

**Town of Hampden  
Planning Board Ordinance Committee  
Wednesday August 3, 2016  
Municipal Building Conference Room  
6:30pm**

**AGENDA**

- A. Zoning Ordinance Amendment – Accessory Apartments
- B. Zoning Ordinance Amendment – Off Premises Signs
- C. Zoning Ordinance Amendment – Building Permit Threshold
- D. Shoreland Zoning Ordinance Amendment – Consistency with Statute

**NOTE:** Please refer to the July 13, 2016 memo from Town Manager Angus Jennings for information on each of these agenda items.

**Town of Hampden**  
106 Western Avenue  
Hampden, Maine 04444



**Phone:** (207) 862-3034  
**Fax:** (207) 862-5067  
**Email:**  
townmanager@hampdenmaine.gov

**TO:** Planning Board  
**FROM:** Angus Jennings, Town Manager  
**DATE:** July 13, 2016  
**RE:** Proposed Ordinance Amendments referred by Town Council

The Town Council has referred the following proposed amendments to the Planning Board for review and consideration within a public hearing:

<b>Proposed Amendments</b>	<b>Date of Town Council Referral</b>
Zoning Ordinance, proposed amendments to allow Accessory Apartments	May 2, 2016
Zoning Ordinance, proposed amendments to Off-Premises Signs	May 2, 2016
Zoning Ordinance, proposed amendments to threshold for required building permits	May 16, 2016
Shoreland Zoning Ordinance, proposed amendments for consistency with Statute	May 16, 2016

It is requested that the Planning Board refer these proposals to its Ordinance Committee and/or to public hearing for consideration and recommendation.

To reduce printing/copying, the text of the proposed amendments, along with supporting materials that were considered by the Council's Planning & Development Committee regarding these items, has been circulated by email only. Hard copies will be provided upon request, and will be circulated prior to the meeting of the Board's Ordinance Committee.

Adopted Amendments to Subdivision Ordinance

As discussed at the Board's January 13 meeting and as outlined in my memo of May 25, the Town Council referred amendments to the Subdivision Ordinance to allow for permitting and construction of Private Roads on December 21, 2015. Following the

passage of the timeline provided in the Ordinance for Planning Board recommendation, the Town Council has since acted to approve these amendments following a public hearing on July 6. (Because the Planning Board did not make a recommendation the amendments required a two-thirds majority to pass; the vote was 7-0). The amended language, which is attached, will take effect on August 6. The new Town Planner will be prepared to review these amendments with the Planning Board in August.

Thank you for your attention to these matters.

*cc: Town Planner, Town Clerk, Code Enforcement Officer*

## **Zoning Ordinance, proposed amendments to allow Accessory Apartments**

Referred to Planning Board by Town Council: May 2, 2016

### **Enclosures:**

- Meeting minutes from Town Council meeting referring proposed amendment
- Meeting minutes from Town Council's Planning & Development Committee during which amendments were considered
- Memo from Dean Bennett with proposed amendment language, April 25, 2016
- Letter from Tonya McVay and Barbara McKay dated March 26, 2016
- Sample Freeport Accessory Apartments Ordinance

### **Issues for Consideration (Town Manager notes, discussed with P&D Committee and included in referral to Planning Board):**

Which Zoning District(s) to allow Accessory Apartments, taking into account allowable / prevailing lot sizes; parking availability; etc.

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**MINUTES**  
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MONDAY

MAY 2, 2016

7:00 P.M.  
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managers. The Council was given a memo on his review from which he read. **(Memo attached as Exhibit 4.b.1 to these minutes)** Discussion followed with councilors weighing in with concerns about the lack of correlation between the budget requests and the actual money spent, concerns about large contingency cushions not identified as such and the 23% increase in just 2 years. All councilors emphasized their support for quality education, with fiscal responsibility. The Council advised, by a unanimous show of hands, for the manager to continue pursuing and bringing forth answers and information regarding the school budget. The Council also encouraged residents to attend the RSU 22 Budget meeting to be held on May 4<sup>th</sup> at 6:00 at the Hampden Academy library.

**5. NEW BUSINESS**

- a. **Application for a renewal liquor license for Anglers Restaurant** – Motion made by Councilor Sirois, seconded by Councilor McAvoy to approve the liquor license. Unanimous vote in favor.
- b. **Amendments to the Zoning Ordinance regarding off-premise municipal signs – referral from Planning & Development Committee to Planning Board** – Councilor McPike reported on the additions made to 4.8.1 and discussion followed regarding off premise signs for businesses. Councilor McAvoy expressed concern regarding the broad scope in relationship to signs on private property. Manager Jennings acknowledged those concerns and stated that there is a public interest for the need to allow off premise signs, but it can be done without being vague. This will all be addressed in the ensuing Planning Board and committee meetings. Motion made by Councilor McPike, seconded by Councilor Wilde to refer to the Planning Board. Unanimous vote in favor.
- c. **Amendments to the Zoning Ordinance regarding Accessory Apartments in Residential A District – referral from Planning & Development Committee to Planning Board** – Councilor McPike explained the intent of the changes as addressing a need to allow for accessory living space at a single family dwelling and to make it easier for families that may need to have a family member living at home in a separate living area, such as elderly parents returning home to live with grown children. At this time there is nothing on the books and the intent here is to address that. Motion made by Councilor McPike, seconded by Councilor McAvoy to refer changes to Residential A District, accessory structures in the Zoning Ordinance to the Planning Board. Unanimous vote in favor. At this point Councilor Marble stated for the record that this is one more

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*instance where he could contest the need for three parking spaces at a single family dwelling and the emphasis is on family. He doesn't believe that this is comparable to private apartments and hopes that someone will review the parking aspect.*

- d. Town Manager's presentation of the proposed FY17 budget –**  
*Manager Jennings addressed the Council and the public by stating that his Budget Message attempted to address some key points as follows: To internalize recurring expenses formerly paid from Host Community Benefit account, Preventing the Sewer Fund from draining the General Fund, Utilizing TIF revenue to offset the budget, and re-activating the Environmental Trust. For the budget to include a Capital program that will help with establishing a Capital plan. To evaluate the operational effects of the Skehan Center, to budget for parks and recreation maintenance, and to strategize the feasibility of a Community Center. **(The Proposed FY 17 budgets and message are attached to these minutes as Exhibit 5.d.1)** The various departments within the entire budget will be discussed at several budget workshops and will be posted to the website. **(Schedule of budget workshops attached to these minutes as Exhibit 5.d.2)***

**E. COMMITTEE REPORTS –**

*Councilor Sirois reported that Finance & Administration Committee reviewed the foreclosed property process and made the recommendation that the Council acted on tonight, discussed the overview of the FY17 budget presented tonight.*

*Councilor McPike reported on the 4/20 Planning & Development meeting and discussions on the marina sign design, off premise signs, accessory apartments and the Shoreland Zone conformance update.*

*Councilor Marble reported on the Infrastructure Committee at which they considered the proposal from Pemco regarding LED streetlights. More research is needed on that. They considered a resident's request for a sidewalk crossing on Rte. 1-A, discussed private businesses selling food on town owned property and discussed the victualer's license process and requirements.*

*Councilor McAvoy reported that the next Services Committee meeting will be Monday the 9<sup>th</sup>.*

- F. MANAGER'S REPORT –**  
*Manager Jennings reported that there is a meeting with the Farmers' Market representatives scheduled for May 3<sup>rd</sup>, they will again be starting the summer market on May 20<sup>th</sup> at the municipal office, work is continuing on the Harbor Ordinance as well as continuing work on the storm water process with a meeting scheduled for May 11<sup>th</sup> at 9:00 a.m.*

**Planning and Development Committee  
April 6, 2016  
6:00 PM  
Conference Room  
MINUTES**

**Attendees:**

Committee

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

Staff

Angus Jennings, Manager  
Dean Bennett, Community Dev Dir (CDD)

Guest

Karen Marysdaughter, Solarize Bangor

1. Approval of March 16, 2016 Minutes - Approved

2. Committee Applications:

- A. Resignation of Andrew Nelson, Planning Board - Noted

3. Updates:

- A. Marina Sign Progress

The Community Development Director and Town Manager reported on their past and current efforts to assist Hamlin Marine and McLaughlin Seafood in establishing a sign along Route 1A. Communication with MDOT was reviewed and noted that it was not possible to comply with MDOT permitting/licensing requirements in order to establish a sign within the State Right-of Way.

Dan Higgins of Hamlin Marine and Kimberly McLaughlin of McLaughlin Seafood explained their situation. A dark area of the community, very little lighting and no signage makes it difficult for customers to find their location. Dan Higgins expressed his thoughts that due to the history of the location and the achievement of establishing a new park, the community should take pride in that location and celebrate the asset. He further described a number of community activities that could find a home there such as Children's Day, Farmers Markets etc.

It was the consensus of those in attendance, including a majority of the Planning and Development Committee members that we should move forward to the extent possible and create a sign design that would be acceptable to all parties. Kimberly McLaughlin indicated that she would take responsibility for getting a draft design and providing to the Committee. Once a design was completed, it would be submitted to the MDOT for approval as a Municipal (Governmental) Sign, as its primary purpose is to identify Turtle Head Park.

4. Old Business:

A. Home Occupation Revisions Draft

The Community Development Director provided the Committee with an updated draft of the Zoning Ordinance Home Occupation provisions which addressed the remaining issue identified by Town Attorney Bearor.

**Committee Action:** It was motioned and seconded to forward the Home Occupation draft to the town attorney and if approved, move to the Town Council for scheduling of a public hearing. **Vote: 5-0**

B. Flag Lots Amendment Draft

As discussed at the previous meeting, the Community Development Director presented a draft amendment to the Zoning Ordinance 4.3. Conditional Lot Dimensions and Rear Flag Lots establishing criteria and permitting processes for the creation of Flag Lots throughout the community.

**Committee Action:** It was motioned and seconded to forward the draft to the Town Council for Planning Board review and comment. **Vote: 5-0**

5. New Business

A. Karen Marysdaughter – Solarize Bangor

Karen Marysdaughter, representing Solarize Bangor, briefly presented the purpose and benefits of the Solarize initiative as she has previously discussed with the Infrastructure Committee. She asked for the Town's sponsorship of the initiative involving promotion of public awareness via social media. She further

indicated, should the town receive inquiries on Solarize Bangor, she would be the contact person on behalf of the Town.

**Committee Action:** It was motioned and seconded to endorse the Solarize project and forward to the Town Council with recommendation to approve. Vote: 4-1

**B. Harbor Ordinance Discussion**

**B. Harbor Ordinance Discussion**

Manager Jennings presented draft amendments to the Harbor Ordinance, following on direction from the P&D and Infrastructure Committees in October, intended to scale back the Town's responsibilities for the Harbor to reflect actual past practices in the administration of the Ordinance. He advised that the Maine Statutes require that the Town of Hampden designate a Harbor Master, with appropriate certification, to respond to requests for mooring locations along the Hampden waterfront.

Members of the public were in attendance, including recreational boaters, and representatives from Hamlin's Marine and McLaughlin's. The discussion focused on the short and long term needs of not only the businesses on the waterfront but also resident/boaters' needs to be able to establish a mooring, in an appropriate location, and have access to a dock for tying up of dinghies, that is outside of the commercial entities operation. It was acknowledged that the DPW Director, who on paper serves as the Harbor Master, is unable to dedicate consistent time toward this function in light of his other responsibilities, and that a better solution would be needed in order for the Town to provide this service.

It was the consensus that the Planning and Development Committee that in order to make informed decisions, especially given budgetary constraints, they need to be advised on the needs of the waterfront users. Residents expressed support for expanded use and visibility of the Marina within the community. The suggestion of the formation of a waterfront advisory committee was initially discussed. Several residents in attendance expressed potential interest in serving.

Manager Jennings explained that he was in the process of ensuring compliance with the Statute and was considering options to ensure that the Harbor Master functions as soon as possible can be properly performed.

It was agreed that the draft amendments to the Harbor Ordinance will require further discussion, and the Ordinance was tabled until a future meeting.

6. Zoning Considerations/Discussion:

A. 23 Cottage Street Request/Discussion

Community Development Director shared a letter from a resident expressing the need for consideration of the allowance for accessory apartments in residential areas of the community. This would allow for in-laws and family members to share living quarters yet still maintain an independent living status.

Committee requested Community Development Director research and draft suggested language at a future meeting.

- 7. Citizens Initiatives: None
- 8. Public Comments: None
- 9. Committee Member Comments: None
- 10. Adjourn: 8:15pm



**To: Angus Jennings, Town Manager**

**From: Dean Bennett, Director of Community Development**

**Date: April 25, 2016**

**Subject: Accessory Apartments**

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In accordance with the Planning and Development Committee's decision to move forward with the allowance of accessory apartments in the Residential A District, at their meeting on April 20, 2016, I offer the following for consideration by the Town Council for forwarding the accessory apartment amendment to the Planning Board for review and comment.

In short, accessory apartments would be allowed in the Residential A District subject to the criteria listed herein. The review would follow the established Site Plan/Conditional Use process requiring Planning Board approval.

The issue at hand is the current allowance of the conversion of an existing single-family dwelling into a two-family dwelling in the Residential A District. However, the construction of a two-family dwelling is not allowed. The proposed accessory apartment provision herein would allow for the construction of a single-family dwelling with an accessory apartment, or the addition of an accessory apartment, subject to very similar criteria as that of a conversion.

These proposed revisions do not allow for the construction of a two-family dwelling in the Residential A District, but does provide relief for those with the need to house family members who wish to live independently.

Whether converting an existing single-family into a two family, or constructing a single-family with an accessory apartment, provisions are provided which require the appearance of the building to be that of a single family home, consistent with the character of the District.

### 3.7. Residential A District

**3.7.1. Purpose** - This district is intended for the development of low density single family housing types. While this district is predominately intended for detached housing the district may allow certain low impact civic and institutional uses.

**3.7.2. Basic Requirements** - All permitted and conditional uses are limited to 20% ground coverage maximum and 35 foot height limit unless noted.

**3.7.3. Permitted Uses (Subject to Site Plan Review where applicable)** - Single family dwelling, (including modular homes), home day care (subject to *Article 4.19*), accessory uses and structures, non-commercial park or playground, home occupation (subject to *Article 4.10*), essential service. (Amended:8-22-94, 03-21-05)

**3.7.4. Conditional Uses (Subject to Site Plan Review where applicable)** - Church, nursing home, non-profit school, public schools, community building, government structure or use except storage or repair facility, two family dwelling, **single-family w/accessory apartment**, congregate care facility, buildings necessary for essential services. Animals other than usual pets provided the premise consists of at least 2 1/2 acres, and animals shall be kept a minimum of 50 feet from any property line. (Amended: 8-22-94, 1-21-97)

#### 3.7.5. Lot Dimensions

		Public Sewer		On-site waste disposal
Minimum Area	-	18,000 sq. ft.	-	30,000 sq.
ft. Minimum Road Frontage	-	125 feet	-	150 feet
Minimum Setbacks:				
Street Yard	-	25 feet	-	
30 feet Side Yard	-	20 feet	-	
30 feet Rear Yard	-	20 feet	-	
30 feet				

(Amended: 5-4-92)

Notwithstanding the above requirements, accessory structures which are not attached to a principal building may be located on a lot in accordance with the following:

Accessory Structures Ground Floor Area		Up to 250 Square Feet
Maximum Height	-	16 Feet
Minimum Other Yard	-	5 Feet

Once located in accordance with the foregoing requirements, said accessory structures shall not be attached to a principal building unless said structures are in compliance with the Other Yard requirement of the District. (Amended: 10-3-94)

### **3.7.6. Special District Regulation**

1. Dwellings other than nursing homes and congregate care facilities shall be limited to a maximum of two dwelling units. *(Amended: 06-21-04)*

#### **2. Two Family Conversions**

Only existing single family dwellings may be converted to a two-family dwelling through addition or division. This provision prohibits construction of new two-family dwellings or complexes. Where a two-family dwelling conversion is proposed the second dwelling unit shall be subordinate to the first or primary dwelling unit. The size of the primary dwelling unit shall not be regulated by this standard. The finished floor area of the subordinate dwelling unit shall be at least 500 sq. ft. so that all subordinate dwelling units constructed under this provision shall be adequate in size. For properties in which the finished floor area of the primary dwelling unit exceeds 1,000 sq. ft., the finished floor area of the subordinate dwelling unit shall not exceed 50 percent of the finished floor area of the primary dwelling unit. *(Amended: 06-21-04)*

Where a two family dwelling conversion is proposed the Planning Board shall determine that design features that distinguish two-family dwellings from single family dwellings are avoided. Such designs may prohibit separate driveways, separate front door entrances, broken facades and other such distinguishing characteristics that call attention to the two-family use of the building and site development. The Board shall encourage creative use of common driveways, side door entrances, and traditional single family architectural elements. *(Amended: 06-21-04)*

Where a two-family dwelling conversion is proposed the Planning Board shall require a report from the Code Enforcement Officer making a determination that the proposed conversion meets applicable building codes and that the conversion is designed in such a way that the structure could easily be returned to a single-family dwelling, and detailing what building alterations are required to do so. *(Amended: 06-21-04)*

In addition to the minimum lot area requirements found in 3.7.5. two-family dwellings shall provide an additional 10,000 square feet in lot area.

In addition to the dimensional requirements found in 3.7.5. churches, schools, community buildings, nursing homes, and congregate care facilities which abut an existing residential use or district shall provide an additional 50% lot area and yards along the applicable property line(s). *(Amended: 1-16-96, 06-21-04)*

#### **3. Single-Family w/Accessory Apartment**

An accessory apartment is a small dwelling unit that is accessory and subordinate to the principal use of a property as a single-family dwelling. These standards are intended to allow the addition of one accessory apartment to a single-family dwelling only if such

addition will preserve the single-family residential character of the property. The following standards shall be met to create and maintain an accessory apartment.

a. An accessory apartment may be created in one of the following ways:

- i. By using space within an existing dwelling;
- ii. By building an addition onto an existing dwelling such that the addition is made part of the principal building;
- iii. By using space within an existing or proposed accessory structure that is within 50 feet of the single-family dwelling.
- iv. New construction

b. The accessory apartment shall not be considered to be a second dwelling unit for determining the required minimum lot area, or net residential density.

c. If the accessory apartment will be located in a building that doesn't conform to the setback requirements, the apartment must be constructed so that the building is not made more non-conforming. If the single-family dwelling is non-conforming with regard to use, the creation of an accessory dwelling will not make the single-family more non-conforming.

d. If the lot is served by public sewerage, both the single-family and the accessory apartment must be connected to the sewer system. If the lot is served by subsurface sewage disposal, the owner must demonstrate that the use conforms to the State of Maine Minimum Lot Size Law and that the sewage disposal system(s) for both the family dwelling and the accessory apartment complies with the Maine Subsurface Wastewater Disposal Rules.

e. In all cases, the accessory apartment shall be no larger than 40% of the finished and heated portion of the single-family home and have no more than one bedroom, and no less than 320 square feet.

f. Either the single-family dwelling or the accessory structure must be occupied by the owner of the property. At least one of the units shall be occupied as a primary residence.

g. Any exterior alteration of the single-family dwelling or accessory building or construction of an accessory building shall preserve the single-family appearance, architectural style, and character of the original structure and shall be in harmony with the general appearance of the neighborhood. Any alteration shall preserve the front entrance of the original structure to preserve the single-family character. A separate entrance for the accessory apartment may be created by shall be clearly secondary to the main entrance, such as but not limited to an entrance that is setback further from the road than the primary entrance.

h. At least three off-street parking spaces shall be provided on the property. At least one space shall be available for the occupant(s) of the accessory apartment. A garage may be counted as one space for meeting the parking requirement. The parking shall be located and designed to minimize the impact on adjacent properties and shall be buffered by landscaping and/or fencing from abutting residential uses if it is located in the side or rear yard. Where possible, a turnaround shall be provided to avoid the need to back out of the driveway.

4. Nursing homes shall not exceed a density of 25 beds per acre.
5. Churches, schools, community buildings, congregate care facilities, nursing homes, shall be served by public sewer and water service and have access and frontage on an arterial street.
6. Congregate care facilities shall not exceed 5 units per acre.
7. *Infill Uses of Existing Community Buildings.* Community buildings of which portions are occupied by qualified community educational, fraternal, cultural and recreational activities such as an auditorium, library, historical building, lodge, indoor swimming, performing arts, etc. may also infill their vacant space with low traffic uses such as a single residential apartment unit, business or professional office, a single storage space consisting of records management and other similar uses as determined by the Code Enforcement Officer. Nonresidential infill uses may not be open between the hours of 9:00 pm and 8:00 am, except for special events upon a prior determination by the Code Enforcement Officer that the proposed event will not be unreasonably disruptive to other occupied buildings in the vicinity. The Planning Board review of the infill use must determine that the existing site development can either function properly with no changes or the Planning Board must be provided with a revised site plan that details the changes to the building and site development that will function properly and with minimal disruption to the neighborhood and limited modifications to the existing site development and building. Existing community buildings are not required to satisfy the area and yard requirements of Article 3.7.6.6 to utilize the provisions of Article 3.7.6.10. *Amended*  
*10-29-2012.*

March 26<sup>th</sup>, 2016

Dear Mr. Bennett,

My mother, Barbara McKay, owns the property at 23 Cottage St. in Hampden. For many years my developmentally disabled brother, Eric McVay, has been living there with support from family nearby as well as some formal support services. My family would like to respectfully request that the property be rezoned from Residential A to Village Commercial 2 in order that we have increased options moving forward for Eric. We really wish to retain his level of independence as the family ages and our resources become more limited. This property is important for Eric as it is in a safe area and within walking distance of a store and a bus route. Thank you for your consideration.

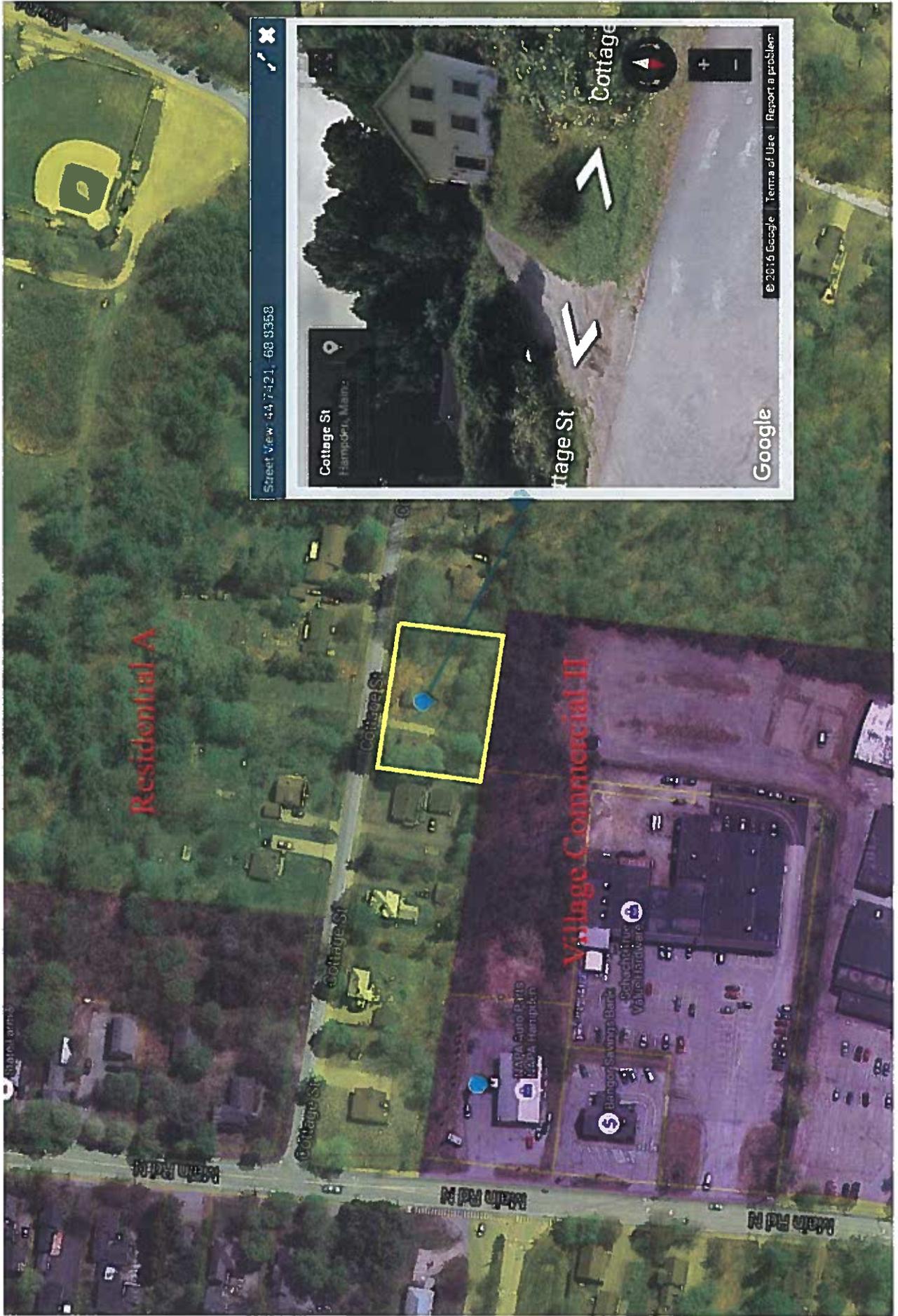
Tonya McVay

*Tonya McVay*  
299-5006, 23 Lindsey Way Hampden

Barbara McKay

*Barbara McKay*  
327-1123, 365 Reeves Road Bradford

# 23 Cottage St



**Freeport Zoning Ordinance  
May 2008**

**Accessory Apartments**

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1. An accessory apartment may be created in one of the following ways:
  - a. By using space within an existing dwelling;
  - b. By building an addition onto an existing dwelling such that the addition is made part of the principal building;
  - c. By using space within an existing or proposed accessory structure that is within 50 feet of the single family dwelling;
  - d. New construction.
2. For the purposes of this section, the accessory apartment shall not be considered to be a second dwelling unit for determining the required minimum lot area, or net residential density.
3. If the accessory apartment will be located in a building that doesn't conform to the setback requirements, the apartment must be constructed so that the building is not made more non-conforming. If the single family dwelling is non-conforming with regard to use, the creation of an accessory dwelling will not make the single family more non-conforming.
4. If the lot is served by public sewerage, both the single family dwelling and the accessory apartment must be connected to the sewer system. If the lot is served by subsurface sewage disposal, the owner must demonstrate that the use conforms to the State of Maine Minimum Lot Size Law and that the sewage disposal system(s) for both the single family dwelling and the accessory apartment complies with the Maine Subsurface Wastewater Disposal Rules.
5. In all cases, the accessory apartment shall be no larger than 40% of the finished and heated portion of the single family home and have no more than one bedroom, nor no less than 320 square feet.
6. Either the single family dwelling or the accessory apartment must be occupied by the owner of the property. At least one of the units shall be occupied as a primary residence.
7. Any exterior alteration of the single family dwelling or accessory buildings or construction of an accessory building shall preserve the single family appearance, architectural style, and character of the

original structure and shall be in harmony with the general appearance of the neighborhood. Any alteration shall preserve the front entrance of the original structure to preserve the single family character. A separate entrance for the accessory apartment may be created but shall be clearly secondary to the main entrance, such as but not limited to an entrance that is setback further from the road than the primary entrance.

