

**MINUTES**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – APRIL 15, 2009**  
**REGULAR MEETING – 7:30 P.M.**

**Item 1. Call to Order.** Chairman Wood called the regular meeting of the Scarborough Town Council to order at 7:31 p.m.

**Item 2. Pledge of Allegiance.**

**Item 3. Roll Call.** Rolled was called by Yolande P. Justice, Town Clerk. Thomas J. Hall, Town Manager, was also present.

Ronald D. Ahlquist	Shawn A. Babine
Carol S. Rancourt, Vice Chair	Judith L. Roy
Richard J. Sullivan, Jr. [Absent]	Karen A. D’Andrea
Michael J. Wood, Chairman	

**Item 4. Minutes: April 1, 2009.** Motion by Councillor Babine, seconded by Councillor Roy, to move approval of the minutes of the March 18, 2009, Town Council meeting.

Vote: 6 yeas.

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

**Order No. 09-49, 7:30 p.m. Public hearing and second reading on the proposed amendments to Chapter 302 – Scarborough Town Council Rules, Policies and Procedures Manual, Section 103.0 Regular Meetings.** Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:33 p.m.

Motion by Councillor Babine, seconded by Councillor Roy, to move approval of the second reading on the proposed amendments to Chapter 302 – Scarborough Town Council Rules, Policies and Procedures Manual, Section 103.0 Regular Meetings, as follows:

**Chapter 302 - Scarborough Town Council Rules,  
Policies and Procedures Manual**

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to the Chapter 302, the Town Council Rules, Policies and Procedures Manual of the Town of Scarborough, Maine, be and hereby is amended by adding the underlined text and deleting the text shown in strikeover type, as shown below:

**103.0: Regular Meetings.**

The regular meetings of the Town Council shall be held in the room known as the Town Council Chamber of the Town Hall at 7:00 ~~7:30~~ P.M., Eastern Standard Time, on the first and third Wednesdays of each calendar month, ~~except that during periods of Daylight Saving Time said meeting shall be held one hour earlier.~~, with the exception of the months of July and August when only one meeting will be held on the third Wednesday of each of the two months.

Vote: 6 yeas.

**Order No. 09-53, 7:30 p.m. Public Hearing on the following renewal requests for a Liquor License: Dan W. Hourihan, d/b/a Nonesuch River Golf Club, located at 304 Gorham Road; Shogun Japanese Steak House, located at 238 Gorham Road; David Anderson, d/b/a Pat's Pizza of Scarborough, located at 209 U.S. Route One; Chia Sen Lo, d/b/a Chia Sen Chinese Restaurant, located at 456 Payne Road and Formality Concepts, LLC, d/b/a Henry VIII Carvery, located at 400 Expedition Drive.** Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:35 p.m.

Motion by Councillor Babine, seconded by Councillor Roy, to move approval on the following renewal requests for a Liquor License: Dan W. Hourihan, d/b/a Nonesuch River Golf Club, located at 304 Gorham Road; Shogun Japanese Steak House, located at 238 Gorham Road; David Anderson, d/b/a Pat's Pizza of Scarborough, located at 209 U.S. Route One; Chia Sen Lo, d/b/a Chia Sen Chinese Restaurant, located at 456 Payne Road and Formality Concepts, LLC, d/b/a Henry VIII Carvery, located at 400 Expedition Drive.

Vote: 6 yeas.

**Order No. 09-54, 7:30 p.m. Public Hearing on the new request for a Massage Therapist License for Marcia L. Sanderson doing business at Focal Point Manual Therapies, located at 7 Oak Hill Terrace.** Chairman Wood opened the public hearing. As there were no comments either for or against the hearing was closed at 7:36 p.m.

Motion by Councillor Babine, seconded by Councillor Roy, to move approval on the new request for a Massage Therapist License for Marcia L. Sanderson doing business at Focal Point Manual Therapies, located at 7 Oak Hill Terrace.

Vote: 6 yeas.

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

**NEW BUSINESS:**

**Order No. 09-55. First reading and schedule a public hearing on the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance, Section 9. Performance Standards - by adding a new subsection N. Wind Power.** Councillor Rancourt gave a brief overview on the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance, Section 9. Performance Standards - by adding a new subsection N. Wind Power and Dan Bacon, Town Planner, responded to questions from the Town Council.

