



Town of Hampden
Planning and Development Committee
Wednesday February 14, 2018, 6:00 pm
Municipal Building Conference Room

Agenda

This meeting was postponed from February 7, 2018.

1. Approval of January 17, 2018 Minutes
2. Committee Applications: None
3. Updates:
 - A. MRC/Fiberight
 - B. Staff Report
4. Old Business:
 - A. Review of final draft of proposed amendments to Hampden Business Park Covenants and referral to Town Council for public hearing pursuant to Article VI of the Covenants
5. New Business:
 - A. LD 1565 – Bill to amend 30-A MRSA §5222 and §5224, regarding Tax Increment Financing eligibility – request of Councilor Marble
6. Zoning Considerations/Discussion:
 - A. Update on Planning Board Zoning Workshop held Jan. 25, 2018
 - B. Quarterly Report on Adult Use Marijuana
7. Citizens Initiatives
8. Public Comments
9. Committee Member Comments
10. Adjourn



Town of Hampden
Planning and Development Committee
Wednesday January 17, 2018, 6:00 pm
Municipal Building Council Chambers
Minutes - Draft

Attending:

Committee/Council

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

Staff

Angus Jennings, Town Manager
Myles Block, Code Enforcement Officer
Karen Cullen, Town Planner

Public

Bill Boyington

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

1. Minutes for the December 20, 2017 and January 3, 2018 meetings – **Motion** to approve as submitted made by Councilor McAvoy; second by Councilor Marble; carried 6/0/0.
2. Committee Applications: None
3. Updates:
 - a. MRC/Fiberight: Manager Jennings said MRC's monthly Board meeting will be held Wednesday January 24 at 10:00 am in Orono, and noted he will be attending. Discussion on the condition of the roadway, which is set to be accepted by the Town. Manager Jennings said staff is aware of the issues and is monitoring them.
 - b. Staff Report: Manager Jennings reported on the progress for the Down East Magazine advertorial which will be published in the March issue. A draft of the text and the Hampden page was handed out; councilors were asked to send any comments within a few days.
4. Old Business: (taken out of order)
 - c. Hampden Business Park Covenants. Manager Jennings said the meeting with Sargent and Noel Musson went well, and David Hughes of Epstein provided comments but was unable to attend. The next draft of the covenants will be going to the town's attorney for review. It was also noted that the memo in the packet provides the timeline for this; the final draft of the covenants will be brought to the Feb. 7 P&D meeting for referral to Town Council for public hearing which will be March 5. Manager Jennings also noted the subdivision plan will be revised to eliminate the 10' easements on property lines between lots, he's

DRAFT

working on getting a scope and price from CES, who prepared the plan. A request for funding will go to the Finance Committee.

- b. **Motion** by Councilor McPike to enter into executive session pursuant to 1 MRSA §405(6)(C) to discuss economic development issues about which premature disclosure might prejudice the Town's bargaining position, to include the town planner, consultant, and the code enforcement officer; second by Councilor Wilde; carried 6/0/0 by roll call vote. Entered executive session at 6:10 pm. **Motion** by Councilor Wilde to exit executive session; second by Councilor McAvoy; carried 6/0/0 by roll call vote at 6:23 pm. The committee confirmed that the terms of the Credit Enhancement Agreement will be as discussed December 20th: 13 years with 65% for year 1, 40% for years 2-10, 36% for year 11, 32% for year 12, and 28% for year 13.
 - a. Review and referral to Finance Committee of proposed Coldbrook Corners Tax Increment Financing District Development Program – **Motion** by Councilor Wilde to refer the proposed TIF Development Program for Coldbrook Corners TIF as previously discussed in executive session; second by Councilor McAvoy; carried 6/0/0. Manager Jennings noted the figures in Table 1 will be filled in prior to the Finance Committee meeting.
5. New Business:
- a. Update on proposed marketing materials for the Business Park – Manager Jennings handed out sample materials we had received today from Sutherland Weston, a local marketing firm recommended by David Hughes. He noted the rough estimate for their work was \$8-12,000. A discussion regarding the scope of the marketing work ensued. Consensus was that we should hold off on pursuing preparation of a brochure until after the next round of contract negotiations with Epstein takes place. At that stage, staff will prepare a scope and solicit bids from local vendors. It was noted that this should only be for the business park since the Town has a financial interest in the park. Other materials such as maps showing zoning, infrastructure, and level of readiness for development can be created by staff for the broader commercial and industrial areas of town.
6. Zoning Considerations/Discussion: Planner Cullen noted the meeting with the Planning Board last night was cancelled because she was sick. She added the meeting has been rescheduled for Thursday January 25. Manager Jennings noted the site plan review process is being rewritten and is proposed to include a two level system with simpler plans going to a staff review committee instead of the Planning Board. Councilor McAvoy noted his approval of a streamlined process.
7. Citizen Initiatives: None.
8. Public Comments: Bill Boyington was present and asked if the Coldbrook Corners TIF District was referred to the Finance Committee; the answer was yes.
9. Committee Member Comments: None.
10. Adjournment: **Motion** to adjourn at 6:55 pm by Councilor Marble; seconded by Councilor McAvoy, carried 5/0/0. [Councilor McPike left around 6:30 to attend the RSU 24 meeting.]



NEWSLETTER

Municipal Review Committee | 395 State Street | Ellsworth, ME 04605 | www.MRCMaine.org

ISSUE 7.1 | January 2018

Fiberight completed the \$70M financing

Fiberight has completed its \$70 million financing for the completion of the Hampden facility. This is another major milestone in the progress to fully implement MRC's Plan for 2018.

After a fairly mild fall, the onset of a brutally cold January has not stopped crews from the diligent effort to stay on task.



Progress photographs of Fiberight's facility in Hampden, January 2018.

UPCOMING MEETINGS

January 31

Finance Committee Meeting: 9 AM

Regular Board Meeting: 10 AM

Orono Town Office

59 Main Street, Orono

ABOUT THE MRC

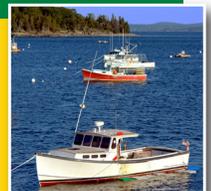
The Municipal Review Committee (MRC) is a non-profit association of Maine communities led by an elected, volunteer board of directors. For more than 25 years, the member communities of the Municipal Review Committee (MRC), now numbering more than 180 cities and towns, have used the PERC waste-to-energy incinerator in Orrington to process their municipal solid waste (MSW). After 2018, the contracts with PERC will expire. The MRC has partnered with Fiberight to offer an innovative solution to recycle and process our MSW post 2018.

Visit www.mrcmaine.org or contact Greg Louder at 207-664-1700 or glouder@mrcmaine.org to learn more about the Municipal Review Committee and to add your name to our email contact list.

JOIN OUR EMAIL LIST & FOLLOW US ON SOCIAL MEDIA

MRC regularly sends updates and announcements by email to those who have signed up for our alerts.

We also have active Facebook and Twitter accounts, and we've posted informative videos from recent meetings on our YouTube account. All of these are accessible from the homepage of our website, mrcmaine.org.



Preparing for April 1st

Fiberight has closed on the facility financing, the construction of the facility is well underway and the MRC Plan for post 2018 is ready to be implemented. Construction of the Fiberight facility in Hampden has recently slipped due to winter conditions. The MRC anticipates that the new Hampden facility will need to take more time after April 1 before it is ready to accept and process MSW. Our approach is to time the acceptance and processing of MSW in Hampden in a manner that realizes the most complete level of MSW processing at the soonest possible time. It is possible that the first MSW could be delivered to Hampden as soon as the end of May, but that timing could interfere with construction and add to delays in achieving readiness to process MSW at full capacity. In the meantime, we are making preparations to implement, for up to 6 months, the back-up plan established in 2015 for disposal of MSW at the Crossroads Landfill until the Hampden Facility is ready.

We are also seeking to augment that plan by making new arrangements with PERC for temporary processing of MSW in 2018 until the new Hampden facility is ready. There will also be provision to transfer material long distances if needed. The target date to finalize this agreement is January 31. In all cases, the extra reasonable transportation costs will be borne by MRC and/or Fiberight, not the member communities. The MRC has set aside \$1.0 million in reserve funds for this purpose.

We are working closely with key regional solid waste service providers, who are working to pool their efforts on an integrated basis to ensure that the MSW processing transition underway in the region is a smooth one that minimizes MSW transportation costs and air emissions.

Payouts to Equity Charter Members Timing

As we fast approach the end of the current contracts with PERC, there are two payout dates that the Equity Charter and Departing Members should be made aware of. MRC and PERC have set a target date of March 15 to execute the payments of the \$1.5 million ownership interest account. If the withdrawal agreements are received in a timely manner, the larger payout for Departing Members will occur on or around August 15, 2018 from the Tip Fee Stabilization Fund.



New Year, New Website

Along with the new plant this year, MRC is also creating a new website. With a fresh new look, the website will offer the most up to date information to keep our community members in the loop. As always, our goal at MRC is to provide you with service, ease of access, and all the information you need to make informed solid waste choices. The website will be there to answer questions pertaining to the new facility, as well as provide more general information and current events. In review at the time of this newsletter, MRC and the website developer are on target for a February 2018 completion date.

A Fond Farewell

This newsletter will be the final one received by the municipalities who have opted out of the move to the new facility. We wanted to take this opportunity to say:

THANK YOU FOR ALL YOUR YEARS OF PARTICIPATION AND SUPPORT.

Transitioning is rarely easy, and we sincerely hope that your path to new solutions is an easy one. We are excited for our new endeavor, and we hope you continue to watch the new plant grow, and perhaps someday decide to join us.

(Printed from url=<https://www.ellsworthamerican.com/maine-news/transition-looms-state-waste-processing-facilities/>)

Transition looms for state waste processing facilities

January 24, 2018 by Jack Dodson on Environment, News



ELLSWORTH — For those in the businesses of trash processing or running towns, the first few months of 2018 have been a long-awaited moment.

March 31 of this year marks the end of the Municipal Review Committee's (MRC) contract with Penobscot Energy Recovery Co. (PERC).

MRC is an Ellsworth-based nonprofit comprised of 187 municipalities that have their trash hauled to PERC, an Orrington-based waste facility that converts trash into energy.

After energy utility Emera Maine announced it would stop buying power from PERC in 2015 — ending a deal that had been providing PERC above-market rates for 30 years — MRC switched providers to a new facility. That new company, Maryland-based Fiberight, has had a plant in development ever since.

Fiberight CEO Craig Stuart-Paul said this week that the new facility, being built in Hampden, will be open for business around July. His company secured \$70 million on Dec. 22 of last year to complete the facility.

Of that figure, \$45 million came from bonds issued by the Finance Authority of Maine and \$25 million came from private equity.

