



Town of Hampden  
**Planning and Development Committee**  
Wednesday February 1, 2017, 6:00 pm  
Municipal Building Council Chambers  
**Agenda**

1. Approval of January 18, 2017 Minutes
2. Committee Applications:
  - A. Thomas Dorrity – Planning Board
3. Updates:
  - A. Staff Report
4. Old Business:
  - A. Hampden Business Park Omnibus TIF Credit Enhancement Agreement
5. New Business:
  - A. MRC/Fiberight – MRC request for Town contribution toward costs of water line extension on Coldbrook Road
  - B. Hampden Business Park – Renewal of Authorization to Sell Agreement with Epstein Commercial Real Estate
  - C. Code Enforcement – Issues regarding civil liability and authority to require certain plans
  - D. Business Loan Program – General information on potential programs
6. Zoning Considerations/Discussion:
  - A. Accessory Apartments
  - B. Flexibility in Parking and Signage Requirements
7. Citizens Initiatives
8. Public Comments
9. Committee Member Comments
10. Adjourn



Town of Hampden  
**Planning and Development Committee**  
Wednesday January 18, 2017, 6:00 pm  
Municipal Building Council Chambers  
**Minutes - Draft**

Attending:

Committee/Council

- Ivan McPike-Chair
- Terry McAvoy
- Dennis Marble
- David Ryder
- Mark Cormier
- Greg Sirois (6:30)

Staff

- Angus Jennings, Town Manager
- Karen Cullen, Town Planner
- Myles Block, Code Enforcement Officer

Public

- Noreen Norton, Rudman Winchell
- John Quesnel, Hampden Water District

Chairman McPike called the meeting to order at 6:03 pm.

1. Approval of January 4, 2017 Minutes – **Motion** to approve as submitted made by Councilor McAvoy with second by Councilor Marble; carried 5/0/0.
2. Committee Applications: None.
3. Updates:
  - a. Staff Report: Planner Cullen informed the committee that the Planning Board had approved the site plan application for a new 3,600 square foot building on Nadine’s Way, for a restaurant equipment company. She also told them the Planning Board’s Ordinance Committee had met the previous evening and discussed the home occupation amendment; they have made some edits to it and tabled it to another OC meeting pending receipt of the related amendments to other sections of the zoning ordinance.
4. Old Business:
  - a. Hampden Business Park Credit Enhancement Agreement (CEA) for Sargent Corp.  
  
A new version of the CEA was handed out; this version has several edits noted with underline/strikethrough format. This CEA is implementing one of the requirements of the Developer’s Agreement (DA) which was executed in 2014. Planner Cullen pointed out the edits, and Noreen Norton explained them as necessary. Ms. Norton and Manager Jennings answered questions; key points were:

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- 50% of the tax revenue on the value of site improvements and building development (e.g. parking lots, buildings) when the value exceeds \$500,000 will go to Sargent Corporation.
- New taxes resulting from increases in land value will go to the Town.
- Staff has built a detailed database which will allow us to track all of the values and the amounts to go to Sargent (or others assigned by Sargent) each year.
- The CEA as currently written differs from the DA in regards to when the reimbursement payments to Sargent start. According to the DA it would be the earlier of the tax year following the date of town acceptance of the infrastructure or July 1, 2018. The CEA simply states the tax year starting July 1, 2018. This discrepancy will be rectified prior to the hearing.

The committee then turned its attention to Table 1 in the Development Program which sets forth the TIF district project costs. Manager Jennings explained that Ms. Norton had given us a figure of 12 million dollars for the total, and he split that up between the various project categories in the table. Ms. Norton noted that the \$12 million figure was based on a number of assumptions, and that we could use a higher figure if so desired. She also noted these costs are for the town portion of the TIF revenue and not the portion that will go to Sargent under the CEA. The purpose of this is to give DECD an idea of how TIF revenues might be spent; it does not mean we will actually receive that amount. For example, there will probably be some lots that are not developed until the 25<sup>th</sup> year of the 30 year TIF, they would only be contributing for 5 years. Key points of discussion with the committee:

- These costs can be revised at any time, given the way DECD currently manages TIF's across the state. It was acknowledged and understood that DECD may change its oversight of TIF spending in the future.
- We could increase the total from \$12 million to something a bit higher, say \$15 million.
- The councilors agreed with the numbers presented by Manager Jennings, and Ms. Norton said she felt they are good solid numbers. None are unrealistically low, and the majority of the costs are for infrastructure as desired by Council.

Motion by Mayor Ryder to refer the Credit Enhancement Agreement for Sargent Corporation to public hearing with the Hampden Business Park Omnibus Municipal Development and Tax Increment Financing District on February 6, 2017; seconded by Councilor McAvoy. Motion carried by unanimous vote (6/0/0).

- b. Status of MRC/Fiberight: Manager Jennings gave an update on the water supply issues, noting the various documents included in the packet for this meeting. He noted the Hampden Water District (HWD) Board will be meeting Thursday January 19<sup>th</sup> at 4:00 pm at the Town Offices (since their offices cannot accommodate the number of people expected to attend the meeting). He summarized what he believes are the policy questions before the HWD Board:
  - i. Which route, pipe size, and pipe materials will be required for the water service to the site;

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- ii. Will HWD contribute to the cost of the line extension; and
- iii. What will the cost allocation be for the broader infrastructure improvements (including expansion of the current pump station).

John Quesnel, President of the HWD Board, gave a status report of where the HWD is on these issues at this time. They have allocated \$45,000 toward valve costs, and are waiting for additional information from their consultant Woodard & Curran regarding the costs for other needed improvements to the system to ensure adequate flow at all times to all customers. He verified that the Ammo Park route is off the table. He also noted there are a number of “behind the scenes” infrastructure improvements that need to be done to provide water to this new area (and Fiberight) without impacting the existing system.

Manager Jennings noted that the MRC is now focused on the three issues which have been a primary focus of Town staff in recent months: water, sewer, and frontage. On the latter, we are waiting for MRC to submit a request to the Planning Board for a modification of the Board Order regarding frontage. Until we receive that we don’t know what will be requested nor when it will be dealt with.

5. New Business:

- a. Discussion of Ordinance Amendments: Planner Cullen led a discussion of the table she had presented in the memo in the packet; key points were:
  - i. The amendments to parking, buffer, and signage standards will likely help with some of the zoning issues in the town center area.
  - ii. The use table, dimensional table, and district (article 3) amendments will also help with the town center area even before the town center zoning is completed.
  - iii. The shoreland zoning was almost ready to go but Planner Cullen found some serious errors that led her to pull it back; her next step is to review it word for word with the state guidelines to ensure there are no other serious problems.
  - iv. The retail and medical marijuana regulations will remain entirely separate.
  - v. The P&D is satisfied with the general order of priority presented.

Manager Jennings updated the P&D on the recodification project, noting that it has sat for so long that the costs to complete with General Code are likely to be higher, perhaps significantly so, to complete the project, and more importantly with the number of amendments ongoing now, it will be more costly both in funds to General Code and in staff resources to provide the necessary documents to General Code. After discussion it was the consensus of the committee to drop the project pending receiving answers to the specific questions staff has asked General Code.

- 6. Zoning Considerations/Discussion: Planner Cullen updated the committee on the status of the home occupation language. She briefly reviewed the changes the Planning Board’s Ordinance Committee had made to the draft, the most significant of which was a change for the permit to run with the owner and not the land, with the option available to the permit granting authority to have

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it run with the land. She said the next step – which is in progress now – is to prepare the amendments to the other sections of the zoning ordinance that relate to home occupations; e.g. §4.1, site plan review, 4.2, conditional use, §4.8, signage, and §7.2, definitions. Once complete, she will submit the whole package to the OC for further review and then they will refer to the Planning Board for public hearing. After that it will be referred back to Town Council or the P&D Committee.

7. Citizen Initiatives: None.
8. Public Comments: None.
9. Committee Member Comments: Manager Jennings gave an update on the hiring of an intern to perform the bus ridership survey, and asked if the P&D was comfortable with allowing him to move forward to hire the individual he had interviewed for the position. He noted the costs would be paid from the Host Community Benefit or TIF or some other funds. The P&D agreed by consensus to allow Manager Jennings to move forward on this project.
10. Adjournment: **Motion** to adjourn at 8:06 pm by Councilor Sirois; seconded by Mayor Ryder, carried 6/0/0.

*Respectfully submitted by*  
Karen Cullen, Town Planner

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Check One:  Initial Application  
 Reappointment Application

TOWN OF HAMPDEN  
APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: DORRITY THOMAS P  
LAST FIRST MI

ADDRESS: 46 COTTAGE STREET HAMPDEN 04444  
STREET TOWN ZIP

MAILING ADDRESS (if different): \_\_\_\_\_

TELEPHONE: HOME: 207-944-3892 WORK: 207-974-2241

EMAIL: THOMAS.DORRITY@TD.COM // TDORRITY@GMAIL.COM

OCCUPATION: COMMERCIAL CREDIT ANALYST, TD BANK

BOARD OR COMMITTEE PREFERENCE:

FIRST CHOICE: PLANNING BOARD

SECOND CHOICE (OPTIONAL): BOARD OF ASSESSMENT REVIEW

How would your experience, education and/or occupation be a benefit to this board or committee?: I held a Maine Real Estate Sales Agents and Associate Broker license from 2006 through 2008. I currently work in the Commercial Credit department of TD Bank, providing financial analysis to loans, industries, and customers in TD's portfolio. I have built a strong foundation in financial risk assessment along with industry risk analysis. I have a bachelor's in business from UMO and previously worked at IBM in Slovakia where I lived for four years.

Are there any issues you feel this board or committee should address, or should continue to address?: At this time, no. I recently moved back to the Hampden area and want to become more involved in the community. I feel that joining the planning board and board of assessment review will allow me to use some of my skills while helping the community and identifying other areas of interest in public service.

