



Town of Hampden
Planning and Development Committee
Wednesday November 15, 2017, 6:00 pm
Municipal Building Council Chambers
Agenda

1. Approval of November 1, 2017 Minutes
2. Committee Applications: none
3. Updates:
 - A. MRC/Fiberight
 - B. Staff Report
4. Old Business:
 - A. Hampden Business Park Covenants – Kick-off meeting with business and property owners to discuss the covenants
 - B. Discussion with consultant of potential Coldbrook Corners TIF District
 1. Verify proposed TIF District boundaries
 2. Review project objectives with consultant
 3. Discuss potential terms of CEA with Southstreet Development
 4. Discuss potential eligible uses for Town TIF revenues
5. New Business: none
6. Zoning Considerations/Discussion:
 - A. Update on Discussion with Planning Board re: Zoning Amendment Process
7. Citizens Initiatives
8. Public Comments
9. Committee Member Comments
10. Adjourn



Town of Hampden
Planning and Development Committee
Wednesday November 1st, 2017, 6:00 pm
Municipal Building Council Chambers
Minutes – Draft

Attending:

Committee/Council

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

Staff

Angus Jennings, Town Manager
Myles Block, Code Enforcement Officer

Chairman McPike called the meeting to order at 6 pm.

1. **Approval of October 18th, 2017 Minutes – Motion** to approve as submitted made by Councilor McAvoy with second by Councilor Marble; carried 5-0.
2. **Committee Applications:** None.
3. **Updates:**
 - A. **MRC/Fiberight** – Manager Jennings provided an update regarding the project timeline and there was discussion among the Committee members. CEO Block provided an updated regarding site work to date. Committee discussion focused on the requirements associated with implementing the updated Solid Waste Flow Control Ordinance, including the requirement to notify local businesses and institutions regarding the new destination for MSW after April 1, 2018, and how these communications could best be handled. Manager Jennings said that the MRC Exec. Director has talked about MRC preparing “model” documents (i.e. hauler licensing forms, sample correspondences to haulers and to local businesses) so that 110 municipalities can implement the changes with some consistency, but a timeline isn’t known. It was acknowledged that there could be challenges in enforcing the Flow Control Ordinance.
 - B. **Staff Report** – Manager Jennings summarized the materials in the meeting packet, including the update of ongoing/pending development activity.
4. **Old Business:**
 - A. **Update on potential commercial development at northeast corner of Coldbrook Road and Route 202; update on agreement to engage consultant to support new TIF District proposal to facilitate development; review potential boundaries of potential TIF District** – Manager Jennings summarized the materials in the meeting packet. There

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was discussion about the potential District boundaries. Mayor Ryder suggested including several additional parcels along Coldbrook Road. The Committee members unanimously agreed with these changes. Manager Jennings said that an updated map would be reviewed at the next meeting, and that the TIF consultant would be present to begin discussion of other aspects of the TIF District. Manager Jennings reminded the Committee of the November 8 Planning Board public hearing regarding the proposed zoning map amendment. Mayor Ryder and Councilor Marble confirmed that they would join the Manager in attending the public hearing.

- B. Review of approved consultant work scope and schedule to prepare amendments to the Business Park Covenants and associated zoning amendments; review draft outreach to Business Park owners –** Manager Jennings summarized the materials in the meeting packet. The Committee appreciated the detail in the schedule and all agreed that it will be important to maintain the project schedule.

5. **New Business:** None.

6. **Zoning Considerations/Discussion:**

- A. Discussion of zoning amendment process including the role of the Planning Board and its Ordinance Committee; preparation for November 8 Planning Board meeting –** Manager Jennings summarized the materials in the meeting packet. He circulated a draft letter to the Planning Board and asked the Councilors to take a couple of minutes to review the draft to be sure it effectively communicated the issues. The Councilors read the draft letter, and all agreed it was appropriate to send as is. The Committee discussed the importance of aligning the Planning Board process relative to zoning amendments with the Council's goals regarding timeliness of amendments. Manager Jennings said the letter would be included in the November 8 Planning Board meeting packet. Mayor Ryder and Councilor Marble confirmed that they would join the Manager in attending the meeting.

7. **Citizens Initiatives:** None.

8. **Public Comments:** None.

9. **Committee Member Comments:** None.

10. **Adjournment:** There was a **motion** by Councilor Marble **seconded** by Councilor McAvoy to adjourn at 7:03 pm. The motion carried unanimously.

Respectfully submitted –
Angus Jennings, Town Manager

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**BI-WEEKLY CONFERENCE CALL
MRC & Fiberight Facility
October 16, 2017**

Attendees:

- | | |
|-------------------------------------|-----------------|
| ◆ Alan Iantosca, Patrick Emerson | Fiberight |
| ◆ Greg Louder | MRC |
| ◆ David Burns, Victoria Eleftheriou | Maine DEP |
| ◆ Angus Jennings, Myles Block | Town of Hampden |
| ◆ Denis St. Peter | CES, Inc. |

Discussion Notes:

1. **Meeting Minutes** – No comments.
2. **Construction Schedule** – Prior to the call, Alan emailed construction photo, shaded foundation drawing showing the current progress on the foundation work, and updated schedule.

Alan is working with MRF contract to establish guaranteed date of July and an earlier expected by date with liquidated damages clause.

The MRF 3D model revisions are expected by Wednesday. The condition compliance application associated with the MRF once it is finalized. Victoria reminded us that the application should be for the three co-applicants.

The web camera access was provided to MDEP by email.

The timing of operational staffing was discussed. CES mentioned requirements of solid waste processing permit which will require a condition compliance application 30 days prior to pre-commissioning.

3. **Waste water** – The changes to waste water quantities was discussed briefly and further evaluations will be required to finalize approach. Email to be provided after call.
4. **Financial Closing** – Fiberight/Coastal working with attorneys to assemble substantial documents and will be sending out mailing as soon as possible. Closing is anticipated prior to Thanksgiving.
5. **Town of Hampden** – Town asked about timing of next building permit application. CES offered to send email update after call.



Angus Jennings <townmanager@hampdenmaine.gov>

Board of Directors Telephonic Meeting

1 message

Municipal Review Committee <municipal.review.committee1@gmail.com>

Thu, Nov 9, 2017 at 3:23 PM

Reply-To: glounder@mrcmaine.org

To: townmanager@hampdenmaine.gov



NOTICE BOARD OF DIRECTORS TELEPHONIC MEETING

Wednesday, November 15
2:00 p.m.

The MRC Board of Directors will be holding a conference call on Wednesday, November 15th at 2:00 p.m. to discuss minor revisions needed for the Site Lease and MWSA that require MRC Board consideration. Member communities are welcome to call in to the telephonic meeting.

Please follow this link for the meeting [Agenda](#).

Below is the connection information:

Conference Call-in Line
1-877-366-0711
Participant 76096296#

Please contact Greg Louder at 207-664-1700 or by e-mail at glounder@mrcmaine.org with any questions.

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Municipal Review Committee, 395 State Street, Ellsworth, ME 04605

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Project List - Planning

Project Name	Location	What it is	Size¹	PB Action/Date	Type
Fiberight	off Coldbrook	solid waste processing	153,800 sq ft	Approved	Site Plan
Hannibal Hamlin Place	Main Road N	expansion	2,800 sq ft	Approved	Site Plan
Pine Tree Food Equipment	Nadine's Way	new building/business	3,600 sq ft	Approved	Site Plan
Dennis Paper	Mecaw Rd	expansion	27,237 sq ft	Approved	Site Plan
Colonial Heights	off Constitution	phase 3 of subdivision (final plan)	11 new lots	Approved	Subdivision
Carver	Ballfield Rd	conversion of single family to two family	1 new unit	Approved	Conditional Use
Sky Villa	646 Main Road N	conversion of interior to 10 short term rehab beds	3,172 sq ft	Approved	Conditional Use
Brickle	326 Main Road N	conversion of single family to two family	1 new unit	Approved	Conditional Use
Southeast Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	Withdrawn	Zoning Map Amendmemt
Hamlin's Marina	Marina Road	new boat storage building	10,000 sq ft	Approved	Site Plan
Fiberight	348 Coldbrook Road	Site Plan Revision	-	Approved	Site Plan
Springer Estates	Deer Hill Lane	Addition of land to existing lot within subdivision	1 Lot	Approved	Minor Revision
Hannaford	Western Ave.	Addition of ~12' x 32' external CLYNK bldg as accessory structure.	384 sq ft	Approved	Site Plan Revision
H.O. Bouchard	Coldbrook Road	Expanded office building & Deck	1,620 sq ft	Approved	Site Plan Revision
Southeast Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	11/20/2017 ²	Zoning Map Amendment

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

2. Town Council public hearing.

Town of Hampden
106 Western Avenue
Hampden, Maine 04444



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

November 7, 2017

Farren Holdings, LLC
Hampden Veterinary Clinic
9 Commerce Court
Hampden, ME 04444

Sample Letter

Dear Barbara and Gary Farren:

As a business owner in the Hampden Business & Commerce Park, I am writing to you to let you know about the next step in an ongoing initiative to increase business development in the Business Park, and to invite your participation in this process, which will kick off at a meeting of the Town Council's Planning and Development Committee meeting **next Wednesday, November 15th at 6 PM at the Hampden Town Office.**

As you know, Sargent Corp. has nearly completed the infrastructure for both phases of the Business Park. In addition, the Town recently secured State approval of the creation of a new Tax Increment Financing (TIF) District which allows the Town to provide tax incentives for new or expanded development in the Business Park.

The next step in our efforts to improve the Business Park as a place to do business is to review – and in all likelihood revise – the Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park. All properties within the Business Park are subject to these Covenants, which were approved in 2002, although certain elements of the Covenants apply differently in different areas of the Business Park. (A complete copy is enclosed for reference).

The Planning & Development Committee has reviewed the Covenants in detail and has preliminarily determined that, as written, the Covenants create a potential barrier to new private investment in the Business Park. In addition to creating substantive requirements of new development that exceed requirements in the Zoning Ordinance, the Covenants add an extra layer of review. This adds complexity, and in all likelihood additional permitting and construction costs. This runs counter to the goal of encouraging new private investment in the Business Park, and providing a prompt and predictable permitting process.

The Covenants were initially adopted in order to establish high standards for development in the Business Park. The Councilors want to ensure that, prior to proposing amendments, they hear from current business owners in the Business Park regarding what aspects of the Covenants may be important to retain. Certainly, the Council shares the goal of seeing high quality development in the Business Park, and

expects to consider zoning amendments – concurrent with revisions to the Covenants – to preserve standards that are found to be important.

My office has retained planning consultant Noel Musson to assist us as we work to identify what aspects of the Covenants will be important to retain; propose revisions as necessary to clarify and streamline the permitting process; and propose coordinated zoning amendments as needed.

Although the meeting next Wednesday, November 15 will be important, it will not be the last opportunity for current Business Park businesses to get involved. In fact, this initiative is scheduled to be on the P&D Committee's meeting agendas on December 6 and December 20 (both meetings at 6 PM), and on the January 3, 2018 P&D agenda. All meeting agendas and packets will be posted to the Town website (www.hampdenmaine.gov/planningdevelopment) at least 48 hours prior to the meetings.

If you have thoughts regarding these issues, or are interested in learning more, I hope you can join us at one or more of the upcoming meetings. And/or, please feel free to contact me at any time via phone, email, or stop by the office.

The Town Council is thankful for the investment that you've chosen to make in the Town of Hampden, and we are working hard to further enhance the Business Park as a top tier place for new – and existing – businesses.

