

Planning and Development Committee
October 16, 2013
6:00 PM
Council Chambers
AGENDA

1. Approval of September 18, 2013 Minutes
2. Committee Applications
3. Updates
 - A. Bangor Breakfast Rotary Presentation – CEDD
4. Old Business
 - A. Draft Conservation Easement (Waterfront Park Project)
 - B. Epstein Realty Authorization Renewal
 - C. Zoning Ordinance Sign Provisions Discussion
 - D. Executive Session pursuant to 1.M.R.S.A. §405 (6) (C) to discuss an Economic Development Proposal. (Hampden Business Park),
5. New Business:
 - A. Zoning Ordinance – Article 4. General Regulations
 - 4.9 – Filling and Grading of Land and Stockpiling Materials
 - 4.23 - Excavation, Gravel Pit and Quarry
6. Comprehensive Plan Implementation
 - A. Western Avenue Re-Zoning Priorities
7. Citizens Initiatives:
8. Public Comments:
9. Committee Member Comments:
10. Adjourn

Planning and Development Committee
September 18, 2013
6:00 PM
Conference Room
MINUTES

Attendees: **Committee**

Staff

Tom Brann
Bill Shakespeare
David Ryder
Jean Lawlis
Janet Hughes

Bob Osborne

1. **Approval of September 4, 2013 Minutes** – Approved

2. **Committee Applications** – There were no committee applications under review.

3. **Updates**

A. Business Park Discussion

We are currently waiting on Sargent’s Attorney Eric Stumpfel to get back to us on Tom Russell’s latest revisions. Discussions with Chip Laite of Sargents suggest there is little if any issues remaining. Once we receive a final draft, I will bring it and Tom Russell to the next scheduled meeting of the Committee for discussion and consideration.

B. Marina

Storm Water and NRPA have been submitted by Woodard and Curran on our behalf. NRPA has been approved, we are waiting on DEP Storm Water approval.

Due to the possible additional funding from Chrevron, we have had to change the Site Plan (to be submitted to the Planning Board) to reflect all possible activities including restroom and kayak launch in order to secure these areas outside of what will be the boundaries of the conservation easement.

Over the winter we will need to develop an RFP for parking lot construction and award the bid in anticipation of a Spring construction of the parking lot. We are obligated to complete the parking lot in accordance with the terms of the agreement under the Chevron Supplemental Environmental Project and the National Park Service per the Conversion Approval. We will need to spend out the escrow held by Preti-Flaherty by August 28, 2014 or we will lose those resources. Parking lot construction is estimated at \$ 400,000 and we have approximately \$200,000 available in escrow. We have asked for sufficient funding to cover all expenses beyond the \$ 200,000, however, approval and/or availability of resources is unknown at this time.

C. Ammo Park

Monday nights Council approval resulted in Mr Thornton providing \$ 12,000 per Chip Swan request to establish funding for a third party inspector selected by the Town. Once Tom Russell returns we will develop an easement and get Mr. Thornton started with onsite inspector. The design, prepared by Oscar Emerson (and reviewed by Sargent) has been approved by Woodard and Curran via peer review. We should be all set to go once agreements signed.

4. Old Business

Fireworks Discussion

The committee discussed a range of options for possible changes to the Fireworks Ordinance. They determined that there is no urgency at this time to make changes and will wait and see how events unfold.

5. New Business:

Open Space Discussion

The committee discussed the various sorts of open spaces that have been created in the Town over the years and noted that many are not particularly viable for either recreation or conservation for the public. They noted that the need of mandatory open space dedication is a municipal regulation and is not statutory. The committee questioned the need of open space dedication for larger lot subdivisions. The suggestion was made that perhaps there could be an urban/rural differential in the way open space is handled. The suggestion was made that mandatory open space dedication and fee in lieu of open space is confiscatory. The suggestion was made that fee in lieu payment could be deferred to the time when the lot is sold.

6. Comprehensive Plan Implementation

Re-Zoning – Priorities

The committee discussed the mixture of commercial districts in the village and suggested that less zones were needed with more consistency throughout the village. The committee tasked itself with reviewing the current regulations of those districts (Village Commercial, Village Commercial II and Business B Districts) with an eye to which standards they want and those they wish to change.

The committee asked the Town Planner to prepare a map of the Western Avenue corridor that would be the basis of a zoning map amendment to address the request of the Frosts to provide a more viable district for their large land parcel. The suggestion was to look at a change to Business B District extending from Route 202 up to Frosts and across to Gilpatricks.

7. Citizens Initiatives: - none

8. Public Comments - none

9. Committee Member Comments: - none

10. Adjourn

The meeting was adjourned at 7:45 pm.



6 State St, P.O. Box 2444
Bangor, ME 04401
Phone: (207) 945-6222
Fax: (207) 945-5824
results@epsteincommercial.com
www.epsteincommercial.com

EXCLUSIVE AUTHORIZATION TO SELL

This Agreement is entered into this 25th day of September 2013, by and between Epstein Commercial Real Estate of 6 State Street, P.O. Box 2444, Bangor, Maine 04402-2444, hereinafter called Broker; and Town of Hampden, 106 Western Ave, Hampden, Maine hereinafter called Owner.

In consideration of Broker's efforts to procure a sale for Owner's real estate as follows:

Lot #2, further described as a 1.46 acre lot as shown on Map 10B, Lot 2 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot # 4, further described as a 4.75 acre lot as shown on Map 10B, Lot 4 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #6, further described as a 1.74 acre lot as shown on Map 10B, Lot 6 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #8, further described as a 1.88 acre lot as shown on Map 10B Lot 8 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot # 9, further described as a 1.55 acre lot as shown on Map 10B, Lot 9 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #10, further described as a 2.80 acre lot as shown on Map 10B, Lot 10 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285.

Owner hereby grants to Epstein Commercial Real Estate the exclusive authorization to sell the above-mentioned real estate at the following price:

- Lot #2 \$ 80,000
- Lot #4 \$200,000

- Lot #6 \$ 95,000
- Lot #8 \$110,000
- Lot #9 \$100,000
- Lot #10 \$155,000

or at any sale price which is acceptable to Owner. This exclusive authorization shall begin on September 26, 2013 and expire on September 25, 2014.

Broker shall have the exclusive right to sell said property within the time period above and shall be entitled to a commission fee of eight percent (8%) of the sale price. This commission fee shall be paid at the time of each closing. This commission fee shall be due Broker in the event of a sale produced by Broker, Owner, or any other person or entity; all inquiries shall be referred to Broker. If the Property is sold in its entirety (lots 2,4,6,8,9,10) in one transaction to Herb Sargent or an entity in which Herb Sargent has a majority interest, then no commission shall be due.

Should the Owner sell, transfer, convey, lease, exchange or dispose of any portion of said property within six months after the termination of this Agreement to any person, corporation, or entity which the Broker has introduced to the property, and whose name has been furnished to Owner in writing by the Broker during the time period of this Agreement, then in such a case the above commission shall become due and payable to the Broker.

By this Agreement it is understood that Broker is employed and is representing only Owner unless otherwise agreed to in writing. It is further understood that Broker's entitlement to the above commission fee occurs when Broker, Owner, or any other entity finds a purchaser who is ready, willing and able to purchase, and actually purchases, the said above described real estate on the terms herein setout, or on any other terms acceptable to the Owner.

Any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules of the American Arbitration Association. This clause shall survive the expiration of this Agreement.

Agency and Owner each agree that this property is to be offered to any person without regard to race, color, religion, national origin, sex, age or handicap.

SPECIAL CONDITIONS:

1. A "For Sale" sign may be placed on the property. Yes No ___
2. Broker may advertise the property. Yes No ___

BUYER'S AGENCY:

This Agency's policy is to cooperate with other agencies acting as Buyer's agents, unless such other brokerage agencies have a general policy which effectively inhibits or

precludes the cooperation and sharing of compensation with other brokerage agencies. This Agency's policy is to share compensation with Buyer's agents.

