

**MINUTES**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – JULY 15, 2009**  
**REGULAR MEETING – 7:00 P.M.**

**Item 1. Call to Order.** Chairman Wood called the regular meeting of the Town Council to order at 7:01 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 [Arrived Late]	Shawn A. Babine
Carol S. Rancourt, Vice Chair	Judith L. Roy
Richard J. Sullivan, Jr.	Karen A. D’Andrea
Michael J. Wood, Chairman	

**Item 4. Minutes: June 17, 2009 – Regular Meeting.** Motion by Councillor Rancourt, seconded by Councillor Babine, to move approval of the minutes of the June 17, 2009, regular Town Council meeting, as written.

Councillor Roy noted that on page 21, under Standing Committee Reports; second line from the bottom Councillor D’Andrea reported on ecomaine.

Vote: 6 Yeas.

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

Prior to the opening of the public hearings, Chairman Wood stated that due to the confusion at the last Town Council meeting regarding when a member of the public could speak he asked the Town Clerk to read the procedures for addressing the Council.

**Order No. 09-74, 7:00 p.m. Public hearing on the proposed amendments to the Town of Scarborough Official Zoning Map designating the TVC2 and RPO Districts in North Scarborough (Town and Village Centers Transition and Residence and Professional Office Districts).** Dan Bacon, Town Planner, gave a brief overview on this item.

Chairman Wood opened the public hearing. The following individual spoke on this item: Paul Porada of 476 Gorham Road. As there were no further comments, the hearing was closed at 7:14 p.m. The second reading on the proposed amendments to the Town of Scarborough Official Zoning Map designating the TVC2 and RPO Districts in North Scarborough (Town and Village Centers Transition and Residence and Professional Office Districts) will be scheduled for August 19<sup>th</sup> Town Council meeting.

**Order No. 09-75, 7:00 p.m. Public hearing the proposed amendments to Chapter 405, the Town of Scarborough Zoning Ordinance, Section XVIII.C. Town and Village Centers District (TVC2).** Dan Bacon, Town Planner, gave a brief overview on this item and responded to questions from the Town Council.

Chairman Wood opened the public hearing. As there were no comments either for or against the hearing was closed at 7:19 p.m. The second reading on the proposed amendments to Chapter 405, the Town of Scarborough Zoning Ordinance, Section XVIII.C. Town and Village Centers District (TVC2) will be scheduled for the August 19<sup>th</sup> Town Council meeting.

**Order No. 09-76, 7:00 p.m. Public hearing the proposed amendments to Chapter 405, the Town of Scarborough Zoning Ordinance, Section XVII.A. Residence and Professional Office District (RPO).** Dan Bacon, Town Planner, gave a brief overview on this item and responded to questions from the Town Council.

Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:21 p.m. The second reading on the proposed amendments to Chapter 405, the Town of Scarborough Zoning Ordinance, Section XVII.A. Residence and Professional Office District (RPO) will be scheduled for the August 19<sup>th</sup> Town Council meeting.

**Order No. 09-78, 7:00 p.m. Public hearing the proposed amendments to Chapter 405, the Town of Scarborough Zoning Ordinance, Section XIX. Regional Business District (B2).** Dan Bacon, Town Planner, gave a brief overview on this item.

Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:25 p.m. The second reading on the proposed amendments to Chapter 405, the Town of Scarborough Zoning Ordinance, Section XIX. Regional Business District (B2) will be scheduled for the August 19<sup>th</sup> Town Council meeting.

**Order No. 09-79, 7:00 p.m. Public hearing the proposed amendments to the Town of Scarborough Official Zoning Map designating a portion of the property identified as Map R38 Lot 6, as the B2 District (Regional Business District).** Dan Bacon, Town Planner, gave a brief overview on this item.

Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:25 p.m. The second reading on the proposed amendments to the Town of Scarborough Official Zoning Map designating a portion of the property identified as Map R38 Lot 6, as the B2 District (Regional Business District) will be scheduled for the August 19<sup>th</sup> Town Council meeting.

**Order No. 09-80, 7:00 p.m. Public hearing the proposed amendments to the Town of Scarborough Official Zoning Map to change the boundaries of the Exit 42 Economic Development Overlay District.** Dan Bacon, Town Planner, gave a brief overview on this item and responded to questions from the Town Council.

Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:29 p.m. The second reading on the proposed amendments to the Town of Scarborough Official Zoning Map will be scheduled for the August 19<sup>th</sup> Town Council meeting.

**Order No. 09-88, 7:00 p.m. Public hearing and second reading to approve the acceptance of the fee of the land identified on Scarborough Tax Map 22, Lot 109-A from Peter and Nicholas Truman, and to authorize the Town Manager to accept the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney. The approximate location of the land to be accepted by the Town is depicted in sketch plan entitled “Concept Land Swap dated May 5, 2009” as the “Truman Parking Parcel to Town”.** Prior to opening the public hearing Thomas J. Hall, Town Manager, gave an overview on this order and the next three orders as they were all related. Mr. Hall thanked those who had taken time to meet with him on this issue and made comments related to how this item has come to this point. The following spoke on this order: On behalf of the Pine Point Association, John Thurlow of 1 Starpine Lane, gave a fifteen minute overview as to why this land swap should not take place.

[Note: Councillor Ahlquist arrived at meeting 8:04 p.m.]

On behalf of the Truman family, Mr. Libby, Attorney – gave a fifteen minute overview on the proposal that was before the Council this evening; Sean Flaherty of 237 Pine Point Road and State Representative to the Pine Point Area; Kevin McQuinn, owner of the Landing at Pine Point; Don Googins of the Pine Point area; Kerry Corthell of 1 Wedgwood Street; Nick Pappas of Pine Street; Joan Mauri of East Grand Avenue read a letter from a couple of her neighbors Mary and Ted Gawlicki; Judith Mushial of 26 Driftwood Lane; Elaine Richer of East Grand Avenue; Stan Lourie of 21 East Grand Avenue; Robert Rovner of 4 King Street; Courtney Sargent, Sr. of 23 East Grand Avenue; Jack Callahan of King Street; Joe DeGrinney of 18 King Street; Jane McGurn of 18 Jones Creek; Sue Hamel of Shady Creek and Pine Point Area; Karen Lothrop of 56 East Grand Avenue; John Wiggin of 5 Claudia Way; Diane McLellan – 57 East Grand Avenue; Don Cote – 57 East Grand Avenue; Moira Erickson – 288 Pine Point Road; John Delehanty – King Street; Dick Welch – summer resident; Sue Perrino – Driftwood Lane; Judy Shirk – Pine Point; Arlene Hurd – formerly of Pine Point area; Pauline Levine – 5 Lane By The Sea and J. Pierre Brunet – Avenue Six.

There being no further comments, the hearing was closed at 9:55 p.m.

Motion by Councillor Babine, seconded by Councillor Roy, to recess the meeting for 10 minutes.

Vote: 7 Yeas.

The meeting was recessed at 9:57 p.m. Chairman Wood reconvened the meeting at 10:08 p.m.

Main Motion:

Motion by Councillor Babine, seconded by Councillor Ahlquist, to move approval of the second reading to approve the acceptance of the fee of the land identified on Scarborough Tax Map 22, Lot 109-A from Peter and Nicholas Truman, and to authorize the Town Manager to accept the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney. The approximate location of the land to be accepted by the Town is depicted in sketch plan entitled “Concept Land Swap dated May 5, 2009” as the “Truman Parking Parcel to Town”.

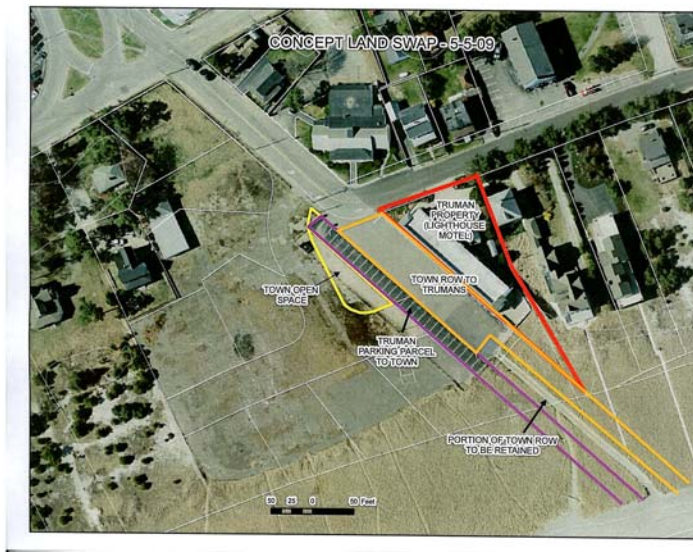
Tabling Motion:

Motion by Councillor Rancourt, seconded by Councillor D’Andrea, to move approval to table Order No. 09-88.

Vote: 2 Yeas. 5 Nays [Chairman Wood, Councillors Ahlquist, Babine, Roy and Sullivan].