CONSERVATION COMMITTEE  
BOARD OF ASSESSMENT REVIEW  
PERSONNEL APPEALS BOARD  
LURA HOIT MEMORIAL POOL  
ECONOMIC DEVELOPMENT COMMITTEE  
FRIENDS OF DOROTHEA DIX PARK

3 YEAR

DYER LIBRARY  
RECREATION COMMITTEE  
BOARD OF APPEALS  
HISTORIC PRESERVATION COMMITTEE  
TREE BOARD

5 YEAR  
PLANNING BOARD

JAN 10 2017

<b>FOR TOWN USE ONLY</b>		Date Application Received: _____
COUNCIL COMMITTEE ACTION: _____	DATE: _____	
COUNCIL ACTION: _____	DATE: _____	
<input type="checkbox"/> NEW APPT	<input type="checkbox"/> REAPPOINTMENT	DATE APPOINTMENT EXPIRES: _____



Town of Hampden  
Land & Building Services

## Memorandum

To: Planning & Development Committee  
From: Karen M. Cullen, AICP, Town Planner *KME*  
Date: January 30, 2017  
RE: Hampden Business Park Omnibus TIF Credit Enhancement Agreement

Staff met with the consultant regarding the Credit Enhancement Agreement last week, and the final version showing modifications is attached. This will be considered as part of the Hampden Business Park Omnibus Municipal Development and Tax Increment Financing District public hearing on Monday February 6, 2017.

~~APPENDIX 1~~—CREDIT ENHANCEMENT AGREEMENT

**HAMPDEN BUSINESS PARK OMNIBUS TIF  
CREDIT ENHANCEMENT AGREEMENT**

THIS CREDIT ENHANCEMENT AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, 2017, is made by and between the **Town of Hampden**, a municipal corporation organized and existing under the laws of the State of Maine (hereinafter the “Town”), **Sargent Corporation**, a business corporation organized and existing under the laws of the State of Maine; **SSR, LLC**, a limited liability company organized and existing under the laws of the State of Maine; and **SSR II, LLC**, a limited liability company organized and existing under the laws of the State of Maine (hereinafter collectively referred to as “Sargent”),

**WITNESSETH:**

WHEREAS, on or about \_\_\_\_\_April 24, 2014, the Town and Sargent entered into a certain Development Agreement for completion of infrastructure improvements in the Town-owned Hampden Business and Commerce Park (hereinafter the “Park”), a true copy of which Development Agreement is attached to this Credit Enhancement Agreement as **Exhibit A** (hereinafter the “Development Agreement”);

WHEREAS, as partial consideration for Sargent’s completion of infrastructure improvements in the Park, section II(5) of the Development Agreement obligates the Town to designate a development district and tax increment financing (TIF) district for the Park, and to enter into a credit enhancement agreement with Sargent with respect to certain lots in the Park as specified in the Development Agreement; and

WHEREAS, on February \_\_\_\_\_, 2017, the Town designated the Hampden Business Park Omnibus Municipal Development District and Tax Increment Financing District (hereinafter the “District”), consisting of lots 001, 002 and 004 through 038, including roads contained therein, as depicted on Map 10-B of the Town of Hampden Assessor’s tax maps, in accordance with Chapter 206 of Title 30-A, Maine Revised Statutes, as amended, by vote of the Hampden Town Council (the “Vote”); and

WHEREAS, on the same date, the Council adopted a development program and financial plan (the “Development Program”) for the District; and

WHEREAS, on the same date, the Council approved the execution and delivery of a credit enhancement agreement with Sargent; and

WHEREAS, the Town and Sargent desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated and described in the Development Program and in section II(5) of the Development Agreement;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows.

## ARTICLE I DEFINITIONS

Section 1.1 Definitions. For the purposes of this Credit Enhancement Agreement, the following terms shall have the meanings specified ~~in~~ herein unless the context ~~clearing~~ clearly requires otherwise:

"Agreement" or "Credit Enhancement Agreement" shall mean this Credit Enhancement Agreement between the Town and Sargent.

"Assessment Date" means April 1<sup>st</sup> of each calendar year, the date fixed by Maine law for valuation and municipal tax liability with respect to the ensuing Tax Year.

"Captured Assessed Value" means that portion of the Increased Assessed Value that is annually retained within the District for the purpose of funding the District Development Program, as provided in the approved Development Program for the District. For the purposes of the District and this Credit Enhancement Agreement, Captured Assessed Value does not include the taxable value of personal property and equipment located within the District. As provided in the Financial Plan of the Development Program, the Captured Assessed Value shall be equal to one hundred percent (100%) of the Increased Assessed Value for each of the thirty (30) Tax Years beginning July 1, 2017 and ending June 30, 2047.;

"Current Assessed Value" means the taxable value of all real estate located within the District as of the annual Assessment Date. For the purposes of the District and this Credit Enhancement Agreement, Current Assessed Value does not include the taxable value of personal property and equipment located within the District.

"Development Agreement" means the agreement between the Town and Sargent dated \_\_\_\_\_, ~~April 24,~~ 2014, for completion of infrastructure improvements in the Hampden Business Park, a true copy of which is attached to this Credit Enhancement Agreement as **Exhibit A**.

"Development Program" means the development program for the District adopted by the Hampden Town Council on February \_\_\_\_\_, 2017.

"Development Program Fund" means the development program fund described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article II hereof.

"District" means the Hampden Business Park Omnibus Municipal Development District and Tax Increment Financing District designated by the Town pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, adopted by the Hampden Town Council on February \_\_\_\_\_, 2017. The District consists of the property described in section II(A)(1) and Exhibit A-2 of the Development Program and depicted in **Exhibit B** to this Credit Enhancement Agreement.

"Financial Plan" means the financial plan described in the "Financial Plan" section of the Development Program.

"Fiscal Year" (sometimes abbreviated "FY") means July 1 to June 30 each year or such other fiscal year as the Town may establish from time to time.

"Increased Assessed Value" means the amount, in any Tax year, by which the Current Assessed Value in the District exceeds the Original Assessed Value. If the Current Assessed Value within the District does not exceed the Original Assessed Value in any Tax Year, there is no Increased Assessed Value for that Tax Year.

"Original Assessed Value" means \$6,957,600.00, the assessed value of taxable real property and facilities located within the District, excluding taxable personal property and equipment, as of March 31, 2016 (= April 1, 2015).

"Project" means Sargent's completion of infrastructure development within the Park in accordance with the Development Agreement and as described in section I(A) of the Development Plan.

"Project Cost Account" means the Project Cost Account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article IV hereof.

"Property Taxes" means any and all ad valorem property taxes in excess of any county, state or special district taxes, levied, charged or assessed against real estate and facilities located in the District by the Town or on its behalf.

"Qualified Investments" shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

"Retained Tax Increment Revenues" means, in each Tax Year this Agreement remains in effect, the amount of Property Taxes assessed and collected with respect to the Captured Assessed Value in the District pursuant to the terms of the Development Program, for the purpose of funding the Development Program.

"Retained Tax Increment Revenues – Developer's Share" means, in each Tax Year that this Agreement remains in effect, the percentages of Retained Tax Increment Revenues to be returned to Sargent in accordance with this Credit Enhancement Agreement, for the purpose

of defraying the Developer's costs of developing and building the Project, which may include Sargent's financing costs.

As provided in section II(5) of the Development Agreement, "Retained Tax Increment Revenues – Developer's Share" shall consist of fifty percent (50%) of the Retained Tax Increment Revenues from new taxable development (site improvements and building development) on for Lots 1, 5, 7, and 11 through 3817 and 19 through 37 as depicted in the final subdivision plan for the Hampden Business and Commerce Park, as amended, as referenced in the first recital of the Development Agreement; said Lots also being designated as Tax Map 10-B, Lots ~~001, 005, 007, 011, etc. 017 and 019 through 037~~ in the Hampden Assessor's tax maps. Payment of Retained Tax Increment Revenues – Developer's Share to Sargent shall be for the periods, and subject to the prior conditions, set out in section II(5) of the Development Agreement. Incremental new taxes resulting from increaseschanges in land value not associated with site improvements and building development will accrue to the Town portion of TIF revenuesRetained Tax Increment.

"Tax Payment Date" means the later of the date(s) on which Property Taxes assessed by the Town against Real Estate located in the District are due and payable or are actually paid.

"Tax Year" means the Town's annual July 1<sup>st</sup> through June 30<sup>th</sup> fiscal year.

Section 1.2 Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Except as expressly provided herein, and except in regard to the District approval dates and effective dates as provided in the Development Agreement, nothing in this Credit Enhancement Agreement shall be deemed to alter, modify or excuse performance of Sargent's or the Town's obligations under the Development Agreement. In the event of any ambiguity in the provisions of this Credit Enhancement Agreement relating to annual payments of tax increment revenues by the Town to ~~the~~ Sargent, the provisions concerned

shall be construed in a manner consistent with the terms and conditions of the Development Agreement and specifically section II(5) thereof.

(e) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

## **ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

Section 2.1 Creation of Development Program Fund. The Town hereby confirms the creation and establishment of a segregated fund in the name of the Town designated as the "Hampden Business Park Omnibus Municipal Development District and Tax Increment Financing District Development Program Fund" (the "Development Program Fund") pursuant to, and in accordance with, the terms and conditions of the Development Program and Development Agreement. The Development Program Fund shall consist of a single Project Cost Account, which shall include a Developer Project Cost Sub-account and a Town Project Cost Sub-account.

Section 2.2 Deposits into Development Program Fund. The Town shall deposit into the Developer Project Cost Sub-account of the Development Program Fund within ten (10) days after each payment of Property Taxes with respect to Real Estate located in the District, an amount equal to that portion thereof constituting Retained Tax Increment Revenues - Developer's Share for the period to which the payment relates. The Town shall allocate the amounts so deposited to fund fully and pay the payments due to Sargent under section II(5) of the Development Agreement and Article III of this Credit Enhancement Agreement, both past due, if any, and coming due within the following 12 months. After payment by the Town of the amount(s) due to Sargent for each fiscal year, any revenue resulting from the investment of monies in the Developer Project Cost Sub-account that remains in the Sub-account at the end of the applicable fiscal year shall be transferred by the Town to the Town Project Cost Sub-account.

Section 2.3 Use of Monies in Developer Project Cost Sub-account. Monies deposited in the Developer Project Cost Sub-account shall be used and applied exclusively to fund the Town's payment obligations described in Article III hereof.

Section 2.4 Monies Held in Trust. All monies required to be deposited with or paid into the Developer Project Cost Sub-account of Development Program Fund to fund payments to

Sargent under the provisions hereof and the provisions of the Development Program, but excluding any investment earnings thereon, shall be held by the Town in trust, for the benefit of Sargent.

Section 2.5 Investments. The monies in the Developer Project Cost Sub-account not immediately paid to Sargent shall be invested and reinvested in Qualified Investments as determined by the Town. The Town shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the Town shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The Town shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Developer Project Cost Sub-account.

Section 2.6 Liens. The Town shall not create any liens, encumbrances, or other interests of any nature whatsoever, nor shall it hypothecate the Developer Project Cost Sub-account of the Development Program Fund or any funds therein, other than the interest granted to Sargent hereunder in and to the amounts on deposit.

