

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

**Item 1. Call to Order.** Chairman Wood called the regular meeting of the Scarborough Town Council to order at 7:00 p.m.

**Item 2. Pledge of Allegiance.**

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

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

**Item 4. General Public Comments.**

- Tom Bennett – potential business owner – noted that he would be interested in opening a Pawn Shop here in Scarborough; however, the town needs to implement an Ordinance regulating Pawn Shops and would like the Council's support when the Pawn Shop Ordinance is presented to the Council.

**Item 5. October 21, 2009 – Regular Meeting.** Motion by Councillor Roy, seconded by Councillor Rancourt, to move approval of the minutes of the October 21, 2009, Town Council meeting, as written.

Vote: 6 Yeas.

**Item 6. Adjustment to the Agenda.** None at this time.

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

**Order No. 09-126, 7:00 p.m. Public hearing on the new request for a Food Handler License for Little Caesars Pizza, located at 200 Gallery Blvd.** Chairman Wood opened the public hearing. As there were no comments either for or against, the hearing closed at 7:07 p.m.

Motion by Councillor Roy, seconded by Councillor Rancourt, to move approval on the new request for a Food Handler License for Little Caesars Pizza, located at 200 Gallery Blvd.

Vote: 6 yeas.

**OLD BUSINESS:**

**Order No. 09-127. Act on the names posted to the various committees/boards at the last Town Council meeting, as recommended by the Appointments Committee.** Motion by Councillor Roy, seconded by Councillor Ahlquist, to move approval on the names posted to the various committees/boards at the last Town Council meeting, as recommended by the Appointments Committee, as follows:

**Housing Alliance:**

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

**Shellfish Conservation Committee:**

Move Sheldon W. Blais from 1<sup>st</sup> Alternate to a full voting member with a term to expire in 2012.

Vote: 6 Yeas.

**NEW BUSINESS:**

**Order No. 09-128. First reading and schedule a public hearing on the proposed amendments to Chapter 416 – the Haigis Parkway Assessment Ordinance.** Thomas J. Hall, Town Manager, gave a brief overview on the proposed amendments to Chapter 416 – the Haigis Parkway Assessment Ordinance.

Motion by Councillor Roy, seconded by Councillor Sullivan, to move approval of the first reading on the proposed amendments to Chapter 416 – the Haigis Parkway Assessment Ordinance, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Authority. This Ordinance is enacted under and pursuant to the provisions of the Charter of the Town of Scarborough, Maine and Chapters 141 and 206 of Title 30-A of the Maine Revised Statutes Annotated, amended and supplemented to date.
2. Revised List of Assessments. After hearing, the Town Council finds that the properties set forth in the Revised List of Assessments (the “Revised List”), attached hereto as Exhibit A and made a part hereof, is a true, complete and correct list of those properties and that the owner(s) (“Owner”) thereof, and the properties listed therein, have received and will continue to receive benefits from the Development Program and the public facilities constructed in the District.

3. Just and Equitable Share. The Town Council further finds that a revised or supplemental assessment for each property described in the Revised List, arrived at through the procedures identified in the “Haigis Parkway Zone Assessment Calculation Procedure”, Exhibit B attached hereto and made a part hereof, is necessary to allocate a just and equitable proportionate share of the costs of the Project to each property within the District.

4. Assessment. There is hereby assessed, against each of the properties described in the Revised List, a revised or supplemental assessment in the amount set forth in the Revised List (the “Revised Assessment”).

5. Payment. Revised Assessments shall be due and payable at the Office of the Treasurer of the Town of Scarborough, Maine thirty (30) days following the effective date of this Ordinance. In cases where property owners have already paid in full the Original Assessment shown on the “List of Properties Assessed in the District” effective as of May 12, 2004, and the Revised Assessments set forth in the Revised List are less, the Town will make a refund. The Owner, if already paying under a Deferred Payment Program, shall continue to pay according to the terms of the payment agreement and may, within thirty (30) days, make application to the Town Manager for consideration and approval of a revised payment schedule and plan for payment of the Revised Assessment according to one of the Deferred Payment Programs, as set forth in Paragraph 6, below.

