June 4, 2007

Office of Attorney General
Municipal Law Section
Western Massachusetts Division
1350 Main Street
Springfield, MA 01103-1629

RE: Comments on May 7, 2007 rezoning bylaw submitted by the Town of Sharon, Massachusetts

Dear Assistant Attorney General Ritchie:

Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide; our New England chapter is located outside of Boston, Massachusetts.

PEER, together with the undersigned resident of Sharon, is writing to express concerns about a recent re-zoning vote in the Town of Sharon, Massachusetts. On May 7, 2007, the Town held a Special Town Meeting, within their Annual Town Meeting, to vote on the re-zoning of an approximately 87-acre parcel of land known as Rattlesnake Hill from rural residential (2-acre zoning) to allowing 624 units of luxury elderly housing in six 8-story buildings. The development, proposed by a national company called Brickstone, also includes a 150-bed hospital, a number of restaurants, a 4-hole golf course, dry cleaner, hairdresser, and other amenities.

The entire process by which this rezoning proposal was introduced, pushed by the Selectmen, and rushed to vote was troubling. We believe that: 1) the process by which the vote was obtained was contrary to law; 2) the vote passed due to reliance on misinformation knowingly distributed to the citizens of Sharon by the developer and the Selectmen; 3) the Selectmen and some other town officials gave the appearance of impropriety, and inappropriately acted at the behest of the developer, 4) the deal between

the developer and the Selectmen was struck before Town Meeting during improperly called Executive Sessions contrary to the Open Meeting law; and 5) the re-zoning amounts to spot zoning, and thus is contrary to law. Our specific concerns are set forth below.

1. Violation of law regarding warrant

- **Special Town Meeting warrant articles were not available sufficiently in advance of the Town Meeting vote.** Both state and local law requires that warrants for Special Town meetings be made available 14 days before the vote. In this case, the warrant was not made available in time, and thus violates both statutes.

  Specifically, Chapter 39 M.G.L. Section 10 states, "Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen, notice of which shall be given at least seven days before the annual meeting or an annual or special election ***and at least fourteen days before any special town meeting***" (emphasis added). In this case, the final version of the zoning bylaw, Article 1, was not made available until May 4, 2007, three (3) days before the May 7, 2007 Special Town Meeting (see Town of Sharon web site, showing the date of the bylaw language: http://www.townofsharon.net/Public_Documents/SharonMA_BBoard/). Moreover, the warrant including the bylaw article in question was only made available electronically at that time, requiring residents to have internet access to view the document. Given the immense complexity of the issue at hand, three days was not nearly enough time for the residents of Sharon to review the bylaw and understand the content. In addition, the Town of Sharon has its own bylaw regarding timeliness of the warrant. Article 1, Section 2 of the Town Bylaws states, "Every town meeting shall be notified by posting attested copies of the warrant, calling the same, at ten places within the town, one of which shall be the post office, ***at least fourteen days before the day appointed for the annual meeting or any special meeting of the town.*** The Town Clerk shall mail, or otherwise deliver, copies of the Town Warrant to every residence at least seven days before each meeting of the town" (emphasis added; see http://www.townofsharon.net/Public_Documents/SharonMA_Bylaws/article1). Again, in this case, the final version of the articles for the May 7, 2007 Special Town Meeting was made available online on May 4, 2007. The draft copy that was mailed to residences on April 24, 2007, 13 days before the Town Meeting, was significantly different from the version that was ultimately voted on (see Attachment 1; see also Attachment 2, an e-mail form Sharon's Town Counsel dated April 27, 2007, attaching another draft of the zoning article, and explaining that neither the article nor the exhibits are in final form). Note that the cover of the warrant did not indicate a Special Town Meeting to discuss the zoning change was to be included within the regular Town Meeting. Thus, many residents may have been unaware of the zoning proposal. The warrant arrived, at the earliest, to the residences on April 25, 2007, only 12 days before the Town Meeting. Moreover, several residents, including one of the signatories to this letter, Anne

Bingham, never received a copy of the warrant in the mail.[1] Therefore, the warrant was not provided 14 days prior to the meeting, and residents had inadequate time to review it. In fact, the final version of the zoning bylaw, which had been changed substantially from earlier draft versions, was only made available at the registration table on the night of the Town Meeting.