The undersigned jointly and severally agree to accept telefacsimile copies of the documents which have been sent by either party to the other, or to any other party or agent to this transaction, as original documents.

DATE:

OWNER:

9.25.13

DATE:

BROKER:
EPSTEIN COMMERCIAL REAL ESTATE

4.9. Filling and Grading of Land and Stockpiling of Materials These provisions shall apply retroactively to all applications received after May 14, 2007. *(Amended 12-17-07)*

4.9.1. Purpose This section is intended to apply to two general categories of earth moving activities: 1) the preparation of land for development and construction activities through filling and grading and 2) stock piles of materials for use in construction and site development activities or for use in industrial activities. These activities, if not properly engineered and constructed can result in uncontrolled erosion and sedimentation and in land unstable for development. These provisions shall apply to filling, grading, lagooning, dredging, excavation, processing and storage of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling, grading, lagooning, dredging and other earth-moving activity which would result in erosion, sedimentation, or impairment of water quality or fish and aquatic life is prohibited. These provisions are not intended to supersede any review of earth-moving activity conducted by state or federal agencies. Activities such as excavation, gravel pit and quarry are governed in Article 4.23 *Excavations, Pits And Quarries. (Amended 12-17-07)*

4.9.2. Earth Moving Permit Required - All earth moving activities, processing and storage within the Town of Hampden shall require an earth moving permit in accordance with this section. *(Amended 12-17-07)*

EXCEPTIONS: The following earthmoving activities do not require an earth moving permit: 1) Earth-moving activity conducted during construction of Planning Board approved subdivisions, or site plans, 2) Earth moving activity conducted during the construction of structures authorized by a building permit or subsurface wastewater disposal permit. 3) The removal or filling of less than two hundred (200) cubic yards of material from or onto any lot in any one (1) year provided such removal or fill does not: A. Disturb more than 10,000 sq. ft. of land area, B. Change the existing topography by more than three feet, C. Redirect the natural flow of stormwater toward or impound stormwater upon a neighboring property, D. Place fill in wetlands or E. Place fill in FEMA mapped 100 year flood plain. 4) Earthmoving associated with construction of public utilities projects and street and highway projects except for placement of excess fill related to the project. *(Amended 12-17-07)*

4.9.2.1. *Erosion and Sedimentation Control.* All earth moving activities, including filling and grading activities and stockpiling activities shall utilize erosion and sedimentation control measures in accordance with Maine Department of Environmental Protection's publication entitled "Erosion and Sediment Control Best Management Practices". (This document is available online at www.hampdenmaine.com and a printed copy is available for purchase from the Code Enforcement Office). *(Amended 12-17-07)*

4.9.3. Earth Moving Permit Issued by the Code Enforcement Officer. Earth moving permits for activity in the Rural District (Article 3.9) may be issued by the Code Enforcement Officer in accordance with this section. (Note: Urbanized areas such as Hampden's Residential and Commercial Districts are subject to state and federal regulations which require additional stormwater considerations that require Planning Board review and approval), *(Amended 12-17-07)*

4.9.3.1. *Erosion and Sedimentation Control.* All earth moving activities, including filling and grading activities and stockpiling activities shall utilize erosion and sedimentation control measures in accordance with Maine Department of Environmental Protection's publication entitled "Erosion and Sediment Control Best Management Practices". The Code Enforcement Officer shall be notified that erosion and sedimentation control devices are in place prior to commencing work authorized by any earth moving permit. *(Amended 12-17-07)*

4.9.3.2. *Earth Moving Permit Jurisdictional Review.* Prior to issuing the required earth moving permit the Code Enforcement Officer must find that the activity does not: 1) remove or fill more than one thousand (1000) cubic yards of material from or onto any lot, 2) disturb more than 20,000 sq. ft. of land, 3) change existing topography by more than ten feet, 4) create side slopes in excess of 2:1, 5) redirect the natural flow of stormwater toward or impound stormwater upon a neighboring property, or 6) disturb or in any way impact wetlands. If the Code Enforcement Officer finds that the application exceeds his/her authority he/she shall refer the matter to the Planning Board for consideration in accordance with section 4.9.4. The Code Enforcement Officer also hereby has the authority to refer applications over which he/she has jurisdictional authority to the Planning Board if in his/her judgment the proposal represents a potential neighborhood concern. *(Amended 12-17-07)*

4.9.3.3. *Earth Moving Permit Application Requirements* All applications for earth moving permits issued by the Code Enforcement Officer shall include applicable fees in accordance with the Town of Hampden Fees Ordinance and be accompanied by a plan, drawn to scale which shall show: *(Amended 12-17-07)*

1. The name and current address of the owner of the property involved;
2. The location and boundaries of the lot or lots for which the permit is requested; *(Amended 12-17-07)*
3. The location of all proposed access roads and, staging areas, disturbed areas topographic details and physical features such as streets and rock walls; *(Amended 12-17-07)*
4. The proposed provisions for drainage and erosion control including a plan that shows the location of sediment barriers, water diversions, temporary stockpiles, constructed ditches and swales and culverts. *(Amended 12-17-07)*
5. The plan for stabilizing all disturbed soil following the earth-moving activity including details on loam and seed and other ground cover treatments; *(Amended 12-17-07)*
6. Any other information the Code Enforcement Officer may deem necessary to carry out the intent of this section. *(Amended: 11-17-03, 12-17-07)*
7. Copy of deed and subdivision plat plan if applicable *(Note: This requirement is to determine if and where deeded drainage easements may be located on a land parcel).* *(Amended 12-17-07)*

4.9.3.4. *Earth-Moving Permit Review Procedure* - The code enforcement officer shall review the application and issue an earth-moving permit if the proposal will result in no erosion, sedimentation, drainage problems, or impairment of water quality or fish or aquatic life or habitat. In issuing such a permit he may impose any conditions as outlined in *Article 4.9.5 or 4.9.6* which may be reasonably assumed to be necessary to prevent erosion, sedimentation, drainage problems, or impairment of water quality or fish or aquatic life or habitat. If the code enforcement officer denies a permit, the applicant may apply to the planning board under the provisions of *Article 4.9.4* of this Ordinance.

4.9.4. Earth Moving Activity Requiring a Permit from the Planning Board – All earthmoving activities other than those addressed under 4.9.2. *Exceptions* to a permit and 4.9.3 *Earthmoving Permit Issued by the Code Enforcement Officer* shall require approval from the Planning Board under these provisions. Application for an earth-moving permit from the planning board for excavation, processing and storage of soil, loam, sand, gravel rock and other mineral deposits shall include site plan review application fees and other applicable fees paid in accordance with the Town of Hampden Fees Ordinance and be accompanied by a plan prepared by a registered professional engineer which shall show: *(Amended 12-17-07)*

1. The name and current address of the owner of the property involved;
2. The location and boundaries of the lot or lots for which the permit is requested;

3. The existing contours of the land within and extending beyond the above boundaries for two hundred (200') feet of intervals not to exceed five (5') feet referred to mean sea level or, if the five (5') foot interval is inappropriate to the site, at intervals approved by the planning board;
4. The contours as proposed following completion of the operation at intervals not to exceed five (5') feet referred to mean sea level;
5. The location of all proposed access roads and temporary structures;
6. The proposed provisions for drainage and erosion control, including drainage plan prepared by a professional engineer; and *(Amended 12-17-07)*
7. Other information necessary to indicate the physical characteristics of the proposed operation. *(Amended: 11-17-03)*

4.9.5. Conditions of an Earth-Moving Permit from the Planning Board - The planning board may approve an earth moving permit providing the following conditions shall be met: *(Amended 12-17-07)*

1. The smallest amount of bare ground shall be exposed for the shortest time feasible. The planning board shall set a specific date after which bare ground shall not be exposed.
2. Temporary ground cover such as mulch shall be used. The planning board shall set a specific date by which permanent ground cover shall be planted.
3. Diversions, silting basins, terraces and other methods to trap sediment shall be used.
4. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources and Fisheries or Inland Fisheries and Game, as applicable, prior to consideration by the planning board.
5. The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
6. Fill shall not restrict a floodway, channel or natural drainage-way.
7. The sides and bottom of cuts, fills, channels, and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission; "Technical Guide, Standards and Specifications."
8. Deleted. *(Amended 12-17-07)*
9. Topsoil or loam shall be restored to a depth of not less than three (3") inches and seeded.

