



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

1. Approval of November 15, 2017 Minutes
2. Committee Applications:
 - A. Kelley Wiltbank, Planning Board
3. Updates:
 - A. MRC/Fiberight
 - B. Staff Report
4. Old Business:
 - A. Hampden Business Park Covenants – discussion with The Musson Group (our consultants) on potential revisions to the covenants and related amendments to the zoning ordinance
5. New Business: none
6. Zoning Considerations/Discussion:
 - A. Moratorium on retail marijuana cultivation, product manufacture, and testing facilities
7. Citizens Initiatives
8. Public Comments
9. Committee Member Comments
10. Adjourn
11. Executive Session pursuant to 1MRSA Section 405(6)(c) to discuss potential terms of a Credit Enhancement Agreement for Southstreet Development within the proposed Coldbrook Corners TIF District.



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

Attending:

Committee/Council

Ivan McPike-Chair
 Terry McAvoy
 Dennis Marble

Staff

Angus Jennings, Town Manager
 Karen Cullen, Town Planner
 Myles Block, Code Enforcement Officer

Public

Noreen Norton, TIF Consultant

Chairman McPike called the meeting to order at 6:00 pm.

1. Approval of November 1, 2017 Minutes – **Motion** to approve as submitted made by Councilor McAvoy with second by Councilor Marble; carried 3/0/0.
2. Committee Applications: none.
3. Updates:
 - a. MRC/Fiberight: Manager Jennings reported that there isn't much new information from the most recent bi-weekly call. The completion date for the MRF processing continues to be a topic of discussion. He added the closing date for the debt financing is estimated to be by Christmas. He also noted it appears they will be seeking a different sewer rate at some point in the future. CEO Block reported the building construction continues; the building is roughly one-quarter built.

Chairman McPike noted the entire length of the roadway has curbing, with only one opening for stormwater runoff.

- b. Staff Report:
 - i. Planner Cullen noted the list of development projects is in the packet, and added the Hannaford and Bouchard site plans have been approved.
 - ii. Planner Cullen reported on the MMA's workshop on marijuana legislation which she attended today. The legislative committee had worked on amendments to the

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Act over the last 7 months or so, and although the legislature passed it, they did not override the Governor's veto. As it stands, the law will take effect Feb 1, 2018 unless the legislature enacts another moratorium to extend that date.

Planner Cullen summarized the key points from today's session:

1. there is language in the law that says if you have a cultivation facility, you can open a retail store – that store is exempt from other regulations on retail marijuana stores. Since Hampden wants to allow cultivation but not allow retail stores, this is a problem. It may get addressed in future amendments to the Act, but at this point that's an unknown.
 2. Each municipality needs to ensure they have the resources necessary to enforce whatever regulations they adopt locally, since there is no state enforcement of local regulations – they will deal with state licensing issues and that's it.
 3. We should discuss with the owners in the Hampden Business Park what their thoughts are on allowing any marijuana activity in the park (cultivation, product manufacture, or testing).
 4. At this point, given the unknown future of the state law, it is recommended that municipalities adopt ordinances to either prohibit or place a moratorium on whatever retail marijuana activities make sense. In Hampden, this would be a moratorium on cultivation, product manufacture, and testing.
- iii. Manager Jennings noted that the TIF Policy included in the packet is the correct one; it came to staff's attention recently that the one we'd been using does not reflect amendments made to it just before he was hired. The issue of the \$1,000 application fee was addressed in those amendments, and while there are other things that may need tweaking, nothing is a front-burner issue and so we will not be proposing any amendments at this time.

4. Old Business:

- a. Hampden Business Park Covenants – Manager Jennings noted that our consultants are working on this now, and we had sent letters to business and property owners informing them of the efforts now underway. We would like their input and noted there are several opportunities for people to attend P&D meetings to participate; tonight was meant to be the first of those but no one is here. Manager Jennings also said that unless owners get 30 days advance notice, adding that there is no requirement for consent. Finally, we are expecting a discussion with the consultant at the December 6th meeting regarding what (in the current document) should be kept, eliminated, modified, or moved to the zoning ordinance.
- b. Potential Coldbrook Corners TIF – Manager Jennings invited Noreen Norton, consultant on this project, to the table to discuss it with the Committee. The main points of the discussion were:
 - i. Manager Jennings noted the map in the packet shows the boundaries after adding several parcels on Coldbrook Road, the result of previous discussion with

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the P&D Committee. It was noted two of those (newly added) parcels are in the Rural district; there may be a need to revise the zoning in the future, after discussion with the owners of those parcels.

