

MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2005
REGULAR MEETING – 7:30 P.M.

Item 1. Call to Order. Chairman Ross called the regular meeting of the Scarborough Town Council to order at 7:30 p.m.

Item 2. Pledge of Allegiance.

Item 3. Roll Call. Roll was called by Marcia McGinnis, Deputy Town Clerk. Ronald W. Owens, Town Manager, was also present.

Jeffrey A. Messer	Carol S. Rancourt
Sylvia J. Most	Shawn A. Babine, Vice-Chair
Patrick J. O'Reilly	Robert E. Patch (Absent)
Steve N. Ross, Chair	

Item 4. Minutes: December 7, 2005. Motion by Councillor Messer, seconded by Councillor Babine, to move approval of the December 7, 2005.

Vote: 6 yeas.

At this point Chairman Ross presented a plaque to Councillor Messer in appreciation for his leadership as the Scarborough Town Council Chair for the year 2005.

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

Order No. 05-151, 7:30 p.m. Public hearing on the renewal request for a liquor license from Evangelos Roumeliotis, d/b/a Van Reeo, Inc. (PizzaTime/Dimitris Restaurant), located at 185 U.S. Route One. [Tabled from December 7, 2005] Chairman Ross opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:30 p.m.

Motion by Councillor O'Reilly, seconded by Councillor Most, to move approval of the renewal request for a liquor license from Evangelos Roumeliotis, d/b/a Van Reeo, Inc. (Pizza Time/Dimitris Restaurant), located at 185 U.S. Route One.

Motion by Councillor O'Reilly, seconded by Councillor Babine, to amend the approval with the condition that on any future renewal on this license they be in compliance with the approved site plan prior to November 1, 2006, per 28-A M.R.S.A., Section 653(2).

Vote on amendment: 6 yeas.

Vote on main motion as amended: 6 yeas.

Order No. 05-159, 7:30 p.m. Public hearing on the following renewal applications for Manufactured Housing Communities: (1) Crystal Springs Manufactured Housing Community (David & Donna Alexander), U.S. Route 22; (2) Pinecrest Manufactured Housing Community (Theresa Desfosses), 126 U.S. Route One; (3) Hillcrest Manufactured Housing Community (Theresa Desfosses), 126 U.S. Route One. Chairman Ross opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:40 p.m.

Motion by Councillor O'Reilly, seconded by Councillor Babine, to move approval to divide the question by splitting Item No. 1 (Crystal Springs Manufactured Housing Community) from Items No. 2 and No. 3 (Pinecrest Manufactured Housing Community and Hillcrest Manufactured Housing Community).

Vote to divide: 6 yeas.

Motion by Councillor Messer, seconded by Councillor Babine, to table the Crystal Springs Manufactured Housing Community application as recommended by the Town Manager.

Vote to table: 6 yeas.

Motion by Councillor Messer, seconded by Councillor O'Reilly, to move approval of the applications of Pinecrest Manufactured Housing Community and Hillcrest Manufactured Housing Community.

Vote: 6 yeas.

Resolution 05-18. Recognition of the Scarborough High School Boys Soccer Team. Motion by Councillor Messer, seconded by Councillor Babine, to move approval of Resolution 05-18, Recognition of the Scarborough High School Boys Soccer Team, as follows:

RESOLUTION 05-18

SCARBOROUGH HIGH SCHOOL BOYS SOCCER TEAM

BE IT RESOLVED by the Council of the Town of Scarborough, Maine, in Town Council assembled, that,

WHEREAS, the Scarborough High School Boys Soccer Team did invest many hours of training in preparation for the 2005 Western Maine Regional Championship and the State of Maine Class A Championship; and,

WHEREAS, the Scarborough High School Boys Soccer Team did compete and win the 2005 Western Maine Regional Championship and the State of Maine Class A Championship.

NOW, THEREFORE, BE IT RESOLVED, by the Scarborough Town Council, in Town Council assembled, that the following members of the Scarborough High School Boys Soccer Team, their Coach Assistant and Managers are hereby recognized for the great honor they have brought to their Team and the Town of Scarborough. The Scarborough Town Council is proud of their efforts and hard work.

Members: Freshmen – Adam Blanchard and Nicholas Broadhurst; Sophomores – Nathaniel Gove, Joseph Kennedy, Christopher Kipp, and Craig Slavin; Juniors – Micah Abrams, Michael Hathaway, Edward Jones, Andrew Kirstein, Philip Lambert, Brent Mayo, Jason Philbrick, Cody Powers, Jeffrey Soules, Tyler Tait, and Brian York; Seniors – Dana Bennett, Tyler Carr, Chad Decker, Michael Keenan, Brian Mills, Kevin Penley, Derek Poulin, William Sabo, Pierre Soubrier, Christopher Tyson, and Brian Van Dam.

Head Coach: Mark Diaz
Assistant Coach: David Wakem
Managers: Calvin Do and Andrew Beety
Athletic Trainer: Neil Carroll

Signed and dated this the 21st day of December 2005, by the Scarborough Town Council and Town Manager.

Vote: 6 yeas.

Resolution 05-19. Presentation by Councillor Babine regarding “Facts About County Government in the United States” with a resolution in support of expanding the number of

Cumberland County Commissioners. Councillor Babine gave a PowerPoint presentation regarding County Government in the United States.

- Chris Barstow, State Representative and Chair of the Cumberland County Redistricting Committee, spoke in favor of this resolution.
- Richard Feeney, County Commissioner for District 2, also spoke in favor of this resolution.