4.9.6. Optional Conditions of an Earth-Moving Permit from the Planning Board - The planning board may impose other reasonable conditions to safeguard the neighborhood and the Town of Hampden which may include those relating to:

1. Methods of removal or processing;
2. Hours of operations;
3. Type and location of temporary structures;
4. Routes of transporting material;
5. Area and depth of excavations;
6. Provision of temporary or permanent drainage;
7. Disposition of stumps, brush and boulders; and
8. Cleaning, repair and/or resurfacing of streets used in earth-moving activity which have been Adversely affected by said activity.

4.9.7. Performance Guarantees. The Planning Board may require a bond payable to the Town with sureties satisfactory to the Town Manager or such other security as the Town Manager may determine adequately secures compliance with this ordinance, conditioned upon the faithful performance of the requirements set forth in this ordinance. In determining if a bond is necessary the Planning Board shall review the magnitude of the proposed activity to determine: what level of effort necessary to either complete or remove an unfinished project, what environmental impact would the proposed disturbed earth pose, and consider what is the financial capacity of the applicant to complete the project. Other security may include a security deposit with the Town, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the Town Manager shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the Town for the reclamation of the area for which the bond was posted and any remainder returned to the operator. Assurance may include the following: *(Amended 12-17-07)*

4.9.7.1. Performance standards relating to operation or maintenance plans; *(Amended 12-17-07)*

4.9.7.2. Performance standards for determining the reclamation period including annual revisions of those plans; *(Amended 12-17-07)*

4.9.7.3. Limits, terms and conditions on bonds or other security; *(Amended 12-17-07)*

4.9.7.4. Proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance; *(Amended 12-17-07)*

4.9.7.5. Estimation of reclamation costs; and *(Amended 12-17-07)*

4.9.7.6. Reports on reclamation activities; or the manner of determining when the bond or other security may be discharged. *(Amended 12-17-07)*

4.9.7.7. The applicant shall grant and record a limited easement to provide the Town and/or a third party the right to enter the subject property and engage in construction activities therein for the purpose of completing reclamation of the property in the event that the performance guarantee must be utilized. *(Amended 12-17-07)*

4.9.8. Existing Operations - Any existing earth moving operation subject to this section in lawful operation on January 16, 2008 (the effective date of this amendment) may operate for a period of one year from the effective date. Continuance of any existing operation for more than one year shall require a permit from the planning board. *(Amended 12-17-07)*

Exceptions: Notwithstanding the one year regulation any currently permitted excavation, pit or quarry approved under *Section 4.9 Application for an Earth-moving Permit from the Planning Board* approved prior to this effective date of this amendment may operate for the period established in the Planning Board approval. Also notwithstanding the one year regulation existing, lawfully established stockpile operations as of the effective date of this amendment may continue to operate and do not require site plan review or an earthmoving permit from the Planning Board. However expansion or relocation of the stockpile operation to a new area would require an earthmoving permit and site plan review. *(Amended 12-17-07)*

4.9.9. Stockpiles - Any stockpile not accessory to excavation, gravel pit and quarry operation, and not associated with construction activities otherwise approved by the Planning Board and/or permitted by building permit shall be regulated under the following standards: *(Amended 12-17-07)*

4.9.9.1. *Earthmoving Permit Required.* All proposed stockpiles shall require an earthmoving permit. The Planning Board may authorize a permanent earthmoving permit for a proposed permanent stockpile operation. *(Amended 12-17-07)*

4.9.9.2. *Site Plan Review Required.* All stockpiles must be shown on a site plan approved by the Planning Board. *(Amended 12-17-07)*

4.9.9.3. *Limits of the Stockpile to be Marked.* The limits of the stockpile must be clearly marked in a manner acceptable to the Code Enforcement Officer including but not limited to bollards or offsets from buildings or other structures on the property to establish the maximum extent of the pile. *(Amended 12-17-07)*

4.9.9.4. *Best Management Practices to be Adhered To.* All stockpiles must comply with Best Management Practices. Cleaning, repair and/or resurfacing of streets shall be required for any street upon which stockpile activity has been found by the Public Works Director to adversely impacted a street in the Town of Hampden. *(Amended 12-17-07)*

4.9.9.5. *Total Stockpile Size.* Total gross stockpile footprint shall be less than 1 acre unless otherwise authorized in Section 4.9.10. *(Amended 12-17-07)*

4.9.9.6. *Maximum Lot Coverage.* Total gross stockpile footprint must not exceed 20 percent of the lot area of the subject parcel unless otherwise authorized in Section 4.9.10. *(Amended 12-17-07)*

4.9.9.7. *Setbacks.* No portion of the stockpile or any drainage device related to the stockpile shall be placed in a building setback required for front, side or rear yard setback within the zoning district where the stockpile is proposed to be located. *(Amended 12-17-07)*

4.9.9.8. *Shielding is Required.* Appropriate shielding of the stockpile activity from roads and neighboring properties shall be required. *(Amended 12-17-07)*

4.9.9.9. *Approved Materials for Stockpiles.* All applications for stockpiles shall include information on the materials proposed to be stockpiled. Stockpiles shall be comprised of materials that are earth, stone, sand, inert fill, grindings or other materials approved by the Planning Board after finding that storage of such materials poses no unreasonable environmental threat. *(Amended 12-17-07)*

4.9.9.10. *Reclamation of Stockpile Area.* All operators and or owners of existing and proposed stockpile areas upon discontinuation and removal of the stockpile shall be required to restore affected areas to a condition that is environmentally sound and sustainable in accordance with Best Management Practices. *(Amended 12-17-07)*

The Planning Board shall consider the proposed duration of a proposed stockpile and its visual impact on neighboring properties when determining how such a stockpile is to be sited and shielded. The Board shall have the authority to require additional setbacks and natural buffer strips for operations that shall be conducted for more than one year. *(Amended 12-17-07)*

4.9.10. Stockpiles in Excess of One Acre. In addition to the foregoing requirements stockpiles in excess of one acre and or in excess of 20 percent lot coverage shall also be regulated by the following provisions. *(Amended 12-17-07)*

4.9.10.1. Existing Stockpile Operations in Old Pits and Excavations. Operators and owners of existing stockpile operations currently located within otherwise inactive existing old pits or excavations shall be required to comply with the applicable provisions of Article 4.23 which require excavations to be reclaimed. Nothing within Section 4.9 shall relieve the owner of an excavation from restoring affected areas to a condition that is environmentally sound and sustainable in significant un-reclaimed, un-used, inactive areas of the existing old pits or excavations. *(Amended 12-17-07)*

4.9.10.2. Landscaping. All proposed stockpiles in excess of one acre or 20 percent lot coverage shall be screened with native plants from view of abutting properties, to the maximum extent practicable. The intent is to site such facilities in an existing stand of mature wooded land. This wooded area must surround the stockpile in all directions for a radius of at least 50 feet from the edge of the proposed development. The site shall be preserved as follows: Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. Notwithstanding the above provisions, no more than forty (40%) percent of the total volume of trees four (4") inches or more diameter, DBH may be removed in any ten (10) year period. *(Amended 12-17-07)*

4.23 Excavation, Gravel Pit and Quarry *(Amended 12-17-07)*

4.23.1. Purpose. *(Amended 12-17-07)* The purpose of Article 4.23 is to:

4.23.1.1 Regulate in an environmentally sound manner the excavation, removal, processing, and storage or stockpiling of topsoil, loam, rock, sand, gravel, clay, and other similar earth materials within the Town, and provide for the sound reclamation of all excavations within the Town.

