

FINDINGS OF FACT

Town of Shelburne - Development Review Board

SUBDIVISION PRELIMINARY PLAN/PUD, SITE PLAN, AND CONDITIONAL USE APPLICATIONS

SUB08-03 – Shelburne Woods LLC, Mixed Use PUD on multiple parcels totaling 44.32 acres in size

5059 SHELBURNE ROAD, 82 SHELBURNEWOOD DRIVE, AND 5171 SHELBURNE ROAD

PROPERTY OWNERS: MARGARET A. DYER, MARVIN AND SUE THOMAS AND TRINITY EPISCOPAL CHURCH

Introduction:

Green Mountain Development Group has filed applications seeking preliminary approval of Shelburne Wood, a Planned Unit Development (PUD). The project represented in the applications proposes a mix of uses including affordable and market rate housing developed as apartments, single-family homes, duplexes, townhouses, condominium flats, elderly supportive service housing, assisted living units as well as office/commercial units. Properties are located in the Village Center Zoning District and Village Design Review Overlay Districts. In total the lots cover an area of roughly 44.19 acres in size. All uses would be served by municipal water and sewer. As proposed, the primary access for the development would be located on Shelburne Road, just north of the existing Trinity Church, where an existing curb cut will be removed and a shared entrance way will be utilized. A secondary entrance is proposed through the Shelburne Inn property in the location of the current drive that services the mobile home park.

Public Hearing Notice:

On August 1st, 2009, a notice of a public hearing was published in the *Burlington Free Press*, and on August 3rd, 2009, a notice of a public hearing was posted in the Shelburne municipal office complex, the Shelburne Post Office, and the Shelburne Supermarket.

Record and Decision:

The application was considered by the Development Review Board (DRB) at a public hearing formally warned for August 19th, 2009. The hearing was opened and continued on several occasions (08/26/09, 09/02/09, 9/16/09, 10/21/09, 11/04/09, 11/18/09, 12/02/09, 12/16/09, 01/06/10). On January 6, 2010, at the conclusion of the hearing the record was closed. Present at the hearing was a quorum of the members of the DRB.

Any members participating in the decision but not present at the hearing session have reviewed relevant meeting minutes and videos. A number of deliberative sessions regarding the project were conducted during the public hearing and subsequent to the close of the hearing. The DRB reviewed the application under the Town of Shelburne Zoning Bylaws, as amended effective March 17, 2009.

The written record maintained by the Planning and Zoning Office as part of the proceeding consists of the following:

- P1 Overall Plat Plan, Prepared by Civil Engineering Associates, Dated July 2009
- P1a Lot Layout Plan, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- P2 Easement Plan, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- C1.0 Overall Location Plan, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- EC2.0 Existing Condition Plan, Prepared by Civil Engineering Associates, Dated July 2008, Revised December 30, 2009
- EC2.1 Existing Condition Plan, Prepared by Civil Engineering Associates, Dated July 2008, Revised December 30, 2009
- EC2.2 Existing Condition Plan, Prepared by Civil Engineering Associates, Dated July 2008, Revised December 30, 2009
- C2.0 Interior Road Layout, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C2.1 Pedestrian Amenities Plan, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C2.2 Road Gradients with Spot Grades at Intersection, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C2.3 Typical Road Sections, Dated October 2009
- C2.4 Shelburne Emergency Vehicle Access Turning Movements, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C2.5 So. Burlington Mutual Aid Aerial Truck Turning Movement, Prepared by Civil Engineering Associates, Dated October 2009
- C2.6 Moving Van (WB-62 Tractor Trailer) Turning Movements, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C2.7 Building Size and Parking Spaces Plan, Prepared by Civil Engineering Associates, Dated December 2009
- C2.8 Street Address Plan, Prepared by Civil Engineering Associates, Dated December 2009
- C2.9 Building Separation Distances, Prepared by Civil Engineering Associates, Dated December 2009
- C3.0 Overall Grading and Drainage Plan, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C3.1 Topographic Plan – Northwest Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C3.2 Topographic Plan - Northeast Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C3.3 Topographic Plan – Southeast Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C3.4 Topographic Plan – Southwest Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C3.5 South Access Site Plan, Prepared by Civil Engineering Associates, Dated September 2009, Revised December 30, 2009

- L3.1, Planting Plan – Northwest Quadrant, Prepared by HKW Partnership, Dated December 16, 2009
- L3.2 Planting Plan – Northeast Quadrant, Prepared by HKW Partnership, Dated December 16, 2009
- L3.3 Planting Plan – Southeast Quadrant, Prepared by HKW Partnership, Dated December 16, 2009
- L3.4 Planting Plan – Southwest Quadrant, Prepared by HKW Partnership, Dated December 16, 2009
- L3.5 Planting Plan – South Access, Prepared by HKW Partnership, Dated December 16, 2009
- L3.6 Planting Plan – Building Types, Prepared by HKW Partnership, Dated December 16, 2009
- L3.7 Planting Plan – Building Types, Prepared by HKW Partnership, Dated December 16, 2009
- C4.0 Overall Utility Plan, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C4.1 Utility Plan – Northwest Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C4.2 Utility Plan – Northeast Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C4.3 Utility Plan – Southeast Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C4.4 Utility Plan – Southwest Quadrant, Prepared by Civil Engineering Associates, Dated October 2009, Revised December 30, 2009
- C4.5 Utility Plan – South Access Utility Plan, Prepared by Civil Engineering Associates, Dated September 2009, Revised December 30, 2009
- C4.6 Utility Plan – North Route 7, Prepared by Civil Engineering Associates, Dated December 2009
- C5.0 A & B Street Profiles, Prepared by Civil Engineering Associates, Dated November 2009
- C5.1 D & G Street Profiles, Prepared by Civil Engineering Associates, Dated November 2009
- C5.2 A & B Lot & C Street Profiles, Prepared by Civil Engineering Associates, Dated November 2009
- C5.3 Park Road & E & H Street Profiles, Prepared by Civil Engineering Associates, Dated November 2009
- C6.0 EPSC Narrative, Prepared by Civil Engineering Associates, Dated November 2009
- C6.1 EPSC Inspection, Prepared by Civil Engineering Associates, Dated November 2009
- C6.2 EPSC Specifications, Prepared by Civil Engineering Associates, Dated November 2009
- C6.3 EPSC Details, Prepared by Civil Engineering Associates, Dated November 2009
- C7.2 Pump Station #2 Plan and Details, Prepared by Civil Engineering Associates, Dated November 2009
- C7.3 Water Details, Prepared by Civil Engineering Associates, Dated November 2009
- C7.4 Sewer Details, Prepared by Civil Engineering Associates, Dated November 2009
- C8.0 Road Sections, Prepared by Civil Engineering Associates, Dated December 2009
- C8.1 Site Cross-Sections & Retaining Wall Profiles, Prepared by Civil Engineering Associates, Dated October 2009
- C8.2 Site Details, Prepared by Civil Engineering Associates, Dated December 2009
- C8.3 Storm Drainage Details, Prepared by Civil Engineering Associates, Dated December 2009
- C8.4 Handicap Ramp & Detectable Warning Details, Prepared by Civil Engineering Associates, Dated December 2009

- C9.0 Specifications, Prepared by Civil Engineering Associates, Dated November 2009
- C9.1 Specifications, Prepared by Civil Engineering Associates, Dated November 2009
- C9.2 Specifications, Prepared by Civil Engineering Associates, Dated November 2009
- T1 Overall Site Plan, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- T2 Route 7 Intersection Improvements, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- T2A Conceptual Route 7 Intersection Improvements, Prepared by Civil Engineering Associates, Dated December 2009
- T3 Route 7 Utility Plan & Signage Plan, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- T4 South Property Access (emergency access, Southern connector sidewalk, ROW, and connector typical section), Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- T4A South Access Site Plan, Prepared by Civil Engineering Associates, Dated September 2009, Revised December 30, 2009
- T5 Origins & Destination Plan, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- T-6A Sidewalk Plan, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009
- T-6B Bike Lanes, Prepared by Civil Engineering Associates, Dated July 2009, Revised December 30, 2009.

Testimony offered at the hearing, included sworn remarks from the applicant, as represented by John Giebink and Charlie Brush of the Green Mountain Development Group, the applicants' engineers David Marshall of Civil Engineering Associates and Lucy Gibson of Smart Mobility LLC., architect Rolf Kielman of Truex Cullins , landscape architect Jeff Hodgson of H. Keith Wagner Partnership, residents of the Shelburnewood Mobile Home Park; other residents of Shelburne ; town staff; and others .

Based on the evidence presented and the applicable bylaws the DRB finds and concludes as follows:

Findings of Fact:

The DRB hereby makes the following procedural and substantive findings of fact in connection with the application.

