

Town of Hampden

PLANNING & DEVELOPMENT COMMITTEE MEETING

Monday, October 3, 2018

6:00 P.M.

HAMPDEN TOWN OFFICE

AGENDA

1. Approval of Minutes
 - a. September 5, 2018 Meeting
2. Committee Applications
3. Citizen's Initiatives
4. New Business
 - a. Urban Impaired Streams and Compensation Fee Utilization Plan
 - b. Amendments to the Board of Appeals Ordinance
5. Unfinished Business
6. Zoning Considerations/Discussion
7. Staff Updates
 - a. MRC/Fiberight
 - b. Staff Report
8. Manager Items
9. Public Comments
10. Committee Member Comments
11. Adjourn



Town of Hampden
Planning and Development Committee
 Wednesday September 5, 2018, 6:00 pm
 Municipal Building Council Chambers
Minutes - DRAFT

Attending:

Committee/Council

David Ryder - Chair
 Dennis Marble
 Ivan McPike
 Terry McAvoy
 Mark Cormier

Staff

Karen Cullen, Town Planner
 Myles Block, Code Enforcement Officer
 Jim Chandler, Town Manager

Public

Farrah Perry

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

1. Minutes for the August 1, 2018 meeting – **Motion** to approve as submitted made by Councilor McAvoy; second by Councilor Marble; carried 5/0/0.
2. Committee Applications: None
3. Citizen's Initiatives: None
4. New Business: None
5. Old Business: None
6. Zoning Considerations/Discussions:
 - a. Discussion of potential zoning amendment to allow Place of Assembly in the Rural district. Planner Cullen introduced the concept which is to allow venues for weddings, family reunions, meetings, etc. She reviewed her memo and the issues that have arisen in other communities where these uses have been established, primarily traffic and noise. Other issues include buffering (visual), dust control (from dirt driveways and parking areas), sewage disposal, and operational issues such as the number of events per year, the duration of events, and the number of attendees. The main points of the discussion were:
 - there are different levels of such event centers, some are full time businesses while others are only offered a few times a year
 - Farrah Perry offered that she is interested in doing this at her property on Shaw Hill Road but only on a limited basis, with just a few events per year
 - there are a variety of ways to allow and regulate these uses
 - the committee wants to pursue such event centers as an allowable use in the zoning ordinance, and keep the regulations simple yet provide appropriate criteria and the means for the Planning Board to set site-specific conditions for projects they approve
 - Planner Cullen will work on this with the Planning Board.

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7. Updates:

- a. MRC/Fiberight: CEO Block reported that construction is continuing. Town Manager Chandler reported he has been trying to get a response (so far unsuccessfully) from Fiberight regarding the need to deal with the temporary occupancy permit issue as it relates to the use of the facility and compliance with the Planning Board approval and zoning ordinance. CEO Block reported he still has not received plans for energy code compliance or fire suppression. He added the project is being done by many different parties, apparently with little if any oversight by any one entity, which has led to the situation we're dealing with on a daily basis now.
- b. Staff Report:
 - i. Planner Cullen reported that the packet included an updated project list which includes two new applications, one for a minor subdivision and the other is another "insubstantial" modification requested by MRC/Fiberight for more modifications to the approved site plan. Both of these will be in front of the Planning Board next week, September 12.
 - ii. CEO Block reported that there has been quite a few new homes permitted this year, four in August and about a dozen are under construction in several areas of town.
 - iii. CEO Block said he was working on draft regulations for property maintenance and would have them ready for the October P&D meeting. There was discussion whether the Council had requested this; CEO Block was certain he had heard that directive at a meeting but no one present could confirm one way or the other. Councilor Marble stated he would be in favor of reviewing something. Councilor McAvoy said he would never vote in favor of a property maintenance ordinance.
 - iv. CEO Block reported there is a Board of Appeals meeting scheduled for September 26 for a variance request.
 - v. Planner Cullen reported the Shoreland Zoning Ordinance draft is moving forward and she is now ready to meet with the state to address a number of questions on the regulations. Once that's done we can move ahead with creating a new map that will match the state mandated (not the optional) shoreland zones.