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## **Zoning Ordinance, proposed amendments to Off-Premises Signs**

Referred to Planning Board by Town Council: May 2, 2016

### **Enclosures:**

- Meeting minutes from Town Council meeting referring proposed amendment
- Meeting minutes from Town Council's Planning & Development Committee during which amendments were considered
- Memo from Dean Bennett with proposed amendment language, April 25, 2016
- Article from Planning Magazine: Sign Regulation Just Got More Complicated
- Article from Maine Townsman: Signs of Trouble: Your Ordinance Could be Unconstitutional, November 2015
- Article from Maine Townsman: Additional Thoughts on Signs after Reed v. Town of Gilbert, November 2015
- Sample Zoning Language for comparable situation from Marshfield, MA, drafted by then-Town Planner Angus Jennings and offered as sample/precedent based on Council's objectives to allow off-premises signage on Route 1A to promote Marina Park and adjacent businesses

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**5. NEW BUSINESS**

- a. **Application for a renewal liquor license for Anglers Restaurant**  
*–Motion made by Councilor Sirois, seconded by Councilor McAvoy to approve the liquor license. Unanimous vote in favor.*
  
- b. **Amendments to the Zoning Ordinance regarding off-premise municipal signs – referral from Planning & Development Committee to Planning Board**  
*– Councilor McPike reported on the additions made to 4.8.1 and discussion followed regarding off premise signs for businesses. Councilor McAvoy expressed concern regarding the broad scope in relationship to signs on private property. Manager Jennings acknowledged those concerns and stated that there is a public interest for the need to allow off premise signs, but it can be done without being vague. This will all be addressed in the ensuing Planning Board and committee meetings. Motion made by Councilor McPike, seconded by Councilor Wilde to refer to the Planning Board. Unanimous vote in favor.*
  
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**Planning and Development Committee  
April 20, 2016  
6:00 PM  
Conference Room  
MINUTES**

Attendees:

Committee

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

Staff

Angus Jennings, Manager  
Dean Bennett, Community Dev Dir (CDD)  
Myles Block, Code Enforcement Officer

1. Approval of April 6, Minutes - Approved

2. Committee Applications: None

3. Updates:

4. Old Business:

A. Marina Sign Design

Manager Jennings indicated he had been in contact with Chip Kelly of the MDOT with regard to the placement of a municipal sign at the entrance to the Marina Road. He indicated he wanted to clarify to MDOT that the sign was primarily a municipal sign, with a minor portion of the sign being mention of the businesses at the marina. Consistently MDOT has responded that although municipal signs are exempt and don't require a permit, an off-premise business sign is not provided for in the statute.

Manager Jennings wanted to continue efforts to determine the status of the road way and explore the potential for the sign being placed that falls under the realm of non-commercial speech. The promotion of the town's assets such as the boat launch and associated amenities enhances the recreational offerings of the community. An amendment to the sign regulations may be necessary to provide for such signs throughout the community.

**Committee Action: Motion made and Seconded to draft amendments to the sign regulations that would allow for the placement of municipal signs that promote community assets and related amenities. Vote: 6-0.**

**B. Fees Ordinance Discussion**

The Fee's Ordinance was discussed. Fees associated with the Harbor Ordinance, Zoning Ordinance, Subdivision Ordinance, Earth Moving and Signs were reviewed. Committee disagreed on the necessity of fees, amount of fees, and what costs were covered by tax dollars vs. costs covered by application and inspection fees.

Code Enforcement Officer Block presented recommended increases in various fee categories, noting that Hampden is considerably low compared to many surrounding communities.

Discussion primarily focused on subdivision, zoning, and inspection fees. Code Enforcement Officer noted that the codes require a minimum number of inspections be performed dependent upon the nature of the development. Current fees do not always cover actual costs or repeated inspections as may be necessary.

Committee will continued discussion on specific categories of Fee's at the next meeting.

**5. New Business:**

**A. Shoreland Zoning Update Draft**

Community Development Director (CDD) explained that the Draft Shoreland Zoning changes are proposed for consideration consistent with Hampden's obligation to stay current with the State Minimum Guidelines, which have again, been amended by the State of Maine.

CDD to identify and present those specific areas of the Ordinance that exceed the minimum requirements at the next meeting to facilitate Committee review.

B. Accessory Apartment Discussion

Community Development Director presented a list of criteria, for Committee discussion, taken from the Town of Freeport Zoning Ordinance that appeared very clear and concise. CDD asked the Committee for their comment on the criteria.

Committee indicated they were in favor of the concept with Chairperson McPike specifically pointing to the criteria that addressed parking requirements. The Committee agreed in support for the accessory apartment vs. in-law apartment due to the restriction and enforcement issues associated with the in-law apartment.

The Committee, indicating concern for timing of this concept, to the following action:

**Committee Action: Motion made and seconded to refer the material to the Town Council for forwarding to the Planning Board for review and comment. Vote: 6-0**

6. Citizens Initiatives: None
7. Public Comments: None
8. Committee Member Comments: None
9. Adjourn: 8:05pm



**To:** Angus Jennings, Town Manager  
**From:** Dean Bennett, Director of Community Development  
**Date:** April 25, 2016  
**Subject:** Off-Premise Municipal Signs

.....

In accordance with the Planning and Development Committee's decision to move forward with amendments to the Zoning Ordinance that would clarify the purpose and intent of municipal signage, I have drafted the attached amendment.

The proposed amendment is to clarify the purpose and intent of the Town of Hampden to erect municipal signage in order to promote community amenities which attract and enhance tourism and development opportunity for Hampden businesses and citizens.

Hampden wishes to make clear distinction between signs which promote community amenities such as waterfronts, hiking trails, public access, historic locations, parks, etc., from those that are commercial by nature. This can only be accomplished with the establishment of municipal signs in strategic locations which promote the asset, resources and/or amenities associated with that location.

**4.8.1. Off-Premises Signs** - No off-premises signs shall be erected or maintained in the Town of Hampden except in conformity with 23 MRSA section. 1901-1925 the Maine Traveler Information Services Law. Off-premises official business directional signs may be located in the Town of Hampden in such locations and in such a manner as allowed under 23 MRSA sections 1901-1925 and under the rules and regulations of the State of Maine Department of Transportation. Provided, however, that off-premises official business directional signs for home occupations are prohibited. Authorization for official business directional signs shall be obtained from the Code Enforcement Officer (Amended 01/21/03) (Amended 2-4-16)

1. **Exception for property identification numbers** - Each residential premise is allowed a mailbox with the identification number of the property clearly marked on it. If the mail box is on the opposite side of the street of the house or if there is no mailbox, the premises is also allowed an MDOT approved sign post, or similar structure, with numbers that meet the standards of subparagraph a below. Such signs are also allowed on an adjacent parcel with written permission of the landowner. Amended 01/21/03
  - a. All non residential uses must display the identification number of the property. The area required by the number is not included in the calculation of the total square footage of the sign. Amended 01/21/03
  - b. Approved address numbers shall be placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Amended 01/21/03
2. **Exception for industrial subdivision entrance sign** - In Planning Board approved Industrial Subdivisions a sign marking each public street entrance shall be permitted. Such signs shall be limited to 70 square feet per face and shall only contain the name of the subdivision, the name of the public subdivision's street, and owner identification information. The sign may be located in the raised median of the entrance street provided that it is at least 20 feet from the nearest perpendicular traveled way and the sign itself creates no visual barrier from the ground up to a height of 6 feet. Amended 01/21/03
3. **Exception for industrial subdivision directory sign** - In Planning Board approved Industrial Subdivisions a directory sign marking tenants in the subdivision located near each public street entrance shall be permitted. Such signs shall: be unlighted, be limited to 50 square feet per face, not exceed five feet in height, and shall only contain the name of subdivision, information about the subdivision's management, and the name and address of each subdivision's tenant. The sign may be located in the public right of way provided that it is at least 100 feet from the entrance and does not create a visual barrier to individual lot entrances. Amended 01/21/03
4. **Exception for municipal signs promoting community amenities** – Signs erected by the town of Hampden that promote community asset locations such as recreational trails, parks, historic areas, waterfront districts, picnicking areas, public access, and scenic views that are designated to attract and enhance tourism, promote and development opportunity for Hampden businesses and its citizens. Such municipal signs shall only contain the name of the location and/or its significance and listing of businesses or

*amenities directly associated with the designated location. Such municipal signs may be located in the public right-of-way or on an adjacent parcel of land with the written permission of the landowner. Sign shall be located so as not to present a hazard to pedestrian or vehicular traffic. Sign shall not exceed 12 feet in height and no more than 50 square feet total signage display area.*

## SIGN REGULATION JUST GOT MORE COMPLICATED

With the Supreme Court's recent sign ordinance decision, *Reed v. Town of Gilbert*, local regulation of signs faces new problems—and there were plenty before. We have known for some time that messages on signs are protected free speech, and that regulating these messages demands higher scrutiny from the courts.

Before *Reed*, the rules of free speech law did pose some challenges to well-established practices in sign regulation. One was that sign ordinances are based on basic distinctions among types of sign: on-site signs and billboards, or off-premise signs, for example. Another is the tendency in many ordinances to create different categories of signs—various types of noncommercial signs, for example—and to make different rules for each category.

Another problem was free speech doctrine. Sign regulation plays a minor role in that doctrine, which has developed distinct and sometimes rigid rules for laws that affect free speech, including those that regulate content. Courts apply strict scrutiny to those laws, requiring that they be justified by a compelling governmental interest, which is a high hurdle. Some lower federal courts had held that sign ordinances authorizing the display of category signs were content-based.

### The *Reed* case

The practice in sign ordinances of regulating by categories and the specific rules of free speech doctrine came together in the *Reed* case to produce a hostile decision.

In *Reed*, the sign ordinance in a town with a population of 200,000 contained 23 exemptions with different display requirements for different noncommercial signs, such as political and ideological signs. A church without a permanent facility rented property in various locations for its services, and the town issued citations when its displays violated the time allowed for temporary signs. The church and its pastor sued in federal court, and the Ninth Circuit Court of Appeals upheld the ordinance.

In a divided decision, a majority of the Supreme Court reversed in an opinion written by Justice Thomas. Justice Alito concurred, and Justices Breyer and Kagan concurred in the judgment in two separate opinions.

### The opinions

Justice Thomas's opinion has some unusual features, including the failure to cite or discuss any of the major Supreme Court cases that considered sign regulations.

The holding of the *Reed* decision was that the town's distinctions between directional signs and political or ideological signs were impermissibly content-based. This decision, the Court said, must be made on the face of the ordinance. A regulation that was specific to directional signs was deemed content-based because, in Justice Thomas's words, even a purely directional message that merely bears "the time and location of a specific event" should be considered one that "conveys an idea about a specific event."

Such a regulation was content-based in the eyes of six justices of the Court and was presumptively unconstitutional and a violation of the First Amendment because Gilbert could not satisfy strict scrutiny.

The regulation that the Supreme Court characterized as content discrimination differentiated between types of noncommercial messages. It was also described in the majority opinion as a distinction that was based on "the topic discussed" or "a specific subject matter." As a result, a regulation of noncommercial signage that differentiates on its face between viewpoints, types of messages, topics, or subject matter is likely to trigger strict scrutiny under the holding of *Reed*. Few sign codes are completely free of those kinds of distinctions, so planners are advised to scrutinize their sign codes and replace them as they are found.

In deciding the case on this ground, the Supreme Court rejected the town's reliance on several of the Court's more pragmatic previous decisions that had found laws content-neutral because they were "justified without reference to the content of the regulated speech," and were not adopted by the government "because of disagreement with the message" the speech conveyed. In the context of a regulation that on its face included a distinction between types of messages (broadly defined), the Court only treated the test developed in those cases as one of several "swords" available to First Amendment plaintiffs, rather than as the shield available to government to fend off the need to satisfy strict scrutiny.

Justice Alito's concurring opinion, joined by Justices Kennedy and Sotomayor, provided what he called "a few words of further explanation," including a nonexhaustive list of "some rules that would not be content based." It included regulations of the size and location of signs and rules distinguishing between lighted and unlighted signs, signs with fixed messages and those with messages that change, signs on private versus public property, and those on commercial rather than residential property.

Notably, however, his list of noncontent-based rules included "[r]ules distinguishing between on-premises and off-premises signs," and "[r]ules imposing time restrictions on signs advertising a one-time event." Here, the Alito concurrence and the Thomas majority opinion send conflicting signals, meaning that lower courts may struggle to determine which approach to follow.

*Reed* puts a new burden on sign regulators. The content neutrality of sign ordinances must be determined on their face, and this requirement is governed by rules that may invalidate many sign ordinances now in effect.

—Daniel R. Mandelker and John M. Baker

*Daniel Mandelker is the Stamper Professor of Law at the Washington University School of Law in St. Louis. John M. Baker is a founding attorney of the Minneapolis law firm Greene Espel. They are coauthors, with Richard Crawford, of the fourth edition of Street Graphics and the Law, Planning Advisory Service Report 580, published this summer by APA.*

# Signs of trouble: Your ordinance could be unconstitutional

*A recent ruling by the U.S. Supreme Court shows how quickly municipalities encounter problems when they try to regulate what signs say, rather than factors like size and location.*

By **Agnieszka A. Pinette**,  
Drummond Woodsum Attorneys at Law

This past June, in a relatively brief and seemingly mundane opinion, the U.S. Supreme Court invalidated a municipal sign ordinance that gave less favorable treatment to signs that advertised church services than signs promoting other messages. The case may not appear remarkable at first glance, but its implications are far-reaching: By many accounts, the opinion calls into question the constitutionality of virtually every municipal sign ordinance in the country.

In *Reed v. Town of Gilbert*, the Supreme Court considered a sign ordinance that allowed the display of temporary outdoor signs without a permit, so long as the signs met certain restrictions enumerated in the ordinance. Not unlike many sign codes, the town's sign ordinance imposed different size, quantity and length-of-display requirements on different types of signs. Under the town's ordinance, "ideological signs" that communicated a message or idea could be up to 20 square feet in size, whereas "political signs" designed to influence the outcome of an election could be up to 32 square feet in size – although political signs could only be displayed during an election season. In contrast, "temporary directional signs" that directed the public to assemblies, gatherings, or meetings sponsored by religious or non-profit organizations were limited to a maximum of four signs per advertised

event, each of which could not exceed six square feet in size and could not be displayed more than 12 hours before the event or one hour after the event.

The case arose when the Good News Community Church displayed a dozen or so temporary directional signs bearing the church's name and the time and location of the next service. Members of the church would install the signs around town on Saturday morning and would remove them around midday Sunday. The town cited the church for exceeding the time limits for displaying temporary directional signs and for failing to include the date of the event on the signs. In turn, the church challenged the constitutionality of the Town's sign ordinance, contending that the ordinance unlawfully allowed some groups wide latitude to communicate messages through signage while stymying the ability of other groups to do so. In other words, the church argued that because the ordinance established rules for temporary directional signs that were more restrictive than the rules for other categories of temporary signs, the ordinance abridged the church's right of free speech guaranteed under the First Amendment.

## Protecting free expression

Under the First Amendment, a government may not restrict expression because of its message, its ideas, its subject matter or its content. When a regulation singles out specific subject matter for differential treatment, courts will therefore presume that the regulation is unconstitutional. So-called content-based laws are justified only if they satisfy the most rigorous judicial test called strict scrutiny – that

is, the law must further a compelling governmental interest using the least restrictive means possible. This is a steep judicial hurdle. As Adam Liptak succinctly explained in a recent New York Times article discussing the case: "Strict scrutiny, like a Civil War stomach wound, is generally fatal."

In *Reed*, the Supreme Court determined that because the town's sign ordinance defined the categories of directional, political, and ideological signs on the basis of their messages and then subjected each category to different restrictions, those restrictions "depend[ed] entirely on the sign's communicative content" and were therefore content-based. Although the town offered two long-recognized compelling governmental interests in support of its sign ordinance – preserving the town's aesthetic appeal and traffic safety – it could not explain why temporary directional signs posed a greater threat to aesthetics or safety than other types of temporary signs. Because the town failed to justify its more restrictive rules for directional signs, the court concluded that the sign ordinance failed the strict scrutiny test and was unconstitutional.

Notably, the Supreme Court struck down a previously applied judicial rule that might have saved the town's sign ordinance from its unconstitutional fate. Before *Reed*, a rule restricting "who" is speaking (say, a Realtor versus a political candidate) or "what event" is occurring (say, a community supper versus a mattress sale) was usually deemed content-neutral so long as the rule paid no regard to the message itself. Content-neutral laws are constitutional if they further an important governmental interest by means that are

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*Agnieszka A. Pinette is an attorney who focuses her legal work on municipal and land use matter, public and bond counsel work. Before joining Drummond Woodsum, she was a senior planner with the Maine Land Use Regulation Commission, where she coordinated comprehensive planning projects, rulemaking initiatives and regulatory reviews of significant projects. Reach her via email at: [APinette@dwmlaw.com](mailto:APinette@dwmlaw.com).*

substantially related to that interest – a judicial test far less demanding than strict scrutiny. The Supreme Court rejected this analytical approach, however, and instead adopted a novel theory: Whenever a law treats different categories of public expression differently, the law discriminates against those *entire categories* of speech and only passes constitutional muster if it survives strict scrutiny. Consequently, a sign code based on who is speaking about what event, without regard to the substance of the message, is no longer safe from a free speech challenge.

### Effective sign laws still OK

Even though the Supreme Court clearly raised the bar on constitutionally permissive sign regulations, the Court stressed that its decision would not prevent governments from enacting effective sign laws. The Court noted that sign regulations might well survive strict scrutiny if they are “narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers – such as warning signs

## POST-REED POINTERS

The *Reed* decision implicitly calls on municipal officials to reexamine their sign ordinances in light of the Court’s expansion of what constitutes a content-based sign regulation. This is not a simple task. Determining whether a rule is content-based involves complex legal analysis, even with the guidance provided in the concurring opinion. But municipal officials can quickly spot whether their sign ordinance is at risk based on a relatively straightforward question:

*Does your code enforcement officer need to classify a sign in order to figure out if it violates your sign ordinance?*

Put another way, does your sign ordinance make reference to types of signs (for example, real estate signs, political signs, business relocation signs, construction signs, open house signs, farm stand signs or community events signs) and does the ordinance establish rules (such as dimensional requirements, quantity limits or restrictions on the time of year or duration when a sign may be displayed) that vary based on those sign types? If so, then your ordinance is probably content-based.

Just because an ordinance is content-based does not mean it is per se unconstitutional. But a municipal official who answers the above question in the affirmative should not wait to take action. There are many ways to fix a sign ordinance so that it does not run up against *Reed*, and towns do not necessarily need to abandon the common practice of regulating signs based on categories to be on the right side of the First Amendment. The key to avoiding a legal challenge is to spot the issue early and consult with a qualified legal professional on ways to safely enforce your existing sign ordinance while making revisions that pass constitutional muster.



## Meet Our Attorneys Andrew Hamilton

Andy brings many years of experience to counseling municipalities. He has served as General Counsel for a number of Maine towns, and provides advice on economic development initiatives and environmental/land use matters.

Andy is committed to improving Maine communities through public and private investment, and has served in many leadership roles in the Bangor region and eastern Maine.

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marking hazards on private property, signs directing traffic, or street numbers associated with private houses." The Court also acknowledged that governments have "ample content-neutral options available to resolve problems with safety and aesthetics" by regulating aspects of signs – such as size, building materials, lighting, moving parts and portability – that have nothing to do with a sign's message.

Indeed, in a concurring opinion, three of the Supreme Court Justices enumerated the following rules that would likely be lawful:

- Rules regulating the size of signs.
- Rules regulating the locations in which signs may be placed, including rules that distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the

placement of signs on commercial and residential property.

- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on temporary signs.

While a concurring opinion is not binding on courts, it does signal that a sign ordinance in keeping with these

rules would likely satisfy the heightened *Reed* test – at least in the view of three Supreme Court Justices.

In sum, while the *Reed* decision instructs courts to be highly skeptical of codes that impose different standards for different categories of signs, the ruling is not intended to prevent governments from regulating signs in a way that protects public safety and serves other legitimate governmental objectives. ■

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# Additional thoughts on signs, after *Reed v. Town of Gilbert*

By Breana Behrens, Staff Attorney  
Maine Municipal Association Legal Services

The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* (135 S.Ct. 2218 (2015)) clarifies what constitutes a content-neutral sign regulation by establishing a new black and white rule: If you have to read the sign's message or determine who is "speaking" through the sign to apply your sign ordinance, it is probably unconstitutional. Because the Court has established this stricter test for determining what is a content-based restriction, many regulations that were previously thought to be content-neutral may now be content-based and an unconstitutional restriction on free speech.

The Court found that ordinances that distinguish between the size and location of signs, and number of signs per mile of roadway are still likely permissible. In addition, ordinances that distinguish between certain types of signs may be permissible, such as between lighted and unlighted signs. However, municipalities will need to prove that when an ordinance distinguishes between different types of signs it is to further a compelling governmental interest and the ordinance is narrowly tailored to that end, such as for traffic safety or aesthetic purposes.

This decision will not likely affect municipalities' ability to regulate commercial speech. Commercial speech is still less protected than non-commercial speech and there is little reason to believe the *Reed* decision intended to prohibit this distinction. However, some courts across the country are finding that on-site and off-site distinctions in sign regulations could be an unconstitutional content-based distinction. This is happening despite the fact that a concurring opinion in the *Reed* decision postulated that this distinction would not be subject to strict scrutiny. We will need to stay tuned as this issue develops.

As municipalities across the state, and nation, work to comply with this more stringent test for content-neutral sign regulations, discussion with local

legal counsel and the public will be necessary. Municipalities will have to find a "Goldilocks" balance where regulations are not so fine-tuned as to treat different types of signs differently, but also not so general that the rules become overly broad. This may be especially difficult when adopting regulations that address temporary signs, such as political and event signs, and regulations that address issues of local concern, such as panhandling and roadside solicitation.

## Outright bans problematic

It is important to note that outright bans on all types of speech can be problematic as well. For example, the City of Portland recently adopted an ordinance restricting all people from standing, sitting, staying, driving or parking on the median strip to address the safety concerns with panhandling and other activities in the median. The U.S. Court of Appeals found that the ordinance was not content-based since it prohibited all types of speech, but declared the ordinance unconstitutional because it was not narrowly tailored to serve a significant government interest (*Cutting v. City of Portland*, Docket No. 14-1421, 2015 (1st Cir. Sept. 11, 2015)). Even when the court applied this low level of judicial scrutiny, the city was not able to show that the ordinance restricted only enough speech to meet the government's interest in promoting public safety in the medians. Therefore, the ordinance was found to be unconstitutional.

The Court's decision further reminds municipalities that a traditional public forum, or place that is tradition-

ally used by the public to assemble, communicate thoughts and discuss matters of public concern is treated differently than private and other municipally owned property. A traditional public forum generally includes sidewalks and parks, and as in the *Cutting* decision, medians. A content-based regulation that restricts speech in a public forum raises serious concern that the government is using its power to tilt public debate in a direction of its choosing, which means that Courts will apply strict scrutiny.

So what do you do now? First, carefully review your sign ordinance to make sure all parts are truly content-neutral. Your ordinance should contain a strong purpose statement that complies with the new content-neutral test and legislative findings on why the regulation furthers a governmental interest. We highly encourage municipalities to contact local legal counsel for review as well.

At MMA, we are working to develop guidance on these issues and sample provisions for sign regulations for Maine municipalities. In addition, if you are in a position where you may need to enforce your current sign regulation, contact local legal counsel before taking any action.

We will monitor any changes that may be made to the Maine Traveler Information Services Act, or what is commonly known as the State's billboard law (23 M.R.S.A. sections 1901-1925). If the state law is amended to better comply with current court decisions, this may affect how municipalities regulate signs as well. ■

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

MMA's services include advocacy, education and information, professional legal and personnel advisory services, and group insurance self-funded programs.

For more information visit the MMA website: [www.memun.org](http://www.memun.org)

# Sample Zoning Language, Marshfield, MA

2. One wall sign for each lot street frontage of each establishment, provided, it shall be attached and parallel to the main wall of a building; the surface area of the sign shall not aggregate more than ten percent of the area of the wall on which it is displayed, or 40 square feet, whichever is lesser; and if lighted, it shall be illuminated internally or by indirect method only.
3. One pole sign for each street frontage lot held in single ownership regardless of the number of businesses on that lot; it may be double-faced, but shall not exceed 40 square feet in surface area per side; no portion of it shall be set back less than ten feet from any street lot line; it shall not be erected so that any portion of it is over 30 feet above the ground or sidewalks; and if lighted, it shall be illuminated internally or by indirect method with white light only.
4. One standing sign for each lot street frontage of a business establishment in the highway business district, provided; it shall not exceed 40 square feet in surface area, on any one side; no portion of it shall be set back less than 10 feet from any street lot line; it shall not rise to more than 12 feet from the ground or sidewalk; and it shall be illuminated internally or by indirect method with white or blue light only. Where a single lot is occupied by more than one business whether in the same structure or not, there shall not be more than one standing sign.