Main motion as follows:

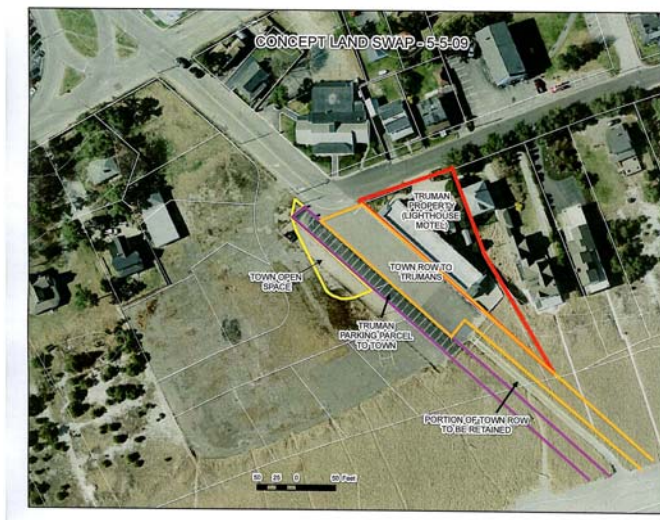
Motion by Councillor Babine, seconded by Councillor Ahlquist, to move approval of the second reading to approve the acceptance of the fee of the land identified on Scarborough Tax Map 22, Lot 109-A from Peter and Nicholas Truman, and to authorize the Town Manager to accept the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney. The approximate location of the land to be accepted by the Town is depicted in sketch plan entitled “Concept Land Swap dated May 5, 2009” as the “Truman Parking Parcel to Town”, as follows:



Vote: 4 Yeas. 3 Nays [Councillors D’Andrea, Rancourt and Roy].

**Order No. 09-89, 7:00 p.m. Public hearing and second reading to approve acceptance of a release deed from Peter and Nicholas Truman to the Town of the land in the approximate location which is shown as “Portion of Town ROW To Be Retained” depicted in a sketch plan entitled “Concept Land Swap dated May 5, 2009”, and to authorize the Town Manager to accept the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney.** Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 11:12 p.m.

Motion by Councillor Babine, seconded by Councillor Ahlquist, to move approval of the second reading to approve acceptance of a release deed from Peter and Nicholas Truman to the Town of the land in the approximate location which is shown as “Portion of Town ROW To Be Retained” depicted in a sketch plan entitled “Concept Land Swap dated May 5, 2009”, and to authorize the Town Manager to accept the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney, as follows:



Vote: 5 Yeas. 2 Nays [Councillors D’Andrea and Rancourt].

**Order No. 09-90, 7:00 p.m. Public hearing and second reading to approve the release to Peter and Nicholas Truman of the land in the approximate location shown as “Town ROW to Trumans” depicted in a sketch plan entitled “Concept Land Swap dated May 5, 2009”, and to authorize the Town Manager to execute the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney, and further subject to restrictive covenants to protect the dunes and preserve public access to the beach and public view corridors.** Chairman Wood opened the public hearing. The following individuals spoke on this Order: Richard Welch, summer resident at Pine Point; Harold Hutchinson of King Street; Sue Hamel of Shady Creek Lane and property on Pine Point; Joan Louire of East Grand Avenue; John Thurlow of 1 Starpine Lane and Moira Erickson of 288 pine Point Road. There being no further comments, the hearing was closed at 11:26 P.m.

Main Motion:

Motion by Councillor Babine, seconded by Councillor Ahlquist, to move approval of the second reading to approve the release to Peter and Nicholas Truman of the land in the approximate location shown as “Town ROW to Trumans” depicted in a sketch plan entitled “Concept Land Swap dated May 5, 2009”, and to authorize the Town Manager to execute the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney, and further subject to restrictive covenants to protect the dunes and preserve public access to the beach and public view corridors.

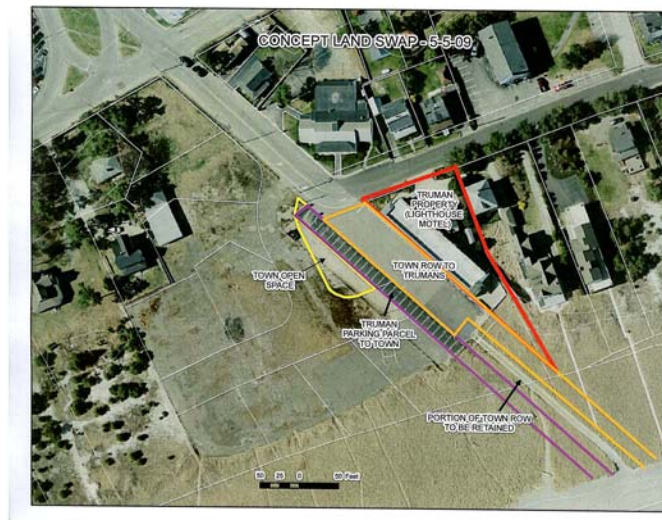
Tabling Motion:

Motion by Councillor Rancourt, seconded by Councillor D’Andrea, to move approval to table Order No. 09-90.

Vote: 2 Yeas. 5 Nays [Chairman Wood, Councillors Ahlquist, Babine, Roy and Sullivan].

Main Motion as follows:

Motion by Councillor Babine, seconded by Councillor Ahlquist, to move approval of the second reading to approve the release to Peter and Nicholas Truman of the land in the approximate location shown as “Town ROW to Trumans” depicted in a sketch plan entitled “Concept Land Swap dated May 5, 2009”, and to authorize the Town Manager to execute the deed on behalf of the Town once it has been reviewed and approved by the Town Attorney, and further subject to restrictive covenants to protect the dunes and preserve public access to the beach and public view corridors, as follows:



Vote: 5 Yeas. 2 Nays [Councillors D’Andrea and Rancourt].

**Order No. 09-91, 7:00 p.m. Public hearing and second reading to discontinue all of that portion of the town way accepted on March 28, 1872 and depicted as “Town Road” on a plan entitled “Plan of Pine Point, Scarborough, Me.” recorded in the Cumberland County Registry of Deeds at Plan Book 6, Page 36, formerly known as Depot Street and renamed Pine Point Road in 1976, which lies southeasterly of the intersection of King Street and Pine Point Road, with the westerly boundary line of that portion of Pine Point Road to be discontinued being defined by the turning of an approximate 49.5 ft radius, with the radius point on the pin at the intersection of the northeasterly sideline of Pine Point Road and the northwesterly sideline of King Street, from the southeasterly sideline of Pine Point Road to the extension and on the same course of the southeasterly sideline of King Street and then on the same course of that sideline extension to the southeasterly sideline of King Street as depicted on said plan. Said discontinuance to take effect only upon recording in the registry of deeds of the deeds described in Order No. 09-88, Order No. 09-89 and Order No. 09-90.** Chairman Wood opened the public hearing. The following individuals spoke on this Order: John Thurlow of 1 Starpine Lane; Harold Hutchinson of King Street; Mr. Libby, Attorney for the Trumans; Sue Hamel of Shady Creek Lane; Judy Shirk of Pine Point and Richard Welch summer resident at Pine Point. There being no further comments, the hearing was closed at 11:52 p.m.

Main Motion:

Motion by Councillor Ahlquist, seconded by Chairman Wood, to move approval of the second reading to discontinue all of that portion of the town way accepted on March 28, 1872 and depicted as “Town Road” on a plan entitled “Plan of Pine Point, Scarborough, Me.” recorded in the Cumberland County Registry of Deeds at Plan Book 6, Page 36, formerly known as Depot Street and renamed Pine Point Road in 1976, which lies southeasterly of the intersection of King Street and Pine Point Road, with the westerly boundary line of that portion of Pine Point Road to be discontinued being defined by the turning of an approximate 49.5 ft radius, with the radius point on the pin at the intersection of the northeasterly sideline of Pine Point Road and the northwesterly sideline of King Street, from the southeasterly sideline of Pine Point Road to the extension and on the same course of the southeasterly sideline of King Street and then on the same course of that sideline extension to the southeasterly sideline of King Street as depicted on said plan. Said discontinuance to take effect only upon recording in the registry of deeds of the deeds described in Order No. 09-88, Order No. 09-89 and Order No. 09-90.

Tabling Motion:

Motion by Councillor Rancourt, seconded by Councillor D’Andrea, to move approval to table Order No. 09-91.

Vote: 2 Yeas. 5 Nays [Chairman Wood, Councillors Ahlquist, Babine, Roy and Sullivan].