Procedural findings

1. Sketch Plan approval for the project was granted on June 17 of 2009.
2. Request by the applicant for "staged/iterative review" of the applications was made on July 15, 2009 and unanimously approved by the DRB.
3. Preliminary Plan, Site Plan, and Conditional Use application forms were filed on or about July 28, 2009.
4. A public hearing was opened on August 19th, 2009. (08/26/09, 09/02/09, 9/16/09, 10/21/09, 11/04/09, 11/18/09, 12/02/09, 12/16/09, 01/06/10 and was continued on August 26, 2009, September 2, 2009, September 16, 2009, October 21, 2009,

- November 4, 2009, November 18, 2009, December 2, 2009, December 16, 2009, and January 6, 2010.
5. Zoning Bylaws in effect at the time of filing of the original applications is version dated March 17, 2009.
 6. Subdivision Bylaws in effect at the time of filing of the original applications is version dated July 1, 2003.
 7. Supplemental application materials, including numerous iterations of revised plans, were filed subsequent to the original application.
 8. Shelburne's Selectboard voted on January 12, 2010, to amend the Town's zoning bylaw such that, among other things, structures are allowed within the periphery buffer of a PUD.
 9. Requests to waive certain standards and to defer consideration of certain requirements of the zoning and subdivision bylaw were filed by the applicant on January 6; the same day the DRB voted to approve the request for deferrals and announced it would address the request for waivers as part of its written decision.
 10. The requested waivers are documented in a memo from the applicant and pertain to dimensional requirements under 1930.4 of the Zoning Regulations, requirements of Section 900 (3) of the Subdivision Regulations, and certain requirements of Section 710 of the Subdivision Regulations (which in turn reference the Town's Public Works Standards)
 11. The requested deferral are documented in the same memo and pertain to final recommendations of the HP&DRC , signage details, certain legal documents, final construction drawings, final street names, and location of structures within the periphery buffer of the PUD.
 12. The DRB voted to close the evidentiary portion of the public hearing on January 6, 2010.
 13. The DRB deliberated on the application on January 6, 2009, January 13, 2009, January 20, 2009, January 26, 2009, February 3, 2010 and February 9, 2010.

Substantive findings

14. Applicants propose to develop a mix of uses on land located east of Shelburne Road in the Village Center Zoning District and Village Design Review Overlay District.
15. Project involves at least four distinct tax parcels: 31-50-52 (the Shelburnewood property, owned by Marvin and Sue Thomas); 31-50-50.1 (the Harrington house property owned by Margaret Dyer); 31-50-47 (the Trinity Episcopal Church); and 31-50-48 (the Towle house property, owned by Marvin and Sue Thomas). Access-related improvements are also proposed on a portion of the Shelburne Inn property (31-50-44).

16. Excluding that area retained by the Trinity Church, the development covers an area roughly 44.19 acres in size and is bounded to the north and east by the Laplatte River.
17. As a result of the project, parcel 31-50-48 would be reconfigured and reduced to an area of 0.17 acres; parcel 31-50-47 would be reconfigured and reduced to an area of 1.63 acres; tax parcels 31-50-52 and 31-50-50.1 would be combined and subdivided in the process of creating a PUD .
18. Tax parcel 31-50-52 includes land east of the Laplatte River in the Conservation District (outside the Village Center Zoning District), while parcel 31-50-50.1 encompasses approximately two acres of land on the west side of Shelburne Road.
19. The lots resulting from the PUD as proposed would include 17 single family building lots (lots 1-17), four parcels with individual multi-unit structures (lots E, H, F-2, and F-3), five parcels including multiple structures (lots A, B, C, F-1, and F-4), a commercial parcel encompassing a renovated barn and new parking lot (lot C-2), a commercial parcel containing an existing single family home to be converted to an office use (lot A-1)
20. The lots resulting from the PUD as proposed would include four street parcels (lots R1-R4), two parcels containing village greens (lot D and Lot G), and two large open space parcels (lots OS-1 and OS-2).
21. The combined lot frontage of the properties undergoing development exceeds several hundred feet.
22. The project as proposed would include affordable and market rate housing developed as apartments, single-family homes (29 units, of which 17 are house lots), duplexes (32 units in 16 structures), apartments (12 units in two buildings), townhouses (48 units in 12 quadrplex structures), condominium flats (24 units), elderly supportive service housing (80 units), assisted living housing (38 units), and a renovated barn improved for commercial (office) use.
23. The total number of residential units proposed, including partial units dedicated to assisted living use, is 263, while two commercial units are proposed. One of the commercial units will be located in the former Towle House while the other will be located in the renovated barn immediately east of the Shelburne Inn property.
24. Of the 32 duplex units proposed, 8 exceed the default land area requirements for the district and are thus instead proposed under the “Density bonus” provisions of the zoning bylaw.
25. Of the 12 proposed single family units not on house lots, 2 exceed the default land area requirements for the district and are thus instead proposed under the “Density bonus” provisions of the zoning bylaw.
26. All uses for which approval is being sought are listed as permitted or conditional uses under the bylaw.
27. Land area requirements for the proposed uses are primarily based on the number of units proposed, however, the relatively small size of some of

- residential units also qualifies some of those residential units for reduced land area requirements.
28. Because permitted uses are being proposed along with at least one use classified as a conditional use (elder housing/elder care facility), the proposal is considered to feature multiple uses as well.
 29. All uses are proposed to be served by municipal water and sewer.
 30. The primary access for the development is proposed to be located on Shelburne Road, north of the existing Trinity Church, where an existing curb cut will be removed and a shared entrance way will be utilized.
 31. A secondary entrance is proposed across the Shelburne Inn property in the location of the current drive that services the mobile home park and which is the subject of a 16 foot wide right-of-way benefitting the mobile home park property; this access would be signed as one-way (inbound) only.
 32. A "Future Connector Drive," is depicted on project plans for the southwest corner of the property, adjacent to the Shelburne Shopping Park, however, the applicant does not propose to construct this future connector.
 33. Currently, the project area is occupied by the Shelburnewood Mobile Home Park, among other uses. The Preliminary Plan application noted that there are 28 units currently existing on the site: 25 mobile homes and 3 other single family homes. The subject property also contains the 'Harrington House,' an historic residence with ancillary commercial uses (antique sales and Bed and Breakfast) located on Route 7.
 34. The subject properties are partially wooded, and contain several residential structures, some of which are proposed to be removed.
 35. The property bordering the project to the southwest contains the recently redeveloped property, the 'Shelburne Inn' consisting of a mix of commercial and residential uses; the approved transformation of the motel units into townhouses has yet to occur.
 36. To the north of the 'Shelburne Inn' property and along the western border of the project parcel along Route 7 is a professional office, a single family residential, the Trinity Episcopal Church and another single family residence.
 37. The project properties encircle a parcel owned by Rev. Bernard Depeaux, where a single family home is currently located.
 38. According to the application, 7.46 acres of the property contain Class II wetlands and 9.94 acres of lands with slopes greater than 15%.
 39. The bulk of the area proposed for development consists of primarily flat land surrounded by wet areas and areas of moderate to steep slope.
 40. Roughly 43% of the land making up the project would be conserved through a combination of public ownership and conservation easement held by a qualified Conservation organization.
 41. A generally gridded network of streets and alleys is proposed to provide vehicular access within the proposed development, while a network of sidewalks will provide pedestrian access. Streets are designated A Street (primary street

- running east-west) , B Street (minor street running north-south behind the Towle House), C Street (a dogleg street running parallel to and then intersecting with A street), D Street (a u-shaped street running north-south in the location of the historic utility easement that bisects the property and also connecting with the eastern terminus of A street), E Street (major street running south from A street to the area behind the Shelburne Inn), F Street (a minor street located east of the Harrington House), G street (a dogleg shaped street at the eastern extreme of the development), and H Street (a minor street connecting to area E).
42. Pedestrian access to the 'Shelburne Inn' and Shelburne Shopping Park' properties is proposed to be provided via existing and proposed sidewalks and depressed curbs.
 43. Bike lanes are proposed on both sides of Shelburne Road from the southern border of Trinity Church property connecting to the existing bike lanes to the north.
 44. A new bus shelter is proposed on the Trinity Church property. A primitive trail is proposed around the perimeter of the development on land proposed to be deeded to the Town; the trail as depicted would provide connections to the developed area as well as to adjoining properties.
 45. Portions of the development area are designated Lots A through H. The center of the project is occupied by a proposed Elderly Supportive Services Housing (ESSH) facilities overlooking the topographic bowl forming the southern portion of the property.
 46. Lot A is located at the northern edge of the development area and includes affordable duplexes, affordable apartments in the Harrington House (renovated consistent with federal NPS guidelines), and affordable apartments in a new building proposed immediately south of the Harrington House.
 47. Lot A-1 is located north of the Trinity Church and South of the main entrance to the project (A Street), and consists of one existing single family home, referred to as the Towle House. According to Liz Pritchett, a Historic Preservation Consultant for the State of Vermont, the Towle House is historically significant.
 48. Lot B is located south and east of Area A and consists of workforce housing single family and two family units.
 49. Lot C is located east of the Trinity Church and consists of three quadraplexes whose residents would have the option of accessing services at the ESSH building.
 50. Lots F-1 and F-2 are located east of the ESSH building and encompasses a cluster of quadraplexes and a single quadraplex respectively, separated by D street.
 51. Lot H is located at the far northeast corner of the developed area and consists of a single building containing 24 units of age restricted (elderly) housing in flats.
 52. Lots F-4 and F-3 are located south of parcel H and encompass a pair of quadraplexes and a single quadraplex respectively, separated by G street.

