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

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

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

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

Areas of wetlands that are surrounded by shoreland zones are not regulated by the SZO, they are regulated by the Natural Resources Protection Act (NRPA). Such wetlands have been removed from the Shoreland Zoning Map. In addition there are several small areas which were included in the limited residential district that do not meet the criteria for that district due to the absence of residential uses; these have been changed to the resource protection district. There are several other areas where changes have been made as well, described below.
• The area between Bog Road and Ben Annis and Hermon Ponds has a significant reduction in the area covered by the resource protection district. On the Ben Annis Pond (west) side of Pond Road, the Board of Appeals had approved a map adjustment in 2018 to remove much of the area since it does not meet the criteria for being within the shoreland zone. On the east side of Pond Road, a large part of the area within the resource protection district was also found to not meet the criteria for being included. By the bridge over the Souadabscook, the limited residential area was expanded northward slightly to accommodate the residential lot created in a 2016 subdivision.

• Similar changes were made north of Hammond Pond and along the Souadabscook near the interstate highway, where large wetland areas do not meet the criteria for inclusion in the resource protection district; they are regulated by the NRPA. A small area northeast of Stetson Drive has been changed from limited residential to resource protection since there is no possibility of residential development in that area; it is included in two house lots that are already developed with more than 250' of woodland between the houses and the shoreland zone.

• On the north side of the Souadabscook, west of Emerson Mill Road, there is an area where the district is proposed to change from general development to resource protection. The reason for this is that the area doesn’t meet the criteria for being included in a general development district. To the west of Emerson Mill Road, there is also a section of general development district that is proposed to be changed to the resource protection district, for the same reason. This area is just south of the Pine Tree landfill.

• Along Shaw Brook, the general development district that extended beyond the resource protection district has been removed since it does not meet the criteria for being included in any shoreland zone. This stream is only subject to a 75' zone. Areas to the north and east of the wetland associated with Shaw Brook that were in the general development district have been changed to the resource protection district since they do not meet the criteria for the general development district. The area extending to the town line along the brook also do not meet the criteria for being included in any shoreland zone and have been removed.

• Most of the general development district on the north side of the Souadabscook between Papermill Road and Route 202 has been changed to resource protection, again since that area does not meet the criteria for inclusion in the general development district. The area where the old concrete plant was located is the exception to this change.

• A portion of the area surrounding the wetland to the west of Back Winterport Road opposite Baker Road is proposed to be changed from limited residential to resource protection, and an area not meeting the criteria for inclusion in any shoreland zone is proposed to be removed.

• The shoreland zones surrounding two wetland areas to the west of Monroe Road, one associated with the (local) stream and one opposite Norway Drive, are proposed to be changed from the limited residential district to the resource protection district because neither one meets the criteria for inclusion in the limited residential district.
• The stream protection district extending easterly from the wetland on Carmel Road near the Winterport town line to the confluence with an unnamed stream flowing from Winterport is proposed to be removed since this area doesn’t meet the criteria for inclusion in any shoreland zone.

• At the West Branch of the Souadabscook at the Newburgh town line, there is a wetland that is proposed to be changed from limited residential to resource protection, again since it doesn’t meet the criteria for inclusion in the limited residential district. In addition, there is one section that was left out of the zone that should have been included.

• A portion of the shoreland zone around the wetland to the east of the Meadow/Patterson/Canaan intersection is proposed to be changed from limited residential to resource protection since it is removed from residential areas and doesn’t meet the criteria for the limited residential district.

• The shoreland zones around the wetland system that stretches from the end of Ichabod Lane across Patterson Road has a couple of areas that are proposed to be changed from limited residential to resource protection since they do not meet the criteria for the limited residential district.

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

• Section 9 – deleted Local Stream Protection District – this district is optional in the state guidelines; Hampden’s Town Council has directed staff to only include those areas that are required by the state to be regulated in Hampden.

• Section 10 – modified Interpretation Of District Boundaries to delete property lines, edge of pavement of streets, roads, and rights-of-way, since none of these features have anything to do with shoreland zoning. The distance for any shoreland zoning district is based on the edge of the waterbody and not on any other features.

• Section 12C – Nonconforming Structures – the state guidelines made significant changes to this section; the new section combines the two previous nonconforming expansion rules, and it changes from floor area and volume to footprint and height restrictions for measuring nonconforming expansions. This is in accordance with P.L. 2013 Chapter 320 Section 8.

• Section 13A – Resource Protection District – reworded to be more easily understood by the reader and eliminated criteria no longer used in the state guidelines.