Motion by Councillor Babine, seconded by Councillor Messer, to move approval of Resolution 05-19 in support of expanding the number of Cumberland County Commissioners, as follows:

RESOLUTION 05-19

SUPPORT THE EXPANSION OF COUNTY COMMISSIONERS

WHEREAS, Cumberland County, incorporated in 1760, is the most populous county in Maine with nearly 265,612 (265 thousand) persons; and,

WHEREAS, we recognize the historical connection that York County is the predecessor County to Cumberland, and that Cumberland County's population is now 37% larger than that of York County and when comparing land-size is nearly 20% larger; and,

WHEREAS, the Cumberland County Board of Commissioners provides legislative and executive leadership of the County; and,

WHEREAS, the number of members of the County Board of Commissioners is limited to three; and,

WHEREAS, this number is the same today as it was in 1790 when the population was 25,563; and,

WHEREAS, Cumberland County is the 106th largest county in the United States of America, and that it now represents a population greater than ninety-six percent that of all other counties in the United States of America; and,

WHEREAS, it is now necessary to expand the number of Commissioners to better serve the people, to provide more representative democracy, and to enable greater diversity in the election of the Commissioners; and,

WHEREAS, the Cumberland County Redistricting Committee has recommended that the number of Commissioners increase the representation to no more than seven Commissioners; and,

NOW, THEREFORE, BE IT RESOLVED, that the Scarborough Town Council endorses and supports legislative, county and municipal initiatives that expands the number of County Commissioners.

Signed and dated this the 21st day of December, 2005, on behalf of the Scarborough Town Council and Town Manager of Scarborough, Maine. Signed by Steve N. Ross, Council Chair, and attested by Marcia Foster McGinnis, Deputy Town Clerk.

Councillor Babine stated that the Cumberland County Commissioners funded a four-page survey (and overview of county government) that is available in each of the town clerks' offices in the county. These are being sent to the municipal officers for their input, with the remaining surveys to be submitted to municipal subcommittees.

Vote: 6 yeas.

OLD BUSINESS:

Order No. 05-139. Second reading on a new proposed ordinance, Chapter 613 - Emergency Management Ordinance.” [Tabled from December 7, 2005] Motion by Councillor Messer, seconded by Councillor O’Reilly, to move approval of the second reading on a new proposed ordinance, Chapter 613 - Emergency Management Ordinance.

Vote: 6 yeas.

NEW BUSINESS:

Order No. 05-160. First reading and schedule a public hearing on the proposed amendments to Chapter 405, the Zoning Ordinance, Section VII, Conservation Subdivision Design. Motion by Chairman Ross, seconded by Councillor Most, to move approval to divide the question into two parts. The first part is adoption of the new Section VIIA (Conservation Subdivision Design – Flexible Development Standards for Lower Density Residential Districts) and the second part will be the subsequent amendments necessary if Section VIIA is adopted.

Vote to divide: 6 yeas.

Motion by Chairman Ross, seconded by Councillor Babine, to move approval of the first reading on the proposed amendments to Chapter 405, the Zoning Ordinance, to adopt the proposed Section VIIA, Conservation Subdivision Design, and schedule a public hearing for Wednesday, January 18, 2006, after Planning Board review.

Councillor Most noted that there is a typographical error under F(2) (Conservation of Open Space) – 2540% should be 40%.

Vote: 6 yeas.

Motion by Councillor O’Reilly, seconded by Councillor Rancourt, to move approval of the subsequent changes necessary to Chapter 405, Zoning Ordinance, upon adoption of the new Section VIIA (Conservation Subdivision Design – Flexible Development Standards for Lower Density Residential Districts).

Order as approved:

Section VIIA. CONSERVATION SUBDIVISION DESIGN - FLEXIBLE DEVELOPMENT STANDARDS FOR LOWER DENSITY RESIDENTIAL DISTRICTS.

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A. PURPOSE

Conservation subdivisions are intended to conserve and protect the town’s freshwater wetlands, watercourses, farmlands, open space and natural features, while enabling more flexibility for residential developments to design around these natural features and resources. Conservation subdivisions allow the same net residential density on a given parcel as a conventional subdivision, but the use of alternative space and bulk requirements enable residential lots and dwellings to be clustered away from the natural or agricultural resources within a development. Conservation subdivision designs present many public benefits including: the conservation of wetlands; the avoidance of wetland impacts; the protection of watercourses and riparian corridors; the conservation of wildlife habitat; the conservation of productive agricultural uses, activities and soils; and the conservation of open space and forestlands for neighborhood use and recreation. Conservation subdivision designs also offer fiscal and maintenance benefits to the landowner, developer and town government through clustered development that enables shorter road lengths, less infrastructure, and less impact to the landscape. Conservation subdivision design shall be required to avoid and conserve Scarborough’s freshwater

wetlands and shall be encouraged to conserve Scarborough's forestlands, wildlife habitat, farms, agriculture and rural character.

B. APPLICABILITY

The requirements for, and exercise of, conservation subdivision design is applicable to residential development within Conservation subdivisions are allowed in only the Town's RFM, RF and R-2 Zoning Districts, subject to the requirements of this Section VIIA. A conservation subdivision within a R-2 Zoning District must be served by sewer.

1. Required conservation subdivisions. Conservation subdivision design shall be is required by the Planning Board in the RFM, RF and R-2 Districts when:

- a. A subdivision The land to be subdivided contains one acre or more of wetlands. ← --- Formatted: Bullets and Numbering
- b. Twenty percent (20%) or more of the land area within a subdivision to be subdivided is wetlands. ← --- Formatted: Bullets and Numbering
- c. Twenty percent (20%) or more of the land area within a subdivision to be subdivided is within the Stream Protection District, Shoreland Overlay District, or combination thereof Shoreland Zone under the Town of Scarborough Shoreland Zoning Ordinance. ← --- Formatted: Bullets and Numbering
- d. A subdivision would will alter (through lot configurations and road, driveway and utility crossings) 4,300 square feet or more of wetland if designed and developed in a conventional layout. ← --- Formatted: Bullets and Numbering

2. Elective conservation subdivisions. Where not required under Section VIIA.B.1. above, Conservation conservation subdivision design may be permitted by the Planning Board in the RFM, RF and R-2 Districts in order to:

- a. Avoid, buffer and conserve wetlands, watercourses, water bodies, and Stream Protection and Shoreland Overlay shoreland zoned areas less in area and percentages than the thresholds requiring conservation subdivision design under Section VIIA.B.1. ← --- Formatted: Bullets and Numbering
- b. Conserve agricultural fields, farming activities, forestlands, meadows, wildlife corridors, high value plant and animal habitat areas, or other natural areas, while accommodating residential development through flexible design. ← --- Formatted: Bullets and Numbering
- c. Establish open space to be used for active and passive recreational purposes that can compliment complement and serve the residences within a conservation subdivision. ← --- Formatted: Bullets and Numbering

C. PERMITTED USES & SPECIAL EXCEPTIONS

The Permitted Uses and Special Exceptions within a conservation subdivision shall be the same as those allowed within the zoning district in which the subdivision is approved with the following exceptions:

- 1. General purpose farming on single-family house lots less than 80,000 sq. ft. in size in the RF and RFM zoning districts shall require a special exception approval from the Board of Appeals. ← --- Formatted: Bullets and Numbering

D. DENSITY DETERMINATION

The maximum number of dwelling units permitted within the conservation subdivision shall be determined by the maximum net residential density allowed in the zoning district in which the conservation subdivision is located, and as calculated in accordance with the definition of net residential acreage. To demonstrate the number of dwelling units possible, an applicant shall submit a sketch or concept level conventional preliminary subdivision plan of land showing a lot layout complying with the space and bulk regulations of the applicable zoning district, the net residential density calculation, an upland area on each lot capable of sufficiently accommodating a building

envelope and providing for drinking water and wastewater provisions disposal, and a street layout in accordance with the Street Acceptance Ordinance of the Town of Scarborough.

E. SPACE AND BULK REGULATIONS

Notwithstanding other provisions of this Ordinance relating to space and bulk, the Planning Board, in reviewing and approving a proposed conservation subdivision, shall apply the following space and bulk regulations.

1. RF & RFM Districts

<u>Maximum net residential density</u>	<u>1 dwelling unit per net residential 2 acres</u>
<u>Minimum lot area</u>	<u>30,000 sq. ft.</u>
<u>Minimum street frontage</u>	<u>100 feet</u>
<u>Minimum front yard, all buildings</u>	<u>25 feet</u>
<u>Minimum rear and side yards, all buildings</u>	<u>15 feet</u>
<u>Maximum building height</u>	<u>(See Section IX,A,15)</u>
<u>Maximum building coverage</u>	<u>25%</u>

2. R2 Districts served by Sewer

<u>Maximum net residential density</u>	<u>2 dwelling units per net residential acre</u>
<u>Minimum lot area</u>	<u>7,500 sq. ft.</u>
<u>Minimum street frontage</u>	<u>75 feet</u>
<u>Minimum front yard, all buildings</u>	<u>15 feet</u>
<u>Minimum rear and side yards, all buildings</u> <i>*Buildings higher than 30 feet shall have side and rear yards not less than 50% of building height.</i>	<u>15 feet*</u>
<u>Maximum building height</u>	<u>(See Section IX,A,15)</u>
<u>Maximum building coverage</u>	<u>35%</u>

3. No building lot shall include land unsuitable for development in its natural state due to topographical, drainage, or subsoil conditions, or environmental sensitivities such as wetlands, water bodies, coastal dunes, tidal marsh and other natural features as outlined in paragraphs 2, 3, 54, and 65 of the definition for Net Residential Acreage under Section VI. of this ordinance. One of the primary purposes of this section is to conserve these natural features in contiguous tracts of open space. The Planning Board may relax this requirement if such relaxation helps to fulfill the intent of this Section VIIA and provided that no such land unsuitable for development shall be counted toward meeting the minimum lot size requirement of Section VIIA.E.1 and Section VIIA.E.2 above.

43. Building lots shall be grouped in clusters of approximately three to five lots, and within each cluster the lots may be clustered in groupings of three to five lots or may all be clustered in one contiguous area depending on the natural characteristics of the land, the location and size of upland areas, and the function and values of the open space shall be contiguous. The Planning Board may relax this requirement if such a relaxation helps to fulfill the intent of this ordinance Section VIIA. The minimum width of open space between these any clusters of building lots shall be 50 feet. This minimum width shall be measured between the building lots' side property lines and is intended to provide separation between clusters of building lots along a road right-of-way. The size and dimensions of the larger, contiguous open space areas shall be designed in accordance with the applicable performance standards in Section VII.F. below.

54. The minimum lot area permitted in the RFM and RF Districts shall be 30,000 sq. ft. as per subsection Section A. VIIA.E.1 above, except where a greater lot area minimum may be required in order to meet the Town Plumbing Ordinance and the Maine State Plumbing Code. Lot size determinations shall be made prior to preliminary plan approval.

E. CONSERVATION OF OPEN SPACE

The open space within a conservation subdivision, which may include freshwater wetlands, forested wetlands, saltwater marshlands, farmlands, fields, forestlands and recreation areas, shall be designed in accordance with the following performance standards:

1. Within conservation subdivisions that are required pursuant to Section VIIA.B.1.a. thru d., at least 50% of a subdivision's total land area shall be open space. The open space areas shall be contiguous areas that encompass and buffer the wetlands, watercourses, water bodies and other natural features within the subdivision. These open space areas shall be at least one acre in size and shallIn order to be counted toward the 50% requirement, an open space area must be at least one acre in size and include a minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary. The open space areas shall be connected and contiguous, consistent with the connectivity and network of the wetlands, watercourses, water bodies and other natural features within the subdivision. Building lots shall be designed on the accessible and contiguous upland areas in clusters according to Section VIIA.E.34. to prevent fragmentation of the open space tracts and to lessen road lengths, infrastructure needs and wetland or stream crossings. The Planning Board may permit open space parcels that are not contiguous and are less than one acre in size, as per Section VIIA.G., if the intent and purpose of this Section VIIA is fulfilled.