53. Lot E is at the center of the project and consists of a large, h-shaped building containing 80 units of ESSH and 38 assisted living units.
54. The project also includes two areas proposed for development as single family lots, lying west and south of Lots F-3 and F-4.
55. A primary public green with outdoor performance space is proposed as Lot D in the area between the ESSH building and Lot B, while Lot G encompasses a secondary green proposed in a portion of the island created by D, H, and G streets; a community garden and playground is proposed for Lot G.
56. Much but not all of the development is proposed be located on flat or gently sloped areas; in general, steeper slopes on the property lie below the 130 foot contour elevation south of the Depeaux in-holding and below the 140 foot elevation north of the Depeaux in-holding.
57. Relatively steep sloped areas proposed for development include the following areas: a filled area at the southwest corner of the project along the southern end of E street; a cut area south of the ESSH building and quadraplexes immediately east of the ESSH building; a cut area along the rear edge of single family house lots 8 through 14; a fill area along the rear edge of single family house lots 15 through 17; a cut along periphery of the 24 unit building anchoring Area E; a cut area along the rear edge of single family house lots 1 and 7; a significant fill at the bend in C Street; and an area combining cuts and fills north of proposed duplexes north of C Street.
58. A total of 457 parking spaces are proposed to be provided through a combination of off street, on-street, and underground parking spaces on the project site. On street parking is proposed on portions of B, C, D, F, G, and H streets. A small surface parking lot containing 17 spaces is proposed near the southern end of E street, while additional surface parking is proposed for the area immediately south of the proposed green. A total of 80 spaces are proposed underground in connection with the ESSH building, and plans indicate another 43 underground spaces are proposed in connection with the Building E.
59. In addition to the parking spaces identified above, a total of 76 spaces are proposed to be located on, or mostly on, the Trinity Church property, which represents an increase of 2 over the number currently located on the site and presumably approved by the Town as part of a prior site plan approval. Of the total number of spaces on the parcel, five spaces are proposed to be reserved for the use of tenants of the Towle house.
60. Of the 76 proposed spaces in association with the Trinity Church, 40 would extend over the property line and thus be located in part on the proposed lots A and C; a parking and access easement benefiting the Trinity Church property is proposed.
61. According to Town's comprehensive Plan, portions of the property around the Laplatte River are in the Floodplain Overlay, while a significant palustrine natural community has been identified in the Class II wetlands.

62. According to Town's Comprehensive Plan, areas directly adjacent to the Laplatte River are considered Archeologically Sensitive Areas, and the 'Harrington House' is a mapped Historic Resource.
63. Segments on the north east portion of the property are identified as Middleground Area on the Significant Views map.
64. The development would be in close proximity to a Public Transit Route and is situated in the Town's Primary Growth Planning Area.
65. The land area density requirement for standard single family homes on lots is a minimum of 10,000 square feet per unit, while the land area density requirement for smaller single family homes is six times the total usable, above ground temperature controlled space within the structure, or 10,000 square feet, whichever is less.
66. The land area density requirement for a standard duplex unit is 7,500 square feet per unit, while the land area requirement for smaller duplex unit is five times the total usable, above ground temperature controlled space within the structure, or 7,500 square feet, whichever is less.
67. The land area density requirement for a standard apartment unit is 7,500 square feet per unit, while the land area requirement for smaller apartment is four times the total usable, above ground temperature controlled space within the structure, or 7,500 square feet, whichever is less.
68. The land area density requirement for an elder care units is 2,000 square feet per resident bedroom, while the land area requirement for ESSH units is 2,500 square feet per unit and the land area requirement for elderly housing units is 3,500 square feet per unit.
69. The land area density requirement for an office use is 20,000 square feet per unit.
70. The project is proposed to include the following smaller units: 22 duplex units of typically 1,200 square feet (requiring a land area of 6,000 square feet per unit); 10 duplex units of typically 1,300 square feet (requiring a land area of 4,800 square feet per unit); 12 single family units of typically 1,300 square feet (requiring a land area of 8,400 square feet per unit); and 12 multifamily units of typically 1,200 square feet (requiring a land area of 4,800 square feet per unit).
71. The project, if approved, would constitute a Planned Unit Development (PUD); approval as a PUD allows, among other things, the location of multiple primary structures on a single parcel and variation of certain dimensional requirements.
72. Allowable density of uses within a PUD is a function of the amount of developable land, as defined in the zoning bylaw. Under the definition established in the zoning bylaw, the project area encompasses 1,172,635 SF of developable land.
73. The land required for the units proposed under the default requirements of the zoning district equals 1,171,400 square feet of developable land, leaving a balance of 1,235 square feet of developable land.

74. A density bonus has been requested to authorize construction of 8 of the 22 proposed duplex units and 2 of the proposed single family village homes. Under the zoning bylaw, a density bonus may be authorized to increase by up to 25 percent the number of units that could otherwise be provided by the site in conformance with the zoning bylaw.
75. The requested density bonus, if approved, would represent a 3.8 percent increase in the number of dwelling units based on the total number of complete dwelling units proposed.
76. The bylaw states that density bonuses may be granted only for developments that demonstrate exceptional affordable housing creation and open space conservation and which reflect exceptional design in the area between the right of way edge and points 400 feet from the right of way edge; exceptional design within this area shall be demonstrated when buildings are both energy-certification eligible and compatible with the surrounding area, with compatibility determined by scale and general size in relation to existing surroundings.
77. The bylaw states that in evaluating the compatibility of a development with the surrounding area, the DRB shall consider a written recommendation of the HP&DRC; the HP&DRC has provided preliminary comments on the project and has asked to submit additional comments and Final Plan Review.
78. Density calculations in a PUD are to be based on the project as a whole, and unless the applicant determines to base density on smaller areas, future expansion of the livable area within any of the smaller units may require amendment of the PUD approval, unless a larger density bonus granted in advance or some other adequate steps are taken.
79. PUD provisions allow modification of dimensional requirements; the intent of language authorizing PUDs is to implement the goals and objectives of the Town Plan, to encourage the orderly development of the land, to protect important scenic and natural features of the landscape, to encourage effective neighborhood design, and ensure the unified and integrated design of development projects.
80. Bylaw provisions applicable to the project authorize a building coverage maximum of 20 percent; the proposed extent of building coverage is approximately 11 percent across the entire project, although on some individual lots within the project the level of building coverage exceeds 20 percent.
81. Bylaw provisions applicable to the project limit building height as follows: average building height shall not exceed 35 feet; fire-rated buildings more than 300 feet from the edge of the Shelburne Road right-of-way may have an absolute maximum height of 45 feet; fire-rated buildings between 250 and 300 feet from the edge of the Shelburne Road right-of-way may have an absolute maximum height of 40 feet
82. The proposed ESSH Building is fire-rated and would be located more than 400 feet from ROW and thus is limited by an absolute maximum height limit of 45 feet.

83. The proposed E Building is fire-rated and would be located more than 400 feet from ROW and thus is limited by an absolute maximum height limit of 45 feet.
84. The proposed quadraplexes west of the ESSH building would be located between 250 and 300 feet from the edge of the Shelburne Road right-of-way and thus are limited by an absolute maximum height limit of 40 feet.
85. Based on calculations submitted by the applicant, the average height of the ESSH building is 27.6 feet, while the maximum height of the building is 43.5 feet; according to alternative calculations and estimates developed by staff, the average height of the ESSH building is approximately 33 feet, while the maximum height of the building is 43.5 feet.
86. Based on calculations submitted by the applicant, the average height of the so-called E building is 33.17 feet; the maximum height of the building was not calculated by the applicant; according to estimates developed by staff, the maximum height of the building is approximately 35 feet.
87. All other structures proposed in the development would have maximum heights below 35 feet.
88. Bylaw provisions applicable to the project specify the following PUD-specific dimensional requirements: minimal total area of development of 40,000 square feet; minimum frontage of 150 feet; minimum front yard setback (from Shelburne Road) along periphery of PUD of 30 feet or average of adjacent parcels; minimum side and rear yard setback along periphery of PUD of 30 feet.
89. As a PUD, the project as a whole is subject to Site plan review criteria, which govern features such as traffic, circulation, parking, landscaping, and lighting.
90. The primary project access will be located in a new intersection proposed to be created immediately north of the existing Towle house and opposite the exit drive for the TD Banknorth property located on west side of Shelburne Road; three new crosswalks are proposed in conjunction with the intersection.
91. The primary project access would be signal controlled and feature two exit lanes and a single entrance lane; the northerly exit lane will be dedicated to right hand turns, while the southerly lane will be dedicated to left hand turns.
92. Because Shelburne Road is under the jurisdiction of the State of Vermont, any new access drive and signal system will require approval of the Vermont Agency of Transportation (VTrans) prior to construction.
93. Sidewalks will parallel the access drive on each side.
94. According to a traffic study prepared for the applicant, the project will generate approximately 75 AM peak vehicle trip ends; during the PM peak hour, the project will generate approximately 103 vehicle trip ends.
95. The study shows that the new traffic generated by the project will represent a small percentage (less than 3 percent / 52 out of 1764) of the traffic already using Shelburne Road south of the new access drive.
96. According to a traffic study prepared for the applicant, the project will have minimal impacts on local traffic conditions and levels of service (LOS) will vary by location; at the primary project entrance, the traffic exiting the project will

