

Town of Hampden

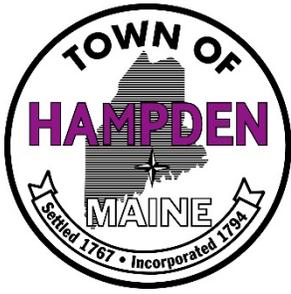
Planning Board

Wednesday, August 14, 2019, 7:00 pm

Municipal Building Council Chambers

Agenda

1. Administrative
 - a. Minutes - July 10, 2019 regular meeting and July 16, 2019 special meeting
2. Old Business – None
3. New Business
 - a. Kristopher Brooker – Public Hearing for a Conditional Use for an accessory apartment and for encroachment into setback no more than the existing nonconforming structure. The proposal is to build an addition to the existing residence and create an accessory apartment in a portion of the proposed addition, at 95 Old County Road, Parcel 26-0-015, in the Residential A district.
 - b. Public Hearing to consider proposed amendments to various sections of the Hampden Zoning Ordinance to clarify or correct language, add a new use category for “agricultural diversity uses”, modify the cluster housing provisions, and add a new use category “private event venues” along with provisions to govern them.
 - c. Public Hearing to consider a proposal to repeal and replace the Hampden Shoreland Zoning Ordinance to eliminate inconsistencies with the Maine Department of Environmental Protection’s Guidelines for Shoreland Zoning Ordinances.
4. Staff Report
5. Planning Board Comment
6. Adjournment



Town of Hampden Planning
Board Meeting
Wednesday July 10, 2019

Minutes

In Attendance:

Planning Board

Kelley Wiltbank, Vice Chair
Tom Dorrity
Jake Armstrong
Jennifer Austin
Peter Weatherbee
Brent Wells

Staff

Karen Cullen, AICP, Town Planner
Paula Scott, Interim Manager
Shelley Abbott, Recreation Director Speaking for the
Municipal Complex

Public

Scott Braley, Plymouth Engineering
Jason Sharpe, Recreation Committee Chair speaking
for the Municipal Complex

The meeting was called to order at 7:01 pm. In the chairman's absence, vice-chair Wiltbank chaired the meeting.

1. Administrative:

- a. **Motion** by Member Dorrity to approve the minutes of the June 12, 2019 regular meeting, and June 19, 2019 workshop meetings; second by Member Weatherbee; motion carried 6/0/0.

2. Old Business:

- a. Stanley & Sean MacMillan – Continuation of Public Hearing for Preliminary Subdivision plan for Stearns Farm. Proposal for a major subdivision for a single family 39 lot cluster housing development with three new roads, on a 27.7-acre parcel located on Main Road North (parcels 33-0-011-A & 33-0-015-A). This property is in the Residential A district. Vice-chair Wiltbank noted the applicant was unable to attend the meeting tonight, and furthermore indicated that he would be unable to have the revised subdivision application ready until the September meeting.

Motion by Member Weatherbee to continue the public hearing to the September 11, 2019 meeting at 7:00 pm; second by Member Dorrity; motion carried 6/0/0.

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- b. R&B Development, LLC – Continuation of Public Hearing for Preliminary Subdivision plan for Honey Hill Estates. Proposal for a major subdivision for a single family 23 lot cluster housing development with one new road, on a 29.3-acre parcel located on Main Road South (parcel 06-0-050-1). This property is in the Residential A and Rural districts. Vice-chair Wiltbank noted the applicant was unable to attend the meeting tonight.

Motion by Member Austin to continue the public hearing to a special meeting on July 16, 2019 at 7:00 pm; second by Member Weatherbee; motion carried 6/0/0.

3. New Business:

- a. Town of Hampden – Municipal Complex Expansion. Public Hearing for a major site plan to expand the parking lot at the Lura Hoit pool recreational complex, add a right-turn lane at the exit onto Western Avenue, and make improvements to the stormwater management system at several locations on the property at 106 Western Ave, Parcels 09-0-018 and 09-0-018-A. This property is located in the Residential B and Rural districts.

Scott Braley presented the application:

- Addition of parking lot at Lura Hoit Pool, with the possibility of 100 additional parking spaces; this will eliminate the need for people to park along the side of Western Ave and will improve safety for the people using the facilities at the site.
- Addition of exit lane at Lura Hoit Pool. Residents will be able to easily turn right.
- Addition of small amount of paved area near Public Safety, out back in front of the bay doors.
- A number of stormwater management improvements.
- The parking lot at the Pool broke the threshold of 3 acres of impervious area on the parcel including the rooftops and pavement, thus a site location development act permit was required from the DEP; that permit has been issued.
- Revised entrance permit from DOT to gain the width for the right turn exit lane for the pool/playing field driveway.
- No changes to utilities.
- Adding light pole bases for the lighting of the parking lot.

Acting Chair Weatherbee invited comments from anyone who wished to speak on the application:

Shelly Abbot, Recreation Director

- Will allow the Recreation Department to fully utilize the field; several years ago when safety issues were brought to light the department started to reduce the usage of the field until such time as safety improvements could be made.
- Allow to program the area more fully and move participants in a timelier manner.
- Will help with safety, by providing better visibility with traffic.
- Will allow the Recreation Department to increase programs.

Jason Sharpe, Recreation Committee Chair

- Hampden has a long history of providing good recreational opportunities for kids.
- Currently limited fall/spring sports.
- Opportunity for new programs like lacrosse.
- Increased safety for everyone.

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Opposition – No one spoke in opposition.

No further comments from the board.

Planner Cullen's report/Discussion:

- With the additional information that was submitted tonight, the application is complete and in compliance with the zoning ordinance. A Board order has been drafted and no conditions are necessary because the two in the draft have been met with tonight's submission.

Motion by Member Armstrong to approve the site plan to allow the Town of Hampden to expand the parking lot and add the right turn lane at the exit at the Lura Hoyt Pool Recreational Complex, add the proposed pavement at the Public Safety building, and make the stormwater management improvements as shown on the site plan; second by Member Wells; motion carried 6/0/0.

4. Staff report:

Planner Cullen mentioned she had a new idea to allow cluster developments with private roads to be designed with more flexibility than those with roads to be accepted as public. After discussion the Planning Board requested to see draft language. Planner Cullen agreed to draft something up and email it out to everyone. If there is time after the public hearing on Tuesday, it will be discussed further, and the Board will determine if it will be added to the amendments going forward to the public hearing in August.

