

APPENDIX

FARM ROAD HOMES – 40B

Introduction: Summary of the Comment Process

On May 17, 2022, the Town of Sherborn Select Board received the application for this proposed 40B project by Fedex, and received an electronic copy of the complete application file. On the same day, the Town received notice from MassHousing that the applications had been received, that a site visit was scheduled for June 7, and that comments from the Town were due June 20, 2022. The site visit was subsequently rescheduled by MassHousing for June 14, 2022.

A 30-day extension was requested by the Select Board and granted by MassHousing, thereby moving the due date of the comment letter to July 20, 2022.

A site visit with MassHousing was held on June 14, 2022, and was attended by Sherborn elected officials, certain Town Staff, various members of Sherborn boards and commissions, and representatives of the property owner.

The proposed 40B project was discussed openly as a Select Board agenda item at its meeting of June 30, 2022, which was well-attended. The Select Board requested that comments from the public, departments, and Town boards and commissions be submitted for inclusion in the Town's response letter to MassHousing.

A Draft Comment Letter and all of the received public comments and requested board and commission comments received by July 13 were distributed to the Board on July 13, 2022, and made public at the Select Board's meeting on July 14, 2022. The posted Agenda for this public meeting specifically included reviewing and finalizing this Comment Letter to MassHousing.

The Select Board reviewed and revised the draft version of the letter to MassHousing at the Board's regularly scheduled meeting on June 14, 2022.

The final Comment Letter to MassHousing was sent by email and a hard copy sent by FedEx on July 18, 2022, meeting the comment deadline. On the same day, the complete letter with addendum was posted on the Town's website, and a link was emailed to all departments, boards, commissions, and other interested parties, as well as to the Applicant.

PART I. Comments of Town Boards, Committees and Departments

PART II. Comments of Sherborn Citizens and Interested Parties

APPENDIX PART I.

Comments of Town Boards, Committees & Departments

(up to June 18, 2022)

(Provided on subsequent pages)



Board of Health

TOWN HALL • 19 WASHINGTON ST. • SHERBORN, MASSACHUSETTS 01770
508-651-7852 • FAX 508-651-7868

July 18, 2022

MassHousing, Office of Planning and Programs
One Beacon Street
Boston, Massachusetts 02108

RE: Proposed 40B Project for Farm Road Homes, Sherborn

Mr. Michael Busby:

The Sherborn Board of Health takes seriously its responsibility to provide input to your decision-making process regarding the suitability and viability of the proposed Farm Road Homes project in Sherborn. It is not the role of the Board of Health (BoH) to promote or oppose development but rather to guide each project to be supportive of healthful conditions for future residents of the project and for surrounding residents.

Introduction

The comments provided herein cover the following topics:

- *Public Health Focus for Site Eligibility*

While BoH evaluation of the proposed project will involve the usual set of topography, environmental resource, and integration issues as for other projects that come before the Board, the density of the project's impacts will require additional analyses. Typically, co-located¹ wells² and septic systems have been associated with rural areas. Urban and suburban areas typically have municipal water supplies and/or sewer systems. What has yet to be fully resolved is how to safely and pragmatically manage the communities that fall between the two extremes.

- *How MassHousing Can Assist with Sustainability for this Affordable Housing Project*

If MassHousing determines that the Farm Road Homes application is approvable, the BoH requests support for carrying out its public health responsibilities. In particular, protecting and ensuring a high quality and sufficient water supply resource in Sherborn is essential to

¹ Co-located in the sense that they are on the same property and serving the same structure(s) which is typically a single home or business

² The wells are either private or small-scale public water supplies.

the health of its residents, including the future residents of the proposed project. The BoH governs this resource with a goal of sustainability.³

Although the default for 40B projects is to defer to State-level regulations, only local BoHs have authority over private wells as there are no State level regulations for such.

Local septic regulations appropriately build upon the State's Title 5 regulation to address local needs. Title 5 is designed as the minimum requirements to apply to municipalities that, often may have septic systems but also have a municipal water supply serving the entire town. Under those circumstances, the risk to drinking water quality is reduced. However, Sherborn's circumstances demand greater precautionary measures. The few more stringent regulations are appropriate and important because the septic systems likely have the greatest impact on groundwater quality.

There is potential for a bedrock disruption permit from the BoH to be required for the project.

At present, other areas of BoH permitting (such as food establishments or camps) are not foreseen for this project.

Not All Dense or Large Projects Pose Public Health Risks

The BoH has been supportive of the much larger pair of affordable and alternative housing projects, Coolidge Crossing (a 40B) and Meadowbrook Commons (elder and 10% affordable), that are still being pursued by the Town and would meet the affordable housing target while having significantly less impact on environmental resources that are essential to the sustainability of Sherborn. The locations of those projects are very close to both Natick and Framingham, thus offering access not only to amenities, public transportation, and employment opportunities, but also to those municipalities' sewer and water systems, respectively. Such an arrangement relieves the burden otherwise posed by dense development to the quality of Sherborn's limited groundwater resources.

Sherborn Has No Municipal Water Supply or Sewer System

A key starting point for any housing in Massachusetts is the ability to provide adequate water supply and sanitary features (per 105 CMR 410). Sherborn's "infrastructure" for these functions is quite different from that of most municipalities in the Boston metropolitan area; each individual property is both the source of water, via a well, and recipient of wastewaters, via a septic system. This means that the septic system associated with every developed piece of property is discharging wastewaters on that property which may become a threat to the waters that we drink if improperly managed.

³ Once groundwater is found to be contaminated through well sampling and analyses, it is often too late to remedy and costly treatment systems become the only option.

Integral to Sherborn's development patterns are the hydrogeologic conditions present at any development site and how those conditions interface with surrounding properties. Unlike BoHs in more urban areas, a major function of Sherborn's BoH is the protection of our shared drinking water resource, primarily through careful management of wastewater discharges into the ground.

Other Relevant Town Characteristics

There are physical reasons why Sherborn (and Dover, Carlisle, etc.) remains relatively rural despite its proximity to Boston and in comparison to surrounding communities. The development patterns reflect the water supply and wastewater management limits of its available infrastructure and environmental characteristics. These include:

- reliance on private wells and septic systems that are co-located;
- a prevalence of ledge outcroppings and related shallow depth to bedrock;
- shallow depth to groundwater, which is also reflected in the presence of significant wetlands throughout; and
- an absence of substantial overburden aquifers, with nearly all drinking water wells drawing from bedrock fractures (for comparison, most municipal wells draw from overburden aquifers or surface waters due to their capacity and predictability).

Such environmental characteristics have technical bearing on how drinking water and septic wastewaters are managed within the Town. We can see from decades of data that even the modest density of development that currently exists in downtown Sherborn has resulted in concentrations of septic-related contaminants that are higher than elsewhere in Town. The impact of denser development on groundwater likely explains the rarity of this pairing in denser residential environments. The greater local dependence on natural processes to decontaminate the wastewater and thereby mitigate risk of groundwater contamination makes prudent management of this shared resource critical to safe and sustainable development.

Potential Project Site Challenges

To date, the BoH has received a subset of information about the site and limited details about the design, construction activity, and resulting infrastructure for the project. Thus, challenges identified are based on that information plus site visit observations, historic information, surrounding area information, and communications at various BoH public meetings.

Much of the site is believed unsuited to hosting septic systems due to wetlands, surface waters, shallow depth to bedrock, ledge outcroppings, and/or a high-water table, which likely resulted in the clustering of multiple septic systems for the project in one area. This pattern does not follow Sherborn's typical dispersed pattern for septic systems. Prior evaluations of high volumes of septic effluent being concentrated in one area suggested that this can lead to downgradient (i.e., downstream) groundwater contaminant levels being elevated above drinking water standards.

Requested Conditions to Accompany a MassHousing Project Approval

If MassHousing plans to approve the Farm Road Homes project, the BoH requests that the approval be conditioned with the following provisions.

- *Require that an EHIR be performed for the collective septic systems of the entire project*

This is perhaps the single-most important provision requested because it addresses the most significant, persistent risk to drinking water resources for the project and the vicinity – the analysis of septic effluent influences on groundwater and surface water quality.

Preparation of an Environmental Health Impact Report (EHIR) is a requirement (per BoH regulation III.3.1) that would apply to this project if not for its 40B status. It has been applied to other multi-unit projects in Sherborn. Requirements include the performance of hydrology evaluations according to accepted techniques, such as those specified by MassDEP for comparable applications.

Given that the concentrated plume of effluent from the project's proposed septic systems is most likely to affect the wells of Farm Road Homes by virtue of proximity, it is clearly in the interest of safe affordable housing for future residents to perform the EHIR. Prior modeling of the impacts of effluent from a large septic system revealed that a steady state of contaminants in groundwater could reach 2 to 3 times the drinking water standard. Although the results are situation-specific, it nonetheless highlights the value of such evaluations. A cluster of septic systems, as is currently proposed, has the potential to generate impacts similar to that of a single large system.

- *Prohibit Segmentation of the Project*

Require that the project be treated as a single entity and not be segmented (unless otherwise approved to do so by a Sherborn Board/Commission/Department/Authority) to fall below regulatory applicability thresholds for individual portions of the project. This requirement would be similar to that of 301 CMR 11.01(2)(c).

Just as traffic studies are performed for these larger projects but not for a single lot with one single-family home, so should wastewater discharge impact analyses be performed. Avoiding requirements appropriate to larger, denser projects may be detrimental to public health, especially since the health and environmental impacts are likely cumulative. For example, one of the thresholds for the EHIR requirement is 2,000 gallons per day of wastewater design-discharge; this project is expected to discharge approximately 8,000 gallons per day in total.

- *Require that the project's water supply be managed as a MassDEP-regulated public water supply (PWS)*

The threshold for PWS applicability per MassDEP is 25 persons served for at least 60 days per year. It appears that this project will house approximately 150 persons. Absent such a requirement, there are ways to design the water supply for a project which circumvent MassDEP's PWS threshold requirements.

Establishing the project's water supply as a PWS offers future residents the benefit of having a routine water quality testing program, the results of which are overseen by MassDEP. This is advantageous given the sizeable and concentrated effluent discharge expected from the multiple septic systems on site. Wells serving the project will be close to the projects clustered septic systems.

- *If the water supply is not regulated as a PWS, require verification of sustainable yield across all wells for the project*

If the proponent is not required to --or does not voluntarily-- select the PWS route for the project's water supply, then require extended, simultaneous⁴ pump testing and borehole dynamics monitoring of all project wells. This shall be accompanied by monitoring of a subset of wells in the vicinity of the project for drawdown impacts and recovery. Such testing and evaluation shall be conducted under BoH oversight and authority.

