

**Minutes
Hampden Town Council
Services Committee
May 09, 2011 @ 6:00pm**

The meeting of the Hampden Town Council Services Committee was called to order at 6:03p.m. on Monday, May 09, 2011, at the Hampden Municipal Building by Chairperson Jean Lawlis.

Gretchen Heldmann, GIS/IT Specialist
Kurt Mathies, Recreation Director
Councilor Jean Lawlis, Chair
Councilor Tom Brann

Councilor Kristen Hornbrook
Mayor Janet Hughes
Melanie Spencer, MSAD22
Tom Russell, Town Attorney

1. Approval of Minutes

Suggested amendment to minutes: Sentence added at end of first paragraph under FoDDix, "Previous water usage was based on the minimum the Hampden Water District used to charge, which was around \$400 per year." The minutes were approved as amended, with no objections.

2. Old Business

A. MSAD22 Trails Grant – MOU

There was some discussion over the number of people to serve on the Recreation Trails Committee, the makeup of the committee, number of reps, etc. Councilor Brann motioned that the committee should be made of four reps from MSAD22 chosen by MSAD22, two reps from the town of Hampden chosen by the Town of Hampden, and two town officials chosen by the Town of Hampden. Councilor Hornbrook second, all voted in favor.

Other discussion on sections was as follows:

p. 1, D. – both bridges are to be for motorized so the trails can be groomed in the winter using snowmobiles

p. 2, c. Third Party – add language, "an organized third party may make use of the facility and operate under a permit subject to the rules and regulations of the RTC applicable to the facility."

p. 3, 9. – Change "Public Assess Hours" to "Public Access Hours"

p. 3, a. – Question on prohibiting ATVs – some grants stipulate you can't prohibit ATVs, so this would have to be worked out – allow on the bridge but not all trails for example.

p. 4, b. – Keep as NO hunting

p. 5, 17. – change "not received" to "not awarded" and put the date as "one year from date of this agreement"

The group will wait for school input on this revised MOU. A special meeting may need to be called so it isn't delayed further. The group reviewed the timeline and process as outlined in the March minutes.

B. Subcommittee Updates

Tree Board – Gretchen explained that in order to maintain Tree City USA status, there has to be a functioning board with oversight on public trees; it is one of four requirements to be a Tree City USA. Currently, there are only two members on the Tree Board which is not enough to conduct business. Suggestions offered by Councilors were the Services Committee or the Conservation Commission. Councilor Hornbrook wanted to know what the Tree Board does. Gretchen explained that the Tree Board makes recommendations regarding public trees within town road rights-of-way, trees on town-owned land, and trees on private land that pose a hazard to the public, such as trees or shrubs at a road intersection that obstruct views. Councilor Brann motioned to recommend to Council to give the Services Committee that authority until such time as the Tree Board has enough membership, second by Mayor Hughes, all voted in favor.

HOTDOG – The group met last week and they want to move forward on the first proposed location and set up an abutter meeting. The town planner and CEO said the group would not need to go to the Planning Board.

FoDDix – There is a meeting next week on Wednesday. Councilor Lawlis noted there were some trees across the trail.

3. New Business

No new business.

4. Public Comment

None due to time constraints.

5. Committee Member Comments

Councilor Brann questioned the status of the Outdoor Facilities Ordinance and Gretchen responded that it was on hold due to the Council motion to stay all activity. Councilor Brann also noted that there was a design flaw/error/oversight in the Mayo Rd project in that the mailboxes in the sidewalk don't allow for the snow thrower to plow the sidewalk without scuffing up lawns.

The next meeting is June 13, 2011 at 6:00pm.

The meeting was adjourned at 6:53pm.

Respectfully submitted,

Gretchen Heldmann
GIS/IT Specialist

JOINT USE AGREEMENT

This Agreement is entered into by and between the Town of Hampden, a municipal corporation located in Penobscot County, Maine (hereinafter “Town”), and Maine School Administrative District / Regional School Unit #22, an educational entity formed under the laws of the State of Maine with a principal place of business in Hampden, Penobscot County, Maine (hereinafter “District”).

RECITALS:

- A. Town owns two parcels of land as described in a Quitclaim Deed With Covenant from Parkway Realty Development Corporation dated December 20, 1994, recorded in the Penobscot County Registry of Deeds in Book 5785, Page 263 (said parcels being depicted on Hampden Tax Map 6 as Lots 42A and 43B).
- B. District owns a parcel of land as described in a Quitclaim Deed With Covenant from Parkway Realty Development Corporation dated May 5, 1992, recorded in said Registry of Deeds in Book 5059, Page 22 (said parcel being depicted on Hampden Tax Map 6 as Lot 43A). (Note: Is some of the proposed trail located on adjacent land of the District to the north?) [\[Tom, I'll check on this. I would also like to review title references.\]](#)
- C. Town and District desire to have a trail system developed on their properties for recreational use by members of the public and students of the District. The District, in cooperation with the Hampden Academy Boosters Club (hereinafter “Boosters Club”) and the Hampden Education Athletic Trust (hereinafter “Trust”), will collaborate with other agencies, partners and organizations to secure funds toward the development of the trail system. The approximate location of the proposed trail system is shown on Exhibit A.
- D. The contemplated trail system will be approximately 1.8 miles in length, with a width ranging from 10 feet to 20 feet. The trail will be comprised of some wood chip pathways, some stone dust, and other materials. The trail system will also include 6 culverts and 2 bridges, one of which will be a bridge crossing Reeds Brook designed to accommodate certain motorized vehicles and one of which will be a small bridge [\[to accommodate motorized vehicles\] to accommodate pedestrian traffic?](#) across a wetland area. It is anticipated that grant applications will be submitted to seek funding for the trail and bridges. The trail system will also include approximately 12 small trail signs and one trailhead sign. The entire trail system, including the trail improvements and bridges, is hereinafter referred to as the “Facility”.

NOW, THEREFORE, District and Town hereby agree as follows:

1. Term. This Agreement shall commence on its date of execution, and shall continue for a period of 10 years from the date on which the Recreational Trail Committee certifies to District and Town that the Facility has been completed [and both the District and the Town accept such certification], unless sooner terminated as provided in Section 17.
2. Rights and Obligations of District. District shall be responsible for all required permitting and the construction of the Trail Facility. To that end, and subject to the provisions of Section 12 and Section 14 below, District Shall have the right to enter onto Town's property with persons and equipment to construct, maintain, repair, or replace the improvements to be located on Town's property, all of which shall be accomplished in a good and worker-like manner. Provided, however, that District shall restore the Town's property to the greatest practical extent after exercising any of the foregoing rights.
3. Cooperative Agreement. As provided herein, the parties agree to cooperate in coordinating programs and activities to be conducted on the Facility located on their respective properties. As used in this Agreement, "Owner" shall mean the party to this Agreement that owns a particular property and the portion of the Facility located thereon, and "User" shall mean the other party using the Owner's property and the portion to the Facility located thereon. "Public Access Hours" shall mean the hours during which the general public may use the Facility located on the Town property and District property.
4. Permitted Uses.
 - a. District shall be entitled to priority use of the Facility for school-~~related recreational activities~~ athletic meets involving cross country running and Nordic skiing, ~~including school athletic meets~~. District shall notify Town in advance of any scheduled meet, and shall post "trail in use" signs at the trailhead during the meet. It is anticipated that there will be no more than 8 meets per year.
 - b. At all other times and subject to a schedule developed by Town and District, the Town shall be entitled to use the Facility for community recreational purposes for the benefit of District students, the District, and the Town at large. ~~In planning programs and scheduling activities on District property, the security, academic, athletic and recreational needs of the District shall be taken into account and given priority.~~
 - c. Third Party Use? Identify eligible third party uses and require compliance with all rules and regulations applicable to the Facility.
5. Retention of Rights. Nothing in this Agreement shall be construed to limit or interfere with each party's legal rights to develop or use their respective

properties so long as the use and development thereof does not materially alter or modify the Facility. Each party shall have the right to re-locate the portion of the Facility located on that Party's property at its sole cost and expense.

6. Compliance with Law. All development and use of District property and Town property under this Agreement shall be in accordance with all applicable laws, ordinances, or regulations. Any actions taken by District or Town that are required by law, but are inconsistent with the terms of this Agreement, shall not constitute a breach of this Agreement.
7. Recreational Trail Committee. District and Town shall establish a Recreational Trail Committee, composed of ____ representatives of the District, ~~and~~ ____ representatives of the Town. The purpose of the Committee is to oversee the development and use of the Facility, to recommend rules and regulations for the District and Town to adopt to implement this Agreement, to monitor and evaluate the joint use project and this Agreement, and to confer and discuss operational or other issues that might arise during the term of this Agreement. The Committee may also develop recommendations concerning the maintenance of, or improvements to, the Facility. At least once per year, the Committee shall cause the Facility to be inspected, and shall prepare a proposed maintenance and/or repair work plan for consideration by District and Town.
8. Scheduling Use of Facility. District and Town shall each designate an individual to jointly administer this Agreement, and to develop a master schedule for joint use of the Facility to allocate use thereof to the District, Town, and Public Access Hours. (Third Parties?). District and Town representatives shall meet periodically with the Committee to review and evaluate the status and condition of the Facility and to modify or confirm the schedule.
9. Public Access Hours.
 - a. The parties agree that the general public may use the Facility for passive outdoor recreational activities, such as hiking, walking, running, biking, or snowshoeing. The Facility may also be used for snowmobiling when the ground is covered with snow, but other motorized vehicles, such as all terrain vehicles, shall be prohibited. Provided, however, that the use of motorized vehicles for emergency or maintenance purposes is permitted. The Public Access Hours shall be from one hour before sunrise to one hour after sunset daily. Each party may impose limitations and restrictions on Public Access Hours during activities sponsored by that party.

