



February 9, 2025

BY EMAIL: jeanne.guthrie@sherbornma.org

Sherborn Zoning Board of Appeals
Town of Sherborn
19 Washington Street
Sherborn, MA 01770

RE: Proposed Chapter 40B Project - 34 Brush Hill Road, Sherborn, MA

Dear Zoning Board Members:

As you know, I represent Andrew and Michelle Lauterback and Dennis and Vicki Natale, direct abutters to the above-referenced proposed project (the “Neighbors”). Since last summer, when this public hearing opened, my clients and I have commented extensively on a variety of Project design-related issues that affect public health and safety, and the environment. While the latest plan changes reducing the size and scale of the Project to four single-family homes is an improvement over previous plan iterations, the Project still presents water quality and quantity impacts to the Neighbors’ private wells. Moreover, the current driveway and building layout, set back, in places, just a few feet from the Neighbors’ property boundaries, is inappropriate, contrary to Chapter 40B design principles, and presents other concerns to the Neighbors. We remain concerned that there has been no hydrogeological evaluation of the current site plan, let alone the prior 8-unit iteration, which we recommended (and the Board of Health recommended) in prior correspondence.

We recognize that the Board desires to close this public hearing notwithstanding this gap in information. In lieu of requiring the Applicant to perform additional subsurface investigations and analysis needed to ensure the viability of the Project now, we recommend that the Board impose reasonable conditions on its permit, requiring this analysis to be completed to satisfaction of the Board of Health prior to the issuance of any building permits. We also offer the following draft “conditions” that the Board could incorporate into its final written decision, to further protect the Neighbors and the Town generally.

A. Project Design

1. The Project shall be built and constructed in conformity with the design and specifications shown on the Project site plans revised December 23, 2024 (four units), and the house plans filed by the Applicant with the ZBA dated May 8, 2024, all as

modified by the conditions of this Decision. The following changes shall be made to the site plans:

- a. The driveway leading from Brush Hill Road (“BHR”) to the rear of the Project Site within the 50-foot strip of land shall be centered within said 50-foot strip, except for where the driveway passes the 28” Ash tree that straddles the property boundary with #32 BHR, in which case the driveway shall shift towards #36 Brush Hill Road to provide as much separation as practical.
- b. House #1 as shown on the site plan shall be moved so that it is west of the leaching field as shown on said plan, and all structures shall be set back at least 80 feet from #32 and #36 BHR..
- c. There shall be no driveway or parking behind #32 BHR, and the driveway and parking for the homes shall be set back at least 40 feet from #32 BHR (except as necessary for the driveway to turn left from the 50-foot strip).
- d. The private wells serving the four homes in the Project shall be re-located so that their respective 150-foot protective radii are located wholly within the boundaries of the Project Site, and do not encroach onto abutting properties. The area on the Project Site between the rear of #32 BHR and the stone wall on the Project Site shall not be disturbed or touched during and after construction of the Project, and shall be labelled on the Final Plan (hereinafter defined) as the “No Disturb Area”).

B. General Construction Conditions

2. No Disturb Zone. The land area between the rear property line for #32 BHR and the stone wall to the north of said property line (“No Disturb Zone”) shall not be disturbed by the Applicant during construction activities. The stone wall shall represent the “limit of work” boundary for the Project in that area.
3. Prior to commencement of site clearing and until the permanent fence is installed, Applicant shall install and maintain an 6’ chain link privacy construction fence along the shared property boundaries with the neighbors at 32 and 36 BHR, except for the rear property boundary of #32 BHR, in which case the fence shall be installed along the northerly bound of the No Disturb Zone, said fence to be covered with fabric screening on both sides.
4. No construction related vehicles shall park on Brush Hill Road or within the 50-foot strip between the Neighbors’ properties.
5. There shall be no construction vehicle idling on the Project Site. All vehicles shall comply with the Massachusetts Anti Idling Law. MGL Ch. 90, Section 16A and 310

CMR 7.11(1)(b). Site clearing or construction work shall not occur: (i) before 8:00 AM or after 6:00 PM Monday-Friday, (ii) before 8:30 AM on Saturday, and (iii) at all on Sundays or federal and Massachusetts state holidays. Materials and equipment deliveries may occur starting at 7:00 AM, provided that prior to 8:00 AM on work days there shall be no operation of equipment, tools, or vehicles that have back-up alarms, no loading or unloading of any materials or equipment, and no other activity on the Project Site that would create or emit any discernible noise at the Neighbors' properties.

