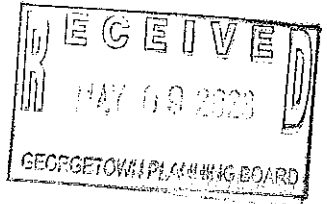


RECEIVED
TOWN CLERKS OFFICE
GEORGETOWN, MA



MCCANN & MCCANN, P.C.

ATTORNEYS AT LAW
89 NEWBURY STREET, SUITE 302
DANVERS, MASSACHUSETTS 01923
TELEPHONE: 978-739-8484
FACSIMILE: 978-739-8455
E-MAIL: NMCCANN@MCCANNLAW.COM



May 8, 2023

Georgetown Planning Board
Town Hall
One Library Street
Georgetown, MA 01833
Attn: John Cashell, Planner

Re: G. Mello Disposal Corp. – Major Development Review Special Permit
Carleton Drive, Georgetown, MA

Dear Board Members:

On behalf of G. Mello Disposal Corp., submitted herewith please find a Major Development Review Special Permit (Section 165-80.2) application package.

This application package consists of:

1. Special Permit Application Form
2. Current Deed
3. Owner's Authorization
4. Project Narrative
5. Memorandum Scope of Review
6. Facility Operation and Maintenance Plan
7. Environmental Impact Assessment
8. Stormwater Management Report and Operation and Maintenance Plan
9. Traffic Impact and Access Study May 8, 2023
10. Project Approvals, Determinations and Orders:
 - a. ZBA Special Permit (Docket #19-07)
 - b. ZBA Water Resource District Special Permit (Docket #19-07)
 - c. DEP Superseding Order of Conditions
 - d. MEPA Determination
 - e. DEP Site Suitability Determination
 - f. Georgetown Board of Health Site Assignment
11. Photographs proposed building site, abutting structures and environs
12. Site Plan Set w/ Building Elevation and Floor Plans Drawings

As required, 16 copies of the Application package are provided for circulation by the Town Planner to Town Departments and the Planning Board members. The Applicant has filed this day a copy of this Application with the Town Clerk. Due to the size of the Application Package Technical Data and Plans, a Dropbox Link has been provided.

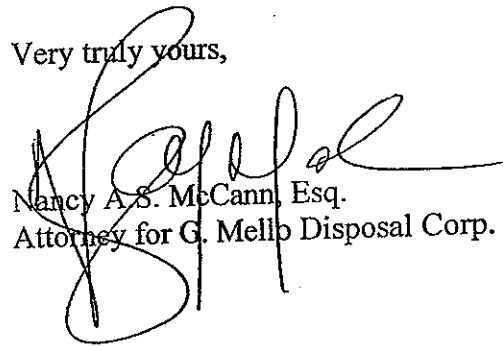
Georgetown Planning Board
Page 2 of 2
May 8, 2023

Also enclosed please find:

- Filing fee payable to the Town of Georgetown - \$500.00
- Certified Abutters List
Addressed envelopes are provided for the Board's convenience in notifying abutters.

The Applicant would appreciate this matter being placed on the June 14, 2023 Planning Board meeting. Thank you for your consideration.

Very truly yours,



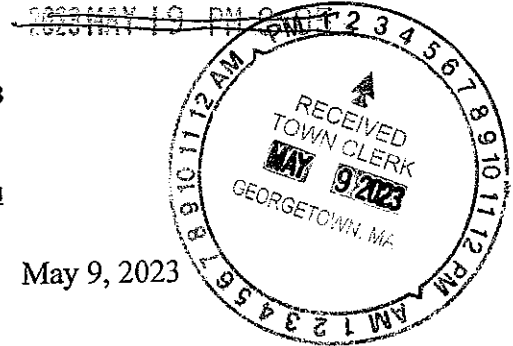
Nancy A. S. McCann, Esq.
Attorney for G. Mello Disposal Corp.

NASM/kjl
Enclosures

RECEIVED
TOWN CLERKS OFFICE
GEORGETOWN, MA

McCann & McCann, P.C.

Attorneys AT LAW
89 Newbury Street, Suite 302
DANVERS, MASSACHUSETTS 01923
TELEPHONE: 978-739-8484
FACSIMILE: 978-739-8455
E-MAIL: NMCCANN@MCCANNLAW.COM



May 9, 2023

Georgetown Town Clerk
Town Hall
One Library Street
Georgetown, MA 01833

Re: G. Mello Disposal Corp. – Major Development Review Special Permit
20 Carleton Drive, Georgetown, MA
Assessor's Map 15 Lot 46

Dear Ms. McManus:

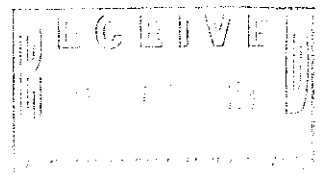
On behalf of G. Mello Disposal Corp., enclosed for filing with your office please find a Major Development Review Special Permit (Section 165-80.2) application package filed this day with the Georgetown Planning Board.

Thank you.

Very truly yours,

Nancy A.S. McCann, Esq.
Attorney for G. Mello Disposal Corp.

NASM/kjl
Enclosures



G MELLO DISPOSAL CORP

95 TENNEY ST
GEORGETOWN, MA 01833-2206

SalemFive

53-7055/2113



5/4/2023

1218

PAY TO THE
ORDER OF Town of Georgetown

Five Hundred and 00/100*****

Town of Georgetown
1 Library St
Georgetown, Ma 01833

MEMO



AUTHORIZED SIGNATURE

⑈001218⑈ ⑈211370558⑈ 10001445237⑈

RECEIVED

Security features. Details on back.

TOWN OF GEORGETOWN
ABUTTER LIST

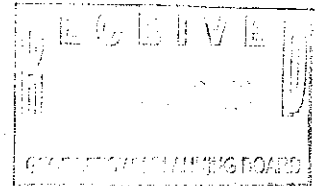
PARCEL #15-46 ~ 20 CARLETON DRIVE ~ PREPARED FOR PLANNING BOARD 300'

PARCEL ID	PARCEL ID	OWNER 1	OWNER 2	MAILING ADDRESS	CITY/TOWN	STATE	ZIP CODE
14-10	E MAIN ST	EAST WEST MIRRA REALTY LLC		6 NORINO WY	GEORGETOWN	MA	01833
15-26	5 SPAULDING RD	SAWYER MELINDA ANN TRUSTEE	KOPACZYNSKI IRREVOCABLE TRUST	5 SPAULDING RD	GEORGETOWN	MA	01833
15-27	SPAULDING RD	DRISKILL, EMMA	POWERS-SMITH, CONOR	3 SPAULDING RD	GEORGETOWN	MA	01833
15-28	3 SPAULDING RD	DRISKILL, EMMA	POWERS-SMITH, CONOR	3 SPAULDING RD	GEORGETOWN	MA	01833
15-29	1 SPAULDING RD	FRASH, SCOTT		1 SPAULDING RD	GEORGETOWN	MA	01833
15-29A	1A SPAULDING RD	ENOS BARRY M TR OF	CARLTON REALTY LLC	P O BOX 183	GEORGETOWN	MA	01833
15-29B	1B SPAULDING RD	ENOS BARRY M. TR	CARLETON REALTY LLC	PO BOX 183	GEORGETOWN	MA	01833
15-30	35 TENNEY ST	TYSON, CHRISTOPHER GRAHAM	KIMBERLY MARA TYSON	35 TENNEY ST	GEORGETOWN	MA	01833
15-30A	33 TENNEY ST	MEDWID WILLIAM J	RACHEL S THOMAS-MEDWID	33 TENNEY ST	GEORGETOWN	MA	01833
15-41	E MAIN ST (1 KATIE LN)	SMITH AMY E TRUSTEE	AMY E SMITH FAMILY TRUST	E MAIN ST (1 KATIE LN)	GEORGETOWN	MA	01833
15-44	4 CARLETON DR	DESMOND JOHN S & THOMASIN J BERRY TR	SALISBURY REALTY TRUST	21 PACELLA PARK DR	RANDOLPH	MA	02368
15-45	CARLETON DR	ENOS, BARRY M & JOHN TRST	B & R LTY TRST OF GEORGETOWN	P O BOX 183	GEORGETOWN	MA	01833
15-46	20 CARLETON DR	EAST WEST MIRRA LLC		6 NORINO WAY	GEORGETOWN	MA	01833
15-68	16 CARLETON DR	ENOS, BARRY M & JOHN TRST	B & R LTY TRST OF GEORGETOWN	P O BOX 183	GEORGETOWN	MA	01833

Town of Georgetown
ASSESSORS OFFICE
CERTIFIED COPY
Georgetown, MA 01833

Janet L. L...

April 19, 2023

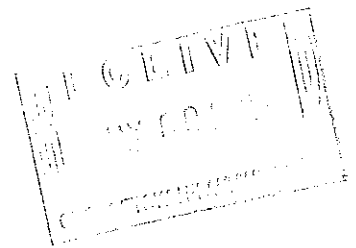
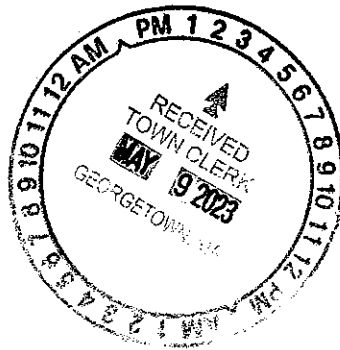


G. MELLO DISPOSAL CORP.

MAJOR DEVELOPMENT REVIEW SPECIAL PERMIT

Submission to the Georgetown Planning Board

20 Carleton Drive
Georgetown, MA 01833
Assessor's Map 15, Lot 46



Nancy A.S. McCann, Esq.
McCann & McCann, P.C.
89 Newbury Street, Ste. 302
Danvers, MA 01923

May 8, 2023

Table of Contents
Major Development Review
G. Mello Disposal Corp.
Carleton Drive, Georgetown, MA

1. Special Permit Application Form
2. Current Deed
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11. Photographs proposed building site, abutting structures and environs
12. Site Plan Set w/ Building Elevation and Floor Plans Drawings

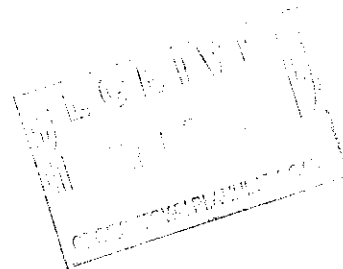


EXHIBIT 1

Planning Office
1 Library Street
Georgetown, MA 01833

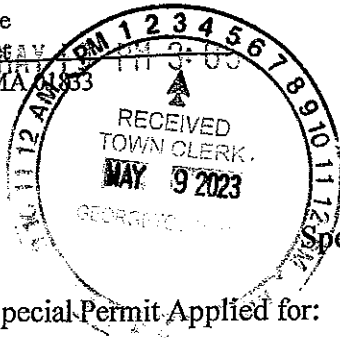
RECEIVED
TOWN CLERKS OFFICE
GEORGETOWN, MA

Town of Georgetown



Phone: (978) 352-5713

Fax: (978) 352-5725



Special Permit Application

Type of Special Permit Applied for:

- ☐ OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD) Concept Plan (Chapter 165-47)
☐ OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD) Site Plan (Chapter 165-47)
☐ COMMON DRIVEWAY (Chapter 165-7)
☐ GROUNDWATER PROTECTION DISTRICT (Chapter 165-39)
☐ EARTH REMOVAL PERMIT (Chapter 49)
☐ RAPID DEVELOPMENT - RATE OF DEVELOPMENT BY-LAW (Chapter 165-12)
☐ ACCESS ACROSS LOT FRONTAGE (Chapter 165-73.1)
☒ OTHER (Explain) Major Development Review (Chapter 165-80.2) _____

Check the appropriate category above and outline basis for request for Special Permit:

Relative to the construction of a Transfer Station including residential waste and recycling drop of center; a 15,000 s.f. waste handling building, scales, and scale house.

Submit 16 copies of application and corresponding plan/data to Georgetown Planning Board in accordance with posted procedures. M.G.L. Ch. 40 Sec. 9 requires that petition shall be filed with the Town Clerk. Application shall include a Certified List of Abutters within 300 ft. as required by M.G.L. Ch. 40A, Sec. 11. The Planning Board shall advertise the Public Hearing, at Owner/Applicant's expense. The applicant shall notify abutters via certified mail.

East-West Mirra Realty, LLC

Owner's Name	Business Name
6 Norino Way, Georgetown, MA 01833	
Owner's Address (Street, City, State, and Zip Code)	Telephone

G. Mello Disposal Corp.

Applicant's Name (If acting as agent, attach authorization signed by owner.)	Business Name
95 Tenney Street, Georgetown, MA 01833	978-352-8581

Applicant's Address (Street, City, State, and Zip Code)	Telephone
Nancy A.S. McCann, Esq. McCann & McCann, P.C. 89 Newbury Street, Ste. 302, Danvers, MA 01923	978-739-8484

Applicant's Representative Name	Business Name
Scott Cameron MorinCameron Group Inc. 66 Elm Street, Danvers, MA 01923	978-777-8586

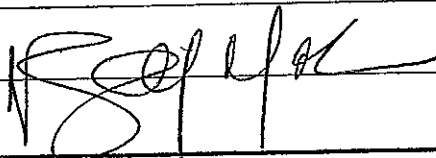
Applicant's Engineer	Address (Street, City, State, and Zip Code)	Telephone
----------------------	---	-----------

Address of Site 20 Carleton Drive, Georgetown, MA 01833

Assessor's Map 15 Lot 46 Zoning District CC

Registry of Deeds Book # 18149 Page # 578

Signature of Owner See Attached Authorization Date _____

Signature of Applicant  Date 5-8-23

Application for Special Permit General Information

1. Filing fee as per current fee schedule to be submitted with application to Planning Board, payable to "Town of Georgetown."
2. Copy of deed of current owner to be included with submittal.
3. Plan is to be stamped by a Registered Professional Civil Engineer, or Registered Land Surveyor, as necessary.
4. Applicant hereby agrees to permit inspection to confirm construction as per plan during ordinary business hours by reviewing board or its agent. The applicant shall compensate agent, where applicable.
5. The Planning Board reserves the right to hire a consultant, at Applicant's expense, if deemed necessary to further review plans or supporting data, as per M.G.L. Ch. 44, Section 53G.