4.23.1.2 Protect the quantity and quality of the groundwater and other water bodies.

4.23.1.3 Prevent a lowering of the average water table.

4.23.1.4 Control erosion.

4.23.1.5 Regulate access to excavations to and from public and private streets or roads.

4.23.1.6 Provide for the safety of the public.

4.23.1.7 Ensure continued access to and availability of a critical natural resource for the benefit of the people of Hamden and the State of Maine.”.

4.23.2 Effective Date. These provisions shall apply to all applications received after January 16, 2008. *(Amended 12-17-07)*

4.23.3 Applicability: After January 16, 2008, all excavations within the Town shall be operated and maintained in accordance with the requirements of this Ordinance except for those excavations with previously issued valid permits that specifically allow otherwise. Examples of exceptions include, but are not limited to, previously issued site location of development permits, (38 MRSA §480), filed a Notice of Intent to Comply with the Performance Standards for Excavation and/or Quarries (38 MRSA §490) and amendments and variances thereof or other arrangements that have been approved by the Maine Department of Environmental Protection. Notwithstanding other permits or approvals all excavations in the Town will be subject to the Reclamation provisions of this Ordinance. Notwithstanding the foregoing all excavations, gravel pits and quarries shall be subject to the requirements of *4.23.4 Registration of Existing Excavations, 4.23.7.3 Buffer Strips, 4.23.8 Reclamation, and 4.23.7.10. Noise.* Activities such as filling and grading land in preparation for development and construction activities and stockpiles of materials for use in construction and industrial activities are governed in *Article 4.9 Filling and Grading of Land and Stockpiling of Materials.* *(Amended 12-17-07)*

4.23.4 Registration of Existing Excavations: In order to preserve existing conforming bufferyards, improve the quality of undersized natural buffer areas and to create a benchmark for future review and closure of existing excavations, gravel pits and quarries any such activity within the Town of Hampden shall be registered with the town under this ordinance. Registration will create a benchmark for excavations, gravel pits and quarries. The basis of the benchmark document will be a site exhibit of the excavation parcel(s) superimposed upon Town provided digital aerial photography dated April, 2006 (and revisions thereafter). In addition to the site exhibit and the aerial photography the following items shall be included. *(Amended 12-17-07)*

4.23.4.A Name, address, telephone number, fax, and email address of current owner of the property.

4.23.4.B Name, address, telephone number, fax, and email address of operator if different from owner.

4.23.4.C For excavations subject to current Maine Department of Environmental Protection permitting or any other State or Federal regulations copies of those permits and plans shall be submitted with the application.

4.23.4.D A site exhibit plan containing the following:

4.23.4.D.1 Boundaries of the entire parcel to sub-meter accuracy.

4.23.4.D.2 Present use of entire parcel including existing excavated areas.

4.23.4.D.3 Type and location of all existing and proposed surface water including drainage ways.

4.23.4.D.4 Limits (top of bank) of the areas previously excavated to sub-meter accuracy.

4.23.4.D.5 Limits of the areas previously reclaimed.

4.23.4.D.6 Limits of the areas proposed to be excavated including those areas (identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting)

4.23.4.E A narrative description of the operations including methods of excavation, gravel pit and quarry, uses of on-site processing equipment, type and location of any structures, stockpiled materials, disposition of stumps, brush, or other materials, and on-site storage of any hazardous materials.

4.23.4.F Parcel description by tax map and copy of deed with Registry of Deeds Book and Page Number.

4.23.4.G A signed statement attesting that, to the best of the Applicant's knowledge, the information contained in the application is true, accurate, and complete.

All existing excavations, gravel pits and quarries within the Town of Hampden shall register their operation with the town and submit the required documents in accordance with this section within six months of the effective date of this amendment.

4.23.5 Jurisdictional Classifications. This section recognizes two general jurisdictional classifications of excavations and the regulations contained herein make certain distinctions between them: (*Amended 12-17-07*)

4.23.5.1 Those excavations that are required to have a permit from the Maine Department of Environmental Protection in accordance with PERFORMANCE STANDARDS FOR EXCAVATIONS FOR BORROW, CLAY, TOPSOIL, OR SILT 38 MRSA §§ 490-A to 490-M (generally five acres of activity), PERFORMANCE STANDARDS FOR QUARRIES (38 MRSA §§490W – 490Z) or excavations that have (or are required to have) filed a notice of intent to comply pursuant to 38 MRSA § Section 484-A of the Site Location of Development Law and have adhered with the compliance schedule as required by that Section.

4.23.5.2 Those excavations that are not required to have a permit from the Maine Department of Environmental Protection as identified in 4.23.5.1, but are required to have an excavation permit from the Town.

4.23.5.3 Note that there are also earthmoving activities governed under *Article 4.9, Filling and Grading of Land and Stockpiling of Materials*.

4.23.6 Excavation Permits *(Amended 12-17-07)*

4.23.6.1 *Permit required.* Any proposed new excavation, or any proposed expansion of an existing excavation, beyond previously approved limits, is required to obtain an excavation permit from the Town in accordance with the requirements of this Ordinance.

4.23.6.2 *Duration.* An excavation permit shall be for eight years by the Planning Board.

4.23.6.3 *Planning Board approval required.* Planning Board approval is required before an excavation permit is issued by the Town.

4.23.6.4 *Application procedure and contents.* An application for an excavation permit shall be submitted to the Code Enforcement Officer. The application and its contents shall be sealed by a professional engineer. The Code Enforcement Officer shall verify that the application is complete. The following information shall be included with the application for a permit:

4.23.6.4.A Name, address, telephone number, fax, and email address of current owner of the property.

4.23.6.4.B Name, address, telephone number, fax, and email address of operator if different from owner.

4.23.6.4.C For excavations identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting or any other State or Federal regulations copies of those permits and plans shall be submitted with the application.

4.23.6.4.D A site plan in accordance with *Article 4.1 Site Plan Review*. In addition to the requirements of 4.1 the site plan shall also contain the following:

4.23.6.4.D.1 Boundaries of the entire parcel to sub-meter accuracy.

4.23.6.4.D.2 Contours of land within the proposed excavation area and 100 feet beyond the limits of the excavation contour intervals of not more than five feet. For areas beyond those requiring five foot contour intervals and for land areas extending two-hundred (200) feet in all directions beyond the boundaries of the parcel contours intervals shall be not more than 10 feet.

4.23.6.4.D.3 Present use of entire parcel including existing excavated areas.

4.23.6.4.D.4 Type and location of all existing and proposed surface water including drainage ways.

4.23.6.4.D.5 Limits of the areas excavated, reclaimed and proposed to be excavated.

4.23.6.4.D.6 Location of all proposed accesses to and from public or private streets.

4.23.6.4.D.7 The location of existing wells and waterbodies.

4.23.6.4.E Reserved.

4.23.6.4.F The depth to groundwater at the site of the proposed excavation as determined by test pits or boring(s) to substantiate that the groundwater will not be disturbed. The number of test pits or borings to be required shall be a minimum of 1 per site and no less than 1 for each five-acre proposed excavation.

4.23.6.4.G Plans for controlling access to the site.

4.23.6.4.H Provisions for shielding the excavation from surrounding properties with adequate screening or buffering.

4.23.6.4.I Description of existing or proposed signs and lighting.

4.23.6.4.J A narrative description of the operations including methods of excavation, gravel pit and quarry, uses of on-site processing equipment, type and location of any structures, stockpiled materials, disposition of stumps, brush, or other materials, and on-site storage of any hazardous materials including SPCC plans (spill plan).