6. During construction, the Applicant shall comply with all local, state, and federal laws regarding air quality, noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents in the general area. The Applicant shall provide the Neighbors with the name and 24-hour telephone number for the project manager (the "Project Manager") responsible for construction.
7. At least 14 days before the start of construction, the Applicant shall provide written notice to the Neighbors of the anticipated construction start date and the anticipated construction schedule, along with contact information for an individual other than the Project Manager who will be available on site to address all concerns that may arise during construction. Neighbors shall receive at least one week's notice of any changes in dates of construction schedule.
8. Any portable toilets on the Project Site shall be located in an area that is west of the proposed home construction.
9. The Applicant shall keep in optimum working order any and all construction equipment that makes sound.
10. The Applicant shall ensure that nuisance conditions do not exist in and around the site during construction. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area, including, but not limited to:
 - a. All equipment, dumpsters, etc. remaining on site after the hours of operation shall be screened to provide sufficient means to remove and abate any offensive noise, odors, and to screen appearances from the public. No mechanical equipment, including but not limited to generators, shall be on or running (emitting sound) outside the permitted hours of construction set forth above. No such equipment shall be left on the southerly boundary of the Site

after hours of operation.

b. The Applicant shall implement dust control measures (such as misting) as directed by the Building Inspector.

c. The Applicant shall implement measures to ensure that noise from the Project's construction activities does not exceed acceptable levels, as set forth by the state noise regulations and shall implement noise and vibration control measures as directed by the Building Inspector. The Applicant shall implement necessary controls to ensure that vibration does not create a nuisance or hazard beyond the Project Site.

11. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. During construction, the Applicant shall provide means to secure the front entrance to the Site at appropriate times to protect against unauthorized entry or vandalism, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.

12. Blasting - Any rock blasting shall be performed by a licensed blasting professional, who shall first obtain all required permits from the Sherborn Fire Department. All blasting and removal of debris shall be performed in accordance with state regulations and local Fire Department requirements, and the Applicant shall provide evidence thereof to the Fire Chief.

- a. Selection of the Blasting Contractor. A blasting contractor, acceptable to both the Applicant and the Sherborn Fire Department, shall be selected after review of the qualifications of such contractor.
- b. Independent Blasting Consultant. If required by the Fire Chief, an independent geotechnical-blasting consultant shall be selected and paid for by the Applicant, subject to the approval of the Sherborn Fire Department. The consultant shall review the qualifications of the blasting contractor, and review the final blasting plan prepared by the blasting contractor, check the calibration of the seismograph monitors, approve the location and installation of the seismograph monitors, and, if required by the Sherborn Fire Department, determine the blast limits throughout the blast period, and shall consult with the Sherborn Fire Department as needed throughout the blasting period.
- c. Pre-blast Survey. Before any blasting on the Site, the Applicant shall conduct a pre-blasting survey that shall include video-recording of the foundations of all direct abutters to the Project, and shall provide copies of that survey to the ZBA, Fire Chief and each abutter upon request.
- d. Insurance Coverage. The blasting contractor shall carry comprehensive public liability insurance in the amount of not less than \$1,000,000 for property damage

in respect of any one occurrence and \$2,000,000 aggregate. A certificate shall be submitted to the Sherborn Fire Department by the contractor documenting that the required coverage will be in force for the duration of the blasting at the site. If there is a general contractor or developer associated with the blasting, each shall carry a minimum of \$1,000,000 of comprehensive liability insurance.

