

TOWN OF SHARON
PLANNING BOARD

DECISION ON APPLICATION FOR MODIFICATION OF SPECIAL PERMIT
PURSUANT TO SECTION 4371 OF THE ZONING BY-LAWS

Applicant: Hunter's Ridge, LLC
Owner: 155-157 North Main Street Sharon Holdings LLC
Property location: 155 and 157 North Main Street, Sharon, MA

By application ("Application") filed with the Sharon Town Clerk on April 27, 2009, Hunter's Ridge, LLC (the "Applicant"), petitioned the Town of Sharon Planning Board (the "Board") for a Modification of that Special Permit issued by the Planning Board for "Hunter's Ridge" dated April 27, 2005 ("Original Special Permit") pursuant to Sections 4360-4371 of the Zoning By-Laws (the "Conservation Subdivision Design, or "CSD" by-law), for (1) a Reduction in the Total Number of Dwelling Units, (2) a Change of the Unit Type, (3) an Alteration of the number of Age Restricted Units, and (4) the Elimination of the number of Affordable Units (hereinafter referred to as "Modified CSD"). The proposed modification is based upon the redivision of lots on the subdivision road (Hunters Ridge Road) creating twenty-nine (29) lots as depicted on plans entitled "Bella Estates: A Conservation Subdivision Development in Sharon, MA Special Permit Modification Plan" dated May 20, 2009, prepared by Gallagher Engineering (the "Modified Special Permit Plan").

A Public Hearing was noticed and opened at the Sharon Community Center on May 20, 2009 with three members of the Planning Board present. The Planning Board received testimony and voted on the matter. Thereafter the Board determined that a minimum of four votes is required for action on this matter. Accordingly, with the written consent of the Applicant, the Board noticed a new Public Hearing to cure this error.

A Public Hearing, duly noticed under the applicable statutes and By-Law provisions was held at the Sharon Community Center on July 8, 2009. Board members Paul Lauenstein, Susan Price, Eli Hauser, and Amanda Sloan were present at the hearing. Member David Milowe attended only the latter part of the hearing and accordingly abstained from voting. At the hearing, the Board received testimony and written submissions from the Applicant and from the Town Engineer, Peter O'Cain, and from members of the public. The hearing was continued until July 22, 2009. Following deliberations, the Board voted four in favor, none opposed, and one member abstaining to approve the Applicant's proposal to Modify the Special Permit as follows: (i) reduce the number of dwelling units from 51 to 29; (ii) eliminate the age restriction of over 55; (iii) eliminate the requirement of two "affordable" dwelling units; and (iv) allow construction of twenty-seven 3 bedroom dwelling units and two 2 bedroom dwelling units; provided,

however, that such approval shall be further subject to the Conditions specified in this Decision. Thereafter, the hearing was continued to July 28, 2009 for further deliberation.

DRAWINGS. The Applicant submitted drawings entitled "Bella Estates: A Conservation Subdivision Development in Sharon, MA Special Permit Modification Plan" dated May 20, 2009, prepared by Gallagher Engineering depicting twenty-nine (29) lots (the "Modified Special Permit Plan.") Pursuant to the vote of the Board on July 8, 2009, the Applicant submitted drawings entitled "Plan of Land Showing the Redivision of Lots on Bella Road in Sharon, MA" consisting of three sheets dated June 13, 2009 and last revised on July 13, 2009 prepared by Gallagher Engineering (hereinafter the "Lot Redivision Plan"). Within forty (40) days of this Decision, the Applicant is required to update the "Hunter's Ridge Definitive Subdivision Plan" as a minor modification to conform to the lot layout indicated on the Modified Special Permit Plan, to provide construction requirements for the retaining walls, to modify the stormwater basin outlet structure, and to conform to all requirements of this Decision. Requirements for the updated definite plan are set forth in Condition 33. Within forty (40) days of this Decision, the Applicant is required to prepare and submit a final landscaping plan based upon the Modified Special Permit Plan and all requirements of this Decision (hereinafter the "Final Modified Special Permit Landscape Plan"). Requirements for the final landscaping plan are set forth in Condition 35. The Plan entitled "Hunter's Ridge", endorsed June 10, 2004 shall serve as the definitive subdivision pending submission of the revised subdivision plan within forty (40) days of this decision, pursuant to Condition 33.

FINDINGS. The proposed modified development will be located wholly within those lots created by Definitive Subdivision Approval Plan entitled "Hunter's Ridge – An Active Adult Retirement Development in Sharon, MA" dated May 5, 2005, last revised on January 13, 2006 endorsed by the Planning Board on February 8, 2006 and recorded at the Norfolk County Registry of Deeds in Plan Book 552, Page 23 to 28 (hereinafter referred to as "Hunter's Ridge Definitive Subdivision Plan"). As such, the eight (8) year zoning freeze established pursuant to M.G.L. Chapter 40A, Section 6, Fifth Paragraph, is afforded to this modification for eight (8) years from and after endorsement of the subdivision plan, or until February 8, 2014, and therefore the Rules and Regulations in effect on the date of original Application by the Applicant (August 12, 2004) are in effect for this Modification Proposal.

The development is located in a Single Residence B Zone, where single-family dwellings on lots of not less than 20,000 square feet are permitted. Improvements have already been made to the property, including drainage, utilities, water, roadways to binder course, sidewalks, curbing, detention basins and septic. Retaining walls will be used in the area of Detention Basin 2 and home construction will vary according to site conditions on each individual lot.

Access to the development is from North Main Street with emergency access provided from Cheryl Drive. The development is served by Town water. The development is also served by two shared septic systems, approval for which from the Sharon Board of Health and the Massachusetts Department of Environmental Protection ("DEP") has been obtained. Drainage on-site is serviced by a closed drainage system that is designed to match pre- and post-

development peak run-off and volume in accordance with the DEP's Storm Water Management Policy. Flood impact analysis has also been performed for the 100-year storm. The non-Board of Health aspects of the Plan have been reviewed by the Town Engineer and an outside consultant, Earth Tech, of Concord, Massachusetts.

