

Planning and Development Committee
June 3, 2015
6:00 PM
Conference Room
AGENDA

1. Approval of May 20, 2015 Minutes
2. Committee Applications:
3. Updates:
4. Old Business:
 - A. Subdivision Ordinance Review
 - B. Draft Private Ways Ordinance Review
 - C. Codification Portfolio
 - D. Sign Standards Amendment
5. New Business:
6. Comprehensive Plan Implementation:
7. Citizens Initiatives:
8. Public Comments:
9. Committee Member Comments:
10. Adjourn

Planning and Development Committee
May 20, 2015
6:00 PM
Conference Room
DRAFT MINUTES

Attendees:

Committee
Bill Shakespeare
David Ryder
Stephen Wilde
Terry McAvoy
Dennis Marble
Greg Sirois
Carol Duprey

Staff
Dean Bennett, Director of Com/Econ Development

1. Approval of May 6, 2015 Minutes:

Minutes were approved unanimously.

2. Committee Applications: None

3. Updates:

4. Old Business:

A. Draft Private Ways Ordinance

The Community and Economic Development Director (CEDD), recently tasked with the town planning duties, requested of the Committee to allow him time to search for a model private way/road ordinance that was more typical of Maine communities. The objective would be to develop an ordinance, with minimal standards, which accomplishes the desired results.

Committee agreed to postpone action for two weeks until the CEDD can conduct research for such a model.

B. Subdivision Ordinance Review

CEDD asked for a two week extension to allow him to reduce the level of required standards to more closely match the minimum

state standards. Committee agreed to postpone action for two weeks to allow CEDD to do so.

C. Codification Portfolio

CEDD updated the Committee on his progress in addressing the 35 pages of questions related to the codification process which are due in August. CEDD stated he has distributed the questions to applicable departments and would present his draft at a future meeting.

D. Downtown Planning Initiative

CEDD updated the Committee on his progress in researching the necessary steps to formulate an approach to the establishment of a Downtown Revitalization Plan and subsequent Downtown TIF District. CEDD will invite an expert in the subject to attend and present scope of such a project to the Committee for educational purposes.

E. Sign Ordinance Review

CEDD presented a number of proposed changes to the zoning sign provisions, prepared in consultation with the Code Enforcement Officer. CEDD explained that he would like to review the amendments prepared by the prior Code Enforcement Officer before beginning a Committee review of the draft.

5. New Business
6. Comprehensive Plan Implementation: None.
7. Citizens Initiatives: None.
8. Public Comments: Ivan McPike encouraged the Committee to be aggressive in their efforts to seek complimentary businesses to the MRC Natural Gas generation. He encouraged outreach to the owner of Fiberight to initiate discussions that may be mutually beneficial to the town and the facility.
9. Committee Member Comments: None
10. Adjourn: The meeting was adjourned at 7:00pm.

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[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

2. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

3. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;

[2001, c. 560, §1 (AMD) .]

6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW); 1989, c. 497, §8 (AMD) .]

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW); 1989, c. 497, §8 (AMD) .]

8. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10

(NEW); 1989, c. 497, §8 (AMD) .]

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9. Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

A. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.

(1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.

(2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983; [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW); 1989, c. 497, §8 (AMD) .]

12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

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[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW); 1989, c. 429, §1 (AMD); 1989, c. 497, §8 (AMD) .]

13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW); 1989, c. 429, §1 (AMD); 1989, c. 497, §8 (AMD); 1989, c. 878, Pt. A, §85 (RPR) .]

14. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

[1989, c. 404, §2 (NEW); 1989, c. 429, §2 (NEW); 1989, c. 497, §9 (NEW); 1989, c. 772, §3 (AMD); 1989, c. 878, Pt. G, §5 (RPR) .]

14-A. Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district;

[2009, c. 356, Pt. C, §2 (NEW) .]

15. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;

[1991, c. 838, §12 (AMD) .]