### **ARTICLE III PAYMENT OBLIGATIONS**

Section 3.1 Credit Enhancement Payments. The Town agrees to pay to Sargent within thirty (30) days following each Tax Payment Date all amounts then on deposit in the Developer Project Cost Sub-account, excluding earnings thereon; provided however, that all payments made hereunder shall be used only to pay Sargent's Project Costs directly or to reimburse Sargent for payment of Project Costs (including payment or reimbursement of debt service on indebtedness incurred to finance such Project Costs).

Such reimbursement payments shall be made by the Town for a maximum of twentyten (2010) tax years as to each qualifying lot, during the twenty (20) year period beginning with the Tax year starting July 1, 2018, and ending no later than June 30, 2038, subject to the requirements of section II(5)(b) of the Development Agreement. ~~Such reimbursement payments shall be made by the Town in each Tax Year beginning with the Tax Year starting July 1, 2017 and ending with at the conclusion of the Tax Year ending June 30, 2047.~~ The Town shall make all such payments with respect to the District to Sargent, its successors and assigns. The obligation of the Town to make such payments shall be a limited obligation payable solely out of monies actually on deposit in the Developer Project Cost Sub-account of the Development Program Fund and shall not constitute a general debt or obligation on the part of the Town or a general obligation or charge against or pledge of the faith and credit or taxing power of the Town, the State of Maine or any political subdivision thereof.

Section 3.2 Failure to Make Payment. In the event the Town should fail to or be unable to make any of the payments required under Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year as a limited obligation of the Town under the terms and conditions hereinafter set forth until the unpaid amount shall have been fully paid. 7

In the event of such default by the Town, Sargent shall also have the right to initiate and maintain an action to specifically enforce the Town's obligations hereunder, including without limitation, the Town's obligation to deposit all Retained Tax Increment Revenues – Developer's Share to the Developer project Cost Sub-account of the Development Program Fund and to make payments to Sargent.

Section 3.3 Manner of Payments. The payments provided for in this Article III shall be paid in immediately available funds directly to Sargent in the manner provided hereinabove for its own use and benefit.

Section 3.3A Developer's Payment Obligations. Sargent agrees that during the term of this Agreement it shall pay, when due, all amounts lawfully assessed by the Town against Sargent as Property Taxes against Real Estate located in the District. Notwithstanding this obligation, the parties acknowledge that the intention of the parties' Development Agreement is that the Town shall continue to hold title to all unbuilt lots in the park until such time as they are sold to a third party or Sargent exercises its option to purchase the lot(s) concerned in accordance with the Development Agreement. Accordingly, Sargent shall become liable for payment of Property Taxes only with respect to those lots as to which it has exercised its option to purchase and has taken title from the Town, and continues to hold title as of April 1<sup>st</sup> prior to the Tax Year concerned.

If otherwise eligible to receive tax reimbursements with respect to any lot under the Development Agreement and this Credit Enhancement Agreement, Sargent shall not lose its eligibility on account of payment of the underlying property taxes by a third party purchaser of the lot(s) concerned. Provided, however, that Sargent may assign its right to receive tax reimbursements as to any lot to a third party purchaser of that lot, as an inducement to sale and development of the lot concerned, as provided in Article VII below.

In the event that Sargent or a third party purchaser of the lot concerned shall fail, for any reason, to pay the full amount of any such lawful Property Tax assessment when due, amounts actually paid by Sargent or such third party shall be applied as follows:

First, to payment of Property Taxes assessed against that portion of Real Estate located in the District constituting the Original Assessed Value of the District;

Second, to payment the Town's portion of Retained Tax Increment Revenues on Real Estate located in the District; and

Third, to payment of Retained Tax Increment Revenues – Developer's Share.

Section 3.3B Property Tax Valuation Appeals. Nothing in this Agreement shall be deemed to waive Sargent's right to appeal the Town's valuation or assessment of Real Estate or other Property located in the District and assessed against Sargent for tax purposes, in the same manner as provided by law for assessment and valuation appeals. Provided however, that in the event of a successful valuation appeal with respect to Real Estate located in the District, all

amounts due to Sargent under this Agreement as property tax reimbursements shall be based upon the final valuation and tax amount actually paid for the Tax Year concerned, as determined through the appeals process.

Section 3.4 Obligations Unconditional. Except as directly provided herein, the obligations of the Town to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against Sargent. Except as otherwise expressly provided herein, the Town shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof, or any failure of the Developer to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Agreement or the Development Program.

Section 3.5 Limited Obligation. The Town's obligations of payment hereunder shall be limited obligations of the Town payable solely from monies on deposit in the Developer Project Cost Sub-account of the Development Program Fund, pledged therefor under this Agreement. The Town's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the Town, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from Retained Tax Increment Revenues – Developer's Share payable to Sargent hereunder, whether or not actually deposited into the Developer Project Cost Sub-account of the Development Program Fund. This Agreement shall not directly or indirectly or contingently obligate the Town, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation or to levy or to make any appropriation for their payment, excepting the Town's obligation to levy property taxes upon the Project and the pledge of the Retained Tax Increment Revenues, and earnings thereon, established under this Agreement.

Section 3.7–6 Indemnity. Sargent agrees to defend, indemnify, pay, reimburse and hold the Town, its councilors, officers, agents and employees harmless from and against any and all claims, suits, liabilities, actions, proceedings and expenses, including, without limitation, attorneys fees and expenses and accountant's fees and expenses, arising out of this Agreement, the Development Program or any claim ~~or~~ of illegality or invalidity of the Agreement or the Development Program or the Town's approval of the District, this Agreement or the Development Program or out of the Town's preparation and participation in this Agreement or the Development Program. Provided, however, that these indemnification provisions shall apply only to matters directly related to the validity of this Agreement or to the validity of payments to Sargent by the Town in accordance with this Agreement. The Town shall indemnify Sargent for same if Sargent is successful in any such claim of illegality or invalidity.

## **ARTICLE IV PLEDGE AND SECURITY INTEREST**

Section 4.1 Pledge of Developer Project Cost Sub-account. In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Sargent by the Town, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the Town's covenants and agreements contained herein, the Town does hereby grant a security interest in and pledge to Sargent the Developer Project Cost Sub-account of the Development Program Fund to the extent of Sargent's rights under this Agreement to receive funds from such Project Cost Account and all sums of money and other securities and investments now or hereafter therein.

Section 4.2 Perfection of Interest. The Town shall cooperate with Sargent in causing appropriate financing statements and continuation statements naming Sargent as pledge of all amounts from time to time on deposit in the Developer Project Cost Sub-account of the Development Program Fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

Section 4.3 Further Instruments. The Town shall, upon the reasonable request of Sargent, at Sargent's sole expense, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall impose any obligation or expense on the Town additional to the obligations and expenses contained elsewhere herein or constitute a pledge of the credit of the Town.

Section 4.4 No Disposition of Developer Project Cost Sub-account. Except as permitted hereunder, the Town shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Developer Project Cost Sub-account of the Development Program Fund and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part hereof not permitted hereby.

Section 4.5 Access to Books and Records. All books, records and documents in the possession of the Town relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Development Program Fund shall at all reasonable times be open to inspection by Sargent, its agents and employees.

## **ARTICLE V DEFAULTS AND REMEDIES**

Section 5.1 Events of Default. Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default:"

- (a) any failure by the Town to pay any amounts due to Sargent when the same shall become due and payable;
- (b) any failure by the Town to make deposits into the Development Program Fund and/or the Project Cost Account as and when due;
- (c) any failure by the Town or Sargent to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the Town or Sargent to be observed or performed, provided, however, that failure of Sargent to pay Property Taxes when due shall not constitute an event of default hereunder; or
- (d) if a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Town's affairs shall have been entered against the Town or the Town shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Town or of or relating to all or substantially all of its property, including without limitation, the filing of a voluntary petition in bankruptcy by the Town or the failure by the Town to have a petition in banking dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Town.

Section 5.2 Remedies on Default. Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps:

- (a) The non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and
- (b) ~~Dennis Paper & Food Services Sargent~~ shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine.

Section 5.3 Remedies Cumulative. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to insist upon the strict performance of any of the covenants and agreements herein set

forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the Town with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 5.4 Agreement to Pay Attorneys' Fees and Expenses. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Town or ~~Dennis Paper & Food Services~~ Sargent herein contained, the defaulting party shall, on demand thereof, pay to the non-defaulting party the reasonable costs and expenses so incurred by the non-defaulting party.

Section 5.5 Waiver of Sovereign Immunity. The Town hereby waives its sovereign immunity with respect to any actions or suits undertaken by Sargent, its successors or assigns, arising out of, resulting from or involving any alleged default by the Town hereunder or failure by the Town to observe or perform any of its obligations hereunder, it being understood and agreed that such waiver is a material inducement to Sargent entering into this Agreement and continuing its pursuit of the Project.

## **ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION**

Section 6.1 Effective Date and Term. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire upon the payment of all amounts due to Sargent hereunder and the performance of all obligations on the part of the Town and Sargent hereunder.

Section 6.2 Cancellation and Expiration of Term. At the termination or other expiration of this Agreement and following full payment of all amounts due and owing to Sargent hereunder or provision for payment thereof and of all other fees and charges having been made in accordance with the provisions to this Agreement, the Town and Sargent shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

## **ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

Section 7.1 Consent to Collateral Pledge and/or Assignment. The Town hereby acknowledges that it is the intent of Sargent to pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is

hereby imposed on Sargent to make such assignment or pledge. Recognizing this intention, the Town hereby consents and agrees to the pledge and assignment of any or all of Sargent's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Sargent hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. For this purpose, the Town agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledge or assignee, including without limitation, recognition of the pledge or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledge or assignee the position of such assignee or pledge and the irrevocable and binding nature of this Agreement and provide to the pledge or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

The Town further consents to an assignment by Sargent of its right to receive tax reimbursements under this Agreement with respect to any particular lot or lots, to a third party purchaser or developer, as an inducement to said third party's purchase or development of the lot or lots concerned, and subject to all provisions of the Development Agreement and this Credit Enhancement Agreement concerning eligibility for such tax reimbursement payments.

Section 7.2 ~~Other~~ Conditions of Assignments.

