

LAW OFFICES OF
WILLIAM C. HENCHY, LLC

165 CRANBERRY HIGHWAY
ROUTE 6A
ORLEANS, MA 02653

TELEPHONE: (508) 255-1636
FACSIMILE: (508) 255-1325
INTERNET: whenchy@alumni.tufts.edu
www.henchylaw.com

MEMORANDUM

TO: Adam Duchesneau, Planning Director
FROM: William C. Henchy
RE: Cold Brook Crossing Draft Permit—By-law analysis
CC: Jonathan Silverstein Esquire, Steven Garvin, Chairman Sudbury Planning Board
Date: July 13, 2020

As the Planning Board begins to complete its review of the Cold Brook Crossing development, I appreciate the opportunity to submit my views on the proposed draft decision that the Planning Staff is going to prepare, and to share my views on the larger zoning concepts that are involved in this matter.

I. BACKGROUND

--The applicant won the right to develop the Melone property in an open competitive c. 30B bid process. Among multiple bids, the applicant's bid was deemed the most advantageous to the Town of Sudbury. The applicant's proposal included in addition to monetary consideration, a proposal to exchange, the applicant's 40 acres of land +/- adjacent to the Town Center, for the Melone property and a settlement of the Sudbury Station litigation.

--After the applicant's bid was accepted, the parties entered into negotiations. The Town's negotiating team included members of the Board of Selectmen, the Town Manager, the Planning Board, the Board of Appeals, Planning staff and the Town Counsel.

--During negotiations, the applicant agreed (1) to reduce the number of units in its proposal from 333 units to 274; (2) to age-restrict 80 of those units; (3) to acquire from the Sudbury Water District some 6.7+ acres at fair market value, plus pay to the Sudbury Water District an additional \$300,000.00 for infrastructure improvements, well exploration, and water quality improvements, as well as to cooperate in the design, siting, and location of any Wastewater Treatment Plant for the proposed development; (4) to

deed-restrict some 16 acres of land in Concord to no more than six residential units, and (5) to the extensive mitigation package described below.

--The parties agreed to the following mitigation above and beyond the agreed purchase price of \$1,000,000.00 plus the applicant's 40 acres of land in Town Center in the Disposition Agreement:

--\$1,000,000.00 to be available for the Town to use for off-site improvements including sidewalks and traffic improvements;

--Payment of \$50,000.00 to the Town for traffic studies and other consultant studies to assess the impact of the proposed development on the Town (this is above and beyond any peer-review consultant fees);\

--Reimbursement to the Town of all Peer-review fees incurred in reviewing the proposed development;

--Payment to the Town of up to \$100,000.00 in legal fees incurred in the Sudbury Station Housing Appeals Committee litigation;

--Waiver of the award of Legal Fees made against the Town for its frivolous and bad-faith litigation commenced against the developer in the Land Court;

--Agreement to a 100-foot setback from Route 117 and preservation of the berm along Route 117 as a visual buffer from the development;

--Creation of a turning lane on Route 117 (modified during design subject to the Planning Board's approval);

--Transportation Management Plan including shuttle bus service to MBTA transportation hubs and religious, governmental, and shopping areas in Sudbury;

--Free use of meeting space for Town Committees and events as available;

--Post construction mitigation payments depending upon impacts to school services in Sudbury;

--The parties negotiated other matters beyond those agreed in the Disposition Agreement. Those negotiations included discussion of a sidewalk from the Melone property to Davis Field, which was estimated to cost \$5.2 million and was expressly rejected by the Town due to its cost.

--This development as proposed and as approved by the Town Meeting is the proposed settlement of the Sudbury Station litigation, has yet to be finalized, and is subject to successful completion of these proceedings.

--The settlement of that litigation is embodied in the Land Development and Disposition Agreement between the applicant and the Town of Sudbury dated February 28, 2019.

