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MEMORANDUM

To: Hinesburg Development Review Board

From: David G. White

Date: July 6, 2012

Re: Applicant's proposed Findings, Conclusions and Order

Attached is a slightly revised version of our proposed Findings, Conclusions and Order. I have red-lined the changes made since the first draft. These are relatively minor, intended to correct a few small errors, clarify language and reflect the evolving discussion since we submitted the first draft.

We intend this as a statement of how we, as applicant, view our conformance with the applicable criteria, and also as a convenience to you and the planning staff. We are providing staff an editable Word version for your use. Hopefully it will make your collective task easier. Where you agree with our perspective, you may choose to use the language substantially as drafted herein. Where you see things differently it provides a base that you can edit as you deem appropriate. In any event it should be easier than starting from scratch.

**TOWN OF HINESBURG
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT, CONCLUSIONS & ORDER**

**For Martin's Foods of South Burlington, Inc.
Site Plan and Conditional Use Review for 36,000 SQ FT Retail Use
Parcel Numbers 20-50-02.100 and 20-50-77.000**

This matter came before the Hinesburg Development Review Board (Board) on the site plan and conditional use application of Martin's Foods of South Burlington, Inc., hereafter referred to as the Applicant, for a 36,000 square foot retail use on Lot 15 on Commerce Street, located in the Commercial District within Hinesburg's Village Growth Area. The Board reviewed the application on January 4, 2011, January 18, 2011, February 1, 2011, February 15, 2011, March 15, 2011, September 20, 2011, November 15, 2011, December 6, 2011, December 20, 2011, February 21, 2012, May 15, 2012, June 5, 2012, and July 17, 2012.

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PROJECT DESCRIPTION AND HISTORY

On November 11, 2010, Applicant submitted a proposal to develop Lot 15 of Commerce Park. The application was deemed complete on November 18, 2010. The Board reviewed the proposal pursuant to the Zoning Ordinance and Town Plan in effect on November 18, 2010; the findings of fact and conclusions reflect the proposal's conformance to the Zoning Ordinance adopted on October 12, 2009, the 2005 Town Plan and the 2009 Official Map.

Applicant's initial proposal included developing Lot 15 to contain an approximately 36,000 square foot Hannaford supermarket with a drive-through pharmacy and 144 parking spaces. This proposal also called for sidewalk connections to Mechanicsville Road and Commerce Street, road improvements on Route 116 and Commerce Street, extensive landscaping, and an on-site stormwater management system. Applicant also sought conditional use approval for various operating activities outside of the hours of 6 am to 10 pm.

In July 2011, Applicant amended the original proposal to address various concerns expressed since the November 2010 proposal. These changes included removing the pharmacy drive-through, revised architectural designs, providing a venue for the Hinesburg Farmers' Market, increasing landscaping throughout the parking lot and along the pedestrian path, converting lighting to LED lighting at lower heights and with lower wattage, adding a pocket park to the site, further studying the project's potential traffic impacts, and withdrawing portions of the request to obtain a conditional use permit to extend operational hours, among other changes.

On September 20, 2011 and December 6, 2011, Applicant expanded its offer to accommodate community facilities on the list suggested by the Town's Official Map. Applicant offered to (1) buy additional land to provide additional green space for the farmer's market and (2) provide a

permanent easement to the Town on almost an acre of land and provide funding to create a more substantial park (referred to as “Canal Park”) than the previously proposed pocket park.

On May 1, 2012 Applicant further amended its application proposing revised architectural designs and other detail changes. On May 25, 2012 Applicant submitted additional detail changes to the architectural design as well as new designs for both the free-standing sign and the wall sign.

FINDINGS OF FACT AND CONCLUSIONS

1. Findings re: Safety of vehicular and pedestrian circulation on site and on the adjacent street network (4.3.4(1));

Pedestrian Safety: Applicant proposes improvements to the existing pedestrian network. Specifically, it proposes (1) sidewalk connections to Mechanicsville Road and Commerce Street (including a new section of sidewalk filling the existing gap along Lot 12 of Commerce Park), (2) extending the sidewalk along the Bank of Middlebury’s entry drive into the Applicant’s site, and (3) connecting the existing sidewalk along the canal to the front of the store. Pedestrian links will carry through the site and pedestrian crossings will be clearly marked with standard marking. Off-site pedestrian crossings at signalized intersections will continue to use push-button activation and continue to allow as much time as under current circumstances. The improved sidewalk network will connect to and from an extension of the Town’s existing sidewalk network along Commerce St, Route 116 and Mechanicsville Rd.

Vehicular Safety: Lantman’s store is a significant contributor to the existing congestion at the intersection of Route 116 and Charlotte Road. Applicant has an agreement to purchase Lantman's and close it once the new Hannaford opens. The current Lantman's property will have a restriction preventing it from being used as a supermarket in the future. Applicant’s traffic engineer estimates that likely potential replacement uses for the property will have substantially lower trip generation and will materially reduce congestion at that intersection. Nonetheless, because this is uncertain, the Board requested that Applicant revise its analysis to use Lantman’s current trip generation in its projections. Applicant complied and all of the estimates of traffic volumes and congestion relied on in these findings include Lantman’s current trip generation.