- (a) Except to the extent provided in section 7.1, Sargent shall not have the right to transfer or assign all or any portion of its rights in, to and under this Agreement, without the consent of the Town, which consent may be withheld at the ~~sole~~ discretion of the Town.
- (b) Any assignment by Sargent will require the Assignee to be bound by the terms and conditions of this Agreement. Prior to giving consent to any proposed assignment, documentation showing that the Assignee has agreed to this requirement shall be submitted to the Town. Prior to giving consent to any proposed assignment, the Town must receive documentation in form and substance satisfactory to it, that the proposed assignee accepts and agrees to be bound by the terms and conditions of this Agreement.

**ARTICLE VIII  
MISCELLANEOUS**

Section 8.1 Successors. The covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8.2 Parties in Interest. Except as otherwise expressly provided herein, nothing in this Agreement is intended or shall be construed to confer upon any person, firm or corporation, other than the Town, ~~and University Club and Dennis Paper & Food~~ Sargent Services any right, remedy or claim; it being intended that this Agreement shall be for the sole and exclusive benefit of the Town, ~~and~~ Sargent and their respective successors and assigns.

Section 8.3 Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4 No Personal Liability of Officials of the Town. No covenant, stipulation, obligation or agreement of the Town contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the Town in his or her individual capacity and neither the members of the Town Council of the Town nor any official, officer, employee or agent of the Town shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6 Governing Law. The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7 Notices. All notices, certificates, requests, requisitions or other communications by the Town or Sargent pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the Town:

Town Manager  
Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444

If to Sargent:

~~[Insert contact information for notices]~~ Herbert R. Sargent, President  
378 Bennoch Road / PO Box 435  
Stillwater, ME 04489

Any of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8 Amendments. This Agreement may be amended only with the concurring written consent of the parties hereto.

Section 8.9 Net Agreement. This Agreement shall be deemed and construed to be a "net agreement," and the Town shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without abatement, deductions or setoffs.

Section 8.10 Benefit of Assignees or Pledges. The Town agrees that this Agreement is executed in part to induce assignees or pledges to provide financing for the Project and accordingly all covenants and agreements on the part of the Town as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledge from time to time of Sargent's right, title and interest herein.

Section 8.11 Valuation Agreement. The Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The Town and Sargent hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party to be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Sargent's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.12. Development Agreement. The Development Agreement (Exhibit A), Development Program and Financial Plan for the District (Exhibit B) as approved by the Town shall be deemed to be part of and incorporated in this Agreement. Provided however, that in the event of any conflict between this Agreement and the Development Program or Financial Plan, the Development Agreement and this Agreement shall control, to the extent permitted by law, over any such inconsistent provisions of the Development Program or Financial Plan.

Section 8.13 Integration. This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, written or oral, between the Town and Sargent relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the Town and Sargent have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

TOWN OF HAMPDEN

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By: Angus Jennings  
Its: Town Manager

SARGENT CORPORATION  
SSR, LLC  
SSR II, LLC

---

By: Herbert R. Sargent  
President, Sargent Corporation  
Managing Member, SR, LLC  
Managing Member, SR II, LLC

**Town of Hampden**  
 106 Western Avenue  
 Hampden, Maine 04444



**Phone:** (207) 862-3034  
**Fax:** (207) 862-5067  
**Email:**  
[townmanager@hampdenmaine.gov](mailto:townmanager@hampdenmaine.gov)

TO: Planning & Development Committee  
 FROM: Angus Jennings, Town Manager  
 DATE: January 30, 2017  
 RE: Potential contribution to costs for water extension on Coldbrook Road

As you know, the route for water infrastructure to serve the proposed Fiberight facility and surrounding land, as well as the method for financing this infrastructure, has been the subject of continued focus.

This past Wednesday HWD Superintendent Jamie Holyoke and I both attended the meeting of the MRC Board of Directors. A follow-up meeting was held on Friday including HWD staff and two Board members; HWD consultants from Woodard & Curran; MRC Exec. Dir. Greg Louder; MRC consultant from CES; and me.

At an Executive Session last Wednesday, the MRC Board directed Greg to request a contribution of funds from the Town of Hampden in order to assist them in filling a gap in financing. MRC has requested that the Town consider contributing \$167,000 (or more) toward the cost of a 12" ductile iron pipe and related infrastructure along Coldbrook Road. MRC has said that this requested amount is based on the additional cost to install 12" pipe (as opposed to 6" pipe).

In previous discussions with the Council or its Committees, the following were stated as conditions under which the Council could consider making a contribution:

1. The construction standards of the HWD must be met (i.e. 12" ductile iron along Coldbrook Road).
2. The need for Town financial contribution would need to be demonstrated so the Town understands MRC's budgeted, expended and anticipated costs that have led (or will lead) to the financing gap.
3. The Town would need security that, if it makes a contribution, the water infrastructure would be constructed regardless of whether the Fiberight facility is completed (or, alternatively, that any Town funds contributed would be refunded in full in the event that the infrastructure were not completed).
4. The Town would expect MRC to waive its right to cost recovery pursuant to Ch. 65 to allow future private party tie-ins within 10 years at no cost.
5. The Town would like to recoup any funds contributed once the Fiberight facility is up and running (such as through reduced tipping fees or otherwise).
6. The Town would like to receive assurance that additional Town contributions would not be requested.

At Wednesday's P&D meeting, I will recommend that the Committee take the following two actions:

Authorize a letter to be written to the MRC on the Council's (or Committee's) behalf setting out the conditions above (if/as modified by the Committee or Council); and

Refer the MRC request to the Finance & Administration Committee with a recommendation from P&D regarding whether the P&D Committee supports Council consideration of the request (but leaving to the Finance Committee the source(s) and timing of any such contribution.

As you know, I have preliminarily reviewed potential funding options, if so supported by the Council, and will be prepared to discuss these potential options at Wednesday's meeting.



6 State St, P.O. Box 2444  
Bangor, ME 04401  
Phone: (207) 945-6222  
Fax: (207) 945-5824  
[results@epsteincommercial.com](mailto:results@epsteincommercial.com)  
[www.epsteincommercial.com](http://www.epsteincommercial.com)

## EXCLUSIVE AUTHORIZATION TO SELL

This Agreement is entered into this 1st day of March 2016, by and between Epstein Commercial Real Estate of 6 State Street, P.O. Box 2444, Bangor, Maine 04402-2444, hereinafter called Broker; and Town of Hampden, 106 Western Ave, Hampden, Maine hereinafter called Owner.

In consideration of Broker's efforts to procure a sale for Owner's real estate as follows:

Lot #2, further described as a 1.46 acre lot as shown on Map 10B, Lot 2 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot # 4, further described as a 4.75 acre lot as shown on Map 10B, Lot 4 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #6, further described as a 1.74 acre lot as shown on Map 10B, Lot 6 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #8, further described as a 1.88 acre lot as shown on Map 10B Lot 8 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot # 9, further described as a 1.55 acre lot as shown on Map 10B, Lot 9 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #10, further described as a 2.80 acre lot as shown on Map 10B, Lot 10 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285.

Owner hereby grants to Epstein Commercial Real Estate the exclusive authorization to sell the above-mentioned real estate at the following price:

- Lot #2           \$ 75,000
- Lot #4           \$200,000

- Lot #6           \$ 90,000
- Lot #8           \$ 95,000
- Lot #9           \$ 90,000
- Lot #10          \$175,000

or at any sale price which is acceptable to Owner. This exclusive authorization shall begin on March 1, 2016 and expire on February 28, 2017.

Broker shall have the exclusive right to sell said property within the time period above and shall be entitled to a commission fee of eight percent (8%) of the sale price. This commission fee shall be paid at the time of each closing. This commission fee shall be due Broker in the event of a sale produced by Broker, Owner, or any other person or entity; all inquiries shall be referred to Broker. If the Property is sold in its entirety (lots 2,4,6,8,9,10) in one transaction to Herb Sargent or an entity in which Herb Sargent has a majority interest, then no commission shall be due.

Should the Owner sell, transfer, convey, lease, exchange or dispose of any portion of said property within six months after the termination of this Agreement to any person, corporation, or entity which the Broker has introduced to the property, and whose name has been furnished to Owner in writing by the Broker during the time period of this Agreement, then in such a case the above commission shall become due and payable to the Broker.

By this Agreement it is understood that Broker is employed and is representing only Owner unless otherwise agreed to in writing. It is further understood that Broker's entitlement to the above commission fee occurs when Broker, Owner, or any other entity finds a purchaser who is ready, willing and able to purchase, and actually purchases, the said above described real estate on the terms herein setout, or on any other terms acceptable to the Owner.

Any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules of the American Arbitration Association. This clause shall survive the expiration of this Agreement.

Agency and Owner each agree that this property is to be offered to any person without regard to race, color, religion, national origin, sex, age or handicap.

**SPECIAL CONDITIONS:**

1. A "For Sale" sign may be placed on the property.    Yes X    No
2. Broker may advertise the property.                    Yes X    No

**BUYER'S AGENCY:**

This Agency's policy is to cooperate with other agencies acting as Buyer's agents, unless such other brokerage agencies have a general policy which effectively inhibits or

precludes the cooperation and sharing of compensation with other brokerage agencies. This Agency's policy is to share compensation with Buyer's agents.

The undersigned jointly and severally agree to accept telefacsimile copies of the documents which have been sent by either party to the other, or to any other party or agent to this transaction, as original documents.

3/7/16  
DATE:

  
OWNER:

3-2-16  
DATE:

  
BROKER:  
EPSTEIN COMMERCIAL REAL ESTATE



6 State St, P.O. Box 2444  
 Bangor, ME 04401  
 Phone: (207) 945-6222  
 Fax: (207) 945-5824  
[results@epsteincommercial.com](mailto:results@epsteincommercial.com)  
[www.epsteincommercial.com](http://www.epsteincommercial.com)

## EXCLUSIVE AUTHORIZATION TO SELL

This Agreement is entered into this 7 day of February 2017, by and between Epstein Commercial Real Estate of 6 State Street, P.O. Box 2444, Bangor, Maine 04402-2444, hereinafter called Broker; and Town of Hampden, 106 Western Ave, Hampden, Maine hereinafter called Owner.

In consideration of Broker's efforts to procure a sale for Owner's real estate located on Map 10, Lots; 2,4,6,8,9,10,17,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37 in the Town of Hampden tax assessor's office and recorded in the Penobscot registry of deeds Book 7832, Page 2732, plans 2014-60 & 2014-61.