8. Public Comments: None

9. Committee Member Comments: Councilor McAvoy asked about the flags/banners; Manager Chandler said we have recently purchased new flags and have received permission from Emera to install them on the telephone poles; that will be done when DPW can get to it.

10. Adjournment: **Motion** to adjourn the meeting at 6:56 pm made by Mayor McPike, seconded by Councilor Marble; motion carried 5/0/0.

Respectfully submitted by
Karen Cullen, Town Planner

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Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
 From: Karen M. Cullen, AICP, Town Planner *KMC*
 Date: September 26, 2018
 RE: Urban Impaired Stream Regulations and Compensation Fee Utilization Plans

The purpose of the Urban Impaired Stream (UIS) regulations is to improve the water quality of those streams in the state that do not meet certain water quality standards. In the case of both streams so designated in Hampden, the pollution is primarily from non-point source pollution from impervious surfaces, and is generated mostly from developments located outside of Hampden, such as the Bangor International Airport. However, that does not excuse the Town of Hampden or property owners within Hampden from compliance with the regulations.

As of May 23, 2018, both Shaw Brook and Sucker Brook have been listed as Urban Impaired Streams by the Maine Department of Environmental Protection (DEP) in Chapter 502 of their Rules. What this means is that any new development or certain redevelopment may be required, depending on the extent of the proposed development, to mitigate existing stormwater pollution in the stream watershed or pay a compensation fee. Projects required to comply with the UIS regulations include any within the affected watershed that require a new or modification to an existing Site Location of Development permit (a.k.a. Site Law permit). This includes (in Hampden):

- projects that exceed 3 acres (buildings, parking, driveways, and landscaped areas)
- projects that occupy more than 20 acres
- most subdivisions exceeding 4 lots and 20 acres that are for anything except single family residences (there are some exceptions)
- any development of any size within the Hampden Business & Commerce Park that is required to apply for an amendment to the business park's Site Law permit (such as larger projects covering two or more lots).

The primary means for improving the water quality in the stream is to reduce impervious surfaces and provide stormwater facilities to allow pollutants to be filtered or adsorbed by soils, vegetation, or other means before it enters the stream. One simple form of this is a stormwater buffer – a natural vegetation strip between the impervious surface and the stream – that stormwater flows across, slowing the rate of flow and allowing the filtering and chemical processes (adsorption) to occur so the water entering the stream contains less pollution.

When development is proposed that triggers the Urban Impaired Stream requirements, the developer has the choice whether to mitigate existing contributors to pollution (primarily by reducing existing impervious surfaces somewhere in the watershed) or by paying the compensation fee. If the latter, the fee is deposited into a fund called a Compensation Fee Utilization Fund which is established as part of a Compensation Fee Utilization Plan. If the Town does not have such a plan, then the fee is not an option for the developer. Generally speaking, it is less expensive and faster to pay the fee than to mitigate existing development.

Staff has begun work on developing a Compensation Fee Utilization Plan for Sucker Brook, and once that is completed we will work on a plan for Shaw Brook. In each case, the plan must be approved by DEP as well as Town Council. The Plan includes a few pages of general information and then a listing of projects that are designed to reduce stormwater pollution within the watershed. A draft of this plan for Sucker Brook will be available at the P&D meeting on October 3, along with maps showing the areas of the two watersheds (Sucker Brook and Shaw Brook).

