

TOWN COUNCIL MINUTES

NOVEMBER 5, 2007

The regularly scheduled meeting of the Hampden Town Council was held on Monday, November 5, 2007. The meeting was held at the municipal building council chambers and was called to order by Mayor Pro-tem Robert Gilberti at 7:00 p.m.

Attendance: Councilors: Robert Gilberti, Thomas Brann, Matthew Arnett, Andrew Colford, Shannon Cox and Edward Murphy. Rick Briggs was absent.

Town Manager: Susan Lessard

Town Counsel: Thomas Russell

Department Heads/Staff: Town Planner Bob Osborne and GIS/IT Specialist Gretchen Heldmann

Water District Trustees and Staff, residents of Ichabod Lane, and citizens

A. CONSENT AGENDA

Treasurer's Warrants were circulated for approval and signatures of the Finance Committee. The balance of the consent agenda was accepted without objection.

B. PUBLIC COMMENTS

There were none.

C. POLICY AGENDA

1. PUBLIC HEARINGS

a. PROPOSED TREE ORDINANCE

James Feverston, Chair of the Tree City USA Project explained that the purpose of this ordinance is to promote and protect the rural character and ecological health of Hampden's landscape and further protect the health, safety and general welfare of its residents by providing guidance for, and where appropriate, the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the Town primarily on public property. The ordinance will pertain to private property only if it becomes a threat or a hazard.

Mayor Pro-tem Gilberti explained the procedure for the public hearing and then opened the hearing.

Proponents: Stanley Abraham of 82 Meadow Road spoke in favor of the proposed ordinance. He noted that the shrubs at the corner of Canaan Road and Western Avenue were only cut away after his daughter lost her life at that intersection. He hoped that this ordinance would prevent another loss of life.

Opponents – None; General Questions/Comments – None. The hearing was closed.

Councilor Brann moved and Councilor Colford seconded to adopt the ordinance.

During discussion, Councilor Arnett expressed concerns about the Town Forester and what kind of financial obligations will be associated with that position. He said he was uncomfortable voting for this ordinance without a financial impact assessment.

Councilor Arnett moved to amend Article 10.1 by removing the word “initially” from the last sentence so that the Town Manager may delegate the duties and responsibilities irrespective of when that may happen. Councilor Brann seconded the motion and vote was unanimously in favor.

Councilor Arnett also wondered what the financial commitment will be if the ordinance is adopted. He would like some sense of what the cost will be before adopting the ordinance. Jim Feverston pointed out that the Board will serve without compensation and there is currently someone on staff that could undertake the Town Forester responsibilities.

Manager Lessard pointed out that this ordinance is a phase in a process and that the financial obligations will be dictated by the plan to be developed by the Tree Board. She said is not possible to assess a fiscal impact without a plan to assess.

Councilor Arnett said he is fully prepared to support the ordinance, but he wanted to make it clear that the Council is not financially committing itself other than what it thinks, as proposals come forward, make sense for the community and our fiscal position at that time.

Vote on the motion to adopt the ordinance as amended was unanimously in favor.

**b. APPLICATION FOR RENEWAL OF A VICTUALER'S LICENSE
RECEIVED FROM ROBERT CROSS, d/b/a PAT'S PIZZA at 662 MAIN
ROAD NORTH**

Mayor Pro-tem Gilberti opened the hearing.

Proponents – None; Opponents – None; General Questions/Comments – None. The hearing was closed.

Motion by Councilor Brann, seconded to Councilor Arnett to approve the application – unanimous vote in favor.

C-1-a



TO: Mayor Briggs and Hampden Town Council
FROM: Robert Osborne, Town Planner RLO
SUBJECT: Draft Tree Ordinance
DATE: October 10, 2007

Please find attached a copy of the Draft Tree Ordinance that the Council Ordinance Committee voted at its last meeting to send to the full Council for consideration. As you are aware the Town of Hampden is pursuing the Tree City USA designation and adoption of a tree ordinance is a requirement of that program.

Adopted by Town Council 11/5/2007

**TOWN OF HAMPDEN, MAINE
DRAFT
TREE ORDINANCE**

ENACTED DATE: month/day/year
EFFECTIVE DATE: month/day/year

CERTIFIED BY: _____
Name

Title Affix Seal

**TOWN OF HAMPDEN, MAINE
DRAFT TREE ORDINANCE
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DRAFT

The Town of Hampden hereby ordains that the following Tree Ordinance be enacted.

**ARTICLE I.
PURPOSE**

1.1. Purpose. It is the purpose of this ordinance to promote and protect the rural character and ecological health of the Town of Hampden's landscape and further protect the health, safety and general welfare of its residents, by providing guidance for, and where appropriate, the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the Town.

**ARTICLE II.
AUTHORITY**

2.1. Authority. Pursuant to the provision Title 30-A M.R.S. Sections 3001 and 3280-3281 and the Charter of the Town of Hampden, Article II, Section 212, and Article III, Section 302, there is hereby established a tree ordinance to be organized, administered and governed in accordance with the following provisions.

**ARTICLE III.
APPLICABILITY**

3.1. Applicability. This ordinance provides full power and authority over all trees, shrubs and other plants within street rights-of-way, parks and public places of the Town, and to trees, shrubs and other plants located on private property that constitute a hazard or threat as defined herein.