Signature of Owner See Attached Authorization Date _____

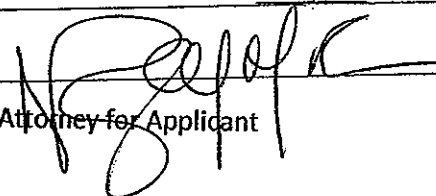
Signature of Applicant  Date 5-8-23
Attorney for Applicant

EXHIBIT 2

QUITCLAIM DEED

EAST-WEST REALTY TRUST, a Massachusetts realty trust under Declaration of Trust dated October 17, 1996, recorded with the Essex South Registry of Deeds in Book 13802 at Page 349 with a business address of 6 Norino Way, Georgetown, Essex County, Massachusetts, for consideration paid and in full consideration of One Dollar (\$1.00), grant to EAST-WEST MIRRA REALTY LLC, a Delaware limited liability company, with a business address of 6 Norino Way, Georgetown, Essex County, Massachusetts with quitclaim covenants, the following described parcels of land:

With Quitclaim Covenants

A certain parcel of land situated in Georgetown in said County and Commonwealth, containing about five acres and bounded as follows:

Beginning at the southwesterly corner thereof by land sometime of Josiah Goodwin called the "Close", thence running easterly by the wall of said Goodwin land about twenty (20) rods to a south end of a lane; thence across said lane about one and one-half (1½) rods to land sometime of said Goodwin; thence south by the wall and said last mentioned land about fifteen (15) rods to a corner; thence easterly by a wall and ditch by said Goodwin land about forty-one (41) rods to a corner; thence northerly by a ditch by land sometime of said Goodwin eleven (11) rods to a brook; thence easterly by the brook by land formerly of George J. Tenney about thirty (30) rods to a corner by land formerly of Sylvanus Merrill; thence southerly by a fence and ditch by land formerly of said Merrill about eighty-one (81) rods to a stake and stones by land formerly of Richard Tenney; thence westerly on a straight line by said Richard Tenney land about ninety (90) rods to the easterly end of a wall by land formerly of Samuel Pearson and others; thence westerly by the wall by said Pearson land about forty-four (44) rods to a corner; thence northerly by the wall by land formerly of Joseph Pickard about twenty-two (22) rods to a corner; thence northwesterly by the wall by said Pickard land about thirty (30) rods to a corner by land formerly of Alpha S. Tenney called the "Sheep Pasture"; thence northeasterly on a straight line by said Alpha S. Tenney land about eleven (11) rods to the corner first described, together with a right of way from the "Back Road" to said premises through the land and the old barn yard as heretofore used. Being the same premises conveyed by deed from Alvin F. Marden dated March 28, 1944 and recorded at the Essex Registry of Deeds, Southern District, in Deed Book 3364 at Page 257.

For title to the above parcel, see Deed of Nancy Gosson, Trustee of Carlton Drive Realty Trust, dated June 19, 2001 and recorded with the Essex South District Registry of Deeds at Book 17319 at Page 223.

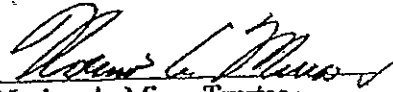
Grantee : East-West Mirra Realty Trust LLC
6 Norino Way, Georgetown, MA 01833.


EKL/31403/1/512170v1

Deed
18149/578

Witness my hand and seal this 21st day of December, 2001.

EAST-WEST REALTY TRUST

By: 
Norino A. Mirra, Trustee

By: 
Ralph V. Mirra, Trustee

By: 
Antonio Mirra, Sr., Trustee

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

December 21, 2001

Then personally appeared Norino A. Mirra, Ralph V. Mirra, and Antonio Mirra, Sr. to me known and known by me to be the Trustees of EAST-WEST REALTY TRUST and the persons executing the foregoing instrument on behalf of said Trust, and being duly sworn, swore that said instrument executed by them to be their free acts and deeds in said capacity and the free act and deed of said Trust. ✓

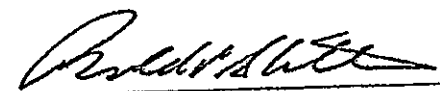

Notary Public, Ronald N. Stetler
My Commission Expires: June 28, 2007

EXHIBIT 3

Owner's Authorization

The undersigned being the owner of a certain parcel of vacant land on Carlton Drive, Georgetown, MA containing 14.572 acres, shown as Lot A on a plan recorded with the Southern Essex Registry of Deeds in Plan Book 374, Plan 34, and further shown on Georgetown Assessor's Map 15, Lot 46 ("the Premises") hereby assents to the filing by G. Mello Disposal Corp. or its representative of any and all municipal and state applications as may be necessary or desirable to permit the development of a solid waste transfer station and recycling facility on the Premises. Thank you.

East-West Mirra Realty LLC

By: _____

Norino Mirra, Manager

Date: _____

By: _____

Antonio Mirra, Manager

Date: 12-13-2018

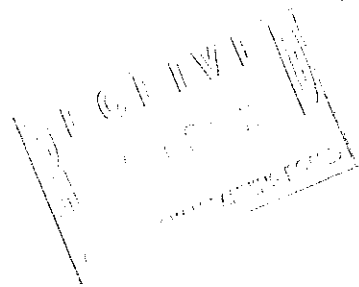
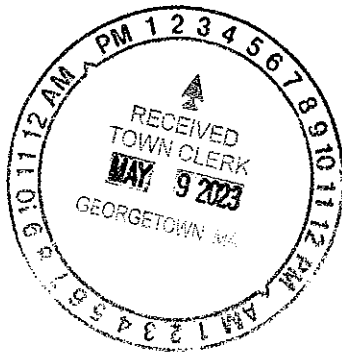
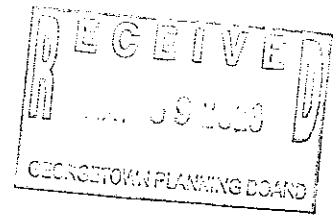


EXHIBIT 4



PROJECT DESCRIPTION
Transfer Station
20 Carleton Drive, Georgetown, MA



I. Introduction:

The Applicant, G. Mello Disposal Corp. ("Mello"), currently operates a Transfer Station located at 203 East Main Street, Georgetown MA. The Massachusetts Department of Environmental Protection (MassDEP) Northeast Regional Office (NERO) has required that the existing Transfer Station be upgraded to comply with MassDEP regulations; the upgrade and compliance of the existing facility will require the enclosure of the current Transfer Station operation and an increase in capacity to make that upgrade financially viable.

The Applicant identified the land located at 20 Carleton Drive (the "Property") adjacent to Interstate 95, and containing approximately 14.6 acres of land in the Commercial C Zoning District, to relocate its Transfer Station operation. Mello has proceeded with its consultants to design a new Transfer Station on Carleton Drive that will be in *full compliance* with the MassDEP regulations, and will allow the Applicant to continue to meet the waste disposal needs of its customers.

Proceeding diligently through the permitting process, Mello has received:

- Special Permit from the Georgetown Board of Appeals to permit the Transfer Station project on the Property (Docket #19-07);
- DEP Site Suitability Determination
- Georgetown Board of Health Site Assignment
- DEP Superseding Order of Conditions
- Special Permit from the Georgetown Board of Appeals for work in the Water Resource District (Docket#19-07)

On appeal of the denial of Site Plan review by the Planning Board, the Land Court determined that Site Plan review, as it is not a Special Permit, is not applicable to the Project. The Court determined, however, that a Major Development Review ("MDR") Special Permit is required if the developed area exceeds 30,000 s.f. The Project Engineer has determined that the development area as defined by the Court, exceeds 30,000 s.f. Mello has filed an Appeal of the Land Court's determination that MDR is applicable to this project, however Mello has proceeded with filing this MDR Special Permit application in a good faith effort to work with the Town in the development of the new Transfer Station. In so doing, Mello does not waive its objection to the application of the MDR Bylaw to the Project, does not concede the Planning Board's jurisdiction and reserves all rights.

II. Project:

The Applicant Mello proposes to construct and operate on the Property a Transfer Station - a place where residential garbage/trash and recyclables, and commercial trash, construction

materials and non-hazardous commercial wastes are accepted, sorted, processed, compressed, baled, and loaded on vehicles for transport to off-site disposal sites or landfills. The Transfer Station will collect and handle Municipal Solid Waste ("MSW"), Construction and Demolition ("C&D") debris, bulky waste and recyclables. No hazardous materials will be accepted.

The new Transfer Station facility will consist of a 30' access driveway along the westerly lot boundary; a residential waste and recycling drop off center; an approximately 15,000 square foot waste handling building; scales, scale house and circulation areas around the new building. Utilities servicing the facility will be extended from Carleton Drive. The Applicant proposes a permitted capacity of 500 tons per day (108,900 tons per year) of solid waste, phased in over a 5 year period as permitted under the Georgetown Board of Health Site Assignment. The Transfer Station will meet waste handling needs now and into the future, as well as advance the goals of the Massachusetts Solid Waste Master Plan.

The Transfer Station will operate:

Monday – Thursday 6:30 a.m. – 5:00 p.m.

Friday – Sunday 7:30 a.m. – 3:00 p.m.

With hours of receipt of materials:

Monday – Thursday 7:30 a.m. – 3:00 p.m.

Friday – Sunday 7:30 a.m. – 12:00 p.m.

The proposed Transfer Station has been designed to fully comply with the dimensional and density requirements under the Georgetown Zoning Bylaw; will fully comply with the MassDEP regulations for new Transfer Station facilities; and will operate in accordance with the MassDEP regulations, and Site Assignment issued by the Georgetown Board of Health ("BOH").

The BOH Site Assignment imposed conditions on the construction and operation of the Transfer Station which have been incorporated into the Site Plan, and the Operation and Maintenance Plans submitted with this MDR Special Permit application, and include the following conditions:

- Phasing in of maximum daily tonnage
 - Years 1 and 2 150 tons per day
 - Year 3 350 tons per day
 - Year 4 450 tons per day
 - Year 5 550 tons per day
- 60 days following each tonnage increase, a traffic and noise study will be conducted to determine if mitigation measures are needed to abate a result of the increase.
- All doors at the facility shall be closed unless vehicles are entering or exiting.
- All discharging, sorting and handling of material shall be performed within the building.
- All waste shall be removed from the facility within 72 hours of arrival.
- Annual executed contract for extermination shall be provided to Board of Health.
- All truck loads, both entering and exiting the facility, shall be covered.
- Mello shall inspect Carleton Drive and facility grounds daily for windblown litter.

- 6' fence shall be installed around the perimeter of the facility
- All machinery owned by Mello and operating at the facility shall have "white noise" back up alarms.

Further, as noted in the Traffic Impact and Access Study submitted as part of this MDR Special Permit application, Mello has agreed to the following:

- Prohibiting the arrival transfer trailers on site during the weekday AM peak hour and during hours when school buses may be present
- Implementing pavement markings on Carleton Drive to provide a centerline and STOP line
- Participating in the reconstruction of Carleton Drive through funding to be determined by and provided to the Town of Georgetown Highway Department and to be used for the reconstruction of Carleton Drive
- Providing a police detail at the Route 133/Carleton Drive intersection during the hours the facility is open for receipt of materials for the first 60 days of operation
- Conducting a post-occupancy monitoring study within 6 months of commencement of operation to verify the number and type of vehicle trips generated by the facility and assess the need for any additional mitigation measures
- Mello shall direct all transfer trailers to arrive and leave the site via East Main Street (Rte. 133) to the east toward Interstate 95.

III. Compliance:

This MDR Special Permit application has been submitted in accordance with the Submittal Requirements in Section 165-80.2.D and consists of the Site Plan prepared in compliance with Section 165-83.E.1, together with technical reports concerning environmental impacts, traffic, stormwater, and operations and maintenance plans that demonstrate:

- the location of buildings, uses and other site development are properly located on the site;
- adjacent properties are protected from nuisance caused by noise, fumes and glare of lights and from detracting visual features;
- unique man-made features and significant natural features are preserved as much as possible;
- Adequate parking, loading facilities, drainage and methods of solid waste disposal are provided on-site;
- Pedestrian ways, access driveways, loading and parking facilities are properly designed and operated for public convenience and safety;
- Consideration of architectural style and its relation to the prevailing character and scale of buildings in the neighborhood; and
- Water resources are protected – see also Water Resource Special Permit issued by the Georgetown Board of Appeals.

In addition to the Site Plan and technical reports, the MDR Special Permit application includes

- Façade elevations of all sides of the proposed building;

- Photographs showing the proposed building site and abutting properties;
- There are no plans for phased construction of the is project;
- Contingency plans or bond relative to completion of the project are not applicable to this private development however Mello has demonstrated financial ability to complete the Project; and
- Operation and Maintenance Plans provided address Project impact mitigation, understanding a Major Development Review Rules and Regulations for Impact Statements has not been promulgated by the Town.

State and municipal regulatory compliance is evidenced further by the Permits, Orders and Determinations issued for the Project, a copy of each being provided in this MDR Special Permit application:

- a. ZBA Special Permit (Docket #19-07)
- b. ZBA Water Resource District Special Permit (Docket # 19-07)
- c. DEP Superseding Order of Conditions
- d. MEPA Determination
- e. DEP Site Suitability Determination
- f. Georgetown Board of Health Site Assignment

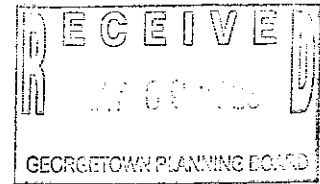
Finally, this Major Development Review Special Permit application provides a Memorandum on the scope of review by the Planning Board. The Major Development Review Special Permit may be reviewed in light of the criteria in Zoning Bylaw § 165-83 A (1)-(7), and may only impose reasonable conditions on the Mello's project, in order to mitigate Project impacts, and may not use the MDR bylaw in order to deny the Project.

We look forward to presenting this MDR Special Permit application to the Planning Board.

EXHIBIT 5



DAVIS MALM
ATTORNEYS



MEMORANDUM ON SCOPE OF REVIEW

TO: Town of Georgetown Planning Board

FROM: G. Mello Disposal Corp.,
by its counsel, Davis Malm & D'Agostine, P.C

DATE: May 8, 2023

SUBJECT: Memorandum of Scope of Review,
Application for Major Development Review Special Permit

I. INTRODUCTION

G. Mello Disposal Corp. ("Mello") submits this Memorandum in connection with its application for a Major Development Review Special Permit relating to its proposal to construct and operate a new transfer station (the "Transfer Station"), on property located at 20 Carleton Drive in Georgetown ("Property"). The purpose of this Memorandum is to summarize the critical rulings from the Land Court that are binding on the Planning Board, and which relate to the scope of the review that the Planning Board may apply to the Transfer Station.

II. HISTORY AND LAND COURT RULINGS

In 2019, the Zoning Board of Appeals issued a special permit for the use of the Property as a transfer station. In addition the Transfer Station has received site assignments from the Department of Environmental Protection and from the Georgetown Board of Health pursuant to

G.L. c. 111, § 150A, and a Water Resource District Special Permit from the Georgetown Zoning Board of Appeal.