5. Businesses or civic institutions located within the area known as Library Plaza within the B-1 zoning district – said area including Assessors Parcels H7-05-07, H7-05-02 – said businesses not having legal frontage on a street but accessible from both Ocean Street and Webster Street, may be permitted to construct a total of two shared signs subject to the following conditions:

- a. One pole sign at the intersection of both Ocean Street and Webster Streets with the primary access road to Library Plaza, with said sign located on Town-owned land and held in ownership by the Town regardless of the number of businesses referenced on the sign; it may be double-faced, but shall not exceed 40 square feet in surface area per side; no portion of it shall be set back less than ten feet from any street lot line; it shall not be erected so that any portion of it is over 12 feet above the ground or sidewalks; and if lighted, it shall be illuminated by indirect method with white light only.
- b. Such permit may be granted under the conditions of Article X, Section 10.10, Special Permits. Upon receipt of such application,

the Board shall transmit a copy of such plan at least to the Planning Board, the Safety Officer and the Beautification Committee, if applicable, which may make recommendations. No recommendation within thirty-five days shall be deemed approval.

- c. Any Site Plan Review permit issued for new construction, redevelopment or reuse within Library Plaza shall be conditioned upon approval of an amended sign design reflecting the addition of the new business to the shared sign or signs.
- d. The commercial tenant(s) located on Assessors Parcel H7-05-01 may elect to be included on the two signs authorized herein provided that any reference on said sign(s) shall serve as the primary and only signage for said tenant(s) visible from either Ocean Street or Webster Street, and shall disallow, for the duration of the reference to said tenant(s) on the shared sign(s), the presence on any other sign on the parcel's frontage on Ocean Street.



Section  
7.05

Signs Permitted in the "I" District

1. Wall signs permitted in Section 7.04, subject to the same regulations.
2. One standing sign for each lot street frontage, provided: it shall be set back at least 15 feet from any street lot line; it shall not be erected so that any portion of it is over 15 feet above the ground or sidewalk; and if lighted, it shall be illuminated internally or by indirect method with white light only.
3. In the Industrial Zone, a sign or assembly of signs which are similar in size and appearances, and which serve as a directory of occupants, is/are permitted, provided the aggregate area of such sign or signs does not exceed 40 square feet. Not more than one such directory sign may be located at each entrance roadway to the Industrial Zone within 250 feet of the boundary of the zone and not closer than 15 feet to the edge of the roadway. Illumination, if any, will be by indirect white light only.

**Zoning Ordinance, proposed amendments to threshold for required building permits**

Referred to Planning Board by Town Council: May 16, 2016

**Enclosures:**

- Meeting minutes from Town Council meeting referring proposed amendment
- Meeting minutes from Town Council's Planning & Development Committee during which amendments were considered
- Memo from Dean Bennett with proposed amendment language, May 9, 2016

*the municipal parking lot as a sales area. During discussion, Councilor McAvoy stated that he opposed the motion because he is against allowing public enterprises to conduct business on private property. Mayor Ryder wanted it clarified that the vendors have to be selling agricultural products and have to be Hampden residents. Councilor Marble stated he respected Councilor McAvoy's position and wanted the public to know that the Council has talked this over for a couple of years and the Council is attempting to find an appropriate and safe use to allow an additional source of commerce in the town and that discussions will continue. Councilor McAvoy amended his motion, seconded by Councilor Marble, to authorize the Hampden Farmers' Market and up to four additional Hampden resident vendors of agricultural products to use the municipal parking lot as a sales area. Unanimous vote in favor.*

- b. Amendment to Zoning Ordinance – referral to Planning Board recommended by Planning & Development Committee –** Councilor McPike made a motion, seconded by Councilor Marble to refer to the Planning Board, an amendment of the Zoning Ordinance section 5.3 Permits. Unanimous vote in favor.
- c. Amendment to Shoreland Zoning Ordinance – referral to Planning Board recommended by Planning & Development Committee –** Councilor McPike made a motion, seconded by Councilor McAvoy, to refer to the Planning Board an amendment to the Shoreland Zoning Ordinance for mandatory revisions to comply with State standards. Unanimous vote in favor.
- d. Request for Municipal Building reserve funds in the amount of \$550.00 to replace garage door opener –** Councilor Sirois made a motion, seconded by Councilor McPike to authorize use of \$550.00 from the Municipal Building Reserve Funds to replace the garage door opener. Unanimous vote in favor.
- e. Request for Marina reserve funds in the amount of up to \$4,000.00 for channel markers, no wake buoys, mooring equipment –** Councilor Sirois made a motion, seconded by Councilor Marble to authorize use of \$1600.00 from the Marina reserve fund for channel markers, no wake buoys and mooring equipment. Councilor Wilde stated for the public that the approval of this expenditure will bring us into compliance with the ordinance and the law regarding moorings. Unanimous vote in favor.
- f. Request for Streets/Roads reserve funds in the amount of up to \$59,213.00 for 2016 paving projects. –** Councilor Sirois explained that discussion in committee centered on taking advantage of the low fuel prices by moving some planned projects up. Councilor Sirois made a motion, seconded by Councilor Marble to authorize use of \$59,213.00 from the Streets/Roads reserve fund for 2016 paving projects. Unanimous vote in favor.
- g. Manager's proposed FY17 Budget workshop – Review of Public Works, Municipal Garage, Solid Waste, Buildings & Grounds,**

### C. Fees Ordinance Revisited

Discussion continued from the last P&D Meeting (April 20, 2016) on proposed updates to the Fee's Ordinance. The Committee agreed that the recommended changes thus far, principally with regard to Public Works, will be forwarded to the May 16, 2016 Town Council Meeting for consideration by the full Town Council.

Fees Ordinance discussions will continue at future meetings of the Committee.

### 5. New Business:

#### A. Zoning Ordinance/MUBEC Inconsistency

The mandated Maine Unified Building Energy Code of 2010 contains a provision which exempts certain minimum square foot structures from the Building Permit Application requirements. This provision is contrary to the Zoning Ordinance which requires Building Permits for all "structures" as defined.

In efforts to address this inconsistency, the following actions were initiated.

**Committee Action: Motion made and seconded to amend the Zoning Ordinance to reference Maine Unified Building Energy Code's threshold for structures exempted from the requirement of a Building Permit. Vote: 4-0.**

**Committee Action: Motion made and seconded to amend the Zoning Ordinance to reflect the Shoreland Zoning Ordinance Building Permit time frame for expiration. Vote: 4-0.**

6. Zoning Considerations/Discussions
7. Citizens Comments
8. Public Comments
9. Committee Member Comments
10. Adjourn: 7:45pm



**To:** Angus Jennings, Town Manager  
Paula Scott, Town Clerk

**From:** Dean Bennett, Director of Community Development

**Date:** May 9, 2016

**Subject:** Zoning Amendment

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On May 3, 2016, the Council's Planning and Development Committee, unanimously approved the attached revisions to the Zoning Ordinance. The Committee voted to forward the draft to the full Town Council for forwarding to the Planning Board for review and comment.

Please schedule for an upcoming Town Council Meeting as appropriate.

## ARTICLE 5 - ENFORCEMENT

(Amended: 6/ 3/02)

**5.1. Administrative Officer** - This Ordinance shall be enforced by a Code Enforcement Officer appointed by the Town Manager with confirmation by the Town Council.

**5.2. Duties** - The Code Enforcement Officer, in enforcing this Ordinance, shall be responsible for establishing reasonable procedures for enforcement, keeping all activities within the jurisdiction of this Ordinance under surveillance, issuing building and/or use permits where applicable, keeping public records of his proceeding and instituting or causing to be instituted any or all actions that might be appropriate for the enforcement of this Ordinance.

**5.3. Permits** - Application for a building permit and a certificate of compliance shall be made concurrently with the initial application.

### 5.3.1. Building Permits

**5.3.1.1. Building Permit Required** – Building Permits shall be required per the Maine Uniform Building and Energy Code as amended from time to time. ~~An application shall be submitted to the Code Enforcement Officer for the following activities, and these activities shall not commence in the Town of Hampden without a permit being issued.~~

~~1. Construct or alter a structure.~~

~~2. Change of exterior dimensions of a existing structure;~~

~~3. Construct a sign or change the exterior dimensions of a sign;~~

~~4. Reconstruction of a disaster damaged or disaster destroyed structure.~~

**5.3.1.2.** No building permit shall be issued except in conformity with the provisions of this Ordinance.

**5.3.1.3.** Within fourteen (14) days of the filing of an application for a building permit, the Code Enforcement Officer shall approve or deny such application or shall refer the applicant to the planning board or the Board of Appeals. The decision shall be in writing and communicated directly to the applicant. In the case of a denial of an application, the decision shall include reasons for such. One (1) copy of the Code Enforcement Officer's decision shall be filed in the municipal office.

(Amended:09-18-06)

**5.3.1.4.** No building permit for a building or structure on any lot shall be issued except to the owner of record thereof, or his authorized agent. The Code Enforcement Officer may require that any application for such a permit shall be accompanied by a plan, accurately drawn to scale, showing the actual shape and dimensions of the lot to be built upon, an on site soils survey, the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed, together with the lines within which all buildings and structures are to be constructed, the existing and intended use of each building or structure, and other such information as may be necessary to provide for the execution and enforcement of this Ordinance.

**5.3.1.5.** Applications for permits with their accompanying plans and building permits shall be

maintained as a permanent record by the Code Enforcement Officer.

**5.3.1.6.** A building permit secured under the provisions of this Ordinance shall expire if the work or change is not commenced **within twelve (12) months** of the date on which the permit is granted, or if the work or change is not substantially completed within two (2) years of the date on which the permit is granted.

**5.3.1.7.** No building permit, demolition permit, earth moving permit, sign permit or certificate of compliance shall be issued without payment of fees in accordance with the Town of Hampden Fees Ordinance. *(Amended: 11-17-03)*

Any structure on which construction, including but not limited to foundation work, has begun before the issuance of a building permit will be assessed double the above described fees.

**5.3.1.8.** Building permits for structures to be located on subdivision lots shall not be issued by the Code Enforcement Officer until all improvements, including public utilities (sewer, water and electrical), roads and drainage facilities as approved by the Planning Board and required by town ordinances, are completed to the satisfaction of the Town designated engineering consultant and the road, if any, has been accepted by the Town Council as a town way. *(Amended: 03-01-10)*

**5.3.1.9. Wastewater Disposal Permit Required** - No building permit shall be issued for any structure or use involving the construction, installation, or alteration of plumbing facilities unless either a subsurface wastewater disposal permit or sewer hook-on permit has been secured by the applicant or his authorized agent in conformance with the State of Maine Subsurface Wastewater Disposal Rules or the Town of Hampden Sewer Ordinance. *(Amended: 03-01-10)*

### **5.3.2. Certificate of Compliance**

**5.3.2.1.** No building or other structure for which a building permit is required shall be occupied or used until and unless a certificate of compliance has first been obtained from the Code Enforcement Officer and the Building Inspector. In addition, a certificate of compliance shall be required for the following activities undertaken in the Town of Hampden:

1. The change of use of a lot or structure;
2. The resumption of use in a structure which has been abandoned for the continuous period of one year;
3. The establishment of a new use of a lot or structure.

**5.3.2.2.** A Certificate of Compliance shall be issued only after the work on the building or structure is completed and the site has been stabilized. If a site plan approval has been obtained from the Planning Board then all of the improvements shown on the site plan, including off-site improvements, must be completed in accordance with the approved site plan.

**5.3.2.3.** It shall be unlawful to use or occupy or permit the use or occupancy of any land, building, structure or part thereof for which a building permit is required until a certificate of compliance is issued therefore by the Code Enforcement Officer and the Building Inspector and endorsed to the effect that the proposed use of the land, building, or structure conforms with the requirements of this Ordinance, any other codes or ordinances of the Town of Hampden, and with applicable state statutes or regulations.

**5.3.2.4.** After completion of the work permitted by the building permit, the applicant shall notify the Building Inspector, who with the Code Enforcement Officer, shall issue or deny the certificate of compliance within fifteen days. The Code Enforcement Officer and Building Inspector shall issue the

**Shoreland Zoning Ordinance, proposed amendments for consistency with Statute**

Referred to Planning Board by Town Council: May 16, 2016

**Enclosures:**

- Meeting minutes from Town Council meeting referring proposed amendment
- Meeting minutes from Town Council's Planning & Development Committee during which amendments were considered
- Memo from Dean Bennett with proposed amendment language, May 9, 2016

*the municipal parking lot as a sales area. During discussion, Councilor McAvoy stated that he opposed the motion because he is against allowing public enterprises to conduct business on private property. Mayor Ryder wanted it clarified that the vendors have to be selling agricultural products and have to be Hampden residents. Councilor Marble stated he respected Councilor McAvoy's position and wanted the public to know that the Council has talked this over for a couple of years and the Council is attempting to find an appropriate and safe use to allow an additional source of commerce in the town and that discussions will continue. Councilor McAvoy amended his motion, seconded by Councilor Marble, to authorize the Hampden Farmers' Market and up to four additional Hampden resident vendors of agricultural products to use the municipal parking lot as a sales area. Unanimous vote in favor.*

- b. Amendment to Zoning Ordinance – referral to Planning Board recommended by Planning & Development Committee –** Councilor McPike made a motion, seconded by Councilor Marble to refer to the Planning Board, an amendment of the Zoning Ordinance section 5.3 Permits. Unanimous vote in favor.
- c. Amendment to Shoreland Zoning Ordinance – referral to Planning Board recommended by Planning & Development Committee –** Councilor McPike made a motion, seconded by Councilor McAvoy, to refer to the Planning Board an amendment to the Shoreland Zoning Ordinance for mandatory revisions to comply with State standards. Unanimous vote in favor.
- d. Request for Municipal Building reserve funds in the amount of \$550.00 to replace garage door opener –** Councilor Sirois made a motion, seconded by Councilor McPike to authorize use of \$550.00 from the Municipal Building Reserve Funds to replace the garage door opener. Unanimous vote in favor.
- e. Request for Marina reserve funds in the amount of up to \$4,000.00 for channel markers, no wake buoys, mooring equipment –** Councilor Sirois made a motion, seconded by Councilor Marble to authorize use of \$1600.00 from the Marina reserve fund for channel markers, no wake buoys and mooring equipment. Councilor Wilde stated for the public that the approval of this expenditure will bring us into compliance with the ordinance and the law regarding moorings. Unanimous vote in favor.
- f. Request for Streets/Roads reserve funds in the amount of up to \$59,213.00 for 2016 paving projects. –** Councilor Sirois explained that discussion in committee centered on taking advantage of the low fuel prices by moving some planned projects up. Councilor Sirois made a motion, seconded by Councilor Marble to authorize use of \$59,213.00 from the Streets/Roads reserve fund for 2016 paving projects. Unanimous vote in favor.
- g. Manager's proposed FY17 Budget workshop – Review of Public Works, Municipal Garage, Solid Waste, Buildings & Grounds,**

**Planning and Development Committee**  
**May 3, 2016**  
**6:00 PM**  
**Conference Room**  
**DRAFT MINUTES**

Attendees:

Committee

Ivan McPike-Chair  
Dennis Marble  
Terry McAvoy  
David Ryder

Staff

Angus Jennings, Manager  
Dean Bennett, Community Dev Dir (CDD)  
Myles Block, Code Enforcement Officer

1. Approval of April 20, Minutes - Approved
  
2. Committee Applications:
  - A. Brittany Goetting – Historic Preservation Commission  
  
**Committee Action: Motion made and Seconded to recommend to the Town Council the appointment of Brittany Goetting to the Historic Preservation Commission.  
Vote: 4-0**
  
  - B. Andrew Scott – Planning Board Alternate  
  
**Committee Action: Motion made and seconded to recommend to the Town Council the appointment of Andrew Scott to the Planning Board as an Alternate Member.  
Vote: 4-0**
  
  - C. Kristen McAlpine – Historic Preservation Commission  
  
**Committee Action: Motion made and seconded to recommend to the Town Council the appointment of Kristen McAlpine to the Historic Preservation Commission.  
Vote 4-0.**

3. Updates: Planning Board – Fiberight

Community Development Director reported that the MRC/Fiberight application is under review by the Planning Board. The initial meeting was conducted on April 13, 2016. The discussion focused on odor and traffic standards. A Public Hearing was held and suspended and will resume on May 11, 2016. Supplemental information has come in from the applicants as a result of the initial meeting that addresses many of the stated concerns of the Planning Board.

4. Old Business:

A. Shoreland Zoning Amendments

Community Development Director presented draft amendments of the Shoreland Zoning Ordinance, initiated in response to the Department of Environmental Protection Guideline changes, and the statutory requirements to meet those minimum standards. CDD provided the redline changes to the current ordinance that reflect the mandatory changes. Also within the document, in blue type, are additional changes recommended by the Code Enforcement Officer.

The Code Enforcement Officer reviewed his proposed changes with the Committee and explained the rationale behind his recommendations.

**Committee Action: Motion made and seconded to recommend to the Town Council for forwarding to the Planning Board, the proposed amended Shoreland Zoning Ordinance containing the mandatory revisions and the proposed administrative change to provide for the creation of separate Shoreland Zoning Application. Vote: 4-0**

B. Harbor Ordinance

The Committee's discussion centered around efforts to develop proposed amendments to the dated Harbor Ordinance, in order to update its provisions to reflect current practices with regard to the public launch facility and mooring placement along Hampden waterfront.

After discussion and input from both users of the waterfront and interested citizens, the need for an Ad-Hoc Committee was suggested in order to develop appropriate protocols and practices associated with the management of the waterfront. The goal of the Ad-Hoc Committee would be to develop protocols that balance safety and responsible practices, to the minimum extent necessary, along with a recommendation for Harbor Master duties and responsibilities.

Manager Jennings will be forming an Ad-Hoc Committee, made up of interested, knowledgeable individuals, to work on the development of Harbor Ordinance amendments and practices.

**Planning and Development Committee  
April 20, 2016  
6:00 PM  
Conference Room  
MINUTES**

Attendees:

Committee

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

Staff

Angus Jennings, Manager  
Dean Bennett, Community Dev Dir (CDD)  
Myles Block, Code Enforcement Officer

1. Approval of April 6, Minutes - Approved

2. Committee Applications: None

3. Updates:

4. Old Business:

A. Marina Sign Design

Manager Jennings indicated he had been in contact with Chip Kelly of the MDOT with regard to the placement of a municipal sign at the entrance to the Marina Road. He indicated he wanted to clarify to MDOT that the sign was primarily a municipal sign, with a minor portion of the sign being mention of the businesses at the marina. Consistently MDOT has responded that although municipal signs are exempt and don't require a permit, an off-premise business sign is not provided for in the statute.

Manager Jennings wanted to continue efforts to determine the status of the road way and explore the potential for the sign being placed that falls under the realm of non-commercial speech. The promotion of the town's assets such as the boat launch and associated amenities enhances the recreational offerings of the community. An amendment to the sign regulations may be necessary to provide for such signs throughout the community.

**Committee Action: Motion made and Seconded to draft amendments to the sign regulations that would allow for the placement of municipal signs that promote community assets and related amenities. Vote: 6-0.**

**B. Fees Ordinance Discussion**

The Fee's Ordinance was discussed. Fees associated with the Harbor Ordinance, Zoning Ordinance, Subdivision Ordinance, Earth Moving and Signs were reviewed. Committee disagreed on the necessity of fees, amount of fees, and what costs were covered by tax dollars vs. costs covered by application and inspection fees.

Code Enforcement Officer Block presented recommended increases in various fee categories, noting that Hampden is considerably low compared to many surrounding communities.

Discussion primarily focused on subdivision, zoning, and inspection fees. Code Enforcement Officer noted that the codes require a minimum number of inspections be performed dependent upon the nature of the development. Current fees do not always cover actual costs or repeated inspections as may be necessary.

Committee will continued discussion on specific categories of Fee's at the next meeting.

**5. New Business:**

**A. Shoreland Zoning Update Draft**

Community Development Director (CDD) explained that the Draft Shoreland Zoning changes are proposed for consideration consistent with Hampden's obligation to stay current with the State Minimum Guidelines, which have again, been amended by the State of Maine.

CDD to identify and present those specific areas of the Ordinance that exceed the minimum requirements at the next meeting to facilitate Committee review.

B. Accessory Apartment Discussion

Community Development Director presented a list of criteria, for Committee discussion, taken from the Town of Freeport Zoning Ordinance that appeared very clear and concise. CDD asked the Committee for their comment on the criteria.

Committee indicated they were in favor of the concept with Chairperson McPike specifically pointing to the criteria that addressed parking requirements. The Committee agreed in support for the accessory apartment vs. in-law apartment due to the restriction and enforcement issues associated with the in-law apartment.

The Committee, indicating concern for timing of this concept, to the following action:

**Committee Action: Motion made and seconded to refer the material to the Town Council for forwarding to the Planning Board for review and comment. Vote: 6-0**

6. Citizens Initiatives: None
7. Public Comments: None
8. Committee Member Comments: None
9. Adjourn: 8:05pm



**To:** Angus Jennings, Town Manager  
Paula Scott, Town Clerk

**From:** Dean Bennett, Director of Community Development

**Date:** May 9, 2016

**Subject:** Zoning Amendment

.....

On May 3, 2016, the Council's Planning and Development Committee, unanimously approved the attached revisions to the Zoning Ordinance. The Committee voted to forward the draft to the full Town Council for forwarding to the Planning Board for review and comment.

Please schedule for an upcoming Town Council Meeting as appropriate.

## ARTICLE 5 - ENFORCEMENT

(Amended: 6/ 3/02)

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**5.3.1.3.** Within fourteen (14) days of the filing of an application for a building permit, the Code Enforcement Officer shall approve or deny such application or shall refer the applicant to the planning board or the Board of Appeals. The decision shall be in writing and communicated directly to the applicant. In the case of a denial of an application, the decision shall include reasons for such. One (1) copy of the Code Enforcement Officer's decision shall be filed in the municipal office.

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**5.3.2.4.** After completion of the work permitted by the building permit, the applicant shall notify the Building Inspector, who with the Code Enforcement Officer, shall issue or deny the certificate of compliance within fifteen days. The Code Enforcement Officer and Building Inspector shall issue the



**To: Angus Jennings, Town Manager  
Paula Scott, Town Clerk**

**From: Dean Bennett, Director of Community Development**

**Date: May 9, 2016**

**Subject: Shoreland Zoning**

.....

On May 3, 2016, the Council's Planning and Development Committee, unanimously approved the attached revisions to the Shoreland Zoning Ordinance. The Committee voted to forward the draft to the full Town Council for forwarding to the Planning Board for review and comment.

Please schedule for an upcoming Town Council Meeting as appropriate.

**TOWN OF HAMPDEN, MAINE  
SHORELAND ZONING ORDINANCE**

ADOPTED: Hampden Town Council, March 1, 2010  
Effective Date:

AMENDED: Hampden Town Council, August 15, 2011 (DEP Approval September 9, 2011)  
Effective Date: September 14, 2011

Article 17 Definitions

AMENDED: Hampden Town Council, July 14, 2014 (DEP Approval: September 3, 2014)  
Effective Date: August 13, 2014

Article 4.B Sections 15 (O) and 15 (O 1)  
Table 1 Land Uses in the Shoreland Zone  
Article 13.A. ~~f.~~ (1) Resource Protection  
District

Article 15 O Timber ~~Harvesting~~ (~~Harvesting~~) (NOTE: Repealed  
January 1, 2013) Article 15 O 1 Timber Harvesting Statewide  
Standards  
Article 17 Definitions

CERTIFIED BY:

\_\_\_\_\_  
Denise Hodsdon, Town Clerk

Town Clerk  
Affix Seal

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Town of Hampden, Maine  
Shoreland Zoning Ordinance  
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Town of Hampden, Maine  
Shoreland Zoning Ordinance

NOTE: Words appearing in *italics* are defined terms that appear in Article 17 Definitions.

1. **Purposes.** The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.
2. **Authority.** This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.M.R.S.).
3. **Applicability.** This Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond or river, ~~the, the~~ upland edge of a coastal wetland, including all areas affected by tidal action, the upland edge of a freshwater wetland, all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream and all land areas within 75 feet, horizontal distance, of the normal high-water line of certain local streams.

NOTE: The Town of Hampden, Maine has opted to not govern docks, wharfs, piers or other extending or located below the shoreline. Such structures are subject to other regulatory bodies.

4. **~~Effective Date~~ Effective Date of Ordinance and Ordinance Amendments.**

~~A. Effective Date of Ordinance and Ordinance Amendments. This Ordinance~~  
~~Ordinance, which, was~~ which was adopted by the Town of Hampden on  
March 1, 2010, shall not be effective unless approved by the Commissioner of  
the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance  
Amendment, attested and signed by the Town Clerk, shall be forwarded ~~to the~~  
~~Commissioner~~ the Commissioner ~~approval~~ for approval. ~~If the~~ If the ~~Commissioner~~ the  
~~Commissioner fails to~~ fails to ~~enact this~~ enact this ~~Ordinance or~~ Ordinance or Ordinance  
Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance  
Amendment, it shall be automatically approved.

Any application for a shoreland permit submitted to the Town of Hampden within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

**B. Sections 15(O) and 15(O-1).** Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

**C. Repeal of Prior Shoreland Zoning Provisions.** Upon the effective date of this Ordinance pursuant to Section 4(A) above, Section 4.14 of the "Zoning Ordinance of the Town of Hampden, Maine" shall stand repealed. Provided, however, that said provisions of the Zoning Ordinance shall remain in effect for the prosecution of any violations thereof in existence as of the effective date of this Ordinance."