- b. In the event the District determines that a particular use of the Facility is unsafe for District students, including without limitation snowmobiling, District may refer the matter to the Recreational Trail Committee for review, evaluation, and development of a recommendation to District and Town for alleviation or mitigation of the safety concern. Hunting shall be prohibited at all of the Facility.
- 10. Parking. District agrees that its parking facilities may be used for public parking associated with any event sponsored or organized by the Town's Recreation Department, and during Public Access Hours, the approximate location of said parking facilities being shown on Exhibit A.
- 11. Funding. District and Town acknowledge and agree that neither party is obligated to provide funding for the design, creation nor construction of the Facility, and that the parties are contemplating grant funding for the project. District shall be the lead agency for any grant applications. If grants are awarded for the project, the Trail Committee shall review the same and make a recommendation to District and Town concerning the portion of the proposed Facility that may reasonably be accomplished with the available funding. At that time, District and Town shall consult to agree upon the scope of the project.
- 12. Approval of Plans. No construction of the Facility shall commence until the District and Town have reviewed and approved the final design thereof and any construction documents or contracts.
- 13. Improvements and Modifications. Once the plans have been approved, no modification thereof shall be made without prior approval of District and Town. Once the Facility has been constructed, no modifications or improvements thereto shall be made without the prior written consent of the Owner of the property on which the modification or improvements to the Facility are to be located. Any such modifications or improvements shall be at the expense of the requesting party, unless otherwise agreed upon.
- 14. Liability and Indemnification. Each party enjoys certain immunities from liability under the Maine Tort Claims Act, and nothing in this Agreement shall be construed to be a waiver of those immunities by either party.
 - a. Town shall defend, indemnify, and hold the District, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of

the Town, its officers, agents, or employees, and are not immune from liability under the Maine Tort Claims Act.

- b. District shall defend, indemnify, and hold the Town, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages, arising out the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the District, its officers, agents, or employees, and are not immune from liability under the Maine Tort Claims Act. [\[Tom, I am checking to see if District has insurance coverage for indemnity.\]](#)

Each party agrees to provide liability coverage for its property and the portion of the Facility located thereon as part of its risk pool coverage or insurance coverage

- 15. Responsibility for Damage. Town shall be responsible for the repairs of any damage to the Facility due to, or as a result of, Town's use of the Facility as part of any organized activity sponsored by its Recreation Department. District shall be responsible for all other repair of any damage to the Facility. The repairs shall be sufficient to restore the Facility to its condition prior to such damage, and shall be made in a reasonable time after the damage occurs or is discovered. Each party shall report any damage to the other party.
- 16. Maintenance of Facility. Each party shall restore the Facility to a clean and neat order after any use thereof by the party. Otherwise, District agrees to perform routine maintenance of the Facility, and to repair or replace the same, at ~~its soleno~~ cost to Town.
- 17. Termination. This Agreement may be terminated in writing by either party if the contemplated funding for the Facility is not received by _____, _____, or the other party has breached the terms of this Agreement and the breach has not been cured within 30 days of receipt of written notice of the breach. In addition, either party may terminate this Agreement in writing if the terms and conditions of any funding grant are unacceptable to that party. The terminating party must provide written notice of the termination within 30 days of its receipt of the terms and conditions of any funding grant.
- 18. Encumbrances. Neither party shall encumber, nor permit the encumbrance of, the other party's property without that party's written consent. For the purposes hereof, encumbrance shall include subjecting either party's property to any conditions of any funding sources.
- 19. Entire Agreement; Interpretation of Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter,

and supersedes any prior negotiations, representations, agreements or understandings. In interpreting this Agreement, no ambiguity shall be resolved against either party on the premise that it, or its attorney, was responsible for drafting this Agreement or any provision hereof.

20. Amendment. This Agreement may not be amended or modified, nor may compliance with any of its terms be waived, except by written instrument duly executed by both parties.
21. Notice. All notices to be given by the parties shall be in writing and shall be either delivered personally, or mailed by certified mail (return receipt requested), as follows:

If the Town: Susan M. Lessard, Town Manager
Town of Hampden
106 Western Avenue
Hampden, ME 04444

If to District: Richard A. Lyons, Superintendent
M.S.A.D. #22
24 Main Road North
Hampden, ME 04444

Each party reserves the right to change its notification contact or address by written notice to the other party.

22. Counterparts. This Agreement may be signed in counterparts, which taken together, shall constitute one original document.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on their behalf as of this ____ day of _____, 2011.

Witness

M.S.A.D. #22
By: _____
Richard A. Lyons, Its Superintendent

Witness

Town of Hampden
By: _____
Susan M. Lessard, Its Town Manager