Motion by Councillor Rancourt, seconded by Councillor Roy, to move approval of the first reading and refer to the Planning the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance, Section 9. Performance Standards - by adding a new subsection M. Wind Power and schedule a public hearing for the next regular meeting following the filing of the recommendations of the Planning Board, as follows:

**Proposed Amendment to the Zoning Ordinance  
To Add a Performance Standard Section to the Zoning Ordinance to Allow and Regulate  
Small Wind Energy Systems:**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendment to the Zoning Ordinance of the Town of Scarborough, Maine, be and hereby are adopted:

Amend the Zoning Ordinance to add a new subsection N. to Section IX. Performance Standards as follows:

## **N. PERFORMANCE STANDARDS – SMALL WIND ENERGY SYSTEMS**

Small wind energy systems (SWES) are considered accessory uses and structures in all residential, mixed use, commercial and industrial districts in the Town of Scarborough. The Code Enforcement Officer may issue a building permit for the installation and operation of a small wind energy system provided the following performance standards are met.

### **1. Space and Bulk –**

- a. Number of SWES** – With the exception of small wind energy systems allowed per subsection M.(12) below, SWES are limited to one (1) per lot and shall be designed, sized and installed to only generate energy for the building(s) located on the same lot. This standard is not intended to prohibit the transfer of excess energy to the power grid.
- b. Height** – The height of a SWES shall be limited to one hundred (100) feet. SWES height shall be measured from the ground level to the center of the turbine.
- c. Setbacks** - The SWES shall be setback 110% of the system’s height, as measured per subsection M.1.b. above, from all property lines.
- d. Town Exemption** – Wind Energy Systems located on property owned by the Town of Scarborough shall not be subject to the Space and Bulk Standards listed above.

### **2. Design and Aesthetics –**

- a. Tower** – The tower of a SWES shall be a monopole (freestanding or guyed wire). Lattice towers are prohibited.
- b. Color** – SWES shall be a non-reflective, neutral color (light gray, white, brushed aluminum etc.)
- c. Signage** – SWES shall not display signage or other forms of advertising, except warning, direction and manufacturing labels.
- d. Appendages** – No appendages shall be attached to the SWES tower that is not incidental to its primary use.

### **3. Safety –**

- a. Access** – Any climbing apparatus on a SWES tower shall be a minimum of fifteen (15’) feet from the ground.
- b. Blade Clearance** – The SWES’s blades shall not rotate to within twenty (20’) feet of the ground at their lowest point.

**4. Lighting** - Exterior lighting on a SWES shall not be permitted, except that which may be required by the Federal Aviation Administration.

**5. Electrical Service** - Electrical wiring and connections from the wind energy system to the building(s) they serve shall be underground.

### **6. Noise –**

- a. Automatic Brake** - The SWES shall be equipped with an automatic brake that controls and moderates the rotation of the system’s blade and prevents over-speed. Conformance with this requirement shall be confirmed and documented by the wind energy system’s manufacturer.

- b. Db(A) Level** – The SWES shall be designed and operated to not exceed 55 db(A) at a distance of one hundred (100’) horizontal feet from the SWES. This shall be confirmed by the wind energy system’s manufacturer.
- 7. Foundations** – The foundation design for a SWES shall comply with the SWES manufacturer’s minimum standards regarding the specific wind energy system and the soils type at which the installation is proposed.
- 8. Submission Requirements for Permitting** - A plot plan; specifications and an illustration of the SWES provided by the manufacturer; a detailed description of how the SWES, and the lot on which it is proposed, complies with the performance standards of this subsection M; structural drawings of the wind tower, base and foundation prepared by the manufacturer or a professional engineer; and electrical and building permit applications shall be submitted prior to Code Enforcement review and approval.
- 9. Meteorological Tower** – As defined in Section VI. Definitions of the Zoning Ordinance, meteorological towers are structures intended to collect data to determine the appropriate siting of a Small Wind Energy System. These towers are permitted as a temporary use to remain installed for a maximum of two (2) years. The Town encourages applicants interested in installing SWES to first collect the necessary data through the use of a meteorological tower or other appropriate device to help determine the appropriate location and height for a SWES as well as to ensure a SWES is a worthwhile investment on the subject property. Meteorological towers shall comply with the SWES performance standards of this subsection with the exception of subsection M.2.a. Tower, subsection M.2.b. Color, and subsection M.5. Electrical Service.
- 10. Removal Requirements** –
  - a. Unsafe SWES** – A small wind energy system that is found to be unsafe by Code Enforcement shall either be repaired to correct the safety issue or shall be removed by the property owner.
  - b. Abandonment** – A small wind energy system that is not working or is not being used for a consecutive twelve (12) month period shall be removed by the property owner.
- 11. SWES within Common Open Space** – Up to three (3) SWES may be allowed by the Planning Board within the common open space of a residential subdivision reviewed under Section VII. or Section VIIA. of the Zoning Ordinance, subject the following requirements:
  - a.** The open space shall be of sufficient size and dimensions to accommodate the SWES(s) and the 110% setback requirement of subsection M.3.c. above, within the boundaries of the open space.
  - b.** The installation of a SWES, and necessary associated improvements, shall not impact wetlands or otherwise compromise the intent of a conservation subdivision to protect wetlands or other natural resources.
  - c.** The SWES shall comply with all the performance standards other than subsection M1. Number of SWES, and shall require Planning Board approval prior to application to Code Enforcement.