Planner Cullen noted the schedule for the next couple of months:

August:

- Conditional use for addition on a house on the Old County Rd for an accessory apartment.
- Possibly the final subdivision plan for Honey Hill; get mylar signed.
- Public hearing on the amendments to the zoning and shoreland zoning ordinances.

September:

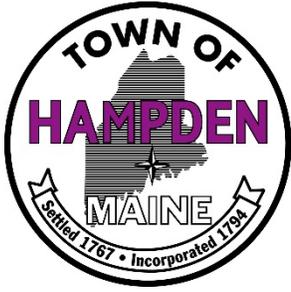
- Continuation of the Stearn's Farm preliminary plan.
- New application for a multi-family project on Monroe Road, which is a multi-stage project involving two minor subdivisions and a major site plan.

5. Planning Board comment: None

6. Adjournment: Upon **motion** by Member Weatherbee and second by Member Austin, the meeting was adjourned at 7:29 pm.

Respectfully submitted by Jessica Albee,
CED Administrative Asst.

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Town of Hampden
Planning Board Meeting
Tuesday July 16, 2019

Minutes

In Attendance:

Planning Board

Kelley Wiltbank, Vice Chair
Tom Dorrity
Jake Armstrong
Jennifer Austin
Peter Weatherbee
Brent Wells

Staff

Karen Cullen, AICP, Town Planner

Public

Jim Kiser, for R&B Development, LLC

The meeting was called to order at 7:00 pm. In the chairman's absence, vice-chair Wiltbank chaired the meeting.

1. Old Business:

- a. R&B Development, LLC – Continuation of Public Hearing for Preliminary Subdivision plan for Honey Hill Estates. Proposal for a major subdivision for a single family 23 lot cluster housing development with one new road, on a 29.3-acre parcel located on Main Road South (parcel 06-0-050-1). This property is in the Residential A and Rural districts.

Motion by Member Weatherbee to remove this item from the table; second by Member Austin; carried 4/0/0. Acting Chair Wiltbank noted that Members Weatherbee, Austin, and Dorrity, in addition to himself, would be the voting members on this application based on attendance at previous sessions of this public hearing.

Jim Kiser presented a brief overview of the application:

- The DOT permit is in
- Lot 23 will contain the existing structure on the property
- There are 22 lots
- The two lots in the front of the subdivision, in the Residential A district, will stay as traditional (non-cluster) lots
- Buffer/setbacks: the applicant is no longer seeking a reduction in the required 75 foot depth; it is being split on several lots into a "natural buffer" and a "green space buffer"
- There will be a new road
- The development will be served by public water and public sewer
- The existing sewer line ends about 200 feet short of this parcel so there will be an extension up Main Road South to reach it
- Water pressure issues, will have to put pressure booster valves into the system in a number of the houses.
- Water District estimates the water flow of the hydrant being 300 gallons a minute. Will try to comply with the town's requirement of 500 gallons a minute. If they cannot get 500

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gallons a minute, they will put in a dry hydrant in the stormwater pond located in the front of the project.

Acting Chair Wiltbank invited comments from anyone who wished to speak for or against the application; there being no public comments, the public hearing was closed at 7:19 pm.

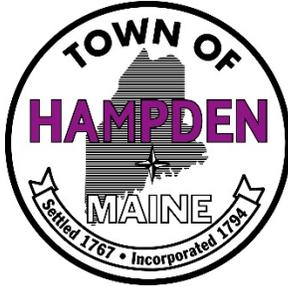
Planner Cullen's report/Discussion:

- Buffer/setback: is the Board okay with the plan to allow the buffers to be split into natural/green space? Jim Kiser explained the "green space" buffer is the back yard for those houses, and there would be limits on what could be done with the space but vegetation could be removed and grass planted. No structures would be permitted. The Board agreed to accept the way it is proposed this on the plan.
- Stormwater system: Jim Kiser is requesting a waiver to the stormwater requirements of the subdivision ordinance, based on the premise that the project is complying with the stormwater standards of the zoning ordinance and in addition the plan still must go through DEP for a permit by rule. He added that he believes the stormwater management system as designed to deal with quality issues will also adequately address the quantity issues. The board agreed to grant the waiver.
- A sidewalk is required on one side of the street under section 553 of the subdivision ordinance. The applicant is requesting a waiver on this based on past practice. After further discussion, it was agreed to grant a waiver on the sidewalk due to this project being a dead end street without a lot of traffic, and therefore not being a significant safety concern.
- It was suggested at a previous meeting that abutter Peter Cowan have access to the new road. Any resolution? Jim Kiser mentioned they are still in negotiations with Mr. Cowan. Will have a better idea at final. A letter or email by Mr. Cowan will be provided at final.
- Fire Suppression-Jim Kiser is working with the town. If he can't get the Hydrant at 500 gallons a minute, they will put in a dry hydrant located at the front of the project. He will have more at final.
- Cluster mailbox: The Director of Public Works, Sean Currier requested that it be maintained by the homeowner's association not the town. There will be further discussion between the Public Works Director, Interim Town Manager, and Jim Kiser about this to determine the proper removal method of snow and ice for final approval.
- Financial and technical capacity: Jim Kiser mentioned that he must have a guarantee in place. They must have a bond, letter of credit, or escrow from the bank for final approval.
- Abutter Peter Cowan's honeybees: Applicant to discuss with abutter Peter Cowan the situation regarding potential harmful impacts to honeybees from herbicides and pesticides. Jim Kiser said the homeowner's association documents will address this issue with an agreed upon resolution.

Motion by Member Weatherbee to grant the three waivers requested as drafted in the board order, and to approve the preliminary subdivision plan for Honey Hill Estates subject to the conditions in the board order; and furthermore that the application proceed to the final plan stage; second by Member Dorrity; motion carried 4/0/0.

Adjournment: Upon **motion** by Member Dorrity and second by Member Austin, the meeting was adjourned at 8:05 pm.

Town Planner
planner@hampdenmaine.gov



Report
Conditional Use
Kristopher Brooker

To: Planning Board
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: August 7, 2019
RE: Report on Application for Accessory Apartment & Expansion of Nonconforming Structure at 95 Old County Road

This application is for a conditional use approval under the provisions of Sections 4.2, Conditional Uses, 4.5.2.1, Expansion of Nonconforming Structures, and 4.25, Accessory Apartments. The proposal is to build an addition to the existing residence, which is nonconforming for the front setback, and to use a portion of the addition for an accessory apartment. The proposed addition will encroach the front setback the same amount as the existing house (roughly 14 feet), and under §4.5.2.1 a conditional use approval is required for this encroachment. As can be seen in the aerial image in Exhibit 1, some of the other houses in this area also encroach the front setback. Exhibit 2 shows the present configuration of the house; the tan area to the south is a deck and is where the proposed garage and addition will go.

