



AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – NOVEMBER 4, 2009
REGULAR MEETING – 7:00 P.M.

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

- Item 1.** Call to Order.
- Item 2.** Pledge of Allegiance.
- Item 3.** Roll Call.
- Item 4.** General Public Comments (*Please see **NOTICE** at the end of the agenda.)
- Item 5.** October 21, 2009 – Regular Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer’s Warrants.

***Procedure for Addressing Council**, please see end of agenda.

Order No. 09-126, 7:00 p.m. Public hearing on the new request for a Food Handler License for Little Caesars Pizza, located at 200 Gallery Blvd.

OLD BUSINESS:

Order No. 09-127. Act on the names posted to the various committees/boards at the last Town Council meeting, as recommended by the Appointments Committee.

NEW BUSINESS:

Order No. 09-128. First reading and schedule a public hearing on the proposed amendments to Chapter 416 – the Haigis Parkway Assessment Ordinance.

Order No. 09-129. Act on the recommendation of the Town Manager to amend the sewer assessment installment payment schedule for The Gateway Square owned by The New England Expedition – Scarborough II, LLC (former GlennDonna, Inc. property, Tax Map R40, Lot 14) to postpone the payment schedule by one year such that the October 15, 2009 installment will be due on October 15, 2010 with the remaining annual installments to be due on October 15 of each year subsequent to 2010 through October 15, 2016.

Order No. 09-130. Act on the request from the Town Clerk to certify the results of the Municipal Elections held on Tuesday, November 3, 2009.

Item 8. Non Action Items.

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

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

***NOTICE Procedure for Addressing Council.**

202.0: PROCEDURES FOR ADDRESSING THE COUNCIL.

Any person wishing to address the Town Council will be given an opportunity to do so in accordance with the following procedures:

202.1: Procedure.

A Public Comment Period shall be conducted prior to the start of any Council business at each regular Town Council meeting, at which time citizens shall be given the opportunity to be heard on matters concerning Town business in general. Additional public comment shall be allowed during public hearings and on agenda items. Such public forums and/or public comment periods may be waived if no member of the public wishes to speak. Persons wishing to speak will preface their comments by giving their name and address.

202.2: Time Limit.

All such public forums, public comment periods and public hearings shall be conducted under the following guidelines:

202.2.a: General Public Comment: Persons addressing the Town Council during the public comment period at the beginning of the meeting shall limit their comments to (3) three minutes. Individuals may be permitted to speak more than once at the discretion of the Chair of the Council. The first (30) thirty minutes of the Council meeting will be allocated for general public comment. If it appears that the public comment period will exceed (30) thirty minutes, public comment may be suspended by the Chair, so the Town Council can conduct its business, in any case to occur prior to adjournment. (amended 10/21/09)

202.2.b.: Public Hearing Comment: Persons addressing the Town Council during a public hearing shall limit their comments to the particular agenda item and shall limit their comments to (3) three minutes. Individuals may be permitted to speak more than once at the discretion of the Chair of the Council. (amended 04/18/01; amended 10/21/09)

202.2.c: Public Comment on Agenda Items: Following the reading of each agenda item, the Chair shall ask if any member of the public wishes to speak on that item. Persons who have previously addressed the Town Council during the public comment portion and wishes to speak on an agenda item may do so only if there is new and pertinent information to be added and limit their comments to (3) three minutes. (amended 10/21/09)

202.3: Decorum.

Persons present at Council meetings are requested not to applaud or otherwise express approval or disapproval of any statements made or action taken at such meeting.

202.3.a: Citizens will strive to be accurate in their statements, avoid personalities, and conduct themselves in a manner expected of all meeting participants. (amended 04/18/01).

202.3.b.: It shall be at the discretion of the Council Chair to ask any persons making in-appropriate statements, and/or conducting themselves in a disrespectful manner to cease such action or risk being asked to be seated or removed.

