

**MINUTES**  
**SCARBOROUGH TOWN COUNCIL**  
**WEDNESDAY – DECEMBER 2, 2009**  
**REGULAR MEETING – 7:00 P.M.**

**Item 1. Call to Order.** Council Chair Rancourt 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	Judith L. Roy, Vice Chair
Jessica L. Holbrook [Absent]	Shawn A. Babine
Michael J. Wood [Absent]	Karen A. D’Andrea
Carol S. Rancourt, Council Chair	

**Item 4. General Public Comments.**

- Tom Bennett of Spurwink Road and owner of the new gift shop, located at 426 US Route One, thanked the Town Manager and Councillor Ahlquist for their assistance in working with him to get his business open and hoped that the Council would be acting on a Pawn Shop Ordinance in the very near future.

**Item 5. Minutes: November 18, 2009 – Regular Meeting.** Motion by Councillor Roy, seconded by Councillor D’Andrea, to move approval of the minutes of the November 18, 2009, regular Town Council meeting.

Councillor Roy noted on page 1 under public comment – Ms. Shirk also spoke on the Pine Point issue and asked that the new Council to reconsider the action that had been taken; Order No. 09-132 - Councillor Roy was the individual nominate for Vice Chair and on page 14 - Order No. 09-137 - add “It was suggested that residents who reside in the watershed protection area to be members of this group.”

Councillor D’Andrea noted on page 10 - Order No. 09-134, it was recommended that the Conservation Commission review the recommendations being proposed.

Vote: 5 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. 09-139, 7:00 p.m. Public hearing on the new request for a Food Handlers License from Tyson P. Millette, d/b/a Mac’s Deli & Catering, located at 426 U.S. Route One. [Change in ownership]** Council Chair Rancourt opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:04 p.m.

Motion by Councillor Babine, seconded by Councillor Roy, to move approval on the new request for a Food Handlers License from Tyson P. Millette, d/b/a Mac's Deli & Catering, located at 426 U.S. Route One.

Vote: 5 Yeas.

**Order No. 09-140, 7:00 p.m. Public hearing on the new request for a Combined Massage Establishment/Massage Therapist License from Diane L. Provencher, LMT, located at 153 U.S. Route One.** Council Chair Rancourt opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:05 p.m.

Motion by Councillor Roy, seconded by Councillor Babine, to move approval on the new request for a Combined Massage Establishment/Massage Therapist License from Diane L. Provencher, LMT, located at 153 U.S. Route One.

Vote: 5 Yeas.

**OLD BUSINESS:**

**Order No. 09-128. Second reading on the proposed amendments to Chapter 416 – the Haigis Parkway Assessment Ordinance.** Motion by Councillor Roy, seconded by Councillor Babine, to move approval of the second 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	Glennonna Inc.	\$410,800
R52 L6	Dongle, LLC	\$204,700
R40 L26	Lee F. Adams Jr.	\$295,100
R40 L27	CJK, Inc	\$162,500
R52 L5	George E. Curlew	\$251,700
R50 L24	Michael D. Scamman	
R50 L24C	Michael D. Scamman	\$282,500
R50 L33	Three Diamond Realty, Inc.	\$140,400
R51 L1A	Three Diamond Realty, Inc.	\$100,000
R50 L34A	Haigis Parkway, LLC	\$544,500
R52 L4	Davric Maine Corp.	\$475,000
<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.

