

**BLATMAN, BOBROWSKI, MEAD & TALERMAN, LLC**  
ATTORNEYS AT LAW

30 GREEN STREET  
NEWBURYPORT, MA 01950  
PHONE 978.463.7700  
FAX 978.463.7747

*Concord Office*  
9 DAMONMILL SQUARE, SUITE 4A4  
CONCORD, MA 01742  
PHONE 978.371.2226  
FAX 978.371.2296

*Millis Office*  
730 MAIN STREET, SUITE 2B  
MILLIS, MA 02054  
PHONE 508.376.8400  
FAX 508.376.8440

**PAUL J. HAVERTY**  
paul@bbmatlaw.com

May 20, 2016

Hand Delivered

Lorraine Nessar, Docket Clerk  
Housing Appeals Committee  
100 Cambridge Street, Suite 300  
Boston, MA 02114

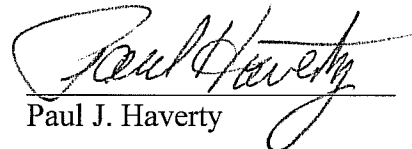
RE: The Fields at Sherborn, LLC v. Sherborn Board of Appeals  
Initial Pleading

Dear Ms. Nessar:

Attached please find the Initial Pleading of the Fields at Sherborn, LLC, appealing a decision of the Sherborn Zoning Board of Appeals. Also included herewith are the Initial Pleading Cover Sheet, a copy of the Board's decision granting a comprehensive permit, with conditions, and a copy of the Applicant's original application, as well as a check for the filing fee in the amount of \$6,210.

If you have any questions regarding this matter, please feel free to contact me.

Very Truly Yours,

  
Paul J. Haverty

Cc. Barbara Saint Andre (via email w/o attachments)  
Ben Stevens (via email w/o attachments)

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
HOUSING APPEALS COMMITTEE

THE FIELDS AT SHERBORN, LLC,

Appellant,

v.

SHERBORN BOARD OF APPEALS,

Appellee

**INITIAL PLEADING UPON GRANT OF A COMPREHENSIVE PERMIT WITH  
CONDITIONS**

**INTRODUCTION**

1. This is an appeal brought pursuant to G. L. c. 40B, §§ 20-23 and 760 CMR 56.06(4) brought by the Appellant/Applicant The Fields at Sherborn, LLC (the “Applicant”) from a decision of the Sherborn Board of Appeals (the “Board”) approving a comprehensive permit, with conditions, that renders the Applicant’s project uneconomic.

**I. PRIOR PROCEEDINGS – 760 CMR 56.04(a)(1)**

2. On December 10, 2014, MassHousing issued a Project Eligibility Letter to the Applicant, authorizing the construction of thirty-six (36) attached condominium units in ten (10) structures on property located between 247 and 257 Washington Street, Sherborn Massachusetts (the “Property”). The Property consists of approximately 17.55 acres.

3. On February 13, 2015, the Applicant filed an application for a comprehensive permit with the Board, seeking the construction of thirty-six attached condominium units in ten (10) structures on the Property. A copy of the initial application submitted to the Board is included herewith as Exhibit 1.
4. The Board opened the public hearing on March 12, 2015.
5. During the course of the public hearing, the Board retained consultants to review the site design, drainage, wetlands, septic and other areas of concern. The Board retained Phil Paradis of BETA Group, Inc., for general civil engineering peer review, and Stephen W. Smith, P.E., P.HGW., L.S.P., of GeoHydroCycle, Inc. for hydrogeological peer review.
6. The Board also heard the testimony of James H. Vernon, Ph.D, P.G., Senior Hydrogeologist at Nobis Engineering, Inc., a hydrogeologist retained by the Town of Sherborn at the joint request of the Sherborn Conservation Commission and the Sherborn Board of Health.
7. The Applicant provided detailed information from its civil engineer Bruce Saluk, P.E., of Bruce Saluk & Associates, Inc., by its hydrogeologist Desheng Wang, P.E., of Creative Land and Water Engineering, LLC, and by its traffic consultant Robert Michaud, P.E., of MDM Transportation Consultants, Inc.
8. The Board held numerous sessions of the public hearing, and the Applicant granted multiple extensions of the 180 deadline contained in 760 CMR 56.05(3), to allow the Board to conduct a thorough review of the issues of concern.
9. During the course of the public hearing, in response to concerns raised by the Board, the Board's consultants, and abutters, the Applicant voluntarily reduced the

number of units in the Project from thirty-six (36) units in ten (10) residential structures, to thirty-two (32) units in nine (9) residential structures.

