

***Whippoorwill Subdivision***  
**Plan Notes and Conditions of Approval**  
**Recorded in Plan Book 239, Page 01**

1. **PROJECT DESCRIPTION** - Bradford Realty Trust, property owner, Map 94/Lots 52, 55, 56, 57, 58 and 59 has obtained Planning Board approval to construct a 99 lot cluster subdivision. The property is 290+ acres in size and is located in the Route One-4 Zone. A portion of the property is also in the Mixed Use and Limited Residential Sub-districts of the Shoreland Overlay Zone. The Planning Board used net developable acreage standards identified in the Town Zoning Ordinance for cluster subdivisions to determine the maximum number of housing units that could be constructed, and determined there is sufficient acreage to support more than the 99 lots proposed.
2. **PLANNING BOARD REVIEW** - The Planning Board, at its meeting of October 30, 1997, granted approval to the 99-lot cluster subdivision. The Board determined the project complies with all requirements of the following: the State of Maine Subdivision Law, Town of York Planning Board Subdivision and Site Plan Regulations, and Town of York Zoning Ordinances, including standards that address Shoreland Zoning and Cluster Subdivisions. Any change to any condition of this approved final subdivision plan shall require review and approval of the Town of York Planning Board.
3. **WAIVERS TO SUBDIVISION REGULATIONS** - The Planning Board granted waivers pursuant to Article 12, Planning Board Subdivision and Site Plan Regulations for the following Regulation requirements:
  - 6.3.18 Location Map, waive scale of map.
  - 7.4.1.5 Slopes, to not require slopes greater than 15% to be deducted from lot areas and to use 33% slopes to calculate deductions.
  - 9.5.8 Requirement of two street connections, waive to accept one connection.
  - 9.5.9 Pavement width for uncurbed street, waive to accept 20 rather than 24 (24 only on section of Meadowlark Drive) .
  - 9.6.4.1 Sidewalks, to require sidewalks only where shown on Plan and not on all streets.
4. **SHORELAND PERMITS** - The initial 500 feet (measured from Route One) of Meadowlark Drive is located in the Mixed Use Subdistrict of the Shoreland Zone and the next 200 feet of this Drive is located in the Limited Residential Subdistrict. The Planning Board approved the required Shoreland Permit to allow construction of this section of Meadowlark Drive, including a crossing of a small finger of the Whippoorwill Swamp wetland, as an element of subdivision plan approval.

Most of Heron Drive is located within 250 of Whippoorwill Swamp and is in the Limited Residential Subdistrict of the Shoreland Zone. This road is not planned to be constructed until the last phase of the subdivision and will require the issuance of a Shoreland Permit prior to construction.

Parcels 1, 2, 3, 4, 7 and 8 in Phase I and parcels 31, 32, 33, 34, 36, 37, 38, 39, and 40 in Phase II are located in the Limited Residential Subdistrict of the Shoreland Zone. The Planning Board grants the required Shoreland Permit for construction of houses on these lots as an element of subdivision plan approval.

Parcels 48, 49, 50, 51, 52, 53, 91, 92, 93, 95, 96, 97, 98 and 99 in Phases III to V are located in the Limited Residential Subdistrict of the Shoreland Zone. A Shoreland Permit shall be required prior to commencement of any and all construction activity, including site clearing, on any of these lots.

The Board approved locating the driveway for parcel 97 within 50 feet of the NHWM of a protected wetland and required a minimum setback of 10 feet from the NHWM.
5. **TOPOGRAPHY** - Contour lines shown are from on-site fieldwork by Anderson-Livingston Engineers, Inc. (reference Plan sheets 2, 3 and 4). Soil classification performed by Michael Cuomo, Soil Scientist, and is described in a separate, high intensity soils report on file at the Town of York Code and Planning Department.

