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# MIRICK O'CONNELL

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A T T O R N E Y S   A T   L A W

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**AMENDED NOTICE OF APPEAL PURSUANT TO M.G.L. c. 40A, § 17**

September 1, 2021

**VIA HAND DELIVERY**

Andrew T. Dowd, Town Clerk  
Northborough Town Offices  
Office of the Town Clerk  
63 Main Street  
Northborough, MA 01532

NORTHBOROUGH TOWN CLERK  
ROUD 2021 SEP 1 PM12:38

Re: Isomedix Operations, Inc. d/b/a STERIS A.S.T. v. Kerri A. Martinek, Amy Poretzky, Anthony W. Ziton, Milly Milton, And Michele Gillespie, as Members of the Planning Board for the Town of Northborough, Massachusetts Land Court, Civil Action No. 21MISC000436

Dear Mr. Dowd:

Notice was given on August 31, 2021 that Isomedix Operations, Inc. d/b/a STERIS A.S.T. ("STERIS") had filed a Complaint pursuant to M.G.L. c. 40A, § 17 in the above-referenced Massachusetts Land Court action ("Notice"). The Complaint is a timely appeal of the Decision of the Town of Northborough Planning Board filed with the Town Clerk on August 12, 2021. The Decision denies STERIS' application for site plan approval and a groundwater special permit.

Since the Notice, the Massachusetts Land Court has provided a date-stamped copy of the Complaint and assigned the case Civil Action No. 21MISC000436. This Amended Notice is hereby given with that information.

Two copies of the date-stamped Complaint, which includes the Decision as Exhibit K, are enclosed. Kindly file the Amended Notice of Appeal and Complaint and date stamp the extra copy for the awaiting courier. Thank you in advance for your assistance.

Client Matter  
29774/00001/A7340082.DOC

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MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP  
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**MIRICK O'CONNELL**

Andrew T. Dowd, Town Clerk  
Northborough Town Offices  
September 1, 2021  
Page 2

Please do not hesitate to call me if you have any questions about this filing.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Morrissey', with a stylized, sweeping flourish at the end.

William J. Morrissey

Enclosure

cc: David K. McCay, Esq. (via email, with enclosure)  
Stephen F. Madaus, Esq. (via email, with enclosure)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

LAND COURT DEPARTMENT  
CIVIL ACTION NO.

LAND COURT  
FILED

2021 AUG 31 PM 4:06

ISOMEDIX OPERATIONS, INC. d/b/a  
STERIS A.S.T.,  
Plaintiff

v.

KERRI A. MARTINEK, AMY PORETSKY,  
ANTHONY W. ZITON, MILLY MILTON,  
AND MICHELE GILLESPIE, as members of  
the Planning Board for the TOWN OF  
NORTHBOROUGH  
Defendants

NORTHBOROUGH TOWN CLERK  
RCUD 2021 SEP 1 PM 12:38

COMPLAINT

This Complaint is brought pursuant to M.G.L. c. 40A, § 17, along with related claims, by the Plaintiff, Isomedix Operations, Inc. d/b/a STERIS A.S.T. (“STERIS”) as a result of a decision of the Town of Northborough Planning Board (“Planning Board”) denying site plan approval and a groundwater special permit for STERIS’ proposed medical supply processing facility in an existing industrial building at 425 Whitney Street, Northborough. However, this is no ordinary zoning appeal by an aggrieved project proponent.

In this case, STERIS’ proposed use was allowed *by right* under the then-applicable Northborough Zoning Bylaw (“Bylaw”), reviewed by the Planning Board over 20 sessions of a public hearing stretching for more than a year and a half from October 17, 2019 to May 18, 2021, supported by detailed expert submissions satisfying *all* of the requirements of the Bylaw, and reviewed and approved by a team of peer reviewers selected by the Planning Board and paid for by STERIS. Notwithstanding the absence of *any* evidence in the record that would support its denials, the Planning Board applied the wrong criteria to STERIS’ application contrary to

detailed legal memoranda from Town Counsel, and manufactured purported findings of fact to deny STERIS' application with gross negligence, in bad faith and with malice against STERIS.

STERIS requests that the court reverse the Planning Board's denial and award STERIS its damages, costs, and reasonable attorney's fees incurred in connection with the Planning Board's bad faith denial.

### **Jurisdiction**

1. The Land Court has jurisdiction of this action pursuant to M.G.L. c. 40A, §17 and M.G.L. c. 185, §1(p).

### **Parties**

2. The Plaintiff, STERIS, is a Delaware corporation registered to conduct business in Massachusetts with places of business at 425 and 435 Whitney Street, Northborough, Massachusetts.

3. The Defendant, Kerri A. Martinek, is the Chair of the Planning Board and, on information and belief, resides at 16 Hemlock Drive, Northborough, Massachusetts 01521, and is named as a Defendant in her capacity as a member of the Board.

4. The Defendant, Amy Poretsky, is a member of the Planning Board and, on information and belief, resides at 47 Indian Meadow Drive, Northborough, Massachusetts 01532, and is named as a Defendant in her capacity as a member of the Board.

5. The Defendant, Anthony W. Zitton, is a member of the Planning Board and, on information and belief, resides at 17 Franklin Circle, Northborough, Massachusetts 01532, and is named as a Defendant in his capacity as a member of the Board.

6. The Defendant, Millie Milton, is a member of the Planning Board and, on information and belief, resides at 50 Fay Lane, Northborough, Massachusetts 01532, and is named as a Defendant in her capacity as a member of the Board.

7. The Defendant, Michelle Gillespie, is a member of the Planning Board and, on information and belief, resides at 117 Howard Street, Northborough, Massachusetts 01532, and is named as a Defendant in her capacity as a member of the Board.

8. The Defendant, Planning Board, has an address of 63 Main Street, Northborough, Massachusetts 01532, and is responsible for reviewing applications for site plan approval and groundwater special permits for the Town of Northborough.

#### **Background**

9. This case concerns STERIS' property at 425 Whitney Street, Northborough, Massachusetts (the "Property"), which includes an existing industrial building (containing approximately 43,753 square feet) and paved parking areas.

10. The Property is located in the Industrial Zoning District and within the Groundwater Protection Overlay District, as defined in the Bylaw.

11. STERIS seeks to construct two additions with a combined total of approximately 23,000 square feet to its existing industrial building for the sterilization of medical devices, equipment and consumer products (the "Project").

12. The Project will utilize the existing curb cut to Whitney St., the existing parking lot and the existing stormwater management systems (with appropriate upgrades).

13. On September 13, 2019, STERIS filed an application for site plan review and for a groundwater special permit (the "Application") with the Northborough Town Clerk and the Planning Board. A copy of the Application form is attached as Exhibit A.

14. Before filing the Application, STERIS requested a Zoning Interpretation from the Northborough Building Inspector, Robert J. Frederico, using the Building Department's official form.

15. On May 22, 2019, the Building Inspector provided STERIS a signed Zoning Interpretation Request Form noting that the use was allowed subject to a dimensional variance from the Zoning Board of Appeals and project approval by the Conservation Commission.<sup>1</sup> A copy of the signed Zoning Interpretation Request Form for the Project is attached as Exhibit B.

16. STERIS received the necessary dimensional variance from the Zoning Board of Appeals by a decision from the Zoning Board of Appeals filed with the Town Clerk on September 25, 2019 ("ZBA Approval").

17. STERIS also received an Order of Conditions for the Project from the Conservation Commission on October 23, 2019 ("Conservation Commission Approval").

18. On February 11, 2020, the Town of Northborough Groundwater Advisory Committee voted *unanimously* to recommend approval of a groundwater special permit for the Project ("Groundwater Advisory Committee Approval").

19. By letter dated March 10, 2020, the Town Engineer notified the Planning Board of the Groundwater Advisory Committee Approval. A copy of the Town Engineer's letter is attached as Exhibit C.

### **The X-Ray Sterilization Technology for the Project**

20. The Project is for the purpose of installing an x-ray pallet system to sterilize medical devices, equipment and consumer products (e.g., paper products, plastic products,

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<sup>1</sup> On September 18, 2019, the Building Inspector issued a subsequent written determination. During the continued public hearing on September 15, 2020, the Building Inspector clarified his determinations stating unequivocally that STERIS' proposed use was by right under the Bylaw.

bandages and gauze) in the existing building, as improved. The x-ray pallet system is located in a specially designed concrete enclosed room called a shield. The shield is designed for containment of the highest output of power to be created by the x-ray system.

21. STERIS will receive the manufactured products of others, which will remain in their original packaging during the processing. The products are then taken to the enclosed room (shield) using the pallet conveyance system. The x-ray system uses an electron beam to create x-rays inside the shielded area to irradiate the products. After sterilization, the products are shipped to their designated destinations.

22. The x-ray system is designed and will be operated in accordance with the requirements of the Massachusetts Department of Public Health pursuant to M.G.L. c. 111, §5N.

23. The Mass. Dept. of Public Health has exclusive jurisdiction over this technology pursuant to M.G.L. c. 111, §5N, which states:

Except as otherwise provided in this section, the department is hereby designated as the state radiation control agency. The department shall develop and, from time to time, after a public hearing, prescribe and establish rules and regulations, compatible or consistent, whichever appropriate, with federal rules and programs, necessary to implement a program for the evaluation and control of the radioactive hazards of radioactive materials and of machines which emit ionizing and nonionizing radiation and for the issuance, amendment, suspension and revocation of general and specific licenses for by-product, source and special nuclear material or devices or equipment utilizing such material, for the purpose of protecting the general public and individuals against hazards associated with the possession, use, transportation, storage, packaging, sale, distribution, production, and disposal thereof...

24. Section 5N further provides:

The department of public health shall establish rules and regulations of the commonwealth insofar as they pertain to the health aspects of ionizing and nonionizing radiation. *Such rules and regulations shall apply exclusively throughout the commonwealth.* (Emphasis added).

25. The Massachusetts Department of Public Health promulgated regulations in accordance with its exclusive authority. The primary regulations are found at 105 CMR 120.000, et seq., entitled “Control of Radiation.”

26. As a result, the Planning Board is preempted by state law from regulating or conditioning, through Site Plan approval or any other means, STERIS’ use of ionizing machines and equipment.

**The Public Hearing and Record Evidence on the Application**

27. The Planning Board held 20 sessions of the public hearing on STERIS’ Application on October 17, November 5, December 3, and December 12, 2019, January 16, February 4, February 18, March 10, April 7, June 16, August 4, September 15, and December 1, 2020, January 5, February 2, March 2, April 6, April 20, May 4, and May 18, 2021.

28. On May 18, 2021, the Planning Board closed the public hearing.

29. At many of the sessions, the Board expressed confusion as to the scope of its jurisdiction and review, and the appropriate criteria for the site plan review and the groundwater special permit requested in the Application.

30. On September 14, 2020, Town Counsel provided a memorandum to the Planning Board (“Town Counsel’s September 14th Memorandum”) in which he outlined the criteria to be applied to STERIS’ Application for site plan approval. Town Counsel advised the Planning Board to apply the nine (9) factors set forth in Section 7-03-050.C.(2)(b) of the Bylaw. A copy of Town Counsel’s September 14th Memorandum is attached as Exhibit D.

31. On September 15, 2020, Town Counsel provided another memorandum to the Planning Board (“Town Counsel’s September 15th Memorandum”), this time in connection with another project application, in which he confirmed the criteria to be applied to a request for a



groundwater special permit as set forth in Section 7-07-010.D.(4)(e) of the Bylaw, along with any area-specific requirements stated in Section 7-07-010.D.(3). A copy of Town Counsel's September 15th Memorandum is attached as Exhibit E.

32. On October 6, 2020, Town Counsel provided a third memorandum to the Planning Board ("Town Counsel's October 6th Memorandum"), again in connection with another project application, in which Town Counsel reaffirmed that the criteria to be applied to a request for a groundwater special permit were set forth in Section 7-07-010.D.(4)(e) of the Bylaw. A copy of Town Counsel's October 6th Memorandum is attached as Exhibit F.

33. On April 5, 2021, Town Counsel provided a fourth memorandum to the Planning Board ("Town Counsel's April 5th Memorandum"). Town Counsel noted that STERIS' property fell within Area 3 of the overlay district and subsection 7-07-010.D.(3)(c)[4] of the Bylaw applied to STERIS' application. Town Counsel also addressed the Planning Board's questions regarding certain conditions, and the proposed temporary concrete batching plant. A copy of Town Counsel's April 5th Memorandum is attached as Exhibit G.

34. As part of the public hearing, the Planning Board obtained, at STERIS' expense, detailed peer reviews of: (1) the Project's engineering by Environmental Partners' Director of Planning, Scott D. Turner, PE, AICP, LEED AP ND, (2) the Project's traffic impacts by Environmental Partners' traffic engineer, Jane R. Davis, P.E., and (3) the Project's x-ray pallet sterilization system by CN Associates' Director of Operational Health Physics, Donald T. Flahardy, CHP. A copy of their written reports to the Planning Board are attached as Exhibits H, I and J, respectively.

35. In each instance, the Planning Board's peer reviewer found *no deficiencies* in the Project and did not identify any aspect of the applicable site plan review or groundwater special permit criteria that STERIS failed to meet. See generally Exhibits H, I and J.

36. The Planning Board voted on STERIS' Application on June 1, 2021 and filed its written decision with the Northborough Town Clerk on August 12, 2021 (the "Decision"), a copy of which is attached as Exhibit K.

37. In its Decision, the Planning Board:

- a. applied the incorrect standards, including the standards for a traditional special permit for which STERIS never applied because, as the Building Inspector determined, STERIS' use is allowed by right in the Industrial Zoning District, as designated by a "Y" in the Table of Uses at the time STERIS filed its Application;<sup>2</sup>
- b. purported to determine that STERIS' use was prohibited, notwithstanding the Building Inspector's contrary determination, the clear language of the Northborough Zoning Bylaw, and the "plan freeze" secured by STERIS in March of 2020;
- c. purported to deny STERIS site plan approval based on STERIS' use of x-ray sterilization technology that is the exclusive jurisdiction of the Massachusetts Department of Public Health and not within the scope of the site plan review criteria; and

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<sup>2</sup> The designation for "Light Industrial" in the Table of Uses was changed to require a special permit pursuant to Article 41, sponsored by the Planning Board, at the 2020 Northborough Annual Town Meeting held on July 18, 2020. However, STERIS had secured a "plan freeze," pursuant to M.G.L. c. 40A, §6 prior to the Planning Board's public hearing to consider the amendment to the Table of Uses.

- d. denied STERIS a groundwater special permit, despite the unanimous recommendation for approval of STERIS' project by the Town's Groundwater Advisory Committee, the approval of the proposed temporary concrete batching plant by the Conservation Commission in its Order of Conditions, the finding of the Town's engineering peer reviewer, Environmental Partners, that the Project complied with the Mass. Stormwater Standards, and STERIS' statement at the May 18, 2021 session of the public hearing that, in light of the concerns expressed by the Planning Board, STERIS would no longer use a temporary concrete plant for construction of the Project if the Planning Board desired.

**STERIS' Use Is Allowed By-Right**

38. After STERIS filed its Application, the Bylaw was amended. By vote under Article 41 at the Northborough Annual Town Meeting on July 18, 2020, the Town voted to amend Table 1, "Table of Uses, Part B, Commercial and Industrial Districts", in Section 7-05-030, by changing the designation for the use "Light Manufacturing" in the Table of Uses from a "Y", a use permitted by right, to a designation of "PB", a use allowed by special permit from the Planning Board.

39. STERIS filed an "Approval Not Required" (ANR) Plan in accordance with M.G.L. c. 41, § 81P with the Planning Board, with written notice of such submission given to the Northborough Town Clerk on March 5, 2020. See Exhibit M.

40. The Planning Board endorsed the ANR Plan on March 10, 2020.

41. As a result, STERIS is entitled to a three-year "plan freeze" relative to the use of the Property in accordance with M.G.L. c. 40A, § 6, 7<sup>th</sup> paragraph.

42. The three-year plan freeze is effective relative to all subsequent amendments to the Zoning Bylaw concerning the use of the Property, as shown on the ANR Plan.

43. In Paragraph 3 of the Specific Findings, the Planning Board erroneously finds that “[w]ithout a special permit as requested, the proposed use is not a permitted use under the Zoning Bylaw...”

44. According to the Bylaw in effect at the time of STERIS’ Application, light manufacturing was an allowed use in the Industrial District under the Table of Allowed Uses in Section 7-05-030.

45. Section 7-05-020 of the Bylaw defined light manufacturing as:

Fabrication, processing, packaging, or assembly operations, employing only electric or other substantially noiseless and inoffensive motor power, utilizing hand labor or quiet machinery and processes, and free from neighborhood-disturbing agents such as odors, gas, fumes, smoke, cinders, refuse matter, electromagnetic radiation, heat, vibration, or noise; provided, that all operations are located entirely within an enclosed building and there is no outside storage of materials or finished goods.

46. The Building Inspector, who is authorized to make such determinations pursuant to Section 7-03-080 of the Bylaw, determined that STERIS’ proposed use is a by right use.

47. The Town’s engineering peer reviewer, Scott D. Turner, PE, AICP, LEED AP ND, of Environmental Partners Group, Inc., agreed with the Building Inspector’s determination. Mr. Turner stated in his April 30, 2021 report to the Planning Board, “The applicant has described the proposed use as ‘Light manufacturing: processing.’ We generally agree with that description.” See Exhibit H, p.4.

**STERIS’ Use Does Not Require a Traditional Special Permit**

48. At the continued public hearing on September 15, 2020, the Planning Board Chairperson, Kerri Martinek, asked the Building Inspector whether STERIS’ proposed use was a

by-right use. The Building Inspector stated unequivocally that STERIS' proposed use was allowed by right and that he would provide such a determination in writing if necessary.

49. As a result, Section 7-03-050.A.(2) of the Bylaw, which states that “[a] special permit with site plan approval shall be required for any *use requiring a special permit*” (emphasis added), does not apply to the Project and STERIS Application.

50. The Planning Board knew, or should have known, that Section 7-03-050.A.(2) of the Bylaw and the traditional special permit criteria in Section 7-03-040 did not apply to STERIS' Application.

51. The Planning Board sponsored an article at Town Meeting to amend the Bylaw to impose such a standard, while STERIS' Application was pending and more than a year after STERIS secured a three-year “plan freeze” for the use of the Property.

52. Specifically, the Planning Board sponsored Article 36 at the 2021 Annual Town Meeting, which deleted the reference to “the specific criteria” for a groundwater protection special permit in the Bylaw and inserted, “in accordance with section 7-03-040” (the traditional special permit standard). A copy of Article 36 is attached as Exhibit L.

53. Despite the “plan freeze” protection afforded to STERIS' Property, the Planning Board in bad faith imposed the new standard to STERIS' Application knowing it did not apply.

#### **Site Plan Approval**

54. Section 7-03-050.C.(2) of the Bylaw specifies the criteria for site plan approval:

The Planning Board *shall* approve a site plan if it determines that:

- (a) The site plan meets all applicable requirements of this bylaw;
- (b) Given the location, type and extent of land use proposed by the proponent, the design of building form, building location, egress points, grading, and other elements of the site plan could not reasonably be altered to:

- [1] Reduce clearing and grading on the site, or reduce the volume of cut and fill, the number of removed trees, the length of removed trees, the length of removed or altered stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, or threat of air or water pollution,
- [2] Reduce the risk of groundwater contamination from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances,
- [3] Improve pedestrian, bicycle or vehicular safety, both on the site and egressing from it,
- [4] Improve access to each structure for fire and other emergency service equipment,
- [5] Reduce visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned,
- [6] Achieve greater consistency and compatibility with the surrounding area as to building design or scale, or site design,
- [7] Reduce glare from headlights, reduce light trespass from luminaires onto adjacent lots or the street, or light overspill into the night sky,
- [8] Avoid the removal or disruption of historic, traditional or significant structures or architectural elements, and
- [9] Reduce obstruction of scenic views from publicly accessible locations, and

(c) Any variances required from the Zoning Board of Appeals have been granted. (Emphasis added).

55. As set forth above, Town Counsel confirmed in writing to the Planning Board, prior to the Planning Board's issuance of its Decision, that the site plan approval criteria set forth at Section 7-03-050.C.(2) of the Bylaw applied to STERIS' Application.

56. Per Town Counsel, the scope of site plan review does not include issues of "use," especially where a use in question is allowed by right. See Exhibit D. None of the site plan review criteria concern site construction or an applicant's proposed use *inside* a building.

57. At page 6 of its Decision, however, the Planning Board erroneously cites and applies to STERIS' Application the traditional special permit criteria in Section 7-03-040.C. of the Bylaw.

58. Section 7-03-040.C. establishes the criteria for a traditional special permit (as opposed to site plan approval or a groundwater special permit). Under Section 7-03-040.C., these traditional special permit criteria apply "*unless otherwise specified herein...*" (emphasis added) – i.e., only when the Bylaw itself does not otherwise specify the special permit criteria to be applied. Here, the groundwater special permit provision in Section 7-07-010.D.(4)(e) of the Bylaw specifies the criteria for a groundwater special permit.

59. As a result, the Planning Board unlawfully applied the traditional special permit criteria for review of STERIS Application.

60. For instance, the Planning Board erroneously found at Paragraph 1(a) of the Specific Findings that STERIS did not provide sufficient evidence that the Project would not be injurious to public health, safety, and welfare.

61. These findings are unrelated to the applicable criteria for STERIS' Application, exceed the authority of the Planning Board in reviewing the site plan, and are not supported by any record evidence before the Planning Board. The Planning Board, in making such findings, failed to apply the site plan approval criteria in Section 7-03-050.C.(2) of the Bylaw.

62. The Planning Board further exceeded its authority in finding at Paragraph 1(b) of the Specific Findings that STERIS' traffic study did not adequately cover the impact concrete trucks during the construction phase would have on the Town's roadways.

63. This finding is unrelated to the applicable criteria for STERIS' Application, concerns a method of construction outside the scope of the Planning Board's jurisdiction

pursuant to M.G.L. c. 40A, §3, exceeds the authority of the Planning Board in reviewing the site plan, and is unsupported by any record evidence before the Planning Board. The Planning Board, in making such a finding, failed to apply the site plan approval in Section 7-03-050.C.(2) of the Bylaw.

64. The Planning Board's finding is contradicted by the Town's own peer traffic peer reviewer, Jane R. Davis, PE of Environmental Partners Group, Inc., who concluded that VAI [STERIS' traffic consultant] has adequately addressed all of our questions raised in the TIA Peer Review, and all comments have been closed as of this review." See Exhibit I, p.3.

65. The Planning Board's finding is further contradicted by the Town's own engineering peer reviewer, Scott D. Turner, PE, AICP, LEED AP ND, the Director of Planning at Environmental Partners Group, Inc., who stated in his report, with respect to the temporary concrete plan trucking, "We would expect that any noise associated with trucks would be typical travel noise as well as loading and unloading." See Exhibit I, p.3.

66. The Planning Board exceeded its authority in finding at Paragraph 1(c) of the Specific Findings that the noise generated by the Project would adversely affect the neighborhood. Such a finding is speculative, unrelated to the applicable criteria for STERIS' Application, exceeds the authority of the Planning Board in reviewing the Application, and is directly contradicted by the record evidence before the Planning Board. The Planning Board, in making such a finding, failed to apply the site plan approval criteria in Section 7-03-050.C.(2) of the Bylaw.

67. In addition, the Town's engineering peer reviewer, Scott D. Turner, PE, AICP, LEED AP ND, of Environmental Partners Group, Inc., informed the Planning Board in his report, that "EP does not perform sound studies or noise analysis." See Exhibit H, p.4.



68. The Planning Board neither requested or obtained any further noise or sound peer review.

69. The only noise or sound study submitted to the Planning Board was that of Marc C. Wallace, QEP, INCE, of Tech Environmental on behalf of STERIS. Mr. Wallace stated in his April 29, 2021 report, "Tech performed a conceptual design sound study for the Project. The results of the Study reveal that the Project will fully comply with both the Noise Bylaw and Policy with recommended sound mitigation measures."

70. The Tech Environmental sound study by Mr. Wallace was not rebutted by any sound engineer or other qualified professional in the Planning Board public hearing record.

71. The Planning Board further exceeded its authority in finding at Paragraph 1(d) of the Specific Findings that purported toxic gases generated as a byproduct of the sterilization process would adversely affect the neighborhood. Such a finding is speculative, unrelated to the applicable criteria for STERIS' Application, exceeds the authority of the Planning Board in reviewing the site plan, and is unsupported by the record evidence before the Planning Board. The Planning Board, in making such a finding, failed to apply the site plan approval criteria set forth at Section 7-03-050.C.(2) of the Bylaw.

72. This finding was also contradicted by the Town's own peer review consultant, Donald T. Flahardy, CN Associates' Director of Operational Health Physics. Mr. Flahardy stated in his report that "C.N. has no comment regarding ozone emissions," and "C.N. has no comments regarding carbon dioxide emissions." See Exhibit J, p.11 of second memorandum, p.21 of first memorandum.

73. Mr. Flahardy had the same response to concerns raised by the Planning Board with respect to “the power grid,” “non-ionizing EM radiation (EMFs),” and “electromagnetic interference.” See id. at p.11 of second memorandum, p.21 of first memorandum.

74. With respect to the Planning Board’s radiation related concerns, Mr. Flahardy plainly stated, “*C.N. agrees with Steris that the operation of the pallet sterilizer does not use nor create radioactive material. C.N. agrees there will be no radioactive emissions from the property.*” See id. at p.10 of first memorandum (emphasis added).

75. The remaining facts set forth in Paragraph 1(e)-(h) of the Specific Findings are also not within the scope of the site plan approval criteria in Section 7-03-050.C.(2) of the Bylaw.

76. The Groundwater Advisory Committee Approval, the Conservation Commission’s Order of Conditions, the Planning Board’s own peer reviews, the information submitted by STERIS in support of its Application, and the testimony offered at the public hearing established that STERIS satisfied all of the site plan approval criteria in Section 7-03-050.C.(2).

77. As a result, the Planning Board was *required* to approve STERIS’ site plan.

78. The Planning Board’s failure to apply the correct criteria to STERIS’ Application and the resulting failure to approve STERIS’ Application for site plan approval was arbitrary and capricious, unsupported by the facts, contrary to the evidence, in excess of the Planning Board’s authority, and made in bad faith.

79. As such, the denial is invalid and the Planning Board’s Decision should be annulled.

### Groundwater Special Permit

80. The Property is located in the Groundwater Protection Overlay District, Area 3, and therefore a special permit is required under Section 7-07-010.D.(3)(c)[4] of the Bylaw.

81. Section 7-07-010.D.(4)(e) provides that the Planning Board may grant a groundwater special permit if it finds the proposed use:

- a. Meets the purpose and intent of this chapter and will not derogate from the purpose of the [Groundwater District].
- b. Will not, during construction or thereafter, impair ambient groundwater quality or reduce existing recharge capacity beyond that allowed per this chapter.
- c. Will not adversely affect the quality or the yield of an existing or potential water supply. (“Groundwater District Special Permit Criteria”).