16. Storm water. The proposed subdivision will provide for adequate storm water management;

[1991, c. 838, §12 (AMD) .]

17. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

[1997, c. 226, §2 (AMD) .]

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18. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

[2003, c. 622, §2 (AMD) .]

19. Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

[2003, c. 622, §3 (AMD) .]

20. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the municipal reviewing authority must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. A municipal reviewing authority may request technical assistance from the Department of Agriculture, Conservation and Forestry, Bureau of Forestry to determine whether a rule violation has occurred, or the municipal reviewing authority may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If a municipal reviewing authority requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the municipal reviewing authority within 30 days of receipt of the municipal reviewing authority's request. If the bureau notifies a municipal reviewing authority that the bureau will not provide assistance, the municipal reviewing authority may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to Title 12, section 8869, subsection 14.

[2003, c. 622, §4 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

SECTION HISTORY

1989, c. 104, §5A45,C10 (NEW). 1989, c. 404, §2 (AMD) .

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1989, c. 429, §§1,2 (AMD). 1989, c. 497, §§8,9 (AMD).
1989, c. 762, §§3,4 (AMD). 1989, c. 772, §3 (AMD). 1989,
c. 878, §§A85,86,G5 (AMD). 1991, c. 838, §§12-14 (AMD).
1997, c. 226, §§2-4 (AMD). 2001, c. 560, §1 (AMD). 2003,
c. 622, §§2-4 (AMD). 2009, c. 356, Pt. C, §2 (AMD). 2011,
c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23
(REV).

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**Office of the Revisor of Statutes
7 State House Station
State House Room 108
Augusta, Maine 04333-0007**

- map 7. Soils report. A soils report, identifying soil types and location of soil test areas. If subsurface sewage disposal is to be used, evidence of soil suitability for subsurface sewage disposal as determined by the Maine Plumbing Code shall be presented. There shall be at least one soils test per lot.
- map 8. Location and name of existing public streets and way.

350. Performance Standards for Subdivision The performance standards in this section are intended to clarify and expand upon the criteria for approval found within the subdivision statute (Title 30-A M.R.S.A., §4404, Review Criteria). In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance standards and make findings that each has been met prior to the approval of a subdivision plan. Compliance with the design guidelines of Sections 350 and 360 and Article 500 shall be considered to be evidence of meeting the appropriate performance standards. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met. All proposed subdivisions shall be in conformity with the Comprehensive Plan and subsequent amendments or revisions or policy statement of Hampden and with the provisions of all pertinent state and local codes and ordinances.

(Note: the boldface text that follows is directly from the statute).

When adopting any subdivision regulations and when reviewing any subdivision for approval, the municipal reviewing authority shall consider the following criteria and, before granting approval, must determine that

350.J. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- 1. The elevation of the land above sea level and its relation to the flood plains;**
- 2. The nature of soils and subsoils and their ability to adequately support waste disposal;**
- 3. The slope of the land and its effect on effluents;**
- 4. The availability of streams for disposal of effluents;**
- 5. The applicable state and local health and water resource rules and regulations**
6. The proposed subdivision shall not discharge wastewater to a water body without a license from the Maine Department of Environmental Protection.
7. Discharges of storm water shall be designed to treat expected pollutants such as sediments prior to discharge into surface water bodies. Discharges from proposed parking lots and loading areas shall also be designed to treat expected pollutants such as oil, grease, and sediment prior to discharge into surface water bodies. When the subdivision is within the watershed of a great pond, the storm water shall be treated in order to remove excess nutrients.
8. The homeowner association covenants, if the subdivision utilizes a homeowner association, will include a requirement to follow the guidelines in the most current edition of "Best management

Practices for the Application of Turf Pesticides and Herbicides” as published by the State of Maine Pesticide Control Board.