The Modified Special Permit Plan calls for the site to be divided into 29 lots. On all 29 of the lots, single-family dwellings will be constructed. The lots are between approximately between 7,671 and 12,019 square feet in size. There will be no age restriction for any of the lots or Units and none of the dwelling units shall be required to be marketed to persons who qualify under "Affordability" standards.

Under the provisions of a Homeowner's Association Trust dated January 1, 2007 and recorded at the Norfolk County Registry of Deeds in Book 24563, Page 539, each unit owner is a member of a Homeowners' Association Trust. The roadway for the development will remain, in perpetuity, a private way, maintained at all times by the Homeowners' Association Trust.

The Modified Special Permit Plan provides for approximately 10.5 acres of usable open space which has been deeded to the Town in two separate deeds: (1) a deed of Hunter's Ridge Realty Trust to the Town of Sharon acting by and through its Selectmen dated September 1, 2007 of Open Space Parcels A and B1 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 242; and (2) a deed of Hunter's Ridge Realty Trust to the Town of Sharon acting by and through its Conservation Commission dated September 1, 2007 of Open Space Parcel B2 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 244. The general public will be permitted access to the open space from the road constructed by the Applicant for the development. The public will be permitted to park at the clubhouse parking lot and in the area of the cul-de-sac located at the Cheryl Drive end of the proposed roadway for the purpose of using and gaining access to the open space, the trail heads and open space access points located throughout the development.

The Applicant has extended the public water main with an 8" looped water main between North Main Street and Cheryl Drive. Upon completion of the project, the water system will be turned over to the Town of Sharon and protective and access easements have been granted to the Town over private ways in the development pursuant to that deed of Hunter's Ridge Realty Trust to the Town of Sharon dated September 1, 2007 and recorded at the Norfolk County Registry of Deeds in Book 25171, Page 247. The Town's water system is adequate to provide the required flow and pressure for this development.

CSD By-Law Criteria. Section 4371 of the By-Law in effect as of August 12, 2004 provides that the Board "shall grant a Special Permit for a CSD if it determines that the proposed CSD has less detrimental impact on the tract than a conventional development proposed for the tract." The Planning Board, as Special Permit Granting Authority, approved an Application of "Hunter's Ridge Realty Trust" for the development known as "Hunter's Ridge" pursuant to the terms and conditions of the "Original Special Permit" and that Definitive Subdivision Plan Decision dated April 27, 2005. At that time, the land was undeveloped and in its natural state, the

approvals of the Planning Board reflected such state. However, the Site has now been almost fully developed with much of the Site infrastructure and improvements already installed. Therefore, the Planning Board must apply the criteria of the Bylaw in its current state. Section 4371 sets forth seven (7) factors to be considered by the Board in making this determination. Each of the seven factors is addressed as follows:

1. Whether the CSD meets the criteria for flexible development under Sec. 4351 (a), (b), (c), (d), (e), (f), (g) and (h) as well as achieving greater flexibility and creativity in the design of residential development than a conventional plan. With respect to §4351 of the By-Laws, the Modified CSD will continue to meet several of the criteria set forth therein. Municipal costs will be reduced in that the road will remain a private way, maintained at the expense of the Homeowners' Association Trust (§4351(a)). Approximately fifty (50%) percent of the development will remain as open space, with access provided to residents of the development as well as the general public. As set forth in Condition 26, a public trail will also be provided by the Applicant in open space extending from the cul-de-sac on Hunters Ridge Road to the easterly property line to facilitate future extension by others. (§4351(b)). One of the most prominent scenic aspects of the tract is a large grove of beech trees. These are to be preserved, which would not be the case with a conventional subdivision. (§4351(d)). No driveway openings will be on existing streets (§4351(f)). There are two shared septic systems (as opposed to up to 26 individual septic systems as would be the case in a conventional subdivision), both of which are outside any Water Protection District (§4351(g)).

On the other hand, even though the scenic vistas were not preserved (§4351(d)) during the original development pursuant to the "Original Special Permit", in that the tract was in a wooded natural state, currently, the tract has been stripped of most trees and shrubs and the development required to make improvements as provided for in the "Modified CSD" will result in no further deterioration of the current state. However, such would have been the case to even a greater extent with a conventional subdivision. Also, it is not clear that the road, accessing from North Main Street, "increases vehicular safety" as provided for in §4351(f). However, by having the road access to North Main Street, potential increased traffic on Cheryl Drive and Lantern Lane will be minimized.

To the extent that (a) the total square footage for the 29 lots will be less than the square footage of twenty-six (26) 20,000 square foot lots in a conventional subdivision, (b) that the units will create housing diversity in the Town, and (c) open space will be preserved and deeded to the Town, the Modified CSD achieves greater flexibility and creativity in design than a conventional plan. Another important factor is that under the Modified Special Permit Plan, the 29 units will have a total of 85 bedrooms. A conventional subdivision likely would consist of 26 four-bedroom dwellings, with a total of 104 bedrooms.

2. Whether the CSD promotes permanent preservation of open space, agricultural land, forestry land and other natural resources. Approximately fifty (50%) percent of the tract shall be preserved for usable, contiguous open space which has been deeded to the Town (see (1) a deed of Hunter's Ridge Realty Trust to the Town of Sharon dated September 1, 2007 of Open Space

Parcels A and B1 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 242; and (2) a deed of Hunter's Ridge Realty Trust to the Town of Sharon dated September 1, 2007 of Open Space Parcel B2 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 244), pursuant to §4369 of the By-Laws, (which requires that at least forty (40%) percent be so preserved).

3. Whether the CSD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision. By constructing 29 dwellings units on 29 lots, each lot being approximately 9,100 square feet in area, the Modified CSD promotes more efficiency and less sprawl than a conventional 26-lot subdivision with 20,000 square foot lots. However, even though the CSD did not conform to previously existing topography and natural features in many respects, currently, the tract has been graded and the development required to make improvements as provided for in the "Modified CSD" will result in no further deterioration of the current site condition. The Board believes that such would also have been the case in a conventional subdivision, due to the contours of the tract. Further, even though the previous Applicant had not been sensitive to preserving natural features of the land and other features, currently, the tract has been graded and the development required to make improvements as provided for in the "Modified CSD" will result in no further deterioration of the current site condition.

