



Town of Hampden  
**Planning and Development Committee**  
Wednesday July 19, 2017, 6:00 pm  
Municipal Building Council Chambers  
**Agenda**

1. Approval of June 21, 2017 Minutes
2. Committee Applications: Julie Johnston – Board of Appeals
3. Updates:
  - A. MRC/Fiberight
  - B. Staff Report
4. Old Business:
  - A. Colonial Heights Phase 3 – Conservation Easement
  - B. Carmel Road North, Medical Marijuana Update
5. New Business:
  - A. Quarterly Report - Recreational Marijuana
  - B. Good Neighbor Ordinance – at the request of Councilor Wilde
6. Zoning Considerations/Discussion: None
7. Citizens Initiatives
8. Public Comments
9. Committee Member Comments
10. Adjourn



Town of Hampden  
**Planning and Development Committee**  
Wednesday June 21, 2017, 6:00 pm  
Municipal Building Council Chambers  
**Minutes - Draft**

Attending:

Committee/Council

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

Staff

Angus Jennings, Town Manager  
Karen Cullen, Town Planner

Public

Jennifer Austin  
Jim Kiser  
Valerie Webster  
Cynthia and Peter Herrick

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

1. Approval of May 17, 2017 Minutes – **Motion** to approve as submitted made by Councilor Sirois with second by Councilor Marble; carried 6/0/0.

Note, there was no P&D Committee meeting on June 7, 2017.

2. Committee Applications: Jennifer Austin, for Alternate seat on the Planning Board. Ms. Austin stated she has lived in Hampden for 12 years and has done some volunteer work, and wants to serve the town by joining a board. She added that she is a project manager and is used to working with people.

**Motion** to refer Jennifer Austin's application for an Alternate seat on the Planning Board to the Town Council made by Councilor Marble with second by Councilor Sirois; carried 6/0/0.

Manager Jennings added that this will go to Council at the July 17<sup>th</sup> meeting, after which Town Clerk Paula Scott will contact Ms. Austin to come in to get sworn in. He added the Planning Board is meeting July 12<sup>th</sup> and she is welcome to attend that meeting.

NOTE: Agenda items were taken out of order.

3. Updates:

- a. MRC/Fiberight: Manager Jennings reported that Craig Stuart Paul of Fiberight will be in town tomorrow and will be meeting with the Hampden Water District and later with town

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staff. They are preparing to submit the building permit application and staff has provided a list of items they need to take care of in order to get that permit. Manager Jennings also reported that the question of what the facility is going to be categorized as when it initially opens is up in the air and is under review by DEP; MRC/Fiberight are proposing to phase the operation of the facility such that the “wet” end of the processing will not begin for some as yet undefined number of months after the facility opens. The question is whether, before the “wet” end is operational, the facility’s operations would be in compliance with the approved Planning Board Order, or would in effect be operating as a transfer station. Manager Jennings noted he has informed MRC/Fiberight’s consultant of the pending zoning amendment regarding transfer stations. He reported that he will be part of a conference call with DEP, MRC and Fiberight next week and is aware that DEP is reviewing the proposed phasing, and he advised that Town staff will look to DEP given its subject matter expertise to determine whether the proposal is in compliance with the permits.

It was also noted that the water line has been completed up Coldbrook Road, and the Hampden Water District will be installing hydrants in the near future. Site work on the road and infrastructure into the site from Coldbrook Road has resumed.

- b. Staff Report:
  - i. Planner Cullen said the reports on what development activity is going on in town were provided in the packet, and asked the committee what information they would like to see in the building permit report. Mayor Ryder said all he wants is the planning report, the building permits report is not necessary. Staff noted the building permit reports can be produced quickly and easily and can be available upon request. The planning report, showing applications to the Planning Board, will be provided in each packet. The committee was pleased with this work and said it will help them stay apprised of ongoing development projects.
  
- 4. Old Business: None.
  
- 5. New Business:
  - a. Colonial Heights Phase 3, Conservation Easement. Jim Kiser was present to discuss the request for the town to accept the conservation easement on 12.33 acres of land within the proposed subdivision. The easement is a requirement of ME DEP for wetland mitigation for phases 2 and 3 of the housing development. Main points of the discussion were:
    - i. Reeds Brook runs through this easement area.
    - ii. There are other options to meet DEP’s requirement if the town doesn’t want to accept the conservation easement; the proponent needs to know soon so they can pursue other options if necessary.
    - iii. The proponent (Cushing Family Corporation) may request the Town to accept the land (ownership) in the future, as an open space parcel.
    - iv. This land abuts a small (2.45 acre) parcel owned by the Town which was given as open space for phase 2.

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- v. Liability for someone getting injured on the property remains with the land owner; as holder of the easement the Town would not have liability.
  - vi. The conservation easement as written does not allow public access to the area.
  - vii. Permitted uses includes construction of trails for education or recreation.
  - viii. Council is concerned about this given the potential ramifications that arose when reviewing the proposed conservation easement for the MRC/Fiberight project.
  - ix. Land Trusts (as holders of easements) usually require more restrictions than this easement has.
  - x. Councilor McAvoy expressed concern that more developers who are trying to develop marginal land will ask the Town to help them mitigate wetland impacts on their projects, which might result in more development than could happen if such mitigation wasn't done – that by having the Town hold easements, we are contributing to increased impacts on wetlands. Jim Kiser responded that developers need to do this in order to have economically viable projects, and given the condition of the land it is usually low value anyway so further lowering the value with a conservation easement has a small impact on the tax base.
  - xi. The preservation of this area will continue the green corridor along Reeds Brook which could extend from Route 1A over to Mayo Road.
  - xii. Most Councilors felt this easement might be acceptable, with low risk to the Town and a small amount of resources needed to handle it, but want further research and review by staff to know exactly what the impact to staff will be if it is accepted.
  - xiii. Chairman McPike requested that this come back to the P&D Committee on July 19.
- b. Stormwater Presentation – Planner Cullen gave a presentation (“Stormwater 101”) reviewing the MS4 General Permit and activities the town has done to comply with the requirements of the permit over the past year. The presentation was recorded and will be available to Councilors who were not able to attend the meeting tonight. This presentation is one of the requirements of the Permit.
- c. Environmental Mitigation Guidelines – Manager Jennings said staff had recently determined that the guidelines, regarding using land within the LL Bean parcel for wetland mitigation for private commercial or industrial development on other land, was never adopted by the Town Council. He said staff would like Council to decide whether they want to have such a written policy or not, so we can take the appropriate action to fulfill that decision. Discussion points:
- i. These guidelines were drafted by a previous planner when the business park was being developed, as an option for on-site wetland mitigation.
  - ii. Part of the proposal put before voters in the purchase of the LL Bean parcel was that the land would be used for commercial or industrial development. These guidelines were developed to allow wetland mitigation specifically for commercial or industrial development since the town realized much of the LL Bean parcel is basically undevelopable.
  - iii. The committee is in favor of staff going through this and putting it into official form for adoption by Council.

- iv. Councilor McAvoy requested that the 50% of the ILF (“in lieu fee”) noted in item 10 of the draft guidelines be re-examined; perhaps a higher percentage would be more appropriate. He noted 50% is quite generous to the developer.
- v. Manager Jennings noted this is not a particularly time sensitive item and will probably not be back to the committee until this fall.

6. Zoning Considerations/Discussion:

- a. Planner Cullen reported that at this point, the Town does not have an Official Zoning Map which is an accurate reflection of the zoning districts. While many maps have been produced since the last Official Map was done (in 1979), none have been signed by the Town Manager and Town Clerk as required by the Zoning Ordinance. Rather than try to research every map amendment since 1979, staff recommends that the current map be taken through the amendment process, with public hearing at Planning Board and Town Council and a vote to adopt; the signatures required will then be added and each time the map is amended, a new one will be printed and signed.

**Motion** by Councilor Marble to refer the Zoning Map to the Planning Board for public hearing; seconded by Councilor McAvoy; carried 5/0/0.

7. Citizen Initiatives: None.

8. Public Comments:

Valerie Webster of 1325 Carmel Road addressed the committee regarding activity at 1334 Carmel Road involving the growing of marijuana. She submitted four documents to the committee, attached as Exhibits:

- Exhibit A: Letter from Jeremy and Sheila Williams (previous owner of the land in question)
- Exhibit B: Talking Points from Valerie Webster
- Exhibit C: Article regarding marijuana in Denver Colorado
- Exhibit D: Article “Grass Is Not So Green: Marijuana Has A Huge Carbon Footprint”

The main point of the letter from Mr. Williams is that he sold his property to people who he believes are dishonest and deceptive, and is afraid they are planning to turn the property into a commercial marijuana cultivation facility. He does not believe that is consistent with the traditional values of the community and hopes the Town Council will not allow such activity in Hampden.

The main point of the comments from Ms. Webster is that she is very concerned about the future use of this property and the potential for commercial cultivation of marijuana at this site. Her concerns include impact on property values, the environment (the wildlife, stream, groundwater supply), neighborhood (noise, lights, odors), traffic, and security. She questioned whether commercial cultivation will be allowed here, and if so, what the review

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and approval process will be for the site and the buildings (greenhouses). She urged the town to conduct an in depth investigation into this matter.

Cynthia Herrick of 1348 Carmel Road said she is concerned about her well and the potential depletion of the aquifer. She is also concerned about her property value, they want to sell their house and are afraid they won't be able to with this activity next door. Her husband Peter questioned whether this area was Rural or Rural Agriculture. He stated the road is in poor condition and it is a very busy street with a lot of truck traffic. He requested the town further research this.

Discussion points:

- Ms. Webster reported that she had spoken with the Public Safety Director and that he had advised her that the state has done an inspection of the property recently and apparently found no violations.
- Medicinal marijuana regulations require each plant to be labeled with the patient's information, and is limited to 6 plants per patient.
- Question raised as to whether they would need a permit under the Use of a Residence for Business Purposes regulations (§4.10 of the Zoning Ordinance) to sell medical marijuana out of the property.
- There has already been an increase in traffic to the site.
- The Council's Resolution on marijuana requires quarterly updates and the first will be at the July 19<sup>th</sup> meeting of the P&D Committee.
- Many of the concerns brought forth tonight are based on the assumption that there will be a commercial marijuana cultivation facility there, and that is an unknown at this point – the Town has not made any decisions on the allowance or regulation of such facilities. It was noted that this is both a land use issue regulated by Zoning and, if the Council so directs, a licensing matter that would include review of the particular applicant or operator.

Manager Jennings said staff will look into the current operation to determine what is permitted currently and whether the activity is in compliance with that. Meanwhile staff continues to work on the whole issue, which includes licensing issues as well as zoning.

9. Committee Member Comments: None.

10. Adjournment: **Motion** to adjourn at 8:06 pm by Councilor Marble; seconded by Councilor McAvoy, carried 5/0/0.

Respectfully submitted by  
Karen Cullen, Town Planner

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P+D Committee Meeting  
Exhibit A  
6.21.2017

Jeremy and Sheila Williams (Formerly of 1334 Carmel RD N, Hampden)  
310 SW Airpark Glen  
Lake City, FL 32025

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23 Porter Street  
Searsport, ME 04974  
June 20, 2017

Hampden Town Council  
Planning and Development Committee  
Town of Hampden  
106 Western Ave  
Hampden, ME 04444

Dear Hampden Town Council:

I wish to sincerely apologize to my friends and former neighbors on Carmel Road North after having sold Oak Spring Farm. As you may know, Sheila and I operated an airstrip with tie downs and hangar where we operated a part time business restoring classic aircraft. The property as conditionally zoned for such activities. I also apologize for the length of this letter but I felt I need to fully illustrate the back ground of my concern.

Almost two years ago, I accepted an appointed position with the Jacksonville Electric Authority in Jacksonville Florida. At that time, we placed Oak Spring Farm on the market because we had bought a home in an airpark in Lake City Florida, and also retained a small cottage in Searsport for us to stay in on visits to Maine and after we retire. Maintaining three properties was a financial hardship, so we had to rent the Hampden Property to meet costs and keep up the maintenance until it sold.

We had quite a few renters in that year and a half before we sold the house. All were excellent tenants until we encountered the current occupants. Matthew Davidson and his wife Laura contacted us about renting and perhaps buying the farm. They were from New Jersey, and were currently living in Charleston, South Carolina. Matthew expressed his interest in bringing their two small children up in a wholesome community such as Hampden, and expressed an interest in growing vegetables and raising livestock. Although not a pilot, he also expressed an interest in maintaining the airstrip and learning to fly. He said he had just sold a baseball training center in New Jersey and had some cash in the bank and was going to wait for his credit to settle.