Sincerely,

Angus Jennings
Town Manager

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
THE HAMPDEN BUSINESS AND COMMERCE PARK**

This Amended and Restated Declaration is made this 17 day of September, 2015 by the Town of Hampden, a municipality situated in Penobscot County, Maine:

BACKGROUND:

- A. A Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park dated October 7, 2002 was recorded in the Penobscot County Registry of Deeds on December 17, 2002 in Book 8503, Page 78.
- B. By Certificate of Amendments dated January 23, 2008, recorded in the Penobscot County Registry of Deeds on January 28, 2008 in Book 11274, Page 328, the Town of Hampden amended Section 4.2 and Section 4.4 of the original Declaration.
- C. On November 17, 2014, the Hampden Town Council adopted additional amendments to the original Declaration pursuant to Article VI, Section 6.1 of the Declaration.
- D. This Amended and Restated Declaration is issued for the purpose of restating the original Declaration, as amended through November 14, 2014, and shall apply prospectively from November 14, 2014.

RECITALS:

1. The Town of Hampden is the owner of that certain real property in the Town of Hampden, County of Penobscot, State of Maine, shown on a Final Subdivision Plan entitled Hampden Business and Commerce Park and recorded in the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112 and Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14)

2. The Hampden Business and Commerce Park is being developed as a master planned Business and Commerce Park. It is the Town of Hampden's desire and intention to subject the real property in said Business and Commerce Park to certain covenants, conditions, and restrictions which are deemed to be real covenants which run with the land, for the benefit of the property, the Town of Hampden, and the owners or occupants of lots in the Hampden Business and Commerce Park. It is intended that said

covenants, conditions and restrictions shall bind and benefit not only said Town of Hampden, and the owners and/or the occupants, but also their respective successors, heirs, and assigns and that all lots in Hampden Business and Commerce Park shall be owned, held, used, sold, transferred, leased, and conveyed subject to the covenants, conditions, and restrictions set forth in this Declaration.

It is the intention of the Town of Hampden to further a plan of subdivision by means of the covenants, conditions, and restrictions set forth in this Declaration. Said covenants, conditions, and restrictions are intended to be common to all of the lots in the Hampden Business and Commerce Park, and any other land which the Town might wish to add in the future, and to enhance and protect the value, desirability, and attractiveness of all such lots to their mutual benefit except where otherwise noted. The design review provisions are limited to Phase 1 as defined, and not apply to the East Phase or West Phase of the subdivision. (Amended 11/17/14)

3. It is also the intention of the Town of Hampden to enhance the value of the property, to increase the job base and job diversity in the community, and to increase the Town's tax base by undertaking construction and management of the Business and Commerce Park and through the use of this Declaration. Limitations on use, preference for certain uses over other uses, a limitation on non-taxable uses, construction and appearance standards, and many other standards in this Declaration are designed toward these ends.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this article shall, as used in this Declaration, have the meanings herein set forth:

Declarant. The Town of Hampden and its successors and assigns.

Declaration. This Declaration of Covenants, Conditions, and Restrictions for Hampden Business and Commerce Park as it may from time to time be amended or supplemented.

Design Review Board. (Deleted 11/17/14)

Final Subdivision Plan - Subdivision Plan. The term Final Subdivision Plan or subdivision plan shall mean the Final Subdivision Plan approved by the Hampden Planning Board, on file at the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the: (1) Final Subdivision Plan - Amendment No. 1 recorded in said Registry in Map File Nos. 2002-89 and 2002-90, (2) Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No. 2007-112 and (3) Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded in said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14)

Hampden Business and Commerce Park. The term "Hampden Business and Commerce Park" shall be synonymous with the term "subject property" and shall mean all of the real property now or hereafter made subject to this declaration, including but not limited to the property shown on the Final Subdivision Plan.

Improvement - Improvements. The term "improvement" or "improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, storage facilities, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks; plantings, planted trees and shrubs, poles, signs, loading areas, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface.

Lot. The term "lot" shall mean any lot or other tract or parcel of land located within the subject property as shown on the Final Subdivision Plan. This definition does not preclude establishing improvements across interior lot lines of lots held in common ownership. (Amended 11/17/14)

Low Impact Outdoor Recreation. The term "low impact outdoor recreation" shall mean outdoor recreation, nature observation and study which is dispersed, traditional non-commercial outdoor activities that do not generally rely on buildings or spectator facilities, and may include hiking, bird watching, picnicking, cross-country skiing, snowmobiling, snow-shoeing, bicycling, horseback riding, primitive non-commercial camping, and outdoor education, including scientific and archeological research and observation.

Master Plan. The Hampden Business and Commerce Park master plan approved by the Town of Hampden Planning Board developed by WBRC Architects- Engineers dated April 27, 2001, a copy of which is on file at the Town Clerk's Office in Hampden, Maine. The plan shall include items identified on the Final Subdivision Plan as amended.

Occupant. A person or entity that is in possession of and is occupying or using any improvements located on a lot. The term includes, but is not limited to, an owner, lessee, optionee, or party in possession.

Owner. A person or entity that holds title to a lot as evidenced by records recorded in the Penobscot County Registry of Deeds.

Phase. This term shall represent certain lots within the Hampden Business and Commerce Park Subdivision and further identified on the Amendment 3 Final Subdivision Plan:

Phase 1. Phase 1 is lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18 within the Hampden Business and Commerce Park Subdivision.

Phase, East. East Phase is lots 33, 34, 35, 36 and 37 within the Hampden Business and Commerce Park Subdivision.

Phase, West. West Phase is lots 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 within the Hampden Business and Commerce Park Subdivision. (Amended 11/17/14)

Record-Recorded-Recordation. The terms shall mean, with respect to any document, the recordation of said document in the Registry of Deeds of the County of Penobscot, State of Maine.

Sign. Any structure, devise, or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting, devise, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, posted, otherwise fastened or affixed.

Street. Any public or private way as shown on the Final Subdivision Plan.

Subject Property. Synonymous with the term "Hampden Business and Commerce Park", or any lot therein, and shall mean all of the real property now or hereafter made subject to this Declaration.

Substantial Completion. The date at which the building can be fully utilized for its intended purpose.

Visible from Neighboring Property and/or Street R/O/W. The term "visible from neighboring property and/or Street R/O/W" shall mean, with respect to any object on the lot, that as determined by the Design Review Board, such object is or would be visible from a point measured six (6) feet above the grade at the property line of any adjacent lot or street right of way, except that objects greater than 35 feet above grade are exempt from this definition.

Other Definitions. Any term not defined herein shall have its customary dictionary definition.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 GENERAL DECLARATION

Declarant hereby declares that all of that real property located in the Town of Hampden, County of Penobscot, State of Maine, as shown on the following plans:

Final Subdivision Plan entitled Hampden Business and Commerce Park recorded in the Penobscot County Registry of Deeds in Map Files No. 2001-70 and 2001-71, as amended by Final Subdivision Plan -Amendment No. 1 recorded in said Registry of Deeds in Map File Nos. 2002-89 and 2002-90;

Final Subdivision Plan, Amendment 2 (addition of Business Court and Commerce Court) on June 20, 2007, recorded in said Registry in Map File No.2007-112; and

Final Subdivision Plan Amendment 3 (Reconfiguration of Carey Circle) on September 10, 2014, recorded is said Registry in Map File Nos. 2014-60 and 2014-61. (Amended 11/17/14)

shall be sold, held, conveyed, encumbered, leased, rented, used, occupied, improved, maintained or transferred in whole or in part, subject to the limitations, restrictions, conditions, covenants, liens and provisions set forth in this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of said real property and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subject property and every part thereof. All of said limitations, restrictions, conditions, covenants, liens and provisions of this Declaration shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest therein or any part thereof.

2.2 ADDITION OF OTHER REALTY

Declarant may, but shall have no obligation to, add at any time or from time to time additional land to the scheme of this Declaration. The addition of additional land to the scheme of this Declaration shall be made and evidenced by filing in the Penobscot County Registry of Deeds a supplementary Declaration with respect to the additional land to be added. Declarant reserves the right to so amend and supplement this Declaration without the consent of any party who may have any right, title, or interest to the subject property. Upon addition of additional land to the scheme of this Declaration, said additional land shall be and become subject to this Declaration.

ARTICLE III CONSTRUCTION OF IMPROVEMENTS

3.1 APPROVAL OF PLANS REQUIRED

The provisions of the Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park outlined in Section 3.1 through 3.4 shall only apply to Phase 1, and do not apply to East Phase and West Phase as defined. No exterior improvements shall be commenced, erected, placed, altered, maintained, or permitted to remain on any lot, nor shall any addition, change or alteration of any improvements be made, until final plans and specifications shall have been submitted to and approved in writing by the Hampden Planning Board. Such final plans and specifications shall be submitted in accordance with Zoning Ordinance Article 4.1 Site Plan Review, as may be amended or replaced from time to time. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Planning Board or Town Planner, but shall in any event include those items listed in III.1.a and III.1.b of this paragraph. The Planning Board must make a positive finding that the standards contained herein are satisfied in addition to the standards contained in Article 4.1 Site Plan Review, as may be amended or replaced from time to time. (Amended 11/17/14)

A site development plan or plans shall include the nature, grading scheme, shape, composition, and location of all structures (including proposed front, rear, and side setback lines and all stream and wetland buffers), and all structures within three hundred (300) feet of any property line, and the number and location of all parking spaces and driveways, landscaping, buildings, lighting and signage accessory buildings, fences, storage areas, trash collection, antennas, and:

III.1.a. - A plan showing all landscaping elements for the particular lot, including botanical/common name, size, condition, and "hard" landscape elements, and;

III.1.b. - Building exterior elevations of each facade showing dimensions, all building windows and doors, materials, and exterior color scheme and any external mechanical systems, and;

III.1.c. (Deleted 11/17/14)

III.1.d. (Deleted 11/17/14)

III.1.e. (Deleted 11/17/14)

3.2 BASIS FOR APPROVAL

Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air-conditioning, or other roof-top installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration, and in reasonably close conformance with the approved Hampden Business Park master plan, as amended, and the final subdivision plan.

Plans that provide for metal-clad buildings will be approved only on the condition that such buildings are designed and built in accordance with the requirements of Section 4.4. (Amended 11/17/14)

Plans for plantings and landscape improvements will be approved only on the condition that materials, placement, and form are designed and built in accordance with the Landscaping Plans for the Hampden Business and Commerce Park. (Amended 11/17/14)

Declarant shall not arbitrarily or unreasonably withhold its approval of any plans and specifications. Except as otherwise provided in this Declaration, Declarant, by and through the Hampden Planning Board, shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

1. Failure to comply with any of the limitations, restrictions, conditions, and covenants set forth in this Declaration;

2. Failure to include information in such plans and specifications as may have been reasonably requested by the Planning Board;
3. Failure to reasonably comply with the Hampden Business and Commerce Park Master Plan;
4. Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;
5. Objection on the ground of incompatibility of any proposed structure or use with existing structures or uses upon other lots, or other property in the vicinity of the subject property;
6. Objection to the locations of any proposed structure with reference to other lots, or other property in the vicinity;
7. Objection to the grading or landscaping or parking plan for any lot;
8. Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure;
9. Any other matter that, in the judgment of the Planning Board, would render the proposed improvements or use inharmonious with the general plan for improvement of the subject property or with improvements located upon other lots or other property in the vicinity.
(Amended 11/17/14)

3.3 ACTION

Declarant, by and through the Planning Board, may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same subject to specific conditions, or it may deny approval. Upon approval or conditional approval by Declarant of any plans and specifications submitted, a copy of such plans and specifications, or the revised plans, together with any conditions, shall be deposited for permanent record with Declarant, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same. If the Declarant fails to act within 10 business days from the date the plan is deemed complete, the plan is deemed denied. A time extension may be granted in writing by the applicant. (Amended 11/17/14)

3.4 APPEAL (Deleted 11/17/14)

3.5 PROCEEDING WITH WORK

Upon receipt of approval from Declarant pursuant to Section 3.3, the applicant, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement of and shall diligently and continuously pursue the completion of all approved excavation and construction. In all cases, work shall commence within one (1) year from the date of approval, and if work is not so commenced, approval shall be deemed revoked unless Declarant, pursuant to written request made and received prior to the expiration of said one (1) year period, extends the period of time within which work must be commenced.