350.2. Sufficient Water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;

1. The statutory criterion is that the proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision. This means an adequate supply of good quality water. Water supplies shall meet the primary drinking water standards contained in the Maine Rules Relating to Drinking Water. If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the plan or a separate document to be recorded in the Registry of Deeds.
2. Any subdivision within 1,000 (one thousand) feet of an existing public water supply will be connected to and source it's water supply from that public system unless the relevant water authority indicates in writing that it does not have the capacity to serve the subdivision or it can be demonstrated that the water extension costs are greater than the full cost of establishing private wells for all of the lots in the subdivision.
3. When a subdivision is to be served by a public water system, the complete supply system within the subdivision, including fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Hampden Water District and the Hampden Public Safety.
4. When a proposed subdivision is not within the area designated for public water supply service in the Comprehensive Plan and subsequent amendments or revisions, or within 1000 feet of the existing water service, water supply shall be from individual wells or a private community water system with a map provided showing where the water supply is located.
 - A. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.
 - B. Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules. Unless otherwise permitted by the Board, the subdivider shall prohibit dug wells by deed restrictions and a note on the plan.
 - C. When a central water supply system is provided by the applicant the location and protection of the source, the design, construction and operation of the system will conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
 - D. Hampden Public Safety Department must approve in writing the adequacy and accessibility of water supply for the proposed subdivision, whether the water is from public or private sources.

350.3. Public water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

In meeting the standards, a proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the servicing water company or district beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision. The applicant shall be responsible for paying the costs of system improvements to the district's or company's system as necessary to alleviate existing deficiencies.

350.4. Soil Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results:

1. The proposed subdivision shall prevent soil erosion from entering water bodies, wetlands, and adjacent properties.
2. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.
3. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.
4. Cutting or removal of vegetation along or adjacent to waterbodies shall not result in shoreline erosion or sedimentation.

350.5. Traffic Conditions. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section:

1. In general, provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to:
 - A. Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision;
 - B. Avoid traffic congestion on any street; and
 - C. Provide safe and convenient circulation on public streets and within the subdivision; and
 - D. Provide adequate, unimpeded access to emergency vehicles and personnel to all lots and structures within the subdivision at all times under normal and adverse conditions. The Public Safety Department must approve in writing their satisfaction with the emergency vehicle access to and within the subdivision.
2. More specifically, access and circulation shall also conform to the following standards.
 - A. The vehicular access to the subdivision shall be arranged to avoid through traffic use of existing or proposed streets that the Comprehensive Plan and subsequent amendments or

- revisions has classified as residential access streets. Gates or other form of permanent access restriction across access roads, streets or pedestrian ways are not permitted.
- B. The street giving access to the subdivision and neighboring streets and intersections that can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. No subdivision shall reduce the Level of Service (LOS) of the street giving access to the subdivision and neighboring streets and intersections to "E" or below, unless the Comprehensive Plan and subsequent amendments or revisions has indicated that Levels of Service "E" or "F" are acceptable for that street or intersection.
- C. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle ways and traffic controls within existing public streets.
- D. Access ways to non-residential subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.
- E. Unless not feasible for topographic and other site conditions, provisions in the form of rights of way or street stubs shall be made for street connections to adjoining lots of similar existing or potential use within areas of Hampden designated as growth areas in the Comprehensive Plan and subsequent amendments or revisions. All street stubs shall be provided with temporary turn around or cul-de-sacs unless specifically exempted by the Superintendent of Highways, and the restoration and expansion of the street shall be the responsibility of any future developer of the abutting land. Minor collector and local streets shall connect with surrounding streets to permit convenient movement of traffic between residential neighborhoods or facilitate emergency access and evacuation, but such connections shall not be permitted where the effect would be to encourage the use of such streets by substantial through traffic. In non-residential subdivisions such access will be provided to adjoining lots or similar existing or potential use, if it will: (1) facilitate fire protection services as approved by the fire chief; or (2) enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a public street.
- E. Street Names, Signs and Lighting. Streets that join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall be named in accordance with Town of Hampden ordinances and shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality, and shall be subject to approval of the Board. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation. Street lighting shall be installed as required or approved by the Board and the cost of the installation and the operating costs will be borne by the applicant.
- F. Clean-up. Following street construction, the developer or contractor shall conduct a thorough cleanup of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

350.6. Sewage Disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized:

1. Public System.

- A. A sanitary sewer system shall be installed at the expense of the subdivider when there is a public sanitary sewer line located within 1000 feet of the proposed subdivision at its nearest point.