4. Whether the CSD reduces the total amount of disturbance on the site. The CSD reduced the amount of disturbance on the site more than would likely be the case with a conventional subdivision. Further, the Modified CSD would add no further disturbance than the CSD.

5. Whether the CSD furthers the goals and policies of the open space and comprehensive plan. As noted above, the CSD has resulted in almost 50% of its area being set aside and deeded to the Town as open space. Further, the Modified CSD would not alter such area set aside for open space.

6. Whether the CSD facilitates the construction and maintenance of streets, utilities and public service in a more economic and efficient manner. Because the roadway for the development will remain forever as a private way, the Town will benefit economically in that it will not be required to repair, maintain or plow the roadway.

7. Whether the Concept Plan and its supporting narrative documentation complies with all sections of this Zoning By-law. In general, the Modified Special Permit Plan and documentation comply with the CSD by-law. However, it should be noted that §4370(2)(c) of the By-Law calls for a twenty (20') foot buffer along the perimeter of the property where the property abuts residentially zoned and occupied property and states that no vegetation in this buffer is to be disturbed, destroyed or removed. Because of grading and drainage considerations, however, the Plan calls for removal of a substantial amount of existing vegetation from the buffer zones. Pursuant to the last sentence of §4370(2)(c), the Board in the Original Special

Permit decided to waive the non-disturbance requirement. To compensate for this, please note that that plan entitled "Site Planting Plan" dated April 6, 2005, revised January 23, 2006, was approved by the Tree Warden. Further, to address current Site conditions, Condition 15 of the Conditions of Approval to this Decision requires the Applicant to meet with the Abutters and submit a Planting, Fencing and Screening Abutter Mitigation Plan for screening for the Abutters. Condition 35 requires a Landscape Plan due to removal, by the previous developer, of trees and shrubs that provided natural screening in the buffer zones.

PREVIOUS CONDITIONS COMPLETED. Many of the Conditions required in the Original Decision have been satisfied, including:

1. Condition 3 required the Applicant to record the Hunter's Ridge Homeowners' Association Trust; Hunter's Ridge Declaration of Easements, Restrictions and Covenants; Hunter's Ridge Quitclaim Deed for Roadway; and Hunter's Ridge Deed for Common Land, all of which have been done as follows: (a) The Hunter's Ridge Homeowners' Association Trust was recorded at the Norfolk County Registry of Deeds in Book 24563, Page 539; (b) The Hunter's Ridge Declaration of Easements, Restrictions and Covenants was recorded at the Norfolk County Registry of Deeds in Book 24563, Page 426; (c) The Quitclaim Deed for Hunter's Ridge Road and Cheryl Drive was recorded at the Norfolk County Registry of Deeds in Book 24563, Page 564; and (d) The Deeds for Common Land was recorded at the Norfolk County Registry of Deeds: (i) a deed of Hunter's Ridge Realty Trust to the Town of Sharon dated September 1, 2007 of Open Space Parcel A and B1 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 242; and (ii) a deed of Hunter's Ridge Realty Trust to the Town of Sharon dated September 1, 2007 of Open Space Parcel B2 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 244.

2. Condition 4 required the Applicant to record a Water Easement and Quitclaim Deed to the Common Land to the Town of Sharon, both of which were done as follows: (a) deed of Water Easement by Hunter's Ridge Realty Trust to the Town of Sharon dated September 1, 2007 and recorded at the Norfolk County Registry of Deeds in Book 25171, Page 247; and (b) deeds for Common Land was recorded at the Norfolk County Registry of Deeds as follows: (i) a deed of Hunter's Ridge Realty Trust to the Town of Sharon acting by and through its Selectmen dated September 1, 2007 of Open Space Parcel A and B1 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 242; and (ii) a deed of Hunter's Ridge Realty Trust to the Town of Sharon acting by and through its Conservation Commission dated September 1, 2007 of Open Space Parcel B2 recorded at the Norfolk County Registry of Deeds in Book 25171, Page 244.

3. Condition 5 required that all community facilities shall be designated and maintained in conformance with the latest Massachusetts standards for handicap accessibility. The Clubhouse was constructed in conformity with the handicap accessibility standards.

4. Condition 8 required the Applicant to submit to the Sharon Tree Warden, (with a copy

to the Board and the Town Engineer) a Planting, Screening and Landscaping Plan for the buffer areas where natural vegetation is to be removed. That plan entitled "Site Planting Plan" dated April 6, 2005, revised January 23, 2006, was approved by the Tree Warden.

5. Condition 13 required the Applicant to construct the detention basins first, and then place loam and seed on the outside of these structures. All disturbed areas during site construction should flow toward the detention basins, or other temporary basins or swales constructed, as necessary, under the supervision of the Town Engineer and the Department of Public Works.

CONDITIONS OF APPROVAL:

General

That the subdivision shall fully comply with the following:

1. Conformance with Endorsed Plans. The subdivision shall be constructed in conformance with the Modified Special Permit Plan and endorsed copies of the Lot Redivision Plan and the Final Modified Special Permit Landscape Plan.

2. Compliance. The subdivision shall fully comply with federal and state regulations and licensing requirements in effect as of the date of this Decision. Except to the extent that specific provisions are waived by this Decision and except as determined by agencies having jurisdiction, the subdivision shall fully comply with the all provisions of By-Laws and Rules & Regulations of the Town of Sharon in effect on August 12, 2004 including the following: (1) the Town of Sharon "Zoning By-Laws," (2) the Sharon Planning Board's Rules & Regulations Governing the Subdivision of Land for on-site road and utility improvements, (3) the "General By-Laws" of the Town of Sharon, (4) the Rules and Regulations of the Sharon Conservation Commission, and (5) the Rules and Regulations of the Sharon Board of Health.

3. Precedence. In case of conflict between this Decision and documents cited herein, precedence shall be accorded first, to the Sharon "Zoning By-Laws," and second, to the Sharon Planning Board's "Rules & Regulations."