Main Motion as follows:

Motion by Councillor Ahlquist, seconded by Chairman Wood, to move approval of the second reading to discontinue all of that portion of the town way accepted on March 28, 1872 and depicted as “Town Road” on a plan entitled “Plan of Pine Point, Scarborough, Me.” recorded in the Cumberland County Registry of Deeds at Plan Book 6, Page 36, formerly known as Depot Street and renamed Pine Point Road in 1976, which lies southeasterly of the intersection of King Street and Pine Point Road, with the westerly boundary line of that portion of Pine Point Road to be discontinued being defined by the turning of an approximate 49.5 ft radius, with the radius point on the pin at the intersection of the northeasterly sideline of Pine Point Road and the northwesterly sideline of King Street, from the southeasterly sideline of Pine Point Road to the extension and on the same course of the southeasterly

sideline of King Street and then on the same course of that sideline extension to the southeasterly sideline of King Street as depicted on said plan. Said discontinuance to take effect only upon recording in the registry of deeds of the deeds described in Order No. 09-88, Order No. 09-89 and Order No. 09-90, as follows:

**ORDER OF DISCONTINUANCE**

WHEREAS, the Municipal Officers of the Town of Scarborough determine that a portion of the town way formerly known as Depot Street and renamed Pine Point Road in 1976 lying between the current terminus of the paved traveled way at the edge of the dune grass and the sea has not been kept passable at the expense of the municipality for use by the general public traveling with motor vehicles for a period of 30 or more consecutive years and has therefore been discontinued by abandonment; and

WHEREAS, the Town Council determines that it is appropriate to reconfigure that portion of the town way formerly known as Depot Street and renamed Pine Point Road which lies between King Street and the edge of the dune grass, in order to eliminate conflicts between pedestrian and vehicular traffic and maintain safe pedestrian access to the beach; and

WHEREAS, the Municipal Officers of the Town of Scarborough have caused to be filed with the Town Clerk this Order of Discontinuance for the purpose of discontinuing a portion of the town way formerly known as Depot Street and renamed Pine Point Road in 1976 as hereinafter described, pursuant to the provisions of Section 3026 of Title 23 of the Maine Revised Statutes, and the Municipal Officers have given notice of said discontinuance to Peter and Nicholas Truman, being the only abutters to the portion of the way being discontinued, and to the Municipal Planning Office, it is hereby:

**ORDERED**, that, pursuant to the provisions of Section 3026 of Title 23 of the Maine Revised Statutes, the Town of Scarborough, Maine does hereby discontinue all of that portion of the town way accepted on March 28, 1872 and depicted as "Town Road" on a plan entitled "Plan of Pine Point, Scarborough, Me." recorded in the Cumberland County Registry of Deeds at Plan Book 6, Page 36, formerly known as Depot Street and renamed Pine Point Road in 1976, which lies southeasterly of the intersection of King Street and Pine Point Road, with the westerly boundary line of that portion of Pine Point Road to be discontinued being defined by the turning of an approximate 49.5 ft radius, with the radius point on the pin at the intersection of the northeasterly sideline of Pine Point Road and the northwesterly sideline of King Street, from the southeasterly sideline of Pine Point Road to the extension and on the same course of the southeasterly sideline of King Street and then on the same course of that sideline extension to the southeasterly sideline of King Street as depicted on said plan.

**FURTHER ORDERED**, that no damages are awarded to any person by reason of this discontinuance of said town way;

**FURTHER ORDERED**, that no public easement shall remain in said town way after its discontinuance and that all remaining interests of the municipality shall pass as per the deeds described in Town Council Orders 09-88, 09-89 and 09-90.

**FURTHER ORDERED**, that this discontinuance shall take effect only upon the recording in the registry of deeds of the deeds described in Town Council Orders 09-88, 09-89 and 09-90.

Dated: July 15, 2009                      MUNICIPAL OFFICERS OF THE TOWN OF SCARBOROUGH

Vote: 5 Yeas.                      2 Nays [Councillors D'Andrea and Rancourt].

**Order No. 09-92, 7:00 p.m. Public Hearing on the new request for a Food Handlers License from PJS Associates, d/b/a Beals Old Fashioned Ice Cream, located at 29 Gorham Road [Oak Hill Plaza] and Dgreek, Inc., d/b/a Olympic Pizza & Grille, located at 183 U.S. Route One, Suite D.** Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 12:00 a.m.

Motion by Councillor Babine, seconded by Councillor Roy, to move approval on the new request for a Food Handlers License from PJS Associates, d/b/a Beals Old Fashioned Ice Cream, located at 29 Gorham Road [Oak Hill Plaza] and Dgreek, Inc., d/b/a Olympic Pizza & Grille, located at 183 U.S. Route One, Suite D.

Vote: 7 yeas.

**Order No. 09-93, 7:00 p.m. Public Hearing on the new request for a Special Amusement Permit from Portland Pie Company, located at 400 Expedition Drive, Suite H.** Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing was closed at 12:01 a.m.

Motion by Councillor Babine, seconded by Councilor Roy, to move approval on the new request for a Special Amusement Permit from Portland Pie Company, located at 400 Expedition Drive, Suite H.

Vote: 7 yeas.

At this point in the meeting, Councillor Rancourt that she would not be able to stay for the rest of the meeting and excused herself.

### **OLD BUSINESS:**

**Order No. 09-55. Second reading on the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance, Section 9. Performance Standards - by adding a new subsection N. Wind Power.** Councillor Roy gave a brief overview on the proposed recommendations. Dan Bacon, Town Planner also commented on this item and responded to questions from the Council.

The following individuals spoke on this Order: Rick Shinay – on behalf of his client, Mr. William Roman; Jim Plagenhoef of Prouts Neck; Kathleen Hannen of Ferry Road; Scott Doherty of 12 Ferry Road and Harry White of 131 Running Hill Road.

Main Motion:

Motion by Councillor Babine, seconded by Councillor Roy, to move approval of the second reading on the proposed amendments to Chapter 405 – the Scarborough Zoning Ordinance, Section 9. Performance Standards - by adding a new subsection N. Wind Power.

Tabling Motion:

Motion by Councillor Babine, seconded by Councillor Roy, to move approval to table Order No. 09-55 and send back to the Ordinance Committee.

Vote: 3 Yeas.            3 Nays [Councillors Ahlquist, D’Andrea and Sullivan]

Amendment to main Motion:

Motion by Councillor Babine, seconded by Councillor Roy, to move approval to amend the main motion and accept the proposed amendments as recommended out of Ordinance.

Vote on amend: 5 Yeas. 1 Nay [Chairman Wood]

Main Motion as Amended:

**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 districts except the Resource Protection District (as delineated in the Shoreland Zoning Ordinance for the Town of Scarborough). The Code Enforcement Officer may issue a building permit for the installation and operation of a SWES provided the following performance standards are met. A SWES which complies with the performance standards of this section is not subject to the space and bulk regulations of the zoning district in which it is located.

**1. Space and Bulk –**

**a. Number of SWES** – With the exception of SWES allowed per subsection ~~M.~~ N.(12) below, the number of SWES ~~are~~ shall be limited as follows:

~~to~~ On lots less than one (1) acre in size a maximum of one (1) SWES is permitted per lot;

On lots one (1) acre to five (5) acres in size a maximum of two (2) SWES is permitted per lot;

On lots greater than five (5) acres in size, there is no maximum number of SWES per lot.

SWES, and the number of systems, and shall be designed, sized and installed to generate energy only 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 and seventy-five (~~100~~ 175) feet. SWES height shall be measured from the average elevation of the finished grade at the base of the tower to highest point of the SWES ~~the center of the spindle on the turbine.~~

**c. Setbacks** – The SWES shall be set back a minimum 40 ~~75~~% of the system’s height, as measured per subsection ~~M.~~ N.1.b. above, from all property lines or shall comply with the minimum front, side or rear yard setback requirements of the zoning district in which

it is located whichever is greater. The Code Enforcement Officer may relax the 75% of the SWES height setback standard if the applicant secures a restrictive easement(s) from the abutting property(s) that allows for a lesser setback. The restrictive easement shall restrict the uses and structures within the easement area so as to allow the SWES to be located closer to the property line than the 75% requirement above. A restrictive easement from an abutting property shall not however enable a SWES to be sited closer to the abutting property line than the minimum front, side and rear yard setback requirements of the zoning district.

- d. **Town Exemption** – A SWES located on property owned by the Town of Scarborough shall not be subject to the Space and Bulk Standards listed above, provided the purpose of the SWES is to reduce energy consumption and energy costs for public buildings and provided the plans for the SWES are approved by the Town Council after public notice, notice to abutters and public hearing.

2. **SWES Energy Generation** – SWES shall be limited to a power generation capacity of 20 kilowatts in residential districts and 60 kilowatts in commercial and industrial districts.

2. **3. Design and Aesthetics** –

- a. **Tower** – The new installation of a tower ~~of a~~ for a SWES designed to generate electricity shall be a monopole-style tower (freestanding or guyed wire). ~~Lattice towers are prohibited~~ The new installation of a lattice tower shall be allowed for SWES designed to pump water. Electricity generating SWES affixed to lattice towers existing as of June 26, 2009, that otherwise comply with this subsection shall be permitted.
- 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, none of which shall exceed six (6) square feet in area.
- d. **Appendages** – ~~No a~~ Appendages shall ~~be attached~~ to the a SWES tower ~~that are not incidental to its primary use.~~ may be permitted, but are limited to appendages that will not affect the normal operation, safety or stability of the SWES.

3. **4. Safety** –

- a. **Access** – Any climbing apparatus on a SWES tower shall be a minimum of ~~fifteen~~ eight (~~15~~ 8) feet from the ground.
- b. **Blade Clearance** – The SWES's blades shall not rotate to within ~~twenty~~ ten (~~20~~ 10) feet of the ground at their lowest point.

4. **5. Lighting** - Exterior lighting on a SWES ~~shall not~~ may be permitted but the lightings placement on the SWES shall comply with the maximum building height limit of the zoning district in which the SWES is sited, except ~~for lighting~~ that ~~which~~ may be required by the Federal Aviation Administration.