**ARTICLE IV.
DEFINITIONS**

4.1. Definitions. Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Abutter- One whose property touches or adjoins along a border of another person's property as defined herein.

Drip Line- An imaginary, vertical line that extends from the outermost tips of the tree branches to the ground.

Person- Any individual, firm, partnership, association, corporation, company, organization, or entity of any kind.

Property Owner- The person owning such property as shown by the Town of Hampden's tax assessor records, unless proof to the contrary is available.

Public Property- Includes all property owned, leased, or occupied by the Town of Hampden or any of its administrative agencies or departments, or any property on which the Town is the holder of a conservation easement.

Public tree, shrub, or other plant- All trees, shrubs, or other plants now or hereinafter growing in any street or road right-of-way, park, town forest, or other public property.

Right of way - The strip of public or private land subject to a right to traverse and on which facilities such as streets, utilities and drainage conveyances are built.

Street or Road- The entire width of every public way or right-of-way when part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular or pedestrian traffic.

Street Tree- Any tree located or planted within the right-of-way of a street or road.

Threat or hazard- A threat or hazard is that which constitutes an infringement on public health or safety by a tree, shrub, or other plant that is located on public property or rights-of-way or located on private property that is adjacent to a public area or right-of-way.

Topping- The severe cutting back of limbs to stubs larger than three inches in diameter within a tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

Town Forester- The designated official of the Town assigned to carry out the enforcement of this ordinance.

Treelawn- That part of a street or highway right-of-way, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

Large Trees- are those tree species that habitually attain a height of forty-five feet or more.

Medium Trees- are those tree species that habitually attain a height of thirty to forty-five feet.

Small Trees- those tree species that habitually attain a height of less than thirty feet.

ARTICLE V. HAMPDEN TREE BOARD AUTHORITY AND POWER

5.1. Authority and Power. The Hampden Tree Board is hereby created and established. The Board shall consist of a minimum of five members, appointed by the Town Council. It is preferred that members be residents of the town, that one member be a licensed professional forester or have education/experience in forest resources, that one member be a licensed arborist or have education/experience in arboriculture, and that one be a member of the Town of Hampden Conservation Commission. The Town Forester shall serve as an ex-officio member of the board.

ARTICLE VI. TERM OF OFFICE

6.1. Term of Office. The term of the members shall be for three years, except that the term of the members approved to the first Board shall be as follows: three members shall be appointed for two years, and two members shall be appointed for three years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term. Members may renew their membership upon re-appointment by the Town Council.

ARTICLE VII. DUTIES AND RESPONSIBILITIES

7.1. Public Area Tree Plan. It shall be the responsibility of the Board to study, develop, update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or

disposition of trees and shrubs in parks, along streets within the public right of way, and in other public areas.

7.2. General Forest Plan. The Board shall similarly study, develop, and update annually a general forest plan with non-regulatory guidelines and recommendations for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs on private lands with the intent of preserving the rural character and ecological health of the Town. These documents will be presented annually to the Town Council and upon their acceptance and approval shall constitute the official comprehensive tree plan for the Town of Hampden, Maine.

7.3. Research and Education. When requested by the Town Council, the Board shall investigate and report upon any matter coming within the scope of its work. The Board also may initiate such actions itself, as it deems appropriate. The Board shall promote and assist in the dissemination of information, for the purpose of public education related to the Town's comprehensive tree plan and the standards and guidelines therein. The Board shall be involved in the selection of the Town Forester.

ARTICLE VIII OPERATION

8.1. Operation. The Board shall choose its own officers, develop its own bylaws, and maintain a public record of its proceedings. A majority of the members shall be a quorum for the transaction of business. Members shall serve without compensation.

ARTICLE IX. LANDSCAPING

9.1. Landscaping. The Board will assist with the development of new ordinance sections relating to landscaping and in new subdivisions or other new developments, which shall be included in the Town Subdivision Ordinance and Zoning Ordinance. As part of the review process for site plan and subdivision proposals, the Tree Board shall review landscaping plans for pending applications and may make written comments and/or suggestions to the planning board concerning the adequacy of the plans under this ordinance and the comprehensive tree plan and program.

ARTICLE X. TOWN FORESTER

10.1. Town Forester Established. The position of Town Forester is hereby created. The Town Forester shall be appointed by the Town Manager and be a person skilled and trained in municipal arboriculture, and shall hold a college degree or its equivalent in arboriculture/ornamental or landscape horticulture, urban forestry, or other closely related field. The Town Forester shall hold a current license from the State of Maine in either arboriculture or forestry. The Town Manager ~~initially~~ may delegate the duties and responsibilities to qualified existing staff and/or contract with qualified professionals to provide services in a timely and professional manner.

10.2. Oversight Responsibilities. The Town Forester shall, in concert with the Tree Board, oversee all forest management and urban tree care for the Town. It shall be the duty of the Town Forester to ensure compliance of all contractual agreements entered into by the town for work done in accordance with the terms of this ordinance. The Town Forester shall ensure that a current management plan is on file for all town forest parcels, and that an inventory and care plan of all street trees is created and maintained. At the discretion of the Town Forester and the Tree Board, additional inventory and management plans of trees, shrubs, or other plants may be conducted. The Town Forrester shall provide administrative support to the Tree Board as requested.

10.3. Enforcement Responsibilities. The Town Forester shall also enforce the rules and regulations of this ordinance and the annual plans as developed by members of the Tree Board and approved by the Town Council.

