

MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 20, 2006
RECEPTION FOR MIKE WOOD – 7:00 P.M.
REGULAR MEETING – 7:30 P.M.

Item 1. Call to Order. Chairman Messer called the regular meeting of the Scarborough Town Council to order at 7:34 p.m.

Item 2. Pledge of Allegiance.

Item 3. Moment in honor with respect to a fallen member, James J. Durant. Pastor Dwayne Hopkins gave a brief testament on the life of James J. Durant whom lost his life in the line of duty.

Item 4. Roll Call. Roll was called by Yolande P. Justice, Town Clerk. Ronald W. Owens, Town Manager, was also present.

Ronald D. Ahlquist	Patrick J. O'Reilly
Richard J. Sullivan, Jr.	Sylvia J. Most
Carol S. Rancourt	Shawn A. Babine, Vice Chair
Jeffrey A. Messer, Chair	

Item 5. Minutes: December 6, 2006. Motion by Chairman Messer, seconded by Councillor Babine, to move approval of the minutes of the December 6, 2006, Town Council meeting as written.

Vote: 7 yeas.

Item 6. Items to be signed: a. Treasurer's Warrants. Treasurer's warrants were signed during the meeting.

Order No. 06-143, 7:30 p.m. Public hearing on the renewal request for a liquor license from Van Reeo, Inc., d/b/a Pizza Time/Dimitris Restaurant, located at 185 US Route One. Chairman Messer opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:39 p.m.

Motion by Councillor Babine, seconded by Councillor O'Reilly, to move approval on the renewal request for a liquor license from Van Reeo, Inc., d/b/a Pizza Time/Dimitris Restaurant, located at 185 US Route One.

Vote: 7 yeas.

Order No. 06-148, 7:30 p.m. Public hearing on the following requests for a Combined Massage Establishment/Massage Therapist License: Jolene Leighton, d/b/a Majestic Massage, located at 605 U.S. Route One; Gina Cass, d/b/a Coastal Therapeutic Massage, located at 136 U.S. Route One and Debra Shaw, d/b/a Majestic Massage, 605 U.S. Route One, Corner Suite 20 and on the following request for a Massage Therapist License from Virginia L. Esposito at Calm Waters Spa & Salon, located at 144 U.S. Route One. Chairman Messer opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:40 p.m.

Motion by Chairman Messer, seconded by Councillor Babine, to move approval on the following requests for a Combined Massage Establishment/Massage Therapist License: Jolene Leighton, d/b/a Majestic Massage, located at 605 U.S. Route One; Gina Cass, d/b/a Coastal Therapeutic Massage, located at 136 U.S. Route One and Debra Shaw, d/b/a Majestic Massage, 605 U.S. Route One, Corner Suite 20 and on the following request for a Massage Therapist License from Virginia L. Esposito at Calm Waters Spa & Salon, located at 144 U.S. Route One.

Vote: 7 yeas.

Resolution 06-17. Recognizing Mike Wood for his dedication and service to the Town of Scarborough. Motion by Chairman Messer, seconded by Councillor Babine, to move approval of the Resolution 06-17, recognizing Mike Wood for his dedication and service to the Town of Scarborough, as follows:

Resolution 06-17

***Recognition of Michael J. Wood
For his Outstanding Contributions to
The Town of Scarborough***

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

Whereas, from time to time an individual demonstrates an extraordinary level of commitment to the Town of Scarborough; and,

Whereas, Michael Wood has served the Town with honor and distinction as a member of the Planning Board since January, 1998 to the present; and,

Whereas, Michael Wood has displayed excellent leadership skills in his service as Chairman of the Planning Board for three years and vice chairman for an additional five years; and,

Whereas, Michael Wood has previously served the Town as a member of the Open Space Committee, Oak Hill Traffic Committee, YMCA Building Committee and currently serves as a member of the Personnel Appeals Board and School Building Committee; and,

Whereas, Michael Wood has worked diligently to help make Scarborough a better place to work and live; and,

Now, Therefore, Be It Resolved, by the Scarborough Town Council in Town Council assembled, that the Town of Scarborough does hereby recognize and honor Michael Wood for his outstanding contributions to the Scarborough Community.