--The Sudbury Town Meeting voted to approve this settlement overwhelmingly in a Special Town Meeting attended by 1,697 registered voters, by a vote of 71.89% in favor. See, <https://s3-us-west-2.amazonaws.com/cdn.sudbury.ma.us/wp-content/uploads/sites/270/2019/05/Town-Proceedings-2018.pdf?version=f234d9125f62457a6a79aa7153b45e7f>

--The Town Meeting Vote approved the settlement, approved and created the By-right zoning, and approved the land transfer between the applicant and the Town by which the Town will receive 40 acres in Town Center, and gave to the Planning Board the obligation to grant Final Plan Approval under the NRROD Zoning and Plan Approval pursuant to G.L. c. 40R under the SGOD Zoning.

--The settlement is not final until all permits have been received and all appeal periods have expired. The applicant has the right under the Land Disposition Agreement to void the agreement in the event that any regulatory Board imposes conditions that require monetary or other obligations on the applicant that exceed those set forth in the Disposition Agreement. See, Disposition Agreement Section III (A).

With these Town Meeting actions and background to the contractual agreements in mind, the applicant makes the following suggestions as to any Draft approval:

II. GENERAL PRINCIPLES—THE ZONING

1. The NRROD Zoning is Sui Generis in Sudbury, and is Separate and Distinct from any Site Plan Approval or Review

The NRROD Zoning Overlay District is a creation that is unique under the Sudbury zoning scheme, though it was based upon the framework established for approval of the MUOD (Mixed Use Overlay Development) re-development of the former Raytheon property on Route 20 (See Section 4700).

The NRROD Zoning was adopted by the Town Meeting in order to provide a vehicle for review by Town Meeting and approval under Zoning of the Land Disposition Agreement (See Section 4761) between the developers of the proposed Sudbury Station 40B development, the applicant here, which is Quarry North Road LLC (who was the successful bidder in an open c. 30B process for the disposition of the Melone land) and the Town's Board of Selectmen.

To that end, the Zoning provides a unique approach to the approval of any project proposed under Section 4700A of the Zoning By-law.

It is important to keep in mind that Section 4700A is by-right zoning. It contemplates a two-step process; (1) approval by the Town Meeting by a 2/3 vote of a Master Development Plan that conforms to the provisions of Section 4740A; and (2) final approval of that Master Plan by the Planning Board pursuant to Section 4742A. It is important to remember that the Town Meeting Approval is essentially what governs the development (subject to such modifications as are allowed under Section 4750A). That vote is what approved the development under the Zoning By-law, subject to Final Plan Review by the Planning Board to ensure that the final plan materially complies with the Town Meeting vote. See Section 4740A.

Therefore, although the Planning Board has the obligation to review the Final Plan to ensure that it materially complies with the Town Meeting approved Master Plan and that it promotes the purposes of the NRROD Overlay District set for the in Section 4710A, the Planning Board's review is not an approval or disapproval process. It is a fact-finding process as to whether or not the Final Development Plan materially conforms to the Town Meeting Approved Master Plan and promotes the purposes of the NRROD District. See Section 4744A(a).

If the Board so finds, it may include reasonable conditions, limitations and safeguards to ensure adequacy of utilities, wastewater disposal, stormwater drainage, pedestrian accommodations, parking and circulation, fire and service equipment access, lighting and noise protections, and general massing and architecture in its final approval. See Section 4744A(b). The Board's decision must be made by a 4/5 supermajority of the Board. See Sec. 4744A(a).

Thus, though the process is analogous to a site plan approval review, it is not such a review. Any reference to Section 6300 in any Final Approval would not be correct.

The Master Plan has already been approved by the Town Meeting. The Planning Board's role under this Zoning By-law is to determine whether the Final Plan materially conforms to that approval, and to exercise its reasonable discretion to add conditions to the Town Meeting's prior approval as allowed by Section 4744A(b).

