

Town of Hampden

PLANNING & DEVELOPMENT COMMITTEE MEETING

Thursday, January 2, 2020

6:00 P.M.

HAMPDEN TOWN OFFICE

AGENDA

1. Approval of Minutes
 - a. December 5, 2019 Meeting
2. Committee Applications
3. Citizen's Initiatives
4. New Business
5. Unfinished Business
 - a. Property Maintenance Ordinance – CEO Carey
6. Zoning/Regulatory Considerations
7. Staff Report
 - a. Historic Preservation Commission status
8. Public Comments
9. Committee Member Comments



Town of Hampden
Planning and Development Committee
Thursday Dec. 5, 2019, 6:00 pm
Municipal Building Council Chambers
Minutes

Attending:

Committee/Council

Eric Jarvi, Chair
Dennis Marble
Ivan McPike, Mayor
Terry McAvoy

Staff

Karen Cullen, Town Planner
Ryan Carey, CEO

Public

Phil Stack

Chairman Jarvi called the meeting to order at 6:00 pm.

A motion was made by Councilor Marble to take item 8, Public Comments out of order, since a member of the public was here to speak and it would be appropriate to not make him wait. Councilor McPike seconded; carried 4/0/0.

8. Public Comments: Phil Stack noted he had addressed the Town Council about the dilapidated building across the street from his house on Kennebec Road this past summer, and also met with the P&D Committee in August. He was here tonight to find out what the status is of that particular property and the previously discussed possibility of the town enacting an ordinance to deal with dilapidated properties. Main points of the discussion:
- The USDA no longer holds any interest in the subject property.
 - The Town now holds a lien on the property for nonpayment of taxes.
 - There are several paths forward, the first three would be time consuming and costly:
 - Town eventually take ownership of the property for nonpayment of taxes
 - Town adopt a property maintenance ordinance and enforce it for this property
 - Designate the building “dangerous” under state statute
 - Hope that a private citizen will purchase the property and demolish the building.
 - There needs to be a balance between the property rights of the property owner and the rights of the abutters.
 - The P&D believes this is a high priority issue and will discuss again at the January 2, 2020 meeting; they requested sample ordinances be included in the packet for that meeting.

Chairman Jarvi returned to the agenda.

1. Minutes for the November 6, 2019 meeting – **Motion** to approve as submitted made by Councilor Marble; second by Chairman Jarvi; carried 2/1/1.
2. Committee Applications: None.

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3. Citizen's Initiatives: None.
4. New Business: None.
5. Unfinished Business:
 - a. Town Center, formation of a Citizen's Task Force – Chairman Jarvi reported that he has not yet been able to meet with the RSU and thus this project is delayed. Nothing has been posted on the website yet regarding seeking citizen's for the task force.
6. Zoning Considerations/Discussions:
 - a. Marijuana Ordinance amendments – Planner Cullen gave an overview of the memo for discussion tonight, noting the input she needs are the committee's thoughts on the maximum number of registered caregivers that can operate on a property and the distances between the operations and abutting properties. The main points of the discussion were:
 - There was a drop in the number of registered caregivers in Maine between 2017 and 2018, perhaps due to the difficulty of these businesses obtaining any financing and the potential that legalization of adult-use marijuana has reduced the demand for registered caregivers to produce marijuana products for medical use.
 - The consensus of the committee was to reduce the maximum number of registered caregivers that can operate on a single property to half for each category in the draft ordinance.
 - The consensus of the committee on distances was for Planner Cullen to run additional GIS analyses to identify properties that would be eligible for the various number of registered caregivers, using larger distances (e.g. 750 feet).
 - Another possibility is to greatly simplify the ordinance and set stricter limits on the number of registered caregivers operating on a single property across town, except allow more in the industrial districts.
 - The P&D Committee will hold a second meeting in January (date to be determined) to continue discussion on the marijuana ordinance
7. Staff Report:
 - a. CEO Carey reported that while he has been busy, there is nothing of concern going on currently. Councilor McAvoy asked about permitting procedures and educational materials for contractors and builders, noting these were issues discussed with the previous CEO and he is wondering what the status is. CEO Carey said he is working on materials to provide to builders, such as diagrams for foundations and checklists for numerous other things.
 - b. Planner Cullen reported we have received new water quality data for the Pine Tree landfill, and she's spoken with our consultant Drumlin Environmental about it. They reported that the wells of concern seem to have stabilized; the water quality is not worse than the previous sampling round, but we have to wait to see whether those wells start to improve. Drumlin is also available to come meet with the P&D committee or the TC; the committee thought that would make sense in the spring after the annual report is out and has been reviewed
8. Public Comments: See above