2. Within conservation subdivisions that are exercised elected pursuant to Section VIIA.B.2.a., at least 2540% of a subdivision's total land area shall be open space. The open space areas shall be contiguous areas that encompass and buffer the wetlands, watercourses, water bodies and other natural features within the subdivision. These open space areas shall include a minimum wetland buffer of twenty-five (25) feet, but may be less than one acre in size depending on the size and configuration of wetlands or other natural features. The open space areas shall be connected and contiguous, consistent with the connectivity and network of the wetlands, watercourses, water bodies and other natural features within the subdivision. Building lots shall be designed on the accessible and contiguous upland areas in clusters according to Section VIIA.E.34. to prevent fragmentation of the open space tracts and to lessen road lengths, infrastructure needs and wetland or stream crossings. The Planning Board may permit open space parcels that are not contiguous, as per Section VIIA.G., if the intent and purpose of this section is fulfilled.

3. Within conservation subdivisions that are exercised elected pursuant to Section VIIA.B.2.b. and or c., at least 40% of a subdivision's total land area shall be open space. The open space areas shall encompass and buffer the agricultural fields, farming activities, forest lands, wildlife corridors and habitat areas, or recreation areas the conservation subdivision is intended to preserve or establish. The open space areas shall be connected and contiguous, shall be at least one acre in size, and shall connect to open space lands on adjacent properties to the extent possibleIn order to be counted toward the 40% minimum requirement, the open space areas shall be connected and contiguous and shall each be at least one acre in size. To the extent possible, open spaces shall connect to open space lands existing or proposed on adjacent properties. The open space areas within conservation subdivisions shall also be consistent with the performance standards that apply to the type and function of the open space.

4. Open space lands that are conserved to be used and maintained for agricultural activities shall meet the following standards:

a. The open space land(s) intended for agricultural activity shall not be intermingled with a cluster(s) of residential lots within a conservation subdivision, but rather shall be designed as larger, contiguous tracts of land be segregated from the building lots within the conservation subdivision and shall be appropriate in dimensions and area to enable the agricultural activitiesy to occur at a level deemed appropriate by the Planning Board. For example, agricultural fields and activities should be designated along a road at the entrance

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to a subdivision, within a central common between clusters of residential lots, or at the rear of subdivision behind a cluster of residential lots, as opposed to designating agricultural activities on smaller open space strips between residential lots.

b. The specific agricultural activity shall require Planning Board approval. When determining the appropriateness of an agricultural activity within a conservation subdivision the Planning Board shall consider the noise, dust, odors, and other impacts that may result from the proposed agricultural activity. The Planning Board may require specific buffering, hours of operation and seasons of operation, and may restrict the type and intensity of agricultural use or activity based on the above considerations. Any conditions or restrictions imposed by the Planning Board shall be consistent with best management practices as determined by the Maine Department of Agriculture, Food and Rural Resources.

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c. No access to the agricultural use by vehicles, equipment or livestock associated with the agricultural activity shall be planned or allowed over residential lots as part of the conservation subdivision. Separate access to the agricultural use for operational purposes shall be required.

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d. The size and location of any agricultural building(s) associated with the agricultural use of the open space shall be approved by the Planning Board.

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e. The open space lands may be permanently conveyed to a corporation or trust owned or to be owned jointly by the owners of the residential lots within the subdivision or to a recognized nonprofit conservation group, a land trust or the Town as approved by the Planning Board. Alternatively, open space land preserved for agricultural activity may be held in private ownership separate from the ownership of the residential lots within the subdivision, provided that all the agricultural open space within the subdivision is held in the same ownership. A permanent deed restriction prohibiting further use and development of the open space parcel(s) beyond the specified agricultural use(s) and building(s) shall be required. Allowance for modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.

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5. Open space lands that are conserved as wetlands, forestlands, meadows and other natural areas shall meet the following standards:

a. Conservation subdivisions utilized to preserve wetlands, forestlands, meadows, wildlife corridors, wildlife habitats and other natural features shall be designed with the open space lands encompassing the most significant wildlife areas, mature forestlands or natural features within the subdivision. The open space lands shall be as large and contiguous as possible to provide the highest wildlife habitat and passive recreation values possible.

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b. Open space lands may include a trail system for walking, hiking, biking or similar activities. This trail system shall be included on the subdivision plan, including a cross-section and limit of clearing, and should link with adjacent trails if possible.

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c. The open space lands shall be permanently conveyed to a corporation or trust owned or to be owned jointly by the owners of the residential lots within the conservation subdivision for only open space and recreational purposes, as specified above and as approved by the Planning Board, and shall not be further subdivided, used for building purposes or used for other recreational activities. A permanent deed restriction to this affect effect shall be required. Any allowance for modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.

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d. As an alternative to Section VIIA.F.5.c., the open space lands may be preserved as such by being conveyed to a recognized non-profit conservation group, land trust or the Town as

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approved by the Planning Board. This conveyance shall also be accompanied by a permanent deed restriction limiting the use of the land to the specific open space and recreational purposes approved by the Planning Board. Any allowance for modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.

6. Open space lands designed to accommodate passive and active recreational facilities or amenities shall meet the following standards:

a. Active and passive recreational areas shall not be commercial facilities, but rather shall be areas for use by the residents of the conservation subdivision, such as neighborhood commons, gardens, picnic areas, playing fields, playgrounds, courts, bikeways or a combination thereof.

b. Recreation areas shall be designed and located in a manner that is accessible to all of the residential dwellings in the subdivision. The open space and recreation areas may include sidewalks, footpaths, trails, driveways and parking areas to facilitate accessibility. Such amenities and infrastructure shall be reviewed and approved by the Planning Board.

c. The size, location and impervious area of any recreational facility or amenity shall be reviewed and approved by the Planning Board. The Planning Board may consider stormwater runoff, lighting, proximity to residential dwellings, buffering, traffic impacts, compatibility with the residential development, and similar criteria factors in their review.

d. Recreation areas shall be permanently conveyed to a corporation or trust owned or to be owned jointly by the owners of the residential lots within the conservation subdivision for only open space and recreational purposes, as specified above and as approved by the Planning Board, and shall not be further subdivided, used for building purposes or used for other recreational activities. A permanent deed restriction to this affect effect shall be required. Any allowance for modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.

e. As an alternative to Section VIIA.F.6.a. and d., the recreation areas may be conveyed to the Town and may be open to use by the entire community if specifically approved by the Planning Board and agreed to by the Town Council. If open to community use, the recreation areas shall be segregated from the building lots within the conservation subdivision and shall be sited in a location that is easily accessible to the public with minimal traffic impacts to the residential component of the conservation subdivision; shall provide adequate visitor parking based on the facility's recreation area's size and intended uses; and shall include buffers to the residential lots within the conservation subdivision to separate public and private space.