- ii. Noreen noted a minimum of 25% of the area designated in the TIF District has to be intended for commercial development; other uses are permitted (in accordance with the applicable zoning).
- iii. The committee agreed generally with the objectives but requested modification of the language for the first one to not be developer-specific and to encompass other potential development, including potential mixed use development and senior housing (which would respond to the results of the market study).
- iv. The project list should be broad to allow flexibility, since we don't know what needs may arise in 15 or 20 years. Should include traffic improvements which can include paving. Discussion about adding the right-of-way on Coldbrook Road easterly to Main Road North, specifically to allow use of TIF funds to repave that stretch of road. There was a question which Noreen with research regarding the use of TIF funds for sewer infrastructure, given the fact that sewer is an enterprise fund (as is water).
- v. The committee agreed that the duration of the TIF should be the full 30 years allowed by the state, to allow flexibility in the future, especially given the potential for several of these parcels to not be proposed for redevelopment for years. Noreen noted that if the town wished to end it sooner, that is a possibility as long as there are no active credit enhancement agreements.
- vi. Prior to discussion on a potential CEA for Southstreet Development, Manager Jennings and Noreen Norton should meet with the developer. Note that the TIF and CEA are separate documents.
- vii. This will be discussed again at the December 20th P&D meeting.

5. New Business: None.

6. Zoning Considerations/Discussion: Manager Jennings noted that he and several councilors had attended the November 8th planning board meeting to discuss the need for modifications to the Planning Board's process regarding zoning ordinance amendments. Councilor Marble reported that he told the Board that Town Council is trying to make the town friendlier while respecting the work the (planning board) volunteers do, but Council is concerned that some amendments seem to take a long time to get through the board's process. He added his impression was that the message was taken as somewhat of a threat to the planning board's culture. Manager Jennings added that he believes this may be the only item on the December 13th agenda, and suspects the board may look at amending their bylaws to formalize the Ordinance Committee. He suggested it might be sensible to amend the zoning ordinance to change the time requirement for planning board recommendation for amendments referred to the planning board from the town council;

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perhaps from the current 90 days from date of that referral to 45 days from the next regularly scheduled planning board meeting. The council wants to allow the planning board to do their due diligence without taking too long.

7. Citizen Initiatives: None.
8. Public Comments: None.
9. Committee Member Comments: None.
10. Adjournment: **Motion** to adjourn at 7:50 pm by Councilor McAvoy; seconded by Chairman McPike, carried 2/0/0. [Councilor Marble had left at approximately 7:40 pm.]

Respectfully submitted by
Karen Cullen, Town Planner

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Check One: Initial Application Reappointment Application

TOWN OF HAMPDEN

APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: WILTBANK Joseph Kelley
LAST FIRST MI

ADDRESS: 69 Cottage Street HAMPDEN 04444
STREET TOWN ZIP

MAILING ADDRESS (if different): _____

TELEPHONE: [REDACTED] _____
HOME WORK

EMAIL: Kelley.WILTBANK@MAINE.EDU

OCCUPATION: RETIRED

BOARD OR COMMITTEE PREFERENCE:

FIRST CHOICE: PLANNING BOARD

SECOND CHOICE (OPTIONAL): BOARD OF APPEALS

How would your experience, education and/or occupation be a benefit to this board or committee? CURRENT PLANNING BOARD MEMBER; RETIRED ATTORNEY WORKING IN THE PUBLIC AREA FAMILIAR WITH MUNICIPAL

LAW INCLUDING ZONING BUT PRIMARILY PUBLIC RECORDS AND RIGHT TO KNOW LAWS; AND GOVERNMENT/PRIVATE PROPERTY RIGHTS. Are there any issues you feel this board or committee should address, or should continue to address? UPDATING ORDINANCES AND CLOSE WORKING RELATIONS WITH COUNCIL IN THE COMMUNITY'S BEHALF.