3.6 COMPLETION OF WORK

Any improvement commenced pursuant hereto shall be substantially completed within two (2) years from the date of Declarant's approval pursuant to Section 3.3, except that if such substantial completion is rendered impossible, or unless work upon the proposed improvements would impose a great hardship upon the applicant to whom Declarant's approval is given, due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of the applicant, Declarant may, upon written request made and received prior to the expiration of the two (2) year period, extend the period of time within which work must be completed. Failure to comply with this section shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Article VII. Nothing in this paragraph shall be deemed to extend any construction start or completion date required by the Planning Board, Zoning Ordinance or other ordinance or regulation.

All disturbed areas on any Lot must be revegetated in accordance with good erosion practice methods within three (3) months if disturbed during the growing season and within nine (9) months if disturbed during the non-growing season.

All revegetation must be completely established within one year from the time of disturbance.

If all elements of the approved plans and specifications are not substantially completed in accordance with the terms and conditions of this Declaration or such terms and conditions as may be included in a deed of conveyance, the owner shall be assessed a late penalty of \$100 for each day beyond the completion deadline that the project is not substantially completed. Said late penalty shall be payable to Declarant, and the owner shall also be obligated to pay any of Declarant's reasonable costs incurred to collect the same, including reasonable attorney's fees and expenses.

Within sixty (60) days from substantial completion, the Owner shall submit two (2) copies of final record drawings to the Declarant, along with a set thereof in such electronic format as may be designated by Declarant.

3.7 DECLARANT NOT LIABLE

Nothing in this Declaration shall be deemed to constitute an undertaking by the Declarant to perform any particular act with respect to the subject property, nor to assume liability or indemnify any person for any damage, loss, or prejudice suffered or claimed by any person on account of:

- a. The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective.
- b. The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications.

- c. The development or use of any lot within Hampden Business and Commerce Park, or enforcement or failure by the Declarant to enforce any of the covenants, conditions, or restrictions contained herein.

3.8 CONSTRUCTION WITHOUT APPROVAL

If any improvement shall be commenced, erected, placed, or maintained upon any lot, or any new use commenced upon any lot, other than in accordance with the approval by the Declarant pursuant to the provisions of this article, such improvement shall be deemed to have been undertaken in violation of this Declaration, then upon written notice from Declarant, any such improvement shall be removed or altered so as to conform to the approval by the Declarant, and any such use shall cease or be altered so as to conform to the approval by the Declarant within thirty (30) days after receipt of such notice. Thereafter, any party who remains in breach of the approval shall be subject to the enforcement procedures set forth in Article VII.

3.9 STARTING TIME AND REPURCHASE OPTIONS

- a. Lots are conveyed with the intent that the owner will build thereon, and not for purposes of speculation. Conveyance of lots shall be specifically made upon the condition that commencement of construction shall begin within one year from the date of said conveyance and that substantial completion of construction, including paving of access ways, walkways and parking lots and the grading and landscaping of the surrounding grounds, shall be substantially completed within two (2) years from the date of Declarant's approval pursuant to Section 3.3. In the event owner shall fail to commence construction within one (1) year from the date of conveyance, the Declarant may at its option and after written notice of 30 days, declare a violation of these covenants and upon tender of the original purchase price for the lot by Declarant to owner, the owner shall, notwithstanding any improvements to the lot, execute and deliver to the Declarant a deed conveying the subject lot to the Declarant. Owner shall have no right, remedy or recourse against the Declarant for the cost or value of any improvements, nor a cause or claim for unjust enrichment, quantum merit, or other similar relief.
- b. In the event any owner of land lying within the Hampden Business and Commerce Park shall desire to sell all or part of the land which at the time is unimproved, then the Declarant shall have the prior right and option to repurchase the unimproved premises proposed to be sold at the same price per acre paid by the Owner for said land when originally acquired from the Declarant.
- c. Prior to any sale of such premises, the owner of such lot, or the owner's successors or assigns, shall notify the Declarant in writing of intention to sell, describing the premises to be sold and the Declarant shall have sixty (60) days from the date of receipt of such notice to exercise its option, and in the absence of written notification sent by the Declarant of its election to exercise said option, such owner shall be free to sell such premises to any person and at any price deemed desirable by such owner.

- d. In the event of any repurchase by the Declarant under paragraphs a, b, and c hereof, the purchaser upon tender of the repurchase price, shall execute and deliver to the Declarant a Quitclaim Deed with Covenant to said premises conveying thereby marketable title to the same free and clear of all encumbrances, except those encumbrances contained in the original deed from Declarant.

3.10 RIGHTS RESERVED TO DECLARANT

- a. The property subject to this Declaration is also subject to the reservation to the Declarant for itself, its successors and assigns, of easements and rights of way ten (10) feet in width along all front lines of all lots and as may be shown on the final subdivision plan for all purposes relating to the installation and maintenance of utilities and/or for the installation and maintenance of drainage ways and structures. The areas encumbered by these easements are parallel, and interior to and adjacent to all lot boundaries and this reservation shall include the right of entry by men and machines. In addition, a 10' pedestrian easement is reserved along all property lines for the purposes of public pedestrian egress.
- b. In recognition of the fact that Declarant, or its successors and assigns, will be undertaking the work of constructing the Hampden Business and Commerce Park, nothing in this Declaration shall be understood or construed to prevent the Declarant, or its successors, assigns, employees, agents, contractors or sub- contractors, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Park, and the disposition of lots by sale, lease, or otherwise.

3.11 WETLAND DISTURBANCES

No disturbances may occur within any delineated wetlands as shown on the "Site Grading and Erosion Control Plan" (Sheets CGJOI and CGI02), prepared by WBRC Architects/ Engineers, dated March 16, 2001, and recorded in the Penobscot County Registry of Deeds in Map Files 2002-275 and 2002-276, respectively, other than filling as specifically shown on said plan, unless said plan is amended with the written approval of the Declarant, and with the requisite governmental approvals. Any such amendments to said plan must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the responsibility of those seeking such amendment(s).

3.12 BUFFER AREAS AND OPEN SPACE

No disturbances may occur within any delineated stormwater buffer treatment areas or open space areas designated on the final subdivision plan, except for the removal of dead or dying trees or shrubs, and in accordance with the requirements of the Site Location of Development Permit or Natural Resource Protection Act Permit, as amended, unless said plan is amended with the written approval of the Declarant, the Hampden Planning Board and Maine Department of Environmental Protection (MDEP). Any such amendments for alternative treatment methods or areas must be recorded in said Registry. Costs of any such amendments, including permitting, shall be the

responsibility of those seeking such amendment(s). Exceptions to this restriction include the annual maintenance or mowing of non-wooded buffers, low impact outdoor recreation and recreational trail development within open space areas retained by the Declarant, and maintenance or repair of utilities within easements identified on the subdivision plan. In the event that MDEP requires that a Declaration be recorded in the Registry of Deeds, the more strict provisions shall apply.

ARTICLE IV DEVELOPMENT STANDARDS

4.1 GENERAL REQUIREMENTS

All improvements shall comply in every respect with all applicable laws and ordinances of the United States, the State of Maine, and the Town of Hampden, including zoning restrictions, landscaping, and site development standards under applicable Town of Hampden ordinances.

4.2 MINIMUM SETBACK (Amended 10/15/07)

Notwithstanding any lesser setback requirements under Town of Hampden zoning ordinances, no improvements of any kind, and no part thereof, shall be placed closer than permitted by Declarant to an interior property line or right-of-way, except as otherwise provided in Section 4.3.

- a. Front, side and rear setbacks – no buildings shall be placed outside the building area limit for each lot as depicted on the subdivision plan, or within 20' of a property line.
- b. Building to parking setback– no less than 5' between parking spaces and principal buildings, except no less than 20' for entrance drives.
- c. Impervious area setbacks– no paved areas, parking spaces, loading spaces and associated driveways and access aisles shall be placed outside the impervious area limit for each lot as depicted on the subdivision plan, or within 20' of the front property line or 10' of the side and rear property lines, except for entrance drives.

4.3 EXCEPTIONS TO SETBACK REQUIREMENTS

The following improvements, or parts of improvements, are specifically excluded from the setback requirements set forth in Section 4.2:

- a. Walkways;
- b. Fences, subject to the requirements set forth in Section 4.7;
- c. Landscaping and irrigation systems;
- d. Low planters;
- e. Business park identification signs, directional and parking signs, and signs identifying the occupant of a lot, subject to the prior written approval of Declarant, compliance with the Town of Hampden's Zoning Ordinance, and the requirements of Section 4.5 of this Declaration;
- f. Lighting facilities, subject to the prior written approval of Declarant; and

- g. Underground utility facilities and sewers.

4.4 STRUCTURES AND ARCHITECTURAL STANDARDS

The provisions of this section shall only apply to Phase 1 of the Park. (Amended 11/17/14)

- a. All buildings and other site improvements shall be built in conformance with all applicable laws, including any building code adopted by the Town of Hampden or the State of Maine. (Amended 11/17/14)
- b. Building primary facades (front face of building) visible from Route 202 and the Business & Commerce Park contained in Phase 1 of the final subdivision plan's road network shall incorporate design elements which create visual interest. These primary facing facades shall not be blank walls, but shall incorporate windows, entry treatments, variations in plane, variation in roof shapes, and other architectural features to create visual interest, and to distinguish them from simple industrial structures. Development of continuous covered porches or arcades serving multiple businesses is encouraged. Building facades shall be designed and detailed to develop a human scale, present in the appearance of commercial storefront and recognizable entry elements. For the purposes hereof, the term human scale shall mean that the building facade shall use construction products or detailing which refer to modules or scale of the human body. (Amended 11/17/14)
- c. Color scheme and finish for all metal, including roofs, shall be pre-painted. Trim (window, doors, roof edge, eaves, etc.) shall be articulated by color different than the building's siding color. Generally, colors should relate to the setting (landscape). Bold hues and bright saturated colors shall be discouraged.
- d. Buildings less than 10,000 s.f. footprint shall be proportioned such that the roof eave to ridge heights do not exceed the building facade height (ground to eave). Building footprint shall be contained within the building area limits designated on the approved final subdivision plan.
- e. Roof slopes shall be 5"/12" minimum for buildings with footprints less than 10,000 s.f., and ¼"/12" for others. Provided, however, that roof slopes for metal frame buildings with footprints less than 10,000 s.f. shall be a minimum of 3"/12". Roof eaves shall be projected 6" minimum beyond the exterior of all wall surfaces and trimmed, and 12" beyond for buildings having less than 10,000 s.f. footprint. (Amended 10/15/07).
- f. Acceptable exterior materials include:
 - 1) Finished concrete.
 - 2) Finished masonry or masonry units, such as stone, brick, structural facing tile and ceramic tile.
 - 3) "Shallow" corrugated or flat metal panels.
 - 4) Aluminum/glass curtain wall systems.
 - 5) Wood siding, to include solid wood materials such as clapboards but not including pre-manufactured panels such as T1-11.
 - 6) Architectural grade vinyl siding.

- 7) Aluminum doors and window systems.
- 8) Exterior insulation finish systems (EIFS).

4.5 SIGNS

No sign shall be permitted on any lot unless approved by Declarant in writing.