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7. Open space lands, required pursuant to Section VIIA.B.1., may be designed to conserve wetlands and other natural resources, while also accommodating agricultural or recreational uses and activities. The Planning Board shall have the flexibility to allow a combination of open space functions so long as these functions and uses are in conformance with all of the above performance standards in Section VIIA.F.1. through 6.

G. WETLAND AVOIDANCE AND IMPACTS

As stated in Section VIIA.A. and F., one of the primary purposes of conservation subdivision design is to avoid wetland fills and alterations and to buffer wetlands from development and impacts. Therefore, wetlands within a conservation subdivision shall not be used, filled or altered, except as follows:

1. Where no practical alternative exists, the Planning Board may allow the crossing of wetlands for roads, driveways or utilities to provide access to, or use of, an upland area within a subdivision. To

approve this crossing the Planning Board must find that the wetland impact is minimized, that the upland area is consistent with the net residential acreage, and that all other standards of this ordinance are met.

2. Where no practical alternative exists, the Planning Board may allow the construction of footbridges, trails and docks within wetlands to provide communal access to the open space lands within a conservation subdivision. The footbridges, docks or similar structures shall be constructed on posts, pilings, or other structural supports to maintain the unobstructed flow of water and wetland connectivity.

3. The Planning Board may allow the restoration or enhancement of a previously altered, disturbed or degraded wetland to improve the functions and values of the wetland area. This allowance shall involve a restoration or enhancement program consisting of the wetland area subject to the program, the activities necessary for restoration or enhancement, a planting schedule and other necessary material as determined by the Planning Board.

4. The Planning Board may allow a wetland to be used for agricultural purposes in accordance with Section VIIA.F.4. if the agricultural use is in existence within the wetland area at the time of subdivision. Any agricultural use shall be in accordance with Section VIIA.15. M. of the Town of Scarborough Shoreland Zoning Ordinance.

H. RELATIONSHIP TO OTHER ORDINANCE PROVISIONS

1. When a conservation subdivision is required or elected, the provisions of this Section VIIA shall apply in place of the provisions of Section VII.

2. This Section VIIA does not alter or supersede any requirement of the Scarborough Shoreland Zoning Ordinance for any portion of a conservation subdivision located within the Shoreland Zone.

AMENDMENT TO SCARBOROUGH ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the Zoning Ordinance of the Town of Scarborough, Maine is amended as follows:

Section VII. FLEXIBLE DEVELOPMENT STANDARDS FOR HIGHER DENSITY RESIDENTIAL DISTRICTS

A. SPECIAL PROVISIONS

In all higher density residential districts (R3, R4, R4A, TND & RPO) the following special provisions may apply, subject to the conditions set forth in this section. This section is intended to enable the developer of subdivisions and residential developments electing to use these provisions, and to require all developers of multiplex housing developments, to design projects which minimize environmental impacts, establish public and open spaces, integrate pedestrian ways and amenities, and demonstrate creativity and imagination in the design, location and orientation of housing types as well as the streets and ways that serve them. This section is intended to enable the creation of ~~healthful, efficient, safe and aesthetically pleasing residential areas.~~

B. PERFORMANCE STANDARDS

Notwithstanding other provisions of this Ordinance relating to space and bulk, the Planning Board in reviewing and approving proposed higher density residential subdivisions and developments located in the Town of Scarborough, may modify said provisions related to space and bulk in order to permit innovative approaches to housing, neighborhood and environmental design in accordance with the following standards. This shall not be construed as granting Variances to relieve hardship.

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1. The purpose and intent of this Zoning Ordinance shall be upheld.
2. There shall be compliance with all State and local codes and ordinances.
3. There shall be no approval of any proposed development, which exceeds the net residential density (see Section VI for definition) allowable in the Residential District in which it is located.
4. Separation between principal buildings located on the same lot shall be a minimum of 30 feet. This minimum separation requirement may be reduced by the Planning Board, but lesser separation must be in accordance with Chapters 6 and 7 of the International Buildings Code 2003 governing Construction Types and Fire-Resistance-Rated Construction. Any separation of less than 30 feet between buildings needs to be accompanied by a note on the approved plan indicating the need for building construction and materials in accordance with the Fire Resistance Rating Requirements of the International Building Code 2003 cited above.
5. Each building shall be an element of an overall plan for site development.
6. Where possible, buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, natural drainage areas, neighborhood greens and common open space,
7. Where possible, buildings, streets, sidewalks, parking areas and landscaping shall be designed in a cohesive, integrated fashion. Building placement and orientation to streets, parking, sidewalks and common areas should be designed to establish inviting public spaces exhibiting human elements and scale, while building orientation to natural features should furnish and buffer private spaces for individual dwelling units or groups of dwelling units.
8. Development proposals shall include a landscape program to illustrate the proposed aesthetic treatment of space, roads, paths, service and parking areas. Screening devices shall not impair pedestrian and vehicular safety.
9. All utilities shall be installed underground wherever possible. All transformer boxes, substations, pumping stations, and meters shall be located and be designed as not to be unsightly or hazardous to the public.
10. Residual open space accumulated by modifying space and bulk requirements within the allowable density limits shall be usable for active or passive recreation, neighborhood gathering places, or other outdoor living purposes and for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life and wildlife cover. The use of any open space may be further limited or controlled at the time of final plat approval where necessary to protect adjacent properties or uses.
11. The common open space(s) shall be shown on the subdivision plan and with appropriate notation of the face thereof to indicate that it:
 - a. Shall not be used for future building lots
 - b. A part or all of the common open space may, at the Municipality's option, be accepted in dedication by the Municipality and operated as a Municipal Recreational facility.
 - c. If any or all of the common open space is to be reserved for use by the residents, the formation and incorporation by the developer of a neighborhood association shall be required prior to final plat approval.
 - d. Covenants for mandatory membership in the association setting forth the owners rights and interest and privileges in the association and the common land, shall be approved by the Planning Board and included in the deed for each lot.