Matthew said all of the things that led me to believe he would be a good steward of the land. I mentioned to him that I always allowed people to access and enjoy my property provided they follow the rules. He said if he bought the place he would continue that tradition. I later found out that was lie.

Matthew moved in December 1st and Laura and the small children joined him later that month. He had signed a standard rental agreement that simply stated they would not alter anything in the house or on the property without our express written permission.

Matthew represented that he and partner were starting another baseball training center in Charleston, South Carolina and were going back and forth.

Sheila and I drove up to Maine for the Christmas Holiday. We went to the property to remove some items out of the garage to enable them to stack some firewood in there (they a load dumped in the driveway adjacent to the garage). Matthew also asked me if he could use a room in the garage for a workshop. I said he could and told him I would have my son come and connect the heating register in the garage so it would be heated. While I was there at a later time, I noticed some brand new ducting, fans and light fixtures in the mud room. I asked him and his partner (who he introduced as Richard Mudd) what those were for. He told me they were small hydroponic growing equipment for cultivating tomatoes. I guess I take people at face value because at first I believed this story. At this time I felt I should finish the upgrade to the subpanel in the garage to provide a safer electrical load. I noted that they had sealed off the egress door to the garage with an insulating panel and sealed it with spray foam. Noting this as a violation of the rental agreement, I told Matthew to cease any more alterations of my house. He insisted that he was buying the place and that he had the money all arranged. I was firm in insisting he not do any more changes, since he hadn't put up any earnest money or signed a contract. I discovered later he had continued to install the equipment.

The next day my son came and connected the heat to the room. My son saw some of the equipment installed. At that time, he told my son he planned on cultivating marijuana in the room. My son called and informed Sheila about their plan and she called him and reiterated what I had told him. At that time, he insisted he was going to purchase the place and was in the process of putting together the money.

In the meantime, my brother struggled to plow the driveway. The woodpile was in a place that interfered with proper snow removal. The walkways weren't shoveled properly (their responsibility in the rental agreement). They never moved the wood in the garage despite my requesting they do so on numerous occasion because of the hazard of inadequate snow removal.

The firewood became incased in ice from a storm. The snow and ice buildup around the house was becoming a hazard. All the while I heard repeatedly from Matthew and Richard how they had the money to purchase the place. Finally, I served them with a letter of violation of rental agreement which gave them 15 days to return the garage to the way it was and if they were to continue to rent the property, they would make no changes without authorization. Matthew then sent me cards and certifications that he had a prescription for medical marijuana and that he was legal to grow it. I told him he was not to grow it on my property while I still owned it. Period. I also told him I had two interested parties in the property. One was a gentleman who fell in love with the place while assigned to BGR as an aircraft inspector. He hadn't moved on the property yet because he was waiting for his company to sign a more permanent contract at C&L aviation. The second party was flying in from Wyoming in two weeks to view the property. They were going to be teaching at the University of Maine.

This new apparently motivated them, because I got a call from an attorney by the name of Mike Gruenloh in Charleston who said he represented a Mr D. Loy Stewart, President and Chairman of the Board of Detyens Shipyards in Charleston. Mike apologized for the run-around that I had been going through and conveyed that it was Mt Stewart who was buying the property. After some negotiation, a purchase agreement was signed and a closing was set for February 17, 2017. He also told me Mr Stewart was an elderly man who suffered

from ALS, but had connections to Richard Mudd through Richard's father. He as supposedly financing their baseball ventures.

Sheila and I flew to Maine to clean out the house and the hangar so that they would have unfettered access to everything on the day of closing. All the while we were removing items inside and outside (as much as snow cover would allow) Matthew insisted he was going to be a good steward of the property. Noontime on the 17th arrived and as we were loading the last of our personal property, I got a call from Mr. Mudd. He stated that they weren't able to get the money to the closing by close of business and asked for another week. I said, no, were going to show the property to the Wyoming couple and if they made a reasonable offer I would accept it. At this point my trust in their word was waning and I was tired, cold and sick of the diatribe. Mr. Gruenloh called me later in the day and pleaded for me to close on the property the following week and agreed to forfeit the earnest money as a fee. I stupidly agreed despite my uneasiness. We closed on the following Friday.

As entitled by the purchase agreement, Sheila and I returned to the property on June 9<sup>th</sup> to retrieve the rest of our personal property and equipment that was buried in snow when we were there in February. The place was a mess and the runway was not mowed. They had a man named Mark working there cleaning up and mowing. He told me they (Matthew and company) had rutted the runway up in the spring with their SUV's and make quite a mess down by the spring. Sheila found the hand carved Oak Spring Farm sign removed from its post and discarded on the ground. I inquired about the Lake Aircraft Corporation sign that was on the wall in the hangar. The Mark indicated that it had been burned. The sign was an artifact from the Lake Aircraft Factory in Sanford Maine. My Hangar was originally part of that hangar that was torn down after Lake went defunct.

While retrieving some staging from the back of the hangar, I could not help but notice that the windows and doors were blacked out on the hangar and they had installed mini split heat pumps on the east side of the hangar. Mark told Sheila that their intention was to put greenhouses down along the old runway and start growing marijuana commercially. He also told her they were cultivating "medical marijuana" in the hangar and they had all kinds of lawyers working on pulling the trigger once the state puts the regulations together.

So why am I concerned? I got my money, after all, right? I'm concerned because I grew up on that farm. I appreciated and loved my neighbors. So much so I ran for and was elected to the Hampden Town Council to help protect their property rights. I still believe in individual property rights and support any activities that don't harm or hurt a neighbor, cause unnecessary noise or pollution or devalue their property. So why am I upset about these people growing so-called "medical marijuana"? Because that is not their intention. They are dishonest and cannot be trusted. They lied to us from the start. I made a mistake. I had every right to refuse the sale of the property to them. I wasn't in a dire position financially. They were deceptive.

It appears there are news articles about the "carpetbaggers" converging on Maine to cash in on the legalized marijuana market. I would be disappointed if Hampden allowed such an activity, especially from these people who have a line bull feces that is never ending. I believe that the current Maine laws regarding the growing of medical marijuana are a joke and all one has to do is doctor shop to get a prescription.

Hampden Town Council

June 20, 2017

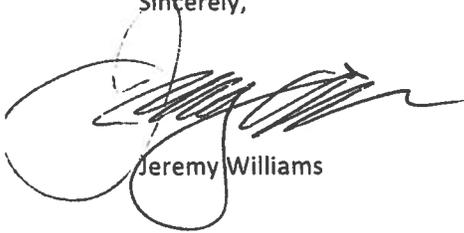
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Again, I apologize to my neighbors and friends who have expressed concerns about what is going on there. I wish I could go back in time and reverse my decision. If I could, there would be a pilot/mechanic and his wife, a teacher, living in the home and maintaining the place in the tradition that Sheila and I have done for the last 15 years. The contract was signed and they are moving to Maine.

I am in hopes that the council can draft and pass an ordinance to keep this kind of activity out of Hampden to preserve the traditional values and security of the residents. I wanted the council to be aware of how deceptive and dishonest these people can be. Please remember my experience should you be approached with a request for conditional use.

Hampden will always be my true home.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Williams', with a large, stylized flourish extending to the left.

Jeremy Williams

June 21, 2017 Talking Points

Good Evening my name is Valerie Webster and I reside at 1325 Carmel Rd N in Hampden. I have been a tax paying citizen of Hampden for over 35 years. We have had 5 children graduate from Hampden Academy and 4 grandchildren with 2 more attending Hampden schools. I want to thank you for allowing me to address the Council and the public on the Commercial Cultivation of marijuana in Hampden, Me. Specifically, the commercial cultivation of marijuana at 1334 Carmel Rd N, Hampden. Me. I have several concerns and questions for the council.

1. How will commercial cultivation at 1334 Carmel Rd North affect my property value? Will my property and the property of my neighbors be impacted negatively by the commercial cultivation of marijuana in our neighborhood? When I moved to 1325 Carmel Rd N in 2003 there was an airplane landing strip at 1334 Carmel Rd N. I knew there would be noise from airplanes and had no issue with the noise as the planes were used recreationally and mostly on the weekends. If there had been commercial cultivation of marijuana at 1334 Carmel Rd N, I can tell you I would not have purchased 1325 Carmel Rd N.
2. Will the town follow the States lead when and if the State issues rules and regulations on commercial cultivation of marijuana? Can the town tighten up the State rules if the town feels it is warranted? Will the town issue a moratorium on commercial cultivation of marijuana in Hampden until rules and regulations are in place? FYI one of the workers at 1334 Carmel Rd N revealed that there are a team of lawyers in place and the Corporation is ready to expand and move forward as soon as the state issues the green light.
3. What about the noise from exhaust fans in the greenhouses that need to be running continually in the summer, what about the noise from the alarm systems [motion detectors] going off all hours of the night from deer and other wildlife or intruders, what about the light pollution from grow lights that need to provide 18 hours of daylight on a continuous basis throughout the spring and summer months plus at least 12 hours of daylight on a continuous basis throughout the fall and what about fertilizer pollution of the soil and the Souadabscook Stream from the commercial cultivation in greenhouses?
4. What will be the setback of the greenhouses from the high way? If the greenhouses are to be built on the obsolete runway, will there be site planning as to where they will be built? The runway is 2500 feet long, will the greenhouses be sited at the further end, away from Carmel Rd N and neighboring properties?
5. Will there be rules/regulations adapted and put in place for the construction of said greenhouses?
6. Where is the tremendous amount of water [3 to 5 gallons per plant per day] to grow marijuana coming from? Will there be additional wells dug on the property and if there are additional wells on the property how will that impact my well that is over 300+ feet deep and recovers at less than a ¼ gallon a minute. Will they be able to pull water from the Souadabscook Stream [that is the back border of the property]? If they are allowed to pull water from the stream what rules/regulations will be in place for them?
7. In the Zoning Ordinances of Hampden 4.2 Customary Rural Business: To insure that the character of the rural area is not transformed from one which is rural, Customary Rural Businesses shall be operated and designed to blend in with the rural landscape. All Customary Rural Businesses shall be planned and operated and maintained according to

following standards. 4.20.1 the business shall be owned and operated by the property owner or a lease hold interest of a person or persons residing on the property. 4.20.2 The floor area devoted to a Customary Rural Business shall not exceed 2,000 square feet. 4.20.3 New structures or expansions of existing structures shall meet the following minimum architecture standards. 1. A pitched roof with a pitch of no less than 4 to 12 inches. 2. Exterior siding shall be limited to siding which is either wood clapboard or wood shingles, brick aluminum or vinyl siding which imitates clapboard or hardboard siding. Will these rules be enforced when the permits to build greenhouses on the obsolete runway are requested for the commercial cultivation of marijuana at 1334 Carmel Rd N?

8. How many workers are going to be employed? Other concerns about workers are: if the commercial cultivation of marijuana business is unable to find enough local workers will the business be engaging in hiring migrant workers? If this is the case, where will those employees reside?
9. What impact will the additional traffic have on our already busy and desperate road, Carmel Rd North also known as Route 69?
10. Are the Davidson's planning on residing at 1334 Carmel Rd North once the business is up and running or will they have a manager running the business and they will live elsewhere [reference 4.20.1 Ownership]?
11. There will be a state of the art security system installed which leads me to believe they are expecting to have security issues with the commercial cultivation of marijuana. I'm sure the security system is a requirement for the business. My point: Is the town of Hampden Police Department prepared to handle the extra enforcement that may be required with security/safety issues that may arise from the commercial cultivation of marijuana?
12. On April 5, 2017 Planner Cullen gave a brief summary of her memo [see the minutes from 4/5/2017 meeting]. My question is the council could see fit to prohibit retail sales and social clubs in Hampden, Me, but they could not see fit to prohibit commercial cultivation of marijuana at that same time? Why? I'm interested to know if Planner Cullen's recommendations to limit commercial cultivation of marijuana to industrial districts will be adopted. Also, There was discussion of limiting the number of facilities, has there been more development on that? Why did the council feel it was not necessary to enact a moratorium on commercial cultivation of marijuana but it was necessary to prohibit retail sales and social clubs? There was also a question as to whether the commercial cultivation of marijuana should be permitted in Hampden at all. Why did the council feel it was necessary to be conservative in dealing with the industry?
13. April 18, 2017 The resolution regarding Town of Hampden Policy Intent regarding Legalization of recreational Marijuana. The Town Council has directed the Town Manager to cause the Town Planner to amend zoning to prohibit two categories of the marijuana bill that was passed in November, retail sales and social clubs. The Council has also directed the Town Manager to cause the Town Planner to work on zoning amendment for regulations, locations, performance standard and abutter notifications for the cultivation, testing and manufacturing of marijuana. Where do we stand on the zoning amendments?