- experience relatively poor level of service (LOS D in the AM, after school, and PM peaks) five years from the present, while the traffic traveling along Shelburne Road and/or into the project will experience relatively good level of service (LOS A northbound and southbound in AM, after school, and PM peaks) five years from the present. Overall, the intersection would function at or near LOS A.
97. The level of service experienced at the intersection of Shelburne Road, Harbor Road, and Falls Road will not be degraded by the addition of the relatively small number of trips generated by the project during the peak hour.
 98. During the PM peak hour five years from the present, the LOS at the various approaches will range from LOS B (southbound approach in both AM and PM peaks) to LOS E (Harbor Road approach during AM peak); the amount of delay experienced by drivers using each of these approaches to the intersection will be affected only slightly as a result of the project.
 99. Delays experienced by vehicles turning out of the driveway serving the Harrington House will be significant; drivers will experience LOS F during peak hours.
 100. Drivers exiting existing businesses located west of Shelburne Road, who enter Shelburne Road using the access point at the Kellner building currently experience at least some delays when making left hand (northbound) turns.
 101. The applicant's traffic consultant testified that installation of the traffic signal at the project entrance should create gaps in traffic that would reduce delays for drivers existing the Kellner property.
 102. The primary access drive has been designed to accommodate reconfigured access to the Trinity church. The existing northerly access to the church property via Shelburne Road would be closed, and instead, access to the northern portion of the Church property will be gained via a connection to the new project drive.
 103. The resulting reconfiguration of the Trinity Church property, along with associated parking lot changes, would yield an increase in the number of parking spaces by two, from 74 to 76.
 104. According to a traffic study prepared for the applicant, the project will not create unsafe conditions or congestion or be out of character with the area.
 105. Under the proposal, Streets A, D, and E are proposed to be dedicated to the Town as public streets, while remaining streets would remain private.
 106. Streets are proposed to be located within 50 foot wide strips of land, while the subdivision bylaw and public works specifications require street ROWs to be 60 feet wide.
 107. Landscaping alongside proposed streets includes trees located within the street right of way; the Town's public works specifications exclude trees from the ROW, while the Subdivision Bylaw does not.
 108. Street surfaces are proposed within the project vary by location, with curb-to-curb profiles of 24 feet in public street segments without parallel parking and 30 and ½ feet in public street segments with single side parallel parking.
 109. Curb to curb profiles in private street segments are 22 feet wide.

110. The main entrance will have a total curb to curb width of 37 feet.
111. Under the Town's specifications for public works, public streets are to be 28 feet wide; the applicant has requested a waiver to allow the narrower width.
112. In support of his request, applicant has submitted examples of regulations from the City of South Burlington authorizing relatively narrow streets and rights of way.
113. An analysis of emergency vehicle turning movements indicates that vehicles owned by the Town of Shelburne would be able to travel throughout most of the development without mounting curbs (one area on G street), while the aerial ladder truck owned by the City of South Burlington and available via mutual aid would be able to travel through the western portion of the project mounting curbs on a portion of C street.
114. Landscaping as part of the project includes the planting of 360 new trees including varieties of maples, honey locust, white spruce, white pine, oak, valley forge elm, hemlock, birch and tree lilacs. Trees are proposed along streets, parking areas and amongst proposed structures. The planting plan notes that, "the landscape contractor shall have the general contractor locate all underground utilities in areas to be landscaped prior to commencing any excavation. Adjustments to tree locations will be allowed where utility conflicts are clearly a problem and with prior approval by Landscape Architect." The planting plan also includes 1092 shrubs/perennials made up of 22 different varieties.
115. Certain trees are proposed in the space between street and sidewalk. It is unclear whether the species selected in these areas will have adequate conditions to survive and grow.
116. Existing or proposed landscaping that would provide buffering between the project site and surrounding properties includes existing vegetation along Shelburne Road ROW immediately north of the Harrington house, existing vegetation along north and eastern perimeter of project, and vegetation southwest of the ESSH building.
117. While located within or at the edge of Shelburne village, the proposed project would be visible from limited locations along Shelburne Road or Falls Road and would be visible from relatively few properties in the surrounding area.
118. The proposed ESSH building would be one of the more visually prominent aspects of the project. Relatively unobstructed views of the building would be experienced looking north from the Shelburne Shopping Park. Relatively obstructed views of the building would possibly be experienced looking East from Rte 7.
119. Conflicting testimony has been received regarding visibility of proposed E building on Lot H as viewed from the surface of the Laplatte river. The building would, however, be visible from the cliffs along the eastern side of the Laplatte river.

120. Lighting as part of the project includes 49, black, LED downcast street light fixtures placed along the proposed street network. The lighting will generate an average footcandle level of 0.60, a maximum of 3.2 footcandles and a minimum of 0.
121. Five foot sidewalks are proposed throughout the project and would be created along both sides of all streets.
122. A “nature trail” is proposed for the periphery of the project; although several hundred feet of the trail would fall on Lots A and E, the majority of the trail route lies on proposed open space lots OS-1 and OS-2.
123. Spur trails would be located to provide access to the periphery trail in at least three locations, near lot 1, between lots 16 and 17, and north of lot H; the north-western terminus of the trail would be accessible from Shelburne road.
124. A transit stop with bicycle racks is proposed for the edge of the Shelburne Road ROW along the western edge of the Trinity church, providing a means for residents to access services offered by the CCTA.
125. Other linkages for bicyclists and pedestrians include a sidewalk along the north side of the southern one-way entrance (across the Shelburne Inn property) and a 5 foot wide sidewalk extending southward from the southern terminus of E Street toward the Shelburne Shopping Park. (Plans also indicate room is available for a second sidewalk to the Shopping park.)
126. A request has been made by the applicant to defer consideration of legal documents addressing, among other things, proposed structure of homeowners association (HOAs); these HOA will be responsible for the maintenance of infrastructure in areas where the maintenance is not the responsibility of the Town of Shelburne.
127. In the short term, the project is proposed to be served by two points of vehicular entry and one point of vehicular egress; the secondary point of vehicular entry across the Shelburne Inn property could serve as a second point of egress in the event of an emergency.
128. In the long term, the project might possibly be served by an additional egress/access point in the event the street connection is made between the project site and the Shelburne Shopping Center property.
129. Signage associated with the project includes highway signage required in association with the proposed new intersection and internal street signage; any signs eventually proposed in conjunction with commercial offices in the renovated historic barn and with the ESSH/Elder care facility must conform with the Town of Shelburne zoning bylaw.
130. The number of residents likely to be added to the Town is a result of the project has been estimated at 473; these residents will utilize municipal water, municipal sewer, municipal recreation, public school, municipal library, municipal police, and municipal fire and rescue services.
131. Comments have been received from public works staff regarding capacity of water and wastewater service.

132. Regarding water infrastructure, the Public Works department has requested the following be submitted and approved by Public Works staff prior to any Final Plan submission: plans detailing the abandonment of existing water lines, water line profiles, ownership and maintenance details of the private water line on the Shelburne Inn property, fire flow modeling and related improvements. Fire hydrant locations may be addressed during Final Plan.
133. Regarding wastewater infrastructure, the Public Works department has requested the following be submitted and approved by Public Works staff prior to a Final Plan submission: wastewater system modeling and related improvements.
134. Comments have been received from the Supervisory Union regarding the capacity of local schools; those comments indicate the project would not burden school services.
135. Comments have been received from town staff regarding the project's impacts on police, recreation, and rescue services; those comments indicate the project would not burden municipal services.
136. Comments have been received from the fire chief regarding the project's impacts on fire services; the most recent comments from the chief indicate the project generate an additional 52 calls a year and would not burden municipal fire services.
137. To comply with statute and the Town's zoning bylaw, the proposed project may not have an undue adverse impact in the character of the area in which the project is located. The character of the area in which the project is located is (as described in the purpose statement for the Village Center zoning district): *This is the central, most compact, mixed-use core of the Village. It is intended to accommodate the variety of retail and office uses, government facilities, residential uses, churches and schools and other uses that serve the community while enhancing the pedestrian qualities of the area and, as reasonably practicable, preserving and protecting the historic structures and patterns located in the village. This area is served by both municipal sewer and water and is close to available transit stops. Note that a portion of this district is included in the Village Core Overlay District.*
138. The meaning of the "undue adverse" standard has been clarified by the Vermont Supreme Court (e.g., in *In re: Walker* (156 Vt 639) as one that fails the "substantially materially adverse impact" test.
139. Anticipated changes in the character of the Village Center district stemming from the project include temporary construction-related changes as well as long term changes following construction.
140. Construction related changes include truck traffic, noise, dust, vibration associated with clearing of the site and building out of the project.
141. Long term changes include land use changes, including establishment of streets, housing, and parks; population growth (estimated additional 400