4. Housing and Bedroom Count. The subdivision shall contain not more than twenty-nine (29) single-family dwelling units, except as provided in Condition 5. The bedroom count for the twenty-nine (29) units shall not exceed 85 bedrooms (as defined by Sharon Zoning By-Laws or the Sharon Board of Health Rules and Regulations whichever definition results in the largest total number of bedrooms). The Planning Board may allow the mix of two, three, and four bedroom units to be varied provided that the number of dwellings does not exceed 29 in total and provided that the number of bedrooms does not exceed 85 in total. The units are not required to be age-restricted and provision of affordable units is not required.

5. Parcel C Use. The Clubhouse located on Parcel C may be used as a temporary real

estate office by the Applicant to market the sale of dwelling units for Bella Estates, if otherwise allowed by applicable law, to market the sale of dwelling units for a period of up to five (5) years. Upon completion of sales of all units in Bella Estates, the use of such structure shall comply with the requirements of the Zoning Bylaws for the Town of Sharon and it is understood by the Applicant, its successors and assignees, that the total number of dwelling units within the land comprising the twenty-nine lots of "Bella Estates" and Parcel C shall comply with the CSD bylaw in effect August 12, 2004. Prior to conveyance of the first dwelling unit, the Applicant shall submit and obtain approval for a plan showing the proposed permanent use of the parcel as one of the following:

a. The Applicant may further amend the CSD Special Permit to convert the use of Parcel C into a dwelling or dwellings to support affordable housing provisions of the CSD by-law (§4367), provided that the number of lots and units in Bella Estates and Parcel C does not exceed the provisions of the CSD by-law (§4367) and that any increase in the number of bedrooms meets with approval of the Board of Health.

b. If Parcel C is to be used as open space, the building and site improvements shall be removed and a layer of loam at least six (6) inches thick shall be provided over all disturbed areas. Trees having a minimum 2½-inch caliper shall be planted at a maximum 40 feet on center from each other and a minimum of six shrubs shall be provided for each tree planted. Surfaces not seeded with grass shall be covered with a 3-inch thick layer of bark mulch. Any lawn areas shall be seeded with drought-tolerant grass varieties. No irrigation system shall be installed by the Applicant.

c. If Parcel C is to be used as a community center, the amended Hunters Ridge Homeowners' Association Trust shall specifically provide for operation and maintenance of the facility.

6. Dimensional Requirements. Residential structures shall comply with the following: (1) the minimum street setback shall be fifty (50) feet from North Main Street and twenty (20) feet from Hunters Ridge Road, (2) the minimum setback from rear lot lines shall be twenty five (25) feet, and (3) the minimum setback from side lot lines shall be six (6) feet. The homes will have a maximum height of 35 feet and shall not have a garage that accommodates more than two (2) cars.

7. On Street Parking. There shall be no on-street parking permitted in the development, except that four (4) parking spaces shall be provided for the general public on the cul-de-sac of the road to be constructed to provide access to the open space being deeded to the Town by the Applicant and signage for said spaces shall be indicated on the Traffic Mitigation Plan as set forth in Condition 21. Such parking spaces shall be designed so that access by emergency vehicles will not be impaired. In order to obtain access to the open space, the general public may also park in the community center parking area.

8. Emergency Access. Cheryl Drive shall be used only as an emergency access and shall be closed off in a way that is acceptable to the Sharon Fire Department. General access to the subdivision shall be from North Main Street only. The emergency access to Cheryl Drive shall be plowed and maintained by the Homeowners' Association Trust so that it remains at all times accessible to emergency vehicles. The Homeowners' Association Trust shall notify the Department of Public Works of the name, address and telephone number of the person or entity

hired by the amended Hunters Ridge Homeowners' Association Trust to provide snow plowing and removal.

9. Maintenance and Repair. The Homeowners' Association Trust shall maintain and keep clean at its own expense the storm water drainage system in perpetuity in compliance with the Operation and Maintenance Plan at no cost to the Town. The system will be cleaned in compliance with the Operation and Maintenance Plan and the amended Hunters Ridge Homeowners' Association Trust shall provide the Department of Public Works a copy of the paid bills evidencing compliance with this condition. The Homeowner's Association Trust shall maintain all stormwater structures as per the Stormwater Pollution Prevention Plan pursuant to that covenant dated March 31, 2006 and recorded in the Norfolk County Registry of Deeds as Book 23668, Page 235. Snow shall not be deposited within stormwater management facilities or over the shared soil absorption systems.

10. Indemnification. The Homeowners' Association Trust shall indemnify the Town and/or abutting property owners for damage which may occur subsequent to the date of this decision due to (a) the failure of either of the common septic systems or (b) flooding or water damage caused by or resulting from the improvements to the tract undertaken in connection with the CSD development.

11. Detention Basins. Prior to issuance of any Building Permit authorized by this Decision, the Applicant shall clean out and repair the existing drainage systems, and provide crushed stone infiltration trenches or similar measures as necessary, all as determined by the Town Engineer. Further, the Applicant shall review the current design of the Detention Basin located near Cheryl Drive with the Town Engineer, and if the Town Engineer determines that modifications are necessary, the Applicant shall make such modifications prior to the issuance of the first Certificate of Occupancy for any dwelling unit not already built at the time of this Decision within the Development. All disturbed areas during site construction should flow toward the detention basins, or other temporary basins or swales constructed, as necessary, under the supervision of the Town Engineer and the Department of Public Works.

12. NPDES Construction Permit. The Applicant and his contractor are required to obtain an NPDES General Construction Permit from the E.P.A. and have a copy of the Stormwater Pollution Prevention Plan (SWPPP) and the Stormwater Permit from the Town of Sharon on site at all times. The Town Engineer, Conservation Agent, Board of Health Agent, the Building Inspector, the Applicant and his contractor will have a pre-construction meeting to review the SWPPP, orders of conditions, phasing of construction and other important items of concern related to construction of the development prior to commencement of construction.