6. **RESIDENTIAL USE ONLY** - A maximum of one single-family dwelling unit shall be constructed on a lot. A dwelling unit shall only be used for a permitted residential use identified in Town of York Zoning Ordinances.
7. **STRUCTURE SETBACKS** - The minimum setback requirements for all structures, primary or accessory, on an individual lot shall be as follows: Front - 30; Side - 20; and Rear - 20. However, all structures, including swimming pools, shall be located within the structure building envelopes identified on the Final Plan. These building envelopes may impose requirements more stringent than the minimum setback requirements.
8. **WATER SERVICE** - Water shall be supplied via the York Water District. The applicant proposes to provide public water via an extension of the public main located on Route One. The Planning Board supported this method of providing service and voted to approve this subdivision, prior to final Water District approval, if this method of providing public water is used. If another method of providing service is proposed, this proposal shall require Planning Board review and approval. The Trust shall provide the District easements or title to all land needed to construct and access present and future water service improvements (e.g. pump station). Installation of the water service shall be accepted by the York Water District prior to issuance of an Occupancy Permit for any housing unit. Bradford Realty Trust shall install the water service.
9. **SEWAGE SERVICE** - Sewage disposal shall be supplied by construction of an on-site subsurface septic system on each lot. Installation of a septic system that conforms to all Town and State requirements shall occur prior to the issuance of an Occupancy Permit for any housing unit. The York Code Enforcement Officer has reviewed the soils analysis performed by Michael Cuomo (Test Pit Data, Whippoorwill Subdivision, July 28, 1997 and supplements to this report are on file at Code and Planning Department) and certified there are adequate soils on each lot to construct a septic system that satisfies Town and State requirements.
10. **UTILITIES** - All utilities, including electric, telephone, cable television and similar services shall be installed underground by Bradford Realty Trust. All utilities for each phase of the subdivision shall be installed prior to issuance of an Occupancy Permit for any housing unit in that phase.
11. **FINANCIAL AND TECHNICAL CAPABILITY** - The Planning Board determined Bradford Realty Trust has the financial and technical ability to construct the project. Any change in ownership (for any phase of the subdivision) shall require review and approval of the Town of York Planning Board to determine if the proposed new owner has the financial and technical ability to construct the project.
12. **HOMEOWNER'S ASSOCIATION** - A Homeowner's Association shall be established. The Homeowner's Association shall assume all operational responsibilities from the Bradford Realty Trust for improvements subject to the following schedule:
  - a. Upon issuance of the 51st Occupancy Permit.
    - Open Space Land, including the Village Common, reference Note # 23.
    - Landscaping of Meadowlark Drive, reference Note #14.
    - Sidewalks in Village Common area, reference Note #15.
  - b. Upon issuance of 80% of the Occupancy Permits for parcels located in the respective phase of the subdivision, or until Town acceptance of the improvements.
    - Fire hydrants, reference Note #13.
    - Roads, reference Note #19.
    - Sidewalks, except Meadowlark Drive, reference Note #15.
    - Drainage Swales, reference Note #16.
    - Street Lights, reference Note #17.
  - c. Upon issuance of all Occupancy Permits for Phases I and II, or until Town acceptance of the improvements.
    - Meadowlark Drive, sidewalks, reference Note #15.
    - Meadowlark Drive, road, reference Note #19.

d. Upon issuance of 80% of the Occupancy Permits for parcels located in the respective phase of the subdivision.

- Landscaping of the cul-de-sacs, reference Note #14.

