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DRB & ZONING

R. PRESCOTT JAUNICH
sjaunich@drm.com
Tel: (802) 846-8606
Fax: (802) 862-7512

January 9, 2014

Ms. Zoe Wainer, Chairperson, and
Hinesburg Development Review Board
Town of Hinesburg
10632 VT Route 116
Hinesburg VT 05461

Re: Giroux-Automotion and Firehouse Plaza Site Plan Amendments
Martin's Foods of South Burlington and Hannaford Brothers

Dear Chairperson Wainer and Members of the Development Review Board:

This letter is submitted on behalf of Applicant Martin's Foods of South Burlington in response to Mr. Dumont's letter to you dated December 27, 2013. In his letter, Mr. Dumont asserts 1) that the pending lot adjustments were wrongfully omitted from the Development Review Board's (DRB) consideration of the prior site plan application and 2) that testimony before the District Commission has suggested project changes that should now be re-considered by the DRB. Such assertions are without basis. The DRB has independent jurisdiction over the pending applications which are submitted to comply with the DRB's own prior Order without any requirement for a remand from the Environmental Division, and there have been no changes to the project that require fresh review by the DRB. It is respectfully urged that the DRB proceed to properly and lawfully act upon the applications now before it.

Mr. Dumont ignores the merits of the DRB's earlier proceeding by suggesting that the pending site plan amendments, "should have been proposed together with the Lot 15 application for review by the DRB at that time, as these projects are being proposed to accommodate the supermarket." In short, the site plan amendments *were* expressly proposed and incorporated within the previously considered Lot 15 site plan application, which Mr. Dumont's letter acknowledges: "**Nonetheless, the DRB approved of the proposed supermarket, including the proposed use of Giroux lands outside of Lot 15.**" That these additional lands were considered previously is also evidenced by the Town's prior site plan approval for the 36,000 Sq. Ft. Retail

Use on Parcel No 20-50-02.100, Findings of Fact, Conclusions & Order approved November 6, 2012 (referred to herein as the "Lot #15 Site Plan Approval" or "Order"), in which it is stated:

"This project relies on the purchase of a portion of lot #20-50-02.200, a .32 acre lot to the West where the Automotion business is located and easements on lot 20-50-04.00 which is where the Giroux storage yard is located, both in the adjacent Village District. These properties and lot #15 are all owned by Victor J. and Ramona A. Giroux Trustees."
Order, Finding of Fact #2.

The inclusion of these lands is unambiguous: "This Project relies on adjacent Giroux family property." Order, Conclusion #15. Consequently, as the DRB directed, "any site plan approval for the project as proposed shall be contingent on the Applicant making and obtaining DRB approval for the necessary revisions to these other permits." *Id.* The Board's Order made this clear:

"The approved site plan, zoning lot coverage, official map approval, and some of the landscaping are all contingent upon the addition of the parcel from the Giroux property to the west. This permit is null and void if revisions to associated subdivisions and site plans are not approved, and if such property is not conjoined to lot 15 according to all approved plans." Lot 15 Site Plan Approval, Order #15.

The pending applications therefore are submitted to conform with this Board's Order and the previously approved project plans.

Notwithstanding that the Applicant now seeks to conform with this Board's earlier Order, Mr. Dumont gamely asserts that the Town is without jurisdiction to consider the pending applications because the Lot 15 Site Plan Approval is under appeal to the Environmental Division. However, the principle of singular jurisdiction espoused in *Kotz v. Kotz*, 134 Vt.36 (1975) has no application to subsequent applications which have an independent jurisdictional basis such as are now presented.

Each property and each regulatory regime has its own authority. As is the case here, it is a routine matter for site plan approvals to be contingent on various other permits such as Act 250 approval, stormwater permits, wetland permits, life safety code permits, water and waste water permits and, not uncommonly, site plan amendments for other affected properties. Appeal of one permit does not automatically incorporate or preempt other applicable regulatory regimes with respect to other permits or properties. Such independent authority remains and must proceed with its independent process until completion. Project opponents may subsequently elect to appeal such permits. In such event the Environmental Division has the discretion to determine whether to merge appeals of different permits into a single proceeding. Absent completion of such independent regulatory approval processes and an appeal and subsequent decision by the court to merge the proceedings, no such merger has occurred.

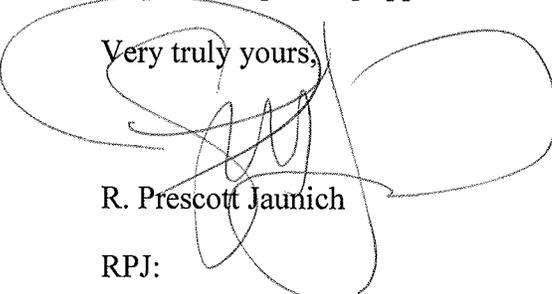
Thus, the Hinesburg DRB is lawfully charged to consider these applications in the first instance and is properly vested with the necessary jurisdiction to do so.

Mr. Dumont's alternative request for remand of the Lot 15 Site Plan Approval from the Environmental Division wrongfully seeks to re-open that approval to reconsideration by this Board. In making this request, Mr. Dumont ignores the DRB's exhaustive prior consideration of the Lot 15 project as a whole.

There are no significant project changes newly proposed before the Act 250 District Commission.¹ Despite Mr. Dumont's attempt to re-characterize the stormwater testimony before the District Commission, Mr. O'Leary's testimony is wholly consistent with his prior testimony before the DRB. Nothing is materially "different" regarding stormwater treatment and there is no evidence that erosion will flush sediments into Patrick Brook. Questions with respect to flooding of the Dark Star property, both present and prospectively, were previously considered by this Board. Before this Board and before the District Commission, the testimony of the engineers retained by the Applicant and by Dark Star uniformly establishes that any flooding of the Dark Star property will be lessened and the condition will be improved after the project is built as proposed.

Respectfully, this Board has lawful jurisdiction to consider the pending applications. Though considered and included in the prior project and Lot 15 Site Plan Approval, these further legal approvals are required and necessary to conform with the Board's Order. The Board's jurisdiction over these applications, and the scope of the Board's inquiry, is independent of the prior application and proceeding. There is no basis for remand of the pending Environmental Division appeal to consolidate jurisdiction. Remand would also serve no purpose because the project has not been changed in any fashion that would present novel issues to this Board. To refrain from processing and acting upon the applications as Mr. Dumont urges would be contrary to this Board's prior direction and Order. This DRB has already properly rendered its decision on the project as a whole, and notwithstanding Mr. Dumont's effort to collaterally seek remand for reconsideration of that earlier decision, his appeal lies in a separate forum unrelated to the scope of the pending applications now properly before you.

Very truly yours,



R. Prescott Jaunich

RPJ:

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¹ The project no longer includes modification of the Patrick Brook culvert as road widening was not required after changes were made to the speed limit on Route 116, but in all other material respects the project remains as previously presented to this Board which this Board should recognize from its participation as a party in the District Commission proceeding.