**TOWN OF HAMPDEN, MAINE
BOARD OF APPEALS ORDINANCE**

ADOPTED: Hampden Town Council, June 19, 2006
Effective Date: July 19, 2006

CERTIFIED BY: ~~Denise Hodsdon~~
Name

Town Clerk
Title Affix Seal

**BOARD OF APPEALS ORDINANCE
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TOWN OF HAMPDEN, MAINE BOARD OF APPEALS ORDINANCE

ARTICLE 1 ESTABLISHMENT AND ORGANIZATION

1.1 Composition of the Board of Appeals. A Board of Appeals is hereby established which shall consist of ~~seven-five (75)~~ members and ~~two-one (21)~~ alternates. The term of office of all members is three (3) years, serving staggered terms. Neither a municipal officer nor his/her spouse may be a member of the Board of Appeals. Members of the Board of Appeals shall be appointed by the Town Council. When there is a permanent vacancy, the Municipal Officers shall appoint a new member for the remainder of the unexpired term. Members of the Board of Appeals may be removed from office by the Town Council for cause upon written charges and after hearing. The Board of Appeals shall elect a chairperson and secretary from its own membership.

1.2 Present Board Re-Established. The present Zoning Board of Appeals for the Town of Hampden as now constituted, shall constitute the Board of Appeals under this ordinance, and each member thereof shall serve the remainder of his or her present term.

ARTICLE 2 JURISDICTION

2.1 Jurisdiction of the Board of Appeals. The Board of Appeals is authorized to hear appeals from decisions made under the following Codes and Ordinances of the Town of Hampden, as the same may be amended from time to time. All appeals and variance requests shall be in accordance with the applicable provisions of the subject code or ordinance, including any provisions thereof specifying the jurisdiction of the Board.

1. ~~Building Code Ordinance.~~ Maine Uniform Building and Energy Code
2. Fire Prevention Code.
3. Floodplain Management Ordinance.
4. Historic Preservation Ordinance.
5. Life Safety Code Ordinance.
6. Mobile Home Park Ordinance.
7. ~~Residential Building Code Ordinance.~~ Shoreland Zoning Ordinance
8. Special Amusement Ordinance.
9. Zoning Ordinance.
10. Any other State or Locally adopted code, ordinance or standard that references appeals, interpretation, or review by the Municipal Board of Appeals.

2.2 Enforcement Decisions. The Board of Appeals' authority does not include appeals from enforcement decisions made by the Code Enforcement Officer, Building ~~Inspector~~Official, ~~Fire Inspector~~, or other enforcement official. The term *enforcement decisions* refer to violation determinations and enforcement actions taken by the enforcement official.

ARTICLE 3 POWERS AND DUTIES OF THE BOARD OF APPEALS

3.1 Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers as provided for in the subject code or ordinance:

3.1.1. *De novo Review.* To hear and decide, on a de novo basis, an administrative appeal alleging that there is an error in any order, requirement, decision, or determination made in writing by, or failure to act by, the Code Enforcement Officer, Building ~~Inspector~~Official, Fire Inspector, or other official in regard to an application for a permit under the subject code or ordinance.

3.1.2. *Appellate Review.* If authorized by the subject code or ordinance, to hear and decide on an appellate basis, an administrative appeal alleging that there is an error in any order, requirement, decision, or determination made by, or a failure to act by, the reviewing authority body in regard to an application for a permit, license, or approval under the subject code or ordinance.

3.1.3 *Standard of Review.* When acting in a de novo capacity, the Board of Appeals shall hear and decide the administrative appeal afresh, undertake its own independent analysis of the evidence presented and the law, research its own decision, and make findings and conclusions in support of its decision. When acting in an appellate capacity, the Board of Appeals shall limit its review to the record of the proceedings before the reviewing authority body, and may reverse the decision of that body only upon a finding that the decision was contrary to specific provisions of the subject code or ordinance or was not supported by substantial evidence in the record. The Board of Appeals shall not substitute its judgment for that of the reviewing authority body. If the Board reverses the decision of the reviewing authority body, it shall remand the matter to that body for further consideration.

3.1.4. *VariANCES.* To authorize variances in specific cases but only within the limitations set forth in the subject code or ordinance of the Town of Hampden.