82. In Paragraph 2 of the Planning Board’s Specific Findings, the Planning Board, without citing to any evidence, found that the Project will derogate from the purpose of the Groundwater District by impairing ambient groundwater quality and reducing existing recharge capacity, and adversely impacting the quality or yield of an existing or potential water supply.

83. There was no evidence in the record that supports this finding.

84. Paragraph 2 of the Planning Board’s Specific Findings was contrary to the prior approvals of STERIS’ Project by the Conservation Commission, the Groundwater Advisory Committee, and the Planning Board’s own peer reviewer.

85. With respect to groundwater issues, the Town’s engineering peer reviewer, Scott D. Turner, PE, AICP, LEED AP ND, of Environmental Partners Group, Inc., stated in his April 30, 2021 report, “EP has reviewed the stormwater management report and finds that it generally complies with the Massachusetts Stormwater Management Standards,” and “[t]he long term Operations and Maintenance Plan generally meets the Standards.” Exhibit H, pp. 5, 14.

86. Mr. Turner identified no other aspects of the Project that would cause degradation of groundwater or any related wetlands or stormwater issue. He opined to the Planning Board, “In our opinion, the proposed project, under normal operations, will likely not cause a degradation of the Class B standards.” Exhibit H, p.7.

87. Notwithstanding the Groundwater Advisory Committee Approval, the Conservation Commission’s approval and Order of Conditions, the Planning Board’s own peer reviews, the information submitted by STERIS in support of its Application, and the testimony offered at the public hearing, the Planning Board erroneously and in bad faith voted to deny STERIS’ Groundwater District Special Permit.

#### **Environmental Performance Standards**

88. In Paragraph 4 of the Specific Findings, the Planning Board erroneously finds, again with no supporting evidence, that STERIS’ use would be prohibited by Section 7-05-010.G.(1)-(2) of the Bylaw, and that STERIS’ proposed operations do not meet the Environmental Performance Standards in Sections 7-05-040.C. and 7-05-040.E.(1).

89. Section 7-05-010.G.(1)-(2) provides:

(1) Any building, use or structure not specifically permitted shall be deemed prohibited.

(2) In all zoning districts, no use shall be permitted which would be offensive because of injurious or noxious noise, vibration, smoke, gas, fumes, odors, dust, debris, glare, radiation, or electrical interference, or other objectionable features, or be hazardous to the town due to fire or explosions or the creation of traffic hazards, or any other cause.

90. STERIS’ use will emit no radiation or toxic gases in violation of any federal or state requirements, or create any other nuisance implicating Section 7-05-010.G.(2) of the Bylaw.

91. No evidence at the public hearing, including any finding by the Planning Board's peer reviewers, or any specific, factual finding by the Planning Board in its Decision showed otherwise.

92. The Planning Board's own peer reviewer on radiation-related issues, Ronald Carciarelli of CN Associates, stated at the public hearing on May 18, 2021, "The system could just keep operating and no one's harmed... In other words, you could operate this system 24/7 and the shielding takes care of all keeping the x-rays, you know, in the facility, so even if the operator is incapacitated, it's not like there's a problem."

93. Donald T. Flahardy, CN Associates' Director of Operational Health Physics, further stated at the same hearing, "This machine is inherently safe, in that, it doesn't take anything to stop the x-rays that are used to sterilize these medical components other than the concrete that's there."

94. The findings in Paragraph 4(a)-(b) of the Specific Findings exceed the Planning Board's authority, are unsupported by the record evidence before the Planning Board, and are speculative.

95. These findings exceed the Planning Board's authority, in part, because any local action attempting to regulate or control STERIS' use of x-ray technology is expressly preempted by state law.

96. Further, there was no evidence that the technology STERIS intends to utilize would be injurious or noxious. In contrast, the Planning Board was presented with evidence that STERIS' proposed use would *not* be injurious or noxious.

97. Section 7-05-040.C. of the Bylaw provides:

Noise. With respect to industrial uses having an impact on residential uses, the sound due to the operations of the facility, measured at the property

line of the facility, shall not be increased over the ambient sound level by more than five (5) decibels weighted for the “A” scale [dB(A)]. The ambient sound level is the sound from all sources other than the subject facility. The ambient sound measurement (A-weighted sound level) is taken where the offending sound cannot be heard, or with the sound source shut-off. The ambient sound level is the level that is exceeded ninety percent (90%) of the time that the noise measurements are taken.

98. Section 7-05-040.E.(1) of the Bylaw provides:

Miscellaneous standards. (1) Cinders, fumes, toxic gases, smoke, refuse, or other waste materials shall be effectively confined to the premises and treated or disposed of in accordance with state and federal regulations governing air, water, and soil pollution.

99. Paragraph 4(c)-(e) of the Planning Board’s Specific Findings are contrary to the record evidence, including the Planning Board’s own peer reviews.

100. The Planning Board’s Decision disregards its own peer reviews and fails to rebut the comprehensive expert reports and testimony presented by STERIS at the public hearing.

**The Planning Board Acted In Bad Faith**

101. The Planning Board delayed action on the Application for over a year and a half, conducting some 20 sessions of the public hearing on the matter, the majority of which consisted of the Planning Board refusing to accept the limited scope of its review of STERIS’ Application under the Bylaw, and its refusal to accept the expert reports and testimony of STERIS’ consultants and the Planning Board’s own peer reviewers.

102. At the continued public hearing on April 6, 2021, during discussions as to whether the special permit criteria applied to STERIS’ proposed use of the Property, the Chair of the Planning Board stated, “I’m not saying the use is by special permit.” However, in direct contravention of that statement, the Planning Board erroneously and in bad faith determined, without any factual or legal basis, that a traditional special permit for STERIS’ proposed use would be required.

103. The Planning Board exceeded its authority and failed to apply the correct criteria to STERIS' Application, despite being repeatedly advised of the proper criteria and standards by Town Counsel and STERIS.

104. The Planning Board also ignored the Town's Building Inspector's determination that STERIS' proposed use was a by right use.

105. The Decision violates M.G.L. c. 40A, §15, which requires, in part, that written decisions provide factual support for the required findings. Here, the Planning Board failed to provide factual support for its findings.

106. The Decision is not only unsupported by the facts, but it is also contrary to the evidence, arbitrary, capricious, and made in bad faith. Accordingly, the Decision is invalid and the Planning Board's Decision should be annulled.

**COUNT I**  
**M.G.L. c. 40A, §17**

107. STERIS realleges and incorporates by reference its allegations in the previous paragraphs.

108. STERIS is a person aggrieved by the Planning Board's Decision denying the Application within the definition of M.G.L. c. 40A, §17.

109. As set forth in detail above, the Planning Board's Decision was beyond the scope of its authority, arbitrary and capricious, and without substantial basis in law or fact and should be annulled.

**COUNT II**  
**Bad Faith**

110. STERIS realleges and incorporates by reference its allegations in the previous paragraphs.

111. The vote and Decision of the Planning Board was motivated by bad faith and personal animus against STERIS' Project.

112. The Planning Board disregarded Town Counsel's guidance as to the proper criteria to apply to STERIS' Application.

113. The Planning Board disregarded the Building Inspector's determination that STERIS' proposed use was a by right use.

114. The Planning Board disregarded the findings of its own peer reviewers to deny the Application.

115. The Planning Board failed to cite record facts or bases for its findings, instead relying upon its own speculation unsupported by the evidence.

### **COUNT III**

#### **Writ of Mandamus – Constructive Grant**

116. STERIS realleges and incorporates by reference its allegations in the previous paragraphs.

117. Mandamus is appropriate where a plaintiff seeks to set aside the illegal performance of a duty or compel the performance of a public duty by a public official.

118. Section 7-03-050.C.(1)(d) and (e) of the Bylaw requires the Planning Board to approve, approve with conditions, or deny the site plan, in writing, within 90 days from the date of submission (unless the Planning Board and proponent have agreed to an extension of the review period).

119. Section 7-03-050.C.(1)(e) of the Bylaw further provides that, where the Planning Board fails to issue a written decision within the 90 day period, the site plan shall be deemed approved.



120. STERIS and the Planning Board agreed to extend the review period to May 4, 2021.
121. STERIS did not agree to or provide the Planning Board any further extensions.
122. The Planning Board was required to file its Site Plan decision within 90 days from May, 4, 2021 – by August 2, 2021.
123. The Decision was filed with the Town Clerk on August 12, 2021, 10 days after the deadline.
124. The duty of the Planning Board to comply with Section 7-03-050.C.(1)(e) of the Bylaw is clear, unequivocal, and non-discretionary.
125. As a result, STERIS is entitled to a constructive grant of its application for site plan approval.

**Relief Requested**

WHEREFORE, STERIS respectfully requests that the court:

1. Hear all pertinent evidence and determine the facts;
2. Determine and enter judgment that the Decision of the Planning Board was without a substantial basis in fact, was arbitrary and capricious, and was an abuse of discretion;
3. Determine and enter judgment that the Decision of the Planning Board was erroneous in law and fact and exceeded the Planning Board's authority;
4. Annul the Decision of the Planning Board;
5. Grant STERIS its requested relief for site plan approval and a groundwater special permit under Sections 7-03-050.C.(2)(b) and 7-07-010.D.(4)(e) of the Bylaw;

6. Award STERIS its damages suffered as a result of the bad faith action of the Planning Board in its denial of STERIS' application for site plan approval and a groundwater special permit;

7. Declare that STERIS is entitled to a constructive grant of its application for site plan review; and

8. Grant any additional relief with which justice and equity may require.

ISOMEDIX OPERATIONS, INC d/b/a  
STERIS A.S.T.

By their attorneys,

  
\_\_\_\_\_  
David K. McCay, Esq., BBO #646921  
William J. Morrissey, Esq., BBO #694938  
Mirick, O'Connell, DeMallie & Lougee, LLP  
1800 West Park Drive, Suite 400  
Westborough, MA 01581-3926  
Phone: (508) 898-1501  
Fax: (508) 983-6273  
[dmccay@mirickoconnell.com](mailto:dmccay@mirickoconnell.com)  
[wmorrissey@mirickoconnell.com](mailto:wmorrissey@mirickoconnell.com)

Dated: August 31, 2021



**Trial Court of Massachusetts  
Land Court Department**

DOCKET NUMBER

COURT USE ONLY

**CIVIL COVER SHEET**

(For use in all Land Court case types except tax foreclosures, mortgage foreclosures under the Servicemembers Civil Relief Act, and all cases related to original and subsequent registration under G. L. c. 186, § 1)

CASE NAME

ISOMEDIX OPERATIONS, INC. d/b/a STERIS A.S.T.  
v.

KERRI A. MARTINEK, AMY PORETSKY, ANTHONY W. ZITON, MILLY MILTON AND MICHELE GILLESPIE,  
as members of the Planning Board for the TOWN OF NORTHBOROUGH

LOCUS ADDRESS/DESCRIPTION

CITY/TOWN

**PART I – TYPE OF ACTION**

Using the list below, place the Number "1" next to the main cause of action asserted in your complaint.

Place an "X" next to each other cause of action asserted in your complaint.

Is this complaint verified?  Yes  No

Any related cases (open or closed) filed in the Land Court Department?  Yes  No

Case No(s).

1	ZAC	Appeal from Zoning/Planning Board G. L. c. 40A, § 17
	ZAD	Appeal from Planning Board G. L. c. 41, § 81BB
	ZJA	Validity of Zoning G. L. cc. 240, § 14A, 185, § 1 (j ½)
	ZEN	Enforcement of Zoning G. L. c. 40A, § 7
	COT	Remove Cloud on Title G. L. c. 240, § 6 - 10
	DOM	Discharge of Old Mortgage G. L. c. 240, § 15
	LVT	Affirm Tax Foreclosure - Land of Low Value G. L. c. 60, § 80B
	MTB	Try Title G. L. c. 240, § 1 - 5
	MWA	Recover Freehold Estate (Writ of Entry) G. L. c. 237
	MRC	Determine Validity of Encumbrances G. L. c. 240, § 11 - 14
	CER	Enforce Restrictions G. L. c. 240, § 10A - 10C
	MAD	Determine Fiduciary Authority G. L. c. 240, § 27

	PAR	Partition G. L. c. 241
	RED	Redemption G. L. c. 60, § 76
	SP	Specific Performance of Contracts G. L. c. 185, § 1 (k)
	MBF	Determine Municipal Boundaries G. L. c. 42, § 12
	MFE	Determine Boundaries of Flats G. L. c. 240, § 19
	CNC	Certiorari G. L. c. 249, § 4
	MAN	Mandamus G. L. c. 249, § 5
	TRE	Trespass to Real Estate Involving Title G. L. c. 185, § 1 (o)
	EQA	Equitable Action Involving Any Right, Title or Interest in Land G. L. c. 185, § 1 (k)
	AHA	Affordable Housing Appeal G. L. c. 40B, § 21
	OTA	Other

SIGNATURE OF SELF-REPRESENTED PLAINTIFF

DATE

**PART II – UNIFORM COUNSEL CERTIFICATE (SJC RULE 1:18)**

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

SIGNATURE OF ATTORNEY

BBO NUMBER

DATE

/s/ David K. McCay

646921

August 31, 2021

# EXHIBIT A



# Town of Northborough

Planning Department

63 Main Street

Northborough, Massachusetts 01532-1994

(508) 393-5019 Office (508) 393-6996 Fax

[www.town.northborough.ma.us](http://www.town.northborough.ma.us)

[planning@town.northborough.ma.us](mailto:planning@town.northborough.ma.us)

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## Application

### Check one of the following:

Site Plan Approval

Special Permit

Common Driveway Special Permit

Wireless Communications Facility Special Permit

Wireless Communications Facility Site Plan Review

Special Permit per Groundwater Protection Overlay District Bylaw

1. Name, address and phone number and email address of each applicant:

Isomedix Operations Inc.  
425 Whitney Street  
Northborough, MA 01532

Contact: Mr. Michael C. Carelli  
(508) 393-9323  
[Mike\\_Carelli@steris.com](mailto:Mike_Carelli@steris.com)

2. The undersigned submits under oath the information and representations contained in all statements made herein for consideration by the Board in its determination of the application.

Yes  No

3. The basis for this application is found in the following section(s) of the Northborough Zoning Bylaw:

Section 7-03-050; Site Plan Review  
Section 7-07-010; Groundwater Protection Overlay District

4. Street address, map & parcel, and GIS map & parcel to readily identify the land which is subject of this application:

425 Whitney Street  
Map 15, Parcel 8  
015.0-0008-0000.0

5. Name and address of each holder of legal title to the land which is the subject of this application. List each name exactly as it appears in the deed under which such title is derived.

Isomedix Operations Inc.  
C/O Steris Corporation  
5960 Heisley Road  
Mentor, Ohio 44060

6. If the undersigned has/have any knowledge of a prior application concerning the land involved in this application, provide the date of the application and describe the application.

The Applicant filed an application for a dimensional variance with the Zoning Board of Appeals on July 25, 2019, seeking relief from the required 100' side-yard setback requirement in the Industrial (I) Zoning District. At a public hearing held on August 27, 2019, the Zoning Board of Appeals voted to grant the requested dimensional variance.

7. In addition to providing the information required in the Zoning Bylaw, briefly summarize the application and provide any additional information which you consider important in the determination of the Board's decision:

This application is submitted in accordance with Section 7-03-050 and Section 7-07-010 of the Zoning Bylaw, to request Site Plan Approval and a Special Permit pursuant to the Groundwater Protection Overlay District. As shown on the Site Plans prepared by VHB dated 9/13/19 and submitted herewith, the Applicant proposes to construct two additions to an existing industrial building located in the Industrial (I) Zoning District. The additions will contain approximately 20,100 sq. ft. and approximately 3,375 sq. ft., respectively. As shown on the plans, the property will comply with the off-street parking requirements of the Zoning Bylaw. The owner will also complete site improvements to improve stormwater management and treatment, reduce the amount of paved area on the property, and improve site safety and aesthetics.

8. The name, mailing address, and phone number of each attorney, engineer, or other representative of the undersigned are as follows:

Rich Whitehouse  
Site/Civil Project Manager  
VHB  
120 Front Street, Suite 500  
Worcester, MA 01608

(508) 513-2719  
rwhitehouse@vhb.com

Stephen Madaus  
Land Use Attorney  
Mirick O'Connell  
100 Front Street  
Worcester, MA 01608

(508) 929-1630  
smadaus@mirickoconnell.com

Signed this thirteen day of September, 2019.

Michael C. Cavelli  
Applicant

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

9-13-2019  
Date

Then personally appeared the above-named Michael C. Cavelli  
And made oath and said that the foregoing statements and representations contained in  
the application herein and attachments hereto, are true and accurate to the best of  
his/her/their knowledge, information and belief, before me.

Nancy D. Zaccone  
Notary Public, Massachusetts  
My Commission Expires June 5, 2020  
Notary Public

OFFICE OF TOWN CLERK  
Northborough, Massachusetts

\_\_\_\_\_  
Date

Application filing fee \_\_\_\_\_ dollars (\$ \_\_\_\_\_ )  
received this date.

\_\_\_\_\_  
Town Clerk

# **EXHIBIT B**





**TOWN OF NORTHBOROUGH** Building Department  
 Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5010 • Fax 508-393-3130

**ZONING INTERPRETATION REQUEST FORM**

Property Address: 425 Whitney St Northborough, MA 01532

Does the Property Have: Public Water: Yes  No  Public Sewer: Yes  No

Current Use: LUMBER WAREHOUSE & DISTRIBUTION

Proposed Use: MEDICAL PRODUCT WAREHOUSE, STORAGE & DISTRIBUTION + (X-RAY)

Applicant Name: RICH WHITEHOUSE Phone Number: 508-513-2719

Email Address: RWHITEHOUSE@VHB.COM

**For Official Use Only**

Map & Parcel: 15/8 Property Zoning District: I Floodplain, wetlands

Groundwater Protection Overlay District: Area 1  Area 2  Area 3  N/A

Lot Area Required 60K Have  Street Frontage Required  Have

Setbacks Required 40/100/25 Have  Bylaw Citation for Proposed Use:

Comments: Dimensional ONLY  
VARIANCE - ZBA - 7-06-030 C(4)(b)  
I AT I DISTRICT REQUIRES 100' SETBACK.

RELIEF OF 20' REQUIRED

**Conservation Requirements**

Is the proposed use allowed in the Zoning District: Yes  By PB  By ZBA No

Does the use require a GPOD Special Permit: Yes  No  N/A  Conservation required: Yes  No

Special permit required: Yes  No  N/A  Special Permit w/ Site Plan Approval: Yes  No

Earthwork permit required: Yes  No  Design Review required(7-03-060): Yes  No

Minor Site Plan Approval required: Yes  No  Historical/Scenic/Stone Wall required: Yes  No

Signature: [Signature]  
 Robert J. Frederico  
 Inspector of Buildings/Zoning Enforcement Officer

Date: 5/22/19

This Zoning Interpretation is for informational purposes only. This Zoning Interpretation does not give permission to construct, alter, demolish or change the use of a property. This Interpretation may require a variance and/or special permit which is granted by either the Zoning Board of Appeals (ZBA)/Planning Board (PB) or both.

# EXHIBIT C



# Town of Northborough

Office of the Town Engineer

63 Main Street

Northborough, Massachusetts 01532-1994

Office (508) 393-5015 Fax (508) 393-6996

March 10, 2020

Kerri Martinek, Chairman  
Northborough Planning Board  
63 Main Street  
Northborough, MA 01532

RE: 425 Whitney Street, Map 15, Parcel 8

Dear Ms. Martinek,

The Groundwater Advisory Committee at their meeting held on February 11, 2020 reviewed the additional information filed with the Northborough Town Clerk on February 4, 2020 for the above referenced project. The additional information consists of a letter dated January 22, 2020 from Rich Whitehouse, Civil Engineer with VHB, First Floor Plan sheet A101 dated September 12, 2019 prepared by Cutler Design and a copy of the set of plans filed with original application dated September 13, 2019 prepared by VHB Engineering. The Groundwater Advisory Committee unanimously voted to recommend approval with the following comments as conditions:

- 1) The additional information submitted on January 22, 2020 indicates a total of approximately 20 gallons of potentially hazardous chemicals are to be stored on site (please see the attached list and note the 110 gallons of transformer oil have been removed from the original list). Since no details are available at this time regarding the proposed containment cabinet the applicant shall specify a cabinet that can physically fit the listed items in their original packaging and the cabinet floor can contain a minimum volume of 20 gallons in the event all containers were to break or have their contents leak out of their original containers. The specific cabinet shall be reviewed and approved by the Town Engineer prior to the issuance of a building permit.
- 2) The Special Permit should be granted for the storage of a maximum of 20 gallons of potentially hazardous chemicals and any future increase will require an amended Special Permit.
- 3) The applicant shall meet with the Town Engineer and Conservation Agent to review and obtain approval of all details regarding the location and operation of the temporary concrete plant and the process for washing and removal of any excess concrete prior to the start of any construction.

- 4) The Operation and Maintenance Plan and the Long Term Pollution Prevention Plan shall be made a part of any approval.
- 5) A minimum of two permeability tests must be performed within the proposed infiltration area prior to any other work being done on site in order to confirm the assumed infiltration rate.
- 6) All changes to the property shall be shown on an as-built site plan to be submitted to the Town Engineer for review and approval prior to the issuance of a certificate of occupancy. The as-built plan shall include, at a minimum, and as applicable to the project, a permanent benchmark, elevation of all pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; and all dates of fieldwork. The as-built plan shall also include certification the drainage system was built in accordance with the approved plan and will function as designed. A completed Operation and Maintenance inspection report shall be submitted with the as-built plan prior to the issuance of an occupancy permit. Upon approval by the Town Engineer one (1) mylar and three (3) paper copies of the as-built plan shall be submitted in addition to an electronic copy compatible with the Town's GIS system and the Town's vertical datum (U.S.G.S. Datum of 1988).

Please feel free to contact me with any questions.

Sincerely,



Fred Litchfield  
Town Engineer

Cc: Michael Carelli, Isomedix Operations, Inc. Applicant  
Rich Whitehouse, Vanasse, Hangen Brustlin, Engineering  
Attorney Steve Madaus, Mirrick O'Connell  
Robert Federico, Zoning Enforcement Officer/ Building Inspector  
Kathryn Joubert, Town Planner  
File



January 22, 2020

Ref: 14500.00

Mr. Fred Litchfield  
Town Engineer & Groundwater Advisory Committee Staff Liaison  
63 Main Street  
Northboro, MA 01532

Re: 425 Whitney Street Site Plan Review and Groundwater  
Special Permit Application Chemical Storage Information

Dear Mr. Litchfield:

In accordance with section 7-07-010.D.4(a) of the Northboro Zoning Bylaws, Isomedix Operations Inc. (the Applicant) has provided the following information to VHB to address items [1] through [5] in support of the request for Groundwater Protection Overlay District Special Permit. Items [1] through [5] are in italics below.

Please note that this letter supersedes the September 13, 2019 letter of the same subject that was previously submitted to your office in support of a Groundwater Protection Overlay District Special Permit. Following the submission of the previous letter, the Applicant became aware of additional chemicals that would be necessary on-site, which was brought your attention immediately. Since that time, the Applicant has revised the list of chemicals, which is reported herein.

*[1] A complete list of all chemicals, pesticides, fuels and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion and leakage and to provide for control of spills.*

Applicant anticipates the following chemicals may be stored on-site. Chemicals will be stored in a flammable cabinet with integrated containment within the warehouse portion of the building (see attached plan by Cutler Associates for location).

- ① - Gunk Brake Parts Cleaner – (12) 20-ounce cans
- ② - HydroForce Degreaser – (12) 20-ounce cans
- ③ - CRC Brakleen – (12) 20-ounce cans
- ④ - Liquid Wrench Universal Chain Lube – (12) 12-ounce cans
- ⑤ - Power Lube – (12) 12-ounce cans
- ⑥ - Krytox Lubricant – (12) 20-ounce cans
- ⑦ - Blaster Silicone Lubricant – (12) 20-ounce cans
- ⑧ - PB Blaster – (12) 20-ounce cans

CUTLER ASSOCIATES  
NORTHBORO TOWN ENGINEER  
2020 FEB -4 PM 5:14

120 Front Street  
Suite 500  
Worcester, Massachusetts 01608  
P 508.752.3001  
F 508.459.0877

Engineers | Scientists | Planners | Designers

SAYB

Mr. Fred Litchfield  
T4500.00  
January 22, 2020  
Page 2



- 9 - Air Tool Oil – (12) 8-ounce bottles
- 10 - Chain Lube – (12) 20-ounce cans
- 11 - Renolit Syn 940 Grease – (12) 12-ounce tubes
- 12 - Loctite LB 8801 Silicone Lubricant – (12) 6-ounce tubes
- 13 - Acetone – (1) 1-gallon bottle
- 14 - Methanol – (1) 1-gallon bottle

Material Safety Data Sheets for these chemicals are attached for reference.

*[2] A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal methods.*

Not applicable

*[3] Evidence of approval by the Massachusetts Department of Environmental Protection (DEP) of any industrial waste treatment or disposal system or any wastewater treatment system over fifteen thousand (15,000) gallons per day capacity.*

Not applicable

*[4] For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation.*

Not applicable

*[5] Analysis by a technically qualified expert certifying that the quality and supply of the underlying groundwater resources will not be degraded to the point whereby a hazard to public health or ecological damage results.*

All chemicals will be stored within the building inside a flammable cabinet with integrated containment. Site stormwater management infrastructure has been designed in accordance with the Massachusetts Department of Environmental Protection Stormwater Management Standards.

On behalf of the Applicant, VHB hopes that this memo provides the chemical storage information required in support of a Groundwater Protection Overlay District Special Permit. Please feel free to contact me with questions.

Sincerely,

Rich Whitehouse

Project Manager  
508.513.2719  
rwhitehouse@vhb.com

# EXHIBIT D

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**TO:** Northborough Planning Board (*By Electronic Mail Only*)  
**cc:** Town Administrator

**FROM:** David J. Doneski

**RE:** Site Plan Approval and Uses Subject to Special Permit with Site Plan Approval

**DATE:** September 14, 2020

---

You have requested an opinion regarding application of the Zoning Bylaw's site plan approval provisions, with respect to uses allowed by right and uses which are allowed only upon issuance of a special permit. Your question arises in the context of two pending applications, one for site plan approval respecting construction of additions to a building at 425 Whitney Street for a light industrial use, which is allowed as of right in the Industrial zoning district, and one for special permits for extension of an access driveway into Area 1 of the Groundwater Protection Overlay District, and for industrial development in Area 3 of the Groundwater Protection Overlay District (lot of at least 60,000 square feet) at 0 Bartlett Street, which triggers a site plan approval requirement. In my opinion, the site plan review process is defined by the site plan purposes set forth in the Zoning Bylaw, and allows for the imposition of reasonable conditions related to those stated purposes – encompassing physical conditions on the development site and exterior development features.