Amend the Zoning Ordinance to add two new definitions to Section VI. Definitions as follows:

**Small Wind Energy System (SWES):** A structure or structures that may include a wind turbine, a tower, footings, electrical infrastructure and associated equipment that is designed to produce electrical energy for the building(s) and use(s) on a particular lot or site. Small Wind Energy Systems shall be limited to a capacity of 100 kilowatts or less and shall be subject to the Performance Standards under Section IX.N of this Ordinance.

**Meteorological Tower:** A structure or structures intended to collect data to determine the appropriate siting of a Small Wind Energy System, that may include wind speed indicators, wind direction indicators, a tower, guy cables, wiring, and other wind data gathering equipment and infrastructure.

Vote: 6 yeas.

**Order No. 09-56. First reading and schedule a public hearing on the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance, Section 9. Performance Standards - by adding a new subsection O. Solar Power.** Motion by Councillor Rancourt, seconded by Councillor Babine, to move approval of the first reading on the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance, Section 9. Performance Standards - by adding a new Subsection O. Solar Power and schedule a public hearing for the next regular meeting following the filing of the recommendations of the Planning Board, as follows:

**Proposed Amendment to the Zoning Ordinance  
To Add a Performance Standard Section to the Zoning Ordinance  
Regarding Solar Energy Systems:**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the first reading on the following amendments to the Zoning Ordinance of the Town of Scarborough, Maine, be and hereby are adopted:

Amend the Zoning Ordinance to add a new subsection O. to Section IX. Performance Standards as follows:

**O. PERFORMANCE STANDARDS – SOLAR ENERGY SYSTEMS**

Solar energy systems are considered accessory uses and structures in all residential, mixed use, commercial and industrial districts in the Town of Scarborough. The Code Enforcement Officer may issue a building permit for the installation of a solar energy system provided the following performance standards are met. Solar energy systems include photovoltaic, solar hot water, and solar space heating.

**1. Roof and Building Mounted Solar Energy Systems -**

- a. Roof mounted solar energy systems shall conform to the maximum building height restrictions within the district in which it is located;
- b. The solar energy systems shall be designed, sized and installed to only generate electricity, hot water, or heat for the building(s) located on the same lot. This standard is not intended to prohibit the transfer of excess energy to the power grid.
- c. Electrical, plumbing and/or building permits from Code Enforcement shall be required.

## 2. Ground Mounted Solar Energy Systems (Solar Arrays) -

- a. The maximum height of a ground mounted solar energy systems shall be a twenty (20) feet. The height of a ground mounted solar energy system shall be measured from the ground level to the highest point of the solar energy system or the system's pedestal.
- b. Ground mounted solar energy systems shall conform to the yard requirements of the applicable zoning district or be setback a distance equal to the total height of the system, whichever is greater.
- c. Electrical wiring and connections from the solar energy system to the building(s) they serve shall be underground.
- d. The solar energy systems shall be designed, sized and installed to only generate electricity, hot water or heat for the building(s) located on the same lot. This standard is not intended to prohibit the transfer of excess energy to the power grid.
- e. Electrical, plumbing, and/or building permits from Code Enforcement shall be required.

Amend the Zoning Ordinance to add two new definitions to Section VI. Definitions as follows:

**Solar Energy System:** A structure or structures that use sunlight as a source of energy for such purposes as heating or cooling a structure, heating or pumping water, or generating electricity.

Vote: 6 yeas.

**Order No. 09-57. Act on the renewal request, referred by the Town Clerk, for an Ice Cream Truck Permit from Jerry Sterritt, d/b/a Northeast Ice Cream, located at 98 Beech Hill Road - Exeter, NH.** Motion by Councillor Rancourt, seconded by Councillor Roy, to move approval on the recommendation of the Town Clerk, regarding the Ice Cream Truck Permit from Gerry Sterritt, d/b/a North East Ice Cream, located at 98 Beech Hill Road - Exeter, NH – not to renew the permit.

Thomas J. Hall, Town Manager, gave a brief overview on this request. Mr. Sterritt, owner of the Northeast Ice Cream and Jason Klein, employee of Northeast Ice Cream, commented on the recommendation and responded to questions from the Council.