- 13. FIRE HYDRANTS** - Bradford Realty Trust shall install all fire hydrants required on the Plan. The hydrant(s) for each phase of the subdivision shall be operational prior to issuance of an Occupancy Permit for any housing unit located in that phase. Bradford Realty Trust shall be responsible for all costs to operate the hydrants until either the Homeowner's Association is established or the Town accepts the roads/streets involved with the respective phase of the subdivision.
- 14. LANDSCAPING** - Bradford Realty Trust shall install the landscaping required for all cul-de-sacs and the Entrance Island on Meadowlark Drive. Landscaping shall be installed for each respective phase of the subdivision prior to the issuance of any occupancy permits for any housing units located in that phase, or if the first occupancy permit is requested between November 1 and April 15, by the following June 30. The Trust, until the Homeowner's Association is established, and subsequently the Homeowner's Association shall be responsible to replace, within one growing season, any plants which die. The Town shall not assume responsibility for maintaining this landscaping after Town acceptance of any of the roads in this subdivision.
- 15. SIDEWALKS** - Bradford Realty Trust shall be responsible to construct the sidewalks located in the Village Common area and to maintain these sidewalks until the Homeowner's Association is established. The Trust shall be responsible to construct the sidewalks located on Meadowlark Drive, Osprey Lane and Sparrow Lane and to maintain these sidewalks until either the Homeowner's Association is established or the respective road/street is accepted by the Town. However, the responsibility to maintain the sidewalks on Meadowlark Drive shall not be conveyed until the Homeowner's Association is established and operational for both Phases I and II of the subdivision, or Town acceptance occurs.
- 16. DRAINAGE SWALES/EASEMENTS** - Bradford Realty Trust shall construct all drainage swales identified on the plan and shall maintain such swales until the Town accepts the respective road or the Homeowner's Association is established. The individual property owners shall regularly mow the vegetation (grass) in the section of the drainage swale located along their street frontage and keep the swale clear of debris. If the individual property owner fails to maintain the drainage swale, the Homeowner's Association shall be held responsible for such maintenance. The Town Code Enforcement Officer is specifically authorized to enforce this Note.
- The Town of York is granted the right to enter any and all drainage easements shown on the plan for any purpose and to remove any material that may hinder the functioning of the drainage installed in the road right-of-ways. Bradford Realty Trust, until transfer to the Homeowner's Association, shall be responsible for maintaining all drainage located outside the road right-of-ways.
- 17. STREET LIGHTS** - Bradford Realty Trust shall install all street lights identified on the Final Plan. The Trust shall maintain these street lights until establishment of a Homeowner's Association or acceptance of the respective road/street by the Town.
- 18. ROAD/SIDEWALK/DRAINAGE CONSTRUCTION PERFORMANCE GUARANTEE**  
Bradford Realty Trust shall construct all roads, drainage and sidewalks in accordance with all Plan specifications and Town of York requirements; reference Plan sheets 5-13. Road construction shall occur as permitted by the phasing of the subdivision, reference Note #32. The Planning Board has accepted a combination of a binding agreement, Subdivision Regulation 10.1.4, and a tri-party agreement, Subdivision Regulation 10.1.3, as a performance guarantee for construction of the improvements.

The binding agreement shall require the Trust to complete a specified amount of the respective road, drainage and sidewalk improvements prior to the sale of any lots or the issuance of any building or occupancy permits for any lots which front on the respective road. The Trust and the Code and Planning Department shall agree to specific terms of the binding agreement prior to the commencement of any construction activities on any section of the road (the amount of improvements subject to the binding agreement). The Code and Planning Department, on behalf of the Town, is authorized to release terms of the binding agreement, subject to Town Engineer inspection and approval that all road, drainage and sidewalk improvements satisfy Town standards.

The Trust shall also establish a tri-party agreement with the Town equal to 125% of the cost to complete all road, drainage and sidewalk improvements which are not subject to the binding agreement. The specific amount of funds required in this agreement shall be determined by the Code and Planning Department by working with the York Superintendent of Public Works and Town Engineer. The tri-party agreement shall be established for each phase of the subdivision prior to the start of construction for any phase. Payments from the tri-party agreement shall not exceed 80% of the amount in the agreement until Town Engineer reviews project construction and certifies that all improvements satisfy or exceed Town standards. If Town Engineer certifies that Town standards have been met, the Board of Selectmen will consider release of the final 20% of the agreement and deem the road to be satisfactory. Certification by Town Engineer and/or Selectmen release of the tri-party agreement does not imply or denote Town acceptance of any road.

- 19. TOWN ACCEPTANCE OF ROADS/DRAINAGE/SIDEWALKS** – The Planning Board has required all roads be constructed to Town standards. The Planning Board acknowledges the intent of Bradford Realty Trust to present all roads for Town acceptance. Town acceptance must occur in conformance with the Town Road Specification Ordinance.

The Trust shall also convey ownership to the Town of the right-of-way at the end of Osprey Lane and Sparrow Lane. These right-of-ways are to allow potential access to an adjacent undeveloped parcel. Bradford Realty Trust shall be responsible to maintain the respective subdivision roads, sidewalks and associated drainage until the respective phase of the Homeowners Association is established, or Town acceptance, whichever occurs first. The Trust, however, shall be responsible for all maintenance costs of Meadowlark Drive until the completion of Phases I and II or Town acceptance.