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Applicant’s traffic engineer initially used trip generation rates based on a study of Vermont supermarkets conducted by VTrans. This study indicates trip generation rates that are lower than national averages contained in the Institute of Transportation Engineers (ITE) Trip Generation Manual. However, VTrans has not yet officially accepted their study for use in traffic impact analyses. Because of this the Board requested that Applicant revise its analysis to use ITE trip rates. Applicant complied with this. All of the estimates of traffic volumes and congestion relied on by the Board in these findings include the ITE trip rates.

Because of the potential impacts of this project, the Town engaged its own traffic engineers to review the applicant's traffic analysis. Opponents of the project also hired a traffic engineer to review the analysis. These reviews raised various questions and resulted in Applicant's traffic engineer conducting further analyses.

Applicant proposed to and received conceptual approval from VTrans for road improvements on Route 116. Applicant also proposed other improvements on Commerce Street. Specifically, Applicant proposed:

- (1) At the intersection of Route 116 and Charlotte Road, replace the existing split signal phasing with a combined eastbound/westbound signal phase. This proposal will reduce traffic congestion conditions on Route 116 during afternoon peak hours.
- (2) At the existing Lantman's exit westbound, move the stop bar and crosswalk closer to Route 116. This will enable vehicles exiting Lantman's to have an improved view of vehicles approaching from the south and thereby improve safety.

In a November 28, 2011 memo to VTrans, Hinesburg Director and Planning, Alex Weinhagen, supported the Applicant's proposed changes at the Route 116/Charlotte Road intersection.

Additionally, in the vicinity of the intersection of Route 116 and Commerce Street Applicant proposes:

- (1) To extend the existing south-bound left turn lane on Route 116 at the Commerce Street Intersection;
- (2) Extend the west bound right turn lane;
- (3) Move the existing driveway for Firehouse Plaza, which is too close to Route 116, to a location further away, opposite the Mobil station's existing eastern curb cut;
- (4) Paint hatch marks on the pavement in front of Mobil's western curb cut and provide signage to discourage vehicles from blocking the curb cut.

Applicant's traffic engineer estimates that even with the addition of trips generated by Applicant's project, these measures will materially decrease congestion along Route 116 in town and improve safety. In 2017, Applicant's traffic engineer estimates that the intersection of Route 116 and Charlotte Road will operate at Level of Service C, with an overall average 31 second delay in the "build" scenario (with the Applicant's project and Applicant's proposed traffic mitigation), compared to Level of Service E and an overall average 58 second delay in the "no-build" scenario (without Applicant's project and mitigation). As this

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is the intersection that causes traffic to backup throughout the Route 116 corridor, this improvement will materially benefit the entire corridor.

One intersection that remains a problem area is the intersection of Route 116 and Mechanicsville Road. This is an unsignalized intersection. West bound traffic on Mechanicsville Road has a stop sign. During peak hours west-bound left turns exiting Mechanicsville Road experience long delays. This intersection meets the warrants for signalization even without the addition of Applicant's traffic. Applicant has no obligation to solve pre-existing problems. However, it is estimated that post-development Applicant will constitute 9% of the traffic at this intersection during the PM Peak Hour. It is estimated that full signalization of this intersection will cost approximately \$175,000. Applicant's 9% share would be \$15,750. As mitigation of its impacts at this intersection, Applicant has offered to pay \$25,000 toward the cost of signalization of this intersection if it is signalized within 5 years of the opening of Applicant's store.

Because of the uncertainty of traffic estimates, Applicant has also proposed two permit conditions:

- (1) Applicant will conduct a follow-up traffic study 6 to 12 months after the store opens. The first step will be to count PM peak hour trips. If it is found that the store generates trips that are lower than the estimates used in Applicant's traffic study by 20% or more, no further study will need to be done. If the trips are found to be above this, then the next step will be to do intersection counts and trip distribution analysis of Hannaford's trips. If turning movements are 20% or more higher than predicted, then the Applicant will return to the Board to review whether further mitigation is warranted
- (2) At the same time as the foregoing study, Applicant will analyze whether south bound left turn movements at the 116/Commerce St. intersection are higher than predicted in Applicant's traffic study. If so, and if those left turns extend beyond the capacity of the south-bound left turn lane such that they block through traffic on Route 116 more than 3 minutes during normal PM peak hour conditions, then Applicant shall return to the Board to re-assess the need to further lengthen the south-bound left turn lane and widen Patrick Brook culvert.

Conclusion

The Board reviewed the above proposals and finds that the proposed sidewalk connections will contribute to pedestrian safety, while the changes to curbs cuts and other road improvements will reduce vehicular conflicts and traffic congestion. Subject to Applicant's proposed traffic mitigation and two proposed permit conditions which the Board will impose

in its decision, the Board finds that these proposed changes will improve safety of vehicular and pedestrian circulation on site and on the adjacent street network.