10. The Board closed the public hearing on March 7, 2016.

11. The Board held multiple deliberative sessions, before voting on its decision on May 3, 2016, after the Applicant granted an extension of the forty-day period for the Board to issue its decision pursuant to G. L. c. 21.

12. The Board filed its decision with the Sherborn Town Clerk on May 5, 2016.

## **II. OBJECTIONS TO FINDINGS OF FACT**

13. The Applicant has no objection to Finding of Fact No. 1.
14. The Applicant has no objection to Finding of Fact No. 2.
15. The Applicant has no objection to Finding of Fact No. 3.
16. The Applicant has no objection to Finding of Fact No. 4.
17. The Applicant has no objection to Finding of Fact No. 5.
18. The Applicant has no objection to Finding of Fact No. 6.
19. The Applicant has no objection to Finding of Fact No. 7.
20. The Applicant has no objection to Finding of Fact No. 8.
21. The Applicant objects to Finding of Fact No. 9.
22. The Applicant has no objection to Finding of Fact No. 10.
23. The Applicant has no objection to Finding of Fact No. 11.
24. The Applicant has no objection to Finding of Fact No. 12.
25. The Applicant objects to Finding of Fact No. 13, as the Project will impact 36% of the buffer zone, not more than 50% as found by the Board.

26. The Applicant has no objection to Finding of Fact No. 14.

27. The Applicant has no objection to Finding of Fact No. 15.

28. The Applicant has no objection to Finding of Fact No. 16.

**III. OBJECTION TO DECISION ON WAIVER REQUESTS**

29. The Applicant has no objection to Board Action Re: Requested Waivers  
A.1.

30. The Applicant objects to Board Action Re: Requested Waivers A.2. The Applicant states that the denial of the requested waiver of the local wetland bylaw No Alter Zone will render the Project uneconomic, and is not consistent with local needs.

31. The Applicant has no objection to Board Action Re: Requested Waivers  
B.1.

32. The Applicant has no objection to Board Action Re: Requested Waivers B.2, as decided. If it is subsequently determined that the Sherborn Board of Health Regulations require the units in the Project to be treated as single-family dwellings, the Applicant objects to the denial of this waiver request.

33. The Applicant has no objection to Board Action Re: Requested Waivers  
B.3.

34. The Applicant has no objection to Board Action Re: Requested Waivers  
B.4.

35. The Applicant has no objection to Board Action Re: Requested Waivers  
B.5.

36. The Applicant has no objection to Board Action Re: Requested Waivers  
B.6.

37. The Applicant has no objection to Board Action Re: Requested Waivers  
B.7.
38. The Applicant has no objection to Board Action Re: Requester Waivers  
C.1.
39. The Applicant has no objection to Board Action Re: Requester Waivers  
C.2.
40. The Applicant has no objection to Board Action Re: Requester Waivers  
C.3.
41. The Applicant has no objection to Board Action Re: Requester Waivers  
C.4.
42. The Applicant has no objection to Board Action Re: Requester Waivers  
D.1.
43. The Applicant has no objection to Board Action Re: Requester Waivers  
D.2.
44. The Applicant has no objection to Board Action Re: Requester Waivers  
D.3.
45. The Applicant has no objection to Board Action Re: Requester Waivers  
D.4.
46. The Applicant has no objection to Board Action Re: Requester Waivers  
D.5.
46. The Applicant objects to Board Action Re: Requested Waivers D.6. The Applicant states that the Board's determination that it does not have the authority to rescind recorded restrictions ignores the fact that there is no recorded restriction on

record, and that the Applicant's request was for the Board to modify a condition contained in a special permit previously issued by the Sherborn Planning Board. Modification of prior decisions of other local boards is well within the authority of the Board pursuant to G. L. c. 40B, §§ 20-23.

