

STITZEL, PAGE & FLETCHER, P.C.

ATTORNEYS AT LAW  
171 BATTERY STREET  
P.O. BOX 1507  
BURLINGTON, VERMONT 05402-1507

STEVEN F. STITZEL  
PATTI R. PAGE  
ROBERT E. FLETCHER  
JOSEPH S. MCLEAN  
AMANDA S.E. LAFFERTY  
JOHN H. KLESCH  
DINA L. ATWOOD

TELEPHONE (802 660-2555)  
FAX (802-660-2552)  
WWW.FIRMSPF.COM  
DRUGH@FIRMSPF.COM

DAVID W. RUGH\*  
ERIC G. DERRY\*\*  
DIANE M. SHERMAN  
\*(ALSO ADMITTED IN MD)  
\*\*(ALSO ADMITTED IN NH)

March 25, 2014

VIA ELECTRONIC AND REGULAR U.S. MAIL

Alex Weinhagen, Director of Planning & Zoning  
Town of Hinesburg  
10632 Route 116  
Hinesburg, VT 05461

Re: Final Plat Subdivision Revision for Farmer's Market and Hannaford Grocery Store

Dear Alex:

The Town of Hinesburg (the "Town") Development Review Board ("DRB") requested our opinion regarding the above-referenced subdivision revision and boundary line adjustment application. The DRB asked whether it can approve the proposed subdivision revision because it will create a lot split by two zoning districts—a so-called "split lot." The DRB also asked whether, pursuant to 24 V.S.A. § 4421, its approval of the subdivision revision will accommodate a proposed public facility as depicted on the Town's Official Map, or whether its approval of the subdivision revision will require a "minor change" to the Town's Official Map. The DRB further inquired if our conclusions on these issues would require the DRB to re-visit or otherwise amend its November 6, 2012 site plan approval of a proposed Hannaford grocery store, which is proposed for Lot 15 of Commerce Park ("Lot 15").

As set forth in more detail below, the DRB may approve the proposed subdivision revision since the proposed split lot is allowed under these specific circumstances. The DRB's approval of the subdivision revision also accommodates a public facility and does not require a change to the Town's Official Map. Moreover, there is no need to revisit the DRB's November 6, 2012 site plan approval, as the instant subdivision revision implements and is consistent with the conditions of approval imposed in that decision.

The proposed subdivision revision and boundary line adjustment will add a +/-0.32-acre parcel of land (the "Open Space Parcel") to the northwesterly side of Lot 15. The Open Space Parcel is currently a portion of the abutting parcel of land to the west of Lot 15 where an auto repair business, Automotion, operates on a +/-1.63-acre parcel of land (the "Automotion Lot"). The proposed subdivision revision will enlarge Lot 15 so that it will comprise of +/-4.88 acres of land (the "New Lot 15") and will reduce the Automotion Lot so that it will comprise of +/-1.31 acres of land.

The Giroux Trusts and Hannaford Bros. Co. (collectively, "Hannaford") proposed this subdivision revision to accommodate the addition of a public facility, a "Farm Market" use, to Lot 15, which is also proposed to be developed with a Hannaford grocery store. Lot 15 is designated as the location of a future public facility on the Town's Official Map, which was adopted on May 25, 2009. The Official Map lists a number of possible public facilities for Lot 15, and a "Farmers Market venue"—the proposed "Farm Market" use—is one of the listed public facilities. The Open Space Parcel added to Lot 15 is proposed solely to be used for open space; no permanent structures are proposed. As discussed in the DRB's November 6, 2012 site plan approval, Hannaford will accommodate the farmer's market by granting a perpetual easement to the Town to use the northerly portion of the Hannaford parking lot and the Open Space Parcel. The easement also allows the Open Space Parcel to be used for public green space purposes even when the farmer's market is not operating.