3 YEAR

- BOARD OF ASSESSMENT REVIEW
- PERSONNEL APPEALS BOARD
- LURA HOIT MEMORIAL POOL
- HARBOR COMMITTEE

- DYER LIBRARY
- RECREATION COMMITTEE
- BOARD OF APPEALS
- HISTORIC PRESERVATION COMMISSION

5 YEAR PLANNING BOARD

FOR TOWN USE ONLY		Date Application Received: <u>NOV 30 2017</u>
COUNCIL COMMITTEE ACTION: <u>P&D</u>	DATE: <u>12/6/17</u>	
COUNCIL ACTION: _____	DATE: _____	
<input type="checkbox"/> NEW APPT	<input type="checkbox"/> REAPPOINTMENT	DATE APPOINTMENT EXPIRES: _____

2016

Hampden Town Clerk
Paula A. Scott
106 Western Avenue
Hampden, Maine 04444



Phone: (207) 862-3034
Fax: (207) 862-5067
email: clerk@hampdenmaine.gov

November 16, 2017

Morten Syverson
70 Main Road South
Hampden, ME 04444

Dear Mort:

According to my records your appointment to the Planning Board will expire on December 31, 2017. I have enclosed an Application for Town Boards and Committees. If you are interested in being reappointed to the Board of Assessment Review, please complete and return the application to me by (or on) Monday, December 4th, 2017.

Your application will be forwarded to the Planning & Development Committee for consideration at their meeting on Wednesday, December 6th at 6 PM. The Committee invites your attendance at the Committee's meeting to discuss your interest in reappointment.

If you do not wish to be considered for reappointment, please contact me as soon as possible.

Thank you for your dedicated service to the Town of Hampden and I look forward to hearing from you soon.

Sincerely,

Paula A Scott, CCM
Town Clerk

Enclosure

Hampden Town Clerk
Paula A. Scott
106 Western Avenue
Hampden, Maine 04444



Phone: (207) 862-3034
Fax: (207) 862-5067
email: clerk@hampdenmaine.gov

November 16, 2017

Michael Avery
40 Riverview Road
Hampden, ME 04444

Dear Michael:

According to my records your appointment to the Planning Board will expire on December 31, 2017. I have enclosed an Application for Town Boards and Committees. If you are interested in being reappointed to the Board of Assessment Review, please complete and return the application to me by (or on) Monday, December 4th, 2017.

Your application will be forwarded to the Planning & Development Committee for consideration at their meeting on Wednesday, December 6th at 6 PM. The Committee invites your attendance at the Committee's meeting to discuss your interest in reappointment.

If you do not wish to be considered for reappointment, please contact me as soon as possible.

Thank you for your dedicated service to the Town of Hampden and I look forward to hearing from you soon.

Sincerely,

Paula A Scott, CCM
Town Clerk

Enclosure

Hampden Town Clerk
Paula A. Scott
106 Western Avenue
Hampden, Maine 04444



Phone: (207) 862-3034
Fax: (207) 862-5067
email: clerk@hampdenmaine.gov

November 16, 2017

J. Kelley Wiltbank
69 Cottage Street
Hampden, ME 04444

Dear Kelley:

According to my records your appointment to the Planning Board will expire on December 31, 2017. I have enclosed an Application for Town Boards and Committees. If you are interested in being reappointed to the Board of Assessment Review, please complete and return the application to me by (or on) Monday, December 4th, 2017.

Your application will be forwarded to the Planning & Development Committee for consideration at their meeting on Wednesday, December 6th at 6 PM. The Committee invites your attendance at the Committee's meeting to discuss your interest in reappointment.

If you do not wish to be considered for reappointment, please contact me as soon as possible.

Thank you for your dedicated service to the Town of Hampden and I look forward to hearing from you soon.