5. **6. Electrical Service** - Electrical wiring and connections from the wind energy system to the building(s) they serve shall be underground, unless an applicant demonstrates to the Code Enforcement Office that the subsurface conditions of a particular site makes the installation of an underground electrical service impracticable.

**~~6-7.~~ Noise –**

- a. **~~Automatic Brake Over-Speed Control~~** - The SWES shall be equipped with both an manual and automatic brake, governing, furling or feathering mechanism 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 20 db(A) above the ambient noise level at the closest property line. After approval and installation of the SWES, the Code Enforcement Officer may require the applicant to perform sound measurements to determine conformance with this standards. at a distance of one hundred (100') horizontal feet from the SWES. This shall be confirmed by the wind energy system's manufacturer.

**~~7-8.~~ Foundation** – 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.

**~~8-9.~~ 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 N~~; 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. 10.~~ 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 SWES. 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. N.3.a~~ Tower, subsection ~~M.2 N.3.b~~. Color and subsection ~~M.5 N.6~~. Electrical Service.

**~~10.11.~~ Removal Requirements –**

- a. **Unsafe SWES** – A SWES 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 SWES that is not working or is not being used for a consecutive twelve (12) month period shall be removed by the property owner.

**~~11.12.~~ SWES within Common Open Space** – To the extent permitted by applicable state and/or federal law, ~~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 75% setback requirement of subsection. ~~M.3 N.1.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 ~~M.N.1~~. Number of SWES, and shall require Planning Board approval of the location of the SWES within the subdivision prior to application to Code Enforcement. The number of SWES shall be determined by the Planning Board and shall be based on the forecasted energy consumption of the dwellings and uses with the subdivision as well as the site's ability to comply with subsection 12.a. and 12.b. a. above.

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 (both vertical or horizontal axis), a tower, footings, electrical infrastructure and associated equipment that is designed to produce electrical energy or pump water 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. The term meteorological tower does not include structures principally utilized in the operation of federally licensed amateur radio stations, which may also accommodate wind speed indicators, wind direction indicators, and other data gathering equipment and infrastructure.

Vote: 5 Yeas. 1 Nay [Chairman Wood].

**Order No 09-81. Second reading on the proposed amendments to Chapter 405c – the Shoreland Zoning Ordinance.** Motion by Councillor Babine, seconded by Councillor D’Andrea, to move approval of second reading on the proposed amendments to Chapter 405c – the Shoreland Zoning Ordinance, as follows:

**CHAPTER 405C  
SHORELAND ZONING ORDINANCE  
FOR THE TOWN OF  
SCARBOROUGH, MAINE**

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendment to Chapter 405c the Shoreland Zoning Ordinance of the Town of Scarborough, Maine, be and hereby amended (additions are underlined; deletions are struck through), as follows:

**Section 1. Purposes**

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to

protect freshwater and coastal wetlands; to control buildings sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

## **Section 2. Authority**

This Ordinance has been prepared in accordance with and adopted pursuant to the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

## **Section 3. Applicability**

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the

- normal high-water line of any great pond or river
  - upland edge of a coastal wetland, including all areas affected by tidal action, or
  - upland edge of a freshwater wetland—normal high water line of any great pond, river or saltwater body; within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland;
- and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to all land areas within the Stream Protection 2 District as shown on the Official Zoning Map and as further described in Section 13(C) Stream Protection 2 District. This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond below the normal high-water line of a water body or within a wetland. (amended 02/06/2008)

In the Shoreland Overlay District, this Ordinance applies in addition to the Zoning Ordinance of the Town of Scarborough, Maine ("Scarborough Zoning Ordinance"). In the Resource Protection District, Stream Protection District, and Stream Protection 2 District this Ordinance applies in place of the Scarborough Zoning Ordinance. (amended 02/06/2008)

## **Section 4. Effective Date ~~and Repeal of Formerly Adopted Ordinance of Ordinance and Ordinance Amendments~~**

The effective date of this Ordinance is the date of approval, automatic approval or approval with conditions by the Commissioner of the Department of Environmental Protection as provided in 38 M.R.S.A. subsection 438-A(3). On the effective date of this Ordinance, or Ordinance Amendment, any shoreland zoning provisions previously adopted by the Town of Scarborough are hereby repealed. Any application for a permit submitted to the Town of Scarborough within 45 days prior to the date the Commissioner of the Department of Environmental Protection determines that he has received the Ordinance, or Ordinance Amendment, pursuant to 38 M.R.S.A. subsection 438-A(3) shall be governed by the terms of this Ordinance, or Ordinance Amendment, if this Ordinance, or Ordinance Amendment, is approved pursuant to 38 M.R.S.A. subsection 438-A(3).

~~(\*Note: Date of the Commissioner of the Department of Environmental Protection's approval—September 21, 1992).~~

**Section 5. Availability**

This Ordinance is on file in the office of the Town Clerk, who will make copies available to the public on request upon payment of the Town's reasonable expenses of reproducing the Ordinance.

**Section 6. Severability**

Should any section or provisions of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

**Section 7. Conflicts with Other Ordinances**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

**Section 8. Amendments**

This Ordinance may be amended according to the procedures set forth in Section II.G of the Scarborough Zoning Ordinance. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Board of Environmental Protection following the adoption by the municipal legislative body and shall not be effective unless approved by the Board of Environmental Protection. If the Board of Environmental Protection fails to act on any amendment within forty-five (45) days of the Board's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Board.

**Section 9. Districts and Zoning Map**

**A. Official Shoreland Zoning Map ~~{amended 12/15/2004}~~**

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

- 1. Resource Protection
- 2. Stream Protection
- 3. Stream Protection 2 (amended 02/06/2008)
- 4. Shoreland Overlay

The Official Shoreland Zoning Map is the document entitled “Town of Scarborough Maine GIS Zoning Map,” as such may be amended from time to time pursuant to Section 8 of this Ordinance, which document shall be maintained in digital electronic form in the Town’s geographic information system database and in printed form in the office of the Town Clerk. Additional printed copies shall also be available in the Planning and Code Enforcement offices.

**B. Certification of Official Shoreland Zoning Map**

The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office.

### **C. Changes to the Official Shoreland Zoning Map**

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Board of Environmental Protection.

### **Section 10. Interpretation of District Boundaries**

The depiction of the boundaries of the shoreland zone and of the individual shoreland districts on the Official Shoreland Zoning Map is merely illustrative of their general locations. The exact boundaries shall be determined by on-site inspection and measurement from the normal high-water line or upland edge of a wetland. Such on-site inspection and measurement may be requested by the property owner at any time or by the applicant at the time of filing an application for a permit or approval under this Ordinance. As part of such on-site inspection and measurement, the property owner or the applicant for any permit or approval may present evidence from persons with training and/or experience relevant to the identification, delineation and classification of wetlands and/or the delineation of the high-water line or upland edge of a wetland. Such evidence shall be presented to the Code Enforcement Officer (or to the Planning Board if an application for a Planning Board permit or approval is pending) and the Code Enforcement Officer (or the Planning Board if an application for a Planning Board permit or approval is pending) shall make a determination as to the exact boundaries, subject to review by the Board of Appeals pursuant to section 16(G)(1)(a) of this Ordinance.

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines, of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

### **Section 11. Land Use Requirements**

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

### **Section 12. Non-conformance**

#### **A.**

##### **1. Purpose:**

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in this Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

##### **2. Applicability:**

The provisions of this Section 12 govern only non-conforming conditions which result from non-compliance with the requirements of this Ordinance. As to such non-conforming conditions, the provisions of this Section 12 supersede the provisions of Section III of the Scarborough Zoning Ordinance. As to non-conforming conditions which result from non-compliance with the requirements of the Scarborough Zoning Ordinance, the provisions of the Scarborough Zoning Ordinance shall govern.

## B. General

### **1. Transfer of Ownership:**

Non-conforming structures, lots and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

### **2. Repair and Maintenance:**

This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations ~~that which~~ do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

## C. Non-conforming Structures

### **1. Expansions:**

A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure except as provided for below. (amended 02/06/2008)

### **Further Limitations:**

a. After January 1, 1989 if any portions of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure. This limitation does not apply to structures in the Stream Protection 2 District that are greater than seventy-five (75) feet from the normal high-water line of the stream, provided that the structure was in existence as of January 31, 2008. (amended 02/06/2008)

b. ~~Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided:~~ Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, that the structure and new foundation ~~are~~ must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, or its designee, basing its decision on the criteria specified in ~~subsection 2~~ Section 12(C)(2). Relocation, below. ~~If that~~ the completed foundation does not extend beyond the exterior dimensions of the structure, ~~except for expansion in conformity with Section 12(C)(1)(a) above,~~ and ~~that~~ the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

c. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland. This limitation does not apply to existing structures in the Stream Protection 2 District that are more than seventy-five (75) feet from the high-water line of the stream provided that the entire structure will be at least seventy-five (75) feet from the stream after it is expanded. (amended 02/06/2008)

## **2. Relocation:**

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

(a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

(b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

## **3. Reconstruction or Replacement:**

Should any nonconforming building or structure be destroyed or damaged by any means beyond the control of the owner, it shall be rebuilt or restored within a period of one year or thereafter conform with the requirements of Section 15.B of this Ordinance unless a variance from such requirements is granted by the Board of Appeals pursuant to Section 16.G.2 of this Ordinance. If a nonconforming building or structure is demolished or removed by or for its owner, it shall not be rebuilt or replaced except in conformity with the requirements of Section 15.B of this Ordinance unless a variance from such requirements is granted by the Board of Appeals pursuant to Section 16.G.2 of this Ordinance.