#### **IV. OBJECTIONS TO GENERAL MITIGATION CONDITIONS**

47. The Applicant does not object to the substantive provisions in the conditions contained in General Mitigation Condition A.1(A). The Applicant notes that it is not in agreement with a number of the conclusions contained in the preface for this section of the Board's decision, particularly the statement that Dr. Vernon found that there was a greater than fifty percent (50%) probability that "nitrogen concentrations at of one or more on-site wells will exceed the DEP drinking water standard of 10mg/l." This statement mischaracterizes the testimony of Dr. Vernon, who orally stated that there is a greater than fifty percent (50%) chance that nitrogen concentrations in the overburden at one or more on-site wells will exceed the DEP drinking water standard of 10 mg/L. Because the proposed wells are bedrock wells, they will not be pulling water from the overburden at the location of the wells. Furthermore, this particular well (Well "J") was moved further away from the Area of Influence on the revised plans submitted to the Board prior to the close of the public hearing.

48. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(B)(1).

49. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(B)(2).

50. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(B)(3).

51. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(C)(1).

52. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(C)(2).

53. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(C)(3).

54. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(D)(1).

55. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(D)(2).

56. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(D)(3).

57. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(D)(4).

58. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(D)(5).

59. The Applicant does not object to the conditions contained in General Mitigation Condition A.1(D)(6).

## V. OBJECTION TO CONDITIONS

60. The Applicant does not object to Regulatory Condition A.1.



61. The Applicant objects to Regulatory Condition A.2, as it infringes upon the jurisdiction of the Subsidizing Agency in violation of Zoning Bd. of Appeals v. Amesbury v. Housing Appeals Comm., 457 Mass. 748 (2010).

62. The Applicant does not object to Regulatory Condition A.3.

63. The Applicant does not object to Regulatory Condition A.4.

64. The Applicant objects to Regulatory Condition A.5, as it infringes upon the jurisdiction of the Subsidizing Agency in violation of Zoning Bd. of Appeals v. Amesbury v. Housing Appeals Comm., 457 Mass. 748 (2010).

65. The Applicant does not object to Regulatory Condition A.6.

66. The Applicant objects to Regulatory Condition A.7, as it infringes upon the jurisdiction of the Subsidizing Agency in violation of Zoning Bd. of Appeals v. Amesbury v. Housing Appeals Comm., 457 Mass. 748 (2010).

67. The Applicant does not object to Regulatory Condition A.8.

68. The Applicant does not object to Regulatory Condition A.9.

69. The Applicant does not object to Regulatory Condition A.10.

70. The Applicant does not object to Regulatory Condition A.11.

71. The Applicant does not object to Regulatory Condition A.12.

72. The Applicant does not object to Regulatory Condition A.13.

73. The Applicant does not object to Regulatory Condition A.14.

74. The Applicant does not object to Project Specific Condition B.1.

75. The Applicant objects to Project Specific Condition B.2(a), as it requires the review and approval by the Board of the Regulatory Agreement. This provision clearly violates the holding of Zoning Bd. of Appeals v. Amesbury v. Housing Appeals

Comm., 457 Mass. 748 (2010). The Applicant does not object to any other portion of Project Specific B.2.

76. The Applicant does not object to Project Specific Condition B.3.

77. The Applicant does not object to Project Specific Condition B.4.

78. The Applicant objects to Project Specific Condition B.5, to the extent that it prohibits phasing of the Project. The Applicant states that it is not economically feasible to construct the entire project in a single-phase, and further the Applicant states that the decision by the Board to pre-determine whether a potential modification is substantial pursuant to 760 CMR 56.05(11) is arbitrary and capricious and invalid as a matter of law.

79. The Applicant does not object to Project Specific Condition B.6.

80. The Applicant does not object to Project Specific Condition B.7.

81. The Applicant does not object to Project Specific Condition B.8.

82. The Applicant does not object to Project Specific Condition B.9.

83. The Applicant does not object to Project Specific Condition B.10.

84. The Applicant objects to Project Specific Condition B.11, only to the extent that requires the condominium association to be in place before any lot is sold. The Project will consist of a single lot. The Applicant does not object to a condition requiring the condominium association to be in place before any unit is sold.