Sincerely,

Paula A Scott, CCM
Town Clerk

Enclosure



NEWSLETTER

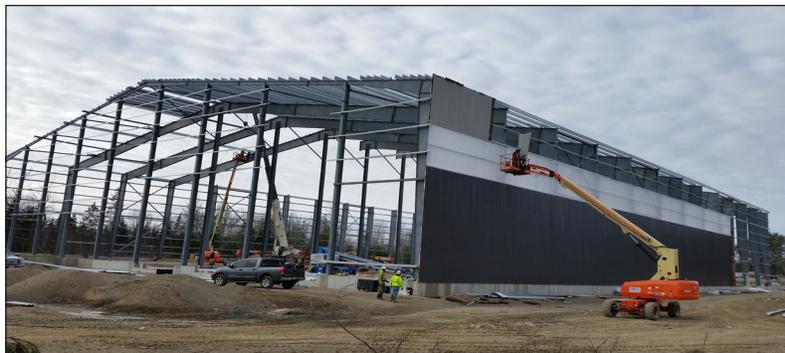
Municipal Review Committee | 395 State Street | Ellsworth, ME 04605 | www.MRCMaine.org

ISSUE 6.4 | December 2017

Construction Progress

The Fiberright facility continues to make timely progress to meet their goals with mild weather working to their advantage. The structural steel for the 144,000 square-foot building has arrived, and the steel installation for the eastern half of the building is nearly complete. The sewer and water systems are being installed.

Fiberright reports that they are finishing up the year at a steady pace, and construction continues on schedule.



UPCOMING MEETINGS

Wednesday, December 13
3 PM: Annual Meeting
Hampden Town Office
106 Western Ave., Hampden

Wednesday, January 24
9 AM: Finance Committee Mtg
10 AM: Regular Board Meeting
Orono Town Office
59 Main Street, Orono

ABOUT THE MRC

The Municipal Review Committee (MRC) is a non-profit association of Maine communities led by an elected, volunteer board of directors. For more than 25 years, the member communities of the MRC, now numbering more than 180 cities and towns, have used the PERC waste-to-energy incinerator in Orrington to process their municipal solid waste (MSW). After 2018, the contracts with PERC will expire. The MRC has partnered with Fiberright to offer an innovative solution to recycle and process our MSW post 2018.

Visit www.mrcmaine.org or contact Greg Louder at 207-664-1700 or glouder@mrcmaine.org to learn more about the Municipal Review Committee and to add your name to our email contact list.

JOIN OUR EMAIL LIST & FOLLOW US ON SOCIAL MEDIA

MRC regularly sends updates and announcements by email to those who have signed up for our alerts. We also have active Facebook and Twitter accounts, and we've posted informative videos from recent meetings on our YouTube account. All of these are accessible from the homepage of our website, mrcmaine.org.



Reminder! Put Option Deadline December 15, 2017

Many member municipalities have already requested that the MRC exercise the Put Option on their behalf. While the technical deadline is December 15, 2017, we are requesting that Equity Charter Members send the request in ahead of the deadline. For more information including a template to the make the request, please visit our website at <http://mrcmaine.org/put-option/>.

Spreading the Good News

Executive Director Greg Louder has been busy spreading the good news about the new waste-to-energy facility in Hampden.

Greg and Craig Stuart-Paul, CEO of Fiberight LLC, spoke to members of the Maine Resource Recovery Association in Brewer on October 23rd. Craig informed the group that roadwork and other site preparation targets have been completed ahead of schedule. More than 115 communities have signed contracts with the MRC.



Greg also had the opportunity to present information about the trailblazing facility to the Joint Standing Committee on Environmental and Natural Resources earlier this month. (see picture above.) As the project rolls towards completion in 2018, MRC is actively preparing its members and the state at large for the innovative new process, while also reassuring community members that changes they experience will be small, incremental changes for the better.



Happy Holidays

The staff, board members, and partners at MRC wish everyone a Happy Holiday Season, and are looking forward to a bright 2018.

Update to MRC's Website

Have you ever tried to look back and find an email from the MRC that had links to certain documents? The MRC website under the News tab now has our emails to members, including links to the documents, to make finding the information you need easier. We have also updated our Frequently Asked Questions section on the website, which is done periodically to reflect the questions that we often hear. Check out the new links at <http://mrcmaine.org/news/> and <http://mrcmaine.org/frequently-asked-questions/>.