- **No amendment to the Sharon zoning map was included in the Warrant, contrary to the Uniform Districts provision of Massachusetts General Laws.** A zoning map was not included in the zoning bylaw, which violates state law. Specifically, 40A M.G.L. Section 4 provides:

> Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted. Districts shall be shown on a zoning map in a manner sufficient for identification. Such maps shall be part of zoning ordinances or by-laws. Assessors' or property plans may be used as the basis for zoning maps….

Section 5 of chapter 40A establishes that any change to the town's zoning map must be accomplished by Town Meeting action through a zoning by-law amendment. (see, e.g., Attorney General Opinion Marshfield #1557 - Town by-law disapproved for failure to comply with the requirements of G.L. c. 39, § 10, where bylaw was disapproved because map of zoning change was not attached to the warrant, 08/14/01; see also Attorney General Opinion Westford #2518 – which found that a generalized zoning map for information only was inconsistent with state law, 08/07/03). Zoning maps are an integral and necessary part of a town's zoning bylaw. Any effort to change those bylaws without clearly and explicitly changing the map, particularly when a new district is involved, does not satisfy the statute's intent. (See e.g., Attorney General Opinion #1398 March 2, 2001 Wenham Special Town Meeting of November 14, 2000).

No zoning map was included in the May 7, 2007 Annual Warrant sent to registered voters in Sharon**.** Therefore, the vast majority of Sharon voters had no way of knowing what parcel of land they were voting on. Only about forty voters attended the May 1, 2007 warrant meeting, otherwise known as the "pre-town meeting") or the May 2, 2007 Planning Board hearing, or any of the other April board meetings at which a copy of an untitled map was flashed up as part of a PowerPoint presentation by the landowner. Although a plan of the 87.43 acres does appear in the spiral bound Brickstone presentation which was selectively distributed at the meeting place prior to the May 7, 2007 Meeting (see Attachment 3), this clearly does not meet the statutory requirement of sections 4 and 5 of 40A M.G.L. cited above. Nor does the metes and bounds description appearing as Article 3 of the Special Meeting within the General Meeting, accompanied by

[1] In the interest of full disclosure, Anne Bingham is the Chair of the Board of Health for the Town of Sharon; however, she is participating in this request as a citizen of Sharon, not in her capacity as the Chair of the Board of Health.

reference to a April 6, 2007 Sketch Plan by Daylor Engineering rise to the level of a zoning map contained within the Sharon by-laws. Finally, the map contained in the bound volume of information selectively handed out to voters was incorrect in that it failed to include roads near the development.

Neither the bylaw nor the presentation thus allowed any useful reference point for voters to understand the parcel of land they were considering. Neither was a basis for weighing the all-important underlying substantive zoning question of uniformity formed. This appears to be contrary to the Attorney General's opinion in a previous case which states, "It is inconsistent with G.L. c.40A sec 4 and 5 for the proposed by-law to provide that … maps are to be used as "general guides." (see Attorney General Opinion 2655 October 22, 2003 – Medfield Annual Town Meeting of June 2, 2003). A sketch plan randomly handed to voters is not even a "general guide"; metes and bounds descriptions are challenging to interpret, and cannot possibly be instructive to voters. For this reason alone, this proposed bylaw amendment should be disapproved.

- **The Town agreed to and signed contractual Development Agreement prior to Town Meeting vote approving the zoning change.** The Selectmen and the Conservation Commission became signatories to a contractual "Development Agreement" ***prior to*** the Town Meeting (see Attachment 4). This premature signing away of the Town's rights and commitment by the Town through its Selectmen to a specific course of action appears to be contrary to law. See, e.g., Durand v. IDC Bellingham, LLC, 440 Mass. 45 (2003), footnote 14, which states, "…in the circumstances where the town meeting is the governmental body charged with the responsibility for approving or denying a zoning bylaw, it is difficult to imagine how there could be agreement in advance of the vote to approve such an action." In this case, the Sharon Selectmen not only agreed to the rezoning prior to the vote, but signed away the rights of abutters who were not parties to the agreement (see Attachment 5, letter from Cheryl Weinstein to Attorney General).

- **The Development Agreement, an integral part of the warrant article, had changes made to it up to several hours before the Special Town Meeting, and was not included in the warrant.** The proposed rezoning bylaw was the actual document that was voted on at Town Meeting. However, the "Development Agreement" (see Attachment 4, above), which laid out the detailed mitigation Brickstone would provide if the rezoning were passed, was significantly more important to the proponents of the rezoning, and was in fact the ***only*** document referred to in Town Meeting. The Selectmen and Planning Board members spoke at Town Meeting as if the Development Agreement were part of the warrant article itself; however, the Development Agreement was not part of the rezoning proposal, nor was it included in the warrant. Residents of Sharon relied on a representation of the terms of the Development Agreement, which was not part of the warrant, and the contents of which was mischaracterized by the developer, the Selectmen, and a member of the Planning Board and Economic Development

Committee. We believe that had the Development Agreement been portrayed accurately, the vote would not have been in favor of the rezoning.

