

**Planning and Development Committee**  
**February 3, 2016**  
**6:00 PM**  
**Conference Room**  
**AGENDA**

1. Approval of January 6, 2016 Minutes
  2. Committee Applications:
  3. Updates:
  4. Old Business:
    - A. Dangerous Buildings
      - Maine Municipal Association Dangerous Buildings Information Packet
      - Demo Estimate
    - B. Discussion of Municipal Solid Waste Disposal Proposals
      - MRC/Fiberight Proposal
      - PERC Proposal
  5. New Business:
  6. Zoning Considerations/Discussion
  7. Citizens Initiatives:
  8. Public Comments:
  9. Committee Member Comments:
  10. Adjourn
- Pending: Home Occupations  
Business Friendly Community Discussion  
Mineral Extraction, Gravel Pit and Quarry, Filling, Grading and Stockpiling  
Bangor Chamber of Commerce Discussion

**Planning and Development Committee**  
**January 6, 2016**  
**6:00 PM**  
**Conference Room**  
**DRAFT MINUTES**

**Attendees:**

Committee

Ivan McPike - Chair  
Stephen Wilde  
Dennis Marble  
Terry McAvoy  
David Ryder  
Greg Sirois

Staff

Angus Jennings, Manager  
Dean Bennett, Community Dev Director

1. Approval of December 16, 2015 Minutes:

Minutes were approved 3-0.

2. Committee Applications: None

3. Updates:

- A. Municipal Review Committee

Community Development Director (CDD) updated the Committee on the recent pre-application meetings with applicant Municipal Review Committee/Fiberight, Town departments, Hampden Water District, Bangor Sewer District, Bangor Water District, Civil Engineering Services, Woodard and Curran, and Manager Jennings.

The purpose of the meetings was to identify and discuss requirements, studies, design criteria, capacity, stormwater, treatment, water storage, etc.. CDD explained this process, collaboration with the developer, has proven successful and advantageous over the years to all parties involved, ensuring compliance with the many and varied obligations on the developer while addressing and protecting the towns interest.

The meetings will continue in efforts to assist the developer with an application that addresses the requirements of the Town of Hampden once formerly submitted to the Planning Board for review.

B. Codification

CDD updated the Committee on the status of the Codification Submission Material. CDD explained that there were few remaining issues, Planning Board review, and Council. CDD provided a tentative schedule for completion of the Editorial and Legal Review of the provided draft and the 26 pages of questions. The draft document would then be submitted to General Code for preparation of their 2<sup>nd</sup> draft in efforts to finalize the process.

4. Old Business:

A. Home Occupations

CDD reviewed the town attorney's opinion on the draft Home Occupation provisions and provided a course of action to address the attorney's concerns. CDD proposed to create two levels of Home Occupations, minor and major, with the minor to be processed by the Code Enforcement Officer. Criteria will be developed for each which clearly identifies the necessary framework for approval. CDD will present a revised draft at future meeting.

B. Open Space Requirements

CDD presented a memo on his review of the current requirements within the Subdivision Ordinance for the set aside of Open Space or Cash in Lieu option. CDD concluded the current requirements have been ineffective in achieving the stated objective of the ordinance. The requirement has resulted in parcels of land, a large percentage unusable, scattered over the community without benefit of a master plan or strategic objective.

**Committee Action:** Motion and second to move forward with the repeal of the Open Space provisions within the Subdivision Ordinance and Zoning Ordinance. Vote 6-0.

C. Business Friendly Certification

It was noted that this year's deadline has passed. Item tabled to future meeting.

D. Dangerous Buildings  
James Butler  
758 Main Rd North

The Code Enforcement Officer and Fire Inspector reported that the repeated efforts to gain the corporation of the landowner to secure the property located at 758 Main Rd North have been unsuccessful.

Options that are available to the Town in accordance with State Statutes were discussed and a course of action agreed upon.

Manager Jennings will report back to the Committee on the costs of razing the property.

5. New Business:

A. Bangor Chamber of Commerce Representative

Discussion was tabled to future meeting.

6. Zoning Considerations/Discussion: None.

7. Citizens Initiatives: None.

8. Public Comments: None.

9. Committee Member Comments:

10. Adjourn: There being no further business the meeting was adjourned at 7:45 PM.

**Town of Hampden  
RECEIVED**

**FEB 01 2016**

**Office of the  
Town Manager**

**TO: MRC Member Communities**  
**FR: Greg Louder**  
**DT: January 28, 2016**  
**RE: Independent Legal Review of the MRC Plan for 2018**

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You may be aware that a small number of MRC communities, communicating to MRC through Mr. Roger Raymond, Town Manager in Hermon, approached the MRC and requested our cooperation in funding an independent legal review of the contract documents that make up the MRC Plan for 2018. The MRC agreed to fund this request with the understanding that there would no MRC involvement in the independent review process other than to make our legal advisor available to answer questions posed by the independent legal reviewer. The MRC also wanted assurance that the final written independent review report would be made available to all MRC Member Communities.

