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SHELBOURNE PROPERTIES II INC  
Form SC 13D  
April 19, 2002

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

SCHEDULE 13D  
UNDER THE SECURITIES EXCHANGE ACT OF 1934  
(AMENDMENT NO. 5)\*

SHELBOURNE PROPERTIES II, INC.

-----  
(Name of Issuer)

COMMON STOCK, PAR VALUE \$0.01 PAR VALUE

-----  
(Title of Class of Securities)

821374105

-----  
(CUSIP Number)

Michael L. Ashner  
100 Jericho Quadrangle, Suite 214  
Jericho, New York 11753  
(516) 822-0022

-----  
(Name, Address and Telephone Number of Person Authorized to Receive  
Notices and Communications)

APRIL 19, 2002

-----  
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1 (b) (3) or (4), check the following box [ ].

Note: Six copies of this statement, including all exhibits, should be filed with the Commission. See Rule 13d-1(a) for other parties to whom copies are to be sent.

\*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

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The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 (the "Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

-----  
CUSIP No. 821374105  
-----

-----  
1 NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
Michael L. Ashner  
-----

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

3 SEC USE ONLY

4 SOURCE OF FUNDS  
N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION  
United States

7 NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH SOLE VOTING POWER  
71,564 shares (1)

8 SHARED VOTING POWER

9 SOLE DISPOSITIVE POWER  
71,564 shares (1)

10 SHARED DISPOSITIVE POWER

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

71,564 shares (1)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

7.998%

14 TYPE OF REPORTING PERSON\*

IN

(1) Comprised entirely of shares owned by HX Investors L.P. of which Exeter Capital Corporation is the sole general partner an entity in which Mr. Ashner is the sole shareholder and director.

\*SEE INSTRUCTIONS BEFORE FILLING OUT!

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SCHEDULE 13D

CUSIP No. 821374105

NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

1 HX Investors L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

3 SEC USE ONLY

SOURCE OF FUNDS

4 OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

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CITIZENSHIP OR PLACE OF ORGANIZATION

6

Delaware

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		SOLE VOTING POWER
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	71,564 shares
		-----
		SHARED VOTING POWER
	8	
		-----
		SOLE DISPOSITIVE POWER
	9	71,564 shares
		-----
		SHARED DISPOSITIVE POWER
	10	
		-----
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON	
	71,564 shares	
	-----	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*	
	-----	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)	
	7.998%	
	-----	
14	TYPE OF REPORTING PERSON*	
	PN	
	-----	

\*SEE INSTRUCTIONS BEFORE FILLING OUT!

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This Amendment No. 5 amends certain information contained in the Schedule 13D filed jointly by Michael L. Ashner and HX Investors, L.P. on February 25, 2002 with respect to Shelbourne Properties II, Inc. (the "Company"), as amended by Amendment No. 1 thereto filed on March 14, 2002, as further amended by Amendment No. 2 thereto filed on March 26, 2002, as further amended by Amendment No. 3 thereto filed on March 27, 2002, and as further amended by Amendment No. 4 thereto filed on April 8, 2002 (as amended, the "13D"). Capitalized terms used but not defined herein have the meanings ascribed to them in the 13D.

Item 4. Purpose of Transaction.

On April 19, 2002, HX sent to the Company a request for a waiver to permit the Company to acquire shares of the Company's common stock in excess

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of the Ownership Limit set forth in the Company's Amended and Restated Certificate of Incorporation.

Item 7. Material to be Filed as Exhibits.

Exhibit 3: Letter dated April 19, 2002 from HX to the Company

SIGNATURE

After reasonable inquiry and to the best of their knowledge and belief, the undersigned certify that the information set forth in this statement is true, complete and correct.

Dated: April 19, 2002

HX INVESTORS L.P.