6. Deferred Payment Programs. Owners who receive increases in the assessment on their property as a result of a Revised Assessment may, within 30 days from the effective date of this revision of the Ordinance, make application to the Town Manager for consideration and approval of a Deferred Payment Program and revised payment schedule in accordance with one of the payment plans below. Revised payment schedules under any Deferred Payment Program for each property shall include: the amount of the Original Assessment; the amount of the Revised Assessment and the difference; a revised payment schedule showing each new installment; and a revised interest schedule consistent with the terms of the particular deferred payment option as follow:

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

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

C. In cases where the Town Manager determines that payment in accordance with Sections 6(A) or 6(B) above would cause an undue financial hardship to the Owner, the Town Manager may approve a deferred payment plan authorizing the

Owner to make reduced payments of the principal balance of the Revised Assessment annually over a period not to exceed six (6) years and payment of the then remaining principal balance of the Revised Assessment in substantially equal annual payments for a period of up to four (4) additional years, together with interest on the unpaid principal balance of the Revised Assessment at the rate of eight percent (8%) per annum; or

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

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

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

The Town Manager shall oversee and approve the terms of all such requested re-apportionments of assessments or installment payments. In arriving at re-apportioned assessments and installments the Town Manager shall discuss the proposal with the owner and then re-apportion the outstanding amount of the Revised Assessment for the original parcel among each newly created parcel or interest. The schedule and timing for payments for any re-apportioned assessments shall remain the same as in the payment schedule established in the

underlying installment payment agreement for the original parcel. The Town Manger's objectives in re-apportioning assessments are to create fair and proportional assessments which are consistent with the expected relative values of the newly created lots and consistent with the interests of the Town in securing the most expedient and complete collection of assessments and outstanding payment installments.

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

7. Collection. In the event that an Owner fails to pay an assessment, installments or interest under a Deferred Payment Program on or before the dates required, the terms and conditions of payment agreements under a Deferred Payment Program, or as otherwise required under this Ordinance, the Town of Scarborough and its officers shall have and may exercise all authority and powers to collect assessments or delinquent payments, interest or its costs under the procedures and legal remedies for the collection of delinquent municipal taxes.

8. Use of Revenues. All revenues collected from assessments made pursuant to this Ordinance shall be deposited into the Town's reserve fund established by the Development Program known as the Sinking Fund Account of the Development Program Fund, and all such revenues shall be used solely for the purposes of the Development Program.

9. Effective Date. This Ordinance shall become effective on the date it is approved by the Scarborough Town Council.

10. Severability. The provisions of this Ordinance are severable. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision or application of this Ordinance and the Ordinance shall be given effect without the invalid provisions or application.

11. Review of Assessments. (Repealed).

**EXHIBIT A  
REVISED LIST OF ASSESSMENTS**

<b>Map/Lot</b>	<b>Property Owners</b>	<b>Assessment</b>
<b>BUSINESS USE</b>		
R39 L1	R. C. Moore, Inc	\$44,400
R39 L1A	Moore Brothers Realty, LLC	\$38,800
R39 L2	Shaws Realty Co.	\$177,100
R40 L11	Richard C. Moore	
R40 L11B	Richard C. Moore	
R40 L11C	Richard C. Moore	\$164,400
R40 L12A	R L R Investments LLC	\$48,300
R40 L12B	Adele C. & Cary N. Mack	\$97,400
R40 L5	Peoples Heritage Savings Bank	
R40 L6	Peoples Heritage Savings Bank	
R40 L7	Peoples Heritage Savings Bank	\$172,200
R40 L8	262 Payne Road, LLC	\$107,100
R40 L9	23 Spring Street, LLC	\$22,300
R40 L11A	Herbert E. & Robert Ginn	\$72,300
R40 L13	Neptune Properties LLC	\$79,100
R40 L14	Glenndonna Inc.	\$410,800
R52 L6	Dongle, LLC	\$204,700
R40 L26	Lee F. Adams Jr.	\$295,100
R40 L27	CJK, Inc	\$162,500
R52 L5	George E. Curlew	\$251,700
R50 L24	Michael D. Scamman	
R50 L24C	Michael D. Scamman	\$282,500
R50 L33	Three Diamond Realty, Inc.	\$140,400
R51 L1A	Three Diamond Realty, Inc.	\$100,000
R50 L34A	Haigis Parkway, LLC	\$544,500
R52 L4	Davric Maine Corp.	\$475,000