This testing would also help with understanding water availability in that area of Sherborn. Although drought conditions in Massachusetts over the last several years have not been as severe as in 2016-2017, there has been a distinct increase in the number of wells that have required deepening or replacement with deeper wells. Within the last few weeks alone, the BoH has received requests for three emergency well permits for existing homes. This suggests that water levels in the underlying bedrock may be dropping or that the flow rate is constrained. Since these same wells did not require replacement during the more severe drought period, it is unclear whether these conditions are related to reduced rainfall, increased use of water in the area (i.e., additional homes/businesses), or both.

- *Require compliance with BoH bedrock disruption regulations*

Due to the extent of bedrock on the site and the extensive site development work that may be required, it is appropriate to require that the proponent complies with BoH regulation III.10.0. It requires that: a permit be obtained from the BoH; blasting agents that have caused drinking water contamination throughout Massachusetts not be used; and nearby properties be given a specified form of advance notice of the bedrock disruption activities.

- *Require evaluation of stormwater dynamics and management*

Impacts on stormwater flow dynamics both during construction activities and as a result of the surface and subsurface changes from the completed project warrant evaluation.

⁴ The purpose of testing all wells simultaneously is to mimic withdrawals when the project is fully occupied.

Stormwater issues are typically already addressed for a project by the Planning Board and/or Conservation Commission prior to reaching BoH review. Thus, the BoH is often able to rely upon the information generated by those authorities' requirements, but does have stormwater assessment requirements for projects of this size. For example, if stormwater flows are channeled over the septic leaching field, that would be a BoH concern.

A stormwater study is important to perform for this project due to its scale, complex terrain, water features, increase of impervious surfaces, etc. Impervious surface impacts of relevance to the BoH include (i) reduced opportunity for rainfall to infiltrate the ground and recharge groundwater in a distributed manner and (ii) increased likelihood that rainfall will merely run-off to surface waters and/or create new areas of temporary flooding.

- *Require compliance with these additional Sherborn-specific regulations that impact drinking water quality security*

Local septic system design standards that are important to maintain for drinking water quality protection (especially because of the co-located water and wastewater infrastructures) include the following BoH regulation sections: percolation rates of I.5.2, soil conditions of I.5.3, bedroom count determination of I.7.1.A, and vertical grades and clearances of I.8.0.1 and I.8.0.2.

- *Require establishment of formal financing mechanisms for shared water and/or wastewater systems*

A condition of MassHousing's approval can be that a financing mechanism for on-going operation and maintenance of shared systems be established prior to occupancy. For reference, MassDEP has formal procedures for establishing financial mechanisms for residential PWSs and wastewater treatment plants that fall under its jurisdiction; their purpose is to avoid delays in or inattention to remedying shared system needs in the future. From the information available, it does not appear that the proponent is currently planning to adopt systems that will be governed by MassDEP. Thus, as this future collection of households will be responsible for one or more shared systems, required financial mechanisms to begin accumulating funds for operation, maintenance, and repair from the outset are appropriate. If, for example, a system failure is encountered and interim emergency measures (e.g., trucked-in water, trucked-out wastewaters) plus a pump replacement could cost \$50,000, the funds and a method for allocating them appropriately need to be established well in advance of any such situation. To let system problems linger can lead to negative public health impacts at the project and beyond.

Please do not hesitate to let us know if you would like to discuss or get further information about any of the issues raised herein.

On behalf of the Board of Health,

A handwritten signature in black ink, appearing to read "Matthew Vitale".

Dr. Matthew Vitale, Chair

Supplemental Background Information

Guidelines prepared by the Department of Housing and Community Development for the design review process of Chapter 40B projects specify criteria to be used in project evaluation. Using those criteria, the regulations require findings “that the conceptual project design is generally appropriate for the site on which it is located”. Issues of primary importance to public health, which are briefly discussed below, are organized according to a selected subset of design review evaluation criteria. It is likely that we have introduced aspects of these issues that are not confronted by many of the projects that MassHousing reviews since most projects are proposed for areas serviced by municipal water and/or sewer. Unlike much of Massachusetts –and especially in eastern Massachusetts— Sherborn faces an uncommon situation for water resources management.⁵ Our septic discharges eventually become our drinking water, unlike municipalities served by isolated, remote, or otherwise protected water supplies and/or with sewer systems. Furthermore, Sherborn does not have any substantial aquifer within its borders and thus the vast majority of water is supplied from more limited water in bedrock fractures.

According to a fact sheet about groundwater, developed by the Massachusetts Department of Environmental Protection’s (MassDEP) Northeast Regional Office:

Groundwater originates with rain or melted snow that soaks into the ground and seeps downward due to gravity. If contaminants have been disposed on the ground or buried, the water may soak through them and carry contamination down into the groundwater.

Wastewater discharged underground via septic system leaching fields constitutes “buried” contaminants. Even if that wastewater has been pretreated, contaminants still remain and there is reliance on soil filtering action, biodegradation, and other dynamics (including dilution) taking place to render that water drinkable before it reaches a well. The fact sheet goes on to indicate:

The more developed and urbanized an area is, the greater the chance that the groundwater is contaminated ...

This refers to limits on the capacity of the environment to handle our wastewaters. Hence, the protection of drinking water is an essential factor for each residential, commercial, and municipal establishment in Sherborn⁶; all have been required to participate in this responsibility. When assessing this project’s “integration with adjoining properties”, it is fair to hold it to an equivalent level of responsibility, commensurate with its greater degree of potential impact, as was applied to those adjoining properties.

⁵ Other eastern Massachusetts towns without municipal water and sewer may include: Berkley, Berlin, Boxborough, Boxford, Carlisle, Dover (approximately one-third with alternative water supply), Lakeville, and Plympton.

⁶ Refer to Sherborn’s Master Plan for information regarding the overarching importance of water within the Town due to its limited availability, its vulnerability, and our reliance on it.

PLANNING BOARD



19 WASHINGTON STREET
SHERBORN, MASSACHUSETTS 01770

July 13, 2022

Jeff Waldron, Chair
Select Board
19 Washington Street
Sherborn, MA 01770

Re: Farm Road Homes 40B

Dear Mr. Waldron,

At its meeting of July 12, 2022, The Planning Board voted unanimously to finalize its comments on the Farm Road Homes project to be submitted to MassHousing for its consideration as it reviews the application for a Project Eligibility Letter. The comments closely track the draft comments previously provided to you with 2 additions. The comments are as follows:

- This proposal appears to be a viable concept to address the need for affordable housing in Sherborn.
- The variety of housing units, including smaller and less expensive homes, is consistent with Planning Board past discussions and the Master Plan.
- The 8 duplex units along the road frontage, however, are closely spaced and very near the road, and would significantly impact the rural character of Farm Road. The aesthetic impact to Farm Road could be reduced by housing design (making the units look like single family homes), increased spacing between buildings, staggering frontages, and/or providing vegetative screening.
- The layout of the development and grouping of housing could result in feeling like four different projects on one site.
- Open air parking with no shelter could be a challenge for residents, especially since the development may attract a downsizing population.
- From the site walk, it appears that the proposed staked driveway would address the concern of headlight intrusion into the existing abutter home.

However, this concern is documented because the current plans appear to indicate a potential issue. This should be confirmed in future plans.

- A sidewalk along Farm Road as far as Great Rock Road would be a benefit to the Town. The Town could consider extending and connecting it to the existing sidewalk farther west on Farm Road.
- The Town may consider increasing the priority of nearby intersection improvements if local traffic is anticipated to increase.
- It will be important for the appropriate boards and committees to evaluate septic leaching, water use, well placement/yield, and wetlands. Impacts to abutter wells is a significant potential concern.
- If the well(s) are not configured to constitute a public water supply, failure of a well serving multiple homes could prove problematic with respect to identifying a replacement location on the densely built site.
- Low impact development stormwater management should be implemented.
- The net zero energy approach is supported.
- Charging station(s) for electric vehicles should be considered.
- Rooftop solar should be prioritized over ground mounted panels that require tree removal to the extent feasible.
- The design should be compatible with the designated scenic road character of Farm Road.

The Planning Board appreciates the opportunity to provide comments on this project. It will continue to follow the project and provide additional comments as applicable as it proceeds through the comprehensive permit process with the ZBA.

Sincerely,

Gino Carlucci
Town Planner

SHERBORN CONSERVATION COMMISSION



MEMO

TO: Sherborn Select Board
Diane Moores, Interim Town Administrator

FROM: Sherborn Conservation Commission

DATE: July 13, 2022

RE: Conservation Commission Comments on Farm Road Homes 40B Project
for Mass Housing Agency Letter

Overall, the function of wetlands protection by the Conservation Commission will be undertaken via (a) the Zoning Board of Appeals Comprehensive Permit process that will cover the Sherborn Wetlands By-Law and the Department of Environmental Protection (the "DEP") Stormwater Standards and (b) a Notice of Intent permitting process under the MA State Wetlands Protection Act (the "WPA"). For this project, adverse wetlands impacts can affect the following goals/interests of state and local wetland protection: private and public water supply, ground-water supply, pollution prevention, flood control, storm damage prevention, and wildlife habitat. Quality of water supplies and groundwater and pollution prevention are essential for our Town given our dependence on private water supplies and septic systems. Flood control and storm damage issues are increasingly important due to climate changes and increased intensities of precipitation events. At this point, the Commission notes the following initial concerns about the scale, density and design of the project:

Water Quality

Wetland and related water quality impacts from both the total amount and possible concentration of septic field effluent from the scale of the project as well as the proximity of septic systems to wetlands. This can lead to surface- and ground-water quality impacts and can diminish wetland functioning. Most, if not all, of the septage will flow into septic fields that are located at the edge of wetlands' buffer zone with a significant gradient down to the wetlands. Given the scale and this concentration, this design has the potential for significant wetlands and water quality impacts.

Past experience with the DEP indicates that the applicable regulations do not address this possible problem until an impact is observed, at which time it can be extremely difficult, if even possible, to remediate. Therefore, it is important at this stage in the project review process that the Massachusetts Housing Finance Agency ("MassHousing") take into consideration these potential problems given our Town's drinking water dependence on groundwater.

Stormwater Management and Flood Control

Stormwater management and flooding issues due to the large increase in impervious area (about 16% of 14 acres) could possibly lead to adverse water quality and storage capacity impacts on wetland areas, which help with flood control, pollution prevention and infiltration. The current plan could limit the water storage capacity of the existing pond and the related land subject to flooding based on reported observations of previous high-water and flooding levels.

There is a concern that land subject to flooding may extend into areas that are designated for the entry road and buildings on the proposed plan. Town residents have observed seasonal flooding that extends from the large pond into the field and to the existing driveway. Further study will be needed.

Furthermore, even when a project meets the DEP Stormwater Standards, the contaminant removal levels may not be sufficient to avoid adverse impacts on the functioning of wetlands for pollution prevention to water supplies. These adverse impacts partly depend on scale and onsite chemical use and non-point pollution, as well as on the choice of stormwater treatment practices.

Therefore, it is important at this stage in the project review process that MassHousing be aware of these potential stormwater management and related flooding and pollution issues.