- e. Blasting Limits. The Commonwealth of Massachusetts blasting limits shall be observed. However, if, based upon the recommendation of the independent blasting consultant, the Sherborn Fire Department feels that a lower limit is necessary to protect the site and the abutting residential neighbors, that lower limit shall be in effect.
 - f. Notification. Not less than two weeks before the commencement of any period of blasting, the Applicant shall notify the immediate abutters whose property boundaries lie within 200 feet of the blast area, stating when the blasting period shall begin. Notification under this provision and under any other provision in the Comprehensive Permit shall be by the following three methods: (1) phone or in person; (2) by email; and (3) by letter. Such notification shall include an explanation of the warning procedures for blasting, including soundings. The Applicant shall send another letter notifying the same abutters that the blasting period has been completed. In addition, the Applicant shall notify the Fire Department 30 minutes before each blast, and a Fire Department detail is required for every blast, who shall be certified by the Fire Academy regarding the requirements of the state blasting regulation.
 - g. No perchlorate shall be used during blasting at any time.
13. No areas shall be left in an open, unstable condition longer than sixty (60) days. Bare ground that cannot be permanently stabilized within sixty (60) days shall be stabilized by annual rye grass following U.S. Natural Resource Conservation Service procedures. Final stabilization shall be accomplished by loaming and seeding exposed areas. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable.
14. Prior to the commencement of site preparation activities, the Applicant shall post cash, a bond or enter into a Tri-Party Agreement with its construction lender in the amount of \$25,000 to provide surety to the Town in the event that the Project Site is disturbed, cleared, grubbed, etc. and abandoned in a state with insufficient erosion control, site stabilization or interim stormwater management. The surety shall be released by the Board upon completion of the driveway to base gravel course and all other infrastructure.
15. No grading, land disturbance, or construction shall commence until the Applicant or MassHousing has supplied the Board with written evidence of an executed Regulatory Agreement under the qualifying subsidy program. The Permit granted by this Decision shall lapse and become void and shall be considered without force or effect if the Applicant or MassHousing does not supply the ZBA with such written correspondence.

16. The Applicant shall not enter onto anyone else's property without obtaining the necessary permission or legal right to do so, in advance.
17. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns.
18. Prior to the issuance of any building permit, the Applicant shall:
 - a. Deliver to the ZBA revised site plans, architectural drawings, and plans for the Project that conform to the conditions and terms of this Decision, which will be subject to the review and approval by the ZBA for consistency with this Decision. The revised plans, as may be approved by the ZBA, shall be referred to as the "Final Plans."
 - b. Deliver to the ZBA and the Building Inspector final and detailed utilities plans and profiles including properly labeled drainage components and all site utilities; electric, gas, water supply wells, water supply lines, wastewater disposal systems and appurtenances and dwelling unit connections thereto, and to the detail required to obtain a building permit in accordance with the State Building Code.
 - c. Deliver to the ZBA and the Building Inspector final and detailed plans and profiles prepared and duly sealed and signed by a structural engineer. Final plans shall be delivered to the Building Inspector for review to determine if they are in conformance with this Decision and after any necessary peer review paid for by Applicant prior to issuance of building permits. Copies of the final approved plans shall be filed with the ZBA.
 - d. Deliver to the ZBA a written submission describing all easements and covenants affecting the use of the Site, referring to such covenants and locating such easements on a site plan.
 - e. Provide to the Building Inspector a final Stormwater Pollution and Prevention Plan to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system.
19. During construction, no run-off shall be directed down the driveway onto Brush Hill Road or onto abutting properties. The following conditions shall be implemented by the Applicant during construction:
 - a. Maintain the construction site free of dust that would create a hazard or nuisance to adjacent properties.

- b. Trucks hauling debris shall be covered and wet down as required to minimize dust. Spillage on roads shall be cleaned up immediately, and overloading trucks, which may contribute to spillage on haul roads, is prohibited.
 - c. Maintain any drainage or sediment controls in good working order (hay bales, silt fencing, etc.). Inspect all drainage and sediment controls prior to and immediately after, any storm event.
 - d. Brush Hill Road shall be swept clean of dirt, sediment, construction debris, etc., at the end of each workday.
- 20. Covered dumpster(s) shall be used during construction to keep debris within the Site, and the Applicant shall be responsible for the prompt removal of any debris which escapes enclosure. Use of the dumpster(s) shall be limited to the duration of the active construction period.
- 21. All fill used in connection with this Project shall be clean fill, as approved by the applicable Town of Sherborn department or official with jurisdiction. No fill shall contain any trash, refuse, rubbish or debris, including, but not limited to: lumber, brick, asphalt, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, appliances, motor vehicles or any part of the foregoing. Any fill subject to specialized disposal in conformance with current environmental criteria shall not be used.
- 22. As security for the completion of the infrastructure related to the Project as shown on the Approved Plans, no certificate of occupancy shall be issued for any unit in the Project until:
 - a. All sewage treatment and disposal facilities serving the Project are the subject of a final approval from the Board of Health, and may begin operation.
 - b. The unit has a fully functioning drinking water system that has been lawfully permitted and for which all permits have become final.
 - c. The base and binder course for the road, driveways and guest parking areas serving such unit have been installed.
 - d. All stormwater management and drainage facilities serving such building or unit as shown on the Approved Plans have been installed.
 - e. All utilities serving such unit have been installed.
 - f. All required landscaping has been installed.
- 23. In addition to the foregoing, prior to issuance of an occupancy permit for any unit in the Project, the Applicant shall have provided to the ZBA a performance guaranty to secure the complete construction of the remaining road, stormwater management infrastructure and/or utilities, as shown on the Approved Plans, for the Project. Said performance guaranty shall be secured by one, or in part by one and in part by another, of the methods set forth in clauses (1), (2) and (4) of M.G.L. c.41, §81U, which method or combination of methods may be selected and from time to time varied by the Applicant. The security provided as aforesaid shall be administered in accordance with the provisions of G.L.