A. The Transfer Station Is Not Required to Obtain Site Plan Review.

The Transfer Station was before the Planning Board in 2020 and 2021 on an application for Site Plan Review pursuant to Section 165-83 of the Georgetown Zoning Bylaw (the “Bylaw”). The Planning Board issued a decision denying the application for Site Plan Review, which was filed with the Town Clerk September 27, 2021, and appealed to the Land Court by Mello. The Land Court ruled that the Zoning Act prohibits the Town from subjecting the Transfer Station to Site Plan Review. This is because the Transfer Station is entitled to special protection under the final paragraph of Section 9 of Chapter 40A, which was intended by the legislature to make it more difficult for local boards to prevent solid waste facilities in their towns, recognizing that while solid waste facilities often are unpopular locally, they are critical infrastructure in the Commonwealth. A copy of the Decision and Judgment in the Site Plan Appeal, Land Court Case No. 21-MISC-000513, is attached hereto as Exhibit A.

B. The Major Development Review Special Permit May Not Be Denied.

On a parallel track, in case numbers 21-MISC-000296 and 2177-CV-00557, both Mello and a group of Georgetown residents (the “Abutters”) asked the Land Court to decide whether the Transfer Station was required to obtain a Major Development Review Special Permit (the “MDR Action”). Mello argued that the Transfer Station did not meet the threshold for an MDR Special Permit under Bylaw § 165-80.2 (B), and even if it did, the fact that the Planning Board had not adopted standards and criteria for reviewing MDR Special Permit applications meant the MDR Bylaw could not be applied to Mello’s Transfer Station. Mello also argued that, given the

Transfer Station's status as a protected use under the Zoning Act, if Mello was required to apply for an MDR Special Permit, the permitting authority could not deny the application, but could only "impose reasonable conditions on the construction or operation of the facility" pursuant to G.L. c. 40A, § 9. The Abutters argued that the Transfer Station meets the thresholds of the MDR Bylaw and should be required to obtain the MDR Special Permit.

The Court issued a written decision and judgment in the MDR Action, which are attached hereto as Exhibit B. The decision and judgment contain several important rulings that affect the current application for an MDR Special Permit, summarized below.

1. The Court ruled that the Transfer Station did not trigger Major Development Review based on vehicle trips, because it was under the 1,000 trip-per-day threshold that applied to Georgetown's Business and Commercial Districts.
2. The Court ruled that, under Bylaw § 165-80.2 (B) (4), the Transfer Station would trigger review if "the footprint of the building and, at least, all impervious area on the property which are necessary to the function of the development—including the access way that allows passage from the public or private way to buildings that constitute the use" comprise more than 30,000 square feet.
3. The Court ruled that, in reviewing the Transfer Station for an MDR Special Permit, the Planning Board shall apply the criteria in Bylaw § 165-83, which are the Site Plan Review criteria, and shall not apply the criteria that governs special permits under Bylaw § 165-79.
4. The Court ruled that the Planning Board "may only impose reasonable conditions on Mello's project and may not use the MDR bylaw in order to deny the project."

The Abutters appealed the Land Court’s decision in the MDR Action to the Appeals Court, and Mello filed a cross appeal. Mello asks the Appeals Court to rule that its Transfer Station is wholly exempt from the MDR Bylaw. In the meantime, however, Mello elected to move forward with the application process. In filing its application for a MDR Special Permit, Mello does not waive its objection to the application of the MDR Bylaw to the project, does not concede the Planning Board’s jurisdiction, and reserves all rights.

III. APPLICABLE STANDARD AND CRITERIA

In light of the Land Court’s rulings, the Planning Board is to consider the application for a Major Development Review Special Permit in light of the criteria in Bylaw § 165-83 A (1)-(7), and may “impose reasonable conditions on the construction or operation of the facility” (G.L. c. 40A, § 9) in order to mitigate any “adverse[] impact [on] adjacent properties, the neighborhood, the Town, or the environment” (Georgetown Bylaw § 165-80.2 (E)). In considering the application, the Planning Board may consider the elements set out in Bylaw § 165-83 (P) (1) – (10) to the extent they bear on the criteria the Planning Board is to apply, however as the Court ruled, the Planning Board may not use the MDR bylaw as a basis on which to deny the project.

A. The Board May Not Impose Conditions that Amount to a De Facto Denial.

While the final paragraph of G.L. c. 40A, § 9 allows the Planning Board to impose “reasonable conditions on the construction or operation” of the Transfer Station, the Planning Board may not use imposition of conditions as a “back door” to deny the project. This is established in a 1976 decision of the Mass. Supreme Judicial Court called *Cape Ann Land Development Corp. v. City of Gloucester*. In that case, the city of Gloucester sought to apply its “major development” special permit ordinance to a shopping center where the shopping center

was an allowed use in that location. The SJC ruled that, where the shopping center is a protected use, that protection “may not be eroded by the denial of a special permit for that use when the reason for that denial is the proposed protected use.” In other words, the special permit granting authority (in Gloucester at the time it was the city council) could not deny the major development special permit because they did not want a shopping center at that location. The council could, however, “impose reasonable conditions which do not amount, individually or collectively, to a practical prohibition of the use.” *Cape Ann Land Dev. Corp. v. City of Gloucester*, 371 Mass. 19, 24 (1976). See also *Newbury Junior College v. Town of Brookline*, 19 Mass. App. Ct. 197, 207 (1985) (“To allow such use to be prohibited by any backdoor method ... is ... wrong”).

The Land Court has considered what conditions may be imposed on a solid waste facility—which is subject to the same zoning protections as the Transfer Station—and what conditions amount to “a practical prohibition of the use” and are therefore not allowed. In *Wheelabrator Land Resources, Inc. v. Town of Saugus*, Judge Trombly considered whether the town of Saugus could impose a maximum height limitation of 40 feet on a landfill that the state has authorized with a maximum height of 50 feet. The Land Court specifically consider that section 9 of the Zoning Act allows imposition of reasonable conditions on the construction or operation of the facility, but concluded that the height limit—which was in direct conflict with the state authorization—amounted to a practical prohibition of the use and was not allowed.


B. The Board May Not Impose Undue Delay in its Proceedings.

Specifically regarding the Mello Transfer Station, the Land Court in the MDR Action stated: “It is worth noting that the planning board already reviewed Mello’s project under the site

plan review guidelines of §165-83 in a public hearing that started in February 2020, spanned nine hearing nights, and concluded in September 2021. Although I have previously ruled that the site plan review bylaw was not applicable to Mello's project due to the protections provided to solid waste facilities by G. L. c. 40A, § 9, the hard work of the planning board and Mello during that process will not have been wasted if Mello's project is subject to the MDR bylaw." In other words, it is the Court's expectation that Mello's MDR application proceed efficiently, without significant duplication of efforts. To that end, it is also worth revisiting the familiar time standards that apply to special permit applications under the Zoning Act.

Section 9 of chapter 40A states that the "decision of the special permit granting authority shall be made within ninety days following the date of [the first] public hearing." Section 9 further provides that "[f]ailure by the special permit granting authority to take final action within said ninety days or extended time, if applicable, shall be deemed to be a grant of the special permit." For purposes of this provision, "final action" means filing a written decision with the Town Clerk. *See Board of Alderman of Newton v. Maniace*, 429 Mass. 726, 729 (1999) ("filing of the board's decision in the office of the municipal clerk constitutes 'final action' as that term is used in § 9.").

Respectfully submitted,
G. MELLO DISPOSAL CORP.,
By its attorneys,



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EXHIBIT A

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

ESSEX, ss.

MISCELLANEOUS CASE
No. 21 MISC 000513 (KTS)

G. MELLO DISPOSAL CORP.,

Plaintiff,

v.

HARRY LACORTIGLIA, *et al.*,

Defendants.

DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This case presents the legal question of whether the Plaintiff, G. Mello Disposal Corp. ("Mello"), must submit its proposed development of a solid waste transfer station to the site plan review process of the Georgetown zoning bylaw, or whether the last paragraph of G. L. c. 40A, § 9 overrides the Georgetown bylaw and relieves Mello of that obligation. The Defendant, the Town of Georgetown, asserts that its site plan review bylaw is tantamount to a special permit bylaw and, therefore, that it may regulate the construction of a solid waste transfer station through its site plan review and approval process. Mello claims that G. L. c. 40A, § 9 overrides Georgetown's site plan review bylaw so that such review may not be required for its project.

The parties filed cross-motions for summary judgment, and I heard oral argument on August 17, 2022. For the reasons set forth in this decision, Mello's motion for summary judgment is ALLOWED. The protections provided to solid waste facilities by G. L. c. 40A, § 9

override the Georgetown zoning bylaw. Thus, Mello's project shall not be subject to site plan approval under §165-83.

Procedural History

This action was originally commenced by Mello as an appeal under G. L. c. 40A, § 17 of the Georgetown planning board's decision to deny site plan approval of the solid waste transfer station which Mello proposed for the property at 20 Carleton Drive in Georgetown (the "Property"). The planning board moved to dismiss the appeal on the grounds that this Court lacked subject matter jurisdiction over the matter, arguing the matter was not yet ripe for adjudication as Mello had not exhausted its administrative remedies at the local level. The gist of the planning board's argument was that its site plan review bylaw, §165-83, was an administrative requirement preliminary to the issuance of a building permit—not a special permit—and, therefore, Mello did not have a right to seek judicial review of its decision under G. L. c. 40A, § 17. Mello opposed the planning board's motion but moved in the alternative to amend its complaint to add the Town as a defendant, and to seek a declaration under G. L. c. 240, § 14A that §165-83 does not apply to Mello's project because it violates the last paragraph of G. L. c. 40A, § 9.

I allowed the planning board's motion to dismiss, finding that site plan review under §165-83 was not the same as a special permit and, therefore, this Court did not have subject matter jurisdiction to hear that action under G. L. c. 40A, § 17. I also allowed Mello's motion for leave to file the amended complaint.

The question now before me tests the applicability of §165-83 to Mello's project: does §165-83 violate the last paragraph of G. L. c. 40A, § 9, which prohibits the regulation of a solid waste facility by any means other than a special permit, or is the bylaw "functionally and

legally” the same as a special permit bylaw and therefore a permissible regulation under G. L. c. 40A, § 9?¹

Undisputed Facts

The material facts that are pertinent to the resolution of these motions are undisputed. The Property is comprised of approximately 14.57 acres of land located in Georgetown’s Business and Commercial District C. In May of 2019, the Georgetown zoning board of appeals issued a special permit allowing Mello to use the Property as a transfer station facility with a capacity of 500 tons per day. The transfer station is proposed to be a handling facility where solid waste is brought, stored, and transferred from one vehicle or container to another vehicle or container for transport off site to a solid waste treatment, processing, or disposal facility. In January 2020, Mello applied to the planning board for site plan approval pursuant to Georgetown zoning bylaw §165-83(B)(1). Over a year later, in September of 2021, the planning board voted to deny site plan approval for the project.

Following the planning board’s denial, Mello continued to pursue other state and local approvals for the project. Of particular significance to the legal question in this case, Mello received a positive site suitability report for the Property from the Massachusetts Department of Environmental Protection on March 1, 2022, and a site assignment from the Georgetown Board of Health on May 18, 2022.

¹ This question is essentially the same question I answered in deciding to dismiss Mello’s original appeal under G. L. c. 40A, § 17. In that decision, I determined—as urged by the Georgetown planning board—that site plan review under the Georgetown zoning bylaw is not the same as a special permit. As such, that decision is very likely the law of the case and I need not go further in my analysis of the present motions. See generally *King v. Driscoll*, 424 Mass. 1, 7-8 (1996). It is also not lost on the Court that the Town’s principal argument in opposing Mello’s motion for summary judgment is directly contrary to the position asserted by the planning board in seeking the dismissal of Mello’s original appeal: that site plan review under §165-83 is not a special permit. Nonetheless, in the interest of completeness, I will address the merits of the parties’ arguments in rendering this decision.

Statutory Framework

Whether Mello's project is subject to site plan review and approval by the Georgetown planning board requires an analysis of the interplay between G. L. c. 40A, § 9 and Georgetown bylaw §165-53.

G. L. c. 40A, § 9 – Protection of Solid Waste Facilities

In 1987, the Legislature adopted an amendment to G. L. c. 40A, § 9 which limited a municipality's ability to regulate the construction of solid waste facilities. The amendment, set forth as the last paragraph of G. L. c. 40A, § 9, provides as follows:

“A facility, as defined in section one hundred and fifty A of chapter one hundred and eleven, which has received a site assignment pursuant to said section one hundred and fifty A, shall be permitted to be constructed or expanded on any locus zoned for industrial use unless specifically prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to be constructed or expanded, in effect as of July first, nineteen hundred and eighty-seven; provided, however, that all permits and licenses required by law have been issued to the proposed operator. A city or town shall not adopt an ordinance or by-law prohibiting the siting of . . . [a solid waste] facility or the expansion of an existing facility on any locus zoned for industrial use, or require a license or permit granted by said city or town, except a special permit imposing reasonable conditions on the construction or operation of the facility. . . No special permit authorized by this section may be denied for any such facility by any city or town; provided, however, that a special permit granting authority may impose reasonable conditions on the construction or operation of the facility, which shall be enforceable pursuant to the provisions of section seven.”

This amendment was intended to address the severe shortage of environmentally safe and financially sound solid waste facilities in the Commonwealth by providing what is essentially a “zoning override” for these facilities, with an exemption for zoning bylaws in effect prior to July 1, 1987. See G. L. c. 40A, § 9, as amended by St. 1987, c.584; *Theophilopoulos v. Bd. of Health of Salem*, 85 Mass.App.Ct. 90, 94-95 (2014).

The type of facility that is covered by the zoning override is “a sanitary landfill, a refuse transfer station, a refuse incinerator rated by the department at more than one ton of refuse per

hour, a resource recovery facility, a refuse composting plant, a dumping ground for refuse or any other works for treating, storing, or disposing of refuse.” G. L. c. 111, § 150A. Since the addition of the last paragraph of §9, municipalities shall not prohibit the use of industrial property for a solid waste facility and may only impose reasonable limitations on such use by special permit. Any other municipal license or permit is forbidden.

The Georgetown Site Plan Review Bylaw

The Georgetown site plan review bylaw is administered by the planning board and is a mandatory prerequisite to the issuance of a building permit for all projects that fit the following definition:

“Except as otherwise exempted in accordance with Subsection C, no building permit for the construction, exterior alteration, relocation, occupancy, or change in use of any building shall be permitted and no new or existing use(s) shall be established or expanded in off-street parking or floor area except in conformity with a site plan approved by the Planning Board. Required approval includes, but is not limited to, proposals for commercial, industrial, office, multiple-family dwelling residential developments, municipal, institutional, utility, fraternal or recreational uses.”