10. ~~Interpretation of~~Interpretation ~~Shoreland of~~ ~~District~~Shoreland ~~Boundaries~~District Boundaries. Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, edge of pavement of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of shoreland district boundary lines, the Board of Appeals shall be the final authority as to location.

11. ~~Land Use~~Land ~~Requirements~~Use Requirements. ~~Except as~~Except ~~hereinafter~~hereinafter specified, ~~no building~~no building, structure ~~or land~~or ~~shall~~land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

## 12. Non-conformance.

A. **Purpose.** It is the intent of this Ordinance to promote land use conformities, except that *non-conforming* conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

### B. General

- (1) Transfer of Ownership. Non-conforming conditions may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or non-conforming lot, subject to the provisions of this Ordinance.
- (2) Repair and Maintenance. This Ordinance allows, without a shoreland permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

NOTE: See Section 17 for the definitions of non-conforming structures, non-conforming uses and non-conforming lots.

---

### C. Non-conforming Structures

- (1) Expansions. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A non-conforming structure may be added to or expanded after obtaining a shoreland permit from the same permitting authority as that for a new structure, if such addition or expansion does not create an increase in non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.
-

(a) Expansion of any portion of a structure within 25 feet of the normal high water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.

(b) Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high water line of a water body, tributary stream or upland edge of a wetland that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12 (C) (1).

~~(a) After January 1, 1989 if any portion of a structure is less than the required shoreline setback from the shoreline, that portion of the structure shall not be expanded, as measured in floor area or volume of a structure, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 12(C)(3), and is less than the required setback from the shoreline, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume of a structure since that date.~~

(i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

(c) All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12 (C)(1) or Section 12 (C)(1)(a), above.

(i) For structures located less than 75 feet from the normal high water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(ii) For structures located less than 100 feet from the normal high water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high water line of a water body, tributary stream or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(I) and Section 12(C)(1)(c)(I), above.

(iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high water line of a water body, tributary stream, or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high water line of a waterbody, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C) (1) (b) (I) and Section 12(C) (1) (c) (I) above.

d. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

(2) Foundations. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12)(C).

~~(b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the shoreline setback requirement is met to the greatest practical extent as determined by the Code Enforcement Officer, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.~~

- (23) Relocation. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Code Enforcement Officer and provided that the applicant demonstrates that the present subsurface wastewater disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a replacement system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the shoreline setback to the greatest practical extent, the Code Enforcement Officer shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the subsurface wastewater disposal system and other on-site soils suitable for subsurface wastewater disposal systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the shoreline setback area in order to relocate a structure, the Code Enforcement Officer shall require replanting of native vegetation to compensate for the destroyed vegetation. In accordance with Section 15(S). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the shoreline than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the shoreline setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

(43) Reconstruction or Replacement. Any non-conforming structure which is located less than the minimum required shoreline setback and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a shoreland permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the shoreline setback requirement to the greatest practical extent as determined by the Code Enforcement Officer in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to create an increase in non-conformity of a structure. If the reconstructed or replacement structure is less than the minimum required shoreline setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming ~~floor area and volume footprint~~ of the reconstructed or replaced structure at its new location. If the total ~~amount of floor area and volume footprint~~ of the original structure can be relocated or reconstructed beyond the minimum required shoreline setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the minimum shoreline setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(~~23~~) above.

Any non-conforming structure which is located less than the ~~minimum~~minimum required shoreline setback and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a shoreland permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the shoreline setback to the greatest practical extent the Code Enforcement Officer shall consider, in addition to the criteria in Section 12(C)(~~23~~) above, the physical condition and type of foundation present, if any.

(45) **Change of Use of a Non-conforming Structure.** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, local stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

#### D. Non-conforming Uses

- (1) **Expansions.** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a shoreland permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1)(a) above.
- (2) **Resumption Prohibited.** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the *structure* has been used or maintained for residential purposes during the preceding five (5) year period.
- (3) **Change of Use.** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(4) above.

#### E. Non-conforming Lots

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, minimum lot width and *shore frontage* can be met. Variances relating to shoreline setback or other requirements not involving lot area, minimum lot width or shore frontage shall be obtained by action of the Board of Appeals.
- (2) **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S. ~~A.M.R.S.~~ sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

- (3) **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on December 16, 1991 and recorded in the registry of deeds if the lot is served by a municipal sanitary sewer or can accommodate a subsurface wastewater disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the shore frontage and lot area requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

### 13. Establishment of Shoreland Districts

**A. Resource Protection District.** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the General Development District need not be included within the Resource Protection District.

- (1) **Water bodies and Wetlands.** Areas within 250 feet, horizontal distance, of the shoreline of wetlands associated with great ponds and rivers, which are rated “moderate” or “high” value waterfowl and wading bird habitat, including nesting and feeding areas by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of December 31, 2008. For the purposes of this paragraph “wetlands associated with great ponds and rivers” shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. “Wetlands associated with great ponds or rivers” are considered to be part of that great pond or river. *Amended 7-14-2014, Effective Date 8-13-2014*
- (2) **Floodplains.** Floodplains along rivers defined by the 100 year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate ~~Maps~~ Maps. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps.
- (3) **Slopes.** Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (4) **Other Smaller Wetlands.** Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

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NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

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(5) Bluffs and River Bank Erosion. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

**B. Limited Residential District.** The Limited Residential District includes those areas within 250 feet, horizontal distance, of the shoreline suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, Stream Protection District or Local Stream Protection District and areas which are used less intensively than those in the General Development District. Residential dwelling units and the land area within 100 feet of such residential dwelling units subject to shoreland zone regulations at the time of adoption of this ordinance shall be included in Limited Residential District. Such Limited Residential Districts shall be limited to the subject property only and not extend to neighboring properties.

~~**C. (Limited Commercial District).**~~ Deleted.

**D. General Development District.** The General Development District includes areas within the shoreland zone containing the following types of existing, intensively developed areas:

(1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

(a) Areas devoted to manufacturing, fabricating or other industrial activities;

(b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

(c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.

(2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

~~**E. (General Development II District).**~~ Deleted.

**F. (Commercial Fisheries/Maritime Activities District).** Deleted.

~~**G. Stream Protection District.**~~ **Stream Protection District.** The Stream Protection District includes all areas within seventy-five (75) feet, horizontal distance, of the shoreline of a stream exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the shoreline of a great pond, or river, or freshwater or coastal wetland. The three following waterways are streams: the portion of the West Branch Souadabscook Stream southwest of its confluence with Brown Brook, Brown Brook and Burnt Swamp Stream. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

NOTE: Shaw Brook is listed in error as a Local Stream when in fact and on the Shoreland Map it is in fact a jurisdictional Stream and is zoned Stream Protection and or General Development.

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**H. Local Stream Protection District.** The Local Stream Protection District shall include all land areas within seventy-five (75) feet horizontal distance of the shoreline of the following local waterways including: Baker Brook (and two unnamed tributaries of Baker Brook), Cold Brook, Reeds Brook, Shaw Brook, Sucker Brook, and Weber Brook.

NOTE: Shaw Brook is listed in error as a Local Stream when in fact and on the Shoreland Map it is a jurisdictional Stream and is zoned Stream Protection and or General Development.

NOTE: Portions of these brooks in association with jurisdictional wetlands, streams or rivers may be in Resource Protection, Limited Residential and General Commercial Districts.

**14. Table of Land Uses.** All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. ~~The district~~The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

- Yes - Allowed (no shoreland permit required but the use must comply with all applicable land use standards.)
- No - Prohibited
- PB - Allowed with shoreland permit issued by the Planning Board.
- CEO ~~Allowed~~ Allowed with shoreland permit issued by the Code Enforcement Officer
- LPI - Allowed with ~~shoreland~~shore land permit issued by the Local Plumbing Inspector

Abbreviations:

- RP - Resource Protection
- LR - Limited Residential
- GD - General Development
- SP - Stream Protection
- LSP - Local Stream Protection

The following notes are applicable to the Land Uses Table on the following page:

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NOTE: A person performing any of the following activities shall require ~~a permit~~ a permit from the Department of Environmental Protection, pursuant to 38 ~~M.R.S.~~M.R.S. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
  - B. Draining or otherwise dewatering;
  - C. Filling, including adding sand or other material to a sand dune; or
  - D. Any construction or alteration of any permanent structure.
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NOTE: A person performing any activities in a Shoreland Area shall also be subject to the Town of Hampden, Maine Zoning Ordinance which also governs land use activities. The most restrictive standards shall apply.

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TABLE 1. LAND USES IN THE SHORELAND ZONE

LAND USES	DISTRICT				
	SP	LSP	RP	LR	GD
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes	yes
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes
3. <i>Forest management activities Deleted</i>	-	-	-	-	-
4. <i>Timber harvesting Deleted</i>	-	-	-	-	-
5. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO	CEO <sup>1</sup>	Yes <sup>14</sup>	Yes <sup>14</sup>
6. Fire prevention activities	yes	yes	yes	yes	yes
7. Wildlife management practices	yes	yes	yes	yes	yes
8. Soil and water conservation practices	yes	yes	yes	yes	yes
9. Mineral exploration	no	no	yes <sup>2</sup>	yes <sup>2</sup>	yes <sup>2</sup>
10. Mineral extraction including sand and gravel extraction	no	no	PB <sup>3</sup>	PB	PB
11. Surveying and resource analysis	yes	yes	yes	yes	yes
12. Emergency operations	yes	yes	yes	yes	yes
13. Agriculture	yes	yes	PB	yes	yes
14. Aquaculture	PB	PB	PB	PB	yes
15. Principal structures and uses					
A. One and two family residential, including driveways	PB <sup>4</sup>	PB <sup>4</sup>	PB <sup>9</sup>	CEO	CEO
B. Multi-unit residential	no	no	no	PB	PB
C. Commercial	no <sup>10</sup>	no <sup>10</sup>	no <sup>10</sup>	no <sup>10</sup>	PB
D. Industrial	no	no	no	no	PB
E. Governmental and institutional	no	no	no	PB	PB
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB <sup>4</sup>	PB <sup>4</sup>	PB	CEO	CEO
16. Structures accessory to allowed uses	PB <sup>4</sup>	PB <sup>4</sup>	PB	CEO	yes
17. Deleted					
18. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI
19. Home occupations	PB	PB	PB	PB	yes
20. Private subsurface wastewater disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI
21. Essential services	-	-	-	-	-
A. Roadside distribution lines (34.5kV and lower)	CEO <sup>5</sup>	CEO <sup>5</sup>	CEO <sup>5</sup>	yes <sup>12</sup>	yes <sup>12</sup>
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	CEO	CEO
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	PB	PB
D. Other essential services	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	PB	PB
22. Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes
23. Public and private recreational areas involving minimal structural development	PB	PB	PB	PB	CEO
24. Individual, private campsites	CEO	CEO	CEO	CEO	CEO
25. Campgrounds	no	no	no <sup>7</sup>	PB	PB
26. Road construction	PB	PB	no <sup>8</sup>	PB	PB
27. Land Management Roads. Deleted	-	-	-	-	-
28. Parking facilities	no	no	no <sup>7</sup>	PB	PB
29. Marinas	PB	PB	no	PB	PB
30. Filling and earth moving of <10 cubic yards	CEO	CEO	CEO	yes	yes
31. Filling and earth moving of >10 cubic yards	PB	PB	PB	CEO	CEO
32. Signs	yes	yes	yes	yes	yes
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a CEO shoreland permit	CEO	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a PB shoreland permit	PB	PB	PB	PB	PB

<sup>1</sup>In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

<sup>2</sup>Requires shoreland permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

<sup>3</sup>In RP not allowed in areas so designated because of wildlife value.

<sup>4</sup>Provided that a variance from the setback requirement is obtained from the Board of Appeals.

<sup>5</sup>Reserved.

<sup>6</sup>See further restrictions in Section 15(L)(2).

<sup>7</sup>Except when area is zoned for resource protection due to floodplain criteria in which case a shoreland permit is required from the PB.

<sup>8</sup>Except as provided in Section 15(H)(4).

<sup>9</sup>Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Single Family, Special Exceptions. Two-family residential structures are prohibited.

<sup>10</sup>Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

<sup>11</sup>Reserved.

<sup>12</sup>Shoreland permit not required but must file a written "notice of intent to construct" with CEO.

<sup>13</sup>Forest Management Activities Deleted.

<sup>14</sup>All clearing activities shall be supervised by a licensed forester.

*Amended 7-14-2014, Effective Date 8-13-2014*

**15. Land Use Standards.** All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

**A. Minimum Lot Standards**

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) Residential per dwelling unit Within the Shoreland Zone		
(i) Adjacent to Tidal Areas on well and septic	30,000	150
(ii) Adjacent to Non-Tidal Areas on well and septic	40,000	200
(iii) Adjacent to Tidal Areas on municipal sewer and water	18,000	125
(iv) Adjacent to Non-Tidal Areas on municipal sewer and water	18,000	125
(b) Governmental, Institutional, Commercial or Industrial per principal structure Within the Shoreland Zone		
(i) Adjacent to Tidal Areas,	40,000	200
(ii) Deleted.		
(iii) Adjacent to Non-tidal Areas	60,000	300
(c) Public and Private Recreational Facilities <del>Within</del> <u>within</u> the Shoreland Zone		
(i) Adjacent to Tidal and Non-Tidal Areas	40,000	200

(2) **Certain Land Not Included Toward Lot Area.** Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

(3) **Lots Bisected By Roads.** Lots located on opposite sides of a public or private *road* shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

(4) **Minimum Lot Width.** The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

(5) **Group Developments.** If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use. (Please note that there are additional standards for group developments contained in the Zoning Ordinance).

**B. Principal and Accessory Structures**

(1) **Shoreline Setback.** All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the shoreline which is the normal high-water line of great ponds and rivers that flow to great ponds, and seventy-five (75) feet, horizontal

distance, from the normal high-water line of other water bodies, tributary streams, local streams or the upland edge of a wetland. In the Resource Protection District the shoreline setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the shoreline setback requirements specified above shall apply.

Minimum Shoreline setback requirements

RP District except for specifically permitted structures	250 feet
Great Ponds	100 feet
Rivers that flow to Great Ponds	100 feet
Rivers	75 feet
Streams, Tributary Streams <sup>1</sup> and Local Streams	75 feet
Wetlands	75 feet
In addition:	
Unstable & Highly Unstable Coastal Bluffs	Required shoreline setback measured from top of bluff. (See section 15B(1)(c) below)

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<sup>1</sup>NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

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- (a) **Exception for Water-Dependent Uses.** The shoreline setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (b) deleted.
- (c) **Coastal Bluff Setback.** For principal structures, the shoreline setbacks established in 15B(1) shall be measured in horizontal distance starting at and away from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. The Maine Office of GIS Data ~~Catalog provides~~ Catalog ~~aprovides~~ data ~~layerdata~~ titledlayer ~~“titled~~ “coastal bluff hazards” (<http://megis.maine.gov/catalog>) which is also acceptable as source information for coastal bluffs. If the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located is in question, the applicant must at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement by the permitting official is not reached in regard to the location of the top of the bluff the applicant may appeal the matter to the Town of Hampden Board of Appeals.
- (d) **Exception for Accessory Structures.** On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required shoreline setbacks, the code enforcement officer may issue a shoreland permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height of a structure, and shall be located as far from the shoreline as practical and shall meet all other applicable standards, including lot coverage and

vegetation clearing limitations. In no case shall the structure be located closer to the shoreline than the principal structure.

- (2) Height. ~~Principal~~ or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential and Stream Protection Districts, shall not exceed thirty-five (35) feet in height of a structure. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- (3) Floodplain. All development located in the special Flood Hazard Area as depicted on Flood Insurance Rate Maps shall comply with the Town of Hampden Floodplain ~~Manangement~~Management Ordinance.
- (4) Lot Coverage. ~~The total footprint area~~ With the exception of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, General Development Districts located within the shoreland zone, including land area previously developed, except in the General Development District adjacent to tidal waters ~~coastal wetlands~~ and rivers that do not flow to great ponds non-vegetated surfaces ~~where lot coverage shall not exceed seventy (70) percent~~ percent of the portion of the lot within the shoreland zone.

For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as nonvegetated surfaces when calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date.

- (5) Retaining Walls. Retaining walls that are not necessary for erosion control shall meet the structure shoreline setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
  - (a) The site has been previously altered and an effective vegetated buffer does not exist;
  - (b) The wall(s) ~~is~~is (are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, local stream or upland edge of a wetland;
  - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (d) The total height of the wall(s), in the aggregate, are no more than 24 inches;
  - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, local streams and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as *recent floodplain soils*.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and

- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, local stream or upland edge of a ~~wetland~~ wetland ~~when~~ when ~~natural~~ natural buffer area ~~does~~ area ~~not~~ does ~~exist~~ not exist. ~~The buffer~~ The buffer ~~area~~ area ~~must~~ must ~~meet~~ meet ~~the~~ the following characteristics:
- (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
  - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - (iii) Only native species may be used to establish the buffer area;
  - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - (v) A footpath not to exceed the standards in Section 15(P)~~(1)~~ (2)(a), may traverse the buffer;
- (6) Structures For Shoreline Access. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a shoreland permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the *structure* is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A.M.R.S. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property. All applications for structures for shoreline access shall be accompanied by an engineering report that contains an analysis of soil conditions, addresses stormwater analysis for the installation area, contains installation details and necessary best management practices to assure stable soil conditions both during construction and thereafter.

**C. Deleted.**

**D. Campgrounds.** Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- (1) Minimum Size. Campgrounds shall contain a minimum of five thousand (5,000) square feet ~~of land of land, not, including not roads including and roads driveways and driveways, for each for site each site. Land supporting Land wetlands supporting wetland~~ vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- (2) Shoreline Setback. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, local streams, or the upland edge of a wetland.

**E. Individual Private Campsites.** Individual private campsites not associated with campgrounds

are allowed provided the following conditions are met:

(1) Minimum Size. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.

(2) When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.

~~(23)~~ Shoreline Setback. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, local streams or the upland edge of a wetland.

~~(43)~~ Recreational Vehicles. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

~~(54)~~ Vegetation Clearing. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.

~~(65)~~ Sewage Disposal Plan Required. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.

~~(76)~~ After 120 Days. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface wastewater disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

**F. Prohibited Commercial and Industrial Uses.** The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds, and rivers and streams which flow to great ponds:

(1) Auto washing facilities

(2) Auto or other vehicle service and/or repair operations, including body shops

(3) Chemical and bacteriological laboratories

(4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

(5) Commercial painting, wood preserving, and furniture stripping

(6) Dry cleaning establishments

(7) Electronic circuit assembly

- (8) Laundromats, unless connected to a municipal sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

#### G. Parking Areas

- (1) Shoreline Setback. Parking areas shall meet the shoreline setback requirements for structures for the district in which such areas are located. The shoreline setback requirement for parking areas serving public boat launching facilities shall be no less than fifty (50) feet, horizontal distance, from the shoreline if the Planning Board finds that no other reasonable alternative exists further from the shoreline.
- (2) Design. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream, local stream or wetland and where feasible, to retain all runoff on-site.
- (3) ~~Compliance~~ With Compliance ~~Zoning with~~ Ordinance ~~Zoning Ordinance.~~ ~~In determining~~ In determining the appropriate ~~the appropriate size and size~~ minimum and minimum number of proposed parking spaces, the parking layouts and handicap parking configurations shall comply with the Town of Hampden Zoning Ordinance standards contained in Article 4.7.
  - (a) Parking Space Exception: Parking spaces for a vehicle and attached boat trailer shall be forty (40) feet long.
  - (b) Deleted.

#### H. Roads and Driveways. The following standards shall apply to the construction of roads and/or ~~driveways~~ Driveways and drainage systems, culverts and other related features.

- (1) Shoreline Setback. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or a river that flows to a great pond, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water-bodies, tributary streams, local stream or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water-body, tributary stream, local stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, local stream or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway shoreline setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

Section 15 (H)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access ~~to~~with the structure.

- (2) Existing Public Roads. Existing public roads may be expanded within the legal road right of way regardless of their shoreline setback from a water body, tributary stream, ~~local~~, local stream or wetland.
- (3) Deleted.
- (4) Roads in the RP District. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a shoreland permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, local stream or upland edge of a wetland.
- (5) Road Side Slope. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15(Q).
- (6) Road Grades. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (7) Drainage Buffers. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams, local streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, local stream or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (8) Stormwater Management. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

- (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway at intervals no greater than indicated in the following table:

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21 +	40

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
- (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective ~~functioning~~, functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

(9) Stormwater Maintenance. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**I Signs.** Conformance ~~With~~ with Zoning Ordinance. Signs locations, size, configuration and lighting shall comply with the Town of Hampden Zoning Ordinance standards contained in Article 4.8.

#### **J. Storm Water Runoff**

(1) Stormwater Management. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

(2) Stormwater Maintenance. ~~Storm water runoff control systems shall be maintained as necessary to ensure proper functioning. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.~~ Storm water runoff control systems shall be maintained as necessary to ensure proper functioning. Stormwater runoff control systems shall be in compliance with Department Chapter 500 and applicable Post-~~Ce~~ Construction Ordinance, Zoning Ordinance and Subdivision Ordinance standards.

#### **K. Subsurface Wastewater Disposal Systems**

(1) Subsurface Wastewater Disposal. All subsurface wastewater disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a replacement system and any associated fill extensions, shall not extend closer than seventy-five (75) feet,

horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

#### L. Essential Services

- (1) Expansions. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) Limitations in the RP and SP Districts. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except ~~to provide~~to provide services ~~to a~~to ~~permitted~~a permitted use ~~within~~use within ~~said~~ ~~district~~said district, ~~or~~ ~~except~~except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Replacement. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a shoreland permit.

**M. Mineral Exploration and Extraction.** Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A shoreland permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

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~~NOTE: Mineral Exploration and Extraction are also regulated in the Town of Hampden, Maine Zoning Ordinance in Article 4.23.~~

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Mineral extraction may be permitted under the following conditions:

- (1) ~~A reclamation~~A reclamation plan shall ~~be filed~~be filed with, and approved, ~~by the~~by the Planning Board before a shoreland permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)~~(4)~~ below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond or a river flowing to a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. ~~Minimum~~Minimum distances from property lines for extraction operations are established in the Hampden Zoning Ordinance in Article 4.23.
- (3) (Significant River Segments). Deleted.
- (4) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

- (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
  - (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
  - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (5) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

#### **N. Agriculture**

- (1) **Manure Spreading.** All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A.M.R.S. sections 4201-4209).
- (2) **Manure Stockpiling.** Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond or a river flowing to a great pond, or within seventy-five (75) feet horizontal distance, of other water-bodies, tributary streams, local stream or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) **Tillage Requiring Conservation Plan.** Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- (4) **Tillage Shoreline Setbacks.** There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, from other water-bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams, local streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- (5) **Grazing Shoreline Setbacks.** Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, of other water-bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams, local streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above shoreline setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the Planning Board.

**O. Timber Harvesting.** Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

**O-1. Timber Harvesting – Statewide Standards** Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

NOTE: Timber Harvesting in Shoreland Zones is now permitted through the Maine Forest Service and governed by MFS Rule - Chapter 21 Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas

**P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting** All Shoreland Districts are subject to this Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting section. Clearing or removal of vegetation for activities other than timber harvesting shall be supervised by a licensed forester. Supervision shall include marking of trees for cutting and written verification by the licensed forester post-cut stating that the cutting was in keeping with the original markings.

- (1) Resource Protection Cutting Limits. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

- (2) Except in areas as described in Section P(1), above, ~~and except to allow for the development of permitted uses,~~ within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond or a river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, local stream or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
- (b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 < 4 in.	1
4 < 8 in.	2
8 < 12 in.	4
12 in. or greater	8

Adjacent to other water-bodies, tributary streams, local streams and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36 - 24 = 12) may be removed from the plot provided that no cleared openings are created.

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The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no *vegetation* removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have *vegetation* removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(P)(2)(b) "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- (c) In order to protect water quality and wildlife habitat, existing *vegetation* under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, ~~diseased, unsafe, or~~ dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section Q, below, unless existing new tree growth is present.

(f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15.P(2).

Section 15(P)(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- (3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond or a river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, local streams or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply to the General Development District.

Notwithstanding the general requirement that clearing and removal of vegetation be supervised by a licensed forester clearing for construction of a new single-family residence does not require supervision by a licensed forester if the home builder adheres to a maximum limit of 25% of the lot area in the shoreland zone or ten thousand (10,000) square feet, whichever is greater.

- (4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- (5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

**Q. ~~Erosion and Sedimentation Control~~ Hazard Trees, Storm Damaged Trees, and Dead Tree Removal.**

(1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer, if the following requirements are met:

(a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native trees species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.

(b) Outside the shoreline buffer, when the removal of hazard trees exceeds forth (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and on

half (4.5) feet above the ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.

(c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision, dead trees are those trees that contain no foliage during the growing season.

(d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.

(e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.

(2) Storm damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

(a) Within the shoreline buffer, when the removal of storm damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

(i) The area from which a storm damaged trees is removed does not result in new lawn areas, or other permanently cleared areas;

(ii) Stumps from the storm damaged trees may not be removed;

(iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and

(iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.

#### R. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(P), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

(1) The removal of vegetation that occurs at least once every two (2) weeks for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;

(2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Section 15(B) are not applicable;

(3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;

(4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of Section 15 (N) are complied with;

(5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S./AM.R.S., section 343-E, and that is located along:

(a) A coastal wetland; or

(b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S./AM.R.S., section 465-A.

(6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:

(a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;

(b) Removal of vegetation within twenty (25) feet, horizontal distance from the shoreline occurs via hand tools; and

(c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

NOTE: An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program;

(7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

S. Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 15(P), to address the removal of non-native species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements:

(1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.

(2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.

(3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

(4) Revegetation activities must meet the following requirements for trees and saplings:

(a) All trees and saplings removed must be replaced with native noninvasive species;

(b) Replacement vegetation must at a minimum consist of saplings;

(c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;

(d) No one species shall make up 50% or more of the number of trees and saplings planted;

(e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and

(f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) year period.