Owner hereby grants to Epstein Commercial Real Estate the exclusive authorization to sell the above-mentioned real estate at the following price:

Lot #	List price	Lot #	List Price
2	\$75,000	25	\$68,500
4	\$200,000	26	\$88,900
6	\$90,000	27	\$73,700
8	\$95,000	28	\$109,200
9	\$95,000	29	\$87,400
10	\$175,000	30	\$102,200
17	\$98,300	31	\$124,100
19	\$75,800	32	\$91,200
20	\$74,100	33	\$160,400
21	\$88,600	34	\$213,800
22	\$121,500	35	\$155,400
23	\$71,200	36	\$109,000
24	\$171,300	37	\$131,000

or at any sale price which is acceptable to Owner. This exclusive authorization shall begin on \_\_\_\_\_ and expire on \_\_\_\_\_.

Broker shall have the exclusive right to sell said property within the time period above and shall be entitled to a commission fee of eight percent (8%) of the sale price. This commission fee shall be paid at the time of each closing. This commission fee shall be due Broker in the event of a sale produced by Broker, Owner, or any other person or entity; all inquiries shall be referred to Broker.

Should the Owner sell, transfer, convey, lease, exchange or dispose of any portion of said property within six months after the termination of this Agreement to any person, corporation, or

entity which the Broker has introduced to the property, and whose name has been furnished to Owner in writing by the Broker during the time period of this Agreement, then in such a case the above commission shall become due and payable to the Broker.

By this Agreement it is understood that Broker is employed and is representing only Owner unless otherwise agreed to in writing. It is further understood that Broker's entitlement to the above commission fee occurs when Broker, Owner, or any other entity finds a purchaser who is ready, willing and able to purchase, and actually purchases, the said above described real estate on the terms herein setout, or on any other terms acceptable to the Owner.

Any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules of the American Arbitration Association. This clause shall survive the expiration of this Agreement.

Agency and Owner each agree that this property is to be offered to any person without regard to race, color, religion, national origin, sex, age or handicap.

**SPECIAL CONDITIONS:**

- 1. A "For Sale" sign may be placed on the property.                      Yes X                      No \_\_\_
- 2. Broker may advertise the property.    Yes X                      No \_\_\_

**BUYER'S AGENCY:**

This Agency's policy is to cooperate with other agencies acting as Buyer's agents, unless such other brokerage agencies have a general policy which effectively inhibits or precludes the cooperation and sharing of compensation with other brokerage agencies. This Agency's policy is to share compensation with Buyer's agents.

The undersigned jointly and severally agree to accept telefacsimile copies of the documents which have been sent by either party to the other, or to any other party or agent to this transaction, as original documents.

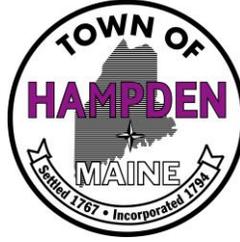
\_\_\_\_\_  
DATE:

\_\_\_\_\_  
OWNER:

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
BROKER:  
EPSTEIN COMMERCIAL REAL ESTATE

**Town of Hampden**  
106 Western Avenue  
Hampden, Maine 04444



**Phone:** (207) 862-3034  
**Fax:** (207) 862-5067  
**Email:**  
townmanager@hampdenmaine.gov

**TO:** Planning & Development Committee  
**FROM:** Angus Jennings, Town Manager  
**DATE:** January 30, 2017  
**RE:** Advice from Town Attorney regarding engineers' stamps, liability

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As you may know, we have on occasion received questions or complaints from contractors or property owners regarding whether the building permitting process requires more documentation than is appropriate or justified. This often has focused on the requirement, in certain instances, to provide plans stamped by a professional engineer. Any such question or complaint is investigated and resolved at the time, but I felt there would be benefit to looking at this issue from a broader view.

In order to ensure that our Code Enforcement processes are fully compliant with both law and generally accepted standards, I therefore requested the attached advice from Atty. Stumpfel on behalf of the Town Attorney, which was received in August 2016.

At times, Code Enforcement personnel have cited concern about any liability the Town generally or they personally could be exposed to if a permit issued by the Town without an engineer's stamp were to result in construction that later fails and causes injury or monetary loss. I discussed this matter with Atty. Stumpfel, and requested a follow-up opinion regarding the Town's and its' employees exposure to liability, which is limited.

The attached opinion letters have been provided to the Town Planner, Chief Rogers, the Code Enforcement Officer, Building Inspector and Fire Inspector, and were reviewed and discussed at a meeting earlier in January.

These materials in general validate the authority of the CEO to require documentation as may be needed in certain instances, while providing context for what types of circumstances may justify this need. The companion memo helps to provide assurance that Town staff need not be overly concerned about Town or personal liability that may result from their actions or inactions.

These materials are provided to the Committee for informational purposes. One follow-up item, underway, is to prepare a flyer to better communicate to the public and to contractors what to expect from the local permitting process, how best to receive information from inspectional personnel, etc. This is part of an overall effort to improve Hampden's reputation as a place to do business.

**RUDMAN WINCHELL**  
**Memorandum**

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**TO:** Angus Jennings, Hampden Town Manager  
**FROM:** Erik Stumpf, Rudman Winchell  
**DATE:** August 15, 2016

**RE:** Authority of Code Enforcement Officer to Require Professionally Stamped Design Plans

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This Memorandum addresses the legal authority of the Town of Hampden Code Enforcement Officer to require that design plans submitted in support of a building permit application under the Maine Uniform Building and Energy Code ("MUBEC") as adopted by the Town of Hampden, be stamped with the seal of a certified design professional (architect or engineer), notwithstanding lack of a specific submittal requirement in the ordinance concerned, to require a stamped or sealed plan.

**I. MUBEC**

In October, 2010, the State of Maine Technical Building Codes and Standards Board, acting pursuant to Title 10 M.R.S. § 9721(2), approved a series of regulations adopting the constituent parts of the Maine Uniform Building and Energy Code. As approved by the Board, MUBEC consists of:

(a) Portions of the 2009 International Building code, in effect June 1, 2010, published by the International Code Council, Inc., with revisions (*see* 16 Code of Maine Rules 642, Chapter 3);

(b) The 2009 International Existing Building Code in effect June 1, 2010, published by the International Code Council, Inc., with revisions (*see* 16 Code of Maine Rules 642, Chapter 4);

(c) Portions of the 2009 International Residential Code, in effect on June 1, 2010, published by the International Code Council, Inc., with revisions (*see* 16 Code of Maine Rules 642, Chapter 5); and

(d) The 2009 International Energy Conservation Code, in effect on June 1, 2010, published by the International Code Council, Inc., with revisions (*see* 16 Code of Maine Rules 642, Chapter 6).

Under 10 M.R.S. § 9724(1), as originally enacted, Hampden, as a municipality with an existing building code and more than 2,000 residents, was required to begin enforcing MUBEC effective July 1, 2010. Because the Technical Building Codes and Standards Board had not issued its regulations as of July 1<sup>st</sup>, the enforcement date was pushed back to December 1, 2010.

Section 9724(1) also provides that MUBEC “must be enforced through inspections that comply with Title 25, section 2373.” In turn, 25 M.R.S. § 2373 provides as follows:

**§2373. Municipal inspection options**

The code must be enforced in a municipality that has more than 4,000 residents and that has adopted any building code by August 1, 2008. Beginning July 1, 2012, the code must be enforced in a municipality that has more than 4,000 residents and that has not adopted any building code by August 1, 2008. The code must be enforced through inspections that comply with the code through any of the following means: [2011, c. 408, §6 (AMD).]

1. Building officials. Building officials and local code enforcement officers; [ 2007, c. 699, §11 (NEW) .]
2. Interlocal agreements. Interlocal agreements with other municipalities that share the use of building officials certified in building standards pursuant to Title 10, section 9723; [ 2007, c. 699, §11 (NEW) .]
3. Contractual agreements. Contractual agreements with county or regional authorities that share the use of building officials certified in building standards pursuant to Title 10, section 9723; and [ 2007, c. 699, §11 (NEW) .]
4. Third-party inspectors. Reports from 3rd-party inspectors certified pursuant to Title 10, section 9723 submitted to the building official prior to obtaining a certificate of occupancy in section 2357-A that are obtained pursuant to independent contractual arrangements between the building owner and 3rd-party inspector or the municipality and 3rd-party inspector. [ 2011, c. 633, §10 (AMD) .]

Additional requirements are imposed on local CEOs / building inspectors under 25 M.R.S. §2373-A, as follows:

**Title 25 M.R.S. § 2353-A. Duty to inspect buildings under construction**

The building official shall inspect each building during the process of construction so far as may be necessary to see that all proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made safe and that proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread, and may give such directions in writing to the owner or contractor as the building official considers necessary concerning the construction of the building so as to render the building safe from the catching and spreading of fire. For a building official in a municipality that is enforcing the Maine Uniform Building and Energy Code pursuant to Title 10, section 9724, unless the municipality is enforcing that code by means of 3rd-party inspectors pursuant to section 2373, subsection 4, the building official shall inspect each building during the process of construction for compliance with the Maine Uniform Building and Energy Code adopted pursuant to Title 10, chapter 1103. [2011, c. 582, §4 (AMD).] (Emphasis added.)

A municipality’s use of third-party inspectors under MUBEC is addressed in 162 CMR 642, Chapter 2 of the Technical Building Codes and Building Standards Board. Chapter 2 includes the following provisions:

## **SECTION 1. PURPOSE AND SCOPE**

A TPI certified by the State Planning Office is authorized to enter into a private agreement for remuneration with an Applicant or with a municipality or municipalities, to conduct inspections under 30-A M.R.S. §4451 for compliance with this Code, to issue a Notice to Proceed to the Applicant and to issue an inspection report to the municipality for the issuance of a certificate of occupancy.

## **SECTION 2. AUTHORITY**

The authority for third party inspectors is found in 10 M.R.S. §9723.

## **SECTION 3. NOTICE TO PROCEED**

1. A TPI shall inspect the Applicant's planned construction documents, including diagrams, schematics, specifications, etc. for compliance with this Code. If the TPI finds the planned construction complies with the Code, the TPI shall:

A. Approve the planned construction in writing to the Applicant, as currently in compliance with this Code, within the specific building area for which the TPI is certified.

A full copy of 16 CMR 642, Chapter 2, is appended to this Memo.

## **II. Town's Ordinances**

Although the Town of Hampden has enforced MUBEC since December 1, 2010, the Town did not enact an ordinance formally adopting MUBEC until March 16, 2015, effective April 15, 2015. The Town's MUBEC ordinance was enacted as a separate, stand-alone ordinance, and not as part of the Zoning Ordinance or another Town ordinance.