13. Hours of Construction Operations. All subdivision construction work shall be performed only between the hours of 7:00 a.m. and 5:00 p.m. on Mondays through Fridays and between 8:00 a.m. and 4:00 p.m. on Saturdays. No subdivision construction shall be performed on Sundays or legal holidays. Work on Saturdays shall be limited to typical house construction work including plastering, painting, hammering nails, etc. affiliated with assembly or construction of the houses to be situated on the lots, excepting the pouring of foundations. Flood lighting shall not be used to facilitate exterior work after sunset. Heavy equipment shall not access or leave the construction site during hours when schoolchildren from the Chabad

Center normally are arriving to or leaving from school.

14. Current Grading. Prior to Building Permit issuance, the Applicant must have the site stabilized with vegetation on all disturbed areas as directed by the Town Engineer. Thereafter, no disturbed area exceeding 1,000 sq. ft. shall be left unstabilized for more than forty-five (45) days.

15. Planting, Fence and Screening Abutter Mitigation. The Applicant shall provide and install the required screening prior to issuance of the Certificate of Occupancy for the subdivision dwelling nearest to the abutter's lot and separated therefrom by a buffer strip, or within six (6) months of issuance of the Building Permit, whichever occurs first. In the event that the Applicant and the abutters cannot agree, the Planning Board shall arbitrate the issues. The Applicant has met with abutters to discuss the landscape screening and fencing. The Applicant shall provide the Planning Board with an Abutters' Listing which shall include the names of abutters, all planting requirements for screening (the type of planting, species, height or caliper at the time of planting, and the quantities of plants) and the type and height of fencing for screening which the abutters desire. Any fencing and landscape screening will be located on the abutters' property and maintained by the abutters. Any screening plantings that are dead within one (1) year of planting shall be replanted. The Applicant shall maintain records of installation dates, species, caliper and location of all plantings. The abutters and the developer may also come to any agreement that the parties agree to, as long as it does not conflict or negate the requirements of any Town Rule, By-Law or any section of this order of conditions. Fieldstone boundary walls located on abutting properties that existed prior to 2005 shall be restored and any existing boundary walls located on abutting properties shall be preserved and protected. Walls shall be restored to match the type, materials, construction methods, and height of the original wall removed. The Applicant shall continue to meet with abutters if requested throughout the course of construction to provide all parties with opportunities to exchange information and express concerns.

16. Dwelling Structures Razed. The Dwelling Structures currently existing on lots 3, 4 and 25A may be razed and the homes on lots 1 and 48 will remain. The Applicant shall obtain the necessary demolition Permit prior to any such demolition. The Applicant shall cooperate with the Sharon Housing Partnership in efforts to relocate the dwelling structure on lot 9 to an off-site location. The Applicant shall delay demolition of the structure designated by the Sharon Housing Partnership until at least until November 1, 2009 and is amenable to discussion beyond that date.

17. SWPPP. As soon as practicable, but in no instance later than thirty (30) days following the date of this Decision, if that Covenant with the Town of Sharon dated March 31, 2006 and recorded at the Norfolk County Registry of Deeds in Book 23668, Page 235 with Storm Water Permit and O&M Plan attached does not apply to the Applicant, then the Applicant shall file a new Stormwater Pollution Prevention Plan as per Article 38 of the General By-Laws of the Town of Sharon.

18. Earth Removal Permit. At the request of the Town Engineer and if necessary, the Applicant shall submit a copy of the Earth Removal Permit to the Town Engineer if removing more than 25 cubic yards of soil from the site, as per Article 12A of the General By-Laws of

the Town of Sharon.

19. Lot 48. Lot 48 as shown on the “Hunter’s Ridge Definitive Subdivision Plan”, shall have improvements made to the home by the Applicant as mutually agreed between the Applicant and the Owner of Lot 48. Improvements are to be listed by owner and address, the improvements delineated, and signed off on by the developer and the homeowner. The improvements will be agreed to prior to the issuance of Certificates of Occupancy for any other lot.

20. Age Directed Floor Plan. Prior to the issuance of Foundation Permits, the Applicant shall submit to the Planning Board an age-directed floor plan that shall include at least one bedroom on the ground floor level. The age-directed floor plan shall be incorporated in all marketing plans of the Applicant.

21. Traffic Mitigation Plan. A traffic remediation plan will be drawn up that will include remedies to make egress and entry to the site safer subject to applicable laws of the State and Town for installation of recommended signage. The Applicant will hire a consulting engineer to create the plan, which must be approved by the Planning Board prior to issuance of the first Certificate of Occupancy authorized by this Decision. The plan shall also indicate signage for the public trails and for parking in the cul-de-sac per Condition 7. Signage shown on the remediation plan will be installed prior to the issuance of any Certificate of Occupancy.

22. Conservation Commission. Prior to Building Permit issuance, the Applicant shall submit a copy of the amended Order of Conditions to the Planning Board that is consistent with the Lot Redivision Plan and the Final Modified Special Permit Landscape Plan.

23. Relotting. Prior to Foundation Permit issuance, the Applicant shall record the Lot Redivision Plan in the Norfolk County Registry of Deeds.

24. Submittal to Fire Department. As soon as practicable, but in no instance later than thirty (30) days following the date of this Decision, the Applicant shall submit the Lot Redivision Plan and the Final Modified Special Permit Landscape Plan to the Fire Department for review, comment and approval. The Town Engineer shall obtain a letter from the Sharon Fire Chief, prior to the first Certificate of Occupancy, indicating how the roadway will be gated to prevent traffic from entering or exiting from the site prior to issuance of Foundation Permits.

25. Blasting. In the event that that the Applicant requires blasting to be performed at the site, a Blasting Permit must be obtained from the Sharon Fire Department.

26. Trail. The Trailhead shall be marked by the Applicant with appropriate signage and such trail shall be surfaced with a four inch thick layer of woodchips throughout and shall be a minimum of five (5) feet wide. The location of the trail shall be coordinated with the Sharon Friends of Conservation. The details of the signage will be included on the traffic remediation plan discussed in item 21 of this Decision.