“We’ve moved through a whole bunch of processes and we’ve hit all our marks,” Stuart-Paul said. “If you ride up to the site, you’ll see that it’s coming along.”

As for the gap between April 1 and July, Stuart-Paul said there’s a contract in place for towns to have their waste sent to a separate facility in Norridgewock. But back in Ellsworth, MRC Executive Director Greg Louder said he’s been in talks with PERC to keep sending waste to that facility for the interim period. He thinks the MRC members will send their trash to both the facility in Norridgewock and to PERC.

“I’m pleased at the prospect of finding a way to work with our old partners — even on an interim basis,” Louder said.

When the shift occurs, MRC’s member communities will drop to 115. Lounder said the 62 members that left have made other arrangements to have their waste dealt with. The deal PERC had received from Emera Maine was good for these communities; Lounder said Emera Maine was paying about 17 cents per kilowatt hour even when the market rates were closer to 4 cents. Some of that money would be sent back to MRC communities.

Over at PERC, officials are optimistic about the looming change, saying it provides an opportunity for them to work with more commercial trash haulers.

Ted O’Meara, a PERC spokesman, said his company’s facility has been well maintained and is in good shape to be competitive in the energy market.

“PERC is very much viable,” he said. “PERC is going its own way. The plant has existed for 30 years; it’s in great shape.”

O’Meara pointed to the fact that company owners, mainly USA Energy, have continued to invest in the facility despite the changes coming.

“PERC continues to play a very prominent role,” O’Meara said. “It’s a key piece of state waste management.”

As of April 1, he said a little more than 40 municipalities have contracted with PERC — including Ellsworth, Hancock and Stonington.

For all three groups, the changes have been coming for a long time. All three men expressed optimism that 2018 has arrived and their plans can move forward.

For Stuart-Paul, the moment also is a test of his company’s ability to deliver. He said he was confident they’d prepared well.

“All I can tell you is you don’t get 70 million bucks just because you’re a nice guy,” Stuart-Paul said. “A lot of due diligence went into this.”

 Bio	 Latest Posts
	<p>Jack Dodson Reporter at The Ellsworth American</p> <p>Jack Dodson has worked for <i>The Ellsworth American</i> since mid-2017, and covers eastern Hancock and western Washington counties. He grew up in the Mid-coast region before living in New York City for five years, where he freelanced in documentary filmmaking and journalism. He is particularly interested in criminal justice, environment and immigration reporting.</p>

SUPPORT YOUR LOCAL BUSINESSES

**BI-WEEKLY CONFERENCE CALL
MRC & Fiberight Facility
January 8, 2018**

Attendees:

- | | |
|---|-----------------|
| ◆ Alan Iantosca | Fiberight |
| ◆ David Burns, Lou Pizzuti, Victoria Eleftheriou, Lynn Muzzey | Maine DEP |
| ◆ Myles Block, Angus Jennings | Town of Hampden |
| ◆ Kyle Sullivan | CES, Inc. |

Discussion Notes:

1. **Meeting Minutes** – No Comments on previous meeting minute
2. **Construction Schedule**—Alan sent out revised project schedule just before the meeting. Contractors are still working but construction has been delayed by weather. David asked if construction completion estimate was still May 1st, 2018. Alan stated they were still working on sequencing of construction tasks to get back on schedule

David expressed some frustration with the delay in receipt of the updated master schedule and receiving it just before the meeting. Alan offered to address any questions from the Department at their convenience.

3. **Schedule** David asked about Condition Compliance for MRF. Alan said Coastal had several meetings setup for Wednesday and Thursday of the current week. These meeting would put them much closer to finalizing the MRF layout and then they would update MDEP on the revised schedule.
4. **Air Bureau** – Lynn asked for an update on the air license amendment, and Alan stated Coastal was waiting for boiler configuration from 2 vendors. They are trying to design a cofired boiler for natural gas and biogas. Fiberight and CES will provide the air bureau with an update as soon as the final boiler configuration is established.
5. Lou reminded coastal that MDEP would like an updated DRAFT O&M prior to commissioning of the MRF. Lou stated MDEP would need time for review and comment on the initial O&M.

Lou also stated a submittal of the operator's technical ability was required 30 days prior to Pre-commissioning. Alan let MDEP know that a contract operator had been engaged so Coastal would be able to provide documentation of technical ability prior to pre-commissioning.



Karen Cullen <planner@hampdenmaine.gov>

Update on MRC/Fiberight/Coastal Resources Bridge Waste plan

1 message

Angus Jennings <townmanager@hampdenmaine.gov>

Wed, Jan 31, 2018 at 4:08 PM

To: Myles Block <codeenforcement@hampdenmaine.gov>, Joe Rogers <jlrogers@hampdenmaine.gov>, Sean Currier <publicworks@hampdenmaine.gov>, Rosemary Bezanson <adminasst@hampdenmaine.gov>, Karen Cullen <planner@hampdenmaine.gov>, Danielle Simons <danielle@hampdenmaine.gov>, "Kelly J. Karter" <assessor@hampdenmaine.gov>, Paula Scott <clerk@hampdenmaine.gov>, Tammy Ewing <financehr@hampdenmaine.gov>, Kyle Severance <gisit@hampdenmaine.gov>

Hi all,

I attended this morning's MRC Board meeting in Orono, along with Councilors McAvoy and Marble. We were primarily interested in answers to the questions we had sent leading up to the meeting, forwarded below.

I'm glad to report that their plan to handle "bridge waste" gave us the answers we sought and, importantly, does not include shipping to a backup facility via the Hampden site during the bridge period. The MRC Bridge Disposal Waste Management Plan is attached, and is summarized below:

- Diversion period: April 1 to September 30, 2018. As we look to implement the new Solid Waste Flow Control Ordinance and license haulers, MRC's advice was to direct haulers to bring waste to PERC until further notice - rather than until September 30 - since the date waste will be directed toward the Hampden facility may be after (or before) Sept. 30.
- During this period, waste will be transported from municipalities directly to the corresponding back-up facilities (list attached - Hampden's back-up facility will be PERC, not Norridgewock, during this period). Waste will not be sent via the Hampden site.
- MRC/Fiberight/Coastal will honor the \$70/ton tipping fee in the Joinder Agreement, and will absorb any incremental transportation and tip fee costs during the bridge period.

It was also reported at the meeting that Cianbro will be mobilizing another 30 construction workers soon to supplement the current crew from Rutherford, which Cianbro will retain.

My takeaways from this information:

- Code, led by Myles, is in contact with CES and Cianbro and will ensure that, with the anticipated ramp-up of site work, that they're fully aware of all required inspections, sign-offs etc.
- Flow Control: Now that we know where we'll be directing haulers, I'll set up a meeting to include Paula, Sean, and Rosemary so we can review how best to coordinate outreach to, and licensing of, Hampden haulers, as well as any other communications that may be needed to Hampden businesses regarding where waste should be hauled.

Please let me know if any questions -

Thanks,
Angus

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

From: **Angus Jennings** <townmanager@hampdenmaine.gov>

Date: Mon, Jan 22, 2018 at 9:13 AM

Subject: MRC meeting

To: Greg Lounder <glounder@mrcmaine.org>

Greg,

On behalf of the Town Council I wanted to reiterate the questions I'd sent you leading up to the December Annual Meeting, in hopes these will be addressed at next Wednesday's MRC Board meeting:

- How long the period of "bridge" is expected to last;
- where waste will go during this time;
- what function (if any) the MRC owned site will serve during the "bridge" period;
- who will bear the additional transportation costs associated with bridge waste transport;

- if MRC bears some of the cost (the \$1M that's been discussed), how this will be allocated among communities, and whether this would be for the remainder of FY18 or may also extend into FY19;
- how best to manage communication of the new Solid Waste Flow Control Ordinance to haulers (incl. getting haulers licensed pursuant to the new ordinance) since - at least for some period after the April 1, 2018 date of effect of the new ordinance - we'll be directing haulers to a location other than Fiberight.

We had initially planned to start contacting haulers in December to allow adequate time for licensing but have held off until the situation is clearer; but we can't wait too much longer or we'll face a real time crunch.

At the December meeting it sounded like there would be fairly definitive answers to these questions at the January meeting. I plan to be in attendance on Jan. 31st and expect attendance from at least one member of the Council as well.

Happy to connect by phone in the meantime if helpful to do so.

Thanks,
Angus

--

Angus Jennings
Town Manager

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

Please check out our new website: www.hampdenmaine.gov

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town Business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law. If you have received this message in error, please notify us immediately by return email. Thank you for your cooperation.

 **MRC Bridge Disposal Waste Management Plan 1-25-18.pdf**
52K

JAN 3 1 2018

Municipal Review Committee, Inc.

Bridge Disposal Waste Management Plan, Rev 1.0 dated 25 January 2018 (draft subject to change) Office of the
Town Manager

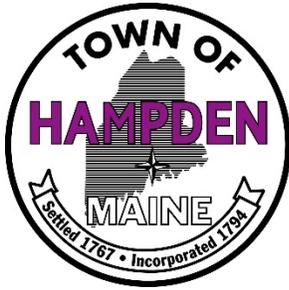
<i>Diversion Period</i>	April 1, 2018 through September 30, 2018	58,794 tons MSW (2261 tons/week) over period with 28,298 tons in 2Q (2177 tons/week), 30,496 tons in 3Q (2346 tons/week) based on 2017 data. Assumes no MSW accepted at Hampden facility during the Diversion Period.
<i>Back-up Facilities</i>	Crossroads Landfill (direct delivery). 27,800 tons in Diversion Period (1069 tons per week). Transfer stations in bold would accept MSW from other Joining Members under new arrangements.	Joining Members include Abbott, Albion, Bar Harbor, Belfast, Boothbay Harbor, Brooks, Brownville, China, Dover-Foxcroft , Freedom, Knox, Mid-Maine SWA , Millinocket , Milo, Montville, Mt. Desert/EMR , N. Katahdin , Palmyra, Parkman, Thorndike, Troy, Unity, Vassalboro, Waldoboro, Wiscasset
	Dover-Foxcroft TS (600 tons)	Atkinson, Bowerbank, Sangerville, Sebec
	Mid-Maine SWA TS (1535 tons)	Garland, Guilford, Levant, Monson
	Millinocket TS (695 tons)	Chester, County of Aroostook, Lee, Mattawamkeag, Springfield
	Mt. Desert/EMR TS (61 tons)	Cranberry Isle, Frenchboro
	N. Katahdin TS (414 tons)	Sherman
	PERC Facility under short-term agreement; if not available, divert to Juniper Ridge Landfill (JRL) under back-up swap agreement with Waste Management and Casella. 31,000 tons in period (1192 tons per week)	Joining Members include Alton, Bangor, Blue Hill/Surry, Bradley, Brewer, Bucksport, Burlington, Carmel, Castine, Central Penobscot, Cherryfield, Clifton, Dedham, Dixmont, Eddington, Franklin, Hampden, Holden, Hudson, Lowell, Lucerne, Mariaville, Orono, Otis, Piscataquis County, Pleasant River SWD, Searsmont, Sorrento, Steuben, Sullivan, Swans Island, Union River SWD, Verona
<i>Tip fees</i>	Tip fee to Coastal Crossroads disposal PERC disposal Swap agreement	\$70 per ton \$62 per ton for disposal \$90 per ton processing; \$14 per ton for trans-shipment Discussion of arrangements and costs in progress
<i>Extra haul costs</i>	Extra haul cost to Crossroads vs Hampden facility	Based on town-by-town analysis of (a) haul time to Hampden facility; (b) haul time to Crossroads LF; (c) valuation of increment at \$150 per hour; and (d) diversion to the PERC Facility or JRL of small vehicles deemed incapable of traveling extra distance without incurring excessive costs. Classification of some towns being confirmed.
	Extra haul cost to PERC (or JRL) vs. Hampden facility	Not included in this analysis
<i>Cost summary</i>	Tip fees to Crossroads Extra haul cost Tip fees at PERC Bridge Disposal Costs Tip fee revenue, Coastal Net cost	\$ 1.724 M \$ 0.234 M <u>\$ 2.790 M</u> \$4,747 M <u>\$4,116 M</u> \$0.631 M or roughly \$105k per month average incremental cost. Discussion of cost-sharing with Coastal is in progress.