2. The SGOD Zoning (Section 4700B) is By-Right Zoning under G.L. c. 40R

Section 4700B of the Zoning By-law is a Smart Growth District adopted under G.L. c. 40R. G.L. c 40R sec. 11(e) states as follows:

The project shall be approved by the approving authority subject only to those conditions that are necessary: (1) to ensure substantial compliance of the proposed project with the requirements of the smart growth zoning district or starter home zoning district ordinance or by-law; or (2) to mitigate any extraordinary adverse impacts of the project on nearby properties. An application may be denied only on the

grounds that: (i) the project does not meet the conditions and requirements set forth in the smart growth zoning district or starter home zoning district ordinance or by-law; (ii) the applicant failed to submit information and fees required by the ordinance or by-law and necessary for an adequate and timely review of the design of the project or potential project impacts; or (iii) it is not possible to adequately mitigate significant adverse project impacts on nearby properties by means of suitable conditions.

Thus, an application that conforms to the Zoning under the SGOD Zoning can only be denied if the applicant fails to submit adequate information, fails to pay the filing fee, or is it is impossible to address “significant adverse impacts on nearby properties” by means of suitable conditions. See also Section 4700B(B) Definitions “As of Right Development” (“A development that is subject to the Plan review requirement of this section shall be considered an As-of-Right Development”)

Further, the rights of appeal of 40R approvals significantly disincentive such appeals. G.L. c. 40R sec. 11(h) states that:

A plaintiff seeking to reverse approval of a project under this section shall post a bond in an amount to be set by the court that is sufficient to cover twice the estimated: (i) annual carrying costs of the property owner, or a person or entity carrying such costs on behalf of the owner for the property, as may be established by affidavit; plus (ii) an amount sufficient to cover the defendant’s attorneys fees, all of which shall be computed over the estimated period of time during which the appeal is expected to delay the start of construction. The bond shall be forfeited to the property owner in an amount sufficient to cover the property owner’s carrying costs and legal fees less any net income received by the plaintiff from the property during the pendency of the court case in the event a plaintiff does not substantially prevail on its appeal.

Thus, similar to the NRROD Zoning, Planning Board review under the SGOD Zoning is intended to be by-right, with the Planning Board charged with the obligation to ensure that the proposal meets the Zoning’s requirements, determine that the application is complete (see Section 4700B(I)(2)(c)), and approve the Plan if it meets the conditions and requirements in the SGOD by-law. The Board may impose conditions to that approval as are necessary to address “significant adverse effects on nearby properties” if the Board determines that such effects result from the proposed development.

3. Each Proposed Development (both SGOD and NRROD) have Submitted Separate Applications for Approval under the Sudbury Stormwater By-law

Because the management of the two areas within the proposed development will be materially different (the SGOD development will be rental apartments with an affordable component as required by G.L. c. 40R and Section 4700(F) whereas the NRROD Development will be individual, for-sale condominiums), separate applications for Stormwater Management permits have been submitted for each. The Planning Board will

need to make two separate decisions, one for each application, and issue two separate permits if the applications are approved.

4. NRROD—Section 4200 Findings

Section 4720A provides that any NRROD project shall comply with Section 4200 of the Zoning By-law (Water Resource Protection Overlay Districts) “to the maximum extent practicable”. I have submitted previously a detailed Memorandum on how the proposed NRROD Development meets this standard. My view is that the Board should, if it agrees that the standard has been met, make such a finding with subsidiary findings to support the ultimate finding. I will suggest such findings below.

III. PROPOSED FINDINGS

With the foregoing general principles in mind, I would suggest the following findings by the Planning Board.

A. NRROD DEVELOPMENT

1. The Planning Board (hereinafter “the Board”) finds that the proposed Final Plan, as reviewed by the Board materially complies with the Master Plan approved by a more than 2/3 vote of the Sudbury Town Meeting and the standards and requirements set forth in Section 4700A and all of its subsections of the Zoning By-law. The Board further finds that the proposed Final Plan promotes the purposes of the Zoning By-law as noted in Section 4710A of the Zoning By-law and conforms to the dimensional requirements of Section 4780A and that the uses proposed in the Final Plan are allowable under Section 4770A. The Board finds that the proposed Final Plan, with signage as approved by Special Permit granted by the Sudbury Zoning Board of Appeals¹ complies with the provisions of Section 3200 of the Sudbury Zoning By-law. The Planning Board further finds that the proposed Final Plan complies with Section 4200 of the Sudbury Zoning By-law to the maximum extent practicable, and that parking has been provided as required by Section 4780A(g) and Section 3100 of the Zoning By-law.
2. The Board makes the following subsidiary findings, each of which is incorporated into Finding No. 1 above, and which form the basis of Finding No. 1.