#### Scope of Site Plan Review

At the outset, I note that the Northborough site plan approval process is an administrative one, as opposed to a special permit site plan review employed in some zoning bylaws. Zoning Bylaw Section 7-03-050 provides for site plan approval for certain specified uses and developments. By its terms, the purposes of site plan approval are as follows:

to promote public health, safety, and welfare by encouraging the laying out of parking, circulation, and buildings in a safe and convenient manner, to ensure that new developments are designed to protect and enhance the visual and environmental qualities of the Town of Northborough, and to provide for an adequate review of development plans which may have significant impacts on traffic, drainage, community services, environmental quality, and community character” (7-03-050, first paragraph)

The site plan decision criteria in subsection 7-03-050.C(2) are keyed to those purposes. The criteria are stated as follows: “The Planning Board shall approve a site plan if it determines that:



- (a) The site plan meets all applicable requirements of this bylaw;
- (b) Given the location, type and extent of land use proposed by the proponent, the design of building form, building location, egress points, grading, and other elements of the site plan could not reasonably be altered to: [stated review elements]" (emphasis supplied)

There are nine numbered standards: reduce clearing and grading; reduce risk of groundwater contamination; improve pedestrian, bicycle or vehicular safety – on site and egressing from it; improve emergency equipment access to structures; reduce visual intrusion; achieve greater consistency and compatibility with surrounding areas as to building design or scale, or site design; reduce glare, light trespass and light overspill; avoid removal or disruption of historical, traditional or significant structures or architectural elements; and reduce obstruction of scenic views. (7-03-050.C(2)) Thus, the stated focus of the site plan approval process is the design and layout elements described in the first paragraph of Section 7-03-050. This serves to set the parameters for site plan review, as a process related to the physical site and exterior development features. I do not construe the process, as framed by the language of the Zoning Bylaw, as extending to elements of a use within a building or structure.

As a general rule, the scope of site plan review does not include issues of “use,” especially where a use in question is allowed by right. Under an administrative site plan process, review of a site plan application is limited to a consideration of the factors set forth in the applicable zoning bylaw provision. See Quincy v. Planning Board of Tewksbury, 39 Mass. App. Ct. 17, 20 n.4 (1995) “[W]here the proposed use is one permitted by right the planning board may only apply substantive criteria consistent with Prudential Ins. Co. v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278 (1986) (i.e., it may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use).” Id. at 21. “Site plan review, however, is not without some teeth. ‘A board . . . possesses discretion to impose reasonable conditions under a by-law’s requirements in connection with approval of a site plan, even if the conditions are objected to by the owner or are the cause of added expense to the owner.’” Castle Hill Apartments Ltd. Partnership, et al. v. Planning Board of Holyoke, 65 Mass. App. Ct. 840, 846 (2006), quoting Prudential Ins. Co., supra, at 283, n.9.

The Castle Hill case provides some guidance as to what conditions may be considered reasonable. Under the Holyoke zoning ordinance, the general site plan review provisions included “architectural style” as an element for consideration, stating a standard of “harmony with the prevailing character and scale of buildings in the neighborhood through the use of appropriate building materials, screening, breaks in the roof or wall lines and other architectural techniques,” with the use of variation in “detail, form and siting . . . to provide visual interest and avoid monotony,” and a requirement that “[p]roposed buildings . . . relate harmoniously to each

other with adequate light, air, circulation, and separation between buildings." 65 Mass. App. Ct. at 642. The plaintiff challenged a site plan approval condition requiring that there be two entrances to each unit within the proposed multi-family development (as opposed to the one proposed – from common areas), noting that such a condition would require a re-design from garden style to townhouse style units and would reduce the number of units from the 123 allowed to a range of 40 to 60.

The Land Court invalidated the condition “reasoning that issues of access and egress are not aesthetic considerations and that the site plan review criteria do not reference building access.” *Id.* at 844. On appeal, the Appeals Court agreed. It framed the issue as whether the two entrances condition was “reasonable” within the ordinance’s stated purposes of site plan review: to “protect the health, safety, convenience and general welfare of the city . . . and to ensure that [the] design[] . . . reasonably protects visual and environmental qualities of the site and its immediate surroundings.” *Id.* at 846. After considering the planning board’s argument that it was acting with respect to architectural and design issues, based on “visual harmony,” the court concluded that “imposing a condition that requires Castle Hill to completely redesign the interior and exterior of each building to add multiple entrances to accommodate vague exterior aesthetic concerns is not reasonable and exceeds the board's authority.” *Id.* at 849. It further stated:

we share the judge's concern about the impact of the condition on the density of the project, which is not even an enumerated consideration of the site plan review criteria. We do not consider reasonable a condition imposed pursuant to site plan review that provides questionable aesthetic value and yet profoundly impacts the density of the project. To the extent such an impact could be tolerated, the design flaw at issue would have to be "so intrusive on the interests of the public" in a regulated aspect that the condition could be considered reasonable. Compare Prudential Ins. Co. v. Board of Appeals of Westwood, 23 Mass. App. Ct. at 283 & n.9. The board has failed to articulate such a concern here. *Id.*

#### Special Permit with Site Plan Approval

Under the Northborough Zoning Bylaw, for those uses subject to a special permit with site plan approval, the special permit granting authority also serves as the site plan review body. (“A special permit with site plan approval shall be required for any use requiring a special permit, in which case the special permit granting authority shall also act as site plan approval authority.” Zoning Bylaw, subsection 7-03-050.A(2)) Subsection 7-03-050.D states that the procedures and timelines “shall be the same as any other special permit and shall conform to the requirements of MGL C. 40A, § 9, as amended, and the provisions of Section 7-03-040. Submission requirements shall be in accordance with the rules and regulations of the special permit granting authority.” Subsection 7-03-050.D(3) states: “The decision criteria for a special permit with site plan approval shall be as set forth in Section 7-03-040 [the Zoning Bylaw’s

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general special permit provisions] and the site plan approval criteria under subsection (C)(2) of this section.”

Subsection 7-03-050.D(5) provides that a proponent may, instead of submitting a combined special permit and site plan application, apply for the special permit prior to submitting a site plan for review and then submit a detailed site plan submission following action by the special permit granting authority. Based on that language, I would agree with the statement of counsel for the 0 Bartlett Street applicant, Mark Donahue, in his August 31, 2020 letter to Planning Board chair Martinek, that the same special permit criteria should apply whether an applicant requests a special permit separately from site plan approval or in a combined special permit with site plan approval application.

The principle that authorized site plan conditions are those related to the purposes of site plan approval is stated in subsection 7-03-050.C(3) of the Zoning Bylaw, following the list of approval criteria cited above. “The Planning Board may, in its approval of a site plan, impose reasonable conditions at the expense of the proponent, including performance guarantees, to promote these objectives.”

732021/NBOR/0001

# EXHIBIT E

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**TO:** Northborough Planning Board (*By Electronic Mail Only*)  
**cc:** Town Administrator

**FROM:** David J. Doneski

**RE:** Special Permit Requirements for Groundwater Protection Overlay District,  
Application for property at 0 Bartlett Street

**DATE:** September 15, 2020

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You have requested an opinion regarding the standards applicable to an application for a special permit in the Groundwater Protection Overlay zoning district. In particular, the Planning Board is considering an application for industrial-use property located at 0 Bartlett Street. Based on the Zoning Bylaw provisions referenced below and applicable rules of statutory construction, it is my opinion that the specific, subject matter standards for the Groundwater Protection Overlay District are those stated in the section of the Bylaw establishing that district, 7-07-010. The applicability of the general special permit provisions, in section 7-03-040 of the Bylaw is less clear.

A comparison of Zoning Bylaw sections 7-03-040 Special Permit (general provisions), and 7-07-010 (Groundwater Protection Overlay District), and the special permit provisions for other of the various overlay zoning districts, shows that the language for a groundwater protection special permit is more limited. Subsection 7-07-010.D(4), Procedures for issuance of special permit, specifies application submission requirements, processing steps, and approval standards for the Groundwater Protection Overlay District. Paragraph (e) states as follows:

After notice and public hearing and after coordinating, clarifying and weighing the comments and recommendations of the Groundwater Advisory Committee, the special permit granting authority may grant such a special permit; provided, that it finds that the proposed use:

- [1] Meets the purpose and intent of this chapter and will not derogate from the purpose of the Groundwater Protection Overlay Districts.
- [2] Will not, during construction or thereafter, impair ambient groundwater quality or reduce existing recharge capacity beyond that allowed per this chapter.
- [3] Will not adversely affect the quality or the yield of an existing or potential water supply. (7-07-010.D(4)(e))

Also, subsection 7-07-010.D(4)(b) states: "Such special permit shall be granted if the special permit granting authority determines that the intent of this chapter as well as its specific criteria are met." I take the word "chapter," as appearing in both subsections 7-07-010.D(4)(b) and 7-07-010.D(4)(e), to be a reference to the overlay districts provisions of the Zoning Bylaw, Chapter 7-07 – "Overlay Districts."

For other overlay districts, the applicable Zoning Bylaw provisions reference other sections of the bylaw and other special permit criteria, in addition to those particular to the overlay district in question. For example, for the Floodplain Overlay District, the language is:

Buildings and sheds accessory to the uses described in subsection (C) of this section, and driveways and roads are permitted on approval of the Zoning Board of Appeals in accordance with Section 7-03-040. In hearing such applications, the Zoning Board of Appeals shall consider the following, in addition to any other factors it deems pertinent: . . . (Subsection 7-07-020.D(1))

For the Major Commercial Development Overlay District, the standard is stated as follows:

The Zoning Board of Appeals may grant a special permit for any use listed under subsection (D)(2) of this section, or a special permit with site plan approval for a development in the MCDOD, subject to any conditions it deems appropriate, upon finding that the proposal meets the criteria for approval in Section 7-03-030 and, where applicable, Section 7-03-050, and the following additional criteria: . . . (Subsection 7-07-030.D)

The reference to section 7-03-030 appears to be a clerical error, as that section simply provides for establishment and jurisdiction of the Zoning Board of Appeals, while section 7-03-040 (which is referenced for the Floodplain Overlay District and is presumably the section intended to be referenced) includes the criteria for approval of a special permit.

Given the principles of statutory construction, it is my view that the difference between the provisions for the Groundwater Protection Overlay District and those for other overlay districts could well be a basis for a court to conclude that the criteria applicable to an application for a groundwater protection overlay special permit are those in subsection 7-07-010.D(4)(e), together with any area-specific requirements stated in subsection 7-07-010.D(3), which prescribes the uses for which a special permit may be granted in groundwater protection Areas 1, 2, and 3.

Some general principles of statutory construction include the following: A court's review of a local bylaw or a local authority's rules and regulations is treated in the same manner as review of state statutes. See, e.g., Cohen v. Board of Water Commissioners, Fire Dist. No. 1, South Hadley, 411 Mass. 744, 748 (1992) (citing Hellman v. Board of Registration in Medicine, 404 Mass. 800, 803 (1989); Bell v. Treasurer of Cambridge, 310 Mass. 484, 489 (1941). "[W]hen the Legislature has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present . . ." Commonwealth v. Galvin, 388 Mass. 326, 330 (1983). A specific statutory (or by-law) provision supersedes a more general provision in the same statute (or by-law). Jaworski v. Earth Removal Bd. of Millville, 35 Mass. App. Ct. 795, 799 (1994); Pereira v. N.E. LNG, 364 Mass 109, 118 (1973).

While the statement of procedure for Groundwater Protection Overlay District special permits does not explicitly reference the general special permit provisions in section 7-03-040, based on review of prior decisions provided to me it appears that the criteria in section 7-03-040 have been applied to other applications for special permits in the Groundwater Protection Overlay District. For example, the August 14, 2018 Planning Board decision on the application

of Northborough Land Realty Trust c/o The Gutierrez Company for a special permit for commercial and industrial development in Area 3 of the Groundwater Protection Overlay District at 0 Bartlett Street includes in the statement of findings the criteria in subsection 7-07-010.D(4) and some of those in section 7-03-040, including: “site is an appropriate location for such use” (7-03-040.C(2)); “use as developed will not adversely affect the neighborhood (7-03-040.C(3)); “There will be no nuisance or serious hazard to vehicles or pedestrians (7-03-040.C(4)); “Adequate and appropriate facilities will be provided for the proper operation of the proposed use” (7-03-040.C(5)). These criteria were also included in the findings for a Groundwater Protection Overlay District special permit issued to Arturo J. Gutierrez and John Cataldo, as trustees of Northborough Land Realty Trust, for a warehouse/distribution facility on the northerly side of Bartlett Street in a decision dated May 17, 2005.

Rules of statutory construction can also apply to the issue of how a local bylaw provision should be applied. Some of the stated principles are: Reviewing courts should give deference to administrative interpretations of a statute. See, e.g., Advanced Development Concepts, Inc. v. Town of Blackstone, 30 Mass. App. Ct. 228, 231 (1992); see also, Flemings v. Contributory Retirement Appeal Board, 431 Mass. 374, 375 (2000); Gateley's Case, 415 Mass. 397, 399 (1993); Berrios v. Department of Pub. Welfare, 411 Mass. 587, 595 (1992) (interpretation of agency charged with primary responsibility for administering statute entitled to substantial deference).

Here, the Zoning Bylaw includes general directives and standards for issuance of a “special permit,” and also includes particular standards for special permits required by various overlay district provisions. Where a Groundwater Protection Overlay District special permit is a “special permit” within the meaning of the Zoning Bylaw, and it has been done in some prior instances, that could be evidence of a basis for the special permit granting authority to apply both the overlay district criteria and the general special permit criteria in section 7-03-040 to a special permit application. However, where the standards for a special permit in the Groundwater Protection Overlay District do not make reference to or otherwise include the general special permit language in Zoning Bylaw section 7-03-040 and the standards for special permits in other overlay districts do reference that general special permit language, and where subsection 7-07-010.D(4)(b) states that a groundwater protection special permit “shall be granted if the special permit granting authority determines that the intent of this chapter as well as its specific criteria are met,” that would be evidence that Groundwater Protection Overlay District special permit applications are to be governed by the specific standards stated for that district in Zoning Bylaw section 7-07-010.

732024/NBOR/0001

# EXHIBIT F



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**TO:** Northborough Planning Board (*By Electronic Mail Only*)  
**cc:** Town Administrator

**FROM:** David J. Doneski

**RE:** 0 Bartlett Street, Application for Groundwater Protection  
Overlay District Special Permit and Site Plan Approval

**DATE:** October 6, 2020

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Please accept this memorandum in response to the supplemental questions forwarded with Town Planner Joubert's e-mail of September 24, following discussion at the September 15 Planning Board meeting.

Criteria and Standard of Review for Groundwater Protection Overlay District Special Permit

In my memorandum to the Planning Board of September 15, 2020 regarding special permit requirements for the Groundwater Protection Overlay District, I stated that the difference in language between the Groundwater Protection Overlay District provisions and those for other overlay districts (Floodplain and Major Commercial Development) could be a basis for a court to conclude that the criteria applicable to an application for a Groundwater Protection Overlay special permit are those set forth in subsection 7-07-010.D(4)(e), together with any applicable area-specific requirements stated in subsection 7-07-010.D(3) relative to groundwater protection Areas 1, 2, and 3. I also noted that prior decisions on applications for special permits in the Groundwater Protection Overlay District referenced the general special permit criteria in subsection 7-03-040. The summary of my review of the question of which special permit criteria are applicable to a Groundwater Protection Overlay District special permit application was that the language of the Zoning Bylaw suggests a specific set of criteria, as stated in subsection 7-010.D(4)(e), but that the fact that any such special permit is, by its terms, a "special permit" within the meaning of the Zoning Bylaw and the fact that in prior instances the Planning Board has applied the general special permit criteria in section 7-03-040 to such applications could be evidence that those general special permit criteria are applicable to an application for a special permit use in the Groundwater Protection Overlay District.

Where the language of the Zoning Bylaw does not, by itself, provide a direct answer on this question, one of the first-level rules of statutory construction, apply the language as written, does not end the inquiry. (See State Board of Retirement v. Boston Retirement Board, 391 Mass. 92, 94 (1984). It is the "principal rule of statutory interpretation that [the court] need not look beyond the words of the statute where the language is plain and unambiguous.") Therefore,

additional principles are necessary in evaluation of this issue. One of those principles is deference to administrative interpretation of the statute or bylaw in question. In this instance, there is some history of applying both the Groundwater Protection Overlay District special permit requirements and the general special permit criteria to an application for a special permit in the Groundwater Protection Overlay District. Given the written record, I am not able to say definitively which way a court might decide the question if it were presented in a judicial forum. As noted in the September 15, 2020 memorandum, there is evidence for both a more limited and a more expansive view.

The background facts noted in the e-mail outlining the Planning Board's additional questions on this matter refer to and include the terminology of "special permit with site plan approval." I understand the reason for this to be the language in Zoning Bylaw subsection 7-03-050.A(2): "A special permit with site plan approval shall be required for any use requiring a special permit, in which case the special permit granting authority shall also act as site plan approval authority;" and the caption of subsection 7-03-050.D: "Special permit with site plan approval." I do not take this language to mean that special permit uses require both the particular special permit specified (for example, in the Zoning Bylaw's Table of Uses) and a second special permit together with a site plan approval. Rather, in my opinion, the reasonable construction of this language is that when a use requires a special permit it shall also be subject to the requirement of site plan approval. The Zoning Bylaw, in my view, confirms this by stating that when a special permit and site plan approval are needed the applicable special permit granting authority shall also act as the site plan approval authority (instead of the Planning Board, as otherwise provided in subsection 7-03-050.C). In addition, as noted in my other September 15, 2020 memorandum to the Planning Board, regarding site plan approval, a project proponent may, instead of submitting a combined special permit and site plan application, apply for the special permit prior to submitting a site plan and then submit a detailed site plan following action by the special permit granting authority (SPGA). Accordingly, I do not view section 7-03-050.A(2) as creating a separate category of special permit.

#### Status of a Special Permit for a Use in the Groundwater Protection Overlay District

You have asked whether a Groundwater Protection Overlay District special permit granted only on the basis of the criteria in subsection 7-07-010.D(4)(e), without review under the general special permit criteria in subsection 7-03-040.C, would not be subject to the basic procedural provisions for special permits, for example, authority of the SPGA to impose conditions (subsection 7-03-040.D) and lapse in the event of non-use (subsection 7-03-040.G). If a Groundwater Protection Overlay District special permit were subject to the more limited standard of review in subsection 7-07-010.D(4)(e), that would not negate its status as a

“special permit” and its therefore being subject to those basic provisions. Language in section 9 of the Zoning Act (G.L. c. 40A), which authorizes the use of special permits as a zoning tool, provides that zoning ordinances or bylaws “may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law.” G.L. c.40A, §9, tenth par. The statute also specifically directs that any special permit shall be subject to lapse for failure to exercise it, as follows:

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than 3 years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause. G.L. c.40A, §9, fourteenth par.

Where the Zoning Bylaw “is published in accordance with the provisions of MGL C. 40A” (subsection 7-02-010) and includes in its statement of purposes the phrase “all as authorized by, but not limited to, the provisions of the Zoning Act, MGL C. 40A, as amended” (7-02-020), it is my opinion that a special permit issued in accordance with particular criteria in one section of the Zoning Bylaw but not the more general criteria in subsection 7-03-040 should not be treated as less of a special permit than a special permit granted on the basis of applying those general criteria. In my view, this is confirmed by the definition of “special permit” in subsection 7-02-040 of the Zoning Bylaw, which is as follows:

A permit that may be issued by the special permit granting authority to authorize a use which would not be allowed generally or without restriction throughout any particular zoning district but which, if controlled as to number, area, location, relation to the neighborhood and other characteristics, would not be injurious to the public health, safety, welfare, order, appearance, prosperity, or general welfare. A special permit is not a variance, but it may include a waiver of dimensional and similar requirements incidental to the special permit.

Resident Question on Conflict of Interest Law

The state’s conflict of interest law is contained in Chapter 268A of the General Laws. Per section 3 of Chapter 268B, the State Ethics Commission is empowered “to act as the primary civil enforcement agency for violations of all sections of chapter two hundred and sixty-eight A and of this chapter.” G.L. c. 268B, §3(i). As a general matter, if a conflict of interest question is presented during the course of application proceedings before a land use board, it is my view that

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the board should advise the Board of Selectmen and/or Town Administrator of its existence, but that investigation or enforcement activity is not within its purview.

Under the law, a municipal employee may request, confidentially and through the chief officer of the employee's agency, an opinion of town counsel "upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee." G.L. c. 268A, §22. Where I have not received such a request, or a request made by an applicable Town officer(s), I will refrain from stating anything further at this time.

734981/NBOR/0001

# EXHIBIT G

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**TO:** Northborough Planning Board (*By Electronic Mail Only*)  
cc: Town Administrator

**FROM:** David J. Doneski

**RE:** Review of Site Plan and Special Permit Application for 425 Whitney Street

**DATE:** April 5, 2021

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You have requested an opinion regarding issues implicated by an application for site plan approval and for a Groundwater Protection Overlay District special permit for property located at 425 Whitney Street. As I understand it, the applicant, Steris A.S.T., is proposing an addition to the existing building on the property, which will include X-Ray equipment for sterilization of products manufactured by others, and proposing to use a temporary, on-site concrete batching plant for construction of the thick walls (12 feet) required for operation of such equipment. The applicant has obtained a variance from the Zoning Board of Appeals to construct the addition closer to the side lot line than otherwise permitted under the Zoning Bylaw. That variance has been appealed by a neighbor to the property, and the appeal is pending in the Land Court (Shore v. Zoning Board of Appeals for Northborough and Isomedix Operations, Inc. d/b/a Steris A.S.T., No. 19 MISC 000500).

The application states Zoning Bylaw section 7-07-010 as the applicable provision for the Groundwater Protection Overlay District special permit. After review of the Bylaw and background materials concerning review of the application by the Groundwater Advisory Committee, I understand that the subject property is located within Area 3 of the overlay district and that the application falls within subsection 7-07-010.D(3)(c)[4] – “Industrial development on lots of at least sixty thousand (60,000) square feet in area.” (For such development, the Bylaw imposes restrictions on post-development runoff, impervious lot coverage, on-site sewage disposal, and on-site water supply development.) The application also appears to fall within subsection 7-07-010.D(3)(c)[5] – storage of toxic or hazardous materials as a use accessory to industrial activities.

With that background, you have presented various questions on the Planning Board’s review of the application. These are addressed below.

1. Condition of No Start of Construction Until Variance Appeal Resolved

Under the Zoning Act, the variance may not be exercised unless and until it has been finally authorized at the conclusion of the pending litigation. Section 10 of the Zoning Act states as follows: “No variance . . . shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, . . . is recorded in the registry of deeds for the county and district in which the land is located.” G.L. c. 40A, §10. Therefore, no building permit for the addition may be issued until the appropriate, certified copy of the variance decision has been recorded with the Registry of Deeds. While the statute controls on this point, if the Planning Board wishes, it may include in a decision on the application a condition referencing or incorporating the Zoning Act requirement.

2. May the Town Require Site Plan Approval for the Temporary Concrete Plant?

In the circumstances of this application and proposed development, it is my opinion that site plan approval for the concrete plant, by itself, is not required under the Zoning Bylaw. As presented, the plant is proposed for the temporary purpose of construction only and would not remain a part of the overall site development. Section 7-03-050 of the Zoning Bylaw states the “purposes of site plan approval” as follows:

to promote public health, safety, and welfare by encouraging the laying out of parking, circulation, and buildings in a safe and convenient manner, to ensure that new developments are designed to protect and enhance the visual and environmental qualities of the Town of Northborough, and to provide for an adequate review of development plans which may have significant impacts on traffic, drainage, community services, environmental quality, and community character.

In this situation, it is my view that the concrete plant is, by its nature, and would be, a temporary aid in construction and not part of a proposed “building” or “development” which will remain on the property. In that sense, it would be similar to other construction equipment or facilities temporarily placed on a development site to promote or facilitate building activities.

However, as described below, it is my opinion that the concrete plant element of the proposed industrial development is something the Planning Board may consider in acting on the Groundwater Protection Overlay District special permit request. (As a reference point, I note that as outlined in my September 14, 2020 memorandum to the Planning Board site plan approval under the Northborough Zoning Bylaw is not a special permit process.)

If Site Plan Approval is Not Required:

- a. What is the correct and legal process to evaluate a concrete plant of this intensity?
- b. May the Planning Board request input from the Massachusetts DEP?

In my view, the Planning Board may evaluate the proposed temporary concrete plant in the same manner as it would consider other construction facilities or equipment proposed in connection with a particular development which requires site plan and special permit approval. Where this type of plant is not a typical construction phase element, at least not in Northborough, it would certainly be reasonable, in my view, for the Planning Board to seek input or guidance from other sources, such as the Department of Environmental Protection, regarding such a facility and best practices for operation and use.

With respect to wetlands issues, I note that the Conservation Commission has already addressed the concrete plant in its Order of Conditions, and is requiring that no site work on the plant begin until plans and specifications have been reviewed and approved by the Commission, or its agent, and the Town Engineer. The required plan information includes: erosion control measures, construction sequencing; dewatering details, mobilization and demobilization from the site; and daily operation and maintenance. (Order of Conditions – DEP File #247-1172, Special Conditions: #46) This approval requirement is also included in the conditions recommended by the Groundwater Advisory Committee, as stated in the March 10, 2020 letter to the Planning Board from Town Engineer Fred Litchfield. In addition, as noted in the Stormwater Report prepared by the applicant’s consultant, VHB (Sept. 2019, rev. Oct. 2019), because more than one acre of land will be disturbed for the addition project, before any land disturbance activity begins the applicant must obtain authorization under the Construction General Permit for Massachusetts under the National Pollutant Discharge Elimination System of the federal Clean Water Act. This process includes submission of a stormwater pollution prevention plan (SWPPP) to the Environmental Protection Agency.

In a memorandum to the Planning Board dated January 28, 2020, counsel for the applicant stated that the hours of construction would be limited to those stated in the Zoning Bylaw, 7:00 a.m. to 7:00 p.m. Those hours are set forth in paragraph E of Zoning Bylaw section 7-03-010, relating to building permits, which states: “Construction equipment may be operated by a paid contractor between the hours of 7:00 a.m. and 7:00 p.m. daily, except Sunday and legal holidays.” In my view, where the applicant is requesting a Groundwater Protection Overlay District special permit, the Planning Board may consider such other limitations of time as evidence presented to the Board shows are necessary or appropriate for use and operation of a concrete batching plant, as provided for in section 9 of the Zoning Act and section 7-03-040 of



the Zoning Bylaw. (“Special permits . . . shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.” G.L. c. 40A, §9. “Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this bylaw.” Section 7-03-040.D) Note also, that paragraph B of section 7-03-010 states: “Where a special permit is required under this bylaw, the Building Inspector shall not issue a permit except in accordance with the written decision of the applicable special permit granting authority.”

- c. What defines “temporary”? If not the Zoning Bylaw, is there a state definition or guidance?