(5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:

(a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) in height as applicable;

(b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

(c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;

(d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and

(e) Survival of planted woody vegetation and vegetation under three (3) feet in height must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five (5) years.

(6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:

(a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

(b) Where necessary due to a lack of sufficient ground cover, an areas must be supplemented with a minimum for (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and

(c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

### . Erosion and Sedimentation Control

#### (1) All activities

~~(1) Filling, Grading and Excavation Requires Shoreland Permit and Plan.~~ All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a shoreland permit shall also require a written soil erosion and sedimentation control plan. The plan must reference and conform to the Maine Erosion and Sedimentation Control Best Management Practices Handbook. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

- (a) Mulching and revegetation of disturbed soil.
- (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
- (c) Permanent stabilization structures such as retaining walls or riprap.

(2) **Avoid Steep Slopes.** In order to create the least potential for erosion, *development* shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

- (3) Erosion and Sedimentation Control. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Stabilization. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) ~~Drainageways~~Drainage ways. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. ~~Drainageways~~Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

**U.R. Soils.** All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface wastewater disposal systems, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, ~~presenee~~and presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

**VS. Water Quality.** No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream, local stream or wetland.

**WF. Archaeological Site.** Any proposed land use activity involving structural *development* or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

## 16. Administration

### A. Administering Bodies and Agents

- (1) Code Enforcement Officer. A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
- (2) Board of Appeals. A Board of Appeals shall be created in accordance with the provisions of 30-A ~~M.R.S.~~M.R.S. section 2691.
- (3) Planning Board. A Planning Board shall be created in accordance with the provisions of State law.

**B. Shoreland Permits Required.** After the effective date of this Ordinance no person shall, without first obtaining a shoreland permit, engage in any activity or use of land or structure requiring a shoreland permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use. A person who is issued a shoreland permit pursuant to this Ordinance shall have a copy of the shoreland permit on site while the work authorized by the shoreland permit is performed.

(1) ~~Exception – Road~~Exception – Culvert~~Road – Replacement~~Culvert Replacement.  
~~A shoreland permit is permit –~~  
~~notis – required~~not – for required – the~~for the~~ replacement of an existing road culvert as long as:

- (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
  - (b) The replacement culvert is not longer than 75 feet; and
  - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) Exception Archaeological Excavations. A shoreland permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Other Permits May Be Required. Any shoreland permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

### C. Shoreland Permit Application

(1) Application and Plan Required. Every applicant for a shoreland permit shall submit a written application, including a scaled site plan, on a form provided by the Town of Hampden, to the ~~Code Enforcement~~Code Enforcement Officer ~~as~~as ~~indicated~~indicated in ~~Section~~Section 14. Applications ~~for activities~~for – also activities also required to obtain a building permit under the Town of Hampden, Maine Zoning Ordinance may apply for said permit concurrent with a building permit. ~~Such a building permit shall substitute the required shoreland permit upon clear demonstration that all aspects of this ordinance have been satisfied.~~

At the time of application for a Shoreland Permit, applicant shall pay a fee in accordance with the

Town of Hampden Fees Ordinance.

- (2) **Legal Standing and Certification of Information.** All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a shoreland permit hereunder, certifying that the information in the application is complete and correct.
- (3) **Date Stamp Applications.** All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (4) **Plumbing and Subsurface Permits Required.** If the property is not served by a municipal sanitary sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Local Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface wastewater disposal system.
- (5) **Other Information as Required.** The Code Enforcement Officer and the Planning Board shall have the authority to require additional information which may reasonably be necessary for them to make their decision and inform the facts of the application.

**D. Procedure for Administering Shoreland Permits.** Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Deleted;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Section 15, Land Use Standards.

If a shoreland permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the Town.

**E. Single Family Special Exceptions.** In addition to the criteria specified in Section 16(D) above, ~~excepting~~ structure setback requirements, the Planning Board may approve a shoreland permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District or no later than July 1, 2009.
- (3) All proposed buildings, subsurface wastewater disposal systems and other improvements are:
  - (a) ~~Located~~ Located on natural ground slopes of less than 20%; and
  - (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with the Town of Hampden, Maine Floodplain Management Ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

- (4) The total ~~ground floor area~~ footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream, local stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the

proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

**F. Expiration of Shoreland Permit.** Shoreland permits ~~shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the shoreland permit, the applicant shall have one additional year to complete the project, at which time the shoreland permit shall expire.~~ A Shoreland Permit secured under the provisions of this Ordinance shall expire if the work or change is not commenced within twelve (12) months of the date on which the permit is granted, or if the work or change is not substantially completed within two (2) years of the date on which the permit is granted.

**G. Installation of Public Utility Service.** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting ~~to the~~ to the validity and currency ~~of all of local~~ all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

## H. Appeals

- (1) Powers and Duties of the Board of Appeals. A Board of Appeals is hereby established in accordance with the state law and the provisions of this Ordinance. The Board of Appeals shall be governed by the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. The Board of Appeals shall have the following powers with regard to this Ordinance:
  - (a) Administrative Appeals: All administrative appeals shall be subject to the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions of the Board of Appeals and subsequent appeals to Superior Court. The Board of Appeals shall hear and decide administrative appeals. An administrative appeal is an appeal: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a shoreland permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.
  - (b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance and the Town of Hampden Board of Appeals Ordinance.
- (2) Variance Appeals. All variance appeals shall be subject to the provisions of the Town of Hampden Board of Appeals Ordinance including but not limited to filing deadlines, application requirements, fees, appeal procedures, decisions ~~of the of Board the Board of Appeals of Appeals~~ Appeals and subsequent appeals to Superior Court. The Board of Appeals shall hear and decide variance appeals. A variance from the provisions of the Ordinance may only be granted by the Board of Appeals in accordance with the following conditions:

- (a) Variances may be granted only from dimensional requirements including, but not limited to, ~~to, minimum, minimum lot width, lot width, maximum, maximum structure height, structure height, percent, of percent, lot of coverage, lot coverage,~~ shoreline setback requirements, lot area, and shore frontage.
- (b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- (c) The Board shall not grant a variance unless it finds that:
  - (i) The proposed structure or use would meet the provisions of Section 15, Land Use Standards, except for the specific provision which has created the non-conformity and from which relief is sought; and
  - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
    - a. That the land in question cannot yield a reasonable return unless a variance is granted;
    - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
    - c. That the granting of a variance will not alter the essential character of the locality; and
    - d. That the hardship is not the result of action taken by the applicant or a prior owner.
- (d) Disability Variance. Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals, or the Codes Enforcement Officer if authorized in accordance with 30-A M.R.S. §4353-A may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

(3) Administrative Appeals.

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the ~~record of the Planning Board proceedings are~~ record of the Planning Board proceedings is inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(4) Appeal Procedure

(a) Making an Appeal

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
  - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.

- (ii) The *person* filing the appeal shall have the burden of proof.
  - (iii) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
  - (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
- (5) Appeal to Superior Court. Except as provided by 30-A ~~M.R.S.~~M.R.S. section 2691(3)(F), any *aggrieved party* who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- (6) Reconsideration. In accordance with 30-A ~~M.R.S.~~M.R.S. section 2691(3)~~(F)~~, the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration ~~of aof a decision a decision shall require~~shall require a positive a positive vote of vote the of the majority the majority of the of Board the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

## I. Enforcement

- (1) Nuisances. Any violation of this Ordinance shall be deemed to be a nuisance.
- (2) Code Enforcement Officer
  - (a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

- (b) The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- (c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. ~~On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.~~
- (3) Legal Actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
- (4) Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, ~~M.R.S.~~AM.R.S. section 4452.

## 17. Definitions.

Accessory structure or use. "Accessory structure or use" means a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Aggrieved party. "Aggrieved party" means an owner of land whose property is directly or indirectly affected by the granting or denial of a shoreland permit or variance under this Ordinance; a person whose land abuts land for which a shoreland permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such shoreland permit or variance.

Agriculture. "Agriculture" means the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green-house products. Agriculture does not include forest management and timber harvesting activities.

Aquaculture. "Aquaculture" means the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area. "Basal Area" means the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement. "Basement" means any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume of a structure below the existing ground level.

Boat Launching Facility. "Boat Launching Facility" ~~means~~ means a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Bureau of Forestry. "Bureau" means the State of Maine Department of Agriculture, Conservation and ~~'s~~ Bureau of Forestry

Campground. "Campground" means any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy. "Canopy" means the more or less continuous cover formed by tree crowns in a wooded area.

Coastal wetland. "Coastal wetland" means all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. The line defining the limits of the subject term is defined by the term shoreline.

Commercial use. "Commercial use" means the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

*Cross-sectional area.* Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

*DBH.* Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

**Development.** “Development” means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**Dimensional requirements.** “Dimensional requirements” means numerical standards relating to spatial relationships including but not limited to shoreline setback, lot area, shore frontage and height of a structure.

**Disability.** “Disability” means any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**Disruption of shoreline integrity.** Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

**Driveway.** “Driveway” means a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**Emergency operations.** “Emergency operations” means operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Essential services.** “Essential services” means gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a structure.** “Expansion of a structure” means an increase in the ~~floor area or volume~~ footprint of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

**Expansion of use.** “Expansion of use” means the addition of one or more months to a use's operating season; or the use of more ~~floor area~~ footprint of a structure or ground area devoted to a particular use.

**Family:** Shall mean an individual occupying a single dwelling unit, or a group of two or more persons occupying a single dwelling unit and living together as a single housekeeping unit, including the sharing of common living, sleeping, cooking and eating facilities. When occupancy of a dwelling unit is by a group of two or more persons, the group of persons occupying the dwelling must either be:

- a. Related by blood, adoption, domestic partnership, or marriage; or
- b. Comprised of two persons who are not related by blood, domestic partnership, adoption or marriage, and any children related to either or both of them by blood, adoption or marriage;

- c. Comprised of persons, whether or not related to each other by blood, domestic partnership, adoption or marriage, but not to exceed four unrelated persons. Family shall not include a group of unrelated persons occupying a boarding home, rooming house, hotel/motel, tourist home or inn.
- d. A Community Living Arrangement as defined by Title 30-A, Section 4357-A.

Note: For the purposes hereof, the number of unrelated persons occupying a dwelling unit shall be calculated as follows: Any persons related by blood, adoption or marriage plus one unrelated person shall be considered to constitute a total of two unrelated persons, and each additional unrelated person shall be added to determine the total number of unrelated persons occupying the dwelling unit. By way of example, two or more related persons occupying a dwelling unit combined with two unrelated persons occupying the dwelling unit yields a total of three unrelated persons occupying the dwelling unit. (Amended 08-15-2011)

Floodway. "Floodway" means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor area. "Floor area" means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, ~~plus the horizontal area of any unenclosed portions of a structure such as porches and decks.~~

Footprint – the entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

Forest management activities. "Forest management activities" means timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads. All proposed forest management activities shall require a forest management plan prepared and submitted by a licensed forester.

~~Forested wetland. "Forested wetland" means a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.~~

Forest stand. "Forest stand" means a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

Forested Wetland – a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet or taller.

Foundation. "Foundation" means the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Freshwater wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- 1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
- 2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to

support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition. The line defining the limits of the subject term is defined by the term shoreline.

Functionally water-dependent uses. “Functionally water-dependent uses” means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, ~~(excluding recreational boat storage buildings)~~ finfish and shellfish processing, fish related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, ~~retaining walls~~ shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

Great pond. “Great pond” means any inland body of water which in a natural state has a surface area in excess of ten acres. (Great pond in Hampden, Maine includes Hermon Pond, Patten Pond, Hammond Pond and Ben Annis Pond). The line defining the limits of the subject term is defined by the term shoreline.

Ground cover. “Ground cover” means small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

*Harvest area. Deleted Amended 7-14-2014, Effective Date 8-13-2014*

Hazard Tree – a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricane – force winds; tornados; microburst’s; or significant ice storm events. Hazard trees also include those trees that pose a serious an imminent risk to bank stability. A target is the areas where personal injury or property damage could occur if the tree or portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Height of a structure. “Height of a structure” means the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

Home occupation. “Home occupation” means an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Increase in non-conformity of a structure. “Increase in non-conformity of a structure” means any change in a structure or property which causes further deviation from the dimensional requirement(s) creating the non-conformity such as, but not limited to, reduction in shoreline setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional requirement or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase non-conformity. For example, there is no increase in non-conformity with the shoreline setback requirement for water-bodies, wetlands, local streams or tributary streams if the expansion extends no further into the required shoreline setback area than does any portion of the existing non-conforming structure. Hence, a structure may be expanded

laterally provided that the expansion extends no closer to the water body, tributary stream, local stream or wetland than the closest portion of the existing structure from that water body, tributary stream, local stream or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**Individual private campsite.** “Individual private campsite” means an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

**Industrial.** “Industrial” means the assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**Institutional.** “Institutional” means a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

*Land management road. Deleted Amended 7-14-2014, Effective Date 8-13-2014*

| **Licensed forester** “Licensed forester” means a forester licensed under 32 ~~M.R.S.~~AM.R.S. Chapter 76.

**Local stream.** “Local stream” means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock. This definition does not include the term “stream” or tributary stream as defined elsewhere in this Ordinance, and in Hampden, Maine only applies to Baker Brook, Baker Brook Tributary 1 and Baker Brook Tributary 2, Cold Brook, Reeds Brook, Shaw Brook, Sucker Brook and Weber Brook.

**NOTE:** Shaw Brook is listed in error as a Local Stream when in fact and on the Shoreland Map it is in fact a jurisdictional Stream and is zoned Stream Protection and or General Development.

**Lot area.** “Lot area” means The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

**Marina.** “Marina” means a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

**Market value.** “Market value” means the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mineral exploration.** “Mineral exploration” means hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral extraction.** “Mineral extraction” means any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Minimum lot width.** “Minimum lot width” means the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

**Multi-unit residential.** “Multi-unit residential” means a residential structure containing three (3) or more residential dwelling units.

Native. "Native" means indigenous to the local forests.

Non-conforming condition. "Non-conforming condition" means a non-conforming lot, non-conforming structure or non-conforming use in lawful existence at the time this Ordinance or subsequent amendment took effect.

Non-conforming lot. "Non-conforming lot" means a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure. "Non-conforming structure" means a structure which does not meet any one or more of the following dimensional requirements; shoreline setback, height of a structure, ~~or~~ lot coverage or footprint, but in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-conforming use. "Non-conforming use" means use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-Native Invasive Species of Vegetation. Species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

Normal high-water line (non-tidal waters). "Normal high-water line (non-tidal waters)" means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Outlet Stream – any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Person. "Person" means an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland. Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland are divided into two categories:

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Principal structure. ~~"Principal structure" means a~~ structure building other than one which is used for purposes wholly incidental or ~~accessory to~~ accessory to the use of another building structure or use on the same lot premises.

| Principal use. "Principal use" means a use other than one which is wholly incidental or accessory to  
| another use on the same ~~lot~~premises.

Public facility. "Public facility" means any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Recent floodplain soils. "Recent floodplain soils" means the following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Alluvial	Cornish	Charles
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

Recreational facility. "Recreation facility" means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle. "Recreational vehicle" means a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system. "Replacement system" means a subsurface wastewater disposal system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

Residential dwelling unit. "Residential dwelling unit" means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

*Residual basal area. Deleted Amended 7-14-2014, Effective Date 8-13-2014*

*Residual stand Deleted Amended 7-14-2014, Effective Date 8-13-2014*

Riprap. "Riprap" means rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River. "River" means a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth. The line defining the limits of the subject term is defined by the term *shoreline*. In Hampden, Maine "river" includes: Penobscot River, Souadabscook Stream and West Branch Souadabscook Stream beginning north at its confluence with Brown Brook.

Road. "Road" means a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Sapling- a tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

Seedling – a young tree species that is less than four and on half (4.5) feet in height above ground level.

Service drop. "Service drop" means any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service
  - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
  - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

Shore frontage. "Shore frontage" means the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Shoreland permit. "Shoreland permit" means documented municipal authorization of any activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use requiring a permit within the shoreland area in accordance with this ordinance.

Shoreland zone. "Shoreland zone" means the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream and specified tributary streams.

NOTE: Shoreland zone also includes specified local streams as called out in 13H Local Stream Protection District.

Shoreline. "Shoreline" means the normal high-water line, or upland edge of a wetland whichever is greater.

Shoreline setback. "Shoreline setback" means ~~the—required~~the required minimum horizontal distance from the shoreline to the nearest part of a structure, road, parking space or other regulated object or area.

Significant River Segments. "Significant River Segments" means See Appendix B or 38 ~~M.R.S.~~A.M.R.S. section 437. (As of the date of adoption of this ordinance the Statute does not identify any Significant River Segments in Hampden, Maine).

Skid Road or Skid Trail. Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

Slash. Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

Storm Damaged Tree - a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

Stream. "Stream" means a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national 7.5 minute series topographic map, or if not available, a 15 minute series topographic map, to the point where the streambody of water becomes a river or where the stream meets the shoreline zone of another water body or wetland. When a stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a waterbody or wetland and a channel forms downstream of a water body or wetland as an outlet, that channel is also a stream. flows to another water body or wetland within the shoreland.

~~area.~~—In Hampden, Maine “stream” applies to Brown Brook, Burnt Swamp Stream and West Branch Souadabscook Stream southwest of its confluence with Brown Brook.

Structure. “Structure” means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, or anything constructed or erected on or in the ground ~~together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors.~~ The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8.

Substantial start. “Substantial start” means completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface wastewater disposal system. “Subsurface wastewater disposal system” means any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S./A.M.R.S. section 414, any surface waste water disposal system, or municipal sanitary sewer system.

Sustained slope. “Sustained slope” means a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal waters. “Tidal waters” means all waters affected by tidal action during the highest annual tide.

Timber harvesting. “Timber harvesting” means the cutting and removal of timber for the primary purpose of selling or processing forest products. Timber Harvesting does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

*Timber harvesting and related activities.* Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

Tree – a woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

Tributary stream. “Tributary stream” means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term “stream” as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

NOTE: Tributary Stream does not include the term local stream which is defined elsewhere.

Upland edge of a wetland. "Upland edge of a wetland" means the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the ~~maximum spring~~ highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for ~~a duration~~ duration sufficient to support wetland vegetation; or where the soils support the growth of wetland

vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) ~~feet~~) tall or taller.

Vegetation. "Vegetation" means all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

Velocity zone. "Velocity zone" means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Volume of a structure. "Volume of a structure" means the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body. "Water body" means any great pond, river or stream. Water body also includes local streams.

Water crossing. "Water crossing" ~~means~~ means any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland. "Wetland" means a freshwater wetland or coastal wetland.

Windfirm. Deleted *Amended 7-14-2014, Effective Date 8-13-2014*

Woody vegetation. "Woody vegetation" means live trees or woody, non-herbaceous shrubs.

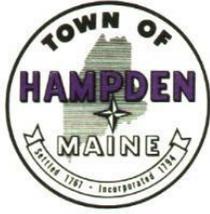
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STATUTORY AUTHORITY: 38 ~~M.R.S.~~A.M.R.S. Section  
438-~~A(A)~~(5)

**Subdivision Ordinance, amendments to allow Private Road Subdivisions**

Referred to Planning Board by Town Council: December 21, 2015

Approved by Town Council after public hearing on July 6, 2016



# **TOWN OF HAMPDEN**

## **PUBLIC NOTICE**

### **TOWN OF HAMPDEN**

#### **PUBLIC NOTICE**

Notice is hereby given that the Hampden Town Council will conduct a public hearing at 7:00PM on Wednesday, July 6, 2016, in the Hampden Municipal Building Council Chambers, located at 106 Western Avenue, to consider proposed amendments to the Subdivision Ordinance. The proposed amendments would allow for Planning Board approval of the construction of private roads and would define permitting and performance standards for such private roads.

The meeting is open to the general public to make comment. Copies of the proposed amendments are available for review at the town office and on the town website at [www.hampdenmaine.gov](http://www.hampdenmaine.gov) under Public Notices.

Paula Scott

Town Clerk

*Posted: 6/27/2016*

Miles Greenacre - 745 Western Ave, Hampden, ME

Proposed change to the Proposed Amendments to the Subdivision Ordinance

Why - My house is the first residence located on the Goodell Farm Road (a private drive). When I purchased this property there was a defined number of lots for sale which would limit the number of houses and therefore vehicle traffic. The road that leads to my house is on my property. Allowing the larger parcels further down the road to put in a subdivision and substantially increase the traffic across my property is called "intensification" of use and goes beyond the original intent of the right of way. Without a check on this in the ordinance, my only alternative would be to seek a legal injunction at significant cost while the other party would reap substantial revenue from the sale of house lots that could be used to finance a legal effort to thwart my rights if they were granted a subdivision permit.

Please consider the following additional language (noted in blue) that would address this issue.

On Page 22 of the Draft Proposed Amendments to the Subdivision Ordinance:

Section 347. Submissions -

~~Section 347. Submissions -~~ 

**A complete statement of all the terms and conditions of the proposed road easement, including copies of all agreements or intended agreements regarding the maintenance and improvements of the right-of-way and roadway. Agreements shall include authorization from servient land owners allowing for any intensified or other use of the right of way. Furthermore, said maintenance agreements shall be in such form to be recordable with the Penobscot Registry of Deeds and shall specifically address the liability and responsibility of the parties to said agreement to maintain the Private Street pursuant to the specifications of this Article, including, but not limited to, the responsibility of removing snow from said roads. The recorded statement which runs with the land, shall also inform subsequent purchasers that the road is private and may never be maintained or accepted by the Town of Hampden.**

**TOWN OF HAMPDEN  
Draft**

The Town of Hampden Hereby Ordains  
Proposed Amendments to the Subdivision Ordinance to allow for Private Street Subdivisions

Deletions proposed in these amendments are ~~Strikethrough~~  
Additions proposed in these amendments are Double Underlined

**SUBDIVISION ORDINANCE**

*Prepared for the*

**TOWN OF HAMPDEN, MAINE**

*By*

*PENOBSCOT VALLEY REGIONAL PLANNING COMMISSION  
FEBRUARY 1982*

Financial assistance in the preparation of this document was provided by Maine's Coastal Program through funding provided by the U. S. Department of Commerce, Office of Coastal Zone Management, under the Coastal Zone Management Act of 1972 as amended.

ADOPTED BY HAMPDEN TOWN COUNCIL: May 17, 1982

EFFECTIVE DATE: June 17, 1982

TEXT AMENDED

AMENDED: April 4, 1983	deletion				
EFFECTIVE: May 6, 1983					
AMENDED: May 7, 1984	331.2.5				
EFFECTIVE: June 6, 1984					
AMENDED: November 18, 1985	532.6	1030			
EFFECTIVE: December 18, 1985					
AMENDED: December 1, 1986	620				
EFFECTIVE: January 1, 1987					
AMENDED: September 21, 1987	545.3D	554.4			
EFFECTIVE: October 20, 1987					
AMENDED: October 5, 1987	331.2.4	332.1.1	332.1.4	342.5	
EFFECTIVE: November 3, 1987					
AMENDED: March 7, 1988	565				
EFFECTIVE: April 6, 1988					
AMENDED: June 6, 1988	331.2.2	332.1.2			

EFFECTIVE: July 5, 1988

AMENDED: September 19, 1988    1030

EFFECTIVE: October 18, 1988

AMENDED: March 13, 1989        deletion

EFFECTIVE: April 11, 1989

TEXT AMENDED

AMENDED: June 19, 1989 EFFECTIVE: July 19, 1989	332.2.3	332.2.4	332.2.12	443	460.26	554.4		
AMENDED: June 3, 1991 EFFECTIVE: July 3, 1991	544.3	545.3D						
AMENDED: April 6, 1992 EFFECTIVE: May 6, 1992	deletion							
AMENDED: October 4, 1993 EFFECTIVE: November 3, 1993	513	531.8						
AMENDED: December 20, 1993 EFFECTIVE: January 19, 1994	1031							
AMENDED: February 7, 1994 EFFECTIVE: March 9, 1994	1021	1032	1033					
AMENDED: December 4, 1995 EFFECTIVE: January 3, 1996	552.15.C	552.25	552.26					
AMENDED: May 20, 1996 EFFECTIVE: June 19, 1996	541	543						
AMENDED: February 12, 2002 EFFECTIVE: March 14, 2002	410 475	420 481	431 483.3	432 521	450 531.3A	460.3 532.3	470 532.5	
AMENDED: February 12, 2002 EFFECTIVE: March 14, 2002	520	530						
AMENDED: November 17, 2003 EFFECTIVE: December 17, 2003	320	330						
AMENDED: October 3, 2005 EFFECTIVE: November 2, 2005	521	522	524	552.15.B	552.16			
AMENDED: August 6, 2007 EFFECTIVE: September 5, 2007	565							
AMENDED: July 14, 2014 EFFECTIVE: August 13, 2014	542							

**TOWN OF HAMPDEN, MAINE  
SUBDIVISION ORDINANCE**

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ARTICLE 100  
***DECLARATION OF PURPOSE***

The purpose of these standards shall be to assure the comfort, convenience, safety, health, and welfare of the people, to protect the environment, to promote the development of an economically sound and stable community, and to uphold the state Subdivision Law (MRSA) Title 30, Section 4956). This ordinance establishes separate and distinct construction standards and maintenance practices for Public Streets and Private Streets.

ARTICLE 200  
***AUTHORITY AND ADMINISTRATION***

**210. Authority** - This Ordinance is enacted pursuant to and consistent with Title 30 MRSA Section 4956; the Subdivision Law.

**220. Administration and Enforcement**

221. This Ordinance shall be known and may be cited as the “Subdivision Ordinance of the Town of Hampden, Maine.”

222. The Planning Board of the Town of Hampden, with the assistance of the code enforcement officer and the Town Manager (as specified in the ordinance) shall administer this Ordinance.

223. The provisions of this Ordinance shall pertain to all land proposed for subdivision as herein defined within the boundaries of the Town of Hampden.