Project List - Planning

Project Name	Location	What it is	Size ¹	PB Action/Date	Type
Fiberight	off Coldbrook	solid waste processing	153,800 sq ft	Approved	Site Plan
Hannibal Hamlin Place	Main Road N	expansion	2,800 sq ft	Approved	Site Plan
Pine Tree Food Equipment	Nadine's Way	new building/business	3,600 sq ft	Approved	Site Plan
Dennis Paper	Mecaw Rd	expansion	27,237 sq ft	Approved	Site Plan
Colonial Heights	off Constitution	phase 3 of subdivision (final plan)	11 new lots	Approved	Subdivision
Carver	Ballfield Rd	conversion of single family to two family	1 new unit	Approved	Conditional Use
Sky Villa	646 Main Road N	conversion of interior to 10 short term rehab beds	3,172 sq ft	Approved	Conditional Use
Brickle	326 Main Road N	conversion of single family to two family	1 new unit	Approved	Conditional Use
Southstreet Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	Withdrawn	Zoning Map Amendmemt
Hamlin's Marina	Marina Road	new boat storage building	10,000 sq ft	Approved	Site Plan
Fiberight	348 Coldbrook Road	Site Plan Revision	-	Approved	Site Plan
Springer Estates	Deer Hill Lane	addition of land to existing lot within subdivision	1 Lot	Approved	Minor Revision
Hannaford	Western Ave.	addition of ~12' x 32' external CLYNK bldg as accessory structure.	384 sq ft	Approved	Site Plan Revision
H.O. Bouchard	Coldbrook Road	expanded office building & Deck	1,620 sq ft	Approved	Site Plan Revision
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	2/11/2018	Sketch Plan ²
Good Shepherd	Penobscot Meadow	addition of 7,550 sq ft impervious area	-	3/14/2018	Site Plan Amendment
Pat's Pizza	662 Main Road N	new restaurant to replace current restaurant	3,500	3/14/2018	Site Plan
Tradewinds	98 Coldbrook Rd	new convience store with gasoline sales	6,900	3/14/2018	Site Plan
Aaron Watt	Cottage St	new multi-family building	4 units	3/14/2018	Final subdiv. and Site Plan

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

2. This will be followed by a site plan application and a final subdivision application for the March 14 meeting.



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner *KME*
Date: February 2, 2018
RE: Hampden Business Park Covenants

The proposed amendments to the Hampden Business Park Covenants are provided in strikethrough/underline format on the following pages. Noel Musson and town staff discussed the proposed changes and Noel's draft was sent to Town Attorney Ed Bearor, who added his edits. Finally, I have added a few comments on items that could be eliminated since they are in the proposed zoning amendments. Note that if we did eliminate those, there could be a gap of a few months when there would be no provisions for those items between the date of the revised covenants and the date the zoning amendments become effective. I believe that is a small risk, but it could be eliminated if the covenants retain those provisions until after the zoning amendments are adopted, and then the covenants could be amended again to eliminate the redundancy.

After the P&D Committee reviews these changes, we will send the draft to the owners and occupants within the business park in accordance with Article VI of the Covenants.

Staff respectfully requests that the Committee refer the proposed amendments to Town Council for public hearing to be held at the March 19, 2018 Council meeting.

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE HAMPDEN BUSINESS AND COMMERCE PARK**

This Second Amended and Restated Declaration is made this ____ day of ~~September~~February, 2018~~5~~ by the Town of Hampden, a municipality situated in Penobscot County, Maine:

BACKGROUND:

- A. A Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park dated October 7, 2002 was recorded in the Penobscot County Registry of Deeds on December 17, 2002 in Book 8503, Page 78.
- B. By Certificate of Amendments dated January 23, 2008, recorded in the Penobscot County Registry of Deeds on January 28, 2008 in Book 11274, Page 328, the Town of Hampden amended Section 4.2 and Section 4.4 of the original Declaration.
- C. On November 17, 2014, the Hampden Town Council adopted additional amendments to the original Declaration pursuant to Article VI, Section 6.1 of the Declaration.
- D. This Amended and Restated Declaration ~~is~~was issued for the purpose of restating the original Declaration, as amended through November 14, 2014, and ~~shall apply~~applied prospectively from November 14, 2014 until the date of effect of the Second Amended and Restated Declaration.
- ~~D.~~E. This Second Amended and Restated Declaration is issued for the purpose of restating the Amended and Restated Declaration, as amended through September 17, 2015, and shall apply prospectively from February ____, 2018.

RECITALS:

1. The Town of Hampden is the owner of that certain real property in the Town of Hampden, County of Penobscot, State of Maine, shown on a Final Subdivision Plan entitled Hampden Business and Commerce Park and recorded in the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112 and Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14)
2. The Hampden Business and Commerce Park is being developed as a master planned Business and Commerce Park. It is the Town of Hampden's desire and intention to subject the real property in said Business and Commerce Park to certain covenants, conditions, and restrictions which are deemed

to be real covenants which run with the land, for the benefit of the property, the Town of Hampden, and the owners or occupants of lots in the Hampden Business and Commerce Park. It is intended that said covenants, conditions and restrictions shall bind and benefit not only said Town of Hampden, and the owners and/or the occupants, but also their respective successors, heirs, and assigns and that all lots in Hampden Business and Commerce Park shall be owned, held, used, sold, transferred, leased, and conveyed subject to the covenants, conditions, and restrictions set forth in this Declaration.

It is the intention of the Town of Hampden to further a plan of subdivision by means of the covenants, conditions, and restrictions set forth in this Declaration. Said covenants, conditions, and restrictions are intended to be common to all of the lots in the Hampden Business and Commerce Park, and any other land which the Town might wish to add in the future, and to enhance and protect the value, desirability, and attractiveness of all such lots to their mutual benefit except where otherwise noted. The design review provisions in Article IV are limited to Phase 1 as defined, and do not apply to the East Phase or West Phase of the subdivision. (Amended 11/17/14)

3. It is also the intention of the Town of Hampden to enhance the value of the property, to increase the job base and job diversity in the community, and to increase the Town's tax base by undertaking construction and management of the Business and Commerce Park and through the use of this Declaration. Limitations on use, preference for certain uses over other uses, a limitation on non-taxable uses, construction and appearance standards, and many other standards in this Declaration are designed toward these ends.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this article shall, as used in this Declaration, have the meanings herein set forth:

Declarant. The Town of Hampden, acting through its Town Council except as otherwise specified, and its successors and assigns.

Declaration. This Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hampden Business and Commerce Park as it may from time to time be amended or supplemented.

Design Review Board. (Deleted 11/17/14)

Final Subdivision Plan - Subdivision Plan. The term Final Subdivision Plan or subdivision plan shall mean the Final Subdivision Plan approved by the Hampden Planning Board, on file at the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the: (1) Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, (2) Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112 and (3) Final Subdivision Plan Amendment 3 (Reconfiguration of

Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14).

Hampden Business and Commerce Park. The term "Hampden Business and Commerce Park" shall be synonymous with the term "subject property" and shall mean all of the real property now or hereafter made subject to this declaration, including but not limited to the property shown on the Final Subdivision Plan.

Improvement - Improvements. The term "improvement" or "improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, storage facilities, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks; plantings, planted trees and shrubs, poles, signs, loading areas, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface.

Lot. The term "lot" shall mean any lot or other tract or parcel of land located within the subject property as shown on the Final Subdivision Plan. This definition does not preclude establishing improvements across interior lot lines of lots held in common ownership. (Amended 11/17/14)

Low Impact Outdoor Recreation. The term "low impact outdoor recreation" shall mean outdoor recreation, nature observation and study which is dispersed, traditional non-commercial outdoor activities that do not generally rely on buildings or spectator facilities, and may include hiking, bird watching, picnicking, cross-country skiing, snowmobiling, snow-shoeing, bicycling, horseback riding, primitive non-commercial camping, and outdoor education, including scientific and archeological research and observation.

Master Plan. The Hampden Business and Commerce Park master plan approved by the Town of Hampden Planning Board developed by WBRC Architects- Engineers dated April 27, 2001, a copy of which is on file at the Town Clerk's Office in Hampden, Maine. The plan shall include items identified on the Final Subdivision Plan as amended.

Occupant. A person or entity that is in possession of and is occupying or using any improvements located on a lot. The term includes, but is not limited to, an owner, lessee, optionee, or party in possession.

Owner. A person or entity that holds title to a lot as evidenced by records recorded in the Penobscot County Registry of Deeds.

Phase. This term shall represent certain lots within the Hampden Business and Commerce Park Subdivision and further identified on the Amendment 3 Final Subdivision Plan:

Phase 1. Phase 1 is lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18 within the Hampden Business and Commerce Park Subdivision.

Phase, East. East Phase is lots 33, 34, 35, 36 and 37 within the Hampden Business and Commerce Park Subdivision.

Phase, West. West Phase is lots 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 within the Hampden Business and Commerce Park Subdivision. (Amended 11/17/14)

Record-Recorded-Recordation. The terms shall mean, with respect to any document, the recordation of said document in the Registry of Deeds of the County of Penobscot, State of Maine.

