

**Decision of the Sherborn Zoning Board of Appeals  
Comprehensive Permit (Chapter 40B M.G.L)  
59 North Main Street, Sherborn, Massachusetts**

**I. Project Description**

The Applicant proposes to construct a residential development off North Main Street in Sherborn, Massachusetts consisting of twelve (12) single-family age-restricted homeownership units, a circular driveway providing access to all units, and associated water, septic, and stormwater improvements to the Site (the Project).

**II. Property Location and Owner Information**

The property is located at 59 North Main Street, shown on Assessor's Map 10, Lot 25. The property is owned by HP Sherborn LLC.

**III. Plans, Documents, and Exhibits**

1. Plans entitled *Sherborn Village in Sherborn, Massachusetts (Middlesex County)* dated July 25, 2017, revised November 27, 2017 prepared by Engineering Design Consultants, Inc., Southborough, Massachusetts.
2. Calculations including *Stormwater Calculations for Sherborn Village, a Residential Development located at 59 North Main Street Sherborn, Massachusetts 01772* including *Drainage Summary, Checklist for Stormwater Report, TR-20/TR-55 Hydrologic Calculations, TSS Removal Calculations, Hydrodynamic Separator Specifications, NRCS Web Soils Survey, FIRM Mapping and Construction Period Pollution Prevention and Sedimentation Control Narrative*, dated July 25, 2017 and prepared by Engineering Design Consultants, Inc.
3. Exhibits, including:
  - a. A letter from Town of Sherborn Town Administrator, dated July 6, 2017 to MassHousing,
  - b. A letter from Town of Sherborn Town Planner to the Town Administrator, dated December 14, 2016,
  - c. A Memorandum from the Board of Health to the Board of Selectmen dated December 30, 2016,
  - d. A Memorandum from The Conservation Commission to the Board of Selectmen, dated December 21, 2016,
  - e. Correspondence from the Sherborn Fire/Rescue Department to the Town Administrator, dated December 4, 2016,
  - f. Correspondence from the Sherborn Police Department to the Town Administrator, dated December 12, 2016,
  - g. Two letters from Heritage Properties to the Board of Appeals, dated May 12, 2017 and May 15, 2017 and
  - h. A letter from Engineering Design Consultants to the Board of Appeals, dated May 11, 2017.

4. List of requested variances, waivers and exemptions from Engineering Design Consultants, Inc, addressed to the Zoning Board of Appeals, dated May 22, 2017, revised May 8, 2018.
5. Comprehensive Site Approval letter from Massachusetts Housing Finance Agency addressed to Vin Gately, 59 N. Main Street Village, Inc., dated February 21, 2017.
6. Response Letter to Board of Appeals from Engineering Design Consultants regarding Sherborn Village, dated November 27, 2017.
7. Report Memorandum to Peter Bemis, Engineering Design Consultants, Inc. from Provencher Engineering, LLC regarding well testing results, dated March 21, 2018.
8. Letter/Memorandum to the Applicant from the Board of Health, identifying conditions associated with the plan approval, dated May 17, 2018.

#### **IV. Procedural History**

An application was submitted to the Sherborn Zoning Board of Appeals (the ZBA) on March 22, 2017. The Application sought to construct a twelve (12) unit age-restricted homeownership development under M.G.L c. 40B.

The public hearing was opened on April 13, 2017. The ZBA held public hearings for the Project on the following dates: (2017) April 13; May 18; June 22; July 20; August 10; September 26; October 18; November 28; December 19; December 20; (2018) January 17; February 26; March 22; April 5; and April 19. The public hearing was closed on May 10, 2018.

#### **V. Governing Law (Chapter 40B)**

1. The Town of Sherborn, as of the date of this Application to the ZBA, did not meet the 10% Subsidized Housing Inventory (SHI)-eligible housing unit minimum;
2. The Town of Sherborn, as of the date of submission of this Application to the ZBA, did not contain SHI-eligible housing units on sites comprising more than 1.5% of the total land area in Sherborn;
3. The Project would not result in the commencement in any one calendar year of construction of Low or Moderate Income Housing on sites comprising more than 0.3 of 1% of the Town's land area or 10 acres, whichever is larger; and
4. The Town of Sherborn does not meet any of the other Safe Harbor thresholds.

