

**MINUTES**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – MARCH 3, 2010**  
**REGULAR MEETING – 7:00 P.M.**

**Item 1. Call to Order.** Council Vice Chair Roy 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.** Rolled was called by Yolande P. Justice, Town Clerk. Thomas J. Hall, Town Manager was also present.

Ronald D. Ahlquist	Karen A. D’Andrea
Jessica L. Holbrook	Michael J. Wood
Shawn A. Babine	Carol S. Rancourt, Council Chair [Absent]
Judith L. Roy, Council Vice Chair	

**Item 4. General Public Comments.**

**Item 5. Minutes: February 17, 2010 – Regular Meeting.** Motion by Councillor Babine, seconded by Councillor D’Andrea, to move approval of the minutes of the February 17, 2010 – Regular Town Council meeting, as written.

Vote: 6 Yeas.

**Item 6. Adjustment to the Agenda.** There was one adjustment to the agenda, that being an action item regarding the possible appointment of Mr. Martin Marcisso to the Zoning Board of Appeals as 2<sup>nd</sup> Alternate. This item would be placed under old business.

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

**OLD BUSINESS:**

**Order No. 10-08. Second reading on the proposed fourth amendment to Contract Zoning Agreement IX [New England Expedition – Scarborough, LLC] of Chapter 405 – the Zoning Ordinance.** Motion by Councillor Babine, seconded by Councillor Wood, to move of the second reading on the proposed fourth amendment to Contract Zoning Agreement IX [New England Expedition – Scarborough, LLC] of Chapter 405 – the Zoning Ordinance, as follows:

**FOURTH AMENDMENT**  
**TO**  
**CONTRACT ZONING AGREEMENT**  
**BETWEEN THE TOWN OF SCARBOROUGH AND**  
**THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC**  
**THE GATEWAY AT SCARBOROUGH**

This Fourth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 3<sup>rd</sup> day of March, 2010 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC,

a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3<sup>rd</sup> day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and,

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5<sup>th</sup> day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7<sup>th</sup> day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30<sup>th</sup> day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and,

WHEREAS, Section 6 of the Agreement provided that certain improvements within that portion of the Property located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway known as “The Gateway Square at Scarborough” be “substantially complete,” as that term is defined in said Section 6 of the Agreement, within two (2) years from the date that New England Expedition received Planning Board approval for the Project; and,

WHEREAS, the Town Planner extended said “substantial completion” deadline to March 12, 2010, pursuant to authority granted the Town Planner under said Section 6 of the Agreement; and,

WHEREAS that portion of the Property known as The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and,

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to Section 6 of the Agreement (a) further extending said “substantial completion” deadline for an additional three (3) years to March 12, 2013, and (b) amending the definition of “substantially complete” as set forth therein.

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

1. Section 6 of the Agreement is hereby amended in its entirety to read as follows:
  6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance") and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the "Subdivision Ordinance"), with construction anticipated to proceed in phases commencing with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway. The phasing of the construction as outlined above shall be subject to the additional requirement that construction of that portion of the Project comprising The Gateway Square at Scarborough shall be "substantially complete" no later than March 12, 2013. For purposes hereof, "substantially complete" shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, the installation of utilities, storm drains and sanitary sewer lines and the completion and approval of the foundations for one or more buildings containing in the aggregate not less than one hundred thousand (100,000.00) square feet of gross leaseable area.
2. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment and the Third Amendment, remains consistent with the Comprehensive Plan.
3. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
4. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:  
\_\_\_\_\_

TOWN OF SCARBOROUGH  
By: \_\_\_\_\_  
Thomas J. Hall, its Town Manager (duly authorized by vote of the Scarborough Town Council on March 3, 2010)

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

March \_\_\_\_, 2010

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,  
\_\_\_\_\_  
Notary Public/Attorney at Law

WITNESS:

\_\_\_\_\_  
Print name

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

\_\_\_\_\_

By: \_\_\_\_\_

Barry E. Feldman  
Its Managing Member

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

March \_\_\_\_, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-  
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its  
Manager

\_\_\_\_\_

By: \_\_\_\_\_

Barry E. Feldman  
Its Managing Member

STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD, ss.

March \_\_\_\_, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough II, LLC.

Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print name

Vote: 6 Yeas.