**BI-WEEKLY CONFERENCE CALL
MRC & Fiberright Facility
November 11, 2017**

Attendees:

- | | |
|--|---|
| <ul style="list-style-type: none"> ◆ Alan Iantosca, Patrick Emerson ◆ Lou Pizzuti, Victoria Eleftheriou, Lynn Muzzey ◆ Angus Jennings, ◆ Kyle Sullivan | <p>Fiberright
Maine DEP
Town of Hampden
CES, Inc.</p> |
|--|---|

Discussion Notes:

1. **Meeting Minutes** – Victoria asked for clarification on the on the established guarantee date of July 2018. Alan stated he would provide MDEP with the language from the contract addressing this date and the liquidated damages clause. No changes to the Meeting minutes were necessary.

2. **Transfer Costs** - Angus initiated a brief discussion of the rejoinder agreement and the fiscal responsibility of MRC and municipalities for transfer of waste if Coastal was not operating. The group agreed that this discussion would be continued when Craig and Greg were able to participate.

3. **Construction** – Alan stated building foundations and footings were complete and that steel construction was underway. During the status update Alan added that steel construction was behind schedule, but the construction crews believed they would make up lost time and finish building construction on schedule. Alan also provided a summary of the building assembly process.

Victoria asked about the status of MRF major equipment drawings, Lou referenced construction ready plans for MRF. Alan expected to be able to provide the requested drawings in the next couple days. Then CES can design the sub slab foundations.

Victoria requested an update on the Master Schedule; Alan anticipated that he could have revisions submitted to the MDEP within the next week.

4. **Condition Compliance** –
Condition 6 - Lou stated a submittal of the operator's technical ability was required 30 days prior to commencing operation. Alan was planning on having the operations contract in place this week, so meeting the 30 days would not be a problem.

Condition 10 – Lou stated that MDEP would like an updated DRAFT O&M prior to commissioning of the MRF. Expecting another O&M update submitted prior to full-scale operation.

5. **Secondary Materials** – Victoria requested and acknowledgement for the wastewater email.
6. **Closing** – Alan expected mailings associated with bonding to be sent out next week and the closing would be before Christmas. Angus confirmed the closing delay from before Thanksgiving to before Christmas.
7. **Air Bureau** – Lynn asked for an update on the expected license amendment, and Alan stated Coastal was waiting for design from AMEC. After we receive boiler sizing information, CES and Fiberight will provide MDEP an update on the amendment schedule.



Paul R. LePage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

November 15, 2017

David Bernhardt
COMMISSIONER

Angus Jennings, Town Manager
Town of Hampden
106 Western Avenue
Hampden, Me 04444

Town of Hampden
RECEIVED

NOV 20 2017

Office of the
Town Manager

Subject: I-95 Bridges Pittsfield to Howland
Protective Coating for Concrete Surfaces, Win Number: 21764.00

Dear Mr. Jennings,

The Maine Department of Transportation is currently working on the final design of a Substructure Protective Coating project for the bridges on the I-95 corridor, WIN 21764.00. Advertisement of the subject project for competitive bids is scheduled for January 2018. We estimate that the construction would begin approximately in April 2018, and be completed by September 3, 2018.

The project is further described as: *Region 4, Protective coatings - Interstate bridges.*

The Contractor will be allowed to reduce traffic on I-95 to one 14' lane of traffic from Monday to Saturday from 8:00 p.m. to 6:00 a.m. for the following bridges:

- 5971 Access Rd/I-95 Bangor
- 5794 Hammond St/I-95 Bangor
- 5822 Essex St/I-95 Bangor
- 5800 I-95 NB/Stillwater Ave. Bangor
- 6411 Stillwater Interchange/I-95 NB Bangor
- 6412 Stillwater Interchange/I-95 SB Bangor
- 5934 Chase RD/I-95 Bangor

The Contractor may reduce traffic on I-95 to one 14' lane of traffic from 9:00 a.m. to 3:00 p.m. Monday to Thursday and from 9:00 a.m. to 12:00 p.m. on Friday for all other bridges.

We hereby request that you provide a copy of this notice to all municipal officials, employees and boards with responsibilities for utility and/or land-use planning/permitting, and that you post this letter on any municipal public bulletin boards, media outlets and/or municipal websites as a public meeting will not be held regarding this project unless specifically requested by the municipality.