2. There were irregularities immediately prior to and at Town Meeting.

- **The developer coerced abutters into publicly supporting the project.** The developer resorted to threats and intimidation in order to get abutters to publicly support the proposed rezoning. The primary concern of many of the abutters was the effect of the huge amount of wastewater on their private wells, many of which are shallow. Upon hearing of these concerns, the developer promised to hook the abutters up to safe town water, but only if they publicly dropped their objections to the project (see, e.g., Attachment 6, excerpt from draft Development Agreement, which explicitly states that in order to receive town water, abutters would have to agree to support the rezoning). The developers called abutters at their homes repeatedly, reiterating that they would hook them up to town water ***only*** if the abutters publicly supported the project. In one case, the developer pressured one homeowner to the point when she informed the developer that they were "killing [her] husband,"[2] and she wanted them to stop. John Kusmiersky, a Brickstone principal, then sat next to her and whispered, "I wouldn't want to drink your water, either [once the project is built]." (Joann MacInnis, personal communication). In another case, when an abutter objected to the proposed rezoning, the developer drew up plans that put townhouses immediately adjacent to that abutter's house, indicating that if he did not publicly support the rezoning, this is what they would build. These scare tactics made many of the abutters to fear voting against the project, and had a chilling effect on the voting process, as abutters could not publicly express their concerns over the project.

- **Selectmen "negotiated" with the developers in improperly called Executive Sessions, contrary to the Open Meeting Law.** According to Chairman of the Selectmen William Heitin, the town has been negotiating with the developer since the day Bricksone purchased the property in January of 2006. All of these alleged negotiations took place in Executive Sessions, and the minutes of these sessions have not yet been released. This matter has been referred to the District Attorney's office (see Attachment 7), and is being investigated (Attachment 8). Because these executive session negotiations were likely improper, the decisions made based on these sessions should be invalidated.

- **Opponents to the rezoning were not provided with the same information about the rezoning.** On the night of Town Meeting, Brickstone had employees outside the doors of the high school, where the Town Meeting was held, handing out bound brochures containing information about the project to people entering (see Attachment 3, above). One of the opponents to the rezoning, who had been holding a sign urging people not to rezone, asked for a copy of the information on her way into the meeting. She was refused, even after she made it clear that she was a Sharon resident and wanted a copy of the information in order to vote.

[2] Her husband has heart problems, and indeed, the stress was adversely affecting his health.

Selectively handing out information to town residents results in differential knowledge about the matter to be voted on.

- **The developer had paid employees holding signs in support of the rezoning.** Outside of the Town Meeting venue, there were approximately 20 young adults – all male except for one female - holding signs in support of Brickstone and the rezoning. The young adults boasted that they were being paid $70 each to hold the signs for three hours, and were given free pizza. When questioned, they knew very little or nothing about the rezoning proposal. It is unclear as to whether they were of voting age or registered to vote. At times, the youths became rowdy, preventing people from entering the meeting, and acting in an intimidating manner. At one point, the police were asked to intervene so as to allow people to pass. The sign holders booed at people who were against the rezoning, and created a menacing atmosphere for the opponents to the rezoning.

- **Opponents to the rezoning were not given equal treatment at town meeting.** At the May 7, 2007 Town Meeting, William Heitin, Chairman of the Selectmen, and Eli Hauser, Chairman of the Planning Board and of the Economic Development Committee, both strong and vocal proponents of the rezoning, were given almost 27 minutes to speak, and were allowed to continue even after the moderator warned them three times they had gone over their time limit (personal observation, tape of Town Meeting).[3] Citizen opponents, including non-profit groups adversely impacted by the proposed rezoning, were only given five minutes to speak. Moreover, the moderator of Town Meeting, Paul Bouton, made editorial comments praising the proponents of the rezoning, while making no such comments after the opponents spoke. Specifically, Mr. Bouton said, "Thank you ***very*** much – that was a ***great*** presentation" (emphasis in original; personal observation from watching tape of Town Meeting) after Eli Hauser spoke. Moreover, after Keevin Geller of the Economic Development Committee spoke in support of the rezoning, Mr. Bouton stated, "That was great" (Id.). This behavior gave a clear indication to the attendees of Town Meeting that the moderator was supportive of the rezoning. Town moderators are supposed to be unbiased, and his behavior indicated otherwise.