224. No person, firm, corporation or other legal entity may sell, lease, develop, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land in a subdivision which has not been approved by the Hampden Planning Board and recorded in the Penobscot County registry of deeds, nor shall such person, firm, corporation or other legal entity sell or convey any land in such approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term “permanent marker” includes but is not limited to the following: a granite monument, a concrete monument, an iron pin or a drill hole in ledge. No subdivision plat or plan shall be recorded by the register of deeds which has not been approved as required. Approval for the purpose of recording shall appear in writing on the plat or plan. No public utility, water district, sanitary district or any utility company of any kind shall install services to any lot in a subdivision for which a plan has not been approved.

225. The Hampden Planning Board, the Town Council of the Town of Hampden, the code enforcement officer, or the Town of Hampden may institute proceedings to enjoin any violations of this Ordinance, and if a violation is found in court, the Town of Hampden may be allowed attorney fees.

226. Any person, firm, or corporation or other legal entity found guilty of a violation of this Ordinance shall be punished by a fine of not more than one thousand dollars (\$1,000) for each such occurrence.

ARTICLE 300  
**PROCEDURES FOR SUBDIVISION REVIEW**

**310. Introduction** – At the subdivider’s option, an application for subdivision approval may propose one or more Public Streets, one or more Private Streets, or a combination thereof. Proposed subdivisions that include one or more Public Streets shall be reviewed under the procedures set forth in section 320 and section 330, inclusive. Proposed Private Street Subdivisions shall be exempt from section 320 and 330, inclusive, and shall be reviewed under the procedures set forth in section 345.

The subdivider’s application for subdivision approval will not be considered complete until a Final Plan, including all required information, has been submitted to the Planning Board. While the subdivider may submit the Final Plan and all related materials to the Planning Board without any prior contact with the board, the subdivider is encouraged to follow the procedures outlined in this Ordinance. The procedures herein outlined are designed to prevent problems related to the statutory time limits for reviewing complete applications and to provide opportunity for a dialogue between the Planning Board and the subdivider so that the approved subdivision will be designed and built in a manner that fulfills the purpose of this ordinance.

**320. Preapplication Meeting and Submission of a Sketch Plan**

321. The subdivider shall submit at least twelve (12) copies of a sketch plan and application to the code enforcement officer at least fifteen (15) days in advance of the regularly scheduled meeting at which she/he wishes it to be considered. The subdivider or his/her authorized agent shall be present at the meeting to discuss the proposal with the Planning Board.

322. The purposes of this preapplication conference between the subdivider and the Planning Board are:

1. To classify the subdivision as a major or a minor subdivision.
2. To provide an opportunity for the subdivider and the Planning Board to informally review the subdivider’s ideas for use of the land;
3. To discuss procedures for subdivision review and approval;
4. If road construction is involved in the proposal, to classify the road as either minor or collector;
5. To discuss any apparent potential problems associated with the subdivision; and
6. To arrange for on-site inspection of the subdivision site.

323. The sketch plan shall consist of an outline of the proposed subdivision, drawn on a map drawn to scale, showing the proposed layout of streets, lots, and other features in relation to existing conditions. The sketch plan may be a freehand pencil sketch. Accompanying the sketch plan shall be a written application which includes a description of existing covenants and easements and zoning; medium intensity soils survey information (obtainable from the Penobscot County Soil Conservation Service); information about available community facilities and utilities on or near the site; information describing the subdivision proposal including the number of residential lots, typical lot width, and depth, plans regarding sewer and water service and road construction; and any proposed nonresidential areas. An application form, available at the town office, shall be used to submit the written information.

324. Other than the classification of the subdivision and the roads, if necessary, no binding commitments shall be made between the subdivider and the board at this stage.

325. The Planning Board shall act on the sketch plan within forty-five (45) days of the time it is submitted and shall notify the subdivider of its action in writing, within fifteen (15) days of its action.

326. Inspection of the site. In order for the Planning Board to be more fully informed about the site, the subdivider shall arrange an inspection of the site with the code enforcement officer and the Planning Board or an individual appointed by the chairman to act as the board's representative for the inspection. The on-site inspection must be considered the next step in the subdivision review process.

### **330. Review of Major Subdivision**

#### *331. Preliminary Plan*

331.1. *Purpose* - The purpose of Preliminary Plan review is to give the Planning Board an opportunity to review the subdivider's proposal while it is in the planning stage and to make recommendations to the subdivider as seem appropriate based on state and local laws and regulations. The intent is that all major issues relative to the subdivision will be identified and resolved prior to the submission of the Final Plan.

#### *331.2. Procedure*

1. Within six (6) months after classification of the sketch plan as a major subdivision by the Planning Board, the subdivider shall submit an application for the consideration of a Preliminary Plan for a major subdivision. The Preliminary Plan shall substantially conform to the layout shown on the sketch plan plus any recommendations made by the Planning Board.
2. The application for approval of the Preliminary Plan shall be accompanied by a fee paid in accordance with the Town of Hampden Fees Ordinance, payable by check to the Town of Hampden, Maine. (*Amended: 06-06-88, 11-17-03*)
3. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the Preliminary Plan.
4. The time of submission of the Preliminary Plan shall be considered to be the date of the regular monthly meeting of the Planning Board at least forty-five (45) days prior to which fifteen (15) copies of the application for Preliminary Plan approval, complete and accompanied by the required fee and all data required by section 331.3 of this Ordinance shall have been filed with the code enforcement officer. (*Amended: 10-05-87*)
5. A public hearing shall be held by the Planning Board at the time of submission of the preliminary subdivision plan. Said hearing shall be advertised in a newspaper of general circulation in the town at least ten (10) days prior to the hearing. A notice of said hearing shall be mailed to each land owner abutting the proposed development and to each landowner within three hundred (300) feet of the property line of the proposed development. Landowners shall be considered to be those against whom property taxes are

assessed. Failure of any landowner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Planning Board. Responsibility for such notification shall be assumed by the code enforcement officer. The applicant shall bear all associated costs of advertisements and notifications. If site plan review is required it shall be combined with this hearing. *(Amended: 05-07-84)*

6. The purpose of the public hearing shall be for the Planning Board to receive testimony from the public and the Town Council relative to any municipal ordinance, standard, or regulation which is applicable to the proposed subdivision and relative to the relationship of the subdivision to the ordinance, standard, or regulation.
7. Within thirty (30) days after the public hearing, the Planning Board shall take action to give preliminary approval, with or without modifications, or to disapprove such Preliminary Plan. The reasons for any modification required or the grounds for disapproval shall be stated upon the records of the Planning Board. Failure of the Planning Board to act within thirty (30) days of the public hearing shall constitute approval of the Preliminary Plan.
8. When granting approval to a Preliminary Plan, the Planning Board shall state the conditions of such approval, if any, with respect to:
  - A. The specific changes which it will require in the Final Plan;
  - B. Specific information which is over and above that required in section 332.2 of this Ordinance which will be required in the Final Plan review (such additional information must be reasonably related to the review of the subdivision);
  - C. The character and extent of the required improvements for which waivers have been requested and which in its opinion may be waived without jeopardy to the public health, safety, and general welfare.
9. Approval of a Preliminary Plan shall not constitute approval of the Final Plan but rather it shall be deemed an expression of approval of the design submitted on the Preliminary Plan as a guide to the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of these standards and the conditions of the preliminary approval, if any.

331.3. *Submissions* - The preliminary subdivision plan shall be submitted, in the appropriate number of copies, which may be either printed or reproduced on paper. The Preliminary Plan shall be not less than eight and one-half (8-1/2) inches by eleven (11) inches and not more than forty-eight (48) inches by thirty-six (36) inches. The plan shall be drawn to a scale in which one inch equals no more than one hundred (100) feet and shall be oriented so the north direction is the same on all sheets. The Preliminary Plan and supporting data shall include the following information.

331.3.1. *Information About the Applicant*

- |                       |   |
|-----------------------|---|
| <i>map &amp; text</i> | 1. Name of owner indicated on the map plan and in accompanying written information.                           |
| <i>map &amp; text</i> | 2. Name of applicant (if other than owner) indicated on the map plan and in accompanying written information. |

- text* 3. If applicant is a corporation, state whether the corporation is licensed to do business in Maine, and attach a copy of secretary of state's registration in accompanying written information.
- text* 4. Name of applicant's authorized representative in accompanying written information.
- map & text* 5. Name, address, and number of registered professional engineer or land surveyor indicated on the map plan and in accompanying written information.
- text* 6. Address to which all correspondence from the Planning Board should be sent in accompanying written information.
- text* 7. What interest does the applicant have in the parcel to be subdivided (option, land purchase contract, record ownership, etc.) in accompanying written information?
- text* 8. What interest does applicant have in any property abutting parcel to be subdivided in accompanying written information?
- text* 9. State whether preliminary plat plan covers entire, contiguous holdings of applicant or not in accompanying written information.

*331.3.2. Information About the Parcel to be Subdivided*

- text* 1. Location of property: Book and page (from register of deeds) in accompanying written information.
- text* 2. Location of property: Map and lot (from assessor's office) in accompanying written information.
- map* 3. Map survey of tract to be subdivided, certified by a registered land surveyor, tied to established reference points (attach to application) indicated on the map plan.
- map & text* 4. Current zoning of property indicated on the map plan and in accompanying written information.
- text* 5. Acreage of parcel to be subdivided in accompanying written information.
- map & text* 6. A soils report, identifying soil types and location of soil test areas indicated on the map plan. Evidence of soil suitability according to the Maine State Plumbing Code shall be presented if subsurface sewage disposal is proposed. There shall be at least one (1) soil test per lot if subsurface sewage disposal is proposed.
- map* 7. Names of property owners abutting parcel to be subdivided, and on opposite side of any road from parcel to be subdivided indicated on the map plan.
- map & text* 8. Indicate the nature of any restrictive covenants to be placed on the deeds indicated on the map plan and in accompanying written information.

331.3.3. *Information About the Subdivision*

- |                       |   |
|-----------------------|---|
| <i>map &amp; text</i> | 1. Proposed name of subdivision indicated on the map plan and in accompanying written information.  |
| <i>map &amp; text</i> | 2. Number of lots and lot sizes indicated on the map plan and in accompanying written information.  |
| <i>map</i>            | 3. Date, north point, graphic map scale indicated on the map plan.  |
| <i>map</i>            | 4. Proposed lot lines with approximate dimensions and suggested locations of buildings, subsurface sewage disposal systems, and wells indicated on the map plan.  |
| <i>map &amp; text</i> | 5. Location of all parcels to be dedicated to public use and the conditions of such dedication indicated on the map plan and in accompanying written information.   |
| <i>map</i>            | 6. A location map, drawn at a scale in which one (1) inch equals no more than five hundred (500) feet, showing the relation of the proposed subdivision to adjacent properties and to the general surrounding area indicated on the map plan. The location map shall show all the area within two thousand (2,000) feet of any property line of the proposed subdivision (attach to application). |
| <i>map</i>            | 7. Location and size of significant existing physical features including but not limited to wetlands, floodplains, watercourse, rock outcrops and trees of twelve-inch caliper diameter at chest height indicated on the map plan.  |
| <i>map</i>            | 8. Location and size of any existing sewers, watermains, culverts and drains on the property indicated on the map plan.   |
| <i>map</i>            | 9. Location, names and widths of existing and proposed streets, highways, easements, building setback lines, parks and other open spaces indicated on the map plan.   |
| <i>map</i>            | 10. Contour lines at an interval of not more than two (2) feet in elevation, unless otherwise specified by the Planning Board indicated on the map plan. All elevations shall be referred to USGS datum.  |
| <i>map</i>            | 11. Typical cross-sections of proposed grading for roadways and sidewalks, including materials to be used on roadways and sidewalks indicated on the map plan.  |
| <i>map</i>            | 12. Storm drainage plan indicating the approximate location and size of proposed lines, catch basins and means of disposal indicated on the map plan.   |
| <i>map</i>            | 13. The approximate location and size of all proposed water and sewer lines, valves, pump stations and hydrants. Also connections to existing sewer and water systems or alternative methods of water supply and sewage disposal shall be shown indicated on the map plan.  |
| <i>map</i>            | 14. Location of all other existing and proposed utilities such as electricity and telephone indicated on the map plan.  |

- map* 15. Location and type of landscaping including natural growth to be left in place and nursery stock to be planted indicated on the map plan. This information may be indicated on a Preliminary Plan print.
- map* 16. If the application covers only a part of the subdivider's entire holding, a map of the entire tract, drawn at a scale in which one (1) inch equals not more than five hundred (500) feet showing an outline of the subdivided area with its proposed streets and an indication of the probable future street system in the remaining portion of the tract indicated on the map plan. The part of the subdivider's holding submitted, shall be considered in light of the entire holding.
- map* 17. If the preliminary application covers more area than the Final Plan will cover, a map showing the phasing of the entire project, drawn at a scale in which one inch equals not more than five hundred (500) feet and indicating the proposed timing of each phase indicated on the map plan.

332. *Final Plan*

332.1. *Procedure*

1. Within six (6) months of the date of Planning Board action on the Preliminary Plan, the subdivider shall submit the Final Plan to the Planning Board. Failure to submit the Final Plan within the designated time period shall require resubmission of the Preliminary Plan to the Planning Board. However, the subdivider may submit a Final Plan for only part of the subdivision approved in the Preliminary Plan. In that case, each successive phase shall be submitted within three (3) years of the date of approval of the preceding phase. The Final Plan shall consist of two (2) original transparencies of all maps or drawings and fifteen (15) copies of all items necessary to complete the submission. *(Amended: 10-05-87)*
2. The application for approval of the Final Plan shall be accompanied by a fee paid in accordance with the Town of Hampden Fees Ordinance. The cost of the following improvements shall be included in the calculation of cost: sewer, storm drainage, and/or street work. The subdivider shall be responsible for providing the Town Manager with an estimate of construction cost, prepared by an engineer acceptable to the Town Manager. The Town Manager shall be responsible for certifying the acceptability of the estimate. *(Amended: 06-06-88, 11-17-03)*
3. The subdivider, or his duly authorized representative shall attend the meeting of the Planning Board to discuss the Final Plan.
4. The time of submission of the Final Plan shall be considered to be the date of the regular monthly meeting of the Planning Board at least forty-five (45) days prior to which the complete application, accompanied by the required fee, shall have been filed with the code enforcement officer. The Planning Board shall issue the subdivider a dated receipt for the Final Plan at the time of submission of the Final Plan. *(Amended: 10-05-87)*
5. Within thirty (30) days from receipt of a Final Plan, the Planning Board shall notify the subdivider in writing either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the Planning Board has determined that a complete application has been filed, it shall notify the subdivider and begin its full evaluation of the proposed subdivision.
6. Prior to submitting the Final Plan, the subdivider shall file an improvement guarantee with the Town Manager. The purpose of the guarantee is to insure that all required subdivision improvements shall be satisfactorily completed. The amount and form of the guarantee shall be that defined under Article 400 of this Ordinance.
7. *Public hearing* - The board may vote to hold a public hearing on the proposed subdivision. If so, such hearing shall be held within thirty (30) days of having received a complete Final Plan (as determined under section 332.1 item 5.). The manner described in section 331.2 item 5 of this Ordinance. The purpose of the public hearing shall be for the Planning Board to receive testimony from the public relative to any municipal or state ordinance, standard, or regulation which is applicable to the proposed subdivision and the relationship of the subdivision to the ordinance, standard, or regulation.
8. *Review and Action on Final Plan* - The board shall, within thirty (30) days of a public hearing; or within sixty (60) days of having received a complete application, if no public

hearing is held; or within such other time limit as may be mutually agreed to by the board and the subdivider, review the application and deny or grant approval of the proposed subdivision, or grant approval on such terms and conditions as it may deem advisable to satisfy the criteria contained in these regulations and state law and to preserve the public's health, safety, and general welfare. In all instances, the burden of proof shall be upon the subdivider. In issuing its decision, the Planning Board shall make findings of fact establishing that the proposed subdivision does or does not meet the provisions of these regulations and the state subdivision law.

9. Upon approval of the plan, at least a majority of the board members present and eligible to vote shall sign both transparencies. The date and any conditions of approval shall be written on both transparencies. One signed transparency shall be returned to the subdivider for filing with the registry of deeds and one signed transparency shall be retained by the Planning Board. The Planning Board shall maintain a permanent record of their action with respect to the Final Plan.
10. No changes, erasures, modifications, or revisions shall be made in any subdivision plan after approval has been given by the Planning Board and endorsed, in writing on the plan unless the plan is first resubmitted to the Planning Board and the board approves the modifications. In the event that any such subdivision plan is recorded without complying with this requirement, the same shall be considered null and void, and the board shall institute proceedings to have the plan stricken from the records of the registry of deeds.
11. The subdivider shall file a signed subdivision plan at the Penobscot County registry of deeds within ninety (90) days of the approval. Any plan not filed within ninety (90) days will be considered null and void unless the particular circumstances of said subdivider or subdivision warrant the Planning Board to grant an extension which shall not exceed two (2) additional ninety-day periods.

332.2. *Submissions* - The Final Plan shall be submitted in the appropriate number of paper and transparent copies. The Final Plan shall be not less than eight and one-half (8-1/2) inches by eleven (11) inches and not more than forty-eight (48) inches by thirty-six (36) inches. The plan shall be drawn at a scale in which one inch equals no more than one hundred (100) feet and shall be oriented so the north direction is the same on all sheets. In addition to all items required on the Preliminary Plan and information requested by the Planning Board during the Preliminary Plan review, the following items shall be required as part of the Final Plan submission unless otherwise indicated by the Planning Board.

- map* 1. *Registered Land Surveyor or Engineer* The name, registration number, seal and signature of the surveyor and/or engineer who prepared the plan. This information shall be on all sheets including cross-section and profile sheets also indicated on the map plan.
- map* 2. *Streets* - The names and lines, lengths of all straight lines, the deflection of angles, radii, length of curves, and central angles of all curves, and tangent distances and bearings indicated on the map plan.
- map* 3. *Street Profiles and Details* - Profiles of centerlines of proposed new streets on sheets separate from the plat, at a horizontal scale on one inch equals 40 feet and vertical scale of one inch equals four (4) feet; profiles of all proposed sewers shall be shown on street profiles, when applicable, at the same scale. All elevations shall refer to USGS datum

indicated on the map plan. Detail drawings of any construction methods required for the accommodation of utilities and street appurtenances shall be included. *(Amended: 06-19-89)*

- map*      4. *Street Cross Section* - Cross section at fifty-foot horizontal intervals of proposed new streets, on sheets separate from the plan at the scale of 1 inch equals 5 feet horizontal and 5 feet vertical indicated on the map plan. *(Amended: 06-19-89)*
  
- map*      5. *Sewer profiles*. Profile of sanitary sewer, if not shown on street profiles, on sheets separate from the plan, at the same scale indicated for street profiles indicated on the map plan.
  
- map*      6. *Storm drainage plan*. Indicating the location and size of the proposed lines, catchbasins, underdrains, their profiles and means of disposal indicated on the map plan.
  
- map & text*    7. *Open spaces*. The designation of all easements, areas reserved for or dedicated to public use, and areas reserved by the subdivider indicated on the map plan and in accompanying written information. If open space or recreation land is to be dedicated to the town, accompanying the plan must be a copy of the minutes of the Town Council, attested by the town clerk, in which the Town Council agrees to accept such open space or recreation land. Also accompanying the plan shall be written copies of any documents of land dedication and a letter from the town attorney that he is satisfied with the legal sufficiency of the documents conveying such land dedication.
  
- map*      8. *Lots* - The location, bearing and length of every line, with all lots to be numbered in accordance with the property maps of the Town of Hampden indicated on the map plan.
  
- map*      9. *Permanent Reference Monuments* - The location of permanent monuments and pins, set at all lot corners, and identified as existing or proposed indicated on the map plan.
  
- text*      10. *Improvement Guarantee* - Accompanying the plat shall be a letter from the Town Manager indicating that the form, duration, and amount of the improvement guarantee is sufficient and that it has been filed with him in accompanying written information.
  
- map*      11. *Approval Space* - Suitable space to record on the approved plan the date and conditions of approval, if any indicated on the map plan. This space shall be similar to the following example:

*(Additional Suggested Text)*

This is to certify that after reviewing the subdivision submission information for the subdivision shown on this plan and considering each of the criteria set forth in M.R.S.A. Title 30-A, Section 4404 (as amended) and in the Hampden Subdivision Ordinance, the undersigned have made findings of fact establishing that this subdivision plan along with its additional submission information has met all the criteria set forth and therefore the subdivision is approved.

Approved: Town of Hampden Planning Board

\_\_\_\_\_  
Chairman

Date Approved: \_\_\_\_\_  
Date Signed: \_\_\_\_\_  
Conditions: \_\_\_\_\_

- text* 12. *Accompanying Data* - The plans shall show the proposed location of all utilities (ie. Water, sewer, electrical, telephone) with written letters from each respective utility indicating their approval for the proposed design and location as shown on the plans. Also there shall be a letter from the Fire Chief approving the number, size and location of hydrants proposed and a letter from the Town Manager indicating the Town's approval of rental charges in accompanying written information. *(Amended: 06-19-89)*
- text* 13. *Easements* - If any easements have been required by the Planning Board, title to the easement, drawn up in a form and substance acceptable to the town or the Hampden Water District if applicable) shall be provided to the town (or the Hampden Water District if applicable) by the subdivider before final approval is granted in accompanying written information.

### **340. Review of Minor Subdivision**

341. *General* - The Planning Board may require, in advance, where it deems it necessary for the protection of public health, safety and welfare, that a minor subdivision or a minor subdivision plan comply with all or any of the requirements specified for major subdivision or major subdivision plans.

#### *342. Procedure*

1. Within six (6) months after classification of the sketch plan as a minor subdivision by the Planning Board, the subdivider shall submit an application for approval of a subdivision plan. The subdivision plan shall substantially conform to the layout shown on the sketch plan plus any recommendations made by the Planning Board.
2. The application for approval of a minor subdivision shall be accompanied by a fee paid in accordance with the Town of Hampden Fees Ordinance payable by check to the Town of Hampden, Maine. *(Amended 11-17-03)*
3. The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the subdivision plan.
4. The time of submission of the subdivision plan shall be considered to be the date of the regular monthly meeting of the Planning Board, at least fifteen (15) days prior to which the application, complete and accompanied by the required fee has been filed with the code enforcement officer. The Planning Board shall issue the subdivider a dated receipt for the subdivision plan at the time of submission of the subdivision plan.
5. Fifteen (15) paper copies and two (2) transparent copies of the subdivision application, containing all information required in section 343 of this Ordinance shall be submitted. *(Amended: 10-05-87)*
6. Within thirty (30) days from receipt of a subdivision plan, the Planning Board shall notify the subdivider in writing either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the Planning Board has determined that a complete application has been filed it shall notify the subdivider and begin its full evaluation of the proposed subdivision.

7. In the event that the Planning Board determines to hold a public hearing on the proposed subdivision, it shall hold such public hearing within thirty (30) days of having received a complete subdivision application, and shall cause notice of the date, time and place of such hearing to be given to the subdivider and to be published in a newspaper of general circulation in Hampden at least two (2) times, the date of the first publication shall be at least seven (7) days prior to the hearing. The decision to hold a public hearing is discretionary, and in making its decision the Planning Board may consider the size and location of the subdivision, its community impact, and whether any written requests for such hearing have been received.
8. The Planning Board shall, within thirty (30) days of a public hearing, or within sixty (60) days of the time of submission, if no hearing is held, or within such other time limit as may be mutually agreed to, issue an order denying or granting approval of the proposed subdivision, or granting approval on such terms and conditions as it may deem advisable to satisfy the criteria contained in these regulations and in Title 30, MRSA, section 4956, the state subdivision law, and to preserve the public's health, safety, and general welfare. In all instances, the burden of proof shall be upon the subdivider. In issuing its decision, the Planning Board shall make findings of fact establishing that the proposed subdivision does or does not meet the provisions of these regulations and the state subdivision law.
9. Upon approval of the plan, at least a majority of the board members present and eligible to vote shall sign both transparencies. The date and conditions of approval shall be written on both transparencies. One signed transparency shall be returned to the subdivider for filing with the registry of deeds and one signed transparency shall be retained by the Planning Board. The Planning Board shall maintain a permanent record of their action with respect to the subdivision.
10. No changes, erasures, modifications, or revisions shall be made in any subdivision plan after approval has been given by the Planning Board and endorsed, in writing on the plan, unless the plan is first resubmitted to the Planning Board and the board approves the modifications. In the event that any such subdivision plan is recorded without complying with this requirement, the same shall be considered null and void and the board shall institute proceedings to have the plan stricken from the records of the registry of deeds.
11. The subdivider shall file a signed subdivision plan at the Penobscot County Registry of Deeds within ninety (90) days of the date of approval. Any plan not filed within ninety (90) days will be considered null and void unless the particular circumstances of said subdivider or subdivision warrant the Planning Board to grant an extension which shall not exceed two (2) additional ninety (90) day periods.
12. If the Planning Board fails to take action within thirty (30) days of a public hearing or within sixty (60) days of the time of submission of a complete subdivision plan, if no hearing is held, or within the mutually agreed to time, as specified above, the subdivision plan shall be deemed disapproved.

343. *Submissions* - The subdivision plan of a minor subdivision shall be submitted in appropriate number of paper and stable transparent copies. The subdivision plan shall be not less than eight and one-half (8-1/2") inches by eleven (11") inches and not more than forty-eight (48") inches by thirty-six (36") inches. The plan shall be drawn at a scale in which one inch equals no more than one hundred (100') feet and shall be oriented so the north direction is the same on all sheets.

The application for approval of a minor subdivision shall include all of the following information:

343.1. *Information About the Applicant*

- map & text* 1. Name of owner indicated on the map plan and in accompanying written info.
- map & text* 2. Name of applicant (if other than owner) indicated on the map plan and in accompanying written information.
- text* 3. If applicant is a corporation, state whether the corporation is licensed to do business in Maine, and attach a copy of secretary of state's registration in accompanying written information.
- text* 4. Name of applicant's authorized representative in accompanying written information.
- map* 5. Name, address, seal, signature, and number of the land surveyor who prepared the plan indicated on the map plan.
- text* 6. Address to which all correspondence from the Planning Board should be sent in accompanying written information.
- text* 7. What interest does the applicant have in the parcel to be subdivided (option, land purchase contract, record ownership, etc.) in accompanying written information?
- text* 8. What interest does the applicant have in any property abutting parcel to be subdivided in accompanying written information.