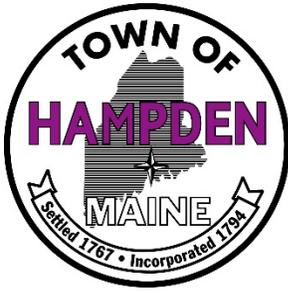
Should you have any questions, concerns or other areas of interest, we would appreciate your comments and input. Please feel free to contact me at (207)-624-3336 or by e-mail at joseph.r.stilwell@maine.gov with any questions or concerns.

Sincerely,

Joseph Stilwell PE, Project Manager
Bridge Program



PRINTED ON RECYCLED PAPER



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: November 30, 2017
RE: Zoning Amendment Update

I have been working diligently on drafting language to replace Article 3, Regulations Pertaining to Individual Zones, for the past month. The key parts of this work are the creation of a use table and a dimensional table. I have completed the first draft of the use table and will be reviewing it in depth with the Planning Board at two meetings in December – the 13th and the 28th. As part of this work, I am making many changes to the definitions in Section 7.2, as well as handling the various restrictions and criteria that go along with many of the uses.

By the end of December, I hope to have the dimensional table and related sections drafted as well, and will discuss those sections with the Planning Board in January.

Since part of this work involves the replacement of the Village Commercial and Village Commercial II districts with a new Town Center district, I expect to initiate meetings with the people who have indicated interest in that project after discussing with the Planning Board.

Project List - Planning

Project Name	Location	What it is	Size ¹	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 Amendment
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	11/8/2017	Site Plan Revision
H.O. Bouchard	Coldbrook Road	Expanded office building & Deck	1,620 sq ft	11/8/2017	Site Plan Revision
Southeast Development Co	Route 202/Coldbrook Rd	zoning map amendment; Resid A to Comm. Service	16 acres	11/8/2017	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.



Town of Hampden
Land & Building Services

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: December 4, 2017
RE: Hampden Business Park Covenants

Noel Musson of The Musson Group has begun work on a review of the existing covenants, conditions, and restrictions. He has submitted a listing of the various items in the document and his recommendation of whether they should remain in the document or be handled in the zoning ordinance (under standards or under site plan review), or if they are unnecessary.

The existing document is attached for your review along with the listing from Noel. Our goal for the P&D discussion is to determine whether each item (or group of items) should be handled as suggested by Noel.

Please note that, due to the size of the listing from Noel, I will bring printed copies to the meeting on 11x17 paper to simplify reading it.

Declaration of Covenants, Conditions, and Restrictions for the Hampden Business and Commerce Park

