Retirement Residence and 10 Cottage Building design style and materials shall be substantially as depicted on the building elevations submitted during site plan review, with any changes thereto as approved by the Planning Board. Assisted Living and Senior Housing Design shall be approved by the Planning Board as and when each phase is developed.
 - (d) Landscaping: The Property shall be landscaped to enhance the general appearance of the project from surrounding properties as determined by the Planning Board at the time of site plan approval. The landscaping shall be maintained by Harvest Development or its successors or its successors in interest. After the date of approval of this Contract Zoning Agreement, there shall be no significant amount of removal of existing trees or other vegetation except as indicted on an approved Site Plan.
 - (e) Density: The maximum net residential density of the Congregate Retirement Residence shall be 118 congregate suites, ranging in size from 500 square feet to 1100 square feet and 10 cottages. The cottages shall range in size from 1100-1400 square feet. The maximum net residential density shall be 90 units of Assisted Living Facility, and 44 units of senior housing.

- (f) Residents: Occupancy of the Retirement Community shall be limited to persons 55 years of age or older or households with at least one resident who is 55 years of age or older.
 - (g) Sewer and Water: The facility will be served by both public water and public sewer.
 - (h) Setback: The front, side and rear yards shall be a minimum of 25 feet, excluding accessory buildings, and as generally shown on the Site Plan, approved by the Planning Board.
 - (i) Parking: The Congregate Retirement Residence shall provide a minimum of 0.6 off-street parking spaces for each suite. The Assisted Living Facility shall provide a minimum of 0.5 off-street parking spaces for each suite. The Senior Housing shall provide 1.25 spaces which may include the garage and driveway.
 - (j) Site Plan: The property subject to this Contract Zoning Agreement shall be developed and used only in accordance with the site plan approved by the Scarborough Planning Board on September 15, 2008, as that site plan may be amended from time to time pursuant to the provisions of the Scarborough Site Plan Ordinance. Any amendment which involves the following changes will require an amendment to this Contract Zoning Agreement:
 - (a) any change to the definition of a Congregate Retirement Residence; and
 - (b) any increase in the number of units.
3. Harvest Development shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after its execution by the Town Council.
 4. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property except as this Contract Zoning Agreement may be amended by future written agreement with the Town of Scarborough and Harvest Development or its successors in interest.

The provisions of this Contract Zoning shall operate as an “overlay” zone and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying Zoning District shall apply (other than the maximum net residential density, use, height, setbacks and parking). The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind Harvest Development, its successors in interests and assigns of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Scarborough.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Zoning Ordinance of the Town of Scarborough (as applicable) and any applicable amendments thereto or replacement thereof.

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 this Agreement. In the event that Harvest Development, or its successors, or assigns, fail to develop the project in accordance with this Contract, or in the event of any other breach hereof, and such

failure or breach continues for a period of thirty (30) days after written notice of such failure or breach cannot reasonably be remedied or cured within thirty (3) day period, if Harvest Development, its successors or assigns, fails to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time, then this Contract may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses as otherwise allowed by law.

WITNESS:

TOWN OF SCARBOROUGH
_____, Its Town Manager
duly authorized by vote of the Scarborough
Town Council on _____, 20__

WITNESS:

HARVEST DEVELOPMENT, LLC

Vote: 7 yeas.

Order No. 08-133. Act on the request from the Police Chief to accept a \$500.00 donation from the Saco and Biddeford Savings Bank to the DARE Program. Motion by Chairman Messer, seconded by Councillor Most, to move approval on the request from the Police Chief to accept a \$500.00 donation from the Saco and Biddeford Savings Bank to the DARE Program.

Vote: 7 yeas.

Order No. 08-134. Act on the request from Maine Municipal Association to select a *Voting Delegate* for the MMA Annual Business Meeting. Motion by Councillor Most, seconded by Councillor Rancourt, to move approval to nominate Councillor Roy as the Voting Delegate to the MMA Annual Business meeting and Ron Owens, Town Manager as the Alternate Voting Delegate.

Vote: 7 yeas.

Order No. 08-135. Act on the request from the Seniors Program Advisory Board to reduce the number of members from nine to seven. Motion by Chairman Messer, seconded by Councillor Rancourt, to move approval on the request from the Seniors Program Advisory Board to reduce the number of members from nine to seven.

Vote: 7 yeas.

Order No. 08-136. Act on the request to authorize a one-time exemption to the property tax limit calculation under LD-1 for FY 2009. Ronald Owens, Town Manager, gave a brief overview on this Order.

Motion by Chairman Messer, seconded by Councillor Most, to move approval on the request to authorize a one-time exemption to the property tax limit calculation under LD-1 for FY 2009, as follows:

**ONE-TIME AUTHORIZATION TO
EXCEED TAX LEVY CAP**

WHEREAS, the Budget that was adopted on May 22, 2008, for Fiscal 2009 resulted in a property tax commitment that exceeded the property tax cap calculation under LD1 Guidelines; and,

WHEREAS, the reasons for the property tax levy exceeding the limitation posed by LD 1 was the inclusion of additional public safety personnel and resources to accommodate the increased demand for police, fire and emergency response as a result of growth in both the residential and commercial districts in the community and the increase in net debt service cost as result of realizing less revenues related to debt service i.e. school impact fees and sewer reimbursement.

Fire Department - 10.5% increase

Police Department - 6.5% increase

Debt Service (Net) -15% increase (4.6% increase in cost, 17% decrease in debt revenues)

NOW, THEREFORE, BE IT RESOLVED, that the Town Council hereby affirms the property tax levy adopted to support the FY2009 Budget as a one-time exemption in the amount of \$139,344.

Vote: 7 yeas.

Item 7. Non-Action Items. None at this time

Item 8. Committee Reports: Standing Committee Reports and Other Committee Reports.

- Chairman Messer noted that he would like to appoint Jack Callahan as the as-large member of the Pine Point Study Committee.
- Councillor Most gave an update on the CPIC Committee and stated the next meeting is scheduled for Monday, October 6th at 8:00 a.m.
- Councillor Rancourt gave an update on the Pine Point Study Committee.

Item 9. Public Comments. None at this time.

Item 10. Town Manager Report. Mr. Owens, Town Manager, recognized Steve Wells, a senior here at the high school who is part of the new internship program between the town and school department that introduces students to the workings of the Cable Access Studio. Mr. Wells is responsible for setting up the Conference Room here at the high school for the live meetings that are being held during the month of October.

Mr. Owens also noted that Town received the 2007 Certificate of Achievement for Excellence in Financial Reporting from the GFOA.

Item 11. Council Member Comments. Closing comments were made by Council members.

Item 12. Adjournment. Motion by Councillor Rancourt, seconded by Councillor Roy, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 7 yeas.

Meeting adjourned at 9:48 p.m.

Respectfully submitted, Yolande P. Justice, Town Clerk