Sign. Any structure, devise, or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting, devise, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, posted, otherwise fastened or affixed.

Street. Any public or private way as shown on the Final Subdivision Plan.

Subject Property. Synonymous with the term "Hampden Business and Commerce Park", or any lot therein, and shall mean all of the real property now or hereafter made subject to this Declaration.

Substantial Completion. The date at which the building can be fully utilized for its intended purpose.

Visible from Neighboring Property and/or Street R/O/W. The term "visible from neighboring property and/or Street R/O/W" shall mean, with respect to any object on the lot, that as determined by the ~~Design Review Board~~ Code Enforcement Officer, such object is or would be visible from a point measured six (6) feet above the grade at the property line of any adjacent lot or street right of way, except that objects greater than 35 feet above grade are exempt from this definition.

Other Definitions. Any term not defined herein shall have its customary dictionary definition.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 GENERAL DECLARATION

Declarant hereby declares that all of that real property located in the Town of Hampden, County of Penobscot, State of Maine, as shown on the following plans:

Final Subdivision Plan entitled Hampden Business and Commerce Park recorded in the Penobscot County Registry of Deeds in Map Files No. 2001-70 and 2001-71, as amended by Final Subdivision Plan -Amendment No. 1 recorded in said Registry of Deeds in Map File Nos. 2002-89 and 2002-90;

Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No.2007-112; and

Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14)

shall be sold, held, conveyed, encumbered, leased, rented, used, occupied, improved, maintained or transferred in whole or in part, subject to the limitations, restrictions, conditions, covenants, liens and provisions set forth in this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of said real property and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subject property and every part thereof. All of said limitations, restrictions, conditions, covenants, liens and provisions of this Declaration shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest therein or any part thereof.

2.2 ADDITION OF OTHER REALTY

Declarant may, but shall have no obligation to, add at any time or from time to time additional land to the scheme of this Declaration. The addition of additional land to the scheme of this Declaration shall be made and evidenced by filing in the Penobscot County Registry of Deeds a supplementary Declaration with respect to the additional land to be added. Declarant reserves the right to so amend ~~and supplement or repeal~~ this Declaration or any portion thereof pursuant to the procedures in Article VI, without the consent of any party who may have any right, title, or interest to the subject property. Upon addition of additional land to the scheme of this Declaration, said additional land shall be and become subject to this Declaration.

ARTICLE III CONSTRUCTION OF IMPROVEMENTS

3.1 APPROVAL OF PLANS REQUIRED (Deleted ==/==/2018)

~~The provisions of the Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park outlined in Section 3.1 through 3.4 shall only apply to Phase 1, and do not apply to East Phase and West Phase as defined. No exterior improvements shall be commenced, erected, placed, altered, maintained, or permitted to remain on any lot, nor shall any addition, change or alteration of any improvements be made, until final plans and specifications shall have been submitted to and approved in writing by the Hampden Planning Board. Such final plans and specifications shall be submitted in accordance with Zoning Ordinance Article 4.1 Site Plan Review, as may be amended or replaced from time to time. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Planning Board or Town Planner, but shall in any event include those items listed in III.1.a and III.1.b of this paragraph. The Planning Board must make a positive finding that the standards contained herein are satisfied in~~

~~addition to the standards contained in Article 4.1 Site Plan Review, as may be amended or replaced from time to time. (Amended 11/17/14)~~

~~A site development plan or plans shall include the nature, grading scheme, shape, composition, and location of all structures (including proposed front, rear, and side setback lines and all stream and wetland buffers), and all structures within three hundred (300) feet of any property line, and the number and location of all parking spaces and driveways, landscaping, buildings, lighting and signage accessory buildings, fences, storage areas, trash collection, antennas, and:~~

~~III.1.a. A plan showing all landscaping elements for the particular lot, including botanical/common name, size, condition, and "hard" landscape elements, and;~~

~~III.1.b. Building exterior elevations of each facade showing dimensions, all building windows and doors, materials, and exterior color scheme and any external mechanical systems, and;~~

~~III.1.c. (Deleted 11/17/14)~~

~~III.1.d. (Deleted 11/17/14)~~

~~III.1.e. (Deleted 11/17/14)~~

3.2 BASIS FOR APPROVAL (Deleted ==/==/2018)

~~Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning, or other roof-top installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration, and in reasonably close conformance with the approved Hampden Business Park master plan, as amended, and the final subdivision plan.~~

~~Plans that provide for metal-clad buildings will be approved only on the condition that such buildings are designed and built in accordance with the requirements of Section 4.4. (Amended 11/17/14)~~

~~Plans for plantings and landscape improvements will be approved only on the condition that materials, placement, and form are designed and built in accordance with the Landscaping Plans for the Hampden Business and Commerce Park. (Amended 11/17/14)~~

~~Declarant shall not arbitrarily or unreasonably withhold its approval of any plans and specifications. Except as otherwise provided in this Declaration, Declarant, by and through the Hampden Planning Board, shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:~~

- ~~1. Failure to comply with any of the limitations, restrictions, conditions, and covenants set forth in this Declaration;~~
 - ~~2. Failure to include information in such plans and specifications as may have been reasonably requested by the Planning Board;~~
 - ~~3. Failure to reasonably comply with the Hampden Business and Commerce Park Master Plan;~~
 - ~~4. Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;~~
 - ~~5. Objection on the ground of incompatibility of any proposed structure or use with existing structures or uses upon other lots, or other property in the vicinity of the subject property;~~
 - ~~6. Objection to the locations of any proposed structure with reference to other lots, or other property in the vicinity;~~
 - ~~7. Objection to the grading or landscaping or parking plan for any lot;~~
 - ~~8. Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure;~~
 - ~~9. Any other matter that, in the judgment of the Planning Board, would render the proposed improvements or use inharmonious with the general plan for improvement of the subject property or with improvements located upon other lots or other property in the vicinity.~~
- ~~———— (Amended 11/17/14)~~

3.3 ACTION ~~(Deleted ==/==/2018)~~

~~Declarant, by and through the Planning Board, may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same subject to specific conditions, or it may deny approval. Upon approval or conditional approval by Declarant of any plans and specifications submitted, a copy of such plans and specifications, or the revised plans, together with any conditions, shall be deposited for permanent record with Declarant, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same. If the Declarant fails to act within 10 business days from the date the plan is deemed complete, the plan is deemed denied. A time extension may be granted in writing by the applicant. (Amended 11/17/14)~~

3.4 APPEAL ~~(Deleted 11/17/14)~~

3.5 PROCEEDING WITH WORK ~~(Deleted ==/==/2018)~~

~~Upon receipt of approval from Declarant pursuant to Section 3.3the Planning Board, the applicant, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement of and shall diligently and continuously pursue the completion of all approved excavation and construction. In all cases, work shall commence within one (1) year from the date of approval, and if work is not so commenced, approval shall be deemed revoked unless Declarant, pursuant to written request made and received prior to the expiration of said one (1) year period, extends the period of time within which work must be commenced.~~

3.6 COMPLETION OF WORK

Any improvement commenced pursuant hereto shall be substantially completed within two (2) years from the date of ~~regulatory Declarant's~~ approval ~~by the Planning Board pursuant to Section 3.3~~, except that if such substantial completion is rendered ~~impossible~~~~infeasible~~, or unless work upon the proposed improvements would impose a great hardship upon the ~~owner or occupant applicant to whom Declarant's approval is given~~, due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of the ~~owner or occupant applicant~~, Declarant may, upon written request made and received prior to the expiration of the two (2) year period, extend the period of time within which work must be completed. Failure to comply with this section shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Article VII. Nothing in this paragraph shall be deemed to extend any construction start or completion date required by the ~~Planning Board~~, Zoning Ordinance or other ordinance or regulation, ~~or condition of permit~~.

All disturbed areas on any Lot must be revegetated in accordance with good erosion practice methods within three (3) months if disturbed during the growing season and within nine (9) months if disturbed during the non-growing season.

All revegetation must be completely established within one year from the time of disturbance.

If all elements of the approved plans and specifications are not substantially completed in accordance with the terms and conditions of this Declaration or such terms and conditions as may be included in a deed of conveyance, the owner ~~shall~~may be assessed a late penalty of \$100 for each day beyond the completion deadline that the project is not substantially completed. Said late penalty shall be payable to Declarant, and the owner shall also be obligated to pay any of Declarant's reasonable costs incurred to collect the same, including reasonable attorney's fees and expenses.

~~Within sixty (60) days from substantial completion, the Owner shall submit two (2) copies of final record drawings to the Declarant Town Manager, along with a set thereof in such electronic format as may be designated by Declarant.~~

3.7 DECLARANT NOT LIABLE (deleted ==/=/2018)

~~Nothing in this Declaration shall be deemed to constitute an undertaking by the Declarant to perform any particular act with respect to the subject property, nor to assume liability or indemnify any person for any damage, loss, or prejudice suffered or claimed by any person on account of:~~

- a. ~~The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective.~~
- b. ~~The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications.~~
- c. ~~The development or use of any lot within Hampden Business and Commerce Park, or enforcement or failure by the Declarant to enforce any of the covenants, conditions, or restrictions contained herein.~~

3.8 CONSTRUCTION WITHOUT APPROVAL

If any improvement shall be commenced, erected, placed, or maintained upon any lot, or any new use commenced upon any lot, other than in accordance with ~~the approval by the Declarant pursuant to the provisions of this article~~article a plan approved by the Planning Board by the Town of Hampden, such improvement shall be deemed to have been undertaken in violation of this Declaration, then upon written notice from Declarant, any such improvement shall be removed or altered so as to conform to the approval ~~by the Declarant~~, and any such use shall cease or be altered so as to conform to the approval ~~by the Declarant~~ within thirty (30) days after receipt of such notice. Thereafter, any party who remains in breach of the approval shall be subject to the enforcement procedures set forth in Article VII.

3.9 STARTING TIME AND REPURCHASE OPTIONS

- a. Lots are conveyed with the intent that the owner will build thereon, and not for purposes of speculation. Conveyance of lots shall be specifically made upon the condition that commencement of construction shall begin within one year from the date of said conveyance and that substantial completion of construction, including paving of access ways, walkways and parking lots and the grading and landscaping of the surrounding grounds, shall be substantially completed within two (2) years from the date of ~~Declarant's regulatory~~ approval ~~pursuant to Section 3.3~~. In the event owner shall fail to commence construction within one (~~1~~) year from the date of conveyance, the Declarant may at its option and after written notice of 30 days, declare a violation of these covenants and upon tender of the original purchase price for the lot by Declarant to owner, the owner shall, notwithstanding any improvements to the lot, execute and deliver to the Declarant a deed conveying the subject lot to the Declarant. Owner shall have no right, remedy or recourse against the Declarant for the cost or value of any improvements, nor a cause or claim for unjust enrichment, quantum merit, or other similar relief.
- b. In the event any owner of land lying within the Hampden Business and Commerce Park shall desire to sell all or part of the land which at the time is unimproved, then the Declarant shall have the prior right and option to repurchase the unimproved premises proposed to be sold at the same price per acre paid by the Owner for said land when originally acquired from the Declarant.