The accessory apartment is proposed to be located within the new addition, but will not occupy the entire space. As the floorplans show, the accessory apartment will occupy 1,068 square feet, which is 40% of the total living space for the house including the proposed additions. This is in compliance with the requirements of §4.25.2 of the zoning ordinance.

Staff has reviewed the proposal and has determined that the application is complete and is in compliance with all applicable provisions of the zoning ordinance. A draft Board Order is attached.

Kris Brooker – 95 Old County Road

Existing home = 28' x 24' = 672 sq ft

Proposed garage addition = 24' x 30' = 720 sq ft

Proposed addition behind garage = 34' x 37' = 1258 sq ft



Area outlined in red is the proposed accessory apartment; 1,068 sq ft or 40% of the total (proposed) house.



Exhibit 1



Brooker - 95 Old County Road

Hampden, ME

1 inch = 75 Feet



August 7, 2019



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Exhibit 2



Brooker - 95 Old County Road

Hampden, ME

1 inch = 33 Feet

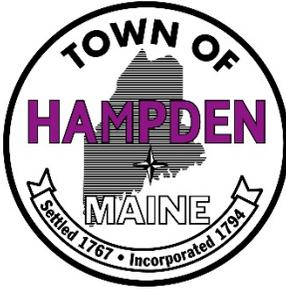


August 7, 2019

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Town of Hampden
Land & Building Services

Planning Board Order

K. Brooker – Accessory Apartment and
Expansion of Nonconforming Structure

Approval Date: August 14, 2019

Project Name: K. Brooker Accessory Apartment

Location of Project: 95 Old County Road

Assessor's Reference: 26-0-015

Deed Reference: B14475/P305

Zoning District: Residential A

Total Acreage: 0.4 acres

Type of Use: Accessory Apartment

Building Area: 2,650 square feet total; 1,068 square feet in apartment (40%)

Applicant: Kristopher Brooker
95 Old County Rd
Hampden, ME 04444

Owner: same

Plans Prepared by: NA

Plans Dated: NA

Application Date: July 11, 2019

Public Hearing: August 14, 2019

*PB Members:*¹ Gene Weldon, Kelley Wiltbank, Peter Weatherbee, Jennifer Austin,
Tom Dorrity, Jake Armstrong, and Brent Wells

PB Action: Approved. This Conditional Use for an accessory apartment is approved under Sections 4.2 and 4.25, and the Expansion of the nonconforming structure is approved under Section 4.5.2.1 of the Hampden Zoning Ordinance.

¹ Planning Board Members who were eligible to vote on this case.

Summary Description of Application: This application is to construct an addition to an existing house which is nonconforming to the front setback, and to create a two bedroom accessory apartment in one portion of the new addition. The total living area of the building is 2,650 square feet and the accessory apartment will be 1,068 square feet, or 40% of the total. Access to the accessory apartment will be from the interior of the garage; no additional front door will be added to the front of the house. A double door will be included in the great room of the accessory apartment to a deck, for a second egress.

Findings: After the public hearing duly noticed and held, the Hampden Planning Board made the following findings as required by Section 4.2.5 of the Hampden Zoning Ordinance:

1. The proposed project is consistent with the general purpose and intent of the zoning ordinance and will not be detrimental to the health, safety, or welfare of the neighborhood or the Town, since it is for an expansion of an existing residence with a portion of it used for an accessory apartment.
2. The proposed project is compatible with the existing residential uses in the neighborhood as it is also a residential use.
3. The proposed project will not create a nuisance given that it is a residential use.
4. The proposed project will not create traffic congestion nor impair pedestrian safety, given that it is a residential use, and further it provides adequate parking and circulation on the site.
5. The proposed project provides adequate space onsite for all loading needs, given that it is a residential use and part of the addition will be a two car garage, and that there is ample space on the parcel for additional exterior parking.
6. The proposed project will have adequate provisions for wastes generated on site given that it is a residential use and is connected to the public sewer system.
7. The proposed project will not exceed the capacity of any public utility since it is an existing property which is connected to the public utilities.
8. The proposed project will have no impact on light and air to surrounding properties since it meets the other yard setbacks of the zoning ordinance.
9. The proposed project will not cause any environmental impacts since it is a residential use.
10. The proposed project complies with the standards for approval of an accessory apartment in §4.25.2 of the zoning ordinance.

Based on these findings, the Hampden Planning Board voted _____ to approve the Conditional Use to allow Kristopher Brooker to construct an addition to the existing house that will encroach the front setback no more than the existing house, and to use a portion of the addition for an accessory apartment as previously described.

For the Hampden Planning Board:

Eugene Weldon, Chair

Date

Peter Weatherbee

Kelley Wiltbank

Jennifer Austin

Tom Dorrity

Jake Armstrong

Brent Wells

Notes:

1. *A copy of this decision is on file with the Land & Building Services Office at the Town Offices, 106 Western Avenue, Hampden, ME 04444.*
2. *This decision is subject to appeal in accordance with Article 6 of the Hampden Zoning Ordinance within 30 days after the date this decision is made by the Planning Board.*



Town of Hampden
Land & Building Services

106 Western Ave.
Hampden, ME 04444
207-862-4500
www.hampdenmaine.gov
planner@hampdenmaine.gov

Application for Conditional Use Review

Name of Applicant (primary contact): Kristopher DB Brooker

Company: _____

Address: 95 old county Rd Hampden ME 04444

Phone: 207-907-0098 Cell: 207-907-0098

Email Address: Ledgehillcustom@gmail.com

Name of Owner: Kristopher & Kerri Brooker

Address: 95 old county Rd Hampden ME 04444

Daytime phone: 207-907-0098

Does the project require a: Site Plan Review: Yes No Variance: Yes No (Explain in narrative)

Location of Property: 95 old county Rd Hampden ME 04444

Assessor's Tax Map/Parcel Number: 26-0-015 Acreage: 0.4

Zoning district: Resid A Is there Shoreland Zoning on the site? Yes No

Proposed use (check applicable category and write in specific use from Use Table, §3.1.3 of the Zoning Ordinance):

- Agricultural/Recreational
- Residential
- Educational
- Medical
- Utility/Government
- Institutional
- Commercial/Office
- Industrial

Specific use or uses (line item from Use Table): _____

Description of proposal: Conditional use

1. See 4.5.2.1 to allow New addition to encroach No More than the existing Structure (Deck)
2. See 4.25 for Accessory apt.