27. Retaining Wall Repairs. Prior to issuance of the first Certificate of Occupancy for any dwelling unit authorized by this Decision, the Applicant shall repair the existing retaining wall at the south property boundary to safe standards using materials and methods compatible

with the existing wall. The full extent of the retaining walls must be indicated on the approved Updated Definitive Subdivision Plan for “Bella Estates”. For wall segments having an exposed face exceeding four feet in height, a forty-two (42) inch high non-climbable pedestrian rail system conforming to the Massachusetts Building Code shall be provided by the Applicant prior to the issuance of a Certificate of Occupancy for the adjoining lot.

28. Detention Basin Safety Fence. Within 30 days of the date of this Decision, the Applicant shall erect a black chain linked fence with a 12-foot wide gate or two six-foot wide gates for access at the Detention Basin off Cheryl Drive. The location of the gates must be approved by the Town Engineer. The fence and existing fencing on the site must be shown on the approved CSD plan to be submitted for approval by the Planning Board.

29. Environmental Impact Mitigation. The Applicant shall provide feasible measures to mitigate project impacts as follows:

a. Automatic lawn irrigation systems shall not be installed prior to conveyance to the homeowners nor shall the conveyance documents include provisions for installation of automatic lawn irrigation systems.

b. The Planning Board requires use of high efficiency toilets, low-flow shower heads, kitchen faucets, and bathroom faucets as required by the Sharon Water Division Rules and Regulations.

c. The Planning Board encourages compliance with the “Appendix 120.AA ‘Stretch’ Energy Code” of the Massachusetts Building Code (780 CMR). The Applicant shall meet with the Sharon Energy Advisory Committee and consider their recommendations for any provisions of the code to be used in the design of new dwellings.

30. Prior Agreements. The terms of the Settlement Agreement with Jacobs, Wine, and Kelly shall be honored including without limitation fencing and landscaping improvements. The prior agreement with Jacobs, et al shall be honored, except to the extent that such obligations are superseded by individual agreements with those parties contemplated herein as abutters agreements.

31. Amended Hunters Ridge Homeowners Association Trust. The Hunter’s Ridge Homeowners’ Association Trust dated January 1, 2007 shall be revised as required in order to be fully consistent with this Decision and applicable law. The amended Hunter’s Ridge Homeowners’ Association Trust shall be subject to review and approval by Town Counsel if required by the Planning Board. The amended Hunters Ridge Homeowners’ Association Trust shall provide for the management of the subdivision and the repair and maintenance of all roads, utilities, stormwater management facilities, and common areas and ensure that the terms and conditions of this Decision are enforced. The amended Trust shall provide that Town of Sharon shall never have any responsibility for maintenance and repair of the subdivision improvements. The Amended Trust shall provide for a provision of funds in the amount of five thousand dollars (\$5,000.00) to be reserved to compensate the Town should the Town be required to provide services in the instance the Trust fails to properly fulfill its responsibilities.

32. Special Permit Not Transferrable. The Special Permit authorized by this Decision is not transferrable or assignable without the written consent of the Planning Board, which shall not be unreasonably withheld, denied, or conditioned.

Final Construction Plan Submission

That a Final Construction Plan Submission shall be made within forty-five (45) days of the date of this Decision incorporating revised and supplemental information as follows:

33. The Updated Definitive Subdivision Plan. The Definitive Subdivision Plan shall be updated as a minor modification in order to conform to the lot layout indicated on Modified Special Permit Plan and to conform to all other requirements of this Decision. The updated plans shall be signed and sealed by the Massachusetts Civil Professional Engineer (PE) of record. The revisions required by paragraphs “e” and “f” below shall be submitted separately or may be shown on the Final Modified Special Permit Landscape Plan provided that the plans are signed and sealed by a Massachusetts Civil Professional Engineer. The Plans shall be submitted in AutoCAD and PDF formats and as 24” x 36” plan sheets. The updated sheets shall be accurate, drawn to scale, and easily legible. The revised sheets shall be submitted to the Town Engineer for review and approval, which when so approved, shall be endorsed thereafter by the Planning Board and shall become the “approved” plan set for the “Bella Estates” development as follows:

- a. The plans shall conform to and incorporate all revisions required by federal, state, and Town regulatory and permitting authorities.
- b. The plans shall show twenty-nine (29) lots as shown on the Modified Special Permit Plan and the Lot Redivision Plan.
- c. Plantings shall be deleted from the Definitive Plan sheets and shown only on the Final Modified Special Permit Landscape Plan.
- d. The stormwater basins shall accommodate the 100-year frequency storm event,
- e. Low Impact Design (LID) measures shall be incorporated. Roofwater shall be recharged in accord with the one-year frequency storm event volumes set forth in the Stormwater Management Standards. Roofwater recharge systems may be combined with the roofwater from up to eight (8) lots combined in a single facility. In the case of a shared facility, easements shall be provided for maintenance and repair of said roofwater systems. The roofwater recharge for lots in the cul-de-sac shall be provided by at least three (3) rain gardens.
- f. Three (3) tree boxes shall be installed upgradient of the catchbasins in the cul-de-sac to intercept, purify and infiltrate the first flush of storm water runoff.
- g. Four (4) parking spaces shall be provided at the cul-de-sac for public access to the open space.
- h. Construction requirements for the retaining wall shall be indicated.
- i. Required modifications to the basin outlet structure shall be indicated.
- j. The gate for the emergency access road shall comply with Fire Department

requirements.

k. Pavement markings and regulatory signs shall be indicated.

l. A plan of the black chain link fence and gates at the stormwater basin at Cheryl Drive shall be indicated.

34. Final Engineering Calculations and Data. Engineering calculations and data shall be revised as necessary to incorporate changes resulting from the Lot Redivision Plan and the Final Modified Special Permit Landscape Plan. The submitted materials shall be signed and sealed by the Massachusetts Civil Professional Engineer (PE) and shall include the following as required:

a. Revised drainage calculations.

b. If required by the Town Engineer, the recorded Operation and Maintenance Plan shall be revised.

c. If required by the Town Engineer, the recorded stormwater management plan approved pursuant to Article 38 of the Sharon General By-Laws shall be revised.

