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James A. Dumont, Esq. Kit Donnelly, Legal Assistant

November 30, 2012

Hon. Jacalyn Fletcher, Court Manager
Vermont Superior Court - Environmental Division
2418 Airport Rd.
Barre, VT 05641-8701

In re: Hinesburg Hannaford Conditional Use Appeal, Docket No. 129-9-12 Vtec; Hinesburg Hannaford Site Plan Appeal, Docket No. 163-11-12 Vtec

Dear Ms. Fletcher:

I enclose the Statement of Questions for Appeal in Docket No -11-12Vtec.

I also enclose a Revised Statement of Questions for Appeal in the companion appeal, No. 129-9-12 Vtec, along with a Motion to Clarify or Amend Statement of Questions for Appeal and Memorandum in Support.

I have not yet received the list of Interested Persons in the second appeal.

Please call with any questions.

RECEIVED
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TOWN OF HINESBURG
DRB & ZONING

Sincerely,

James A. Dumont, Esq.

cc: Chris Roy, Esq.
Clerk of the Hinesburg DRB
Earnest (Bud) Allen, Esq.

STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION

In re: Hinesburg Hannaford Site Plan Approval (Martin's Foods of South Burlington, Inc., and Victor J. and Ramon A. Giroux Trustees Site Plan Approval for 36,000 SQ. Ft. Retail Use Parcel Number 20-50-02.100)

Env. Ct Docket No 163-11-12 Vtec

STATEMENT OF QUESTIONS FOR APPEAL BY APPELLANTS
(Statement of Questions for Site Plan Approval)

James A. Dumont, Esq., on behalf of Appellants, submits the following statement of questions for appeal.

1. Giroux Lot Outside of Lot 15 Relied On Without Permit Application or Notice. In this *de novo* site plan review, was it lawful and constitutional for the Hinesburg Development Review Board (DRB) and would it be lawful and constitutional for this Court to engage in review of and to approve of the grocery store project where:
    a. development of the .32 acre Giroux lot outside of Lot 15 is a necessary, integral component of the project, without which the application cannot be granted and without which the applied-for project cannot function;
    b. the .32 acres consists of additional, adjoining land;
    c. the additional land lies in a different, more restricted, zoning district;
    d. the land development on the additional land has not yet been the subject of a permit application;
    e. the land development on the additional land has not yet been the subject of notice required by the ordinance and the enabling statute (24 V.S.A. § 4464) for the permit application;
    f. the land development on the additional land has not yet been reviewed by the DRB; and
    g. the land development on the additional land is not before this Court?

2. Lantman's and Mead Properties Outside of Lot 15 Relied On Without Permit Application or Notice. In this *de novo* site plan review, was it lawful and constitutional for the DRB and would it be it lawful and constitutional for this Court to engage in review of and to approve of the grocery store project where:
    a. applicant relies on land development on the so-called "Lantman's Property" and "Mead Property" in order to mitigate traffic impacts from the proposed grocery store;
    b. the Lantman's Property and the Mead Property consist of additional, non-adjoining land;
    c. the additional land lies in a different, more restricted, zoning district;

d. the land development on the additional land has not yet been the subject of a permit application;
e. the land development on the additional land has not yet been the subject of notice required by the ordinance and the enabling statute (24 V.S.A. § 4464) for the permit application;
f. the land development on the additional land has not yet been reviewed by the DRB; and
g. the land development on the additional land is not before this Court?

3. Section 4421 Mapped Public Facility Not Accommodated. In this *de novo* site plan review, where the Town's Official Map has designated the main project site, Lot 15, as the location for public facilities, can the applicant meet its burden of satisfying the standard set forth in 24 V.S.A. §4421 that the project applicant "shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's by-laws?"

4. Section 4421 Mapped Public Facility Accommodated by Giroux Non-Lot 15 Land. In this *de novo* site plan review, where the Town's Official Map has designated the main project site, Lot 15, as the location for public facilities, can the applicant meet its burden of satisfying the standard set forth in 24 V.S.A. §4421 that the project applicant "shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's by-laws" where use of lands outside of Lot 15 is proposed to accommodate the public facilities planned for Lot 15?

5. Section 4421 Mapped Public Facility Accommodated by Giroux Non-Lot 15 Land Without Permit Application or Notice. In this *de novo* site plan review, where the Town's Official Map has designated the main project site, Lot 15, as the location for public facilities, can the applicant meet its burden of satisfying the standard set forth in 24 V.S.A. §4421 that the project applicant "shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's by-laws" where:

a. development of the .32 acre Girioux lot outside of Lot 15 is proposed by the applicant as its means of accommodating the public facilities;
b. the .32 acres consists of additional, adjoining land;
c. the additional land lies in a different, more restricted, zoning district;
d. the land development on the additional land has not yet been the subject of a permit application;

e. the land development on the additional land has not yet been the subject of notice required by the ordinance and the enabling statute (24 V.S.A. § 4464) for the permit application;

f. the land development on the additional land has not yet been reviewed by the DRB; and

g. the land development on the additional land is not before this Court?