¹ As of this writing the Board of Appeals is considering an application for Special Permit under Section 3200. This proposed finding cannot be made until and unless the Board of Appeals approves that Special Permit.

Procedural History

3. The applicant, Quarry North Road LLC, filed with the Town Clerk a Master Development Plan (hereinafter the “Master Plan”) to construct 274 dwelling units (81 being age restricted and 26 being affordable) in townhouses and multi-family buildings on approximately 26 acres of land with associated parking, amenities, and infrastructure at 16 and 36 North Road (Assessor’s Maps C12-0003, C12-0004, and C12-0100).
4. The Master Plan was approved by a vote of more than 2/3 of the quorum present at a Special Town Meeting held on December 11, 2018.
5. On February 28, 2019, the applicant and the Town of Sudbury entered into a Land Development and Disposition Agreement (hereinafter the “Disposition Agreement”). This Disposition Agreement provides for, among other things, mitigation to address potential impacts arising out the use an occupancy of the proposed Final Plan; contains restrictions on development areas and other development limitations including but not limited to limits on the total number of units that may be constructed, and a minimum number of such units that must be age restricted by the applicant; requires pedestrian and vehicular interconnectivity in the form of a detailed transportation management and demand program; and provides for the authority of the Town to engage necessary professionals to assist in the Town’s review of development applications. The Board finds that the Disposition Agreement meets the requirements of Section 4761A of the Zoning By-law.
6. On August 30, 2019, MassDEP authorized the transfer of a portion of the Sudbury Water District’s land to the applicant. Such transfer was previously approved at the Sudbury Water District’s Annual District Meeting on April 23, 2019.
7. On October 1, 2019, MassDEP approved the location of the proposed leaching facility in its approval of the applicant’s GeoHydrological Report dated August 7, 2019.
8. On December 11, 2019, the Secretary of Environmental Affairs certified that the proposed development’s ENF had adequately described and analyzed the project and its alternatives, and that an EIR was not required.
9. In 2020, Pursuant to Section 4700B(I)(1) of the Zoning By-law, the applicant participated in two pre-application staff meetings and one post-application staff meeting. At these meetings, the applicant was provided with staff commentary from the Building Department, the Fire Department, the Police Department, the Board of Health, the Conservation

Commission, the Department of Public Works, and the Sudbury Water District.

10. On March 11, 2020 the applicant, William M. Wagner Jr., and the Sudbury Water District, and the Town of Sudbury, Owners, filed with the Sudbury Town Clerk and the Sudbury Planning Board Applications (hereinafter the “applications”) for Final Plan Approval under Town of Sudbury Zoning Bylaw Section 4700A, Plan Approval under Town of Sudbury Zoning Bylaw Section 4700B, and Stormwater Management Permits under Town of Sudbury General Bylaw Article V(F), Section 5.C to construct 274 dwelling units (81 being age restricted and 26 being affordable) in townhouses and multi-family buildings on approximately 26 acres of land with associated parking, amenities, and infrastructure at 16 and 36 North Road (Assessor’s Maps C12-0003, C12-0004, and C12-0100), Research-1, North Road Residential Overlay District, Melone Smart Growth Overlay District, and Water Resource Protection Overlay District Zone II Zoning Districts.
11. The applicant acquired title to the land of William M. Wagner Jr. on April 21, 2020, by deed recorded at Middlesex South Registry of Deeds in Book 74523, Page 244.
12. The Planning Board referred the application to the Sudbury Zoning Board of Appeals for public hearing and recommendation by the Zoning Board of Appeals pursuant to Section 4743A of the Zoning By-law.
13. The Planning Board and the Zoning Board of Appeals conducted a Joint Public hearing on the applications on April 6, 2020. The Zoning Board of Appeals conducted a further public hearing on the Final Master Plan pursuant to Section 4743A of the Zoning By-law application on April 21, 2020.
14. The Planning Board and the Design Review Board conducted a Joint Public Hearing on the applications on April 8, 2020. The Design Review Board conducted a public hearing on the applications on May 6, 2020.
15. The Planning Board conducted further public hearings on the applications on April 29, 2020, May 13, 2020, May 27, 2020, June 10, 2020, June 24, 2020, July 15, 2020 and _____. The Board accepted and carefully considered oral and written testimony and comment from the applicant, its experts and development team, the Board’s peer reviewers, and members of the public and other Town officials throughout the numerous public hearings on the applications.