85. The Applicant does not object to Project Specific Condition B.12.

86. The Applicant does not object to Project Specific Condition B.13.

87. The Applicant does not object to Project Specific Condition B.14.

88. The Applicant does not object to Project Specific Condition B.15.

89. The Applicant does not object to Project Specific Condition B.16.
90. The Applicant does not object to Project Specific Condition B.17.
91. The Applicant does not object to Project Specific Condition B.18.
92. The Applicant does not object to Project Specific Condition B.19.
93. The Applicant does not object to General Condition C.1.
94. The Applicant does not object to General Condition C.2.
95. The Applicant does not object to General Condition C.3.
96. The Applicant does not object to General Condition C.4.
97. The Applicant does not object to General Condition C.5.
98. The Applicant does not object to General Condition C.6.
99. The Applicant does not object to General Condition C.7.
100. The Applicant does not object to General Condition C.8.
101. The Applicant does not object to General Condition C.9.
102. The Applicant objects to General Condition C.10, to the extent that such condition prohibits phasing of the Project.

103. The Applicant does not object to General Condition C.11.
104. The Applicant does not object to General Condition C.12.
105. The Applicant does not object to General Condition C.13.
106. The Applicant does not object to General Condition C.14.
107. The Applicant objects to General Condition C.15 to the extent that it requires to place a restrictive covenant upon open space areas of the Property.

108. The Applicant does not object to Construction and Bonding Condition D.1.

109. The Applicant does not object to Construction and Bonding Condition D.2.
110. The Applicant does not object to Construction and Bonding Condition D.3.
111. The Applicant objects to Construction and Bonding Condition D.4, to the extent that it prohibits stockpiling of construction materials within fifty feet (50') of a wetlands area.
112. The Applicant does not object to Construction and Bonding Condition D.5.
113. The Applicant does not object to Construction and Bonding Condition D.6.
114. The Applicant does not object to Construction and Bonding Condition D.7.
115. The Applicant does not object to Construction and Bonding Condition D.8.
116. The Applicant does not object to Construction and Bonding Condition D.9.
117. The Applicant does not object to Construction and Bonding Condition D.10.
118. The Applicant does not object to Construction and Bonding Condition D.11.
119. The Applicant does not object to Construction and Bonding Condition D.12.

120. The Applicant does not object to Construction and Bonding Condition  
D.13.
121. The Applicant does not object to Construction and Bonding Condition  
D.14.
122. The Applicant does not object to Construction and Bonding Condition  
D.15.
123. The Applicant does not object to Construction and Bonding Condition  
D.16.
124. The Applicant does not object to Construction and Bonding Condition  
D.17.
125. The Applicant does not object to Construction and Bonding Condition  
D.18.
126. The Applicant does not object to Construction and Bonding Condition  
D.19.
127. The Applicant does not object to Construction and Bonding Condition  
D.20.
128. The Applicant does not object to Construction and Bonding Condition  
D.21.
129. The Applicant does not object to Construction and Bonding Condition  
D.22.
130. The Applicant does not object to Construction and Bonding Condition  
D.23.

131. The Applicant does not object to Construction and Bonding Condition  
D.24.

132. The Applicant does not object to Construction and Bonding Condition  
D.25.

133. The Applicant does not object to Construction and Bonding Condition  
D.26.

#### **VI. OBJECTION TO LAPSE PROVISIONS**

The Applicant objects to the lapse provision contained in Section VII of the Board's decision to the extent that it prevents phasing of the Project and requires completion within three (3) years of the commencement of construction. The Applicant also objects to the provision of this section stating that the Comprehensive Permit will lapse if it has not been recorded within three (3) years.

#### **VII. RELIEF SOUGHT**

134. The Applicant prays that the Housing Appeals Committee, after hearing, overturn the decision of the Board granting the Comprehensive Permit, with conditions, as not consistent with local needs, and ordering the issuance of a decision approving the Comprehensive Permit as requested by the Applicant, without the conditions listed above that are illegal, improper, or which render the Project uneconomic.

#### **VIII. NAME AND ADDRESS OF APPLICANT**

135. The Fields at Sherborn, LLC  
Ben Stevens, Manager  
30 Turnpike Road, Suite #8  
Southborough, MA 01772

Respectfully submitted  
The Fields at Sherborn, LLC  
By its attorneys,

Date: May 20, 2016



---

Paul J. Haverty, Esq. (BBO # 652359)  
Jason R. Talerman, Esq. (BBO # 567927)  
Blatman, Bobrowski, Mead & Talerman, LLC  
730 Main Street, Suite 2B  
Millis, MA 02054  
(508) 376-8400 (telephone)  
(508) 376-8440 (facsimile)  
[jay@bbmatlaw.com](mailto:jay@bbmatlaw.com)  
[paul@bbmatlaw.com](mailto:paul@bbmatlaw.com)