- residents over 8 year); changes in traffic patterns; trip generation, LOS, number uses served by access. Change in delay at main intersection as noted above.
142. The applicant has provided no estimate of the amount of bicycle and pedestrian travel but the Shelburne Bike and Pedestrian Paths committee has noted that, as a residential project with provision for bicycle and pedestrian connections, there will be some level of pedestrian and bicycle traffic.
143. In comments filed with the DRB, Shelburne's Bike and Pedestrian Paths committee has indicated that the project generates the need for un-truncated bicycle lanes along both sides of Shelburne Road from the project entrance to the Falls Road/Harbor Road intersection and a fourth, north crosswalk at the Harbor/Falls Road intersection; the committee also identified the appropriateness of establishing a bicycle-pedestrian easement along the south edge of the portion of the Dyer property west of Shelburne Road.
144. Much of the pedestrian and bicycle trips generated by the project on a daily basis will flow to and from the Shelburne Community school via the sidewalk system in the development and the crosswalks at the intersection of Shelburne Road/ Harbor Road/ Falls Road and the crosswalks at the proposed new access drive intersection.
145. Comprehensive plan language applicable to the project includes several policy statements cited in staff reports; most of these statements do not have regulatory effect.
146. Relative to utilization of renewable energy resources, the project will consume an area currently producing an un-quantified amount of unutilized biomass; in the place of unutilized biomass, the project proposes to capture renewable solar energy via hot water solar panels.
147. To address bylaw requirements relating to Site plan approval, the DRB has the authority to attach conditions to any site plan approval.
148. Review of site plan criteria occurred simultaneously with other reviews, including PUD, Conditional use, and subdivision.
149. As part the review of the project's conformance with Mixed use PUD requirements, the DRB considered a series of waivers requested by applicant, specifically: Waivers of dimensional requirements under 1930.4 of the Zoning Regulations (· Front yard minimum in areas not encompassed by the periphery buffer - 5'; · Side and rear yard in areas not encompassed by the periphery buffer - 5'; · Lot frontage minimum - no requirement in areas not encompassed by the periphery buffer); Waiver of requirements of Section 900 (3) of the Subdivision Regulations (· Allow an intersection with an angle of less than 80 degrees out of respect of the irregular shape of the plateau (topography) as outlined in Section 900 (2); Waiver of requirements of Section 710 of the Subdivision Regulations, which invoke the public works specifications (· The placement of a master water meter instead of individual water meters for each living unit in the ESSH building; Waiver from the minimum road width of 28 feet to allow portions of the public roads to have a width of 24'; · From the minimum

- street right of way from 60-feet to 50-feet; · For the placement of street trees within the public right-of-way; ·For the use of 25-foot radii instead of 30-foot radii for the Type I public streets; · For the placement of portions of the power distribution system outside of the public right-of-way).
150. The side and rear yard periphery buffer requirement in the zoning regulations effective March 17, 2009, is 30 feet; in zoning amendments adopted by the Selectboard on January 12, 2010, periphery buffer requirements were revised to permit structures in the periphery buffer area.
 151. The project if constructed would extend the form of Shelburne village form through the creation of a grid-inspired street network around which are arranged single family, two-family, multi-family homes, and an office building, as well as two larger structures; one is a three-story, dual-purpose building providing elderly housing and related services in 138 units, while the other is a single purpose elderly-housing structure with 24 units.
 152. The project is located along the Laplatte River greenway; a conservation area is would separate the bulk of the development from the river corridor and, to a lesser extent, wetlands.
 153. The proposed single family lots (lots 1 -17) incorporate building envelopes; in the case of lots 1 and 7 through 17, at least one boundary of each structural building envelope is formed by the proposed new top-of-bank.
 154. Open space within the developed area includes a central green, a pocket park, a playground for young children, and playground for older children, and a community garden site.
 155. An archeology investigation was completed on the property but no significant archeology resources were identified.
 156. Although the Laplatte River is a recognized wildlife corridor, no high value wildlife resources have been specifically identified within developed portions of the project.
 157. Some forested areas will be cleared to make way for the project but these areas do not include large tracts of high value timber land.
 158. The development plan provides for trash removal from larger structures, as well as screening and buffering from most adjacent properties and does not contain noxious or noisy land uses that typically are incompatible with surrounding lands.
 159. The site plan was revised at Sketch Plan following input from independent design consultant Julie Campoli.
 160. The project as proposed would impact drainageways, small wetlands, and certain areas with highly erodible soils.
 161. The project's impacts on steep slopes and soils were subject to independent review by Jonathan Ashley, PE; in summarizing the findings of his evaluation, Mr. Ashley's primary concerns pertained to areas proposed for construction of retaining walls and to a lesser extent areas prone to high water table and requiring management of water and erosion during and after construction.

162. In addressing one of the areas proposed for a retaining wall, near the corner of C Street, Mr. Ashley recommended that additional evaluation of the location be completed by a qualified geotechnical engineer.
163. Additional analysis of the retaining wall was completed by geotechnical engineer James Olson, PE, PhD, who concluded a modified wall design (stepped and incorporating geofoam blocks) would be appropriate on the site.
164. The Town's Comprehensive Plan calls for a mixture of uses, as evidenced by text indicating the Village Center district "is intended to accommodate the variety of retail and office uses, government facilities, residential uses, churches and schools and other uses that serve the community while enhancing the pedestrian qualities of the area and, as reasonably practicable, preserving and protecting the historic structures and patterns located in the village."
165. The non-residential element of the project—two office buildings—represents a very small portion of the project in terms of area, trip generation, parking demand, and reasonably foreseeable level of activity.
166. The two primary open space parcels, plus two related parcels—one east of the Laplatte River and the other west of Shelburne Road—occupy an area in excess of 20 acres.
167. The open space parcels are proposed to be conveyed to Town, while the applicant proposes that a conservation easement on the land be held by The Nature Conservancy; this ownership-management arrangement has been utilized in a number of other locations in the Town.
168. Shelburne's Selectboard has indicated it would consider offer of dedication of the open space parcels to the Town.
169. If accepted and protected, the open space parcels would expand the conserved greenway extending along the Laplatte river corridor.
170. Most utilities in the project are proposed to be located underground, with the precise location varying by utility type and situation within the project.
171. Water lines and sewer lines are proposed to extend throughout the project, with sewer lines generally centered in roadways and water lines parallel along the roadway edge but with some water lines traversing planned parking areas.
172. Wastewater from the project would exit north of the Harrington House and cut northwesterly and then northerly to the Town pump station near the Laplatte River, while water service to the project would be provided by an 8 inch ductile iron pipe intersecting Town mains near the proposed new intersection and by a connection accessing an existing line located on the Shelburne Inn property.
173. Ownership of water lines and sewer lines is proposed to be split between private and public entities.
174. Electric, gas, and cable would be distributed throughout the project in rear yard location as well as streetside locations, with streetside locations sometimes falling on opposite sides of the street relative to water and sometimes falling on

- the same side as water; in some locations, gas service is proposed to be located outside the highway right of way.
175. Maintenance of streets proposed to remain private (Streets B, C, F, G, H) will be the responsibility of a Home Owners Association; maintenance of main water lines and sewer lines outside public rights of way for highways includes some areas of public responsibility (ie., where lines would be public).
 176. Wastewater from the site will be treated by Shelburne's wastewater treatment plant number two.
 177. The project at full build out is estimated to require increased wastewater treatment capacity of 35,613 gallons per day, which is within the surplus capacity available at the plant; however, certain wastewater lines connecting the site with the plant may require upgrading to accommodate the increased flows.
 178. Potable water used at the site will be supplied by the Champlain Water district over infrastructure owned and managed by the Town of Shelburne.
 179. The project is estimated to generate demand for approximately 46,289 gallons of drinking water per day, which is within the surplus capacity available; however, certain water lines in the village may need upgrading to accommodate the increased demands on the water system in the event of a major fire in the development.
 180. To better understand the potential impact of the project on water and sewer transmission systems, Town public works staff have called for the preparation of additional analyses and modeling prior to the filing of any application for final plan approval.
 181. Implementation of the project will begin with construction of duplex units on Lot A, followed by preparation of single family lots and demolition of the mobile home park and subsequent construction of the ESSH and elder care building.
 182. Build-out or phasing of the project has been characterized as 'market driven'; previously the applicant has indicated construction will take place over a period of 8 to 10 years. Project phasing will be examined at final plan review.
 183. Building types will be varied, however, there are no tunnels or elevated walkways proposed to link buildings.
 184. As part of PUD review the DRB has authority to waive yard requirements in furtherance of good design.
 185. The applicant has not requested waiver of parking requirements.
 186. Definition of affordable housing under Shelburne's zoning bylaw is "Housing that is occupied by inhabitants whose gross annual household income does not exceed 80 percent of the county median income (or income of the standard metropolitan statistical area), and for which the total cost of the housing (as defined below) does not exceed 30 percent of the household's gross annual income. The long-term affordability of such units must be preserved through appropriate legal mechanisms. a. For owner occupied housing, total housing costs include mortgage principal, interest, taxes, insurance, and association