No sign shall be approved other than signs identifying the building or the business of the occupant of a lot, business park identification signs, informational, and vehicular control signs, signs offering the lot for sale or lease, and temporary development signs. All signs must comply with the Hampden Zoning Ordinance and the following requirements:

- a. Freestanding Occupancy Identification Signs shall be no more than twelve (12) feet in height above the average grade elevation of the site around the sign; shall be located on the frontage facing the Hampden Business and Commerce Park access road, no more than twenty-five (25) feet nor less than eight (8) feet from the front property line; nor shall such signs be supported above the base or ground immediately beneath them by a single post. They shall be unlit, or indirectly lit by either back lighting through opaque sign facing or by spotlight. No neon, no intermittent or moveable character signs shall be permitted.
- b. Occupant Identification Signage on a Building shall not extend above a parapet or eaves line (or obscure such building line) and shall not be erected on more than two walls of any building.
- c. Deviations from these standards may be granted by the Declarant upon submission of a written request.

4.6 LANDSCAPING

Within ninety (90) days following completion of construction each lot shall be landscaped in accordance with the plans and specifications, except when the completion of the landscaping would impose a great hardship upon the applicant due to weather or climatic conditions. Declarant may, upon written request made and received prior to the expiration of the ninety (90) day period, extend the period of time within which work must be completed.

- a. The area of each lot between any street and any minimum setback line shall be landscaped with a combination of trees, shrubs, and other ground cover providing a buffer and transition zone from streetscape to site. All other undeveloped portions of a lot shall be landscaped in a complementary and similar manner.
- b. The perimeters of parking areas shall be landscaped with year round plant material or earth berms or a combination of both to screen said areas from view and lessen the impact on neighboring sites.
- c. Within parking areas, parking spaces shall be broken up by landscaped islands such that for every 20 parking spaces there is one landscaped island containing at least 650 square feet, at least one deciduous tree, and planted with low shrubbery.
- d. After completion, such landscaping as is herein required shall be maintained in a slightly and well-kept condition. If, in Declarant's reasonable opinion, the required landscaping is not

maintained in a sightly and well-kept condition, Declarant shall be entitled to the remedies set forth in Article VII.

e. Minimum planting sizes:

Deciduous shade trees	2" Caliper
Coniferous trees	5-7' Height
Deciduous shrubs	18-24"
Coniferous shrubs	18-24"

Planting sizes may be waived at the Declarant's discretion and approval by landscape architect.

f. (Deleted 11/17/14)

The applicant shall provide a suitable performance bond or other form of security to guarantee the performance and completion of all planting required pursuant to this section, which bond or security shall also guarantee plantings for a period of one (1) year after installation. Landscaping shall be maintained thereafter by the property owner at a level consistent with the site plan approval. In determining the amounts of planting to be required, the Declarant shall take into account:

- 1) Existing trees, shrubs, evergreens and other vegetation to be preserved on the site.
- 2) Visibility of incompatible or unsightly areas from roads and/or adjoining properties.
- 3) Shade trees and landscape strips in relation to existing and planned streets.

4.7 FENCES

All fences are subject to the provisions of this section.

- a. A fence six feet high or less may be placed up to but not on a property line so that both sides of the fence can be erected and maintained from the property of the person erecting the fence.
- b. A fence more than six feet high shall be considered a structure subject to normal setback requirements for the zoning district, unless otherwise approved by the Declarant during site plan review.
- c. A fence shall be erected so that its "good side" shall face an abutting property or roadway.
- d. Any fence located adjacent to a publicly owned or maintained sidewalk, bike path or pedestrian way shall not be located closer than two feet to such public facility.
- e. The Declarant reserves the right to approve the location and design of all fences, and no fence shall be constructed without written approval from the Declarant.

4.8 PARKING AREAS, LOADING AREAS, AND DRIVEWAYS

Off-street parking adequate to accommodate the parking needs of the development and the employees and visitors thereof shall be provided for each Lot. The intent of this provision is to eliminate the need for any on-street parking. If parking requirements increase as a result of a change in the use of a lot or in the number of persons employed thereon, additional off-street

parking shall be provided so as to satisfy the intent of this section. All parking areas shall conform to the following standards:

- a. Parking areas shall be paved so as to provide dust free, all weather surfaces.
- b. Each parking space provided shall be designated by lines painted upon the paved surface.
- c. Provision shall be made on each site for any necessary vehicle loading, and no on-street vehicle loading shall be permitted.
- d. Loading dock areas shall be set back, recessed, or screened to minimize visibility from neighboring properties or streets.
- e. No more than one (1) entrance or exit driveway per Lot shall be permitted except in extraordinary circumstances approved by the Declarant, or as identified on the master plan.

4.9 STORAGE AREAS

All storage of bulk materials, including but not limited to such things as coal, wood, pulp, raw materials shall be located completely within a building or other space adequately screened from public view, as approved by the Design Review Board. Any fences, walls or plantings used for such screening purposes shall be located not less than twenty (20) feet from any property line. Outside storage of materials, supplies, or equipment, including trucks or other motor vehicles, shall be permitted only if:

- a. The material equipment, or objects stored outside are necessary and accessory to the activities regularly conducted on the premises;
- b. The area devoted to outside storage is limited and does not dominate the site or appear unattractive from neighboring sites, as determined by the Design Review Board.
- c. The area is screened on the sides and harmonizes with the architecture, landscaping, design, and appearance of neighboring structures and other surroundings, and in reasonably close conformance to the master plan; and
- d. The area is located upon the rear portions of a lot, unless otherwise approved in writing by Declarant.

4.10 LIGHTING

Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas and public highways. Lights shall be of a "downshield luminaire" type where the light source is not visible from any public highway or from adjacent properties.

Only fixtures, which are shielded, do not expose a light source, and which do not allow light to "flood" the property are permitted to be attached to buildings. All lighting must be approved in writing by Declarant.

When illumination is required for part or all of a structure, the illuminating device shall be designed, located and adjusted so as to not cast light directly on adjacent properties or roadways.

4.11 SPECIAL PROVISIONS

In addition to the requirements of Section 4.1-4.8, site plans for development in the Hampden Business and Commerce Park shall be consistent with the requirements of this sub-section. The Hampden Business and Commerce Park is to become a pleasant commercial area in which all visual and functional elements form an integrated design plan. Route 202 connects Hampden and Bangor centers and the site lies in the path of planned recreation trails and alternative transportation links. Site plans for proposed new developments must acknowledge this basic pattern and reinforce it by defining public spaces and walkways, and by providing appropriate landscaping and features.

Design Requirements

- a. New buildings shall be sited to create pleasant outdoor spaces, and to create visual and pedestrian linkages between existing buildings.
- b. Public spaces shall be created to connect to and reinforce the circulation pattern and recreation paths. These public spaces shall be designed at a human scale and furnished with appropriate features such as benches, plantings, public sculptures, bike racks, and pedestrian scaled and styled light fixtures.
- c. Public walkways shall be created and shall be suitably landscaped and furnished with attractive pavement, plantings, pedestrian scaled and styled light fixtures, and other amenities.
- d. The location and design of buildings, public spaces and walkways shall create pleasant and effective termini for views to and from the site.
- e. The southerly views from this area towards the agricultural land and Penobscot River beyond are an important public resource. Prominent public vantage points for these views must be identified and the visual corridors from these vantage points to this resource must be protected and enhanced. Building envelopes have been defined which will prevent these visual corridors from being interrupted by new buildings or landscaping.
- f. The wetlands and waterways shall be utilized as the focal point for the public open space, which shall be designed as a more natural open space rather than developed parks, plazas, or greens. The open space should be accessed by walkways and bikeways, and should be accessible from the buildings.

ARTICLE V USES AND OPERATIONS

5.1 NO FURTHER SUBDIVISION OF LOTS

No lot as shown on the Final Subdivision Plan shall be subdivided without the prior approval of the Declarant and the Hampden Planning Board. No building shall be constructed, erected or placed on any lot other than shown on said Plan, or an amended subdivision plan as approved by the Planning Board and recorded in the Penobscot County Registry of Deeds.

5.2 PERMITTED USES

Lots shall be used for light manufacturing, assembly, research and testing laboratories, professional and other business offices, call centers, warehouses and other acceptable uses permitted by the Town of Hampden Zoning Ordinance, provided that Declarant specifically consents to such use in writing. (Amended 11/17/14)

Such approved use shall be performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to other lots or property, such as, but not limited to, vibration, sound, electro mechanical disturbances, electromagnetic disturbances, radiation, air or water pollution, dust, or emission of odorous, toxic, or nontoxic matter (including steam). Certain activities that cannot be carried on within a building may be permitted, provided Declarant specifically consents to such activity in writing and further provided that such activity is screened so as not to be highly visible. The screening or fencing shall be attractive from neighboring property and streets. All lighting is to be shielded so as not to be directly visible from neighboring property or to cause glare on neighboring streets and properties.

5.3 PROHIBITED USES

The following operations and uses shall not be permitted on any property subject to this Declaration:

- a. Junk yards; wrecking yards; automobile graveyards; or automobile recycling business;
- b. Recycling facilities (unless accessory to the primary activities regularly conducted on the premises);
- c. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
- d. Refining of petroleum or of its products;
- e. (Deleted 11/17/14)
- f. Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to Article III;
- g. Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or other refuse;
- h. Uses prohibited by federal, state, or local law, including applicable Town of Hampden Zoning Ordinance provisions; (Amended 11/17/14)
- i. No use shall be made of any lot or any portion thereof which would allow access to transportation or utility systems through such lot to any property not controlled by the Town of Hampden without approval of the Town of Hampden;
- j. Non-taxable uses are prohibited unless approved by the Hampden Town Council because they are generally inconsistent with the goals of Recital 4 above.

5.4 NUISANCES

No nuisances shall be permitted to exist or operate upon on any Lot so as to be offensive or detrimental to any adjacent Lot or property or to its occupants. A nuisance shall include, but not be limited to, any of the following conditions:

- a. Any use, excluding reasonable construction activity, of the Lot that emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any stream, river, or other waterways that, in the opinion of the Declarant, may adversely affect the health, safety, comfort, or intended use of property by persons within the area. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the subject property or any part thereof in violation of any regulation of the Town of Hampden;
- b. The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substances into the atmosphere, which discharge, in the opinion of Declarant, may be detrimental to the health, safety, or welfare of any person or may interfere with the comfort of persons within the area or may be harmful to property or vegetation;
- c. The radiation or discharge of intense glare or heat, or atomic, electromagnetic, microwave, ultrasonic, laser, or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the site or lot upon which the operation is conducted;
- d. Excessive noise. At no point outside of any lot shall the sound pressure level of any machine, device, or any combination of same, from any individual plant or operation, be offensive or detrimental to any adjacent lot or property or to its occupants, as determined by the Design Review Board;
- e. Excessive emissions of smoke, steam, or particulate matter. Emission of dust, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation, or property, or which could soil or stain persons or property, at any point beyond the lot line of the establishment creating that emission shall be prohibited. All such activities shall also comply with applicable Federal and State regulations;
- f. Ground vibration. Buildings and other structures shall be constructed and machinery and equipment installed and insulated on each lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point exterior to any lot.
- g. Trash and refuse outdoors if not contained in a proper receptacle in a refuse collection area.
(Amended 11/17/14)

5.5 CONDITION OF PROPERTY

The occupant of any lot shall at all times keep it and the buildings, improvements, and appurtenances thereon in a safe, clean, and wholesome condition and comply, as its own expense, in all respects with all applicable governmental, health, fire, and safety ordinances, regulations,

requirements, and directives, and the occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such lot.

5.6 MAINTENANCE OF GROUNDS

Each occupant shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaping on his/her lot. Such maintenance and repair shall include, without limitation, up to the public travel way including any easements, esplanades, tree protection zone, and joint or shared parking areas. Each occupant shall be responsible for:

- a. Maintenance of all parking areas, driveways, and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefor as shall, in all respects, be equal thereto in quality, appearance, and durability, the removal of debris and waste material and the washing and sweeping of paved areas, the painting and repainting of striping markers and directional signals as required;
- b. Cleaning, maintenance, and re-lamping of any external lighting fixtures; and
- c. Performance of all necessary maintenance of all landscaping, including the trimming, watering, and fertilization of all grass, groundcover, shrubs, or trees, the removal of dead or waste materials, the replacement of any dead or diseased grass, groundcover, shrubs, or trees.