- c. Prior to any sale of such premises, the owner of such lot, or the owner's successors or assigns, shall notify the Declarant in writing of intention to sell, describing the premises to be sold and the Declarant shall have sixty (60) days from the date of receipt of such notice to exercise its option, and in the absence of written notification sent by the Declarant of its election to exercise said option, such owner shall be free to sell such premises to any person and at any price deemed desirable by such owner.
- d. In the event of any repurchase by the Declarant under paragraphs a, b, and c hereof, the purchaser upon tender of the repurchase price, shall execute and deliver to the Declarant a Quitclaim Deed with Covenant to said premises conveying thereby marketable title to the same free and clear of all encumbrances, except those encumbrances contained in the original deed from Declarant.

3.10 RIGHTS RESERVED TO DECLARANT (Deleted ==/==/2018)

- ~~a. The property subject to this Declaration is also subject to the reservation to the Declarant for itself, its successors and assigns, of easements and rights of way ten (10) feet in width along all front lines of all lots and as may be shown on the final subdivision plan for all purposes relating to the installation and maintenance of utilities and/or for the installation and maintenance of drainage ways and structures. The areas encumbered by these easements are parallel, and interior to and adjacent to all lot boundaries and this reservation shall include the right of entry by men and machines. In addition, a 10' pedestrian easement is reserved along all property lines for the purposes of public pedestrian egress.~~
- ~~b. In recognition of the fact that Declarant, or its successors and assigns, will be undertaking the work of constructing the Hampden Business and Commerce Park, nothing in this Declaration shall be understood or construed to prevent the Declarant, or its successors, assigns, employees, agents, contractors or sub-contractors, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Park, and the disposition of lots by sale, lease, or otherwise.~~

3.11 WETLAND DISTURBANCES

No disturbances may occur within any delineated wetlands as shown on the "Site Grading and Erosion Control Plan" (Sheets CGJOI and CGI02), prepared by WBRC Architects/ Engineers, dated March 16, 2001, and recorded in the Penobscot County Registry of Deeds in Map Files 2002-275 and 2002-276, respectively, other than filling as specifically shown on said plan, unless said plan is amended ~~with the written approval of the Declarant, and~~ with the requisite governmental approvals. Any such amendments to said plan must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the responsibility of those seeking such amendment(s).

3.12 BUFFER AREAS AND OPEN SPACE

No disturbances may occur within any delineated stormwater buffer treatment areas or open space areas designated on the final subdivision plan, except for the removal of dead or dying trees or shrubs, and in accordance with the requirements of the Site Location of Development Permit or Natural Resource Protection Act Permit, as amended, unless said plan is amended with the written approval of the ~~Declarant, the Hampden Planning Board and~~ Maine Department of Environmental Protection (MDEP). Any such amendments ~~for alternative treatment methods or areas~~ must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the responsibility of those seeking such amendment(s). Exceptions to this restriction include the annual maintenance or mowing of non-wooded buffers, low impact outdoor recreation and recreational trail development within open space areas retained by the Declarant, and maintenance or repair of utilities within recorded easements ~~identified on the subdivision plan~~. In the event that MDEP requires that a Declaration be recorded in the Registry of Deeds, the more strict provisions shall apply.

ARTICLE IV DEVELOPMENT STANDARDS

4.1 GENERAL REQUIREMENTS

All improvements shall comply in every respect with all applicable laws and ordinances of the United States, the State of Maine, and the Town of Hampden, including zoning restrictions, landscaping, and site development standards under applicable Town of Hampden ordinances.

4.2 ~~MINIMUM IMPERVIOUS AREA SETBACK~~ (Amended 10/15/07)

~~Notwithstanding any lesser setback requirements under Town of Hampden zoning ordinances, no improvements of any kind, and no part thereof, shall be placed closer than permitted by Declarant to an interior property line or right-of-way, except as otherwise provided in Section 4.3.~~

~~a. Front, side and rear setbacks — no buildings shall be placed outside the building area limit for each lot as depicted on the subdivision plan, or within 20' of a property line.~~

~~b. Building to parking setback— no less than 5' between parking spaces and principal buildings, except no less than 20' for entrance drives.~~

~~c.a. Impervious area setbacks—n~~No paved areas, parking spaces, loading spaces and associated driveways and access aisles shall be placed outside the impervious area limit for each lot as depicted on the subdivision plan (as may be amended from time to time), or within 20' of the front property line or 10' of the side and rear property lines, except for entrance drives. This minimum setback requirement shall not apply to walkways, fences (subject to the requirements set forth in Section 4.7), landscaping, irrigation systems, low planers, signage, lighting, or underground utilities.

4.3 EXCEPTIONS TO SETBACK REQUIREMENTS (Deleted ==/==/2018)

The following improvements, or parts of improvements, are specifically excluded from the setback requirements set forth in Section 4.2:

- a. ~~Walkways;~~
- b. ~~Fences, subject to the requirements set forth in Section 4.7;~~
- c. ~~Landscaping and irrigation systems;~~
- d. ~~Low planters;~~
- e. ~~Business park identification signs, directional and parking signs, and signs identifying the occupant of a lot, subject to the prior written approval of Declarant, compliance with the Town of Hampden's Zoning Ordinance, and the requirements of Section 4.5 of this Declaration;~~
- f. ~~Lighting facilities, subject to the prior written approval of Declarant; and~~
- g. ~~Underground utility facilities and sewers.~~

4.4 STRUCTURES AND ARCHITECTURAL STANDARDS

The provisions of this section shall only apply to Phase 1 of the Park. (Amended 11/17/14)

- a. ~~All buildings and other site improvements shall be built in conformance with all applicable laws, including any building code adopted by the Town of Hampden or the State of Maine. (Amended 11/17/14)~~
- b. ~~a. Building primary facades (front face of building) visible from Route 202 and the Business & Commerce Park contained in Phase 1 of the final subdivision plan's road network shall incorporate design elements which create visual interest. These primary facing facades shall not be blank walls, but shall incorporate windows, entry treatments, variations in plane, variation in roof shapes, and other architectural features to create visual interest, and to distinguish them from simple industrial structures. Development of continuous covered porches or arcades serving multiple businesses is encouraged. Building facades shall be designed and detailed to develop a human scale, present in the appearance of commercial storefront and recognizable entry elements. For the purposes hereof, the term human scale shall mean that the building facade shall use construction products or detailing which refer to modules or scale of the human body. (Amended 11/17/14)~~
- c. ~~b. Color scheme and finish for all metal, including roofs, shall be pre-painted. Trim (window, doors, roof edge, eaves, etc.) shall be articulated by color different than the building's siding color. Generally, colors should relate to the setting (landscape). Bold hues and bright saturated colors shall be discouraged.~~
- d. ~~Buildings less than 10,000 s.f. footprint shall be proportioned such that the roof eave to ridge heights do not exceed the building facade height (ground to eave). Building footprint shall be contained within the building area limits designated on the approved final subdivision plan.~~
- e. ~~Roof slopes shall be 5"/12" minimum for buildings with footprints less than 10,000 s.f., and 1/2"/12" for others. Provided, however, that roof slopes for metal frame buildings with footprints less than 10,000 s.f. shall be a minimum of 3"/12". Roof eaves shall be projected 6" minimum~~

~~beyond the exterior of all wall surfaces and trimmed, and 12" beyond for buildings having less than 10,000 s.f. footprint. (Amended 10/15/07).~~

f. Acceptable exterior materials include:

- 1) Finished concrete.
- 2) Finished masonry or masonry units, such as stone, brick, structural facing tile and ceramic tile.
- 3) "Shallow" corrugated or flat metal panels.
- 4) Aluminum/glass curtain wall systems.
- 5) Wood siding, to include solid wood materials such as clapboards but not including pre-manufactured panels such as T1-11.
- 6) Architectural grade vinyl siding.
- 7) Aluminum doors and window systems.
- 8) Exterior insulation finish systems (EIFS).

4.5 SIGNS

~~No sign shall be permitted on any lot unless approved by Declarant in writing.~~

~~No sign shall be approved other than Only signs identifying the building or the business of the occupant of a lot, business park identification signs, informational, and vehicular control signs, signs offering the lot for sale or lease, and temporary development signs are allowed. All signs must comply with the Hampden Zoning Ordinance, ~~and the following requirements:~~~~

- ~~a. Freestanding Occupancy Identification Signs shall be no more than twelve (12) feet in height above the average grade elevation of the site around the sign; shall be located on the frontage facing the Hampden Business and Commerce Park access road, no more than twenty-five (25) feet nor less than eight (8) feet from the front property line; nor shall such signs be supported above the base or ground immediately beneath them by a single post. They shall be unlit, or indirectly lit by either back lighting through opaque sign facing or by spotlight. No neon, no intermittent or moveable character signs shall be permitted.~~
- ~~b. Occupant Identification Signage on a Building shall not extend above a parapet or eaves line (or obscure such building line) and shall not be erected on more than two walls of any building.~~
- ~~c.a. Deviations from these standards may be granted by the Declarant upon submission of a written request.~~

4.6 LANDSCAPING

Within ninety (90) days following completion of construction each lot shall be landscaped in accordance with ~~the approved~~ plans and specifications, except when the completion of the landscaping would impose a great hardship upon the ~~applicant-owner~~ due to weather or climatic conditions. Declarant may, upon written request made and received prior to the expiration of the ninety (90) day period, extend the period of time within which work must be completed.

- a. The area of each lot between any street and any minimum setback line shall be landscaped with a combination of trees, shrubs, and other ground cover providing a buffer and transition zone

from streetscape to site. All other undeveloped portions of a lot shall be landscaped in a complementary and similar manner.