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9. Committee Member Comments: None

10. Adjournment: Chairman Jarvi adjourned the meeting at 7:36 pm.

Respectfully submitted by
Karen Cullen, Town Planner

Items from this meeting for Thursday January 2, 2019 P&D meeting:

- Agenda Items:
 - Town Center, formation of Citizen Task Force
 - Property Maintenance Ordinance

Items from this meeting for second P&D meeting in January (date to be determined):

- Agenda Items:
 - Marijuana Ordinance Amendments

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Town of Hampden
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Memorandum

To: Planning and Development Committee
From: Ryan M. Carey, Code Enforcement Officer
Date: December 23, 2019
RE: Property Maintenance Options

The town has a number of derelict and dilapidated buildings in need of attention. We have two primary options: enforcing the State of Maine Dangerous Buildings statute, or drafting and/or adopting a property maintenance ordinance. There are some similarities between the two, mainly that a complete property maintenance ordinance includes a section addressing dangerous buildings. There are, however, a number of differences between them. Property maintenance addresses buildings in disrepair, addressing issues as small as decorative finishes (IPMC 2018 304.8), and weeds (IPMC 2018 302.4). The dangerous buildings ordinance addresses the narrow scope of safety and habitability. We, as a town, need to decide what the issues are, and the desired outcomes of those issues are.

Voluntary compliance is our most effective and efficient tool. Most property owners do not want to be in violation. Others have little to no choice. If an owner is in violation due to economic hardship or for demographic reasons, compliance is challenging sometimes impossible. The ultimate outcome for some of these properties will be the town acquiring the property or razing the property and passing the fees along to an already taxed owner. Consideration must be given to how the town will incur these burdens. Research indicates that each property will cost, on average, between \$5,000 and \$25,000 to mitigate.

A copy of the State of Maine's dangerous buildings statute (Title 17 M.R.S. §§2851-59) will accompany this memo. This issue will be discussed at the P&D meeting in January.

Title 17: CRIMES
Chapter 91: NUISANCES
Subchapter 4: DANGEROUS BUILDINGS

§2851. Dangerous buildings

The municipal officers in the case of a municipality or the county commissioners in the case of the unorganized or deorganized areas in their county may after notice pursuant to section 2857 and hearing adjudge a building to be a nuisance or dangerous, in accordance with subsection 2-A, and may make and record an order, in accordance with subsection 3, prescribing what disposal must be made of that building. The order may allow for delay of disposal if the owner or party in interest has demonstrated the ability and willingness to satisfactorily rehabilitate the building. If an appeal pursuant to section 2852 is not filed or, if an appeal pursuant to section 2852 is filed and the Superior Court does not order, stay or overturn the order to dispose of the building, the municipal officers or the county commissioners shall cause the nuisance to be abated or removed in compliance with the order. [PL 2017, c. 136, §1 (AMD).]

For the purposes of this subchapter, "building" means a building or structure or any portion of a building or structure or any wharf, pier, pilings or any portion of a wharf, pier or pilings thereof that is or was located on or extending from land within the boundaries of the municipality or the unorganized or deorganized area, as measured from low water mark, and "parties in interest" has the same meaning as in Title 14, section 6321. [PL 2017, c. 136, §1 (NEW).]