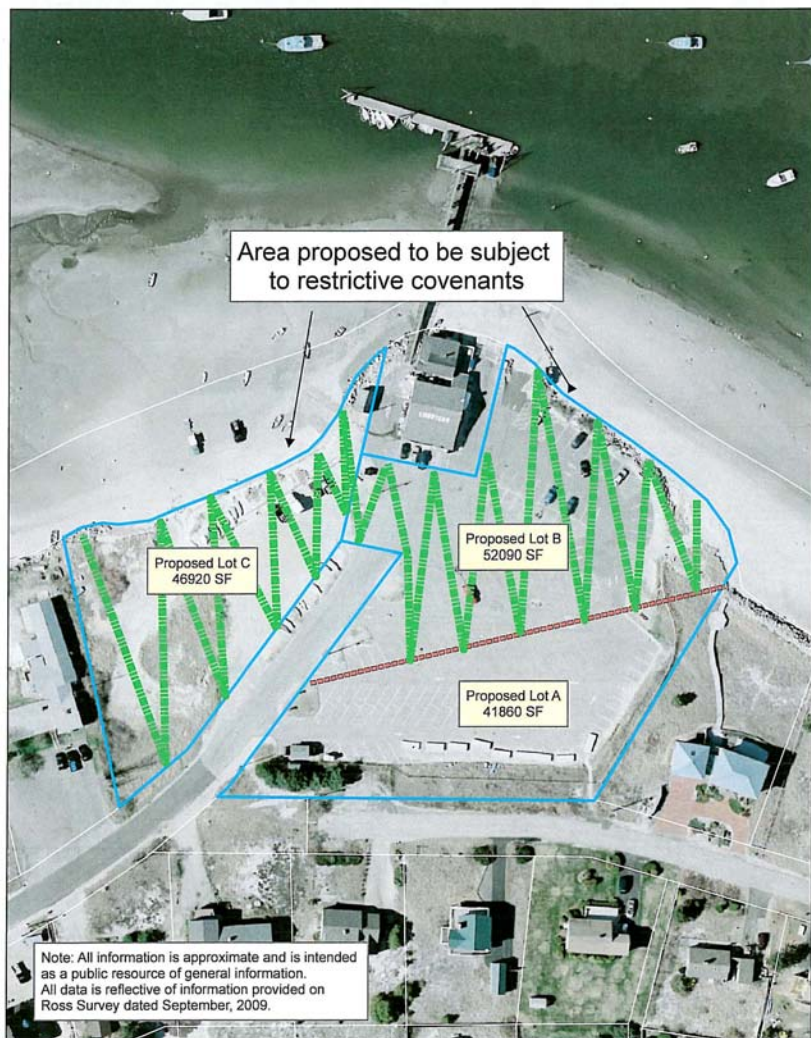
For the existing residential properties, the total assessment fee for each lot is equal to the total area assessment already calculated for each lot.

Vote: 5 Yeas.

**NEW BUSINESS:**

**Order No. 09-141. Act to authorize the Town Manager to apply under the Working Waterfront Access Pilot Program and to accept a grant in the amount of Two Hundred Fifty Two Thousand and Five Hundred Dollars (\$252,500) from the Land For Maine Future Board and to execute such documents and take such steps as will be necessary to adopt a Working Waterfront Covenant at Pine Point on land located at 93 and 94 King Street, and more particularly described as Tax Map U021, Lot 20 and a portion of Tax Map U021, Lot 21. Thomas J. Hall, Town Manager, gave a brief overview on the proposed recommendations.**

Motion by Councillor Babine, seconded by Councillor Roy, to move approval to authorize the Town Manager to apply under the Working Waterfront Access Pilot Program and to accept a grant in the amount of Two Hundred Fifty Two Thousand and Five Hundred Dollars (\$252,500) from the Land For Maine Future Board and to execute such documents and take such steps as will be necessary to adopt a Working Waterfront Covenant at Pine Point on land located at 93 and 94 King Street, and more particularly described as Tax Map U021, Lot 20 and a portion of Tax Map U021, Lot 21.



Vote: 5 Yeas.

**Order No. 09-142. Act to authorize the Town Manager to sign a *Waiver of Foreclosure* if taxes are not paid on properties located at 28 Matthews Way – Map T003, Lot 028 and at 407 Topaz Drive – Map T002, Lot 407, as requested by the Deputy Tax Collector.** Thomas J. Hall, Town Manager, noted that Council action was no longer required in that the property taxes on both properties have been paid in full.