Wildlife Habitat

A third concern is that this project is located between two wetland areas and as currently designed, the layout of the project could adversely impact the continuity of wildlife habitat. As the review process continues, project design changes that would minimize these impacts should be considered and address fragmentation and barriers between wetland resources that are part of a broader healthy ecosystem abutting Town Forest and Conservation land.

[approved at July 13, 2022 meeting]

To: Sherborn Select Board, SB

Date: July 13, 2022

From: Sherborn Groundwater Protection Committee, GPC (T Trainor, Chair)

Subject: GPC Formal Comments for SB (MassHousing letter) on the proposed 40B Farm Road Homes.

The GPC held a public meeting on Wed July 13 at which time we continued discussing an agenda item from our previous June 22 meeting *"Request from Select Board: Comments on proposed 40B Farm Road Homes development from all Town boards/committees, draft GPC comments, updates on comment submittal deadlines."* What follows here is a more complete summary of the concerns raised by GPC members at both meetings, several whom also attended the site visit on June 14. This is provided now to the SB as requested, for the SB meeting scheduled for the evening of July 14th. The document here was approved by the GPC members by a roll call vote of 6-0 and represents an expansion of our earlier document sent to the SB on June 28th.

Please know that the GPC is quite concerned with the acute lack of more affordable housing within our community. We encourage the SB and all Town residents to redouble efforts to find ways of adding, in a safe and compatible manner, more diverse and affordable housing stock. But the town's lack of a modern public water supply along with no central modern wastewater disposal system, to serve any parts of Sherborn, bring major public health challenges in constructing more dense developments.

Please see our comments here, for your consideration in preparing your letter to MassHousing on this project. Four areas of concern are addressed to you here:

1. General Concerns:

- a. Publicly available, posted 40B development information/plans for this project (Town website, as of 7/13/2022) are not detailed enough for GPC to evaluate potential groundwater concerns completely at this time.
- b. Once available, detailed plans for the required septic systems, wells, stormwater management structures, etc. will each require significant review by Town-designated professionals along with the appropriate Town boards and committees.

2. Wastewater/Septic Concerns:

- a. Project as proposed would generate a huge amount of septic effluent from the proposed 32 new housing units (particularly as compared to the septic flow expected from the 4 new units as shown in the by-right plan), raising major concerns about septic leach field capacity (soils) and long-term wastewater treatment performance.

Sherborn is 95% reliant on private drinking water wells and septic systems, 1-to-3-acre zoning allows the wells and septic to be co-located for public health. A dense development with onsite water requires a specific design plan that accounts for reliance on private well and septic.

In fact, some property owners in Sherborn are already suffering from well contamination. For example, many of our Town Center properties exhibit elevated nitrate levels, and most recently, detectable PFAS concentrations – both of which can come from septic systems.

b. USGS Surficial Materials maps of this site area indicate significant amount of bedrock outcrops, and shallow depth of overburden soils, including near the general area of the set of proposed three large septic leach fields west of proposed house units # 15 and 18 (Figure 1, general area of proposed site, source: Surficial Materials of Massachusetts – U.S. Geological Survey Map).

c. Given the amount of bedrock known to be present at this site, sufficiency of the overburden soil absorption areas and depth/volume of soils to treat adequately this large amount of septic effluent must be evaluated by a professional.

d. The depth to the groundwater table needs to be well defined and monitored over the seasons and after rain events in the areas of proposed septic and stormwater infiltration areas. Depth to groundwater can vary dramatically on a day-to-day basis, especially for land where bedrock is shallow, and groundwater can be perched on the bedrock. Increased storms and precipitation events could result in shallower groundwater table depths than those observed at the site during the test pit program. This needs to be carefully defined to ensure proper infiltration capacity is available.

e. It was noted by the GPC that the proposed septic leach fields for house units # 1 through 8, a separate area near Farm Road and located west of these units, lies in the general area of the hydrologic watercourse identified in USGS maps (as does the house units # 1-8 themselves, and the proposed new main entry road). Please see Figure 2, map of USGS StreamStats view of the proposed development plan area. The implications of this known “open surface drain” and/or “watercourse” within the site interfering in the future with the proposed septic leach fields, homes, and access road should be evaluated by a professional.

See Figure 3 for a view of applicants site map with housing units numbered. More details on the existence of this hydrologic feature may be obtained from the oral/slide presentation testimony at the Board of Health meeting of Feb 16, 2022 (recording available on-line, along with a written report submitted to the BOH) by water resources consultant Scott Horsley.

f. Town should request to MassHousing now a professional analysis of subsurface conditions by the applicant, to include bedrock geology, with a profile of the depth to top of bedrock at the property including proposed leach field areas and stormwater management infiltration locations, soil absorptive capacity, leaching capacity, and hydrologic modeling to identify potential fate and transport of leachate both on- and off-site. This detailed study should include a nitrate loading analysis taking into consideration the existing abutters wells and the new proposed development public and/or private wells. Please be aware that prior to this 40B proposal submission this same site was under local review for a development by this 40B applicant involving just a few new homes. At that time an abutter’s hired expert consultant calculated from the associated proposed septic plans a modeled groundwater nitrate concentration above the MassDEP nitrate MCL’s (max contamination levels) could negatively impact abutters existing properties and drinking water wells (see Scott Horsley BOH testimony of Feb 16, 2022, reference noted above). With this significantly larger 40B proposed project a more extensive nitrate study needs new attention to protect both the new 40B dwelling drinking water wells and the existing abutters wells.

3. Drinking Water/Groundwater Concerns:

- a. The posted/public plan documents are completely silent as to the proposed number and general location of any required water supply wells on the property. Anyone building new homes in a semi-rural town like Sherborn, with no public water supply or public wastewater systems, must first and foremost address water supply planning before any scale of development be considered.
- b. It is not clear if multiple private wells are planned, or alternatively, one or a small number of public water supply wells (PWS) serving multiple dwelling units. The Town normally collaborates with MassDEP for any new PWS, but if any wells proposed in the future are not PWS, the Town should request extended well pump quantity testing with additional monitoring at existing abutter wells, given the number of occupants (76 bedrooms as proposed).

If a Zone I protective radius of 225 feet was required by MassDEP for a future PWS, it appears challenging within this site to fit such a large area given various other required setbacks.

- c. Concerns that untreated or inadequately treated wastewater could infiltrate bedrock fractures, and rapidly travel to any new or existing bedrock drinking water wells on- or off-property, thus compromising drinking water quality. Besides pre-permitting, pre-construction well placement and design studies, funds should be established by the developer to allow for on-going post-construction well water quality and quantity testing well into the future on 40B and abutters wells. It can take years for problems to develop in deep bedrock wells.
- d. Bedrock blasting, hammering, or drilling related to construction activities near bedrock outcrops in other parts of Sherborn in recent years have mobilized pollutants and impacted nearby drinking water wells. If this development requires any blasting to address observed bedrock outcroppings around the site, the Town requests a commitment to preserve the integrity of the existing wells in the vicinity, including water quality monitoring at existing wells pre- and post-blasting/future testing (see c. above).

4. Stormwater Concerns:

- a. The entire project, with 32 new homes and associated paved sidewalks, driveways, parking areas, and the access road represent a significant amount of new impervious surfaces all concentrated in the center of the 14-acre property. No stormwater plans have been posted publicly yet for the proposed development. Future stormwater plans will require rigorous peer review by a professional hired by the Town.
- b. The topic of future climate change impacts needs to be taken into serious consideration in the design of this project, given the projected much larger storm events with expected larger rain/snow amounts, and higher annual precipitation levels, now published by the MA RMAT state design team for future project planning. The future higher than historical annual and per storm event precipitation levels now predicted as compared to current design standards need to be considered for all the concerns raised by the GPC here on groundwater/septic/stormwater including the USGS mapped open surface drain/watercourse and the existing pond on the property that varies in size and depth based on annual precipitation amounts. Town should

request consideration of climate change in the selection of design storms that are used to size stormwater management features.

An additional stormwater concern unique to this site is the existing pond on the southeast corner of the property, which already varies constantly in total size and depth based on average seasonal precipitation and groundwater levels. The entry road and potentially some housing units, as currently shown in the plan, may be partially submerged if the pond expands significantly following a storm event. Future climate change will only exacerbate the extent of this. A stormwater evaluation would need to account for the full drainage area tributary to the overall site and especially the pond.

Figure 1 – Surficial Materials of Massachusetts – U.S. Geological Survey Map, general area of site.