§168-83.B(1). However, the zoning bylaw does not designate the planning board as a special permit granting authority for purposes of site plan review, nor does it adopt a special permit procedure for its site plan review and approval. Rather, site plan approval is an administrative step preliminary to the issuance of a building permit. The decision on site plan review is not immediately reviewable by the Land Court or the Superior Court under G. L. c. 40A, § 17.²

² Much ink has been spilled by this court and others concerning the distinction between a special permit and site plan review and whether the legislature should amend G. L. c. 40A, § 9 to provide municipalities with a standard procedure and an appellate path for the review of site plans. See *Willis v. Nelson*, 27 LCR 245 (2019); *Corner v. Forest Delahunt Dev., LLC*, 27 LCR 425 (2019). The absence of the right for direct judicial review of a site plan review decision now requires the applicant, like Mello, to go through the expensive and futile charade of developing final construction plans for a project not yet approved, applying for a building permit that the building inspector *must* deny because the site plan was denied, appealing the building inspector’s decision to the zoning board under G. L. c. 40A, § 8, and, when denied there, finally seek judicial review of the site plan review decision originally made by the planning board.

Discussion

Mello's amended complaint seeks a judicial determination under G. L. c. 240, § 14A that §168-83 does not apply to its project. General Laws c. 240, § 14A is a remedial statute whose primary purpose is to provide property owners with a procedure for declaratory judgment that will "resolve doubts relating to by-law restrictions or the requirements of a zoning ordinance." *Whitinsville Ret. Soc., Inc. v. Northbridge*, 394 Mass. 757, 762-763 (1985) citing *Addison-Wesley Publishing co. v. Reading*, 354 Mass. 181, 184-185 (1968). Proceedings under this section "determine how and with what rights and limitations the land of the person seeking an adjudication may be used under the provisions of a zoning enactment in terms applicable to it." *Harrison v. Braintree*, 355 Mass. 651, 654 (1969); see also *Addison-Wesley*, 354 Mass. at 185; *Woods v. City of Newton*, 349 Mass. 373, 376-377 (1965); *Hanson & Donahue*, 61 Mass.App.Ct. 292, 295 (2004).

In its amended complaint, Mello seeks a declaration that the site plan review process under §165-83 violates the zoning override in G. L. c. 40A, § 9. The parties agree on the pertinent facts. The project proposed by Mello is a "facility" under G. L. c. 111, § 150A, it has received a site assignment from the Georgetown board of health, and the Property on which the project is proposed is in a "locus zoned for industrial use." As such, the project meets the requirements of G. L. c. 40A, § 9 and may only be regulated by a special permit that imposes reasonable conditions on its construction or operation or both. The Town may not deny Mello a special permit nor may it impose another type of license or permit to prohibit the project as a whole. Thus, this case presents the pure legal question of whether site plan review under §165-83 is, functionally and legally, the equivalent of a special permit under the Georgetown zoning bylaw or whether it is a license or other permit prohibited by G. L. c. 40A, § 9.

General Laws c. 40A, § 9 contemplates that municipal zoning ordinances and bylaws will provide that certain types of uses and improvements to land will be permitted only upon the issuance of a special permit.³ Special permits may only be granted by a board that has been designated by the municipality as the “special permit granting authority.”⁴ General Laws c. 40A, § 9 also prescribes the procedure for the grant or denial of a special permit, which includes time limits within which the special permit granting authority must hold a public hearing on an application and, subsequently, make decision on the application, the minimum required number of votes necessary for the grant of a special permit, the circumstances under which the special permit granting authority’s failure to act will result in a constructive approval of the special permit, the manner in which the decision must be filed with the town clerk, and the right to seek direct judicial review of the decision by the applicant or abutters pursuant to G. L. c. 40A, § 17.

Site plan review, on the other hand, is a process not recognized by G. L. c. 40A. Generally speaking, site plan review is a creature of local zoning bylaws that authorizes either a zoning board or planning board to review the site plan for a project, where the underlying use is permitted by right or allowed by special permit, for the purpose of determining whether the project meets certain design standards which have been established by that board. See *Y.D. Dugout, Inc. v. Bd. of Appeals of Canton*, 357 Mass. 25 (1970); *Osberg v. Planning Bd. of Sturbridge*, 44 Mass.App.Ct. 56, 57 (1997) (“Although site plan review is not expressly recognized in [the Zoning Act] as an independent method of regulation, some communities have introduced it into their zoning by-law as a means of controlling the aesthetics and environmental

³ General Laws c. 40A, § 9 sets forth the purpose and the guidelines for issuing special permits. “Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or bylaw, and 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.”

⁴ General Laws c. 40A, § 1A defines “special permit granting authority” as follows: “. . . the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or by-law for the issuance of special permits.”

impacts of land use.”) Because site plan review is not a regulatory process authorized by the Zoning Act, a board’s site plan review decision is not the equivalent of a special permit and may not be appealed in the manner prescribed by G. L. c. 40A, § 17. See *Dufault v. Millennium Power Partners*, 49 Mass.App.Ct. 137, 139-140 (2000).

This important distinction between a special permit and site plan approval has two exceptions. Site plan review may be treated as the equivalent of a special permit only if the municipal bylaw creating it either (1) expressly designates the site plan approval authority as a special permit granting authority, or (2) adopts a special permit process as outlined in G. L. c. 40A, § 9 for the review and approval of site plans. See *Quincy v. Planning Bd. of Tewksbury*, 39 Mass.App.Ct. 17, 20-22 (1995); see also *Y.D. Dugout, Inc. v. Bd. of Appeals of Canton*, 357 Mass. 25 (1970). When either exception exists, the applicant may seek judicial review of the board’s site plan review decision by direct appeal to the Land Court or the Superior Court under G. L. c. 40A, § 17.⁵ However, because a special permit is the only means by which a town may regulate a solid waste facility under G. L. c. 40A, § 9, when site plan review does not meet either of these exceptions so as to be equivalent to a special permit, such a process cannot be used to deny or even to regulate a proposed solid waste facility.

Here, whether the Georgetown site plan review bylaw is the functional and legal equivalent of a special permit, as the Town argues, comes down to the language of the bylaw. The Georgetown zoning bylaw does not meet either exception such that site plan review can be considered the equivalent of a special permit. The bylaw does not designate the planning board as a special permit granting authority in the context of its role in conducting site plan review and

⁵ At least one court has suggested that, even where the site plan review process lacks the strictures or limitations of the special permit process set forth in G. L. c. 40A, § 9, direct judicial review per G. L. c. 40A, § 17 may be available. *Osberg*, 44 Mass.App.Ct. at 62, n.8.

approval, nor does the bylaw adopt the special permit procedures set forth in G. L. c. 40A, § 9 for the administration of site plan review and approval under §165-83. Rather, site plan review and approval in Georgetown is an administrative prerequisite to the issuance of a building permit for most projects other than single-family residential projects. Significantly, §165-83 does not provide a direct right of appeal of the planning board's decision on site plan review to the Land Court or the Superior Court. Like the procedure reviewed by the court in *Dufault*, an applicant's right of appeal of a site plan review decision "arises only when the building permit for the proposed project is issued or denied by the building inspector." *Dufault*, 49 Mass.App.Ct. at 141, quoting *St. Botolph Citizens Comm., Inc. v. Boston Redev. Auth.*, 429 Mass. 1, 9 (1999).⁶ For these reasons, site plan review under §165-83 is not the functional or legal equivalent of a special permit under the Georgetown zoning bylaw, nor has Georgetown treated it as such. Cf. *Berkshire Power Dev., Inc. v. Zoning Bd. of Appeals of Agawam*, 43 Mass.App.Ct. 828, 832-834 (1997). Rather, site plan review and approval procedure under §165-83 constitutes a "license or permit granted by [a] city or town" prohibited by the last paragraph of G. L. c. 40A, § 9 which is intended to protect projects like Mello's.

The Town also argues in the alternative that site plan review is a condition of the original special permit issued by its zoning board in May of 2019, which allowed Mello's use of the Property as a solid waste facility and contains an express condition that "Site Plan Approval from the Planning Board will be required for this project." For the reasons below, I find the Town's argument to be an overstatement of the language used by the zoning board in deciding to issue the special permit.

⁶ The purpose of requiring this process is to give the town a chance through its own administrative procedures to correct any error in a planning board decision before it is appealed. *Wildstar Farm, LLC v. Planning Bd. of Westwood*, 81 Mass.App.Ct. 1114 (2012).

In that decision, which has been recorded in the Essex Registry of Deeds in Book 37962, Page 247, the zoning board made the following specific findings required by Georgetown special permit bylaw that

“a) the requested use is essential and desirable to the public convenience and welfare. A transfer station provides a needed service and convenience to the residences and business of the Town and the community; b) the requested use will not overload any public water or other municipal system so as to unduly subject any area to hazards affecting health, safety or the general welfare; c) the requested use will not impair the integrity or character of the district or adjoining districts; and d) the requested use will not cause an excess of that particular use which could be detrimental to the character of the neighborhood.”

The statement in the special permit decision that “Site Plan Approval from the Planning Board will be required” cannot be seriously read to be a condition of the special permit. First, it is contained in the section of that decision entitled “Overview,” and is more reasonably interpreted as a recitation of what the zoning board understood at the time was the regulatory process that Mello would be following in its pursuit of the other approvals required to site, construct, and operate a solid waste facility at the Property. Second, the findings required by Georgetown’s special permit bylaw in §165-79(a)–(d) are recited in the section of the decision entitled “Special Permit – Granted” and make no reference to the site plan approval process that the Town now argues is a second special permit which ostensibly would be available to the planning board to undo the zoning board’s decision in 2019 to allow a solid waste facility at the Property. I decline to read that statement as a “condition” of the special permit.

Finally, the Town makes a third argument that the zoning override is not applicable to its site plan review bylaw because that bylaw was in existence prior to 1987 when the amendment of the last paragraph of G. L. c. 40A, § 9 was adopted. However, Georgetown’s site plan review bylaw that existed in 1987 is substantively different than the site plan review bylaw which the Town now seeks to impose on Mello. Under the earlier bylaw, the planning board was charged

with making “recommendations as they deem appropriate” to the special permit granting authority or the building inspector as the case may have been. The planning board did not have the authority to approve or deny a project. The current version of site plan review in §165-83 authorizes the planning board to grant or deny site plan approval which has the effect of stopping a project in its tracks. That is a distinctly different power that was conferred on the planning board after 1987. I, therefore, find that §165-83 as it existed in 1987 did not “specifically prohibit” the construction or operation of a solid waste facility and, therefore, it did not survive the addition of the last paragraph of G. L. c. 40A, § 9 as urged by the Town.

Conclusion

For the reasons set forth in this decision, the site plan review bylaw under §165-83 of the Georgetown zoning is not applicable to Mello’s project. As a result, the court rules that:

1. Mello’s motion for summary judgment is ALLOWED; and
2. The Town’s cross-motion for summary judgment is DENIED.

By the Court. (Smith, J.)

/s/ Kevin T. Smith

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson
Recorder

Dated: December 1, 2022

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

ESSEX, ss.

MISCELLANEOUS CASE
No. 21 MISC 000513 (KTS)

G. MELLO DISPOSAL CORP.,

Plaintiff,

v.

HARRY LACORTIGLIA, *et al.*,

Defendants.

JUDGMENT

This case presented the legal question of whether the last paragraph of G. L. c. 40A, § 9, which provides certain protection from municipal zoning to a solid waste facility as defined in G. L. c. 111, §150A, overrides the site plan review bylaw in §165-83 of the Georgetown zoning bylaw. The Plaintiff, G. Mello Disposal Corp. ("Mello"), asserts that §165-83 violates the protection contained in the last paragraph of G. L. c. 40A, §9 and, therefore, is not applicable to its proposal to construct and operate a solid waste transfer facility in Georgetown. The Defendants assert that the site plan review bylaw is tantamount to a special permit bylaw and, therefore, that it may regulate the construction of a solid waste transfer station through site plan review and approval without being in violation of G. L. c. 40A, § 9.

The case came on for hearing on cross-motions for summary judgment. For the reasons set forth in the court's decision of this date, it is hereby

ORDERED, **ADJUDGED** and **DECLARED** that G. L. c. 40A, § 9 overrides Georgetown zoning bylaw §165-83 and, therefore, site plan review under §165-83 does not apply to Mello's project. It is further

ORDERED and **ADJUDGED** that the Plaintiffs' Motion for Summary Judgment is ALLOWED. It is further

ORDERED and **ADJUDGED** that the Defendant's Cross-Motion for Summary Judgment is DENIED. It is further

ORDERED that this Judgment is a full adjudication of the parties' claims in this case, and no further relief is awarded.

By the Court. (Smith, J.)

/s/ Kevin T. Smith

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson
Recorder

Dated: December 1, 2022

EXHIBIT B

ESSEX, ss.

construction at 20 Carleton Drive, Georgetown is subject to “Major Development Review” under §165-80.2 of the Georgetown zoning bylaw (the “MDR bylaw”). The action in the Superior Court was brought by a group of property owners who live near the project site (the “Abutters”). They oppose Mello’s project and claim that the zoning board of appeals should require Mello to submit the project to the planning board for a separate review under the MDR bylaw. The Land Court action was commenced by Mello, who seeks a declaration that its project is not subject to the MDR bylaw.

At the request of the parties, the Executive Office of the Trial Court entered an Order of Assignment dated July 7, 2021, which authorized and assigned the undersigned to sit as a Justice of the Superior Court Department to preside over the Superior Court action. Since that date, both actions have proceeded together and now come before the court on cross-motions for summary judgment. The cross-motions came on for hearing on August 17, 2022, and the court took the matters under advisement.

Undisputed Facts

The parties to both actions agree that there are no disputes of material fact and that the court can decide their respective claims as a matter of law. The pertinent facts to both actions follow.

1. The property at 20 Carleton Drive, Georgetown (the “Property”) is comprised of approximately 14.57 acres of land located in Georgetown’s Business and Commercial District C.
2. On May 21, 2019, the Georgetown zoning board issued a special permit which allows Mello to use the Property as a solid waste transfer facility with a capacity of 500 tons per day. The project is proposed to be a 15,000 square foot handling facility, with scales and a scale

house, that includes circulation areas around the buildings. The facility will be accessed by a 30-foot driveway that extends from the cul-de-sac at the end of Carleton Drive.

3. The zoning board's special permit decision was not appealed by any party and became final twenty days after it was filed with the Georgetown town clerk. Mello later recorded the special permit on October 24, 2019 in the Essex Registry of Deeds in book 37962, page 247.

4. During the time period following the issuance of the special permit, Mello pursued other approvals from the appropriate state and local regulatory agencies that were necessary for construction and operation of a solid waste facility at the Property.

5. On March 10, 2020, the Abutters sent a letter, pursuant to G. L. c. 40A, § 7, to the Georgetown building commissioner requesting that he "enforce the requirements of Major Development Review" against Mello's project. In particular, the letter outlined the Abutters' contention that the size and scope of the project triggered the application of the MDR bylaw.

The Major Development Review Bylaw

6. Section 165-80.2 is the MDR bylaw whose express purpose "is to identify and attempt to mitigate potential negative impacts to the Town of Georgetown, such as to Town services, traffic patterns, the environment, abutting properties, or public health and safety, caused directly or indirectly by major development." §165-80.2(A).