14. Will the commercial cultivation of marijuana be the only step in the recreational marijuana process allowed at 1334 Carmel Rd N or will the harvesting, curing and selling also be allowed?
15. Finally, to say I am disappointed in the medicinal growing of marijuana at 1334 Carmel Rd N is an understatement. I am, however, a conservative and have conservative values. I believe in free enterprise and I believe small business runs this world. What I am asking from the council is that my concerns and the concerns of my neighbors be considered and addressed before any commercial cultivation of marijuana is allowed at 1334 Carmel Rd N or any property in Hampden, Me. I feel that the commercial cultivation of marijuana is not what the agriculture status in the zoning ordinance had in mind. I think myself and my neighbors and Hampden residents deserve to be notified of applications to grown medicinal marijuana and the commercial cultivation of marijuana. It is very disheartening to find out "after the fact" medicinal marijuana is already being grown at 1334 Carmel Rd N. My hope is to stop the commercial cultivation of marijuana at 1334 Carmel Rd N and other properties within Hampden, Me or at the very least to have as moratorium enacted to put on hold and commercial cultivation in Hampden until rules and regulations are in place by the State of Maine and the Hampden Council has had time to research the rules and regulations and tighten them up if necessary. The Town of Hampden has seen fit to prohibit marijuana retail sales and social clubs in Hampden. If the Town Council is uncomfortable with retail sales and social clubs why isn't the council uncomfortable with commercial cultivation in Hampden, also. Shouldn't the citizens in rural zoning be entitled to the same consideration in this matter as Main Street citizens? Perhaps, if we had been notified of the application to grow marijuana in our neighborhood we could have been proactive in this matter instead we are now putting the cart before the horse.

Thank you for your time. I value your opinions, before moving forward on the commercial cultivation of marijuana in Hampden I would appreciate an in depth research and investigation into this very disconcerting matter. I look forward to the outcome of the issues raised by Planner Cullen in the 04/05/2017 meeting.

Sincerely,  
Valerie Webster  
1325 Carmel Rd N  
Hampden, Me 04444  
207-862-4026

DENVER (AP) — Take a black-market business that relies on cash. Move the business out of the shadows by giving it government oversight. Hire new regulators to keep watch on the business, all without any experience regulating a brand-new industry.

The result can be a recipe for government corruption.

Recent cases in Colorado and Washington are the first known instances of current or former pot regulators being accused of having improper dealings with the industry. The two recreational marijuana states are the nation's oldest, approving legal weed in defiance of federal law in 2012.

A pair of cases several years into the legal-weed experiment might not seem like much, but they give a black eye to all marijuana regulators and fuel old fears about the criminal element's influence.

In a case that has caught the U.S. Justice Department's attention, former Colorado marijuana enforcement officer Renee Rayton is accused of helping pot growers raise plants for illegal out-of-state sales.

State investigators say the marijuana warehouse inspector quit her job last year and immediately went to work for the illegal pot ring, taking an \$8,000-a-month job.

A June 7 indictment says Rayton told the pot growers she could help them "get legal" through her contacts at the Colorado agency that oversees the marijuana industry. The indictment says Rayton had "vast knowledge" of marijuana regulations and "must have been aware" that other defendants in the case were growing pot illegally.

She is charged with conspiracy to illegally grow pot. Rayton's attorney told The Associated Press she is innocent.

In Washington, the state agency that regulates pot recently fired an employee who leased land to a prospective pot grower.

Marijuana licensing specialist Grant Bulski was leasing 25 acres to a marijuana entrepreneur for \$2,834 a month, The Spokesman-Review reported . That violated Washington rules prohibiting state pot regulators from having a financial stake in the business. Bulski was not charged with a crime.

Messages left at numbers for a Grant Bulski in Olympia weren't returned.

Pot isn't the first product in the U.S. to go from illegal to legit. Alcohol and gambling made similar transitions last century.

But since recreational pot remains off-limits in most states and in the U.S. government's eyes, a massive black market remains.

"Marijuana is unique because it's so front and center in the public eye," said Lewis Koski who became Colorado's top marijuana enforcement officer after reulating the

gambling and alcohol industries.

Now a government consultant who teaches public policy at the University of Colorado-Denver, Koski said government employees who regulate any business face tension. Regulators know the industry they're monitoring well. And in the case of the marijuana business, those regulators have no guidance from federal authorities and little precedent to rely on.

And because the federal government considers all pot business illegal, making it difficult for those businesses to access banking products as basic as checking accounts, the pot industry remains cash-heavy.

U.S. Attorney General Jeff Sessions cited the Colorado case last month when he asked Congress not to renew a spending provision that prevents the Justice Department from spending tax money to interfere with state marijuana laws and businesses.

"It would be unwise for Congress to restrict the discretion of the Department to fund particular prosecutions," Sessions wrote in the letter first obtained by cannabis social network Massroots.com.

The Colorado and Washington cases were uncovered by state officials, not federal drug authorities. They highlight how critical it is for states to tightly regulate a business still coming out of the black market, Koski said.

"Both sides — government agencies and the industry — are working hard to establish credibility," Koski said. "So it makes it more concerning when you have people going back and forth."

Ethics watchdogs say the Colorado and Washington cases should spur pot states to beef up ethics commissions charged with monitoring conflicts of interest by government employees. Michigan, a medical-marijuana state, passed a 2016 law banning even relatives of its pot oversight board members from having any financial stake in the weed industry.

Poorly staffed ethics offices in some marijuana states aren't prepared to stop regulators leaving to work for the industries they once monitored, said Aaron Scherb, national legislative director for the government watchdog group Common Cause.

6/21/2017

As pot comes out of black market, regulators face scrutiny - news - TDS

"It's like trying to keep water out of a sinking boat — you can do it for a while, but it's only a matter of time," he said.

# The Green Economy Post



(<http://greeneconomypost.com/>)

**GREEN BUSINESS**

([HTTP://GREENECONOMYPOST.COM/CATEGORY/GREEN-BUSINESS](http://greeneconomypost.com/category/green-business)) ·

**POLICY (HTTP://GREENECONOMYPOST.COM/CATEGORY/POLICY-POLITICS-GOVERNMENT)**

## Grass is Not So Green: Marijuana Has a Huge Carbon Footprint

By Tracey de Morsella (<http://greeneconomypost.com/author/admin>) on

3 Comments



([http://greeneconomypost.com/marijuana-huge-carbon-footprint-14116.htm/indoor\\_marijuana-weed\\_cannibis](http://greeneconomypost.com/marijuana-huge-carbon-footprint-14116.htm/indoor_marijuana-weed_cannibis)) **The yearly greenhouse-gas pollution of the \$40 billion per year marijuana industry is responsible for about 3% of all electricity use or 8% of household use. Indoor growers use high-intensity lights that are 500 times more powerful than a standard reading lamp. They also use several other high energy industrial practices. The closest comparison for these massive, industrial-style grow facilities are data centers, which consume about two percent of the nation's electric power.**

**by Tracey de Morsella, Green Economy Post**

It turns out that grass (Marijuana) is not all that green, particularly if it is grown indoors. Evan Mills, Ph. D

(<http://www.linkedin.com/pub/evan-mills/b/ba4/743>), a longtime energy analyst at the U.S. Department of Energy's Lawrence

Berkeley National Laboratory (<http://eetd.lbl.gov/>), last week released his independent study that examined the carbon footprint of the indoor marijuana industry.

In his report, *Energy Up in Smoke: The Carbon Footprint of Indoor Cannabis*, ([http://evan-mills.com/energy-associates/Indoor\\_files/Indoor-cannabis-energy-use.pdf](http://evan-mills.com/energy-associates/Indoor_files/Indoor-cannabis-energy-use.pdf)) Mills reports that indoor Marijuana production, considered the largest cash crop in the U.S., with an annual production value estimated at about \$40 billion, uses 1% of the nation's entire electricity consumption. This comes to energy expenditures of \$5 billion per year. This is due to the fact that Cannabis production has for the most part shifted indoors, where it is out-of-sight of law enforcement. This is particularly the case in California, which is the top producer among the 17 states to allow cultivation for medical purposes, where medical marijuana growers use high-intensity lights. These lights are usually reserved for operating rooms that are 500 times more powerful than a standard reading lamp.

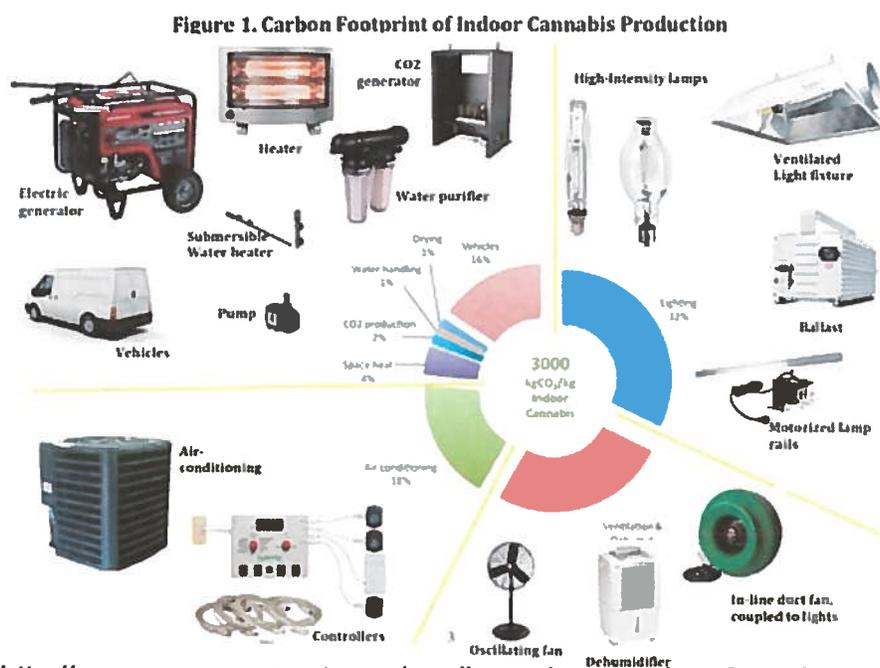
Also driving the large energy requirements are 30 hourly air changes (6 times the rate in high-tech laboratories, and 60 times the rate in a modern home). The closest comparison for these massive, industrial-style grow facilities are data centers, which consume about two percent of the nation's electric power.

"The yearly greenhouse-gas pollution", Mills wrote. "the practice is responsible for about 3% of all electricity use or 8% of household use.

Marijuana production has raised other environmental concerns. Each Marijuana plant said to need between 3 and 5 gallons of water per day to grow to fruition, which significantly raises its carbon footprint. The Bay Citizen (<http://www.baycitizen.org/marijuana/story/are-there-pesticides-your-pot/>), a San Francisco publication, reported last year on the risk of pot being tainted with pesticides used by growers. Even though 17 states allow growing Marijuana for medical purposes, it is a controlled substance under federal law and U.S. regulatory agencies do not supervise how it is grown or monitor the pesticides used in its cultivation. Mills also notes that marijuana growers often raise indoor carbon dioxide levels to four-times natural levels to boost plant growth.

Broken down to the individual level, one Cannabis cigarette represents 2 pounds of CO<sub>2</sub> emissions, an amount equal to running a 100-watt light bulb for 17 hours with average U.S. electricity. It has the greenhouse gas impact of driving 15 miles in a 44-mile-per-gallon car.

Mills, a member of the U.N. Intergovernmental Panel on Climate Change, compiled his data from open literature and interviews with horticultural equipment retailers. He conducted the study quantify a previously undocumented component of energy demand in the United States, to understand the underlying technical drivers, and to establish baseline impacts in terms of energy use, costs, and greenhouse-gas emissions.



(<http://greeneconomypost.com/marijuana-huge-carbon-footprint-14116.htm/indoor-cannabis-energy-use>)

Mills writes in his report that criminalization contributes to inefficient energy practices. Compared to electric grids, off-grid power production often produced more greenhouse-gas emissions, requiring 70 gallons of diesel fuel to produce one indoor Cannabis plant, or 140 gallons with smaller, less-efficient gasoline generators. He also describes how long driving distances and odor suppression measures take away from ventilation efficiencies. Mills also points out that the huge carbon footprint is caused by the lights, fans, and air filters need for indoor cultivation. Outdoor weed plantations do not

have these types of energy use issues, and when managed correctly, do not have a significant environmental impact, but also suggests that there are solutions for indoor growers.