The independent legal review was completed and the MRC incorporated several of the suggestions before finalizing the contract documents. Mr. Raymond recently contacted the MRC to request that the MRC mail a copy of the final independent legal review report to all MRC Member Communities. To accommodate this request, please find enclosed a copy of the final independent legal review report.



Dean Bennett <economicdevelopment@hampdenmaine.gov>

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## Fwd: Hampden - Attn: Brianna Behrens

1 message

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Angus Jennings <townmanager@hampdenmaine.gov>

Mon, Feb 1, 2016 at 3:42 PM

To: Dean Bennett <economicdevelopment@hampdenmaine.gov>

This email is intended for inclusion in this week's P&D meeting packet. Thanks.

----- Forwarded message -----

From: Legal Services Department <Legal\_Services\_Department@memun.org>

Date: Wed, Jan 6, 2016 at 11:01 AM

Subject: RE: Hampden - Attn: Brianna Behrens

To: "townmanager@hampdenmaine.gov" <townmanager@hampdenmaine.gov>

Dear Angus,

Below please find the "Dangerous Buildings" Information Packet that I mentioned. Some of the links may require that you have a MMA username and password to access the website. You can contact Ben Thomas [bthomas@memun.org](mailto:bthomas@memun.org) to see if you have an account or register for a new one.

### Dangerous Buildings

*Links to the following documents are provided as examples for informational purposes only. They have not been reviewed by MMA Legal Services. Do not use any sample unless it has been reviewed by your legal counsel and tailored to meet the needs of your municipality.*

This packet includes the following attachments:

- Title 17 M.R.S.A. §§ 2851-2859 [Use the arrows to move within the sections]
- Title 14 M.R.S.A. § 6321
- Title 30-A M.R.S.A. § 3106
- Rule 4, Maine Rules of Civil Procedure, 2011 edition [scroll down to Rule 4]
- Sample Notice of Hearing
- Sample Findings and Order
- Sample Consent to Removal
- Sample Acknowledgment and Return of Service

Important issues and considerations include:

#### I. Securing Structures

If a building poses a serious threat to public health and safety, a municipality may secure it pending the abatement proceedings discussed below, and may recover its expenses from the owner (17 M.R.S.A. § 2856). Notice must be served on the owner and all parties-in-interest in accordance with 17 M.R.S.A. § 2851(1), but notice need not be given in advance if prompt action to secure the structure is necessary.

## II. Local Process; Alternative Summary Process

State law provides three methods for abating the nuisance and public safety threat posed by a dangerous building. Under the first method, the municipal officers (selectpersons or councilors) may, after notice and hearing, find that a building or structure, or portion thereof, is unsafe and is therefore a nuisance or dangerous and must be disposed of (17 M.R.S.A. § 2851). Notice of the hearing must be served on the owner and upon all parties-in-interest as defined in 14 M.R.S.A. § 6321 (mortgagors, holders of the fee interest, mortgagees, lessees under recorded leases or memoranda of leases, lienors and attaching creditors, all as shown by Registry of Deeds records and documents referred to therein). Published notice is required where the name or address of any owner or co-owner is unknown (17 M.R.S.A. § 2851(2)). The notice must be recorded in the Registry of Deeds by the municipal clerk (17 M.R.S.A. § 2857). After the hearing, the municipal officers may issue an order: "prescribing what disposal must be made of that building or structure" (17 M.R.S.A. § 2851). The order must be accompanied by written "findings." Most often, the order is for abatement of structural defects within a specific period of time or removal of the structure. However, nothing in the statute limits municipal remedies, and it may order a building demolished. Neither the statute nor due process of law requires the municipality to first list the defects and allow a reasonable time for repairs before demolition. *Kirkpatrick v. City of Bangor*, 1999 ME 73, 728 A.2d 1268. The municipal clerk must record the order in the Registry of Deeds and must also serve an attested copy of the order upon the owner and all parties-in-interest (17 M.R.S.A. § 2851(3)). An appeal may be taken to Superior Court from the decision of the municipal officers. If no appeal is filed, the municipal officers may order the building or structure to be repaired or removed (17 M.R.S.A. §§ 2852-2853).