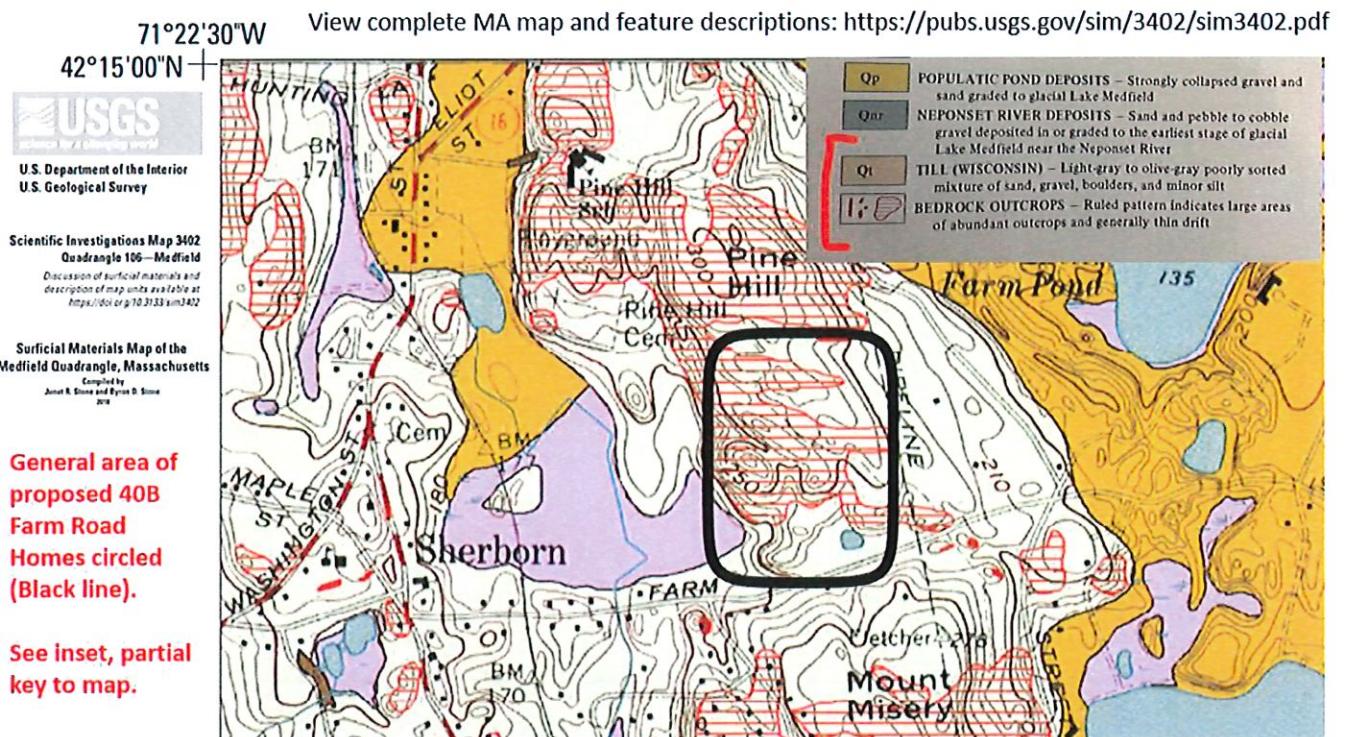


Figure 2 – USGS StreamStats map, <https://streamstats.usgs.gov/ss/>

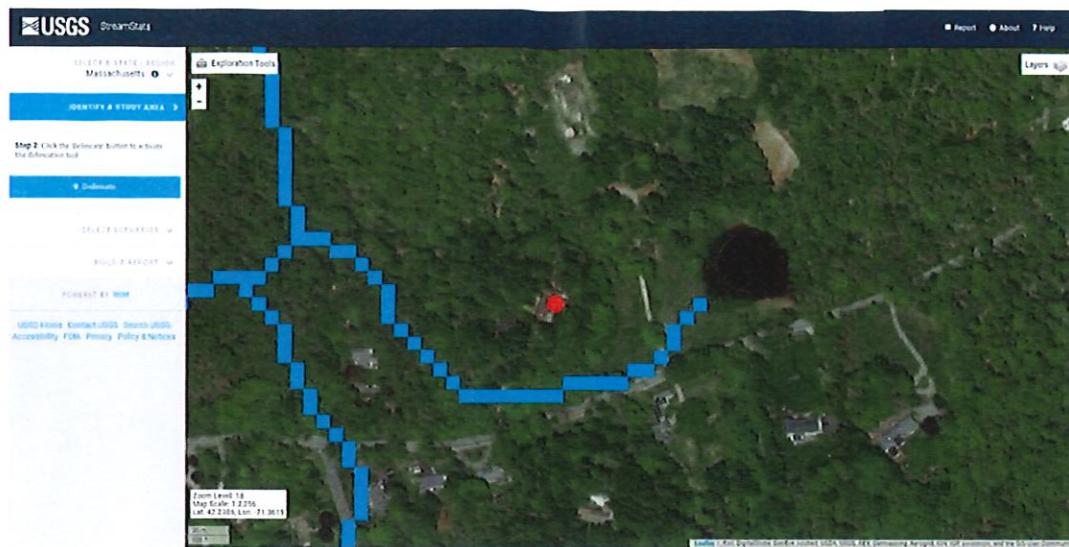
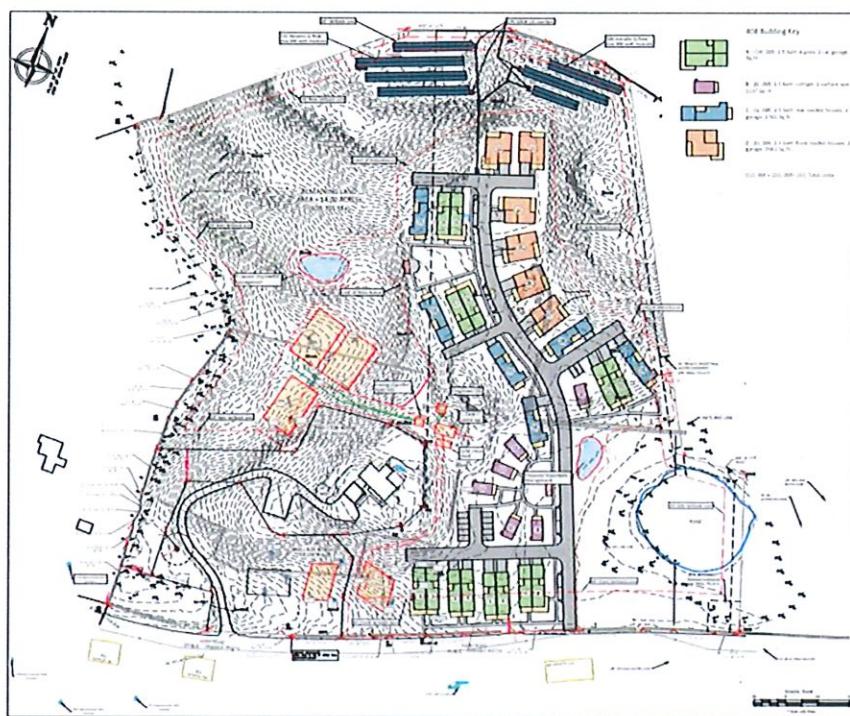


Figure 3 – Project plan map, focusing on major site features (right hand legend not included).



June 29, 2022

To: Sherborn Select Board

Subject: Water Commission Comments Regarding 55/65 Farm Road Proposed 40B Development

Sherborn Water Commissioner's held a public meeting on June 27, 2022. During the meeting we discussed comments regarding the 55/65 Farm Road proposed 40B development. The following is a summary of our discussion:

- The available information including the plan titled Conceptual 40B Overlay and dated 04/26/22 (Plan), and Project Description – Project Eligibility Application Farm Road Home do not include final water or wastewater designs at this time. During the site walk at 55/65 Farm Road on June 14, 2022, it was confirmed that the wastewater system shown on the Plan is conceptual and that a design still needs to be completed. Also, the wells shown on the plan are existing and proposed water supply wells will be located and designed at a later date.
- Since we are unable to comment on the water and wastewater system designs, we are instead providing the following recommendations:
 - Water: We recommend that the property owner consider developing the water supply wells as a public water supply rather than private. The testing requirements for public water supply wells are more conservative than private and may provide a higher level of confidence to property abutters that this proposed development will not impact their drinking water quantity. For comparison, a pump test for private wells is conducted for a four (4) hour constant pumping period and requires a flow twice of 2 – 5 gpm. (This flow range depends on well drawing depth.) Testing for a public water supply well (less than 100,000 gpd) is conducted at a minimum of 100% the design rate of the final production well for a min. 48-hour period.
 - Wastewater: We recommend that the property owner consider a wastewater treatment system that requires professional annual maintenance and testing. The testing would include water quality testing of the leachate/wastewater effluent to ensure the quality is within acceptable design parameters. Examples include a STEP or community FAST system. Annual testing may provide a higher level of confidence to property abutters that this proposed development will not impact their drinking water quality.

From: Sherborn Water Commissioners: Roger Demler, Frank Hess, Tara Hourihan



TOWN OF SHERBORN, MASSACHUSETTS FIRE & RESCUE DEPARTMENT

22 NORTH MAIN STREET, SHERBORN, MA 01770



Zachary J. Ward
Fire Chief

Sherborn Select Board
19 Washington Street
Sherborn, Ma 01770

June 29th, 2022

Chairman Jeff Waldron,

This letter is to portray the comments of the Sherborn Fire & Rescue Department regarding the proposed development at 55-65 Farm Road. Both myself and Lieutenant/Inspector Kristin Buckler met with the developer on April 14th and attended a site visit on June 14th. These comments and concerns are based solely with our mission in mind, which is to protect life and property.

Impact to Department Operations:

While we are not completely sure as to what the actual population increase to the Town will be from this development, we used an estimated additional three people per unit. Since this proposed development includes thirty-two housing units, our rough estimate is that 96 people will live in the development.

According to the most recent census, Sherborn has a population of 4,580. We are currently responding to approximately 625 emergency calls per year, both for fire and EMS responses. While it is certainly difficult to predict how an increase in population could affect call volume, we estimate the additional 96 people in Sherborn could increase our call volume by approximately 10-15 emergency calls per year. This will not strain our agency, and is not a significant increase. We can handle that extra volume.

Site Access:

We spoke with the developer on April 14th about site access. The road widths were initially smaller than what we would request, but the developer agreed to increase the main access roads to a width of 22 feet, which would satisfy our needs for emergency access.

Water Supply:

We spoke with the developer on April 14th about water supply. A question was also raised about water supply at the June 14th site visit. The developer has agreed to install a water cistern, which is an underground tank with a supply of water for firefighting operations. We have not discussed the location of this cistern in detail yet, and we have not discussed how the department would access this cistern, but there is a commitment from the developer to have those conversations, and we believe our needs will be satisfied at the present time.

Sprinkler Systems

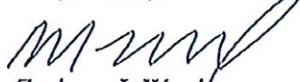
The development includes several duplexes and single-family homes. Per the fire code, none of these must have a sprinkler system. We would certainly hope to see sprinkler systems in all units. The National Fire Protection Association (NFPA) U.S. Experience With Sprinklers Report also provides the following statistics:

- The civilian death rate was 81 percent lower in homes with fire sprinklers than in homes without them.
- The average firefighter injury rate was nearly 80 percent lower when fire sprinklers were present during fires.
- When sprinklers were present, fires were kept to the room of origin 97 percent of the time.
- The home fire death rate was 90 percent lower when fire sprinklers and hardwired smoke alarms were present.

Therefore, we recommend that all units would have these potentially lifesaving devices, although they are not required.

As always, please reach out to me if you would like to discuss this further or have any comments or concerns.

Respectfully,



Zachary J. Ward
Fire Chief

APPENDIX PART II

Comments of Sherborn Citizens and Interested Parties (up to June 18, 2022)

(Provided on subsequent pages)

58 Farm Road
Sherborn, Massachusetts 01770

June 2, 2022

BY ELECTRONIC MAIL: ejohnson@sherbornma.org

Select Board Chair Eric Johnson
Town of Sherborn
19 Washington Street
Sherborn, Massachusetts 01770

Prohibited subdivisions at 55 Farm Road and 65 Farm Road

Dear Chairman Johnson:

As you know, Robert Murchison, through his special purpose entity, Fenix Partners Farm Road LLC, (collectively, developer) has purchased the contiguous parcels of land on Farm Road in Sherborn known as 55 Farm Road and 65 Farm Road. As you also know, the developer has submitted plans to develop both those parcels by subdividing each. From a deed search, and legal research, I have come to understand that certain deed restrictions exist for those parcels that preclude subdividing them.¹ This has significance to the Town as the Town enjoys rights to enforce the restrictions at issue -- valuable rights to conserve the environment and maintain the statutorily protected nature of Farm Road generally from overdevelopment, valuable rights which the developer apparently seeks to extinguish.