35. Final Modified Special Permit Landscape Plan. The Final Construction Plan Submission shall be made within sixty (60) days of the date of this Decision and shall include the Final Modified Special Permit Landscape Plan signed and sealed by the Massachusetts Registered Landscape Architect (RLA) of record. The Plans shall be submitted in AutoCAD and PDF formats and as 24" x 36" plan sheets. The drawings shall be accurate, drawn to scale, and easily legible and shall include the following:

a. The plans shall be developed by a Landscape Architect who has been continuously in practice for 10 years or more and has demonstrable experience with preparation of site plans for open space preservation developments.

b. The plans shall be based upon an examination of current conditions on the site, from current survey and engineering data, and from the current architectural and layout plans. The plans shall preserve and enhance existing natural features and character of the site. The plans shall include a site master plan showing the conceptual effect of all these elements, plus specific sheets for each area.

c. Planting details should be provided for evergreen and deciduous trees and shrubs.

d. All plans shall include comprehensive plant lists and accurate, labeled plant placement. Plant list should include common and botanical names, quantity, size at planting, and density of planting in "inches (or feet) on center" terminology.

e. The Plant List shall include a New England Native Warm Season meadow grass mix, listed by variety and percentage, to be planted in non-lawn areas not otherwise planted, such as slopes, roadsides, and other disturbed areas.

f. The plant list shall not include any trees or shrubs that are included in the Massachusetts Department of Agricultural Resources' "Massachusetts Prohibited Plants" list and a note shall be added precluding their planting.

g. For all planting areas, an emphasis should be placed on using drought-tolerant native plants. For the Buffer and Detention Basins Plan the use of native plants is

required. Plants requiring supplemental irrigation during moderate drought conditions as defined by the “US Drought Monitor” are unacceptable. Detention Basin planting shall be able to tolerate 72 hours of inundation and grasses shall be a specific basin planting mix. Buffer plantings, stormwater basin plantings, and stormwater basin screening shall be limited to native plants. Spruce (Picea) and Fir (Abies) are preferred to White Pine (Pinus strobus) due to their propensity for holding lower branches into maturity. Monoplantings of Hemlock (Tsuga Canadensis) should be avoided due to their susceptibility to infestations by Hemlock Woolly Adelgid.

h. The plan shall incorporate revised street tree spacing corresponding with the lot locations as indicated on the Lot Redivision Plan.

i. For all permitted uses for Parcel C, the North Main Street streetscape shall be upgraded by planting street trees using spacing comparable to that used for the street trees on Hunter’s Ridge Road.

j. The area of turf shall be indicated for each residence and shall not exceed an average of five thousand (5,000) sq. ft. per lot. All turf areas shall have a minimum 6-inch thick layer of loam borrow conforming to M1.05.0 of the MassHighway Standard Specifications. Turf shall consist of deep-rooted drought tolerant perennial grasses.

k. A no-cut line shall be indicated and marked in the field to protect significant trees to remain.

l. A trail shall be indicated conforming to Condition 26. The trail shall be extended from the cul-de-sac to the easterly property line in a manner and location that facilitates future extension to the Massapoag Trail.

m. On-lot driveways may use impervious pavement, provided that they are provided with cross slopes that promote drainage to the driveway edges.

n. The Final Modified Special Permit Landscape Plan shall be reviewed with the abutters, the Sharon Tree Warden, and the Sharon Planning Board. The Applicant shall provide ten (10) days notice to all abutters of the Planning Board hearing at which the Landscape Plan is to be reviewed. A desirable timeline foresees planting for site stabilization by the end of September 2009, and full landscape installation by a year from that date. In the event of irreconcilable differences between the Applicant and the abutters, the Sharon Planning Board will decide.

o. Documentation shall be submitted to the Town Engineer identifying the parties responsible for the care and maintenance of all aspects of the landscape for the three years following installation.

During Construction

During construction authorized by this Decision, the work shall fully comply with the following:

36. Security. The Planning Board shall require security adequate to ensure completion of certain site improvements and required by this Decision. The amount of the security shall be based upon the cost to complete the remainder of subdivision improvements as set forth in the memorandum from Peter M. O’Cain dated May 11, 2009 plus the cost to complete the additional

improvements required by this Decision. The amount of the security shall also include an adjustment for inflation to the year of anticipated completion plus a construction cost contingency of twenty-five percent (25%). The instrument of security shall be held solely in the name of the Town. In the instance that the instrument of security accepted by the Board is other than cash, the financial stability and creditworthiness of the issuer shall be subject to approval by the Town Treasurer. Security must be submitted to and approved by the Planning Board, prior to the issuance of Foundation Permits.

37. Right of Entry. The Applicant shall grant the Town of Sharon, its agents, and third parties engaged by the Town of Sharon, right of entry onto the lot for the purpose of observing construction, sedimentation and erosion controls, dust controls, and related matters.

38. Contact Information. During construction, the Applicant shall furnish the Board with the site superintendent's name and contact information and with 24/7 emergency contact information for the Applicant's agent. Any changes in contact information shall be updated within 24 hours of occurrence.

39. Construction Schedule. During construction, a detailed "Construction Phasing Plan" and "Construction Schedule" for sitework shall be submitted to the Town Engineer and updated throughout construction.

40. Engineering Agents. During construction, the Board shall designate Engineering Agents to observe construction of roads, stormwater management system, utilities, and common areas, to observe fencing and plantings used for abutter screening, and to observe landscape installation in order to ensure that construction proceeds in compliance with this Decision. The Board's Engineering Agent shall monitor sedimentation controls, erosion controls, and dust controls on behalf of the Planning Board and shall have the right to require that controls be maintained, adjusted, relocated, and augmented as required to control, erosion, sediment, and fugitive dust. The Board hereby designates Peter O'Cain, Town Engineer as its Engineering Agent. Additionally the Board designates Thomas C. Houston of Professional Services Corporation, PC as an Engineering Agent. The Applicant shall pay all costs incurred by the Planning Board for the services provided by the Board's Engineering Agent.

41. Construction Observation. During construction, the Applicant shall schedule and sequence construction to accommodate observation of each construction task by the Town Engineer as set forth below. No succeeding construction operation shall be initiated until the prior operation has been observed without prior written consent of the Town Engineer. The Town Engineer shall observe excavations below normal depth prior to backfilling, subgrade during placement and at completion, and shall observe stabilization and seeding installation during installation and upon completion. The Town Engineer or engineering agent of the Planning Board shall observe sedimentation and erosion controls and dust control measures throughout the course of construction.