1. Notice.

[PL 2017, c. 136, §1 (RP).]

2. Notice; how published.

[PL 2017, c. 136, §1 (RP).]

2-A. Standard. To adjudge a building to be a nuisance or dangerous, the municipal officers or county commissioners must find that the building is structurally unsafe, unstable or unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property.

[PL 2017, c. 136, §1 (NEW).]

3. Recording of the order. An order made by the municipal officers or county commissioners under this section must be recorded by the municipal or county clerk, who shall cause an attested copy to be served upon the owner and all parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. If the name or address cannot be ascertained, the clerk shall publish a copy of the order in the same manner as provided for notice in section 2857.

[PL 2017, c. 136, §1 (AMD).]

4. Proceedings in Superior Court. In addition to proceedings before the municipal officers or the county commissioners, the municipality or the county may seek an order of demolition by filing a complaint in the Superior Court situated in the county where the building is located. The complaint must identify the location of the property and set forth the reasons why the municipality or the county seeks its removal. Service of the complaint must be made upon the owner and parties in interest in accordance with the Maine Rules of Civil Procedure. After hearing before the court sitting without a jury, the court shall issue an appropriate order and, if it requires removal of the building, it shall award costs as authorized by this subchapter to the municipality or the county. Appeal from a decision of the Superior Court is to the law court in accordance with the Maine Rules of Civil Procedure.

[PL 2017, c. 136, §1 (AMD).]

SECTION HISTORY

PL 1965, c. 284 (RPR). PL 1967, c. 401, §1 (AMD). PL 1973, c. 143, §1 (AMD). PL 1979, c. 27, §§1-3 (AMD). PL 1997, c. 6, §1 (AMD). PL 2017, c. 136, §1 (AMD).

§2852. Appeal; hearing

An appeal from a decision of the municipal officers or county commissioners under section 2851 or section 2856 must be to the Superior Court, pursuant to the provisions of the Maine Rules of Civil Procedure, Rule 80B. [PL 2017, c. 136, §2 (AMD).]

SECTION HISTORY

PL 1965, c. 284 (RPR). PL 1979, c. 27, §4 (RPR). PL 1997, c. 6, §2 (AMD). PL 2017, c. 136, §2 (AMD).

§2853. Recovery of expenses

All expenses incurred by a municipality or county related to an order issued under section 2851, including, but not limited to, expenses relating to the abatement or removal of a building, must be repaid to the municipality or county by the owner within 30 days after demand, or a special tax may be assessed by the assessors against the land on which the building was located for the amount of the expenses and that amount must be included in the next annual warrant to the tax collector of the municipality or county for collection and must be collected in the same manner as other state, county and municipal taxes are collected. [PL 2017, c. 136, §3 (AMD).]

In the case of any claim for expenses incurred in the abatement or removal of any wharf, pier, pilings or any portion thereof that extends beyond the low water mark, the special tax authorized by this section must apply to the land from which the wharf, pier or pilings extended or to which they were adjacent, if the owner of the land is also the owner of the wharf, pier, pilings or portion thereof. [PL 2017, c. 136, §3 (AMD).]

Expenses include, but are not limited to, the costs of title searches, location reports, service or process, reasonable attorney's fees, costs of removal of the building, any costs incurred in securing the building pending its removal and all other costs incurred by the municipality or county that are reasonably related to the removal of the building. In addition to levying a special tax, the municipality or county may recover its expenses, including its reasonable attorney's fees, by means of a civil action brought against the owner. [PL 2017, c. 136, §3 (AMD).]

SECTION HISTORY

PL 1965, c. 284 (RPR). PL 1967, c. 401, §2 (AMD). PL 1973, c. 143, §2 (AMD). PL 1977, c. 707, §§5-A (AMD). PL 1979, c. 27, §5 (AMD). PL 2017, c. 136, §3 (AMD).