6. Site Plan Standards Not Satisfied. In this *de novo* site plan review, can the applicant satisfy all of the standards of the Hinesburg site plan review ordinance, including but not limited to compatibility with adjacent property and the character of the neighborhood, setbacks, traffic and pedestrian safety, adequacy of stormwater runoff and design for poorly drained areas, and consistency with the Town Plan?

7. Planning Commission Order Not Satisfied or Amended. In this *de novo* site plan review of development of a lot created by a subdivision approval issued by the Hinesburg Planning Commission, does this application conform to the intent and the explicit requirements of the Planning Commission's subdivision approval? If not, does this Court have the jurisdiction and lawful authority to approve of the project without the issuance, after notice and hearing, by the Planning Commission of an amendment to its earlier order under the standards of In re: Hildebrand, 2007 VT 5, 181 Vt. 568?

Dated at Bristol, Vermont, this 30th day of November, 2012.

James A. Dumont

James A. Dumont, Esq.
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15 Main St.
Bristol, VT 05443

STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION

In re: Hinesburg Hannaford CU Off Hour Activities (Martin's Foods of South Burlington, Inc., and Victor J. and Ramon A. Giroux Trustees Conditional Use for Hours of Operation for 36,000 SQ. Ft. Retail Use Parcel Number 20-50-02.100)

Env. Ct Docket No.129-9-12 Vtec

MOTION TO CLARIFY OR AMEND STATEMENT OF QUESTIONS FOR APPEAL,
AND
MEMORANDUM IN SUPPORT

Appellants move pursuant to Vermont Environmental Court Rule 5(f) for permission to clarify or amend their Statement of Questions. The existing Statement lists compliance with the ordinance and the statute. The revised Statement provides more detail and better notice of the issues and also includes constitutional issues being raised in the companion appeal that is being heard with this appeal. A replacement Statement of Questions is attached.

The purpose of the Statement of Questions is to "define the scope of the litigation well in advance of trial, so that the parties know what issues they will have to meet at trial." Appeal of Albert, et al., Docket No. 110-6-03 Vtec (3/21/06). The Statement of Questions may be amended after discovery, based on the discovery answers. Appeals of Garen, Docket Nos. 42-3-01 and 218-9-00 Vtec (11/7/02). "Generally speaking, motions to amend a Statement of Questions should be liberally granted, when they do not prejudice the other parties. Such a motion is typically granted when it is neither frivolous nor made as a dilatory maneuver or in bad faith." In re Verizon Wireless Barton Permit, Docket No. 6-1-09 Vtec (2/2/09) (citations and quotation marks omitted). An issue may be reached by the Environmental Court, even if not set forth in the Statement of Questions, if "intrinsic" to the matters that were listed. In re Jolley Associates, 2006 VT 132, ¶ 9, 181 Vt. 190, 193-194, 915 A.2d 282, 286. Even a Notice of Appeal may be amended if opposing

parties in fact were on notice of the issues actually being appealed regardless of the wording of the notice. In re Verizon Wireless Barton Permit, Docket No. 133-6-08 Vtec (5/2/09).

The Motion to Clarify or Amend the Statement of Questions should be granted.

Dated at Bristol, Vermont, this 30th day of November, 2012.

Mary Beth Bowman et al.

BY:
James A. Dumont
James A. Dumont, Esq.
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15 Main St.
Bristol, VT 05443

STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION

In re: Hinesburg Hannaford CU Off Hour Activities (Martin's Foods of South Burlington, Inc., and Victor J. and Ramon A. Giroux Trustees Conditional Use for Hours of Operation for 36,000 SQ. Ft. Retail Use Parcel Number 20-50-02.100)

Env. Ct Docket No.129-9-12 Vtec

REVISED STATEMENT OF QUESTIONS FOR APPEAL BY APPELLANTS
(Statement of Questions for Conditional Use Appeal)

James A. Dumont, Esq., on behalf of Appellants, submits the following statement of questions for appeal.