16. The Zoning Board of Appeals submitted its recommendations to the Planning Board in accordance with Section 4743A of the Zoning By-law on April 23, 2020. The Planning Board has carefully considered the Zoning Board of Appeals' recommendations in arriving at this decision.
17. On May 18, 2020, the Sudbury Conservation Commission rendered a Negative Determination of Applicability under the Wetlands Act and the Sudbury Wetlands By-law to the applicant for work within the 100-foot buffer zone and 200-foot riverfront area associated with the construction of the Wastewater Treatment Plant and associated parking and roadways.
18. The Planning Board has received into the record the following documents and plans, all of which it incorporates by reference into this decision:

(Insert listing of the entire administrative record)

FINDINGS

19. The Board has requested independent peer review by the Board's own consultants of the applicant's stormwater design, wastewater design, and traffic impact studies. Based on those independent peer reviews, the Board has required amendments to the applications, which the applicant has made, in order to conform to the recommendations of the Board's peer review consultants.
20. Based upon the independent peer reviews performed at the Board's request, and the materials and testimony presented at the public hearings, the Board specifically finds that (1) stormwater management has been adequately provided for, and will conform to the Town's stormwater by-law and regulations (see separate permit issued for the NRROD development and the SGOD development pursuant to the Town of Sudbury Stormwater management by-law) (2) that adequate provision has been made for fire and service equipment access, parking, and pedestrian access and safety; (3) that all access roads and entrances to North Road have been designed with adequate and safe sight distances; and (4) that off-site impacts to traffic flows and operations have been adequately addressed.
21. The applications varied slightly from the Master Plan approved by the Town Meeting on December 11, 2018. The net effect of these changes to the unit mix is to reduce visual impacts from the development from North Road, reduce total bedrooms by two, and to further age-restrict the development by adding an additional age-restricted unit into the mix.
22. One apartment building was removed in favor of two slightly larger buildings. The proposed leaching field was relocated in order to maximize travel times for leachate to the Sudbury Water District's No. 5 well. A

small clubhouse was added to replace the maintenance building. The emergency access was re-located at the request of the Planning Board to a location on North road with significantly improved sight distances from the location proposed in the Master Plan, with no changes to the primary access location on North Road. No changes in the number of units is proposed, though the unit mix varied slightly with the addition of 2 1BR units and a guest suite in the SGOD, a reduction of 2 2BR units in the SGOD, a reduction of one 2BR NRROD townhome, and one additional unit (a 2 BR NRROD Townhome) being age-restricted.

23. The two proposed apartment buildings were revised as the result of the discovery of a substantial amount of ledge in the location where one of the buildings shown on the Master Plan was proposed. In response, the applicant proposed two buildings rather than three. The design of the two buildings now proposed is more in keeping with the natural topography of the site than the prior design, and will result in reduced visual impacts from the proposed development from the adjacent public ways, and result in a more harmonious site design that is consistent with the requirements of Section 4710A of the Zoning By-law.
24. The Board finds that the changes to the Final Plan are allowable in accordance with Section 4753A, or constitute minor modifications to the Master Plan as defined in Section 4751A of the Zoning By-law. To the extent that any such changes may require Project Modification review as defined in Section 4752A (which the Board does not so find), the Board finds that the such modifications were considered as part of the applications in the public hearings thereon, and that such changes substantially conform to the Master Development Plan, are compliant with the standards and requirements set forth in Section 4700A and that the project does not pose material adverse effects to the neighborhood.
25. The Board finds that the modifications made in the applications in fact reduce the impact of the development on the Town and the neighborhood by reducing visual impacts of the development; by creating a site design that is more in harmony with the natural topography; by maximizing travel times between wastewater leachate and the Sudbury Water District No. 5 well; by reducing the overall daily discharge of wastewater; and by age restricting additional unit, by reducing the overall impact on Town services from the development.