Mills observed that there are many reversible inefficiencies are embedded in current practices. "If improved practices applicable to commercial agricultural greenhouses are any indication, the energy use for indoor cannabis production can be reduced dramatically," he said. "Cost-effective efficiency improvements of 75 percent are conceivable, which would yield energy savings of about \$25,000/year for a generic 10-module growing room," he wrote.

ic Wesoff, at GreentechEnterprise (<http://www.greentechmedia.com/articles/read/pot-article/>) suggests pot cultivation's carbon footprint could be reduced by replacing metal halide and high-pressure sodium lights with more energy-efficient solid-state LED lighting. "This LED grow light site (<http://www.myhydroponicgardening.com/>) claims reductions in electricity usage of 40 percent to 75 percent compared MH or HPS lights. However, other sites in the indoor grow community have some reservations over the effectiveness of LEDs," he wrote.

***Mills provided the following recommendations for growers, communities, suppliers, utilities, regulators, and medical dispensaries:***

- Growers should be applying science to understanding how to achieve necessary environmental conditions in a less energy-intensive manner.
- Energy providers, policymakers, and forecasters need to better account for this particular driver of energy demand, and thus more accurately evaluate the effects of unrelated programs and policies on the consumption of energy at the macro scale.
- Planning and building officials at the city, state, and federal level may choose to seek better understanding of the energy consequences of this activity in their localities. Some (Berkeley ([http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/Ordinance%207,161.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_Commissions/Ordinance%207,161.pdf)), Boulder (<http://www.newsfirst5.com/news/boulder-requires-medical-pot-growers-to-go-green1/>), Fort Bragg (<http://city.fortbragg.com/pages/searchResults.lasso?-token.editChoice=9.0.0&SearchType=MCsuperSearch&CurrentA>) have already made steps in this direction.
- To support more responsible consumer decision-making, medical dispensaries should provide disclosure of product

carbon content and other dimensions of environmental footprint.

- Growers should select better, commercially available equipment.
- Designers and manufacturers of the energy-using equipment can more precisely analyze and consider the issues from an engineering and market standpoint.
- Utilities have already begun to recognize legal producers, granting them lower (agricultural) tariffs in exchange for safety inspections.
- Equipment vendors should develop even more efficient equipment, and educating their customers.
- Consumers and the general public can be more informed about the carbon footprint associated with this practice and better consider the environmental consequences of their actions.
- Growers should reduce the use of off-grid power generators fired with fossil fuels.

Visit Mills' web site (<http://evan-mills.com/energy-associates/Indoor.html>) to to read his study.

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 Bay Citizen (<http://greeneconomypost.com/tag/bay-citizen>), California (<http://greeneconomypost.com/tag/california>), Cannabis production (<http://greeneconomypost.com/tag/cannabis-production>), carbon footprint (<http://greeneconomypost.com/tag/carbon-footprint>), CO2 emissions (<http://greeneconomypost.com/tag/co2-emissions>), criminalization (<http://greeneconomypost.com/tag/criminalization>), data centers (<http://greeneconomypost.com/tag/data-centers>), diesel fuel (<http://greeneconomypost.com/tag/diesel-fuel>), energy demand (<http://greeneconomypost.com/tag/energy-demand>), Energy Up in Smoke: The Carbon Footprint of Indoor Cannabis (<http://greeneconomypost.com/tag/energy-up-in-smoke-the-carbon-footprint-of-indoor-cannabis>), environmental impact (<http://greeneconomypost.com/tag/environmental-impact>), Evan Mills (<http://greeneconomypost.com/tag/evan-mills>), GHG (<http://greeneconomypost.com/tag/ghg>), grass (<http://greeneconomypost.com/tag/grass>), green (<http://greeneconomypost.com/tag/green>), greenhouse gas (<http://greeneconomypost.com/tag/greenhouse-gas>), greenhouse gas emissions (<http://greeneconomypost.com/tag/greenhouse-gas-emissions>), high-intensity lights

(<http://greeneconomypost.com/tag/high-intensity-lights>), Indoor Cannabis (<http://greeneconomypost.com/tag/indoor-cannabis>), indoor cannabis production (<http://greeneconomypost.com/tag/indoor-cannabis-production>), Lawrence Berkeley National Laboratory (<http://greeneconomypost.com/tag/lawrence-berkeley-national-laboratory>), LED lighting (<http://greeneconomypost.com/tag/led-lighting>), Marijuana (<http://greeneconomypost.com/tag/marijuana>), medical marijuana (<http://greeneconomypost.com/tag/medical-marijuana>), off-grid power production (<http://greeneconomypost.com/tag/off-grid-power-production>), pesticides (<http://greeneconomypost.com/tag/pesticides>), pot (<http://greeneconomypost.com/tag/pot>), Tracey de Morsella (<http://greeneconomypost.com/tag/tracey-de-morsella>), U.N. Intergovernmental Panel on Climate Change (<http://greeneconomypost.com/tag/u-n-intergovernmental-panel-on-climate-change>), U.S. Department of Energy (<http://greeneconomypost.com/tag/u-s-department-of-energy>)

**Author: Tracey de Morsella (<http://greeneconomypost.com>)** (323 Articles)



Tracey de Morsella started her career working as an editor for US Technology Magazine. She used that experience to launch Delaware Valley Network, a publication for professionals in the Greater Philadelphia area. Years later, she used the contacts and resources she acquired to work in executive search specializing in technical and diversity recruitment. She has conducted recruitment training seminars for Wachovia Bank, the Department of Interior and the US Postal Service. During this time, she also created a diversity portal called The Multicultural Advantage and published the Diversity Recruitment Advertising Toolkit, a directory of recruiting resources for human resources professionals. Her career and recruitment articles have appeared in numerous publications and web portals including Woman Engineer Magazine, Monster.com, About.com Job Search Channel, Workplace Diversity Magazine, Society for Human Resource Management web site, NSBE Engineering Magazine, HR.com, and Human Resource Consultants Association Newsletter. Her work with technology professionals drew her to pursuing training and work in web development, which led to a stint at Merrill Lynch as an Intranet Manager. In March, she decided to combine her technical and career management expertise with her passion for the environment, and with her husband, launched The Green Economy Post (<http://greeneconomypost.com>), a blog providing green career information and covering the impact of the environment, sustainable building, cleantech and renewable energy on the US economy. Her sustainability articles have appeared on Industrial Maintenance & Plant Operation, Chem.Info, FastCompany and CleanTechies.

- 1. The minimum age to grow is 21**
- 2. You can possess an unlimited number of seedlings**
- 3. You can have no more than 12 immature marijuana plants**
- 4. You can have no more than 6 flowering marijuana plants**
- 5. You can keep the entire harvest of your 6 plants**
- 6. Indoor growing must be completed in your own residence**
- 7. Outdoor growing can be on your property or on a friend's property with written permission**
- 8. Outdoor grows must not be visible without the aid of binoculars or aircraft**
- 9. Plants must have an identifying tag that includes a driver's license or identification number**

The Maine Legislature's Marijuana Legalization Implementation Committee is expected to meet throughout the summer and into the fall or winter, reviewing the experiences of other legalization states and poring through nearly 50 cannabis-related bills. The committee plans to present next year's Legislature with a lengthy list of recommendations on regulations, licensing and law enforcement before the opening of retail stores.



Check One:  Initial Application  
 Reappointment Application

TOWN OF HAMPDEN  
APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: Johnston Julie A  
LAST FIRST MI

ADDRESS: 6 Independence Ave Hampden 04444  
STREET TOWN ZIP

MAILING ADDRESS (if different): \_\_\_\_\_

TELEPHONE: 207/951-0852 \_\_\_\_\_  
HOME WORK

EMAIL: julie.johnston0852@gmail.com

OCCUPATION: manager

BOARD OR COMMITTEE PREFERENCE:  
FIRST CHOICE: Board of Appeals

SECOND CHOICE (OPTIONAL): \_\_\_\_\_

How would your experience, education and/or occupation be a benefit to this board or committee?  
I have served on this board twice before and feel I would be an asset to the board.

Are there any issues you feel this board or committee should address, or should continue to address?  
No

3 YEAR

BOARD OF ASSESSMENT REVIEW  
PERSONNEL APPEALS BOARD  
LURA HOIT MEMORIAL POOL  
HARBOR COMMITTEE

DYER LIBRARY  
RECREATION COMMITTEE  
BOARD OF APPEALS  
HISTORIC PRESERVATION COMMISSION

5 YEAR  
PLANNING BOARD

JUL 1 1 2017

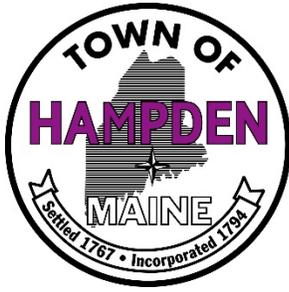
<b>FOR TOWN USE ONLY</b>		Date Application Received: _____
COUNCIL COMMITTEE ACTION: _____	DATE: _____	
COUNCIL ACTION: _____	DATE: _____	
<input type="checkbox"/> NEW APPT	<input type="checkbox"/> REAPPOINTMENT	DATE APPOINTMENT EXPIRES: _____

## Project List - Planning

Project Name	Location	What it is	Size <sup>1</sup>	PB Action/Date
Fiberight	off Coldbrook	solid waste processing	153,800 sq ft	Approved
Hannibal Hamlin Place	Main Road N	expansion	2,800 sq ft	Approved
Pine Tree Food Equipment	Nadine's Way	new building/business	3,600 sq ft	Approved
Dennis Paper	Mecaw Rd	expansion	27,237 sq ft	Approved
Colonial Heights	off Constitution	phase 3 of subdivision (final plan)	11 new lots	9-Aug
Carver	Ballfield Rd	conversion of single family to two family	1 new unit	Approved
Sky Villa	646 Main Road N	conversion of interior to 10 short term rehab beds	3,172 sq ft	9-Aug
Brickle	326 Main Road N	conversion of single family to two family	1 new unit	9-Aug
Southeast Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	9-Aug

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



Town of Hampden  
Land & Building Services

Memorandum

To: Planning & Development Committee  
From: Karen M. Cullen, AICP, Town Planner *KMC*  
Date: July 17, 2017  
RE: Colonial Heights Phase 3 Conservation Easement

This item was before the P&D at the June 21 meeting; the committee requested additional research be done to determine the amount of staff resources that would be required to hold the easement. Councilor McAvoy had expressed concern that the Town is enabling developers to develop marginal land that would otherwise be undevelopable.

To the first concern, staff has reviewed the conservation easement language and believes the annual resources will be minimal – at most it would involve a site visit to see the property which would take no more than four hours. With the snowmobile trail running through the easement area, communication between the snowmobile club and staff could eliminate the need for a site visit. Specific tasks for which the Town will be responsible include:

- Review and approval of applications for maintenance activities including such things as removal of dead trees, pruning, removal of invasive species, planting vegetation to enhance wildlife habitat, grading and landscaping as required by DEP and the Town, maintaining the snowmobile trail and structures, building paths, and allowing motorized vehicles on the property for maintenance work purposes.
- Perform site visits as needed to determine compliance with the conservation easement.
- Notify the Grantor of any breach of the terms of the easement and perform follow-up work to ensure any damage is repaired.

It should be noted that the Grantor (Cushing Family Corp) has the primary responsibility for the enforcement of the easement, the Grantee (Town) has secondary responsibility, and the DEP has third party responsibility – meaning if both the Cushing Family Corp and the Town fail to enforce the terms of the easement, DEP can step in to enforce it.

The second concern may be true conceptually, but in reality if the Town decides not to hold such easements, the developers would still have the option to use this mechanism to develop properties where there will be wetland impacts; they just have to find other entities to hold the conservation easement. It should be noted that this requirement from DEP is based on the larger Colonial Heights development, not just this phase with eleven new lots.