Applicant's signature: [Signature]

Owner's signature: [Signature]
(or proof that owner has given applicant all rights to submit the application)

Date of application submittal: 7-11-19

Official Use Only

Application Fee: \$ 75- Date Paid: 7.11.19 Check #: 122

Date of Public Hearing: Aug 14, 2019

Town of Hampden
RECEIVED
JUL 11 2019
Planning & Zoning
Office



95 Old County Rd

Hampden, ME

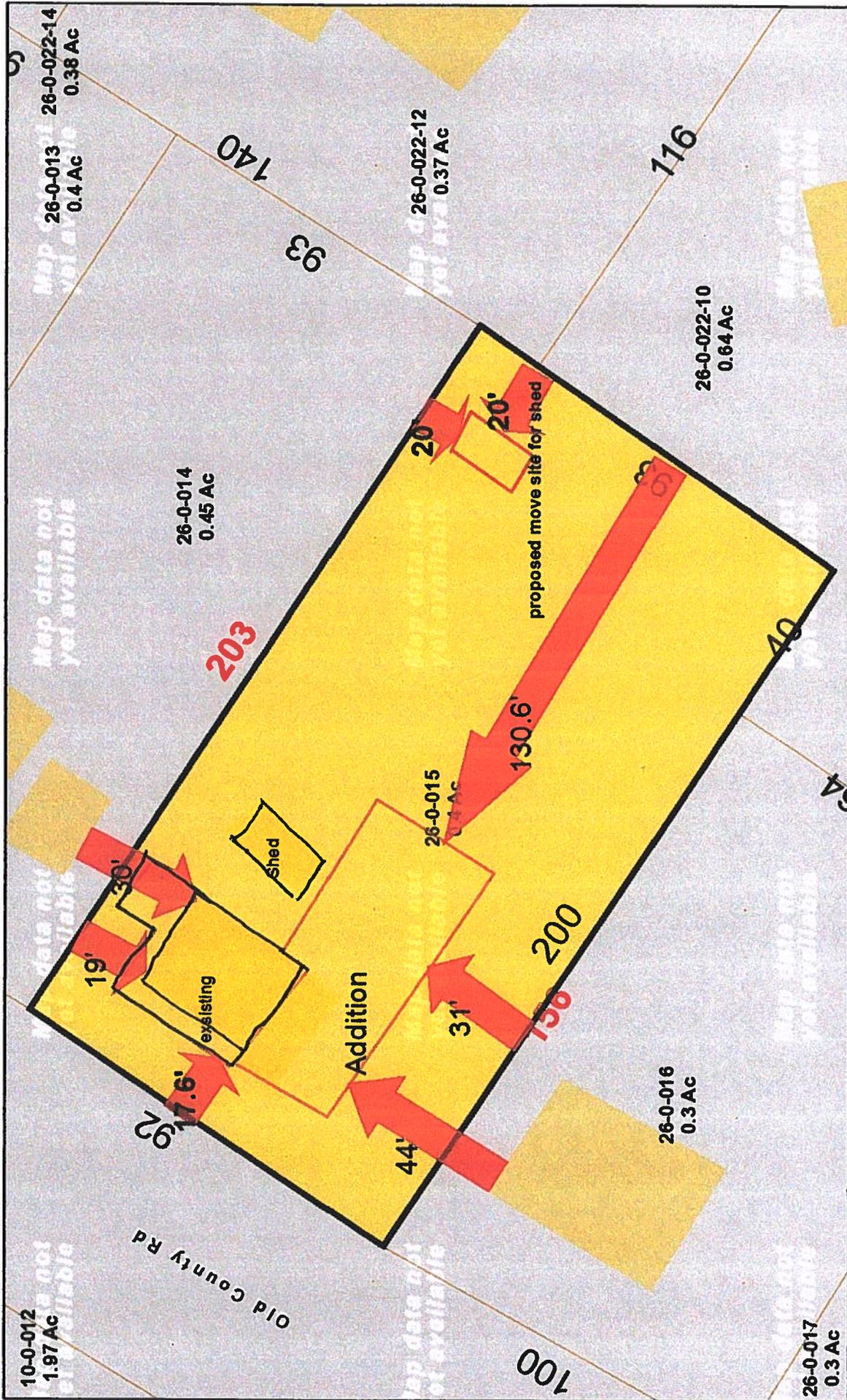


July 11, 2019

1 inch = 34 Feet



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Town of Hampden

Town Planner

Memorandum

From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: July 18, 2019
RE: Miscellaneous Amendments to the Zoning Ordinance

After working with the revised zoning ordinance for about a year, town staff and the Planning Board have drafted a variety of amendments to deal with a number of issues that have been identified. While many of them are self-explanatory, a few warrant additional information.

Proposed amendment to the use table, §3.1.3 to add a new use called “agricultural diversity uses.” These are activities on active farms that will help to diversify the income generated on the property. Examples include farm-stay vacations, public educational events, horse shows, etc. These are proposed to be allowed as conditional uses in the Rural and Residential B districts, where Hampden’s active farms exist. They are proposed to be conditional uses to allow the Planning Board to set specific conditions which would be determined on a case by case basis and would address issues such as parking, hours of an event, and other things that could have a negative impact on abutters, which is dependent on the proximity of any abutters to the site of the proposed activity.

The proposed amendments to §4.5.1 are to clarify how nonconformities created by a taking by eminent domain are to be handled. The current language only deals with lot size, while the proposed amendment makes it clear that nonconformities created this way are considered to be legal nonconformities and thus enjoy broader protections than just for lot size.

The proposed amendments to the cluster housing provisions (§4.6) are to provide better protection for abutting properties, and are the result of working with the current language in the review of several development proposals since last fall. The intent of the cluster provisions is to provide flexibility to developers so Hampden will have a greater diversity of housing options. The most significant change being proposed is how open space in cluster developments will be handled. Currently there is a requirement that there be a “buffer/setback” around the perimeter of the tract being developed, which varies in depth based on the zoning district. Additionally, 30% of the tract must be protected in permanent open space, some of which is allowed to be within the perimeter buffer. The proposed amendments would split the buffer and setback requirements, set standards for the buffer, and change the way open space is calculated and handled.