The circular drives on Osprey Lane that serve lots 82 - 84 and 86 - 87 are the responsibility of the respective property owners to maintain.

- 20. INFRASTRUCTURE/ROAD INSPECTION FEE** - Bradford Realty Trust, within 60 days of plan approval, shall post an initial amount of \$7,500 with the Town Code and Planning Department to pay inspection fees for Town Engineer to conduct required infrastructure inspections to determine conformance with Town and Plan requirements. The Town can request additional payments when more than 50% of the available funds have been expended to ensure adequate funds are available to perform required inspection services.
- 21. ROUTE ONE IMPROVEMENTS** - The Maine Department of Transportation has determined the Bradford Realty Trust must make several improvements to Route One, including the addition of a fifth lane to serve as a turn lane into the subdivision, to warrant their approval of this project. The Planning Board requires the Trust construct all improvements required by MDOT by June 30, 1999 to allow issuance of building or occupancy permits after that date. Also, if MDOT requires any substantive change as an alternative to the proposal (other than a fifth turning lane), the applicant is required to obtain Planning Board approval of this change.

**22. SITE STABILIZATION PERFORMANCE GUARANTEE** - Bradford Realty Trust, consistent with Subdivision Regulation 10.10.2. shall post an escrow account of \$5,000 with the Town to enable the Town to stabilize the site at any point during construction of the subdivision if the Town determines there is the potential of soil erosion or the developer is unable to complete construction. The guarantee shall be paid prior to commencement of any earthmoving or vegetation clearing work on the site. This performance guarantee shall not be released prior to Town Engineer certification that all required public improvements for all phases of the subdivision have been constructed. Release of the Guarantee shall be subject to Board of Selectmen review.

**23. OPEN SPACE** - Bradford Realty Trust and all heirs and assigns shall maintain all land/areas identified on the Final Plan as open space land to remain undeveloped in perpetuity. This open space land that must remain undeveloped does not include the Village Common shown on the Final Plan. Bradford Realty Trust shall install all required signage to identify this area as protected open space.

Bradford Realty Trust, within 120 days of Final Plan approval, shall enter a Conservation Easement with the State of Maine Department of Environmental Protection and York Land Trust to manage the property for its intended purpose. These easements and the Homeowner's Association documents shall also recognize the responsibility of the Homeowner's Association regarding management and use of the property. The Planning Board reviewed drafts of the Conservation Easements during the Subdivision Plan process and determined the easements were satisfactory. A copy of the recorded easements shall be provided to the Town of York Code and Planning Department.

The Land Trust, Homeowner's Association and DEP shall recognize the York Code Enforcement Officer has the right to inspect the open space to ensure requirements of this Plan are satisfied.

**24. CONTRIBUTION TO OPEN SPACE IMPROVEMENTS** - Bradford Realty Trust shall contribute a minimum amount of \$25,000 to support improvements to the Village Common area and the Open Space lands. A minimum of \$15,000 of this amount shall be contributed directly to the Homeowner's Association to allow improvements to the Village Common area. This amount shall be paid as follows: \$5,000 upon establishment of Homeowner's Association for Phase I, and \$2,500 upon establishment of the respective Homeowner's Association for each of the four subsequent phases of the subdivision. A minimum of \$10,000 shall be jointly managed by the York Land Trust and the Homeowner's Association to improve trails in the Open Space area. This amount shall be paid as follow: \$4,000 upon establishment of the Homeowner's Association for Phase I, and \$1,500 upon establishment of the respective Homeowner's Association for each of the four subsequent phases of the subdivision.

**25. DEED RESTRICTIONS/COVENANTS** - The Planning Board, during its review of the Plan, considered deed restrictions/covenants proposed by Bradford Realty Trust. The Board acknowledges the deed restrictions/covenants and provides notice to all parties that these covenants may impose conditions in addition to Notes identified on this Plan. The deed restrictions/covenants have been recorded with the Plan at the York County Registry of Deeds.