## CONSERVATION EASEMENT

### RECITALS

BY THIS INDENTURE, made this \_\_\_\_\_, day of \_\_\_\_\_ 2017, by **The Cushing Family Corp** (hereinafter referred to as the “Grantor” which word, where the context requires, includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor’s executors, administrators, legal representatives, devisees, heirs, successors, assigns, lessees, tenants and other occupiers and users) with address of PO Box 211, Hampden, Maine, is the owner in fee simple of certain real property located in the Town of Hampden, County of Penobscot, (hereinafter “Property”) more particularly bounded and described in deed recorded in the Penobscot County Registry of Deeds in Book 11966, Page 60.

and;

WHEREAS, the Grantor intends to grant a Conservation Easement over a portion of the Property more particularly bounded and described as follows:

*[See Attachment A]*

(hereinafter “Easement Area”); and

WHEREAS, the **Town of Hampden**, a municipality, having a principal place of business at (address), Maine (hereinafter referred to “Grantee” which word shall include all successors, assigns, agents and designees) has determined that it would be in the public interest to retain, maintain, and preserve that portion of the Property designated as the Easement Area as open space, in its natural state; and

WHEREAS, Grantor is willing, in consideration of the need to preserve the natural, scenic, aesthetic and special character of the property, desires to conserve and protect the property as a natural habitat for birds, wildlife, plants and similar ecosystems, the Grantor hereby grants in perpetuity to the Grantee, a conservation easement (hereinafter “Easement”) on the Property; and

WHEREAS, MRSA Title 33, §477 permits the creation of a conservation easement; and

WHEREAS, the Grantee agrees, by accepting this grant, to honor the intention of the Grantor as stated herein, and to preserve and protect in perpetuity the conservation values of the Property;

WHEREAS the State of Maine by and through its Department of Environmental Protection (MDEP), (hereinafter referred to as the "Third Party") will receive Third Party Rights of Enforcement under this Easement

NOW THEREFORE, be it known that **The Cushing Family Corp**, does hereby grant, release and dedicate to the **Town of Hampden** a conservation easement in perpetuity over the Easement Area.

1. PURPOSE

The Easement is hereby granted exclusively for the following conservation purposes:

- a. To have the Property remain in its present natural and open condition in order for it to fulfill its present historic, scenic, vegetative, wildlife and/or hydrological functions.

2. USE LIMITATIONS

Grantor intends that this Easement will confine the use of the Easement Area in perpetuity to such activities as are consistent with the purposes of this Easement. Except for the activities authorized by the foregoing easements, any activity on or use of the Easement Area inconsistent with the purposes of this Easement is prohibited. The following limitations shall apply:

- a. The Easement Area shall not be subdivided and none of the individual tracts, which together comprise the Easement Area, shall be conveyed separately from one another.
- b. The Easement Area shall be maintained in perpetuity as open space without there being conducted thereon any industrial, commercial, agricultural or forestry activities. Agricultural and forestry shall include animal husbandry, floricultural, horticultural activities, the production of plant and animal products for domestic or commercial purposes, the growing, stocking, cutting and sale of forest trees of any size capable of producing timber or other forest products and the processing and sale of products produced on the property (e.g., maple syrup), except when associated with exempted activities.
- c. No structures, improvements or alterations, including but not limited to, a dwelling, any portion of a subsurface wastewater treatment and disposal system, mobile home, utility tower, or wireless communication facility shall be constructed, placed or introduced onto the Easement Area. The existing snowmobile trail structures including bridges crossing Reeds Brook are allowed to remain and be reconstructed as necessary to provide for trail use.
- d. No removal, filling, or other disturbances of soil nor any changes in the topography, surface or subsurface water systems, wetlands or natural habitats shall be allowed.
- e. No mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, topsoil or other similar materials shall be allowed on the Easement Area.
- f. The placement of signs, billboards or other advertising materials or structures of any kind is prohibited. Signs required for perimeter marking, trail directions and education are permitted.

- g. There shall be no use of pesticides, poisons, biocides or fertilizers, draining of wetlands, burning of marshland or disturbances or changes in the natural habitat of the premises.
- h. There shall be no manipulation or alteration of the natural watercourses, lakeshores, marshes or other water bodies, nor shall any uses of or activities upon the property be permitted which could be detrimental to water purity or to any vegetative, wildlife or hydrological function.
- i. There shall be no operation of vehicles, snowmobiles, dune buggies, motorcycles, mini-bikes, go-cars, all-terrain vehicles, or any other type of motorized vehicle upon the property. However, the use of snowmobiles on the existing snowmobile trail is permitted to continue, provided that the trail is inspected annually and maintained in a stable condition. Failure by the local snowmobile club to make required inspections and maintenance will result in suspension of use by the Grantee or Gantor.
- j. There shall be no storage or placement of equipment, natural or man-made materials or substances upon the premises.
- k. There shall be no dumping, burning, release, burial, injection, or disposal of any type of material on the Easement Area.
- l. Any other disturbances of the property are prohibited except for those activities explicitly authorized by the Compensatory Mitigation Plan for Permit No. NAE-2010-2114 issued by the Department of the Army, New England District, Army Corps of Engineers dated January 17, 2012 and referenced under Section 4. Reserved Rights.

3. EXCEPTIONS

The Grantor may, but is not obligated to enter upon the Property to conduct the following activities after written application and approval from the Grantee and any other local or state agencies for which approval is required. The Grantee is not obligated to undertake any of the described activities.

- a. Removal of debris, dead trees, or brush for the purpose of promoting safety and aesthetic quality. Materials may be left on site if utilized for habitat management.
- b. Pruning and thinning live trees and brush for the purpose of promoting safety, aesthetic quality, fire control, wildlife habitat and to manage & remove invasive species.
- c. Planting of trees, shrubs, or other vegetation for the purpose of promoting wildlife or aesthetic quality.
- d. Grading and landscaping at the direction and approval of the Grantee and MDEP.
- e. Maintain, repair and replace the snowmobile trail and structures.

- f. Construct paths not greater than 10' wide to provide for passive recreation and enjoyment of the conservation lands. The path shall be located with approval of the Grantee and MDEP and shall not exceed 10% of the land area.
- g. Motorized vehicles shall be permitted on the path and for exempted maintenance activities provided they do not damage the soil surface or quality of the protected area and only with approval of the Grantee and MDEP. Emergency, rescue, fire control and damage restoration vehicles may access any portion of the property, if required.

4. RESERVED RIGHTS

It is expressly understood and agreed that this Easement does not grant or convey to members of the general public any rights of ownership, entry or use of the Property. This Easement is created solely for the protection of the Property and Grantor reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the right to exclude others and to use the Property for all purposes consistent with this Easement.

5. COMPLIANCE INSPECTION

The Grantor expressly authorizes the Grantee, its duly authorized designee or agent to enter upon the lands subject to this Easement for the purpose of determining compliance with the terms and conditions contained within this document.

6. MARKING OF PROPERTY

The perimeter of the Property shall at all times be plainly marked by permanent signs or by an equivalent, permanent marking system designating the area a protected area.

7. PROPERTY TRANSFERS

Grantor shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property. Failure to comply with this paragraph does not impair the validity or enforceability of this Easement:

NOTICE: This Property is Subject To a Conservation Easement recorded in the Penobscot County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

The Grantor shall provide a 60-day advance notification to the Grantee, MDEP and the Army Corps of Engineers pursuant to permit no. NAE-2010-2114, before any action is taken to void or modify this instrument, including transfer of title, or establishment of any other legal claims.

8. BENEFITS AND BURDENS

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity. The benefits of said Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable to another qualified organization, which organization has

among its purposes the conservation and preservation of the land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

9. NOTICES

All notices, requests and other communication required or permitted to be given under this Easement shall be in writing and shall be delivered in hand or via Certified Mail, return receipt requested, to the appropriate address set forth in this Easement or at such other address as the Grantor or Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or mailed.

Said Grantor further covenants and agrees to provide a copy of the Conservation Easement by means of a notice by Certified Mail, return receipt requested, to the last known address of any person or entity who hereafter shall have any possessory interest in the subject property, including but not limited to any tenants, successors, or assigns. Failure of said Grantor to provide such notice shall not constitute any waiver of the Grantee's rights herein.

10. BREACH OF EASEMENT

- a. If a breach of this Easement, or conduct by anyone inconsistent with this easement, comes to the attention of the Grantee, it shall notify the Grantor, in writing, of such breach of conduct, delivered in hand or by Certified Mail, return receipt requested.
- b. The Grantor shall, within thirty (30) calendar days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.
- c. If the Grantors fails to take such proper action under this preceding paragraph, the Grantee may, as appropriate to the purposes of this deed, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs and legal fees, shall be paid by the Grantor.

- d. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damages to the property, or to prevent action or potential action which is determined to be inconsistent with the stated purposes of this Easement, the Grantee may pursue any remedy it deems appropriate to correct such breach, without prior notice to the Grantor or without waiting for the period provided to cure to expire.
- e. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.
- f. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair Grantee's rights or remedies or be construed as waiver.

11. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

12. MERGER

The Grantor and Grantee agree that it is their express intent that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assignee shall be deemed to eliminate the Easement, or any portion thereof, granted under the doctrine of "merger" or any other legal doctrine.

13. CONDEMNATION

- a. Whenever all or any part of the Easement Area is taken in exercise of eminent domain by a public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages from such taking, with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.
- b. The balance of the land damages recovered (including, for the purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and Grantee in proportion to the fair market value of their respective interests in that part of the Property condemned on the date of execution of this Easement. For this purpose, the Grantee's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this Easement is reduced by the use limitations imposed hereby. The values of the Grantor's and Grantee's interest

shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.

- c. The Grantee shall use its share of the proceeds in a manner consistent with the conservation of land and natural resources.

GRANTOR hereby affirms that it is the sole owner of the property in fee simple and has the right to enter into this Conservation Easement and to grant and convey the Easement. The property is free and clear of all liens and encumbrances, including but not limited to any mortgage not subordinated to this Easement.

THE GRANTEE, by accepting and recording this Easement, agrees, except as otherwise provided in this easement, to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

THE GRANTOR hereby grants to the **Maine Department of Environmental Protection**, Third Party, the same inspection and compliance rights as are granted to the Grantee under this easement. However the Parties hereto intend that the Grantor shall be primarily responsible for the enforcement of this easement, that the Grantee shall be secondarily responsible for the enforcement of this easement and that the Third Party will assume such responsibility only if the Grantor and/or Grantee shall fail to enforce it. If the Third Party shall determine that the Grantor and Grantee are failing in such enforcement, the Third Party may give notice of such failure to the Grantee and the Grantor, and if such failure is not corrected within a reasonable time thereafter, the Third Party may exercise, in its own name and for its own account, all the rights of compliance granted the Grantee under this Easement. The Third Party shall also have reasonable access to any and all records of the Grantee relevant to the Protected Property. Grantee shall not be responsible for any expenses, court costs or legal fees incurred by the Third Party.

**IN WITNESS WHEREOF, The Cushing Family Corp** has caused this instrument to be signed in its corporate name by Andre E. Cushing III, its President, hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2017.

WITNESS:

THE CUSHING FAMILY CORP

\_\_\_\_\_

By: \_\_\_\_\_  
Andre E. Cushing III  
Its President  
Hereunto Duly Authorized

STATE OF MAINE  
PENOBSCOT, ss.  
 , 2013

Then personally appeared the above-named Andre E. Cushing III and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Name:  
Notary Public/Attorney-at-Law

The above and foregoing Conservation Easement was authorized to be accepted by the (Receiving Party), Grantee as aforesaid, and the said Grantee does hereby accept the foregoing Conservation Easement, by and through \_\_\_\_\_, its \_\_\_\_\_, hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2017,

(Receiving Party)

By: \_\_\_\_\_  
(Name)  
Its (title)  
Hereunto Duly Authorized

STATE OF MAINE  
PENOBSCOT, ss.  
 , 2013

Then personally appeared the above-named (Name) and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said (Receiving Party).