Rather than calculate the open space requirement as a simple percentage of the acreage of the tract, the proposed amendments base the minimum amount of open space required on the number

of housing units in the development – basically correlating open space to the population of the development. In addition, there is a new requirement that the open space contain at least one recreational amenity for the residents of the development. This could be anything from a walking trail through the open space to a community recreation center (swimming pool, tennis courts, etc.). Benches, picnic tables, ball courts, community gardens, and many other amenities are possible. The idea is to ensure that the residents of the development have opportunities for enjoying the open space and meeting their neighbors, given that they will be living in houses on smaller lots.

In order to come up with a reasonable amount of open space per unit, an analysis was performed that considered each type of cluster development (single family on individual lots, single family without individual lots [condominium form of land ownership], and multi-family) in each of the four zoning districts where cluster housing is permitted (Rural, Residential A, Residential B, and Town Center). The goal of the analysis was to ensure there would be sufficient land available for development to meet the minimum standards for individual lots or for construction of houses or multi-family buildings. The results are in the table in §4.6.4.2 of the proposed amendments.

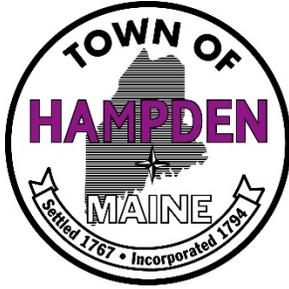
Other changes to the cluster provisions include:

- An increase in the minimum tract size to amounts that are more realistic for developments of these densities.
- New standards for the perimeter buffer that require existing vegetation within the buffer to be retained and where insufficient, that buffering vegetation must be planted per the standards in §4.7.2.4.2 of the zoning ordinance (buffer planting standards).
- New provisions to allow utilities in a portion of the buffer, to protect the buffer from development and from removal of vegetation, and for the Planning Board to allow a portion of the buffer to be reduced in depth in certain situations.
- New provisions to allow even greater flexibility for the design of a cluster project where the road and other infrastructure will remain private – i.e. not be accepted as a public road or into the public system (e.g. sewer or water).

The signage section (§4.7.5.3.9) is proposed to be amended to be consistent with state law, which has recently changed in regards to political signs.

These proposed amendments will be the subject of a public hearing at the August 14, 2019 Planning Board meeting. Interested parties are encouraged to attend.

[Click here to access the PROPOSED zoning amendments on the Town's website at \[hampdenmaine.gov\]\(http://hampdenmaine.gov\); click on Town Departments, then Planning, then Zoning Amendments.](#)



Town of Hampden

Town Planner

Memorandum

From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: July 8, 2019
RE: Private Event Venues

After receiving an inquiry about allowing a wedding venue in the Rural district town staff and the Planning Board have drafted regulations to govern such uses. These consist of both amendments to the Zoning Ordinance and the creation of a new Private Event Venue Ordinance.

These types of venues are typically used not only for weddings and wedding receptions, but also for other private parties, family reunions, business (e.g. corporate) meetings, and similar gatherings. A venue for these activities located in a beautiful space with nice views seems logical; these locations are usually in a rural setting and in Hampden are nearly all in the Rural district.

The impacts for the area where these venues are located are primarily traffic and noise, two issues that come up in nearly every instance in every town where such uses locate. Other issues include lights, dust (from cars driving on dirt driveways and parking areas), sewage disposal and water supply, the number of events held per year, the duration of events, the size of the property, setbacks for structures (including temporary structures like tents), and ancillary activities associated with an event (e.g. wedding rehearsal).

In drafting the attached amendments, research was done on how other municipalities regulate such uses. We have considered the benefits and consequences of such uses on a neighborhood, and we believe these provisions strike a balance that will allow such uses and allow the people in the neighborhood to have a voice in the impacts they will have to deal with during such events.

In addition to the proposed zoning amendments, a new ordinance has been drafted to provide for annual licensing of these venues. It is through the licensing process that abutters and other concerned citizens will have an opportunity to address any negative impacts they experience during events run during the previous year. If Town Council were to find, based on testimony, that a venue is not operating in a manner that is appropriate for the neighborhood, then they would have the opportunity to either place conditions on the license or to deny it altogether, thus shutting the business down until the problems are resolved. Note that this new ordinance would be adopted by Town Council after a public hearing, and the Planning Board does not have jurisdiction in regards to it. We are including it with the proposed zoning amendments for information purposes since the two ordinances are interconnected.

[Click here to access the PROPOSED zoning amendments on the Town's website at \[hampdenmaine.gov\]\(http://hampdenmaine.gov\); click on Town Departments, then Planning, then Zoning Amendments.](#)



Town of Hampden

Town Planner

Memorandum

From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: July 22, 2019
RE: Amendments to Shoreland Zoning Ordinance

In January 2015 the Maine Department of Environmental Protection (DEP) revised their Chapter 1000, Guidelines for Municipal Shoreland Zoning Ordinances. Hampden's Shoreland Zoning Ordinance (SZO) is now proposed to be modified to be consistent with those guidelines. Due to the number of the changes being made, this is proposed to be a "repeal and replace" rather than a simpler underline/strikethrough amendment format. This memo describes the modifications in the proposed new ordinance that are a significant change from the existing ordinance.

One of the things that has been most confusing to people is the location of the various areas that are regulated by the SZO. The DEP guidelines and Hampden's SZO require that certain streams and waterbodies be regulated, and in addition, these areas are categorized by different types of shoreland zones, which in turn are further categorized into different shoreland zoning districts. To help clarify these to the reader, the proposed SZO includes two new maps – Exhibit 1 shows the streams and waterbodies that are regulated, and Exhibit 2 shows the shoreland zones. The official Shoreland Zoning Map shows the shoreland zoning districts. These three maps are attached to this memo and each are part of the proposed ordinance as well.

The Shoreland Zoning Map is also proposed to be amended, primarily to remove the local stream protection district. This removes the shoreland zoning districts from the following streams and intermittent streams: Sucker Brook, Reeds Brook, Shaw Brook and its tributary north of the confluence with the tributary, the unnamed stream flowing northerly into the Souadabscook east of Silver Drift Trail, and the unnamed stream flowing southerly from a wetland at Kennebec Road to Cove Brook in Winterport, including its two tributaries.

Areas of wetlands that are surrounded by shoreland zones are not regulated by the SZO, they are regulated by the Natural Resources Protection Act (NRPA). Such wetlands have been removed from the Shoreland Zoning Map. In addition there are several small areas which were included in the limited residential district that do not meet the criteria for that district due to the absence of residential uses; these have been changed to the resource protection district. There are several other areas where changes have been made as well, described below.