10.4. Ex-officio Member of Tree Board. The Town Forester will serve on the Tree Board as an ex-officio member.

ARTICLE XI. UTILITIES

11.1. Utilities. Street Trees shall be planted in a manner so as to not create conflict with overhead utility wires, or any underground water line, sewer line, transmission line or other utility. These guidelines may be modified dependent upon specific circumstances, subject to approval of the Town Forester.

ARTICLE XII. PUBLIC TREE, SHRUB, AND OTHER PLANT CARE

12.1. Planting, Maintenance and Removal of Public Trees. The Town shall have the right to plant, prune, maintain and remove trees, shrubs and other plants within the right-of-way of all roads, streets, alleys, avenues, lanes and squares, as well as all parks, town forests, and other public property grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

12.2. Removal of Public Trees in Unsafe Condition. The Tree Board or Town Forester may remove, cause or order to be removed, any public tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewer, electric power lines, gas lines, water lines, or other public improvements, or is affected by an injurious disease, insect or other pest. This section does not prohibit the planting of Street Trees by adjacent property owners providing that the selection and location of said trees is in accordance with the approved comprehensive town tree plan.

12.3. Protection of Public Trees During Construction Activities. Persons working construction in the Town of Hampden shall provide protection for public trees by erecting a temporary snow fence on the drip line of any such trees on the site of or that could be negatively affected by any excavation, construction or street work and care shall be taken that injury does not occur either above ground to trunk or limbs or compaction or smothering of roots occur below ground. No person shall deposit or store any machinery, stone, brick, soil, metal, concrete or similar materials which may compact soil or impede the free passage of water and air to the roots within the area of the drip line. The Town Forester may waive these requirements in extenuating circumstances.

12.4. Protection of Public Trees From Excavation Activities. No person shall excavate any ditches, tunnels, trenches, or lay any drive within the dripline of any public tree without first obtaining written permission from the Town Forester. This rule may be superseded if the project is approved and permitted by the State Department of Transportation.

12.5. Protection of Public Trees From Alteration, Removal and Injury. Under no circumstance shall any person cut, carve, transplant, top, tip or remove any public tree, shrub or other plant; attach any rope, wire, nails, advertising posters, or other contrivance to any such tree; allow any gas, liquid or solid substance which is harmful to trees, shrubs or other plants to come in contact with them; or to set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree, shrub or other plant.

**ARTICLE XIII.
REMOVAL OF STUMPS**

13.1. Removal of Public Stumps. All stumps of street and park trees and shrubs shall be removed below the surface of the ground so that the top of the stump shall not project above ground level.

Notwithstanding this requirement stump removal in rural forested areas of the Town is at the discretion of the Town Forester and Tree Board.

**ARTICLE XIV.
DISTANCES FROM CURB, SIDEWALK, AND DRIVEWAYS ON PUBLIC PROPERTY**

14.1. Separation Between Trees and Public Ways. The distance trees may be planted from curbs or curblines, driveways and sidewalks shall be enough so as not to create damage to infrastructure or impede the health of the tree as determined by the Town Forester.

**ARTICLE XV.
DISTANCES FROM STREET CORNERS AND HYDRANTS**

15.1. Separation Between Trees and Corners No tree, shrub or other plant shall be within 30 feet of any road intersection or street corner, measured from the point of nearest intersecting curbs or curblines, if it constitutes a safety hazard. The purpose of this restriction is to ensure public safety by prohibiting the planting of vegetation that may impede or obstruct sightlines.

15.2. Separation Between Trees and Fire Hydrants. No tree, shrub or other plant shall be planted closer than ten feet of any fire hydrant.

**ARTICLE XVI.
PRIVATE PROPERTY OWNER RESPONSIBILITIES**

16.1. Maintenance Required. Every property owner shall maintain trees, shrubs or other plants on the owner's property so as to prevent a threat or hazard as defined herein.

16.2. Threat or Hazard. A tree, shrub or other plant located on privately owned property shall be deemed a threat or hazard if it, or any part of it, by reason of its condition and in the professional judgment of the Town Forester: is likely to fall onto adjacent public ways or public property; or is not pruned to a height of 14 feet above the traveled portions of the public ways and eight feet above public sidewalks.

**ARTICLE XVII.
PRUNING FOR VISIBILITY/ REMOVING OBSTRUCTIONS**

17.1. Pruning. The Town shall have the right to prune or remove any tree, shrub or other plant if and when, in the opinion of the Town Forester, Public Works Department, or Public Safety Director, it interferes with visibility of any traffic control device or intersection, or interferes with pedestrian or vehicular traffic, or impedes or obstructs sightlines. A clearance of fourteen feet above street surface or eight feet above the sidewalk surface shall be maintained.

17.2. Modification of Guideline. This guideline may be modified dependent upon specific circumstances, subject to approval of the Town Forester.

**ARTICLE XVIII.
INTERFERENCE WITH TREE BOARD AND TOWN FORESTER**

18.1. Interference Prohibited. No person shall hinder, prevent, delay, or interfere with the Tree Board or Town Forester or any other town agent, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street tree, shrub or other plant, park tree, town forest tree, tree on other public property, or tree on private property, as authorized in this ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the town.