<b>NON-CONFORMING, RESIDENTIAL USE</b>		
R40 L3	Erik R. Peterson	\$10,400
R40 L4	Richard & Ellen Nielsen	\$5,400
R40 L15	Sharon Paula Theofrastou	\$6,800
R40 L16	Ralph R. & Annette L. Trempe	\$5,400
R40 L17	Robert & Wilma Reed	\$5,700
R40 L18	Leland & Marilyn Withee	\$5,000
R40 L19	Jerri Lynn MacLean	\$7,200
<b>Total</b>		<b>\$3,936,600</b>

## EXHIBIT B

### HAIGIS PARKWAY ZONE ASSESSMENT CALCULATION PROCEDURE

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#### **AREA ASSESSMENT:**

The total area of the properties receiving sewer was summed.

The total area of properties receiving other utilities was summed.

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

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

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

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

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

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

#### **FRONTAGE ASSESSMENT:**

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

The total frontage of properties receiving other utilities was summed.

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

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

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

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

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

#### **TOTAL FEE:**

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

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

Vote: 6 Yeas.

**Order No. 09-129. Act on the recommendation of the Town Manager to amend the sewer assessment installment payment schedule for The Gateway Square owned by The New England Expedition – Scarborough II, LLC (former GlennDonna, Inc. property, Tax Map R40, Lot 14) to postpone the payment schedule by one year such that the October 15, 2009 installment will be due on October 15, 2010 with the remaining annual installments to be due on October 15 of each year subsequent to 2010 through October 15, 2016.** Thomas J. Hall, Town Manager, gave a brief overview on this recommendation. Mr. Barry Feldman of Felco Inc. spoke on this request and responded to questions from the Town Council.

Motion by Chairman Wood, seconded by Councillor Roy, to move approval of the recommendation of the Town Manager to amend the sewer assessment installment payment schedule for The Gateway Square owned by The New England Expedition – Scarborough II, LLC (former GlennDonna, Inc. property, Tax Map R40, Lot 14) to postpone the payment schedule by one year such that the October 15, 2009 installment will be due on October 15, 2010 with the remaining annual installments to be due on October 15 of each year subsequent to 2010 through October 15, 2016.

Motion by Councillor Roy, seconded by Councillor Ahlquist, to move approval to amend the main motion on the recommendation of the Town Manager to authorize the Manager to amend the Town of Scarborough Haigis Parkway Municipal Development District and Tax Increment Financing District Assessment Payment Agreement and Installment Payment Terms, dated October 20, 2005, for the former GlennDonna, Inc. property, (Tax Map R40, Lot 14 and now known as The Gateway Square, the property and payment obligations now owned and assumed by The New England Expedition – Scarborough II, LLC), recorded in the Cumberland County Registry of Deeds in Book 23429, Page 256, by postponing the payment of principle only in the current and now due payment installment, (interest payments on the current and now outstanding installment to remain due and payable), by one year such that the now due October 15, 2009 principle installment will be due on October 15, 2010 and the remaining six annual installments and interest payments to be each due one year later with the final installment being due October 15, 2016.”

Vote on amendment: 6 Yeas.

Vote on main motion as amended: 6 Yeas.

**Order No. 09-130. Act on the request from the Town Clerk to certify the results of the Municipal Elections held on Tuesday, November 3, 2009.** Motion by Councillor , seconded by Councillor , to move approval on the request from the Town Clerk to certify the results of the Municipal Elections held on Tuesday, November 3, 2009, as follows:

**TOWN COUNCIL – 3 Year Term**

HOGLUND, JR., Michael A.	2,433
HOLBROOK, Jessica L.	3,770*
RANCOURT, Carol S.	4,627*
SULLIVAN, JR., Richard L.	3,354

**BOARD of EDUCATION- 3 Year Term**

PERRY, Jacquelyn A.	4,385*
ROSENBLATT, Annalee Z.	4,035
SHIELDS, James P.	3,203
MITCHELL, Robert C.	4,211*
WISEMAN, Jane M.	4,080*

**SANITARY DISTRICT – 3 Year Term**

RICO, Nicola F.	6,360*
VIOLA, Benedetto	6,435*

**QUESTION 1 – LAND BOND REFERENDUM**

YES – 5,844\*      NO – 2,800

There are approximately 14,694 active voters on our voter registration list. There were 9,110 voters who cast ballots. 2,751 absentee ballots were issued, 217 were not returned; 2,507 actual absentee ballots were cast and 27 were rejected.