5.7 REMEDIES FOR FAILURE TO MAINTAIN AND REPAIR

Each lot owner and occupant thereof shall promptly maintain and repair their premises per Article V but if owner or occupant shall fail to do so after fifteen (15) days written notice by Declarant, then the Declarant may pursue those remedies described in Article VII.

5.8 REFUSE COLLECTION AREAS

All outdoor refuse collection areas shall be screened to minimize visibility from neighboring property or streets and setback at least ten (10) feet from the Street right-of-way. No refuse collection area shall be permitted between a subdivision street and the front of a building.

5.9 REPAIR OF BUILDINGS

No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

5.10 PUBLIC UTILITIES

Declarant reserves the exclusive right to approve installation of utility lines across the subject property. Declarant will consult with any Lot owner before such installation and shall attempt to

accommodate Lot owner concerns. The appropriate governmental authority must approve the construction and operation of public utilities in rights-of-way dedicated to the public.

5.11 UTILITY LINES AND ANTENNAS

No sewer, drainage, or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals, including telephone, television, microwave, or radio signals, shall be constructed without approval by the Declarant. Notwithstanding the requirements of the Hampden Zoning Ordinance, no antenna or tower for the transmission or reception of telephone, television, microwave, or radio signals shall be placed on any Lot within the subject property without the consent of the Declarant, which shall not be unreasonably withheld. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone power or telephone facilities incidental to the construction or repair of buildings on the subject property.

5.12 MECHANICAL EQUIPMENT

All mechanical equipment, utility meters, storage tanks, air conditioning equipment, and similar items shall be screened with landscaping or attractive architectural features integrated into the structure itself, and shall not be visible from neighboring properties or street rights of way as defined in Article I.

5.13 MINERAL EXPLORATION

No portion of the subject property shall be used in any manner to explore for or to remove any steam, heat, oil, or other hydrocarbons, gravel, earth, or any earth substances or other mineral of any kind, provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of improvements within the subject property.

5.14 OTHER OPERATIONS AND USES

Operations and uses that are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by Declarant in accordance with the procedures set forth in Article III of this Declaration. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this Declaration or upon the occupants thereof, but shall be in the sole discretion of Declarant.

**ARTICLE VI
MODIFICATION AND REPEAL**

6.1 MODIFICATION BY DECLARANT

The Declarant, at its sole discretion, may modify or amend the provisions of this Declaration, provided, however, that:

- a. Prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary;
- b. A public hearing on the proposed amendment will be held by the Town Council;
- c. No such modification or amendment shall be effective until the owners and occupants have been given thirty (30) days prior written notice of the proposed change and a proper instrument in writing has been executed and recorded.

**ARTICLE VII
ENFORCEMENT**

7.1 ABATEMENT AND SUIT

The Declarant may enforce any breach or violation of the provisions of this Declaration in either the Superior Court of Penobscot County or the U.S. District Court, Bangor, Maine. In the event the Declarant seeks legal redress, the Declarant may pursue, at its option, both the owner and any related or non-related occupant for money damages, specific performance or any other form of legal or equitable relief. Notice of violation or breach of any covenant, condition or restriction or provision of this Declaration shall be provided by the Declarant in writing, and upon a failure to correct or abate said violation after 30 days, Declarant may pursue such legal or equitable action. In addition to the above remedies, if such violation shall continue for more than 30 days, the Declarant may enter upon the lot where said violation or breach exists and summarily correct, abate or remove, at the expense of owner and/or occupant, any improvements, structure, thing or condition deemed by the Declarant to be in violation of or contrary to the provisions of this Declaration. No such entry by the Declarant or its agents shall be deemed a trespass, nor shall the Declarant or its agents be liable for any actions taken hereunder to remedy or remove a violation. All costs incurred by Declarant shall be levied as an assessment against the owner of the lot(s) in question. If any such assessment is not paid within thirty (30) days of an invoice therefor issued by Declarant, such assessment shall then become delinquent and shall, together with interest thereon at the rate of twelve (12) percent per annum and the cost of collection thereof (including reasonable attorney's fees) become a continuing lien on the lot(s) against which such assessment is made and shall bind such lot(s) in the hands of the owner(s), and the owner's successors and assigns, and shall also be a continuing personal obligation of the owner(s) against whom the assessment is levied. The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a financial institution.

7.2 RIGHT OF ENTRY

During reasonable hours and upon reasonable notice and subject to reasonable security requirements, Declarant, or its agents, shall have the right to enter upon and inspect any lot and the improvements thereon covered by this Declaration for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither Declarant nor its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

7.3 DEEMED TO CONSTITUTE A NUISANCE

The result of every act or omission whereby any covenant, condition, or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or in equity against an owner or occupant shall be applicable against every such result and may be exercised by Declarant.

7.4 ATTORNEY'S FEES

In the event the Declarant initiates any legal or equitable action to enforce these covenants, and it prevails in that action, the Declarant shall be entitled to its reasonable attorney's fees. In no event and under no circumstances shall Declarant be responsible for owner's or occupant's attorney's fees.

7.5 FAILURE TO ENFORCE IS NO WAIVER

The failure of Declarant to enforce any covenant, condition, restriction, or provision of this Declaration shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases nor to the right to enforce any other restriction.

ARTICLE VIII ASSIGNMENT

Any and all of the rights, powers, and reservations of Declarant herein contained may be assigned to any person, partnership, corporation, or association that will assume the duties of Declarant pertaining to the particular rights, powers, and reservations assigned, and upon any such person, partnership, corporation, or association evidencing its consent in writing to accept such assignment and assume such duties, the assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Any assignment made under this article shall be recorded in the Registry of Deeds.

**ARTICLE IX
CONSTRUCTIVE NOTICE AND ACCEPTANCE**

Every person or entity who now or hereafter owns or occupies any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration, regardless of whether any reference thereto is made in any document by which that person acquired an interest in the subject property.

**ARTICLE X
WAIVER AND FAILURE TO ENFORCE**

The Declarant may after public hearing, waive one or more of the covenants, conditions, and restrictions contained in this Declaration. Neither Declarant, nor its successors or assigns, shall be liable to any owner or occupant of the subject property by reason of any mistake in judgment, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. No owner or occupant of property in the Hampden Business and Commerce Park may bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

**ARTICLE XI
RUNS WITH LAND**

All covenants, conditions, restrictions, and provisions contained in this Declaration are made for the direct, mutual, and reciprocal benefit of each and every lot of the subject property; shall create mutual equitable servitudes upon each lot in favor of every other lot; shall create reciprocal rights and obligations between respective owners or occupants of all lots, their heirs, successors, and assigns; and shall, as to the owner or occupant of each lot, their heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other lots, except as herein provided otherwise.

**ARTICLE XII
RIGHTS OF MORTGAGEES**

No breach of any covenant, condition, restriction or provision herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any mortgage now or hereafter granted on the subject property or a portion thereof, provided, however, that if any portion of said property is transferred under a foreclosure of any mortgage or by a deed in lieu of foreclosure, any successors and assigns shall hold any and all property so transferred subject to all of the covenants, conditions, restrictions and provisions contained in this Declaration.

**ARTICLE XIII
CAPTIONS**

The captions of articles and sections herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular article or section to which they refer.

**ARTICLE XIV
EFFECT OF INVALIDATION**

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

**ARTICLE XV
NOTICES**

Any notices required to be sent to any owner or occupant under the provisions of this Declaration shall be deemed to have been properly sent when mailed by U.S. mail, postage prepaid, to the last known address of the person as it appears in the records of the Assessor of the Town of Hampden. Owner and occupant shall notify the Assessor of any change of address.

IN WITNESS WHEREOF, the Town of Hampden has caused this Amended and Restated Declaration to be duly executed on its behalf as of this 17 day of September, 2015.

Cheryl M Johnson
Witness Cheryl M Johnson

Town of Hampden
By: *Angus G Jennings*
Angus G. Jennings
Its Town Manager

STATE OF MAINE
PENOBSCOT, ss.

September 17, 2015

Personally appeared the above-named Angus Jennings in his stated capacity and acknowledged the foregoing instrument to be his free act and deed in such capacity and the free act and deed of said Town of Hampden.

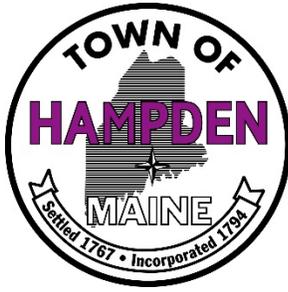
PENOBSCOT COUNTY, MAINE
Susan F. Bulley
Register of Deeds

Before me,
Denise R. Hodsdon
Notary Public
Printed Name: DENISE R. HODSDON

DENISE R. HODSDON
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES
MARCH 3, 2016



Town of Hampden



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner *KME*
Date: November 13, 2017
RE: Potential Coldbrook Corners TIF District

Discussion has begun on a potential new Tax Increment Financing (TIF) District in Hampden, at the corners of Coldbrook Road and Route 202. Noreen Norton, our consultant on this project, has provided the following information and will discuss with the committee at the Nov. 15 meeting.

The objectives of this potential district:

- Support the developer of the Tradewinds store so the Town will secure the investment and improve likelihood of project success;
- Create opportunities for future new investments within the District;
- Provide resources (e.g. TIF revenues) for municipal investments that will encourage additional new commercial development and benefit Hampden residents; and
- Maximize the value of new tax dollars by sheltering new value from tax shift.

For future discussion with Southstreet Development, considerations for a Credit Enhancement Agreement include:

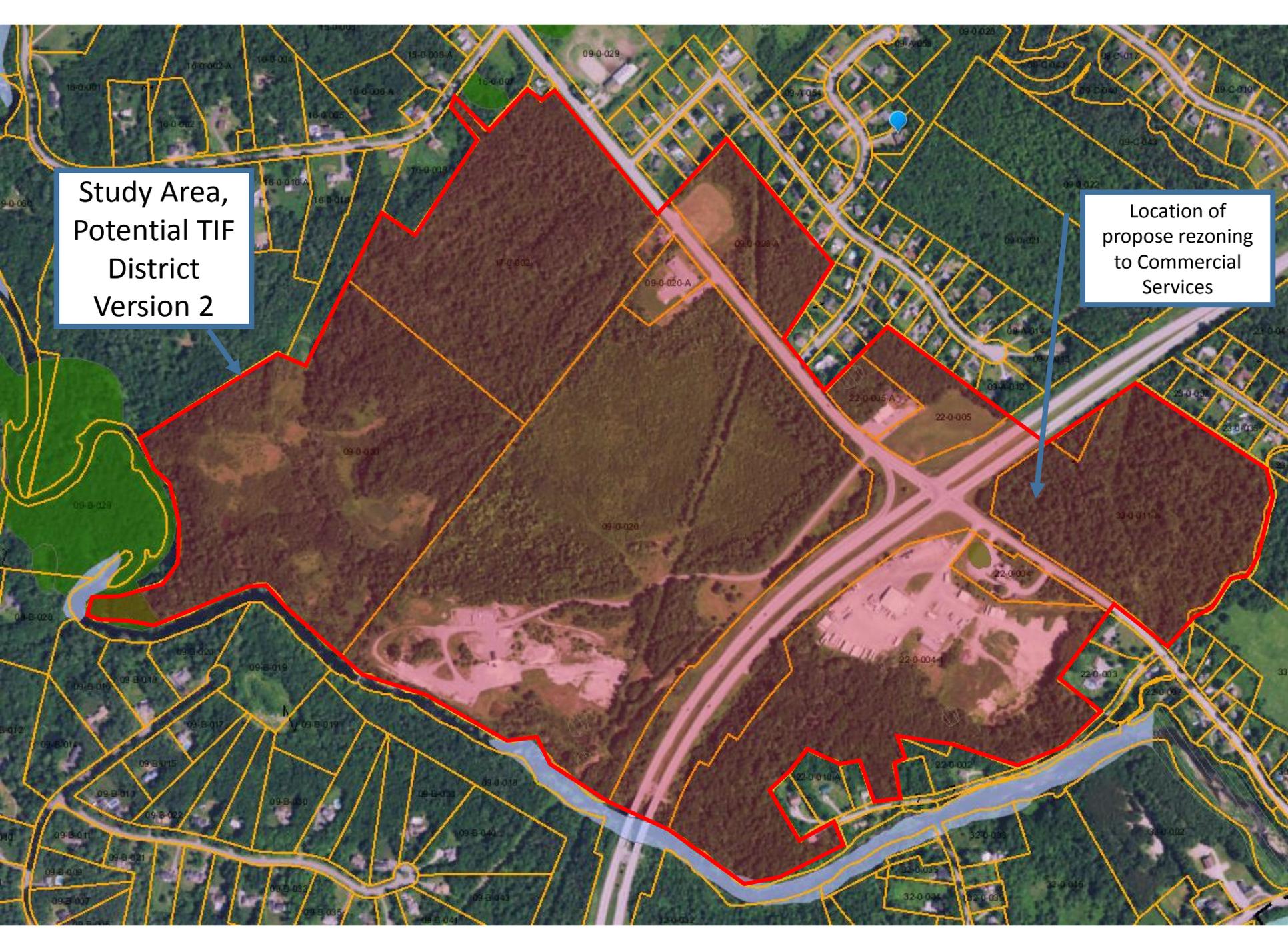
- Developer Request / Need
- TIF Policy
- Duration (years) of reimbursement
- Net Reimbursement Percentage
- Would a tiered approach add value?
- Timing-hard start date vs. trigger to begin reimbursement period