AGENDA

SCARBOROUGH TOWN COUNCIL WEDNESDAY – NOVEMBER 4, 2009 REGULAR MEETING – 7:00 P.M.

Order No. 09-126. Move approval on the new request for a Food Handler License for Little Caesars Pizza, located at 200 Gallery Blvd.

TOWN OF SCARBOROUGH
Office of the Town Clerk
P.O. Box 360
Scarborough, Maine 04070-0360

www.scarborough.me.us

yjustice@ci.scarborough.me.us

TO: Town Council Members
FROM: Yolande P. Justice, Town Clerk
DATE: October 30, 2009
RE: **New Requests for Food Handlers License**

The following applicant is requesting approval of a new Food Handlers License:

Little Caesars Pizza, located at 200 Gallery Blvd

Applicant is in compliance with the requirements of the Town Clerk's Office and there are no outstanding issues.

AGENDA

SCARBOROUGH TOWN COUNCIL WEDNESDAY – NOVEMBER 4, 2009 REGULAR MEETING – 7:00 P.M.

Order No. 09-127. Move approval on the names posted to the various committees/boards at the last Town Council meeting, as recommended by the Appointments Committee, as follows:

Housing Alliance:

Appoint Maryann Burns as a full voting member with a term to expire in 2012

Shellfish Conservation Committee:

Move Sheldon W. Blais from 2nd Alternate to 1st Alternate with a term to expire in 2012

AGENDA

**SCARBOROUGH TOWN COUNCIL
WEDNESDAY – NOVEMBER 4, 2009
REGULAR MEETING – 7:00 P.M.**

Order No. 09-128. Move approval of the first reading on the proposed amendments to Chapter 416 – the Haigis Parkway Assessment Ordinance and schedule a public hearing for Wednesday, November 18, 2009, as follows:

CHAPTER 416
TOWN OF SCARBOROUGH
HAIGIS PARKWAY MUNICIPAL DEVELOPMENT AND TAX INCREMENT FINANCING
DISTRICT
SEWER ASSESSMENT ORDINANCE

WHEREAS, the Town Council of the Town of Scarborough, Maine has designated the Haigis Parkway Municipal Development and Tax Increment Financing District (the "District") and has adopted a development program and financial plan (the "Development Program") for the District;

WHEREAS, the Development Program contemplates the construction and installation, by the Town, of a series of infrastructure projects in order to promote private commercial and industrial development on properties in the District (the "Project");

WHEREAS, the Town Council has authorized the issuance of general obligation bonds of the Town in order to fund a portion of the costs of the Project (the "Bonds");

WHEREAS, the debt service on the Bonds will be paid, in part, from tax increment revenues from the District;

WHEREAS, in the judgment of the Town Council, a just and equitable proportionate share of the costs of the Project and the debt service on the Bonds should be borne by properties that have been benefited by the Project in the form of an assessment on those properties;

WHEREAS, the Town Council conducted a public hearing on the subject of proposed assessments on May 7, 2003, after posting and publication of notice thereof in accordance with the provisions of applicable Maine law;

WHEREAS, thereafter the Town sent out notices of assessments (the "Original Assessments") to the owners of properties located within the District, with most property owners arranging for payment of the Original Assessments or entering into payment plans to pay the Original Assessments with the Town as further authorized hereunder;

WHEREAS, the Project is now complete with the final costs of the construction confirmed;

WHEREAS, pursuant to Section 11 of this Ordinance, as originally enacted on May 12, 2004, the Town Council was directed to review the appropriateness of the Original Assessments to determine whether such assessments continue to be reflective of the just, equitable and proportionate shares of the costs of the Project to be borne by each property within the District, the review to be completed by January 1, 2010;

WHEREAS, in the course of levying the Original Assessments to recover the just and equitable proportionate share of the costs of the Project to the properties which have been benefited by the Project, certain adjustments and modifications to the Original Assessments have been identified by the Council (the "Revised Assessments"), determined to be warranted and appropriate in the circumstances and necessary to ensure that the just, equitable and proportionate shares of the costs of the Project are borne by each property within the District; and