I would take the view that the concrete plant it is a temporary installation or structure because it is proposed only for the period of construction and is not to be maintained as a permanent part of the building or facilities on the site. The term “temporary,” by itself, is not defined in the Zoning Bylaw and I am not aware of any state statutory or regulatory definition that would apply in a circumstance such as this one. Accordingly, it is my view that the ordinary, dictionary meaning is the appropriate one to be used in determining whether the proposed concrete plant should be considered “temporary.” Dictionary definitions include: “lasting for a limited time” (*Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/temporary>. Accessed 2 April 2021); “Lasting, used, serving, or enjoyed for a limited time” (*American Heritage Dictionary*, 5<sup>th</sup> ed., 2020, on-line version at [www.ahdictionary.com](http://www.ahdictionary.com)) By those definitions, the proposed concrete plant is a temporary element of the use of the subject property.

- 3. What is the Process for the Planning Board to Review the Intensity of Such a Use and What Conditions Can be Placed on the Operation?

Per my comments above, it is my view that the Planning Board may evaluate the concrete plant element of the proposed project as it would elements of other development projects, taking into account such factors as the time during which it would be operated on the site, how use of such a plant may allow for a shorter construction period and associated construction impacts, and comparison of impacts resulting from concrete delivery and installation not furnished through use of an on-site plant.

757863/NBOR/0001

# EXHIBIT H



April 30, 2021

Ms. Kathy Joubert, Town Planner  
Town of Northborough  
Northborough Town Offices  
63 Main Street  
Northborough, MA 01532

**RE: Peer Review Letter – Facility Expansion Project  
425 Whitney Street, Northborough, Massachusetts**

Dear Ms. Joubert,

This letter is to advise that we have reviewed the revised application materials submitted regarding the proposed facility expansion project located at 425 Whitney Street in Northborough, Massachusetts for consistency with local and state regulations including:

- Northborough Zoning Bylaw, effective through December 21, 2020.
- Northborough Wetlands Bylaw and Regulations effective through September 21, 2019.
- Massachusetts Stormwater Management Standards.

The materials consulted for this review include the following:

- Plan entitled "Facility Expansion Project, 425 Whitney Street, Northborough, Massachusetts," prepared by VHB, dated October 17, 2019.
- Memorandum from Northborough Planning Board to Steris A.S.T. dated March 11, 2020.
- Memorandum from Attorney Stephen F. Madaus to Northborough Planning Board dated May 27, 2020.
- Memorandum from Northborough Planning Board to Steris A.S.T. dated November 15, 2019.
- Application for Site Plan Approval and Special Permit per Groundwater Protection Overlay District filed by Isomedix Operation, Inc., dated September 13, 2019.
- Zoning Interpretation Request Form dated September 18, 2019.
- Letter from the Town of Northborough Town Engineer dated March 10, 2020.
- Letter from VHB dated October 15, 2019 responding to Northborough Town Engineer's comments.
- Letter from VHB dated January 22, 2020 regarding the Groundwater Protection Overlay District Special Permit with attachments.
- Report entitled "Stormwater Report, Facility Expansion Report," prepared by VHB, revised through October 2019.
- Letter from Northborough Fire Department to Northborough Planning Board dated September 24, 2019.
- Memorandum from KP Law to Northborough Planning Board dated September 14, 2020.

- Memorandum from Stephen F. Madaus to Northborough Planning Board dated January, 28, 2020.

## BACKGROUND

The project includes the expansion of the property located at 425 Whitney Street in Northborough, Massachusetts. The project includes the construction of a 24,700 square foot building addition to an existing industrial building and associated site improvements including parking lot modifications, stormwater management improvements, landscaping, etc. We understand the proposed use of the building will include the receipt and sterilization of medical products prior to their distribution. The project is located in the Town of Northborough's Industrial Zone as well as Groundwater Protection Overlay District. We understand the project is seeking Site Plan Approval and a Special Permit from the Planning Board.

Environmental Partners has developed the following comments regarding zoning, stormwater management design, and civil/site development. Specifically, this letter comments on civil/site related questions provided by the Planning Board to the applicant in their memoranda dated November 15, 2019, and January 28, 2020 as well as the STERIS's responses to their comments. This letter also comments on STERIS's responses to the peer review letter provided by Environmental Partners dated February 25, 2021. Comments regarding traffic and activities associated with the proposed use have been prepared under separate cover.

In order to reduce the length of this letter, we have not included every response provided by STERIS to Planning Board's questions. We have indicated whether we believe the applicant's response is acceptable and – where appropriate – made additional comments.

### Planning Board Memorandum dated November 15, 2019 and STERIS responses

#### Conformity with Section 7.2 Submission Requirements per the Planning Board's Rules and Regulations

1. Application narrative in accordance with Section 7.2 B.(I-11)

B. Application narrative. To assist the Planning Board with its review, the Applicant shall provide a concise narrative about the proposed project. At minimum, the narrative shall include the following information:

(1) The proposed use(s).

**EP Comment 4/30/21:** EP has reviewed STERIS's response. In our opinion, the response provided adequately describes the proposed use.

(2) The projected increase in traffic trips generated by the project.

**EP Comment 4/30/21:** See EP response regarding traffic impacts under separate cover.

(3) The projected public water and sewer demand, if any.

**EP Comment 4/30/21:** The applicant has responded that the proposed facility uses between 400-500 gallons per day based on Title V of the State Environmental Code. Calculations to support this estimate have not been provided. Therefore, we cannot verify this number. Industrial uses, with

few employees, typically result in low water usage and sewer generation, so the flows provided appear reasonable.

(4) A list of all other required local, state and federal permits, and the status of each.

**EP Comment 4/30/21:** We understand that a dimensional variance was issued by the Zoning Board of Appeals for construction of the proposed addition within 20 feet of the side property line and this decision has been appealed. We understand an Order of Conditions has been issued by the Conservation Commission. We understand the applicant is seeing a Special Permit for work within the Groundwater Protection District. The applicant has provided a letter listing all chemicals anticipated to be stored on the property. This letter describes that all chemical will be stored in a flammable cabinet with containment. EP is not familiar with all of the chemicals listed in this letter. They appear to generally be small amounts of cleansers and lubricants that would be considered typical for an industrial use. We recommend that any approvals of this project –if issued – include a condition requiring the proper storage and disposal of these products consistent with manufacturer's instructions. We suggest that these materials not be dumped into floor drains, sanitary or storm sewers, or on the ground and that any disposal of these materials that is inconsistent with manufacturer's instructions be considered a violation of any Special Permits that are issued.

(5) The size of the proposed building(s) or addition.

**EP Comment 4/30/21:** STERIS response is consistent with the size of the addition shown on the site plans.

(6) The estimated number of employees for the project.

**EP Comment 4/30/21:** EP is not familiar with STERIS' operation. However, in our opinion, 25 full time employees is not unreasonable for an industrial facility of this size.

(7) The number of parking spaces required to serve the use(s) in the project.

**EP Comment 4/30/21:** The project is proposing 38 parking spaces to comply with the Zoning Bylaws. The site plans state that actual parking demand, based on the number of employees, is expected to be 20 parking spaces.

(8) The proposed methods of screening the premises and off-street parking from abutting property and the street.

**EP Comment 4/30/21:** The project has provided 5 crabapple trees and three red oaks along the east side proposed parking lot and 5 red oaks along Whitney Street. The limit of the parking lot has been moved approximately 30 feet further away from the eastern property line. EP does not have landscape architects on staff and cannot comment on the appropriateness of the proposed plantings.

(9) Calculation of existing and proposed lot coverage.

**EP Comment 4/30/21:** The lot coverage is proposed to increase from 21% to 33%. This represents a 36% increase over existing impervious surface. The Zoning Bylaw allows for up to a 40% increase in

impervious surface over existing conditions by Special Permit in Area 3 of the Groundwater Protection District.

(10) For a project plan filed under an approved Industrial/Office Campus master plan special permit, the Applicant shall also provide written statements that the project for which a building permit is sought complies with (a) the master plan special permit, (b) the uses permitted within an IOCD and (c) all requirements of §7-10-030 of the Zoning Bylaw.

**EP Comment 4/30/21:** We do not believe this project is part of an Approved Industrial/Office Campus master Plan.

(11) Any other information the Applicant believes will assist the Planning Board in reviewing and understanding the site plan application and making the required

**EP Comment 4/30/21:** The applicant has described the proposed use as "Light manufacturing: processing." We generally agree with this description.

2. Site design contents in accordance with Section 7.2 C.(I-20)

**EP Comment 4/30/21:** EP reviewed the contents of the Site Plans prepared by VHB dated October 17, 2019 and believes the contents are consistent with Section 7.2 C(I-20) of the Zoning Bylaw as described in our previous review letter.

3. Development impact analysis in accordance with Section 7.2 D.(I)(a-d)

**EP Comment 4/30/21:**

- (a) With regard to traffic impacts, please see EP's comments regarding traffic under separate cover.
- (b) With regard to impacts to water, we have previously made comments regarding stormwater management. With regard to radioactive emissions, please see comments prepared by CN Associates under separate cover. With regard to noise impacts, EP does not perform sound studies or noise analysis. With regard to light impacts, the project has provided photometric analysis which does not indicate any measurable off-site light impacts. The supplemental plans include cut sheets of the site lights.
- (c) With regard to fiscal impacts, EP does not provide fiscal impact analysis services.
- (d) With regard to architectural character, EP is not an architectural firm.

### **Light Manufacturing Use**

1. Provide data and facts that support that the operations meet the use criteria in accordance with Section 7-05-020 I. (1).

**EP Comment 4/30/21:** We understand the Town's Building Inspector agrees the proposed use is consistent with light manufacturing.

2. Provide data and facts that support the proposed use complies with all environmental performance standards in accordance with Section 7-05 -040 of the Northborough Zoning Bylaws for uses in an industrial district — including noise, light, emissions,

- a. For all indoor and outdoor activity — buildings (both the addition and the original warehouse), chillers, and concrete plant.

**EP Comment 4/30/21:** As described above, EP does not provide sound studies or noise analysis.

3. Provide the levels of radioactive emissions

**EP Comment 4/30/21:** Please see comments prepared by CN Associates under separate cover regarding radioactive emissions.

4. Provide the levels of electromagnetic radiation

**EP Comment 4/30/21:** Please see comments prepared by CN Associates under separate cover regarding radioactive emissions.

5. Details of the process and how it fits the use:

**EP Comment 4/30/21:** Please see comments prepared by CN Associates under separate cover regarding details regarding the proposed use. With regards to hazardous materials described above, please see our previous comments regarding the storage and disposal of chemicals.

#### **Groundwater**

1. Data and facts that support any requests made by Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee for both the building and the concrete plant.

- a. Drainage, run-off, impact on surrounding land, any possible flooding.

**EP Comment 4/30/21:** EP has reviewed the stormwater management report and finds that it generally complies with the Massachusetts Stormwater Management Standards. We did have some additional comments as described in our letter dated February 25, 2020 regarding the design and we are addressing those items late in this letter.

b. Layout, description, and impact of the concrete plant on the surrounding land:

- i. Containment of stock piles.
- ii. Water usage and source.
- iii. Waste water containment and disposal.
- iv. How will dust be controlled and contained to avoid spreading to residential areas?

**EP Comment 4/30/21:** EP does not have any specific information regarding the proposed concrete plant that will be in operation during the construction of the facility. Mobile concrete plants are commonly used for sizable construction projects. We understand the applicant is proposing to use an on-site concrete plant due to the amount of concrete needed to construct the building as well as

limit the amount of trucks travelling to and from the site. We cannot comment on the concrete plants size, location, duration on site, etc. without additional information from the applicant.

### **Landscaping**

1. Describe buffers for the facility during and after the use of the concrete plant
  - a. Possible sound wall barrier
  - b. Visual barrier

**EP Comment 4/30/21:** As described above, we have no specific information regarding the concrete plant. We would expect that the concrete plant would be on site for a portion of the construction process and not the entire construction duration. Typically, landscaping for construction projects is installed at the end of the project and would therefore not be installed during construction. The applicant has indicated that they may install a sound barrier around the chiller equipment. The Board may consider requiring the installation of a sound barrier around the chiller equipment as a condition of any approvals – if issued.

### **Traffic/Trucks**

1. Impact of trucks traveling to site during construction and during day-to-day operations.
  - a. What will be the hours of operation of the temporary concrete plant including days of the week?
  - b. What will be the hours of operation after construction and during day-to-day operations? How many truck trips per day?
2. What is the noise associated with the trucks?
3. Will there be temporary lighting in place during construction? No. Describe type and levels of lighting, if applicable
4. List of materials if stored in trucks overnight in the parking lot.

**EP Comment 4/30/21:** We would expect that construction trucks would be travelling to and from the site during normal construction hours. With regard to operation hours, the Board may want to include a condition as part of any approval – if issued – for the project, describing the hours that truck traffic may arrive and depart the facility both during construction and during operation. The applicant has described 15-20 truck trips per day, which equates to approximately 1-2 trucks per hour. The Traffic Memorandum submitted with the project does not specifically discuss truck traffic. However, for a facility this size, the Institute for Traffic Engineers trip generation manual estimates the site would generate 14 truck trips per day. We would expect that any noise associated with trucks would be typical travel noise as well as loading and unloading. We would not expect there to be construction lighting. We cannot comment on the nature of the materials stored overnight in trucks on site.

### **Peer Review of Application**

Questions asked under this section will be addressed – when appropriate – by CN Associates under separate cover.



### **Planning Board Memorandum dated March 11, 2020 and STERIS responses**

Questions regarding traffic/trucks will be addressed under separate cover prepared by the Environmental Partners Transportation Department.

Questions regarding the commercial medical x-ray sterilization facilities/equipment are addressed under separate cover by CN Associates.

### **EP Peer Review Letter dated February 25, 2021**

Below are comments prepared by Environmental Partners in our letter dated February 25, 2021 and responses received from the applicant's engineer, VHB, in a letter dated March 22, 2021. We have included VHB's responses and provided additional comments where appropriate:

#### **Northborough Zoning Bylaw**

The project is the Industrial District and Groundwater Protection Overlay District Area 3. We understand the Planning Board is the Special Permit Granting authority for this project. Environmental Partners has the following comments regarding compliance with the Northborough Zoning Bylaw:

1. Section 7-07-010 D(3)(c)[4] allows industrial development on lots within the Groundwater Protection Overlay District Area 3 provided the post development net runoff volume does not exceed existing conditions by more than 15%. The submitted calculations demonstrate that the proposed project meets this requirement. However, we do have recommendations regarding the time span used for the hydrologic calculations as described below. This section also states that the proposed project will not cause a violation of Class B water quality standards and will not cause a violation of Class I groundwater quality standards. Class B standards as described in 314 CMR 4, address dissolved oxygen, temperature, pH, bacteria, solids, color and turbidity. Oil and grease, and taste and odor. The project generally meets the Massachusetts Stormwater Management Standards. However, many of the pollutant described in this section are not specifically addressed in the Stormwater Management Standards. In our opinion, the proposed project, under normal operations, will likely not cause a degradation of the Class B standards.

**VHB Comment 3/22/21:** The peak rates of runoff occur at the 12-hr mark therefore the peak rates would not be affected by a longer time span. We have updated the model to show a longer time span. VHB does not expect the Project to cause a degradation of the Class B standards.

**EP Comment 4/30/21: Item closed.** We have reviewed the revised calculations and agree that the stormwater analysis addresses the performance standards with regards to peak flows and volumes.

2. Section 7-09-010 D (5)(f) regarding land clearing and grading requires weekly inspections of all erosion and sedimentation control measures. This exceeds the requirements of the United States Environmental Protection Agency National Pollutant Discharge Elimination System Construction General Permit. We recommend that weekly inspections be included

as part of the "Recommended Construction Period Pollution Prevention and Erosion and Sedimentation Controls" document submitted by the applicant and that copies of all weekly reports be submitted to Town.

**VHB Comment 3/22/21:** The Maintenance/Evaluation Checklist provided within the "Recommended Construction Period Pollution Prevention and Erosion and Sedimentation Controls" document recommends inspection of all BMPs "weekly and after storm events of ½ inch or greater". The document has been updated to reflect this inspection frequency and require that records of the inspections will be maintained on site by the contractor and copies of all weekly reports submitted to the Town. See revised Stormwater Report attached hereto.

**EP Comment 4/30/21: Item closed.** The language above has been added to include the additional inspection frequency and requiring the reports to be submitted to the Town of Northborough.

3. Section 7-09-010 D (6)(b) requires four inches of loam and seed. We recommend a note be added to the landscape plan and Grading, Drainage, and Erosion Control Plan requiring a minimum of 4" of loam and seed be placed to stabilize the site.

**VHB Comment 3/22/21:** VHB's General Notes, note 4 (sheet C-1) reads as follows "Areas disturbed during construction and not restored with impervious surfaces (buildings, pavements, walks, etc.) shall receive six (6) inches loam and seed."

**EP Comment 4/30/21: Item closed.** The revised plans show 6 inches of loam and seed.

4. Section 7-09-010 E includes requirements for monitoring and inspections. We recommend that the project notes be updated for consistency with the requirements of this section.

**VHB Comment 3/22/21:** The requirements of Section 7-09-010 E will be included in the project's Stormwater Pollution Prevention Plan (SWPPP) to be provided to the US EPA as part of the Construction General Permit (CGP) process at least 14 days prior to the start of construction.

**EP Comment 4/30/21:** We recommend a copy of the Stormwater Pollution Prevention Plan be submitted to the Town earlier than two weeks – possibly one month - prior to construction for the Town's review and comment.

5. Section 7-09-020 C (1) requires projects to comply with Chapter 4-12 regarding illicit discharges. The proposed design does not appear to include any illegal discharges to the municipal storm drain system. The project plans includes a sewer ejector pump with a note that the design of the force main will be prepared following completion of survey. The plans do not include a detail for the pump station of the force main design. As described in the Stormwater Management section of this letter, the Illicit Discharge Statement has not been submitted consistent with the Massachusetts Stormwater Management Standards.

**VHB Comment 3/22/21:** The sewer force main and ejector pump are shown for illustrative purposes only at this time. Once prepared, the design will be fully reviewed and coordinated

with Northborough DPW for approval prior to construction. The illicit discharge statement has been added to the Stormwater Report, Appendix G.

**EP Comment 4/30/21: Item closed.** EP defers to the Northborough DPW regarding the development of the pump station design. It is typical for a project seeking entitlements to have the final design of off-site improvements be completed after the approvals process. We recommend the design of the facility be coordinated with Public Works. We assume that it will have emergency power, such as an emergency generator, so the pump station functions in the case there is a power outage.

6. Section 7-09-020 C (2) requires details regarding site lighting. We recommend that details of the site lights be included on the site plans in conformance with the requirements of this section, including light pole heights.

**VHB Comment 3/22/21:** Details regarding site lighting have been added to the site plans. All fixtures have house side shields that are reducing light spill and shielding the LEDs from abutters positioned behind the poles that run along the perimeter of the parking area. Pole heights are shown on the photometric plan and are called out as "MH: 20" or mounting height. Additional text has been added to the Luminaire Location Summary to provide clarification on pole heights. Fixtures are Dark Sky compliant.

**EP Comment 4/30/21: Item closed.** Cut sheets of the site lights have been added to the plans and included with the revised documents. Based on the photometric plan, the mounting height appears to be 20 feet, which is consistent with industrial facilities.

7. Section 7-09-020 C (5) (a) [2] requires a 50 foot area of open space for industrial projects abutting residential districts. We understand that the Zoning Board of Appeals issued a variance from this requirement on August 27, 2019.

**VHB Comment 3/22/21:** As noted, the Zoning Board of Appeals granted a dimensional variance allowing a structure to be located within 20' of the westerly property boundary, making it impossible to provide a 50 foot buffer in that area. However, the project will maintain existing vegetation to the maximum extent practicable. It's also worth noting that a railroad parcel and an aqueduct parcel are situated between the project site and residential uses.

**EP Comment 4/30/21: Item closed.**

8. Section 7-09-020 C (5) (d) requires exposed storage areas, truck loading areas, etc., to be screened by abutting properties. The proposed 'loading area' to the rear of the proposed parking lot does not include any additional landscaping. Based on review of aerial photography, there appears to be limited vegetation between 425 Whitney Street and the adjacent property.

**VHB Comment 3/22/21:** The loading area to the rear of the property abuts a vegetated wetland system to the east and north. Additional screening seems unnecessary in this location.

**EP Comment 4/30/21: Item closed.**

9. Section 7-09-030 B (2) provides parking ratios for different land uses. The applicant has provided required parking estimates using the industrial (office) and warehouse parking ratios. Based on these ratios, the applicant has estimated that 38 parking spaces are required by regulation. However, the parking requirements table shown on the Layout and Materials Plan indicates the proposed use only requires 20 parking spaces. We recommend the Board consider allowing the applicant to reduce the number of parking spaces to reduce impervious surfaces and stormwater management impacts.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21:** The applicant has provided parking spaces consistent with the Zoning Bylaw requirements. The applicant has indicated that 20 parking spaces will be needed to serve employees.

10. Section 7-09-030 B (3) allows the Planning Board to authorize a 30% reduction in off-street parking spaces, subject to conditions described in the Bylaw.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21: Item closed.**

11. Section 7-09-030 C (1) (a) requires the maximum driveway width to be 24 feet. The proposed driveway is 30 feet wide.

**VHB Comment 3/22/21:** The width of the driveway matches the existing condition and is also preferred to better accommodate larger trucks.

**EP Comment 4/30/21:** The proposed width of the driveway is the same as existing conditions. We have no additional information regarding whether the proposed driveway width is needed to accommodate the proposed uses truck traffic.

12. Section 7-09-030 C (4) (a) [1] requires parking areas with greater than five parking spaces to have a buffer of approximately 10 feet in width. EP was not asked to perform a comprehensive review of the landscape design. However, the proposed landscape plan includes the staggered planting of trees on the outside edge of the parking lot.

**VHB Comment 3/22/21:** The landscape architect has reviewed the planting plan for compliance with the Bylaw requirements. With the low branching and widespread characteristics of the proposed plantings and the existing landscape, VHB believes to have provided the required buffer. If additional plantings are necessary, please provide recommendations.

**EP Comment 4/30/21: Item closed.**

13. Section 7-09-030 F (1) requires bicycle parking facilities be incorporated into the site design unless waived by the issuing authority. It does not appear that bicycle facilities are included on the plans. This section requires one bicycle parking stall for every 10 vehicular parking

spaces. We recommend bicycle facilities be added to the plans consistent with the requirements of the Bylaw.

**VHB Comment 3/22/21:** A bicycle rack has been added to the plan in accordance with the requirements of the Bylaw. See revised Site Plans attached hereto.

**EP Comment 4/30/21: Item closed.** A bicycle rack accommodating 4 bicycles has been added to the rear of the property near the "Warehouse Expansion."

### **Stormwater Management and Erosion Control**

EP has reviewed the projects stormwater management design for consistency with applicable local regulations, the Massachusetts Stormwater Management Standards, and standard engineering practice.

#### **Massachusetts Stormwater Management Standards**

1. Standard 1 – The project complies with this requirement. There are two direct discharges to wetlands. Prior to the discharge of stormwater to wetland resources, stormwater is treated and discharged over a rip-rap pad to reduce erosion impacts. Environmental Partners has comments regarding the riprap pad below.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21: Item closed.**

2. Standard 2 – The project, as currently designed, complies with this requirement. The current design does not increase offsite peak flows to the wetlands.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21: Item closed.**

3. Standard 3 – The project – as designed - provides groundwater recharge in excess of the amount required by the Standard.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21: Item closed.**

4. Standard 4 – The project design provides adequate Total Suspended Solids removal, consistent with the Standards.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21: Item closed.**

5. Standard 5 – The project is not considered a Land Use with Higher Potential Pollutant Loads, as described by the Standards.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21:** Item closed.

6. Standard 6 – The project is located within the Groundwater Protection District and therefore the project is required to treat the 1-inch water quality volume. The project provides adequate treatment to meet the performance standards.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21:** Item closed.

7. Standard 7 – The project is a mix of new development and redevelopment and meets the performance standards for a mix of new development and redevelopment.

**VHB Comment 3/22/21:** No response necessary.

**EP Comment 4/30/21:** Item closed.

8. Standard 8 – An erosion and sedimentation control plan has been provided and generally complies with the Standards. We do have the following comments regarding erosion and sedimentation.

- a. A Stormwater Pollution Prevention Plan required by the United States Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) Construction General Permit was not provided. This document, which is sometimes submitted as part of a Notice of Intent application, is required to be prepared two weeks prior to construction. We recommend this document be submitted to the Town of Northborough a minimum of two weeks prior to the start of construction for review and comment.

**VHB Comment 3/22/21:** A SWPPP will be prepared and submitted to the Town of Northborough a minimum of two weeks prior to the start of construction for review and comment.

**EP Comment 4/30/21:** Item closed.

- b. We recommend that copies of all SWPPP inspection reports be submitted to the Town of Northborough.

**VHB Comment 3/22/21:** Notes will be added to the SWPPP requiring all SWPPP inspection reports be submitted to the Town of Northborough.

**EP Comment 4/30/21: Item closed.** We recommend that any approvals – if issued – include a condition that requires the applicant to submit the SWPPP reports to the Town.

- c. We recommend the Recommended Construction Period Pollution Prevention and Erosion and Sedimentation Controls document include information regarding protecting the bottom of all infiltration facilities during construction to prevent compaction. The bottom of all infiltration facilities should be protected from heavy machinery. In the event that heavy machinery is allowed on the bottom of the infiltration basins, the basins ability to infiltrate water could be impacted.

**VHB Comment 3/22/21:** The Recommended Construction Period Pollution Prevention and Erosion and Sedimentation Controls document has been revised to include notes on protecting the bottom of all infiltration facilities, including protection from heavy machinery. The notes read as follows:

For the long-term function of the infiltration basins, care shall be taken in the areas of the infiltration basins during construction in accordance with the following:

- The infiltration basins shall not be used as a construction sedimentation basin without the prior approval of the engineer.
- Stormwater runoff from exposed surfaces shall be directed away from the infiltration basins.
- Construction equipment, vehicular traffic, parking of vehicles, and stockpiling of construction materials shall be outside of the infiltration basin areas.
- Excavation for construction of the infiltration system shall ensure that the soil at the bottom of the excavation is not compacted or smeared.
- The perimeter of the infiltration basins shall be staked and flagged to prevent the use of the area for activities that might damage the infiltration ability of the system.
- If infiltrations areas are used as temporary sedimentation basins during construction, then the soils shall be excavated a minimum of 2' from the temporary basin bottom to remove clogged soils.

**EP Comment 4/30/21:** The notes described above have been added to the Recommended Construction Period Pollution Prevention and Erosion and Sedimentation Controls document. We recommend similar notes be included on the next revision set of plans to direct the contractor to protect the infiltration basin.

- d. We also recommend the Recommended Construction Period Pollution Prevention and Erosion and Sedimentation Controls document include a section regarding the maintenance of the construction exit.

**VHB Comment 3/22/21:** The Recommended Construction Period Pollution Prevention and Erosion and Sedimentation Controls document will include a section regarding the maintenance of the construction exit.

**EP Comment 4/30/21:** Additional language has been added to this document to include maintenance of the construction exit. We recommend the checklist be amended to include the construction exist as well.