343.2. *Information About the Parcel to be Subdivided*

- text* 1. Location of property: book and page (from register of deeds) in accompanying written information.
- text* 2. Location of property: map and lot (from assessor's office) in accompanying written information.
- map & text* 3. Current zoning of property indicated on the map plan and in accompanying written information. Show location of zone boundaries on the parcel if any zone boundary crosses the parcel.
- text* 4. Acreage of parcel to be subdivided in accompanying written information.
- map* 5. Names of property owners abutting parcel to be subdivided, and on opposite side of any road from parcel to be subdivided as per tax assessor's records indicated on the map plan.

- map & text* 6. Indicate the nature of any covenants or deed restrictions which are intended to cover all or part of the tract indicated on the map plan and in accompanying written information.
- map & text* 7. An actual field survey of the boundary lines of the parcel, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and shall be marked by permanent monuments, and shall be referenced and shown on the plan indicated on the map plan and in accompanying written information.
- map* 8. Location of any watercourses, floodplain, wetland, or unique natural features on the parcel indicated on the map plan.

343.3. *Information About the Subdivision*

- map* 1. Proposed name of subdivision indicated on the map plan.
- map & text* 2. Number of lots and lot sizes indicated on the map plan and in accompanying written information.
- map* 3. Date, north point, graphic map scale indicated on the map plan.
- map* 4. The location of permanent monuments or pins, set at all lot corners and identified as existing or proposed indicated on the map plan.
- map* 5. The location, bearing and length of every lot line with all lots to be numbered in accordance with the property maps of the Town of Hampden indicated on the map plan.
- map* 6. Suitable space to record on the approved plan the date and conditions of approval, if any. This space shall be similar to the following example:

*(Additional Suggested Text)*

This is to certify that after reviewing the subdivision submission information for the subdivision shown on this plan and considering each of the criteria set forth in M.R.S.A. Title 30-A, Section 4404 (as amended) and in the Hampden Subdivision Ordinance, the undersigned have made findings of fact establishing that this subdivision plan along with its additional submission information has met all the criteria set forth and therefore the subdivision is approved.

Approved: Town of Hampden Planning Board

\_\_\_\_\_ ,  
 Chairman  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date Approved: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_  
 Conditions: \_\_\_\_\_

- map* 7. Soils report. A soils report, identifying soil types and location of soil test areas. If subsurface sewage disposal is to be used, evidence of soil suitability for subsurface sewage disposal as determined by the Maine Plumbing Code shall be presented. There shall be at least one soils test per lot.
- map* 8. Location and name of existing public streets and way.

**345. Review of Private Street Subdivision**

346. Procedure

1. Upon receipt of an application, the Town Planner may refer the application to the \_\_\_\_\_ Public Works Director for review and comment prior to scheduling the application before the Planning Board.
2. The application for approval of a Private Subdivision Plan shall be accompanied by a fee paid to defray costs of inspection, plan review, administration and enforcement of this Ordinance, in accordance with the Town of Hampden Fees Ordinance, payable by check to the Town of Hampden, Maine.
3. The Public Works Director shall report in writing to the Planning Board as to whether or not the proposed private street conforms to the standards and specifications of this Ordinance. Said report may include any suggested conditions to be attached \_\_\_\_\_ to the approval/ Permit that, in the Public Works Director's judgment, are necessary to achieve the intent of this Ordinance.
4. The Planning Board shall consider the application, the Public Works Director's report, and all other relevant information in determining whether to grant the approval of the application. If the information submitted by the applicant does not establish that the proposed private street will conform to the standards and specification of the Ordinance, the Planning Board shall not grant the approval. The Planning Board shall impose such conditions on the approval of the application as it deems necessary to achieve the intent and objectives of this Ordinance, which may include, but need to be limited to, conditions suggested by the Public Works Director. The breach of any such condition proposed by the Planning Board shall automatically invalidate the approval.
5. As a condition to the granting of any approval under this Ordinance, the Planning Board shall require that the applicant deposit with the Public Works Director a sum of money, bank letter or credit or certified check, in an amount sufficient to guarantee that the applicant shall perform the terms and conditions of the permit, including the payment of required fees. Upon completion of all improvements required by this Ordinance, any unused portion of the deposit shall be refunded to the applicant.
6. Upon receipt of the required deposit and predetermined fees and approval, the Code Enforcement Officer shall issue the Permit/Approval pursuant to the terms \_\_\_\_\_ established by the either the Planning Board approving the application.
7. Only the Planning Board shall have the authority to approve or deny applications for a private street.

347. Submissions - Each application for a Private Street Subdivision shall be accompanied by completed plans labeled "plan of a private way" prepared and sealed by civil engineer or land surveyor registered in the State of Maine, which include information contained herein. Where the required information is incorporated in the overall site plan of a development, separate road plans shall not be required.

The application and plans for a Private Street shall include all of the following information:

1. An approval block for the signatures of the board members. A copy of the signed standard boundary survey of the roadway shall be included in the documentation.
2. The names and addresses of the lot or parcel owners to be served by the Private Street.
3. A vicinity map of a minimum scale of one inch equals two thousand feet (1"= 2,000'), showing the location of the Private Street, any access roads and cross streets, road names, scale, and a north arrow.
4. Existing topography at two (2) foot contour intervals for the portions of the site sufficient to determine drainage from the Private Street easement to a suitable storm water outlet.
5. Proposed improvements (including but not limited to, roads, sewers, and ditches) shown on plan and profile indicating all materials, grades, dimensions, and bearings in compliance with the standards set forth in this Ordinance relative to Private Streets. The plans shall also show all existing and proposed grades, the location of all existing and proposed drainage facilities, the location of existing and/or proposed utilities and structures, other structures, physical or natural conditions existing adjacent to such improvements, and any connections to existing public and Private Streets.
6. The plan shall delineate the proposed way(s) and each of the lots to be served by the private way(s), the location of existing buildings on the lots or parcels being served or intended to be served by the private way(s), as well as, any existing buildings or structures in or adjacent to any proposed road right-of-way. Lots shall conform to zoning requirements for size, frontage, and setbacks for the area in which they are located. The land within the right-of-way of an approved Private Street shall not be used to meet the area requirements of any lot obtaining frontage from the Private Street.
7. A street plan and an erosion control plan is required for a single lot Private Street. A street plan, cross section, erosion control, utility plan, and drainage plan shall be submitted for each private way serving two or more lots. The utility plan should contain the following information: locations and size of existing and proposed utility connections, including sewer, water, power, telephone, stormwater drainage systems, power poles, light poles, and nearest hydrant(s).
8. A complete statement of all the terms and conditions of the proposed road easement, including copies of all agreements or intended agreements regarding the maintenance and improvements of the right-of-way and roadway. Furthermore, said maintenance agreements shall be in such form to be recordable with the Penobscot Registry of Deeds and shall specifically address the liability and responsibility of the parties to said agreement to maintain the Private Street pursuant to the specifications of this Article, including, but not limited to, the responsibility of removing snow from said roads. The recorded statement which runs with the land, shall also inform subsequent purchasers that the road is private and may never be maintained or accepted by the Town of Hampden.
9. The plan shall bear notes that the Town of Hampden will not be responsible for the maintenance, repair, or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the Planning Board.
10. Appropriate deed restrictions and/or master deed provisions shall provide for free and clear vehicular access for emergency service vehicles on all private roads. All Private Streets shall comply with the Town of Hampden E911 Addressing Ordinance.

ARTICLE 400  
**IMPROVEMENT GUARANTEES**

**410. Improvement Guarantees Required**

Before the submission of a Final Plan, the subdivider in all major subdivisions as defined in Article 1024 shall provide the town with improvement guarantees, in the form of one or more of the guarantee options listed below in an amount that will cover at least one hundred (100) percent of the cost of completing the improvements, including sewer, water, storm drainage, or street work, should the subdivider fail to complete the required improvements or fail to complete them satisfactorily in accordance with the approved final subdivision plan. Furthermore, the subdivider shall guarantee the improvements against all defects from materials and/or workmanship for a period of one year from the date of acceptance thereof by the Town. *(Amended 02-12-02)*

**420. Procedure**

The subdivider shall file with the Town Manager a proposed improvement guarantee (including a written guarantee agreement) and the Town Manager shall determine whether the form, amount, and the duration of the improvement guarantee are sufficient. In the event the Town Manager refuses to approve the proposed improvement guarantee as filed by the subdivider, he/she shall so inform the subdivider and shall inform the subdivider of his/her reasons for rejecting the guarantee. This shall be done in writing. In the event the Town Manager approves the proposed improvement guarantee as filed by the subdivider, he/she shall notify the Planning Board. The Planning Board shall not grant final approval until it has received such notification from the Town Manager. The burden of submitting improvement guarantees in compliance with this Ordinance shall at all times remain with the subdivider. *(Amended 02-12-02)*

**430. Time Limit**

431. *Completion Deadline.* All required improvements within a major subdivision shall be completed within two (2) years of final subdivision approval. The improvement guarantee must provide performance protection to the town during said two-year period plus at least eighteen (18) months following the expiration of the two-year period. The additional eighteen-month period is required as protection to the town in the event the subdivider fails to complete the required improvements and for the one year guarantee period. *(Amended 02-12-02)*

432. *Extension.* The Town Manager may extend the completion deadline for two (2) additional years at one-year increments only where the subdivider presents substantial reason for doing so. No request for extension shall be considered until at least six (6) months prior to the original or extended completion deadline. Before extending the initial deadline or the initial extension, the Town Manager shall require that the improvement guarantee be extended in duration to cover the extended period of time, plus an additional eighteen month period. Before extending the initial deadlines, or the initial extension, the Town Manager shall review the form and amount of the improvement guarantee to make certain it remains adequate. *(Amended 02-12-02)*

**440. Inspection and Certification**

441. Prior to the initiation of construction, a pre-construction conference will be held with the subdivider, Public Works Director, Hampden Water District (if applicable), Community and Economic Development Director and Code Enforcement Officer. Evidence of issuance of required state and local permits shall be provided by the subdivider at the time of the meeting.

442. The Town Manager or his/her duly appointed representative shall regularly inspect the construction of the required improvements for defects. The subdivider shall cooperate with the Town Manager or his/her representative who is carrying out these inspections. Upon completion of the improvements the Town Manager shall notify the subdivider and the Planning Board, in writing, that the improvements have or have not been satisfactorily completed according to the approved final subdivision plan. If the improvements have not been satisfactorily completed, the Town Manager shall provide a written list of the defects.

443. Upon completion of the improvements, the subdivider shall file the following with the Town Manager:

1. A statement from the subdivider's engineer that all required improvements are completed in strict compliance with all applicable construction standards and the approved subdivision plan; and that the engineer knows of no defects from any cause, in the improvements;
2. All site improvements with the exception of final paving are completed to the satisfaction of the Town Manager or his/her representative.

444. No final inspection will be conducted by the Town Manager between November 15<sup>th</sup> and April 15<sup>th</sup>. This does not prohibit council acceptance of improvements inspected between April 15<sup>th</sup> and November 15<sup>th</sup>. (*Amended: 06-19-89*)

445. The costs of inspections, including the costs of review by a third party engineer if needed, shall be paid by the subdivider prior to the issuance of the certification of completion. The Public Works Director shall establish and determine the costs of inspection. If the subdivider does not directly pay the costs of inspection, the same shall be paid from the deposit established by the Public Works Director and held by the Town, and the balance, if any, shall be returned to the subdivider.

446. Private Streets need to be inspected by the Town's staff or designee during the construction process. If the owner did not include the Town's staff in the construction process and wished to have the Private Street serve as frontage for one or more newly created lots at a later date, the owner would need to hire at the owner's expense a professional engineer licensed in Maine to inspect the roadway and to certify that the road has been constructed according to the Private Street standards in this Ordinance.

#### **450. Release of Guarantee**

As soon as the Town Manager or his/her authorized representative has inspected the improvements and certified that they are satisfactorily completed, the subdivider has filed the letter required in Section 442 of this Ordinance with the Town Manager, and the one year guarantee period has expired, the Town Manager shall release the previously required improvement guarantee to the subdivider. (*Amended 02-12-02*)

#### **460. Reduction of Guarantee**

1. When all required improvements have been substantially and satisfactorily completed, the Town Manager may release up to fifty (50) percent of the improvement guarantee. The improvement guarantee shall be reduced in value by no more than fifty (50) percent until all required improvements are satisfactorily completed.

2. Conditional acceptance may be authorized providing:
  - A. All site improvements with the exception of final paving are completed to the satisfaction of the Town Manager or his/her representative.
  - B. The binder pavement layer is placed on all areas proposed to be paved.
  - C. The developer supplies the Town Manager with an improvement guarantee (article 410), documented by a written estimate from a reputable paving contractor, for the placement of the final finished pavement layer. Said guarantee shall be released in accordance with Section 450. *(Amended: 06-19-89)*
3. Upon acceptance of the improvements by the Town, the Town Manager shall release up to eighty-five (85) percent of the improvement guarantee, and shall release the remaining portion fourteen (14) months after acceptance of the improvements by the Town, unless the Town Manager has provided notice of a guarantee claim pursuant to Section 475, in which case the guarantee shall remain in place until any such claims have been resolved to the satisfaction of the Town Manager. *(Amended 02-12-02)*

**470. *Incomplete or Unsatisfactory Work***

If the Town Manager determines, according to the procedures laid out in section 440 of this Ordinance, that the improvements have not been satisfactorily completed according to the accepted subdivision plan, within the agreed upon time, he/she shall inform the subdivider in writing of the town's intent to exercise its rights against the improvement guarantee, he/she shall exercise any and all such rights; and may cause the incomplete or unsatisfactory work to be completed. Any guarantee assets unused in the completion of the unsatisfactory or incomplete work may be returned to the subdivider at the discretion of the town. (Amended 02-12-02)

475. *Defective Improvements.* If the Town Manager, or designee, determines that the improvements suffer from defective workmanship or materials, the Town Manager, or designee, shall notify the subdivider in writing of the defects by not later than 30 days after the expiration of the one year guarantee period. If the defects are not corrected to the satisfaction of the Town Manager within 60 days after the issuance of the notice to the subdivider, the Town Manager, or designee, shall inform the subdivider in writing of the Town's intent to exercise its rights against the improvement guarantee, shall exercise any and all such rights, and may cause the defective workmanship or materials to be corrected. Any guarantee assets unused in the correction of any defects may be returned to the subdivider at the discretion of the Town. (Amended 02-12-02)

**480. *Improvement Guarantee Option***

481. *Performance Bond* - Under this improvement guarantee option, the subdivider shall obtain a subdivision bond from a surety bonding company authorized to do business in the State of Maine. The bond shall be payable to the Town of Hampden and shall be in an amount sufficient to cover the full cost of all required improvements as estimated by a registered professional engineer and as approved by the Town Manager. (Amended 02-12-02)

482. *Property Escrow* - Under this improvement guarantee option, the subdivider shall provide as a guarantee personal property, including stocks and bonds. The value of such property shall be in an amount sufficient to cover the full cost of all required improvements as estimated by a registered professional engineer and as approved by the Town Manager.

482.1. *Personal Property Escrow* - If personal property is proposed for the improvement guarantee, the subdivider must comply with the following requirements:

1. The subdivider shall provide the town with evidence of the value of the personal property satisfactory to the Town Manager.
2. The subdivider shall, at his/her expense, provide the town with a title opinion from an attorney, satisfactory to the town, that there exists no outstanding recorded security interest in said property; the subdivider shall provide the town with evidence, satisfactory to the Town Manager, of ownership of the proposed property.
3. The subdivider shall enter into an agreement with the town and execute a security interest in favor of the town, which shall be filed as required by law; said agreement shall provide that the ownership of the property shall be transferred to the town, unless the subdivider satisfactorily completes the required improvements in accordance with this Ordinance and with the approved final subdivision plan. Said agreement and security interest shall contain such additional provisions as may be required by the Town Manager.

4. In the case of stocks, bonds, or other securities, the subdivider shall deliver to the town or its designated trustee the original certificate for said security, together with a stock or bond power endorsed in blank by the subdivider authorizing the transfer of ownership on the books of the corporation. In the case of other personal property, the subdivider shall deliver to the town, or its designated trustee, the personal property together with a satisfactory security interest in such property.
5. In the case of stocks, bonds, or other securities, the Town Manager may require that the value of said securities exceed the estimated cost of the required improvements in order to protect the town from market fluctuations, or may at his/her option reject stocks, bonds or other securities that in his opinion do not provide the town with satisfactory security.

483. *Letter of Credit* - Under this improvement guarantee option, the subdivider shall provide, as a guarantee, an irrevocable letter of credit from a bank or other reputable institution satisfactory to the Town Manager, such letter of credit to be in form satisfactory to the Town Manager. The amount of such letter of credit shall be in an amount sufficient to cover the full cost of all required improvements as estimated by a registered professional engineer and as approved by the Town Manager. The letter of credit shall be deposited with the Town Manager and shall certify the following:

1. That the creditor does guarantee funds in an amount equal to the costs as estimated for the subdivider by a registered professional engineer and approved by the Town Manager, of completing all required improvements;
2. That, in case of failure on the part of the subdivider to complete the specified improvements satisfactorily within the required time period, the creditor shall pay to the Town of Hampden immediately, and without further action, such funds as are necessary to finance the proper completion of these improvements, up to the limit of credit stated in the letter. (*Amended 02-12-02*)

484. *Cash Escrow* - Under this improvement guarantee option, the subdivider shall provide as a guarantee, cash held in an account at a bank or other reputable institution subject to the approval of the Town Manager. The amount of cash shall be in an amount sufficient to cover the full cost of all required improvements as estimated by a registered professional engineer and approved by the Town Manager. The subdivider shall enter into an agreement with the town that shall stipulate the terms under which a cash escrow may be accepted by the town.

ARTICLE 500  
**GENERAL REQUIREMENTS AND DESIGN STANDARDS**

In considering applications for subdivisions of land, the Planning Board shall be guided by the standards set forth hereinafter. The said standards shall be considered to be minimum requirements and shall be waived by the Planning Board only under circumstances set forth in Article 600 of this Ordinance.

**510. General Requirements**

511. *Conformity with other laws and regulations.* All proposed subdivisions shall be in conformity with the comprehensive plan of the Town of Hampden, as amended, and with the provisions of all pertinent state and local codes, ordinances, laws, and regulations.

512. *Character of the land.* Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace. The Planning Board shall not approve such portions of any proposed subdivision that are located on land below sea level, within the one-hundred-year frequency floodplain, on wetland which must be filled or drained, on land created by diverting a watercourse, or on land subject to slumping, mass wasting, or land slides. In no instance shall the Planning Board approve any part of a subdivision located on filled tidal land.

513. *Soils* - Subdivisions which contain poor soils due to organic materials, clays, or seasonal high water table (less than 24 inches below grade) shall provide appropriate construction techniques, including but not limited to, underdrains and geotextiles in public road construction. The same construction techniques may be required of Private Streets if the Director of Public Works or his/her designee determines, based on inspection, that these techniques are needed based on soil quality. (Amended: 10-04-93)

**520. Lots**

521. *Lots to be Buildable* - The lot arrangement shall be such that in constructing a building in compliance with the Zoning Ordinance there will be no foreseeable difficulties as a result of other natural conditions. Lots should not be of such dimension as to later encourage the creation of a second building lot out of the first. Land area delineated as freshwater wetlands, located between the upper edges of perennial or intermittent streams, or designated for stormwater detention facilities shall not be included as lot area for the purpose of the minimum lot area requirement applicable to the subdivision lots. (Amended 10-03-05)

Notwithstanding the provisions of this subsection, non-cluster Rural District lots comprised of less than two acres of upland may be approved if the Planning Board finds that the lot contains a minimum of one acre of generally contiguous upland area, not delineated as freshwater wetlands, and determines that the lot is suitable for development. (Amended 10-03-05)

Notwithstanding the provisions of this subsection, commercial and industrial subdivisions are exempted from this provision. (Amended 02-12-02)

522. *Side Lines* - All side lines of lots shall be at right angles to straight street lines and radial to curved street lines, unless a waiver from or modification of this rule will give a better street or lot plan.

Notwithstanding this subsection, variations to the right angle/radial of the street line are encouraged where the Planning Board determines that variations of no more than 20 degrees will improve the layout of the lots by meeting one or more of the following objectives: Simplification of lot layouts by elimination of unnecessary property corners, foster creation of parallel side lot lines, foster improved solar access, accommodation of pre-existing features such as perimeter property lines or natural physical features such as wetlands and drainage ways. It is not the intent of the side lines rule to promote the placement of additional pins and monuments located in close proximity to the front property line. *(Amended 10-03-05)*

523. *Corner Lots* - In general, corner lots should be larger than interior lots to provide for proper building setback from each street and to provide a desirable building site.

524. *Lot Frontage* - Lot frontage shall be deemed acceptable only if it is on a road or street as defined in the Hampden Zoning Ordinance, or on a Private Street approved and constructed pursuant to the standards in this Ordinance. Tie lines must be shown at the front setback line to demonstrate that the lot meets the frontage requirement of the zoning district at the setback unless the lot frontage exceeds the minimum frontage requirement by at least five feet. *(Amended 10-03-05)*

### **530. Drainage Requirements**

531. *General* - The subdivider will be required to provide surface water and storm drainage management facilities appropriate to the finished subdivision. The following requirements must be met for both minor and major subdivisions. Minor subdivisions of single family dwellings in the Rural District and Private Street Subdivisions are exempt from the following requirements.

1. A storm water management system will be designed to infiltrate, detain or retain water falling on the site during a design storm, such that the post-development peak discharge and runoff shall not exceed the peak discharge and runoff from the site prior to the development.
2. Pipe systems shall be designed to pass the peak discharge of a ten-year frequency, twenty-four-hour duration storm. Open channel systems shall be designed to contain a design storm. In addition, areas expected to be flooded by the design storm will be indicated on the plans, and be considered part of the drainage and storm water management system.
3. The storm water management system will take into consideration the upstream discharge and runoff which must pass over or through the development site. The system will be designed to pass upstream discharge and runoff, generated by the design storm, through the proposed development without overloading the system or flooding areas not specifically planned for such flooding.
  - A. The surface water and stormwater management system shall be designed so that no water shall be stored in any ditches or drainage ways located along streets or roads during a 10 year, 24 hour storm event. *(Amended 02-12-02)*
4. Urban development which provides public sewer and water service shall be designed to handle storm water drainage by means of an enclosed system with catch basins. Where necessary to control storm water, asphalt curbing may be required.
5. Materials and Installation

- A. Pipe Culverts and Storm Drains - Shall conform to Section 603 of the Maine Department of Transportation (MDOT) Standard Specifications for Bridges and Highways, 1990 or current version.
  - B. Manholes and Catch Basins - Shall conform to Section 604 of the MDOT Standard Specifications for Bridges and Highways, 1990 or current version.
- 6. Drain inlet alignment shall be straight in both horizontal and vertical alignment, unless specific approval of a curvilinear drain is obtained in writing from the Public Works Director ~~after consultation with the Municipality's Engineer.~~
  - 7. Manholes/catch basins shall be provided at all changes in vertical and horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of 400 foot intervals.
  - 8. Upon completion, each catch basin or manhole shall be cleaned of all accumulated silt, debris, or foreign matter until public acceptance. *(Amended: 10-04-93)*
532. *Approvals* - Applications for approval of all proposed subdivisions shall include documentation that demonstrates that there will be no unreasonable effects on runoff/infiltration relationships. This documentation shall include the following, as appropriate:
- 1. The proposed storm water management system shall be designed by a professional engineer experienced in the design of storm water systems. The designer of the system will evaluate the effectiveness of various storm water methods and develop and make available for review the hydraulic calculations. These calculations will be based on accepted engineering practices and must demonstrate that the requirements of section 531 will be met.
  - 2. Where permanent embankment-type storage or retention basins are planned, the basins shall be designed in accordance with good engineering practices, such as outlined in the current Soil Conservation Service Engineering Field Manual or other appropriate references.
  - 3. Rights-of-way or easements will be designated for all components of the drainage and storm water management system lying outside the established street lines. Stormwater detention facilities shall not be located on lots but on separate parcels to be conveyed to the town or provided for by easement to include provisions for suitable annual maintenance by the town, if for a Public Street, or by a private party, if for a Private Street. All rights-of-way and easements for drainage and storm water management facilities for Public Streets will be turned over to the town upon town acceptance of the road(s). Notwithstanding the provisions of this subsection, commercial and industrial subdivisions, and Private Street Subdivisions, are exempted from the provision requiring that stormwater detention facilities be separated from lots and conveyed to the Town. *(Amended 02-12-02)*
  - 4. The developer shall certify in writing that all components of the storm water management system will be maintained until the system is formally accepted by the municipality or a quasi-municipal district, or is placed under the jurisdiction of a legally created association that will be responsible for the maintenance of the system.
  - 5. The storm water management system will be fully coordinated with the project site plans, including consideration of street patterns, pedestrian ways, open space, building siting, parking areas, recreational facilities, and other utilities. Stormwater drainage channels shall be directed to run along property lines to avoid driveway and other utility crossings. *(Amended 02-12-02)*

6. When the construction of a development is to occur in phases, the planning of the storm water management system shall encompass the entire site which may ultimately be developed, and shall not be limited to an initial or limited phase of the development. *(Amended: 11-18-85)*

**540. *Open Space and Recreation Land*** - All major subdivisions shall be required to set aside land for open space and recreation or to provide cash in lieu of land. The primary intent of this section is to provide open space and recreation land in all areas of the community. It is understood that not all developments will have land suitable for open space or recreation within their boundaries, therefore this section is designed to be as flexible as possible. To that end, this section shall allow the provision of off-site open space and recreation areas, and cash in lieu of land. In cluster development, the cash in lieu of land provision shall not apply.