- **Residents from the neighboring town of Stoughton were not allowed to speak at Town Meeting.** The Development Agreement expressly states that all but emergency access and egress to the proposed project will be via Bay Road. The proposed rezoning would therefore result in a very large development that would put over 1000 cars per day on a windy, scenic roadway, owned ***entirely*** by the Town of Stoughton. GIS maps, long term employees of Stoughton's Public Works Department, and Chapter 279 of the Acts of 1957 all establish that the Town of Stoughton owns the entire roadbed of Bay Road in the area where the developer requires access (see Attachment 9). Despite the fact that the developer needs permits from the Town of Stoughton in order to access the property that has

[3] A tape of the Town Meeting can be forwarded to you for your review if you would like to review it.

been rezoned, the Town of Stoughton was never approached by the developer or the Town of Sharon. The Stoughton Board of Selectmen asked the Town Moderator if they could speak for 5 minutes or less at the Town Meeting. They were refused (see Attachment 10, e-mail from Stoughton Selectman explaining that they were not allowed to speak). Because the rezoning affects land in Stoughton, and requires permits from the town of Stoughton, a town official should have been allowed to speak.

- **The town moderator cut off debate and did not allow questions to be answered.** The town moderator made a decision at the beginning of Town Meeting to hold the answers to questions posed by citizens until after all the questions were asked. However, the question was called while there were still speakers waiting their turns at the microphones, and the questions posed by the previous speakers were never answered. In fact, one of the Sharon residents made a Point of Order at the Town Meeting, expressing concern that none of the concerns and questions had been addressed, and the Town Moderator said the motion to call the question was not debatable (personal observation from watching the tape of Town Meeting).

3. <u>Misinformation provided to Sharon residents</u>

- **The move to rezone was premised on the promise that the rezoning would result in a net benefit of $3.2 million annually to the Town of Sharon, which is not supported by the facts.** Many of the voters who voted to rezone the parcel in question did so based on unsubstantiated promises made by the developer and affirmed by the Selectmen and Economic Development Committee. Specifically, the Selectmen parroted the developer's statement that the fully built project would net the town $3.2 million annually. On December 6, 2006, the developer's consultant, Connery Associates, stated, "The Senior Community's initial 600-unit[4] area will generate an annual net fiscal benefit to the Town of approximately **$2,312,000** (*in current dollars)*, and will have a cost to revenue ratio of 0.30" (emphasis in original; see Attachment 11). This number mysteriously increased almost $1 million, and was reiterated by the Selectmen at every meeting and in mailings to the residents (see, e.g., Attachment 12). This figure was repeatedly questioned by us and by other residents.[5]

[4] Initially, the development was supposed to be 1,800 units of luxury elderly housing – ultimately, it was reduced to 624 units. When the initial project was going to consist of 1,800 units, the developer was planning on building the project in phases. It is interesting to note that the developer maintains that it reduced the size of the project due to overwhelming concerns of abutters and the town. However, we have learned that the reduced size of the project came as a result of lack of leaching field capacity on site.

[5] The developer and town officials maintained that the figure was based on taxes, and the fact that there would be no school children entering the Sharon school system as the result of this project. However, the project will result in the need for 69 additional units of affordable housing, which will add approximately 121 children to the school system. Moreover, the developer repeatedly stated that the senior living facility would draw approximately 16% of elderly from the Town of Sharon. This means that approximately 100 houses in Sharon would be put up for sale, and likely purchased by families with children, resulting in an