Signed and dated this 20th day of December, 2006 on behalf of the Scarborough Town Council and the Town Manager of Scarborough, Maine. Signed by: Jeffrey A. Messer, Council Chair and attested by Yolande P. Justice, Town Clerk.

The following individuals spoke: Susan Auglis, current Chair of the Planning Board and Rick Shinay and Harold Clough, prior members of the Planning Board.

Vote: 7 yeas.

OLD BUSINESS:

Order No. 06-136. Second reading on a Contract Zone Application from New England Expedition. Ron Owens, Town Manager, gave a brief overview on this item. Rob Crawford, Town Attorney gave a brief overview on memorandum that had been presented to the Council this evening and on the proposed contract zone agreement and responded to questions from the Council.

Motion by Councillor Babine, seconded by Chairman Messer, to Move approval of the second reading on a Contract Zone Application from New England Expedition to include the following findings and directives:

1. that the Contract Zoning Agreement and authorizations therein are found to be consistent with the Town's Comprehensive Plan, consistent with the existing and permitted uses in the Haigis Parkway District, in the public interest, will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification; and
2. that the Official Zoning Map be changed to show the contract zone; and
3. that the Town Manager be directed to execute the Contract Zoning Agreement, subject to any minor final changes as suggested by Town Attorney.

Motion by Chairman Messer, seconded by Councillor Babine, to move approval to amend the main motion to substitute the document received previously and use the document submitted this evening from the Town Attorney as the working document.

Vote on amendment: 7 yeas.

Vote on main motion as amended:

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

This Contract Zoning Agreement (hereinafter, this “Agreement”) is made as of the ____ day of _____, 200__ by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition intends to purchase certain lots or parcels of land located on Payne Road and Haigis Parkway in Scarborough, Maine, consisting of (a) the premises currently owned by 262 Payne Road, LLC, et al., located at 262 and 274 Payne Road comprising Lots 8 and 11A shown on Town of Scarborough Tax Map R-40 and described in deeds to 262 Payne Road, LLC, et al., recorded in the Cumberland County Registry of Deeds in Book 3630, Page 199, Book 21070, Page 169 and Book 22791, Page 266, (b) the premises currently owned by TD Banknorth, N.A., located at 246, 248 and 250 Payne Road comprising Lots 5, 6 and 7 shown on Town of Scarborough Tax Map R-40 and described in deeds to Peoples Heritage Savings Bank, predecessor to TD Banknorth, N.A.,

recorded in the Cumberland County Registry of Deeds in Book 15215, Page 204 and Book 15272, Page 261, (c) the premises currently owned by 23 Spring Street, LLC located at 264 Payne Road comprising Lot 9 shown on Town of Scarborough Tax Map R-40 and described in deed to 23 Spring Street, LLC recorded in the Cumberland County Registry of Deeds in Book 18263, Page 310, and (d) the premises currently owned by GlennDonna, Inc. located on Haigis Parkway and Payne Road comprising Lot 14 shown on Town of Scarborough Tax Map R-40 and being a portion of the premises described in deed to GlennDonna, Inc. recorded in the Cumberland County Registry of Deeds in Book 7564, Page 223 (hereinafter, collectively referred to as the “Property”), the Property containing approximately seventy-four (74) acres; and,

WHEREAS, New England Expedition intends to develop the Property as a single project to be known as “The Gateway at Scarborough” (hereinafter, the “Project”), with that portion of the Project located on the northwesterly side of Payne Road to be known as “The Gateway Shoppes at Scarborough” and that portion of the Project located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway to be known as “The Gateway Square at Scarborough”, with construction of the Project anticipated to proceed in phases commencing with The Gateway Shoppes at Scarborough and progressing to The Gateway Square at Scarborough; and,

WHEREAS, the Property is currently located in the Haigis Parkway District, HP (hereinafter, the “HP District”) as described in Section XVIII B. of the Zoning Ordinance; and,