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e. This neighborhood association shall have the responsibility of maintaining the common open space(s) and operation and maintenance of local neighborhood recreational facilities, lawn, and landscaped areas within such open space(s).

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f. The Association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of open spaces and neighborhood recreational facilities.

g. The developer or subdivider shall maintain control of such open space(s) and be responsible for their maintenance until development sufficient to support the association has taken place or, alternately, the objectives of clustering have been met. Such determination shall be made by the Planning Board upon request of the Neighborhood Association or the developer or subdivider.

12. The developer shall file with the Town of Scarborough at the time of submission of final plans a performance guarantee. This may be tendered in the form of a certified check payable to the Town or a faithful performance bond running to the Town and issued by a surety company acceptable to the Town. The conditions and amount of such check or performance bond shall be determined by the Treasurer of the Town of Scarborough with the advice of various Town departments or agencies concerned. The amount shall be at least equal to the total cost of furnishing, installing, connecting and completing all of the street grading, paving, storm drainage, and utilities or other improvements specified in the final plan, and shall be conditioned on the satisfactory completion of all such specified improvements within a period agreed upon by the developer and the Planning Board.

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13. For the purposes of this section the tract or parcel of land involved must be either in single ownership or the subject of an application filed jointly by the owners of all the property included.

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C. CORNER CLEARANCES

To maintain safe traffic vision in all residential districts, between the side lines of intersecting streets and a line joining points on such lines, twenty feet distant from their point of intersection, or in the case of a rounded street corner, the point of intersection of their tangents, no building or structure may be erected and no vegetation other than shade trees may be maintained above a height of three feet above the plane through their curb grades.

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*Daniel Bacon
Assistant Town Planner
November 10, 2005*

Overview of Conservation Subdivision Design Through Flexible Residential Development

The concept of conservation subdivision design through flexible residential development evolved out of past considerations over a "Freshwater Wetlands Ordinance" as well as the Planning Board's broader desires for more regulatory flexibility enabling subdivisions with varying lot sizes and open spaces.

A previous draft of the "Freshwater Wetlands Ordinance" focused on monetary compensation for wetland filling and impacts. This idea was discussed at a workshop this past spring. Based on the discussions at that workshop, the Ordinance Committee and staff were given the direction to focus on "avoidance" of wetland impacts as opposed to "compensation", and to focus on residential development (which is seldom regulated by other agencies on wetland filling) as opposed to commercial development, which more often triggers Army Corp. of Engineers and MeDEP review and their corresponding wetland mitigation requirements.

Based on these directives, the addition of a Conservation Subdivision Design zoning mechanism has been proposed to provide residential development flexibilities, coupled with resource and open space conservation. This proposed addition to the zoning ordinance is generally laid out as follows:

As drafted, Conservation Subdivision Design would either be required or elected, depending on the presence of wetlands and the intentions of a landowner or developer:

- Conservation subdivisions would be required when: the lands to be subdivided contain an acre of more of wetlands; 20% or more of the subdivision is wetlands; 20% of more of the subdivision is in the Shoreland Zone; or 4,300 sq. ft. of wetlands would be impacted if developed conventionally.
- Conservation subdivision may also be elected in order to conserve or establish: agricultural fields; farming; forestlands; wildlife areas; recreation areas; or other open space functions.

Density and Space and Bulk Regulations

- This type of subdivision design would be allowed in the RF, RFM and R2 zoning districts and would allow the same net residential density (or potential building lots) as a conventional subdivision. (*In the RF and RFM that = 1 dwelling per net residential 2 acres and in the R2 that = 2 dwellings per net residential 1 acre*)
- This flexible residential development tool differs from the conventional RF, RFM and R2 space and bulk regulations. It would allow a minimum of 30,000 sq. ft. building lots and lesser frontage and setbacks in the RF and RFM, and a minimum of 7,500 sq. ft. lots and less frontage and setbacks in the R2 (must be on sewer). This is alternative to the current RF and RFM standards of 80,000 sq. ft. lots and 20,000 sq. ft. lots in the R2.

Open Space Areas

- When conservation subdivision design is required due to the presence of wetlands, 50% of the subdivision is expected to be open space encompassing and buffering the wetland areas as well as serving other neighborhood open space functions depending on the scope of wetland features.
- If this alternative subdivision design is elected, 40% of the subdivision is to be open space in order to conserve the agricultural lands and activities; fields and forested areas; common space or community gardens; or recreational lands.
- Specific development standards for the open spaces are included in the draft language, such as: location of farming activities; buffering; conservation restrictions; wetland conservation and buffering; and recreation areas and trails, etc.

Conclusions and Likely Results

As has been stated, this potential zoning ordinance amendment is intended to provide flexibility for subdivision design in the town's more rural areas, while enabling the avoidance of wetlands and the conservation of farmland and forested areas. Likely results include:

- More flexibility for lot sizes and subdivision layouts enabling creative design, place-making, and less road and infrastructure costs. *In the RF zone the average lot size in a subdivision would likely be around 55,000 sq. ft., enabling the creation of all 55,000 sq. ft. lots or a range of lot sizes from 30,000 sq. ft. to 80,000 sq. ft. lots depending on a developer's intentions.*
- The avoidance of freshwater wetlands and their upland buffers, enabling wetlands to be contiguous, with house lots clustered away from them.
- The conservation of forestlands in connected tracts providing for wildlife habitat, outdoor trails, recreation and hunting, rural character, and neighborhood privacy and buffering.