4.23.6.4.K Parcel description by tax map and copy of deed with Registry of Deeds Book and Page Number.

4.23.6.4.L Names and addresses of abutting property owners.

4.23.6.4.M Present uses of abutting and nearby properties.

4.23.6.4.N A signed statement attesting that, to the best of the Applicant's knowledge, the information contained in the application is true, accurate, and complete.

4.23.6.5 *Review.* The Planning Board shall review each application for an excavation permit according to the procedures of this Ordinance.

4.23.6.6 *Conflicting regulations.* For excavations identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting, in the event that the provisions of this ordinance are inconsistent with State statutes or regulations of the Department of Environmental Protection, the State statute or regulation shall prevail. The foregoing sentence shall not be construed as preventing the Town from adopting or enforcing more stringent requirements under this ordinance.

4.23.6.7 *Timeline.* Within 30 days of receipt of an application for an excavation, gravel pit and quarry permit the Code Enforcement Officer shall write a letter indicating that the application is complete and ready for review or detailing what elements of the application are deficient. A public hearing by the Planning Board shall be held within forty-five (45) days of the date that the Code Enforcement Officer determines that the application is complete.

4.23.6.8 *Planning Board review criteria.* The Planning Board shall determine that the excavation, as planned, will conform to the requirements of the district in which it is to be located and to other pertinent requirements of this Ordinance. Following such determination, the board shall approve the proposed excavation plan if it makes a positive finding based on the evidence presented that it meets all of the following standards. In all cases, the burden of proof shall be upon the applicant.

4.23.6.8.A Buffer strips and shielding in accordance with the requirements of *Article 4.23.7.* of this Ordinance.

4.23.6.8.B Fencing to protect children when adjacent to a school or for other similar special circumstances

4.23.6.8.C Signs in accordance with the provisions of *Article 4.8* and lighting in accordance with the provisions of *Article 4.1.7* designed to minimize public nuisance conditions or undesirable aesthetic effects on the neighborhood.

4.23.6.8.D Safe entrances and exits in accordance with the provisions of the Zoning Ordinance.

4.23.6.8.E Documentation of security provisions on both the site plan and in written narrative.

4.23.6.8.F Mitigation plan for control of noise, dust, runoff, and other environmental considerations that are outside of the property line boundaries of the excavation operation.

4.23.6.8.G The plan shall also present mitigation measures to minimize negative impacts of the project on surrounding or nearby properties or public facilities including, but not limited to public roads.

4.23.7 Excavation Regulations (*Amended 12-17-07*)

4.23.7.1 *General.* All excavation operations shall be in accordance with the excavation and reclamation requirements of the Maine Department of Environmental Protection and the requirements of the applicable sections of this Ordinance.

4.23.7.2 *Property lines.* All property boundaries must be identified by markers such as metal posts, stakes, flagging, or blazed trees.

4.23.7.3 *Buffer Strips.* A natural buffer strip of existing vegetation must be maintained in accordance with the following requirements:

4.23.7.3.1 A natural buffer strip at least twenty-five (25) feet wide must be maintained between any topsoil excavation and any property boundary. A natural buffer strip at least fifty (50) feet wide must be maintained between any other excavation and any property boundary. These distances may be reduced to not less than ten (10) feet with the written permission of the affected abutting property owner or owners. The written permission indicating the registry book and page reference to the subject property(s) shall be recorded at the Penobscot County Registry of Deeds. The distance may not be reduced to less than twenty-five (25) feet from the boundary of any cemetery or burial ground.

4.23.7.3.2 The buffer strip between excavations owned by abutting owners may be eliminated with the written permission of the abutters, provided that the elimination of this buffer strip does not increase the runoff from either excavation across the property boundaries.

4.23.7.3.3 A natural buffer strip at least one-hundred (100) feet wide must be maintained between any quarry and any property boundary. This distance may be reduced to not less than ten (10) feet with the written permission of the affected abutting property owner or owners. The written permission indicating the registry book and page reference to the subject property(s) shall be recorded at the Penobscot County Registry of Deeds.. The distance may not be reduced to less than twenty-five (25) feet from the boundary of any cemetery or burial ground.

4.23.7.3.4 The buffer strip between quarries owned by abutting owners may be eliminated with the written permission of the abutters, provided that the elimination of this buffer strip does not increase the runoff from either excavation across the property boundaries.

4.23.7.3.5 Natural buffer strips must be maintained for the environmental protection of flowing water, water bodies, wetlands, and significant wildlife habitats contained in wetlands as follows:

4.23.7.3.5.A A natural buffer strip at least one-hundred (100) feet wide must be maintained between the working edge of any excavation or quarry and the normal high water line of a great pond classified as GPA or a river or stream flowing to a great pond classified as GPA.

4.23.7.3.5.B A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and any other water body.

4.23.7.3.5.C A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and any river, stream, or brook as defined in 38 MRSA Section 480-B.

4.23.7.3.5.D A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and a freshwater wetland consisting of or containing either or both of:

4.23.7.3.5.D.1 Under normal circumstances, at least twenty-thousand (20,000) square feet of aquatic vegetation, emergent marsh vegetation, or open water except for artificial ponds or impoundments (aka wetlands of special significance).

4.23.7.3.5.D.2 Peat lands dominated by shrubs, sedges, and sphagnum moss.

4.23.7.3.5.E A natural buffer strip at least seventy-five (75) feet wide must be maintained between the working edge of any excavation or quarry and a significant wildlife habitat contained within a freshwater wetland.

4.23.7.3.6 A natural buffer strip at least one-hundred-fifty (150) feet wide must be maintained between the working edge of any excavation or quarry and the nearest edge of the right of way of an adjacent road designated as a Scenic Highway by the Department of Transportation.

4.23.7.3.7 A natural buffer strip at least one-hundred (100) feet wide must be maintained between the working edge of any excavation or quarry and the nearest edge of the right of way of any adjacent public road that has not been designated as a Scenic Highway.

4.23.7.3.8 A natural buffer strip at least fifty (50) feet wide must be maintained between the working edge of any excavation or quarry and any adjacent private road as well as the nearest edge of the right of way of any adjacent private road present at the time of application submission. The width of the buffer strip adjacent to a private right of way may be reduced if written permission is obtained from those who possess the use of the right of way. The written permission must be recorded in association with the deed of the affected property of the right of way at the Penobscot County Registry of Deeds

4.23.7.3.9. The vegetation located within natural buffer strips between the working edge of any excavation or quarry and any adjacent property lines and roads shall provide shielding from excavation activities. In the event that the Planning Board determines after a site visit that the required natural buffer strips called for in this section do not provide adequate levels of shielding, applicant shall provide a mitigation plan to augment the existing tree growth to satisfy this regulation. The Planning Board may consider adjacent land uses when determining the appropriate level of shielding.

4.23.7.4 *Dust*. Dust generated by activities at the excavation, including dust associated with traffic, must be controlled by reasonable means such as watering, paving, or other suitable management practices.

4.23.7.5 *Erosion and sedimentation control for all reclaimed and unreclaimed areas*. Erosion and sedimentation control for all reclaimed and unreclaimed areas, except for access roads, shall be in accordance with the following:

4.23.7.5.1 The area of a working excavation may not exceed ten (10) acres except for excavations that have received a variance under 38 MRSA § 490 E or § 490 CC.

4.23.7.5.2 Stockpiles of top soil to be used for reclamation must be seeded, mulched, or otherwise temporarily stabilized.

4.23.7.5.3 Grubbed areas shall be stabilized.

4.23.7.5.4 Sediment shall be contained within the excavation site. Sediment shall not leave the parcel and shall not enter a protected natural resource.

4.23.7.6 *Erosion and sedimentation control for access roads*. Erosion and sedimentation control for access roads, shall be in accordance with the Maine Department of Environmental Protection best management practices.