WHEREAS, the HP District presently allows, as a permitted use, among other uses, retail sales and services with less than twenty thousand (20,000) square feet of retail floor area per unit of occupancy; and,

WHEREAS, New England Expedition desires to construct multiple facilities on the Property in which will be conducted various permitted uses including, but not limited to, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road for the retail sale of specialty hunting, fishing and other outdoor recreational equipment by Cabela’s Incorporated or its subsidiaries (hereinafter, “Cabela’s”), which facility will include, in addition to retail sales space, exhibit and education areas as well as an accessory restaurant for patrons; and,

WHEREAS, Cabela’s requires a facility of one hundred thirty thousand (130,000) square feet of retail floor area in order to facilitate the manner in which such facility operates and displays its products and to accommodate the unique exhibit and educational components that are an integral part of such facility; and,

WHEREAS, Cabela’s requires certain specific signage attached to and associated with such facility that varies from signage permitted under Section XII of the Zoning Ordinance; and,

WHEREAS, New England Expedition desires to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and,

WHEREAS, the sign regulations under Section XII of the Zoning Ordinance impose limitations on the placement of off-site signage relating to the Project; and,

WHEREAS, New England Expedition has requested that, notwithstanding the requirements of Section B6 of the HP District requirements and the sign regulations set forth in Section XII of the Zoning Ordinance, in addition to the other facilities proposed to

be constructed on the Property, the Town permit New England Expedition to construct a facility to be occupied by Cabela's and utilized for the uses permitted under said Section B6 of the HP District requirements containing not more than one hundred thirty thousand (130,000) square feet of retail floor area on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road, together with certain specific signage attached to and associated with such facility, and to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and,

WHEREAS, the size, location, configuration and topography of this site permit a level of buffering, landscaping and site design which will mitigate what might otherwise be adverse impacts of the Cabela's facility, and the other facilities proposed for the Property, provided the operation is restricted to the density, scale and intensity proposed by New England Expedition and further provided that the restrictions, provisions and conditions of this Agreement and the site plan and subdivision approval are strictly observed; and,

WHEREAS, the Scarborough Planning Board, pursuant to Section II, Paragraph G Subsection 3 of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberation thereon, recommended that New England Expedition be permitted to develop the Property so as to include, in addition to the other facilities proposed for the Property, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road to be occupied by Cabela's and utilized for the uses permitted under said Section B6 containing not more than one hundred thirty thousand (130,000) square feet of retail floor area, together with certain specific signage attached to and associated with such facility, and to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and,

WHEREAS, the proposed uses of the Property, being in accordance with the requirements of the HP District, are consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (hereinafter, the "Comprehensive Plan") for the area of the Property; and,

WHEREAS, the Town of Scarborough, by and through its Town Council, having determined that the said uses are pursuant to and consistent with the Comprehensive Plan and consistent with the permitted uses within the HP District, authorized the execution of this Agreement on _____, 200__.

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

1. The Town will amend the Zoning Map of the Town of Scarborough by adopting the map change amendment shown on Attachment 1.

2. Notwithstanding the provisions of Section B6 of the HP District requirements, New England Expedition shall be permitted to develop the Property so as to include, in addition to the other facilities proposed for the Property, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road to be occupied by Cabela's and utilized for the uses permitted under Section B6 of the HP District requirements containing not more than one hundred thirty thousand (130,000) square feet of retail floor area.

3. New England Expedition is authorized to construct the Cabela's facility to be used in accordance with the requirements of the HP District, except as amended by this Agreement, together with the other facilities proposed for the Property containing such other uses as are permitted in the HP District.

4. Notwithstanding the provisions of Section XII of the Zoning Ordinance, New England Expedition shall be permitted to include signage attached to and associated with the Cabela's facility as more particularly described and shown on Attachment 2.