- **The developer and Town officials led voters to believe that the only alternatives to the proposed project were more damaging and costly.** Both the developer and the Selectmen repeatedly told the residents of Sharon that if the rezoning attempt were to fail, the developer would either build a 40B on the property, or they would build 88 single family homes. Moreover, the town officials told the residents that such alternatives would result in huge impacts to the schools, and would result in no open space given to the town (see, e.g., Attachment 12, letter from the Selectmen to the residents; see also Attachment 13, broadcast e-mail from Eli Hauser, Chairman of the Planning Board, and Attachment 14, William Heitin, Chairman of the Selectmen).[6] However, these statements are entirely untrue. In fact, according to documents obtained by the public records request, the developer stated numerous times that if the rezoning were to fail, the Town of Sharon could buy the land (see, e.g., Attachment 15, February 16, 2006 Conservation Commission minutes, Executive session, which state, "If their proposal is not acceptable to the Town then we will enter into an Option Agreement pursuant to which the Town will have an option to purchase the land…"; see also Attachment 16, June 1, 2006 Conservation Commission minutes, Executive session, which states, "Mr. Mirrione has offered to buy the entire Rattlesnake Hill Parcel through the Town from Brickstone for the entire $16,000,000 purchase price. If he does buy the entire parcel, he proposes to build 175-185 age-restricted housing units on approximately 45 acres;"[7] see also Attachment 17, June 22, 2006 Conservation Commission minutes, Executive session, which state, "Brickstone has offered to sell the land to the Town if their proposal fails."). Therefore, it is clear that another option for the Town did exist. Failure to inform the Town of Brickstone's intent to sell the land to the town if the rezoning failed, or Mirrione's plans for development (which would have had far less impact on the town) resulted in the town voting for the rezoning without all the pertinent facts.

  The threat of a 40B affordable housing development, used by both the developer and town officials, was also disingenuous. The development rights to the 40B still reside with the previous owners, the Striars. The permit that was granted to the Striars states, "The permit granted by this Decision is non-transferable and non-assignable" (see Attachment 18). Moreover, 760 CMR 31.08(5), which is

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additional 175 children entering the school system. Therefore, approximately 296 children would enter the Sharon school system as a direct result of this project, negating much of the alleged fiscal benefit. The developer and the Town officials refused to take this into account. In fact, in his speech given at Town Meeting, Mr. Hauser repeated that the rezoning would result in "zero school children," and put up a slide to this effect (personal observation from watching tape of Town Meeting).

[6] Mr. Hauser also stated emphatically at his speech at Town meeting that "40B ***is*** an option," as it is "grandfathered" in (personal observation from watching tape of Town Meeting).

[7] Note that the developer Mirrione had a deal with the Town of Sharon to build this identical proposal, with the rest of the land being turned over to conservation. Brickstone purchased the property for $10 million, $6 million less that Mirrione was planning on paying, days before the Purchase and Sale with Mirrione was to be signed.

incorporated by reference into the Town of Sharon's Zoning regulations,states, "Transfer of Permits: No comprehensive permit shall be transferred to a person or entity other than the applicant without the written approval of the Board or the Committee." The fact that the 40B permit was non-transferable was pointed out to the Selectmen, the Planning Board, and the Developer, yet they continued to threaten the residents with a huge 40B if the vote were turned down. This misrepresentation contributed to the vote for rezoning.

- **The developer paid for a propaganda piece to be mailed by the Selectmen to all the residents immediately before Town Meeting, containing much of the misinformation stated above.** On May 5, 2007, Sharon residents received a brochure bearing a return address of "Town of Sharon" entitled "Information Regarding Rezoning of Rattlesnake Hill for Sharon Hills Development" (see Attachment 12). It was signed by the three Selectmen. The alleged purpose of the pamphlet was to answer "some of the most commonly asked questions" (Id.). The brochure knowingly reiterated the misinformation that is discussed in this complaint. Moreover, the brochure did not mention any of the concerns of the Board of Health, the abutter groups, or the Water Management Committee. In fact, it stated, "Many boards and committees, abutter groups and other residents have been advising the Conservation commission, Board of Selectmen and the Town's independent consultants over the past months" (Id.). Therefore, this brochure led residents to believe that all of the town boards, committees, and even abutters were on board with the rezoning, and that no questions remained. These misrepresentations, repeated once again by officials in authority, were relied on by many residents when they voted.

- **The traffic reports were inaccurate, and severely underestimated the impacts to residents.** The traffic study prepared by the developer was completely inaccurate. Specifically, the developer stated, and the Selectmen parroted, that the traffic associated with the proposed development would be similar, if not better than, traffic generated by 88-single family homes. In fact, during Town Meeting, Selectmen Chair William Heitin stated that 88 single family homes would result in ***more*** traffic than the proposed rezoning (personal observation from watching tape of Town Meeting). These statements are directly contrary to the Town's own consultant report, which states that the alternative of 88 single family homes would result in weekday morning peak vehicles of 72, and evening of 96, while the proposed senior living would result in morning peak of 111 vehicles, and an evening peak of 126 vehicles (see Attachment 19, excerpt from Town's consultant reviewing Brickstone's traffic report). The developer claimed that "Motor vehicle crash data for the study area intersections and roadways were obtained from the Sharon Police Department for the research periods 2003 through 2005, the most recent three-year period for which data is available. Crash data was also obtained from the Town of Stoughton Police Department, which responded to crashes at the Bay Road intersections with Chemung Street and Plain Street" (see Attachment 20, excerpt from Brickstone's traffic report). Residents of Stoughton repeatedly told the developer and the Selectmen that the

Stoughton Police Department were the first responders to Bay Road from Plain Street south to the Easton border, yet the developer never included the relevant accident data in its reports (see Attachment 21).