18.2. The Town Forester can, if informed of a threat or hazard, approach a private landowner and request correction of the situation. If informal contact does not resolve the threat or hazard, The Town Forester may provide written notification thereof to the property owner, along with an order to abate the threat or hazard. The notification shall also advise the property owner of the owner's rights of appeal under this ordinance. If the threat or hazard is not adequately abated by the landowner, the owner may be subject to further action by the Town as provided elsewhere in this ordinance.

ARTICLE XIX PENALTIES, CLAIMS, AND APPEALS

19.1. Civil Penalty. Any person who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to any provision of this ordinance, upon being found guilty of violation, shall be subject to a civil penalty not to exceed \$500 for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense.

19.2. Repair and Replacement Costs. If, as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on public property is caused, the cost of repair or replacement, or the appraised dollar value of such tree, shrub, or other plant, shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with the latest revision of *A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens*, as published by the International Society of Arboriculture.

19.3. Abatement Costs. In the event that a threat or hazard is not abated by the date specified in the notice, the Town Forester is authorized to cause the abatement of said threat or hazard. The reasonable cost of such abatement shall be reimbursed to the Town by the property owner. Failure to reimburse the Town within thirty (30) days of the issuance of an invoice by Town shall be a violation of this ordinance. In addition, the owner of the property on which the threat or hazard was located shall be subject to prosecution.

19.4. Compliance With Board of Appeals Ordinance. All appeals shall be subject to the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. The property owner or any other aggrieved person may appeal to the Town of Hampden Board of Appeals, from a decision of the Town Forester and/or Tree Board refusing to grant a modification to the provisions of this ordinance covering maintenance and removal of trees, shrubs and plants. Such appeal shall be commenced within 30 days of the decision.

19.5. Appellate Review. The Board of Appeals may conduct an appellate review of the refusal to grant a modification to the provisions of this ordinance covering maintenance and removal of trees, shrubs and plants.

19.6. Basis of the Appeal. The appellant must demonstrate that the decision of the Town Forester/Tree Board having jurisdiction: (1) failed to correctly interpret the provisions of this ordinance or the rules, and regulations established pursuant to this ordinance, (2) the provisions of this ordinance do not fully apply,

or (3) failed to consider that an equivalent form of maintenance and removal of trees, shrubs and plants can be used.

19.7. Modification or Reversal of the Decision. The Board of Appeals may modify or reverse the decision of the Town Forester/Tree Board upon making a determination that (1) the provisions of this ordinance or the rules and regulations established pursuant to this ordinance have been incorrectly interpreted, (2) the provisions of this ordinance do not fully apply, or (3) an equivalent form of tree, shrub or plant care can be used.

**ARTICLE XX.
ENFORCEMENT**

20.1. Enforcement. This ordinance shall be effectively enforced and administered by the Town Forester, with the assistance of all town departments, as necessary to accomplish the spirit and letter of this ordinance and annual tree plan. When any violation of any provision of this ordinance is found to exist, the Town Forester is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that the Town Forester may deem appropriate or necessary to enforce the provisions of this ordinance.

**ARTICLE XXI.
REVIEW BY TOWN COUNCIL**

21.1. Town Council Review Authority. The Town Council shall have the right to review the conduct, acts and decisions of the Tree Board and Town Forester.

**ARTICLE XXII.
SEVERABILITY**

22.1. Severability. Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

c. APPLICATION FOR A VICTUALER'S LICENSE RECEIVED FROM
KLITON XHEMALI, d/b/a ANGELO'S PIZZERIA, 102 MAIN ROAD
SOUTH

Mayor Pro-tem Gilberti noted that the Town Clerk has advised that Mr. Xhemali had hoped to be ready to open the first week of November, but they were not yet ready for inspection. He hoped to be ready for public hearing at the next Council meeting. He opened the hearing and asked for a motion to postpone until the next meeting.

Motion by Councilor Arnett, seconded by Councilor Cox to postpone this item until the next meeting and to continue the public hearing – unanimous vote in favor.

2. NOMINATIONS-APPOINTMENTS-ELECTIONS

There were none.

3. UNFINISHED BUSINESS

a. REGIONAL OPEN SPACE PLAN

Manager Lessard explained that the Town has been participating in discussion with communities in the region over the idea of a regional open space plan development. The purpose is to think in a more holistic venue than just our own borders in terms of open space and its impacts. There is a commitment for funding the organization, which is \$.50 per resident per community. That component does not take affect until our next budget cycle and the Council could decide to raise those funds and continue membership or not. In order to go forward and establish a steering committee and apply for grants, etc., communities have to adopt the proposed Memorandum of Understanding. She said signing the Memorandum does not commit the Town to funding and the Town has the right to withdraw from the project on or before December 15, 2008.

Motion by Councilor Colford, seconded by Councilor Cox to sign the Memorandum of Understanding. Councilor Brann requested that the motion be amended to include forwarding it to the Conservation Commission and Community Services Committee for immediate review and to include a letter with the Memorandum that we reserve the right to withdraw by December 15, 2008 if so advised by the committees. Councilors Colford and Cox agreed to the amendment – vote on the amended motion was unanimously in favor.

b. WATER DISTRICT INFORMATION

Manager Lessard reported that the information requested by the Council has been supplied by the Water District and the questions formulated by the Council at its last meeting were answered at the Water District's Trustees' meeting on the 18th. The Water District has also extended an invitation to any Town Council member who wishes to tour their facilities

and review their process. Manager Lessard also reported that the PUC has issued a letter which states that they have received a petition, with a sufficient amount of signatures, to review the impending rate increase with and they will be undergoing that process. She did not know what the schedule would be for that review.