4.23.7.7 *Surface water discharges*. Surface water discharges from the excavation and associated improvements shall comply with the standards contained in Section 4.1.7.9 and may not increase the post development storm water runoff rate for storms up to a level of intensity of a twenty-five (25) year, twenty-four (24) hour storm and must also be in accordance with the following standards:

4.23.7.7.1 Grading or other construction activity on the site may not alter natural drainageways such that the drainage, other than that which occurred before development, adversely affects an adjacent parcel of land, or that any drainageways flowing from an adjacent parcel of land to the parcel are impeded. 4.23.7.7.2 Excavations or quarries two (2) acres or larger in size must be naturally internally drained. Structures such as detention ponds, retention ponds, and undersized culverts may not be used to meet the requirements of this Section unless the operator first obtains a variance from the Department of Environmental Protection in accordance with the requirements

of 38 MRSA Section 490-E for gravel pits, 490-CC for quarries, and submits a copy of the variance approval to the Code Enforcement Officer.

4.23.7.8 *Protection of groundwater, setbacks & separation.* To ensure adequate protection of groundwater, setback requirements for excavations and quarries shall be in accordance with the following requirements:

4.23.7.8.1 Excavation may not occur within a vertical distance of five (5) feet of the seasonal high water table except for excavations that have received a variance under 38 MRSA § 490 E or § 490 CC. A benchmark sufficient to verify the height of the seasonal high water table must be established and at least one test pit or monitoring well must be established on each five (5) acres of unreclaimed land.

4.23.7.8.2 A minimum separation of two-hundred (200) feet must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and that was in existence prior to the excavation.

4.23.7.8.3 A minimum separation of one-hundred (100) feet must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and that was in existence prior to the excavation.

4.23.7.8.4 A minimum separation of one-thousand (1000) feet must be maintained between any excavation and a public drinking water source present at the time of application submission.

4.23.7.9 *Protection of groundwater, contamination.* To ensure adequate protection of groundwater, operational requirements for excavations and quarries shall be in accordance with the following requirements: Refueling operations, oil changes, and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids, and other on site activity involving the storage or use of products that, if spilled, may contaminate groundwater, shall be conducted in accordance with a Maine Department of Environmental Protection spill prevention, control, and countermeasures plan. Petroleum products and other substances that may contaminate groundwater shall be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control, and countermeasures plan shall be on file and available for inspection at the site.

4.23.7.10 *Noise.* The level of noise associated with the operation of an excavation or quarry shall be controlled to minimize impacts upon nearby neighbors. All operations shall be conducted in accordance with the following requirements:

4.23.7.10.1 Except as noted in Subsections 4.23.7.13. and 4.23.7.14. below, routine operation of an excavation shall not cause sound levels at any property line of the excavation, or a property line of a contiguous property owned by the operator whichever is farther from the sound source, that exceed the following limits: No such activities that would generate noise shall be permitted between 9:00 pm and 5:00 am Monday through Saturday and no noise generating activities shall be permitted at any time all day Sunday. Hours of operation may be waived temporarily in accordance with 4.23.7.10.2.

4.23.7.10.2. The Hampden Town Council shall have the authority to waive the hours of operation for a period not to exceed one month for cause, such as a special construction project. The Town Council shall consider ways to mitigate noise during these construction projects that will best balance industry needs and neighborhood needs.

4.23.7.10.3. In the event that noise levels are found by neighboring property owners to be a nuisance operators shall meet with the affected property owners and town officials to effect a mutually acceptable remediation plan which shall be established and followed. Particular attention shall be given to noise generators that are loud and intrusive as well as those that are persistent and repetitive for long periods of time.

4.23.7.11 *Sound levels, routine operation.* Sound levels resulting from routine operation of excavations and quarries shall be measured in accordance with the rules and regulations of the Department of Environmental Protection for noise as found in Chapter 375 Section 10-H.

4.23.7.12 *Sound levels, blasting.* Sound resulting from production blasting at an excavation and quarry shall be measured in peak linear sound level (dBLA) with a linear response down to 5 Hz and shall be limited as follows:

4.23.7.12.1 Blasting shall not occur on Sundays.

4.23.7.12.2 Blasting shall not occur between the hours of 5:00 p.m. and 8:00 a.m.

4.23.7.12.3 Blasting shall not occur more frequently than four times per day.

4.23.7.13 *Governing Regulation Blasting.* Blasting must be conducted in accordance with 25 MRSA, Chapter 318 and 38 MRSA, Section 490-Z.

4.23.7.14 *Exemptions.* The following activities are exempt from the sound level limits in this Section.

4.23.7.14.1 Registered and inspected vehicles while operating on public ways, or while entering the excavation area to make a delivery or a pickup and which are moving, starting, or stopping, but not when they are parked continuously for more than sixty (60) minutes in the excavation area.

4.23.7.14.2 Warning signals and alarms. Notwithstanding this provision if back-up alarms create persistent noise and are found by the Code Enforcement Officer to be a noise nuisance to neighboring property owners those devices shall not be deemed as exempt from the sound limits of this section.

4.23.7.14.3 Emergency maintenance and repairs

4.23.7.14.4 Operations necessary for public works projects.

4.23.7.14.5 Railroad activities accessory to excavation activities regulated in this section.

4.23.7.15 *Significant Wildlife Habitat.* No part of any land affected by a gravel mining operation may be located in a significant wildlife habitat, as defined in 38 MRSA Section 480-B, or in an area listed pursuant to the Natural Areas Program, 12 MRSA Section 544.

4.23.7.16 *Waste disposal.* Solid waste, including stumps, wood waste, and land-clearing debris generated on the affected land must be disposed of in accordance with the rules of the Maine of Environmental Protection Chapter 13, including any rules adopted to implement those laws.

4.23.7.17 *Traffic*. Truck traffic at any excavation operation shall be limited to thirty-five (35) trucks per hour or comply with applicable permit requirements of the Maine Department of Transportation under Title 23, Section 704-A, and all applicable Ordinances of the Town.

4.23.8 Reclamation (*Amended 12-17-07*)

4.23.8.1 *General*. Any land on which excavation or quarry activities were conducted thereon between May 14, 2007 and January 16, 2008, or which are conducted thereon at any time subsequent to January 16, 2008, must be reclaimed in accordance with the requirements of this Section or as provided under 38 MRSA Section 490-E or 490-CC.

4.23.8.2 *Purpose*. The purpose of reclamation is to restore affected areas to a condition that is environmentally sound and sustainable and that does not preclude the future development of such land because of instability, stagnant ponds or flooding.

4.23.8.3 *Categories of Reclamation*. Reclamation may include, but is not limited to:

- 4.23.8.3.A Stabilization of slopes.
- 4.23.8.3.B Creation of safety benches.
- 4.23.8.3.C Planting of forests.
- 4.23.8.3.D Seeding of grasses and legumes.
- 4.23.8.3.E Seeding for grazing purposes.
- 4.23.8.3.F Planting of crops for harvest.
- 4.23.8.3.G Enhancement of wildlife and aquatic habitat.
- 4.23.8.3.H Enhancement of aquatic resources.
- 4.23.8.3.I Enhancement of recreational resources.

4.23.8.4 *Alternate Reclamation*. An owner or operator may apply to the Planning Board for approval of plans for alternative forms of reclamation.

4.23.8.4.A The site may be converted to another use.

4.23.8.4.B An owner or operator may develop a recreational management area and be exempt from the reclamation standards set forth in this Section if the following three conditions are all met:

4.23.8.4.B.1 The owner or operator first obtains a variance from the Maine Department of Environmental Protection in accordance with the requirements of 38 MRSA Section 490-E for gravel pits and 490-CC for quarries.

4.23.8.4.B.2 The Off-road Recreational Vehicle Division of the Maine Department of Inland Fisheries and Wildlife determines that the site is suitable under Title 12, Section 1893-A.