7. The MDR bylaw is limited in its application to projects which fit one or more of five categories described in Section 165-80.2(B). The two categories that are germane to the cross-motions in this case are the following:

(B)(1) All new uses defined by the Georgetown Zoning Bylaw that generate 1,000 vehicle trips per day or more in the General Commercial District, and/or 500 vehicle trips per day in any other district.

* * * * *

(B)(4) All new uses of 30,000 square feet or more.

8. On March 26, 2020, the Georgetown building commissioner, in a return letter to the Abutters' counsel, declined to enforce the MDR bylaw as requested because he had not yet determined if it applied to Mello's project and "there is no requirement in the Zoning Bylaw specifying when application for that permit must be made, or authorizing me to determine submittal requirements and procedures." He further explained that

"it is my determination that your request does not constitute a request for enforcement against a present zoning violation, as is required for a response under G.L. c.40A, s. 7, and this letter may not be construed as such a response. I am providing this letter to you as a courtesy, and I will continue to monitor that proposed development and apply the requirements of the Zoning Bylaw as they become applicable."

9. On April 22, 2020, the Abutters appealed the building inspector's decision to decline enforcement to the Georgetown zoning board pursuant to G. L. c. 40A, § 8.

10. By a decision dated May 13, 2021, the zoning board ruled that the building inspector's decision "does not constitute an enforcement action, the granting or denial of a permit, a decision, a determination nor an order from the Building Inspector." Thus, the zoning board found that there was no basis for the Abutters' appeal. However, the zoning board did not limit its decision to upholding the building inspector's decision to decline enforcement of the MDR bylaw. Instead, it went a step further and provided a written advisory opinion that the MDR bylaw did, in fact, apply to Mello's project.

11. In the section of the zoning board's decision that included its opinion that Mello's project constituted a major project under the MDR bylaw, the zoning board concluded that the project satisfied §165-80.2(B)(1) because it would "generate more than 500 vehicle trips per day in zoning districts other than the Commercial C district, specifically the Industrial B and Residential B districts" and it satisfied §165-80.2(B)(4) because the entire proposed development area "far" exceeded the 30,000 square foot threshold.¹

12. On May 28, 2021, the Abutters appealed the zoning board's decision to the Essex Superior Court under G. L. c. 40A, § 17. That case, now before me, is entitled *Melinda Ann Sawyer, Trustee of the Kopacynski Irrevocable Trust, et al. v. Jeffrey Moore et al.*, Civil Action No. 2177-CV-00557. The Abutters requested that the court annul the zoning board's decision that their March 10, 2020 letter did not constitute a request for enforcement of the zoning bylaw. In addition, the Abutters requested that the court declare that Mello's project is subject to review under the MDR bylaw.

13. Mello also appealed the zoning board's decision. On May 28, 2021, Mello commenced the action in this court entitled *G. Mello Corp., et al. v. Town of Georgetown, et al.*, 21 MISC 000296. In its complaint, Mello asked the court in Count I to declare that the zoning board lacked authority and subject matter jurisdiction to have heard the Abutters' appeal from the building inspector's decision. Mello also requested, in Count II, a declaration under G. L. c. 240, § 14A that the MDR bylaw did not apply to its project because, among other reasons, it did not satisfy any of the definitions of a "major project" under the MDR bylaw. On June 3, 2021,

¹ Before the zoning board, Mello contended that the total building area of the project was only 23,228 square feet. It did not include in the calculation of development area the access road from Carleton Drive. See *infra*, pages 18-20 for a discussion of the size of Mello's project under the MDR bylaw.

Mello filed a First Amended Complaint that added the Abutters from the Superior Court Action as party-defendants in the Land Court Action.

Summary Judgment Standard

Summary judgment is appropriate where there are no issues of genuine material fact, and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Hakim v. Massachusetts Insurers' Insolvency Fund*, 424 Mass. 275, 283 (1997); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 711 (1991). In viewing the factual record presented by the parties, the court must draw "all logically permissible inferences" from the facts in favor of the non-moving party. *Willits v. Roman Catholic Archbishop of Boston*, 411 Mass. 202, 203 (1991); *White v. Univ. of Mass. at Boston*, 410 Mass. 553, 556-557 (1991).

In this case, the parties agree that there is no dispute concerning the material facts. That leaves the court to address two questions of law: (1) whether the Abutters' letter to the building inspector constituted a request for zoning enforcement such that the zoning board had the authority and jurisdiction to hear the Abutters' appeal of the building inspector's decision; and (2) whether the MDR bylaw is applicable to Mello's project.

Discussion

These cases come before me in different procedural postures but, ultimately, seek an answer to the same question—whether the MDR bylaw applies to Mello's project. I will address the issues as the parties have framed them in each of the actions.

I. The Superior Court Action

The preliminary, and dispositive, question raised by the parties in the Superior Court Action is whether the Abutters' letter to the Georgetown building inspector constituted a zoning enforcement request under G. L. c. 40A, § 7 which was reviewable in the first instance by the

zoning board under G. L. c. 40A, § 8. If the Abutters' letter did not meet the requirements of such a zoning enforcement request, the Georgetown building inspector was right to decline to treat it as such and the zoning board had no jurisdiction to accept the Abutters' appeal under G. L. c. 40A, § 8.

General Laws c. 40A, § 7 provides the avenue for any person to seek the enforcement of a zoning ordinance or bylaw which he or she believes is being violated by another. In particular, G. L. c. 40A, § 7 requires that such a request be in writing and that it allege a present violation of a zoning ordinance or bylaw. *Connors v. Annino*, 460 Mass. 790, 798-799 (2011). As interpreted by the SJC in *Connors*, G. L. c. 40A, § 7 emphasizes that enforcing ordinances and bylaws "against 'any person allegedly *in violation*' (emphasis added), indicates that the Legislature intended the claimed violation already to have occurred, not that it was anticipated to occur in the future." *Id.* at 799. Section 7 is not, however, a vehicle to obtain an advisory opinion from the zoning enforcement officer about the applicability of a zoning ordinance or bylaw to another person or project that is in its "formative stages." See *Chisolm v. First Parish Road Company, Inc.*, 15 LCR 461, 469 (2007) ("[G.L. c.40A, § 7] is a mechanism for action against specific structures whose parameters are fully known either through the details in the building permit or because they already have been constructed.")

In the case of the Abutters' letter, it did not allege that Mello was in violation of any provision of the Georgetown zoning bylaw. Rather, it advocated for the application of the MDR bylaw to Mello's project, which is still in its formative stages, as it moves through the labyrinth of regulatory processes in Georgetown. In this regard, the Abutters' letter was a request for an advisory opinion that the building inspector properly declined. Indeed, the building inspector reasoned as follows:

“I am aware that Major Development Review may apply to this project, and I will continue to evaluate its potential application as the permitting process moves forward. At this time, however, given that the plans for the development have not been finalized, I am not prepared to make a determination on the application of Major Development Review.”

Because I have concluded that the Abutters’ letter was not an enforcement request under G. L. c. 40A, § 7, it could not be the basis of an appeal from the denial of an “enforcement action” under G. L. c. 40A, § 8. Thus, the zoning board lacked the authority and the jurisdiction to rule on the Abutters’ appeal of the building inspector’s decision. Likewise, for the same reasons, this court lacks subject matter jurisdiction under G. L. c. 40A, § 17 to hear the Abutters’ appeal.² The Abutters’ appeal shall be dismissed and the relief requested in their complaint DENIED.

II. The Land Court Action

Mello has asserted two distinct claims in the Land Court Action. In Count I, it seeks judicial review under G. L. c. 40A, § 17 of the zoning board decision that upheld the building commissioner’s determination that the Abutters’ letter was not an enforcement request under G. L. c. 40A, § 7. For the reasons set forth in my decision to dismiss the Abutters’ appeal in the Superior Court Action, that letter was not a valid request for enforcement of the MDR bylaw. Thus, the zoning board lacked the authority and the jurisdiction to rule on the Abutters’ appeal of the building inspector’s decision. On Count I, Mello’s motion for summary judgment is ALLOWED, and the zoning board’s decision must be annulled.

² Although the Superior Court Action is framed as an appeal of the zoning board decision under G. L. c. 40A, § 17, the Abutters have also requested that I declare that the MDR bylaw applies to Mello’s project. This court has the power under G. L. c. 240, § 14A to determine the validity of a zoning bylaw as it pertains to the property at issue. However, only the owner of property can make a claim under G. L. c. 240A, § 14A. See *Commcan, Inc. v. Mansfield*, 488 Mass. 291, 293-294 (2021). It is not the Abutters’ claim to make and I will not grant the requested relief in that action.

In Count II, Mello seeks a declaration under G. L. c. 240, § 14A that the MDR bylaw does not apply to its project. General Laws c. 240, § 14A is a remedial statute whose primary purpose is to provide property owners with a procedure for declaratory judgment that will “resolve doubts relating to bylaw restrictions or the requirements of a zoning ordinance.” *Whitinsville Ret. Soc., Inc. v. Northbridge*, 394 Mass. 757, 762-763 (1985) citing *Addison-Wesley Publishing co. v. Reading*, 354 Mass. 181, 184-185 (1968). Proceedings under this section “determine how and with what rights and limitations the land of the person seeking an adjudication may be used under provisions of a zoning enactment in terms applicable to it.” *Harrison v. Braintree*, 355 Mass. 651, 654 (1969); see also *Addison-Wesley*, 354 Mass. at 185; *Woods v. City of Newton*, 349 Mass. 373, 376-377 (1965); *Hanson & Donahue*, 61 Mass.App.Ct. 292, 295 (2004).

Whether §165-80.2 applies Mello’s project requires the court to construe that bylaw in the context of the undisputed facts of this case. The interpretation of a zoning bylaw is a question of law for the court to be determined by ordinary principles of statutory construction, with some measure of deference given to the local board’s interpretation. *Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham*, 382 Mass. 283, 290 (1981); *APT Asset Mgmt., Inc. v. Bd. of Appeals of Melrose*, 50 Mass.App.Ct. 133, 138 (2000); *Miles-Matthias v. Zoning Bd. Of Appeals*, 84 Mass.App.Ct. 778, 786 (2014). “When construing a zoning provision, as any other legislation, we are not to regard words in the statute as superfluous and we are to give language a sensible meaning read in context.” See *Melrose-Wakefield Hospital Assoc. v. Bd. of Appeals of Melrose*, 31 Mass.App.Ct. 923, 924 (1991). The court first looks to the language of the bylaw as the principal source of insight into the intent of the bylaw. *Shirley Wayside Ltd. P’ship v. Bd. of Appeals of Shirley*, 461 Mass. 469, 477 (2012). Where the bylaw does not furnish a definition

for a word or phrase, the court should give the word or phrase its usual and accepted meaning as long as the meaning is consistent with the purpose of the bylaw. *Eastern Point, LLC v. Zoning Bd. of Appeals of Gloucester*, 74 Mass.App.Ct. 481, 486-487 (2009); *Pellegrino v. City Council of Springfield*, 22 Mass.App.Ct. 459, 463 (1986). “A court should construe a local zoning requirement ‘in a manner that sustains its validity,’ . . . if this can be done without straining the common meaning of the terms employed.” *Trustees of Tufts College v. Medford*, 415 Mass. 753, 761 (1993) (citations omitted).

Where ambiguities exist in the language of the bylaw, the court should defer to the local board’s reasonable construction of its own bylaw because the local board is deemed to have special knowledge of the history and purpose of its bylaw. *Wendy’s Old Fashioned Hamburgers of N.Y., Inc. v. Bd. of Appeal of Billerica*, 454 Mass. 374, 381 (2009); *Deadrick v. Zoning Bd. of Appeals of Chatham*, 85 Mass.App.Ct. 539, 545 (2014); *Shirley Wayside Ltd. P’ship*, 461 Mass. at 475. If the board’s interpretation of its bylaw is reasonable, the court may not substitute its judgment. *Perry v. Zoning Bd. of Appeals of Hull*, 100 Mass.App.Ct. 19, 21 (2021), citing *Tanner v. Board of Appeals of Boxford*, 61 Mass.App.Ct. 657, 649 (2004).

In this case, the purpose of the MDR bylaw and, therefore, its applicability to Mello’s project is not obvious. Indeed, Mello offers three reasons why the MDR bylaw has no application to its project. First, it argues that the protections provided to solid waste facilities under G. L. c. 40A, § 9 override the MDR bylaw’s application to its project. Second, it argues that the MDR bylaw lacks sufficient criteria on which the planning board could lawfully base a decision and, therefore, this court should declare it void for vagueness. Third, it argues that, even if the criteria are deemed sufficient, the project does not qualify for the MDR bylaw

because it does not meet the definitions of a “major development” under §165-80.2(B)(1) and §165-80.2(B)(4). I will address Mello’s arguments in the order that they are raised.

A. Validity of MDR Bylaw Under G. L. c. 40A, § 9

Mello challenges the fundamental validity of the MDR bylaw in light of the protections afforded solid waste facilities by G. L. c. 40A, § 9. Mello argues that the MDR bylaw cannot be applied to its project because G. L. c. 40A, § 9 overrides any local regulation that purports to prohibit the construction and operation of a solid waste facility.³ Scrutiny of the MDR bylaw reveals that it is valid special permit that is allowed by G. L. c. 40A, § 9.

The last paragraph of G. L. c. 40A, § 9, provides as follows:

“A facility, as defined in section one hundred and fifty A of chapter one hundred and eleven, which has received a site assignment pursuant to said section one hundred and fifty A, shall be permitted to be constructed or expanded on any locus zoned for industrial use unless specifically prohibited by the ordinances and by-laws of the city or town in which such facility is proposed to be constructed or expanded, in effect as of July first, nineteen hundred and eighty-seven; provided, however, that all permits and licenses required by law have been issued to the proposed operator. A city or town shall not adopt an ordinance or by-law prohibiting the siting of . . . [a solid waste] facility or the expansion of an existing facility on any locus zoned for industrial use, or require a license or permit granted by said city or town, except a special permit imposing reasonable conditions on the construction or operation of the facility. . . No special permit authorized by this section may be denied for any such facility by any city or town; provided, however, that a special permit granting authority may impose reasonable conditions on the construction or operation of the facility, which shall be enforceable pursuant to the provisions of section seven.”

This paragraph was intended to address the severe shortage of environmentally safe and financially sound solid waste facilities in the Commonwealth by providing what is essentially a “zoning override” for these facilities, with an exemption for zoning bylaws in effect prior to July

³ Mello asserts that the language in subsection (F) of the MDR bylaw gives the planning board the authority to deny any major project and, therefore, violates G. L. c. 40A, § 9. See §165-80.2(F):

“F. Project decisions. Upon review of the project, the SPGA shall:

- (1) Deny the special permit, stating specific conditions which cannot be sufficiently mitigated, or
- (2) Grant the special permit with conditions, safeguards and/or limitations, stated in writing, or
- (3) Grant the special permit as presented.”