42. Cease and Desist Compliance. During construction, the Applicant shall comply with any "Cease and Desist" order issued by the Building Inspector should the Building Inspector determine that construction violates the requirements of this Decision. Construction may

proceed once the Applicant demonstrates that corrective action has been taken ensuring compliance with this Decision.

43. Emergencies. During construction, the Town reserves the right to deploy equipment and personnel and to utilize materials as required to control or contain any condition caused by such construction, which in the Town's sole judgment presents an imminent danger to the public safety, abutting properties, construction personnel, water resources, or the environment. The Applicant shall reimburse the Town for the actual cost of such response actions within 30 days following receipt of cost documentation.

44. Sanitary Facilities. During active construction, sanitary facilities shall be provided for construction personnel.

45. Safety. During construction, proper control of the site shall be provided during non-construction hours to prevent injury to the public. Construction fencing shall be provided at times and in locations as required by the Town Engineer or the Building Inspector.

46. Construction Impact Mitigation. During construction, the work shall incorporate measures to mitigate construction impacts in accordance with the following:

- a. The work shall be performed in compliance with applicable laws and regulations regarding noise, vibration, dust and sedimentation.
- b. Measures for construction noise abatement shall be utilized including monitoring mufflers, selection of construction methods, and use of smallest practicable construction equipment.
- c. Erosion and sedimentation controls shall be provided in accordance with the approved plans. Erosion controls shall be increased, supplemented, modified, adjusted, and maintained as required to effectively control sediment and erosion.
- d. North Main Street at the site entrance shall be swept as required or as directed to remove sediment and debris.
- e. Dust control measures shall be provided in accordance with the approved plans and best management practices. Dust control measures shall be utilized, modified, and supplemented immediately as required or as directed to control fugitive dust.
- f. On-site refueling of construction equipment and trucks shall comply with all provisions of an On-Site Refueling Plan approved by the Sharon Fire Department. No refueling shall occur within 100 feet of developed properties or wetlands.

Prior to Certificates of Occupancy

That prior to issuance of certificates of occupancy for units authorized by this Decision, the subdivision shall fully comply with the following:

47. Requirements. Prior to issuance of any Certificate of Occupancy authorized by this Decision, all site improvements relating to each particular building shall be complete for the particular building.

48. Recording Required. Prior to issuance of any Certificate of Occupancy authorized by this Decision, the amended Hunter's Ridge Homeowners' Association Trust shall be recorded in the Registry of Deeds.

Project Closeout

That prior to issuance of the final two certificates of occupancy for units authorized under this Decision, submission of plans and documentation to the Town Engineer is required as follow:

49. As-Built Drawing. A signed and sealed as-built drawing of the overall subdivision improvements shall be provided.

50. Certification. The Engineer of Record shall certify that the subdivision has been completed in compliance with all requirements of this Decision or shall enumerate any exceptions.

51. Certificate of Compliance. A copy of the Certificate of Compliance from the Sharon Conservation Commission shall be provided to the Town Engineer.

- a. The advertising sign at the entrance to the subdivision shall be removed upon a Certificate of Occupancy for all units or after five (5) years from the date of this Decision document, whichever comes first.

In Perpetuity

That the subdivision shall fully comply in perpetuity with the following:

52. Compliance with Endorsed Plans. The Subdivision shall comply with this Decision and the Modified Special Permit Plan, the Lot Redivision Plan, and the Final Modified Special Permit Landscape Plan in perpetuity.

53. Compliance with Permits. The Subdivision shall comply with the Order of Conditions issued by the Sharon Conservation Commission and that the septic systems comply with the Sharon Board of Health and the Massachusetts Department of Environmental Protection requirements in perpetuity.

54. Forever Private. The proposed on-site roads, utilities, stormwater management facilities, open areas, and shared septic systems are to remain forever private and shall be maintained by the Hunters Ridge Homeowners' Association Trust at no cost to the Town in perpetuity.

55. Road Salt Prohibited. Sodium chloride (NaCl) shall not be used for ice and snow control and that any snow that cannot be accommodated in designated areas shall be removed from the site in perpetuity.

56. Sight Triangles. Sight triangles at the subdivision entrance on North Main Street shall be maintained in perpetuity by clearing shrubs and pruning low hanging branches.

DECISION. Having considered the evidence presented at the Public Hearing and all of the public records, on July 8, 2009, the Board voted, by four votes in favor, none opposed, and one member abstaining to grant a Modification to the Special Permit pursuant to Section 4371 of the By-Law, and Mass. Gen. Laws, c.40A, §§12 and 14, for the construction of a CSD, as shown on the above-described Modified Plans, subject to the Conditions of Approval set forth above.

If the rights granted by this Special Permit are not exercised within two (2) years from the date of the filing of this Decision with the Town Clerk, the Special Permit shall automatically lapse.

Appeals, if any, shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17, and shall be filed within 20 days after the date of the filing of this Decision in the Office of the Sharon Town Clerk.

This Decision shall not take effect until a copy of the Decision, bearing the certification of the Sharon Town Clerk that 20 days have elapsed after the Decision has been filed in the Office of the Sharon Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Registry of Deeds for Norfolk County, in the grantor index under the name of the owner of record, or is recorded and noted on the owner's certificate of title.

IN WITNESS WHEREOF, the undersigned members of the Town of Sharon Planning Board have executed this instrument as of the date set forth below.

TOWN OF SHARON PLANNING BOARD

Dated: August 4, 2009

Filed in the Office of Town Clerk on the _____ day of August 2009.

Marlene B. Chused, Town Clerk

I, Marlene B. Chused, Town Clerk of the Town of Sharon, hereby certify that the foregoing is a true copy of the Decision of the Sharon Planning Board dated August ____, 2009, and that 20 days have elapsed after the date of such filing without the filing of any appeal on such Decision.

Marlene B. Chused, Town Clerk
Date: _____