**26. SOIL EROSION** - The Bradford Realty Trust shall comply with all requirements of Town of York Soil and Erosion Control Standards, and all requirements of this Plan to lessen soil and erosion during any construction for this subdivision.

**27. OTHER PERMITS** - Bradford Realty Trust shall obtain and shall abide by terms of all other Permits, which may be required for this subdivision. The applicant shall file copies of all permits obtained from sources other than the Town with the York Code and Planning Department.

**28. LOT CLEARING** - No clearing of any lot shall occur until a Building Permit has been issued by the Code Enforcement Officer.

**29. PERMANENT MONUMENTATION** - Bradford Realty Trust shall install permanent monumentation for all properties prior to Town acceptance of any road.

30. **GRADING PLAN** - LOTS 62, 63, 64, 65 AND 66 - Bradford Realty Trust shall comply with the grading plan identified for Lots 62 - 66 shown on the plan. This grading plan must be reviewed and certified by Town Engineer prior to any foundations being installed on any of the lots. The applicant and Code and Planning Department have the authority to make alterations to the grading plan, provided the alterations provide additional protection to the areas wetland resources.
31. **AS-BUILTS** - Bradford Realty Trust shall provide the Town Code and Planning Department as-builts of all improvements (road, drainage, sidewalks, and utilities) within 60 days of Town acceptance of any improvement. As-builts shall be provided in two formats: paper copies and ARC/INFO compatible disk.
32. **PHASING OF CONSTRUCTION** - The Planning Board, per Subdivision Regulation 10.7, approves this subdivision subject to the requirement that it is constructed in a minimum of five phases that will be completed in a minimum of 5 years. The phases are:
- **Phase I** - Parcels 1-23 and construction of roads, drainage and utilities for Meadowlark Drive (to point of initial intersection with Chickadee Lane), section of Chickadee Drive, Egret Circle and Nighthawk Drive.
  - **Phase II** - Parcels 24-42 and construction of roads, drainage and utilities for remainder of Meadowlark Drive, remainder of Chickadee drive, and Kestrel Circle.
  - **Phase III** - Parcels 43-61 and construction roads, drainage and utilities for Sparrow Lane.
  - **Phase IV** - Parcels 62-89 and construction of roads, drainage and utilities for Osprey Lane.
  - **Phase V** - Parcels 90-99 and construction of roads, drainage and utilities for Heron Drive.

The number of Occupancy Permits issued in any calendar year shall not exceed the following without the express approval of the Planning Board:

October 30, 1997 - December 31, 1998	25 Permits
January 1, 1999 - December 31, 1999	20 Permits
January 1, 2000 - December 31, 2000	20 Permits
January 1, 2001 - December 31, 2001	20 Permits
January 1, 2002 - December 31, 2002	20 Permits
January 1, 2003 and beyond	20 Permits/Year

The Board also stipulates that any Occupancy Permits not issued (less than the maximum permitted) in any calendar year identified above, shall not be carried forward to the total which can be issued in the subsequent calendar year.

The Board further stipulates that all roads (base coat), drainage and utilities for the subject phase must be installed to the satisfaction of Town Engineer, and all required performance guarantees shall be in effect prior to the start of any construction for a subsequent phase. The Town, however, recognizes that the Trust may choose to build the loop road, all of Meadowlark Drive and Chickadee Circle as a component of Phase I, and that the Trust may choose to build the roads for Phases IV (Osprey Lane) and V (Heron Drive) concurrently.

The Board further stipulates that the roads, drainage and utilities must be substantially complete within three years of the anticipated date (reference schedule above) and that if any continuity of phases within the subdivision exceed 3 years from substantial completion of the previous phase, the remaining phases of the subdivision shall be rendered null and void unless plan approval is specifically extended by the Planning Board.

**33. CONTENTS OF PLAN** - This Plan consists of 17 Plan sheets, including the following:

- Sheet 1 . . . . . Location Map
- Sheet 1A . . . . . Plan Notes
- Sheet 2 . . . . . Boundary/Open Space
- Sheets 3 & 4 . . . Lot Boundaries
- Sheets 5-13 . . . Road Profiles
- Sheets 14 & 15. Plan Details
- Sheet 16 . . . . . House Layout Details