Councilor Brann requested that James Feverston be allowed to enter his information into the record at this time. There was no objection from the Council and a copy of Mr. Feverston's information is attached hereto.

After further discussion, it was decided that there needs to be more communications between the Town and the Water District on an ongoing basis and Manager Lessard will work with Water District representatives to set up a schedule of meetings/discussions.

c. CONSERVATION COMMISSION – RECOMMENDATIONS FOR DEVELOPMENT ZONES IN RURAL DISTRICT

This item was postponed until the next meeting.

d. ICHABOD LANE

Attorney Russell said that he has looked at the status of Ichabod Lane, in particular the spur road off of it, which goes between Lots 11 and 13 as shown on the subdivision plan approved back in 1972. He has concluded that the Town Council, intentionally or not, did accept the spur as a town way as part of its acceptance of Ichabod Lane. He said this is a unique situation where we have a town way which is not a traveled way.

In a letter to Attorney Russell, Mr. and Mrs. King's attorney, Michael Griffin, indicated that they wished to withdraw their request and that they will be exercising their private rights in the way and will be removing trees in the next two weeks. Attorney Russell said he disagrees with Mr. and Mrs. King's attorney in his belief that they had private rights to use this strip of land for access to their land at the end of it. Attorney Russell believes that there are no private rights. Attorney Russell also stated that if the original owner of the rear land did reserve any rights, they were conveyed to the Town when the developer deeded the strip of land to the Town.

Attorney Russell advised that as a town way, the Town has an obligation under the statute to keep it passable and safe and convenient for travelers with motorized vehicles, which hasn't happened since 1986. He said if it is not maintained as passable by vehicles before 2016, it would be abandoned pursuant to statute. He said it has been accepted as a town way, it was deeded to be a town way, not as open space or a trail, and it is obvious from the plans that it was intended to be a road for access to Lot 11 on the 1972 plan. He advised that the Council look at what the property owners in the area would like to see happen to it, especially the persons who depend on it for access (Lot 11 and the Kings) and try to figure out how to implement the fact that it is a town way, trying to minimize the consequences. He advised that the Council go into Executive Session to

VISION FOR HAMPDEN WATER DISTRIBUTION: PROBLEMS, PROCESS, AND SOLUTION

By

Jim Feverston

November 2007

On August 24, 2007, the Hampden Water District (HWD) submitted an Information Rate Filing to the Public Utilities Commission (PUC) citing the need for an across-the-board increase of 18.26 percent. This increase comes on the heels of a 20 percent increase in 2005. Yet another substantial increase in water rates may be requested in the near future with the planned 2009 rebuilding of Main Rd North (Hwy 1A), from Hillside Ave. to R & K Variety.

Town officials were angered by the decision and by the perceived difficulty in getting questions answered and concerns addressed by the HWD, in a timely manner. Some questions posed by Town officials were required to be submitted in writing.

Citizens' frustrations are spurred by the realization they will be paying twice for the increase—once in the form of a water rate increase to district customers, and again through property taxes assessed to every property owner in Hampden. They are also upset about their lack of meaningful input into the decision making process.

The fire of discontent is further fanned by the perception that town officials and citizens may have been misled as the proposed HWD budget contains a 28.12 percent increase in the salaries and wages budget line. This increase accounts for 43.4 percent of the total dollar increase requested. The justifications sent to water users were primarily for increased cost of water purchased from the Bangor Water District, and the costs of materials and supplies purchased.

Some citizens have begun collecting signatures for a petition to the PUC to block the increase. Still other citizens have publicly expressed a desire to immediately take over the HWD. The talk of taking over the HWD is not new and has surfaced several times during the last ten years. Such actions speak directly to the dissatisfaction of citizens and suggest a need to address issues.

The Town Council has a legitimate right to be concerned. On October 2, 2007 the HWD held a PUC required public hearing on the rate increase. Specific questions posed by one of the two Town Councilors in attendance regarding the necessity of the 18.26 percent increase and salaries and wages were not completely answered. They were asked to put questions in writing and submit them to the HWD. The Town Manager sent the request to the HWD the next day.

Subsequently, the Town Council placed the proposed HWD increase on the agenda of their next regularly scheduled meeting on October 15, 2007 and asked the HWD General Manager to submit requested answers and documentation items for Council discussion. Representatives of the HWD were also invited to attend.

The HWD General Manager and members of the Board chose not to attend, and instead, responded in writing and asked Councilors to postpone discussion of HWD questions and issues. Furthermore, he asked the Council to put any additional questions in writing, and invited Councilors to attend *their* meeting. Clearly frustrated and irritated by the inability to engage the HWD in open discussions, Councilors formulated yet another set of questions and sent them to the HWD the next day.

At the October 18, 2007 meeting of HWD Board, where the questions were due to be answered, the printed agenda called for a vote on the proposed increase to be taken before questions from the councilors were addressed. A change in the order of the agenda was made only after a request by the Mayor for the Board to answer the written questions, prior to voting on the increase.

The questions were answered, but underlying issues remain. The HWD Board approved the rate increase of 18.26% anyway.