#### **VI. Findings of Fact**

1. The Town of Sherborn does not meet the Statutory Minima as set forth in MGL c. 40B;
2. The Project will not exceed the Safe Harbor thresholds as set forth in MGL c. 40B;
3. The Project will provide the necessary minimum number of Low or Moderate Income Housing, as defined in MGL c. 40B to be considered an "Eligible Project";
4. The Applicant has received a letter of Project Eligibility from MassHousing for the Project, dated February 21, 2017;

5. The Project proposes to construct a residential development off North Main Street in Sherborn, Massachusetts consisting of twelve (12) single-family homeownership units on a total land area of approximately 6.3 acres (the Site);
6. The Site is found within the Residence-A (RA) district;
7. The Site was previously occupied by a single-family home with a detached barn structure, both of which were razed in May 2016. Much of the Site was cleared under the prior use;
8. The Project will include three (3) housing units affordable to those persons and families making less than 80% Area Median Income (AMI) as set forth in the Chapter 40B regulations;
9. The project will be served by a single access, interior looped roadway, which will connect the project to North Main Street. Approximately 680 LF of proposed total roadway will be constructed to serve the 12 units;
10. The Project's water is proposed via two (2) private on-site wells, each serving six (6) units;
11. Septic flows will be treated using a pressure-dosed system that will discharge to a shared soil absorption system proposed within the roadway loop; and
12. Surface stormwater will be collected in a closed storm drain system and directed to six (6) subsurface stormwater management galley systems.
13. A portion of the site was previously the subject of a Special Permit issued by the Sherborn Planning Board on April 28, 2015 under Section 4.4 of the Sherborn Zoning By-Law ("2015 Section 4.4 Permit"). The 2015 Section 4.4 Permit allowed a third lot with limited frontage, as reflected on the ANR plan dated April 7, 2015 ("2015 ANR Plan") and recorded with Middlesex South District Registry of Deeds ("MSRD") as Plan 1018 of 2016. The so-called "Section 4.4 Lot" was Lot #3 on the 2015 ANR Plan, which also included two other fully compliant lots, #1 and #2. By April 28, 2017, none of the lots on the 2015 ANR plans had been separately conveyed to third parties, and the 2015 Section 4.4 Permit had not been recorded with MSRD or otherwise exercised. Accordingly, under M.G. L. C. 40A Section 9, and Section 6.4 of the Sherborn Zoning By-Law, the 2015 Section 4.4 Permit lapsed unexercised.

## **VII. Waivers Requested**

### **A. Zoning By-Law:**

1. Multi-Dwellings - allow multiple buildings on a single lot. (Section 3.2 Table of Use Regulations)
2. Schedule of Dimensional Requirements - allow minimum front yard setback reduction from 60-feet to 45-feet and side yard reduction from 30-feet to 17-feet. (Section 4.2)
3. Number and location of Dwellings on One Lot – to allow multiple dwellings on one lot (Section 4.3.6)
4. Parking Area Plans - allow parking layout as proposed without Planning Board Review prior to building permit. (Section 5.1.3)
5. Screening of Parking Areas - allow parking layout as proposed without any additional planting or screening other than as proposed. (Section 5.1.5)
6. Allowed Permanent Signs - allow project monument sign, directional and identification signs as proposed. (Section 5.2.6a)

**B. Wetlands Regulation:**

No Waivers requested. An Order of Conditions was issued by the Sherborn Conservation Commission for State-jurisdictional wetlands on April 5, 2018.

**C. Board of Health Regulations - Sewage Disposal Regulation:**

No Waivers requested. The Sherborn Board of Health approved the Soil Absorption System Design on May 4, 2018, and approved stamped plans are pending distribution at the time of this action. No Sherborn Sewage Disposal Regulation Waivers are required, other than as to the last sentence of BOH regulation 3.2 as to the order of construction.

**D. Board of Health Regulations - Domestic Water Supply:**

1. Number of Wells - allow project to proceed as planned with two (2) separate wells that will each supply potable water to six (6) separate housing units all of which are located upon one single lot. (Section 7.0).
2. Well Yield - allow project to proceed as planned with 150 gallons required per bedroom. (Section 11.1).
3. Storage - allow project engineer to meet and/or exceed minimum state plumbing code requirement for storage and distribution of potable water supply. (Section 11.2).
4. Tests - allow project engineer to meet and/or exceed minimum state guidelines for well testing. (Section 12.0).
5. Domestic Water Supply Testing at each individual dwelling kitchen tap - allow a bacterial analysis to be completed at each individual dwelling kitchen tap (12 individual tests) and allow a comprehensive analysis at each well water supply distribution center (1 test at each individual well pump house). (Section 17.2).