Motion by Councillor Babine, seconded by Councillor Roy, to move approval to amend the main motion and approve the renewal request for an Ice Cream Truck Permit from Jerry Sterritt, d/b/a Northeast Ice Cream, located at 98 Beech Hill Road - Exeter, NH and require the following additional requirements: 1) Northeast Ice Cream shall implement a program that instructs their employees on the Town of Scarborough ordinances pertaining to their business and each employee shall sign an acknowledgement form indicating that they have read and understand the Town of Scarborough ordinances pertaining to their business; 2) that Northeast Ice Cream provide telephone numbers to the Town of Scarborough and its representatives so that the owner and/or manager can be reached in a reasonable amount of time, if a question or concern arises, and 3) that Northeast Ice Cream will improve the numerical identification of each vehicle that will be easily identifiable in multiple locations on each truck.

Vote on amendment: 6 yeas.

Vote on main motion as amended: 6 yeas.

**Order No. 09-58. Act to authorize the Town Manager to sign documents authorizing acceptance of \$17,500.00 or any portion thereof, to be placed in the Asset Forfeiture Account. [This money is the Police Department's equitable share of seizures obtained in recent drug cases].** Motion by Councillor Rancourt, seconded by Councillor Roy, to move approval to authorize the Town Manager to sign documents authorizing acceptance of \$17,500.00 - or any portion thereof, to be placed in the Asset Forfeiture Account. [This money is the Police Department's equitable share of seizures obtained in recent drug cases].

Vote: 6 yeas.

**Order No. 09-60. Act on the appointments to the Rules and Policies Committee, as recommended by the Council Chair.** Motion by Councillor Babine, seconded by Councillor Rancourt, to move approval on the appointments to the Rules and Policies Committee, as recommended by the Council Chair, as follows: Councillors Wood\*, Rancourt and Roy [\*Chair]

Vote: 6 yeas.

**Item 6. Non-Action Items.** None at this time.

**Item 7. Committee Reports: Standing Committee Reports and Other Committee Reports.**

- Councillor Roy noted that the Appointments Committee is stilling looking for individuals to serve of the Charter Review Committee; anyone interested please contact the Town Clerk's Office.
- Councillor Babine noted that the Finance Committee is scheduled to meet this Friday, April 17<sup>th</sup> at 4:30 p.m. to deliberate and make recommendations to the budget. The first reading on the budget is scheduled for 7:00 p.m. on Thursday, April 23<sup>rd</sup>, the public hearing at 7:00 p.m. on Wednesday, April 29<sup>th</sup> and the second reading for 7:00 p.m. on Wednesday, May 6<sup>th</sup>.
- Councillor Rancourt noted that the next Ordinance Committee meeting is scheduled for 4:30 p.m. Tuesday, April 28<sup>th</sup>.
- Councillor Ahlquist gave an update on the first meeting of the Payne Road Study Committee and noted that the next meeting is scheduled for 7:30 a.m. on Wednesday, May 6<sup>th</sup> in the Town Manager's Conference room.
- Chairman Wood noted that when the Rules and Policies Committee meet it is his intention to schedule it prior a Council meeting.

**Item 8. Public Comments.** None at this time.

**Item 9. Town Manager Report.** Thomas J. Hall, Town Manager gave a brief overview on the following:

- if the Council had questions of the budget, please do not hesitate to contact him;
- the Gervais property - noting that it was a 45 acre parcel of upland marsh;
- the Paramedic Association labor negotiations were ongoing;
- the Annual Recognition Banquet for Public Safety is this Saturday, April 18<sup>th</sup> and Thursday, May 28<sup>th</sup> the Annual Employee Recognition will be held at the North Scarborough Grange;
- the storm clean-up will commence on Monday, April 27<sup>th</sup> information is available on the town's website as to when the debris will be picked up in town;
- the town received a dividend check from the MMA Risk Pool, which will reduce town fees;
- the Long Creek Water Shed Plan has scheduled an orientation meeting for Thursday, May 28<sup>th</sup> from 6:00 – 8:00 p.m. at the Nixon Center; and
- the Council received new Directory of State Officials from the town manager.

**Item 10. Council Member Comments.**

- Councillor Ahlquist commented about the Gervais Property and sent a thank you to those individuals who were responsible and involved in the process.
- Councillor Roy noted the passing of Doris Homer, a long-time resident who had been active in the community and commented on the Project Grace subgroup called Neighbors Helping Neighbors who were working the Library to develop a Community Resource Directory.
- Councillor Babine thanked the Town Manager and Councillor Ahlquist and Sullivan for a very productive day at the Finance Committee meeting held last Friday, April 10<sup>th</sup> and noted that there is more work to be done.
- Councillor D'Andrea gave an overview on a conference she had attended sponsored by the Greater Portland Council of Governments.
- Chairman Wood gave an update on the Library Trustees meeting; thanked every for working hard on bringing in the budget and welcomed the Manager's Family to Scarborough.

**Item 11. Adjournment.** Motion by Councillor Roy, seconded by Councillor Rancourt, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 6 yeas.

Meeting adjourned at 8:40 p.m.

Respectfully submitted,

Yolande P. Justice  
Town Clerk