WHEREAS, on July 19, 2006, after posting and publication of notice thereof in accordance with the provisions of applicable Maine law, the Town Council conducted a public hearing on the subject of reviewing the Original Assessments and adopting Revised Assessments as the just, equitable and proportionate share of the costs of the Project to be borne by each Property within the District;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SCARBOROUGH, MAINE AS FOLLOWS:

1. Authority. This Ordinance is enacted under and pursuant to the provisions of the Charter of the Town of Scarborough, Maine and Chapters 141 and 206 of Title 30-A of the Maine Revised Statutes Annotated, amended and supplemented to date.
2. Revised List of Assessments. After hearing, the Town Council finds that the properties set forth in the Revised List of Assessments (the "Revised List"), attached hereto as Exhibit A and made a part hereof, is a true, complete and correct list of those properties and that the owner(s) ("Owner") thereof, and the properties listed therein, have received and will continue to receive benefits from the Development Program and the public facilities constructed in the District.
3. Just and Equitable Share. The Town Council further finds that a revised or supplemental assessment for each property described in the Revised List, arrived at through the procedures identified in the "Haigis Parkway Zone Assessment Calculation Procedure", Exhibit B attached hereto and made a part hereof, is necessary to allocate a just and equitable proportionate share of the costs of the Project to each property within the District.
4. Assessment. There is hereby assessed, against each of the properties described in the Revised List, a revised or supplemental assessment in the amount set forth in the Revised List (the "Revised Assessment").
5. Payment. Revised Assessments shall be due and payable at the Office of the Treasurer of the Town of Scarborough, Maine thirty (30) days following the effective date of this Ordinance. In cases where property owners have already paid in full the Original Assessment shown on the "List of Properties Assessed in the District" effective as of May 12, 2004, and the Revised Assessments set forth in the Revised List are less, the Town will make a refund. The Owner, if already paying under a Deferred Payment Program, shall continue to pay according to the terms of the payment agreement and may, within thirty (30) days, make application to the Town Manager for consideration and approval of a revised payment schedule and plan for payment of the Revised Assessment according to one of the Deferred Payment Programs, as set forth in Paragraph 6, below.
6. Deferred Payment Programs. Owners who receive increases in the assessment on their property as a result of a Revised Assessment may, within 30 days from the effective date of this revision of the Ordinance, make application to the Town Manager for consideration and approval of a Deferred Payment Program and revised payment schedule in accordance with one of the payment plans below. Revised payment schedules under any Deferred Payment Program for each property shall include: the amount of the Original Assessment; the amount of the Revised Assessment and the difference; a revised payment schedule showing each new installment; and a revised interest schedule consistent with the terms of the particular deferred payment option as follow:

A. Payment of the Revised Assessment in up to ten (10) substantially equal annual payments together with interest on the unpaid balance of the Assessment at a rate equal to that paid by the Town on the Bonds; or

B. Payment of the Revised Assessment in up to ten (10) annual payments, the first two (2) of which shall be in an amount of at least three percent (3%) of the total amount of the Revised Assessment and the final eight (8) of which shall be substantially equal payments of the then unpaid principal balance of the Revised Assessment, together with interest on the unpaid principal balance of the Revised Assessment at the rate of four percent (4%) per annum; or

C. In cases where the Town Manager determines that payment in accordance with Sections 6(A) or 6(B) above would cause an undue financial hardship to the Owner, the Town Manager may approve a deferred payment plan authorizing the Owner to make reduced payments of the principal balance of the Revised Assessment annually over a period not to exceed six (6) years and payment of the then remaining principal balance of the Revised Assessment in substantially equal annual payments for a period of up to four (4) additional years, together with interest on the unpaid principal balance of the Revised Assessment at the rate of eight percent (8%) per annum; or

D. In cases where a parcel is already developed and is currently used for commercial or residential purposes, the Owner may elect an installment payment plan to pay any increase in the Revised Assessment over the amount of the Original Assessments (as originally set on May 14, 2004) by agreeing to pay the amount by which the Original Assessment increased in up to five (5) substantially equal annual installments, the first payment due no later than fifteen (15) years from the date of enactment of this Ordinance, interest also commencing to run on that same date on the unpaid balance of the increased assessment, the rate of interest being the same rate then available to the Town for public financing purposes.