**E. Board of Health Regulations – Public and Environmental Health Review Regulations and Standards for Other than a Single Family Dwelling on a Single Lot**

1. Environmental Health Impact Report - allow project to proceed without completing Environmental Health Impact Report. (Section 3.1).
2. Environmental Health Permit - allow project to proceed without obtaining Environmental Health Permit. (Section 3.2).
3. Water Supply - allow project to proceed without conducting separate water supply review with Board of Health. (Section 7.0).
4. Drainage - allow project to proceed without conducting separate drainage system review with Board of Health. (Section 12.0).

**VIII. Decision**

Therefore, on motion duly made and seconded, the Sherborn Zoning Board of Appeals hereby APPROVES the proposed development at 59 North Main Street, and all waivers heretofore requested as detailed above are granted, with the exception of *Board of Health Regulations - Domestic Water Supply* Waiver 5 – Domestic Water Supply Testing, as detailed herein, subject to the following CONDITIONS (No. 1–91):

## **Regulatory Conditions**

1. The total number of units that may be constructed at the Premises shall be limited to 12 age-restricted condominium units, with a maximum of 24 bedrooms, substantially as shown on the Plan of Record. The final plan shows, the installation of two wells to supply potable water for the entire 12 age-restricted units as a Public Water System (PWS), which will require a permit from the Department of Environmental Protection (DEP).
2. As a condition of any approval hereunder, at least 25% of the dwelling units shall be and shall remain affordable and shall be marketed and leased to eligible households whose annual income may not exceed 80% of area median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development (the "Affordable Units"); and, subject to approval by DHCD, the Affordable Units shall be and shall remain eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD. These affordable units will further be restricted to individuals aged 55 years and older, as regulated through the condominium association bylaws.
3. The Applicant shall notify the ZBA and the Town Administrator when building permits are issued for Affordable Units and cooperate with the preparation of request forms to add the Affordable Units to the Town's SHI. The Applicant shall notify the ZBA and the Town Administrator when occupancy permits are issued for the Affordable Units and cooperate with the preparation of request forms to add the units to the Town's SHI permanently. The Affordable Units shall permanently remain affordable units, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23. The Affordable Units shall be deed restricted to remain affordable as detailed herein, for a minimum period of 30 years from the date of issuance of the Certificate of Occupancy for each Affordable Unit.
4. A springing affordable restriction and regulatory agreement shall be signed with the Town and recorded at the Registry of Deeds as set forth below.
5. The Affordable Units shall be dispersed throughout the Project as designated by the Applicant by agreement with the subsidizing agency. The Affordable Units and the market rate units shall be constructed on substantially the same schedule. The Affordable Units shall not be readily identifiable as such and shall be equally distributed among the units.
6. The Applicant shall execute a Regulatory Agreement that shall be countersigned by the Subsidizing Agency as required under G.L. c.40B and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement. The Affordable Units shall be confirmed before building permits are sought and the Affordable Units shall not be segregated from the market rate units. The Applicant has identified the affordable units

as Units 2, 4, and 12, as indicated on the final plans, and these unit assignments shall remain as identified.

7. The Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the ZBA, the Applicant and their counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex South Registry of Deeds against three units of the Property (the "Town Regulatory Agreement Affordable Units") prior to issuance of any building permit for the Project and signed by all necessary parties, including all mortgagees and lien holders of record.
  - a. The Town Regulatory Agreement: (i) shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that the Town Regulatory Agreement Affordable Units shall remain affordable so long as the Project does not conform to local zoning; (iii) shall require that the Town Regulatory Agreement Affordable Units shall be affordable and owned by low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23; and (iv) shall restrict or limit the dividend or profit of the Applicant only if and as required under G.L. c. 40B and 760 CMR 56.00, et seq., and no independent limitation on dividends or profits is imposed hereunder.
  - b. The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Town Regulatory Agreement Affordable Units and shall be enforceable by the Town and shall require that the Town Regulatory Agreement Affordable Units shall remain affordable units in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws or for the longest period allowed by law, whichever period is longer.
8. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency and may take any steps allowed under G.L. c.40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.
9. When the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee, to the full extent allowed by M.G.L. Chapter 40B, Sections 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010) or any other relevant decisional law or amendment to G.L. Chapter 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town

becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee.