By: Exeter Capital Corporation  
General Partner

By: /s/ Michael L. Ashner

-----  
Michael L. Ashner, President

/s/ Michael L. Ashner

-----  
Michael L. Ashner

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Exhibit 3

HX INVESTORS, L.P.  
100 Jericho Quadrangle  
Suite 214  
Jericho, New York 11753  
(516) 822-0022

April 19, 2002

VIA FACSIMILE AND  
FEDERAL EXPRESS

The Board of Directors of  
Shelbourne Properties II, Inc.  
7 Bulfinch Place, Suite 500  
Boston, Massachusetts 02114

The Board of Directors of  
Shelbourne Properties II, Inc.  
527 Madison Avenue - 16th Floor

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New York, New York 10022

Gentlemen:

As you are aware, HX Investors, L.P. ("HX") currently owns just under 8% of the outstanding shares of common stock of Shelbourne Properties II, Inc. (the "Corporation"). As you are further aware, the definition of "Beneficial Ownership" in the Corporation's Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") (1) includes not only the definition applicable to REITs (clause (ii) in the "Beneficial Ownership definition) but also the "group" concept of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The effect of the inclusion of the Exchange Act definition is to count as "one shareholder" an entity that owns shares in the Corporation which otherwise is counted as more than "one shareholder" for purposes of determining whether the Corporation is "closely held" for purposes of Section 856 of the Code. Consequently, groups are restrained in their ability to acquire shares in contrast to individuals. A consequence unnecessary in the context of the protections sought by the Corporation to preserve REIT status, especially in light of the recent share repurchase transaction. Unlike the Corporation, it is our understanding that a number of

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- (1) Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed thereto in the Certificate of Incorporation.

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real estate investment trusts including Mack-Cali Realty Corporation, Simon Property Group, Inc., Equity Office Properties Trust, Equity Residential Properties Trust, Prime Group Realty Trust, Commercial Net Lease, Inc., JDN Realty Corporation and Parkway Properties, Inc. do not include the Exchange Act definition in their charter documents to determine "Beneficial Ownership."

In view of the ownership structure of HX which includes, at present, multiple "beneficial owners(2)" for purposes of Section 856 of the Code, request is hereby made by HX to be granted a waiver pursuant to Section (C)(4) of Article IV of the Certificate of Incorporation, to permit HX to acquire in excess of the Ownership Limit but in an amount not to exceed the amount which would (i) cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code or (ii) cause HX to be an "Acquiring Person" under the Shareholder Rights Agreement, dated February 8, 2001, between the Corporation and American Stock Transfer & Trust Company.

Please be advised that the granting of the waiver requested herein will not cause:

1. The Corporation to be "closely held" within the meaning of Section 856(h) of the Code (based on the information set forth in the Corporation's Annual Report on Form 10-K for the year ended December 31, 2001);
2. The Corporation to (x) Constructively Own 10% or more of the ownership interests of a tenant of the Corporation or a Subsidiary within the meaning of Section 856(d)(2)(B) of the Code or (y) violate the 95% gross income test of Section 856(c)(2) of the Code;
3. The shares of Equity Stock in the Corporation to be beneficially owned by fewer than 100 persons within the meaning of Section

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856(a)(5) of the Code (based on the information set forth in the Corporation's Annual Report on Form 10-K for the year ended December 31, 2001);

4. The Corporation to be a "pension held REIT" within the meaning of Section 856(h)(3)(D) of the Code;

5. The Corporation to fail to be a "domestically controlled REIT" within the meaning of Section 856(h)(4)(B) of the Code;

6. The Corporation to fail to qualify as a REIT.

Further, HX agrees that to the extent the Board of Directors imposes additional restrictions and conditions with respect to the waiver requested hereunder that are acceptable to

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2 Please note that the largest holder of HX holds a 40% interest in HX.

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HX, HX will confirm in writing that any violation or attempted violation of such other restrictions and conditions will result, as of the time of such violation even if discovered after such violation, in the conversion of such shares in excess of the Ownership Limit into Excess Shares pursuant to Section (D)(1) of Article IV of the Certificate of Incorporation.

Finally, please be advised that HX, in connection with the granting of the waiver requested hereunder, agrees (i) not to oppose the granting of a similar waiver to any other Person and (ii) to support any amendments to Article IV of the Certificate of Incorporation to eliminate the Exchange Act definition in determining Beneficial Ownership.

Sincerely,

HX Investors, L.P.

By: Exeter Capital Corporation  
General Partner

By: \_\_\_\_\_  
Michael L. Ashner  
President

cc: Mr. Dallas Lucas  
Mr. Richard J. McCready  
Peter Lyons, Esq.  
Christa D'Alimonte, Esq.

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