c.41, §81U, relative to such security; provided; however, that wherever the Planning Board is referred to in M.G.L. c.41, §81U, the ZBA is substituted.

24. Notwithstanding the foregoing, in the event that the Building Commissioner determines that seasonal weather have reasonably delayed the installation of plantings to complete the landscaping, the Building Commissioner may, in his discretion, nonetheless issue certificates of occupancy; provided that the Applicant shall complete the final landscaping improvements not later than the conclusion of the next planting season, which for the spring shall be April 30 and for the fall shall be October 15, and the Applicant shall, prior to issuance of any certificate of occupancy pursuant to this condition post sufficient cash surety with the Town Treasurer for completion of said improvements should the Applicant fail to timely do so.
25. The final coat of pavement shall not be installed until after the base and binder coat has endured a full winter season.
26. Before occupancy or use of the final housing unit within the Project, the Applicant shall submit to the ZBA an "As-Built Plan" in both paper and CAD format, showing all pavement, buildings, stormwater management structures and other infrastructure as they exist on the Property, above and below grade, including appropriate grades and elevations. The plans shall include a description of each deviation from the Final Approved Plans. The plans shall be stamped and signed by a registered land surveyor or civil engineer, certifying that the Project as built conforms and complies with the conditions of this Decision. A purpose of this condition is to facilitate the Consulting Engineer's review of the Project for compliance with this Decision before the final certificate of occupancy is issued.

C. Tree Protection

27. The following conditions must be adhered to prior to any construction activities and during construction:
 - a. The Applicant shall stake the perimeter of the Site every ten feet a few inches inside the property line.
 - i. No part of the stakes along the perimeter shall be on abutters' properties.
 - ii. Trees straddling the property line shall be assumed to be jointly owned by the Applicant and the abutter. The perimeter stakes shall be installed on the Applicant's side of jointly owned trees, entirely on the Applicant's property.
 - b. The Limit of Work is the limit of grading and general excavation. No construction staging or stockpiling of equipment or materials shall be placed outside the Limit of Work.

- c. The Applicant shall install a Limit of Work fence at the limit of grading and excavation as shown on the Final Plans, which shall conform with the Conditions of this Decision. The fence shall prevent debris from exiting the Site and shall prevent trespassers from entering the Site. The fence shall be inspected and approved by the Building Inspector prior to construction for conformance with this Decision.
- d. No grading or excavation shall disturb, or undermine the ground of, the adjacent properties. The Applicant shall adjust plant locations whenever existing roots are encountered during excavation for root balls.
- e. No work of any kind shall be permitted outside of the Limit of Work line, either above or below ground, except for the landscaping improvements shown on the Final Plans.
- f. Any excavation proposed within 50 feet of the trunk of the 28" (DBH) Ash located on the property boundary with #32 Brush Hill Road (within the 50' strip) shall be performed using an air spade, either directly by or under the guidance of a Certified Arborist. In the event that roots are encountered within said 50-foot area, the Applicant's Arborist shall prepare a plan for preserving the roots or minimizing cutting in such a manner that will not threaten the overall health of the tree, and such plan shall be provided to the abutter's Arborist, Dan Cathcart, for review and comment prior to any root cutting or removal.
- g. During construction of the Project, any exposed roots within thirty (30) feet of the property line shall be protected as directed by a Certified Arborist.
- h. The Applicant shall use an air spade to excavate for plant pits for any plantings proposed within ten (10) feet of the property line where there are existing trees within 20 feet. In the event roots are encountered, applicant shall adjust planting locations in the field to minimize existing root disturbance.