1, 1987. See G. L. c. 40A, § 9, as amended by St. 1987, c.584; *Theophilopoulos v. Bd. of Health of Salem*, 85 Mass.App.Ct. 90, 94-95 (2014). After the addition of the last paragraph of G. L. c. 40A, § 9, a municipality may only regulate the construction and operation of a solid waste facility by special permit and may not, otherwise, prohibit the siting of such a facility within its borders.

The MDR bylaw created a new special permit for “major” developments in Georgetown. Because it is a special permit and not a “license or [other] permit” prohibited by G. L. c. 40A, § 9, it is a permissible regulation of a solid waste facility and can be applied to Mello’s project *if* that project satisfies the definition of a “major development” under the MDR bylaw. In substance, the MDR special permit is no different from the special permit for unidentified “uses” under §165-79 or the Water Resource District special permit under Article V, §165-32. Those bylaws give the zoning board the power to deny a special permit, but that power is limited where the project under consideration is a solid waste facility. For a solid waste facility that meets the definition of a “major development,” the major development review special permit is lawful and may regulate its construction and operation with reasonable conditions designed to satisfy the purpose of the MDR bylaw. The planning board may not, however, deny the project a special permit because of the protection provided by the last paragraph of G. L. c. 40A, § 9.

B. The Validity of the Applicable Criteria Under the MDR Bylaw

Mello next challenges the validity of the MDR bylaw because it lacks “express criteria for the planning board to apply” to the project. Section 165-80.2(E) sets forth the following criteria for the planning board to consider before issuing a special permit:

- (1) the special permit criteria in §165-79;
- (2) the site plan approval guidelines in §165-83; and

(3) The standards for evaluating the impacts of a project set forth in the Major Development Review Rules and Regulations for Impact Statements.

Mello's argument focuses on §165-80.2(E)(3), which identifies the "Major Development Review Rules and Regulations" as containing the relevant criteria for application by the planning board to major projects. No such regulations were ever adopted after the MDR bylaw was added to the Georgetown zoning bylaw in 2007. Mello argues that the absence of special regulations as contemplated by §165-80.2(E)(3) leaves the planning board with no standard by which to evaluate an application for approval of a major development. That argument goes too far.

In order for a bylaw to be too vague or so devoid of standards as to be invalid, its meaning must be unascertainable using the accepted principles of statutory construction and "men of common intelligence must necessarily guess at its meaning and differ as to its application." See *Commonwealth v. Carpenter*, 325 Mass. 519, 521 (1950). Here, although "Major Development Review Rules and Regulations" were never adopted, they are not the only criteria identified in the bylaw.

The MDR bylaw also identifies the zoning board's special permit criteria and the planning board's site plan review guidelines as additional criteria to be applied to a project that fits the definition of a major development. In the context of this case, both criteria have their problems but, on the issue of the validity of the MDR bylaw, they provide sufficient guidance to the planning board to survive the scrutiny urged by Mello. I will address those criteria separately.

Section 165-80.2(E)(1)

Section 165-80.2(E)(1) identifies "the special permit criteria in §165-79" as the first criteria for the planning board to consider. This is the criteria that the zoning board applies to uses for which it is declared the special permit granting authority in the Georgetown bylaw.

Indeed, it is the criteria already applied by the zoning board in May 2019 when it granted Mello a special permit to construct and operate its solid waste facility at the Property. In its decision, the zoning board expressly found that Mello's project meets the criteria as follows:

"a) the requested use [the solid waste facility] is essential and desirable to the public convenience and welfare. A transfer station provides a needed service and convenience to the residences and business of the Town and the community; b) the requested use will not overload any public water or other municipal system so as to unduly subject any area to hazards affecting health, safety or the general welfare; c) the requested use will not impair the integrity or character of the district or adjoining districts; and d) the requested use will not cause an excess of that particular use which could be detrimental to the character of the neighborhood."

The interpretative question is whether the MDR bylaw was intended to require Mello to go through the special permit process contemplated in §165-79 for a second time—this time before the planning board—in order for the planning board to have the opportunity to second guess and, perhaps, override the zoning board's earlier decision to grant a special permit for a solid waste facility.

The MDR bylaw was added by an amendment to the zoning bylaw in May 2007 to create a new special permit to be administered by the planning board for five categories of "major" developments defined in §165-80.2(B). On its face, it appears duplicative of the special permit granting authority vested in the zoning board by §§ 165-9 and 165-79 for uses, like a solid waste facility, that are not identified in the Schedule of Uses in the Georgetown zoning bylaw.⁴ The question, then, is whether §165-79 and the MDR bylaw are truly duplicative of each other, bestowing overlapping discretion in both the zoning board and planning board to apply the same

⁴ Section 165-9 of the Georgetown zoning bylaw designates the zoning board as the special permit granting authority for uses not listed in the Schedule of Uses, and grants the authority to allow "by special permit, any other use not specifically listed in the Schedule of Uses if such use is similar in character to other permitted uses in the district and is in harmony with the general purpose of this chapter." A solid waste transfer station is not a use that is listed in the Schedule of Uses. Thus, the zoning board had the authority to, and did, grant Mello a special permit for the use of the Property as a solid waste transfer station.

criteria of §165-79 before the same project can be approved. In answering that question, I must construe both sections of the bylaw in a manner that sustains their validity, if that is possible.

The zoning board is vested with the broad authority to grant special permits for any “use” not identified in the Schedule of Uses of the Georgetown zoning bylaw. By definition, all such uses are “special permit uses.” The MDR bylaw, on the other hand, vests power in the planning board for only those uses that the bylaw deems to be “major.” But the MDR bylaw is silent as to whether such a “major” use is one that is permitted as-of-right or by special permit. Read together in manner that avoids any overlap between the discretionary powers granted to each board, the most reasonable construction is that the MDR bylaw was intended to apply only to a “major project” whose use is permitted as a matter of right by the Georgetown bylaw. Therefore, the planning board is the special permit granting authority for “major projects” that do not require a special permit; for “major projects” whose uses require a special permit under §165-9 and §165-79, the zoning board is the special permit granting authority. Any one project cannot be required to obtain a special permit from both boards using the same criteria in §165-79.

Here, the zoning board’s decision in May 2019 determined that Mello’s project satisfies §165-79, the special permit was not appealed, and the rights granted to Mello have vested. There is no language in the Georgetown zoning bylaw or the Zoning Act that gives the planning board the power, under the guise of reviewing a project under the MDR bylaw, to review the project under the same criteria a second time and, perhaps, overrule or modify the zoning board’s decision already made pursuant to the authority conferred on the zoning board by §165-9 and §165-79. Thus, if Mello’s project satisfies the definition of a “major development” under §165-80.2(B), the planning board may not apply the criteria in §165-79 because the zoning board has already considered and approved the project under those criteria.

Section 165-80.2(E)(2)

The MDR bylaw also identifies the criteria contained §165-83, which is the site plan review bylaw, as a basis for the planning board's review. Ironically, I have previously ruled in *G. Mello Disposal Corp., v. Harry LaCortiglia, et al.*, 21 MISC 000513 (KTS) that site plan review under §165-83 is improper because it is a "license or other permit" which is expressly prohibited by G. L. c. 40A, § 9. However, the *criteria* identified in §165-83, when made part of the special permit process of the MDR bylaw, provide adequate standards by which a major development may be reviewed by the planning board under the MDR bylaw.

Thus, even though the planning board may not subject Mello's project to site plan review, it may use the criteria identified in the site plan review bylaw as part of the process for a major development review special permit without running afoul of the prohibitions contained in G. L. c. 40A, § 9. But the planning board may only impose reasonable conditions on Mello's project and may not use the MDR bylaw as a back door to site plan review in order to deny the project.

It is worth noting that the planning board already reviewed Mello's project under the site plan review guidelines of §165-83 in a public hearing that started in February 2020, spanned nine hearing nights, and concluded in September 2021.⁵ Although I have previously ruled that the site plan review bylaw was not applicable to Mello's project due to the protections provided to solid waste facilities by G. L. c. 40A, § 9, the hard work of the planning board and Mello during that process will not have been wasted if Mello's project is subject to the MDR bylaw.

⁵ The public hearing on Mello's application for site plan review opened on February 12, 2020, and continued on March 11, 2020, April 22, 2020, January 13, 2021, March 24, 2021, April 28, 2021, June 9, 2021, August 25, 2021, and September 8, 2021.

C. Applicability of the MDR bylaw to Mello's Project

The final question is whether Mello's project is a "major development" under two of the definitions contained in the MDR bylaw.⁶ Mello denies that its project meets either definition.

Section 165-80.2(B)(1) defines a major development as "[a]ll new uses defined by the Georgetown Zoning Bylaw that generate 1,000 vehicle trips per day or more in the General Commercial District, and/or 500 vehicle trips per day in any other district." The parties agree that Mello's project, as previously approved by the zoning board, is expected to generate 890 vehicle trips per day on weekdays and 872 vehicle trips per day on weekends. Where they disagree is whether 1,000 vehicle trips per day or 500 vehicle trips per day is the threshold to determine whether Mello's project requires a special permit under the MDR bylaw.

The initial question is whether the Property is located in a "General Commercial District" or "any other district" as those terms are used in §165-80.2(B)(1). The Georgetown zoning bylaw and zoning map do not have a zone called a "General Commercial District." Instead, there are three commercial districts which are called the "CA Business and Commercial District," the "CB Business and Commercial B," and the "CC Business and Commercial District C." Because a bylaw should "be construed so as to harmonize superficially discordant provisions[,]"" the most reasonable and logical interpretation of the phrase "General Commercial District" is that it was intended to include all three of the so-called business and commercial districts in Georgetown. See *Lee v. Bd. of Appeals of Harwich*, 11 Mass.App.Ct. 148, 154 (1981).

⁶ The zoning board opined in its decision that Mello's project satisfies the MDR bylaw criteria in §165-80.2(B)(1) and (4). The zoning board lacked authority to issue an advisory opinion concerning the applicability of a provision of the Georgetown bylaw that is reviewable under G. L. c. 40A, § 17. Nonetheless, I will review the MDR bylaw with reference to the conclusions which the zoning board claims support its opinion that it applies to Mello's project.

Mello's Property is zoned CC Business and Commercial District C and is located at the dead-end of Carleton Drive. By the plain language of §165-80.2(B)(1), the MDR bylaw should only apply to Mello's project if it generates at least 1,000 new vehicle trips per day which, the parties agree, it will not. Despite the apparent clarity of the language of §165-80.2(B)(1), the Abutters argue that the 500 vehicle-trip threshold is more appropriate because new traffic traveling to Mello's solid waste facility will have to drive along Carleton Drive and pass through a corner of a Residential B zoning district, then through an Industrial B zoning district, before ending at the Property. Because such traffic will, of necessity, pass through "other district[s]," they assert that the 500-vehicle threshold should apply.

Section 165-80.2(B)(1) focuses on the number of vehicle trips to be *generated* by a development in order to determine whether the MDR bylaw is applicable. The Georgetown zoning bylaw does not define the term "generate," but the definition in the second edition of the American Heritage Dictionary is "[t]o bring into existence; produce." Using that definition of "generate," the trigger for review under the MDR bylaw is the amount traffic produced in the zoning district where the major development is located. The focus on traffic *generated* by the major development, as opposed to passing through another zoning district, is consistent with the distinction drawn in the same subsection between trips generated by projects in a General Commercial District and trips generated by projects "in any other district." If the bylaw was intended to measure the number of vehicle trips based on whether and to what extent vehicles would have to travel through other zoning districts to get the project site, the word "generate" would be superfluous.

As proposed, Mello's project is expected to generate 890 vehicle trips per day. Therefore, the project does not fall within the definition contained in §165-80.2(B)(1) and would

not be subject to the major development review special permit based on traffic generated by the transfer station.

The review of §165-80.2(B)(4) leads to a different result. That subsection defines a major development as a “new use[] of 30,000 square feet or more.” Mello argues that §165-80.2(B)(4) should be construed to trigger the MDR bylaw only if the proposed building, and the immediate surrounding areas necessary for its use as a solid waste facility, exceed 30,000 square feet. When measured by that definition, Mello contends that its project is only 23,228 square feet in size. However, Mello excludes from its calculation the paved access way from Carleton Drive to the transfer station facilities. It argues that the access way is not unique to the special purpose of its project—a transfer station—but, rather, it is a generic access way road that would be part of any use on the Property. This distinction between a special use and a generic use is not persuasive.

The term “use” is defined by the zoning bylaw in §165-7 as: “The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.” Turning to the MDR bylaw, its purpose is to identify and mitigate all potential negative impacts of a major development “to the Town of Georgetown, such as to Town services, traffic patterns, the environment, abutting properties or the public health and safety, caused directly or indirectly by a major development.” This broad purpose—to mitigate all potential impacts of a major development—suggests that the term “use” as used in §165-80.2(B)(4) was also intended to be construed broadly.

Whether a use under zoning is special or generic, a distinction not drawn by the “use” definition, a piece of land or a building cannot be used for any purpose unless one can gain access to it. A development, whether it be a solid waste transfer station or some other use, like a

multi-unit high-rise residential building, must have a means of access to get from a public or private way to the buildings that characterize the “use” of the property. Without access, the use could not be enjoyed by the property owner.

Mello urges the court to distinguish between an access way that is distinctive to a particular use and a generic access way that would be interchangeable with any potential use. However, an interpretation that attempts to draw such a distinction introduces a subjective element to the application of the MDR bylaw which would lead to arbitrary and, perhaps, absurd results. It would also be contrary to the accepted canons of statutory construction.

The most reasonable interpretation of §165-80.2(B)(4), in light of the MDR bylaw’s purpose and other related provisions of the Georgetown zoning bylaw, is that the area to be measured in order to determine whether a project is a major development is the footprint of the building and, at least, all impervious area on the property which are necessary to the function of the development—including the access way that allows passage from the public or private way to buildings that constitute the use. If those areas exceed 30,000 square feet, review under the MDR bylaw would be appropriate. Like the building commissioner stated in his letter to the Abutters declining to provide an opinion on the zoning enforcement request, Mello’s project is still in the formative stages, and therefore a determination of whether major development review applies is not yet appropriate. When the plans for the transfer station are finalized, if the total area, including the driveway, exceeds 30,000 square feet, then Mello’s project will be subject to the MDR bylaw.

Conclusion

Mello’s proposed transfer station, based on the nature of the project and the protections provided in G. L. c. 40A, § 9, is not exempt from the MDR bylaw. The project may be subject to

the MDR bylaw pursuant to §165-80.2(B)(4) if the square footage of the project exceeds 30,000 square feet. However, that determination is premature. When the project plans progress to a point where the total area to be developed can be calculated with reasonable certainty, which should include the buildings, the surrounding impervious areas, and the access driveway, and that total area meets or exceeds 30,000 square feet, then it is this court's determination that the MDR bylaw will apply to Mello's project.