The second method of abatement is an alternative to proceeding before the municipal officers. Instead, a municipality may seek an abatement and/or demolition order directly from Superior Court (17 M.R.S.A. § 2851(4)). After a hearing, the Court may order abatement/demolition and may award costs to the municipality.

The third method of abatement is a "summary" (immediate) process that may be used in cases involving an immediate and serious threat to public health, safety and welfare (17 M.R.S.A. § 2859). To use the summary process, the building inspector (or other official named in the statute) must file a verified complaint with the Superior Court. The court may act "ex parte" to set a hearing date (within 10 days of the filing) and order the owner(s) to appear. Upon hearing, the court may order abatement/removal and may assess costs. There is no appeal from the court's judgment, although the owner may, within 30 days, contest costs and seek damages for wrongful removal if provable.

## III. Acknowledgment; Return of Service

On a legal document, an "acknowledgment" attests to the authenticity of a signature and is required in order to record the document at the county Registry of Deeds. A "return of service" evidences that a copy of the document was actually served on a person by someone with authority to do so. All of the suggested forms in this packet should include an acknowledgment for each signature and should be recorded in the Registry of Deeds (17 M.R.S.A. §§ 2851, 2857 and 2858). Any notice or order required to be served on an owner or party-in-interest should also include a return of service (17 M.R.S.A. §§ 2851 and 2856). Service must be made in the same manner as a court summons is served, including by mail, by a sheriff or deputy within the sheriff's county, by another person authorized by law, or by some person specially appointed by the court for

that purpose (Rule 4, M.R.Civ.P., linked above). Please note that while service on an out-of-state property owner may be made in the same manner in which service is made in Maine, the person serving the order on an out-of-state property owner must be one authorized to do so under the laws of the state where service is attempted.

#### **IV. Records**

In any proceeding before the municipal officers, a full record of testimony and deliberations should be kept (either a clearly audible tape recording or a written verbatim transcript). Documentary evidence (such as photos and inspection reports) also should be compiled and preserved. This record is essential to sustaining the municipal officers' decision if it is appealed. Proof of expenses (such as time cards and invoices) also will be important if a municipality itself undertakes the abatement and seeks to recover its costs.

#### **V. Special Tax**

If municipal expenses of abatement are not paid by the owner(s) within 30 days of demand, these costs may be recovered by assessing a "special tax" against the land (17 M.R.S.A. § 2853). The tax must be included in the "next annual warrant" to the collector and may be collected in the same manner as property taxes (including by automatic lien foreclosure). (See MMA's *Municipal Assessment Manual* for assessment and commitment discussions and related forms.)

#### **VI. Personal Property Located in a Building Declared to be Dangerous**

In many cases, there will be items of personal property inside a building that has been declared dangerous using the process outlined above. Before the building may be demolished, the personal property must be addressed. Title 30-A M.R.S.A. § 3106 outlines the statutory procedure that must be followed by the municipality in the event of abandoned personal property.

#### **VII. Additional Concerns**

As the discussion above indicates, a determination that a structure is a dangerous building requires careful consideration by the municipal officers and strict compliance with the requirements of State law, including complex notice provisions. A title search is recommended to identify all parties-in-interest entitled to notice of the proceedings. Moreover, demolition of property is a drastic measure that may result in liability for damages for wrongful removal. The municipality should take care to protect the due process rights of the owner or parties-in-interest by providing a meaningful opportunity to be heard and to address municipal concerns. *Kirkpatrick v. City of Bangor*, 1999 ME 73, 728 A.2d 1268; *Michaud v. City of Bangor*, 196 A.2d 106 (Me. 1963); *Bennett v. Town of Poland*, CV-88-64 (Super. Ct. Andro. Cty, Nov. 9, 1988). Therefore, we strongly urge the municipal officers to consult with local counsel before commencing such a proceeding. The municipality may recover the cost of legal advice as part of the "special tax" assessed against the property. (See *City of Brewer v. Michael W. Conners*, 2004 Me. Super. LEXIS 135 (No. CV-03-2, Me. Super. Ct., Pen. Cty., May 28, 2004), in which the Court awarded the City both its costs for demolishing the dangerous buildings and its attorney's fees and costs for bringing the action.)

Finally, and again in consideration of the complexity of the formal procedures outlined above, a municipality should first attempt to resolve the issue of an unsafe building informally by sending a letter by certified mail, return receipt requested, to the property owner setting forth the problem and explaining that unless the problem is resolved to the municipality's satisfaction within a specified number of days, the municipality will commence proceedings to have the building or structure demolished. Municipalities should be aware that any negotiated consent which allows the municipality to demolish property and assess a special tax against

the property must include written consent by all parties-in-interest. Notices of the consent must be recorded in the Registry of Deeds (17 M.R.S.A. § 2858).