Section 4200—Water Resource Protection Overlay Districts

The purposes of the Water Resource Protection Overlay District are to (a) to promote the health, safety, and general welfare of the community; (b) to protect, preserve and maintain the existing and potential water supply and ground water recharge areas within the Town; (c) to preserve and protect present and potential

sources of water supply for the public health and safety; (d) to conserve the natural resources of the Town; (e) to prevent the pollution of the environment; and (f) to provide for monitoring of ground and surface water quality in areas of present and potential water supply sources to accomplish detection of potential contamination at an early stage, thereby minimizing damage to such sources. Review of proposed development by the Town will be performed with the goal of satisfying these purposes and preserving or improving groundwater quality wherever possible.

The Water Resource Protection Overlay District's substantive provisions, however, would preclude the proposed development. This was not the intention of the Town Meeting when it approved the Master Plan, and therefore the NRROD Zoning requires the applicant to demonstrate that it is complying with Section 4200 "to the maximum extent practicable". The Board concludes that the applicant has met this standard, and that the proposed development satisfies the purposes of Section 4210 and meets the substantive criteria for development in the Water Resource Overlay Protection District set forth in Section 4275. Therefore, the Board makes the following findings:

1. The proposed development is located within the NRROD Overlay District and the Water Resource Protection Overlay District. It is located near to the Sudbury Water District No. 5 well, and part of the project is located within the Zone II of this well.
2. The Planning Board has therefore considered carefully the impacts, if any, to the purposes of the Water Resource Overlay District, and has carefully considered whether the applicant has complied with Section 4200 of the Zoning By-law to the maximum extent practicable.
3. The Planning Board has specifically sought, and obtained, feedback and recommendations from the Sudbury Water District in its deliberations.
4. By letter dated June 23, 2020, Sudbury Water District stated to the Planning Board that it has "reviewed the Site Plans for Cold Brook Crossing and I am satisfied that Quarry North has met all requirements by the Sudbury Water District. The District also hired the services of Dr. Ed Chiang of H2O Engineering to review the site plans as well as Quarry North's proposed groundwater mounding analysis, hydrogeological report and WP83 permit application for their groundwater discharge permit. Dr. Chiang provided feedback throughout his review and is also satisfied that the site plans meet the District's requirements."
5. Based upon these communications, the Planning Board finds that the Sudbury Water District and its requirements relative to purposes of the Water Resource Protection Overlay District have been met.
6. Section 4200 establishes a comprehensive set of regulations intended to preserve the quality and quantity of groundwater within the Town's Zone

I, Zone II and Zone III regions. Few activities are allowed as a matter of right, some are allowed by Special Permit, and many are prohibited.