Before me,

\_\_\_\_\_  
Name:  
Notary Public/Attorney-at-Law

**THIRD PARTY ENFORCER ACCEPTANCE**

The third party rights of enforcement granted under the above and foregoing Conservation Easement, pursuant to Title 33 M.R.S.A Section 476 et seq., were authorized to be accepted by the State of Maine Department of Environmental Protection by Mark Bergeron, its Director of the Bureau of Land Resources, hereunto duly authorized and the said Michael Kuhns does hereby accept the foregoing Conservation Easement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Its: Director, Bureau of Land Resources

# **EXHIBIT A**

## **LEGAL DESCRIPTION**

### **CONSERVATION EASEMENT PARCEL**

### **COLONIAL HEIGHTS SUBDIVISION, PHASE 3**

### **HAMPDEN, MAINE**

A certain lot or parcel of land located southwesterly of Constitution Avenue in the Town of Hampden, County of Penobscot, State of Maine and being more particularly described as follows:

Beginning at the southeasterly corner Lot 68 as depicted on a plan entitled "Subdivision Plan of Colonial Heights: Phase 3" said plan is to be recorded at the Penobscot County Registry of Deeds;

Thence N 89° 41' 46" W by and along the southerly line of said Lot 68, 70 and 72 as depicted on a plan entitled "Subdivision Plan of Colonial Heights: Phase 3" said plan is to be recorded at the Penobscot County Registry of Deeds, a distance of 350.3 feet to a point on the southerly line of said Lot 72;

Thence S 63° 45' 16" W, a distance of 149.75 feet to an angle point;

Thence S 53° 27' 08" W, a distance of 109.67 feet to an angle point;

Thence S 68° 32' 46" W, a distance of 29.69 feet to an angle point;

Then S 35° 03' 31" W, a distance of 43.00 feet to an angle point;

Thence S 85° 05' 28" W, a distance of 46.12 feet to an angle point;

Then S 35° 01' 40" W, a distance of 67.30 feet to an angle point;

Thence N 87° 32' 35" W, a distance of 110.87 feet to an angle point;

Thence S 24° 40' 05" W, a distance of 17.85 feet to an angle point;

Thence S 60° 25' 53" W, a distance of 118.47 feet to an angle point;

Thence S 43° 51' 41" W, a distance of 99.27 feet to an angle point;

Thence S 16° 25' 54" W, a distance of 31.05 feet to an angle point;

Thence S 65° 50' 55" W, a distance of 49.75 feet to an angle point;

Thence S 52° 25' 53" W, a distance of 54.06 feet to an angle point;

Thence S 26° 33' 54" W, a distance of 50.78 feet to an angle point;

Thence S 77° 38' 43" W, a distance of 10.58 feet, more or less, to a point on the easterly line of land now or formerly of Stanley Smith as described in a deed recorded at the Penobscot County Registry of Deeds in Volume 2381, Page 36;

Thence S 15° 47' 49" E by and along the easterly boundary of land of said Stanley Smith as described in the aforementioned deed, a distance of 163.25 feet, more or less, to a point on the northerly line of land now or formerly of John Daniel and Carla Lafayette as described in a deed recorded at the Penobscot County Registry of Deeds in Volume 6251, Page 79;

Thence S 89° 23' 19" E by and along the northerly of land of said Lafayette as described in the aforementioned deed, a distance of 766.97 feet to an angle point in the line of land of said Lafayette;

Thence N 2° 23' 19" W by and along the westerly of land of said Lafayette as described in the aforementioned deed, a distance of 203.94 feet to an angle point in the line of land of said Lafayette;

Thence S 80° 23' 19" E by and along the northerly of land of said Lafayette as described in the aforementioned deed, a distance of 330.00 feet to the southwesterly corner of land now or formerly of the Town of Hampden as described in a deed recorded at the Penobscot County Registry of Deeds in Volume 5785, Page 263;

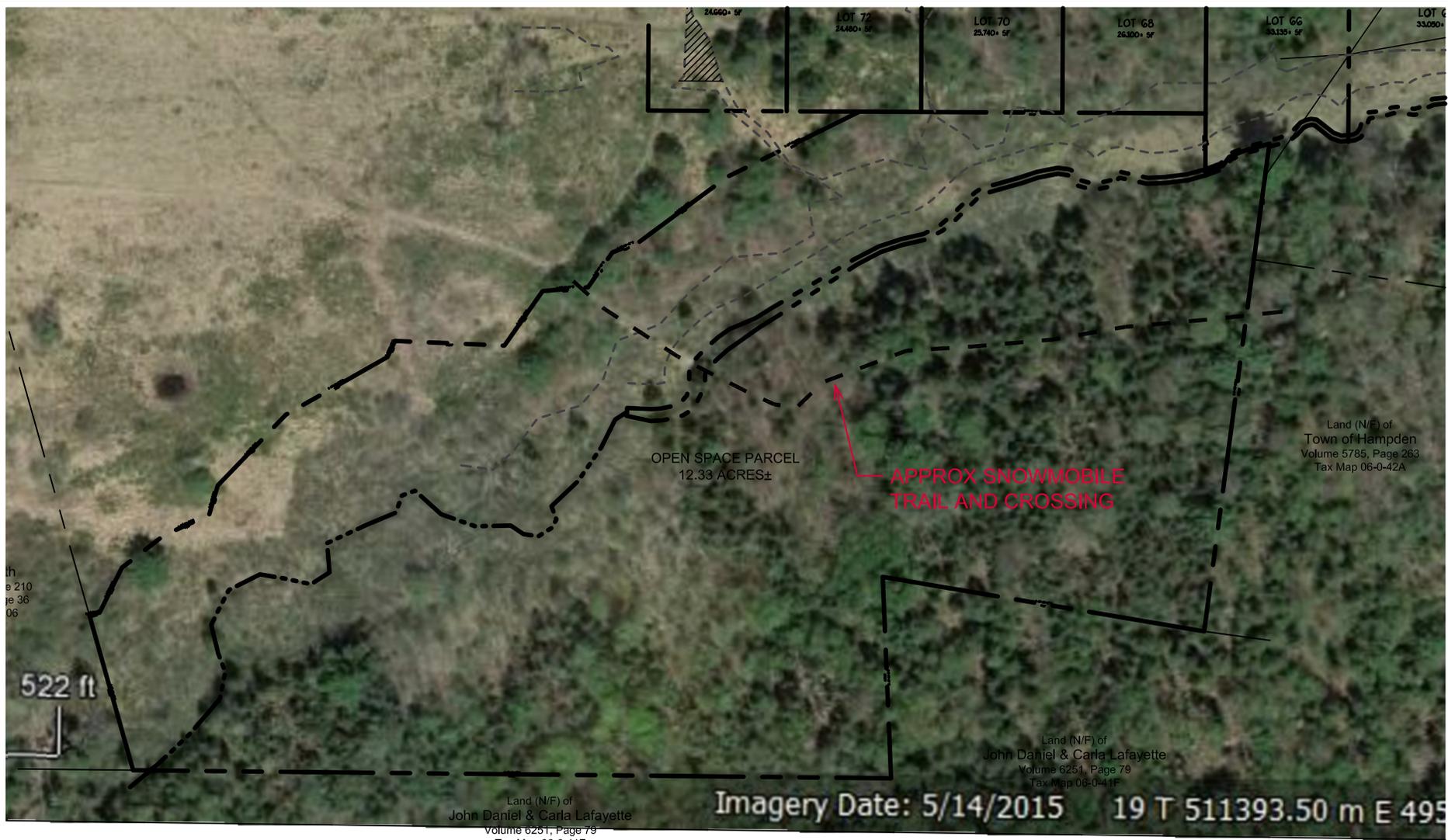
Thence N 7° 36' 50" E by and along the westerly line of land of the said Town of Hampden as described in the aforementioned deed, a distance of 379.32 feet to the southwesterly corner of other land of the Town of Hampden as described in a deed recorded at the Penobscot County Registry of Deeds in Volume 10254, Page 7;

Thence continuing on the same course, N 7° 36' 50" E by and along the westerly line of land of the said Town of Hampden as described in the aforementioned deed, a distance of 118 feet, more or less, to the thread of Reeds Brook, so called;

Thence running in a southwesterly direction by and along the thread of said Reeds Brook, a distance of 73 feet, more or less, to a point defined by the intersection of the thread of Reeds Brook with the westerly line of Lot 66;

Thence N 0° 18' 14" E by and along the westerly line of said Lot 66, a distance of 60 feet, more or less, to the point of beginning.

The above described lot or parcel of land contains 12.33 acres, more or less, and is a portion of the premises described in a deed from Walter Laqualia et al to The Cushing Family Corporation, dated October 30, 2009 and recorded at the Penobscot County Registry of Deeds in Volume 11966, Page 60.



CONSERVATION LAND PLAN  
 COLONIAL HEIGHTS: PHASE 3

CONSTITUTION AVE; HAMPDEN, MAINE

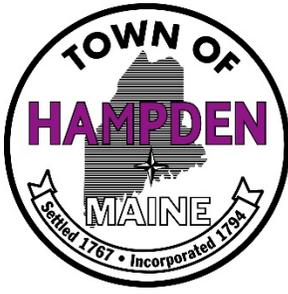
FOR:  
**CUSHING FAMILY CORP**  
 PO BOX 211; HAMPDEN, ME 04444



12 JUN 17



ENGINEERING & DEVELOPMENT CONSULTING  
 PO BOX 282, HAMPDEN, MAINE 04444  
 207-862-4700



Town of Hampden  
Land & Building Services

## Memorandum

To: Planning & Development Committee  
From: Karen M. Cullen, AICP, Town Planner *KMC*  
Date: July 17, 2017  
RE: Medical Marijuana Concerns

Given the concerns that have arisen regarding the medical marijuana caregivers at property on Carmel Road North, I have researched state laws and rules regarding medical marijuana specifically as pertains to caregivers. The following are the key points of Maine medical marijuana rules (10-144 CMR Chapter 122). Note that there are proposed rules currently pending final adoption, I could find no indication as to whether they are likely to be further modified prior to adoption, nor when they might become effective.

1. Maximum 5 patients per caregiver, plus self (if caregiver is a qualifying patient)
2. Maximum of 6 mature female plants plus 2.5 oz prepared marijuana per patient
3. Maximum of 12 nonflowering female plants per patient
4. Each plant must be tagged with patient identification info
5. Unlimited number of seeds, seedlings, stalks, and roots are allowed
6. Maximum 8 pounds per patient of harvested, dried, unprepared marijuana in various stages of processing
7. Current rules: Annual fee to state = \$300 per patient plus \$31 for background check
8. Proposed rules: Annual fee to state = \$240 per patient plus \$31 for background check
9. Current rules: collectives are prohibited
10. Proposed rules: allows a single building to contain an unlimited number of separate, self contained, locked, and secured areas for individual caregivers to cultivate marijuana. There cannot be any common area for storage of supplies, materials, or equipment for the collective use of all caregivers, each must operate entirely separately from the others and use his/her own materials, supplies, and equipment. The building owner cannot be a primary caregiver.
11. Cultivation must be done on property that is owned or under the control of the qualifying patient (for self grown) or caregiver.
12. Two primary caregivers who are members of the same family or household may share the same enclosed, locked facility.
13. Current rules: all info on a caregiver's application is confidential, meaning municipality has no authority to know where a caregiver is located. That prevents the town from

- being able to hold a public hearing since the location is necessary to properly notify abutters.
14. Proposed rules: caregiver application information is no longer confidential.

The Town Attorney has recently opined that if a caregiver wished to sell marijuana products in a storefront, that would be considered to be a dispensary under our Zoning Ordinance. Under the current rules (10-144 CMR Chapter 122), no dispensaries are allowed in Hampden, because only one is allowed in each region of the state and one already exists in Penobscot County (in Brewer). Our region is Penobscot and Piscataquis Counties. There is an option for state to issue additional dispensary licenses in the proposed rules.

Staff will report further on these issues at the meeting, including information from the town attorney, who is looking further into the issue of whether the town's regulations on use of a residence for business purposes (customary home occupation) applies to medical marijuana caregivers.



Town of Hampden  
Land & Building Services

Memorandum

To: Planning & Development Committee  
From: Karen M. Cullen, AICP, Town Planner *KMC*  
Date: July 11, 2017  
RE: Quarterly Report on Retail Marijuana

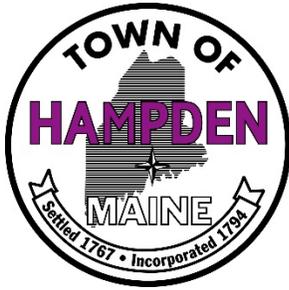
This is the first quarterly report on the issues surrounding the retail marijuana industry in Hampden. As you know, the Town Council has adopted a resolution which included three main intentions:

1. prohibit retail sales and retail social clubs within the town,
2. regulate cultivation, testing, and product manufacture, and
3. advise on the local licensing of cultivation, testing, and product manufacture.

I am currently drafting language for zoning amendments to implement the first intention; this will likely be done through modifications to a number of the definitions in Section 7.2 of the ordinance. It is premature to begin drafting regulations for the three uses to be allowed (intention 2), since the state is still in the process of wrestling with the law let alone writing the rules; I hope to have enough information to begin drafting language before the end of the year. I have met with Chief Rogers regarding the issue of local licensing, and he is in a similar position of not having enough information or guidance from the state to begin to address the issue in any meaningful way.

I have attached my memo of April 3, 2017, as that information remains applicable.

Staff is researching the question of whether the caregiver (medical marijuana) operation at 1334 Carmel Road N is subject to the provisions of our zoning ordinance for the use of a residence for business purposes (Section 4.10).