#### **4. Change of Use of a Non-conforming Structure**

The use of a non-conforming structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

#### **D. Non-conforming Uses**

##### **1. Expansions:**

Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted in Section 12(C)(1)(a) above.

##### **2. Resumption Prohibited:**

A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

##### **3. Change of Use:**

An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(4) above.

#### **E. Non-conforming Lots**

##### **1. Non-conforming Lots:**

A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving size area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

## **2. Contiguous Built Lots:**

If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law ([12 M.S.R.A. sections 4807-A through 4807-D](#)) and [the State of Maine Subsurface Wastewater Disposal Rules](#) are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

## **3. Contiguous Lots - Vacant or Partially Built:**

If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

## **Section 13. Establishment of Districts**

### **A. Resource Protection District**

The Resource Protection District includes areas in which developments would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. In developing the Official Shoreland Zoning Map, areas of the following types were included in the Resource Protection District unless such areas were already developed at the time of mapping.

1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, ~~salt marshes and salt meadows~~, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) ~~as of January 1, 1973; that are as~~ depicted on the [Geographic Information System \(GIS\) data layer maintained by either Maine Department of Inland Fisheries and Wildlife Maps, 1988 or the Maine Department of Environmental Protection as of December 31, 2008](#). ~~The boundaries of the freshwater wetlands were determined based on the 1990 National Wetland Inventory Maps published by the U.S. Fish and Wildlife Service, with further reference to the Maine Geologic Survey Freshwater Wetlands maps, 1983.~~ For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.

2. Areas within 250 feet, horizontal distance, of the upland edge of salt marshes and salt meadows which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973.

**2.3.** Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plan as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100-year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

**3.4.** Areas of two or more contiguous acres with sustained slopes of 20% or greater.

**4.5** Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

**5.6.** Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

**6.7** Freshwater wetlands not rated "moderate" or "high" by the Maine Department of Inland Fisheries and Wildlife but substantially surrounded by areas included in the Resource Protection District because of other characteristics described in this Section 13 (A).

#### **B. Stream Protection District**

The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within the Stream Protection 2 District and those areas within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river ~~or saltwater body~~, or within two-hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area is located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland. (amended 02/06/2008)

#### **C. Stream Protection 2 District**

The Stream Protection 2 District includes all land areas within two hundred fifty (250) feet of the normal high water line of Stuart Brook east of the Maine Turnpike excluding the area within the travel way of Lucky Lane and the area upland of this way as shown on the Official Zoning Map. (amended 02/06/2008)

#### **D. Shoreland Overlay District**

All land areas in the shoreland zone which are not in the Resource Protection District, the Stream Protection District, or the Stream Protection 2 District are in the Shoreland Overlay District. Areas in the Shoreland Overlay District are subject to the requirements of the Scarborough Zoning Ordinance as well as to the requirements of this Ordinance. (amended 02/06/2008)

### **Section 14. Table of Land Uses**

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

Yes - Allowed (no permit required but the use must comply with all applicable land use standards).

No - Prohibited

PB – Requires Allowed with permit issued by the Planning Board

CEO – Requires Allowed with permit issued by the Code Enforcement Officer

LPI – Requires Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:

RP - Resource Protection

SP - Stream Protection and Stream Protection 2 (amended 02/06/2008)

SO - Shoreland Overlay

<b>TABLE 1. LAND USES IN THE SHORELAND ZONE</b>			
<b>LAND USES</b>	<b>DISTRICTS</b>		
	<b>SO<sup>1</sup></b>	<b>SP</b>	<b>RP</b>
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	<u>Yes</u>	Yes	Yes
2. Motorized vehicular traffic on existing roads and trails	<u>Yes</u>	Yes	Yes
3. Forest management activities except for timber harvesting	<u>Yes</u>	Yes	Yes
4. Timber harvesting	<u>Yes</u>	Yes	CEO <sup>2</sup>
5. Clearing <u>or removal</u> of vegetation for <u>activities other than timber harvesting approved construction and other allowed uses</u>	<u>Yes</u>	CEO	CEO <sup>2</sup>
6. Fire prevention activities	<u>Yes</u>	Yes	Yes
7. Wildlife management practices	<u>Yes</u>	Yes	Yes
8. Soil and water conservation practices	<u>Yes</u>	Yes	Yes
9. Mineral exploration	<u>Yes</u>	No	Yes <sup>3</sup>
10. Mineral extraction including sand and gravel extraction	<u>CEO/PB</u>	No	PB <sup>4</sup>
11. Surveying and resource analysis	<u>Yes</u>	Yes	Yes
12. Emergency operations	<u>Yes</u>	Yes	Yes
13. Agriculture	<u>Yes</u>	Yes	CEO
14. Aquaculture	<u>PB</u>	PB	<u>PB CEO</u>
15. Principal structures and uses			
A. One and two family residential, <u>including driveways</u>	<u>CEO</u>	PB <sup>5</sup>	No
B. Multi-unit residential	<u>PB</u>	No	No
C. Commercial	<u>PB</u>	No	No
D. Industrial	<u>No</u>	No	No
E. Governmental and Institutional	<u>PB</u>	No	No
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	<u>CEO/PB</u>	PB <sup>5</sup>	PB
16. Structures accessory to allowed uses	<u>CEO</u>	PB <sup>5</sup>	PB
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below			

<b>TABLE 1. LAND USES IN THE SHORELAND ZONE</b>			
<b>LAND USES</b>	<b>DISTRICTS</b>		
	<b>SO<sup>1</sup></b>	<b>SP</b>	<b>RP</b>
the normal high-water line or within a wetland			
a. Temporary	<u>CEO</u>	CEO	CEO
b. Permanent	<u>PB</u>	PB	PB
18. Conversions of seasonal residences to year-round residences	<u>CEO</u>	<del>LPI</del> <u>CEO</u>	No
19. Home occupations	<u>CEO</u>	<del>LPI</del> <u>CEO</u>	No
20. Private sewage disposal systems for allowed uses	<u>LPI</u>	LPI	No
21. Essential services	<u>CEO</u>	PB <sup>6</sup>	PB <sup>6</sup>
22. Service drops, as defined, to allowed uses	<u>Yes</u>	Yes	Yes
23. Public and private recreational areas involving minimal structural development	<u>PB</u>	PB	PB <sup>10</sup>
24. Campgrounds	<u>PB</u>	No	No <sup>7</sup>
25. Road <u>and driveway</u> construction	<u>PB<sup>8</sup></u>	PB <sup>8</sup>	No <sup>9</sup>
26. Parking facilities	<u>CEO/PB</u>	No	No <sup>7</sup>
27. Marinas	<u>PB</u>	PB	No
28. Filling and earthmoving of < 10 cubic yards	<u>Yes</u>	CEO	CEO
29. Filling and earthmoving of > 10 cubic yards <u>but less than 500 cubic yards</u>	<u>CEO</u>	PB	PB
<u>30. Filling and earthmoving &gt; 500 cubic yards</u>	<u>PB</u>	PB	PB
31. Signs	<u>Yes</u>	Yes	Yes
32. Uses similar to allowed uses	<u>CEO/PB</u>	CEO	CEO
33. Uses similar to uses requiring a CEO permit	<u>CEO</u>	CEO	CEO
34. Uses similar to uses requiring a PB permit	<u>PB</u>	PB	PB

<sup>1</sup>In the Shoreland Overlay District, uses are governed by the district regulations of the Scarborough Zoning Ordinance for the district in which the property is located.

<sup>2</sup>In RP not permitted within 75 feet of the normal high-water line of great ponds, except to remove safety hazards.

<sup>3</sup>Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

<sup>4</sup>In RP not permitted in areas so designated because of wildlife value.

<sup>5</sup>Provided that a variance from the setback requirement is obtained from the Board of Appeals.

<sup>6</sup>See further restrictions in Section 15(L)(2).

<sup>7</sup>Except when area is zoned for resource protection due to flood plain criteria in which case a permit is required from the PB.

<sup>8</sup>Except that no permit is required for the repair or maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

- (1) not more than one standard culvert size wider in diameter than the culvert being replaced;
- (2) not more than 25% longer than the culvert being replaced; and

(3) not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exception. The person repairing, replacing or maintaining an existing culvert pursuant to this exception shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course.

<sup>9</sup>Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the PB.