5. Notwithstanding the provisions of Section XII of the Zoning Ordinance, New England Expedition shall be permitted to install certain signage, together with related improvements, lighting and landscaping, which signage is generally depicted on Attachment 3, for the purpose of identifying the Project, on the property located between that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway and said Payne Road and Haigis Parkway, or within the right of way of said Payne Road or Haigis Parkway adjacent to said property, subject, however, to the terms and provisions of any agreements entered into with the owners of said property and/or the Town of Scarborough relating to such signage including, but not limited to, the following terms and provisions:

a. Such signage shall be built in accordance with the Town of Scarborough's specifications and at the expense of New England Expedition;

b. Such signage shall be maintained by New England Expedition; and

c. Except as otherwise amended by this Agreement, such signage shall comply with the requirements of Section XII of the Zoning Ordinance and all other applicable local and state regulations applicable thereto.

6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance") and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the "Subdivision Ordinance"), with construction anticipated to proceed in phases commencing with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway. The phasing of the construction as outlined above shall be subject to the additional requirement that New England Expedition shall "substantially complete" the construction of that portion of the Project which includes the ten (10) buildings and related improvements to be constructed by New England Expedition, (collectively, the "NEE Buildings"), the NEE Buildings designated and shown on Attachment 4. The NEE Buildings shall be substantially complete within two (2) years from the date that New England Expedition receives Planning Board approval for the Project. For purposes hereof, "substantially complete" shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, the installation of utilities, storm drains and sanitary sewer lines and the completion and approval of the foundations for the NEE Buildings. In the event that New England Expedition requires additional time to attain substantial completion as described herein, the Town Planner, or if the Town Planner chooses, the Scarborough Planning Board, may, for good cause shown, grant New England Expedition an additional one (1) year period for such purpose.

7. New England Expedition shall record this Agreement in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

8. The provisions of this Agreement shall be deemed restrictions on the use of the Property except as this Agreement may be amended by future written agreement of the Town of Scarborough and New England Expedition, or their successors or assigns.

9. Except as the requirements of the HP District and Section XII of the Zoning Ordinance have been amended by this Agreement, and subject to any other restrictions, provisions and conditions set forth herein regarding the development and use of the Property, all other requirements of the underlying HP District and the requirements of Section XII of the Zoning Ordinance shall apply and shall govern the use and development of the Property. Any such restrictions, provisions and conditions are an essential part of the aforesaid modification of the HP District requirements and the requirements of Section XII of the Zoning Ordinance as set forth herein, shall run with the Property, shall bind New England Expedition, its successors and assigns of the Property or any part thereof.

10. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance and any applicable amendments thereto and nothing contained in this Agreement shall be deemed to prohibit or limit the development of the Property in any other manner so long as such development is in compliance with the applicable provisions of the Zoning Ordinance and otherwise approved pursuant to the Site Plan Ordinance, the Subdivision Ordinance and/or other applicable Scarborough Ordinances and, if applicable, State and Federal laws, ordinances and regulations.

11. Notwithstanding anything to the contrary set forth herein or in the Zoning Ordinance, in the event that Cabela's shall, for any reason following its initial occupancy of the facility containing not more than one hundred thirty thousand (130,000) square feet of retail floor area as permitted hereunder to be located on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road, fail to continue to operate its business therein, then:

a. New England Expedition shall, within sixty (60) days of the date that Cabela's ceases its business operations at the facility, remove the signage unique to Cabela's from the buildings and as otherwise permitted under this Agreement;

b. New England Expedition shall, within sixty (60) days of the date that Cabela's ceases its business operations at the facility, report to the Scarborough Town Council on the status of New England Expedition's efforts to secure a substitute tenant, and will continue to update the Council regarding such efforts at intervals not later than every sixty (60) days thereafter, so as to afford the Council the opportunity to comment on any such proposed substitute tenant; and

c. New England Expedition shall have the right to substitute another retailer in such facility so long as such substitute retailer is not a discount store, wholesale club, or home improvement center, the substitute retailer to be subject to such approvals as may be required from the Scarborough Planning Board under applicable Ordinances and regulations and any other State or Federal regulatory bodies having jurisdiction over the development, and provided further, that in the event New England Expedition should seek to substitute another retailer in such facility within the first five (5) years following the date Cabela's commences business operations at the facility, such substitute retailer

shall be subject to the review and approval of the Scarborough Town Council, which approval shall not be unreasonably withheld, conditioned or delayed.