Exceptions: This requirement is intended to facilitate the expansion of the public sewer system but is not absolute. The requirement is not intended to require sewer pump stations to satisfy the standard. The requirement is not intended to establish sewer extension costs that would exceed the full cost of establishing septic systems for all of the lots in the subdivision.

- B. When it is proposed that a subdivision be served by the public sewage system, the complete collection system within the subdivision, including manholes and pump stations (if permitted under the Sewer Ordinance), shall be installed at the expense of the applicant.
- C. The sewer department shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.
- D. The sewer department shall review and approve the construction drawings for the sewerage treatment. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the servicing sewer department or department.
- E. If the proposed system is to be public sewer with private wells the plan must include metering of well water with the full cost of the devices and the reading of the meters borne by the owner/resident. Such plan shall be presented to the Town Council for approval before final subdivision plan is granted by the Planning Board.

2. Private Systems.

- A. When a proposed subdivision is not within the area designated for public sewage disposal service in the Comprehensive Plan and subsequent amendments or revisions and as per the Comprehensive Plan and subsequent amendments or revisions Map, connection to the public system shall not be permitted unless the public sewer extension is approved by the Town Council and paid for by the developer. Permissible private sewage disposal shall be private subsurface wastewater disposal systems or a private treatment facility with surface discharge.
- B. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
- C. The site evaluator shall certify in writing that all test pits that meet the requirements for a new system represent an area large enough to provide a disposal area on soils that meet the Disposal Rules.
- D. Unless the subdivision is a cluster development served by a clustered subsurface waste water

disposal system, the following standards will apply:

- 1). Each proposed lot must be served by a septic system located within its boundaries (see 3) below).
 - 2). If the depth to a limiting factor, as defined by the above rules is less than 24 inches, both the septic system and a replacement system site must be located within each proposed lot. Both the Primary and The reserve area shall be shown on the plan and restricted so it will not be built on.
 - 3). Septic systems serving a structure on one lot are not allowed to be located on abutting or neighboring lots except under the following conditions:
Conditions to be determined.
 - 4). Septic systems shall be designed to ensure that there is no net increase in the flow of nitrates across the perimeter of the subdivision as a result of the subdivision's septic systems.
- E. In no instance shall a disposal area be on a site that requires a New System Variance from the Subsurface Wastewater Disposal Rules.

350.7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

Major subdivisions shall be required to obtain a letter from the Hampden Public Works director stating that the municipal solid waste disposal system has adequate capacity for the anticipated waste stream from the proposed subdivision lots for a period of at least five years.

If in the opinion of the Hampden Public Works director there is not adequate capacity to dispose of solid waste applicant shall be required to make alternate arrangements with an alternative disposal facility and provide a letter from that private solid waste disposal facility stating that they have adequate capacity for the disposal for the anticipated waste stream from the proposed subdivision lots for a period of at least five years.

350.8. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

1. Preservation of Natural Beauty and Aesthetics

- A. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.

2. Retention of Open Spaces and Natural or Historic Features

- A. If any portion of the subdivision is located within an area designated by the comprehensive plan as open space or greenbelt, that portion shall be reserved for open space preservation.

- B. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- C. If any portion of the subdivision is designated a site of historic or prehistoric importance by the comprehensive plan or the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan.
- D. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.
- E. Reserved open space land may be dedicated to the municipality.
- F. Where land within the subdivision is not suitable or is insufficient in amount, where the applicant prefers, or when suggested by the comprehensive plan, a payment in lieu of dedication may be substituted for the reservation of some or part of the open space requirement. Payments in lieu of dedication shall be calculated based on the percentage of reserved open space that otherwise would be required and that percentage of the projected market value of the developed land at the time of the subdivision, as determined by the municipal tax assessor. The payment in lieu of dedication shall be deposited into a municipal land open space or outdoor recreation facility acquisition or improvement fund.