- The area between Bog Road and Ben Annis and Hermon Ponds has a significant reduction in the area covered by the resource protection district. On the Ben Annis Pond (west) side of Pond Road, the Board of Appeals had approved a map adjustment in 2018 to remove much of the area since it does not meet the criteria for being within the shoreland zone. On the east side of Pond Road, a large part of the area within the resource protection district was also found to not meet the criteria for being included. By the bridge over the Souadabscook, the limited residential area was expanded northward slightly to accommodate the residential lot created in a 2016 subdivision.
- Similar changes were made north of Hammond Pond and along the Souadabscook near the interstate highway, where large wetland areas do not meet the criteria for inclusion in the resource protection district; they are regulated by the NRPA. A small area northeast of Stetson Drive has been changed from limited residential to resource protection since there is no possibility of residential development in that area; it is included in two house lots that are already developed with more than 250' of woodland between the houses and the shoreland zone.
- On the north side of the Souadabscook, west of Emerson Mill Road, there is an area where the district is proposed to change from general development to resource protection. The reason for this is that the area doesn't meet the criteria for being included in a general development district. To the west of Emerson Mill Road, there is also a section of general development district that is proposed to be changed to the resource protection district, for the same reason. This area is just south of the Pine Tree landfill.
- Along Shaw Brook, the general development district that extended beyond the resource protection district has been removed since it does not meet the criteria for being included in any shoreland zone. This stream is only subject to a 75' zone. Areas to the north and east of the wetland associated with Shaw Brook that were in the general development district have been changed to the resource protection district since they do not meet the criteria for the general development district. The area extending to the town line along the brook also do not meet the criteria for being included in any shoreland zone and have been removed.
- Most of the general development district on the north side of the Souadabscook between Papermill Road and Route 202 has been changed to resource protection, again since that area does not meet the criteria for inclusion in the general development district. The area where the old concrete plant was located is the exception to this change.
- A portion of the area surrounding the wetland to the west of Back Winterport Road opposite Baker Road is proposed to be changed from limited residential to resource protection, and an area not meeting the criteria for inclusion in any shoreland zone is proposed to be removed.
- The shoreland zones surrounding two wetland areas to the west of Monroe Road, one associated with the (local) stream and one opposite Norway Drive, are proposed to be changed from the limited residential district to the resource protection district because neither one meets the criteria for inclusion in the limited residential district.

- The stream protection district extending easterly from the wetland on Carmel Road near the Winterport town line to the confluence with an unnamed stream flowing from Winterport is proposed to be removed since this area doesn't meet the criteria for inclusion in any shoreland zone.
- At the West Branch of the Souadabscook at the Newburgh town line, there is a wetland that is proposed to be changed from limited residential to resource protection, again since it doesn't meet the criteria for inclusion in the limited residential district. In addition, there is one section that was left out of the zone that should have been included.
- A portion of the shoreland zone around the wetland to the east of the Meadow/Patterson/Canaan intersection is proposed to be changed from limited residential to resource protection since it is removed from residential areas and doesn't meet the criteria for the limited residential district.
- The shoreland zones around the wetland system that stretches from the end of Ichabod Lane across Patterson Road has a couple of areas that are proposed to be changed from limited residential to resource protection since they do not meet the criteria for the limited residential district.

Throughout the proposed ordinance, the term "shall" has been changed to either "may," "must," or "will" depending on the context. The reason is that, based on court proceedings, the legal community now recommends against using the term "shall" because it can have different meanings and the goal in any ordinance is to be as clear as possible. The formatting has been modified in numerous sections to make it easier to comprehend the provisions. The remainder of this memo is a listing of the significant changes to the text of the ordinance, in order of appearance.

- Section 9 – deleted *Local Stream Protection District* – this district is optional in the state guidelines; Hampden's Town Council has directed staff to only include those areas that are required by the state to be regulated in Hampden.
- Section 10 – modified *Interpretation Of District Boundaries* to delete property lines, edge of pavement of streets, roads, and rights-of-way, since none of these features have anything to do with shoreland zoning. The distance for any shoreland zoning district is based on the edge of the waterbody and not on any other features.
- Section 12C – *Nonconforming Structures* – the state guidelines made significant changes to this section; the new section combines the two previous nonconforming expansion rules, and it changes from floor area and volume to footprint and height restrictions for measuring nonconforming expansions. This is in accordance with P.L. 2013 Chapter 320 Section 8.
- Section 13A – *Resource Protection District* – reworded to be more easily understood by the reader and eliminated criteria no longer used in the state guidelines.
- Section 13D – *General Development 2 District* – added back into ordinance per direction of state; it had been deleted in a previous amendment to Hampden's SZO. The GD2 district is identical to the GD1 district but the state wants to differentiate between the

original GD district and any areas added subsequent to the original adoption of the ordinance. At this time there are no existing or proposed GD2 districts in Hampden.

- Section 14 – *Land Use Table* – the only difference from the existing table is that a footnote has been added to “clearing or removal of vegetation activities other than timber harvesting” to require that all clearing activities must be supervised by a licensed forester or arborist; this is because those professionals have the qualifications and expertise to apply the point system required in Section 15N while the Code Enforcement Officer most likely would not.
- Section 15B – *Principal and Accessory Structures*, item 4 non-vegetated surface coverage – modified to exclude public boat launches and naturally existing ledge and rock outcrops.
- Section 15H – *Signs* – added restrictions from state guidelines where they are more strict than we have in our zoning ordinance.
- Section 15O – *Hazard Trees, Storm Damaged Trees, and Dead Tree Removal* – this is a new section added in the state guidelines for the purpose of clarifying DEP interpretations regarding these trees and how their removal can occur.
- Section 15P – *Exemptions to Clearing and Vegetation Removal Requirements* – this section was also added in the state guidelines.
- Section 15Q – *Revegetation Requirements* – this section was also added in the state guidelines.
- Section 16E – *Special Exceptions* – the way the calculation in item 4 is made has been changed in the state guidelines from “ground floor area” to “footprint”.
- Section 16I – *Enforcement* – the state guidelines deleted the requirement for biennial reporting in item 2c.
- Section 17 – *Definitions*:
 - *Agriculture* – added cultivation of marijuana (medical or otherwise) to the uses not included in the definition.
 - *Commercial use* – excepted any business related to marijuana
 - *Conservation plan* – added a definition to provide clarification of this term which is used in the ordinance
 - *DBH (diameter at breast height)* – added (and eliminated the description in numerous sections of the ordinance)
 - *Floor area* – changed to be consistent with state guidelines
 - *Footprint* – added to be consistent with state guidelines
 - *Forest management activities* – deleted; term not used in ordinance
 - *Forest stand* – deleted; term not used in ordinance