Upon the sale or transfer of a property in the District to a non-family member or non-affiliated third party, any outstanding balance of an assessment and interest as is under a Deferred Payment Program becomes immediately due and payable in the full amount to the Town, such amount due and interest to be paid to the Town at closing or upon transfer. Any election to enter a Deferred Payment Program made by an Owner hereunder shall be in a writing, duly executed by the Owner, in a form and content satisfactory to the Town Manager and suitable for recording in the Cumberland County Registry of Deeds. A condition of entering any Deferred Payment Program is that the Owner waives his or her rights to contest or appeal the amount of the assessment or appeal the validity or appropriateness of the methodologies by which such assessments were derived. Nothing in the provisions of this section shall constitute a waiver of the Town's lien rights or other legal remedies available to the Town to secure or enforce payment of any assessment or available for the Town to obtain full payment and interest due in the event of a default under a deferred payment agreement.

E. To further facilitate the sale and transfer of parcels in cases where a parcel originally subject to a Revised Assessment has been legally divided into more than one parcel or interest, the Owner, before such parcels or interests are offered for sale, may request that the Revised Assessment, and any balance remaining under a Deferred Payment Program and installment payment agreement against the parcel, be re-apportioned among the newly created parcels or interests.

The Town Manager shall oversee and approve the terms of all such requested re-apportionments of assessments or installment payments. In arriving at reapportioned assessments and installments the Town Manager shall discuss the proposal with the owner and then re-apportion the outstanding amount of the Revised Assessment for the original parcel among each newly created parcel or interest. The schedule and timing for payments for any re-apportioned assessments shall remain the same as in the payment schedule established in the underlying installment payment agreement for the original parcel. The Town Manger's objectives in re-apportioning assessments are to create fair and proportional assessments which are consistent with the expected relative values of the newly created lots and consistent with the interests of the Town in securing the most expedient and complete collection of assessments and outstanding payment installments.

After re-apportioning the assessment among newly created parcels or interests, the Town Manager shall issue a notice of the same for recording in the Cumberland County Registry of Deeds. Upon the sale or transfer of any newly created parcel or interest to a non-family member or non-affiliated third party, the outstanding balance of the re-apportioned assessment and interest then due is immediately due and payable in full to the Town and shall be paid to the Town at closing or upon transfer of the parcel or interest. Upon receipt of payment in full of a re-apportioned assessment, the Town will issue a partial release of the lien securing the Revised Assessment. The partial release of the Town's lien interest will correspond with the area of the new parcel or interest.

7. Collection. In the event that an Owner fails to pay an assessment, installments or interest under a Deferred Payment Program on or before the dates required, the terms and conditions of payment agreements under a Deferred Payment Program, or as otherwise required under this Ordinance, the Town of Scarborough and its officers shall have and may exercise all authority and powers to collect assessments or delinquent payments, interest or its costs under the procedures and legal remedies for the collection of delinquent municipal taxes.
8. Use of Revenues. All revenues collected from assessments made pursuant to this Ordinance shall be deposited into the Town's reserve fund established by the Development Program known as the Sinking Fund Account of the Development Program Fund, and all such revenues shall be used solely for the purposes of the Development Program.
9. Effective Date. This Ordinance shall become effective on the date it is approved by the Scarborough Town Council.
10. Severability. The provisions of this Ordinance are severable. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision or application of this Ordinance and the Ordinance shall be given effect without the invalid provisions or application.
11. Review of Assessments. (Repealed).