The salient points follow:

On January 11, 2021, Iaonnis Miaoulis granted to the developer the 55 Farm Road parcel (sometimes historically referred to and known as "Lot 1.")² The 55 Farm Road parcel lies adjacent to the 65 Farm Road parcel (sometimes historically referred to and known as "Lot 2"), which, in turn, lies adjacent to a parcel of land (sometimes historically referred to and known as "Lot 3" and/or "Lot 3A" and "Lot 3B") conveyed in or around 1981 to the Town of Sherborn

¹Each parcel's deed has similar restrictions, but this letter addresses only the 55 Farm Road parcel, because that parcel is the one on which the developer has primarily focused to date.

²Deed, Miaoulis (G'tor), Fenix Partners Farm Road LLC (G'tee), Middlesex South Registry Book of Deeds, Book 76660, Page 253, et seq.

Conservation Commission and/or Town of Sherborn (hereinafter, collectively, Town).³

The 2021 deed for the 55 Farm Road parcel incorporates by reference the “certain restrictions and conditions as recited in the deed of Richard Saltonstall and D. McLaughlin Building Co., Inc. dated February 20, 1980 and recorded with the Middlesex South Registry of Deeds in Book 13926, Page 211.” Those “restrictions and conditions” so incorporated by reference specifically provide, among other things, that (A):

1. The parcel hereinbefore described [Lot 1, a/k/a 55 Farm Road] shall not be subdivided into lots or parcels, nor shall any conveyance or transfer of less than the whole part be made.
2. The above restrictions shall be considered a covenant running with the land and shall bind the undersigned grantee, his successors and assigns.

and that (B): such restrictions and conditions “shall attach to said piece or parcel of land hereinbefore described [Lot 1, a/k/a 55 Farm Road] and shall be for the benefit of and appurtenant to Lots 2 and 3 . . .”

In other words, the deed conveying the 55 Farm Road parcel to the developer expressly prohibits subdividing that parcel, and also expressly provides that said prohibition benefits and belongs to -- and thus is enforceable by -- the owner of Lot 3 which, as noted *supra*, is the Town.

I spoke with the developer to offer him the opportunity to explain any contrary contentions which he might have, but he declined to offer any. From research, however, I anticipate two arguments he might make. For at least the following reasons, neither has merit.

First, the developer might argue that, pursuant to G. L c. 184, § 23, the deed restrictions at issue have expired.⁴ In brief, as you may know, that statute limits conditions or restrictions that affect

³More particularly, the Town owns the surviving portion of (which is nearly all of) Lot 3, that lot having been divided in 1981 into (i) a 24,993+/- square foot lot (“Lot 3A”) conveyed to certain third parties and years later apparently subsumed into “Lot 2” a/k/a 65 Farm Road; and (ii) the 7.88+/- acre parcel (“Lot 3B”) conveyed to the Town. See Deed, Saltonstall, et al. (G’tors), Town of Sherborn Conservation Commission (G’tee), Middlesex South Registry Book of Deeds, Book 14492, Page 441, et seq.

⁴General Laws c. 184, § 23, provides: “Conditions or restrictions, unlimited as to time, by which the title or use of real property is affected, shall be limited to the term of thirty years after the date of the deed or other instrument or the date of the probate of the will creating them,

real property, and that do not contain an express time limit, to a period of thirty years, and the 2021 deed incorporates by reference restrictions contained in a deed from 1980, more than thirty years ago.

The problem with this argument is that, as a basic matter of contract law, the operative date for purposes of c. 184, § 23, is the contract date: the developer and former owner of the 55 Farm Road parcel agreed to all the terms set out in the deed -- including the restrictions at issue -- as of January 11, 2021, the date of execution. And this conclusion makes sense; the parties to that transaction did not come to an agreement in 1980; they set the terms of their agreement in 2021.

In addition, lest there be some suggestion otherwise, the fact that the deed set out the restrictions by means of the vehicle of incorporation by reference, as opposed to restatement in full, has no consequence. Caselaw and other authorities well establish that incorporation by reference “is a common tool in the drafting of contracts,” NSTAR Elec. Co. v. Department of Pub. Utils., 462 Mass. 381, 394 (2012), quoting Artuso v. Vertex Pharm., Inc., 637 F.3d 1, 7 (1st Cir. 2011) (applying Massachusetts law), and has the same effect as setting out the referenced provision or document in full, see, e.g., Abbott v. Frazier, 240 Mass. 586, 593 (1922), citing cases (“the same effect” as if referenced language “had been copied” wholesale); 11 Williston on Contracts § 30:25 (4th ed. supp. 2021) (“When a writing refers to another document, that other document, or the portion to which reference is made, becomes constructively a part of the writing, and in that respect the two form a single instrument. The incorporated matter is to be interpreted as part of the writing.” [Footnotes omitted.]).⁵

except in cases of gifts or devises for public, charitable or religious purposes. This section shall not apply to conditions or restrictions existing on July sixteenth, eighteen hundred and eighty-seven, to those contained in a deed, grant or gift of the commonwealth, or to those having the benefit of section thirty-two.”

⁵Indeed, this proposition is not controversial, also finding support in Federal contract law cases, see, e.g., Air Line Pilots Ass’n, Int’l. v. Delta Air Lines, Inc., 863 F.2d 87, 94 (D.C. Cir 1988), quoting Cunha v. Ward Foods, Inc., 804 F.2d 1418, 1428 (9th Cir. 1986) (“It is generally held that ‘[w]hen a document incorporates outside material by reference, the subject matter to which it refers becomes a part of the incorporating document just as if it were set out in full.’” [alteration in Air Line Pilots]); United States v. Science Applications Int’l. Corp., 502 F.Supp 2d 75, 78 (D.D.C. 2007), in various other States’ caselaw, see, e.g., Pinnacle Group, LLC v. Kelly, 235 Md. App. 436, 462 (2018) (“Incorporation by reference is a method of contract drafting such that where a subsequent document references a previous document, it incorporates that previous document into the subsequent. It simply means that the earlier document is made a part of the second document, as if the earlier document were fully set forth therein. It is settled that where a writing refers to another document that other document, or so much of it as is referred to, is to be

Second, the developer might argue that, despite including the restrictions in his 2021 deed, he did not mean to prohibit subdivision of the parcel. One problem with that argument is it ignores the fundamental principal of contract law that a contract be interpreted within its “four corners,” and without resort to any extrinsic matters, such as a party’s proffered intention where, as here, the at-issue language is plain and unambiguous. See, e.g., Bank v. Thermo Elemental, Inc., 451 Mass. 638, 648 (2008) (court “must first examine the language of the contract by itself, independent of extrinsic evidence concerning the drafting history or the intention of the parties”); see also Indus Partners, LLC v. Intelligroup, Inc., 77 Mass. App. Ct. 793, 795-796 (2010), and cases cited.^{6,7} And, applying this principal makes sense, if for no other reason than, had the parties not intended to have included the restrictions in the deed, they were free simply not to have done so. But, they indisputably did, which the law requires be given preclusive effect as to their intention.

Furthermore, even were the developer somehow to erase the deed restrictions contained in his 2021 deed, the parcel would still be prohibited from being subdivided by operation of the previous deed, which contained the same restrictions, executed December 17, 2012.⁸ Per this hypothetical, the restriction just would expire on December 17, 2042. See G. L c. 184, § 23, *supra*.

interpreted as part of the writing.” [Internal quotations & citations omitted.]), and in the authorities particular to real estate and deed interpretation, see, e.g. Real Estate Investor’s Deskbook § 8:111 (“Real estate closings; Deeds—Deeds—Rules of construction for deeds”) (3d ed., supp. 2021) (“7. *Incorporation by reference*. When a deed refers to another document [such as another deed or a subdivision plat], the other document is deemed incorporated into the deed just as if it had been spelled out.” [Italics and brackets in original].).

⁶The fact that the developer might now argue for a contrary interpretation does not make the deed restriction provision at issue ambiguous. See, e.g., Suffolk Constr. Co., Inc. v. Lanco Scaffolding Co., 47 Mass. App. Ct. 726 , 729 (1999), quoting from Jefferson Ins. Co. v. Holyoke, 23 Mass. App. Ct. 472 , 475 (1987).

⁷The developer also would have to surmount the absence of any evidence the Grantor similarly did not intend to prohibit subdivision of the parcel. See, e.g., Covich v. Chambers, 8 Mass. App. Ct. 740, 749-750 (1979), and authorities cited (discussing concepts of mutual and unilateral mistake, and observing “it is also elementary that both parties must share the erroneous state of mind as to the basic assumption on which the contract was made. Avoidance is not permitted just because one party is disappointed in the hope that the facts accord with his wishes.” [Citation and footnote omitted].)

⁸Deed, Miaoulis, et al. (G’tors), Miaoulis (G’tee), Middlesex South Registry Book of Deeds, Book 61418, Page 357 et seq. (Dec. 17, 2012).

Mr. Eric Johnson
June 2, 2022
Page - 5 -

Please let me know if you have any questions about this letter, or the matter generally. Please also let me know if you would like copies of any of the cited documents or legal authorities. I have a challenging schedule, but I will make every effort to be available to discuss this matter with you or the Select Board generally.

Very truly yours,

/s/

Arthur C. Fenno, Esq.

cc: Select Board Clerk Marian Neutra marian.neutra@sherbornma.org
Interim Town Administrator Diane Moores diane.moores@sherbornma.org

To: Diane Moores, Interim Town Administrator

From: Neil and Susan McPherson, 9 Great Rock Road

RE: Farm Road Homes Proposed 40B Development

Dear Diane,

We are writing to let the town know our position relative to the proposed 40B development on Farm Road. As neighbors to this proposed development, we oppose a development in this location with this type of density. We are very concerned with how this large-scale development will impact our well water quality and quantity and the wetlands in the area.

Given that the residents of Sherborn rely solely on private wells, the various boards need to do everything within their power to protect our drinking water. The number of units proposed by Mr. Murchison is just too dense. He objected to having 1 home built on a 3+ acre lot across the street from his home and claimed it would make the neighborhood too dense and overcrowded (SJC decision- Robert Murchison vs. Zoning Board of Appeals of Sherborn, 485 MASS 209 (MASS 2020). However, a 32-unit development around the corner from his home will certainly contribute to density and overcrowding of the neighborhood and have an impact on natural resources.

Given the large scale of this proposed development, we are genuinely concerned that our well water will be negatively impacted. The original well at our home had to be re-drilled. Our current well is very deep, yet we get under 5gpm. We are concerned that 32 additional units in close proximity to us, drawing around 11,400 gal of water per day will have a significant impact on all of the surrounding wells. We are also concerned that the density of the development and increased number of septic systems in a small area may contaminate the groundwater and have a negative impact on our wells and surrounding wetlands.

We have lived at our current location for over 25 years. We have personally witnessed the pond on the proposed site overflowing across the dirt drive that exists on the proposed development site. In fact, historic GIS aerial view slides were shared with the various boards showing the area flooded. We are concerned with the impact a dense development will have on the area wetlands, natural vegetation and trail system.