The fact that the developer never obtained the pertinent traffic data, and continued to misrepresent these data to the residents, was a material misrepresentation on which the residents relied when they voted.

- **The proposed project, in conjunction with current building plans in the town, would result in the necessity of hooking up to MWRA water, which would be another cost to the residents.** The Sharon Water Advisory Committee and the Board of Health both questioned the advisability of this project given Sharon's water limitations. While the alleged annual $3.2 million net benefit to the town (see above) would merely prevent the average resident's tax bill from increasing by $400 to $500 per year, this would be entirely negated by the costs of MWRA water. In fact, the average household using MWRA water pays $800 per year. Paul Lauenstein, who is on the Sharon Planning Board and the Water Management Committee, pointed out the fact that this project, in conjunction with the other recently permitted projects in Sharon, would necessitate hooking up to MWRA water. Eric Hooper, the head of the Water Department and an avid supporter of this project, told Mr. Lauenstein this was not true (Kyla Bennett, personal observation). However, documents obtained through the Public Records law show that indeed, Mr. Hooper knew that more water would be needed if this project were to be approved (see e.g., Attachment 17, Minutes from a June 22, 2006 Executive Session of the Conservation Commission, which states, "Eric Hooper attended the meeting with Brickstone and stated that it might be necessary for the Town to install a new well for this proposal"; also see Attachment 22, August 30, 2006 letter from the Sharon Board of Selectmen to the Stoughton Board of Selectmen, asking for a connection to MWRA through Stoughton).[8] Finally, handwritten notes dated August 24, 2006, also obtained under the public records request, state that the Brickstone development would require water from MWRA (see Attachment 23). Therefore, while the residents of Sharon were told that their tax bills would not go up because of the alleged financial benefits of this project, they were not told about the necessity of MWRA water, which would actually make their annual bills go up even more. This is a material misrepresentation, and the voters relied on this information in order to decide how to vote on the rezoning.

- **The developer promised $6 million gift to the town of water improvements.** The Sharon voters also relied on the fact that the developer would allegedly provide $6 million worth of water improvements to the Town in exchange for the rezoning. Specifically, the developer promised to build a high pressure service district and tank worth $6 million. However, half of this water system would be

[8] Although this letter does not specifically reference the Brickstone proposal, the letter was given in response to a public records request about Brickstone; moreover, Paul Lauenstein said that hooking up to MWRA was discussed at a meeting with MWRA and Mr. Hooper.

necessary in order to bring water to the proposed development. In addition, the Town agreed to waive the water hook up fee, which would have been $2.5 million. The Town would also have to improve on the Pond Street water main in order to bring water to the development, which would cost $500,000. Finally, the entire water system would be turned over to the Town of Sharon for maintenance and upkeep, which would result in a negative balance for the Town. Therefore, the alleged $6 million "gift," on which the voters relied to make their decision to rezone, is all smoke and mirrors (see Attachment 24, speech given by Paul Lauenstein on May 7, 2007, itemizing the costs to the town).

- **The value of land given to town was misrepresented by the Board of Selectmen.** The current owners of the parcel, Brickstone, purchased the entire 337-acre parcel for $10 million (see Attachment 25). However, the Selectmen told the residents that the value of the 250 acres that would be deeded to the town was worth $25 million (see Attachment 14, broadcast e-mail from then-Chairman Heitin to residents). Former Chairman Heitin was questioned about his methods of obtaining this figure at a sparsely attended public meeting, and he said he based it on $100,000 per acre costs of another parcel the town recently purchased (Kyla Bennett, personal communication). This misrepresentation of the value of the land also likely contributed to the vote to rezone the property.

4. The zoning bylaw represents "spot zoning," and is therefore contrary to the Uniform District provision of 40A M.G.L. Section 4.