Article	Keep in Covenants	Zoning Standards	Site Plan Review	Unnecessary	Notes
Article I - Definitions		X			Amend Article 7 as necessary
Article II - Property Subject to this Declaration	X				
Article III - Constuction of Improvements					
3.1 Approval of Plans Required			X		This should be a normal planning board approval process, or a formalized staff review for a minor site plan (Zoning Ordinance Article 4.1)
3.2 Basis for approval			X		Performance Standards. Should be incorporated into site plan review and better defined (Zoning Ordinance, Article 4)
3.3 Action			X		Process. Should be in planning board site plan review or a formalized staff review for a minor site plan (Zoning Ordinance Article 4.1)
3.4 Appeal			X		Process. Should be in planning board site plan review or a formalized staff review for a minor site plan (Zoning Ordinance Article 4.1)
3.5 Proceeding with Work			X		This should be a normal planning board approval process, or a formalized staff review for a minor site plan (Zoning Ordinance Article 4.1)
3.6 Completion of Work			X		This should be a normal planning board approval process, or a formalized staff review for a minor site plan (Zoning Ordinance Article 4.1)
3.7 Declarant not Liable				X	Subdivision Plan is recorded, improvements constructed. Enforcement through normal means.
3.8 Construction without Approval		X			This should be no different than any other building permit process
3.9 Starting Time and Repurchase Options	X				Does the Town wish to retain a repurchase option, or is Sargent the owner/developer of these lots?
3.1 Rights Reserved to Declarant				X	Utility Easement shown on subdivision plan - amendment necessary to show pedestrian easement? Have easements been recorded? Sidewalk constructed within ROW.
3.11 Wetlands Distrubances				X	This should be a normal planning board approval process, or a formalized staff review for a minor site plan (Zoning Ordinance Article 4.1)
3.12 Buffer Areas and Open Space				X	This should be a normal planning board approval process, or a formalized staff review for a minor site plan (Zoning Ordinance Article 4.1)
Article IV - Development Standards					
4.1 General Requirements				X	
4.2 Minimum Setbacks		X			Should specify Building Setbacks, not more inclusive "improvements of any kind"
4.3 Exceptions of Setback Requirements				X	no needed if note above is addressed
4.4 Structures and Architectural Standards			X		Performance Standards. Should be incorporated into site plan review (Zoning Ordinance, Article 4)
4.5 Signs					Performance Standards. Should be incorporated into site plan review or Signs (Zoning Ordinance, Article 4.8)
4.6 Landscaping			X		Performance Standards. Should be incorporated into site plan review (Zoning Ordinance, Article 4)
4.7 Fences			X		Performance Standards. Should be incorporated into site plan review (Zoning Ordinance, Article 4)
4.8 Parking Areas, Loading Areas and Driveways			X		Performance Standards. Should be incorporated into site plan review (Zoning Ordinance, Article 4)
4.9 Storage Areas			X		Performance Standards. Should be incorporated into site plan review (Zoning Ordinance, Article 4)
4.1 Lighting			X		Performance Standards. Should be incorporated into site plan review (Zoning Ordinance, Article 4)
4.11 Special Provisions				X	Address in standards or remove
Article V - Uses and Operations					
5.1 No Further Subdivision				X	This should be a normal subdivision/site plan standard
5.2 Permitted Uses		X			
5.3 Prohibited Uses				X	
5.4 Nuisances			X		
5.5 Condition of Property	X				
5.6 Maintenance of Grounds	X				
5.7 Remedies of Failure to Maintain and Repair	X				
5.8 Refuse Collection Areas			X		Performance Standards
5.9 Repair of Buildings	X				
5.1 Public Utilities	X				
5.11 Utility Lines and Antennas			X		Performance Standards
5.12 Mechanical Equipment			X		Performance Standards
5.13 Mineral Exploration				X	not listed as a Permitted Use
5.14 Other Operations and Uses		X			Interesting catch all - Other should be listed in permitted use for the zone
Article VI - Mondification and Repeal					
6.1 Modification by Declarant					
Article VII - Enforcement					
7.1 Abatement and Suit				X	should be the same proceedures in Aricle 5 of the zoning ordiannce
7.2 Right of Entry				X	should be the same proceedures in Aricle 5 of the zoning ordiannce
7.3 Deemed to Constitute a Nuisance				X	should be the same proceedures in Aricle 5 of the zoning ordiannce
7.4 Attorney's Fees				X	should be the same proceedures in Aricle 5 of the zoning ordiannce
7.5 Failure to Enforce is No Waiver				X	should be the same proceedures in Aricle 5 of the zoning ordiannce
Article VIII - Assignment	X				This Article, and the rest that follow, should be included in the Covenants if there are to remain covenants
Article IX - Constructive Notice and Acceptance	X				
Article X - Waiver and Failure to Enforce	X				
Article XI - Runs with the Land	X				
Article XII - Rights of Mortgages	X				
Article XIII - Captions	X				
Article XIV - Effect of Invalidation	X				
Article XV - Notices	X				should be in Article 6, Modification or Amendment?

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

This Amended and Restated Declaration is made this ____ 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 in 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 ½"/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 slightly 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 *KMC*
Date: November 30, 2017
RE: Retail Marijuana Moratorium

Since the state legislature has not adopted significant amendments to address the known deficiencies of the marijuana legalization act, and given the potential for the law to become effective February 1, 2018 without such amendments being made, I had recommended to the Planning & Development Committee at the November 15th meeting that the Town consider adopting a moratorium on the uses we have not already addressed. Those include retail marijuana cultivation, testing, and products manufacturing facilities. As you are aware, Town Council has adopted zoning amendments which effectively prohibit retail marijuana sales and retail marijuana social clubs within the Town of Hampden; those amendments will become effective on December 20th.