Town of Hampden  
Land & Building Services

Memorandum

To: Planning & Development Committee, Planning Board, Town Manager  
From: Karen M. Cullen, AICP, Town Planner *kmc*  
Date: April 3, 2017  
RE: Regulating Recreational Marijuana Uses

This memo provides a summary of the key points from the workshop I recently attended on some of the issues municipalities are now facing with the legalization of marijuana. There will be numerous other workshops on the subject geared toward specific groups (e.g. public safety, town managers) in the months ahead. This particular workshop gave some brief overviews of some subjects that will be covered in greater detail in these other workshops. The primary focus of this workshop was on regulation.

While 29 states have legalized medical marijuana, 8 have legalized “adult use” or “recreational” marijuana, and 14 states have decriminalized marijuana possession, it is still classified as a Schedule 1 substance under federal law. The position of the current administration in regards to enforcement is not clear at this time.

It is a significant industry: by 2020 it is projected that the cannabis industry in the US will exceed \$24 billion; in Maine the recreational marijuana industry is projected to be \$210 million. As a comparison, the lobster industry (in Maine) is currently worth about \$410 million and the potato industry is about \$200 million. The medical marijuana industry in Maine in 2015 was \$40.5 million and is projected to be \$49.3 million for 2016.

In 2013 the US Justice Department took the position that enforcement against cannabis operations in states with well regulated medical or recreational regimes should not be a priority unless certain federal areas of interest were involved, such as distribution to minors, use of violence, revenue flowing to gangs or organized crime, growing on federal land, etc. This position was put forth in the “Cole Memo” and was the bedrock for the industry, giving investors and operators some assurance they would not go to federal prison even when obeying the laws of the state in which they operated. In addition to this memo, an amendment to the Department of Justice Appropriations bill stated that the federal government will not take action against state or local officials who are doing their jobs in implementing the laws of their own states. This means that local officials are not at risk of arrest under federal law in regards to “aiding and abetting” the possession or use of marijuana.

While some municipalities have categorized marijuana cultivation as an agricultural use, the trend is toward categorization as an industrial use. Hampden’s zoning ordinance allows medical marijuana cultivation in the Commercial Service, Industrial Park, and Industrial zoning districts, and not in the

Rural district. My interpretation of this is that Hampden views marijuana growing as an industrial use rather than an agricultural one.

There are five categories of uses in the new law: cultivation, testing, manufacturing, retail sales, and social clubs. Testing will be a very important part of this industry, as purity, potency, the presence of heavy metals, etc. are significant. Maine currently has a large black market in marijuana and part of the thought process behind this law is that legalization can eliminate that (and the problems associated with it). As such, it is important to keep the end price to the consumer reasonable – if the regulatory scheme and tax structure keeps prices too high, the black market will continue to flourish.

The current law caps the total amount of “plant canopy” (amount of cultivation) to 800,000 square feet (18.37 acres) statewide. This includes all stages of the plant’s life, from cutting (akin to a seedling) through flowering. There is some concern that this is too low to eliminate the black market and it might be increased to as much as 1.2 million square feet. There are no limits on the number of establishments (statewide) for retail stores, social clubs, or processing facilities. Local municipalities do have the option to limit the number of such establishments if they so choose. Home growing is permitted and is not part of the 800,000 square foot plant canopy cap; however no more than 6 plants are allowed per person at a given time and they cannot be visible from public ways and must be secured to prevent unauthorized access. For state cultivation licenses, existing medical marijuana caregivers, who can grow up to 36 plants for themselves and their (maximum of five) patients, will have priority in the licensing process.

The typical lifecycle for a marijuana plant is about 4 months. In the marijuana industry, plants are not grown from seed, but are grown from cuttings (sometimes referred to as cloning) from “mother plants”. A typical cultivation facility will have multiple grow rooms for the various stages of the plant’s life; this way they can harvest flowers (the part of the plant with the most THC, the main compound in marijuana) multiple times a year.

The law as adopted by the voters has a number of flaws and the Legislature is currently working on numerous bills to deal with these. They have already adopted a statewide moratorium and no commercial activity can take place until 2/1/ 2018. In reality it will be mid-2018 before retail sales can begin, based on the ramp-up of cultivation and processing. When the state does begin taking applications it is expected they will open a “window” when they will accept them. It is also expected that the people submitting applications will have them ready and most will be submitted on the “opening day.” Thus it is anticipated that applicants will either try to get through the entire local approval process first, or at least get some sort of pre-approval from the municipality.

On the local level, there are five classes of local powers: prohibition, limiting the number of local licenses, zoning, local licensure, and local regulation (outside of zoning, e.g. public safety, building code). While municipalities have quite a bit of leeway in dealing with recreational marijuana, they cannot prohibit personal use or personal cultivation. Municipalities can license any or all of the five use categories (cultivation, testing, manufacturing, etc.).

There are a number of decisions that Hampden needs to make in addressing recreational marijuana. The remainder of this memo is designed as a “decision tree” and discusses the issues involved with each step.

1: Does Hampden want to prohibit any or all of the five use categories?

- a) Cultivation – although some municipalities consider growing marijuana to be an agricultural use, most treat it as an industrial use. In reality, marijuana is grown in an industrial setting, with

tightly controlled indoor growing rooms to prevent contamination of the plants. There is no public access to cultivation facilities. Cultivation facilities will range in size depending on the state-licensed canopy size for the facility, measured in “unit blocks” of 10’x10’ or 100 square feet. The state will be issuing licenses in two classes: facilities with 3,000 square feet or less of plant canopy and those greater than 3,000 square feet. The law requires that 40% of the state licenses be issued to the smaller facilities. It should be noted that the actual size of a cultivation facility will be greater than the canopy size, as there will be need for storage space for fertilizers and other things needed for the cultivation itself, space for harvesting (people sitting at tables cutting the flowers off the mature plants), office space, etc. The primary issues to be dealt with include security, fire codes, odors, and waste disposal.

- b) Testing – facilities for activities related to acceptable testing and research practices, including but not limited to testing, standards, quality control analysis, equipment certification and calibration, chemical identification, and other research practices. Again, these are industrial type facilities and I do not envision them being large. No public access will be involved, and security is the primary concern with this use.
- c) Product manufacture – there are many different products that use THC, including baked goods, candy bars, soda, and “vaping” products, among many others. These facilities will have a wide range in size and utility needs (e.g. water and sewer), depending on what is being manufactured. There is no public access to these facilities, they are not permitted to sell directly to consumers. In addition to being licensed by the state under the recreational marijuana law, they are required to be licensed as commercial kitchens by the Department of Health and Human Services. Potential issues include security, infrastructure (utilities), building and fire codes, and odors.
- d) Retail sales – stores selling retail marijuana may not sell anything not directly related to marijuana (e.g. baked goods or candy that does not contain marijuana, alcohol, or general merchandise with no relationship to marijuana). They can sell anything related to marijuana, including apparel, paraphernalia, child-proof containers, etc. Municipalities cannot impose a local sales tax on recreational marijuana or products containing marijuana. Primary issues related to retail marijuana stores are security, proximity to certain land uses, signage, and fire codes.
- e) Social clubs – akin to a bar, but for the consumption of marijuana. Products for consumption that do not contain marijuana are allowed, such as baked goods or candy, but social clubs “may not sell or give away cigarettes or alcohol” [MRSA title 7 ch 417 §2448, paragraph 7A]. One of the issues the Legislature is dealing with is the ambiguity here, as the law does not expressly prohibit consumption of tobacco or alcohol in social clubs and there is concern that they may allow “BYOB” which creates potential health problems which could increase demand for emergency medical calls. As with retail sales, the primary issues related to social clubs are security, proximity to certain land uses, signage, and fire codes.

If the town decides to prohibit all five categories, then an amendment to the Zoning Ordinance can be processed immediately. This would either be done as a “special district regulation” in each of the 15 districts in Article 3, or as a new section in Article 4. In theory the uses would not be allowed anyway since they are not listed in any of our 15 districts, but I would not recommend leaving it to chance that someone could propose any of them under another use category (e.g. a retail marijuana store under our “retail sales”).

2: Based on the P&D Committee's policy direction on this after the referendum vote last November, if Hampden decides to prohibit retail sales and social clubs but allow the other three uses, then the next issue to deal with is zoning.

- a) Decision needed on which districts to allow these uses in. Since all are industrial in nature, my recommendation would be to allow them in the Industrial, Industrial 2, and Industrial Park districts. They would require a conditional use permit, with a public hearing before the Planning Board. Note that Hampden can require a wider net for abutter notification; the standard is 300 feet from the property line but for such potentially controversial uses, it could be increased to 500 feet or even more if felt necessary. If and when the time comes, I can create maps showing a variety of potential locations with various abutter notification distances so you can see the extent of the differences.
- b) Decision needed on what performance standards to impose regarding odor, security, setbacks from specific uses, setbacks and buffers from property lines, etc. These would be similar to those adopted for medical marijuana facilities in Hampden, but may differ if appropriate.

3: If any of these uses are allowed, then a decision is needed on whether or not to issue local licenses.

- a) It is not clear if municipalities can impose licensing fees, since one-half of the fee collected by the state (which is an annual fee) is passed on to the municipality.
- b) The licensing process can be used to place limits on the number of establishments (in each category) that will be allowed in the town, as well as things like hours of operation. Note, while the medical marijuana provisions place a limit on the number of establishments in the zoning regulations, it might be better to place a limit on the number of recreational marijuana establishments, if they are allowed at all, through a licensing ordinance. But if Hampden decides not to issue licenses then the zoning regulations can deal with this.
- c) One benefit of licensing is that it can be a way to do an annual review of these operations; such periodic reviews that are required as part of a Planning Board decision are much more difficult to enforce.

4. If Hampden does decide to limit the number of establishments, then a process for selecting licensees will be needed.

- a) How many establishments will be allowed in each category?
- b) How do you come up with that number, and on the basis of what objective criteria? Any such limitation should be supported by evidence on the record so it would withstand potential challenge.
- c) Options for selecting licensees include issuing an RFP, first-come-first-served, or holding a lottery.
- d) An RFP process would be aimed at issuing licenses to the best qualified businesses, and might consider things such as evidence of tax and legal compliance, capital reserves to fund start-up, criminal background check, security plans, management experience, technical capacity, plans for odor mitigation and other issues, and local support. Some of these are things that the municipal staff could review, others may require third party review.
- e) But an RFP process has its risks: applicants will have spent some money and time submitting their proposal, and assuming there are not enough licenses to accommodate all applicants, those that don't get awarded a license will not be happy, and could litigate. Thus it's recommended that if Hampden were to go this route, we consider hiring a consultant to help with the process as it will be easier to defend against litigation if it were to come to that.

And finally, the question of whether a municipality should adopt a moratorium was discussed at the workshop. There are some compelling arguments both pro and con on this question:

Reasons why a moratorium is not needed or useful:

1. State licenses will not be issued for about a year at the least, so no recreational marijuana activity other than personal use and personal growing is legal until that time.
2. A moratorium is only good for 180 days (however, see additional info under other notes below).
3. If a municipality is planning to ban all five use categories, then there is no reason not to just amend the zoning ordinance to accomplish that right now.
4. A public statement could be issued to let people know what the town's intentions are (e.g. prohibit retail stores and social clubs but allow the other three uses).

Reasons why a moratorium could be useful:

1. It could be easier for staff to address any inquiries regarding recreational marijuana.
2. If anyone wanted to submit an application, staff could easily reject it without consequence provided the moratorium specifically prohibited submission of applications.
3. It can prevent people from submitting an application in the absence of regulations, which can inadvertently lead to an appeal of either denial or inaction by the Planning Board.
4. It can provide support for Code Enforcement to deal with any illegal establishments that are started by people who either don't understand the permitting and licensing process or who start a business without regard to the law.

Other notes on moratoriums:

1. There has to be a need for the moratorium, and the ordinance must clearly state what the need is. This is pretty straightforward – the town can't adopt either zoning regulations or licensing regulations before the state issues its rules, to ensure there is no conflict between the local and state regulations.
2. The town needs to be actively working on how they will handle recreational marijuana while the moratorium is in place.
3. A moratorium can be extended by vote of Town Council after a public hearing, and there is no statutory limit on the number of times it can be renewed, as long as the municipality is still actively working on addressing the issues creating the need in the first place.

At this point, I respectfully request that the Planning & Development Committee, as the body tasked with making recommendations to Town Council on setting policy on land use issues, review this and be prepared to discuss the issue of adopting a moratorium. If Hampden decides to take such action, it may be prudent to do so sooner rather than later.