9. Standard 9 – The long Term Operations and Maintenance Plan generally meets the Standards.

**VHB Comment 3/22/21:** No response necessary

**EP Comment 4/30/21: Item closed.**

10. Standard 10 – A signed illicit discharge statement needs to be signed and submitted.

**VHB Comment 3/22/21:** A signed illicit discharges statement is attached hereto and will be included in the revised Stormwater Management Report, Appendix G.

**EP Comment 4/30/21: Item closed.**

#### **Town of Northborough Wetlands Protection Bylaw**

1. Section 4.2.3 states that no foundation, building, road, or sidewalk shall be places within 35 feet of any resource area. This section also states that there will be no construction activity within 25 feet of resource areas. The proposed warehouse expansion is approximately 33 feet from the wetlands at its closest point.

**VHB Comment 3/22/21:** The application was filed prior to the enactment of the buffer distances listed in the Wetlands Bylaw amended through September 21, 2019. The dimensional requirements as per the Wetlands Bylaw amended through January 1, 2000 were as follows "No foundation, building, road, sidewalk, or other permanent structure shall be placed within thirty (30) feet of any resource area. Furthermore, no grading, filling, excavation, removal of vegetation or other construction activity shall be allowed within fifteen (15) feet of said resource areas." As such, the project was designed in accordance with the requirements in affect at the time.

**EP Comment 4/30/21: Item closed.** We defer to the Conservation Commission regarding the applicability of this section. Presumably, the Commission is comfortable with the project since an Order of Conditions has been issued for the project.

#### **Additional Stormwater Management Comments**

EP has developed the following additional stormwater management comments:

1. We recommend the applicant add a note to the Grading, Drainage, and Erosion Control Plan to limit heavy machinery in the bottom of the infiltration basin.

**VHB Comment 3/22/21:** A note has been added to the grading, drainage, and erosion control plan to the effect of "Construction equipment, vehicular traffic, parking of vehicles,



and stockpiling of construction materials shall be outside of the infiltration basin areas." See VHB's revised Site Plans attached hereto.

**EP Comment 4/30/21: Item closed.**

2. We recommend stone for pipe ends, consistent with MassDOT standard specification, be installed at the rip-rap discharge pad.

**VHB Comment 3/22/21:** Materials for stone for pipe ends at all rip rap pads will be specified in the Project Specifications as follows: "Stone for pipe ends and energy dissipaters shall be sound, durable rock, angular in shape. Rounded stones, boulders, sandstone, or similar stone or relatively thin slabs will not be acceptable. The majority of the larger stones shall weigh not less than 50 pounds nor be less than 1.4 ft. long, 0.5 ft. wide, and 0.5 ft. in height. Each larger stone shall weigh not more than 125 pounds nor be more than 2.0 ft. long, 0.8 ft. wide, and 0.8 ft. in height and at least 50 percent of the larger stone volume shall consist of stones weighing not less than 75 pounds nor be less than 1.6 ft. long, 0.6 ft. wide, and 0.6 ft. height. The remainder of the stones shall be so graded that when placed with the larger stones the entire mass will be compact."

**EP Comment 4/30/21: Item closed.**

3. Drain manhole 1 may need to be oversized given the configuration of piping into the manhole.

**VHB Comment 3/22/21:** Drain Manhole 1 (DMH-1) has been upsized to a 5' diameter manhole. This change has been reflected on VHB's revised site plans.

**EP Comment 4/30/21: Item closed.**

4. The Project shows a small increase in total volume of runoff for the 10 and 100-year storms. This increase is below the 15% threshold required for industrial properties located in the Groundwater Protection Overlay District. However, the time span used in the hydrologic calculations is 5 to 20 hours. Using a longer time span, such as 0 to 48 hours, may show different changes in total volumes.

**VHB Comment 3/22/21:** The peak rates of runoff occur at the 12-hr mark therefore the peak rates would not be affected by a longer time span, however the model has been updated to incorporate the longer time span suggested. See VHB's revised Stormwater Report attached hereto.

**EP Comment 4/30/21: Item closed.**

5. The hydrologic drainage calculations show the french drain filling during the 10-year, 25 year, and 100-year storms. The 100 year storm shows the peak elevation in the french drain approximately 5 feet higher than the top of the storage. The french drain is showing a higher outflow than inflow for the 25 and 100-year storms. We recommend the applicant verify and revise the modeling.

**VHB Comment 3/22/21:** VHB has upsized the perforated pipe in the French Drain from 12" to 18". The size of the stone bed has increased as a result of this change. These modifications have been reflected in the French Drain detail shown on C-6. By upsizing the perforated pipe and expanding the stone bed, the French Drain has sufficient storage for runoff in all storms and the inflow is now greater than the outflow.

**EP Comment 4/30/21: Item closed.**

6. We recommend the construction entrance be added to Construction Period Pollution Prevention and Erosion and Sedimentation Controls document. We also recommend that language be included to protect of the infiltration basin from heavy machinery.

**VHB Comment 3/22/21:** Acknowledged, see Stormwater Management and Erosion Control Response 8.

**EP Comment 4/30/21: Item closed.**

7. We recommend the Stabilized Construction Exits detail be revised to include 2-3" stone and the depth be increased to 6 inches.

**VHB Comment 3/22/21:** The construction exit has been revised to utilize the recommended larger 2" to 3" stone coarse aggregate and the depth of the stone will be increased to 6 inches.

**EP Comment 4/30/21: Item closed.**

8. The plans show the ramp leading to the warehouse expansion building will create a low spot. The plans should be revised to remove the low spot or add a drainage structure to drain any water that may pond in this location.

**VHB Comment 3/22/21:** Grading in this area will be refined on the construction drawings to be prepared after the project permit phase has been completed.

**EP Comment 4/30/21:** Item remains open. This minor change in the design should be included in the plans or a condition be included as part of any approval – if issued – requiring the addition of this catch basin and additional piping.

9. Maintenance access to the infiltration basin will be limited. Vehicles will not be able to access the basin and all work will need to be performed by hand.

**VHB Comment 3/22/21:** Acknowledged.

**EP Comment 4/30/21:** We recommend that any approval issued include a condition that all operation and maintenance reports be submitted to the Town of Northborough.

10. We recommend a gate be provided to allow maintenance access to the flared end structure located on the north side of the site.

**VHB Comment 3/22/21:** A gate has been added to allow maintenance access to the flared end structure located on the north side of the site. This change is reflected on VHB's revised site plans.

**EP Comment 4/30/21: Item closed.**

#### **Additional Civil/Site comments**

1. We recommend granite curb be installed at the site entrance along Whitney Street.

**VHB Comment 3/22/21:** The plans have been updated to reflect this change, see revised Site Plans attached hereto.

**EP Comment 4/30/21: Item closed.**

2. We recommend that cut sheets of the site lights be provided. We also recommend that the applicant verify that the proposed site lights are dark skies compliant.

**VHB Comment 3/22/21:** Cut sheets are attached hereto. The proposed fixtures are Dark Sky compliant.

**EP Comment 4/30/21: Item closed.**

3. We recommend the applicant verify plans for trash disposal. There does not appear to be any outside dumpsters or provisions for trash.

**VHB Comment 3/22/21:** The facility doesn't generate a volume of trash significant enough to warrant an external dumpster.

**EP Comment 4/30/21: Item closed.** A trash compactor pad has been added to the plans.

4. We recommend the applicant confirm the installation of sewer force main is allowed by Public Works. We are unclear regarding the status of the design. We recommend the applicant provide details of the sewer ejector pump and wet well. The pump and force main design shown on the plans are schematic in nature.

**VHB Comment 3/22/21:** See response to Comment 5 in the Northborough Zoning Bylaw section of this letter. VHB is working through the design and coordination of this utility. All necessary documentation will be provided to the Town for approval prior to construction.

**EP Comment 4/30/21:** Item remains open. We recommend the Planning Board continue to coordinate with the applicant and Public Works regarding the status of the sewer pump station.

Our review is based on the information that has been provided. As noted above, additional reviews have been prepared – and our ongoing - to address other components of the project.

We appreciate the opportunity to be able to assist you with this important project. Please feel free to contact me at (617) 429-3288 or [sdt@envpartners.com](mailto:sdt@envpartners.com) with any questions or comments.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "S.D. Turner", with a long horizontal flourish extending to the right.

Environmental Partners Group, Inc.  
Scott D. Turner, PE, AICP, LEED AP ND  
Director of Planning  
P: 617.657.0280  
E: sdt@envpartners.com

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# EXHIBIT I



April 30, 2021

Ms. Kathy Joubert, Town Planner  
Town of Northborough  
Northborough Town Offices  
63 Main Street  
Northborough, MA 01532

**RE: Transportation Impact Assessment Peer Review  
425 Whitney Street, Northborough, Massachusetts**

Dear Ms. Joubert,

Environmental Partners (EP) has reviewed VAI's responses to the comments raised in the Traffic Impact Assessment Peer Review (dated February 25, 2021) regarding the proposed laboratory/manufacturing facility to be located at 425 Whitney Street in Northborough, Massachusetts. Please see our responses below.

#### **EXISTING CONDITIONS**

1. **EP Comment 2/25/21:** The TIA indicates the project is expected to generate fewer vehicles than the existing/former usage. As such, VAI only included one study roadway and no study intersections as part of the study area, and therefore did not perform traffic analysis as part of this assessment. It is unclear based on the information provided whether or not the previous occupant still occupied the site as an existing usage at the time the traffic counts were completed in November 2019 and whether or not the occupancy was recent enough to be considered an existing condition. EP requests clarification on the status of the previous occupant.

**VAI Comment 3/3/21:** The previous occupant of the subject building and property (Metrie Interior Moldings and Doors) was active within the past 3 years and, consistent with the standards of the Massachusetts Environmental Policy Act (MEPA) and the Massachusetts Department of Transportation (MassDOT), uses that were active within the past 3-years can be considered when evaluating the "as-of-right" reuse of a property to establish the comparative impact of new development or redevelopment. Metrie relocated its operations to 301 Bartlett Street in Northborough in May 2019.

**EP Comment 4/30/21:** VAI has clarified the status of the previous occupant and we have no further questions. **Comment Closed**

## PROJECT-GENERATED TRAFFIC

2. **EP Comment 2/25/21:** VAI used 49,000 sf of occupied space to calculate the trip generation and did not account for the 20,228 sf of storage/warehouse space. EP requests clarification on what justification and standard was used as the basis for using the partial square-footage.

**VAI Comment 3/3/21:** The functional disposition of the 69,228± square foot (sf) building will include 49,000± sf of office, laboratory and manufacturing space, and 20,228± sf of associated storage and warehouse space. There will be no employees assigned to the storage/warehouse space and, as such, this space will not produce traffic. That being said, including the storage and warehouse space would increase the peak-hour traffic volume projections for the Project by six (6) vehicle trips during the weekday morning peak-hour and by eight (8) vehicle trips during both the weekday evening and Saturday midday peak hours. The resulting peak-hour trip calculations for the Project would be 34 vehicle trips during the weekday morning peak-hour, 29 vehicle trips during the weekday evening peak-hour and 28 vehicle trips during the Saturday midday peak-hour.

Alternatively, it is anticipated at approximately 20 employees will be assigned to the proposed facility. Using the number of employees as the independent variable would result in nine (9) vehicle trips during the weekday morning peak-hour, seven (7) vehicle trips during the weekday evening peak-hour and two (2) vehicle trips during the Saturday midday peak-hour.

Using either methodology, the predicted traffic volumes that are associated with the Project are relatively minor and, when dispersed over the respective peak hours, would not result in a significant increase in motorist delays or vehicle queuing over existing conditions.

**EP Comment 4/30/21:** Given the relatively low difference in vehicle trips as compared to the previous use, and particularly that the trip generation based on either the partial or full square-footage (49,000± or 69,228±) appears to be conservative based on the estimated number of employees, EP requests no further information. **Comment closed**

3. **EP Comment 2/25/21:** • VAI used ITE's fitted curve methodology in establishing proposed trips; however, given the available sample points, one could argue using average rate methodology. With the evaluated 49,000 sf of occupied space, the morning peak hour would increase from the projected 26 trips to 34 trips and the evening peak hour would increase from 23 trips to 31 trips, which is either at or slightly above the existing trips. If the higher square footage is used, the difference in trips would almost double. EP requests clarification on the selected trip-generation methodology.

**VAI Comment 3/3/21:** The Institute of Transportation Engineers (ITE) recommends that the fitted curve equation be used to establish the trip characteristics for a land use when an equation is provided and there are more than 20 data points available for the land use under study. A review of the ITE trip-generation data for Land Use Code (LUC) 110, General Light Industrial, indicates that the LUC meets the recommended practice for use of the fitted curve equation.

**EP Comment 4/30/21:** As previously stated, one could argue use of either methodology based on the recommended procedures outlined in ITE; however, EP is satisfied with VAI's justification and we have no further questions. **Comment closed**

4. **EP Comment 2/25/21:** •As discussed under the Existing Conditions section above, VAI did not include study intersections or traffic analysis given their anticipated reduction in vehicle trips for the proposed facility compared to the former use. Based solely on the TIA's findings, it appears that the proposed site generated volumes equate to one vehicle every two or three minutes which will likely result in negligible or minor delays and would be anticipated to be less than the former use. However, EP requests clarification regarding the above-discussed trip generation methodology, proposed development size, and the status of the former use before commenting on the accuracy of trip generation and the potential need for further evaluation.

**VAI Comment 3/3/21:** Responses have been provided to EP's comments and affirm that the Project will result in comparable traffic volumes to the former use that occupied the Project site

**EP Comment 4/30/21:** EP is satisfied with VAI's responses to all comments regarding the trip generation and we have no further questions. **Comment closed**

#### SIGHT DISTANCE

5. **EP Comment 2/25/21:** • During our site visit, EP measured the sight distance from the location of the proposed site driveway along Whitney Street. We agree that with selective vegetation clearing, the required minimum sight distance should be met. We request that the Applicant provide sight triangles for the proposed driveway on the site plans to indicate areas where all objects and vegetation should be removed and/or maintained below a height of 2.5 feet.

**VAI Comment 3/3/21:** The sight triangle areas will be added to the Site Plans along with a note stating "Signs, landscaping and other features located within sight triangle areas shall be designed, installed and maintained so as not to exceed 2.5-feet in height. Snow windrows located within sight triangle areas that exceed 3.5-feet in height or that would otherwise inhibit sight lines shall be promptly removed."

**EP Comment 4/30/21:** The sight triangles have been provided and EP has no further comments. **Comment closed**

VAI has adequately addressed all of our questions raised in the TIA Peer Review, and all comments have been closed as of this review. We appreciate the opportunity to assist you on this project.

Very Truly Yours,

Environmental Partners Group, Inc.



Jane R. Davis, P.E.

Project Manager

P: 617-657-0288

E: jrd@envpartners.com



# EXHIBIT J



**CN ASSOCIATES**  
YOUR PARTNER IN RADIATION SAFETY

April 30, 2021

Ms. Kathy Joubert, Town Planner  
Town of Northborough  
Northborough Town Offices  
63 Main Street  
Northborough, MA 01532

**RE: Peer Review Letter – Facility Expansion Project  
425 Whitney Street, Northborough, Massachusetts**

This letter is to advise that we have reviewed two response memorandums from Steris A.S.T addressed to the Northborough Planning Board dated January 28, 2020 and May 27, 2020, respectively. We conducted a point-by-point review of these memorandums and have commented as appropriate with available information. See attached response memorandums with our comments inserted. For references and background information we refer you to our previous letter dated February 25, 2021.

*Donald Flahardy*

C. N. Associates, Inc.  
Donald T. Flahardy, CHP  
Director of Operational Health Physics  
603-944-0000  
[Don.Flahardy@CNAssociates.net](mailto:Don.Flahardy@CNAssociates.net)

Attachments:

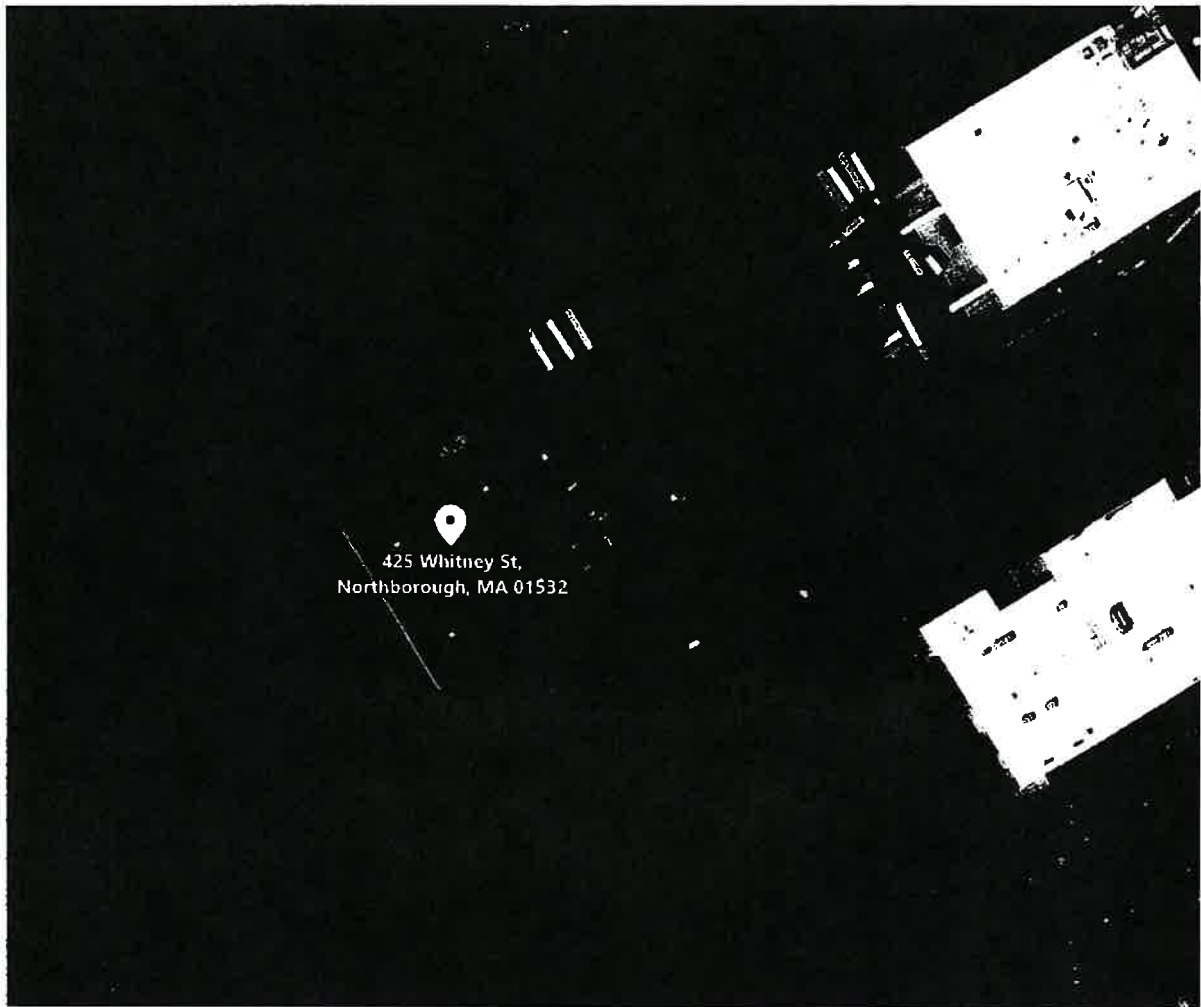
Response Memorandum from STERIS A.S.T. Response to Request for Additional Information. January 28, 202

Response to Northborough Planning Board's Second Request for Additional Information; Site Plan Approval - 425 Whitney Street May 27, 2020

Response Memorandum from STERIS A.S.T.


Northborough Planning Board

Re: 425 Whitney Street



# Memorandum

TO: Ms. Kerri Martinek, Chair, Northborough Planning Board

FROM: Stephen F. Madaus, on behalf of STERIS, A.S.T. 

DATE: January 28, 2020

RE: Response to Request for Additional Information

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This memorandum is in response to a letter received by STERIS A.S.T. (the "Applicant") from the Northborough Planning Board (the "Planning Board"), dated November 15, 2019. By its letter, the Planning Board requested additional information to assist the Board in its review of the Applicant's applications for Site Plan Approval (Section 07-03-050 of the Zoning Bylaw) and for a Special Permit pursuant to the Groundwater Protection Overlay District (Section 7-07010 of the Zoning Bylaw), concerning property located at 425 Whitney Street in Northborough (the "Property" or the "Site"). A copy of the Planning Board's letter is attached as Exhibit A.

To ensure a comprehensive response to the Planning Board's request for additional information, the Applicant cut and pasted each of the line items or topics listed in the Planning Board's letter and provided its response to each item in italics. The Applicant previously submitted with its applications a full Site Plan, entitled "Facility Expansion Project, 425 Whitney Street, Northborough, Massachusetts", prepared by VHB (the "Site Plan"). The proposed improvements to the Property, as shown on the Site Plan, are referred to herein as the "Project".

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MIRICK O'CONNELL

Conformity with Section 7.2 Submission Requirements per the Planning Board's Rules and Regulations.

1 Application narrative in accordance with Section 7.2 B (1-11)

B. Application narrative. To assist the Planning Board with its review, the Applicant shall provide a concise narrative about the proposed project. At minimum, the narrative shall include the following information:

(1) *The proposed use(s).*

*The Applicant 's proposed use involves receiving new products manufactured by others, such as medical devices, equipment and consumer products (e.g., paper products, plastic products, bandages, gauze) and to process these products through an X-Ray Pallet System, to sterilize the medical devices, equipment and consumer products. The medical devices, equipment and consumer products remain in their original packing (on pallets) during the processing. After processing, the medical devices, equipment and consumer products are shipped to their designated destinations.*

**C.N. Comments: The Steris description for the proposed use of the X-Ray Pallet System is consistent with the available literature that describes the purpose and use of these systems.**

**Application narrative sections 7.2B (2-11) are non-radiological in nature. C.N. has no comments**

(2) The projected increase in traffic trips generated by the project.

See the "Transportation Impact Assessment", dated January 21, 2020, prepared by Mr. Jeffery Dirk, P.E., of Vanasse Associates, Inc. attached hereto as Exhibit B. The prior use of the existing building was for warehousing of wood and wood products for an architectural millwork company. See Table 2, "Traffic Volume Comparison ", in the Transportation Impact Assessment; it is estimated that the prior use generated 304 traffic trips per weekday. The Applicant 's proposed new use of the Property is estimated to generate 320 traffic trips per weekday. Accordingly, the net increase in traffic trips per weekday is estimated to be 16.

(3) The projected public water and sewer demand, if any.

The Applicant 's proposed use and occupancy of the existing building is estimated to result in a public water consumption 0/400-500 gallons per day. The existing water connection is sufficient for this' demand.

Relative to sewer service, the Applicant proposes 10 either extend the existing public sewer main in Whitney Street to serve the Property (if elevations allow), or to install a force main along Whitney Street which will connect to the existing gravity sewer system. The Applicant will remove the existing septic system in accordance with all applicable requirements and connect the building to the extended sewer line. The demand for sanitary sewer service for the Project is

estimated to be 400-500 gallons per day, based on 310 CMR 15.203, "System Sewage Flow Design Criteria "for a "Factory, Industrial Plant, Warehouse or Dry Storage Space " use.

(4) A list of all other required local, state and federal permits, and the status of each.

A dimensional variance is required from the Northborough Zoning Board of Appeals to allow for the construction of the proposed addition to the existing building within 20' of the side-yard property line, as shown on the Site Plan. The Northborough Zoning Board of Appeals voted to grant the requested dimensional variance at its meeting on August 27, 2019 and the decision was filed with the office of the Town Clerk on September 25, 2019. A neighboring property owner filed an appeal of the ZBA's decision with the Massachusetts Land Court on October 15, 2019. The litigation is pending in the Land Court.

An Order of Conditions from the Northborough Conservation Commission, pursuant to the Wetlands Protection Act, is required for the Project. EcoTec, Inc. prepared a Notice of Intent on behalf of the Applicant, which was filed with the Conservation Commission on September 24, 2019. The Conservation Commission held a public meeting to consider The Notice of Intent on October 7, 2019; at that meeting the Conservation Commission voted to approve an Order of Conditions. The Order of Conditions for the Project was issued on October 23, 2019.

A Special Permit pursuant to the Ground Water Protection Overlay District is required.

The Property is within the Groundwater Protection Overlay District, Area 3 as established by the Town's Zoning Map and Bylaw and, therefore, a special permit is required under Zoning Bylaw section 7-07-010. D (3)(c)[4]. In accordance with Zoning Bylaw section 7-07-010.D. (4)(a), the Applicant submitted a letter prepared by VHB dated September 13<sup>th</sup>, 2019 to document chemicals expected to be used and stored on-site. Since that letter was submitted to the Town's Groundwater Advisory Board, the Applicant recognized additional chemicals to be stored at the Property. The Applicant notified the Town's Groundwater Advisory Board of the additional chemicals that had not originally been anticipated. Accordingly, the Applicant's site engineer, VHB, submitted a revised letter dated January 22, 2020, documenting the latest chemical use and storage information, which is attached hereto as Exhibit C (without exhibits).

As further described herein, registration with the Massachusetts Department of Public Health (MA DPH), Radiation Control Program is required to operate the X-Ray Processing/Treatment System.

(5) The size of the proposed building(s) or addition.

As shown on the Site Plan, the existing building consists of approximately 45,753 sq. ft. The proposed additions to the existing building will add 20,100 sq. ft. and 3,400 sq. ft., respectively, for a total building size of approximately 69,253 sq. ft.

(6) The estimated number of employees for the project.

It is estimated that there will be 25 full time employee working at the Property, post completion of the Project.

(7) The number of parking spaces required to serve the use(s) in the project.

See the "Parking Summary Chart" on sheet C-2 of the Site Plan; the number of parking spaces required, according to the Zoning Bylaw, is 38 spaces and 38 parking spaces will be provided.

(8) The proposed methods of screening the premises and off-street parking from abutting property and the street.

As shown on sheet L-1, Planting Plan, of the Site Plan, the off-street parking area will be screened from abutting property in the Industrial Zoning District by a chain link fence and existing vegetation along the rear of the Property.

(9) Calculation of existing and proposed lot coverage.

As shown on sheet C-2 of the Site Plan, the existing lot coverage of the Property is 21%; the proposed lot coverage is 33%.

(10) For a project plan filed under an approved Industrial/Office Campus master plan special permit, the Applicant shall also provide written statements that the project for which a building permit is sought complies with (a) the master plan special permit, (b) the uses permitted within an IOCD and (c) all requirements of {7-10-030 of the Zoning Bylaw.

Not Applicable — the Project not part of an Industrial/Office Campus master plan.

(11) Any other information the Applicant believes will assist the Planning Board in reviewing and understanding the site plan application and making the required Northborough Planning Board determinations under Section 6.5 of these Regulations and 0703-050 of the Zoning Bylaw.