541. *Approval Authority* - The Planning Board shall approve the means of meeting this requirement.

The Hampden Conservation Committee and Recreation Committee shall be given opportunity to make written recommendations to the Planning Board on all open space proposals within forty-five (45) days of receiving notice. Where land is to be dedicated to the town, or otherwise requires action of the Town Council, the Planning Board shall require the subdivider provide documentation as to the Town Council's decision as provided in 545.2. *(Amended: 05-20-96)*

542. *Area Required* - The area of land set aside shall be based on the open space requirements of the Zoning Ordinance. If no open space requirement exists in the Zoning Ordinance, the applicant shall be required to provide land in accordance with the following: 500 square feet per unit, or five (5) percent of the parcel to be developed, whichever is greater.

Exception: No open space dedication is required in Private Street Subdivisions or in Minor Subdivisions (four lots or less) in the Rural District if the total aggregate area of the proposed lots exceeds the minimum lot area required in the Zoning Ordinance by at least 10 percent. No fee in lieu of open space is required for subdivisions that satisfy this exception. The intent of this exception is to avoid creating very small open spaces that do not serve the interests of the subdivision or the Town while maintaining the densities that the ordinances contemplate. This exception shall also apply to further division of lots in previously approved subdivisions. *Amended 7-14-2014, Effective Date 8-13-2014*

543. *Standards for Land* - The purpose of this section is to provide for permanent open space. The subdivider may offer dedicated land, conservation easements, or other means to meet the requirements of this section. These areas shall be in locations designated as open space or green belts in the Comprehensive Plan. Land dedicated to permanent open space shall be in such condition, size and shape as to be readily usable for recreation or conservation. *(Amended: 05-20-96)*

1. Where the open space requirement is in excess of ten (10%) percent of the land to be subdivided, the subdivider may elect to provide land identified in the Open Space and Recreation Plan, if one exists. Where off-site open space is proposed, the following standards apply:
  - A. Ten (10%) percent shall be provided within the subdivision.
  - B. The off-site open space shall be within one (1) mile of the subdivision.

C. The off-site open space shall have been previously designated in the Open Space and Recreation Plan.

D. The subdivider shall provide proper right, title or interest to the off-site land.

544. *Standards for Cash-in-Lieu of Land* - Where cash in lieu is proposed, the following standards shall apply.

1. At the time of Final Plan submission, the subdivider shall contribute to the Town of Hampden \$400/lot, \$200/unit or \$200/acre, whichever is greatest.
2. All monies placed in this fund shall be used for the purchase or development of open space or recreation land.
3. Land purchased or developed with these funds shall be located to serve the needs of the residents of the subdivision. *(Amended: 06-03-91)*

545. *Provisions for Ownership and Maintenance of Open Space or Recreation Areas* - If land is to be set aside under the provisions of this section, the subdivider shall make provisions for the permanent ownership, protection and maintenance of such land. The means for insuring the open space will be available in perpetuity shall be:

1. Retain ownership and responsibility for maintenance of such land; or
2. Dedicate such land to public use if the town or another public agency has indicated it will accept such dedication. If the subdivider proposed that the town accept the land, the subdivider must provide the planning board, as part of the final plan, with a copy of the minutes of the meeting of the Town Council, attested by the town clerk, in which the Town Council agreed to accept such land; or
3. Provide for and establish one or more organizations for ownership and maintenance of such land. Such organization shall be either a nonprofit homeowners' corporation or a community open space trust. If such organization is formed, it shall be formed and operated in accordance with the following rules:
  - A. The organization shall be formed by the developer and be operating, with financial subsidization by the developer if necessary, before the sales or lease of any lots or units within the development.
  - B. Membership in the organization is mandatory for all purchasers of units therein and their successors.
  - C. The organization shall be responsible for maintenance of common open spaces and property. It shall also be responsible for insurance and taxes on common open space and property.
  - D. The members of the organization shall share equitably the cost of maintaining and developing common open space and property in accordance with written procedures established by them. *(Amended: 09-21-87, 06-03-91)*

546. Provisions for Ownership and Maintenance of Private Streets – In a Private Street Subdivision, the subdivider shall make provisions for the permanent ownership, protection and maintenance of such Private Street(s). The means for insuring the Private Street(s) will be maintained in perpetuity shall be:

1. Subdivider may retain ownership and responsibility for maintenance of such Private Street(s); or
2. Subdivider shall provide for and establish one or more organizations for ownership and maintenance of such Private Street(s). Such organization may be a nonprofit homeowners' corporation or other organization as approved by the Planning Board. If such organization is formed, it shall be formed and operated in accordance with the following rules:
  - A. The organization shall be formed by the subdivider and be operating, with financial subsidization by the subdivider if necessary, before the sales or lease of any lots or units within the development.
  - B. Membership in the organization is mandatory for all purchasers of units therein and their successors.
  - C. The organization shall be responsible for maintenance of Private Street(s) in the subdivision. It shall also be responsible for insurance, as needed, for Private Street(s) in the subdivision.
  - D. The members of the organization shall share equitably the cost of maintaining Private Street(s) in the subdivision in accordance with written procedures established by them.

## **550. Street Standards**

551. *Layout of Streets* - All streets in a subdivision shall be planned so as to meet the following standards:

1. The proposed streets shall conform, as far as practical, to the adopted Comprehensive Plan or policy statement of the Town of Hampden.
2. All streets in the subdivision shall be designed so as to provide safe vehicular travel and, in minor streets and Private Streets, shall be designed so as to discourage movement of through traffic.
3. The arrangement of streets in a major ~~the~~ subdivision shall provide for the continuation of arterial and collector streets into adjoining unsubdivided land unless topographic or other factors make continuance impracticable or undesirable. Where a subdivision is served by a minor street, the Planning Board may require that a right-of-way or the minor street be projected to adjacent unsubdivided land when the board finds that such a projected street would be in keeping with the land use goals for the area and with sound planning practice.
4. Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed with the town under conditions approved by the Town Council.
5. Intersections of streets shall be at angles as close to ninety (90) degrees as possible. In no case shall two (2) streets intersect at an angle of less than sixty (60) degrees.

6. A distance of at least two hundred (200') feet shall be maintained between centerlines of offset intersecting streets.
7. Whenever possible, subdivisions containing fifteen (15) lots or more shall have at least two (2) street connections with existing public streets or streets shown on the official road map, if such exists, or streets on an approved Subdivision Plan.
8. Where a subdivision borders an existing narrow road (below standards set herein) or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require land in the subdivision, the subdivider shall be required to show areas for widening or realigning such roads on the preliminary and the final plan, marked "Reserved for road realignment (or widening) purposes". Land reserved for such purposes may not be counted in satisfying setback or yard or area requirements of the Zoning Ordinance.

**552. Private Street Standards.** All streets in a private subdivision shall be planned so as to meet the following standards:

1. The design and construction of all Private Streets shall comply with this Ordinance relative to Private Streets, subject to the approval of the Planning Board.
2. Notwithstanding any other provisions of the Ordinance to the contrary, Private Streets in subdivisions platted prior to the enactment of this Ordinance and Private Streets that are contained in land divisions approved by the Town of Hampden prior to the enactment of this Ordinance, shall continue to meet the specifications approved at the time of application. Upon expansion, reconstruction, or major alteration of an existing Private Street, new construction shall comply with then-current requirements of Private Streets.
3. Intersections of streets shall be at angles as close to ninety (90) degrees as possible. In no case shall two (2) streets intersect at an angle of less than sixty (60) degrees.
4. A distance of at least two hundred (200') feet shall be maintained between centerlines of offset intersecting streets.
5. The applicant will provide a stop sign and street name sign meeting Town specification at the intersection with the public street.

553. Design and Construction Standards for Streets Eligible for Public Acceptance - All streets in a subdivision shall be designed and constructed to meet the following standards for streets according to their classification as determined by the Planning Board.

Design and Construction Standards for Streets

<u>Item</u>	<u>Collector</u>	<u>Minor</u>
1. Minimum right-of-way width	66 ft.	66 ft.
2. Minimum pavement width	24 ft.	20 ft.
3. Minimum grade	0.5%	1.0%
4. Maximum grade	8%	8%
5. Maximum grade at intersection 3% Within feet from intersection	75 ft.	50 ft.
6. Minimum centerline radii on curves	200 ft.	100 ft.
7. Minimum tangent length between reverse curves	200 ft.	100 ft.
8. Depth of subgrade grading	22 in.	22 in.
9. Sub base gravel depth	18 in.	18 in.
10. Upper base gravel	4 in.	4 in.
11. Pavement (see 552 item 2)		
A. Grade B	2-1/2 in.	2-1/2 in.
B. Grade C	1-1/2 in.	1-1/2 in.
C. Total thickness	4 in.	4 in.
12. Minimum road crown-centerline to edge of pavement.	3 in.	3 in.
13. Minimum shoulder width on each side of road.	2 ft.	2 ft.
14. Sidewalks		
A. Minimum width	5 ft.	4 ft.
B. Gravel base course	6 in.	6 in.
C. Surface pavement	2 in.	2 in.

<u>Item</u>	<u>Collector</u>	<u>Minor</u>
15. Dead-end or cul-de-sac streets		
A. Completely paved Radii of turn around at enclosed end		
i. Right-of-way boundary minimum	60 ft.	50 ft.
ii. Outside pavement radius - min.	40 ft.	35 ft.
B. With island (see #26)		
i. Right-of-way boundary – min.	65 ft.	55 ft.
ii. Inside pavement radius	26 ft.	25 ft.
iii. Outside pavement radius	50 ft.	49 ft.
iv. Minimum pavement width	24 ft.	24 ft.
<i>(Amended: 10-03-05)</i>		
C. Temporary (See #27)		
i. Radii at Right-of-way - min.	50 ft.	50 ft.
ii. Gravel turn around minimum	40 ft.	40 ft.
<i>(Amended: 12-04-95)</i>		
16. Minimum pavement curb radii at intersections and where street meets cul-de-sac 20 ft. <i>(Amended: 10-03-05)</i>		
17. Grade of streets should conform as closely as possible to the original relief of the land.		
18. All changes in grade shall be connected by vertical curves such as will provide clear visibility for a distance of two hundred (200') feet.		
19. Side slopes shall not be steeper than three (3') feet horizontal and one foot vertical, graded, loamed (six [6] inches compacted) and seeded. If the side slope extends outside the required right-of-way, the subdivider shall expand the right-of-way to include the entire side slope area.		
20. All streets shall be provided with adequate drainage facilities to provide for the removal of storm water. Driveway culverts shall be adequate to pass the design flow of the contiguous ditches.		
21. In construction of roads, the paved area, sidewalk, and shoulder shall be cleared of all stumps, roots, brush, perishable material, and all trees not intended for preservation. All loam, loamy material, clay, and other yielding material shall be removed from the roadway to at least subgrade depth, or as directed by the Town Manager.		
22. The roadway area shall be brought to the grade shown on the plan, profile and cross-section, by suitable gravel. The subbase gravel shall meet the specifications for aggregate subbase courses as contained in the current edition of “The Standard Specifications for Highways and Bridges of the State of Maine Department of Transportation”. The upper base gravel shall meet the specifications for aggregate base courses in the same standards.		
23. <u>For Public Streets</u> , after the upper base gravel has been thoroughly rolled, the surface of the roadway shall be paved. The pavement material and the manner of application of such shall conform to the requirements of the current edition of “The Standard Specifications for Highways and Bridges of the State of Maine Department of Transportation”.		
24. The Planning Board may require curbing of roads <u>in a subdivision including one or more Public Streets</u> .		

25. Where a green space is planned in the interior of a cul-de-sac, existing vegetation should be preserved where possible. Any proposed landscaping shall be of a type which requires limited maintenance. *(Amended: 12-04-95)*
26. Where a proposed street may be extended, the Planning Board may authorize a temporary cul-de-sac. Temporary cul-de-sacs shall provide an escrow account for a period of five (5) years to cover the cost of paving, which is renewable in five (5) year increments. Access shall be prohibited from a temporary cul-de-sac. *(Amended: 12-04-95)*

554. *Design and Construction Standards for Private Streets* - All streets in a Private Street Subdivision shall be designed and constructed to meet the following standards.

Design and Construction Standards for Private Streets

<u>Item</u>	<u>Private</u>
1. <u>Minimum right-of-way width</u>	<u>66 ft.</u>
2. <u>Minimum roadway travel width</u>	<u>20 ft.</u>
3. <u>Minimum pavement width</u>	<u>Not Required</u>
4. <u>Maximum grade</u>	<u>8%</u>
5. <u>Maximum grade at intersection Within 75 feet from intersection</u>	<u>3%</u>
7. <u>Minimum centerline radii on curves</u>	<u>150 feet</u>
8. <u>Minimum tangent length between reverse curves</u>	<u>100 ft.</u>
9. <u>Subbase course (heavy gravel) MDOT Type D <i>(May be waived if pre-existing street)</i></u>	<u>18 inches</u>
10. <u>Base course (crushed gravel MDOT Type A) <i>(May be waived if pre-existing street)</i></u>	<u>4 inches</u>
11. <u>Pavement</u>	<u>Not Required</u>
12. <u>Minimum road crown-centerline to edge of pavement.</u>	<u>N/A</u>
13. <u>Minimum shoulder width on each side of road (if paved)</u>	<u>2 feet</u>
14. <u>Sidewalks</u>	<u>Not Required</u>
15. <u>Turnaround at dead-end</u>	<u>Hammerhead or T</u>

See Sample Cross Section for Private Street Subdivision.

555. Utilities in Streets - In a major subdivision, the Planning Board shall, wherever possible, require that underground utilities be placed in the street right-of-way between the paved roadway and the street right-of-way line to simplify location and repair of lines when they require attention. The subdivider shall install underground service connections to the property line of each lot within the subdivision for such required utilities before the street is paved. In a Private Street Subdivision, the owner or owners shall convey, where applicable, an easement to the Town, described by metes and bounds, for sewer purposes over the entire right-of-way, and shall convey, where applicable, an easement to the Hampden Water District, described by metes and bounds, for water purposes over the entire right-of-way, and shall record both easements, as applicable, in the Penobscot County Registry of Deeds.

556. Street Names

1. Proposed street names shall be substantially different from existing street names so as not to be confused in sound or spelling.
2. If proposed streets are extensions of existing streets they shall carry the same name.
3. Generally no street should change direction by more than ninety (90) degrees without a change in street name.
4. In general, streets shall have names, not numbers or letters. *(Amended: 09-21-87, 06-19-89)*

**560. Utilities**

561. If public water and/or sewer is proposed, the system shall be designed so as to accommodate any development which can reasonably be expected to tie into the system. In determining the amount of reasonably expected development, the Planning Board shall consider existing land use, existing zoning, the character of the land, topography, and existing constraints to development (such as boggy areas), the carrying capacity of the land and of existing municipal services, and the town's Comprehensive Plan or sewer and water plan. If the system has to be built so that it is larger than would normally be required under conditions of the maximum utilization of the subdivider's contiguous land (including land on opposite sides of streets), the town will pay the difference in cost for the larger pipes. The subdivider must cover all other expenses.

562. The subdivider shall install any new public utility system according to the approved Subdivision Plan. If either the public sewer or water system follows a course which is not collinear with the road network, the Planning Board shall require that the subdivider provide the Town of Hampden or the Hampden Water District with a utility easement.

563. If individual wells are proposed for the subdivision, the Planning Board may require that the subdivider's engineer certify that sufficient water is available for the reasonable foreseeable needs of the subdivision.

564. If subsurface sewage disposal is proposed, the Planning Board shall require that the subdivider provide proof that a subsurface sewage disposal system which is in conformance with the Maine State Plumbing Code can be installed on every lot.

565. Pump stations shall not be used in the construction of sewer systems in any proposed development with the Town of Hampden, Maine, except as permitted under the Town's Sewer Ordinance. *(Amended: 03-07-88) (Amended 08-06-07)*

**570. Buffer Strip** - The Planning Board may require a buffer strip when ~~a~~ the proposed major subdivision will be located adjacent to a use where separation is desirable.

ARTICLE 600

**WAIVER AND MODIFICATIONS OF THESE REGULATIONS**

**610.** Where the Planning Board finds that extraordinary and unnecessary hardship may result from strict compliance with these regulations, or where there are special circumstances of a particular plan, it may waive any of these regulations provided that such waiver will not have the effect of nullifying the purpose of these regulations, the Comprehensive Plan, the Zoning Ordinance, or any other ordinance. Upon recommendation of the Planning Board, fees may be adjusted or waived only with the approval of the Hampden Town Council.

**620.** In granting any waiver, the Planning Board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived. (*Amended: 12-01-86*)

ARTICLE 700

**VALIDITY, EFFECTIVE DATE, CONFLICT OF ORDINANCES, AND FILING**

**710.** Should any section or provision of this ordinance ~~these regulations~~ be declared by the courts to be invalid, such section shall not invalidate any other section or provision of these regulations, and to this end, the provisions of this ordinance ~~these regulations~~ are hereby declared to be severable.

**720.** The effective date of this ordinance ~~these regulations~~ is June 17, 1982

**730.** These regulations shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, ordinance, ~~by-law~~, permit, or provision of law. Where these regulations impose a higher standard for the protection and promotion of health and safety, the provisions of this ordinance ~~these regulations~~ shall prevail.

**740.** A copy of this ordinance ~~these regulations~~ shall be filed with the Town Clerk and shall be accessible to any member of the public.

**750.** The Subdivision Ordinance of the Town of Hampden as adopted at the annual meeting March 3, 1970 and as amended, is hereby repealed.

ARTICLE 800  
**AMENDMENTS**

**810. *Initiation of Amendment*** - An amendment to this Ordinance may be initiated by:

1. The Planning Board, provided a majority of the Board has so voted;
2. Request of the Town Council to the Planning Board; or
3. Written petition of ten (10%) percent of the registered voters of the town.

**820. *Proposed Amendments*** - All proposed amendments shall be referred to the Planning Board for their recommendation. Such recommendation shall be returned to the Council within thirty (30) days.

**830. *Adoption of Amendment*** - For an ordinance change to be adopted, it must be approved by a majority vote of the Town Council if the change has been recommended by the Planning Board. If the change has not been recommended by the Planning Board, a two-thirds vote of the Town Council will be necessary to adopt it.

ARTICLE 900  
**APPEALS**

An appeal may be taken, within thirty (30) days from the Planning Board's decision on the Final Plan, by any party to Superior Court in accordance with Rule 80B of the Rules of Civil Procedure.

ARTICLE 1000  
**DEFINITIONS**

**1010.** Words and terms not defined in section 1020 shall have the meanings given them in the Zoning Ordinance of the Town of Hampden, or in the absence of definitions in said Ordinance, such words and terms shall have their customary dictionary meanings.

**1020.** The following words and terms, for the purpose of this Ordinance, shall be designated as follows:

1021. *Subdivision.* "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5 year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5 year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units with a 5 year period.

1. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3<sup>rd</sup> lot, unless:
  - A. Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence or for open space land as defined in

Title 36, M.R.S.A. Section 1102, for a period of at least 5 years before the 2<sup>nd</sup> dividing occurs; or

- B. The division of the tract or parcel is otherwise exempt under this definition.
2. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this Ordinance, do not become subject to this Ordinance by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The Planning Board shall consider the existence of the previously created lot(s) in reviewing a proposed subdivision created by a subsequent dividing.
  3. A lot of 40 or more acres shall not be counted as a lot, except:
    - A. When the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in the Hampden Zoning Ordinance, or any superseding state statute.
  4. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, or a gift to a municipality, or by the transfer of any interest in land to the owner of land abutting that land, does not create a lot or lots for the purposes of this definition, unless the intent of the transferor in any transfer or gift within this paragraph is to avoid the objectives of this Ordinance. If the real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this subsection.
  5. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971, is not a subdivision.
  6. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.
  7. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraph D, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transfer is to avoid the objectives of this Ordinance.

*Exceptions*

This Ordinance does not apply to:

1. Previously approved subdivisions. Proposed subdivisions approved by the Planning Board before September 23, 1971, in accordance with laws then in effect;
2. Previously existing subdivisions. Subdivision in actual existence on September 23, 1971, that did not require approval under prior law; or

3. Previously recorded subdivision. A subdivision, a plan of which had been legally recorded in the Penobscot County Registry of Deeds before September 23, 1971.  
(Amended: 02-07-94)

1022. Private Street Subdivision – A subdivision which includes construction of one or more Private Streets, and does not involve the construction or reconstruction of a Public Street.

1023. Tract or parcel of land - All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

1024. Minor Subdivision - A subdivision with less than five (5) lots which does not involve the construction or reconstruction of a new street, or the extension of public sewer lines, or the extension of public water lines, or the construction of a storm drainage system.

1025. Major Subdivision - A subdivision which is not a minor subdivision or a Private Street Subdivision.

1026. Street or Road - Shall mean a right-of-way, intended for motorized traffic, in the Town of Hampden, which is either:

1. Owned, established, and maintained by the Town of Hampden, the County of Penobscot, or the State of Maine; or
2. Is shown on a plan of a subdivision which has been duly approved by the Hampden Planning Board and recorded in the Penobscot County Registry of Deeds.

1027. Minor Street - A street which serves primarily as an access to abutting properties.

1028. Collector Street - A street which connects one or more minor streets with an arterial street.

1029. Arterial Street - A street which serves heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic-generating areas.

1030. Design Storm - A storm with a frequency or recurrence interval of twenty-five (25) years and a duration of twenty-four (24) hours.

1031. Private Street (or Road) – A Street within a deeded right-of-way that provides access to more than one principal structure and is privately owned and has not been dedicated to public use other than access by emergency and public safety vehicles, and is maintained by its private owners. A Private Street (or Road) shall be protected by a permanent easement which shall conform to the Road Classification Standards Table and which shall be shown on the plan. The limits of a private way shall begin from the edge of the traveled way of a Public Street and all associated sub roads that spur off from this road. Maintenance of this right-of-way area shall be the responsibility of the homeowner’s association.

1032. Public Street (or Road) - A public or dedicated right-of-way, which affords the principal means of vehicular access to abutting property and which is under public ownership or control.

1033. *Pump Stations* - For the purpose of this Ordinance, pump stations shall be defined as any device intended and designed for the purpose of transporting, pumping or lifting of sanitary sewage from residences, commercial institutions or central collection points to the municipal sanitary sewer system. This shall not include lift pumps used in self-contained, on-site subsurface disposal systems. (*Amended: 11-18-85, 9-19-88*)

1034. *Freshwater Wetland* - Freshwater Swamps, marshes, bogs and similar areas which are:

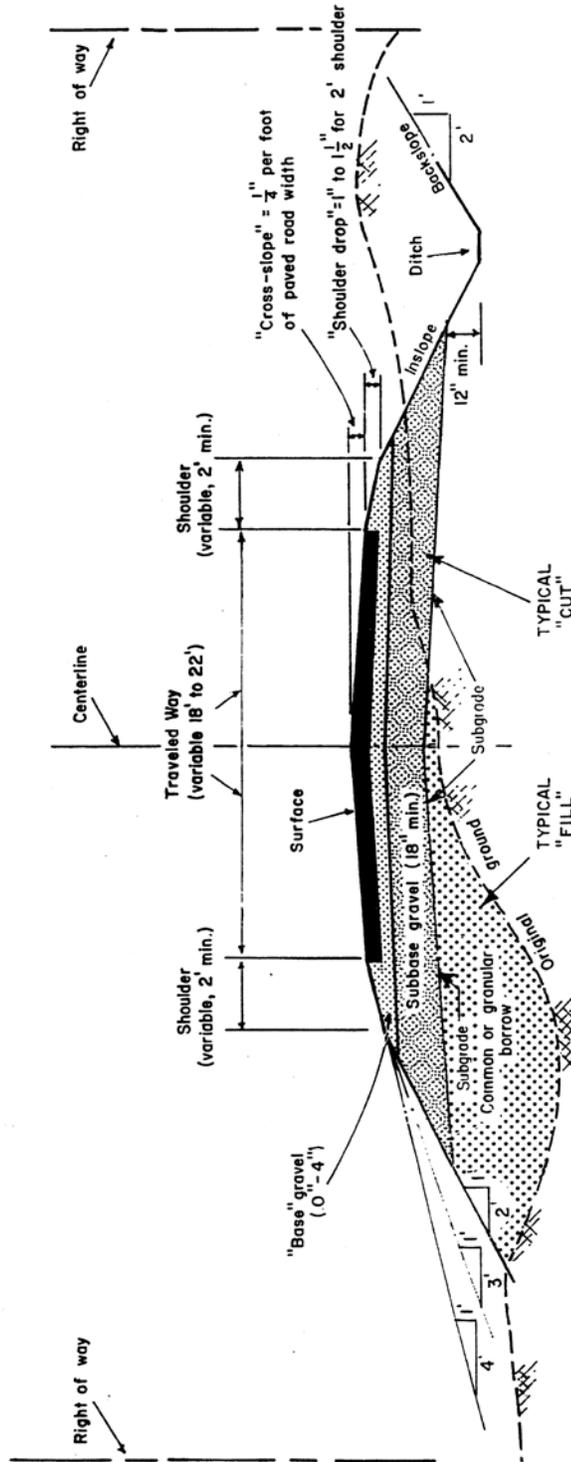
1. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
2. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection. For the purposes of this Ordinance, “wetland” shall mean the same as freshwater wetland. Freshwater wetlands shall be delineated in accordance with the current authorized federal manual, unless the Planning Board approves a different delineation method. (*Amended: 12-20-93*)

1035. *Dwelling Unit* - “Dwelling unit” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multi-family housing, condominiums, apartments and time-share units. (*Amended: 02-07-94*)

1036. *New Structure or Structures* - “New structure or structures” includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this Ordinance. (*Amended: 02-07-94*)

Sample Cross Section for Private Street Subdivision



DESIRABLE MINIMUM DIMENSIONS  
OF A LOW-VOLUME PAVED ROAD

Figure 2 - 2