

Planning and Development Committee
October 5, 2011
6:00 PM
Council Chambers
AGENDA

1. Approval of September 21, 2011 Minutes
2. Committee Interviews – None
3. Old Business
 - a. Billington Subdivision – Jim Kiser
 - b. Acquisition of Land?
Lawrence Merrill
33 Main Road North/Cottage Street
 - c. Business Park Update
 - d. Recreation Plan Update
 - e. Sign Ordinance Update
 - f. Marina Park Update
 - g. School Re-Use Update
4. New Business:
 - a. Landscaping Business – Coldbrook Road
5. Public Comments:
6. Committee Member Comments:
7. Adjourn

27 September 2011

Hampden Town Council
Town of Hampden
106 Western Ave
Hampden, ME 04444

Conservation Easement/Open Space, Chickadee Crossing Subdivision

Dear Council,

Billington LLC is in the process of obtaining final approval for this subdivision with the Planning Board and hopes to be presenting the application to the Board in October. As part of the final approval, we are required to have dedicated open space within the subdivision. This open space may be owned by various entities, one of which is by the Town of Hamden. In addition, a portion of this open space is required to have a conservation easement for wetland impact mitigation.

We are asking the council to accept 2 items; one the conservation easement as the grantee or overseer of the easement and two the open space parcels as fee ownership. This would put the council as owner of the land over which a conservation easement was granted. This owner/easement overseer will be similar to the high school easement on the LL Bean parcel.

The conservation easement is proposed to be given to the town; and therefore, requires council's preliminary acceptance (see attached easement). This easement and the proposal to have the town accept the land as open space has been reviewed by the town's attorney. Mr. Russell has provided comments related to acceptance of the easement in general and an advisory policy concern for ownership (see attached).

The conservation easement has been modified to address Mr. Russell's comments of August 3, 2011. These changes relate to the acceptance of the easement as the Grantee.

The policy advisory is related to the third party enforcement by the Maine DEP and the proposed ownership of the open space by the town. The third party enforcement is required on all DEP conservations easements. The town has given preliminary approval to accepting this type of easement on the LL Bean property as part of the high school project. That easement has not been drafted yet; however, the sample easement language includes the same third party oversight and enforcement. This easement is a policy issue and is an economic development assistance that the town can offer.

It is also noted that the Halpern property has been presented to the town for ownership. Under the subdivision approval granted in 1991, the conservation easement was granted under the terms of MRSA 33, Ch 7, Sub-Ch 8-A and issued a third party right of enforcement to the DEP. The easement is recorded in PCRD Bk 4935, Pg 21. This easement does not mention the cost of third party action; however, one would assume under current economic conditions, cost recovery would occur. It should be noted that over almost 20 years that no issues have occurred related to this property and third party enforcement.

The second action is for the council to provide preliminary approval for the acceptance of ownership of the open space for the subdivision, including the parcel in the conservation easement. As part of Billington's subdivision application, we propose the open space within the subdivision be accepted by the town as it abuts several existing town parcels and it continues a green belt along Route 202. The parcels will also protect wetland and surrounding upland areas against impacts and provide wildlife habitat in this area. The ability to provide trails through the areas will allow connection to other town owned open spaces as connectivity grows.

The open space for this subdivision is separated into 6 parcels ranging from 7,500± sf to 9± ac in size. The smaller two parcels provide access to abutting property owned by the town and access to the largest piece of open space. The 9 ac open space parcel is also proposed for a conservation easement as part of the wetland mitigation requirements of the Maine DEP and the Army Corps of Engineers.

We have provided for a trail in the easement area which could be connected through the other open space areas and connect to Westbrook Terrace in several locations. These parcels may add to the long term potential for connection of other open space/recreational areas in the town including the Ball Field Road site and potentially the LL Bean parcel and business park. This property could be a component of the future open space/recreational plan noted in the 2001 and draft 2010 comprehensive plan.

The 2001 comprehensive plan discusses an open space plan with primary elements including areas around wetlands. The open spaces "can provide public access, wildlife habitat and protection from erosion and sedimentation". The plan also indicates a trail system can provide links to residential, open recreation or civic uses.

We feel that the town's ownership of all the open space within the subdivision is the best option for the area. This puts the town in an oversight position to insure that the natural resources included in the open spaces are protected through public ownership. In addition, it permits public use for trails, connectivity and education. Therefore, we respectfully request the council preliminarily accept the conservation easement and the open space dedications.

We look forward to further discussion at your next regular meeting.

Best Regards,

A handwritten signature in black ink, appearing to read 'JRK', written in a cursive style.

James R. Kiser, PE
Kiser & Kiser Company

Enc.