I have attached the draft moratorium ordinance for your review; this will be discussed for referral to Town Council for a hearing at the January 16, 2018 meeting.

Town of Hampden

**EMERGENCY MORATORIUM ORDINANCE REGARDING RETAIL
(ADULT USE) MARIJUANA**

WHEREAS, the legislative body of the Town of Hampden (the “Municipality”) makes the following findings:

- (1) The Marijuana Legalization Act (the “Act”) was approved by Maine voters in November 2016 and has been codified in the Maine Revised Statutes in Title 7, chapter 417; and
- (2) The unregulated location and operation of “retail marijuana cultivation facility,” “retail marijuana products manufacturing facility,” and “retail marijuana testing facility” as defined in 7 M.R.S.A. chapter 417, raises legitimate and substantial questions about the impact of such facilities on the Municipality, including questions as to compatibility with existing land uses and developments in the municipality; potential adverse health and safety effects on the community; the possibility of illicit sale and use of marijuana and marijuana products to and by minors; and the possibility of unlawful use of marijuana and marijuana products; and
- (3) The Town Council has voted to amend Section 7.2 of the Zoning Ordinance to add certain definitions and modify others to effectively prohibit retail marijuana sales and retail marijuana social clubs in the Municipality, which will become effective December 20, 2017; and
- (4) As a result of the foregoing issues, retail marijuana cultivation, products manufacturing, and testing facilities within the Municipality have potentially serious implications for the health, safety and welfare of the Municipality and its residents; and
- (5) The Municipality currently has no regulations governing retail marijuana cultivation, products manufacturing, and testing facilities or activities, and existing ordinances are insufficient to prevent serious public harm that could result from the unregulated development of such facilities or activities; and
- (6) An overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of retail marijuana cultivation, products manufacturing, and testing facilities or activity in the Municipality; and
- (7) The state’s regulatory structure is unknown at this time as the Maine Legislature and state agencies have not enacted legislation amending the Act with the exception of several minor amendments which do not address the known deficiencies of the Act or developed final regulations governing Retail Marijuana; and
- (8) In the judgment of the Hampden Town Council, the foregoing findings and conclusions constitute an emergency within the meaning of 30-A M.R.S.A. § 4356 and Section 214 of the Hampden Town Charter requiring immediate legislative action.

NOW THEREFORE, pursuant to 30-A MRSA § 4356, be it ordained by the Municipality as follows:

Section 1. Moratorium. The Municipality does hereby declare a moratorium on all retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities within the municipality.

No person or organization shall engage in any retail marijuana cultivation, retail marijuana products manufacturing, or retail marijuana testing within the Municipality on or after the effective date of this Ordinance. During the time this moratorium ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Municipality shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, any other type of land use approval or permit, and/or any other permits or licenses related to retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, or retail marijuana testing facilities.

Section 2. Pending Proceedings. Notwithstanding 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance shall govern any proposed retail marijuana cultivation facility, retail marijuana products manufacturing facility, or retail marijuana testing facility for which an application for a building permit, certificate of occupancy, site plan or any other required approval has been submitted to the Municipality, whether or not a pending proceeding, prior to the enactment of this Ordinance.

Section 3. Medical Marijuana Act. This Ordinance will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S.A. §§ 2421 – 2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications.

Section 4. Personal Use of Marijuana. This Ordinance will not limit the privileges or rights afforded by the Maine Marijuana Legalization Act to persons age 21 or older (7 M.R.S.A §2452).

Section 5. Conflicts/Savings Clause. Any provisions of the Municipality’s ordinances that are inconsistent or conflicting with the provisions of this Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Ordinance is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Section 6. Violations. If any retail marijuana cultivation activity, retail marijuana products manufacturing activity, or retail marijuana testing activity is established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance and the Municipality shall be entitled to all rights available to it pursuant to 30-A M.R.S.A. § 4452, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney’s fees and costs in prosecuting any such violations.

Section 7. Effective Date. This Ordinance shall become effective immediately upon its adoption and shall remain in full force and effect for a period of 60 days thereafter, unless extended pursuant to law or until a new and revised set of regulations is adopted by the Municipality, whichever shall first occur.