3.1.5. *Interpretation of Ordinances.* As provided in the subject code or ordinance, the Board of Appeals shall have the authority to hear appeals to interpret the provisions of a code or ordinance called into question. The Board of Appeals shall interpret the provision called into question based on any of the following considerations: the context in which the word is used in the subject code or ordinance; the legislative intent implicit in the use of the word; definitions given by experts qualified in the field under consideration; other evidence which is germane to the issue but does not involve the specific proposal at hand; and ordinary usage of the word.

3.1.6. *Adoption of Rules.* The Board of Appeals shall have the authority to adopt rules of procedure to govern the conduct of its business as long as the rules are consistent with this ordinance and any other applicable codes or ordinances, and with state laws.

ARTICLE 4
APPEAL PROCEDURE

4.1. Making an Appeal

4.1.1. Appeals to the Board of Appeals shall be taken within thirty (30) days of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

4.1.2. Such an appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal. For an appellate appeal, the application, record of the reviewing authority body, decision of the body, and any written arguments on the appeal shall be filed by applicant at least 7 days before the hearing. In addition, for a de novo appeal, all written materials and exhibits in support of the appeal must be filed by the applicant at least 7 days before the hearing. Any opposing parties may file a response to such materials at least 3 days before the hearing. No

exhibits or other written materials that were not filed within these time limits shall be admitted at the hearing except by leave of the Chair for good cause shown.

4.1.3. The Board of Appeals shall notify the town official, or reviewing authority body, and applicant of the appeal.

4.1.4. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal application. Notice of the date, time, and place of the hearing shall be placed in newspapers of general circulation in the area at least seven (7) days prior to the hearing. In addition, at least seven (7) days prior to the hearing, notice of the appeal shall be sent by mail to the owners of properties that abut the property for which the application or appeal is made. Failure of an abutter to receive notice shall not invalidate the proceedings. A fee shall be paid for application of all appeals, variances and sewer reviews consistent with the provisions of the Town of Hampden Fees Ordinance. The cost of the appeal shall be borne by the person(s) filing the appeal.

4.2. Hearings

4.2.1. For an appellate appeal, the Board may not accept new evidence on the subject matter of the appeal, but may receive oral or written argument concerning the merits of the appeal.

4.2.2. For de novo appeals, the Board may receive any oral or documentary evidence, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross examination as may be required for a full and true disclosure of the facts. Unsubstantiated hearsay and third party hearsay shall not be given the same weight as documented evidence.

4.2.3. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

4.2.4. At any hearing a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

4.2.5. The town official, or representative of the reviewing authority body, whose action or non-action is under appeal, shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material deemed appropriate for an understanding of the appeal.

4.2.6. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

4.3. Decisions of the Board of Appeals

4.3.1. A majority of the members of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.

4.3.2. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the town official or reviewing authority body, or to decide in favor of the applicant on any matter on which it is required to act under this Ordinance, or to effect any variation in the application of this Ordinance.

4.3.3. The person filing the appeal shall have the burden of proof.

4.3.4. The Board shall decide all appeals within thirty-five (35) days after hearing, and shall issue a written decision on all appeals.

4.3.5. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented, and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the appellant, or appellant's representative or agent, and the town official or reviewing authority body whose action or non-action was the subject matter of the appeal within seven (7) days of the decision date.

4.3.6. Upon notification of the granting of an appeal or variance or the interpretation of an ordinance by the Board of Appeals, the town official or reviewing authority body shall promptly act in a manner consistent with the Board's decision, unless an appeal is taken therefrom to Superior Court.

(Note that if the enforcement officer, board or council has denied an application based on multiple non-compliance issues reversal of a solitary decision might not have the effect of reversing the overall basis of the denial. For example if a building permit application failed to meet building code and zoning standards relief from one standard would not result in an approval of the project).

4.3.7. A copy of all variances effecting shoreland zoning granted by the Board of Appeals shall be submitted to the Dept. of Environmental Protection within fourteen (14) days of the decision.