C: Billington LLC

CONSERVATION EASEMENT

RECITALS

BY THIS INDENTURE, made this _____, day of _____ 2011, by **Billington LLC** (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 81 Park Street, Bangor, 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 deeds recorded in the Penobscot County Registry of Deeds; book 11050, page 285 and book _____, page _____.

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 106 Western Ave, Hampden, 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, and 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/restrictive covenants (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, (hereinafter referred to as the "Third Party") will receive Third Party Rights of Enforcement under this Easement

NOW THEREFORE, be it known that **Billington LLC**, 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. 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).
- 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.
- 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.
- 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.
- 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 except for those activities explicitly authorized by the Compensatory Mitigation Plan for Permit No. _____ issued by the Department of the Army, New England District, Army Corps of Engineers dated _____ 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.
- b. Pruning and thinning live trees and brush for the purpose of promoting safety, aesthetic quality, 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/or any other local or state boards/agencies.
- e. Install new utilities and the right to convey easements for such utilities.
- f. Maintain, repair and replace utilities and their easement areas.
- g. Construct a path 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 other state or local agencies.

h. Motorized vehicles shall be permitted to the path and for exempted maintenance activities provided they do not damage the soil surface or quality of the protected area. Emergency 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.

The Grantor reserves to itself the rights to create, restore, remediate, monitor and maintain those areas within the easement as required by the Compensatory Mitigation Plan Permit No. _____ issued by the Department of the Army, New England District, Corps of Engineers, dated _____.

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; book _____, page _____.

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

Grantee shall be under no obligation to maintain the Easement Area, to enforce any provisions of this easement or pay any taxes or assessment thereon.

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 ~~shall~~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 ~~Grantee-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 ~~is-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, BILLINGTON LLC has caused this instrument to be signed in its corporate name by Stanley E. MacMillan, its President, hereunto duly authorized, this ____ day of _____, 2011.

WITNESS:

BILLINGTON LLC

By: _____

Stanley E. MacMillan
Its President
Hereunto Duly Authorized

STATE OF MAINE
PENOBSCOT, ss.
, 2011

Then personally appeared the above-named Stanley E. MacMillan 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 Town of Hampden, Grantee as aforesaid, and the said Grantee does hereby accept the foregoing Conservation Easement, by and through Susan Lessard, its Manager, hereunto duly authorized, this ____ day of _____, 2011,

Town of Hampden

By: _____
Susan Lessard
Its Manager
Hereunto Duly Authorized

STATE OF MAINE
PENOBSCOT, ss.
, 2011

Then personally appeared the above-named Susan Lessard and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said Town of Hampden.

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 Teco Brown, its Director of the Bureau of Land & Water Quality, hereunto duly authorized and the said Teco Brown does hereby accept the foregoing Conservation Easement this _____ day of _____, 20__.

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Its: Director, Bureau of Land & Water Quality

DRAFT

Jim Kiser

From: Robert Osborne [planner@hampdenmaine.gov]
Sent: Wednesday, August 03, 2011 4:02 PM
To: Tom Brann; Jean Lawlis; Janet Hughes; Kristen Hornbrook; Andre Cushing; Shelby Wright; Dean Bennett; Jim Kiser; Susan Lessard
Subject: Fwd: Conservation Easement

Dear Council, Mr. Kiser and Staff,

I just received Mr. Russell's comments regarding the Billington LLC open space.

Respectfully,

Bob Osborne,
Town Planner

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

From: **Thomas A. Russell** <tar@frrlegal.com>
Date: Wed, Aug 3, 2011 at 3:51 PM
Subject: Conservation Easement
To: Robert Osborne <planner@hampdenmaine.gov>

Bob: Based on my review of the proposed Conservation Easement from Billington, LLC, I offer the following comments:

1. I would like to see an affirmative obligation on the Grantor to undertake the activities described in Section 3(a) and (b).
2. I recommend that the Town be provided with the option, but not the obligation, to undertake the activities described in Section 3 (a),(b),(c),(d), and (h).
3. Section 3(h) should be modified to allow for emergency vehicles.
4. Even though Section 3(g) authorizes the construction of a path by the Grantor, the Town should be aware that Section 4 provides that the general public will not have a right to use the trail.
5. The last sentence at the bottom of Page 4 should be modified to read as follows:

“Grantee shall be under no obligation to maintain the Easement Area, *to enforce any provisions of this Easement,*

or pay any taxes or assessments thereon.”

6. In the second line of Section 10(c), the word “shall” should be changed to “may”. The Town should have the option to take the actions specified in Section 10(c), but I do recommend that it assume an obligation to do so.