<sup>10</sup>May include no more than one accessory food concession stand, cart or booth located inside a structure existing on August 5, 1992, provided no on-site waste water disposal is required for the operation of the concession. [Planning Board ~~reivew~~ review is not required to operate such a concession at a recreational area which lawfully existed on August 5, 1992]. (amended 07/05/95)

## **Section 15. Land Use Standards**

All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

### **A. Minimum Lot Standards**

1. a. The minimum lot area in the Resource Protection District shall be 30,000 square feet.  
b. The minimum lot area in the Stream Protection and Stream Protection 2 Districts shall be the same as in the adjacent zoning district under the Scarborough Zoning Ordinance. If more than one district adjoins the land in the Stream Protection or Stream Protection 2 Districts, the minimum lot area for the least restricted adjacent zoning district shall govern. (amended 02/06/2008)  
c. The minimum lot area in the Shoreland Overlay District shall be the same as in the underlying district pursuant to the Scarborough Zoning Ordinance.
2. The minimum shore frontage for all lots in the Shoreland Zone shall be 100 feet, measured in a straight line between the points of intersection of the side lot lines with the shore line at the normal high water line. The minimum width of any portion of any lot within 100 feet, horizontal distance of the normal high water line of a water body or upland edge of a wetland shall be equal to or greater than 100 feet.
3. Land below the normal high water line of a water body or upland edge of a wetland and land beneath roads serving more than two lots shall not be included toward calculating minimum lot area.
4. If a property owner voluntarily transfers the fee simple ownership of land within the Stream Protection 2 District to the Town of Scarborough or to a land trust or other conservation organization approved by the Planning Board for the purpose of public open space and public access to or along the stream, the property owner shall be entitled to a density bonus. The amount of the bonus shall be one and a half times the number of the dwelling units that could have been built on the transferred land within the Stream Protection 2 District without consideration of the stream setback requirement based upon the net residential area and density for the zone that determines the applicable density and lot area for the land based upon the requirements as set out in the Zoning Ordinance. This bonus shall be in addition to any other density bonus provided for in the Zoning Ordinance including the density bonus for the transfer of development rights. The units resulting from this density bonus may be:

- a) Developed on another portion of the same parcel on which development is permitted that is not located within the Stream Protection 2 District, or
- b) Transferred to another parcel in accordance with the Development Transfer Provisions of Section VIID of the Zoning Ordinance.

Units resulting from this density bonus must be built or transferred in accordance with Section VIID of the Zoning Ordinance within ten (10) years of the date of the transfer of the land to the Town, land trust, or conservation organization. The right to build or transfer a unit shall lapse at the conclusion of the ten (10) year period. The Planning Department shall establish and maintain a registry of any bonus units created under this provision and shall track the utilization of those units over time to ensure compliance with these provisions. (amended 02/06/2008)

5. If more than one residential dwelling unit, principal governmental, institutional, or commercial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure or use.

### **B. Principal and Accessory Structures**

1. All new principal and accessory structures shall be set back at least two hundred fifty (250) feet, horizontal distance, from the normal high water line in the Stream Protection 2 District and seventy-five (75) feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland in the other districts. (amended 02/06/2008) In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

a. The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

b. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.

c. On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

2. Principal or accessory structures and expansions of existing which are permitted in the Resource Protection and Stream Protection Districts shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, wind energy systems, antennas, and similar structures having no floor area.

3. The first lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils.

4. The total footprint area of all structures, parking lots, driveways and other nonvegetated surfaces within the S shoreland Z zone shall not exceed twenty (20) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed.

5. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A., Ssection 480-C); and that the applicant demonstrates that no reasonable access alternatives exists on the property.

### **C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or within a Wetland**

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

2. The location shall not interfere with existing developed or natural beach areas.

3. The facility shall be located so as to minimize adverse effects on fisheries.

4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

5. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.

6. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

7. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

### **D. Campgrounds**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.

2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of seventy-five (75) feet from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

#### **E. [Reserved]**

#### **F. Parking Areas**

1. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities ~~may shall~~ be ~~reduced to~~ no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream normal high water line or upland edge of a wetland if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.

3. Size and configuration of parking spaces shall comply with the requirements of the Scarborough Zoning Ordinance and, where applicable, the Scarborough Site Plan Review Ordinance.

#### **G. Roads and Driveways**

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least seventy-five (75) feet, horizontal distance, from the normal high water line of water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, ~~the Planning Board may reduce~~ the road and/or driveway setback requirement ~~to shall be~~ no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

Section 15(H)(1) This paragraph shall neither does not apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

2. Existing public roads may be expanded within the legal road right-of-way regardless of ~~its~~ their setback from a water body, tributary stream, or wetland.

3. [Reserved]

4. New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

5. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in subSection (15)Q.

6. Road and driveway grades shall be no greater than ten (10) percent except for ~~short~~ segments of less than two hundred (200) feet.

7. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams, or wetlands roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. ~~Road-s~~Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

8. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow ~~in the roads or ditches~~ gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply:

a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway, at intervals no greater than indicated in the following table:

<b>RoadGrade (Percent)</b>	<b>Spacing (Feet)</b>
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

b. Drainage dips may be used in place of ditch relief culverts only where the ~~road~~ grade is ten (10) percent or less.

c. On ~~road~~ sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed ~~across the road~~ at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

9. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

## H. Signs

Signs in the Resource Protection and Stream Protection Districts shall comply with the applicable requirements of the Scarborough Zoning Ordinance and, in addition, with the following requirements.

1. Signs ~~and billboards~~ relating to goods and services sold on the premises shall be ~~permitted~~ allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. ~~Billboards and s~~Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

2. Name signs ~~shall be~~ allowed ~~permitted~~, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.

3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be ~~permitted~~ allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.

5. Signs relating to public safety shall be ~~permitted~~ allowed without restriction.

6. No sign shall extend higher than twenty (20) feet above the ground.

7. Signs may be illuminated only by shielded, non-flashing lights.

## I. Storm Water Runoff

1. All new construction and development shall be designed to ~~ensure~~ minimize storm water runoff from the site ~~in excess will be less than or equal to that~~ of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

## J. Septic Waste Disposal

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (~~Rules~~) and the requirements of the Scarborough Plumbing Ordinance, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

## **K. Essential Services**

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services, other than road side distribution lines, is not ~~permitted~~ allowed in a Resource Protection, Stream Protection, or Stream Protection 2 District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where ~~permitted~~ allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts. (amended 02/06/2008)

3. Damage or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

## **L. Mineral Exploration and Extraction**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of ~~paragraph~~ Section 15(M) below.
2. ~~Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C no~~ No part of any extraction operation, including drainage and runoff control features shall be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of any water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) ~~seventy-five (75)~~ feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.
3. [Reserved]
4. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
  - b. The final graded slope shall be two and one half to one (2 1/2:1) slope or flatter.
  - c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

5. In keeping with the purpose of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

6. Mineral extraction shall also comply with all applicable requirements of the Extractive Industry, Waste Control, Landfill and Land Reclamation Ordinance of the Town of Scarborough.

### ***M. Agriculture***

1. All spreading ~~or disposal~~ of manure shall be accomplished in conformance with the ~~Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission on July, 1972. Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).~~

2. Manure shall not be stored or stockpiled within seventy-five (75) feet horizontal distance, of water bodies, tributary streams, or wetlands. ~~Within five (5) years of the effective date of this ordinance a~~All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water. ~~Existing facilities which do not meet the setback requirements may remain, but must meet the no discharge provision within the above five (5) year period.~~

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams; and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

5. ~~After the effective date of this Ordinance, newly~~ Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance of water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams; and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a ~~Soil and Water~~ Conservation Plan.

### ***N. Timber Harvesting***

~~1. In a shoreland area zoned for resource protection abutting a great pond, timber harvesting shall be limited to the following:~~

~~a. Within the strip of land extending 75 feet inland from the normal high water line there shall be no timber harvesting, except to remove safety hazards.~~

~~b. Beyond the 75 foot “no harvesting” strip referred to in paragraph a. above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 1 inch in diameter at 4 ½ feet above ground level be reduced to less than 30 square feet per acre.~~

~~2. Except in areas as described in Paragraph 1 above, timber harvesting shall conform with the following provisions:~~

~~a. Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 ½ feet above the ground level on any lot in any ten (10) year period is permitted. In addition:~~

~~i. Within seventy five (75) feet, horizontal distance, of the normal high water line of water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.~~

~~ii. At distances greater than seventy five (75) feet, horizontal distance, of the normal high water line of water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet they shall be at least one hundred (100) feet apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purpose of these standards volume may be considered to be equivalent to basal area.~~

~~b. No accumulation of slash shall be left within fifty (50) feet of the normal high water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high water line of a water body shall be removed.~~

~~c. Timber harvesting equipment shall not use stream channels as travel routes except when:~~

~~i. Surface waters are frozen; and~~

~~ii. The activity will not result in any ground disturbance.~~

~~d. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.~~

~~e. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.~~

~~f. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy five (75) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high water line of a water body or upland edge of a wetland. For each ten (10) percent increase in sloped, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from the normal high water line of a water body or upland edge of a wetland.~~

~~g. Timber harvesting activities shall be conducted only after the first hard frost of the winter and before the spring thaw.~~

~~3. The Code Enforcement Officer shall be given written notice at least five working days prior to the start of any timber harvesting activities in the shoreland zone. For any timber harvesting activities in the Resource Protection District, such notice shall be accompanied by a Forest Management and Timber Harvesting Plan prepared in accordance with 36 M.R.S.A. section 573(3-A) by a professional forester licensed in the State of Maine. In addition to the minimum requirements of that statute, the Forest Management and Timber Harvesting Plan shall include:~~

- ~~(i) A map of the area to be harvested drawn to seal with a tie in to an accepted town road, north arrow, property lines, name of property owner and name of the abutting property owners.~~
- ~~(ii) A topographic map which depicts upland edge of the wetland, a written description of the hydric mineral and organic soils, wetland plants, and hydrology identified to determine the upland edge of the wetland.~~
- ~~(iii) A written certification from the forester that the Forest Management and Timber Harvesting Plan complies with the requirements of this Ordinance.~~

1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.