7. Section 4700A was adopted to promote the development of complementary land uses including multifamily housing within the overlay district. Section 4700B (the SMOG Overlay District) is a c. 40R Smart Growth by-right zoning District intended to promote the development of multifamily affordable housing.
8. The Board finds that there are direct conflicts between Section 4200 and Sections 4700A and 4700B. These conflicts are both substantive and procedural. First, the Special Permit provisions of Section 4200 cannot apply to either Section 4700A or 4700B, both of which are by-right zoning by-laws, subject to the Planning Board's right to impose reasonable conditions, expressed in Section 4742A. Second, any development proposed under Sections 4700A and 4700B would be not allowable under Section 4200's substantive provisions. Therefore, Section 4720A provides that any proposal under Section 4700 shall conform to Section 4200 "to the maximum extent practicable".
9. The Board finds that the applicant has (a) extensively studied groundwater resources on the site; (b) the study has been approved by MassDEP; (c) measures have been carefully taken to both maximize the time and distance of flow between any wastewater leachate and the Sudbury No. 5 inactive well; (d) the proposed leaching facility has been carefully situated to preclude any flow of leachate into the Concord White Pond Wells; (e) the wastewater treatment plant has been designed to meet or exceed the 5 mg/l nitrate threshold contained in Section 4242(i); (f) the wastewater treatment plant has been designed to meet extremely stringent MassDEP requirements for all other constituents in wastewater within a Zone II; (g) no earthmoving will result in bringing the finished surface grade to anywhere near 5 feet of groundwater, as required by Section 4242(j); (h) all stormwater will be managed in accordance with best management practices and as required by the Board pursuant to this decision and the separate decisions issued to the applicant pursuant to the Sudbury Stormwater Management by-law and regulations.
10. Between April 16 and April 19, 2019 extensive test pits and monitoring wells were installed on the site.
11. Groundwater depth measurements were taken on 4/22/19, 5/7/19, 5/16/19 and 6/11/19. Multiple test trenches (13) and percolation tests (4) were conducted on July 1, 2019 and July 2, 2019, witnessed by MassDEP personnel. An additional observation well was installed on July 2, 2019.
12. These investigations were done for three primary reasons; (1) to determine

the suitability of soils for on-site wastewater disposal; (2) to establish the depth and flow of groundwater under the site and the surrounding areas; and (3) to site any wastewater disposal works in the most appropriate place given the nearby wells in both Sudbury and Concord.

13. The applicant has filed with the Board the resulting report by GeoHydroCycle, Inc., dated July 30, 2019. Groundwater was found at depths ranging from 11 feet below existing grade to over 70 feet below grade (See Exhibit A Figure 14). Soils were largely coarse sand and perched at rates suitable for subsurface wastewater disposal.
14. Based upon the groundwater table, regional direction of flow, mounding analysis, and location of Zone II boundaries, the proposed wastewater-leaching field was located outside of the Concord Zone II and as far away from the Sudbury Well Number 5 as practicable.
15. The time of travel of leachate to both the Concord wells and the Sudbury Number 5 well were calculated based upon existing and proposed conditions. The time to travel to the Concord wells is infinity—the wastewater does not travel to the Concord Wells at all. The travel time to the Sudbury Number 5 well was 356 days, slightly under a year.
16. The results of the draft report were presented to both the Sudbury Water District and the Concord Water Department for review and comment before submission to MassDEP for review. The suggestions of each were incorporated into the final submission to MassDEP.
17. On October 1, 2019, MassDEP approved the results of the Geologic-Hydrological investigation. As proposed, ongoing monitoring wells are required by MassDEP to continue to monitor the groundwater and ensure that the quality of the leachate does not impair the quality of the aquifer as a source of drinking water.
18. The proposed wastewater treatment plant has been designed to stringent standards, well in excess of ordinary standards to protect groundwater.
19. Total nitrogen is limited to not more than 5 mg/l, which is one-half of the allowed level of Nitrogen in drinking water. Since that level of total nitrogen will be discharged at the rate of less than 50,000 gpd into a vastly larger aquifer, the proposed wastewater facility will more than ensure that the limit of 5 mg/l in drinking water wells established by Section 4242(h) will be met or surpassed.
20. All other constituents in wastewater are similarly limited in the proposed design. Biochemical Oxygen Demand (BOD) is limited to 10mg/l, which is one-third the normal allowable rate. Total Suspended Solids (TSS) are

limited to 5 mg/l, one-half the otherwise allowable rate. Total Organic Carbon (TOC) is limited to 1 mg/l, one-third of the otherwise allowable rate of 3 mg/l. Zero colonies of fecal coliform bacterial are allowed in leachate.