Unfortunately, the order of the printed agenda clearly supports the perception that the rate increase was going forward despite unanswered questions and concerns from the Council and other citizens in attendance. Such actions leave councilors and citizens frustrated with the lack of cooperation. Whether through arrogance or staunchly stubborn independence, the inability to get questions answered, and the lack of adhering to the spirit of openness in the entire process, left councilors and citizens feeling, at a minimum uneasy with the process. Still others are vowing to actively fight the actions of the HWD Board through the PUC. The most vocal are demanding the Town annex the HWD.

The Town Council has a legitimate right to be concerned. The Town's cost for the availability of water for public fire protection is a full 30% of the HWD's budget and is subject to the same across-the-board increase as metered ratepayers.

This cost occurs in the form of a hydrant rental charge for the 172 fire hydrants used for public fire protection in Hampden. For the year ending December 31, 2006, the cost was \$310,000. The new cost will be \$365,572, an annual increase of \$55,572. The costs for metered usage by town entities such as the municipal building, library, swimming pool and cemeteries are additional.

Yet another significant rate increase may be looming in the near future. The Maine Department of Transportation has expressed a plan to rebuild the approximately 4000 ft section of Highway 1A (Main Rd North) from R & K Variety to Hillside Ave beginning in 2009. Current contracted cost estimates for a new 12" main installed under the roadbed are between \$125-130 per lineal foot. Therefore, the total cost today, would be between \$500,000 and \$520,000. The subsequent bonding by the Hampden Water District would result in yet another substantial rate increase in the near future; the rate increase would again be borne by water users and every property taxpaying citizen in Hampden.

The upsizing and replacement of aging infrastructure is an expenditure that is most likely warranted and should be completed without regard to whoever manages water distribution in Hampden. Some costs are inevitable, and others are not.

Citizens have a legitimate right to be concerned. All town expenses not paid for by specific fees or other revenue streams are combined into the annual town budget. A mill rate is assessed against the valuation of town properties and expenses are collectively paid through revenue raised by property taxes. This means that every property owner pays a share of the rate increase even if they are not connected to the system.

Some citizens feel misled. The HWD, in its "Notice to Hampden Water District Customers" sent to all customers, cited the following reasons for requesting a rate increase. "The increase is necessary to (1) cover increases in purchased water cost, (2) replace and upgrade needed water piping infrastructure, and (3) help offset the inflationary cost of electricity, fuel, water treatment chemicals and supplies, heating oil and insurance."

However, the Informational Rate Filing document sent to the Public Utilities Commission shows the annual line item for "Salaries and Wages" ballooning from \$319,697 to \$410,000, an increase of 28.12 percent. The HWD has six full-time employees and one part-time. Three of the employees hold the title of manager. The proposed increase in the cost of purchased water and materials/supplies each comprise 7.8 percent of the budget.

PROPOSED INCREASES IN HAMPDEN WATER DISTRICT EXPENSES*

| | | |
|-------------------------|---------------|------------|
| Salaries and Wages | \$ 81,303 | 43.4% |
| Water Purchased | 14,597 | 7.8 |
| Power | 4,097 | 2.2 |
| Chemicals | 1,396 | 0.7 |
| Materials/Supplies | 14,571 | 7.8 |
| Contractual Services | 3,426 | 1.8 |
| Depreciation | 2,805 | 1.5 |
| Debt Retirement | 14,273 | 7.6 |
| Interest Expense | 9,932 | 5.3 |
| Unallocated Contingency | 29,721 | 15.9 |
| Unexplained increase | <u>11,208</u> | <u>5.9</u> |
| TOTAL INCREASE | \$187,329 | 99.9% |

* Source: Exhibit A, Statement of Gross Revenue Requirements
Informational Rate Filing, Hampden Water District

Like it or not, the perception is that the public may have been misled because the areas identified in the notice of intent do not exactly correlate with the proposed budget filed with the PUC.

Couple this with a perceived unwillingness to promptly and publicly address salary and wage questions and other concerns and requirements that specific questions be submitted in writing and a Board meeting agenda designed to limit public dialogue, and the result is a deepening of the perception that the common good of the citizens may be better served by exploring different avenues for managing water distribution in Hampden.

I believe the uproar and divisiveness between the Town Council, the HWD and the town citizens is caused by a lack of consensus about the most efficient use of the revenues collected by the HWD and uneasiness about the motivations behind the decision to seek the rate increase. However, the current standoff offers Hampden an opportunity to begin a transparent and open planning process that will produce a plan capable of attracting community wide support for the solution.

I propose the Town Council begin an open and participatory focused workshop review process based on Hampden's future water resource needs as identified by the Town's Community Services and Comprehensive Planning Committees. Input from citizens should be actively sought and encouraged.

The HWD General Manager and trustees of the water district should be in attendance at every meeting or workshop in which this topic is discussed. Water district employees must be prepared to answer questions without written notice and be forthcoming with thorough explanations, supporting documentation and financial data, in an atmosphere of full and forthright disclosure.

Innovative solutions and collaborations with other water districts or departments should be considered, in addition to the being absorbed by the Hampden Department of Public Works. Working hand-in-hand with others can often help reduce costs by sharing laboratory and excavation equipment, personnel and administrative costs.

I recommend the Hampden Town Council take whatever time it needs to make the best decision. I urge Councilors to exercise discrimination, determination, and imagination in their cooperative and collaborative review and deliberations about the Hampden Water District.