The following documents are attached for review and discussion at the meeting:

1. Draft map of TIF District boundaries
2. Authorized costs in TIF Districts; blank worksheet based on state law allowances
3. Excerpt of the same for the Hampden Business Park (as an example)
4. The Town's current TIF Policy

Study Area,
Potential TIF
District
Version 2

Location of
propose rezoning
to Commercial
Services



AUTHORIZED COSTS IN TAX INCREMENT FINANCING DISTRICTS

MRS TITLE 30-A, CH. 206 §5225	PROPOSED MUNICIPAL ACTIVITY?	PROPOSED BUDGET
<i>COSTS OF IMPROVEMENTS MADE WITHIN THE DISTRICT</i>		
1. <u>Capital costs</u> , such as <ol style="list-style-type: none"> a. the acquisition or construction of land, improvements, public ways, buildings, structures, fixtures and equipment, arts district, new or existing recreational trail, commercial or transit-oriented development district; b. Demolition, alteration, remodeling, repair or re-construction of existing buildings, structures and fixtures; c. Site preparation and finishing work; d. All fees and expenses that are eligible to be included in the capital cost of such improvements; e. Credit enhancement /omnibus feature. 		
2. <u>Financing costs</u> , such as closing costs, interest paid, and premiums for early redemption;		
3. <u>Real property assembly costs</u> ;		
4. <u>Professional services costs</u> ; including licensing, architectural, planning, engineering, legal;		
5. <u>Administrative costs</u> (including reasonable time spent by municipal employees to implement the TIF program);		
6. <u>Relocation costs</u> ; including relocation payments made following condemnation;		
7. <u>Organizational costs</u> relating to the establishment or amendment of the district;		
8. <u>Ongoing costs</u> in a transit-oriented district for new system or new portion of an existing system and limited to operator salaries and fuel and vehicle parts replacements.		

COSTS OF IMPROVEMENTS MADE *OUTSIDE DISTRICT BUT DIRECTLY RELATED TO OR MADE NECESSARY BY THE DISTRICT*

<p>1. Portion of the costs related to construction, alteration or expansion of <u>any facilities not located in the district that are required due to improvements or activities within the district</u>, such as public infrastructure improvements;</p>		
<p>2. Costs of <u>public safety improvements</u> made necessary by the district;</p>		
<p>3. Costs of funding to <u>mitigate any adverse impact of the district</u> on the municipality and its constituents. This funding may be may be used for public facilities and improvements if:</p> <ul style="list-style-type: none"> a. The public facilities are located in a downtown TIF district and b. The entire tax increment of the downtown district is committed to that district. 		
<p><u>This space left blank intentionally</u></p>		

COSTS RELATED TO ECONOMIC DEVELOPMENT, ENVIRONMENTAL IMPROVEMENTS, FISHERIES AND WILDLIFE OR MARINE RESOURCES PROJECTS, RECREATIONAL TRAILS OR EMPLOYMENT TRAINING WITHIN THE MUNICIPALITY

1. <u>Economic development programs or events</u> developed by the municipality, or the <u>marketing of the municipality</u> as a business location;		
2. <u>Environmental improvement projects</u> developed by the municipality for commercial or for arts district use or related to such activities;		
3. Establishment of <u>permanent economic development revolving loan funds, investment funds and grants</u> ;		
4. <u>Skills development and training services</u> and equipment, including scholarships for jobs created or retained within the municipality;		
5. <u>Quality child care services</u> , including financing costs and construction, staffing, training, certification and accreditation costs related to child care;		
6. <u>New or existing recreational trails</u> determined to have significant potential to promote economic development.		
7. <u>New or expanded transit service, limited to:</u> a. Capital costs including vehicles conveyances and related equipment, related structures, benches signs, b. Ongoing costs of adding to or creating a new transit service (limited to transit operator salaries, vehicle fuel and parts replacements);		
8. <u>Development of fisheries or marine resources projects</u>		
9. <u>TIF revenues to be used as match for applicable State and Federal Economic Development Grant Programs</u>		

TABLE 1
Town of Hampden Business Park TIF District Project Costs

Project Description	Cost Estimate	Statutory Cite
Investments Within the District		
<p>1. <u>Capital Costs including but not limited to:</u></p> <ul style="list-style-type: none"> • The acquisition or construction of land, improvements, public ways, infrastructure, buildings, structures, fixtures and equipment for public or commercial development district use. • The demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; • Site preparation and finishing work; • Fees and expenses including but not limited to licensing, permitting expenses, project design and planning, engineering, architectural, legal and accounting expenses. 	\$360,000	30-A M.R.S.A. § 5225(1)(A)(1)(a),(b), (c), and (d)
<p>2. <u>Financing Costs:</u> TIF Revenues may be used to finance any of the other projects listed herein. Such costs may include, but are not limited to, closing costs, issuance costs and interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity.</p>	\$120,000	30-A M.R.S.A. § 5225(1)(A)(2)
<p>3. <u>Professional service costs:</u> including but not limited to, licensing, architectural, planning, engineering, consultant and legal expenses.</p>	\$120,000	30-A M.R.S.A. § 5225(1)(A)(4)
<p>4. <u>Administrative Costs:</u> A dedication of reasonable reimbursement from District revenues to defray administrative costs in connection with the implementation of the development program, including pro-rated municipal staff salaries.</p>	\$600,000	30-A M.R.S.A. § 5225(1)(A)(5)
<p>5. <u>Organizational Costs:</u> relating to the establishment of the district, including, but not limited to, the costs of conducting environmental impact and other studies and the costs informing the public about the creation of the District and</p>	\$120,000	30-A M.R.S.A. § 5225(1)(A)(7)

Project Description	Cost Estimate	Statutory Cite
implementation of the project plans.		
Investments Made Necessary by District		
<p>6. <u>Infrastructure Costs:</u> Improvements directly related to and made necessary by the District including, but not limited to areas affected by the increased impervious surface area caused by the Project: watershed management, catch basin and culvert repair along Sucker Brook and/or its tributaries. Use of TIF Revenues for such improvements will be limited to improvements within the District and improvements outside the District pro-rated to include only the portion of improvements made necessary by the Project.</p>	\$3,120,000	30-A M.R.S.A. § 5225(1)(B)(1)
<p>7. <u>Public Safety:</u> As development occurs within the District significant increases in traffic are anticipated that will require measures to address safety concerns outside the District boundaries. TIF Revenues will be used to address those concerns through measures such as, but not limited to, installation of turning lanes, signalization, or other traffic control; or fire protection equipment & maintenance if development requires equipment not currently owned by the municipality.</p>	\$960,000	30-A M.R.S.A. § 5225(1)(B)(2)
<p><u><i>This space left intentionally blank</i></u></p>		

Project Description	Cost Estimate	Statutory Cite
Investments Related to Economic Development		
<p>8. <u>* / # Costs of funding economic development programs and/or events</u>: funding the development by the municipality of economic development programs and/or events marketing of the municipality as a business location and planning for economic development within the Town of Hampden, including but not limited to, Economic Development Strategic Planning, Feasibility Studies for a Downtown Development District, Downtown Redevelopment Plan, Transportation Planning, Broadband Feasibility Study, Utilities expansion feasibility etc. Pro-rated costs of staff salary or consultant fees to oversee the TIF program and to promote economic development within the Town.</p>	\$1,800,000	30-A MRSA §5225 (1)(C)(1)
<p>9. <u>* / # Economic Development Program Support</u> Pro-rated share of dues to organizations that provide economic development support to the Town, such as the Eastern Maine Development Corporation. Such funding may include additional economic development services and contracts.</p>	\$960,000	30-A MRSA §5225 (1)(C)(1)
<p>10. <u># Costs of funding environmental improvement projects</u> related to commercial activities in Hampden. Such projects could include impact studies and watershed management in areas that affect, or are affected by commercial development in Hampden.</p>	\$240,000	30-A MRSA §5225 (1)(C)(2)
<p>11. <u># Costs of funding to establish permanent economic development revolving loan funds, investment funds and grants.</u></p>	\$1,200,000	30-A MRSA §5225 (1)(C)(3)

Project Description	Cost Estimate	Statutory Cite
<p>12. # <u>Costs of services and equipment to provide skills development and training</u>, including scholarships to in-state educational institutions or to online learning entities when in-state options are not available, for jobs created or retained within Hampden. Expand Broadband Access to Hampden commercial and industrial areas to improve access to training and educational opportunities.</p>	\$960,000	30-A MRSA §5225 (1)(C)(4)
<p>13. */# <u>Costs relating to planning, design, construction, maintenance, grooming and improvements to new or existing recreational trails</u> determined by the department to have significant potential to promote economic development, including bridges that are part of the trail corridor, used all or in part for all-terrain vehicles, snowmobiles, hiking, bicycling, cross-country skiing or other related multiple uses. Trail systems are prevalent and active in Hampden, drawing visitors from surrounding communities. Hampden's numerous recreational areas, with facilities and trails, serve as a destination for family picnicking and recreation. Opportunities are being continually explored to expand and enhance this asset.</p>	\$360,000	30-A M.R.S.A. § 5225(1)(C)(6)
<p>14. <u>Costs associated with a new or expanded transit service</u>, limited to transit service capital costs, including but not limited to: transit vehicles such as buses, ferries, vans, rail conveyances and related equipment; bus shelters and other transit-related structures; and benches, signs and other transit-related infrastructure.</p>	\$240,000	30-A M.R.S.A. § 5225(1)(C)(7)(a)
<p>15. # <u>TIF revenues to be used as match for applicable State and Federal Economic Development Grant Programs</u> To be used for purposes identified as authorized project costs in 30-A M.R.S.A. § 5225.</p>	\$240,000	30-A M.R.S.A. § 5230
Total Municipal Investment Plan Costs:	\$11,400,000	

/# Projects identified with an asterisk () share funding with Dennis Paper & Foodservice TIF and with a hashtag (#) share funding with Coldbrook Road & Emera Maine Hampden TIF; both currently active TIF Districts in the Town of Hampden.