- b. The perimeters of parking areas shall be landscaped with year round plant material or earth berms or a combination of both to screen said areas from view and lessen the impact on neighboring sites.
- ~~c. Within parking areas, parking spaces shall be broken up by landscaped islands such that for every 20 parking spaces there is one landscaped island containing at least 650 square feet, at least one deciduous tree, and planted with low shrubbery.~~
- d. After completion, such landscaping as is herein required shall be maintained in a ~~sightly and well-kept condition. If, in Declarant's reasonable opinion, the required landscaping is not maintained in a sightly and well-kept condition, Declarant shall be entitled to the remedies set forth in Article VII.~~
- e. ~~Minimum planting sizes:
Deciduous shade trees — 2" Caliper
Coniferous trees — 5-7' Height
Deciduous shrubs — 18-24"
Coniferous shrubs — 18-24"
Planting sizes may be waived at the Declarant's discretion and approval by landscape architect.~~
- f. (Deleted 11/17/14)

~~The applicant shall may be required, as a condition of Site Plan approval, to provide a suitable performance bond or other form of security to guarantee the performance and completion of all planting required pursuant to this section, which bond or security shall also guarantee plantings for a period of one (1) year after installation.~~

Landscaping shall be maintained thereafter by the property owner at a level consistent with the ~~site approved plan approval. In determining the amounts of planting to be required, the Declarant shall take into account:~~

- ~~1) Existing trees, shrubs, evergreens and other vegetation to be preserved on the site.~~
- ~~2) Visibility of incompatible or unsightly areas from roads and/or adjoining properties.~~
- ~~3) Shade trees and landscape strips in relation to existing and planned streets.~~

4.7 FENCES

All fences are subject to the provisions of this section.

- ~~a. A fence six feet high or less may be placed up to but not on a property line so that both sides of the fence can be erected and maintained from the property of the person erecting the fence.~~
- ~~b. A fence more than six feet high shall be considered a structure subject to normal setback requirements for the zoning district, unless otherwise approved by the Declarant during site plan review.~~
- c. A fence shall be erected so that its "good side" shall face an abutting property or roadway.

- d. Any fence located adjacent to a publicly owned or maintained sidewalk, bike path or pedestrian way shall not be located closer than two feet to such public facility.
- ~~e. The Declarant reserves the right to approve the location and design of all fences, and no fence shall be constructed without written approval from the Declarant.~~

4.8 PARKING AREAS, LOADING AREAS, AND DRIVEWAYS

~~Off-street parking adequate to accommodate the parking needs of the development and the employees and visitors thereof shall be provided for each Lot. The intent of this provision is to eliminate the need for any on-street parking. If parking requirements increase as a result of a change in the use of a lot or in the number of persons employed thereon, additional off-street parking shall be provided so as to satisfy the intent of this section.~~ All parking areas shall conform to the following standards:

- a. Parking areas shall be paved so as to provide dust free, all weather surfaces. *[in zoning already]*
- ~~b. Each parking space provided shall be designated by lines painted upon the paved surface.~~
- ~~c.b. Provision shall be made on each site for any necessary vehicle loading, and no on-street vehicle loading shall be permitted.~~
- ~~d.c.~~ Loading dock areas shall be set back, recessed, or screened to minimize visibility from neighboring properties or streets. *[Note, this could be in zoning but might be more restrictive on other properties in the various business and industrial districts than we want. – KMC]*
- ~~e. No more than one (1) entrance or exit driveway per Lot shall be permitted except in extraordinary circumstances approved by the Declarant, acting through its Planning Board during Site Plan Review, or as identified on the master plan.~~

4.9 STORAGE AREAS *[Note, I think these provisions are dealt with adequately in the proposed zoning revisions and can be deleted from these covenants. – KMC]*

All storage of bulk materials, including but not limited to such things as coal, wood, pulp, raw materials shall be located completely within a building or other space adequately screened from public view, ~~as approved by the Design Review Board~~ as determined by the Code Enforcement Officer. Any fences, walls or plantings used for such screening purposes shall be located not less than twenty (20) feet from any property line. Outside storage of materials, supplies, or equipment, including trucks or other motor vehicles, shall be permitted only if:

- a. The material, equipment, or objects stored outside are necessary and accessory to the activities regularly conducted on the premises;
- ~~b. The area devoted to outside storage is limited and does not dominate the site or appear unattractive from neighboring sites, as determined by the Design Review Board.~~
- c. The area is screened on the sides and harmonizes with the architecture, landscaping, design, and appearance of neighboring structures and other surroundings, ~~and in reasonably close conformance to the master plan;~~ and
- d. The area is located upon the rear portions of a lot, unless otherwise approved in writing by Declarant, acting through its Planning Board during Site Plan Review.

4.10 LIGHTING *[Note, I think these provisions are also dealt with adequately in the proposed zoning revisions and can be deleted from these covenants. – KMC]*

~~All lighting is to be shielded so as not to be directly visible from neighboring property or to cause glare on neighboring streets and properties. Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas/properties and public highways. Lights shall be of a "downshield luminaire" type where the light source is not visible from any public highway or from adjacent properties.~~

~~Only fixtures, which are shielded, do not expose a light source, and which do not allow light to "flood" the property are permitted to be attached to buildings. All lighting must be approved in writing by Declarant.~~

~~When illumination is required for part or all of a structure, the illuminating device shall be designed, located and adjusted so as to not cast light directly on adjacent properties or roadways.~~

4.11 SPECIAL PROVISIONS (Deleted ==/==/2018)

~~In addition to the requirements of Section 4.1-4.8, site plans for development in the Hampden Business and Commerce Park shall be consistent with the requirements of this sub-section. The Hampden Business and Commerce Park is to become a pleasant commercial area in which all visual and functional elements form an integrated design plan. Route 202 connects Hampden and Bangor centers and the site lies in the path of planned recreation trails and alternative transportation links. Site plans for proposed new developments must acknowledge this basic pattern and reinforce it by defining public spaces and walkways, and by providing appropriate landscaping and features.~~
Design Requirements

- ~~a. New buildings shall be sited to create pleasant outdoor spaces, and to create visual and pedestrian linkages between existing buildings.~~
- ~~b. Public spaces shall be created to connect to and reinforce the circulation pattern and recreation paths. These public spaces shall be designed at a human scale and furnished with appropriate features such as benches, plantings, public sculptures, bike racks, and pedestrian scaled and styled light fixtures.~~
- ~~c. Public walkways shall be created and shall be suitably landscaped and furnished with attractive pavement, plantings, pedestrian scaled and styled light fixtures, and other amenities.~~
- ~~d. The location and design of buildings, public spaces and walkways shall create pleasant and effective termini for views to and from the site.~~
- ~~e. The southerly views from this area towards the agricultural land and Penobscot River beyond are an important public resource. Prominent public vantage points for these views must be identified and the visual corridors from these vantage points to this resource must be protected~~

~~and enhanced. Building envelopes have been defined which will prevent these visual corridors from being interrupted by new buildings or landscaping.~~

~~f. The wetlands and waterways shall be utilized as the focal point for the public open space, which shall be designed as a more natural open space rather than developed parks, plazas, or greens. The open space should be accessed by walkways and bikeways, and should be accessible from the buildings.~~

ARTICLE V USES AND OPERATIONS

5.1 NO FURTHER SUBDIVISION OF LOTS (Deleted ==/=/2018)

~~No lot as shown on the Final Subdivision Plan shall be subdivided without the prior approval of the Declarant and the Hampden Planning Board. No building shall be constructed, erected or placed on any lot other than shown on said Plan, or an amended subdivision plan as approved by the Planning Board and recorded in the Penobscot County Registry of Deeds.~~

5.2 PERMITTED USES (Deleted ==/=/2018)

~~Lots shall be used for light manufacturing, assembly, research and testing laboratories, professional and other business offices, call centers, warehouses and other acceptable uses permitted by the Town of Hampden Zoning Ordinance, provided that Declarant specifically consents to such use in writing. (Amended 11/17/14)~~

~~Such approved use shall be performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to other lots or property, such as, but not limited to, vibration, sound, electro-mechanical disturbances, electromagnetic disturbances, radiation, air or water pollution, dust, or emission of odorous, toxic, or nontoxic matter (including steam). Certain activities that cannot be carried on within a building may be permitted, provided Declarant specifically consents to such activity in writing and further provided that such activity is screened so as not to be highly visible. The screening or fencing shall be attractive from neighboring property and streets. All lighting is to be shielded so as not to be directly visible from neighboring property or to cause glare on neighboring streets and properties.~~

5.3 PROHIBITED USES

The following operations and uses shall not be permitted on any property subject to this Declaration:

- a. Junk yards; wrecking yards; automobile graveyards; or automobile recycling business;
- b. Recycling facilities (unless accessory to the primary activities regularly conducted on the premises);
- c. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;

- d. Refining of petroleum or of its products;
- e. (Deleted 11/17/14)
- f. Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to Article III;
- g. Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse;
- ~~h. Uses prohibited by federal, state, or local law, including applicable Town of Hampden Zoning Ordinance provisions; (Amended 11/17/14)~~
- i.h. No use shall be made of any lot or any portion thereof which would allow access to transportation or utility systems through such lot to any property not controlled by the Town of Hampden without approval of the Town of Hampden;
- j.i. Non-taxable uses are prohibited unless approved by the Hampden Town Council because they are generally inconsistent with the goals of Recital 4 above.

5.4 NUISANCES

No nuisances shall be permitted to exist or operate upon on any Lot so as to be offensive or detrimental to any adjacent Lot or property or to its occupants. A nuisance shall include, but not be limited to, any of the following conditions:

- a. Any use, excluding reasonable construction activity, of the Lot that emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any stream, river, or other waterways that, in the opinion of the Declarant, may adversely affect the health, safety, comfort, or intended use of property by persons within the area. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the subject property or any part thereof in violation of any regulation of the Town of Hampden;
- b. The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substances into the atmosphere, which discharge, in the opinion of Declarant, may be detrimental to the health, safety, or welfare of any person or may interfere with the comfort of persons within the area or may be harmful to property or vegetation;
- c. The radiation or discharge of intense glare or heat, or atomic, electromagnetic, microwave, ultrasonic, laser, or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the site or lot upon which the operation is conducted;
- d. Excessive noise. At no point outside of any lot shall the sound pressure level of any machine, device, or any combination of same, from any individual plant or operation, be offensive or detrimental to any adjacent lot or property or to its occupants, ~~as determined by the Code Enforcement Officer~~ as determined by the Design Review Board;
- e. Excessive emissions of smoke, steam, or particulate matter. Emission of dust, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation, or property, or which

could soil or stain persons or property, at any point beyond the lot line of the establishment creating that emission shall be prohibited. All such activities shall also comply with applicable Federal and State regulations;

- f. Ground vibration. Buildings and other structures shall be constructed and machinery and equipment installed and insulated on each lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point exterior to any lot.
- g. Trash and refuse outdoors if not contained in a proper receptacle in a refuse collection area.
(Amended 11/17/14)

5.5 CONDITION OF PROPERTY

The occupant of any lot shall at all times keep it and the buildings, improvements, and appurtenances thereon in a safe, clean, and wholesome condition and comply, ~~as~~ at its own expense, in all respects with all applicable governmental, health, fire, and safety ordinances, regulations, requirements, and directives, and the occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such lot.