**EXHIBIT A
REVISED LIST OF ASSESSMENTS**

Map/Lot	Property Owners	Assessment
BUSINESS USE		
R39 L1	R. C. Moore, Inc	\$44,400
R39 L1A	Moore Brothers Realty, LLC	\$38,800
R39 L2	Shaws Realty Co.	\$177,100
R40 L11	Richard C. Moore	
R40 L11B	Richard C. Moore	
R40 L11C	Richard C. Moore	\$164,400
R40 L12A	R L R Investments LLC	\$48,300
R40 L12B	Adele C. & Cary N. Mack	\$97,400
R40 L5	Peoples Heritage Savings Bank	
R40 L6	Peoples Heritage Savings Bank	
R40 L7	Peoples Heritage Savings Bank	\$172,200
R40 L8	262 Payne Road, LLC	\$107,100
R40 L9	23 Spring Street, LLC	\$22,300
R40 L11A	Herbert E. & Robert Ginn	\$72,300
R40 L13	Neptune Properties LLC	\$79,100
R40 L14	Glennonna Inc.	\$410,800
R52 L6	Dongle, LLC	\$204,700
R40 L26	Lee F. Adams Jr.	\$295,100
R40 L27	CJK, Inc	\$162,500
R52 L5	George E. Curlew	\$251,700
R50 L24	Michael D. Scamman	
R50 L24C	Michael D. Scamman	\$282,500
R50 L33	Three Diamond Realty, Inc.	\$140,400
R51 L1A	Three Diamond Realty, Inc.	\$100,000
R50 L34A	Haigis Parkway, LLC	\$544,500
R52 L4	Davric Maine Corp.	\$475,000
NON-CONFORMING, RESIDENTIAL USE		
R40 L3	Erik R. Peterson	\$10,400
R40 L4	Richard & Ellen Nielsen	\$5,400
R40 L15	Sharon Paula Theofrastou	\$6,800
R40 L16	Ralph R. & Annette L. Trempe	\$5,400
R40 L17	Robert & Wilma Reed	\$5,700
R40 L18	Leland & Marilyn Withee	\$5,000
R40 L19	Jerri Lynn MacLean	\$7,200
Total		\$3,936,600

EXHIBIT B

HAIGIS PARKWAY ZONE ASSESSMENT CALCULATION PROCEDURE

AREA ASSESSMENT:

The total area of the properties receiving sewer was summed.

The total area of properties receiving other utilities was summed.

An assessment cost per acre for sewer was calculated using the allocated project cost for sewer divided by the total area of properties receiving sewer.

An assessment cost per acre for utilities was calculated using the allocated project cost for utilities divided by the total area of properties receiving utilities.

The area assessment for sewer was calculated by multiplying the cost per acre by the sewer area for each lot.

The area assessment for utilities was calculated by multiplying the cost per acre by the utilities area for each lot.

The area assessment for sewer and utilities for each lot were summed.

The existing residential properties are to be held constant at this value, without further consideration of lot frontage.

FRONTAGE ASSESSMENT:

The total road frontage of the properties receiving sewer was summed.

The total frontage of properties receiving other utilities was summed.

Since the existing residential properties are not considered for this exercise, calculating the cost per lot must exclude the total betterment assessment for the residential properties.

The assessment cost per foot road frontage for sewer was calculated using the allocated project cost *minus the total assessment for the residential properties* for sewer divided by the total frontage of properties receiving sewer.

An assessment cost per foot road frontage for utilities was calculated using the allocated project cost *minus the total assessment for the residential properties* for utilities divided by the total frontage of properties receiving utilities.

The frontage assessment for sewer was calculated by multiplying the cost per foot road frontage by the sewer frontage for each lot.

The frontage assessment for utilities was calculated by multiplying the cost per foot road frontage by the utilities frontage for each lot.

TOTAL FEE:

For the business use properties, the total assessment fee for each lot was calculated by taking the average of the frontage assessment and the area assessment per lot.

For the existing residential properties, the total assessment fee for each lot is equal to the total area assessment already calculated for each lot.