- fees. b. For renter occupied housing, total housing costs include rent, utilities, and association fees.
187. The Shelburne zoning bylaw does not recognize 'workforce housing', defined by the applicant as, "Housing affordable to families earning less than 100% of Median Area Income." As defined, workforce housing would qualify as "Moderate income housing," defined in the Shelburne Town Plan as "Housing units that may be afforded by households earning 80 percent to 120 percent of the Burlington MSA's median household income."
 188. The number of affordable units proposed in the project is 34, while the number of 'workforce' units is 22.
 189. Of the 10 units requiring awarding of a density bonus, eight (80 percent) qualify as affordable.
 190. Evidence of the perpetual affordability of units has been provided in the form of model deed language.
 191. A large area of open space land is proposed to be deeded to the Town, with a conservation easement proposed to be held by The Nature Conservancy.
 192. Shelburne's Natural Resources and Conservation Committee has commented on the project and opined that concerns the group had expressed previously, such as the impact of building on steep slopes, protection of natural resources and the use of "green planting" concepts, have been addressed to the extent possible. The SNRCC also endorsed dedication of the natural areas on the slope and along the LaPlatte River to Town with a third party holding a conservation easement and efforts to maintain the possibility for future linkage with existing walking trails.
 193. No details relating to the creation and maintenance of the depicted 'Nature Trail,' have been submitted.
 194. The Applicant has not committed as part of the proposal to construct the Nature Trail, but also has not asked for a waiver to be relieved of responsibility for constructing the path.
 195. Design of several buildings has been reviewed and preliminarily endorsed by Historic Preservation & Design Review Commission; the design of changes to the historic barn, the Harrington House, and the Towle house have not yet been addressed.
 196. Applicant has requested that Development Review Board authorize preliminary review at this stage of project planning; the Historic Preservation & Design Review Commission has endorsed this staged approach to review.
 197. HP&DRC has indicated that "the current state of the design suggests that the project would be compatible with the surrounding area. The design extends the development pattern of the village in an appropriate way."
 198. Stormwater system consists of detention ponds, detention basins, bioretention areas, and grass disconnection areas, wherein water is retained and sediment is allowed to settle before water is released slowly to outfalls eventually reaching Laplatte river

199. As part of the storm water system design, stormwater generated at the Trinity Church property will be incorporated in to the project's system, ameliorating an existing erosion problem
200. The proposed stormwater system will require a permit from State of Vermont Agency of Natural Resources; an erosion control permit from state of Vermont also will be required.
201. Although no official floodplain mapping exists for the Laplatte River upstream of Route 7 bridge, areas alongside the Laplatte are prone to flooding.
202. A limited study of the project's fiscal impacts, prepared by the applicant, was submitted with the application; the taxable value of the project has been reported by the applicant as being in the vicinity of \$60 million dollars, with potential tax revenue estimated at approximately \$900,000 per year.
203. The study did not estimate the cost of providing services to the project.
204. Non-elderly residential units within the project would be subject to the Town's education impact fee; residential units in the project would also be subject to the Town's recreation impact fee.
205. All structures within the project are proposed to be constructed to meet Energy Star Plus requirements.
206. The ESSH building is proposed to accommodate solar panels to heat water.
207. Letters from the University of Vermont's consulting archeology program and from architectural historian Nancy Boone indicate the project would not have significant impacts on cultural resources in the area of the project.
208. Decisions required in connection with the application include preliminary of the boundary adjustment between Trinity Church and Thomas property, Preliminary Plan/Preliminary PUD approval for the project as a whole, Conditional use approval for the multiple uses making up the project, including elder care and elderly supportive service housing.

Conclusions:

Based on the above findings derived from the evidence and testimony offered during the proceeding, the DRB has reached the following conclusions in connection with the application.

It should be noted that the Development Review Board, at the applicant's request, has granted deferral of certain Preliminary Plan submission requirements and the Board expects that conclusions related to these items shall be made by the Board during Final Plan review. The authority to defer review of certain aspects of an application is granted to the Development Review Board by the Shelburne Subdivision Regulations.

GENERAL CONCLUSIONS AND BASIC ZONING REQUIREMENTS

1. For reasons related to efficiency, to accommodate traffic calming and improved pedestrian circulation, because narrower streets are more appropriate to a Village setting, and because placement of street trees within the public right-of-way would improve traffic calming and aesthetics of the streetscape, a majority of the DRB concludes the applicant's request for waivers is generally reasonable, insofar as they (the waivers) are not modified by the conditions below. Similarly, the Board concludes that the applicant's request for deferrals also is reasonable.
2. The majority of policy statements contained in the Town's Comprehensive Plan are not mandatory or sufficiently clear to be regulatory; the project as proposed is generally concordant with those that may be regulatory, as well as with many others that are non-regulatory. Thus, the Board concludes that insofar as the Town's Comprehensive Plan can be utilized as a regulatory document, the project, if developed pursuant to the conditions specified below, will conform to the Shelburne Comprehensive Plan.
3. Because the uses proposed in the application are authorized in the bylaw, the DRB concludes that the project, if developed pursuant to the conditions specified below, will comply with requirements regarding permitted or conditionally permitted uses.
4. To the most casual observer, the project would appear to violate a number of dimensional requirements contained in the Zoning Bylaw. Thus, the project, if developed pursuant to the conditions specified below, will comply with the dimensional requirements of the Village Center zoning district, as those requirements are enumerated in Section 830 of the Zoning bylaw and, more importantly, modified by Section 1930.

CONCLUSIONS REGARDING REVIEW UNDER SITE PLAN REVIEW CRITERIA

5. Owing to the lack of uninterrupted non-motorized travel connections, the project as proposed has the potential to challenge pedestrians and cyclists who will reside in the subject project. The Board has concluded that additional connections such as more extensive bicycle lanes would help address this deficiency.
6. The bylaw requires at least two points of ingress and egress in projects of over 30 units, and while two points of ingress are proposed, only a single point of egress would be available. Further, one of the points of access is via a narrow ROW across an existing commercial property. The Board has concluded that additional connections for motorists as well as for emergency vehicles would begin to address this deficiency.
7. The project as proposed would offer ample parking, without any request for parking waiver, as well as reasonably good circulation as documented elsewhere in this decision. The Board has concluded that proposed landscaping, while reviewed only on a preliminary basis, is suitable for the site.
8. For the reasons stated above, the Board also concludes that the project will comply with the Site Plan review standards of the zoning bylaw specified in section 1900.2--including provisions for maximum safety of vehicular and pedestrian circulation; adequacy of circulation, parking and loading facilities; and

- adequacy of landscaping, screening and setbacks—so long as the project is developed pursuant to the conditions specified below.
9. For reasons stated above, the project also will comply with the Site Plan review standards of the zoning bylaw specified in section 1900.5--addressing accommodation of pedestrians, bicyclists, and transit users--so long as the project is developed pursuant to the conditions specified below.
 10. The project will comply with the Site Plan review standards of the zoning bylaw specified in section 1900.6--addressing access requirements--so long as the project is developed pursuant to the conditions specified below.

CONCLUSIONS REGARDING REVIEW UNDER CONDITIONAL USE CRITERIA

11. Owing to the potential of the project to burden the municipal wastewater collection system by causing backups along the sewer line serving Falls road and to burden the municipal water distribution system by dropping pressure below critical levels in the event of a fire, the project raises significant concerns regarding public facilities. The Board has concluded that the additional analyses requested by municipal staff should help establish the degree to which these potential problems are real problems.
12. Due to the fact that levels of vehicular traffic on local roads during the AM-, school-, and PM peak hours are relatively high, the project also raises concerns regarding increased congestion and decreased safety. The Board has concluded that proposed improvements, including a new traffic signal at the project entrance, should mitigate these impacts, although some board members would prefer that the improvements not rely on the installation of a traffic signal.
13. Because the project is the largest proposed in Shelburne in decades, and because its location is on the edge of the Town's historic village, the Board has reviewed and considered a evidence and testimony pertaining to potential impacts of the project—including large-scale buildings—on the character of the area. The zoning bylaws characterize the purpose of the village center as a place with a variety of uses that are in keeping with pedestrian scale. The Board recognizes that considerable effort has been made to design the project as an extension of the village fabric and to include buildings that are attractive yet diverse and at an acceptable scale.
14. The energy efficiency of buildings within the project has been the focus of testimony, as has been the potential for rooftop solar collectors and other innovations. The Board has concluded that the project will support responsible utilization of renewable energy resources.
15. For the reasons stated above, the DRB concludes that the project will comply with the Conditional Use review standards of the zoning bylaw specified in section 1910--avoiding undue adverse impacts on capacity of community facilities, character of the area, traffic, the Comprehensive Plan, and the utilization of renewable energy resources--so long as the project is developed pursuant to the conditions specified below.