4.23.8.4.B.3 The owner or operator receives site plan approval from the Planning Board.

4.23.8.5 *Best Management Practices*. Unless otherwise approved by the Planning Board, reclamation shall be conducted in accordance with the Maine Department of Environmental Protection best management practices for erosion and sediment control within two (2) years after final grading and shall include:

4.23.8.5.1 Side slopes shall not be steeper than one (1) foot vertical for two-and-one-half (2 1/2) feet horizontal.

4.23.8.5.2 A vegetative cover shall be established by seeding within one year of the completion of excavation. Vegetative cover is acceptable if, within one year of seeding both of the following are accomplished:

4.23.8.5.2.A The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession, sufficient to ensure a 75% survival rate.

4.23.8.5.2.B The planting of all materials results in a permanent ninety (90) percent of ground coverage.

4.23.8.5.3 The CEO may require, when no longer in use for its intended purpose, the removal of all associated above ground structures, equipment, foundations, utilities, and access roads or driveways constructed to specifically service the reclaimed area.

4.23.8.6 *Surety*. The Town shall require an acceptable form of surety to cover the estimated cost to complete the reclamation of excavations with a working excavation larger than one acre in size, excluding any reclaimed areas, unless the operator demonstrates that a bond or similar financial assurance has been secured for the Maine Department of Environmental Protection pursuant to 38 MRSA Section 490-E.

The estimated cost to complete the reclamation shall be determined on the basis of usual, customary, and reasonable costs for similar reclamation. The applicant shall provide surety in the form of cash, certified bank checks, insurance bonds, or irrevocable letters of credit all payable to the Town. Any such surety shall be satisfactory to the Municipal Officers and to the Town Attorney as to sufficiency, manner of execution, and amount. The applicant shall record a limited easement to provide the Town and/or a third party the right to enter the subject property and engage in construction activities therein for the purpose of completing reclamation of the property in the event that the performance guarantee must be utilized.

4.23.9 District Regulations (*Amended 12-17-07*)

4.23.9.1 *Excavation limited to the Rural District*. Excavation activities requiring a permit in accordance with *Section 4.23.6* of this Ordinance shall be considered allowed uses in the Rural District only.

4.23.9.2 *Excavation further regulated under Shoreland Zoning*. RP, SP Districts and land areas subject to Shoreland Zoning are further regulated under Article 4.14 Shoreland Zoning.

4.23.10 Inspections. Annual inspections are required for all excavations. The purpose of annual inspections is to determine or reaffirm that the excavation is in full compliance with all applicable requirements of *Article 4.23 Excavation Gravel Pits and Quarries*. (*Amended 12-17-07*)

4.23.10.1. Annual inspection shall be filed as part of the Annual Report required in *Section 4.23.14*.

4.23.10.2 *Annual inspections*. Annual inspections of excavations shall be performed by persons who are deemed qualified by the Code Enforcement Officer to determine the degree of compliance of the excavation with the requirements of this Ordinance. Persons deemed qualified shall include but not be limited to professional engineers and professional land surveyors.

4.23.10.2.A All costs of the inspection shall be borne by the owner or operator of the excavation.

4.23.10.2.B The person doing the inspection shall be provided with an escort in accordance with the rules and regulations of the Federal Mining Safety and Health Administration (MSHA). Upon appropriate notice, the operator or a designee shall be the escort for inspection of the excavation.

4.23.10.2.C The person doing the inspection shall determine, as much as may be possible, the extent of the compliance of the excavation with the requirements of this Ordinance. If there are any instances of not being in compliance, those instance shall be noted on the inspection form in accordance with *Section 4.23.10.2.D* of this ordinance.

4.23.10.2.D The person doing the inspection shall complete the proper inspection form “Annual Inspection for Excavations”, with any appropriate comments, and deliver the completed form to the owner or operator.

4.23.10.2.E The owner or operator shall forward a copy of the completed inspection report to the Code Enforcement Officer within thirty (30) days of receipt with payment of a fee in accordance with the Town of Hampden Fees Ordinance for the recording of the report.

4.23.10.3 *DEP inspections accepted*. Inspections of excavations (identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting) by the Maine Department of Environmental Protection shall be deemed sufficient provided that the owner or operator forwards a copy of the inspection report to the Code Enforcement Officer within thirty (30) days of receipt with payment of a fee in accordance with the Town of Hampden Fees Ordinance for the recording of the report.

4.23.10.4 *Additional inspection reports*. If any additional inspection reports related to an excavation are received from any State or Federal Agency, the owner or operator shall forward a copy of the inspection report to the Code Enforcement Officer within thirty (30) days of receipt.

4.23.10.5 *Entry to excavation*. By submitting an application for a permit, or by submitting an Annual Report, the applicant agrees to authorize a properly escorted designated representative of the Town to enter the property including buildings, structures, or conveyances on the property at reasonable hours to determine compliance with the terms and conditions of a permit for an excavation.

4.23.11 Expansions of Nonconforming Uses. No nonconforming mineral exploration, excavation, or removal of lands for the purpose of creating a sand, fill, or gravel pit shall be extended to other land or parts of land unless the other land or parts of the land were designated for such use prior to the effective date of this amendment January 16, 2008. *(Amended 12-17-07)*

4.23.12 Waiver of Provisions The Town shall accept waivers or variances granted by the Department of Environmental Protection under *38 MRSA Section 490-E* provided that the operator provides a copy of the variance approval to the Code Enforcement Officer prior to commencing the activity requiring the variance.
(Amended 12-17-07)

4.23.13 Change of Owner or Operator. Notice of a change of owner or operator shall be submitted to the Code Enforcement Officer of the Town in accordance with the following requirements: *(Amended 12-17-07)*

4.23.13.1 *Documentation required.* For excavations identified in *Section 4.23.5.1* subject to current Maine Department of Environmental Protection permitting, the new owner or operator shall submit evidence to the Town that the excavation meets either of the following conditions:

4.23.13.1.1 The excavation has a valid Site Location of Development License pursuant to 38 MRSA Section 481.

4.23.13.1.2 The excavation has a valid gravel pit or rock quarry registration from the Maine Department of Environmental Protection pursuant to *38 MRSA 490-C, or 490-Y.*

4.23.13.2 *Certification of intent to comply.* The new owner or operator of all excavations shall submit written certification of intent to comply with the requirements of this Ordinance.

4.23.13.3 *New surety required.* Where there is a change in ownership of an excavation operation for which a surety has been provided, the new owner shall be responsible for providing a new surety in accordance with the requirements of *Section 4.23.8.6.* Such surety shall be provided before the Town releases the original surety.

4.23.13.4 *New performance guarantee required.* Where there is a change in ownership of an excavation operation for which a performance guarantee has been provided, the new owner shall be responsible for providing a new performance guarantee in accordance with the requirements of *Section 4.23.13.5.* Such performance guarantee shall be provided before the Town releases the original performance guarantee.

4.23.14 Annual Report. The owner or operator of all excavations shall submit a report for each separately permitted excavation to the Code Enforcement Officer of the Town no later than March 1 of each year on a form specified by the Town. The report shall include the following information: *(Amended 12-17-07)*

4.23.14.1 Name, address, telephone number, fax, and email address of owner.

4.23.14.2 Name, address, telephone number, fax, and email address of operator if different from owner.

4.23.14.3 Location of excavation with street address or directions to the excavation and Town Lot and Map designation.

4.23.14.4 Area in acres of working excavation.

4.23.14.5 Total area in acres that is currently permitted for excavation.

4.23.14.6 Total area in acres that is “grandfathered” in accordance with *Section 4.23.3*, *Section 4.23.7.1*, *Section 4.23.9.2*, or *Section 4.23.11* of this Ordinance.