**TOWN OF ~~SCARBOROUGH~~**

**HAMPDEN**

**GOOD NEIGHBOR**

**ORDINANCE**

**ADOPTED Sept 01, 2017**

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**TOWN OF  
~~SCARBOROUGH~~  
Hampden  
Good Neighbor  
Ordinance**

**1. PURPOSE.**

The ~~Scarborough~~ Hampden Town Council recognizes certain basic standards that allow residents to enjoy their homes and property, preserve peace and quiet in our neighborhoods, help maintain property values and prevent disputes among neighbors. The purpose of this ordinance is to promote these standards and allow for enforcement of violations.

**2. CREATION OF NOISE NUISANCES**

(a.) **Purpose.** The ~~Scarborough~~ Hampden Town Council finds that excessive noise on the public ways may cause distraction to other drivers and preclude the safe operation of motor vehicles to the detriment of the health, welfare and safety of ~~Scarborough's~~ Hampden's citizens. Accordingly, it is the policy of the Town of ~~Scarborough~~ Hampden to prohibit unnecessary, excessive, annoying and distracting noise on the public right-of-way within the Town of ~~Scarborough~~ Hampden. The Town Council also finds that people have a right to the peaceful enjoyment of their property and that excessive or continuous noise may limit that enjoyment. Accordingly, it is the policy of the Town of ~~Scarborough~~ to discourage the creation of unnecessary and unpleasant noise when such noise negatively affects surrounding residents.

(b.) **Definitions.** For the purpose of this article, the following words and phrases shall have the following meanings:

*Town* means the Town of ~~Scarborough~~ Hampden, Maine.

*Noise-creating devices* means any electrical, mechanical or chemical device or instrument, or combination thereof that creates noise during its operation by a person.

*Motorcycle* means an unenclosed motor vehicle, having a saddle for the use of the operator, with two or three wheels in contact with the ground, including, but not limited to, motor-scooters and mini-bikes.

*Operation* means actual control by a person.

*Public right-of-way* means any street, roadway, alley, sidewalk, or other area deeded or dedicated for public travel or transportation purposes.

*Straight pipe exhaust system* means any straight through muffler that does not contain baffles, including, but not limited to, glass packs, steel packs and straight pipes.

**A. Noise Upon Public Right-of-Way.**

**(1.) Creation of Certain Noises upon Public Right-of-Way Prohibited.**

- (a.) No person, while occupying any public right-of-way in the Town, shall operate any noise-creating device in such a manner that the public's attention is drawn to the source of the noise.
- (b.) The prohibition of this section shall include, but not be limited to, the following activity or conduct:
  - i. Discharging fireworks or any exploding device, except as expressly stated in the Hampden Consumer Fireworks Ordinance.
  - ii. Firing a starter pistol, air gun, BB gun or a firearm,
  - iii. Sounding a ~~bell or whistle~~ bell, whistle or siren for so extended a period of time as to cause annoyance to others,
  - iv. Rapid throttle advance and/or revving of an internal combustion engine resulting in increased noise from the engine,
  - v. Operations of a motor vehicle, as defined in 29-A M.R.S.A. §101 (42), including but not limited to a motorcycle, with a straight pipe exhaust system, an exhaust system with a cutout, bypass or similar device or an exhaust system that does not meet the requirements of Maine law, including, but not limited to, 29-A M.R.S.A §1912.

**(2.) Exceptions.** The provisions of this section shall not apply to the following activity or conduct:

- (a.) Expression or communication protected by the United State's Constitution, including the First Amendment, or the Maine Constitution.
- (b.) Any activity or conduct the regulation of which has been preempted by Maine Statute.
- (c.) Any noise created by a governmental entity in the performance of an official duty.
- (d.) Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit.
- (e.) The sounding of any signaling device permitted by law.

**(3.) Engine Brake.** A person operating a motor vehicle in the Town of ~~Scarborough~~ Hampden shall not use an unmuffled engine brake to slow the vehicle except in an emergency situation for the purpose of avoiding a collision with a vehicle, object, person or animal. As used in this section, "engine brake" means a device that retards the motion of a motor vehicle by using the compression of the engine of the motor vehicle and "unmuffled" means that the engine brake is not equipped with a muffler which complies with the requirements of 29-A M.R.S.A. section 1912. This section does not apply to emergency response vehicles operated by a governmental entity or licensed provider of emergency medical services.

**B. Noise Abatement.**

**(1.) Loud, offensive noises prohibited.**

No person shall make, continue, or cause to be made or continued any loud, boisterous, unnecessary or unusual noises which shall annoy, disturb, injure, or endanger the comfort, repose, health, peace, or safety of others.

**(2.) Definitions.**

For the purpose of this article, the following words and phrases shall have the following meanings:

*Daytime hours* means the hours between ~~7:00~~ 6:00 a.m. and ~~9:00~~ 10:00 p.m. Monday through ~~Sunday~~. ~~Thursday; between 7:00 a.m. and 10 p.m. Friday through Saturday; and between 9:00 and 9:00 p.m. on Sunday.—~~

*Domestic power equipment* means but is not limited to power saws, drills, grinders, lawn and garden tools, and other domestic power equipment intended for use in residential areas by a homeowner.

*Nighttime hours* means the hours between ~~9:00~~ 10:00 p.m. and ~~7:00~~ 6:00 a.m. ~~Monday through Sunday~~. ~~Sunday evening through Friday morning; between 10:00 p.m. and 7:00 a.m. Friday evening through Saturday morning; and between 10:00 p.m. and 9:00 a.m. Saturday evening through Sunday morning.—~~

*Property line* means that line along the ground surface and its vertical extension which:

- (1.) Separates real property owned or controlled by any person from contiguous real property owned or controlled by another person; or
- (2.) Separates real property from the public right-of-way.

**(3.) Exclusions.**

This ordinance shall not apply to noise emitted by or related to:

- (1.) Any bell or chime from any building clock, school, or church.
- (2.) Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in an emergency situation; provided, however, that burglar alarms or car alarms not terminating within 30 minutes after being activated shall be unlawful.
- (3.) Warning devices required by the Occupational Safety and Health Administration or other state or federal safety regulations.
- (4.) Farming equipment or farming activity.
- (5.) Noise from domestic power equipment, such as but not limited to power saws, sanders, grinders, lawn and garden tools, or similar devices operated during daytime hours.
- (6.) Timber harvesting (felling trees and removing logs from the woods).
- (7.) Noise generated by any construction or demolition equipment which is operated during daytime hours. Emergency construction or repair work by public utilities shall also be exempted. The police department may allow construction during nighttime hours if it is demonstrated that the extenuating circumstances disallow construction during the daytime hours.
- (8.) Noise created by refuse and solid waste collection.
- (9.) Municipal, public works, or utility projects.
- (10.) Using, displaying, firing, or exploding consumer fireworks within the Town of ~~Searborough~~ Hampden in accordance with the Consumer Fireworks Ordinance, ~~Chapter 608A and any other applicable law or regulation.~~

**(4.) Specific prohibitions.**

The following acts, among others, are declared to be loud, boisterous, unnecessary or unusual noises which shall annoy, disturb, injure, or endanger the comfort, repose, health, peace, or safety of others in violation of this ordinance, but such enumeration shall not be deemed to be exclusive:

- (a.) ~~Excessive animal noise shall be regulated by the provisions in Chapter 604—Animal Control Ordinance section 604-8 Animal Noise.~~
- (b.) The using or operating or the permitting to be played, used, or operated of any radio, receiver, electronically amplified musical instrument, phonograph, loudspeaker,

sound amplifier, or other machine or device for the producing or reproducing of music or sound which is audible outside of any structure during the nighttime hours or which broadcasts the sound in a loud and unreasonable manner during day-time hours which is audible a minimum of 200 feet from the source of the noise except as otherwise permitted, licensed or sponsored by the Town.

- (c.) The use of any automobile, motorcycle or other vehicle, nonessential to safe and reasonable operation, in one or more of the following ways:
  - i. Revving of motor vehicle engine

- ii. Squealing of tires.
- iii. Accelerating or braking unnecessarily so as to cause a harsh, objectionable or unreasonable noise.
- iv. Operating audio equipment clearly audible beyond the confines of a motor vehicle.

### C. Enforcement.

This section of the ordinance may be enforced by any officer of the ~~Scarborough~~ Hampden Police Department. No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this ordinance while such person is engaged in the performance of her/his duty.

Violations of this ordinance shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this ordinance, a written notice shall be given to the alleged violator which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken on the initial violation if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice. If the cause of the violation is not removed or the condition abated or fully corrected within the time period specified in the written notice, or if the same person commits a subsequent violation of the same provision or provisions, of this ordinance specified in the written notice, then no further action is required prior to prosecution of the civil violation.

If the alleged violator cannot be located in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violator at her/his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice.

### 3. CREATION OF LIGHTING NUISANCES.

**A. Purpose.** The purpose of this ordinance is to provide reasonable restrictions on the use of lighting in or near the residential zones of the Town so as to prevent lighting from creating a nuisance to residents within residential zones. It is recognized that lighting is essential to the conduct of many commercial and industrial enterprises for advertising and security. It is further recognized that protective security lighting in residential zones constitutes a deterrent to crime and contributes to the safety of residents. Further, properly controlled lighting in residential areas for landscaping and highlighting architectural features of buildings and structures enhances the aesthetics of properties and neighborhoods. However, it is equally recognized that lighting, by virtue of its intensity, brightness, direction, duration, and hours of operation, can constitute a nuisance to adjacent residential dwellers. It is hereby the intent of the Town in adopting this ordinance to encourage the appropriate use of lighting as set forth herein, but to regulate it in a manner to avoid any public nuisance in residential areas.

**B. Exceptions.** ~~TBD All properties covered by the Town of Scarborough Site Plan Review Ordinance, 405b, are exempt from this ordinance.~~

#### C. Outdoor light restrictions

- (1.) **Light confinement.** All outdoor lights shall, to the greatest extent possible, be allowed for safety, security, operational needs, and decorative purposes but must confine emitted light to the property on which the light is located, by means of shielded or hooded lighting elements

and shall not be directed upwards except where the light is directed away from neighboring properties and limited to the greatest extent possible to avoid urban sky glow.

- (2.) **Spillover light.** Spillover light on to residential property shall not exceed one-tenth (0.1) of one (1) foot-candle at the residential property line.

**D. Outdoor light prohibitions**

- (1.) Any unhooded light source.
- (2.) Any light that creates glare observable within the normal range of vision of any public right-of-way or glare that creates a safety hazard.
- (3.) Any light that resembles an authorized traffic sign, signal or device, or that interferes with, misleads, or confuses vehicular traffic as determined by the Chief of Police or designee.

**E. Enforcement**

- (1.) This section of the ordinance may be enforced by any Code Enforcement or Law Enforcement officer.
- (2.) No person shall interfere with, oppose, or resist any authorized person charged with the enforcement of this ordinance while such person is engaged in the performance of her/his duty.
- (3.) Violations of this ordinance shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this ordinance, a written notice of violation may be given to the alleged violating homeowner/responsible party which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken on the initial violation if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice of violation. If the cause of the violation is not removed nor the condition abated or fully corrected within the time period specified in the written notice of violation, or if the same homeowner/responsible party commits a subsequent violation of the same provision or provisions, of this ordinance specified in the written notice, then no further action is required prior to prosecution of the civil violation. If the alleged violating homeowner/responsible party cannot be located in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violating homeowner/responsible party at her/his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice.

**4. PENALTIES.**

**A. Noise Violations**

Violation of the noise sections of this ordinance are a civil violation punishable by the following civil penalties:

- |                                     |          |
|-------------------------------------|----------|
| (1) First Offense:                  | \$50.00  |
| (2) Second Offense:                 | \$100.00 |
| (3) Third Offense:                  | \$200.00 |
| (4) Fourth and Subsequent Offenses: | \$500.00 |

**B. Lighting Violations**

Any person found to be in violation of the lighting section of this ordinance or who fails to obey any lawful order of any officer charged with the enforcement of the provisions contained therein commits a civil violation and shall be fined between \$100 to \$2,500 for each day such violation continues after the time for correction of the violation specified in the written notice of violation under Section E (3) has expired.

**5. SEVERABILITY.**

Should any section or provision of this ordinance be determined in a court of law to be unconstitutional, invalid or unenforceable, such determination shall not affect the validity of any other portion of the ordinance or of the remainder of the ordinance as a whole.

**6. EFFECTIVE DATE AND REPEAL OF PRIOR ORDINANCE: **TBD****

~~This ordinance repeals Chapter 614, Noise Abatement Ordinance, adopted on November 7, 2007 and amended March 7, 2012 and repeals and replaces Chapter 611, Noise Ordinance, adopted August 20, 2003.~~