10. To the extent allowed under G.L. c. 40B and the regulations promulgated thereunder and other applicable law, with respect to at least 70% of the affordable units, the Applicant shall provide a preference category for Sherborn residents, and their parents and children, who have resided in Sherborn within two years immediately preceding their application for housing, and for employees of the Town of Sherborn in the initial sales of the units.
11. This preference shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference set forth herein, to the extent such local preference has been allowed by the Subsidizing Agency.
12. The foregoing local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.
13. The Applicant shall submit to the ZBA a report on marketing activity at the Project during the initial lease-up of the Project demonstrating compliance with the local preference requirement pursuant to the plan approved by the subsidizing agency as set forth below.
14. The ZBA acknowledges that the Town will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the ZBA or its designee does not provide such information within sixty days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or DHCD, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.
15. The Applicant shall develop a marketing plan for the Affordable Units for review and approval of the Subsidizing Agency, said plan to conform to any and all affirmative action requirements or other requirements as imposed by federal or state regulation and shall conform with the local preference requirement set forth above.
16. If at any time it appears that the Applicant is in violation of an affordable housing restriction, then the ZBA may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.

17. Profits from the Project in excess of those allowed under applicable law and regulations shall be utilized as provided in the regulatory agreement with the Subsidizing Agency and as required and provided for under G.L. c.40B and 760 CMR 56.00.
18. The Applicant shall provide the ZBA with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency or its designated auditor of the Applicant's costs and revenues for informational purposes.
19. The Town, by and through the ZBA or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
20. Prior to receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Official and the ZBA.

### **General Conditions**

21. The Applicant shall comply with all local by-laws, rules and regulations of the Town of Sherborn and its boards, officers and commissions, unless expressly waived hereunder.
22. The Project shall conform to all applicable state and federal laws, codes, regulations, and standards including, but not limited to, the following:
  - a. Massachusetts Building, Plumbing, and Electrical Codes;
  - b. The Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and the associated Regulations 310 CMR 10.00;
  - c. Massachusetts Department of Environmental Protection Title 5 Regulations;
  - d. U.S. Army Corps of Engineers, Regulatory Program under Section 404 of the Clean Waters Act; and
  - e. Massachusetts Stormwater Management Regulations.
23. There shall be no exterior construction activity on the Premises before 7:00 a.m., or after 7:00 p.m., Monday through Friday and before 8:00 a.m. or after 5:00 p.m. on Saturday. There shall be no construction on the Premises on the following days unless a special approval for such work has been issued by the Police Department: Sundays or the following legal holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and Christmas. The Applicant agrees that the hours of operation shall be enforceable by the police department.
24. All utilities within the Premises shall be installed underground.
25. The interior and exterior of all buildings and structures shall be constructed substantially as represented in the Application, as revised, and on the Plan of Record.

26. All utility work and other roadwork within any public right of way shall be performed and conducted in conformance with the regulations of the Town, including requirements for street opening permits. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with current engineering and construction standards. Final design of stormwater management system shall comply with Department of Environmental Protection regulations.
27. All structures and site improvements within the Project site shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, sewer and water infrastructure and the Applicant and then the Condominium Association shall bear the cost of maintenance, repairs, replacement, snow plowing and trash removal for same in perpetuity.
28. The Applicant shall submit final fire alarm/sprinkler plans to the Fire Chief for review and approval, or a letter from the Fire Chief waiving this requirement.
29. The Applicant shall equip each unit with water saving plumbing fixtures in every bathroom, kitchen, and laundry area, and all underground water pipes shall have water tight joints.
30. All infrastructure (utilities, roads, and stormwater management system, sewer and water) shall be constructed as shown on the Plan of Record, prior to issuance of a certificate of occupancy for the first building. The road may be to binder course until after all building is completed, provided that proper surety is provided to secure the work when the first occupancy permit is issued. The septic system shall be installed and completed prior to the issuance of the building permit to frame the first building. A building permit for foundation, or a foundation permit, may be issued at the time that the Project is qualified to do so under the State Building Code.
31. No stormwater pond or other water collection area to be constructed by the Applicant as part of the Project shall hold water for more than 72 hours, to prevent the breeding of mosquitos. The Applicant shall implement any necessary mosquito control measures to protect residents of the Project and nearby residents in the event that water collects for longer than 72 hours.
32. The Project shall comply with all requirements of the Operations and Maintenance Plans submitted to the ZBA, as required in Condition 58, herein.
33. Road salt shall not be used for vehicular areas.
34. Dumping of landscape debris, including leaves, grass clippings and brush, within 50 feet of any wetland shall be and is expressly prohibited.