4.23.14.7 Total area in acres that has been excavated.

4.23.14.8 Total area in acres that has been reclaimed.

4.23.14.9 An estimate of when the total area that is expected to be excavated will reach the limits of the area that has been permitted for excavation.

4.23.14.10 A statement of whether or not the Department of Environmental Protection has conducted an on-site inspection since the most recent previous report.

4.23.14.11 A signed statement attesting that the information submitted in the report is truthful, accurate, and correct to the best of the knowledge of the owner or operator and reaffirming that the excavation is in full compliance with the permit issued under this Ordinance.

4.23.14.12 Payment of required fee.

4.23.14.13. Copy of annual inspection as contained in *Section 4.23.10*.

4.23.15 Performance Guarantees. The Town may require a bond payable to the Town with sureties satisfactory to the Town or such other security as the Town may determine adequately secures compliance with this ordinance, conditioned upon the faithful performance of the requirements set forth in this ordinance. Other security may include a security deposit with the Town, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the Board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the Town for the reclamation of the area for which the bond was posted and any remainder returned to the operator. Assurance may include the following: *(Amended 12-17-07)*

4.23.15.1. Performance standards relating to operation or maintenance plans;

4.23.15.2. Performance standards for determining the reclamation period including annual revisions of those plans;

4.23.15.3. Limits, terms and conditions on bonds or other security;

4.23.15.4. Proof of financial responsibility of a person engaged in excavation activity or the affiliated person who guarantees performance;

4.23.15.5. Estimation of reclamation costs; and reports on reclamation activities; or the manner of determining when the bond or other security may be discharged.

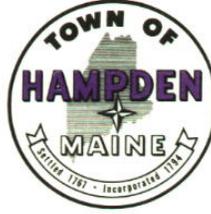
4.23.16 Enforcement *(Amended 12-17-07)*

4.23.16.1 A penalty fee shall be assessed for a failure to file the required Annual Report with payment of the required Annual Fee by March 1 of each year in accordance with the Town of Hampden Fees Ordinance.

4.23.16.2 Failure to pay the required Annual Fee by July 1 of each year or failure to file the required Annual Report by July 1 of each year shall constitute sufficient cause for the Town to terminate any excavation permit that has been issued under the provisions of this Ordinance.

4.23.16.3 Failure to comply with any of the terms of the excavation permit granted under this Ordinance shall constitute sufficient cause for the Town to terminate that permit or to undertake any other appropriate enforcement action or penalties.

4.23.16.4. Failure to comply with any approval granted under this Ordinance or any other requirement of this Ordinance shall be considered a violation, which may be subject to enforcement under the provisions of *30-A M.R.S.A. § 4452*.



TO: Mayor Hughes and Hampden Town Council
FROM: Robert Osborne, Town Planner
SUBJECT: Draft Zoning Ordinance Map Amendment, Western Avenue
DATE: October 15, 2013

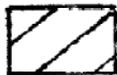
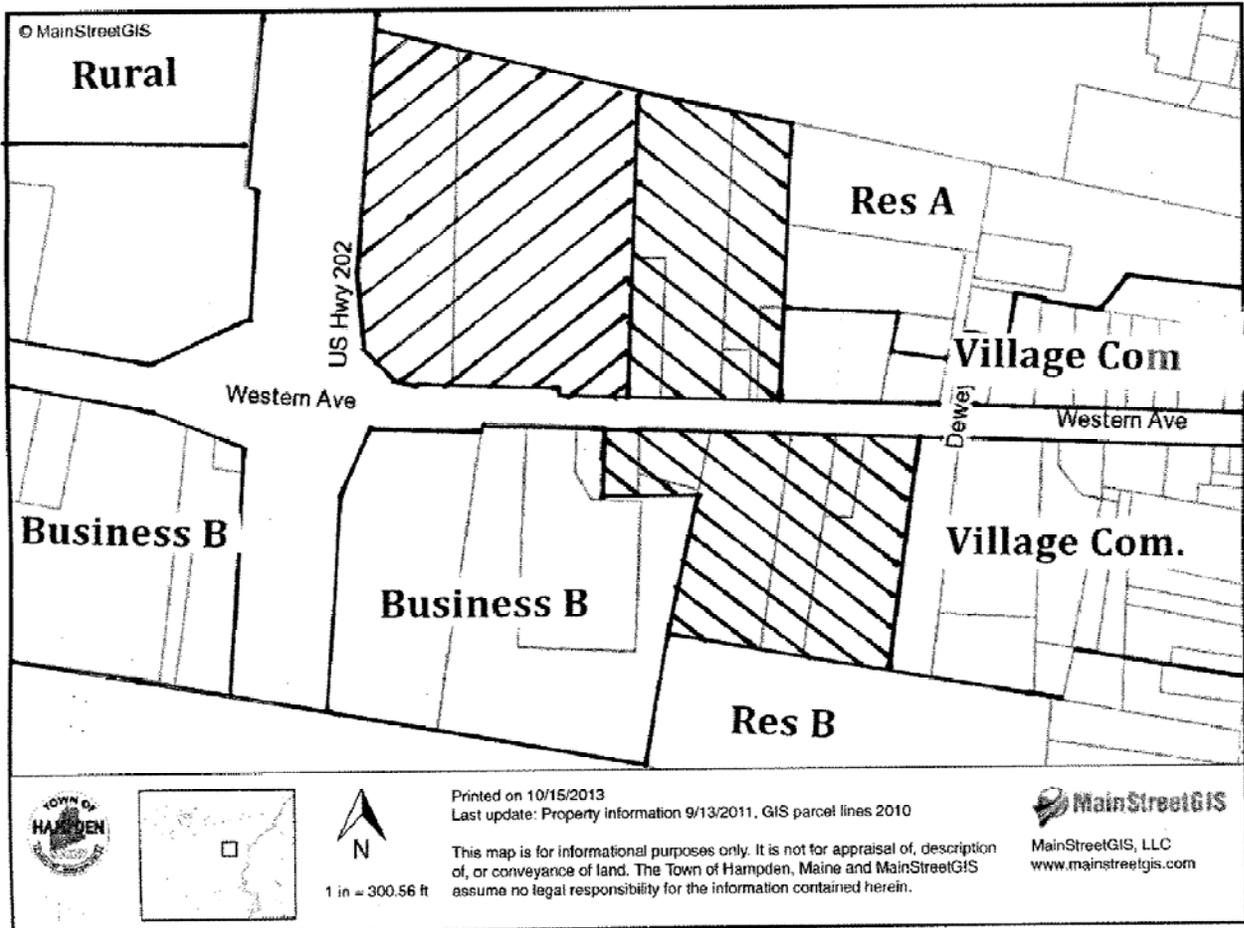
At the October 2, 2013 Planning and Development Committee meeting the Town Planner was asked to provide a draft Council Order for the proposed Zoning Ordinance Map changes to the Western Avenue corridor. This is that document.

The land parcels involved include the following: Starting on the north side of Western Avenue, east of Route 202 are Map 31, Lots 14 and 15 (Catholic Church and parsonage), Map 32, Lots 1 (Pellerin), Map 32, Lots 2, 3 and 3A (all owned by Frost) and Map 32, Lot 4 (owned by McCue). On the south side of Western Avenue, starting with the front corner of the Katahdin Trust Bank, Map 36, Lots 30, 29 and 28 (Gilpatrick), and Map 36, Lots 27 and 27A (TDS).

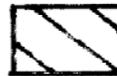
The total land area to be rezoned on the north side of the street is 13.25 acres (10 acres from Res. A to Business B District and the remaining 3.25 acres from Village Commercial to Business B District. The land area to be rezoned on the south side of the street is 6 acres all from Village Commercial to Business B District.

TOWN OF HAMPDEN
Draft

The Town of Hampden Hereby Ordains
Proposed Amendments to the Zoning Ordinance Map



Residential A to Business B



Village Com. to Business B

10/15/20