In the final analysis, the decision surrounding who manages the water distribution in Hampden should be based on one criterion -- What is best for the citizens of the Town of Hampden - not the easiest short-term solution. Whatever is decided will most likely affect the Town of Hampden for generations to come.

Jim Feverston is an independent leadership consultant, college professor, former Vice-President and Academic Dean at Eastern Maine Community College, member of the Community Services and Comprehensive Planning Committees, Trustee and Treasurer Lura Hoyt Memorial Pool Board of Trustees.

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EXECUTIVE SUMMARY

HAMPDEN WATER DISTRIBUTION:

THE SOLUTION IS THE PROCESS

By

Jim Feverston

November 5, 2007

I believe the uproar and divisiveness between the Town Council, the HWD and the town citizens is caused by a lack of consensus about the most efficient use of the revenues collected by the HWD and uneasiness about the motivations behind the decision to seek the rate increase. However, the current standoff offers Hampden an opportunity to begin a transparent and open planning process that will produce a plan capable of attracting community-wide support for the solution. I propose the following twelve-step process.

THE PROCESS:

- 1) Keep one goal in mind -- make decisions that are in the best interest of the citizens of Hampden.
- 2) The Town Council should begin an open and participatory focused workshop review process based on Hampden's future water resource needs as identified by the Town's Community Services and Comprehensive Planning Committees. Input from citizens should be actively sought and encouraged.
- 3) Establish a clear goal and purpose for the workshops. Delivering pure water to the citizens of Hampden in a manner that provides high quality services, maximize the use of all available resources, and minimizes cost to water users and taxpayers, is a more appropriate goal than simply attacking or defending the current arrangement in an adversarial environment.
- 4) Schedules and ground rules for workshops and discussions should be set in advance, publicly announced, and the process or procedures maintained. The service of a neutral previously uninvolved facilitator to lead the meetings is recommended.

5) The proceedings must be open and transparent to the public. The workshop proceedings should occur at the municipal building. The council chamber is larger and equipped with broadcast and rebroadcast capability to allow the discussions to be heard and seen by a majority of Hampden citizens. It is also equipped with special devices for use by the hearing impaired.

6) The HWD General Manager and trustees of the water district should be in attendance at every meeting or workshop in which this topic is discussed. Water district employees and trustees must be prepared to answer questions without written notice and be forthcoming with thorough explanations, supporting documentation and financial data, in an atmosphere of full and forthright disclosure.

7) Establish a climate of teamwork. All participants should come to the table with an open mind and with the attitude of identifying and doing what's best for the common good.

8) Identify water districts, and combined water/wastewater departments that effectively and efficiently demonstrate "best practices" in resource management and service.

9) Identify all the options. In addition to being absorbed by the Hampden Public Works, innovative solutions and collaboration with other districts or departments should be considered. Working hand-in-hand with others can help reduce costs by sharing laboratory and excavation equipment, personnel and administrative costs.

10) Gather factual information and analyze the financial data necessary to accurately identify and assess the pros, cons and potential ramifications of each option.

11) Make a decision based on the merits of the option and the best interest of current and future water users and taxpaying citizens of Hampden.

12) If the decision is made annex or incorporate the water district into the Department of Public Works, or to substantially collaborate with other water districts, the HWD should accept the decision and proactively make the transition as smooth and seamless as possible. No one will be served by a protracted legal battle, except attorneys.

THE SOLUTION:

The process is the solution. I recommend the Hampden Town Council take whatever time it needs to make the best decision. I urge Councilors to exercise discrimination, determination, and imagination in their cooperative and collaborative review and deliberations about the Hampden Water District.

In the final analysis, the decision surrounding who manages the water distribution in Hampden should be based on one criterion -- What is best for the citizens of the Town of Hampden- not the easiest short-term solution. Whatever is decided will most likely affect the Town of Hampden for generations to come.

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November 6, 2007

discuss both the Town's legal rights and responsibilities and pending or threatened litigation.

Motion by Councilor Brann, seconded by Councilor Arnett to enter Executive Session pursuant to 1 MRSA §405(6)(E) to allow attorney/client consultation, to include the Town Manager and the Town Attorney, at the end of the meeting – unanimous vote in favor.

Craig Snow of 559 Meadow Road informed the Council that he has owned Lot 11 and the adjacent 52 acres for the past 22 years. He said he has a letter from the Town indicating that Lot 11 gives him sufficient frontage should he choose to build a single house on that land. He said Lot 11 is shown on the 1972 subdivision plan and he has held onto that land with the assumption that it is a buildable lot. While he is not planning to build on that land, he would not like to see that changed.

Mary Kellogg of 67 Ichabod Lane said she and her husband appreciate having received copies of the letters from Mr. Griffin along with the agenda for this evening. However, because they only received the opinion letter from Attorney Russell this evening, there has not been much time to assess that. She said they still have some remaining questions that need to be addressed. She said in looking over the law in as much as they have been able to, it does appear that there is not a private easement right. As to the remaining issues taken up in that letter, they would need more time to digest and assess those. She requested that when the Council considers this issue that it look at it in conjunction with whether the property farther down is buildable – that it all be looked at together in as much as possible.