#### VIII. Forms

The MMA Legal Services Department would like to thank Geoff Hole, Esq. for sharing various forms that he developed for use in connection with the Title 17 dangerous building process. Those forms appear as part of this packet either in their original form or with modifications.

This packet is designed to provide general information and is not intended as a substitute for legal advice for specific situations. The statutes and other information herein are only current as of the date of publication.

Last reviewed 7/12

In addition, the Maine Tort Claims Act provides that a municipality is not liable for any claim which results from performing a discretionary function (14 M.R.S.A. § 8104-B(3)) or prosecutorial function (14 M.R.S.A. § 8104-B(4)). This means that it is unlikely that the town will be liable regarding its decision to either enforce local ordinances or take any action under the dangerous buildings statute. That being said, if the building or part of the building were to collapse and enter into the public way, under some circumstances the town could be liable for certain claims. For example, if debris from the building falls into the public way it could be considered a road defect and the town could be held liable for any damages if it is not removed promptly.

I hope this is helpful.

Best,

**Breana N. Behrens, Staff Attorney**  
**Legal Services Department**

**Maine Municipal Association**  
60 Community Drive, Augusta, ME 04330  
1-800-452-8786 (in state)  
207-623-8428  
FAX 207-624-0187  
[legal@memun.org](mailto:legal@memun.org)

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From: Christine Bragg

**Sent:** Tuesday, January 05, 2016 11:19 AM  
**To:** Breana Behrens <BBehrens@memun.org>  
**Subject:** Hampden - Attn: Brianna Behrens

**From:** Angus Jennings [mailto:townmanager@hampdenmaine.gov]  
**Sent:** Tuesday, January 05, 2016 11:16 AM  
**To:** Legal Services Department <Legal\_Services\_Department@memun.org>  
**Subject:** Hampden - Attn: Brianna Behrens

Thank you for your time on the phone. Documentation of the building of concern is in the following meeting packet, beginning on pg. 34 of the PDF:

January 6 Agenda and Packet

Hope this helps, and thanks again,

Angus

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Angus Jennings  
*Town Manager*

*Town of Hampden*

*106 Western Avenue  
Hampden, ME 04444  
(207)-862-3034  
townmanager@hampdenmaine.gov*

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—  
  
Angus Jennings  
*Town Manager*

*Town of Hampden  
106 Western Avenue  
Hampden, ME 04444  
(207)-862-3034  
townmanager@hampdenmaine.gov*

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Dean Bennett <economicdevelopment@hampdenmaine.gov>

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**Fwd: Demo cost estimate, 758 North Main Street**

1 message

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Angus Jennings <townmanager@hampdenmaine.gov>

Mon, Feb 1, 2016 at 3:41 PM

To: Dean Bennett <economicdevelopment@hampdenmaine.gov>

This email is intended for inclusion in this week's P&D meeting packet. Thanks.

----- Forwarded message -----

From: Joel Butler <jebutlerllc@gmail.com>

Date: Fri, Jan 8, 2016 at 4:48 AM

Subject: Re: Demo cost estimate, 758 North Main Street

To: Angus Jennings <townmanager@hampdenmaine.gov>

Angus,

The cost to remove the building would not exceed \$14000.

Let me know if you have any other questions.

Thank you,

Joel Butler

On Thu, Jan 7, 2016 at 12:16 PM, Angus Jennings <townmanager@hampdenmaine.gov> wrote:  
Joel,

Thanks for your time on the phone. The property in question is 758 North Main, and there is backup documentation including photos in the meeting packet from last night's meeting, online here. This item begins on page 34 of the PDF file.

To be clear, the Council has not voted to demo the building. However, they have directed Code Enforcement to proceed with the paperwork that would be necessary to give the Town rights to do so, and they've asked me to get an estimate of what the demolition costs would be (inclusive of materials disposal, etc), so that we can budget properly for this potential outcome. It is difficult to say with any certainty, but I'd guess it would take 4-6 months for this to play out through the various hearings and Court authorization - perhaps less, perhaps more. Or, perhaps the landowner will take action to make the property safe to avoid the prospect of the Town doing so.

Feel free to call me with any questions.

Thanks,

Angus

--

Angus Jennings  
Town Manager

*Town of Hampden  
106 Western Avenue  
Hampden, ME 04444  
(207)-862-3034  
townmanager@hampdenmaine.gov*

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—  
  
Angus Jennings  
Town Manager

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