TOWN OF HAMPDEN

TAX INCREMENT FINANCING POLICY

The following are the Town of Hampden's Tax Increment Financing (TIF) policy and application guidelines.

A Tax Increment Financing District is an economic development tool available to the Town of Hampden. A TIF may be established for purposes to finance municipal investments. A TIF may also be enacted to provide incentive or financing to a private development in the form of a tax rebate through an associated Credit Enhancement Agreement (CEA).

This Policy sets forth the guidelines and requirements for a private enterprise to request that the Town establish a TIF District and associated CEA to support their project. The Town may, at its own discretion, create a TIF District for municipal purposes, regardless of request or plans for any CEA.

POLICY GUIDELINES

For the TIF (and CEA) application to be considered by Planning and Development Committee and the Hampden Town Council, the application must meet a majority of the following guidelines.

Notwithstanding compliance with any or all of the guidelines, the creation of a TIF District is a policy choice to be made by the Hampden Town Council on a case-by-case basis; a TIF is not a right under Maine law and meeting these guidelines does not create a right or entitlement in an applicant.

I. Basic Provisions:

1. The Town of Hampden has the option of issuing bonds, which are retired using the tax increment, or paying the tax increment directly to the investing business via a Credit Enhancement Agreement. In order to minimize risk to the citizens of Hampden, Tax Increment Financing provided via a CEA is preferred. The applicant must provide any and all other documentation that will protect the Town's economic and financial position, and/or that conform both to the letter and spirit of the underlying agreement between the applicant and the Town.
2. A Credit Enhancement Agreement, if awarded, will provide for a recapture of the benefits if the project should move to another municipality. Assignments to future owners of the property (project) may be allowed only for conventional commercial financing purposes or where the proposed assignee agrees to be bound by the same terms and condition as the original applicant.

3. The applicant is obligated to apply for any State reimbursement programs for personal property and/or real estate taxes. All proceeds from a State reimbursement will be returned to the Town, with some exceptions. The applicant may be allowed to retain this reimbursement under certain circumstances, such as: significant real estate value not subject to the TIF, economic necessity, or other project specific concerns. Any State Exemptions for personal property taxes shall not be subject to this provision.
4. The applicant will provide verified documentation as to the value of the fixed assets, being real or personal property, as of the date of the acceptance of the final application. The Town and applicant will agree upon the original assessed value for TIF purposes if there is a difference between the committed value and the April 1 assessed value.
5. The Town may establish TIF Districts to provide for municipal TIF funds for public purposes, without consideration of a CEA. The Town need not hold itself to the limits set forth in this Policy in regards to the size of investment. The primary purpose of this Policy is to set forth the guidelines for requests to establish a TIF District and an associated CEA by a private investment.

II. Guidelines:

1. The Town's participation is economically necessary and involvement by the Town is needed in order for the project to be undertaken. Justification for economic need and Town involvement must be demonstrated by:
 - a. A need to offset infrastructure costs unique to the site, or
 - b. A need to offset economic advantages available to the entity if it should build or expand outside of Hampden, or
 - c. The unavailability of sufficient private or other public funding sources to meet the full capital investment needs of the entity seeking assistance.
2. The project creates new incremental real estate tax equal to, or greater than, five hundred thousand dollars (\$500,000). The value of new, incremental personal property tax value may be considered if the value is equal to, or greater than, the value of new incremental real estate value.
3. The applicant must provide evidence of financial capability to undertake the project by submitting one of the following:

- a. A letter from a financial institution, government agency, or other funding agency indicating a commitment to provide a specified amount of funds, and the uses for which the funds may be utilized.
 - b. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "Intent to Fund" from the appropriate funding institution indicating the amount of funds and their specified uses.
 - c. The applicant's most recent corporate (or other entity) annual report indicating availability of sufficient funds to finance the development, together with explanatory material interpreting the report.
 - d. Evidence indicating availability of funds if the developer will personally finance the development.
4. Compliance with all statutory and regulatory guidelines of the Town and State.

III. Conditions of Approval and Guidelines to Determine Level of Town Participation:

Although an applicant need not meet each of the following criteria, the Town may use them to determine the level of participation.

1. The project assists an established business in the Town of Hampden, thus retaining existing employment or existing tax base.
2. The project creates long-term, permanent employment opportunities.
3. The project improves the general economy of Hampden.
4. The project improves and broadens the tax base.
5. The project improves a distressed area within the community in need of redevelopment, or an area identified as a priority by the Town of Hampden for redevelopment.
6. The project improves a distressed area or blighted building in need of rehabilitation, or a building identified as a priority by the Town of Hampden for rehabilitation.
7. The project creates public infrastructure facilities or benefits, which have application beyond the particular development, such as traffic upgrades, public parking facilities, etc.

8. If not from the beginning of the district, then as soon as possible, the project will support community projects or create public benefits, such as granting access to open spaces, creating student internships, providing job training, supporting local contractors and suppliers, etc. The Town shall set forth the goals for municipal benefit in any TIF application that may be required within the TIF District or the TIF Municipal Development Plan.

IV. Application Guidelines

The Town's Planning and Development Committee will act as a clearinghouse and coordinate all activity regarding TIF & CEA proposals, and in cooperation with the Finance Committee, negotiate the conditions of the proposed tax increment financing as requested by applicants. Working with potential applicants, the Community and Economic Development Director, her/his designee or consultant(s) as directed by the Director, as the designated representative of the Planning and Development Committee, will:

1. Provide information on tax increment financing.
2. Discuss project proposals and accept preliminary application information from applicants.
3. Review preliminary applications, based on policy guidelines, to insure that application is complete, and advise applicants of determination.
4. Make a recommendation to the Planning and Development Committee whether to accept or reject the application. If deemed necessary by the Town Manager and the Community and Economic Development Director, the advice and assistance of other departments within the Town of Hampden may be requested. The Community and Economic Development Director will provide a written decision of the Planning and Development Committee to the applicants approving (with or without conditions), or disapproving, the preliminary application.

Approval of the preliminary application by the Planning and Development Committee shall not create any vested rights in the applicants.

5. Will, following approval by the Planning and Development Committee, assist applicants to complete a final application suitable for presentation to the Town Council and the Maine Department of Economic and Community Development for formal review and approval.
6. Make presentation to the Town Council with the recommendation of the Planning and Development Committee. The applicant shall be present at the public hearing to answer any questions prior to a final vote by the Town Council.

7. Advise applicants, in writing, of the decision of the Town Council.
8. Assist the applicant in submitting the necessary documents and information to the Town so that the Town can make application to the State, based on direction from the Town Council.
9. Finalize, with the assistance of staff, the Credit Enhancement Agreement between the Town of Hampden and the applicant. If the applicant transfers ownership of its property within the District, the applicant must notify the Town Manager, in writing, prior to finalizing the transfer. The new owner must agree, in writing, to accept the provisions of the TIF/Credit Enhancement Agreement as presented to and approved by the Town Council, before the Finance Director will release any further TIF payments. The Credit Enhancement Agreement is subject to the approval of the Town Council.
10. Monitor ongoing public and private investment in the development project.

Preliminary tax increment financing applications will be available from the Community and Economic Development Director, Town of Hampden, 106 Western Avenue, Hampden, ME 04444.

All applicants must pay all costs associated with the preparation of the application and agree to reimburse the Town of all costs of review and out-of-pocket expenses, including, but not necessarily limited to, legal, professional, and any other review costs, whether or not the TIF application is approved.

The applicant must further agree to advance whatever funds are necessary or requested by the Town for any of the costs or reimbursements set forth herein, to be held in escrow.

Amended by vote of Hampden Town Council, August 3, 2015

November 9, 2017

Town of Hampden
Attn: Angus Jennings, Town Manager
106 Western Avenue
Hampden, ME 04444

Southstreet Development Company, LLC
Attn: Claustin Lawrence, Manager
15 South Street
Blue Hill, ME 04614

Re: Tax Increment Financing District/Credit Enhancement Agreement

Dear Mr. Jennings and Mr. Lawrence:

The Code of Professional Responsibility applicable to lawyers in Maine requires that we, prior to accepting any professional employment, disclose to a prospective client any relationship to an adverse party in the matter for which our services have been solicited, together with any interest in the subject matter of employment we may have, and all circumstances regarding our relationship with the parties. We must also disclose any interest or connection with the matter at hand that we know or reasonably should know would influence a client in the selection of a lawyer. We may not accept employment on any client's behalf if the exercise of our independent professional judgment on behalf of that client will be, or is likely to be, adversely affected by the acceptance of such employment, or if our representation would be likely to involve us in representing differing interests. There is an exception to this rule. If we feel we can adequately represent the interests of each client without any impact on our professional judgment as to each, and if each client consents to such dual representation after full disclosure of the possible effect of such representation on the exercise of our independent professional judgment on behalf of each client, then we may do so.

We have been contacted by the Town of Hampden and Southstreet Development Company, to perform legal services relative to the creation of a Tax Increment Finance District and associated Credit Enhancement Agreement between the Town of Hampden and Southstreet Development Company in order to promote development of currently unimproved land thus adding to the Town's economic development and tax base.

It is our opinion that our professional judgment which will be exercised on behalf of each of you will in no way be affected by this dual representation because we do not perceive any issue as to

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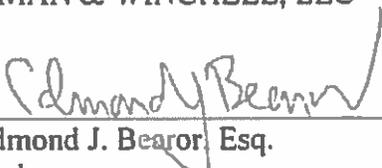
Town of Hampden
Attn: Angus Jennings, Town Manager
Southstreet Development Company, LLC
Attn: Claustin Lawrence, Manager
November 9, 2017
Page 2

which there exists a conflict. As indicated, we will advise you if our opinion changes due to the development of any further facts.

We would appreciate your confirming to us the extent of our engagement, your consent to our representation in this matter, and your acknowledgment that you have had full disclosure of the possible effect of such representation on the exercise of our independent professional judgment.

Very truly yours,

RUDMAN & WINCHELL, LLC

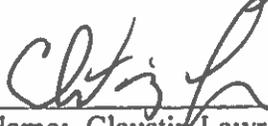
By: 
Edmond J. Bearor, Esq.
EJB/leb

We agree to and accept the terms set forth above.

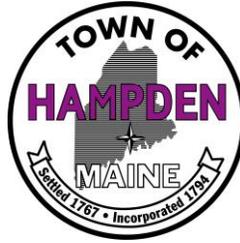
Dated: November 13, 2017


Name: Angus Jennings, Town Manager
Town of Hampden

Dated: November 13, 2017


Name: Claustin Lawrence, Manager
Southstreet Development Company, LLC

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: November 1, 2017
RE: Ordinance amendment process (Zoning, Subdivision, Shoreland Zoning)

Last fall, the Town Planner prepared a series of flow charts to illustrate the zoning amendment process in Hampden. The current process is more lengthy and process-intensive than required by statute due to several local requirements that result from local Ordinance and the Town Charter, specifically:

1. The Town Charter requires a Town Council public hearing, in addition to the statutorily required Planning Board public hearing, for adoption of amendments to the Zoning, Subdivision and Shoreland Zoning Ordinances. This hearing adds about a month to the process, and a cost of about \$200 for the hearing notice, even for non-controversial ordinance amendments.
2. The Town Charter provides that ordinance amendments do not take effect until 30 days after their adoption.

Until the Town Charter may be amended in the future, these delays cannot be avoided.

As you know, this past spring the Town Council amended the Zoning Ordinance in order to clarify and simplify the procedural requirements related to zoning amendments. The revised Section 1, approved on May 1, is enclosed for your reference.

The Council anticipates proposing a number of additional zoning amendments in the coming months, and beyond; the most recent list of prioritized zoning amendments within the Town Planner's work plan is attached.