## **Project Specific Conditions**

### ***General***

35. The Project shall conform to the final plans as approved by the ZBA, as well as those items determined to be a “Closed Item” as set forth in the letter dated March 20, 2018 by Professional Services Corporation, PC (the Peer Reviewer).
36. The Applicant shall provide the ZBA with a final set of stamped plans prior to the issuance of a building permit.
37. The Applicant shall restrict, by deed, all units are to be two (2)-bedroom units and that the proposed loft area, as shown in certain floor plan designs submitted as part of the Application, shall not be used as a bedroom. The Applicant shall grant to the Town a “Grant of Title 5 Bedroom Count Deed Restriction” in the form provided by the Department of Environmental Protection, Bureau of Resource Protection, Wastewater Management, limiting the number of bedrooms on the Property to 24 (12 age-restricted units), which restriction shall be recorded at the Middlesex South Registry of Deeds superior to any mortgages on the Property. This Deed Restriction shall be so recorded prior to the issuance of any building permit for the Project. The Condominium Master Deed shall also include a restriction limiting the total number of bedrooms allowed on the Property to 24 bedrooms (12 age-restricted units).
38. The Applicant has not proposed phasing of the Project. If the Applicant desires to phase the project, it must return to the ZBA with a specific phasing plan, which shall be reviewed in accordance with 760 CMR 56.05(11). Unless a phasing plan is approved, once construction of the Project commences, it shall continue uninterrupted until completed.
39. Prior to issuance of the first Certificate of Occupancy, the Applicant shall transfer ownership of the two (2) parcels of land indicated as such on the final plans to the owners of the properties at 55 North Main Street and 61 North Main Street, or alternatively the Town of Sherborn, in a manner determined to be satisfactory by the ZBA. Notwithstanding the forgoing sentence, the Applicant may satisfy this condition by providing an agreement by either or each of the aforementioned owners for substantially equivalent real estate attributes, as determined to be reasonably satisfactory by the ZBA.
40. Prior to the issuance of a Certificate of Occupancy for the first unit, the Applicant shall submit a detailed management plan indicating the organization and funding mechanism for a Condominium Association or other organization that will be responsible for maintaining the on-site parking, access, utilities, and landscaping, and for contribution to the ongoing maintenance of the shared wastewater facility, which is to be determined satisfactory by the ZBA.

### ***Site Design***

41. Prior to the issuance of a certificate of occupancy for the first unit, the Applicant shall provide a final design of the common mail kiosk to the ZBA. The Applicant shall locate the common mail kiosk per the final plan set in a design as determined satisfactory by the ZBA.
42. The Applicant shall install, and indicate on the final revised plan set, an area of cobblestones, pavers, or similar paving material, at the entrance of the Site, along North Main Street, so as to deter an immediate left turn by vehicles entering the Site to access units on the western side of the interior circulation drive. The internal circulation drive is intended to be a counter-clockwise one-way drive. Therefore this area is intended to deter vehicles from driving the opposite way on this one-way drive, so as to protect the safety of residents and visitors.

#### ***Water and Wastewater***

43. The Applicant shall coordinate and complete additional well testing as part of the water distribution system work during construction of the Project to assure establishment of a potable water supply, in conformance with the Provencher Report, dated March 22, 2018.
44. Prior to the issuance of the building permit, the Applicant shall submit plans showing the full design of the water system, as discussed at the March 22, 2018 ZBA hearing.
45. Prior to the issuance of a Certificate of Occupancy for the first unit, the Applicant shall provide evidence to the ZBA that the on-site wells do not contain measurable amounts of Toluene, in conformance with the Board of Health's No Tolerance policy.
46. Prior to the issuance of the Certificate of Occupancy for each of the twelve (12) age-restricted units, the Applicant shall provide evidence to the ZBA that a tap within the subject unit has been tested and approved, in conformance with the existing Board of Health Regulations.