(2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15(N)(2) does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.

(a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.

(b) Adjacent to great ponds, rivers and wetlands:

(i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and

(ii) Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.

(3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:

(a) Option 1 (40% volume removal), as follows:

(i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;

(ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,

(iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

(b) Option 2 (60 square foot basal area retention), as follows:

(i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;

(ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,

(iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

(c) Option 3 (Outcome based), this option shall only become effective on the statutory date established under 38 M.R.S.A. section 438-A(5), until such time Section 15(N)(3)(c) is not in effect.

Option 3 requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

(4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.

(a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.

(b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.

(c) Setbacks:

(i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.

(ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(N)(7) of this rule.

(a) Land management roads and associated ditches, excavation, and fill must be set back at least:

(i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;

(ii) 50 feet, horizontal distance, from the normal high-water line of streams; and

(iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams

(b) The minimum 100 foot setback specified in Section 15(N)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(N- 1)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent

demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(c) On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.

(d) New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

(e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15(N)(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(f) Road closeout and discontinuance. Maintenance of the water control installations required in Section 15(N)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.

(g) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of Section 15(N). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.

(h) Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(N)(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary

stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.

(6) Crossings of waterbodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.

(a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15(N): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.

(b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15(N). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15(N).

(c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Department of Environmental Protection, or the US Army Corps of Engineers.

(d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.

(e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:

- (i) a map showing the location of all proposed permanent crossings;
- (ii) the GPS location of all proposed permanent crossings;
- (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
- (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.

(f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15(N)(6)(g) below. Streams and tributary

streams may be crossed using temporary structures that are not bridges or culverts provided:

- (i) concentrated water runoff does not enter the stream or tributary stream;
- (ii) sedimentation of surface waters is reasonably avoided;
- (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
- (iv) fish passage is not impeded; and,
- (v) water flow is not unreasonably impeded.

Subject to Section 15(N)(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

(g) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:

(i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the river, stream, or tributary stream channel.

(ii) Temporary bridge and culvert sizes may be smaller than provided in Section 15(N)(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

1. use of temporary skidder bridges;
2. removing culverts prior to the onset of frozen ground conditions;
3. using water bars in conjunction with culverts;
4. using road dips in conjunction with culverts.

(iii) Culverts utilized in river, stream and tributary stream crossings must:

1. be installed at or below river, stream or tributary stream bed elevation;
2. be seated on firm ground;
3. have soil compacted at least halfway up the side of the culvert;
4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

(iv) River, stream and tributary stream crossings allowed under Section 15(N), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100- year flood event.

(v) Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

(h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

(i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15(N)(6)(i) below.

(ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.

(iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

(i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.

(ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.

(iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:

1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;

2. it shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or 3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(7) Slope Table

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15(N), but in no case shall be less than shown in the following table.

<u>Average slope of land between exposed soil and the shoreline (percent)</u>	<u>Width of strip between mineral soil and shoreline (feet along surface of the ground)</u>
<u>0</u>	<u>25</u>
<u>10</u>	<u>45</u>
<u>20</u>	<u>65</u>
<u>30</u>	<u>85</u>
<u>40</u>	<u>105</u>
<u>50</u>	<u>125</u>
<u>60</u>	<u>145</u>
<u>70</u>	<u>165</u>

**O. Clearing or Removal of Vegetation for Activities Development Other Than Timber Harvesting**

1. ~~Within In a shoreland area zoned for~~ Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the ~~cutting or removal clearing~~ of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

2. Except in areas as described in ~~Paragraph Section 15(O)(1),~~ above, and except to allow for the development of permitted uses, within a strip of land extending seventy-five (75) feet, horizontal distance, from any water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

a. There shall be no cleared opening greater than 250 square feet in the forest canopy (~~or other exiting woody vegetation if a forested canopy is not present~~) as measured from the outer limits of the tree ~~or shrub~~ crown. However, a footpath not to exceed ~~ten (10) six (6)~~ feet in width as measured between tree trunks ~~and/or shrub~~ is ~~allowed permitted~~ provided that a cleared line of sight to the water through the buffer strip is not created.

b. Selective cutting of trees within the buffer strip is ~~allowed permitted~~ provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of ~~this s~~Section 15(O)(2)(b) a "well-distributed stand of trees ~~and other vegetation~~" shall be defined as maintaining a rating score of 168 or more in any 25-foot by ~~5025-foot square~~ rectangle (~~6251250~~ square feet) area as determined by the following rating system.

<u>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</u>	<u>Points</u>
<u>2 - ≤ 4 in.</u>	<u>1</u>
<u>&gt;4 - &lt;8 <del>12</del> in.</u>	<u>2</u>
<u>8 - &lt;12 in</u>	<u>4</u>
<u>&gt;12 in. <del>or greater</del></u>	<u>4-8</u>

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(O)(2)(b) “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above the ground level may be removed in any ten (10) year period.

c. ~~[reserved]~~ In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(O) paragraphs 2 and 2a above.

d. Pruning of tree branches, on the bottom 1/3 of the tree is allowed permitted.

e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted as soon as seasonally practical, not to exceed one (1) calendar year, with native tree species unless existing new tree growth is present.

~~The provisions contained in paragraph~~Section 15(O)(2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as ~~C~~cleared areas; are however, shall be limited to the minimum area necessary.

3. At distances greater than seventy-five (75) feet, horizontal distance, from the normal high-water line of any water body, tributary stream, or the upland edge of a wetland, ~~except to allow for the development of permitted uses,~~ there shall be allowed permitted on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose development, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously ~~developed~~ cleared.

4. ~~Legally existing nonconforming~~ Cleared openings ~~legally in existence on the effective date of this Ordinance~~ may be maintained, but shall not be enlarged, except as ~~allowed~~ permitted by this Ordinance.

5. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of ~~this section~~ Section (15)(O).

#### **P. Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- a. Mulching and revegetation of disturbed soil.
- b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
- c. Permanent stabilization structures such as retaining walls or riprap.

2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
- b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
- c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

#### **Q. Soils**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after

construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

## **R. Water Quality**

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body.

## **S. Archaeological Sites**

Any proposed land use activity involving structural development or soil disturbances on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

## **Section 16. Administration**

### **A. Administrating Bodies and Agents**

The Code Enforcement Officer, Board of Appeals and Planning Board charged with administering this Ordinance shall be the same Code Enforcement Officer, Board of Appeals and Planning Board as administer the Scarborough Zoning Ordinance.

### **B. Permits Required**

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

### **C. Permit Application**

1. Every applicant for a permit shall submit a written application, including a scaled plan, on a form provide by the municipality, to the appropriate official as indicated in Section 14.

2. All applications shall be signed by ~~the an~~ owner or ~~owners of the individual who can show evidence of right, title or interest in the~~ property or ~~other person by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, authorizing the work,~~ certifying that the information in the application is complete and correct. ~~If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee.~~

3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

4. If the property is not served by a public sewer, a valid external plumbing permit or completed application for an external plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

#### **D. Procedure for Administering Permits**

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities.
8. Will avoid problems associated with flood plain development and use; and
9. Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the ~~any State law which the~~ municipality ~~is responsible for enforcing~~.

## **E. Expiration of Permit**

~~All permits and approvals issued pursuant to this Ordinance shall expire if~~ Permits shall expire one year from the date of issuance if a substantial start is not made in ~~of~~ construction or (where no construction is involved) commencement of the use does not occur ~~within six months of the date on which the permit or approval was issued during that period.~~ If a substantive start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

Upon good cause shown, the person or board issuing the original permit or approval may extend its effectiveness for an additional six months. As used in this Section 16.E, "substantial start of construction" means completion of all of the following operations for all of the buildings or structures authorized by the permit or approval:

implementation of erosion and storm water control measures

installation of footings

installation of foundations

waterproofing (if necessary) of the foundations

construction of the drainage systems

completion of all back filling (but not including final grading and landscaping)

## **F. Installation of Public Utility Service**

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

## **G. Appeals**

### **1. Powers and Duties of the Board of Appeals**

The Board of Appeals shall have the following powers:

a. Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance.

b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

### **2. Variance Appeal**

Variances may be permitted only under the following conditions:

a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

c. The Board shall not grant a variance unless it finds that:

(1) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(2) The strict application of the terms of this Ordinance would result in undue hardship.

The term "undue hardship" shall mean:

(i) That the land in question cannot yield a reasonable return unless a variance is granted;

(ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;

(iii) That the granting of a variance will not alter the essential character of the locality; and

(iv) That the hardship is not the result of action taken by the applicant or a prior owner.

d. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

### **3. Appeal Procedure**

The appeals procedures under this Ordinance shall be as provided in Section V.C. of the Scarborough Zoning Ordinance. Appeals may be granted only by a majority vote of those members present and voting. Administrative appeals from decisions of the Code Enforcement Officer or Planning Board shall be filed within 30 days of the date of written notification to the applicant of the decision, ruling or order appealed from.