Section 2 of the Town's MUBEC ordinance addresses administration.

Subsection 2.1 provides that "The Code Enforcement Officer and/or Building/Fire Inspector of the Town of Hampden shall serve as the building official as defined in 25 M.R.S. § 2371 and shall be responsible for issuing building permits and certificates of compliance." Under subsection 2.2, the Code Enforcement Officer and/or Building/Fire Inspector is also responsible for inspecting all permitted construction.

Subsection 2.3 gives property owners, at the owner's sole expense, the option of complying with MUBEC's inspection requirements through the third-party inspection process allowed under the MUBEC statute and the regulations of the Technical Building Codes and Standards Board.

Subsection 2.4 further provides that "[t]he administration and enforcement of MUBEC, including permits, certificates of compliance, fees, and violations shall be in accordance with Article 5 of the Town of Hampden, Maine Zoning Ordinance. . ."

Article 5, section 5.1 of the Zoning Ordinance provides that "[t]his Ordinance shall be enforced by a Code Enforcement Officer appointed by the Town Manager, with confirmation by

the Town Council.” Section 5.2 of the Zoning Ordinance elaborates on the duties of the Code Enforcement Officer as follows:

**5.2 Duties** – The Code Enforcement Officer, in enforcing this Ordinance, shall be responsible for establishing reasonable procedures for enforcement, keeping all activities within the jurisdiction of this Ordinance under surveillance, issuing building and/or use permits where applicable, keeping public records of his proceeding[s] and instituting or causing to be instituted any or all actions that might be appropriate for the enforcement of this Ordinance.

Subsection 5.3.1.4 goes on to further provide as follows:

**5.3.1.4** No building permit for a building or structure on any lot shall be issued except to the owner of record thereof, or his authorized agent. The Code Enforcement Officer may require that any application for such a permit shall be accompanied by a plan, accurately drawn to scale, showing the actual shape and dimensions of the lot to be built upon, an on-site soils survey, the exact location and size of all buildings already on the lot, the location of new buildings to be constructed, together with the lines within which all buildings and structures are to be constructed, the existing and intended use of each building or structure, *and such other information as may be necessary to provide for the execution and enforcement of this Ordinance.*

(Emphasis added.)

### III. Discussion

The quoted ordinance provisions confer considerable latitude on the Code Enforcement Officer to determine what plans and other submittals are needed to allow for a complete review of building and use permits that are within the CEO’s granting authority, including building permits under MUBEC. In addition to the authority to establish “reasonable procedures” under subsection 5.2 of the Zoning Ordinance, expressly incorporated by reference in the Town’s MUBEC adoption ordinance, the CEO has express authority under subsection 5.3.1.4 of the Zoning Ordinance, also incorporated by reference, to require submission of scaled plans and “such other information as may be necessary to provide for the execution and enforcement of this Ordinance.”

In order to allow the CEO to determine that the information contained in submitted plans is correct, and that the proposed structure(s) may be safely built in accordance with the plans concerned, it may be both reasonable and necessary at times for the CEO to require plans to be stamped with the seal of a licensed design professional.

Subsection 5.3.1.4 states that plans, if required, must be to scale, and must show the “exact location and size” of all existing and proposed buildings. In ordinary course, the CEO may have limited to determine whether plans submitted in connection with a permit application are correct in these respects, unless they are sealed with a surveyor’s or architect’s stamp.

Likewise, the CEO must determine that the proposed structures may be safely built in accordance with the submitted design plans. In some cases, this determination may involve the exercise of a degree of engineering judgment that exceeds the CEO’s training and professional

credentials. In such cases, requiring an engineer's stamp on plan submittals may be both reasonable and appropriate for the structures concerned.

The authority of the CEO to require submittals under subsection 5.3.1.4 of the Zoning Ordinance is amplified by MUBEC. For example, section R106.1 of the International Residential Code requires all construction documents submitted in connection with a building permit application for a residential structure to be prepared by a registered design professional, although section 106.1 allows the CEO to waive this requirement in some cases. Section 107.1 of the International Building Code contains an identical provision with respect to commercial and industrial buildings.

As a general matter, the CEO must exercise reasonable discretion in determining whether a permit applicant must submit plans, and whether or not those plans must bear a surveyor's, architect's or engineer's stamp. Submittals should only be required for the purpose of demonstrating compliance with the applicable MUBEC or Zoning Ordinance approval standards, and not for the sake of rote formality or harassment. But the CEO's general authority to require plan submittals in general and professionally stamped submittals in particular, is clear under the MUBEC and ordinance provisions quoted above.

An exception to the CEO's authority exists under section 2.3 of the Town's MUBEC adoption ordinance. That section allows property owners, at the owner's sole expense, to comply with MUBEC's requirements by employing a third-party inspector, in accordance with 10 M.R.S. § 9723.

A surface reading of section 2.3 might suggest that the third-party inspector's authority is limited to inspection of actual construction, following approval of the project plans and issuance of a building permit by the Town's CEO. However, under the MUBEC statutory scheme, as implemented by the Bureau of Building Codes and Standards, a third-party inspector's role is not so limited.

Note that under section 3 quoted above, the third-party inspector ("TPI") has authority to inspect "planned construction documents" and to "[a]pprove the planned construction" within the area for which the TPI is certified.

Accordingly, for any MUBEC project on which a TPI is employed by the property owner, the TPI, and not the CEO, would determine the need for "construction documents" or other submittals for those areas of the project within the TPI's certification. The CEO would retain authority to require construction documents or other submittals for portions of the project not within the scope of the TPI's certification. For example, a property owner might hire a properly-certified TPI to review design and construction of steel framing and snow load compliance for a new commercial structure, leaving all other aspects of the project to be reviewed and approved by the Town's CEO. The TPI's inspection report and certificate of compliance would then be made part of the CEO's file.

EMS

16 DEPARTMENT OF PUBLIC SAFETY

642 BUREAU OF BUILDING CODES AND STANDARDS

Chapter 2: MAINE UNIFORM BUILDING AND ENERGY CODE - THIRD PARTY INSPECTORS ("TPI")

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### SECTION 1. PURPOSE AND SCOPE

A TPI certified by the State Planning Office is authorized to enter into a private agreement for remuneration with an Applicant or with a municipality or municipalities, to conduct inspections under 30-A M.R.S. §4451 for compliance with this Code, to issue a Notice to Proceed to the Applicant and to issue an inspection report to the municipality for the issuance of a certificate of occupancy.

### SECTION 2. AUTHORITY

The authority for third party inspectors is found in 10 M.R.S. §9723.

### SECTION 3. NOTICE TO PROCEED

1. A TPI shall inspect the Applicant's planned construction documents, including diagrams, schematics, specifications, etc. for compliance with this Code. If the TPI finds the planned construction complies with the Code, the TPI shall:
  - A. Approve the planned construction in writing to the Applicant, as currently in compliance with this Code, within the specific building area for which the TPI is certified.

### SECTION 4. RESERVED

### SECTION 5. CONSTRUCTION FILE

1. One copy of the Construction File shall be retained by the TPI, and an additional copy shall be furnished to the municipality when the Application for Certificate of Occupancy is submitted.
2. One copy of the Construction File shall be provided to the Applicant and shall be available upon request, for inspection, during the planned construction.
3. The Construction File shall contain the following:
  - A. All written correspondence between the TPI and the Applicant regarding the planned construction. The inclusion of contractual documents regarding contracted services by and between the TPI and Applicant is voluntary.

- B. A copy of the plans, schematics, diagrams, and specifications fully describing the planned construction.
- C. A copy of the Notice to Proceed issued by the TPI to the Applicant for the planned construction.
- D. Change orders for significant modification of planned construction and TPI approval for each change order.
- E. A copy of all inspection reports prepared by the TPI.
- F. A copy of all photographs of the construction. Each photograph shall be time dated.
- G. A final statement of the TPI to the municipality advising if the subject construction is compliance with this Code.

## **SECTION 6. INSPECTION REPORT**

- 1. The Inspection Report shall be prepared by the TPI, and shall include, but not be limited to the following information.
  - A. The Inspection Report shall contain a clear and concise description of each Code item reviewed for compliance.
  - B. The Inspection Report shall provide instruction and guidance to the Applicant to identify and resolve items found to be in noncompliance with the Code.
  - C. Inspection items found to be in noncompliance shall be described and identified by Code section.
  - D. Correction of non-conforming inspection items shall be documented.
  - E. All change orders that significantly modify the planned construction, shall be dated and shall include a written determination by the TPI of Code compliance or noncompliance.
  - F. Each Inspection Report shall include the time and date of inspections, the stage of the planned construction and shall be signed by the TPI conducting the inspection.

## **SECTION 7. INSPECTIONS**

- 1. Construction for which a Notice to Proceed is issued shall be subject to inspection by the TPI and such construction shall remain accessible and exposed for inspection purposes until approved by the TPI.
- 2. The TPI, upon notification by the Applicant, shall make inspections pursuant to this Code and Chapter I of each applicable international code. Such inspection(s) shall be within the specific building area(s) for which the TPI is certified.

**STATUTORY AUTHORITY: 10 M.R.S. §9723**

**EFFECTIVE DATE:**

**October 11, 2010 – filing 2010-471**

## RUDMAN WINCHELL MEMORANDUM

**TO:** Angus Jennings, Hampden Town Manager  
**FROM:** Erik Stumpfel Esq., Rudman Winchell  
**DATE:** January 6, 2017  
**RE:** **Civil Liability of Municipal Code Enforcement Officers and Town Officials for Permitting and Enforcement Decisions**

Town of Hampden  
RECEIVED

JAN 09 2017

Office of the  
Town Manager

As requested, this Memorandum addresses the civil liability of municipal code enforcement officers in Maine and of Maine municipal officials generally, for actions taken or decisions made in connection with land use permit applications and enforcement of local municipal building codes and land use ordinances.

This issue was addressed initially in an e-mail sent to you on August 19, 2016. This Memorandum extends the discussion contained in that e-mail.