- Spot zoning is the illegal "singling out of one lot for different treatment from that accorded to similar surrounding land indistinguishable from it in character, all for economic benefit of owner of that lot." *Whittemore v. Bldg. Inspector of Falmouth*, 46 N.E.2d 1016, 1017 (Mass. 1943). Spot zoning is illegal on statutory and constitutional grounds. *See Bd. of Appeals of Hanover v. Hous. Appeals Comm'n*, 294 N.E.2d 393, 411 n.15 (Mass. 1973). Spot zoning is unconstitutional because it is an "exercise of the zoning powers . . . which fosters 'irrational treatment of people similarly situated.'" *Id.* at 411. In this case, the developer of the property in question, Brickstone, will derive a benefit from the zoning amendment that similarly situated people will not have.

  Spot zoning only occurs when the reclassified locus is indistinguishable from surrounding parcels. "The vice is the singling out of a particular parcel for different treatment from that of the surrounding area, producing, without rational planning objectives, zoning classifications that fail to treat like properties in a uniform manner." *Nat'l Amusements, Inc. v. Boston*, 560 N.E.2d 138, 142 (Mass. App. Ct. 1990). Therefore, we must compare the parcel's significant features with those of the surrounding land to determine whether some justification exists for the disparate treatment. *Murphy v. City of Springfield*, No. 114481, 1987 WL 966132, at *4 (Mass. Land Ct. 1987), *aff'd*, 522 N.E.2d 1017 (Mass. App. Ct. 1988).

In this case, the underlying zoning is "Rural District 2" (hereinafter "R-2") (see Attachment 26, Sharon Zoning map). R-2 zoning exists in the southeast portion of town, and includes recreational areas, Lake Massapoag, Borderland State Park, and some residential areas. The rezoned parcel does not border any existing multiple housing districts, but is in fact surrounded by a state park, conservation land, and 2-acre residential neighborhoods. The rezoned area is several miles away from the nearest multiple housing district, so would not be an extension of an existing zone. Massachusetts courts look at the character of abutting lots to overturn the rezoning of parcels in residential districts when the lots were surrounded by residential zoning. *See Whittemore*, 46 N.E.2d at 1017 (rezoning to light industrial is spot zoning where "lot is in the vicinity of a long-established residential area . . . [and] is surrounded on all sides for a substantial distance by an area zoned for single residences"); *Leahy v. Inspector of Bldg.s of New Bedford*, 31 N.E.2d 436, 439 (Mass. 1941) (rezoning of 96 feet to business is spot zoning where "[t]he lot in question is not on the edge of a residential district for it is surrounded on all sides by districts zoned for residences").

Different treatment of one lot from the surrounding area may be justified by rational planning objectives or as part of a comprehensive plan for the town. "A court will uphold virtually any reasonable amendment carried out in accordance with a comprehensive or 'well-considered' plan for the public welfare." *Murphy*, 1987 WL 966132 at *5, *aff'd*, 522 N.E.2d 1017. The town of South Hadley's zoning amendment was overturned when the court could find "nothing in the record to justify a conclusion that the amendment was predicated upon a reexamination of the zoning districts and a consequent decision that the area constituted an appropriate commercial area." *Mitchell v. Bd. of Selectmen of S. Hadley*, 190 N.E.2d 681, 683 (Mass. 1963). Similarly, the redistricting of Rattlesnake Hill to form the Senior Living District does not correspond with the Town of Sharon's zoning plan as a whole. The nearby Bay Road and Mountain Street are not main thoroughfares. Part of Mountain Street is an unpaved dirt road, and Bay Road is a winding country way that has been designated a Scenic Road. The closest multifamily housing district appears to be at least two to three miles away, north of Lake Massapoag, and is not similar in character to the rezoned area. The less restrictively zoned areas of Sharon all lay to the north and east of the town, whereas Rattlesnake Hill is in the southeastern corner. All of these factors make rezoning of Rattlesnake Hill inappropriate, as it is indistinguishable from the strictly zoned abutting parcels.

In addition, the Town has gone out of its way to reassure residents that this type of building will be allowed nowhere else in town (see e.g., Attachment 12 which states "The assertion that approval of this bylaw will allow similar sized buildings on other sites in town is simply not true. The building height allowed by this proposal is ***exclusive to this zoning district*** and a change in height restrictions in another zoning district or application of this zoning district to another location would require approval of a separate bylaw by a two-thirds vote at another Town Meeting. In addition, the language of the zoning bylaw imposes a large minimum

lot size requirement and requires a significant donation of conservation land in proportion to such lot size")(emphasis added). To make matters worse, the Town allowed the zoning change as of right rather than requiring a special permit. Had the town required a special permit, it would have ameliorated the argument of less onerous treatment.