3. Protection of Significant Wildlife Habitat

- A. A report shall be required if any portion of a proposed subdivision lies within 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife or the comprehensive plan as:
 - 1) Habitat for species appearing on the official state or federal lists of endangered or threatened species;
 - 2) High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
 - 3) Shorebird nesting, feeding and staging areas and seabird nesting islands;
 - 4) Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; or
- B. 1,320 feet of an area identified and mapped by the Department of Inland Fisheries and Wildlife as a high or moderate value deer wintering area or travel corridor;
- C. Or other important habitat areas identified in the comprehensive plan including coastal wildlife concentration areas, the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports.

A report shall be prepared by a wildlife biologist certified by the Wildlife Society with demonstrated experience with the wildlife resource being impacted shall be submitted.

This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

- D. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space with provisions made for continued public access.

350.9. Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

All lots shall meet the minimum dimensional requirements of the zoning ordinance for the zoning district in which they are located. If all of the land within a subdivision will be owned as a condominium, i.e., owned in common by all dwelling unit owners, minimum dimensional requirements will be applied to nominal lots shown on the preliminary and final plans. The proposed subdivision shall meet all applicable performance standards or design criteria from the zoning ordinance.

350.10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

1. *Financial Capacity.* The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of these regulations. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation.
2. *Technical Ability.* The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision. In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

350.11. Surface waters; outstanding river segments (where applicable). Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Cutting or removal of vegetation along water bodies shall not increase water temperature or result in shoreline erosion or sedimentation of water bodies.

Note: A, A(1) and A(2) regarding Outstanding River Segments are not applicable in Hampden, Maine.

350.12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

L. Ground Water Quality.

- A. Hydrologic assessment shall be submitted for major subdivisions and the assessment shall contain at least the following information:
- 1). A map showing the basic soils types.
 - 2). The depth to the water table at representative points throughout the subdivision.
 - 3). Drainage conditions throughout the subdivision.
 - 4). A plan that indicates proposed subsurface waste disposal fields location and a 100 foot radius circle line surrounding each field indicating the minimum setback for private wells. The plan should also indicate any existing private wells or subsurface wastewater disposal fields on adjoining properties that might affect the placement of wells or septic systems within the proposed subdivision.
- B. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- C. No subdivision shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
- D. If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.
- E. If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
- F. Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.

2. Ground Water Quantity. Based on the assessment of a licensed hydrogeologist, the ground water withdrawals by a proposed subdivision will not have a material adverse impact on the level of the water table in the immediate vicinity of the subdivision.

350.13. . Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation; When any part of a subdivision is located in a special flood hazard area as identified by the Federal

Emergency Management Agency:

1. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damages.
2. Adequate drainage shall be provided so as to reduce exposure to flood hazards.
3. The plan shall include a statement that structures in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on the plan.

350.14. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

Freshwater wetlands within the proposed subdivision shall be identified in accordance with the 1987 (or most recent) edition of the Corps of Engineers Wetland Delineation Manual, published by the United States Army Corps of Engineers. Any rivers, streams, or brooks within or abutting the proposed subdivision shall be identified.