A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

## **H. Enforcement**

### **1. Nuisances**

Any violation of this Ordinance shall be deemed to be a nuisance.

## **2. Code Enforcement Officer**

- a. The Code Enforcement Officer shall enforce the provisions of this Ordinance as provided in Section IV.A of the Scarborough Zoning Ordinance.
- b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. On a biennial basis, beginning in 1992, a summary of this record shall be submitted by March 1 to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

## **3. Legal Actions**

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorize municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health to public health and safety or will result in substantial environmental damage.

## **4. Fines**

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who ~~orders or conducts~~ violates any ~~provision or requirement~~ activity in violation of this Ordinance shall be penalized in accordance with Title 30-A, ~~Maine Revised Statutes Annotated~~ M.R.S.A ~~Sub~~section 4452.

## **Section 17. Definitions**

### **Accessory structure or use:**

A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

### **Agriculture:**

The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

**Aggrieved party:**

An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Aquaculture:**

The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Basal area:**

The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

**Boat Launching Facility:**

A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Campground:**

Any area or tract of land to accommodate one or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

**Canopy:**

The more or less continuous cover formed by tree crowns in a wooded area.

**Coastal wetland:**

All tidal and subtidal lands; ~~all lands below any identifiable debris line left by tidal action~~; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the ~~maximum spring~~ highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Commercial use:**

The use of lands, buildings, or structures, other than a "home occupation", defined below the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

**DBH:**

The diameter of a standing tree measured 4.5 feet from ground level.

**Development:**

A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**Dimensional requirements:**

Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

**Disruption of shoreline integrity:**

The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

**Driveway:**

A vehicular access-way less than five hundred (500) feet in length serving two ~~lots or less~~ single family dwellings or one two-family dwelling, or less.

**Emergency operations:**

Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Essential services:**

The construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a structure:**

An increase in the floor area or volume of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

**Expansion of use:**

The addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

**Family:**

One or more persons occupying a premises and living as a single housekeeping unit.

**Floor area:**

The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

**Forest management activities:**

Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Forested wetland:**

A fresh water wetland dominated by woody vegetation that is 6 meters tall or taller.

**Forest stand:**

A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

**Foundation:**

The supporting substructure of a building or other structure, excluding wooden sills and post supports, including but not limited to including basements, slabs, ~~sills, posts or~~ frostwalls, or other base consisting of concrete, block, brick or similar material.

**Freshwater wetland:**

Freshwater swamps, marshes, bogs and similar areas other than forested wetlands which are:

1. of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
2. inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Functionally water-dependent uses:**

Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

**Great pond:**

Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purpose of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**Ground cover:**

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Harvest area:**

The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

**Height of a structure:**

The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances ~~which~~ that have no floor area.

**Home occupation:**

An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than one person other than family members residing in the home.

**Industrial:**

The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**Institutional:**

A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

**Land management road:**

A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

**Licensed forester:**

A forester licensed under 32 M.R.S.A. Chapter 76.

**Lot area:**

The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

**Marina:**

A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities.

**Market value:**

The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Minimum lot width:**

The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be the side lot lines.

**Mineral exploration:**

Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral extraction:**

Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Multi-unit residential:**

A residential structure containing three (3) or more residential dwelling units.

**Native:**

Indigenous to the local forest.

**Non-conforming condition:**

Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Non-conforming lot:**

A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

**Non-conforming structure:**

A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Non-conforming use:**

Use of buildings, structures, premises, land or parts thereof which is not ~~permitted~~ allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Nonvegetated surfaces:**

The area covered by structures and associated constructed facilities, areas which have been or will be covered by a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas, which have been or will be compacted through design

or use to reduce their permeability. Common impermeable surfaces include roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of water.

**Normal high-water line (non-tidal waters):**

That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. ~~In the case of wetlands adjacent to rivers and great ponds, the normal high water line is the upland edge of the wetland, and not the edge of the open water.~~ Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

**Person:**

An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland:**

**Temporary:**

Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

**Permanent:**

Structure which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Principal structure:**

A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

**Principal use:**

A use other than one which is wholly incidental or accessory to another use on the same premises.

**Public facility:**

Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

**Recent flood plain soils:**

The following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial	Cornish	Charles
Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa

Podunk	Rumney	Saco
Suncook	Sunday	Winooski

**Recreational facility:**

A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle:**

A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Replacement system:**

A system intended to replace: 1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2) any existing overboard wastewater discharge.

**Residential dwelling unit:**

A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period but not recreational rented. Recreational vehicles are not residential dwelling units.

**Residual basal area:**

The sum of the basal area of trees remaining on a harvested site.

**Residual stand:**

A stand of trees remaining in the forest following timber harvesting and related activities.

**Riprap:**

Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

**River:**

A free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

**Road:**

A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

**Salt marsh:**

Areas along of a coastal wetland waters (most often along coastal bays) which that support salt tolerant species, and where at average high tide during the growing season, the soil is regularly

inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

**Salt meadow:**

Areas which of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is really inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three square occurs in fresher areas.

**Service drop:**

Any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service
  - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
  - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback:**

The nearest horizontal distance from the normal high-water line of a water body, or tributary stream, or upland edge of a wetland to the nearest part of a structure, road, parking space or other regulated object or area.

**Shore frontage:**

The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline at normal high water elevation.

**Shoreland zone:**

The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or; river; or saltwater body; within 250 feet, horizontal feet, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet, horizontal distance, of a ~~or~~ freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

**Shoreline:**

The normal high-water line, or upland edge of a fresh water or coastal wetland.

**Skid road or skid trail:**

A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Slash:**

The residue, e.g., treetops and branches, left on the ground after a timber harvest.

**Stream:**

A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland zone.

**Structure:**

Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes.

**Subsurface sewage disposal system:**

Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system. A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 M.R.S.A. Section 414, any surface wastewater disposal system licensed under 38 M.R.S.A. Section 413 Subsection 1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A. Chapter 13, subchapter 1.

**Sustained slope:**

A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Tidal Waters:**

All waters affected by tidal action during the maximum spring tide.

**Timber harvesting:**

The cutting and removal of timber for the primary purpose of selling or processing forest products, trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approve construction. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (O), Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

**Timber harvesting and related activities:**

Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**Tributary stream:**

~~A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined.~~  
Means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

**Upland edge of a wetland:**

The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

**Vegetation:**

All live trees, shrubs, ~~grown cover~~, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ~~1/2~~ 1/2 feet above ground level.

**Vernal Pool:**

A vernal pool is a natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders, and fairy shrimp, as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species.

**Volume of a structure:**

The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**Water body:**

Any great pond, river, or stream ~~or tidal area~~.

**Water crossing:**

Any project extending from one bank to the opposite bank of a river, ~~or~~ stream, tributary stream, or wetland whether under, through, or over the water ~~course~~ wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**Wetland:**

A freshwater or coastal wetland.

**Windfirm:**

The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

**Woody vegetation:**

Live trees or woody, non-herbaceous shrubs.

**~~Wetlands associated with great ponds and rivers:~~**

~~Wetlands contiguous with or adjacent to a great pond or river, and which during normal high water, are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river.~~

Vote: 6 yeas.

**Order No. 09-94. Act on the appointment of Pat Corea to the Senior WOW Program Advisory Board, as recommended by the Appointments Committee at the June 17, 2009, Town Council meeting.** Motion by Councillor Roy, seconded by Councillor Babine, to move approval on the appointment of Pat Corea to the Senior WOW Program Advisory Board, as recommended by the Appointments Committee at the June 17, 2009, Town Council meeting.

Vote: 6 yeas.

Motion by Chairman Wood, seconded by Councillor Babine, to move approval to take up Item 7 only; to adjourn immediately after – all other new business will be placed on the August 19<sup>th</sup> Agenda.

Vote: 6 yeas.

**NEW BUSINESS:**

**Order No. 09-95. Act on the re-appointment of Mark Maroon, William Austin and Robert Vautin, to the Scarborough Economic Development Corporation Board of Trustees.**

**Order No. 09-96. Act to authorize the Town Manager to sign documents authorizing acceptance of \$11,852.00 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].**

**Order No. 09-97. Act on the appointments to the Ad-Hoc Energy Committee, as recommended by the Town Council Chair.**

**Order No. 09-98. Act to accept the following street, pursuant to Title 23, M.R.S.A. §3025 and the requirements of Section 4, of the Scarborough Street Acceptance Ordinance: Peregrine Way.**

**Order No. 09-99. Act to authorize the Town Manager to sign an easement deed on property located 93 King Street - Map U21, Lot 21.**

**Item 6. Committee Reports: Standing Committee Reports and Other Committee Reports.**

**Item 7. Public Comments.**

The following individuals spoke : Judy Shirk and Sue Perrino – both of the Pine Point area.

**Item 8. Town Manager Report.**

**Item 9. Council Member Comments.**

**Item 10. Adjournment.** Motion by Councillor D'Andrea, seconded by Councillor Babine, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 6 yeas.

Meeting adjourned at 12:45 a.m.

Respectfully submitted,

Yolande P. Justice  
Town Clerk