5.6 MAINTENANCE OF GROUNDS

Each occupant shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaping on his/her lot. Such maintenance and repair shall include, without limitation, up to the public travel way including any easements, esplanades, tree protection zone, and joint or shared parking areas. Each occupant shall be responsible for:

- a. Maintenance of all parking areas, driveways, and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefor as shall, in all respects, be equal thereto in quality, appearance, and durability, the removal of debris and waste material and the washing and sweeping of paved areas, the painting and repainting of striping markers and directional signals as required;
- b. Cleaning, maintenance, and re-lamping of any external lighting fixtures; and
- c. Performance of all necessary maintenance of all landscaping, including the trimming, watering, and fertilization of all grass, groundcover, shrubs, or trees, the removal of dead or waste materials, the replacement of any dead or diseased grass, groundcover, shrubs, or trees.

5.7 REMEDIES FOR FAILURE TO MAINTAIN AND REPAIR

Each lot owner and occupant thereof shall promptly maintain and repair their premises per Article V but if owner or occupant shall fail to do so after fifteen (15) days written notice by Declarant, then the Declarant may pursue those remedies described in Article VII.

5.8 REFUSE COLLECTION AREAS

All outdoor refuse collection areas shall be screened to minimize visibility from neighboring property or streets and setback at least ten (10) feet from the Street right-of-way. No refuse collection area shall be permitted between a subdivision street and the front of a building.

5.9 REPAIR OF BUILDINGS

No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

5.10 PUBLIC UTILITIES

Declarant reserves the exclusive right to approve installation of utility lines across the subject property. Declarant will consult with any Lot owner before such installation and shall attempt to accommodate Lot owner concerns. The appropriate governmental authority must approve the construction and operation of public utilities in rights-of-way dedicated to the public.

5.11 UTILITY LINES AND ANTENNAS

No sewer, drainage, or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals, including telephone, television, microwave, or radio signals, shall be constructed without approval by the Declarant. Notwithstanding the requirements of the Hampden Zoning Ordinance, no antenna or tower for the transmission or reception of telephone, television, microwave, or radio signals shall be placed on any Lot within the subject property without the consent of the Declarant, which shall not be unreasonably withheld. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone power or telephone facilities incidental to the construction or repair of buildings on the subject property.

5.12 MECHANICAL EQUIPMENT

All mechanical equipment, utility meters, storage tanks, air conditioning equipment, and similar items shall be screened with landscaping, ~~fencing,~~ or ~~attractive~~ architectural features integrated into the structure itself, and shall not be visible from neighboring properties or street rights of way as defined in Article I.

5.13 MINERAL EXPLORATION

No portion of the subject property shall be used in any manner to explore for or to remove any steam, heat, oil, or other hydrocarbons, gravel, earth, or any earth substances or other mineral of any kind, provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of improvements within the subject property.

5.14 OTHER OPERATIONS AND USES

~~Operations and uses that are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by Declarant in accordance with the procedures set forth in Article III of this Declaration. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this Declaration or upon the occupants thereof, but shall be in the sole discretion of Declarant.~~

ARTICLE VI

~~MODIFICATION-AMENDMENT~~ AND REPEAL

6.1 ~~MODIFICATION-AMENDMENT OR REPEAL~~ BY DECLARANT

The Declarant, at its sole discretion, may ~~modify or~~ amend or repeal the provisions of this Declaration or any portion thereof, provided, however, that:

- a. Prior to any such ~~modification or~~ amendment or repeal, Declarant shall obtain the approval of any governmental agency to such ~~modification or~~ amendment or repeal where such approval is necessary;
- b. A public hearing on the proposed amendment or repeal will be held by the Town Council;
- c. No such ~~modification or~~ amendment or repeal shall be effective until the owners and occupants have been given thirty (30) days prior written notice of the proposed change, that any revisions from the advertised amendments made within the public hearing fall within the scope of the advertised amendments, and that upon approval by the Town Council a proper instrument in writing has been executed and recorded.

ARTICLE VII

ENFORCEMENT

7.1 ABATEMENT AND SUIT

The Declarant may enforce any breach or violation of the provisions of this Declaration in either the Superior Court of Penobscot County or the U.S. District Court, Bangor, Maine. In the event the Declarant seeks legal redress, the Declarant may pursue, at its option, both the owner and any related or non-related occupant for money damages, specific performance or any other form of legal or equitable relief. Notice of violation or breach of any covenant, condition or restriction or provision of this Declaration shall be provided by the Declarant in writing, and upon a failure to correct or abate said violation after 30 days, Declarant may pursue such legal or equitable action. In addition to the above remedies, if such violation shall continue for more than 30 days, the Declarant

may enter upon the lot where said violation or breach exists and summarily correct, abate or remove, at the expense of owner and/or occupant, any improvements, structure, thing or condition deemed by the Declarant to be in violation of or contrary to the provisions of this Declaration. No such entry by the Declarant or its agents shall be deemed a trespass, nor shall the Declarant or its agents be liable for any actions taken hereunder to remedy or remove a violation. All costs incurred by Declarant shall be levied as an assessment against the owner of the lot(s) in question. If any such assessment is not paid within thirty (30) days of an invoice therefor issued by Declarant, such assessment shall then become delinquent and shall, together with interest thereon at the rate of twelve (12) percent per annum and the cost of collection thereof (including reasonable attorney's fees) become a continuing lien on the lot(s) against which such assessment is made and shall bind such lot(s) in the hands of the owner(s), and the owner's successors and assigns, and shall also be a continuing personal obligation of the owner(s) against whom the assessment is levied. The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a financial institution.

7.2 RIGHT OF ENTRY

During reasonable hours and upon reasonable notice and subject to reasonable security requirements, Declarant, or its agents, shall have the right to enter upon and inspect any lot and the improvements thereon covered by this Declaration for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither Declarant nor its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

7.3 DEEMED TO CONSTITUTE A NUISANCE

The result of every act or omission whereby any covenant, condition, or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or in equity against an owner or occupant shall be applicable against every such result and may be exercised by Declarant.

7.4 ATTORNEY'S FEES

In the event the Declarant initiates any legal or equitable action to enforce these covenants, and it prevails in that action, the Declarant shall be entitled to its reasonable attorney's fees. In no event and under no circumstances shall Declarant be responsible for owner's or occupant's attorney's fees.

7.5 FAILURE TO ENFORCE IS NO WAIVER

The failure of Declarant to enforce any covenant, condition, restriction, or provision of this Declaration shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases nor to the right to enforce any other restriction.

**ARTICLE VIII
ASSIGNMENT**

Any and all of the rights, powers, and reservations of Declarant herein contained may be assigned to any person, partnership, corporation, or association that will assume the duties of Declarant pertaining to the particular rights, powers, and reservations assigned, and upon any such person, partnership, corporation, or association evidencing its consent in writing to accept such assignment and assume such duties, the assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Any assignment made under this article shall be recorded in the Registry of Deeds.

**ARTICLE IX
CONSTRUCTIVE NOTICE AND ACCEPTANCE**

Every person or entity who now or hereafter owns or occupies any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration, regardless of whether any reference thereto is made in any document by which that person acquired an interest in the subject property.

**ARTICLE X
WAIVER AND FAILURE TO ENFORCE**

The Declarant may after public hearing, waive one or more of the covenants, conditions, and restrictions contained in this Declaration. Neither Declarant, nor its successors or assigns, shall be liable to any owner or occupant of the subject property by reason of any mistake in judgment, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. No owner or occupant of property in the Hampden Business and Commerce Park may bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

**ARTICLE XI
RUNS WITH LAND**

All covenants, conditions, restrictions, and provisions contained in this Declaration are made for the direct, mutual, and reciprocal benefit of each and every lot of the subject property; shall create mutual equitable servitudes upon each lot in favor of every other lot; shall create reciprocal rights and

obligations between respective owners or occupants of all lots, their heirs, successors, and assigns; and shall, as to the owner or occupant of each lot, their heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other lots, except as herein provided otherwise.

**ARTICLE XII
RIGHTS OF MORTGAGEES**

No breach of any covenant, condition, restriction or provision herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any mortgage now or hereafter granted on the subject property or a portion thereof, provided, however, that if any portion of said property is transferred under a foreclosure of any mortgage or by a deed in lieu of foreclosure, any successors and assigns shall hold any and all property so transferred subject to all of the covenants, conditions, restrictions and provisions contained in this Declaration.

**ARTICLE XIII
CAPTIONS**

The captions of articles and sections herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular article or section to which they refer.

**ARTICLE XIV
EFFECT OF INVALIDATION**

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

**ARTICLE XV
NOTICES**

Any notices required to be sent to any owner or occupant under the provisions of this Declaration shall be deemed to have been properly sent when mailed by U.S. mail, postage prepaid, to the last known address of the person as it appears in the records of the Assessor of the Town of Hampden. Owner and occupant shall notify the Assessor of any change of address.

IN WITNESS WHEREOF, the Town of Hampden has caused this Second Amended and Restated Declaration to be duly executed on its behalf as of this ____ day of September ____, 2015~~2018~~.

Town of Hampden

By: _____

Witness

Angus G. Jennings
Its Town Manager

STATE OF MAINE

PENOBSCOT, ss.

~~2015~~2018

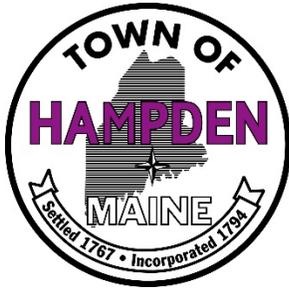
September _____,

Personally appeared the above-named Angus Jennings in his stated capacity and acknowledged the foregoing instrument to be his free act and deed in such capacity and the free act and deed of said Town of Hampden.

Before me,

Notary Public

Printed Name: ~~DENISE R. HODSDON~~



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: January 31, 2018
RE: LD 1565, An Act to Ensure the Effectiveness of Tax Increment Financing

In May of 2017 a bill was introduced to amend the state laws regarding tax increment financing. In short, it proposes to amend the criteria for adopting a development program as part of a development (TIF) district by requiring that 80% of the area within the district is designated for development by an entity engaged in a “qualified business activity” which is defined as one that is directly related to financial services, manufacturing, or targeted technologies (biotechnology, aquaculture and marine technology, composite materials technology, environmental technology, advanced technologies for forestry and agriculture, information technology and precision manufacturing technology). It would apply to development programs approved on or after April 1, 2018.