- The continuation of traditional farming activities, enabling a large landowner to subdivide a portion of a property and continue farming on another portion.
- Neighborhood parks, trails, commons and greens fostering more neighborhood open spaces and gathering places, while accommodating the same overall residential density.

AMENDMENT TO SCARBOROUGH ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the Zoning Ordinance of the Town of Scarborough, Maine, is amended as follows:

SECTION VIII.B. EXIT 42 ECONOMIC DEVELOPMENT OVERLAY DISTRICT [8/21/96]

AMENDMENT TO CHAPTER 405 - SCARBOROUGH ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the Zoning Ordinance of the Town of Scarborough, Maine is amended as follows:

Subsection D. of Section XIII (RURAL RESIDENCE, FARMING AND MANUFACTURED HOUSING DISTRICT: RFM) is amended by adding the underscored text, as shown below:

D. SPACE AND BULK REGULATIONS

Maximum net residential density	1 dwelling unit per net residential 2 acres (adopted 6/21/72)
Minimum lot area	80,000 sq. ft.
Minimum area per family	80,000 sq. ft.
Minimum street frontage	200 feet
Minimum front yard, all buildings	50 feet
Minimum rear and side yards, all buildings *Buildings higher than 30 feet shall have side and rear yards not less than 50% of building height.	15 feet*
Maximum building height	(See Section IX,A,15)
Maximum building coverage	25%

The above space and bulk regulations shall apply unless the use of Section VII.A., Conservation Subdivision Design – Flexible Development Standards for Lower Density Residential Districts, of this Ordinance is required or elected, as per subsection B. Applicability of Section VII.A.

Subsection D. of Section XIV (RURAL RESIDENCE AND FARMING DISTRICT: RF) is amended by adding the underscored text, as shown below:

D. SPACE AND BULK REGULATIONS

Maximum net residential density	1 dwelling unit per net residential 2 acres
Minimum lot area	80,000 sq. ft.
Minimum area per family	80,000 sq. ft.
Minimum street frontage	200 feet
Minimum front yard, all buildings	50 feet
Minimum rear and side yards, all buildings *Buildings higher than 30 feet shall have side and rear yards not less than 50% of building height.	15 feet*
Maximum building height	(See Section IX,A,15)
Maximum building coverage	25%

The above space and bulk regulations shall apply unless the use of Section VII.A., Conservation Subdivision Design – Flexible Development Standards for Lower Density Residential Districts, of this Ordinance is required or elected, as per subsection B. Applicability of Section VII.A.

Subsection D. of Section XV (RESIDENTIAL DISTRICTS R2) is amended by adding the underscored text, as shown below:

D. SPACE AND BULK REGULATIONS

Maximum net residential density	2 dwellings per net residential acre.
Minimum lot area	20,000 sq. ft.
Minimum area per family	20,000 sq. ft.
Minimum street frontage	100 feet
Minimum front yard all buildings	40 feet
Minimum rear and side yards, all buildings *Buildings higher than 30 feet shall have side and rear yards not less than 50% of building height.	15 feet*
Maximum building height	(See Section IX,A,15)
Maximum building coverage	20%
Minimum distance between principal buildings on the same lot	The height equivalent of the taller building

The above space and bulk regulations shall apply unless the use of Section VII.A., Conservation Subdivision Design – Flexible Development Standards for Lower Density Residential Districts, of this Ordinance is required or elected, as per subsection B. Applicability of Section VII.A.

Vote: 6 yeas.

Order No. 05-161. First reading and schedule a public hearing on the proposed amendment to Chapter 405, the Zoning Ordinance, Section IX, PERFORMANCE STANDARDS, J. PERFORMANCE STANDARDS – ACCESSORY UNITS.

- Randy Sargent, 134 Broadturn Road, spoke in support of this issue.
- Rocky Risbara, 196 Black Point Road, spoke in support of this issue and pointed out that “living space” should be defined in the Zoning Ordinance.

Motion by Councillor Messer, seconded by Councillor O’Reilly, to move approval of the first reading on the proposed amendment to Chapter 405, the Zoning Ordinance, Section IX,

PERFORMANCE STANDARDS, J. PERFORMANCE STANDARDS – ACCESSORY UNITS, and schedule a public hearing for Wednesday, January 18, 2006.

PORTION OF

Chapter 405, Zoning Ordinance

Section IX. PERFORMANCE STANDARDS.

J. PERFORMANCE STANDARDS – ACCESSORY UNITS [11/05/2003]

In the R-M-F, R-F, R-2, R-3, R-4, and R-4A districts, the Board of Appeals may issue a permit for the construction of an accessory unit. In addition to meeting the standards for special exceptions in Section IV.I.4 of this Ordinance, all Accessory Units must adhere to the following standards:

- A. The owner(s) of the principal structure must reside in the principal structure or the accessory unit, which residence may be seasonal. An accessory unit may be located on a lot which the owner occupies as a seasonal residence; however, the non-owner occupied living area (accessory unit or principal unit) can be occupied only in a season during which the owner is also in residence. For this purpose, “season” means any three consecutive calendar months during which the owner is in residence for a minimum of 28 days.
- B. The number of occupants of the accessory unit is limited to two.
- C. The accessory unit shall contain up to a maximum of ~~600~~ 750 square feet of living space.
- D. A lot must have a minimum of 15,000 square feet, if sewerred, to be eligible for the addition of an accessory unit to an existing dwelling. The applicant shall have the burden to establish the lot area, which burden may include a survey signed and sealed by a Professional Land Surveyor, at the discretion of the Code Enforcement Officer.

Vote: 6 yeas.