**Order No. 10-09. Second Reading on the proposed amendments to Chapter 405 – the Zoning Ordinance, as follows: Section VI. Definitions. Pawn Broker; Section XIX. Regional Business District – Subsection C. Permitted Uses and Section XIXA. General Business District B-3. Permitted Uses.** Motion by Councillor D’Andrea, seconded by Councillor Babine, to move of the second reading on the proposed amendments to Chapter 405 – the Zoning Ordinance, as follows: Section VI. Definitions. Pawn Broker; Section XIX. Regional Business District – Subsection C. Permitted Uses and Section XIXA. General Business District B-3. Permitted Uses, as follows:

**Proposed Amendments to the Zoning Ordinance  
to Amend Pawnbroker Regulations:**

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:

1. Amend Section VI. DEFINITIONS to include the following definitions (additions are underlined):

**Pawnbroker:**

A person who engages in pawn transactions.

**Pawnshop:**

The place of business of a pawnbroker. A pawnshop is not considered a local retail store or retail sales and services under this Ordinance, but shall be subject to the same parking, signage, and space and bulk standards as retail sales establishments.

**Pawn transaction:**

The lending of money on the security of pledged tangible personal property that is delivered to a pawnbroker and held by the pawnbroker. The term also includes the purchase of tangible personal property on the condition that it may be repurchased by the seller for a fixed price within a fixed period of time.

2. Amend subsection C. PERMITTED USE of Section XIX. REGIONAL BUSINESS DISTRICT B-2 to read (additions are underlined):

**Subsection C. PERMITTED USES**

**24. Pawnshop**

3. Amend subsection C. PERMITTED USE of Section XIXA. GENERAL BUSINESS DISTRICT B-3 to read (additions are underlined):

**Subsection C. PERMITTED USES- CONVENTIONAL AND PLANNED DEVELOPMENT NON-RESIDENTIAL USES:**

**19. Pawnshop**

Vote: 6 Yeas.

**Order No. 10-11. Second reading on the Bond Order for the Municipal Capital Improvements Projects for FY 2009-2010, as amended.** Motion by Councillor Wood, seconded by Councillor Babine, to move approval of the Bond Order for the Municipal Capital Improvements Projects for FY 2009-2010, as amended:

**AMENDED BOND ORDER FOR  
MUNICIPAL CAPITAL IMPROVEMENTS**

**BE IT ORDERED,** That under and pursuant to the provisions of Title 30-A, Sections 5721-5729 and 5772 of the Maine Revised Statutes, as amended, and the Charter of the Town of Scarborough, Maine, a the following Municipal Capital Items are hereby approved;

<b>Municipal - Equipment</b>	
Auxiliary Vehicle Replacement Program	\$ 27,000
Motorola Radio Computers & Software	\$ 142,000
PW Sweeper #4200	\$ 238,000
PW PlowTruck #4026	\$ 160,600
Traffic Master System Equipment-Monitor/Control	\$ 25,000
Traffic Signal Generator Connections @ Key Intersections	\$ 15,000
Library Shelving/Fixtures/Computers	\$ 12,000
Library Material Handling Hardware	\$ 28,700
<b>Total 2009-2010 Capital Equipment</b>	<b>\$ 648,300</b>

**BE IT FURTHER ORDERED,** That a sum, not to exceed \$648,300, is hereby appropriated to provide for the costs of said projects; and,

**BE IT FURTHER ORDERED,** That to fund said appropriation, the Treasurer and the Chairman of the Town Council are hereby authorized to issue, at one time or from time to time, general obligation securities of the Town of Scarborough, Maine, including temporary notes in anticipation of the sale thereof, in an aggregate principal amount not to exceed \$648,300 and the discretion to fix the date(s), maturity(ies), denomination(s), interest rate(s), place(s) of payment, call(s) for redemption, form(s), and other details of said securities, including execution and delivery of said securities against payment therefore, and to provide for the sale thereof, is hereby delegated to the Treasurer and the Chairman of the Town Council.

Roll Call Vote:      Councillor Ahlquist - Yea      Councillor D’Andrea - Yea  
                             Councillor Holbrook - Yea      Councillor Wood - Yea  
                             Councillor Babine - Yea      Council Vice Chair Roy - Yea

**Order No. 10-22. Act on the appointment of Martin Marcisso as 2<sup>nd</sup> Alternate to the Zoning Board of Appeals, as recommended by the Appointments Committee at the February 17, 2010, Town Council meeting – term to expire in 2010.** Motion by Councillor Babine, seconded by Councillor Holbrook, to move approval of the appointment of Martin Marcisso as 2<sup>nd</sup> Alternate to the Zoning Board of Appeals, as recommended by the Appointments Committee at the February 17, 2010, Town Council meeting – term to expire in 2010.