In order to achieve the policy objectives of these amendments, including providing all project applicants prompt and predictable permitting, it will be necessary to finalize certain amendments well enough in advance of the 2018 construction season in order to improve the permitting process applicable to those projects.

The Zoning Ordinance provides the Planning Board up to 90 days, from the date of Town Council referral, to make a recommendation regarding proposed amendments. (The timeline is different for amendments proposed by landowner or petition). However, it is the Town Council's expectation that the Planning Board will expedite its consideration of proposed ordinance amendments to the maximum degree feasible without compromising the Board's ability to do so with all due care. In many instances,

the Council, through its Planning & Development Committee, does not think that 90 days would be needed.

The Council's Planning & Development Committee has become increasingly focused on how the ordinance amendment process may become more efficient. Specifically, the P&D Committee has discussed the Planning Board's amendment review process, including the role of the Ordinance Committee (OC).

In current practice, the Planning Board will not consider zoning amendments referred by the Town Council without convening a meeting of, and receiving a recommendation from, the OC. If amendments are reviewed in a single OC meeting, this adds about a month to the amendment process. If more than one meeting of the OC is needed, this would result in a further delay. The OC meetings also require staff support to prepare the meeting packet, attend the meeting, and document the OC's recommendation.

However, neither State law, local ordinance, the Town Charter nor the Planning Board Bylaws refer to the OC nor define its membership and responsibilities.

The Councilors' have expressed concerns about the role of the OC arising from the delays it adds to the Board's review process, impact on limited staff time, as well as a process that is harder to follow and less transparent for members of the public.

Consider, for example, a resident attending the publicly noticed November 8 hearing of the Planning Board regarding the proposed zoning map amendment. If the Board declines to make a recommendation that night, and instead refers to the matter to the OC (with the expectation that the OC would then offer a recommendation back to the Planning Board), that resident would need to attend three meetings in order to view the Board's deliberation regarding the proposal. The Council feels that the public should reasonably expect a Board recommendation at the publicly noticed hearing. If more deliberation is needed, or if the Board requests research from staff that is not part of the original public hearing materials, the Board always has the option to continue a hearing to a future date/time certain without incurring further advertising costs.

Further, because Advisory Committees are exempt from certain aspects of the Maine Freedom of Access law (1 M.R.S.A. 403(6)), there is no *legal* requirement to keep minutes of the OC meeting proceedings. (In practice, OC meetings have been posted, but minutes have not been kept – although the OC's recommendations are typically documented in correspondence to the Planning Board and/or in the Board's meeting minutes.)

The P&D Committee recently voted unanimously (among the 5 Councilors present) to recommend the following changes to the Planning Board's process in order to expedite its consideration of proposed ordinance amendments:

1. End the practice of referring proposed amendments to the OC, at least until such time as the Planning Board Bylaws may be amended in order to define the Committee, its membership, and its responsibilities;

2. Consider – as a Board – proposed ordinance amendments within its regularly scheduled public meetings, prior to referral to public hearing or simply consider the proposed amendments within the public hearing itself; and
3. If Board deliberation within its regularly scheduled meetings would impair the Board members' ability to consider amendments with all due care, hold posted meetings immediately preceding its regularly scheduled meetings (say, at 5:30 or 6 PM prior to a 7 PM Planning Board meeting) for the purpose of deliberating ordinance amendments on that evening's posted agenda. (It is worth noting that, based on review of some Planning Board meeting minutes from the early 2000s, it was typical at that time for the OC to meet immediately prior to the Planning Board meeting).

The Council's objectives with these changes would be to improve the timeliness and the public transparency of ordinance amendments. Given the nature of some of the anticipated zoning amendments, and their time sensitivity, we hope that the Planning Board will see fit to change its practices.

Two members of the Council will join me in attending the November 8 Planning Board meeting in order to discuss these proposals. We appreciate your consideration.

ARTICLE 1 - GENERAL ADMINISTRATION

1.1 Title and Purpose

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Hampden, Maine" and will be referred to herein as this "Ordinance". It is enacted by the inhabitants by dividing the Town into zones and regulating the use and construction of buildings and premises with a view to encourage the most appropriate use of land in the Town of Hampden, Maine.

1.2. Basic Requirement

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and all uses of premises in the Town of Hampden shall be in conformity with the provisions of this Ordinance. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land, or water area is located.

1.3. Severability

Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

1.4. Conflict with other Ordinances

This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of the land, buildings, or structures, the provisions of this ordinance shall prevail. *(Amended 5-1-2017)*

1.5. Amendment *(Amended 5-1-2017)*

1.5.1. 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;
3. Written petition of one hundred (100) registered voters of the town; or
4. Written application from the property owner seeking a change of the zoning classification for the owner's property, or any portion thereof (i.e. a map amendment). Any person or entity with a legally binding interest in or to said property may make such an application, provided such person or entity submits satisfactory evidence of such interest and written documentation from the property owner authorizing such person or entity to make application for the change of zoning classification.

1.5.2. Text Amendments - Any proposed amendment to the text of this Ordinance that has not been initiated by the planning board shall be referred to the planning board for its review and recommendation. *(Amended 5-1-2017)*

1.5.3 Zoning District Amendments (Map Amendments)

1. Owner Initiated: The owner of a property seeking a change in the zoning classification of his/her property (see *Article 1.5.1.4*) shall file a zoning map amendment application, together with payment in accordance with the Town of Hampden Fees Ordinance, with the planning office. (*Amended: 11-17-03, 5-1-2017*)
2. Petition Initiated: The person or entity who initiated a petition to amend the zoning classification of any property or group of properties shall be responsible for filing a zoning map amendment application, together with payment in accordance with the Town of Hampden Fees Ordinance, with the planning office. (*Added 5-1-2017*)
3. Town Initiated: When a map amendment is initiated by the planning board, the board shall forward a memorandum fully describing the proposed amendment to the town council for information purposes only, prior to holding the public hearing. When a map amendment is initiated by the town council, the council shall refer the proposed amendment to the planning board for a public hearing as required by statute. (*Added 5-1-2017*)

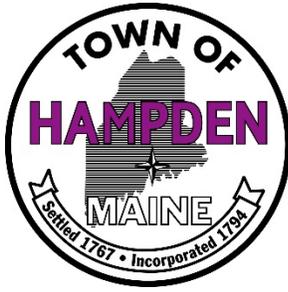
1.5.4 Process:

1. Public Hearing: Upon receipt of an application, memorandum, or referral, the planning office shall schedule a public hearing to be conducted by the Planning Board on the proposed amendment within sixty (60) days of receipt. (*Amended 5-1-2017*)
2. Notice Requirements: Prior to said public hearing, and in accordance with the requirements of this Ordinance and the laws of the State of Maine, notice of said hearing shall be given. The notice shall include, but not be limited to, the date, time and place of the hearing, a short description and, for proposed map amendments, a map showing the boundaries of the current and proposed zoning districts, and the location where the proposed amendment can be viewed. (*Amended 5-1-2017*)
 - a. Publishing Requirements: Said notice shall be published twice in a daily newspaper of general circulation in the Town of Hampden, the first at least twelve (12) days and the second at least seven (7) days in advance of said hearing.
 - b. Posting Requirements: Said notice shall be posted in the Town Offices at least thirteen (13) days prior to the hearing.
 - c. Abutter Notification Requirements: For proposed map amendments, said notice shall be sent by U.S. Mail to all persons initiating the proposed map amendment, to all persons owning property within the boundaries of the proposed map amendment, and to all persons owning property within three hundred (300') feet of the exterior boundaries of the area affected by the proposed change. For purposes of the notices required under this section, the owners of property shall be considered to be those against whom taxes were assessed on the prior April 1. Failure of any person owning property within said three hundred (300') feet to receive notices provided herein shall not necessitate another hearing or invalidate any action by the planning board or the town council.
3. Planning Board Recommendation: The planning board shall make a recommendation of approval or denial for any proposed amendment, and may make a recommendation of approval with modifications for any proposed amendment. To constitute planning board approval the amendment and any proposed modifications thereto must receive at least four (4) affirmative votes from the board. In all cases, the planning board shall forward their recommendation to the town council; this shall be done within 14 days of the completion of the

public hearing and, when the proposed amendment was referred to the planning board from town council, within ninety (90) days of the date of said referral. Failure of the board to make a recommendation within the allotted time shall constitute a recommendation of denial for the purposes of this Ordinance. *(Amended 5-1-2017)*

1.5.5. Adoption of Amendment

1. Text amendments not involving the zoning classification of property may be adopted by a majority vote of the town council members present and voting, if the amendment is recommended by the planning board, or by a two-thirds majority vote of the town council members present and voting, if the amendment is not recommended by the planning board. *(Amended 5-1-2017)*
2. Map amendments may be adopted by a vote of five (5) town council members present and voting, if the amendment is recommended by the Planning Board, or by a vote of six (6) town council members present and voting, if the amendment is not recommended by the planning board. *(Amended 5-1-2017)*
3. Amendments adopted by the town council shall become effective thirty (30) days after the date of adoption. *(Amended: 5-5-86, 3-2-87, 4-6-87, 2-4-91, 5-1-2017)*
4. The Department of Environmental Protection shall be notified by the municipal clerk of zone changes (map amendments) in areas impacted by the Shoreland Zoning Ordinance within thirty (30) days of the effective date of such amendments. *(Amended 5-1-2017)*



Town of Hampden
Land & Building Services

Memorandum

To: Angus Jennings, Town Manager
 From: Karen M. Cullen, AICP, Town Planner *KME*
 Date: August 15, 2017
 RE: Update on Amendments to Zoning and Shoreland Zoning Ordinances

This table provides a status update on zoning amendments since January 2017. Colored rows are amendments that were added since January 2017.

Topic	Ord, Section(s)	Status/Comments
Accessory apartments	ZO, New §4.25	Adopted; effective June 14, 2017
Home occupations	ZO, 4.10	Adopted; effective May 18, 2017
Flexibility in parking, buffer, and signage standards	ZO, 4.7, 4.8	Adopted; effective May 31, 2017
Shoreland Zoning	SZO	CEO working on wholesale revision by starting with State "model" and revising to fit Hampden; first draft under review by staff
Use table	ZO, New section	Undergoing edits
Dimensional table	ZO, New section	Drafted, undergoing edits
Article 3, Districts	ZO	To be drafted (reformat with use and dimensional table; rework "special district regulations")
Retail marijuana phase 1 (prohibit sales & clubs)	ZO, Unknown	Drafted; on P&D agenda for Aug 16.
Retail marijuana phase 2 (regulate cultivation, testing, and product manufacture)	ZO, Unknown	To be drafted; working with Chief Rogers. Regulations anticipated late 2017 or early 2018 to ensure consistency with to-be-drafted State Regulations. Note, next status update to be provided to Manager in Oct.
Medical marijuana	ZO, 4.24	Edits to be drafted to make consistent with state law (distance to schools, etc.)
Town center	ZO, Various	To be drafted after policy direction set; some amendments being done above will advance town center redevelopment. Public meetings/workshops to begin this summer/fall.
Filling, Grading, & Stockpiling and Gravel extraction	ZO 4.9, 4.23	Policy intent: repeal 2007 amendments (retain amendments needed for consistency with statute)
Housekeeping edits	ZO, Various	Numerous relatively minor amendments throughout the Zoning Ordinance to address inconsistencies and things that make no sense; e.g. Conditional Lot Dimensions (flag lots).

Article 1; process to amend the ZO	ZO, article 1	Adopted; effective May 31, 2017
Permits; specifically certificates of compliance and occupancy	ZO, 5.3, 7.2	Adopted; effective Sept. 6, 2017
Definitions; processing, transfer stations	ZO, 7.2	Adopted; effective Sept. 6, 2017
Official Zoning Map	ZO, 2.2	Referred to PB; to be scheduled (expect Sept.)
Recodification	All	Decision to not pursue at this time.