350.14-A. Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district;

350.15. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;

350.16. Storm water. The proposed subdivision will provide for adequate storm water management;

Adequate provision shall be made for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, under drains, storm drains and best management practices equivalent to those described in The Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection, 1995 (or most recent edition), in conformance with the policies of the Comprehensive Plan and subsequent amendments or revisions. The storm water management system shall be designed to conduct storm water flows to existing watercourses or storm drains and to meet the following standards;

1. Quantity. Peak discharge rates shall be generally limited to the predevelopment levels for the 2- year, 10-year, and 25-year frequency, 24-hour duration storm unless storm water from the subdivision will drain directly into a major water body such as a great pond or the ocean,

2. Quality.

- A. Storm water run-off in subdivisions must be treated by the use of Best Management Practices equivalent to those described in the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection, 1995 (or most recent edition), to achieve, by design, 40% reduction in total suspended solids.
- B. Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements shall be provided to the municipality allowing maintenance and improvement of the system.
- C. Proposed projects which need a storm water permit from the Maine Department of Environmental Protection, pursuant to Chapter 500 and Chapter 502 regulations, shall meet both the State regulations and the requirements of this ordinance. In the case of any conflicting requirements, the stricter shall be applied.

350.17. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

350.18. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

350.19. Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

350.20. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the municipal reviewing authority must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. A municipal reviewing authority may request technical assistance from the Department of Agriculture, Conservation and Forestry, Bureau of Forestry to determine whether a rule violation has occurred, or the municipal reviewing authority may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If a municipal reviewing authority requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the municipal reviewing authority within 30 days of receipt of the municipal reviewing authority's request. If the bureau notifies a municipal reviewing authority that the bureau will not provide assistance, the municipal reviewing authority may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to Title 12, section 8869, subsection 14.

360. Design Guidelines. This section is intended to provide an example of design guidelines, that if followed will result in meeting the appropriate performance standards of Section 350. Compliance with these guidelines shall be considered evidence of meeting those standards. Proposed subdivisions not in compliance with the design guidelines of this section may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

361. Sufficient Water.

1. Well Construction.

A. Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots of smaller than one acre. On lots of one acre or smaller, the applicant shall prohibit dug wells by deed restrictions and a note on the plan.

B. Wells shall be prohibited within 30 feet of the traveled way of any street and any drainage easement area. Well head location preference shall be given to locations that do not directly drain from the road to the well head such as uphill locations and areas where drainage is diverted by ditch rows unless this is not feasible. This restriction shall be included as a note on the plan and deed restriction to the affected lots.

362. Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.

1. Access to Open Spaces. Sites selected primarily for scenic or passive recreation purposes shall have such access, as the Board may deem suitable and no less than 25 feet of road frontage. The configuration of such sites shall be deemed adequate by the Board with regard to scenic attributes and significant wildlife habitat to be preserved, together with sufficient areas for trails, vehicular access where applicable, lookouts, etc. where necessary and appropriate.

2. Preservation of Historic Features. Applicant shall seek in writing a letter from Maine Historic Preservation requesting information on the proposed subdivision parcel if it is on the database for historic or archeological known locations. Proposed subdivisions that include or are adjacent to buildings or sites on the National Register of Historic Places, a Local Historic District or Landmark as identified in the Town of Hampden Historic Preservation Ordinance or that the Comprehensive Plan and subsequent amendments or revisions has identified as being of historical significance shall be designed in such a manner as to minimize the impacts on the historic features. When the historic features to be protected include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures. Applicant shall seek the written advice of the Maine Historic Preservation Commission and the Hampden Historic Preservation Commission in reviewing such plans.

3. Protection of Significant Wildlife Habitat and Important Habitat Areas. The following guidelines

are designed to protect the significant wildlife resources identified in the municipality. The Board recognizes that wildlife management must take into account many site-specific variables. Applicants proposing to subdivide land within identified wildlife resources must consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and provide their written comments to the Board. The guidelines of this section shall apply to only those subdivisions that include significant wildlife habitat or resources identified in Section 350.8 Protection of Significant Wildlife Habitat.

A. Protection of Habitat of Endangered or Threatened Species.

- 1). Habitat or species appearing on the official state or federal lists of endangered or threatened species shall be placed in open space.
- 2). Deed restrictions and notes on the plan shall reflect standards from the Department of Inland Fisheries and Wildlife for removal of vegetation within 250 feet of the habitat for species appearing on the list of endangered or threatened species unless the Department of Inland Fisheries and Wildlife has approved cutting of vegetation in writing.