CONCLUSIONS REGARDING CONFORMANCE WITH PARKING AND LOADING CRITERIA AND PERFORMANCE STANDARDS

16. Owing to the relatively large size of the project, a significant amount of the site will be dedicated to parking and ancillary activities. Although the project as a whole is compact, walkable, and in close proximity to stores, services, and public transit—and thus might justify a waiver of parking levels required in the bylaw—no such waiver has been requested.
17. The Board has concluded that the amount of parking proposed, although not necessarily its configuration, is appropriate. And so long as the project is developed pursuant to the conditions specified below, the project will comply with the parking requirements of the zoning bylaw specified in section 1960.1.
18. Evidence on loading areas and handicapped parking within the project area is somewhat limited and will need to be examined more closely as part of any Final Plan review application. Thus, so long as the project is developed pursuant to the conditions specified below, the Board concludes that the project will comply with the loading area requirements of the zoning bylaw specified in section 1960.2 and the parking for Disabled persons requirements specified in section 1960.3.
19. Owing to the DRB's decision to defer consideration of the project's conformance with Historic Preservation and Design Review Overlay district requirements and with requirements of section 841.3, the DRB concludes the project will comply with those requirements so long as the project is developed pursuant to the conditions specified below.

CONCLUSIONS REGARDING THE PRELIMINARY PLAN STAGE OF REVIEW OF THE MIXED USE PUD PROPOSAL

20. Owing to the fact that the project site represents one of the largest undeveloped areas within the Village Center district, if not the largest, the Board bears a special burden when considering questions such as: Does the project represent a unified treatment of development possibilities on the site? And Does the amount of development proposed comply with local bylaws? The project plan has evolved extensively since first proposed and is, from the perspective of the Board, the better for it. The developers propose to create a series of neighborhoods anchored by public spaces and primary buildings. They have attempted to reduce the scale of streets and to unify the project with lighting and landscaping. Calculations submitted with the application indicate the project would require a density bonus, but a relatively small one as compared to the maximum allowed under the bylaw.
21. The project, although located on the edge of the village, also occupies an area with significant natural features such as the Laplatte River and a palustrine natural community. And although most of the proposed development would occupy a plateau in the heart of the parcels, some development of areas with slopes equal to or exceeding 15 percent is proposed. Evidence in the official record indicates that some of these areas feature high water tables and/or high erodibility and are upslope of sensitive areas such as wetlands or open water. As a consequence, the applicant has proposed steps, such as special construction techniques, to minimize any such negative impacts. However,

- members of the Board are at this time uncertain these measures will be adequate or appropriate.
22. In the course of reviewing development proposals, it is the aim of the Board to achieve the objectives of the Municipal Plan. Indeed, the flexibility offered by PUD review is a significant incentive for development of projects that support the Town's vision. As noted above, most policy statements contained in the Town's Comprehensive Plan are not mandatory or sufficiently clear to be regulatory; the project as proposed is generally concordant with those that may be regulatory, as well as with many others that are non-regulatory. Thus, the Board concludes that insofar as the Town's Comprehensive Plan can be utilized as a regulatory document, the project, if developed pursuant to the conditions specified below, will conform to the Shelburne Comprehensive Plan.
 23. In light of the large scale of the project, and the use residents and businesses within it will make of local services and facilities, the Board recognizes that the project has the potential to affect the balance sheet of local government. Evidence has been provided by the applicant with the purpose of demonstrating that any fiscal impacts caused by the project will be positive. Given that the design of the project is compact and thus encourages efficiencies, the Board is prepared to defer further consideration of this issue until Final Plan review.
 24. The scale of the project also is such that it has the potential, perhaps more than most projects, to negatively impact neighboring properties. The design of the project mitigates this potential impact successfully, in the view of the board, through the provision of significant amounts of open space around the periphery of the project and context sensitive design of buildings along Shelburne Road.
 25. It is the conclusion of the DRB that the project will comply with the General PUD standards of the zoning bylaw specified in section 1930.2-- including whether the number of residential units proposed conforms with bylaws; whether the project is an effective and unified treatment of the development possibilities on the project site; whether the project makes appropriate provision for natural features and development constraints such as steep slopes; whether the project is consistent with the Comprehensive plan and bylaws; whether the project provides for the economy and efficiency of street, utility, and public facility installation; and whether the project provides for open space and is compatible with neighboring properties--so long as it is developed pursuant to the conditions specified below.
 26. Similarly, so long as it is developed pursuant to the conditions specified below, the project will comply with the specific PUD standards of the zoning bylaw specified in section 1930.4-- including whether it meets requirements for area of development, frontage, maximum building height, and periphery setbacks
 27. Further, the applicant has demonstrated that alternative setback requirements authorized under 1930.4 are justified by the design of the project. With regard to whether the subject property is unsuitable for subdivision or development due to steep slopes or topography, by virtue of being harmful to the safety, health and general welfare of the present or future inhabitants of the subdivision, the DRB concludes that it will be suitable, assuming it is developed pursuant to the conditions specified below.
 28. With regard to whether the subject project gives due regard for the preservation and protection of existing features, the DRB concludes that it will give such due regard, assuming it is developed pursuant to the conditions specified below.

29. With regard to whether the proposed development is in compliance with the Zoning Bylaws, the DRB concludes that, it will comply, assuming it is developed pursuant to the conditions specified below.

CONCLUSIONS REGARDING THE REVIEW OF THE APPLICATION UNDER SUBDIVISION BYLAW.

30. As noted above, the project occupies an area with significant natural features such as a palustrine natural community and the Laplatte River, which is an important wildlife corridor. And, although most of the proposed development would occupy a plateau in the heart of the parcels, some development of areas with slopes equal to or exceeding 15 percent is proposed. Evidence in the official record indicates that some of these areas feature high water tables and/or high erodibility and are upslope of sensitive areas such as wetlands or open water. The applicant has proposed steps, such as special construction techniques, to minimize any such negative impacts. However, members of the Board are at this time uncertain these measures will be adequate to give “due regard” for the preservation and protection of existing features, or avoid runoff or erosion. If the steps are inadequate, the Board would conclude certain portions of the project with steep slopes, high water table, or high erodibility are not suitable for development.
31. Also as noted above, the scale of the project is such that it has the potential to negatively impact neighboring properties. In the view of the board the design of the project mitigates this potential impact successfully through the provision of significant amounts of open space around the periphery of the project and context sensitive design of buildings along Shelburne Road.
32. Again as noted above, owing to the lack of uninterrupted non-motorized travel connections, the project as proposed has the potential to challenge pedestrians and cyclists who will reside in the subject project. The Board has concluded that additional connections such as more extensive bicycle lanes would help address this deficiency. Furthermore, due to the fact that levels of vehicular traffic on local roads during the AM-, school-, and PM peak hours are relatively high, the project also raises concerns regarding increased congestion and decreased safety. The Board has concluded that proposed improvements, including a new traffic signal at the project entrance, should mitigate these impacts, although some board members would prefer to that the improvements not rely on the installation of a traffic signal. The Board believes that an additional point of egress, which in an emergency could be used as a point of ingress, is called for.
33. And again as noted above, owing to the potential of the project to burden the municipal wastewater collection system by causing backups along the sewer line serving Falls road and to burden the municipal water distribution system by dropping pressure below critical levels in the event of a fire, the project raises significant concerns regarding public facilities. The Board has concluded that the additional analyses requested by municipal staff should help establish the degree to which these potential problems are real problems.
34. As noted above, in light of the large scale of the project, and the use residents and businesses within it will make of local services and facilities, the Board recognizes that the project has the potential to affect the balance sheet of local government. Evidence has been provided by the applicant with the purpose of

demonstrating that any fiscal impacts caused by the project will be positive. Given that the design of the project is compact and thus encourages efficiencies, the Board is prepared to defer further consideration of this issue until Final Plan review.

35. In summary, the DRB concludes that so long as the project is developed pursuant to the conditions specified below, it should comply with the Planning standards contained within the Shelburne Subdivision bylaw -- including whether involved land is suitable for subdivision, whether the proposal includes due regards for preservation and protection of existing features, whether the site is suitable for the proposed density, whether the development is compatible with surrounding properties, whether the proposal contains adequate provision for pedestrian traffic, whether the proposal includes adequate provision for the control of runoff and erosion, whether the anticipated tax return from the proposed development is equal to or exceeds the cost of anticipated municipal services and facilities, whether there is sufficient water available for the project, and whether the proposed development will cause unreasonable highway congestion or unsafe conditions .
36. And, so long as it is developed pursuant to the conditions specified below, the project is found to comply with the development requirements and design standards contained within the Shelburne Subdivision bylaw -- including street design standards, sidewalks and curbs, lot layout, pedestrian access, water, sewage disposal, utility lines, outdoor lighting, and storm drainage.