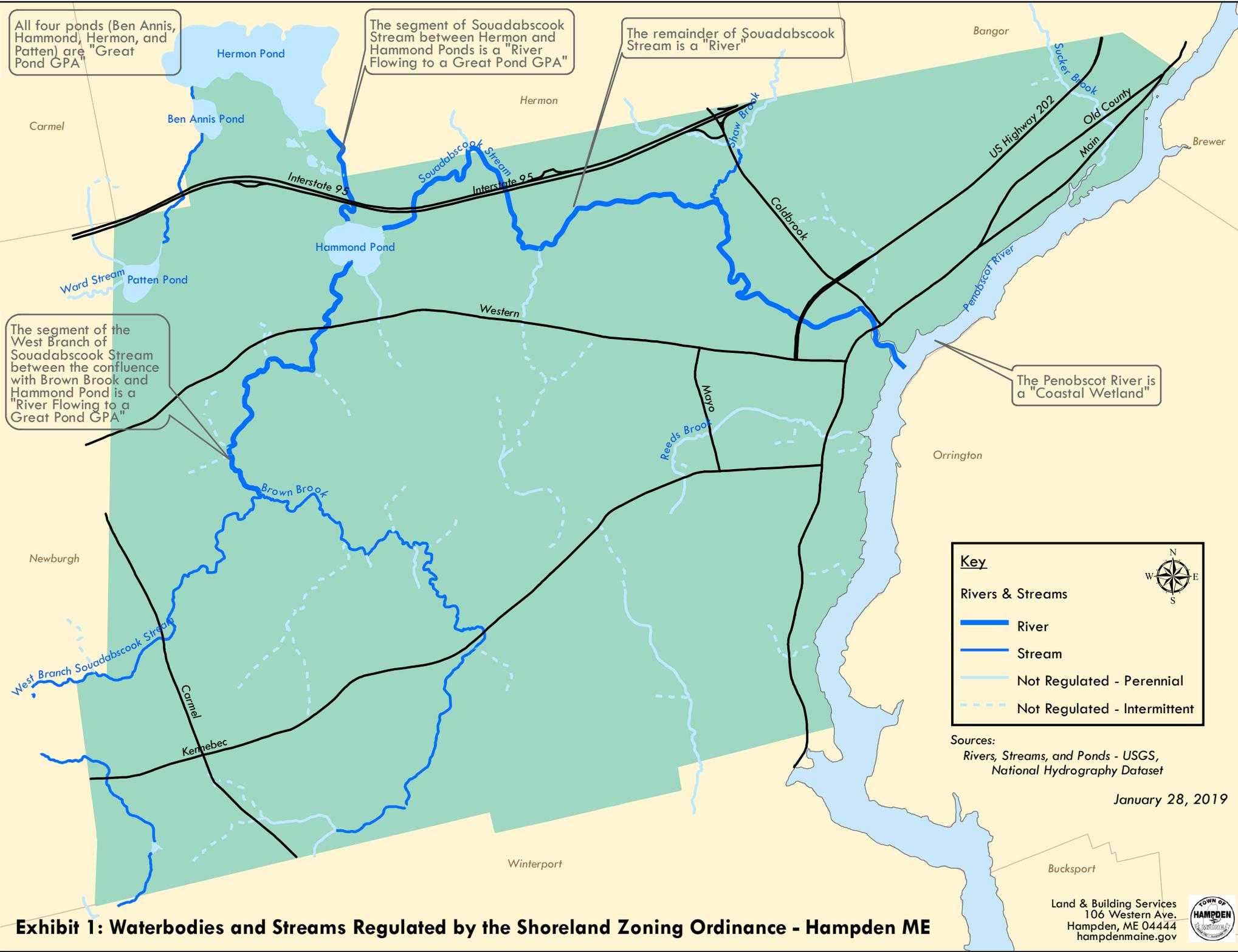
- *Functionally water dependent uses* – added “Recreational boat storage buildings are not considered to be a functionally water dependent use” to be consistent with state guidelines
- *Great pond* – changed to be consistent with state guideline; it is the exact same thing as in the previous ordinance in Hampden
- *Great pond classified GPA* – added to be consistent with state guidelines; in Hampden all great ponds area also great ponds classified GPA so it doesn’t make any difference.
- *Hazard tree* – new definition added to be consistent with the state guidelines
- *Home occupation* – modified definition to be consistent with our zoning ordinance and to clarify that it is an occupation actually being carried out in a residential structure
- *Industrial* – added an exclusion for marijuana businesses
- *Local stream* – kept the definition of a local stream even though we aren’t regulating them, and added last sentence: “The only portion of these local streams that are regulated by this Ordinance are those portions within the Shoreland Zone of a regulated waterbody or stream.”
- *Non-native invasive species of vegetation* – new definition added to be consistent with the state guidelines
- *Outlet stream* – new definition added to be consistent with the state guidelines
- *Piers, docks, wharves, etc.* – deleted definition since it is no longer needed since we are not regulating such structures – they are regulated by the state and/or Army Corps of Engineers
- *River* – added clarification that the Penobscot River is classified as a coastal wetland in Hampden (further upstream it is a river, but where it is tidal it isn’t.)
- *Salt marsh* – new definition added to be consistent with the state guidelines
- *Salt meadow* – new definition added to be consistent with the state guidelines
- *Sapling* – new definition added to be consistent with the state guidelines
- *Seedling* – new definition added to be consistent with the state guidelines
- *Setback* – new definition added to be consistent with the state guidelines
- *Shoreland permit* – deleted to avoid inconsistency with the ordinance
- *Shoreline setback* – changed to *shoreline buffer* and modified to include the verbiage in several sections of the text: “the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within a strip

extending 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland.”

- *Skid road or skid trail* – added to be consistent with state guidelines
- *Storm-damaged tree* – added to be consistent with state guidelines
- *Stream* – modified to be consistent with state guidelines and L.D. 1490 (P.L. 2013 Chapter 320)
- *Structure* – modified to be consistent with state guidelines, to clarify certain things that are not considered to be structures within the context of the shoreland zoning ordinance
- *Tree* – added to be consistent with state guidelines
- *Water body* – deleted “water body also includes local streams” to be consistent with the state guidelines.