Lastly, as neighbors to the property, we were aware that the property had a deed restriction limiting any future development to one house. This restriction was restated in both the deed purchasing 55 Farm Road, the option to purchase 65 Farm Road and the resulting deed for 65 Farm Road. Since this restriction was restated with each deed recording, we feel that this restriction is enforceable. Therefore, only one home should be allowed on this parcel.

Farm Road is a scenic road and will forever be changed by such a dense development. But most importantly the natural resources we enjoy, especially our drinking water, will forever be altered in a negative way. For these reasons, we urge the boards to oppose such a large-scale development at this location.

Respectfully,



Susan and Neil McPherson

Diane Moores

From: Anne Robb <cdrongift@aol.com>
Sent: Tuesday, June 28, 2022 4:19 PM
To: Diane Moores
Subject: 40B plan for Farm Road

Diane- as a 40 year property owner at 35 Farm Road, I am in disbelief that the town boards would permit a 40B plan for development on this historic byway. Ofcourse the main concern here is that our ground water would be contaminated by such a penetration. Our well has been recently tested and we can certify that as of this date, May 2022, our water meets all safety standards. Any development should be allowed only after water course studies have been submitted and found not to contaminate neighboring wells. Overdevelopment of property on Farm Rd. would be distasterous for the town. Anne Robb

Sent from my iPhone

Diane Moores

From: Michael Lesser <[REDACTED]>
Sent: Thursday, July 14, 2022 11:49 AM
To: Marian Neutra
Cc: George Morrill; Paul DeRensis; Eric Johnson; Jeff Waldron; Diane Moores
Subject: 40B Farm Road Homes: sustainability related comments

Marian and other Select Board members:

I am commenting as a Sherborn resident and not as a member of any town committee/commission, and in this email I am only focusing on a range of sustainability related issues. Some issues are more appropriate for the MassHousing comments letter and hopefully most are appropriate for the comprehensive permit process.

First, I'd like to thank you, Marian, for all your work on gathering and organizing comments on the Farm Road Homes 40B project. Your draft is very good.

1. As in the draft comments letter, the goal of "net zero" with regard to energy and climate change issues is great. In addition, as I have advocated for another 40B project, I would like this and other projects to focus more on energy efficiency and conservation to minimize house energy use. These buildings have a long "working life" and all energy use need to be minimized given the climate change challenge (to put it mildly) and to improve affordability. Achieving "net zero" onsite by producing renewable-based/solar electricity is helpful but using less energy is more important so that any surplus solar power can be fed into an electrical grid that needs to increase its renewable energy content.

At a minimum for efficiency, the Passive House standard for energy use could be adopted. There are significant state incentives to help meet this standard and the new MA building code is moving in the direction. More importantly, this standard is being increasing adopted in other projects in MA with the cost difference becoming very small and such costs are greatly outweighed by energy/operating cost savings (though much of this work has been in larger buildings). It should be noted that the resulting house designs may need to be different from what might be considered "New England" style. Housing styles for much "tighter" or energy efficient homes that also maximize roof-top solar need to become esthetically accepted as part of addressing our urgent climate change issues.

2. I strongly agree with the letter's comment that rooftop solar should be maximized and any ground-mounted solar should not involve tree cutting given the carbon storage and other environmental services provided by trees. I recognize that the proximity of tree can limit rooftop and ground-mounted solar capacities.

3. Related to addressing climate change is the electrification of our cars (that will increasingly be charged by renewable energy sources). This and other projects should have the wiring for EV charging integrated into each home (at least at Level 2, i.e. 240V). In addition there could be some faster charging (such as Level 3) stations onsite to meet urgent needs, though these are expensive.

4. Maximum energy efficiency should also extend to household appliances, especially refrigerators and clothing- and dish-washing machines. There are Energy Star standards that offer a minimum level of high efficiency. (For example, clothing washing machines that extract as much water as possible greatly reduce the use of the very energy-intensive drying of clothes.)

5. Water conservation should be required. I'm not sure of the current and planned building code requirements, but all devices should be EPA Water Sensible and better. Landscape/planting plans should minimize watering/irrigation requirements. This is critical given our Town's limited water resources as well as for energy savings.

6. To protect the sustainability of our water supplies and natural environment, some sort of centralized hazardous material storage area could be considered where residents could deposit materials that should not go down the drain or dumped on the ground. Obviously some arrangements for proper disposal would then have to be setup. I am not sure whether this more accessible setup would increase responsible disposal compared to using the transfer station and the annual hazardous waste day services, but it might and it does not take much avoided pollution to be make a difference.

7. Solar and battery storage: Though beyond the scope of MassHousing comments and the ZBA process, there is the issue of integrating battery storage with solar as this can improve the resilience of our local electricity supplies. In addition to addressing power outages, batteries can improve our electrical grid's ability to handle summer peak demands that will be increasing due to climate change. Our electric utility offers significant incentives for being able to use private battery storage to help address peak summer and winter electricity demands.

Regards, Michael Lesser, 54 Forest Street, Sherborn

Diane Moores

From: Arthur Fenno [REDACTED]
Sent: Thursday, June 30, 2022 3:10 PM
To: Diane Moores
Subject: Re: Comments on Proposed Farm Road, Sherborn, 40B development project

58 Farm Road
Sherborn, Massachusetts 01770
June 30, 2022

BY ELECTRONIC MAIL c/o: Diane.Moores@sherbornma.org
Select Board Chair Eric Johnson
Town of Sherborn
19 Washington Street
Sherborn, Massachusetts 01770

Chair and Members of the Select Board:

Please accept this email in response to your call for comments on the preliminary proposal for the above-referenced project situated on land directly across the street from my property at 58 Farm Road, Sherborn.

I have read the June 29, 2022, submissions to you on this matter from both Brian and Mary Moore of 49 Farm Road, Sherborn, and also from Attorney Dennis Murphy. By this email, I expressly agree with, and fully support, all the points raised in those submissions.

In particular, I want to emphasize that this situation falls squarely with the provisions of 760 Code Mass. Regs. §§ 56.03(1)(e) and 56.03(7) providing for a so-called "cooling-off" period. And on that point, I note that the applicant and I spoke by phone on May 27, 2022, about his proposal for this project: during our conversation, the applicant informed me that he had decided to seek a Comprehensive Permit under chapter 40B only after facing, and because of, the frustrations he had experienced at the local level, including adverse town board and committee decisions, to prior iterations of development for this land (which were "principally residential in use, [and] did not include at least 10% SHI Eligible Housing units," 760 Code Mass. Regs. § 56.03[7]).

Because of work commitments, I likely will not be able to attend tonight's Select Board Zoom meeting, but I would be glad to meet with the Select Board another time to discuss this matter if that would be helpful.

Very truly yours,

Arthur Fenno
58 Farm Road, Sherborn

June 29, 2022

Select Board,
Town of Sherborn
19 Washington Street
Sherborn, MA 01770

Re: Comments on Proposed 40B Farm Road Homes
53-65 Farm Road
Sherborn, MA 01770

Chair and Members of the Select Board,

We have written this letter in response to your previous call for comments on the preliminary proposal for the above-referenced project situated on land immediately abutting our property on 49 Farm Road. We appreciate this opportunity to provide you with our comments and concerns, and expect that you are also already in receipt of our comments from counsel we have retained in these matters – Dennis Murphy, esq.

First allow us to applaud the many volunteers and Town employees who have produced a Housing Production Plan to continue to try to progress our SHI to the 10% threshold mandated by the state. We support development and affordable housing in Sherborn and appreciate all the work of others in this town to do so in a responsible manner that is considerate of the fact that nearly every home in Sherborn relies on individual private groundwater supply wells for their potable water.

Here are our comments on the plan as proposed for your consideration:

Applicant needs a "time out"

We believe the applicant is subject to the 12-month hiatus or 1 year 'cooling off period' as contemplated in 760 CMR 56.03(7).

The applicant and his engineer and his lawyer have appeared dozens of times in front of multiple Town Boards both formally and informally over the past 12 months to develop these parcels. Approximate # of 55/66 Farm was agenda item at Public Meeting in last 18 mos. By reviewing the Town Calendar is 27 times. <https://www.sherbornma.org/calendar> Planning Board (6 times), Sherborn Conservation Commission (10 times), Board of Health (11 times).

They have brought forward multiple ANR plans and pursued a phased, incremental approach for wells, septic, and house permits. We asked for an EHIR when he showed 5 houses on a filed ANR plan, and he refused. He has said he received 'unfair treatment' by boards and abutters, and we believe he is now attempting to bypass those same boards and protections with a 40B application now that Sherborn's Safe Harbor expired as the town-approved Coolidge Crossing project has stalled from what appears to be lack of progress on an inter-municipal agreement for public water and sewer.

In April 2022, the ZBA voted to overturn Building Permit #BP 22-50 for a foundation at 53 Farm on the grounds of 'Infectious Invalidity' based on the applicant aggressive 'fork-tined' type ANR lot lines. This appeal hearing brought into sharp focus the applicant's attempts to evade and avoid the setback

requirements and *Intent* of the Town bylaws and setback requirements –an ironic and perhaps frivolous test of the town's resolve to enforce dimensional requirements.

The applicant could have come forward with a rational Open Space Plan which would have required an Environmental Health Impact Report (EHIR) and put the burden on him to show no negative health impact to neighboring wells. He and his lawyer were among those who consulted the Planning Board on the new Open Space bylaw and surely they recognize this is the *preferred* approach to protect Sherborn's open space, rural environment and drinking water. Instead of coming forward with a complete plan a year ago once they had completed their soil testing, they chose to exploit the ANR process and now, it appears, the 40B process.

The numerator/denominator values on this "40B Project" will barely move the SHI towards our 10% goal. It may in fact be the first of several "40B Projects" that come forward as a way to circumvent and avoid Town Bylaws and Regulations. The applicant has communicated to several residents his intent to file a 40B where he has an option to purchase 18 acres at Greenwood/Washington Street.

We hope you will support our assertion with Mass Housing that the applicant be subjected to the 12-month hiatus or 1 year 'cooling off period' as contemplated in 760 CMR 56.03(7).

Applicant is exploiting the environment to his benefit

Chapter 40B was created in 1969 and pre-dates most, if not all, of the wetlands and water resource protection bylaws in the Commonwealth. Not surprisingly, Sherborn was an early protector of the environment with the establishment of a Conservation Commission in 1961 (Chapter 40, § 8D). The BoH was established in 1957 (Chapter 41, §§ 1 and 2) and volunteers on these boards over decades have been protecting public health and recognizing the connection between our drinking water, our septic systems, and our health. A prescient Sherborn BoH intended, we believe, to include the term 'watercourse' in their bylaws and established a 125-foot setback from new septic systems to provide local protections for drinking water from development. Regulations to prevent septic systems and other pollution sources (including PFAS) from contaminating surface and ground waters should be enforced and we believe the Select Board should continue to appoint and support those who are willing to stand up to developers whenever the public health of residents is at risk.