D. Traffic, Fire, and Public Safety

- 28. All utilities, including but not limited to electric, cable and telephone shall be located underground.
- 29. There shall be no signage on the Project Site, including at its entrance except for a traditional Sherborn street sign. The driveway will not be illuminated by artificial lighting, for example, lamp posts, and ground mounted lighting, etc.
- 30. There shall be no parking on the driveways at any time. Pursuant to M.G.L. c.90, §18, this Comprehensive Permit authorizes the Town of Sherborn, through its Police Chief, to enforce this condition. This condition shall be incorporated into the condominium documents.

31. Guest parking shall be limited to the parking spaces shown on the plan. No parking shall occur within 40 feet of any property boundary.
32. A fire cistern shall be provided on the Site, underground, for fire protection of the new homes, and abutting neighbors. The Fire Chief shall review and approve the final design and size of the cistern prior to installation. A dedicated well to be used exclusively for the purpose of refilling the cistern shall be provided by the Applicant adjacent to the fire cistern, subject to approval by the Board of Health. No above-grade construction of residential structures may be initiated or framing lumber brought to the Site until the cistern is installed and operational, as certified by the Sherborn Fire Department. In accordance with the foregoing, the Applicant may obtain foundations permits prior to completion of the fire cistern.
33. The Applicant shall convey to the Town of Sherborn an easement providing for access to the fire cistern and dedicated cistern well. Such easement shall be satisfactory in content and in form to Town Counsel and the Fire Chief, and shall be conveyed to the Town before above-grade construction is initiated or framing lumber is brought to the Site.
34. The numbering system and the identification of the dwelling units shall be subject to the approval of the Building Commissioner. This system shall include a logical and easily identifiable numbering system that is uniform throughout the Project.
35. The Applicant shall obtain approval from the United States Post Office as to the placement of mailboxes for the units.
36. No exterior lighting shall be designed or installed so as to spill over onto or into any adjacent property. In addition, all exterior light fixtures specified for the Project shall cast light downward, and no light should be emitted above a horizontal plane running through the lowest part of the fixture to minimize sky glow.
37. The use of garbage grinders at the Project is prohibited. The restriction shall be included in the condominium documents, and may be enforced by the Condominium Association.
38. There shall be no open burning permitted on the Property. These restrictions shall be incorporated into the condominium documents.

39. The Applicant (and subsequently the Condominium Association) shall maintain all landscaped areas of the Site as shown on the approved Landscape Plan. A bond or surety shall be maintained 2 years after landscaping has been installed for each phase to insure that dead and unhealthy plant materials are replaced. One year after the landscaping has been installed, the Building Commission or its designee shall do a site walk and advise the Condominium Association of plants that need to be replaced. Dead or diseased planting shall be replaced as soon as possible in accordance with growing and weather conditions.

40. All snow shall be removed from the road to ensure access by fire trucks and other public safety vehicles. Snow shall not be plowed onto abutting properties or into parking spaces.

E. Landscaping and Screening

41. Prior to the issuance of any building permit, the Applicant shall prepare a detailed landscaping plan sealed and signed by a Landscape Architect registered in the Commonwealth of Massachusetts that shows fencing and suitable on-site landscaping and screenings, shade trees as well as the type and number, size and location of all proposed landscaping materials. The plan shall at a minimum contain the following elements:

- a. A 2-foot berm and a fence (6-foot high Bufftech Chesterfield in Weathered Blend) adjacent to the property boundaries shared with the Neighbors. The fence along the #32 BHR boundaries shall run the length of the abutting property from Brush Hill Road and continue north of the stone wall where the fence will turn approx.. 90 degrees to the northeast and proceed for another 75 feet. If sufficient permissions are granted by the owner of #32 BHR, the fence shall be installed on the #32 BHR side of the property boundaries with the exception of the section of fencing along the stone wall, which shall be installed adjacent and parallel to, and north of, the existing stone wall, as shown on the site plan. The fence along the #36 BHR property boundaries shall run the length of the #36 BHR property from Brush Hill Road within the 50-foot strip (approximately 480 feet) and shall be installed on the Project Site side of the boundaries. The fence shall continue along the rear property boundary of #36 BHR for an additional 100 feet. All fencing shall be professionally installed promptly after completion of site work and prior to the issuance of any building permits under the State Building Code for the Project. The fencing shall be perpetually maintained in good condition by the Applicant and its successors in title, and any damage or deterioration shall be promptly repaired with good workmanship.
- b. The Landscape Plan shall also include robust planting of trees and shrubs along the property boundaries shared with the abutters at #32 and #36 Brush Hill Road. All of the landscaping features shall be professionally installed promptly after completion of construction and prior to the issuance of any occupancy permits under the State Building Code for the Project. The natural landscaping shall be irrigated, pruned and professionally nurtured and managed for the first two years after installation to ensure long-term survival and growth. Dead or diseased plantings shall be replaced.

F. Water Quality and Quantity Evaluation and Protection

42. The Applicant shall comply with the Board of Health's Sewage Disposal Regulations except as specifically waived herein. The Applicant shall also demonstrate to the satisfaction of the Board of Health, through analyses prepared by qualified engineering professionals, at such time as it seeks a permit authorizing the proposed septic systems, that there shall be no greater than 10 mg/L concentration of total nitrogen in the bedrock aquifer at the perimeter boundary and at all on-site wells using the DEP "mass balance" methodology, and no measurable concentrations of viruses and other pathogens in the bedrock aquifer at the perimeter boundary and at all on-site wells employing a standard "time of travel" transport analysis. To meet this burden, the Applicant retain an independent hydrologist to perform an independent groundwater quality testing protocol that provides a sufficient number of data points to accurately plot groundwater gradients, and provides sufficient data to determine hydraulic connectivity (between the overburden and bedrock aquifer) and time-of-travel between the septic system and downgradient wells. Specifically, the Applicant shall prepare a groundwater contour map using groundwater elevation data collected from multiple wells on the Project Site in locations

provided by the Board of Health. Once groundwater flow directions are established, the Applicant shall prepare an "Area of Impact" analysis, predicting the geographic extent of the anticipated wastewater plume from the proposed leaching field, under the Board of Health's direction. The data collection and analysis shall be performed by competent professionals and include the following components:

- a. Monitoring wells shall be installed and water level data collected at locations determined by the Board of Health;
 - b. Groundwater mounding analyses shall be incorporated into a post-development water table (and groundwater flow direction) map that incorporates measured water levels on the abutter's properties;
 - c. Wells that are drilled for groundwater elevation data shall also collect data on the hydraulic conductivity of the overburden soils and the depth to bedrock;
 - d. Groundwater flow through bedrock fractures shall be taken into account. Pump tests shall be conducted to establish connectivity between the overburden and fracture bedrock.
 - e. "Time-of-Travel" calculations shall be performed to determine the threat of contamination from viruses from the septic system to drinking water wells on and off the Project Site.
43. The Board of Health's water supply regulations should be strictly enforced. Prior to the issuance of building permits, the wells serving the Project shall be pumped for a period of at least 48 hours, and water quality and quantity impacts on abutting wells shall be measured and evaluated to the satisfaction of the Board of Health. Owners of any private well within 600 feet may participate through the monitoring of their wells during and after the pump test and will be provided with at least 21 days notice of the proposed pump test.

G. Condominium Association

44. The Applicant and all of its successors and assigns shall be bound by all conditions and requirements set forth in this Decision. Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that the grantee and its successors and assigns shall be bound by the terms and conditions of this Decision.
45. The Applicant shall establish a condominium owners' association (the "Condominium Association") for the Project.
46. The following common facilities and services of the Project shall be maintained in perpetuity by the Applicant and/or the Condominium Association, as applicable, and further shall remain forever private, and the Town shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- a. Stormwater management system, including the maintenance of catch basins and the like;
- b. Drinking water system;
- c. Wastewater System;
- d. All roadways, walkways, driveways and parking areas;
- e. Snow plowing and removal;
- f. Landscaping and landscape maintenance.

The road within the Project shall never be dedicated to or accepted by the Town as a public way.