#### ***Coordination with Other Boards/Town Officials***

47. The Applicant shall comply with the conditions set forth in the Order of Conditions issued by the Sherborn Conservation Commission, dated April 5, 2018.
48. The Applicant shall comply with the conditions set forth in the approval of the plans voted May 3, 2018 and the memorandum dated May 17, 2018 issued by the Sherborn Board of Health.
49. Prior to issuance of the certificate of occupancy for the first unit, the Applicant shall install a 30,000 gallon tank per the final plan set unless the ZBA is presented with and agrees to a letter from the Sherborn Fire Department confirming the Department's support of the Project as designed and shown on the latest revised site plans.

50. No construction activity shall occur on the Project, and no building permit shall be issued, until the Applicant shall have:

- a. Executed and recorded the standard form Regulatory Agreement as proscribed by the Subsidizing Agency, and provided evidence of same to the ZBA and the Building Inspector. The Regulatory Agreement shall be subject to review, as to form and consistency with this Decision, by Town Counsel prior to execution.
- b. Obtained an Order of Conditions from the Sherborn Conservation Commission or DEP permitting the construction of the Project, and any appeals have been finally adjudicated, if applicable.
- c. Obtained a Disposal Works Construction Permit under Title 5 of the State Environmental Code, and any appeals have been finally adjudicated, if applicable.
- d. Obtained National Pollutant Discharge Elimination System ("NPDES") stormwater permit for the Project, if applicable.
- e. Submitted to the ZBA and the Building Inspector a Construction Management Plan (CMP), as well as a Construction Management Schedule (CMS); that generally conforms to industry standard practice and addresses all construction-related conditions specifically set forth in this Decision. Additional copies of the proposed CMP shall be provided to the Planning Board, Board of Health, Conservation Commission, DPS, Fire Chief and Police Chief.
- f. 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, all in conformance with the requirements of the Conservation Commission during the Order of Conditions process.
- g. Provide procedures that outline the specific operation and maintenance measures for all stormwater/drainage facilities, including any temporary facilities that shall be employed to minimize or eliminate the threat of transmission of mosquito borne diseases to the residents of the Project and nearby residents.

### *Landscaping*

51. Prior the issuance of the building permit, the Applicant shall submit to the ZBA a revised landscaping plan showing vegetated screening, so as to resolve, to the satisfaction of the

ZBA, the concern regarding headlights from vehicles exiting the development impacting the residence across the street (58 North Main Street).

52. Prior to the issuance of a Certificate of Occupancy for the first unit, the Applicant shall provide the ZBA with a current Landscape Operations and Management Plan indicating that the Project will utilize reduced amounts of lawn chemicals and fertilizer as discussed at the ZBA hearing on March 22, 2018.

***Condominium Association***

53. There shall be a Condominium Association and the necessary documents to establish the Condominium Association shall be provided to the ZBA for its review and approval before the first occupancy permit is issued, including the Master Deed, Condominium Trust, form of deed for individual condominium units, documents for the control and maintenance of each well, exclusive control and maintenance easements for each well and the budget.
54. The Condominium Association shall be responsible for owning and maintaining and repairing and replacing the roadway and drainage systems and recreational areas.
55. The Condominium Association shall be responsible for regulating the prohibition of garbage disposals (or similar device) in units, including the application of under-sink labelling stating that both (a) the installation of these types of devices and (b) the removal of such labels prohibited.
56. The Condominium Association shall be in place and recorded against the Property before any unit is sold.
57. The roadway and stormwater control system shall remain private and shall be maintained by the Condominium Association.
58. The Master Deed shall specifically reference the Operations and Maintenance (O & M) Manual, and shall bind the Condominium Association to arrange for regular inspection, maintenance and repair of the stormwater management system by a qualified contractor to ensure its effectiveness for as long as the Project is in existence.
59. The Condominium Association shall include funds in its annual budget to conduct all routine repair and maintenance of the stormwater management system in accordance with the O & M Manual, and shall provide annual funding to create a savings reserve so as to provide for the timely replacement of failed system components.
60. The Applicant and the Condominium Association, as may be applicable, 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 the O & M Manual. Such report shall be filed no later than January 15<sup>th</sup> of each year.