If the proposed legislation is adopted, the proposed Coldbrook Corners TIF District and Development Program would not be approved since it does not meet this criteria.

A hearing was held on May 16, 2017 at which a number of people spoke, I found testimony online from 9 people, 7 opposed to the legislation and 2 in favor of it. Two work sessions were held by the Committee on Taxation in January 2018, and on January 23 they reported the bill out with a recommendation “ought not to pass.” Therefore it is unlikely that the bill will be adopted.

The proposed bill is attached, along with a summary of the committee action for the bill.

If anyone is interested in reading the testimony from the 2017 hearing, it is available in my office or online at http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1565&PID=1456&snum=128&sec3#; click on “Chamber Status, HP 1078” in the upper right corner, then click on “Committee Info” in the menu bar on the left side of the screen. Then click on “Public Hearing Testimony” in the middle of the page to see the testimony items.



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1565

H.P. 1078

House of Representatives, May 2, 2017

An Act To Ensure the Effectiveness of Tax Increment Financing

Submitted by the Department of Economic and Community Development pursuant to Joint Rule 204.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WARD of Dedham.
Cosponsored by Senator VOLK of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 30-A MRSA §5222, sub-§14-A** is enacted to read:

3 **14-A. Qualified business activity.** "Qualified business activity" means a business
4 activity conducted within a development district that is directly related to financial
5 services, manufacturing as defined in Title 30-A, section 5250-I, subsection 11 or
6 targeted technologies as defined in Title 5, section 15301, subsection 2.

7 **Sec. 2. 30-A MRSA §5224, sub-§2, ¶H,** as amended by PL 2013, c. 184, §3, is
8 further amended to read:

9 H. The duration of the development district, which may not exceed a total of 30 tax
10 years beginning with the tax year in which the designation of the development district
11 is effective pursuant to section 5226 or, if specified in the development program, the
12 subsequent tax year; ~~and~~

13 **Sec. 3. 30-A MRSA §5224, sub-§2, ¶I,** as amended by PL 2011, c. 101, §10, is
14 further amended to read:

15 I. All documentation submitted to or prepared by the municipality or plantation
16 under section 5223, subsection 2-; and

17 **Sec. 4. 30-A MRSA §5224, sub-§2, ¶J** is enacted to read:

18 J. For development programs approved by the commissioner on or after April 1,
19 2018, documentation that shows that at least 80% of the area within the development
20 district is designated for development by an entity or organization that is determined
21 by the department to be engaged in a qualified business activity.

22 **SUMMARY**

23 This bill amends the criteria for adopting a development program as part of a
24 development district by requiring that 80% of the area within the district is designated for
25 development by an entity engaged in a qualified business activity that is directly related
26 to financial services, manufacturing or targeted technologies. This provision applies to
27 development programs approved by the Commissioner of Economic and Community
28 Development on or after April 1, 2018.



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: MAINE RELAY 711

Karl Ward

P. O. Box 612
Holden, ME 04429

Residence: (207) 843-7546
Business: (207) 989-7400
Fax: (207) 989-7548
Karl.Ward@legislature.maine.gov

L.D.1565

“An Act To Ensure the Effectiveness of Tax Increment Financing” State Representative Karl Ward

Joint Standing Committee on Taxation

Senator Dow, Representative Tipping and members of the Taxation Committee, I am Karl Ward and I represent the good folks of Maine House District 131 which includes the towns of Otis, Dedham, Orland, Penobscot, Verona Island, Prospect and Stockton Springs.

Thank you for the opportunity to present L.D.1565 “An Act To Ensure the Effectiveness of Tax Increment Financing” on behalf of the Department of Economic and Community Development.

Tax Increment Financing or TIF is by all accounts the most flexible economic development tool Maine has to offer.

Here’s a brief description of how it all works: A municipality designates a specific geographic area as a TIF district. This freezes the value of taxable property within that specified district. The municipality must also adopt a development program describing how TIF revenues will be spent over time. The benefit to a community is that some or even **all** of the new property value realized within the district will be sheltered from state valuation, and therefore it does not negatively impact the education costs or county taxes for that city/town.

LD 1565 seeks to adjust the criteria for adopting a development program. Under the bill, for all TIFS approved after April 1, 2018, 80% of the area within a district must be designated for development by an entity engaged in a qualified business activity; such as, targeted technologies, manufacturing, and financial services.

Additionally, the department is submitting today an amendment to this bill that seeks to establish criteria for adopting a credit enhancement agreement as part of an approval development district.

The department believes this bill as amended is a step in the right direction for making sure taxpayers don’t assume any more of a burden than they have to in the very flexible world of TIF’s

Folks from the Department (DECD) and Maine Revenue are here to answer any technical questions relating to this bill and reasons why they would like to see this criteria implemented.

LD 1565 as amended by Rep. Ward:

Sec. 1. 30-A MRSA §5222, sub- §3-A is enacted to read:

3-A. Credit enhancement agreement. “Credit enhancement agreement” means a contract between a municipality and a business engaged in a qualified business activity that specifies (a) the project costs to which TIF funds will be applied, and (b) the obligations of the municipality and the business regarding the creation of a tax increment financing district and the implementation of the development program.

Sec. 2. 30-A MRSA §5222, sub- §14-A is enacted to read:

14-A. Qualified business activity. “Qualified business activity” means a business activity conducted within a development district that is directly related to financial services, manufacturing, as defined in Title 30-A section 5250-I subsection 11, or targeted technologies as defined in Title 5 section 15301 subsection 2.

Sec. 3. 30-A MRSA §5224, sub- §3-A is amended to read:

3. Financial plan for development program. The financial plan for a development program must include:

- A. Cost estimates for the development program; [2001, c. 669, §1 (NEW).]
- B. The amount of public indebtedness to be incurred; [2001, c. 669, §1 (NEW).]
- C. Sources of anticipated revenues; and [2001, c. 669, §1 (NEW).]
- D. A description of the terms and conditions of any agreements, contracts, credit enhancement agreements or other obligations related to the development program.

SUMMARY

This bill establishes the criteria for adopting a credit enhancement agreement as part of a development district approved by the Department of Economic and Community Development.

128th Maine Legislature, Second Regular Session
An Act To Ensure the Effectiveness of Tax Increment Financing

LD 1565, HP 1078

Fiscal Status Not Yet Determined

Amendments to LD 1565

Status In Committee

Referred to Committee on Taxation on May 4, 2017.

Latest Committee Action: Reported Out, Jan 23, 2018, ONTP

Latest Committee Report: Jan 23, 2018, Ought Not To Pass

Public Hearings

Tuesday, May 16, 2017 1:00 PM, State House, Room 127

Disclaimer: The following documents are digital reproductions of written testimony presented to joint standing committees before and during public hearings. The Legislature is not responsible for the content, accuracy, or appropriateness of any testimony posted herein and takes no position supporting or opposing views expressed in the testimony. The documents are posted solely for convenient viewing by interested persons; they are not official copies and may not represent a complete record of a hearing. Contact the committee clerk for additional information.

 Public Hearing Testimony, 10 items
Work Sessions

Thursday, May 18, 2017 1:00 PM, State House, Room 127

Tuesday, January 9, 2018 1:00 PM, State House, Room 127

Thursday, January 18, 2018 1:00 PM, State House, Room 127

Committee Docket

Date	Action	Result
May 18, 2017	Work Session Held	TABLED
May 19, 2017	Carry Over Requested	
Aug 2, 2017	Carry Over Approved	
Jan 9, 2018	Work Session Held	TABLED
Jan 18, 2018	Voted	ONTP
Jan 23, 2018	Reported Out	ONTP

Divided Reports

No Divided Reports.

Affected Statute Titles and Sections

None listed at this time.

Need a paper copy? Contact the Document Room at 287-1408 or send an e-mail with the LD or Paper number, Item number and a mailing address to webmaster_house@legislature.maine.gov.



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: February 1, 2018
RE: Quarterly Report on Retail Marijuana

This is the third quarterly report on the issues surrounding the retail (aka adult use) marijuana industry in Hampden.

On the local level, zoning amendments to prohibit retail sales and social clubs from locating in Hampden were adopted by Town Council on November 20, 2017 and they became effective December 20, 2017. These were changes to a number of definitions in §7.2 of the ordinance. It should be noted that in the proposed zoning amendments to Article 3, retail sales and social clubs will both be prohibited in all districts in the use table.

A draft Emergency Moratorium Ordinance Regarding Retail (Adult Use) Marijuana was discussed at the December 6, 2017 Planning & Development Committee meeting, at which time it was voted 5/0 to refer the ordinance to Town Council. It is on the agenda for the February 5th Town Council meeting. The primary reason for doing the moratorium is the lack of state rules regarding adult use marijuana and the potential for the state moratorium to end before the state completes their work. Which brings me to the next update.

On the state level, on October 23, 2017 the legislature had passed LD 1650, a bill to amend the Marijuana Legalization Act to address many of the deficiencies and problems with the Act. Governor LePage vetoed LD 1650 on November 3, and the House sustained the veto on November 6. That left us with the original Act with a few minor amendments; the majority of the serious concerns that municipalities across the state had with the Act remain.

During January 2018 the legislature has been dealing with extending the statewide moratorium on all adult use marijuana uses, since the existing moratorium expires today – February 1, 2018. On Jan 26, 2018, the Committee on Marijuana Legalization Implementation referred LD 1775 out with a recommendation ought to pass, with a new moratorium end-date of April 18, 2018. On January 30, the senate accepted the committee report. LD 1775 is scheduled for a vote today, and if it passes, still needs to be signed by the Governor who reportedly wants the end-date to be January 31, 2019. We understand the legislature knows the work remaining to be done on

the Act and the rules will not be completed by April 18, so if LD 1775 is signed into law, it will likely be amended again with some later end-date.

Meanwhile, the legislative Committee on Marijuana Legalization Implementation is apparently continuing to work on the issues that resulted in the failure of LD 1650 to be enacted. However, with the various issues related to marijuana at both the federal and state levels, it is impossible to know when the state will enact amendments to the Act and adopt rules to implement it. That leaves municipalities in a potentially vulnerable spot if they do not have a moratorium in place, or adopt zoning amendments to outright prohibit all retail (adult use) marijuana uses.

Therefore, (with one exception) work has yet to begin on drafting zoning amendments to deal with regulating the three retail marijuana uses Town Council has previously stated might be acceptable in Hampden: cultivation, product manufacture, and testing. The exception is that in the draft zoning amendments to Article 3, these uses are all included in the use table as prohibited in all districts. After the state completes work on the Act and the rules, this can be amended and specific regulations pertaining to these uses can be added. Again, the timing of that is uncertain at this time.