21. The landscape design plan by Bohler Engineering emphasizes drought resistant native species, and limited applications of organic fertilizers in order to limit and reduce the total; nitrogen and phosphorous load from the site. Snow management will be limited to non-harmful de-icing materials.
22. The grading plan prepared in connection with the proposed development indicates that the lowest point will be within a proposed stormwater detention swale near the entrance drive, approximately 6 feet above the seasonally adjusted, mounded high groundwater level of 123 feet MSL. Throughout the rest of the site, finished grades will generally exceed 10-20 feet above groundwater.
23. The Board finds that, although the proposed development cannot comply with many of the requirements of Section 4200 because of the conflicts in allowable uses under each section of the Zoning By-law, the proposal does comply to the maximum extent practicable, and in fact would meet the test established for special permit uses in the Water Resources Overlay Protection District at Section 4275, which requires that the development meet the following criteria:
 - a. Will in no way during construction or any time thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Resource Protection Overlay District;
 - b. Will not cause the groundwater quality to fall below the standard established in 314 CMR 6.00 Massachusetts Groundwater Quality Standards or for parameters where no standards exist, below standards established by the Board of Health and, where existing groundwater quality is already below those standards, upon determination that the proposed activity will result in no further degradation;
 - c. Is in harmony with the purpose and intent of the bylaw and will promote the purposes of the Water Resource Protection Overlay District;
 - d. Is appropriate to the natural topography, soils and other characteristics of the site to be developed, and is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water related natural characteristics of the site to be developed;
 - e. Will not, during construction or thereafter, have an adverse environmental impact on any water body or course in the district; and

- f. Will not adversely affect an existing or potential water supply.
- 24. Therefore, for all of the foregoing reasons, the Board finds that the Final Plan meets the requirement of Section 4720A that the proposed development comply with the provisions of Section 4200 to the maximum extent practicable.

CONDITIONS

In order to ensure adequacy of utilities (including features promoting renewability and sustainability), wastewater disposal, stormwater drainage, pedestrian accommodations, parking and circulation, fire and service equipment access, lighting and noise protections, and general massing and architecture, as permitted by Section 4744A(b), the Board imposes the following conditions on its Final Plan Approval:

(Insert Conditions as Required by the Board)

B. SGOD DEVELOPMENT

Procedural History—largely the same as the NRROD Portion

FINDINGS—in addition to above:

1. The development as proposed consists of 101 units of rental housing, of which at least 26 will be affordable units.
2. The application submitted by the Applicant is complete and the applicant paid all fees required by the Board, including fees for the Board’s own independent peer review consultants. The applicant responded to all requests for additional information above what was submitted with the application originally. The applicant has responded to all requests for changes made by any independent peer-reviewer engaged by the Board.
3. The uses proposed in the SGOD District are allowed by Section 4700B(E) of the Zoning By-law.
4. The structures proposed in the SGOD comply with the dimensional requirements of Section 4700B(G) of the Zoning By-law.
5. The Final Plan as described in the SGOD application meets all of the requirements and standards contained in Section 4700B of the Zoning bylaw.

6. Adequate parking has been provided in accordance with Section 4700B(H) of the Zoning By-law. The Disposition Agreement provides for a shuttle service and transportation management plan, which has been submitted to the Planning Board by the applicant. This may have the effect of reducing the need for parking, which strengthens the Board's finding that parking as provided in Section 4700B(H) is adequate.
7. The development shall comply with the affordability provisions and restriction as set forth in Section 4700B(F) of the Zoning By-law. As required by the Disposition Agreement, the applicant shall enter into a regulatory agreement which shall bind the applicant and any successors, and which shall be enforceable by the Town. The Board requires that the method by which affordable rents are computed shall be provided by a Monitoring agent chosen by the applicant prior to the issuance of a building permit. Such method shall be consistent with state or federal guidelines for affordability applicable to the Town of Sudbury.
8. Based upon all of the foregoing, the Planning Board grants Plan Approval of the SGOD development pursuant to Section 4700B(I) of the Zoning By-law. The Board finds that there are no significant or extraordinary adverse impacts from the development project on nearby properties.