In finding that a particular zoning violates the uniformity provisions of Massachusetts law, we must consider whether the zoning amendment solely benefits the property owner. While the developer and the Town of Sharon claim that the project will result in a net tax benefit to the town, this is both speculative and suspect. The true costs to the town, and to the abutters, will not be known for many years. However, it is abundantly clear that the impacts to the town as a whole – increased traffic, sudden jump in population (including school children), pharmaceuticals going into drinking water wells, destruction of wetlands and rare wildlife habitat, and water shortages – will be severe. While the developer may claim that they are fulfilling a public need for additional luxury elderly housing, this is disputed by the evidence. Specifically, there is not a need for additional elderly housing in town (see, e.g., Chairman of the Selectmen William Heitin's recent e-mail stating that there is a saturation of elderly housing in Sharon, Attachment 27).

Massachusetts courts typically apply a balancing test that weighs the benefits to the public of spot zoning against its detrimental effects on abutters of the rezoned parcel. In this case, the detrimental effects to the abutters are overwhelming. Most of the residents of Mountain Street, Bay Road, and the many cul-de-sacs off of Bay Road with property adjacent to the rezoned parcel are on private well water. Some of these people have very shallow wells, around 40 feet in depth (personal communication, Cheryl Weinstein). The wastewater associated with the 624-unit buildings, plus the 150-bed hospital, will be discharged in close proximity and upstream from many of these wells.[9] The proposed development will add a minimum of 1100 (800 residents plus 300 employees) vehicles to a dangerous, rural, road that already has a poor level of service.[10] Finally, the six 8-story towers, completely incongruous with the surrounding rural land, will diminish the property values of all the abutters. If these harmful effects are balanced against the alleged $3.2 million net annual benefit to the town (which translates into each resident's tax not going up approximately $400 to $500 per year), we believe that the harmful effects to abutters far outweigh the benefit to the town.[11]

[9] Although the developer has promised to bring water mains to some of the streets that would be adversely affected by the project, many of these people will not be put on town water. Moreover, it is still up to the individual homeowners to pay for hook-up to the pipe in the street, which can costs thousands of dollars, and, in some cases, tens of thousands.

[10] This is a conservative estimate, as it does not include visitors and truck deliveries.

[11] It is likely that the developer and the Town would argue that there are other benefits to the general public. We have already discussed how the alleged $6 million water improvements are a fallacy. The 250

A rezoning may be overturned if the planning authority "was singularly inattentive" in producing no information about whether the surroundings were appropriate for residential use. *Nat'l Amusements, Inc.*, 560 N.E.2d at 138. Although Brickstone Properties have conducted a traffic impact analysis, the Town of Sharon did not conduct its own studies. In fact, on May 1, 2007, Sharon residents submitted a 600 signature petition to the town's selectmen, asking for the rezoning vote to be delayed until more information could be discovered regarding the development's possible impact on traffic, visibility, blasting, sewage disposal, and effects on the town's water. Sharon's hasty decision-making and limited nature of their independent inquiry in this process suggests that the town's "true objective was not to promote the public welfare." See e.g., *Murphy*, 1987 WL 966132 at *6, *aff'd*, 522 N.E.2d 1017. Therefore, we believe that the proposed zoning amendment is contrary to the uniformity provision of 40A M.G.L. Section 4, and should be disapproved as a result.

In conclusion, we respectfully request that you disapprove the proposed rezoning bylaw based on the many procedural and substantive errors. Please do not hesitate to contact us if you have any questions, or if you require additional information.

Sincerely,

Kyla Bennett, Esq.
Director, New England PEER

Anne Bingham, Esq.
9 Sherwood Circle
Sharon, MA 02068

cc: Kelli Gunnigan, without Attachments

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acres given to the Town would be required with virtually any project that occurs on this land due to the amount of ledge, certified vernal pools, and rare species habitat. In fact, the other alternative development proposed by Mirrione gives more land than the 250 acres given by Brickstone. Finally, the one-time cash gifts to various boards and the new fire truck will only offset the additional needs of the town from over 1000 new residents in high rise buildings. Finally, even if the $3.2 million annual net benefit to the Town were realistic, this benefit would be more than offset by the cost to each resident of being put on MWRA water. Therefore, the alleged benefits to the town as a whole are, in reality, a detriment.