• Section 13D – General Development 2 District – added back into ordinance per direction of state; it had been deleted in a previous amendment to Hampden’s SZO. The GD2 district is identical to the GD1 district but the state wants to differentiate between the
original GD district and any areas added subsequent to the original adoption of the
ordinance. At this time there are no existing or proposed GD2 districts in Hampden.

- **Section 14 – Land Use Table** – the only difference from the existing table is that a footnote
  has been added to “clearing or removal of vegetation activities other than timber
  harvesting” to require that all clearing activities must be supervised by a licensed forester
  or arborist; this is because those professionals have the qualifications and expertise to
  apply the point system required in Section 15N while the Code Enforcement Officer most
  likely would not.

- **Section 15B – Principal and Accessory Structures, item 4 non-vegetated surface coverage** –
  modified to exclude public boat launches and naturally existing ledge and rock outcrops.

- **Section 15H – Signs** – added restrictions from state guidelines where they are more strict
  than we have in our zoning ordinance.

- **Section 15O – Hazard Trees, Storm Damaged Trees, and Dead Tree Removal** – this is a new
  section added in the state guidelines for the purpose of clarifying DEP interpretations
  regarding these trees and how their removal can occur.

- **Section 15P – Exemptions to Clearing and Vegetation Removal Requirements** – this section
  was also added in the state guidelines.

- **Section 15Q – Revegetation Requirements** – this section was also added in the state
  guidelines.

- **Section 16E – Special Exceptions** – the way the calculation in item 4 is made has been
  changed in the state guidelines from “ground floor area” to “footprint”.

- **Section 16l – Enforcement** – the state guidelines deleted the requirement for biennial
  reporting in item 2c.

- **Section 17 – Definitions**:
  - **Agriculture** – added cultivation of marijuana (medical or otherwise) to the uses not
    included in the definition.
  - **Commercial use** – excepted any business related to marijuana
  - **Conservation plan** – added a definition to provide clarification of this term which is
    used in the ordinance
  - **DBH** (diameter at breast height) – added (and eliminated the description in
    numerous sections of the ordinance)
  - **Floor area** – changed to be consistent with state guidelines
  - **Footprint** – added to be consistent with state guidelines
  - **Forest management activities** – deleted; term not used in ordinance
  - **Forest stand** – deleted; term not used in ordinance
- **Functionally water dependent uses** – added “Recreational boat storage buildings are not considered to be a functionally water dependent use” to be consistent with state guidelines.

- **Great pond** – changed to be consistent with state guideline; it is the exact same thing as in the previous ordinance in Hampden.

- **Great pond classified GPA** – added to be consistent with state guidelines; in Hampden all great ponds area also great ponds classified GPA so it doesn’t make any difference.

- **Hazard tree** – new definition added to be consistent with the state guidelines.

- **Home occupation** – modified definition to be consistent with our zoning ordinance and to clarify that it is an occupation actually being carried out in a residential structure.

- **Industrial** – added an exclusion for marijuana businesses.

- **Local stream** – kept the definition of a local stream even though we aren’t regulating them, and added last sentence: “The only portion of these local streams that are regulated by this Ordinance are those portions within the Shoreland Zone of a regulated waterbody or stream.”

- **Non-native invasive species of vegetation** – new definition added to be consistent with the state guidelines.

- **Outlet stream** – new definition added to be consistent with the state guidelines.

- **Piers, docks, wharves, etc.** – deleted definition since it is no longer needed since we are not regulating such structures – they are regulated by the state and/or Army Corps of Engineers.

- **River** – added clarification that the Penobscot River is classified as a coastal wetland in Hampden (further upstream it is a river, but where it is tidal it isn’t.)

- **Salt marsh** – new definition added to be consistent with the state guidelines.

- **Salt meadow** – new definition added to be consistent with the state guidelines.

- **Sapling** – new definition added to be consistent with the state guidelines.

- **Seedling** – new definition added to be consistent with the state guidelines.

- **Setback** – new definition added to be consistent with the state guidelines.

- **Shoreland permit** – deleted to avoid inconsistency with the ordinance.

- **Shoreline setback** – changed to **shoreline buffer** and modified to include the verbiage in several sections of the text: “the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within a strip
extending 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland.”

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

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

The remainder of Souadabscook Stream is a "River".

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

The Penobscot River is a "Coastal Wetland".

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

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

Sources:
Rivers, Streams, and Ponds - USGS, National Hydrography Dataset
The segment of Souadabscook Stream between Hermon and Hammond Ponds is a "River Flowing to a Great Pond GPA".

The remainder of Souadabscook Stream is a "River".

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

The Penobscot River is a "Coastal Wetland".

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

The Penobscot River, US Highway 202, and Old County Line are shown.

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