B. Protection of Waterfowl, Shorebird, and Wading Bird Habitat, Atlantic Salmon Spawning and Nursery Areas.

- 1). There shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark of the following habitat areas:
 - a. Shorebird nesting, feeding and staging areas and seabird nesting islands;
 - b. High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
 - c. Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission, or
 - d. Other important habitat areas identified in the Comprehensive Plan and subsequent amendments or revisions.
- 2). This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.

C. Protection of Deer Wintering Areas. The report prepared by a wildlife biologist, selected or approved by the Board, shall include a management plan for deer wintering areas.

D. Protection of Important Shoreland Areas.

- 1). Within all areas subject to the state mandated 250 foot Shoreland zone except where exempted under the Shoreland Zoning Ordinance:
 - a. Tree removal shall be limited to no more than 40% of the volume of trees 4 inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten-year period.

b. Cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, 25% of the lot area or 10,000 square feet, whatever is greater, including land previously developed.

2). These restrictions shall appear as notes on the plan and as deed restrictions to the affected lots.

E. If the proposed subdivision includes other important wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the Comprehensive Plan and subsequent amendments or revisions, the restrictions on activities in and around these areas shall be reviewed by the Department or a qualified wildlife biologist and their comments presented in writing to the Board.

363. Impact on Water Quality or Shoreline. Within a strip of land extending 100 feet inland from the normal high-water line of a great pond or any tributary to a great pond, and 75 feet from any other water body or the upland edge of a wetland, a buffer strip of vegetation shall be preserved. The deeds to any lots that include any such land shall contain the following restrictions:

1. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to a great pond, or a tributary to a great pond, the width of the footpath shall be limited to six feet.
2. Selective cutting of trees within the buffer strip is permitted provided that a well- distributed stand of trees and other vegetation is maintained. No more than 40% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten-year period.
3. In order to protect water quality and wildlife habitat adjacent to great ponds, and tributaries to great ponds, existing vegetation under three feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described above.
4. Pruning of tree branches on the bottom third of the tree is permitted.

ARTICLE 800
AMENDMENTS

810. *Initiation of Amendment* - An amendment to this Ordinance may be initiated by:

1. The Planning Board, provided a majority of the Board has so voted;
2. Request of the Town Council to the Planning Board; or
3. Written petition of ten (10%) percent of the registered voters of the town.

820. *Proposed Amendments* - All proposed amendments shall be referred to the Planning Board for their recommendation. Such recommendation shall be returned to the Council within thirty (30) days.

830. *Adoption of Amendment* - For an ordinance change to be adopted, it must be approved by a majority vote of the Town Council if the change has been recommended by the Planning Board. If the change has not been recommended by the Planning Board, a two-thirds vote of the Town Council will be necessary to adopt it.

ARTICLE 900
APPEALS

An appeal may be taken, within thirty (30) days from the Planning Board's decision on the Final Plan, by any party to Superior Court in accordance with Rule 80B of the Rules of Civil Procedure.

ARTICLE 1000
DEFINITIONS

1010. Words and terms not defined in section 1020 shall have the meanings given them in the Zoning Ordinance of the Town of Hampden, or in the absence of definitions in said Ordinance, such words and terms shall have their customary dictionary meanings.

1020. The following words and terms, for the purpose of this Ordinance, shall be designated as follows:

1021. *Subdivision.* For purposes of these regulations, the term "Subdivision" is as defined in the MRSA, Section 30-A, §4401 as amended.