### Introduction

In their governmental capacities, Maine municipalities and municipal code enforcement officers have a wide range of responsibilities in preparing, enacting and enforcing municipal building codes and local land use ordinances. Municipal responsibilities in this area extend to the enforcement of a variety of state statutes, in addition to locally adopted ordinances. In the land use context, Title 30-A M.R.S. section 4452(5) sets out an extensive – but not exclusive – list of state laws and municipal ordinances that may be enforced at the municipal level, as follows:

- A. The plumbing and subsurface waste water disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, including the land area of the State that is subject to the jurisdiction of the Maine Land Use Planning Commission;
- B. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;
- C. Local ordinances adopted pursuant to Title 22, section 2642;
- D. Laws administered by local health officers pursuant to Title 22, chapters 153 and 263;
- E. Laws pertaining to fire prevention and protection, which require enforcement by local officers pursuant to Title 25, chapter 313;
- F. Laws pertaining to the construction of public buildings for the physically disabled pursuant to Title 5, sections 4582-B, 4582-C and 4594-F;
- G. Local land use ordinances adopted pursuant to section 3001;
- H. [Deleted - 2007, c. 699, §18 (RP).]
- I. [Deleted - 2007, c. 699, §18 (RP).]

- J. Laws pertaining to junkyards, automobile graveyards and automobile recycling businesses and local ordinances regarding junkyards, automobile graveyards and automobile recycling businesses, pursuant to chapter 183, subchapter 1 and Title 38, section 1665-A, subsection 3;
- K. Local ordinances regarding electrical installations pursuant to chapter 185, subchapter 2;
- L. Local ordinances regarding regulation and inspection of plumbing pursuant to chapter 185, subchapter 3;
- M. Local ordinances regarding malfunctioning subsurface waste water disposal systems pursuant to section 3428 and laws regarding malfunctioning subsurface waste water disposal systems pursuant to Title 38, section 424-A;
- N. The subdivision law and local subdivision ordinances adopted pursuant to section 3001 and subdivision regulations adopted pursuant to section 4403;
- O. Local zoning ordinances adopted pursuant to section 3001 and in accordance with section 4352;
- P. Wastewater discharge licenses issued pursuant to Title 38, section 353-B;
- Q. Shoreland zoning ordinances adopted pursuant to Title 38, sections 435 to 447, including those that were state-imposed;
- R. The laws pertaining to harbors in Title 38, chapter 1, subchapter 1, local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2;
- S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules;
- T. Laws pertaining to limitations on construction and excavation near burial sites and established cemeteries in Title 13, section 1371-A and local ordinances and regulations adopted by municipalities in accordance with this section and section 3001 regarding those limitations;
- U. Standards under a wind energy development certification issued by the Department of Environmental Protection pursuant to Title 35-A, section 3456 if the municipality chooses to enforce those standards ; and
- V. The Maine Uniform Building and Energy Code, adopted pursuant to Title 10, chapter 1103.

(Legislative history notes for non-deleted items have been omitted from this copy.)

Again, this is only a partial list.

In many of the areas listed above, local enforcement and permitting decisions can have serious unintended consequences; for example, costly structural defects in buildings for which local permits were issued, the plans for which did not meet applicable engineering or building code standards. To give another example, a residential apartment fire may occur, with lives lost, in part because required fire inspections were not performed or were negligently done.

Whether a municipal code enforcement officer, other municipal officials or the municipality itself can be held civilly liable for the municipality's land use permitting decisions; for failure to perform required inspections; or for negligent performance of an inspection, is a matter of significant concern for those who are involved in performing those functions. Fortunately for the public officials concerned, Maine law provides clear and affirmative protections from civil liability in nearly all cases.

### Maine Tort Claims Act

Throughout much of Maine's history as a state, Maine municipalities and municipal officials were protected from civil liability for actions taken by them in their public capacities, under the doctrine of "governmental immunity" recognized and applied by the Maine courts, including the Maine Supreme Court.

However, beginning with its decision in *Bale v. Ryder*, 286 A.2d 344 (Me. 1972), the Maine Supreme Court undertook a re-examination of governmental immunity, in light of then-recent legislation and case law development in other states, and in light of the widespread availability of municipal general liability insurance policies. In *Bale v. Ryder* and subsequent decisions, the Court continued to criticize the then-current application of the doctrine, calling on the Maine Legislature to supersede court-made law in this area with a new statute. Finally, in 1976, as the Court's calls to the Legislature continued to go unheeded, the Supreme Court announced its decision in *Davies v. City of Bath*, 363 A.2d 1269, 1272-73 (Me. 1976), that the doctrine of governmental immunity would be abrogated in its entirety on and after February 1, 1977. The effect of this decision was to make municipalities and municipal officials liable for civil damages caused to any person by negligence in performing municipal public duties, to the same extent that private persons are liable in regard to their personal actions.

In response to the Law Court's decision, the Maine Legislature created and enacted the Maine Tort Claims Act, currently codified in Title 14 M.R.S. section 8101 through 8118. Since enactment of the Maine Tort Claims Act as emergency legislation in early 1977 (Chapter 2 of the 1977 session laws), the civil or "tort" of Maine municipalities and municipal officials has been governed entirely by statute, as interpreted by the courts, and not by a body of court-made law.

### Maine Tort Claims Act Immunity

The Maine Tort Claims Act, in 14 M.R.S. section 8103 and 8104-A, provides a general rule of municipal immunity, with limited statutory exceptions. Under the Tort Claims Act, municipalities and their employees are liable for their negligent acts or omissions only in the four specific areas listed in section 8104-A, copy pasted below. As you will note, section 8104-A does *not* include an exception to immunity for negligent code inspections.

In the municipal code enforcement context, a short-hand way of understanding these provisions is through the following example: If the Town's code enforcement officer is involved in an at-fault automobile accident on the way to an inspection site, both the Town and the code

enforcement are potentially liable to any injured party, to the same extent as a private individual and employer, under the exception to immunity for use of motor vehicles in section 8104-A(1)(A). In such a case, the Town's liability insurance carrier (a private insurance company or the Maine Municipal Association Risk Pool) normally would defend or settle the claim(s) and pay any settlement amount or damages award. (If the code enforcement officer was driving his / her privately owned vehicle, the code officer's automobile liability insurance would apply.) In addition, another provision of the section 8112 Maine Tort Claim Act would require the Town to defend and indemnify the code enforcement officer against any claims for the accident, unless the code enforcement officer was found guilty of a criminal offense in connection with the accident, *e.g.* driving under the influence. However, *no liability exposure would arise from the code enforcement officer's inspections of the property concerned, code enforcement officer or municipal permit decision or decisions to enforce or not enforce any apparent code violations.* No liability would be attached as to these latter matters, because no exception to statutory immunity exists under section 8104-A with respect to those activities and decisions.

To the extent that MUBEC or another applicable ordinance grants discretion to the code enforcement officer or other Town official in performing required inspections (for example, in regard to the timing, frequency or extent of inspection), an additional layer of tort protection is provided by section 8104-B(3), also pasted below. Section 8104-B(3) immunizes municipalities against tort claims arising from the performance of "discretionary acts", even in cases where the official abuses their discretion.

In addition, section 8104-B(2) (also pasted below) specifically immunizes the Town and the code enforcement officer against claims arising out of the administrative permit process, including granting or denying any license, permit or approval. For example, a person who claims that they were injured because the code enforcement officer granted a building permit for an unsafe structure, would not have a remedy in court against the Town or the CEO.

### **§8104-A. Exceptions to immunity**

Except as specified in section 8104-B, a governmental entity is liable for property damage, bodily injury or death in the following instances.

1. Ownership; maintenance or use of vehicles, machinery and equipment. A governmental entity is liable for its negligent acts or omissions in its ownership, maintenance or use of any:
  - A. Motor vehicle, as defined in Title 29-A, section 101, subsection 42;
  - B. Special mobile equipment, as defined in Title 29-A, section 101, subsection 70;
  - C. Trailers, as defined in Title 29-A, section 101, subsection 86;
  - D. Aircraft, as defined in Title 6, section 3, subsection 5;
  - E. Watercraft, as defined in Title 12, section 1872, subsection 14;
  - F. Snowmobiles, as defined in Title 12, section 13001, subsection 25; and
  - G. Other machinery or equipment, whether mobile or stationary.

The provisions of this section do not apply to the sales of motor vehicles and equipment at auction by a governmental entity.

2. Public buildings. A governmental entity is liable for its negligent acts or omissions in the construction, operation or maintenance of any public building or the appurtenances to any public building. Notwithstanding this subsection, a governmental entity is not liable for any claim which results from:

A. The construction, ownership, maintenance or use of:

- (1) Unimproved land;
- (2) Historic sites, including, but not limited to, memorials, as defined in Title 12, section 1801, subsection 5;
- (3) Land, buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation; or
- (4) Dams;

B. The ownership, maintenance or use of any building acquired by a governmental entity for reasons of tax delinquency, from the date of foreclosure and until actual possession by the delinquent taxpayer or the taxpayer's lessee or licensee has ceased for a period of 60 days; or

C. The ownership, maintenance or use of any building acquired by a governmental entity by eminent domain or by condemnation until actual possession by the former owner or the owner's lessee or licensee has ceased for a period of 60 days;

3. Discharge of pollutants. A governmental entity is liable for its negligent acts or omissions in the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but only to the extent that the discharge, dispersal, release or escape complained of is sudden and accidental.

4. Road construction, street cleaning or repair. A governmental entity is liable for its negligent acts or omissions arising out of and occurring during the performance of construction, street cleaning or repair operations on any highway, town way, sidewalk, parking area, causeway, bridge, airport runway or taxiway, including appurtenances necessary for the control of those ways including, but not limited to, street signs, traffic lights, parking meters and guardrails. A governmental entity is not liable for any defect, lack of repair or lack of sufficient railing in any highway, town way, sidewalk, parking area, causeway, bridge, airport runway or taxiway or in any appurtenance thereto.

#### **§8104-B. Immunity notwithstanding waiver**

Notwithstanding section 8104-A, a governmental entity is not liable for any claim which results from:

\* \* \* \*

2. Undertaking of judicial act. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial;

3. Performing discretionary function. Performing or failing to perform a discretionary function or duty, whether or not the discretion is abused and whether or not any statute, charter, ordinance, order, resolution or policy under which the discretionary function or duty is performed is valid or invalid, except that if the discretionary function involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection 42, this section does not provide immunity for the governmental entity for an employee's negligent operation of the motor vehicle resulting in a collision, regardless of whether the employee has immunity under this chapter;

#### Law Court Decisions

Municipal defendants and municipal employees have successfully invoked the immunity defenses of the Maine Tort Claims Act at the trial and appeal court levels in a number of cases. Some of the published Law Court decisions are listed below. While these decisions are not specific to municipal code enforcement officers, they illustrate the general reach of the statute's immunity provisions in a variety of contexts.