47. In accordance with the foregoing, regardless of whether the Condominium Association self manages or contracts with a management entity, it shall at all times have a qualified contractor under agreement to conduct regular inspections and all necessary maintenance and repair of the Project's stormwater management system, wastewater system and drinking water system, to maintain all common area landscaping, and to perform all street maintenance and snow removal. The Condominium Association shall, on or before January 15 of each year, submit a current list of all such contractors, with contact information for each, to the Building Commissioner to demonstrate ongoing compliance with this condition.
48. The Condominium Association shall, on or before January 15 of each year, submit a current list of its Trustees, and shall designate a lead contact responsible for communicating with the Town, its officials and representatives, and a backup contact. Contact information for those designated as lead and backup shall be provided.
49. The condominium documents shall include a realistic condominium fee budget based upon comparable developments that have been occupied for at least two (2) years, and shall include adequate provision for all inspection, maintenance, repair and replacement of the Project's significant infrastructure components, as discussed more specifically below.
50. The condominium documents shall provide for the maintenance and repair of the roadway in a safe and passable condition, including sufficient access for fire, police, and emergency vehicles during all seasons and weather conditions, including the removal of snow and ice and the clearing of brush and foliage.
51. The following covenants shall be included in the Master Deed and in the individual unit deeds:

- a. For each individual unit, all structures and impervious surfaces shall be contained within the footprint shown on the Approved Plans. Sheds and other accessory structures associated with the individual units are prohibited.
 - b. There shall be no conversion of interior space into additional bedrooms.
 - c. All yard and landscaping waste shall be disposed of off-site. Under no circumstances shall yard or landscaping waste be disposed of within the wooded portion of the Project.
 - d. Spillage of light onto neighboring properties is prohibited.
 - e. The use of garbage grinders is prohibited.
 - f. Storage of flammable, combustible or explosive materials, other than lighting and cleaning fluids customary for residential use, within any unit is prohibited.
 - g. Irrigation using the potable water supply is prohibited.
 - h. each unit is to be used for residential purposes only.
52. Prior to the issuance of any building permit for the Project, the Applicant shall submit to the ZBA the condominium documents (Master Deed, Declaration of Trust, Bylaws, Rules and Regulations) for review and approval by Town Counsel and for verification that such documents are consistent with this Decision. At the time that the documents are provided to Town Counsel, the Applicant shall certify that such documents are in compliance with M.G.L. c.183A.
53. The Condominium Association shall cause the inspection, maintenance and repair of the septic systems to be performed in strict accordance with the manufacturer's operation and maintenance manual. The Condominium Association shall submit an annual report to the Building Commissioner in which a qualified contractor certifies that it has timely performed all inspection, maintenance and repair called for by such manual. Such report shall be filed no later than January 15 of each year.
54. The condominium documents shall provide that for each sub-association served by a particular drinking water well, there shall be established a (1) an Operations and Maintenance Fund, to be held by the system owner(s) for normal and regularly occurring maintenance, (2) a Working Capital Fund to be held by the sub association system owner(s) for the current and future treatment, repair and/or replacement expenses of the well, and (3) a Reserve Fund, to be held by the Town, to provide for the replacement of the well at the end of its useful life. Such funds that are held by the Association or sub-association shall be separate and apart from other funds in its custody. Prior to the commencement of operation of the well, and annually thereafter, the Condominium Association shall determine the amount necessary to provide the sums needed to be paid over the next twelve month period to support the maintenance of the well to be deposited in the Operations and Maintenance Fund and these assessments shall be made proportionately to the owner of each unit. The schedule of deposits to the Working Capital Fund and Reserve Fund shall be such that each contains 25% and 75%, respectively, of the replacement value of the well at the end of the anticipated life span. The number and types of such funds, and the schedule of sums to be deposited therein

shall be subject to the review and approval of the Board of Health as part of its review of the applications under the Town's Well Regulations.