Alex King asked Attorney Russell if, without cutting any trees, can he use that road for access to his property. Attorney Russell said he still needs to do some research is not prepared at this time to tell him what rights a private citizen has over an undeveloped public way. Mr. King wanted to know what kind of time frame he was looking at. Manager Lessard said that following the Council's executive session, she hoped that there will be a time frame established.

David King of 149 Ichabod Lane said he thinks permission should be granted to access if it is deemed legal. He said being a person who lives on that section, he does not want see any more traffic down there than what they have already got. He said there is no need for extra traffic to have to come all the way around to where his property is. He asked the Council to consider that in its decision.

- e. ZONING ORDINANCE TEXT AMENDMENTS FOR EARTHMOVING, MINERAL EXTRACTION, GRAVEL PIT AND QUARRY AND FILLING, GRADING AND STOCKPILING – INTRODUCTION FOR PUBLIC HEARING

Councilor Arnett introduced this item for public hearing at the next meeting.

4. NEW BUSINESS

a. ADOPTION AWARENESS MONTH PROCLAMATION

Motion by Councilor Brann, seconded by Councilor Cox to proclaim November as Adoption Awareness Month in the Town of Hampden and to adopt the proposed proclamation – unanimous vote in favor.

b. TAX ABATEMENT - \$456.62 – EDITH PERRY – REAL ESTATE 1988-1996; PERSONAL PROPERTY 1994-1997

Manager Lessard explained that these amounts are not included in the current list of tax collections, but are still in the general ledger. This is a housekeeping detail brought to her attention by the auditor.

Motion by Councilor Brann, seconded by Councilor Colford to abate the taxes – unanimous vote in favor.

c. COUNTY BUDGET COMMITTEE APPOINTEE – 11/7 & 11/15 MEETINGS

Motion by Councilor Arnett, seconded by Councilor Brann to appoint Councilor Gilberti to the County Budget Committee through the completion of his term – unanimous vote in favor.

d. APPLICATION FOR RENEWAL OF LIQUOR LICENSE RECEIVED FROM BANGOR TENNIS & RECREATION CLUB, INC. ON MECAW ROAD

Motion by Councilor Brann, seconded by Councilor Colford to approve the license application – unanimous vote in favor.

D. COMMITTEE REPORTS

Councilor Colford reported that the Public Works Committee will hold regular meetings with the Public Works Director on the first and third Mondays at 6:00 prior to Council Meetings.

Councilor Murphy said he will not be available for the meeting on November 19th and asked to be excused. Councilor Arnett so moved, seconded by Councilor Colford – unanimous vote in favor.

Councilor Arnett reported that the Charter & Ordinance Committee has met and is hoping that the mineral extraction ordinance is done. They have begun discussion of an absentee policy and will be reporting more at a later time.

E. MANAGER'S REPORT

A copy of the Manager's Report is attached.

MANAGER'S REPORT

November 5, 2007

Elections – A reminder to everyone to vote tomorrow between 8 a.m. and 8 p.m. in the Community Room of the Public Safety building.

Halloween – A big thank you to Public Safety and all of their helpers in putting on this year's Halloween Haunted House and festivities. Once again, it was a great success.

Economic & Community Development Specialist – Interviews are being conducted for this position and I hope to have a decision for the council on this position by the middle of November.

Wrist Surgery – I will be out of the office on November 16th for surgery on my wrist to correct a tendon problem. I will be back in the office on Monday the 19th.

Water Problems – We had some water washout problems resulting from the heavy rains on Saturday. The crew is working to get them all remedied early this week.

Pool Good News – We have good news from Mechanical Services about the pool air handling system. After a thorough review of the system they have been able to get it into working condition and we should realize a substantial energy savings in reduced oil consumption over the course of the winter. With proper maintenance the system should last at least another several years. This is a much better prognosis than we were originally facing with the prospect of replacing the whole system immediately. Public Works Director Chip Swan has been working with the Pool Director to find solutions for this and other maintenance issues of concern at the pool.

Garage Audit – We will be having an audit next week by DEP of the town's stormwater management program including the Public Works facility. I am confident that we will do well with it.

New School Project – I met with the Superintendent and Assistant Superintendent and architects for a preliminary meeting about possible locations for the new school in the four mile square area. There will be a need for the council to meet with them to discuss the idea of a 'land swap' in that area but there are some very positive potential outcomes for the town as well. In addition, there was a very creative discussion about how we might utilize the 'green electricity' from the landfill gas to energy project as part of the development if it is in Hampden.

F. COUNCILOR'S COMMENTS

Councilor Brann said he has received a number of phone calls relative to Public Works' placing of snowmobile road crossing signs and commending the Town for having that done.

Councilor Murphy said he is still going to bring forward information to the Council on wind power alternative for town properties. He is still collecting information and said it may be in the \$100,000 range for the initial outlay of a suitable unit, with a payback over 5 to 7 years.

EXECUTIVE SESSION:

The Council entered Executive Session at 9:25 pm together with the Town Manager and Town Attorney.

Motion by Councilor Murphy, seconded by Councilor Brann to re-enter regular session at 9:45 pm – unanimous vote in favor.

Motion by Councilor Gilberti, seconded by Councilor Arnett to have the Town Manager direct the Public Works Director to look at the spur road off Ichabod Lane, develop a plan and have the crew clear a 20-foot traveled way in the least obtrusive manner possible – unanimous vote in favor.

G. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:55 p.m.



Denise Hodsdon
Town Clerk