Environmentally-sensitive land containing wetlands and other water resources are less inexpensive because local regulations restrict what can be built. It is irresponsible to allow a developer with a financial incentive to purchase land at a discount and obtain waivers; to then turn around and financially benefit from the same regulations that influenced the affordability of the land in the first place. It is allowing profit at the expense of environmental protection. It also puts residents, including those in the new affordable homes, at risk. There is currently legislation pending that would provide more local environmental control for 40B applications, we would encourage the Select Board and Planning Board to support this legislation as it feels consistent with our 2019 Master Plan. (see [Bill H.2198](#) Referred to House Committee on Bills in the Third Reading - An Act relative to the preservation of wetlands and water resources in Chapter 40B applications)

The applicant chose to incrementally bring forward small parts of a larger development scheme. As abutters, we have spent hundreds of hours to stay abreast public meeting agendas where these projects have been discussed. We have spent thousands of 'would-be college tuition dollars' on expert and legal

fees. These are real costs to us and others in the neighborhood trying to protect our rights and our drinking water resource.

The "Farm Road Homes" 40B project does not work under any circumstances.

There are many reasons why we believe this project simply does not work, here are a few for your consideration:

- There is not adequate space on this parcel to accommodate the public water supply Zone I or IWPA necessary to serve 32 dwellings on the site (please see attached diagram).
- The project is too dense to allow for proper wastewater and greywater treatment without putting neighboring wells and abutting wetlands at risk. The volume and density of these systems will result in a public health risk as mounding and daylighting of greywater/wastewater will likely occur. Our hired expert, Scott Horsley, in a letter dated 2/15/22 and previously filed with and presented to the Board of Health shows how the development of only five (5) homes (ANR plan filed with the registry in Jan/Feb) would cause groundwater mounding and result in water quality degradation in downgradient drinking water. Such mounding and loading would be approximately doubled by this more extensive and condensed development proposed by the applicant.
- The existing NOIs and OOCs 55 and 65 Farm Road do not reflect the larger project and do not provide the necessary protections or stormwater controls for the large adjacent wetland system or the nearby Town Zone II wells and Zone I wells which are considered critical areas. We believe the Town should ask the Con Comm to rescind those OOCs immediately and request the applicant reapply, sharing the full scope of the proposed 40B project in a new NOI application.

What is good for a Developer is not necessarily good for Sherborn

Just because one could build it does not mean one should build it. This development approach seems to be 'bend it until it breaks'. Other developments in Town have recently followed the same process, resulting in negative consequences to the precious groundwater resource which we all rely on for our drinking water.

The developer claims he receives unfair treatment by the Town and abutters. Quite honestly, our opinion is that if the applicant has a vision to develop affordable housing in Sherborn why not pick up the Coolidge Crossing mantle and bring that project across the finish line. That project has already received the endorsement of the Town and its boards and would put Sherborn firmly in safe harbor.

We have seen plans for five (5) homes with various ANR submissions. We've seen ANR + Open Space for 11 to 14 total homes. Now we see a 40B with 32 homes. Who knows what the truth is? This speculative development approach that later turns into a 40B is extremely taxing on a community; draining local resources and funds, costing the town and neighbors money, and endangering our shared groundwater resources. This feels like the beginning of a painful 'death by a thousand cuts' for Sherborn as we know it if volunteers continue to step away from boards and unfriendly development 40B projects continue to consume Town resources, exhaust employees and boards, and spread angst

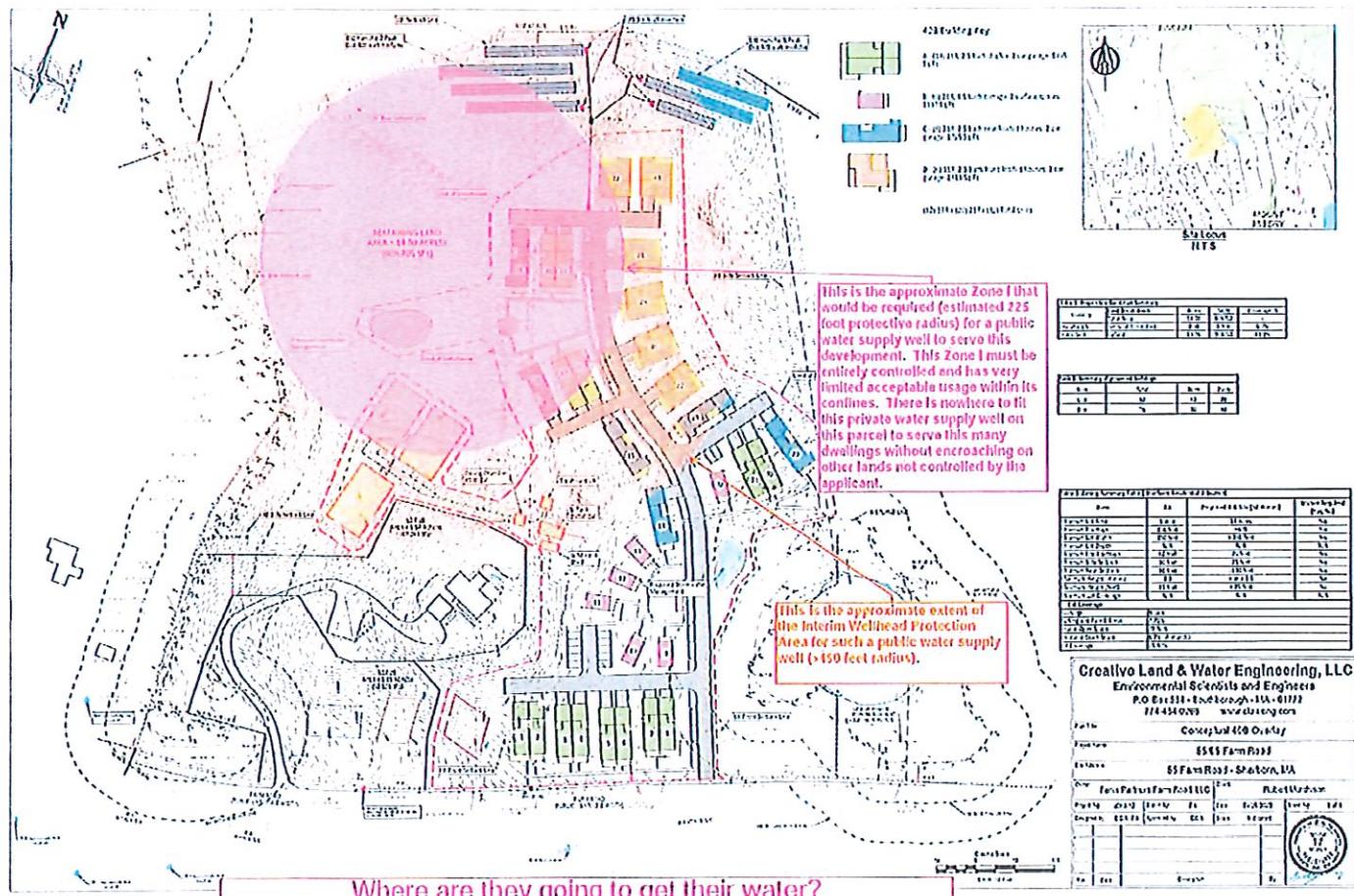
across neighborhoods where the threat of a new 40B creates concerns for existing residents and future buyers.

With what is already known about the geology and wetlands surrounding these parcels, the burden should be squarely on the applicant to demonstrate that there is no potential risk to neighboring resources such as those identified in *Reynolds v. Stow Zoning Bd. of Appeals*, Appeals Court No. 14-P-663 (Sept. 15, 2015). We hope the BoH and Town will recognize the science and data presented by our expert that five (5) homes on this parcel is a health risk and 32 homes is an even bigger health.

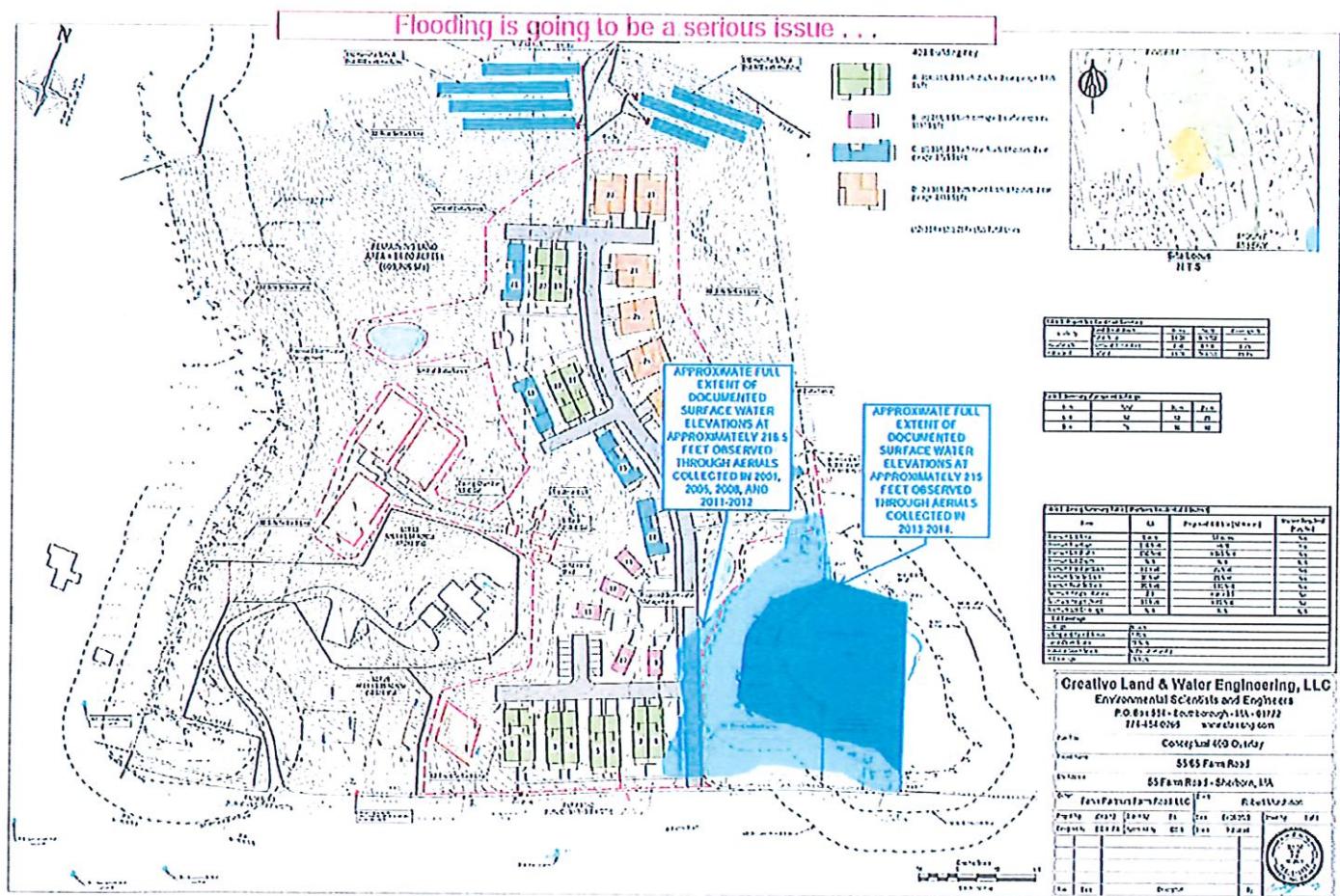
We implore the Select Board to do everything they can, including empowering the Town Planner and Town Administrator to get the Coolidge Crossing project (which Town Meeting approved) back on track. We need to track our progress against goals in the Housing Production Plan to increase our SHI and remove real and frivolous threats of 40Bs that are causing emotional and financial drain on Sherborn's most valuable resource – her residents.