If major development review does apply to this project, then the planning board may only apply the site plan review criteria in §165-80.2(E)(2) in considering the project for the major development review special permit. However, due to the special protections given to solid waste facility by G. L. c. 40A, § 9, the planning board may only place conditions on the project that are intended to meet §165-80.2(E)(2); it may not use the MDR bylaw as a way to deny the project as a whole.

For the reasons set forth in this Decision, the court rules as follows:

1. Plaintiffs' motion for summary judgment in the action *Melinda Ann Sawyer, Trustee of Kopacynski Irrevocable Trust et al. v. Georgetown Zoning Board of Appeals*, Civil Action No. 2177 CV00557, is hereby DENIED.
2. Count I of the Plaintiffs' motion for summary judgment in the action *G. Mello Disposal Corp., et al. v. Town of Georgetown, et al.*, 21 MISC 000296, is ALLOWED and the decision of the zoning board is hereby ANNULLED.
3. Count II of the Plaintiffs' motion for summary judgment in the action *G. Mello Disposal Corp., et al. v. Town of Georgetown, et al.* 21 MISC 000296, is hereby DENIED.

By the Court. (Smith, J.)

/s/ Kevin T. Smith

Attest:

/s/ Deborah J. Patterson

Deborah J. Patterson

Recorder

Dated: December 16, 2022

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

LAND COURT
FILED

2022 DEC 29 PM 3:41

ESSEX, ss.

G. MELLO DISPOSAL CORP., and EAST-WEST
MIRRA REALTY, LLC,
Plaintiffs,

v.

TOWN OF GEORGETOWN, et al,
Defendants.

LAND COURT
MISCELLANEOUS CASE
No. 21 MISC 000296 (KTS)

Consolidated with

MELINDA ANN SAWYER, TRUSTEE OF
KOPACYNski IRREVOCABLE TRUST, AMY
SMITH, TRUSTEES OF B & R REALTY TRUST,
CARLETON REALTY LLC, EMMA DRISKILL,
and CONOR POWERS-SMITH
Plaintiffs,

v.

JEFFREY MOORE, SHAWN R. DEANE, PAUL
SHILHAN, DAVID KAPNIS, and GINA
THIBEAULT, as they are Members of the
GEORGETOWN ZONING BOARD OF
APPEALS, et al,
Defendants.

SUPERIOR COURT
CIVIL ACTION
No. 2177-CV-00557

~~PROPOSED~~ KTS
AMENDED JUDGMENT

The Court issued Judgment in these consolidated cases on December 19, 2022. On December 29, 2022, Plaintiffs G. Mello Disposal Corp. and East-West Mirra Realty, LLC ("Plaintiffs") filed a Motion to Amend Judgment pursuant to Mass. R. Civ. P. 59 (e). The Motion to Amend Judgment is ALLOWED, the Court's Judgment is hereby amended and restated as follows.

The Plaintiffs filed a two-count complaint seeking judicial review of a decision of the Georgetown zoning board of appeals under G. L. c. 40A, § 17 and a declaration under G. L. c. 240, § 14A concerning the applicability of Georgetown zoning bylaw §165-80.2 to the Plaintiffs' proposed construction and operation of a solid waste transfer station in Georgetown (the "Project"). The Plaintiffs amended their complaint to add as party-defendants certain private citizens of Georgetown who had filed a related action in the Superior Court entitled *Melinda Ann Sawyer, Trustee of the Kopacynski Irrevocable Trust, et al v. Jeffrey Moore et al.*, Civil Action No. 2177-CV-00557 (the "Defendants").

The parties filed cross-motions for summary judgment on both counts of the of the Amended Complaint. The parties appeared for oral argument on August 17, 2022 and the court took the matter under advisement. For the reasons set forth in a decision issued on December 19, 2022, it is hereby

ORDERED and **ADJUDGED** that the Plaintiffs' motion for summary judgment on Count I of the Amended Complaint is hereby **ALLOWED** and the decision of the Municipal Defendant, Georgetown Zoning Board of Appeals, is **ANNULLED**; it is further

ORDERED, ADJUDGED and **DECLARED** pursuant to G. L. c. 240, § 14A, that:

- (a) The Project as presented does not trigger Section 165-80.2(B)(1) of the Georgetown Zoning Bylaw;
- (b) Regarding Section 165-80.2(B)(4) of the Georgetown Zoning Bylaw, to determine whether a project is of a size to be qualified as a major development, the footprint of the building and, at least, all impervious area on the property which are necessary to the function of the development—including the access way that allows passage from the public or private way to buildings that constitute the use should be included;
- (c) The standards to be applied by the Planning Board if Plaintiffs seek a special permit under the MDR bylaw for the Project are the criteria contained in §165-83 of the bylaw, which is the site plan review bylaw, but the Planning Board may only impose reasonable conditions on Mello's project and may not use the MDR bylaw in order to deny the project.

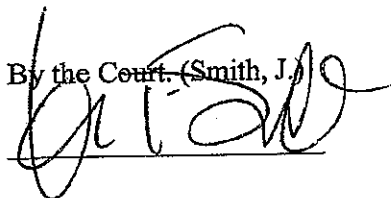
It is further

ORDERED and **ADJUDGED** that, except for the declarations in the preceding paragraph, the remaining relief requested in Plaintiffs' motion for summary judgment on Count II of the Amended Complaint is hereby DENIED; it is further

ORDERED and **ADJUDGED** that the Defendants' cross-motion for summary judgment on Counts I and II of the Amended Complaint is hereby DENIED; it is further

ORDERED and **ADJUDGED** that this Amended Judgment is a full adjudication of the parties' claims in this case, and no other relief is awarded.

By the Court. (Smith, J.)



Attest:

Dated: 1/12/2023

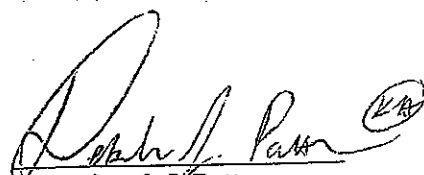

Deborah J. Patterson
Recorder

EXHIBIT 6

Exhibit 6

Please see

Proposed Operation and Maintenance Plan

G. Mello Disposal Corporation

Solid Waste Handling Facility

Carleton Drive

Georgetown, Massachusetts 01833

Proposed Transfer Station 20 Carleton Drive

Georgetown, Massachusetts

April 12, 2023

Prepared by Cornerstone

EXHIBIT 7

The Morin-Cameron

GROUP, INC.

May 8, 2023

Board Members
Georgetown Planning Board
1 Library Street
Georgetown, MA 01833



RE: *Major Development Review Impact Statement
G. Mello Transfer Station
20 Carleton Drive
Georgetown, MA 01833*

Dear Members of the Board:

On behalf of G. Mello Disposal Corp., LLC (Applicant), The Morin-Cameron Group, Inc. (MCG) has prepared the following Impact Statement for Major Development Review. This letter was based on the draft regulations dated January 10, 2022.

Executive summary – G. Mello Disposal Corp. proposes to relocate its existing transfer station and operation currently operating at 203 E. Main Street, Georgetown, MA to the subject property located at 20 Carleton Drive. The development of the property will consist of the construction of a new 28' access driveway along the westerly lot boundary, residential waste and recycling drop off center, 15,000 square foot waste handling building, scales and a scale house, and operations and circulation areas around the building. The project complies with Georgetown's Stormwater Bylaw, and utilizes surface ponds and subsurface storage to ensure the development will not increase stormwater runoff, or cause erosion or flooding. The project is proposing to replicate wetlands at a ratio of 2:1, and restore buffer zones.

III. Submittal Requirements of Impact Statements.

A. The impact statement shall include the following elements:

- (1) A detailed description of the proposed project and its design features, including existing conditions on the site and a description of the abutting properties.***

The site is located along the north side of Carleton Drive and consists of approximately 14.57 acres with the Business and Commercial (CC) Zoning District. The site is also in the Medical Marijuana overlay district and partially within the water resource and flood plain overlay districts. The property is bordered to the east by Interstate Highway 95, to the north by undeveloped CC zoned property and developed and undeveloped residential zoned property, to the west by developed industrial property and to the south by Carleton Drive. The site was previously altered by the construction of a gravel access drive along the easterly lot line which

included a drainage culvert to maintain connectivity of the BVW. Land clearing activities and storage of earth materials and debris is also widespread on the project site. The previous land disturbances were approved by the Conservation Commission in an Order of Conditions issued on November 8, 2002. The numerous soil stockpiles and scattered debris can be observed throughout the property as evidence of construction activity related to this approval, although the project was never completed. Concrete bounds were also set at that time demarcating the wetland and protected buffer zone areas on the site.

The applicant proposes to construct and operate a transfer station on the subject property, which is defined as: *a place where residential garbage/trash and recyclables, commercial trash, construction materials and non-hazardous commercial wastes are accepted, sorted, processed, compressed, baled, and loaded on vehicles for transport to off-site disposal sites or landfills.*

The proposed project features a new 15,000 square foot waste handling building, residential drop-off area and a 28' wide paved driveway to provide access to the site from Carleton Drive. The proposed site layout provides adequate truck circulation around the building as the proposed use requires that the facility be designed to accommodate heavy truck turning and circulation. All waste handling will be contained within the building or enclosed containers for the residential drop-off.

Wetlands near Carleton Drive limit access to the upland areas in middle of the site. The applicant is requesting an exception from the Georgetown Conservation Commission to allow for alterations within the resource area and the buffer zone to occur to gain access to the upland area in the middle of the site. The proposed alterations along with the associated replication and restoration activities are described in the next section and in the attached *Wetland and Buffer Zone Mitigation Report* prepared by LEC.

The site will be graded to accommodate subsurface stormwater retention and groundwater recharge to attenuate peak runoff from the 2, 10 and 100-year storm events. This has resulted in the incorporation of retaining walls and reinforced slopes into the site design. Where slopes exceed 3:1, reinforced vegetated slopes will be implemented to stabilize the slope as well as to provide a more pleasing aesthetic in contrast to stone slope armoring. The portion of the site facing Interstate 95 has been graded to allow for the planting of trees to provide screening from the highway. The stormwater system includes a variety of design elements including deep-sump hooded catch basins, proprietary water quality structures, and both surface-based and subsurface infiltration systems in full compliance with the MassDEP Stormwater Handbook and local Georgetown Regulations. Refer to the Stormwater Management Report prepared by MCG for more detailed information. The project was previously reviewed by H.L. Graham Associates, Inc. in conjunction with a prior application

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currently before the Planning Board. It was also reviewed by Weston & Sampson as part of the Board of Health site eligibility application.

The property will be served by public water which will be extended from the water main on Carleton Drive for domestic use and fire protection. Wastewater will be disposed of in a soil absorption system on site in accordance with 310 CMR 15.00 Title 5 and Georgetown Health Regulations. Gas, electric and communications services will also be extended from Carleton Drive.

- (2) *An evaluation of how the project will meet the design standards required in these rules and regulations.*
The project, as designed, fully complies with the Town of Georgetown Regulations as documented in this letter.
- (3) *Identification and assessment of the impacts of the proposed project and proposed measures to mitigate adverse impacts and/or maximize positive impacts in the following areas:*

B. The Impact Statement shall assess the following areas of potential impact.

- (1) *Traffic impact.*
Provide data for existing and projected traffic conditions, including but not limited to: Physical characteristics of the roadway (pavement width, radii, site distances) average weekday, average weekend, peak hour (a.m. and p.m.) volumes, level of service of all legs of applicable intersections, projections and directional distribution of site generated traffic, sight distances at proposed driveway intersections with streets, queuing impacts, on-site traffic circulation and parking layout, accident data, average and peak speeds, pedestrian and bicycle movements, public transportation services, background traffic conditions for the design year including any planned roadway/ traffic improvements and other proposed projects in the vicinity of the site. Such data shall be provided for:
 - (a) *All streets and intersections adjacent to the project,*
 - (b) *All streets that will experience a ten percent (10% or greater) increase in peak hour traffic.*
 - (c) *All intersections that will experience a reduction in the level of service as a result of the project.*
 - (d) *Failing intersections that will experience an increase in traffic as a result of the project.*

This section is addressed in the traffic report by GPI.

- (2) *Impacts to municipal utilities/services.*
 - (a) *Water supply:*
 - (1) *Describe the proposed water supply system including average daily and peak water demand; location, sizing, and accessibility to municipal water mains; and water*

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pressure and flows available at the site.

The proposed water service for the site will connect to the existing water main on Carleton Drive at the intersection between Carleton Drive and the proposed access road. The water service will continue under the access drive and service a new fire hydrant and the building domestic and fire services.

- (2) *Evaluate the capacity of the Town's water supply and distribution system to adequately service the projected water and fire flow needs of the project; the need for pumping stations, standpipes, or other improvements to the water system required to service the project.*

The project will require less than 100 gallons of water per day on average. As such, it will not have a measurable impact on the Town's water supply system.

- (3) *Estimate the cost and discuss the responsibility for construction of improvements and ongoing maintenance, to include consultation with the Georgetown Water Department.*

No improvements are necessary to the Town's water system. The new service will be connected to the existing main in Carleton Drive following the Georgetown Water Department Regulations.

- (b) *Stormwater: A Stormwater Management Plan is required. See Town Bylaws Chapter 57, Erosion and Stormwater Control Bylaw and associated regulations.*

The project fully complies with the Georgetown Erosion and Stormwater Control Bylaw. Please refer to the Stormwater management report published by MCG.

- (c) *Solid waste disposal: All projects shall describe the quantity and composition of projected solid wastes to be generated by the project including average weekly volume in tons of refuse generated; recycling potential; method of on-site storage, collection and removal methods. Consultation with the Board of Health is required.*

The project will generate a negligible volume of solid waste. The waste will be managed in the facility.

- (d) *Emergency services:*

- (1) *Describe the anticipated fire and police protection needs including time and demand on municipal personnel; provision for alarms or warning devices; on-site firefighting and security capabilities; need for increased municipal personnel or equipment.*

Fire and police service for the facility is not anticipated outside of ordinary 911 calls in keeping with the volume of any other privately owned and operated business in the community. The facility will be equipped with all required fire protection, alarms and warning devices as required under the building codes.

- (2) *Estimate the cost and discuss the responsibility for providing emergency protection to the project. Consultation with the Police and Fire Departments is required.*

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There are no measurable costs to the town anticipated for this use. In the event a police detail is required, this will be paid to the town per the current rate schedule.

(e) *Schools:*

- (1) *Residential projects shall describe the projected impact to the public school system including kindergarten, primary, and secondary levels.*
- (2) *Identify the schools to be affected and projected number of students.*
- (3) *The ability of the schools to absorb the additional enrollment including impact on classroom size, school bus routing changes, and the annual cost per student to the school system.*
- (4) *Projected number of students shall be based on relevant data for the region. Consultation with the School Department is required.*

This project is not a residential project, and therefore will have no impact on Georgetown's schools.