*Applicant seeks to make use of an existing commercial warehouse building, constructed in 1980, in [the Town 's Industrial Zoning District. The Applicant 's proposed use is allowed as of right in the Industrial Zoning District as "Light Manufacturing: processing", as determined by the Town 's Building Inspector, in his capacity as enforcement officer under The Zoning Bylaw (Section 7-03-0080). The Project will comply with all requirements of the Zoning Bylaw.*

2. Site design contents in accordance with Section 7.2. C. (1-20)

**Section 7.2. C. (1-20) are non-radiological in nature. C.N. has no comments**



C. Site plan contents. The site plan shall be at a scale of one inch equals forty feet (1 " = 40'), prepared and stamped by an architect, landscape architect, or professional engineer registered in the Commonwealth of Massachusetts, as applicable, and shall show the following:

- (1) Existing and proposed boundaries of the site.

Boundaries are as shown on sheet C-2 of the Site Plan. No changes to the boundaries of the Property are proposed.

- (2) Site area and zoning classification(s).

The Property is known as and located at 425 Whitney Street and consists of approximately 5 acres of land (217,800 sq. ft.) located in the Industrial (I) Zoning District. The Property is also located in the Groundwater District 3 Overlay District.

- (3) Ownership of abutting land.

As shown on the Site Plan, the Property is bound on two sides (the rear property line and the eastern sideline) by land of Anza Santo/429 Whitney Street Realty Trust and on one side (the western sideline) by land Consolidated Rail Corp. (a railroad line).

- (4) A north arrow and locus map showing the project within the Town at a scale of one (1) inch equals one hundred (100) feet, and the location and use of any building thereon within three hundred (300) feet of the boundary of the site. The Northborough Assessor Maps, as amended to the date of the site plan application, shall be acceptable to show the use and ownership information required herein.

See the Site Plan submitted by Applicant.

- (5) Location of the site in relation to the Groundwater Protection Overlay District as shown on the Northborough Zoning Map, on file with the Town Clerk.

See the Site Plan submitted by Applicant.

- (6) Location of site in relation to the Floodplain District under 7-07-020.

As indicated on the Federal Emergency Management Agency 's (FEMA) Flood Insurance Rate Map (FIRM) and the National Flood Hazard Layer FIRMette, the Property is not within the mapped Floodplain District.

- (7) Existing and proposed topographical contours of the site taken at two-foot (2') contour intervals by a registered engineer or registered land surveyor. The contours shall extend at least fifty (50) feet beyond the site boundaries, as estimated by the professional preparing the plan.

See sheet C-3, "Grading, Drainage, and Erosion Control Plan ", of the Site Plan submitted by the Applicant.

- (8) Location of all wetlands or water bodies on the site and within one hundred (100) feet of the perimeter of the development activity.

See sheet C-3, "Grading, Drainage, and Erosion Control Plan ", of the Site Plan submitted by the Applicant.

- (9) The nature, location, and size of all significant existing natural land features, including but not limited to tree, shrub, or brush masses, specimen trees and all other trees over ten (10) inches in diameter at breast height, grassed areas, and soil features.

See the "Existing Conditions Plan of Land" of the Site Plan submitted by the Applicant.

- (10) Engineering cross-sections of proposed new curbs and pavements, and vision triangles measured in feet from any proposed curb cut along the street on which access is proposed.

See sheet C-5, "Site Details I ", of the Site Plan submitted by the Applicant. No new curb cuts are proposed for the Property.

- (11) Proposed surface treatment(s) of paved areas and the location and design of drainage systems, with drainage calculations prepared by a registered civil engineer.

See sheets C-3, "Grading, Drainage and Erosion Control Plan " and C-4, "Utility Plan " of the Site Plan submitted by the Applicant.

- (12) Comprehensive parking and traffic circulation plan, showing location and dimensions of proposed parking spaces, dividers, bumper stops, required buffer areas and planting beds, the location and dimensions of proposed pedestrian walkways, and provisions for accessible parking and circulation for people with disabilities.

See the Site Plan submitted by Applicant, including Sheet C-2, "Layout and Materials Plan ", showing location of existing and proposed parking spaces and pedestrian walkways.

- (13) Location, height, elevation, interior and exterior dimensions and uses of all buildings or structures, both proposed and existing; location, number and area of floors; number and type of dwelling units or proposed leasable areas; location of emergency exits, retaining walls, existing and proposed signs.

*See the Site Plan submitted by Applicant, including Sheet C-2, "Layout and Materials Plan", and Sheet A 201, "Exterior Elevations".*

- (14) A table that summarizes all zoning requirements that apply to the project and demonstrates how the project complies with each such requirement.

*See the "Zoning Summary Chart" on Sheet CO of the Site Plan submitted by the Applicant.*

- (15) Provisions for waste disposal, drainage, dust, erosion control, and other utilities including the proposed water supply system showing proposed fire hydrant locations, and any proposed sewer, electric, telephone, gas and cable television utilities.

*See Sheet C-4, "Utility Plan", of the Site Plan submitted by the Applicant.*

- (16) Plans and documents illustrating the proposed system of wastewater collection, treatment and disposal, along with documentation regarding the proposed treatment technology.

*See Sheet C-4 of the Site Plan submitted by the Applicant, showing the connection of [the existing building to a new Sewer Force Main, to be constructed by Applicant in Whitney Street. See Note on Sheet C-4: "Existing , , septic system to be removed. Sanitary sewer to be rerouted through building to force main.*

- (17) Proposed stormwater management system, which shall be designed in accordance with the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policy Handbook and Technical Handbook as most recently amended, whether or not the proposed work falls within the jurisdiction of the Wetlands Protection Act, M.G.L. c. 131, 40.

See sheets C-3, "Grading, Drainage, and Erosion Control Plan", and C-4 "Utility Plan" of the Site Plan and see the Stormwater Report submitted by the Applicant, entitled "Facility Expansion Project" prepared for Isomedix Operations Inc., 425 Whitney Street, Northborough, MA by VHB, dated September 2019, Revised October 2019 (copy attached hereto as Exhibit D, without Appendices). The Stormwater Report provides: "The rainfall-runoff of the Site under existing and proposed conditions was analyzed for storm events with recurrence intervals of 2-, 10-, 25-, and 100-years. The results of the analysis... indicated that the post-development net runoff volume does not exceed existing conditions

by more than fifteen percent (15%) for the 2-, 10-, 25-, and 100-year storm events. " The Stormwater Report was reviewed and approved by the Conservation Commission and the Town Engineer.

- (18) Lighting plan showing existing and proposed lighting, including intensity, pole height, design and direction. A photometric plan shall be submitted.

See the photometric plan prepared by Omni-Lite, Inc., dated September 13, 2019, showing the levels of illuminance on the Site. The plan is attached here[o as Exhibit E

- (19) Landscaping plan showing existing and proposed landscape features, including trees, signs, fences, walls, plantings, and walks, and the location, name, number and size of plant types, and the locations and elevation and/or height of planting beds, fences, walls, steps and paths.

See Sheet L-1, "Planting Plan " and Sheet L-2, "Planting Details ", of the Site Plan submitted by the Applicant.

- (20) Where the Zoning Bylaw requires the provision of open space, the Applicant's declaration of his choice of method or methods of dedicating the required open space, consistent with the provisions of the Zoning Bylaw, along with proposed covenants and restrictions to secure the permanent legal existence of the preserved open space and the proposed wording of any deed for transfer in fee to the Town or to a nonprofit organization.

Not Applicable.

### 3. Development impact analysis in accordance with Section 7.2 D (1) (a-d).

D. Additional requirements. The site plan application shall also include:

(1) Development impact analysis, including:

- (a) Traffic impact: projected total and peak-hour trip generations, capacity and pre- and post Project (buildout) level of service (LOS) of streets and intersections to be affected by the Project, existing and proposed traffic controls and sight lines at the intersections of proposed driveways and streets.

See the Transportation Impact Assessment prepared by Mr. Jeffery Dirk, P.E., of Vanasse & Associates, Inc., dated December 13, 2019, attached hereto as Exhibit B.

**Traffic impact is non-radiological in nature. C.N. has no comments**

(b) Environmental impact: written analysis of the project's potential impacts on the quality of air, surface water and groundwater; flooding potential; increases in impervious surfaces; stormwater management; compliance with Groundwater Protection Overlay District requirements; hazards from radioactive emissions or other hazardous materials; solar access to adjacent properties; and noise and light impacts.

*The Project will comply with all applicable federal and state environmental regulations. Relative [o surface water, groundwater and flooding potential, see the Stormwater Report submitted by [he Applicant, entitled "Facility Expansion Project" prepared by Isomedix Operations Inc., 425 Whitney Street, Northborough, MA by VHB, dated September 2019, Revised October 2019, attached hereto as Exhibit D (without Appendices). The Stormwater Report was reviewed and approved by the Conservation Commission and the Town Engineer.*

*Relative to radioactive emissions, there will be no radioactive emissions or other hazardous materials released from the Property; the sterilization operation does not utilize or create radioactive material.*

**C. N. Comments: C.N. agrees with Steris that the operation of the pallet sterilizer does not use nor create radioactive material. C.N. agrees that there will be no radioactive emissions from the property.**

Relative to solar access, to the best of the Applicant's knowledge, no adjacent properties will be impacted by the Project for solar access.

Noise impacts will be shown on an acoustical study to be provided. The Applicant has retained Tech Environmental of Waltham, MA to provide the acoustical study.

Light impacts are as shown on the photometric plan prepared by Omni-Lite, Inc., dated September 13, 2019, attached hereto as Exhibit E.

(c) Fiscal impact: projections of costs rising from increased demand for public services and infrastructure; projections of benefits from increased tax revenues, employment and infrastructure improvements; and impacts on adjacent property values.

The Applicant's proposed use and occupancy of the Property is likely to enhance the tax revenue for the Town of Northborough because a viable business will take occupancy of a vacant warehouse building in the Industrial Zoning District. Furthermore, provided the dimensional variance is upheld, the Applicant will expand the square footage of the commercial building. There will be no perceivable increase in demand for public services arising from the Applicant's use of the Property. Furthermore, the traffic engineer, Vanasse and Associates, Inc., determined that based on its comparative analysis, "it is clear that the Project will result in comparable traffic volumes and impacts to those of the former architectural millwork company that occupied the Project site." The Applicant's proposed use will result in the establishment of approximately 25 full time employment positions in Northborough. There should be no impact on adjacent property values attributable to the Applicant's use and occupancy of a vacant commercial building in the Industrial Zoning District; the building has been in use for commercial/industrial purposes since 1980.

(d) Community impact: analysis of the project's impact on the surrounding neighborhood in terms of architectural character, pedestrian movement and overall character; impacts on nearby historic structures or sites; and an evaluation of the proposed project's consistency and compatibility with existing local and regional plans.

Relative to architectural character, the proposed addition to the building will be consistent with the design of the existing commercial building in the Industrial Zoning District. The Applicant is not aware of any potential impact of the Project on nearby historic structures or sites. The Project is consistent with the determination and intent of Northborough Town Meeting, when it voted (by a two-thirds vote) to designate the zoning for this Property as Industrial.

### Light Manufacturing Use

29774/00001/A6250325.DOCX[Ver.2]

Provide data and facts that support that the operations meet the use criteria in accordance with Section 7-05-020 11).

Response: The Zoning Bylaw lists the following as an allowed use in the Industrial Zoning District:

1. Industrial uses.

(1) Light manufacturing: Fabrication, processing, packaging, or assembly operations, employing only electric or other substantially noiseless and inoffensive motor power, utilizing hand labor or quiet

machinery and processes, and free from neighborhood-disturbing agents such as odors, gas, fumes, smoke, cinders, refuse matter, electromagnetic radiation, heat, vibration, or noise; provided, that all operations are located entirely within an enclosed building and there is no outside storage of materials or finished goods.

*The Applicant 's proposed use qualifies as "light manufacturing —processing. " The term processing is not defined in the Northborough Zoning Bylaw, so it must be given its common and usual meaning. The term "process " is defined as "a systematic series of actions directed to some end; a continuous action, operation, or series of changes taking place in a definite manner ". The verb of processing is defined as, "to treat or prepare by some particular process, as in manufacturing. " The American College Dictionary; 1969. The Applicant 's proposed use involves the receiving of products or goods in containers, which are then run through an x-ray system which sterilizes the material. The products or goods are then shipped out. This use is clearly a "systematic series of actions directed to some end.*

*The x-ray system is powered by electricity and is located is entirely within an enclosed building (surrounded by walls that are twelve-feet thick). The processing of goods and products is free from neighborhood disturbing agents — the processing will not emit odors, smoke, cinders, refuse matter, electromagnetic radiation, heat, vibration or noise. While some gas may be emitted from the processing operation, it is not at a detectible or reportable level and will not cause any neighborhood disturbing agents. " Accordingly, the Applicant 's proposed use qualifies as "light manufacturing" in the Industrial Zoning District.*

*Section 7-03-080 of the Zoning Bylaw, entitled "Enforcement", provides in Part A that the Building Inspector "shall be charged with the enforcement of this bylaw. " At meetings with [the Zoning Board of Appeals and with the Planning Board, the Building Inspector informed the boards of his determination that the Applicant 's proposed use falls within the definition of light manufacturing, a use that is allowed as of right in the Industrial Zoning District. The Applicant understands that Town Counsel also provided written correspondence to inform the Planning Board that Town Counsel agrees with the Building Inspector 's determination that the Applicant 's proposed use is allowed as of right*

**C.N. Comment: As previously commented there will be no radiation emissions from the property.**

2. Provide data and facts that support the proposed use complies with all environmental performance standards in accordance with Section 7-05 -040 of the Northborough Zoning Bylaws for uses in an industrial district — including noise, light, emissions,

a. For all indoor and outdoor activity — buildings (both the addition and the original warehouse), chillers, and concrete plant.

Relative to noise, the Applicant has retained Tech Environmental of Waltham, MA to prepare an acoustical study of the Property and of the Applicant 's proposed operations.

Relative to lighting, see the Photometric Plan prepared by Omni-Lite, Inc., attached hereto as Exhibit E.

3. Provide the levels of radioactive emissions

There will be no radioactive emissions to either air or water and no radiation dose rates outside of the shield exceeding 2.0 mR/hr (105 CMR 120.221 (b) and no potential for a dose exceeding 0.1r in a year outside of the shield.

**C.N. Comment: C.N. agrees with this response.**

4. Provide the levels of electromagnetic radiation

Radiation levels outside of the shield will not exceed 2.0 mR/hr (105 CMR 120.2210) and no potential for a dose exceeding 0.1r in a year outside of the shield.

**C.N. Comment: C.N. agrees with this response.**

5. Details of the process and how it fits the use:

a. What is the equipment for the sterilization process including how many machines, noise, vibration and electromagnetic radiation produced?

*The equipment for the sterilization process includes a radiation shield, a pallet conveyor, a modulator room, a control room, and an accelerator system. The Applicant will install two shields in the building. The equipment required for the sterilization process is explained in a document entitled "X-Ray Overview — Summary of the Technology and Application ", prepared by Mevex, attached hereto as Exhibit F.*

**C.N. Comment: C.N. agrees with the stated description of the equipment.**

b. Describe the "treatment center" vs. other areas of production

*The treatment center is the shield area in the building, where x-rays are applied to goods and products. The other areas are operations and controls and general warehousing.*



**C.N. Comment: C.N. agrees with the description of the treatment center.**

c. Will there be an electron beam?

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*There will be an electron beam used to create x-rays. The machine will be inside of a shield designed for such use and will be registered in accordance with 105 CMR 120.020 and will be designed and used in accordance with 105 CMR 120.700.*

**C.N. Comment: C.N. agrees with the statement regarding the electron beam and the registration per Commonwealth regulations.**

d. List of hazardous materials to be permanently stored in the building and on-site, including amounts, descriptions, and hazards.

*See Exhibit C letter from VHB to the Town Engineer and the Groundwater Advisory Board, dated January 22, 2020. The applicant reported the following chemicals (and quantities) may be stored on-site:*

- *Gunk Brake Parts Cleaner (12) 20-ounce cans*
- *HydroForce Degreaser — (12) 20-ounce cans* ● *CRC Brakleen — (12) 20-ounce cans*
- *Liquid Wrench Universal Chain Lube — (12) 12-ounce cans*
- *Power Lube — (12) 12-ounce cans*
- *Krytox Lubricant — (12) 20-ounce cans*
- *Blaster Silicone Lubricant — (12) 20-ounce cans*
- *PB Blaster — (12) 20-ounce cans* ● *Air Tool Oil — (12) 8-ounce bottles*
- *Chain Lube — (12) 20-ounce cans*
- *Renolit Syn 940 Grease — (12) 12-ounce tubes*
- *Loctite LB 8801 Silicone Lubricant — (12) 6-ounce tubes*
- *Acetone — (1) 1-gallon bottle*
- *Methanol (1) 1-gallon bottle*

**C.N. Comment: None of the listed hazardous materials are radioactive. C.N. has no comments regarding non-radioactive hazardous materials.**

## Groundwater

1. Data and facts that support any requests made by Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee for both the building and the concrete plant.

- a. Drainage, run-off, impact on surrounding land, any possible flooding.

*See the Stormwater Report submitted by the Applicant, entitled "Facility Expansion Project" prepared for Isomedix Operations Inc., 425 Whitney Street, Northborough, MA by VHB, dated September 2019, Revised October 2019, attached hereto as Exhibit D (without Appendices). The Stormwater Report was reviewed and approved by [the Conservation Commission and the Town Engineer.*

- b. Layout, description, and impact of the concrete plant on the surrounding land:
- i. Containment of stock piles.
  - ii. Water usage and source.
  - iii. Waste water containment and disposal.

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- iv. How will dust be controlled and contained to avoid spreading to residential areas?

*These issues and concerns are addressed in the Order of Conditions issued by the Northborough Conservation Commission, attached hereto as Exhibit E. See the "Special Conditions ", No. 46, entitled "Temporary Concrete Plant", which states in part (a): "No site work on the temporary concrete plant shall begin until plans and specifications that include, but are not limited to, erosion control measures, construction sequencing, details on dewatering, mobilization, demobilization, and daily operation and maintenance are approved by the Commission or its agent and the Town Engineer. " And in part (c): "The drainage and stormwater system shall be cleaned and maintained after the complete demobilization of the temporary concrete plant. The maintenance and inspection report for this work shall be submitted to the office of the Conservation Commission. The Commission shall be notified before the maintenance activities occur and shall be afforded the opportunity to inspect the work."*

**C.N. Comment: There are no radiological materials generated by the operation of the X-Ray Pallet system therefore there are no radiological**

**impacts to groundwater. C.N. has no comments regarding other possible impacts.**

## Landscaping

### 1. Describe buffers for the facility during and after the use of the concrete plant

#### a. Possible sound wall barrier

*None during construction. Applicant will adhere to limitation of hours of construction activity, as set forth in the Northborough Zoning Bylaw (limited to hours between 7:00 a.m. to 7:00 p.m.). Depending on the result of the acoustical study, the Applicant may install a sound barrier around the chiller equipment.*

#### b. Visual barrier. *None during construction.*

**C.N. has no comments regarding Landscaping**

## Traffic/Trucks (During construction of the additions and during the operation of the facility)

### I. Impact of trucks traveling to site during construction and during day-to-day operations.

#### a. What will be the hours of operation of the temporary concrete plant including days of the week? *Applicant will adhere to limitation on construction activity as set forth in the Northborough Zoning Bylaw.*

#### b. What will be the hours of operation after construction and during day-to-day operations? *Once completed, the facility will operate (internal operations) 24-hours a day, seven days a week. External operations (shipping and receiving) will typically occur on Monday Friday, between the hours of 7:00 a.m. and 7:00 p.m.*

*How many truck trips per day? It is estimated that there will be 15 — 20 truck [rips to or from the Property, each business' day.*

### 2. What is the noise associated with the trucks? *Typical or usual noises associated with truck traffic will occur on the Property during the business day. The Applicant will adhere to all applicable state and federal regulations relative to the operation of motor vehicles. Note that the "Environmental Performance Standards, " concerning noise as set forth in Section 7-05-040(c) of the Zoning Bylaw, do not apply to: "Any noise produced by a registered motor vehicle; provided that such vehicle is equipped with all noise-suppression devices required for legal operation under such registration by the laws of the " Commonwealth.*

### 3. Will there be temporary lighting in place during construction? No. Describe type and levels of lighting, if applicable. *Not applicable.*

4. List of materials if stored in trucks overnight in the parking lot.

*Typical materials that might be stored in trucks overnight at the Site are consumer products, such as bandages, or medical devices. The stored products are comprised of either metal, plastic, or cloth. There will be no hazardous materials stored overnight in trucks on the Site.*

**C.N. has no comments regarding Trucks/Traffic.**

### Peer Review of Application

1. Expert review of safety, levels of electromagnetic radiation, and the safeguards that should be in place during construction, testing and operation of the facility.

a. Is the thickness and positioning of the concrete walls, floor, and ceiling adequate?

*Yes - the concrete shield (walls, ceiling and flooring) has been designed specifically for the sterilization operations by a company registered with the MA Department of Public Health for Shielding Design.*

**C.N. Comment: C.N. agrees that the design thickness of the concrete walls, floor, and ceiling are adequate to limit the radiation exposures as specified by Commonwealth regulations.**

b. Decommissioning plans?

*A Decommissioning Funding Plan is not necessary or required by regulation because no radioactive materials will be on site or used at the Property.*

**C.N. Comment: C.N. agrees that a decommissioning fund is not required by Commonwealth regulations. Removal for transfer or disposal of the linear accelerators would be required when the devices are no longer needed. The cost of this would be minimal. Notice to the Commonwealth for disposal or transfer is required by regulations in accordance with 105 CMR 120.032**

c. Safety plans in the event of an accident or disaster (100-year flood, earthquake/tornado, other natural disaster)?

*The control system for the sterilization equipment includes a combination of manual and automatic shut offs. If the operators determine that the sterilization system must be shut down quickly, there are emergency stop buttons. If the operators are incapacitated, the system will automatically shut down.*

**C.N. Comment: C.N. has not reviewed design and operations manuals for the X-Ray Pallet system. As such we cannot comment regarding automatic or manual shutoffs.**

d. Adequate cleanup plans if hazardous material is spilled, leaked, released into the environment?

*The sterilization system does not create or cause opportunities for hazardous materials to spill, leak, or to be otherwise released from or at the Property. There will be no radioactive material on the Property.*

**C.N. Comment: C.N. agrees that the system does not create radioactive materials.**

e. Review compliance with MA Executive Office of Health and Human Services, Department of Public Health, Bureau of Environmental Health, Radiation Control Program and any others as applicable or required by law.

*The sterilization system will comply with all applicable regulations of the Commonwealth of Massachusetts.*

**C.N. Comment: The Commonwealth registration process for radiation machines is designed to ensure compliance with regulations.**

f. Are there federal or state licensure regulations or mandatory certifications for personnel operating equipment and handling products?

*Nuclear Regulatory Commission N/A (the Commonwealth of Massachusetts, through its Department of Public Health, enforces applicable standards of the NRC).*

Commonwealth of Massachusetts:

1. 105 CMR 120.001-.016\_General Provisions
2. 105 CMR 120.020-.040\_Registration of Radiation Machine Facilities and Services
3. 105 CMR 120.200-.287 \_Standards for Protection Against Radiation
4. 105 CMR 120.700-.711 \_Radiation Safety Requirements for Particle Accelerators
5. 105 CMR 120.750-.760\_Notices, Instructions and Reports to Workers: Inspections

**C.N. Comment: C.N. agrees that the Commonwealth regulates the use of X-Ray machines.**

g. Proper maintenance protocol for the concrete

- i. Degradation of concrete over time? What is the expectancy of concrete under these conditions?

*There is no degradation of the concrete over time; there is no limitation on the "life expectancy" of the concrete.*

- ii. How often does it need to be inspected, replaced, what type of reporting/records should be required?

**C.N. is not an expert regarding concrete life expectancy but our experience with concrete used for radiation shielding is such that we would not expect degradation that would affect its shielding characteristics in this application.**

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*The shield will be inspected annually during the shield survey or after a natural disaster, such as an earthquake or other unlikely event which could cause damage to the shield.*

- iii. Does the concrete need to be coated? *No. Does it require lead bricks? No.*

**C.N. Comment: C.N. would agree that lead bricks would not be required.**

h. What risks do we need to be aware of? What is the safe radius from the structure?

- i. Health risks

*There are no health risks from the sterilization operations outside of the shield. Risks to employees inside the facility will be controlled by machine safety interlocks which immediately shut down power to the machine if activated.*

**C.N. Comment: see previous comment regarding machine safety interlocks for automatic shutdown.**

ii. Explosion risks. *None.*

iii. Leakage risks

*Initial shield surveys by a qualified expert will determine if additional shielding is needed prior to commencement of operations.*

**C.N. Comment: initial shield surveys are required by Commonwealth regulations**

i. Environmental impact — what are the standards and how do we confirm that standards are met?

*There are no specific environmental impact standards applicable to the sterilization technology; the sterilization system is designed so that radiation is contained within the shield(s). No radioactive material will be stored or used at the Property.*

**C.N. agrees with this response.**

i. What are best practices in measuring compliance: what should be measured, how it should be measured, is there a specific device used to measure it

*Applicant will adhere to monitoring requirements as set forth in regulations of the Massachusetts Department of Public Health, which require continuous radiation monitoring in the treatment/shield area.*

**C.N. Comment: C.N. agrees that Commonwealth regulations specify monitoring requirements for X-Ray device shielding and High Radiation Areas that could exist inside the treatment area.**

## 2. Evaluation of the chillers

a. Level of noise, ground vibration

The Applicant retained Tech Environmental of Waltham, MA, a professional acoustical engineer, to prepare an acoustical study report for the Property.

b. Hours of Operation

The Applicant intends that the internal operations at the facility will occur twenty-four hours per day. External operations on the Property will typically occur from 7:00 a.m. to 7:00 p.m., Monday — Friday.

c. Inspection, maintenance and reporting

As needed; the chillers are required to operate the sterilization system, so it is in the Applicant's interest to monitor and maintain the chillers in good working order. The chillers will be air chilled, with circulating water (no anti-freeze).

**C.N. has no comments regarding the chillers.**

3. Potential impact on utilities possible impact on neighborhoods for power disruption

*None; the local utility company 's power grid will support the facility.*

**C.N. has no comments regarding the power grid.**

a. Levels of carbon dioxide emissions by large use of electricity

*None at the Property.*

**C.N. has no comments regarding carbon dioxide emissions.**

4. Radiation monitoring inside and outside the cell

See response to (b), below; with the monitoring inside the shield area, there is no need to monitor the outside of the facility.

a. Is there a device or instrument that can be installed on the exterior of the building that can monitor the radiation levels beyond the shield?

*Yes, there is a device or instrument which would monitor radiation levels outside of the facility.*

**C.N. agrees that devices exist to monitor radiation levels outside of the facility.**

b. How will it be recorded and reported, how often and to whom?