~~"Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5 year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5 year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units with a 5 year period.~~

~~1. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:~~

~~A. Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single family residence or for open space land as defined in~~

~~Title 36, M.R.S.A. Section 1102, for a period of at least 5 years before the 2nd dividing occurs; or~~

~~B. The division of the tract or parcel is otherwise exempt under this definition.~~

~~2. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this Ordinance, do not become subject to this Ordinance by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The Planning Board shall consider the existence of the previously created lot(s) in reviewing a proposed subdivision created by a subsequent dividing.~~

~~3. A lot of 40 or more acres shall not be counted as a lot, except:~~

~~A. When the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in the Hampden Zoning Ordinance, or any superseding state statute.~~

~~4. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, or a gift to a municipality, or by the transfer of any interest in land to the owner of land abutting that land, does not create a lot or lots for the purposes of this definition, unless the intent of the transferor in any transfer or gift within this paragraph is to avoid the objectives of this Ordinance. If the real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this subsection.~~

~~5. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971, is not a subdivision.~~

~~6. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.~~

~~7. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraph D, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transfer is to avoid the objectives of this Ordinance.~~

~~— Exceptions~~

~~— This Ordinance does not apply to:~~

~~1. Previously approved subdivisions. Proposed subdivisions approved by the Planning Board before September 23, 1971, in accordance with laws then in effect;~~

~~2. Previously existing subdivisions. Subdivision in actual existence on September 23, 1971, that did not require approval under prior law; or~~

- ~~3. Previously recorded subdivision. A subdivision, a plan of which had been legally recorded in the Penobscot County Registry of Deeds before September 23, 1971. (Amended: 02-07-94)~~

NOTE: For convenience the Statutory definition of subdivision as of July 24, 2014 is attached here but the reader of this ordinance is well advised to check the current statute in Title 30-A MSRA §4401.

4. Subdivision. "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

C. A lot of 40 or more acres must be counted as a lot, except:

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435 or a municipality's shoreland zoning ordinance.

D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter

D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.]

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed value of the real estate.

D-5. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.]

H-1. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that:

(1) Expands the definition of "subdivision" to include the division of a structure for commercial or industrial use; or

(2) Otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of "subdivision" except as provided in this subchapter. A municipality that has a definition of "subdivision" that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2006. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2003 for the definition to remain valid for the grace period ending January 1, 2006. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located. .]

I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter..]

1022. *Tract or parcel of land* - All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

1023. *Minor Subdivision* - A subdivision with less than five (5) lots which does not involve the construction or reconstruction of a new street, or the extension of public sewer lines, or the extension of public water lines, or the construction of a storm drainage system.

1024. *Major Subdivision* - A subdivision which is not a minor subdivision.

1025. *Street* - Shall mean a right-of-way, intended for motorized traffic, in the Town of Hampden, which is either:

1. Owned, established, and maintained by the Town of Hampden, the County of Penobscot, or the State of Maine; or
2. Is shown on a plan of a subdivision which has been duly approved by the Hampden Planning Board and recorded in the Penobscot County Registry of Deeds.

1026. *Minor Street* - A street which serves primarily as an access to abutting properties.

1027. *Collector Street* - A street which connects one or more minor streets with an arterial street.

1028. *Arterial Street* - A street which serves heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic-generating areas.

1029. *Design Storm* - A storm with a frequency or recurrence interval of twenty-five (25) years and a duration of twenty-four (24) hours.

1030. *Pump Stations* - For the purpose of this Ordinance, pump stations shall be defined as any device intended and designed for the purpose of transporting, pumping or lifting of sanitary sewage from residences, commercial institutions or central collection points to the municipal sanitary sewer system. This shall not include lift pumps used in self-contained, on-site subsurface disposal systems. *(Amended: 11-18-85, 9-19-88)*

1031. *Freshwater Wetland* - Freshwater Swamps, marshes, bogs and similar areas which are:

1. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
2. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection. For the purposes of this Ordinance, "wetland" shall mean the same as freshwater wetland. Freshwater wetlands shall be delineated in accordance with the current authorized federal manual, unless the Planning Board approves a different delineation method. *(Amended: 12-20-93)*

1032. *Dwelling Unit* - "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multi-family housing, condominiums, apartments and time-share units. *(Amended: 02-07-94)*

1033. *New Structure or Structures* - "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this Ordinance. *(Amended: 02-07-94)*