H. General Requirements

55. As this Comprehensive Permit Decision grants permission to build the Project on the Site under the Act, and as the Applicant has gained the benefits of a comprehensive permit including the right to construct and use the Project in a manner that is not in compliance with the Town of Sherborn's regulatory requirements which otherwise would be applicable to the Property and the Project, but for the Comprehensive Permit's override of local regulations to promote affordable housing, no use shall be made of the Property or of any building or unit on the Property except as permitted by this Decision. Without limiting the foregoing, no business or commercial use shall be conducted on the Property or in any building or use on the Property; provided that nothing contained herein shall be construed as prohibiting a resident of any unit carrying on their profession in a manner that does not involve visitors to, or parking at, the Project, or any other externally visible manifestation of such practice.
56. If, between the date of the Decision is filed in the office of the Sherborn Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the Project as reflected and approved by the Decision, such changes shall be governed by 760 CMR 56.05(11). Without limitation, in the event that any subsequent permitting or regulatory process (such as state wetlands review of the Project by the Conservation Commission or DEP, review of the proposed drinking water system by DEP, or other state or federal approvals) results in a change to the Approved Plans which trigger the need for further waivers from local bylaws, rules or regulations, any such matter shall be treated as a project change and the procedures in 760 CMR 56.05(11) shall be followed.
57. Prior to substantial completion of the Project, this comprehensive permit may not be transferred or assigned to any party without the approval of the subsidizing agency and written notice to the ZBA, as required by 760 CMR 56.05(12)(b).
58. Pursuant to 760 CMR 56.05(12)(c), if construction authorized by this Decision has not begun within three years of the date on which the permit becomes final except for good cause, the permit shall become void. This time shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the Project. The applicant may seek an extension as allowed in 760 CMR 56.05(12)(c).
59. The Applicant shall comply with all local bylaws, rules and regulations of the Town of Sherborn and its boards and commissions in effect as of the date of the filing of the comprehensive permit application with the Board, unless expressly waived herein.

60. The Applicant shall pay all fees of the Town of Sherborn imposed generally for construction projects, including but not limited to building permit fees, and for the purposes of monitoring compliance of the construction and occupancy of the Project in accordance with this Comprehensive Permit unless otherwise expressly waived in this Decision.
61. The Applicant shall copy the ZBA on all correspondence between the Applicant and any federal, state or Town official, board or commission that concerns the design and/or conditions set forth in this Decision, including but not limited to all testing results, official filings and other permit applications that concern this Project. In addition, the Applicant shall provide the Building Commissioner, the ZBA and the Board of Health copies of all communications, reports, submissions, or other documents concerning the drinking water system sent by or on behalf of the Applicant or DEP.
62. The terms, provisions and conditions of this Decision shall run with the land and shall be binding on the Applicant and all of its successors and assigns, with the same effect as if specifically mentioned in each instance where the Applicant is named or referred to. Any and all references to the "Applicant" herein shall include any authorized successors or assigns of the Applicant including, but not limited to, any Condominium Association created relative to the Project and individual unit owners, as applicable. Any sale or transfer of rights or interest in all or any part of the Property shall include a condition that the grantee and its successors and assigns shall be bound by the terms and conditions of this Decision. This Decision shall be so referenced in the condominium Master Deed for the Project and in each condominium unit deed.
63. All outstanding invoices for peer review and consultant costs incurred by the Town prior to the issuance of this Decision shall be paid by the Applicant within thirty (30) days after this Decision is filed with the Town Clerk.
64. Upon submission of the Proposed Final Plans, the Applicant shall replenish the project review fee account in the amount of \$20,000 to fund the review of the Proposed Final Plans by the ZBA Consulting Engineer. Any amounts not expended from this account shall be returned to the Applicant.
65. Inspection of the roadway construction and stormwater infrastructure shall be performed by a qualified engineer retained by the ZBA at the Applicant's expense. The Applicant shall promptly pay the reasonable fees of any consulting engineers or outside inspectors as the ZBA or relevant Town staff determine to be necessary to conduct construction and post-construction inspections of the Project's infrastructure.

66. The Applicant shall reimburse the ZBA for its legal expenses in reviewing the Regulatory Agreement, Monitoring Services Agreement, Affordable Housing Restrictions (Deed Rider), Lottery Plan and Condominium Documents, not to exceed \$5,000.

67. For all matters relating to enforcement of this Decision by the Town of Sherborn responsibility for the cost and maintenance of the common facilities and infrastructure of the Project shall be joint and several between the Condominium Association and the entity(ies) developing the applicable phase of the Project; and the entity(ies) developing the applicable phase shall be relieved of such responsibility upon issuance of the occupancy permit for all of the units within that phase.

Thank you for your consideration of our comments.

Very truly yours,

/s/ Daniel C. Hill

Daniel C. Hill

Encs.

cc: Clients
Sherborn Board of Health
Sherborn Board of Selectmen
Paul Haverty, Esq.