*All high radiation areas, located behind interlocked doors inside the shield, will be continuously monitored for radiation per 105 CMR 120.710 (c). Portable radiation monitors will be available and required for entrance into high radiation areas as required*



*by 105 CMR 120. 710(a). The outside of the shield will be surveyed initially by a qualified expert acceptable to the MA DPH and then annually or if a change is made to the equipment that could affect the power of the machine or if an event, such as an earthquake, could have an effect on the shield.*

**C.N. Comment: The response provided above addresses how often radiation levels will be monitored inside and outside of the cell in accordance with regulations. The response does not address how that monitoring will be recorded and to whom it will be reported. (the response for the following item does state that shield surveys will be documented per internal procedure) but does not address reporting of results.**

c. Proof this level of radiation is safe.

*Shield surveys will be performed and documented per internal procedure as specified by 105 CMR 120. 710(b).*

**C.N. Comment: C.N. agrees with the above reference but suggests the entire section 120.710 (a) through (h) are applicable for radiation monitoring requirements for particle accelerators.**

5. At ZBA hearing, stated: "Shield survey will be done annually to make sure not exceeding regulatory limits for what gets outside."

a. What is a shield survey, how often should it be performed, how and who performs the survey, who monitors it?

*A shield survey is the process of using an appropriate and calibrated hand-held radiation survey instrument on the exterior surfaces of concrete walls and roof of the shield [o verify that any radiation levels, if present are below regulatory limits as specified in 105 CMR 120.211 and 221.*

*A survey is required to be performed when the accelerator is first capable of producing radiation (105 CMR 120. 706(a)) and when there have been any changes to the shielding, equipment, operation of the equipment or use of adjacent areas. In addition, the Applicant will voluntarily perform shield surveys on an annual schedule.*

*Required shield surveys must be performed by qualified expert acceptable to the state agency. These acceptable experts are registered with the MA DPH.*

**C.N. agrees with the above stated response.**

6. Any other information that the peer reviewer determines is pertinent to the site, facility, and process, design, and construction. [Items for Peer Reviewer]

- a. Guidance on conditions that we should consider as part of the review
- b. Establishment of performance bonds or escrow? Account for decommissioning of the concrete plant and facility?

*A Decommissioning Funding Plan is not required or necessary, because the Applicant will not be using radioactive materials.*

**See previous C.N. comment regarding decommissioning funds**

- c. Review of backup plans — including generator and backup for "life support systems"
- d. High-level inquiry of other US locations with this exact process (Ohio and CA) to uncover any unforeseen issues or challenges in construction or operation.
- e. Review of all data and studies submitted by Steris including but not limited to: acoustics study by acoustics engineer, traffic study

# Memorandum

TO: Kerri Martinek, Chair, Northborough Planning Board

FROM: Attorney Stephen F. Madaus, on behalf of STERIS, A.S.T. 

DATE: May 27, 2020

RE: Response to Northborough Planning Board's Second Request for Additional Information; Site Plan Approval 425 Whitney Street

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This memorandum is in response to a second series of questions received by STERIS A.S.T. (the "Applicant") from the Northborough Planning Board (the "Planning Board"), in the form of a memorandum dated March 11, 2020. By way of background, on September 17, 2019 the Applicant filed an application for Site Plan Approval in accordance with Section 7-03-050 of the Northborough Zoning Bylaws. The Planning Board considered the Site Plan Application at its meetings on October 17, 2019, December 12, 2019, February 4, 2020, February 18, 2020, and March 10, 2020. The Planning Board issued its first memo requesting additional information on November 15, 2019 and the Applicant provided an 18-page response memo with exhibits, dated January 28, 2020.

## Site Plan Approval Review Criteria

Preliminarily, we respectfully remind the Planning Board that the Applicant's proposed use is allowed as of right in the Industrial Zoning District. The use is not subject to a special permit. The review criteria for Site Plan Approval is set forth in Section 7-03-050 (C) (2), entitled "Decision criteria." Note the first sentence in the decision criteria: "The Planning Board shall approve a site plan if it determines that:" (the review criteria in subparts (a), (b), and (c) are satisfied). Nothing in the review criteria concerns regulating or denying an applicant's proposed, allowed use, nor does the review criteria relate to or permit the regulation of the interior of a building.

## Preemption by State Law

MIRICK O'CONNELL  
ATTORNEYS AT LAW

The Planning Board's second set of questions concern, almost entirely, the technology to be used by the Applicant within its building. Despite the fact that the review criteria for Site Plan Approval does not concern the regulation of a use (and does not allow for regulating the interior use), the Applicant is providing answers to all of the Planning Board's questions. The Planning Board should be aware, however, that the regulation of radiation and of "machines which emit ionizing and nonionizing radiation" is an area occupied by the Commonwealth of Massachusetts, namely the Massachusetts Department of Public Health. See Section 5N of Chapter I II of the general laws:

*The department (of Public Health) is hereby designated as the state radiation control agency. The department shall develop and, from time to time, after a public hearing, prescribe and establish rules and regulations, compatible or consistent, whichever appropriate, with federal rules and programs, necessary to implement a program for the evaluation and control of...machines which emit ionizing and nonionizing radiation and for the issuance, amendment, suspension and revocation of general and specific licenses by-product, source and special nuclear material or devices or equipment utilizing such material, for the purpose of protecting the general public and individuals against hazards associated with the possession, use, transportation, storage, packaging, sale, distribution, production, and disposal thereof*

Furthermore, Section 5N provides:

*The department "public health shall establish rules and regulations of the commonwealth insofar as they pertain to the health aspects of ionizing and nonionizing radiation. Such rules and regulations shall apply exclusively throughout the commonwealth.*

The Massachusetts Department of Public Health promulgated regulations in accordance with its exclusive authority. The primary regulations are found at 105 CMR 120.000, et seq., entitled "Control of Radiation."

Under the Home Rule Amendment to Massachusetts Constitution, cities and towns may exercise any power or function which the general court has the power to confer upon them, "which is not inconsistent with the constitution or laws enacted by the general court." Section 6 of the Home Rule Amendment (emphasis added). By enacting MGL c. 111, Section 5N, the legislature determined that the Massachusetts Department of public Health shall establish the rules and regulations "insofar as they pertain to the health aspects of ionizing and nonionizing radiation." Most importantly, the legislature determined that, "such rules and regulations shall apply exclusively throughout the commonwealth,"

MIRICK O'CONNELL  
ATTORNEYS AT LAW

The Massachusetts Supreme Judicial Court held: "In deciding whether under Section 6 of the Home Rule Amendment a municipal ordinance or bylaw is 'not inconsistent with the constitution or laws enacted by the general court'... we have said that the legislative intent to preclude local action must be clear." Town of Wendell v. Attorney General 394 Mass. 518, at 523 (1985), quoting Bloom v. Worcester, 363 Mass. 136 (1973). In this instance, it is clear that the legislature intended for the Massachusetts Department of Public Health to promulgate rules and regulations to govern and control, exclusively, the use of radiation and machines which emit ionizing radiation (such as the Applicant's technology). Accordingly, the Northborough Planning Board is preempted by state law from regulating or conditioning, through Site Plan review or any other means, the Applicant's use of ionizing machines and equipment.

The Applicant's answers to the Planning Board's questions are attached as Exhibit A. To ensure a comprehensive response to the Planning Board's questions, the Applicant cut and pasted each of the line items or topics listed in the Planning Board's memo and provided its response to each item in italics.

MIRICK O'CONNELL  
ATTORNEYS AT LAW

## EXHIBIT A

Questions relating to the facility:

Commercial medical x-ray sterilization facilities/equipment:

1. Internet search finds that there are less than five commercial medical X-ray sterilizers currently operating in the world. We are aware of only the one in Daniken, Switzerland. Are there any others?

*In addition to its investment in Daniken, Switzerland and Northborough, the Applicant is investing in building similar electron beam and x-ray sterilization facilities in Ontario, CA, Libertyville, IL (already permitted), and Venlo, The Netherlands (already permitted).*

*In addition to the Applicant, a company named Steri-Tek operates an electron beam and x-ray sterilization facility in Fremont, CA and a company named Steri-Genics operates an electron beam and x-ray sterilization facility in Bridgeport, NJ, Internationally, a company named Ionisos operates an electron beam and x-ray sterilization facility in Biassono, near Milan, Italy and Medi-Scan, GmbH, operates two x-ray sterilization facilities in Austria.*

**C.N. has no comments regarding the total number of sterilizers operating in the world.**

2. Including the Daniken, Switzerland facility, how long they have been operating? What type of equipment is used in each facility?

*The Applicant 's sterilization facility in Daniken has been operating since late 2010. The x-ray sterilization facilities in Ontario, CA and Libertyville, IL are not yet operating. We have no direct knowledge relating to the operating timelines of facilities not owned by STERIS.*

*A review of the website for each company listed above may reveal the types of equipment employed in each facility, but the technology is the generally the same.*

**C.N. has no comments regarding how long various facilities have been in operation.**

3. What is the MeV capacity of accelerator at the Daniken, Switzerland site?

*The Daniken machine is 7 Me V.*

**C.N. has no information for the Daniken machine.**

4. Will this same equipment be used at the Northborough MA facility?

*Similar type equipment, but supplied by a different manufacturer.*

**C.N. has no information for the Daniken machine for comparison to the one planned for Northborough.**

5. Do the accelerators operate continuously?

*No, the equipment does not run continuously, but only when started by an authorized operator and it is shut down when not needed for processing.*

**C.N. Comment: the response is consistent with the available literature**

6. Are there specialized electrical components such as cabling, parts, and brakes needed to operate this equipment?

*Yes.*

**C.N. does not comment regarding electrical needs.**

7. How is the equipment serviced and repaired?

*The equipment will be serviced and repaired by trained STERIS personnel and by the manufacturer's representatives, who are registered technicians with the Commonwealth of Massachusetts.*

**C.N. confirms the regulatory reference: 120.025 (C) Each registrant shall prohibit any person from furnishing radiation machine servicing or services as described in 105 CMR 120.026(D) to his radiation machine facility until such person provides evidence that he has been as a provider of services in accordance with 105 CMR 120.026.**

8. Does the Switzerland facility have a single-row, double-sided system, or double-row, double sided?

*The facility in Switzerland is a single-row, two-level, multi-pass system.*

**C.N. has not knowledge regarding the specifics of the Switzerland facility.**

9. What system will be used at the Northborough MA facility?

*The facility in Northborough will have a double-row, single level, multi-pass system.*

**C.N. finds this response consistent with the literature provided.**

10. What issues or problems have been encountered with the site in Daniken, Switzerland?

*None*

**C.N. has no information regarding the operation of the Switzerland facility.**

11. How many x-ray sterilizers machines do they utilize in Daniken, Switzerland?

*One*

**C.N. has no information regarding the design of the Switzerland facility.**

12. How many x-ray sterilizers machines will there be at the Northborough MA facility?

**C.N. finds this response consistent with the literature provided for the Northborough facility.**

13. Is there potential or allowances, accommodations in the plans to add more?

*No*

**C.N. has no information regarding Steris' plans for any additions other than what is stated in this response.**

Chillers:

1. How do the chillers work?

*Mechanical refrigeration system tht uses air for cooling.*



2. What happens if the chillers breakdown?

*The system shuts down automatically.*

**C.N. does not possess technical information to confirm automatic shutdown capabilities.**

3. Is there a malfunction alarm or some sort of notification that the chillers are not working properly?

Yes.

**C.N. does not possess the technical information regarding this issue.**

Power/shut down/ backup generator:

1. Is there a manual emergency shut down for the entire x-ray processing system?

*Yes; there is an emergency shut down system, with multiple locations (buttons, pull cords, keys, other) that will immediately shut down power to the equipment.*

**C.N. does not possess this technical design information.**

2. Is there a manual emergency shut down for the accelerator?

*Yes; see response to No. 1, above.*

3. Will there be a generator for backup power and if so, where will it be located?

4. What is the source of power for the generator?

*Not applicable.*

Radiation emission dose measurements/monitoring/shields:

It is stated on page 11, question #4 of the response entitled Response Memorandum from STERS A-S.T. Northborough Planning Board RE: 425 Whitney Street, dated January 28, 2020 that "Radiation levels outside of the shield will not exceed 2.0 mR]hr and no potential for a dose exceeding 0.1 r in a year outside the shield".

1. Is it correct to state that this is only measured upon initial set up and then monitored annually, not continuously, as it is inside the shield?

*Yes; the levels outside the shield will be surveyed initially and in accordance with regulations of the MA DPH.*

**C.N. agrees that this response meets MADPH regulations.**

2. Are these measurements taken when accelerator is on, off or both?

*Measurements (shield surveys) are conducted while the machine is on and at full power.*

**C.N. agrees with this response**

3. Is there residual radiation?

No; the machine creates no radioactive contamination.

**C.N. agrees with this response**

4. Is there a potential for a dose exceeding 0.1 r/year and how is that evaluated?

Based on the shield design there is no potential that any member of the public would be exposed to more than 0.1 rem in a year. This will be evaluated by the initial shield survey at full power and then by periodic surveys thereafter.

**C.N. agrees with this response**

5. Is the potential for dose measurement a cumulative measurement? If so, over how long a period?

The 0.1 rem/year dose for members of the public is a cumulative dose over a 12-month period. The 2.0 mrem/hour is a dose rate that is measured at a single point in time:

- for shield surveys this would be while the machine is operating at full power;
- for other interlocks used for employee safety this would be measured continuously after the machine is off and prior to allowing entry into the shield/cell.

**C.N. agrees with this response**

6. What happens in the condition that it is being exceeded?

If during the initial shield survey, it was discovered that any point on the exterior of the shield exceeded acceptable limits additional shielding material would be added to that area and the surrounding area to ensure that levels are below required limits prior to resuming operations.

**C.N. agrees with this response. Regulations require changes to the shielding if acceptable limits are not met.**

7. Are the shields referenced on page I I of the January 28, 2020 response constructed with concrete walls and a concrete roof?

*Yes; the walls and roof will be constructed with high density concrete.*

**C.N. agrees with this response.**

8. Where will the two shields be located?

*In the new addition to the existing building.*

**C.N. finds this response aligned with provided drawings.**

9. Will these measurements be taken in the same spots every time or different spots?

*The initial survey will encompass the entire shield; annual surveys will include any point indicating a dose rate reading above background levels during the initial survey. All surveys will be conducted in accordance with regulations of the Massachusetts Department of Public Health (MA DPH) and industry best practices.*

**C.N. Comment: C.N. agrees that previous locations of readings above background should be elements for subsequent surveys. C.N. would consider surveying additional points as a best practice.**

10. How many areas?

*Measurements will be conducted in accordance with state regulations and industry best practices.*

**C.N. Comment: See previous response regarding survey points.**

11. Do these shields absorb radiation? Do they repel radiation?

*The shields absorb the energy from the x-rays but do not become radioactive.*

**C.N. agrees with this response**

12. Which direction will the electron beams be facing?

North.

**C.N. agrees with this response**

13. Page 17, #4 of the January 28, 2020 response, what does the term "cell" refer to?

*A cell is another term for the area inside of the shield, where processing will take place.*

**C.N. agrees with this response**

14. Regarding a device or instrument that will measure radiation outside the facility, is this something other facilities use and would it be possible to install at this site?

*We do not know if other facilities use a device or instrument to measure radiation outside of a facility. There is neither a need nor a requirement to install such a device and there is no plan to do so.*

**C.N. Comment: C.N. has no information regarding external monitoring by other facilities. C.N. agrees that external monitoring is not needed assuming shield performance is as designed.**

15. What are the costs/effort of deconstructing the 12-foot walls and ceiling to re-utilize the property in the future?

Not known. Unlike a Gamma machine which requires a decommissioning plan, the proposed facility will not use radioactive material to sterilize products and, therefore, a decommissioning plan is not required.

**C.N. has no comments regarding costs for future use. C.N. agrees that a decommissioning plan is not required by regulations.**

EMFs:

L Will the facility give off any EMFs outside of the facility or past the property line?

No.

**C.N. has no comment regarding non-ionizing EM radiation (EMFs).**

2, What is the gas emitted by the process?

The sterilization process creates ozone and the Applicant will comply with all applicable state regulatory limits.

**C.N. has no comments regarding ozone emissions.**

3. Level and type of any electromagnetic interference that is possible?

*None.*

**C.N. has no comments regarding electromagnetic interference.**

4. Any impact on radio frequencies — wireless, cellphone, tv or other?

No.

**C.N. has no comments regarding electromagnetic interference.**

5. Is the beam continuously generating x-rays [*No; only when turned on.*] and does the level or radiation or dose of radiation outside of the shield increase as number of electron beams increases? [*No.*] Currently noted as not to exceed 2mR/hour outside of the shield.

*The machine generates x-rays only when it is intentionally turned on for processing. Each shield is designed for containment of the highest output of power to be used in that shield. Each shield will be designed for a maximum of 2 x-ray machines and will not physically fit any additional xray machines.*

**C.N. agrees with this response.**

6. What triggers an automatic shutdown and how quickly does that trigger lead to the automatic shutdown?

*Multiple machine parameters and safety interlocks will shut down the machine. The machine Will have power removed immediately upon activation of any such interlock.*

**C.N. has no details regarding interlocks to provide comment.**

7. Is the "acceptable expert registered with the MA DPH" who does the initial shield survey and ongoing reporting an internal resource or an independent third-party resource?

The acceptable expert registered with MA DPH is the machine manufacturer.

**C.N. does not possess information regarding the manufacturer's registration with the MA DPH to provide comment.**

8. Are there permits that will need to be filed if the products being sterilized change to toxic or hazardous materials (used medical equipment/waste, infectious materials, etc.)? This could be a question for Bob.

*As the Applicant previously reported, it does not process used medical equipment/waste or infectious materials.*

**C.N. has no comments regarding this matter.**

Traffic/Trucks: (During construction of the additions and during the operation of the facility)

1. The traffic study appears to be based on generic information vs true study. How is this information statistically accurate given only three days were reviewed in November 2019?

*The Applicant retained a qualified, professional traffic engineer, Mr. Jeffery Dirk, P.E, PTOE, of Vanasse & Associates, Inc., to prepare and submit the Traffic Impact Assessment (dated January 23, 2020). He determined that, in comparison to the former architectural millwork company that occupied the Project site, "the PrQject is expected to generate approximately 60 fewer vehicle trips on an average weekday and 196 fewer vehicle trips on a Saturday, with 2 fewer vehicle trips expected during the weekday morning peak-hour, 8 fewer vehicle trips expected during the weekday evening peak hour and 23 fewer vehicle trips expected during the Saturday midday peak hour. On balance, the Project will result in comparable traffic volumes and impacts to those of the former architectural millwork company that occupied the Project site. " The traffic engineer's determinations do not appear to be based on any seasonal study or data.*

**C.N. has no comments regarding trucks/traffic.**



# EXHIBIT K



# TOWN OF NORTHBOROUGH PLANNING BOARD

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

## DECISION

NORTHBOROUGH TOWN CLERK  
RCVD 2021 AUG 12 PM 1:49

### **PLANNING BOARD SPECIAL PERMIT PURSUANT TO GROUNDWATER PROTECTION OVERLAY DISTRICT 3, AND SPECIAL PERMIT WITH SITE PLAN APPROVAL**

**PROPERTY LOCATION:** 425 Whitney Street, Map 15 Parcel 8

**PETITIONER:** Steris A.S.T., 425 Whitney Street, Northborough MA 01532

**PROPERTY OWNER:** Isomedix Operations Inc., C/O Steris Corporation, 5960 Heisley Road, Mentor OH 44060

**RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS:** Book 60722 Page 300

This document is the DECISION of the Northborough Planning Board on the petition of Steris A.S.T. for a Special Permit for light manufacturing in the Groundwater Protection Overlay District, Area 3, and a Special Permit with Site Plan Approval to allow the construction of two additions, of approximately 20,100 square feet and 3,375 square feet, onto an existing industrial building located in the Industrial zoning district with associated on-site surface parking, stormwater management system, access drive, utility infrastructure and associated grading and landscaping on the property located at 425 Whitney Street.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A section 18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the majority of the meetings of the Northborough Planning Board on this application were conducted via remote participation.

### APPLICATION

1. On September 17, 2019, the Applicant filed with the Town Clerk an Application for Hearing before the Planning Board for:
  - a. Site Plan Approval under Zoning Bylaw section 7-03-050; and
  - b. Groundwater Protection Overlay District Special Permit under Zoning Bylaw section 7-07-010
2. Notice of the October 17, 2019 public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on October 2, 2019 and October 9, 2019; and was mailed to abutters and other parties on October 3, 2019;

3. Due to the COVID-19 pandemic and the State of Emergency declared by the Governor, resulting in an approximate three months of suspended public meetings, the public hearing was readvertised for June 16, 2020.
4. Notice of the June 16, 2020 public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on June 1, 2020 and June 8, 2020; and was mailed to abutters and other parties on May 27, 2020.

## **EXHIBITS**

Submitted for the Board's consideration were the following exhibits:

1. Application for Hearing before the Planning Board, including:
  - a. Northborough Planning Board Application for Site Plan Approval and Special Permit per Groundwater Protection Overlay District Bylaw;
  - b. Quitclaim Deed for 425 Whitney Street, Northborough MA recorded in Worcester South District Registry of Deeds, Book 60722 Page 300;
  - c. Easement document recorded in Worcester County Registry of Deeds, Book 5356 Page 480;
  - d. Zoning Interpretation Request Form for 425 Whitney Street from Robert J. Frederico, Inspector of Buildings/Zoning Enforcement Officer, dated September 18, 2019;
  - e. A certified abutters list for parcels 300 feet from 425 Whitney Street, Northborough MA, prepared by Julie Brownlee and Sue Reagan for the Board of Assessors, and a GIS Viewer map of the site, both dated September 10, 2019;
  - f. A certified abutters list for parcels 300 feet from 425 Whitney Street, Northborough MA, prepared by Julie Brownlee and Megan Hennessy for the Board of Assessors, and a GIS Viewer map of the site, both dated May 26, 2020;
  - g. Site Plans entitled Facility Expansion Project, 425 Whitney Street, Northborough MA, prepared for Isomedix Corporations Inc, C/O STERIS Corporation, 5960 Heisley Road, Mentor OH 44060, prepared by VHB, dated September 13, 2019 and revised October 17, 2019. Plan set includes the following sheets: C-1 Legend and General Notes, C-2 Layout and Materials Plan, C-3 Utility Plan; C-4 Grading, Drainage and Erosion Control Plan, C-5 Site Details 1, C-6 Sie Details 2, L-1 Planting Plan, L-2 Planting Details;
  - h. Leachfield Layout & Details As-Built plan dated May 3, 2002, prepared for RREED Management Company, 425 Whitney Street, Northborough MA, prepared by Rizzo Associates; and
  - i. Title 5 Official Inspection Form for 425 Whitney Street, Northborough, prepared December 28, 2016 and received January 3, 2017.

2. Facility Expansion Project Stormwater Report, dated September 2019, prepared for Isomedix Operations Inc, 425 Whitney Street, Northborough MA 01532, prepared by VHB, 120 Front Street, Suite 500, Worcester MA 01608;
3. October 15, 2019 letter from VHB to Fred Litchfield, Town Engineer RE: Responses to Northborough Town Engineer's Comments on the Groundwater Advisory Committee's Application for 425 Whitney Street;
4. November 5, 2019 letter from Michel C. Carelli, Plant Manager, STERIS to Planning Board Chair RE: Invitation to Visit STERIS – Chester NY;
5. Memorandum entitled Transportation Impact Assessment, Proposed Laboratory/Manufacturing Facility – 425 Whitney Street, Northborough Massachusetts, dated January 21, 2020 prepared by Vanasse & Associates Inc;
6. January 22, 2020 letter to Fred Litchfield, Town Engineer from VHB RE: 425 Whitney Street Site Plan Review and Groundwater Special Permit Application Chemical Storage Information;
7. August 18, 2020 letter to Kerri Martinek, Planning Board Chair from Attorney Stephen F. Madaus, Mirick O'Connell RE: 425 Whitney Street – Objection to Continued Delay in Rendering Site Plan Decision Related to the Use of the Property;
8. April 29, 2021 letter to Michael C. Carelli, Isomedix Operations Inc from Marc C. Wallace, Vice President, Tech Environmental RE: 425 Whitney Street Redevelopment, Northborough MA – Conceptual Design Sound Study; and
9. Report to the Borough of Northborough Zoning Board entitled Temporary Batch Plant Facility dated May 14, 2021 prepared by V. Paulius & Associates.

**ADDITIONAL DOCUMENTS:**

1. November 15, 2019 memo to STERIS A.S.T. from Planning Board Chair Martinek RE: Request for Additional 425 Whitney Street Site Plan Information;
2. January 28, 2020 memorandum to Planning Board Chair Martinek from Stephen F. Madaus on behalf of STERIS A.S.T. RE: Response to Request for Additional Information;
3. March 11, 2020 memo to STERIS A.S.T. from Planning Board Chair Martinek RE: Request for Additional 425 Whitney Street Site Plan Information;
4. May 27, 2020 memorandum to Planning Board Chair Martinek from Stephen F. Madaus on behalf of STERIS A.S.T. RE: Response to Northborough Planning Board's Second Request for Additional Information, Site Plan Approval – 425 Whitney Street;
5. February 25, 2021 memorandum to the Town from Environmental Partners RE: 425 Whitney Street Transportation Impact Assessment Peer Review;
6. February 25, 2021 memorandum to the Town from Environmental Partners RE: Peer Review Letter – Facility Expansion Project, 425 Whitney Street, Northborough MA;

7. February 25, 2021 letter to the Town from CN Associates RE: Peer Review Letter – Facility Expansion Project, 425 Whitney Street, Northborough MA;
8. March 3, 2021 letter to the Town from Vanasse & Associates Inc. RE: Response to Transportation Impact Assessment Peer Review Proposed Laboratory/Manufacturing Facility – 425 Whitney Street, Northborough MA;
9. March 22, 2021 letter to the Town from VHB RE: Response to Peer Review Comment Letter, 425 Whitney Street;
10. April 30, 2021 letter to the Town from Environmental Partners RE: Transportation Impact Assessment Peer Review, 425 Whitney Street, Northborough MA;
11. April 30, 2021 memorandum to the Town from Environmental Partners RE: Peer Review Letter – Facility Expansion Project, 425 Whitney Street, Northborough MA; and
12. April 30, 2021 letter to the Town from CN Associates RE: Peer Review Letter – Facility Expansion Project, 425 Whitney Street, Northborough MA.

**BOARD AND STAFF CORRESPONDENCE:**

1. September 24, 2019 letter from Fire Chief David L. Parenti to the Planning Board RE: Site Plan Approval, 425 Whitney Street;
2. October 17, 2019 letter from Fred Litchfield, Town Engineer on behalf of the Groundwater Advisory Committee to the Planning Board RE: 425 Whitney Street, Map 15 Parcel 8;
3. October 23, 2019 letter from Mia McDonald, Conservation Agent to Michael Carelli, Isomedix C/O Steris Corporation RE: Order of Conditions DEP #247-1172, 425 Whitney Street, Northborough MA;
4. March 11, 2020 memo from the Planning Board to STERIS A.S.T. RE: Request for Additional 425 Whitney Street Site Plan Information; and
5. March 10, 2020 letter from Fred Litchfield, Town Engineer on behalf of the Groundwater Advisory Committee to the Planning Board RE: 425 Whitney Street, Map 15 Parcel 8.