Decision:

Based on the above-cited findings and conclusions, the Development Review Board hereby decides as follows:

- The request for Preliminary Plan approval of the major subdivision and the proposed land transfer and boundary modification is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval of the PUD-MU application:
 2. Fulfillment of Conditions 2, 3, 4, 5, 6, 11, 13, 14, 15, 16, as enumerated below.

- The request for approval under Site Plan review criteria is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval being granted for the proposed land transfer and boundary modification between parcels : 31-50-52 and 31-50-47;
 2. Fulfillment of Conditions 1, 6, 7,8, 9, 11, 17 , as enumerated below.

- The request for approval under the Conditional Use approval is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval being granted for the proposed land transfer and boundary modification involving 5059 Shelburne Road and 82 Shelburnewood Drive;
 2. such approval is contingent on final approval being granted for the PUD-Commercial proposed for 5059 Shelburne Road and 82 Shelburnewood Drive;
 3. Fulfillment of Conditions 6, 9, 12, 13, 14, 15, as enumerated below.

- The request for approval of the Preliminary Plan stage of PUD-MU review, including request for Preliminary Plan approval of the overall project, is APPROVED, subject to the following conditions:
 1. such approval is contingent on final approval being granted for the proposed land transfer and boundary modification involving 5059 Shelburne Road and 82 Shelburnewood Drive;
 2. such approval is contingent on final approval being granted for the Conditional Use cited herein;
 3. such approval is contingent on final approval being granted under Site Plan review criteria of the zoning bylaw;
 4. Fulfillment of Conditions 1,2, 3, 4, 5, 9, 10, 15, 16 17, as enumerated below.

- Further consideration of loading, design review, and parking shall be reviewed as part of any Final Plan application.

Conditions of Approval

1. ROAD WIDTH/TREES

Any Final Plan application shall include roads designed to meet the Public Works specifications, and said roads shall be offered for dedication as public facilities. However, road widths in certain areas of the project may be narrower than prescribed by the specifications and trees shall be permitted in the right of way as long as they do not interfere with the maintenance of any public utility.

2. REDESIGN C STREET AT SLOPE

Any Final Plan application will include modifications to the design with provisions made for certain steeply sloped portions of the site. Specifically, the northeast corner of 'C' street shall be relocated southward away from the sloped area so as to significantly reduce the fill and proposed retaining structure. The duplex unit closest to the northeast corner of 'C' street shall be eliminated.

3. AVOID STEEP SLOPE

The applicant shall provide substantial evidence demonstrating that any development on slopes greater than 15% will not threaten public safety, the palustrine natural community and that appropriate provisions have been made to address any potential erosion, soil slumping or collapse, and groundwater contamination. Any Final Plan application will also include modifications to the site design such that, in that portion of the project north of a line drawn between the southernmost point on the Depeaux property to the southeast corner of the Bullard property, but excepting from the portion the area subject to condition 2 above, no new building, foundation, roadway, sidewalk, or retaining wall is located below the 130 foot elevation contour, as depicted on Sheets C3.1 and C3.2. In that portion of the project south of the line referenced above, the design will be modified such that no new building, foundation, roadway, sidewalk, or retaining wall is located below the 140 foot elevation contour, as depicted on Sheets C3.2, C3.3, C3.4, and C3.5.

4. REDUCED BUILDING ENVELOPES ON 8-17

Condition 3 above notwithstanding, any Final Plan application will also include modifications to the site design such that the building envelopes on lots 8 through 17 will be reduced in size by excluding any areas below the 140 foot elevation contour. Further, portions of lots 8 through 17 below the 140 foot elevation contour shall be subject to an open space agreement with the Town. The open space agreement shall include a vegetation management plan consisting of cutting and building restrictions with the goal of preventing both erosion and habitat destruction. To minimize impacts on wildlife, fences will not be allowed. Said plan must be submitted as part of any Final Plan application and if accepted by the DRB, be presented to any prospective buyers. Lastly, primary dwellings on lots 9 through 16 shall have a maximum front yard setback of 15 feet. Alternatively the applicant may avoid the requirement for management plan by revising the lot boundary to exclude land below the 140 foot elevation contour.

5. LOTS 1 and 7

Condition 3 notwithstanding, any Final Plan application will also include modifications to the site design on lots 1 and 7 such that areas below the 130 foot elevation contour shall be subject to an open space agreement with the Town. The open space agreement shall include a vegetation management plan consisting of cutting and building restrictions with the goal of preventing both erosion and habitat destruction. To minimize impacts on wildlife, fences will not be allowed. Said plan must be submitted as part of any Final Plan application and if accepted by the DRB, be presented to any prospective buyers. Lastly, primary dwellings on lots 9 through 16 shall have a maximum front yard setback of 15 feet. Alternatively the applicant may avoid the requirement for management plan by revising the boundary to exclude land below the 130 foot elevation contour.

6. PRIMARY ACCESS

Prior to the filing of any Final Plan application for the subject project, the applicant shall redesign the project access to incorporate two complete drives (i.e., incorporating both ingress and egress lanes). The first of these drives shall be located in the vicinity of the currently proposed primary access. The second drive shall be located in the vicinity of a point opposite the existing commercial access serving the Kellner property. Design of the project will be adjusted to accommodate the modified access.

7. APPLICATION FOR SHELBURNE INN

A site plan application amending the existing approval for the 'Shelburne Inn' property shall be simultaneously submitted with any Final Plan application. The application shall include any proposed changes and legal documents providing residents and visitors with ROW to use any sidewalk to the site and attempt to improve pedestrian and vehicular circulation.

8. APPLICATION FOR TRINITY CHURCH

A site plan application amending the existing approval for the Trinity Church property shall be simultaneously submitted with any Final Plan application.

9. PARKING REMOVED FROM PUD BUFFER

Plans submitted with the Final Plan application shall eliminate or relocate all parking located within the periphery buffer of the PUD. The applicant shall have the option of proposing adjustments to parcel boundaries or other changes to address this requirement.

10. HOME OCCUPATIONS

There shall be no restrictions of home occupations of structures in the PUD by any Homeowner association or deed restriction. Any use changes will, however, need to comply with Shelburne's Zoning Regulations. Structures shall not be considered non-complying due to setback requirements for commercial structures.

11. BICYCLE LANES AND NATURE TRAIL

The proposed bike lane shall be continued South to the Harbor/Falls Road intersection as proposed by the segment 5 conceptual alignment analysis (proposed interim improvements.) The final location of the proposed nature trail must be developed in consultation with the Shelburne Natural Resources and Conservation Committee, the Shelburne Bike and Pedestrian Paths Committee, and staff of the Vermont Department of Fish and Wildlife.

12. ABANDONMENT OF WATER LINES

Additional information regarding abandonment of existing water infrastructure must be submitted to the Department of Public Works for review. Public Works staff must approve the applicant's plans for abandonment of existing water infrastructure before a Final Plan application may be submitted to the Planning and Zoning office.

13. WATER LINE AND SEWER LINE PROFILES

Water line and sewer line profiles must be submitted to the Department of Public Works for review. Public Works staff must approve the applicant's water line profile before a Final Plan application may be submitted to the Planning and Zoning office.

14. WATER LINE ON SHELBURNE INN PROPERTY

Additional information regarding use, ownership, and maintenance of the private water line on the Shelburne Inn property must be submitted to the Town for review. Town staff must approve in concept a plan for use, ownership, and maintenance of the private water line before a Final Plan application may be submitted to the Planning and Zoning office.

15. FIRE FLOW MODELING

Additional fire flow modeling must be submitted to the Department of Public Works and fire chief for review. Public Works staff must indicate concurrence with the updated modeling and any recommendations for system improvements before a Final Plan application may be submitted to the Planning and Zoning office. In the event improvements are required to address project-induced deficiencies, the applicant shall be responsible for defraying the costs of those improvements.

16. WASTEWATER MODELING

Additional wastewater system modeling must be submitted to the Department of Public Works for review. Public Works staff must indicate concurrence with the updated modeling and any recommendations for system improvements before a Final Plan application may be submitted to the Planning and Zoning office. In the event improvements are required to address project-induced deficiencies, the applicant shall be responsible for defraying the costs of those improvements.

17. STREET WIDTH WAIVER

A detailed request for waiver of street width requirements must be submitted to the Department of Public Works and Town Manager for review. Town staff must approve of

any street width waiver request relating to public streets before a Final Plan application may be submitted to the Planning and Zoning office.

Appeal Rights:

Under state statute, parties qualifying as interested persons have the right to appeal this decision or parts thereof consistent with Section 4471 of Title 24, Vermont Statutes Annotated.

Dated at Shelburne, Vermont this ^{18th} 17 day of February, 2010, for the meeting of January 6, 2010.

Peter Gibbs, Chair

Kay Kraushaar



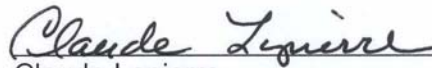
Mark Sammut, Vice Chair



Richard Elkins



Anna Rosenblum Palmer



Claude Lapierre

Jacques "JD" Landry

Copies: Applicant
Colleen Haag, Town Clerk
File