1. Giroux Lot Outside of Lot 15 Relied On Without Permit Application or Notice. In this *de novo* conditional use review, was it lawful and constitutional for the Hinesburg Development Review Board (DRB) and would it be lawful and constitutional for this Court to engage in review of and to approve of the grocery store project where:
    a. development of the .32 acre Giroux lot outside of Lot 15 is a necessary, integral component of the project, without which the application cannot be granted and without which the applied-for project cannot function;
    b. the .32 acres consists of additional, adjoining land;
    c. the additional land lies in a different, more restricted, zoning district;
    d. the land development on the additional land has not yet been the subject of a permit application;
    e. the land development on the additional land has not yet been the subject of notice required by the ordinance and the enabling statute (24 V.S.A. § 4464) for the permit application;
    f. the land development on the additional land has not yet been reviewed by the DRB; and
    g. the land development on the additional land is not before this Court?

2. Lantman's and Mead Properties Outside of Lot 15 Relied On Without Permit Application or Notice. In this *de novo* conditional use review, was it lawful and constitutional for the DRB and would it be it lawful and constitutional for this Court to engage in review of and to approve of the grocery store project where:
    a. applicant relies on land development on the so-called "Lantman's Property" and "Mead Property" in order to mitigate traffic impacts from the proposed grocery store;
    b. the Lantman's Property and the Mead Property consist of additional, non-adjoining land;
    c. the additional land lies in a different, more restricted, zoning district;

d. the land development on the additional land has not yet been the subject of a permit application;
e. the land development on the additional land has not yet been the subject of notice required by the ordinance and the enabling statute (24 V.S.A. § 4464) for the permit application;
f. the land development on the additional land has not yet been reviewed by the DRB; and
g. the land development on the additional land is not before this Court?

3. Section 4421 Mapped Public Facility Not Accommodated. In this *de novo* conditional use review, where the Town's Official Map has designated the main project site, Lot 15, as the location for public facilities, can the applicant meet its burden of satisfying the standard set forth in 24 V.S.A. §4421 that the project applicant "shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's by-laws?"

4. Section 4421 Mapped Public Facility Accommodated by Giroux Non-Lot 15 Land. In this *de novo* conditional use review, where the Town's Official Map has designated the main project site, Lot 15, as the location for public facilities, can the applicant meet its burden of satisfying the standard set forth in 24 V.S.A. §4421 that the project applicant "shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's by-laws" where use of lands outside of Lot 15 is proposed to accommodate the public facilities planned for Lot 15?

5. Section 4421 Mapped Public Facility Accommodated by Giroux Non-Lot 15 Land Without Permit Application or Notice. In this *de novo* conditional use review, where the Town's Official Map has designated the main project site, Lot 15, as the location for public facilities, can the applicant meet its burden of satisfying the standard set forth in 24 V.S.A. §4421 that the project applicant "shall demonstrate that the mapped public facility will be accommodated by the proposed subdivision or development in accordance with the municipality's by-laws" where:

a. development of the .32 acre Girioux lot outside of Lot 15 is proposed by the applicant as its means of accommodating the public facilities;
b. the .32 acres consists of additional, adjoining land;
c. the additional land lies in a different, more restricted, zoning district;
d. the land development on the additional land has not yet been the subject of a permit application;

e. the land development on the additional land has not yet been the subject of notice required by the ordinance and the enabling statute (24 V.S.A. § 4464) for the permit application;

f. the land development on the additional land has not yet been reviewed by the DRB; and

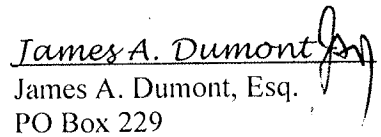
g. the land development on the additional land is not before this Court?

6. Adverse Impact or Undue Adverse Impact Conditional Use Standard. Because the application was filed prior to September 1, 2011, and because the zoning ordinance uses the standard of "no adverse impact" (rather than no "undue" adverse impact), under 24 V.S.A. §§4407, 4414 and 4481 does the applicant have the burden of proving "no adverse impact" rather than no undue adverse impact?

7. Conditional Use Standards Not Satisfied. In this *de novo* conditional use review, can the applicant meet its burden of satisfying all of the Conditional Use Standards in the Hinesburg zoning ordinance (§ 4.2.2) and the statute, including but not limited to whether the project "shall not adversely affect... the character of the area affected," traffic and the town's By-Laws?

8. Planning Commission Order Not Satisfied or Amended. In this *de novo* conditional use review of development of a lot created by a subdivision approval issued by the Hinesburg Planning Commission, does this application conform to the intent and the explicit requirements of the Planning Commission's subdivision approval? If not, does this Court have the jurisdiction and lawful authority to approve of the project without the issuance, after notice and hearing, by the Planning Commission of an amendment to its earlier order under the standards of In re: Hildebrand, 2007 VT 5, 181 Vt. 568?

Dated at Bristol, Vermont, this 26th day of November, 2012.



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