§2854. Costs

(REPEALED)

SECTION HISTORY
PL 1965, c. 284 (RP).

§2855. Entry into force by town vote

(REPEALED)

SECTION HISTORY
PL 1965, c. 284 (RP).

§2856. Securing dangerous buildings

In addition to other proceedings authorized by this subchapter, a municipality has the right to secure buildings that pose a serious threat to the public health and safety and to recover its expenses in so doing as provided in section 2853. If a building is secured under this section, notice in accordance with section 2857 must be given. This notice need not be given before securing the building if the threat to the public health and safety requires prompt action. [PL 2017, c. 136, §4 (AMD).]

SECTION HISTORY
PL 1979, c. 27, §6 (NEW). PL 2017, c. 136, §4 (AMD).

§2857. Notice; recording

Notice required under section 2851 or section 2856 must be served on the owner and parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. When the name or address of an owner or party in interest is unknown or is not ascertainable with reasonable diligence, the notice must be published once a week for 3 successive weeks prior to the date of hearing in a newspaper generally circulated in the county, or if none, in the state paper. [PL 2017, c. 136, §5 (NEW).]

The municipal or county clerk shall cause an attested copy of the notice to be recorded in the Registry of Deeds located within the county where the building is situated. Recording of this notice puts any person claiming under the owner of a building subject to proceedings under this subchapter on notice of the pendency of the proceedings. [PL 2017, c. 136, §5 (AMD).]

SECTION HISTORY
PL 1979, c. 27, §6 (NEW). PL 2017, c. 136, §5 (AMD).

§2858. Consent to removal

The owner or a party in interest of a dangerous building may consent to its removal and to the recovery of the expenses incurred by a municipality or county by means of a special tax as set forth in this subchapter. Notices of the consent must be recorded in the Registry of Deeds located in the county where the building is situated. [PL 2017, c. 136, §6 (AMD).]

SECTION HISTORY
PL 1979, c. 27, §6 (NEW). PL 2017, c. 136, §6 (AMD).

§2859. Summary process

In cases involving an immediate and serious threat to the public health, safety or welfare, in addition to any other remedies, a municipality may obtain an order of demolition by summary process in Superior Court, in accordance with this section. [PL 1981, c. 43 (NEW).]

1. Commencement of action. A municipality, acting through its building official, code enforcement officer, fire chief or municipal officers, shall file a verified complaint setting forth such facts as would justify a conclusion that a building is dangerous, as described in section 2851, and shall state in the complaint that the public health, safety or welfare requires the immediate removal of that building.

[PL 2017, c. 136, §7 (AMD).]

2. Order of notice. Whenever a complaint is filed under this section, the justice before whom it is brought, acting ex parte, shall promptly issue an order:

A. Requiring the owner and all parties in interest to appear and show cause why the building should not be ordered demolished; [PL 2017, c. 136, §8 (AMD).]

B. Specifying the method of service of the order and the complaint; [PL 1981, c. 43 (NEW).]

C. Setting a time and place for hearing the complaint, which shall be the earliest possible time but not be later than 10 days from the date of filing; and [PL 1981, c. 43 (NEW).]

D. Fixing the time for filing an answer to the complaint if the court determines that an answer is required. [PL 1981, c. 43 (NEW).]

[PL 2017, c. 136, §8 (AMD).]

3. Enlargement of time; default. The court may for good cause shown enlarge the time for the hearing. If the owner or parties-in-interest, or any of them, fail to answer, if an answer is required, or fail to appear as directed, or to attend the hearing at the time appointed or as enlarged, the court shall order a default judgment to be entered with respect to the owner or parties-in-interest.

[PL 1981, c. 43 (NEW).]