(3) *Environmental impacts.*

- (a) *Describe the existing physical and ecological characteristics of the site and surrounding land including topography, slope, soils, wetlands, surface water, vernal pools, floodplains, depth to groundwater, drainage patterns, type and coverage of vegetation, wildlife and wildlife habitat, identification of any rare or endangered plant or animal species, relationships to public or private water supply wells and recharge areas or public water supply reservoirs. Consultation with the Conservation Commission and the Water Department is required.*

The site is located along the north side of Carleton Drive and consists of approximately 14.57 acres. The site is mostly undeveloped, but has been subject to construction of a gravel access drive along the easterly lot line, land clearing activities, and storage of earth materials in the middle portion of the property. The property is generally flat with a high elevation of approximately 87 along the west side line to a low elevation of 83 along the east side line. The land generally slopes from west to east towards Interstate 95. The flat topography results in low areas which are wetland resource areas. The site also contains two vernal pools within the Bordering Vegetated Wetlands (BVW) in the northern portion of the site. The majority of soils on site area classified as Deerfield loamy fine sand as defined in the Soil Resource Report for Essex County, Massachusetts. These soils are considered rapidly infiltrating and are in the NRCS Hydrologic Soil Group "A". On site soil testing was performed in 2019, with results yielding native soils consisting of gravelly sand, and estimated seasonal high groundwater levels of between 64" and 69" below the existing ground surface. A complete copy of the soil report can be found within the Stormwater Management Report.

In 2021, LEC Environmental Consultants, Inc. submitted a Wildlife Habitat Summary Report to the Conservation Commission, and concluded that the project will not result in any negative impacts to wildlife, and will improve conditions through Wetland and Buffer Zone replication and enhancement.

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The property is not within a Mass DEP Zone II groundwater supply or Zone A surface water supply. The property falls partially within the Georgetown Groundwater Protection Overlay District. The Georgetown Zoning Board of Appeals issued a special permit for the project on April 4, 2023.

- (b) *Identify and evaluate the potential impacts of the project on air quality, surface water, wetlands, groundwater, plant and wildlife species, temperature, wind, and noise levels on-site and off-site which will be affected by the project.*

The project will destroy 3,335 sf of wetlands adjacent to the developed industrial abutter on the west side of the property. To replicate this impact, 6,700 sf of wetlands will be constructed on the easterly side of the property, a ratio of greater than 2:1. The project also includes extensive buffer zone restoration at a ratio of close to 3:1 of destroyed buffer zone to restored buffer zone. A superseding Order of Conditions was issued by MassDEP on October 27, 2022.

In 2021, LEC Environmental Consultants, Inc. submitted a Wildlife Habitat Summary Report to the Conservation Commission, and concluded that the project will not result in any negative impacts to wildlife, and will improve conditions through Wetland and Buffer Zone replication and enhancement.

- (c) *Evaluate the impact of stormwater, runoff, flooding, erosion, sedimentation, grading changes, increased impervious surface, discharges to groundwater, pumping of groundwater, wetlands disruption, and changes to vegetative cover. Provide the location and results of any test pits, soil borings, and percolation tests performed on the site.*

To analyze if there will be any impacts of stormwater runoff, a stormwater analysis was performed using the U.S. Soil Conservation Service method of analysis contained in Technical Release #20 (TR-20) through the use of the software HydroCAD. Four storm intensities were evaluated using the most current rainfall rates from the NRCC Cornell Website, and it was found that the peak flow rate will be reduced in all storm events. A more complete analysis of the stormwater design can be found in the Stormwater Management Report. The results of soil test pits and percolation tests performed can be found on sheet C-4 of the Plan Set.

- (d) *Describe the types, quantities, use and storage methods for hazardous materials and wastes to be used or generated by the project. Describe measures that will be taken to prevent a release into the environment.*

Hazardous waste will not be accepted at this facility. In the event that it is encountered, an emergency response company will be contacted to provide hazardous waste removal services.

- (e) *Climate Change Impacts: In accordance with Governor Baker's Executive Order 569: Establishing an Integrated Climate Change Strategy for the Commonwealth (EO 569; the Order) was issued on September 16, 2016. The Order recognizes the serious threat presented by climate change.*

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The Northeast Climate Science Center at the University of Massachusetts at Amherst has developed projections of changes in temperature, precipitation and sea level rise for Massachusetts. By the end of the century, the average annual temperature in the Parker River Basin is projected to rise by 3.7 to 10.9 degrees Fahrenheit (F), including an increase in the number of days with temperatures over 90 F from 1 to up to 67 days compared to the 1971-2000 baseline period. MDR proponents are encouraged to implement measures to reduce energy consumption and associated GHG emissions and to consider future climate change conditions in the design of the project. Due to the status of the Parker River as a highly stressed river due to low flows, the proponent is urged to implement water conservation methods to offset the impacts of drought-like conditions in the basin.

The project addresses the matter of climate resiliency in several ways.

- The transfer station use, by itself, is in keeping with climate change measures in that it makes solid waste collection more efficient by reducing overall transportation costs, air emissions, truck traffic and road wear and tear [Ref: EPA 530-K-01-003].
- The development of the site will result in wetland and buffer zone habitat restoration of a ratio close to 3:1 of altered buffer zone and wetlands. This habitat revitalization is a direct environmental benefit.
- The stormwater management system has been designed to mitigate both flow and volume to the highest standards of treatment and following both the Mass Stormwater Handbook and Georgetown Erosion & Stormwater Management Bylaws. This will improve the sites' ability to recharge water into the ground, another direct environmental benefit.
- The project is not within or near to a FEMA flood plain however the building and all subsurface utilities have been designed to be at least 4' above the seasonal high-water table. This is a design feature that addresses sustainability relating to potential sea level rise.
- The building will meet all current building codes which incorporate climate resiliency measures in the form of energy efficiency, water efficiency, noise controls, dust controls and odor controls.

Wastewater will be managed on site with a modern wastewater disposal system meeting all current codes.

(f) Community impacts.

- (1) Data shall be provided and shall be considered with regard to the following:
Scenic, unique geological, historical, or archaeological features and recreational areas on the site or in the vicinity of the site;
None of these areas exist on this property.*
- (2) For those projects that are affecting identified historic properties and/or districts on the property, or abutting the property, consultation with the Historical Commission is required.
This property is not a historic property.*

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- (3) *Residential projects must describe any recreational facilities proposed for the site and provision of public recreational or open spaces.*
This is not a residential project.
- (4) *Estimate the off-site recreational demands of the proposed project and its impact to municipal recreational facilities and programs.*
There will be no off-site recreation associated with this project.
- (5) *Consultation with the Park and Recreation Commission is required and Open Space Committee, if applicable.*
This is a commercial project that will not include any parks or recreation.

(a) *Fiscal impacts.*

(b) *Evaluate the projected fiscal costs and benefits to the Town resulting from the project including:*

- (1) *Projected costs arising from increased demand for and required improvements to public services and infrastructure.*
The project will not require any measurable demand for public services or infrastructure. It is a commercial project that requires minimal water usage, and will manage wastewater and stormwater on site.
- (2) *Projected tax revenues to be generated by the project.*
The property is currently underutilized land. Once developed, the property will include a 15,000 square foot commercial building. This improvement will increase tax revenue generated from this property.
- (3) *Projected number and types of jobs to be created by the non-residential project.*
The project will create temporary jobs for the permitting and construction of the project. The business will also create new job opportunities once completed and in operation.
- (4) *The above shall be supplied by the applicant and may be reviewed by a third party reviewer.*
Noted.

IV. Development Impact Standards. The Special Permit Granting Authority may consider the following standards when reviewing development impacts in addition to the Special Permit and Site Plan criteria required in Article XIII Special Permits and Site Plan Approval of the Zoning Bylaw, and the layout and design of the project must be consistent with Master Plan of Georgetown.

A. Traffic

- (1) *The overall Level of Service (LOS) of all intersections evaluated under CH 165-83.H.(2) shall not be reduced. Level of Service shall be determined in accordance with the most recent edition of the Highway Capacity Manual, Highway Research Board, National Academy of Science - National Research Council. Mitigation methods shall be used to maintain the LOS from being reduced. The design goal is for all legs of signalized and unsignalized intersections to be at LOS D or better. For*

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- intersections currently functioning at LOS D or better, mitigation measures shall be provided to maintain or improve the existing LOS.*
- (2) *For all intersections which are currently failing (LOS F or worse), the goal of mitigation measures is to provide a LOS D or better. At a minimum, existing conditions at failing intersections shall not be further degraded as a result of the project.*
 - (3) *Driveways shall be located to limit conflict points with existing driveways and intersections and shall meet intersection design standards for secondary roads required in the Georgetown Subdivision Regulations.*
 - (4) *Shared driveways and service roads shall be used to control access onto existing streets per §165-73 Adequate Lot Frontage: Common Drive of the Zoning Bylaw.*
 - (5) *The project shall be sited and driveways located to prevent to greatest extent feasible the routing of nonresidential traffic to and through residential streets.*

This section is addressed in the traffic report by GPI.

B. Municipal utilities/services

- (1) *Public water and drainage systems in the vicinity of the site shall be adequate to serve the proposed project. If public utilities are not adequate to serve the project, the reviewing authority may require, as a condition of approval, off-site improvements to increase the capacity of such utilities sufficient to serve the project.*

Stormwater will be managed on site and does not require a connection to the municipal system. Water will be minimal for this use category and will not have an impact on the municipal water system.

- (2) *All utilities shall be placed under ground where physically feasible.*

All utilities (water, gas, electric) will be constructed underground.

- (3) *All discharges shall be in compliance with the Georgetown Erosion and Stormwater Control Bylaws and associated Regulations.*

The stormwater design for this project is fully compliant with the Georgetown Erosion and Stormwater Control Bylaws and associated Regulations.

- (4) *The project shall meet or exceed the requirements of the Georgetown Erosion and Stormwater Control Bylaws and associated Regulations.*

The stormwater design for this project meets the requirements of the Georgetown Erosion and Stormwater Control Bylaws and associated Regulations.

- (5) *Municipal police and fire services shall not be strained by the proposed project.*

Municipal police and fire services will not be strained by the proposed project.

- (6) *Adequate fire flows shall be available at the site. Improvements to the water system may be required to provide adequate service or on-site alternatives owned and maintained by the landowner may be required.*

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No upgrades to the water system are anticipated for this project.

C. *Environment*

- (1) *The project shall not create any significant emission of noise, dust, fumes, noxious gases, radiation, water pollutants, or any similar significant adverse environmental impact.*

Trucks owned by the applicant will be fitted with "white noise" backup alarms. White noise alarms are easier to identify up close, but the sound from a white noise alarm blends in with background noise the further away from the site one is. The building is also orientated towards I-95 so that any noise generated in the operational portion of the property is directed towards the highway. Dust, fumes and noxious gases will be managed by containing the sorting activities within the building. The building is fitted with filters on the air system. No radiation is associated with this use. Water pollutants will be managed with the stormwater management system on site.

- (2) *The project shall not cause erosion, flooding, sedimentation, or increase the rate of runoff from the site. Provision shall be made for attenuation of runoff pollutants. The project shall be designed to minimize the destruction of wetlands, unique natural features, wildlife habitat, and rare or endangered species. Special effort shall be made to maintain wetlands, wetland buffer zones and corridors between wetlands and wooded uplands; wildlife travel corridors; existing diversity of plant communities; and to avoid alteration of areas most difficult to replicate.*

This project will not cause erosion, flooding, or sedimentation due to stormwater runoff, and will not increase the peak flow rates coming from the site. The project is proposing a wetland replication and restoration at a ratio of greater than 2:1.

- (3) *The project shall not result in a reduction of groundwater recharge, deteriorate surface or groundwater, or negatively impact any public water supply recharge area or watershed. Commercial and industrial discharges of processed wastewater to the ground shall not be permitted.*

This proposed development complies with the MassDEP Stormwater Handbook and the Georgetown Erosion and Stormwater Management Bylaw. These regulations address groundwater recharge, treatment of groundwater, management of peak rates of stormwater runoff and volume and short and long term operation and maintenance of the property with respect to stormwater and erosion controls. There will be no impacts to the interests of this standard as a result of full compliance with these regulations.

- (4) *Best available measures shall be used to prevent a discharge or spill of hazardous materials or wastes into the environment.*

An operation and maintenance plan for the facility outlines the protocols and procedures to prevent discharge or manage spills of potential hazardous materials or wastes. Hazardous materials or wastes are prohibited for this use.

- (5) *Buffers, setbacks, landscaping, screening and traffic circulation patterns shall be used to mitigate noise and air pollution impacts.*

The easterly side of the property bordering Interstate 95 will include a dense evergreen buffer. Wetland and buffer zone restoration to the south and buffer zone restoration to the north provide further separation between operations at the facility and surrounding property. Traffic circulation patterns are designed to move vehicles quickly through the

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facility to minimize idling times. The building is required to be setback a minimum of 100' feet from a property line. The operational portion of the facility is more than 1,000 feet from the nearest residential structure.

D. Fiscal impact

- (1) *The proposed project shall not have a significant adverse impact on the Town in terms of balancing as near as possible the cost of public services to the public revenue generated through property and other taxes. The reviewing authority may require phasing of the project to minimize negative fiscal impacts to the Town over the short term.*

This project will have minimal fiscal impacts on the town as a private, commercial use. It will result in a net positive increase in tax revenue as the existing property is currently underutilized land.

- (2) *The applicant shall demonstrate the financial ability to complete the project.*

The applicant will provide proof of financial ability to complete the project prior to construction.

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EXHIBIT 8

Exhibit 8

Please see

Stormwater Management Report

Proposed Transfer Station 20 Carleton Drive

Georgetown, Massachusetts

May 8, 2023

Prepared by The Morin-Cameron Group, Inc.

EXHIBIT 9

Exhibit 9

Please see

G. Mello Disposal Corp.

Proposed Transfer Station - Carleton Drive

Georgetown, Massachusetts 01833

Traffic Impact and Access Study – Volume 1

May 8, 2023

Prepared by GPI

EXHIBIT 10

EXHIBIT 10

Please See

20 Carleton Drive Project

Approvals, Determinations and Orders

- a. ZBA Special Permit (Docket #19-07)
- b. ZBA Water Resource District Special Permit (Docket #19-07)
- c. DEP Superseding Order of Conditions
- d. MEPA Determination
- e. DEP Site Suitability Determination
- f. Georgetown Board of Health Site Assignment

EXHIBIT 11

EXHIBIT 11

Please See

20 Carleton Drive Photos

EXHIBIT 12

Exhibit 12

Please see

Site Plan Set

G. Mello Disposal Corp.

Solid Waste Transfer Station

20 Carleton Drive

Georgetown, Massachusetts 01833

Prepared by The Morin-Cameron Group, Inc.

Dated: May 8, 2023

and

Building Elevation and Floor Plans

Proposed Transfer Station Carleton Drive Georgetown, MA

Prepared by Fitzmeyer & Tocci

Dated: May 1, 2023