4.4. Appeal to Superior Court - Any aggrieved party who participated as a party during the proceedings before the Board of Appeals, and has standing to do so, may take an appeal to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure within forty-five (45) days from the date of any decision of the Board of Appeals.

ARTICLE 5 CONFLICT OF INTEREST

5.1. Voting Procedure for Determination of Conflict of Interest. Any question of whether a particular issue involves a "conflict of interest" sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

5.2. Conflict of Interest. The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (e.g., grandfather, father, wife, son, grandson) or to the member's employer or the employer of any member of the person's immediate family or any other prejudice that would prevent a Board member from rendering an unfair and/or impartial decision.

ARTICLE 6 RECONSIDERATION

6.1. Reconsideration of Decisions. The Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to reconsider must be filed within ten (10) days of the decision to be reconsidered. A vote to reconsider and the action taken on the reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony. Notwithstanding Section 4.4,

appeal of a reconsidered decision must be made within fifteen (15) days after the decision on reconsideration.

**ARTICLE 7
STAY OF PROCEEDINGS**

7.1. Stay of Proceedings. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

**ARTICLE 8
NEW APPEALS**

8.1 New Appeals. After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be submitted to, or entertained by, the Board until one (1) year has elapsed from the date of the decision.

**ARTICLE 9
EFFECTIVE DATE**

9.1. Effective Date. The effective date of this Ordinance shall be 30 days from the date of adoption by the Town Council.

Project List - Planning

Project Name	Location	What it is	Size ¹	PB Action/Date	Type
Southstreet Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	Approved	Zoning Map Amendmemt
Aaron Watt	Cottage St	new multi-family building	4 units	Withdrawn	Sketch Plan ²
Good Shepherd	Penobscot Meadow	addition of 7,550 sq ft impervious area	-	Approved	Site Plan Amendment
Pat's Pizza	662 Main Road N	new restaurant to replace current restaurant	3,500	Approved	Site Plan
Southstreet Development Co	98 Coldbrook Rd	new Tradewinds convience store with gasoline sales	6,900	Approved	Site Plan
Town of Hampden	Hampden Business Park	amendment to approved subdivision		Approved	Final minor subdivision
T&A Realty	50 Main Road North	Business adding a rental apartment	760 sq ft	Approved	Conditional Use
Katherine Carter	76 Main Road South	Customary Home Occupation - Artist Gallery		Approved	Conditional Use
Town of Hampden	355 Canaan Road	Request for waiver to site plan review for essential service, salt shed	1,260	Approved	Site Plan Waiver
Southstreet Development Co	Route 202/Coldbrook Rd	request for waiver to allow a larger sign	-	Approved	Minor Revision
Residential Care Facility	569 Back Winterport Rd	conversion of existing duplex into a 2-unit independent living home for adults with disabilities	2 units	Approved	Conditional Use
F.A. Peabody	36/38 Main Road N	construction of new office building	4,500 sq ft	Approved	Site Plan
Day's Care Children's Center	100 Mayo Rd	convert house to child care center	1,335 sq ft	Approved	Conditional Use
F.W. Webb	Hampden Busn Park lots 33-35	construct new warehouse/wholesale facility	72,750 sq ft	Approved	Major Site Plan
Zucco's Dog House	Hampden Busn Park lot 25	construct new kennel (dog daycare)	3,512 sq ft	Approved	Conditional Use & Site Plan
Smith, Andrew	115 Main Road South	Addition for storage	1320 sq ft	Approved	Minor Site Plan
MRC/Fiberight	348 Coldbrook Road	insubstantial modifications to site plan	NA	Approved	Site Plan Modification
Daryl Coulliard	Back Winterport Rd	split second lot off parcel w/in 5 year period	2 lots	Approved	Minor Subdivision
Shaw Subdivision	Pond Rd/Fowler's Landing Rd	minor subdivision	2 lots	10/10/2018	Minor Subdivision
Revision Energy	Littlefield Rd	solar array behind the White House Inn	NA	11/14/2018	Major Site Plan

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