

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 163-11-12 Vtec

IN RE: )  
)  
MARTIN'S FOODS OF SOUTH )  
BURLINGTON, INC. and VICTOR J. AND )  
RAMON A. GIROUX TRUSTEES SITE )  
PLAN APPROVAL (HINESBURG )  
HANNAFORD SITE PLAN APPROVAL) )

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JAN 02 2013  
TOWN OF HINESBURG  
DEED & ZONING

**CROSS-APPELLANT'S STATEMENT OF QUESTIONS TO BE DETERMINED**

Pursuant to Rule 5(f) of the Vermont Rules for Environmental Court Proceedings, Cross-Appellant/Permittee Martin's Foods of South Burlington, Inc. submits the following statement of questions to be determined in its cross-appeal in the above-captioned proceeding:

1. Can approval of the proposed supermarket project at issue in this appeal be conditioned upon compliance with the Town of Hinesburg's Official Map given its vagueness and overbreadth with reference to (a) the definition of "community facility," and (b) its prescribed location on some or all of the subject parcel?

2. Do the Site Plan Review Standards set forth in Section 4.3.4 of the Town of Hinesburg's 2009 Zoning Regulations (the "Regulations") constitute (a) matters which must simply be considered in evaluating a site plan application, or (b) prerequisites which must each be "satisfied" in order to receive site plan approval?

3. To the extent that the Site Review Standards are deemed discrete prerequisites for approval as opposed to subjects for consideration, does their reference to vehicular and pedestrian circulation allow consideration of traffic congestion beyond the extent to which the congestion issues relate to safety (*Regulations* §§ 3.4.3(1) and (2))?

4. To the extent that the Site Review Standards are deemed discrete prerequisites for approval as opposed to subjects for consideration, do they each provide a sufficiently clear standard to be enforceable under *In re Appeal of JAM Golf, LLC*, 2008 VT 110, ¶¶ 12-14, 185 Vt. 201 (*Regulations* §§ 4.3.4(1) - (9))?

5. Since the evidence does not establish that a 175-foot left turn lane onto Route 116 would handle the 95th percentile vehicle queue, can site plan approval be premised upon a conclusion that such a lane length will handle such a queue length (*DRB Order* at ¶ 1(a)(i))?

6. Given the current conditions at the relevant intersections, to what extent, and under what terms, may site plan approval be conditioned upon (a) future intersection studies, (b) future intersection improvements, (c) the posting of a bond sufficient to cover the costs of such studies and improvements, and (d) payment of some or all of the costs of such studies and/or improvements (*DRB Order* at ¶¶ 1(a), 1(d), and 11)?

7. To what extent may site plan approval be conditioned upon landscaping requirements that are not based upon any express standards set forth in the Regulations (*DRB Order* ¶¶ 5 and 16)?

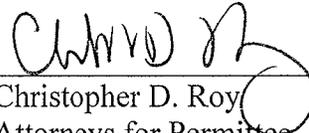
8. To what extent may site plan approval be conditioned upon lighting requirements that are not based upon any express standards set forth in the Regulations (*DRB Order* ¶ 6)?

9. To what extent may site plan approval be conditioned upon stormwater requirements that are not based upon any express standards set forth in the Regulations (*DRB Order* ¶¶ 7 and 8)?

10. To what extent may site plan approval be conditioned upon snow storage requirements relating to supposed Official Map requirements (*DRB Order* ¶ 10)?

Dated at Burlington, Vermont this 21<sup>st</sup> day of December, 2012.

DOWNS RACHLIN MARTIN PLLC

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