Scarborough was selected by the Division of Elections to participate in an Early Voting Pilot Program which ran from Monday, October 26<sup>th</sup> through Monday, November 2<sup>nd</sup>; excluding the weekend. There were an additional 1,988 voters who took advantage of this program.

The combined total of absentees and/or early voting was 4,495; giving us a 31% voter turnout prior to opening the Polls on Election Day. Election Day brought another 31% voter turnout, which brought us to a 62% overall voter turnout.

Newly elected officials will be sworn in at the second meeting following the November 3rd Elections.

\*Asterisk denotes winners.

Vote: 6 Yeas.

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

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

- Councillor Roy gave a brief update on the Ad-Hoc Energy Committee. The Committee is in the process of preparing a report that should come to the Council sometime the beginning of the year. The next meeting has been scheduled for Thursday, November 12<sup>th</sup> at 8:45 a.m. in the Town Manager’s Conference Room
- Councillor Rancourt noted that Mr. Bennett had attended the last Ordinance Committee meeting and that the Committee would be bringing a proposal forward to the Council soon.

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

- He congratulated that voters of Scarborough for getting out to vote – there were over 9,000 voters who cast ballots and thanked the Clerk and staff for their work on the elections.
- He thanked Councillor Sullivan for his service to the community by serving on the Council.
- He noted that the Parks and Land Board will be evaluating the two lots at Higgins Beach that the Town is interested in purchasing along with the two lots located on the corner of Mussey and Payne Road. They will also be evaluating the Tibbetts property.
- He further noted that he has received further information on public transit systems and would, at some point, like to schedule a Council Workshop on this.
- He will be testifying before the Land for Maine Futures Board on the applications for the Pine Point Pier and the Higgins Beach Parking area.

**Item 11. Council Member Comments.**

- Councillor D'Andrea thanked Councillor Sullivan for his service on the Council and congratulated Carol Rancourt and Jessica Holbrook for being elected to the Council. She congratulated Tom Hall on his one year anniversary as Town Manager and then briefly mentioned the website of BuyLocalScarborough.org which is a website that supports locally owned, independent businesses and helps build a sustainable local economy.
- Councillor Roy thanked Councillor Sullivan for his service on the Council and congratulated Carol Rancourt on her re-election and welcomed Jessica Holbrook to the Council. She went on to thank the voters for supporting the land bond question.
- Councillor Rancourt thanked the voters for supporting her by re-electing her for another term. She welcomed Jessica Holbrook being elected to the Council and thanked Richard Sullivan for his service to the community by serving on the Council. She noted that the High School Musical would be this weekend and stated that she would be running for Chair of the Council this upcoming term.
- Councillor Ahlquist thanked the voters for a tremendous turnout. He welcomed Jessica Holbrook for being elected to the Council and congratulated Carol Rancourt for being re-elected to serve another term on the Council. He thanked Richard Sullivan for his service to the Community for his time on the Council. Councillor Ahlquist wished his wife a Happy Anniversary.
- Chairman Wood mentioned that there would be a low cost dental clinic held Friday, November 6<sup>th</sup> for the people in Greater Portland where they will be able to get a cleaning, a filling, or an extraction at no charge. Thirteen area dentist's offices will be holding the first ever "Dentists Who Care For ME" free clinic. For more information on the locations, individuals can log on to the Channel 6 news website. He also thanked the voters for their support on the land bond referendum. He then congratulated Carol Rancourt and Jessica Holbrook for being elected to the Council. He thanked Richard Sullivan for his service on the Council.
- Councillor Sullivan thanked the voters who supported him. He congratulated Carol Rancourt and Jessica Holbrook for being elected to serve on the Council. He has enjoyed his tenure on the Council and was very proud to serve the community in the capacity of Town Councillor.

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

Vote: 6 Yeas.

Meeting adjourned at 8:31 p.m.

Respectfully submitted,

Yolande P. Justice  
Town Clerk