AGENDA

SCARBOROUGH TOWN COUNCIL WEDNESDAY – NOVEMBER 4, 2009 REGULAR MEETING – 7:00 P.M.

Order No. 09-129. Move approval on the recommendation of the Town Manager to amend the sewer assessment installment payment schedule for The Gateway Square owned by The New England Expedition – Scarborough II, LLC (former GlennDonna, Inc. property, Tax Map R40, Lot 14) to postpone the payment schedule by one year such that the October 15, 2009 installment will be due on October 15, 2010 with the remaining annual installments to be due on October 15 of each year subsequent to 2010 through October 15, 2016.

DrummondWoodsum

Richard A. Shinay

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October 29, 2009

Thomas J. Hall, Town Manager
Town of Scarborough
Scarborough Municipal Building
259 U.S. Route One
P.O. Box 360
Scarborough, Maine 04070-0360

Re: The New England Expedition – Scarborough II, LLC/
Sewer Assessment on The Gateway Square

Dear Tom:

As you are aware, that portion of The Gateway at Scarborough comprising The Gateway Square was recently transferred by The New England Expedition – Scarborough, LLC to The New England Expedition – Scarborough II, LLC. This was done to facilitate the financing process regarding the continued development of The Gateway Square. The Member and Manager of The New England Expedition – Scarborough, LLC and The New England Expedition – Scarborough, II, LLC continues to be Feldco Scarborough, LLC and Barry Feldman continues to be the Managing Member of Feldco Scarborough, LLC.

In connection with the acquisition of The Gateway Square, The New England Expedition – Scarborough II, LLC assumed the obligation to continue the payments on the sewer assessment under the Haigis Parkway Sewer Assessment Ordinance which GlennDonna, Inc. has been paying pursuant to an installment arrangement with the Town. That arrangement provides for equal payments of principal and interest on October 15 of each year through October 15, 2015 unless sooner paid. The New England Expedition – Scarborough II, LLC is hereby requesting that the Town agree to postpone the payment schedule by one (1) year such that the next installment which would have been paid on October 15 of this year will be due on October 15, 2010 with the resulting annual payments due on October 15 of each subsequent year through October 15, 2016 rather than October 15, 2015.

Additionally, The New England Expedition – Scarborough II, LLC intends to convert The Gateway Square into a condominium whereby the resulting “development units” comprising portions of the property will be developed on a unit by unit basis with separate construction financing for each unit. As a result, the lenders providing such financing will require that each unit to be developed be released from the Lien on the property that

 MERITAS

DRUMMOND WOODSUM & MACMAHON | ATTORNEYS AT LAW

Portland, ME Portsmouth, NH

Thomas J. Hall, Town Manager
October 29, 2009
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secures the sewer assessment. As you know, the Haigis Parkway Sewer Assessment Ordinance does not provide a mechanism by which portions of an assessed property can be released from the Lien securing the assessment without the property owner having to pay the entire assessment. Requiring that the entire assessment be paid at the time of a conveyance of less than all of the assessed property under a condominium or traditional lot subdivision development scheme has the potential to financially hinder the development process. As such, The New England Expedition – Scarborough II, LLC is hereby requesting that the Town amend the Haigis Parkway Sewer Assessment Ordinance to incorporate a mechanism that will allow for such releases without the requirement that the entire assessment be paid.

We understand that these requests will be placed on the Council's November 4th meeting Agenda and we look forward to discussing them with the Council at that time.

With best regards,

Very truly yours,



Richard A. Shinay

RAS/dls

cc: Barry E. Feldman

AGENDA

**SCARBOROUGH TOWN COUNCIL
WEDNESDAY – NOVEMBER 4, 2009
REGULAR MEETING – 7:00 P.M.**

Order No. 09-130. Move approval on the request from the Town Clerk to certify the results of the November 3, 2009, Municipal Elections.

**INFORMATION WILL BE PROVIDED AT THE
TOWN COUNCIL MEETING.**