7. On Page 7, the paragraph beginning with the words “THE GRANTEE” should be modified to read as follows:

“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.”

8. I recommend that the paragraph on page 7 beginning with the words “THE GRANTOR” be modified to read as follows:

“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 Third Party.”

Please let me know if you have any questions or comments. Tom

Jim Kiser

From: Robert Osborne [planner@hampdenmaine.gov]
Sent: Tuesday, August 16, 2011 9:48 AM
To: Jim Kiser
Subject: Fwd: Billington Easement

Jim,

Here are Tom Russell's comments regarding the conservation easement which has been passed on to the Planning and Development Committee. The heart of the matter is this: The committee must decide that they are willing to recommend to council that the obligations that the easement will place on the Town are ok. It was my hope that Tom's communication would make a recommendation but it does not. He seems to be saying that the committee would need to make a policy decision that they are prepared to live with the obligations that the easement would require the town to undertake.

Bob

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

From: **Thomas A. Russell** <tar@frrlegal.com>
Date: Tue, Aug 9, 2011 at 12:52 PM
Subject: RE: Billington Easement
To: Robert Osborne <planner@hampdenmaine.gov>
Cc: Susan Lessard <manager@hampdenmaine.gov>

Bob:

Given the stated intent to convey the Easement Area to the Town of Hampden, I have even more concerns about the impact of the Conservation Easement on the Town.

Section 2 of the Conservation Easement includes a number of use limitations for the Easement Area, and Section 10 obligates the Grantor to undertake actions necessary to cure a breach of the Easement, to terminate any conduct inconsistent with the Easement, and to repair any damage to the Easement Area. Under the terms of the Easement, the term "Grantor" includes Billington LLC, and its successors and assigns. Therefore, if Billington LLC conveys the Easement Area to the Town of Hampden, the Town will become obligated to undertake the curative actions required under Section 10 of the Easement. In essence, the Town would be required to enforce the Easement against itself. Furthermore, if the Town does not undertake the curative actions required by Section 10, the last paragraph of the Easement grants DEP a third party right of enforcement, and DEP may exercise "all rights of compliance granted the Grantee (i.e., Town) under this Easement." So, if the Town acquires title to the Easement Area and does not undertake any required curative action, DEP could undertake the curative action as authorized under Section 10(c), and recover its costs from the Town. In fact, Section 12 makes it clear that if the Town becomes both the owner of the Easement Area and the holder of the Easement, the Easement is to remain in effect and will not be eliminated under the doctrine of merger.

To the best of my recollection, this proposed arrangement would be the first dedication of open space to the Town that would place affirmative obligations on the Town to enforce use limitations in, and to repair any damage to, the Easement Area, and would create the prospect that the Town could be liable to DEP for any costs incurred by DEP for the Town's failure to fulfill its curative obligations.

Tom

From: Robert Osborne [mailto:planner@hampdenmaine.gov]
Sent: Thursday, August 04, 2011 10:51 AM
To: Tom Russell
Subject: Fwd: Billington Easement

Tom,

Jim Kiser asked me to forward his comments about your comments regarding the Billington, LLC easement. Would you kindly read it over and we will talk Monday.

Thanks,

Bob Osborne,
Town Planner

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

From: Jim Kiser <jim@kiser-kiser.com>
Date: Thu, Aug 4, 2011 at 10:39 AM
Subject: Billington Easement
To: Robert Osborne <planner@hampdenmaine.gov>

Bob,

We have review the comments provided by Tom Russell and feel that for the most part they are not major issues. However, it seems that all items, with the exception of #3, may not be necessary, if as proposed, the town is deeded the property covered by the easement. As you know the subdivision proposal is to have open space, which includes this easement area, deeded to the town upon completion of the road. We are not sure if Tom was aware of this intent when he submitted his comments.

I don't see the Corps having a problem adding the exemption for emergency vehicles but would also say that I don't believe anyone would take issue with emergency vehicles even without them being specified.

When we customized the Corps standard easement for this project, Winn Stevens reviewed the easement to ensure that Billington would not be restricted from transferring the property to the Town.

If you could transmit this intent to Tom, we would be happy to have a meeting or conference call to discuss needed actions.

Thanks

James Kiser



PO Box 282

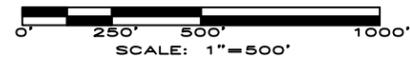
Hampden, ME 04444

[207-862-4700](tel:207-862-4700)



REDUCED

OPEN SPACE PLAN
 CHICKADEE CROSSING
 MAIN ROAD NORTH
 HAMPDEN, MAINE



DEVELOPER:
 BILLINGTON LLC
 BANGOR, MAINE



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