*Doucette v. City of Lewiston*, 1997 ME 157 (municipal police dispatcher case)

*Paschal v. City of Bangor*, 2000 ME 50 (city public works department)

*Norton v. Hall*, 2003 ME 118 (high speed police chase)

*Donovan v. City of Portland*, 2004 ME 70 (injury on City-owned property)

*Day's Auto Body, Inc. v. Town of Medway*, 2016 ME 121 (municipal fire response)

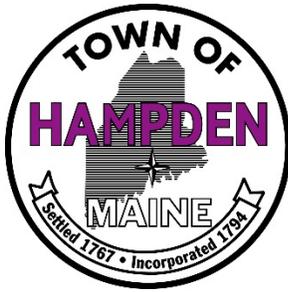
#### Summary

The Maine Tort Claims Act exists so that municipal public officials, including code enforcement officers, can perform their prescribed duties without a constant concern about being sued for their public actions. In limited areas, the Tort Claims Act waives municipal and municipal employee immunity, in the expectation that these areas will be covered by applicable

insurance. Under the Tort Claims Act, immunity is the rule and liability is the exception. Municipal officials, including municipal code enforcement officers, should not be deterred from performing their assigned functions by the prospect of hypothetical legal liabilities that do not, in fact, exist.

Please let me know if you have additional questions or specific facts that you wish to have me review.

Erik M. Stumpf



Town of Hampden  
Land & Building Services

Memorandum

To: Planning & Development Committee  
 From: Karen M. Cullen, AICP, Town Planner *KMC*  
 Date: January 30, 2017  
 RE: Business Loan Program

Staff has done preliminary research on what other Maine communities are doing for business loan programs. In addition to Hermon's program, Gardiner used to have a loan guarantee program, and a number of municipalities around the state have revolving loan funds. There are many ways to run these programs, with varied criteria – a municipality can basically design a program any way they want. In addition to financial terms this could include, for instance, establishing specific locations within which projects would be eligible to apply; establishing guidelines (or requirements) regarding business size and type for program eligibility; and establishing guidelines (or requirements) regarding the types of costs that would be eligible for the program.

It should also be noted that, while this concept was initially raised for discussion as it relates to businesses, a program could also be set up to assist owners of residential properties in disrepair.

In Hermon, they have partnered with one bank and the program provides a three percent subsidy on interest payments on business loans, with the subsidy ending after three years, with a maximum benefit of \$5,000. For example, a \$50,000 loan with a seven year term and a market interest rate of 6% would have the first three years interest rate reduced to 3% (the Town pays the other 3%), the total loan subsidy would be \$2,511.36.

Staff has learned that in addition to numerous ways to design a program, there are several ways to administer it, including internal management, hiring a consultant, or hiring a Development Corporation (e.g. EMDC) or similar entity. We have also learned that most programs that involve a bank loan are not limited to a single bank, the theory being that competition will benefit the overall program. Finally, getting these programs up and running and then maintaining a reasonable success rate requires a consistent financial commitment from the municipality.

Given what we have learned during our preliminary research, staff is seeking input from the Committee as to where this project might fit into the overall Work Plan, including whether the Committee would like the establishment of such a program included in the FY18 TIF budget.



Town of Hampden  
Land & Building Services

Memorandum

To: Planning & Development Committee  
From: Karen M. Cullen, AICP, Town Planner *KME*  
Date: January 30, 2017  
RE: Amendments to Zoning Ordinance

Staff is bringing forth two amendments for consideration:

1. Accessory Apartments, to allow homeowners to establish a second dwelling unit on their property which is clearly subordinate to the primary dwelling; and
2. Flexibility in parking and signage requirements to allow deviation from select requirements in situations where it makes sense and would not be detrimental to the neighborhood.

The proposed amendments are provided on the following pages.

## Introduction

Current status: under the Zoning Ordinance, accessory units are the same as a two family dwelling. In all but the Residential A district they are not limited in size or appearance. In the Res A district they are only allowed as conversions of existing units, although there is nothing to prevent someone from first building a single family house and then immediately applying for a conversion to a two family, which could be perfectly legitimate, e.g. parent needs a home. These conversions, based on the requirements of §3.7.6.2, 3.7.6.3, and 3.7.6.4, are essentially what is commonly referred to as an accessory apartment – subordinate to the main home, avoidance of the appearance of a two family structure. Staff recommendation is to delete those three sections from the Res A provisions and add a new section (4.25) to establish clear permitting and performance standards for accessory apartments.

As for the issue of two family structures in the Res A district, if the town doesn't want to allow any, new or conversions, then delete two family from the list of conditional uses in §3.7.4, and delete 3.7.6.5 (requirement for additional lot area for two family dwellings). If the town does want to allow two family in both new construction and existing home conversions, then leave it – it's by conditional use so abutters would still have input. Anyone (new construction or conversion of existing single family) in the Res A or any other district would be able to apply for a conditional use permit for an accessory apartment under the proposed new regulations in §4.25.

Note that “accessory apartments” are not a primary use and should not be included in the Use Table as a primary use; a section of the table is anticipated for accessory uses.

Add to §7.2, Definitions: *Accessory Apartment*: A separate housekeeping unit, complete with its own sleeping facilities, kitchen and sanitary facilities, that is contained within the structure of a single family dwelling or within a detached accessory structure on the same parcel as the main dwelling.

## Proposed new section 4.25

4.25 Accessory Apartments. Notwithstanding the minimum lot size requirements of this Zoning Ordinance, construction of an accessory apartment is allowed upon the granting of a Conditional Use Permit either within or attached to a new or existing detached single-family dwelling subject to the requirements below:

4.25.1 The purpose of the Accessory Apartment section is to:

- 4.25.1.1 Provide homeowners with a means of providing relatives with housing, enabling the homeowner to provide care and companionship in a private home setting;
- 4.25.1.2 Provide homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security, and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- 4.25.1.3 Add inexpensive rental units to the housing stock to meet the needs of smaller households, both young and old; and
- 4.25.1.4 Protect stability, property values, and the residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied

houses and under such additional conditions as may be appropriate to further the purposes of this ordinance.

4.25.2 Accessory Apartment Standards. The following standards must be met for a Conditional Use Permit to be granted:

- 4.25.2.1 Only one accessory apartment may be created within a single-family dwelling.
- 4.25.2.2 The owner(s) of the residence in which the accessory apartment is located must occupy the principal at least one of the dwelling to which the accessory apartment is attached units on the premises. *[I disagree with proposed change; there are cases where an elderly person owns a large home and would rather occupy the smaller unit and rent or allow others (typically family) to occupy the larger unit. -KMC]*
- 4.25.2.3 The accessory apartment shall be clearly a subordinate part of the single family dwelling, designed so that the appearance of the building remains that of a single family residence. Where feasible, any new entrances should be located on the side or rear of the building.
- 4.25.2.4 An accessory apartment shall occupy no more than 40 percent of the living area of the structure and shall be no greater than 800 square feet nor have more than one bedroom. An addition to the original building is permitted provided that the addition is designed in such a manner as to retain the appearance of the building as a single family dwelling.
- 4.25.2.5 In order to provide for the development of housing units for disabled and handicapped individuals, the Planning Board will allow reasonable deviation from these limits to allow installation of features that facilitate access and mobility for the occupants in cases where an accessory apartment is designed or remodeled for such individuals.
- 4.25.2.6 There shall be at least one dedicated off-street parking space provided for the accessory apartment, and to the extent feasible it shall be located to the side or the rear of the structure.

Notes:

1. Option to require the lot upon which the house sits comply with the minimum dimensional standards of the zoning ordinance (size, frontage, and setbacks). However, that will make it impossible for someone with a nonconforming lot to add an accessory apartment, and there could be cases where there is no good reason not to – a lot that is slightly undersized, or has a smaller frontage, or has a setback encroachment.
2. Option to prohibit granting a conditional use permit for an accessory apartment when there is variance needed to do so. [This goes along with the option above.]

Current status: under the Zoning Ordinance, there is no opportunity for flexibility in off-street parking and signage requirements. The ordinance limits variances to requirements for height, lot size, frontage, setbacks, lot coverage, size of structures, or size of yards or open spaces, thus an applicant cannot request a variance to anything else, including parking or signage requirements. These amendments would provide some flexibility.

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#### §4.7 Off-Street Parking, Loading, Drive-Thru Design and Bufferyard Requirements

4.7.1 Parking Basic Requirement - No use of premises shall be authorized or extended, and no building or structure shall be constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-street parking spaces in accordance with the following parking requirements. No required parking space shall serve more than one use, unless approved under §4.7.1.7. Parking areas with more than five (5) parking spaces shall be so arranged that vehicles can be turned around within such area and are prevented from backing into the street.

4.7.1.5.5 Parking lots to serve newly constructed structures or additions shall be a level, uniform, dust free surface constructed of concrete, bituminous asphalt, brick or pavers, or other similar material. Parking lots to serve pre-existing (as of the date of adoption) structures, including new or expanded uses within said structures, may be constructed of alternate materials such as hard packed dirt or gravel upon a finding by the Code Enforcement Officer that this method of construction will not affect public safety and is otherwise in compliance with the provisions of this Ordinance.

4.7.1.7 Shared Parking. Within the Village Commercial or Village Commercial II districts, abutting properties may share off-street parking spaces provided both owners sign a cross-access/shared parking agreement and the permit granting authority finds there will be no detrimental impact on abutting properties not involved in the shared parking agreement and no projected increase in on-street parking in the immediate area of the subject properties.

4.7.5 Waiver. Any of the requirements set forth in sections 4.7.1 (except Section 4.7.1.6 Handicapped Parking which cannot be waived), 4.7.2, or 4.7.4 may be reduced upon the granting of a waiver by the permit granting authority. The applicant shall submit all waiver requests in writing and shall provide sufficient evidence to assure the permit granting authority that there will be no detrimental impact on any abutters or the general public if the waiver is granted.

*Correct ordinance cross-reference in §7.2 Definitions:*

*Parking space: An area exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles designed in accordance with the standards contained in Article 4.7.5 of this Ordinance.*

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Regarding signage, add a new section to allow flexibility in the standards:

4.8.11 Waiver. Any of the requirements set forth in §4.8.1, 4.8.2, 4.8.3, 4.8.5, 4.8.7, or 4.8.8 may be reduced upon the granting of a waiver by the Code Enforcement Officer, provided no deviation exceeds ten percent. For waiver requests with a deviation exceeding ten percent of the requirement, the Planning Board shall be the waiver granting authority. The applicant shall provide sufficient evidence with the request for the waiver to assure the waiver granting authority that there will be no detrimental impact on any abutters or the general public if the waiver is granted.