4. Hearing. After hearing, the court shall enter judgment. If the judgment requires removal of the building, the court shall award costs to the municipality as authorized by this subchapter. The award of costs may be contested and damages sought in a separate action to the extent permitted by subsection 7.

[PL 2017, c. 136, §9 (AMD).]

5. Appeal. A judgment requiring demolition issued pursuant to this section may not be appealed. The owner of a building that is the subject of an order issued under this section or a party in interest may appeal the award of costs, if any, or seek damages for wrongful removal pursuant to subsection 7.

[PL 2017, c. 136, §9 (AMD).]

6. Stay. No judgment authorizing demolition may be stayed pending appeal, unless the court first determines that granting a stay would not pose a significant risk to the public health, safety or welfare.

[PL 1981, c. 43 (NEW).]

7. Damages. Any complaint that either seeks damages for the wrongful removal of a building or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order that is the subject of the appeal. The damages that may be awarded for wrongful demolition are limited to the actual value of the building at the time of its removal. The provisions of Title 14, section 7552 do not apply. If the municipality prevails, the court may award it its costs in defending any appeal, which may include, but are not limited to, reasonable attorney's fees.

[PL 2017, c. 136, §10 (AMD).]

SECTION HISTORY

PL 1981, c. 43 (NEW). PL 1995, c. 450, §6 (AMD). RR 2007, c. 2, §5 (COR). PL 2017, c. 136, §§7-10 (AMD).

Project List - Planning

Project Name	Location	What it is	Size ¹	PB Action/Date	Type
Stearns Farm Subdivision	Main Rd North	single family cluster subdivision	39 lots	pending approval	Prelim Subdiv
Carmichael Transport	178 Ammo Park Rd	addition of a garage bay	1,800 sq ft	Approved	Minor Site Plan
Historical Society	83 Main Rd South	addition to building	1,020 sq ft	Approved	Minor Site Plan
T&A Realty	50 Main Road North	convert retail space to apartment	1 unit	Approved	Conditional Use
Zucco's Dog House	Hampden Busn Park lot 25	change grass to turf in outdoor dog area	16,000 sq ft	Approved	Minor Site Plan
Andrew Connolly	256 Main Rd N	convert existing space to accessory apartment	1 unit	Approved	Conditional Use
Dysart's	370 Coldbrook Rd	expand store, relocate pumps & replace USTs	4,275 sq ft	Approved	Major Site Plan & Shoreland
Amy Young	1240 Carmel Rd N	daycare facility (in home)	12 children	Approved	Conditional Use
Larry Emery	75 Chickadee Lane	amateur radio operator tower	50 ft tall	Approved	Conditional Use
Fiberight/CRM	348 Coldbrook Road	insubstantial modifications to site plan	NA	Approved	Site Plan Modification
Honey Hill Estates	238 Main Rd S	single family cluster subdivision	23 lots	Approved	Prelim Subdiv
Hampden Municipal Complex	106 & 146 Western Ave	parking lot expansion, stormwater mgt system	add 105 spaces	Approved	Major Site Plan
Nate Wicklow	Monroe Rd	new multi-family building	4 units	Approved	Major Site Plan & Subdiv.
Kris Brooker	Old County Road	addition to home with accessory apartment		Approved	Conditional Use
Honey Hill Estates	238 Main Rd S	single family cluster subdivision	23 lots	pending submission	Final Major Subdivision
ReVision Energy - HO Bouchard	Coldbrook Road	solar array by the trucking facility	NA	Approved	Major Site Plan
Kongsuriya multi-family	Old County Road	new multi-family building	4 units	Approved	Major Site Plan & Subdiv.
Paul Phillips	544 Main Rd S	addition to home encroaching setback	2,200 sq ft	Approved	Conditional Use
Lupine Meadows	Western Ave	multi-family project (2 buildings)	8 units	pending submission	Major Site Plan & Subdiv.

1. Size refers to square footage of building (new or addition), number of new building lots, number of new units, or acreage.