A complicating aspect of Hannaford's proposed subdivision revision is that the Automotion Lot, including the Open Space Parcel, is located in the Village zoning district, while Lot 15 is located in the Commercial zoning district. The subdivision revision will create a so-called "split lot" because New Lot 15 will be located in both the Commercial and Village Districts. Although the subdivision revision will create a split lot, both parcels—New Lot 15 and the new, smaller Automotion Lot—will comply with the Zoning Regulations' use and minimum lot size requirements in the respective Commercial and Village Districts.

The creation of a single lot separated by a zoning district boundary is allowed, provided that the use of each portion of the property complies with each respective zoning district's requirements and provided further that the properties in each respective zoning district satisfy each respective zoning district's minimum lot size requirement. *In re Windjammer Hospitality*, 72 Vt. 560, 562, 772 A.2d 536, 539 (2001). The proposed subdivision revision, which adds the Open Space Parcel to Lot 15, will not render the Automotion Lot nonconforming with the Village District's minimum lot size requirement. Also, both uses of the New Lot 15 will comply with the use requirements of the applicable zoning districts. The Open Space Parcel will be dedicated to allowed open space or "Farm Market" uses in the Village District, and the use of the remainder of New Lot 15 will be an allowed 36,000 square-foot

“Retail” use in the Commercial District. *McLaughry v. Norwich*, 140 Vt. 49, 54-55, 433 A.2d 319, 322 (1981). Notwithstanding the New Lot 15’s compliance with zoning as a split lot, we recommend the DRB impose an explicit condition in its potential approval of the proposed subdivision revision that requires any future use of the Open Space Parcel comply with the use requirements in the Village District.

The DRB has also asked our opinion regarding whether, pursuant to 24 V.S.A. § 4421, its imposition of a condition in its November 6, 2012 site plan approval of the proposed Hannaford that required the addition of the Open Space Parcel to Lot 15 was a “minor change” to the Official Map. The DRB also asked whether the addition of the Open Space Parcel to Lot 15 requires a “minor change” to the Official Map. Because 24 V.S.A. § 4421(2) provides that “minor changes” to an Official Map may occur in two complementary ways, the DRB did not error in failing to seek a “minor change” to the Official Map when it imposed a condition in its site plan approval that required the addition of the Open Space Parcel to Lot 15.

At the outset, pursuant to 24 V.S.A. § 4421(5), Hannaford is accommodating a public, community facility by proposing a “Farmers Market venue” on Lot 15 as required by the Official Map. Assuming the proposed subdivision revision will be approved, the recording the final plat for the subdivision revision will automatically constitute a “minor change” to the Official Map pursuant to 24 V.S.A. § 4421(2). The “minor change” caused by the recording of the final plat of the proposed subdivision revision will adjust the boundary lines shown on the Official Map between the Automotion Lot and New Lot 15 to reflect the DRB’s approval of the proposed subdivision revision. There will be no other impacts to the Official Map, as Hannaford’s proposed farmer’s market accommodates the Official Map.

Moreover, although it had the ability to ask the Planning Commission to make a recommendation to the Selectboard for a minor change to the Official Map pursuant to § 4421(2), it was unnecessary for the DRB to do so. Since the DRB had not yet received an application for, and had not yet reviewed, the proposed subdivision revision, the DRB lacked sufficient details of Hannaford’s proposal to request the Planning Commission to recommend a “minor change” in the Official Map. Therefore, it would have been premature for the DRB to request such a change to the Official Map prior to the submission of the instant subdivision revision application.

As a result of the foregoing analysis and assuming the instant application for a subdivision revision complies with the November 6, 2012 site plan approval, it is unnecessary for the DRB to revisit its site plan approval of the proposed Hannaford. The proposed subdivision revision not only creates a complying split lot, but it also implements the DRB’s site plan approval and the Official Map.

Alex Weinhagen  
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Please contact me if you have questions regarding this analysis.

Sincerely,



David W. Rugh

cc: Bud Allen, Esq. (via e-mail only)  
Peter Erb, Zoning Administrator (via e-mail only)