The current Shoreland Zoning Ordinance is available on the town’s web site, hampdenmaine.gov. This proposed ordinance has been reviewed by the Maine Department of Environmental Protection and will be the subject of a public hearing with the Hampden Planning Board on August 14, 2019 at 7:00 pm in the Council Chambers in the town offices at 106 Western Ave.

[Click here to access the PROPOSED Shoreland Zoning Ordinance, which is on the Town's website at \[hampdenmaine.gov\]\(http://hampdenmaine.gov\); click on Town Departments, then Planning, then Zoning Amendments.](#)



All four ponds (Ben Annis, Hammond, Hermon, and Patten) are "Great Pond GPA"

The segment of Souadabscook Stream between Hermon and Hammond Ponds is a "River Flowing to a Great Pond GPA"

The remainder of Souadabscook Stream is a "River"

The segment of the West Branch of Souadabscook Stream between the confluence with Brown Brook and Hammond Pond is a "River Flowing to a Great Pond GPA"

The Penobscot River is a "Coastal Wetland"

Key

Rivers & Streams

- ▬ River
- ▬ Stream
- ▬ Not Regulated - Perennial
- - - Not Regulated - Intermittent



Sources:
Rivers, Streams, and Ponds - USGS,
National Hydrography Dataset

January 28, 2019

Exhibit 1: Waterbodies and Streams Regulated by the Shoreland Zoning Ordinance - Hampden ME

Land & Building Services
106 Western Ave.
Hampden, ME 04444
hampdenmaine.gov



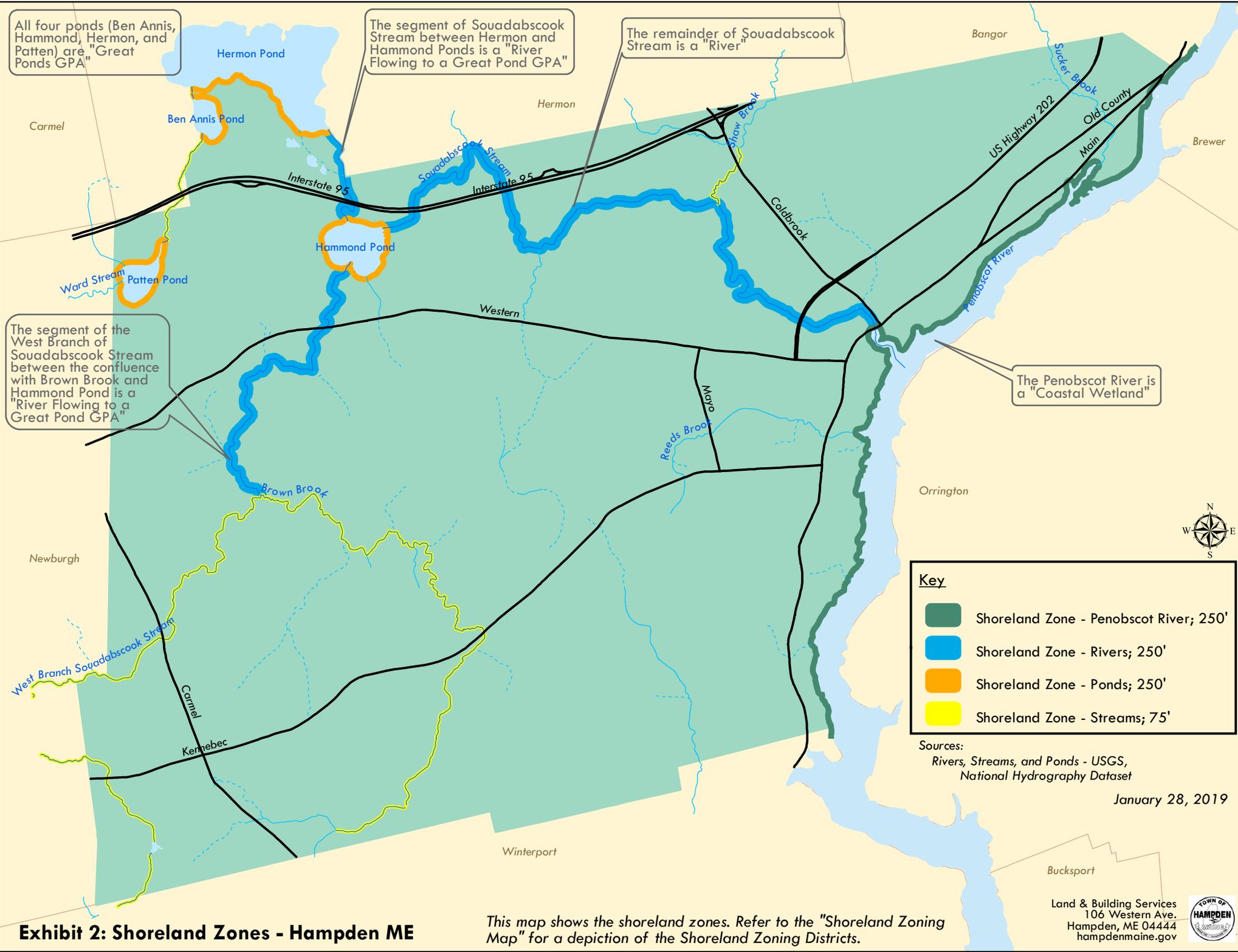


Exhibit 2: Shoreland Zones - Hampden ME

This map shows the shoreland zones. Refer to the "Shoreland Zoning Map" for a depiction of the Shoreland Zoning Districts.

Shoreland Zoning Map

DRAFT - July 22, 2019

Legend

- | | | | |
|---|-------------------------------------|---|------------------------------|
|  | Resource Protection |  | Rivers & Streams |
|  | Resource and Stream Protection |  | River |
|  | Limited Residential |  | Stream |
|  | Limited Resid and Stream Protection |  | Not Regulated - Perennial |
|  | Stream Protection |  | Not Regulated - Intermittent |
|  | General Development |  | Nonforested Wetlands |

Note: The Penobscot River is regulated as a Coastal Wetland.

Sources:
 Shoreland Zoning Districts - Town of Hampden
 Rivers & Streams - National Hydrography Dataset
 Nonforested Wetlands - National Wetlands Inventory,
 supplemented with data produced by Prentiss &
 Carlisle Co. using 2006 orthophotography.



Town of Hampden
 106 Western Ave
 Hampden Maine, 04444
www.hampdenmaine.gov