**Order No. 09-143. Act on Council appointments, as recommended by the Council Chair.** Motion by Councillor Roy, seconded by Councillor Babine, to move approval on the Council appointments, as follows:

Standing Committees

Appointments Committee: Councillors Babine\*, Ahlquist and Holbrook

Fair Hearing: Councillors Rancourt\*, Ahlquist and D'Andrea

Finance Committee: Councillors Roy\*, Babine and D'Andrea

Ordinance Committee: Councillors D'Andrea\*, Roy and Wood

Rules and Policies Committee: Councillors Wood\*, Ahlquist and Holbrook

Council Liaisons:

ADA Advisory Committee: Councillor Ahlquist

Ad Hoc Energy Committee: Councillor Roy

Board of Education: Council Chair Rancourt

Charter Review Committee: Councillor Holbrook

Council of Governments, General Assembly: Councillors Ahlquist and Babine

Council of Governments, Executive Committee: Councillor Ahlquist

Comprehensive Plan Implementation Committee: Councillor Wood

Conservation Commission: Councillor D'Andrea

ecomaine: Councillor Ahlquist and Mike Shaw, Public Works Director (Terms expire 2010)

Fire Commission: Councillor Babine

Firing Range: Councillor Holbrook

Historical Society: Council Chair Rancourt

Housing Alliance: Councillor Holbrook

Library: Councillor Wood

Planning Board: Councillor Wood

School Board: Council Chair Rancourt

SEDCO: Councillor D'Andrea

Senior Liaison: Councillor Roy

Shellfish Committee: Councillor Babine

Zoning Board of Appeals: Council Chair Rancourt

Vote: 5 Yeas.

**Item 8. Non Action Items.** Not at this time.

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

- Councillor Roy noted that the Ad-Hoc Energy Committee will be meeting Thursday, December 10<sup>th</sup> at 8:45 a.m. in the Town Manager's Conference Room.
- Councillor D'Andrea noted that the SEDCO Board would present its Vision Report at the next Town Council meeting on Wednesday, December 16<sup>th</sup>.

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

- Concerns about the current budget and the School Department's reduction in State aid.
- A Financial Report is being prepared through to the end of November and would soon be available to the Council.
- Dunstan Traffic presentation to PACTS – went very well – we still have the 40% commitment from PACTS of the total project costs for the improvements to the Dunstan area. Mr. Hall will continue to keep the Council informed on this item.
- The Committee/Boards Procedures Manual has been handed out to all Council members for review – the goal is to have this go before the Council on December 16<sup>th</sup> for approval.
- Presented the concept plan developed by the Pine Point Task Force for the town owned property located at Pine Point [part of the land swap]. There will be 3 public meetings; 2 at the fire barn at Pine Point and 1 at Town Hall.

**Item 11. Council Member Comments.**

- Councillor D'Andrea noted that the Conservation Commission will be meeting with representatives from the State to review the Vernal Pool Survey. She went on to note that the Buy Local members are now at 76 and for further information, please visit the website: [buylocalscarborough.org](http://buylocalscarborough.org)
- Councillor Roy commented on the proposed Committees/Boards Manual; the Ordinance Committee meeting is tentatively scheduled for Tuesday, December 29<sup>th</sup> at 4:30 p.m.; she supports the Town Manager's concept plan and hoped that members of the public would attend the public meetings when they are scheduled; finally, she noted that Finance Committee will have a tough budget year and encouraged members of the public who might have cost saving ideas to bring them forward.
- Councillor Babine noted the email from the Council Chair with regards to possible meeting and he would be available any time over the next month; he hoped that the Town Manager and Council Chair will be working the School Department in regards to the 1.3 million shortfall and asked that there be no new expenditures or spending to continue until this issue has been resolved.
- Councillor Ahlquist noted that he would like to see the Vernal Pool Report as soon as it is available. With regards to the concept plan proposed for the Pine Point area he felt that it was a great idea and liked the fact that there would be 3 public meetings and went on to thank the Town Manager for his work with PACTS.
- Council Chair Rancourt also noted that the proposed manual for committees/boards had been a Council Goal and looks forward to comments from fellow Councillors. There will be a rabies clinic held on Thursday, December 3, 2009, at the Middle School Cafeteria from 6:00 to 7:30 p.m. The tree lighting ceremony will be held on Sunday, December 6<sup>th</sup> here at the Municipal Center beginning at 4:00 p.m. She sent condolences to the family of Mike Libby who recently passed away.

**Item 12. Adjournment.** Motion by Councillor Babine, seconded by Councillor Roy, to move approval to adjourn the regular Town Council meeting.

Vote: 5 yeas.

Meeting adjourned at 7:40 p.m.

Respectfully submitted: Yolande P. Justice - Town Clerk