Vote: 6 Yeas.

**NEW BUSINESS:**

**Order No. 10-20. Act on the request to accept the following streets, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Pya Court, located in the Pya Court Subdivision and Bornheimer Place, Elbridge Oliver Way, Frederick Thompson Drive and Lancaster Lane – located in the Highlands Subdivision.** Motion by Councillor Wood, seconded by Councillor D’Andrea, to move approval on the request to accept the following streets, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Pya Court, located in the Pya Court Subdivision and Bornheimer Place, Elbridge Oliver Way, Frederick Thompson Drive and Lancaster Lane – located in the Highlands Subdivision.

Vote: 6 Yeas,

**Order No. 10-21. Act on the request from the Vacationland Dog Club, Inc., for a Mass Gathering Permit for an AKC All-Breed and Obedience Dog Show, located at Wassamki Springs Campground.** Motion by Councillor Babine, seconded by Councillor D’Andrea, to move approval on the request from the Vacationland Dog Club, Inc., for a Mass Gathering Permit for an AKC All-Breed and Obedience Dog Show, located at Wassamki Springs Campground.

Vote: 6 Yeas.

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

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

- Councillor D’Andrea stated the next Ordinance Committee is scheduled for Tuesday, March 30<sup>th</sup> at 4:30 p.m.
- Councillor Holbrook stated the Housing Alliance Committee would be holding a meeting tomorrow night – Thursday, March 4<sup>th</sup> at 6:30 p.m. and the next Charter Review Committee meeting is scheduled for Wednesday, March 24<sup>th</sup> at 7:00 p.m.
- Council Vice Chair Roy stated the Energy Committee had met this past week to review the final report and the hopes would be to have it to the Council at the March 17<sup>th</sup> meeting. She also noted the Committee would like to keep this an on-going Committee and the current member would like to remain if this happens.

**Item 10. Town Manager Report.** Thomas J. Hall, Town Manager, gave an update on the following:

- The Budget will be presented at the March 17<sup>th</sup> Council meeting; however, the School Department will not have its budget to the Manager until after the Board takes action on the 18<sup>th</sup> and on the 19<sup>th</sup> the a complete bound budget will be prepared and distributed to the Council.
- The Energy Committee received a \$33,000 grant from Efficiency of Maine which will be used to upgrade the Dunstan Firehouse.
- Pine Point Beach Plan is complete and will go before the Planning Board on March 15<sup>th</sup> and on April 7<sup>th</sup> this plan will be brought back to the Council for endorsement.
- He and Councillors D’Andrea and Roy attended the Chamber Appreciation Dinner last night and thanked both Councillors for attending.

**Item 11. Council Member Comments.**

- Councillor Ahlquist thanked the Town Departments for their work during the last storm and he then congratulated the sports team for an outstanding season.

- Councillor Holbrook also thanked everyone for their work during this last storm and personally thanked Deb Barnes and the Pearson Family for their assistance when the Holbrook Family lost its power. She wished her son and his team good luck at their first wrestling match.
- Councillor Babine thanked staff for work during the storm. He commented on the upcoming budget, noting that just because the State may have given a little more money, they State could always take more later on.
- Councillor D'Andrea thanked the Conservation Commission for its work on the Vernal Pool Study, noting that there was one more year to go. She congratulated Paul Austin, the former Chair of the Conservation Commission, for being selected to receive an ecomaine award. She stated that Buy Local Scarborough would be hosting it Inaugural Celebration on, Thursday, March 23<sup>rd</sup> from 5:00 -8:00 p.m. at the Landing at Pine Point.
- Councillor Wood acknowledged the School Board for their hard work on the budget and to Brian Dell'Olio for his leadership. He went on to state that he felt the school budget was a fair budget. He then congratulated the athletic teams for an outstanding season and was very proud of all the teams.
- Council Vice Chair Roy thanked Nancy Crowell, Library Director, for being at the meeting in case the Council had questions. She too congratulated all the teams for an outstanding season; thanked the Chamber for the dinner; she sent her condolences to Hollis Dixon, on the loss of his sister and she commented on the budget, noting that there have been no cuts or reductions made and encouraged the public input.

**Item 12. Adjournment.** Motion by Councillor Babine, seconded by Councillor D'Andrea, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 6 Yeas.

Meeting adjourned at 7:47 p.m.

Respectfully submitted,

Yolande P. Justice  
Town Clerk