Thank you.

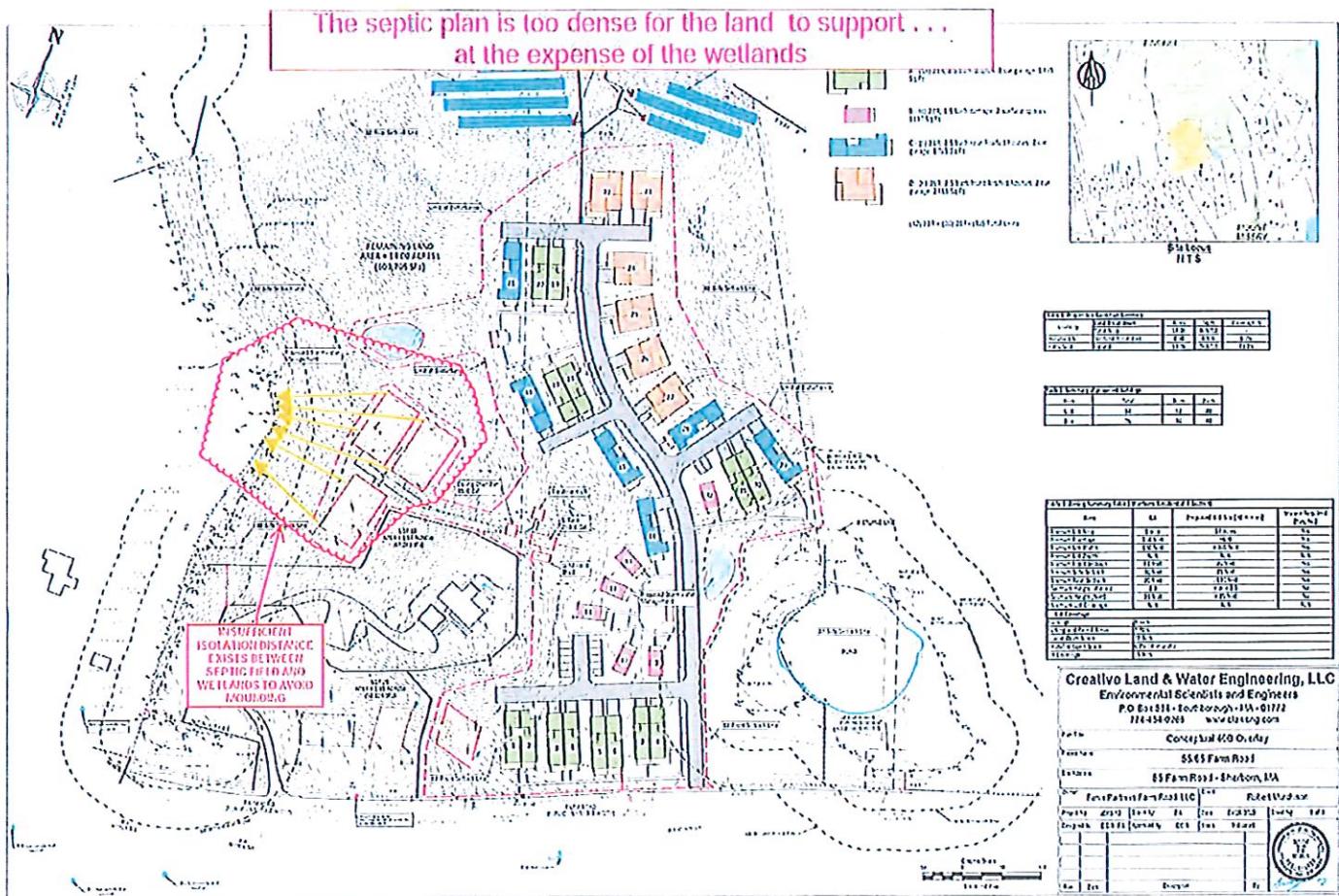
Appendix attached to email - 2022 06 22 Observation on 40B Project Farm Road Homes.PPT



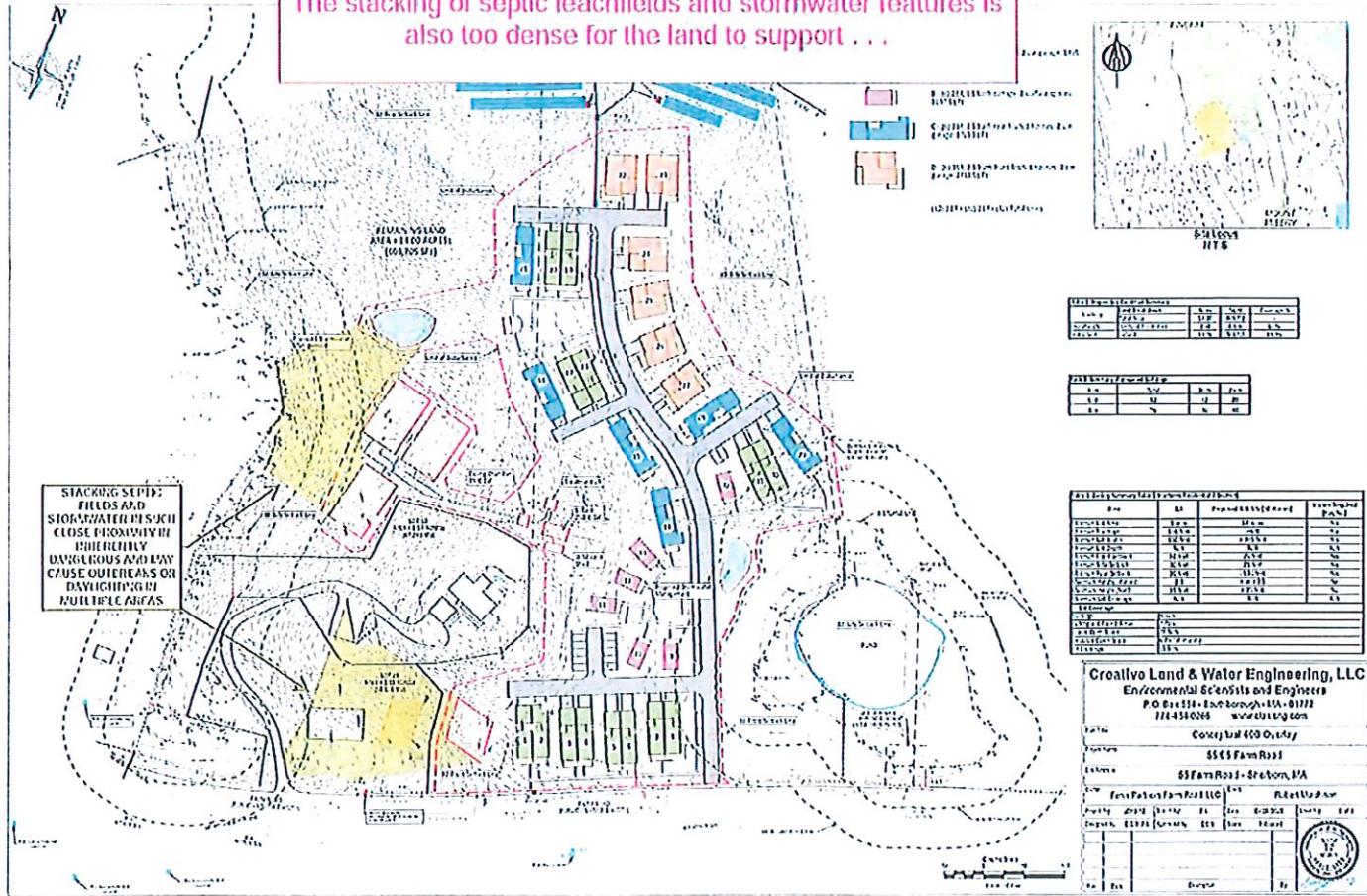
Where are they going to get their water?



The septic plan is too dense for the land to support . . .
at the expense of the wetlands



The stacking of septic leachfields and stormwater features is also too dense for the land to support . . .



Diane Moores

From: Debbie DeMauro <outlook.1AE97FD047BB1943@outlook.com>
Sent: Thursday, June 30, 2022 2:16 PM
To: Diane Moores
Subject: farm road mess

Sent from [Mail](#) for Windows

Hi Diane, I hope we are not driving you crazy with all these comments...I just want to officially state the if these homes/development are called sustainable, it means a lot more that a field of solar panels. Sustainable products (heat pumps, triple pane windows, proper insulation, appliances, etc.) are to be used in the building of these homes, all 32 of them. I also am absolutely against duplexes! In my opinion they will forever change the look of our town, especially on such a scenic road! Maybe in 2050 we will need to have to pack homes in then, please not now. Debbie deMauro

Thanks, and have a nice 4th

Diane Moores

From: Karen Bonadio [REDACTED]
Sent: Monday, July 18, 2022 8:58 AM
To: Diane Moores
Subject: RE: Project on Farm Road

Dear Vice Chair Neutra,

Apologies for the delay in sending this note. I am an abutter to the project on Farm Road. I am concerned by the sheer density of the project: 32 units on 14 acres of land.

I have concerns about impact of the number of septic fields and on the water supply. The septic effluent of all the septic fields has the potential to contaminate the water supply for Farm Road residents. In addition, when the property in question was flushing one well, I experienced well testing issues with my water supply. I did report this to the board of health and was informed it was my own responsibility to prove. If that was just one new well impacting water supply, what will the impact of 32 new wells and septic fields have on the residents on Farm Road?

Lastly, the density will create lots of traffic on Farm Road which is already a busy road since it had limited sidewalks that are not on that part of Farm Road to Farm Street. Many people already walk, bike and run on Farm Road as it connects to the commercial area of Sherborn, to Farm Pond and Dover Sherborn high school and middle school and their safety should be a concern as well.

Thank you for your consideration,
Karen Bonadio
52 Farm Road