Order No. 05-162. Act on the request from the Police Chief to accept the following donations: For the Scarborough Police Department’s K-9 Division in the amount of \$50.00 and from the HIDTA Task Force in the amount of \$14,080.87. Motion by Councillor Messer, seconded by Councillor Babine, to move approval on the request from the Police Chief to accept the following donations: For the Scarborough Police Department’s K-9 Division in the amount of \$50.00 and from the HIDTA Task Force in the amount of \$14,080.87.

Vote: 6 yeas.

Order No. 05-163. Act to authorize the Assessor to impose a special tax on property located at 10 Willowdale Road, pursuant to Title 17, §2853, and as recommended by the Town Attorney. Motion by Councillor O’Reilly, seconded by Councillor Rancourt, to move approval of tabling this order until the Town hears back from the property owner in the required 30-day time frame.

Vote: 6 yeas.

Order No. 05-164. Act to endorse submittal of transportation improvement proposals for PACTS. Motion by Councillor Messer, seconded by Councillor O’Reilly, to move approval to endorse the submittal of transportation improvement proposals for PACTS.

Vote: 6 yeas.

Item 6. Non-Action Items.

1. Discussion with regards to giving the Town Manager direction on the mil rate increase for the FY 2007 Budget. Each councillor gave the Town Manager his/her opinion regarding this. For the record, Councillor O'Reilly read from the Town Manager's memorandum items he highlighted regarding this, as follows:

- School EPS will be fully implemented with no major increase in state aid anticipated.
- Salary adjustments will be 3%.
- Additional personnel in Police and Community Services are becoming critical to meet increasing demands or expanded facilities.
- Seniors are demanding more services and a dedicated budget to senior programs.
- Energy expenses are increasing by double digits
 - i. Electricity – up 31%.
 - ii. Gasoline – up 30-45%.
 - iii. Diesel/Fuel Oil – up 40-55%.
- Health Insurance – up 5-6%.

At this point Chairman Ross requested of the Council to suspend the rule of 137 for the purpose of appointing a Council member to each of two committees at the request of the School Board. He explained why the Council would be appointing one councillor to each committee even though the School Board requested two Council members on each of the two building design committees.

Motion by Councillor Messer, seconded by Councillor Most, to suspend the rules to add an item to the agenda.

Vote: 6 yeas.

Order No. 05-166. Act on the appointments of committee members on the Middle School Building Design Committee and the Intermediate School Building Design Committee as requested by the School Board. Motion by Chairman Ross, seconded by Councillor Rancourt, to move approval of the appointment of Councillor Most to the Middle School Building Design Committee and Councillor O'Reilly to the Intermediate School Building Design Committee.

Vote: 6 yeas.

Item 7. Standing Committee Reports.

- a. **Appointments Committee.** Councillor Messer stated that the next meeting would be held prior to the next Council meeting at 7:00 p.m. on Wednesday, January 4, 2006.
- b. **Finance Committee.** Councillor O'Reilly announced the budget time line as follows: The capital project requests are due to the Town Manager by December 30, 2005; department capital equipment is due to the Town Manager by January 20, 2006; budget will be presented to the Council on March 15, 2006. He stated that he hopes the second reading at the Council level will be held by the end of May.
- c. **Ordinance Committee.** Councillor Most stated the first meeting will be held on January 23, 2006, at 7:00 p.m. Agenda discussions will center around the living space issue (discussed this evening); setbacks in the B-2 zone; clarification of who is responsible to clear sidewalks; whether the R-F-M zone is still needed.

Item 8. Special Committee Reports.

Councillor O'Reilly gave a brief update on the following committee :

- *National League of Cities.*

Chairman Ross stated as point of clarification that it was Council's intent that Councillor Babine be Liaison to all business relating to senior services, as well as the Senior Services Study Committee.

Item 9. Liaison Reports.

Councillor Babine gave a brief overview on the following:

- A meeting with *Senior Voices and Senior Series*.
- *Senior Series* will be holding a focus group forum on January 4, 2006, to discuss priorities and involvement in the senior studies committee.

Councillor Messer gave a brief overview on the following:

- *Regional Waste Systems*.

Councillor Most gave a brief overview on the following:

- *Comprehensive Plan Update Committee*: Next meeting will be the first week in January and a public information session on January 24, 2006.

Councillor O'Reilly gave a brief overview on the following:

- *Library*: The Library Board would like to hold a workshop with the Council prior to the Council's meeting on January 4, 2006, to be held at 6 :00 p.m.

At the request of Ronald W. Owens, Town Manager, Council members gave their opinions regarding extension of utilities, particularly water, on the west side of the Turnpike.

Item 10. Public Comments. None at this time.

Item 11. Council Member Comments. Closing comments were made by Council members.

Order No. 05-165. Act on the request for an executive session to discuss acquisition of two real estate properties, pursuant to Title 1, M.R.S.A. §405(6)(C). Motion by Councillor O'Reilly, seconded by Councillor Messer, to move approval on the request for an executive session to discuss acquisition of two real estate properties, pursuant to Title 1, M.R.S.A. §405(6)(C) and to come back to public session to adjourn the meeting.

Vote: 6 yeas.

The Town Council recessed to executive session at 10:30 p.m. Chairman Ross reconvened the meeting at 10:55 p.m.

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

Vote: 6 yeas.

Meeting was adjourned at 10: 55 p.m.

Respectfully submitted,

Marcia Foster McGinnis
Deputy Town Clerk

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Minimum front yard requirements in R-F Districts shall not be modified.		
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Minimum front yard requirements in the R-2 Districts shall not be modified by a reduction of more than 25%.		
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shall not be modified to less than the height equivalent of the height of any two adjacent principal buildings on the same lot.		
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Frontage requirements in R-F Districts shall not be modified by a reduction of more than 50%. Frontage requirements in the R-2 District shall not be modified by a reduction of more than 25%.		
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7. Minimum Lot Area Requirements in Rural Farm Districts shall not be modified by a reduction of more than 50%. Minimum lot area requirements in R-2 Districts shall not be modified by a reduction of more than 25%.		
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