**LETTERS AND EMAILS RECEIVED IN OPPOSITION TO THE APPLICATION:**

1. May 18, 2021 email from John and Leona Zawacki, 26 Coolidge Circle;
2. May 18, 2021 emails from Scott Stocklin, 12 Patrick Drive;
3. May 18, 2021 email from Russ Lang, 21 Coolidge Circle;
4. May 18, 2021 email from Bob and Rhonda Van Buren, 150 Maynard Street;
5. May 18, 2021 email from Jodie Martinson, 50 Coolidge Circle;
6. May 17, 2021 email from Brian and Cathy Harris, 416 Whitney Street;

7. May 17, 2021 email from Kerry McMullen, 91 Coolidge Circle; and
8. May 17, 2021 emails from Lisa Stone, 17 Coolidge Circle.

**LETTERS AND EMAILS RECEIVED IN SUPPORT OF THE APPLICATION:**

1. February 6, 2020 letter to Northborough Planning Board from Brian Johnson, President, MassMEDIC RE: Support of STERIS AST's expansion.

**HEARING**

A public hearing, after proper notice was given, was opened on October 17, 2019 and continued to the subsequent dates of November 5, 2019; December 3, 2019; December 12, 2019; January 16, 2020; February 4, 2020; February 18, 2020; March 10, 2020; April 7, 2020; June 16, 2020; August 4, 2020; September 15, 2020; December 1, 2020; January 5, 2021; February 2, 2021; March 2, 2021, April 6, 2021; April 20, 2021; May 4, 2021; and the hearing was closed on May 18, 2021.

Deliberations and a vote on a decision occurred at the June 1, 2021 Planning Board meeting.

Presentation of materials by the Applicant, peer review presentations, discussions by the Board members, staff, and all other interested parties occurred at the October 17, 2019; November 5, 2019; February 4, 2020; February 18, 2020; March 10, 2020; June 16, 2020; August 4, 2020; September 15, 2020; March 2, 2021, April 6, 2021; May 4, 2021; and May 18, 2021 sessions of the public hearing.

The application was accompanied by Site Plans entitled Facility Expansion Project, 425 Whitney Street, Northborough MA, prepared for Isomedix Corporation Inc, C/O STERIS Corporation, 5960 Heisley Road, Mentor OH 44060, prepared by VHB, dated September 13, 2019 and revised October 17, 2019. Plan set includes the following sheets: C-1 Legend and General Notes, C-2 Layout and Materials Plan, C-3 Utility Plan; C-4 Grading, Drainage and Erosion Control Plan, C-5 Site Details 1, C-6 Site Details 2, L-1 Planting Plan, L-2 Planting Details.

The Board reviewed the application, the plan(s), and all other materials and information submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.

The following Board members attended the public hearing:  
Kerri Martinek, Amy Poretzky, Anthony Ziton, Millie Milton, and Michelle Gillespie.

**FINDINGS OF FACT**

**GENERAL FINDINGS:**

**APPLICABLE LAW AND DECISION CRITERIA:**

Under Bylaw § 7-03-050(A)(2), "A special permit with site plan approval shall be required for any use requiring a special permit." The Applicant has applied for a Groundwater Protection Overlay

District Special Permit under the By-law and, thus, the Special Permit with Site Plan Approval for which it applied is required.

Bylaw § 7-03-050(D) (Special Permit with Site Plan Approval), states, in pertinent part, that:

“The procedures ... for a special permit with site plan approval shall be the same as any other special permit and shall conform to the requirements of MGL C. 40A, § 9, as amended, and the provisions of Section 7-03-040. (§ 7-03-050(D)(1), Procedures); and

“The decision criteria for a special permit with site plan approval shall be as set forth in Section 7-03-040 and the site plan approval criteria under subsection (C)(2) of this section.” (§ 7-03-050(D)(3), Decision criteria).

### **Section 7-03-040 Special Permit Criteria**

As set forth in § 7-03-040(C), the Planning Board may only approve a special permit upon its written determination that the adverse effects of the proposed use will not outweigh the beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to the site. In addition to any specific factors that may be set forth elsewhere in the Zoning Bylaw, the determination shall include consideration of each of the following:

- (1) The proposal is in substantial harmony with the Northborough Master Plan and other plans approved or amended from time to time by the Northborough Planning Board, and with the purposes of this bylaw;
- (2) The proposed site is an appropriate location for such use;
- (3) The use as developed will not adversely affect the neighborhood;
- (4) There will be no nuisance or serious hazard to vehicles or pedestrians;
- (5) Adequate and appropriate facilities will be provided for the proper operation of the proposed use;
- (6) The proposed use will conform to any special requirements of the special permit granting authority as stated in its written decision; and
- (7) The proposal could not reasonably be altered to reduce adverse impacts on the natural environment, to be compatible with historic development patterns of the town, or to preserve historically significant buildings.

### **Section 7-07-010 Special Permit Criteria**

The Planning Board may only approve a special permit upon its written determination that the adverse effects of the proposed use will not be deleterious to the water supply, in view of the particular characteristics of the site, and of the proposal in relation to the site. These special permits are governed specifically by the three (3) criteria set forth under § 7-07-010(D)(4)(e) of the Zoning Bylaw. These approval standards require that the proposed use:

- [1] meet the purpose and intent of this chapter and will not derogate from the purpose of the Groundwater Protection Overlay Districts;

- [2] will not, during construction or thereafter, impair ambient groundwater quality or reduce existing recharge capacity beyond that allowed per this chapter; and
- [3] will not adversely affect the quality or the yield of an existing or potential water supply.

The purpose of the Groundwater Protection Overlay District is set forth under § 7-07-010 (A):

1. To protect, preserve and maintain the existing and potential groundwater supply and groundwater recharge areas within the known aquifers of the town.
2. To preserve and protect present and potential sources of water supply for the public health and safety.
3. To conserve the natural resources of the town.

Additionally, under § 7-07-010 (D)(4)(b), such special permit shall be granted if the Planning Board determines that the intent of this chapter as well as its specific criteria are met. In making such determination, the Planning Board shall consider the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed.

**SPECIFIC FINDINGS:**

1. The Board finds that the Special Permit application failed to comply with the above criteria, including, without limitation, Zoning Bylaw Sections 7-03-040(C)(1)-(7), in that the project, given its intensity and scale, is located in an inappropriate setting for its use; that the project will adversely affect the neighborhood in which it is situated; that it will create nuisance and hazard to pedestrians and vehicles in the area within and surrounding the site; that inadequate facilities are provided; and that the proposal is not in substantial harmony with the Northborough Master Plan and other plans approved or amended from time to time by the Planning Board, and with the purposes of the Zoning Bylaw. Supporting this finding, the Board further makes the following additional findings:
  - a. Per the definition of Special Permit in the Zoning Bylaw, § 7-02-040, a special permit may be issued if it “would not be injurious to the public health, safety, welfare, order, appearance, prosperity, or general welfare.” It was the Board’s determination that the application did not provide sufficient evidence that the proposed use would not be injurious to public health, safety, and welfare.
    - i. During the public hearings, the Applicant offered testimony numerous times that the radiation technology for the x-ray sterilization process to be conducted in the building would be the first of its kind in the United States, with two other proposed U.S. sites in process. No information was provided on other facilities, including their proximity to residential neighborhoods. Data, facts, and evidence as to the safety of this type of radiation facility, when operating within 50 feet of the nearest property line within a residential neighborhood, was not provided.
    - ii. The Applicant proposes to expand on its current operations. An extensive history of violations on the current Northborough facility was provided as



evidence by a residential abutter. The violations included non-compliance with state regulations as recently as March 2021; 15 OSHA violations; previous Nuclear Regulatory Commission fines; and an Atomic Energy Commission fine. A letter from the Northborough Fire Department was also submitted as evidence of a “pattern of lack of regard for safety.” An article from the Worcester Telegram & Gazette on the company’s previous toxic gas leak at the subject property was also provided. Board members also questioned the lack of evidence that the Applicant had consistently submitted required reports to regulatory agencies.

- iii. MassDEP issued the Applicant a Notice of Noncompliance dated March 4, 2021 which cited in part a violation during a remote inspection beginning on December 16, 2020 stating in part “failure to maintain the required records” in violation of 310 CMR 7.26(42)(f).
  - iv. Representatives of the peer reviewers engaged by the Planning Board, Environmental Partners and CN Associates, testified that local checks and balances would be difficult to achieve. Any information on reporting and monitoring would require that the Town proactively request information from the state.
  - v. The Applicant declined to agree to add external monitors to the perimeter of the facility to ensure radiation was not leaking from the facility and adversely impacting the abutting residential neighborhood.
  - vi. Safety plans in the event of an accident or disaster were not provided to the Board. Thus, the peer reviewers were unable to comment regarding automatic or manual shutoffs of the x-ray equipment. Additionally, the Applicant did not submit for the peer reviewers technical information to confirm automatic shutdown capabilities of the chillers, nor did the Applicant submit for the peer reviewers the technical information regarding a malfunction alarm, nor did the Applicant submit for the peer reviewers technical design information on manual emergency shut down for the x-ray processing system, and further had no details regarding the safety interlocks to provide comments on how the interlocks would shut down the machine in the event of an accident.
- b. That the traffic study submitted by the Applicant did not adequately or accurately cover the impact of 2,000 concrete trucks on the roadways of the Town during the construction period. The Applicant opted to not provide additional information to the Board regarding the merits of an on-site vs. off-site concrete plant and did not provide consistent information on the number of trucks to be expected in either scenario.
  - c. That the noise generated by the proposed use would adversely affect the neighborhood as it did not meet the Environmental Performance Standards in § 7-05-040(C) of the Zoning Bylaw, which requires, for industrial uses having an impact on residential uses, that the sound from the operations of the facility, measured at the property line of the facility, not be increased over the ambient sound level by more than five (5) decibels weighted for the “A” scale [dB(A)].

- d. That the toxic gases generated as a hazardous byproduct of the x-ray operations would adversely affect the neighborhood as they did not meet the Environmental Performance Standards in § 7-05-040 E(1) (“fumes, toxic gases, . . . or other waste materials shall be effectively confined to the premises and treated or disposed of in accordance with state and federal regulations governing air, water, and soil pollution”).
  - e. That no data or facts were provided by the Applicant, nor were the peer reviewers able to sufficiently comment, on the impact on the neighborhood regarding ozone emissions, electromagnetic interference, non-ionizing EM radiation (EMFs), carbon dioxide emission, or impact on the power grid as it relates to power outages caused by high voltage electrical requirements of the facility operations.
  - f. That the Town of Northborough does not have the resources to offset the impact to the surrounding neighborhood or the Town for decommissioning a site with 12-foot concrete walls and ceilings.
  - g. That the granting of the Special Permit would constitute a substantial detriment to the public good and the approval requested could not be given without nullifying or substantially derogating from the intent and/or purpose of the Northborough Zoning Bylaw.
  - h. That the adverse effects of the proposed use will outweigh its beneficial impacts to the Town and/or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to the site.
2. The Board finds that the Special Permit application failed to comply with the above criteria, including, without limitation, Zoning Bylaw Sections 7-07-010(D)(4)(e), in that the project will derogate from the purpose of the Groundwater Protection Overlay District by impairing ambient groundwater quality and reducing existing recharge capacity, and will adversely affect the quality or yield of an existing or potential water supply. Supporting this finding, the Board further makes the following additional findings:
- a. That in light of the nature of the project and its intensity and scale, which includes a 24,700 square foot addition to an existing industrial building requiring 12-foot concrete walls and ceilings, an on-site concrete plant, and/or 2,000 concrete trucks during construction, as described in the report provided by V. Paulius & Associates, the Applicant did not sufficiently provide data or facts that demonstrated that the proposed operations would meet the special permit criterion that the proposed use “Will not, during construction or thereafter, impair ambient groundwater quality or reduce existing recharge capacity beyond that allowed per this chapter” in that insufficient data was provided on:
    - i. Sedimentation/washout basin and other sedimentation protection measures during construction;
    - ii. Erosion and sedimentation protection measures related to the proposed concrete plant during construction;
    - iii. Infiltration and catch basin protection measures to withstand the volume of 2,000 concrete trucks;

- iv. Protection measures to ensure stockpiles of sand and concrete mix held in open air containers would not leak into the ground or nearby wetlands;
  - v. Protection measures to ensure concrete, during creation or pouring, would not leak into the ground or nearby wetlands;
  - vi. Adequate plan for protecting the groundwater during concrete washout of the 2,000 trucks;
  - vii. Truck operations during construction, in particular consistent estimates on number of trucks, timing, process, and impact were not reliably provided, either in the testimony or presentation by Lawrence “Kip Kramer, Senior Vice President/General Counsel, of V. Paulius & Associates, throughout the public hearing. It was the Board’s determination that it could not reasonably rely on the information provided by the report or testimony given by the concrete plant representative to ensure the safety and protection of the groundwater and to meet the purpose and intent of the Groundwater Protection Overlay Districts.
- b. The Applicant did not sufficiently prove that the on-site concrete plant proposed as a temporary structure could operate within the twelve-month period allowable under the Zoning Bylaw’s definition of a Temporary Structure: “A structure without any foundation or footings to be removed within a twelve-month time period.” (Section 7-02-040)
  - c. That based on the unprecedented construction process and time period of 12-18 months and the high level of inspections that would be required as part of the Stormwater Pollution Prevention Plan (SWPPP) that would be necessary, including updated and proactive reporting after every heavy rainfall for that extensive period of time, it is the Board’s determination that the degree of threat to water quality if control measures fail, coupled with the complexity of the control measures proposed, and the high level of inspection and monitoring required, that the application failed to meet the standard of simplicity, reliability and feasibility under § 7-07-010 (D)(4)(b).
  - d. That due to the size and scale of the project, which includes a 24,700 square foot addition to an existing industrial building requiring 12-foot concrete walls and ceilings, an on-site concrete plant, and/or 2,000 concrete trucks during construction, the project is not capable of operating without negatively impacting the groundwater supply and natural resources, regardless of control measures.
  - e. That the adverse effects of the proposed use will outweigh its beneficial impacts to the Town and/or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to its setting within the Groundwater Protection Overlay District.
  - f. That due to the high level of operations, inspection and maintenance activities that are required to avoid negative impact to groundwater, coupled with the level of Town resources available to monitor and enforce such a high level of inspection at the intervals required, the proposal fails to meet the purpose and intent of the

Zoning Bylaw: to protect, preserve and maintain the existing and potential groundwater supply and groundwater recharge areas; to preserve and protect present and potential sources of water supply for public health and safety; and to conserve the natural resources of the Town.

3. Without a special permit as requested, the proposed use is not a permitted use under the Zoning Bylaw; and, therefore, site plan approval cannot be granted.
4. In addition, the Board finds that the Site Plan application is fatally deficient as the proposed use would be prohibited per Section 7-05-010 G(1)-(2) of the Zoning Bylaw in that “no use shall be permitted which would be offensive because of injurious or noxious noise, vibration, smoke, gas, fumes, odors, dust, debris, glare, radiation, or electrical interference;” and further the proposed operations do not meet the Environmental Performance Standards in Sections 7-05-040 C and 7-05-040 E(1). Supporting this finding, the Board further makes the following additional findings:
  - a. The proposed use of the building expansion will include the installation of a M4-H X-Ray Pallet Bunker using particle accelerators containing two (2) X-Ray systems, each with electron energy up to 7.5 MeV and beam power up to 500 kW. The peer reviewers at C.N. Associates provided written and oral testimony that the Code of Massachusetts Regulations (CMR) Title 105 (Department of Public Health), sections 120.020 through 120.040 (The Control of Radiation), provides for the registration of radiation machine facilities and for the registration of persons providing radiation machine installation, servicing, and/or services to Department registrants or registrable facilities. For the purposes of 105 CMR 120.020, particle accelerators, whether used primarily for x-ray production or other purposes, shall be considered a radiation machine facility (emphasis added). It is the Board’s determination that the proposed use is a Radiation Machine Facility. Under section 7-05-010 G(2) of the Zoning Bylaw a use which is offensive because of radiation is a prohibited use.
    - i. Further, in addition to the requirements of 105 CMR 120.020 through 120.040, all registrants are subject to the applicable provisions of other parts of 105 CMR 120.000. The Applicant did not provide evidence of any applicable state and federal permits, approvals, certifications, or registrations for the proposed facility to operate.
  - b. The Applicant was not able to sufficiently prove, through either data and facts or testimony from the peer reviewer, that the use of high intensity radiation would not result in electrical interference for wireless communications, medical devices, television, and radio; and could not prove through either data and facts or testimony by the peer reviewers that the requirement for high voltage electricity to power the electron beams would not lead to interference with electrical power in the abutting residential neighborhood. Under section 7-05-010 G(2) of the Zoning Bylaw a use which is offensive because of electrical interference is a prohibited use.
  - c. Based on materials submitted by the Applicant, and as further described in the testimony of the peer reviewers the proposed use, which requires two (2) linear particle accelerators/electron beams, does not meet the definition of a light manufacturing industrial use under Zoning Bylaw section 7-05-020 I(1) . The

equipment for the sterilization process includes a radiation shield, a pallet conveyor, a modulator room, a control room, and an accelerator system. The equipment required for the sterilization process is explained in a document entitled "X-Ray Overview — Summary of the Technology and Application," prepared by Mevex, attached as Exhibit F in the January 28, 2020 Memorandum from Stephen F. Madaus, on behalf of STERIS, A.S.T. to Ms. Kerri Martinek, Chair, Northborough Planning Board RE: Response to Request for Additional Information . After careful review of the materials provided by the Applicant and written and oral testimony of the peer reviewers, it is the Board's determination that accelerator-based radiation processing is not limited to employing "only electric or other substantially noiseless and inoffensive motor power" (the standard stated in section 7-05-020 I(1)) as it emits both gas and radiation, and further is not a process "utilizing hand labor or quiet machinery and processes, and free from neighborhood disturbing agents such as...gas [and] electromagnetic radiation," as described in section 7-05-020 I(1). It is the Board's determination that the proposed use is a Radiation Machine Facility, and not Light Manufacturing. Per section 7-05-010 G(1) "Any building, use or structure not specifically permitted shall be deemed prohibited."

- d. The proposed operations, as described in the acoustic study performed by Tech Environmental of Waltham, MA and submitted on behalf of the Applicant, do not meet the Environmental Performance Standards related to the development and use of land as set out in section 7-05-040 C of the Zoning Bylaw, because they were not shown to meet the following noise standard: "the sound due to the operations of the facility, measured at the property line of the facility, shall not be increased over the ambient sound level by more than five (5) decibels weighted for the "A" scale [dB(A)]." The Board determined that the mitigation measures proposed were not sufficient, nor conclusive, nor included in the Applicant's site plan.
  - i. The Board further questioned the credibility of the data provided in the Tech Environmental report in that the ambient (L90) short-term monitoring was 36 dBA at each of the three primary intersecting locations in the abutting neighborhood, however, the lowest one-hour L90 level of 38 dBA collected at the property line was determined to be appropriate for representing the lowest existing ambient sound levels at all locations. Although the proposed operations did not meet the noise standard at either decibel level, the use of 38dBA as the lowest data point potentially skewed the data.
- e. The proposed operations do not meet the Environmental Performance Standards in section 7-05-040 E(1) of the Zoning Bylaw in that the Applicant did not provide sufficient data and facts, nor could the peer review team corroborate, that the toxic gases created as a hazardous byproduct of the operations, including carbon dioxide and ozone, could be effectively confined to the premises and treated or disposed of in accordance with state and federal regulations.

## **DECISION**

1. On June 1, 2021, after due consideration of the Application, and following the Planning Board's deliberative session in which all members gave input, the Board unanimously voted to DENY the application for a SPECIAL PERMIT under Section 7-07-010D(3)(c)[4].

Amy Poretsky moved to deny the application. The motion was seconded by Millie Milton. There was no further discussion by the Board.

The following Planning Board members voted unanimously to deny the application in a roll call vote: Kerri Martinek, Amy Poretsky, Anthony Ziton, Millie Milton, and Michelle Gillespie.

2. On June 1, 2021, after due consideration of the Application, and following the Planning Board's deliberative session in which all members gave input, the Board unanimously voted to DENY the application for a SPECIAL PERMIT WITH SITE PLAN APPROVAL under Section 7-03-050A(2), for the proposed use of medical product warehouse/x-ray sterilization/distribution/office.

Millie Milton moved to deny the application. The motion was seconded by Anthony Ziton. There was no further discussion by the Board.

The following Planning Board members voted unanimously to deny the application in a roll call vote: Kerri Martinek, Amy Poretsky, Anthony Ziton, Millie Milton, and Michelle Gillespie.

Appeals, if any from this decision shall be made pursuant to Massachusetts General Laws, Ch. 40A, Sec. 17 and shall be filed within twenty (20) days after the date of filing of this decision in the office of the Town Clerk.

#### **NORTHBOROUGH PLANNING BOARD**



**Kerri Martinek, Chairperson**

# EXHIBIT L

Groundwater Advisory Committee shall report its findings and recommendations to the special permit granting authority. The special permit granting authority shall render its decision within ninety (90) days of the public hearing.

**ARTICLE 36: Zoning Bylaw – Section 7-07-010, Groundwater Protection Overlay District, D. Use regulations**

To see if the Town will vote to amend Part 7 of the Northborough Town Code, the Northborough Zoning Bylaw, Section 7-07-010.D((4)(b) and (e) by deleting the text shown below in strikethrough and adding the text shown as underlined, or take any action relative thereto.

(b) Each application for a special permit shall be filed with the Town Clerk for transmittal to the special permit granting authority and shall be accompanied by nine (9) copies of the plan (minimum scale of one (1) inch equal to one hundred (100) feet). ~~Such special permit shall be granted if the special permit granting authority determines that the intent of this chapter as well as its specific criteria are met. In making such determination, special permit granting authority shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed.~~

(e) After notice and public hearing and after coordinating, clarifying and weighing the comments and recommendations of the Groundwater Advisory Committee, the special permit granting authority may grant ~~such a special permit~~ in accordance with section 7-03-040 and meeting the following additional criteria: provided, that it finds that the proposed use:

- [1] Meets the purpose and intent of this chapter and will not derogate from the purpose of the Groundwater Protection Overlay Districts.
- [2] Will not, during construction or thereafter, impair ambient groundwater quality or reduce existing recharge capacity beyond that allowed per this chapter.
- [3] Will not adversely affect the quality or the yield of an existing or potential water supply.

In making its determination, the special permit granting authority shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed.

**ARTICLE 37: Zoning Bylaw – 7-08-010 Applicability and 7-08-020 Special permit required**

To see if the Town will vote to amend Part 7 of the Northborough Town Code, the Northborough Zoning Bylaw, Chapter 7-08 Nonconforming Uses and Structures, Sections 7-08-010.A and 7-08-020.A, by deleting the text shown below in strikethrough and adding the text shown below as underlined, or take any action relative thereto.



# EXHIBIT M

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# MIRICK O'CONNELL

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A T T O R N E Y S   A T   L A W

**Stephen F. Madaus**  
Mirick O'Connell  
100 Front Street  
Worcester, MA 01608-1477  
smadaus@mirickoconnell.com  
t 508.929.1630  
f 508.983.6270

March 5, 2020

Andrew T. Dowd, Town Clerk  
Town of Northborough  
Northborough Town Offices  
63 Main Street  
Northborough, MA 01532

Northborough Planning Board  
c/o Northborough Planning Department  
Northborough Town Offices  
63 Main Street  
Northborough, MA 01532

Re: Submittal of Plan Not Requiring Approval under Subdivision Control Law;  
425 Whitney Street, Northborough, MA

To the Northborough Town Clerk and the Northborough Planning Board:

I represent Isomedix Operations, Inc. (d/b/a STERIS A.S.T.), owner of the above-referenced property by deed recorded at the Worcester District Registry of Deeds in Book 60722, Page 300. In accordance with MGL c. 41, Section 81P and Chapter 10-08 of the Subdivision Rules & Regulations of the Northborough Planning Board, I hereby submit for endorsement by the Planning Board a plan which does not require approval under the Subdivision Control Law (an "ANR Plan") for the property located at 425 Whitney Street.

The enclosed plan (two mylars and six (6) paper copies) was prepared by Vanasse Hagen Brustlin, Inc. and is dated March 2, 2020. Also enclosed are six (6) copies of the Form A "Application for Endorsement of Plan Believed Not to Require Subdivision Approval", and a check payable to the Town of Northborough for the filing fee.

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**MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP**

WORCESTER | WESTBOROUGH | BOSTON

[www.mirickoconnell.com](http://www.mirickoconnell.com)

**MIRICK O'CONNELL**

Andrew T. Dowd, Town Clerk

March 5, 2020

Page 2

Please contact me if you require any additional information concerning this application.

Sincerely,



Stephen F. Madaus

SFM/jmc  
Enclosures

cc: Michael Carelli, Plant Manager, STERIS A.S.T.  
Jerry A. Dzwierzynski, Director of Engineering/Facilities, STERIS A.S.T.  
Richard Whitehouse, VHB



**NORTHBOROUGH PLANNING BOARD**  
 63 Main Street  
 Northborough MA 01532  
 (508) 393-5019 office (508) 393-6996 fax  
 www.town.northborough.ma.us

RECEIVED  
 NORTHBOROUGH TOWN CLERK  
 2020 MAR -5 PM 12: 53

**FORM A  
 APPLICATION FOR ENDORSEMENT OF PLAN  
 BELIEVED NOT TO REQUIRE  
 SUBDIVISION APPROVAL**

In accordance with Section 10-08-010 of the Northborough Subdivision Rules and Regulations, five copies of the application, five paper copies of the plan, a mylar and a sepia mylar shall be submitted to the Town Clerk.

The undersigned, believing that the accompanying plan of property in the Town of Northborough does not constitute a subdivision within the meaning of the Subdivision Control Law, herewith submits said plan for a determination and endorsement that Planning Board approval under the Subdivision Control Law is not required.

1. Name of Applicant: Isomedix Operations Inc.  
 Address/Phone/Email: 425 Whitney Street  
Northborough, MA Phone: (508) 929-1630\*
2. Name of Owner: (Same)  
 Address/Phone/Email: \_\_\_\_\_
3. Name of Engineer of Surveyor: Vanasse Hangen Brustlin, Inc.  
 Address and Phone: 101 Walnut Street, Watertown, MA
4. Recorded In the Worcester County Registry of Deeds, Book: 60722 Page: 300
5. Property Address: 425 Whitney Street
6. GIS Map & Parcel: 015-0008
7. Zoning District: Industrial
8. Groundwater Overlay District: Yes - Zone GW3
9. Reason for this submission: Endorsement of an Approval Not Required Plan per MGL c. 41, § 81P

Signature of Owner: *Michael Carelli* \*\*

Date: 04 MAR 2020

Signature of Applicant: \_\_\_\_\_

Date: \_\_\_\_\_

Received by Town Clerk *[Signature]*

Date: 3/5/20

\*Attorney Stephen Madaus  
 \*\*Michael Carelli is: Plant Manager, STERIS A.S.T.