## **Construction and Bonding Conditions**

61. The Applicant shall provide the ZBA with authority to enter the Property during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard hat, safety glasses and work boot requirements), with prior notice to determine conformance with this Decision.
62. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. A consulting engineer shall be used. All fees for ZBA consultants including fees incurred prior to the date of this decision shall be paid by the Applicant within 30 days of the receipt by the Applicant of the consultant's bill for services. Any outstanding fees owed for consulting services incurred by the ZBA before this decision was rendered shall be paid forthwith and before any building permit issues. Thereafter, no occupancy permit shall issue if an outstanding fee bill is 30 days overdue.
63. The Applicant shall abide by orders issued by the Building Inspector in conformance with applicable law in conjunction with construction of the Project, subject to the Applicant's rights of appeal under applicable law.
64. No area within 50 feet of any wetland shall be used for stockpiling of earth or construction materials, for storage or overnight parking of construction vehicles and equipment, refueling and maintenance of construction vehicles or equipment, or for storage of diesel fuel or hazardous materials.
65. Prior to construction, physical barriers as required under the tree protection provisions of the construction documents shall be installed along the limit of clearing line. Erosion controls and tree protection measures shall be continuously maintained throughout the course of construction. Adjacent public streets shall be swept as needed to remove sediment and debris. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures.
66. With respect to the work to be done by Applicant on private ways within the Property, no certificates of occupancy, shall be issued by the Town until the Applicant has fully completed all site drainage and utility work appurtenant to any portions of the site for which an occupancy permit is to be issued and has installed a binder course of pavement on driveways and parking areas within the Property.
67. Prior to the issuance of the first certificate of occupancy, a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, shall be

provided to the Town, in an amount to be determined by the Community Maintenance and Development in an amount sufficient to ensure the completion of the top coat of paving. Requests to reduce the surety may be submitted as the work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the satisfactory completion of the work in question as voted by majority vote of the Board of Appeals. In the event of a default, the Town shall have the right to seize the funds and keep them and the right to use the funds, but not the obligation to do so, to appropriate the funds and expend them to do the work. The Town may elect to keep the funds until such time as the work is done and then return the funds. The Town shall have the right to require that the surety amount shall be increased even after work has been released, if the work that was released falls into disrepair or needs to be redone. If proper surety is not in place, no further permits shall be issued until the surety is provided.

68. Landscaping and lighting shall be as shown on the final plans. To the extent that landscaping for the Project is not completed prior to the issuance of the first certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the ZBA in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.
69. In addition, the Applicant shall provide surety sufficient to loam and seed any disturbed areas which are yet to be developed as per the final plans.
70. Project surety shall be held by the Town Treasurer until the Treasurer is notified by the ZBA to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the completion of the landscaping work.
71. Prior to the issuance of any building permit, the final plan set, finalized as necessary to comply with this Decision, shall be signed and sealed by a Massachusetts Professional Engineer and, as appropriate, a Registered Land Surveyor and a Massachusetts Registered Landscape Architect and filed with the ZBA and the Building Inspector, and shall include the following:
  - a. Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes;
  - b. Stormwater Pollution and Prevention Plan (SWPPP) notes that address mitigation of sedimentation and erosion, including details relating to any temporary drainage basins;

- c. Letter from the Project architect confirming that the Project complies with Architectural Access Board (AAB) Regulations; and
  - d. Details of any temporary construction signs.
- 72. A surety instrument, that shall not expire until it is satisfactorily replaced or released, in an amount to be determined by the ZBA in consultation with Town boards and officials and other consultants shall be given to the Town by the Applicant prior to starting any activity authorized by this approval ("Authorized Activity") within a public way, on Town property or in any Town easement to ensure the proper and timely completion of all such work that shall be held by the Town Treasurer until the Treasurer is notified by the ZBA to release the surety.
- 73. Requests to reduce the surety may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The surety retained shall be based on the work remaining.
- 74. Prior to starting any Authorized Activity, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Inspector, Conservation Agent, and Community Maintenance and Development Director, and Board of Health Agent and/or representatives to review this approval.
- 75. Prior to starting any Authorized Activity, the Applicant shall provide to the Building Inspector:
  - a. The company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site;
  - b. A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the premises have been paid;
  - c. Certification from the applicant that all required federal, state and local licenses and permits have been obtained;
  - d. Proof that "dig-safe" has been notified at least 72 hours prior to the start of any site work;
  - e. Proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services to protect and secure the site and construction personnel; and
  - f. At least 48 hour written notice. If activity on site ceases for longer than one month, 48 hour written notice prior to restarting work.
- 76. During construction, at the end of each work day, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the ZBA shall be notified in writing of the final disposition of the materials.