12. Any change to the development that results in either an increase in the size of the one hundred thirty thousand (130,000) square foot retail facility permitted hereunder or changes to the signage attached thereto or associated therewith, or any change with respect to the off-site signage permitted hereunder, shall require an amendment to this Agreement approved by the Scarborough Town Council and will also be subject to further Planning Board review, as required, except for any change to signage that results in the signage being in compliance with the requirements of Section XII of the Zoning Ordinance.

13. The Town of Scarborough shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Zoning Ordinance and through legal action for specific performance of this Agreement. In the event that New England Expedition or its successors or assigns fail to develop the Project in accordance with this Agreement, or in the event of any other breach hereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach, or in the event such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if New England Expedition, its successors or assigns, fail to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time taking into account the nature of such failure or breach and the action necessary to cure or remedy same, then this Agreement may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses and according to such zoning requirements as are otherwise allowed by law.

14. In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

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

WITNESS:

TOWN OF SCARBOROUGH

By: _____

Ronald W. Owens, its Town Manager (duly authorized by vote of the Scarborough Town Council on _____, 200__)

WITNESS:

THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC

By: _____

Barry E. Feldman
Its Member

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 200__

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

Before me,

Notary Public/Attorney at Law

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

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

Before me,

Notary Public/Attorney at Law

Print name

Attachment 1

[Map Change Amendment to be attached to final Agreement]

Attachment 2

[Cabela’s signage depiction to be attached to final Agreement]

Attachment 3

[Project off-site signage depiction to be attached to final Agreement]

Attachment 4

[Plan of NEE’ Ten Buildings and Related Improvements]

7 yeas.

Order No. 06-137. Second reading on proposed amendments to Chapter 416, The Haigis Parkway Municipal Development and Tax Increment Finance District. Motion by Chairman Messer, seconded by Councillor Babine, to move approval on the second reading on the proposed amendments to Chapter 416, the Haigis Parkway Municipal Development and Tax Increment Finance District. [Full document on file with Town Clerk’s Office]

Vote: 7 yeas.

Order No. 06-138. Act on the recommendations regarding the names pertaining to the roads identified as part of the Municipal and School campus at Oak Hill. (Tabled from 11/15/06 meeting) Motion by Chairman Messer, seconded by Councillor Babine, to move approval on the following recommendations: from Sawyer Road through Memorial Park – Durant Drive and from Route 114 to the Middle School – Quentin Drive.

Vote: 7 yeas.

NEW BUSINESS: None at this time.

Item 7. Non-Action Items. None at this time.

Item 8. Committee Reports:

1. Standing Committee Reports and 2. Other Committee Reports.

- a. Appointments Committee. No report.
- b. Finance Committee. No report.
- c. Ordinance Committee. Councillor Most stated that the next meeting is scheduled for Wednesday, January 10, 2007, at 7:00 p.m. in Council Chambers.

Councillor Most gave a brief overview on the following:

Comprehensive Plan Implementation Committee: This committee is moving forward with several important proposals that will support the implementation of the Comprehensive Plan. The first is a development transfer proposal. The next step in that process is to hold a focus group. They are also working on density bonuses for affordable housing.

Item 9. Public Comments.

1. Peter Angis 26 Old Blue Point Road – spoke on the Rachel Carsons Refuge boat ramp portage on Spurwink Road regarding a possible boat [motarized boats] ramp for use by commercial shellfish diggers.
2. Timothy Downs, 71 Kings Street – spoke of behalf of the Shellfish Conservation Committee regarding the boat ramp issue.

Item 10. Town Manager Report. None at this time.

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

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

Vote: 7 yeas.

Meeting adjourned at 8:47 p.m.

Respectfully submitted,

Yolande P. Justice, Town Clerk