77. Blasting, if any, shall be performed in a manner approved by the Fire Department and Building Department so as to prevent injury or property damage to the residents of the Town and proper evidence of insurance shall be provided to the Building Inspector before blasting begins.
78. Within ninety days of completion of the activities authorized under this permit, the Applicant shall submit to the ZBA two sets of as-built plans for all infrastructure improvements and, if applicable, evidence of compliance with this comprehensive permit and any other permits required for the construction of the improvements contemplated by this comprehensive permit. The site engineer of record shall provide a written description of any material deviations from the Building Permit plans.
79. The ZBA, in consultation with a certified engineer determined to be acceptable by the ZBA, shall approve the as-built plans when determined to be in compliance.
80. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the site's storm-water management system in accordance with generally accepted practice, as the same may, from time to time, change.
81. A plan to implement adequate erosion and sedimentation control measures in compliance with the Order of Conditions for the Project shall be submitted by the Applicant to the Building Inspector for approval that such measures comply with the Order of Conditions, prior to the start of any Authorized Activity. Said measures shall be maintained throughout the Project and until all disturbed areas have been permanently stabilized with either an adequate vegetative or asphalt cover in accordance with the Plans of Record.
82. A Massachusetts Registered Professional Engineer hired by the Applicant shall observe soil conditions in the subsurface stormwater disposal area and shall relocate or modify the design of the facility if impervious soils or bedrock are present within the limits of the excavation and if the two-foot separation from seasonal high groundwater cannot be achieved and the Town shall be notified of the inspection and be allowed to have a qualified inspector present at the Applicant's expense.
83. During construction, the location of any and every stormwater disposal area shall be protected to prevent compaction by heavy equipment and to prevent contamination of the area with soils and material that may reduce infiltration rates for the existing soils.
84. The Applicant and the Condominium Association shall be permanently responsible for the following at the Project:
  - a. All plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the final plans or alternate locations acceptable to the Fire

Chief. In the event that snow impairs roadways such that the travel area is less than eighteen feet wide, and all designated snow removal locations have been exhausted, at the direction of the Fire Chief, the Applicant shall cause snow to be transported from the Project to an off-site location for the legal disposal thereof;

- b. All site maintenance and establishing a regular schedule for site maintenance;
- c. Repairing and maintaining all on-site roadways, including drainage structures and utilities therein;
- d. Conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;
- e. Maintaining all easements shown on the final plans; and
- f. Site lighting.

85. Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of the locations for mail boxes and parcel areas.

86. Prior to commencing Authorized Activity, the Applicant's final construction plans shall provide that the construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control and blocking of Town roads and the Applicant shall install aprons at entry points and provide for dust control in the form of sweeping and spraying of water whenever necessary.

87. No stumps or construction debris shall be buried or disposed of at the Property.

88. The Applicant shall use all reasonable means to minimize inconvenience to residents in the general area, during construction.

89. This permit is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the ZBA, as required by 760 CMR 56.05(12)(b) or any successor regulation.

90. Any changes to the Project after issuance of this permit shall be reviewed and approved by the ZBA in accordance with 760 CMR 56.05 (11) or any successor regulation.

91. Building construction may begin simultaneously with the commencement of construction of the infrastructure, but no occupancy permit shall issue unless and until all of the infrastructure necessary for the occupancy permit shall be fully permitted and completed and have any necessary final sign offs.

#### **IX. Lapse, Authorization, and Appeal**

Any comprehensive permit granted hereunder shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)), unless the comprehensive permit is duly recorded before the three year period elapses and unless construction on the Project has

commenced within such period. In addition, construction in accordance with this comprehensive permit shall be completed within three years of the commencement of construction. The Applicant may apply to the ZBA for reasonable extensions of these deadlines for good cause, but shall do so before any lapse occurs.

This comprehensive permit shall not be valid until it is duly recorded with the Registry of Deeds and evidence of such recording is provided to the Building Inspector and the ZBA. Any modification of this comprehensive permit shall be subject to 760 CMR 56 or any successor regulation thereto.

On May 17, 2018, the ZBA voted to authorize the Chairman, Richard S. Novak, to sign this decision on behalf of the ZBA.

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by M.G.L. c. 40A, § 17 or M.G.L. c. 40B, §20 et seq., as applicable.

## SHERBORN ZONING BOARD OF APPEALS

Richard S. Nodd 5/23/18

By: Richard S. Novak, Chairman

Filed with Town Clerk on: May 30, 2018

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Sent to Applicant, Certified Mail, on: May 30 2018

Notices to interested parties mailed on: May 30, 2018

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