2. Findings re: Adequacy of circulation, parking and loading facilities with particular attention to safety. Provisions for refuse storage and disposal, snow removal, and emergency access (4.3.4(2));

Circulation: Applicant's original proposal included a drive-through pharmacy window and circulation around the building. After concerns were raised about this, Applicant revised its proposal to eliminate the pharmacy drive-through and relocate the loading/service area, which removed the need for circulation around the south side of the building. This reduced potential on-site pedestrian conflicts. Other on-site circulation is typical of similar properties and accommodates the largest vehicles expected to be on the property, including emergency vehicles.

Parking and Loading Facilities: Hannaford originally proposed 144 spaces, but has since reduced its proposal to 128 spaces. The 128 parking spaces are laid out appropriately, with islands and pedestrian walkways contributing to pedestrian and driver safety.

The loading area includes two sealed loading docks and an at-grade door for smaller delivery vehicles. Originally the loading area was at the southwest corner of the building. After concerns were raised about the visibility to Mechanicsville Road and proximity to residences, Applicant relocated the loading to its north side. This also separates the truck circulation pattern from most of the parking area and minimizes the amount of potential conflicts between pedestrians and delivery vehicles.

Provisions for Refuse Storage and Disposal: Hannaford has an extensive recycling program. A 20-cubic-yard storage container for returnable beverage containers sits on the pavement along the building's rear wall and is cleaned out every week.

Hannaford will store and dispose of non-recyclable goods with a 35-cubic-yard self-contained compactor located adjacent to the loading docks and filled via a chute located inside the building. This compactor will be emptied as often as needed.

Provisions for Snow Removal: Snow will be plowed to the locations designated on the site plan. The site is graded so that snow melt from the stockpiled locations will be collected in the site's stormwater system and discharged at a rate less than or equal to the property's current discharge rate. Moreover, if the snow storage areas become full Applicant will haul the snow off the property to a proper disposal site.

Provisions for Emergency Access: The site has been designed to accommodate the largest trucks (WB-67) for deliveries as well as emergency vehicles. All drive lanes and turning radii conform to applicable engineering standards.

Conclusion

The Board is satisfied that site is laid out in such a manner that it provides adequate safety to pedestrians and drivers. The parking and loading areas are adequately separated from one another, as well as from the pedestrian network. Additionally, Applicant has made appropriate and adequate provisions for maintaining refuse, snow plowing and for emergency access.

3. **Findings re: Adequacy of landscaping, screening, setbacks, hours of operation and exterior building design in regard to achieving maximum compatibility with adjacent property and with the character of the neighborhood** (4.3.4(3));

Adequacy of Landscaping and Screening: Previous to July 2011, the estimated project construction cost was \$5 million, with a minimum landscaping budget of \$57,500. As of July 2011, the estimated construction budget is \$7.25 million, with a minimum landscaping budget of \$80,000. Applicant estimates its actual landscaping budget at \$109,705.

In brief, the final May 2012 landscaping plan incorporates the following changes from the original application:

- (1) Increased landscaping within and around the parking lots;
- (2) Increased landscaping along the western property line to screen views from Route 116;
- (3) Canal Park: providing a budget of \$28,820 for the Town of Hinesburg to design and construct a park between Mechanicsville Road, the building's south wall, and the parking area.

Setbacks: The Commercial District requires minimum 10 foot setbacks for all sides. The proposal abides by the setback regulations for its zoning district.

Hours of Operation: In its original application Applicant requested conditional use approval to a) remain open to customers until 11 pm, b) receive deliveries during night-time and early morning hours and c) have employees inside the store overnight, stocking shelves, cleaning floors and similar activities. In the revised materials filed in July 2011, Applicant withdrew the first two of these requests. Subject to conditional use approval, the Board is comfortable that the overnight activities of employees within the building will not impose any material negative impacts on the neighborhood. See Section 13, below, for more discussion regarding Applicant's conditional use application.

Exterior Building Design: The zoning ordinance requires that the Board determine the “Adequacy of... exterior building design in regard to achieving maximum compatibility with adjacent property and with the character of the neighborhood”. Perhaps no other aspect of this application has created more controversy than this. Some have suggested that “exterior design” includes the size of the building and that the size of this building is so out of scale with the context of Hinesburg that nothing can be done to make it achieve “maximum compatibility”. The Board spent considerable time evaluating this question. Some pertinent facts are:

- Unlike every other zoning district in which retail uses are allowed, the Commercial Zone within which this project is located does not place a 20,000 square foot limit on retail uses.
- Nearby uses include NRG at approximately 70,000 square feet and the former Saputo plant at approximately 86,000 square feet.

We find that the proposed size of 36,000 square feet is allowed and does not cause the project to violate the standard.

Now we turn our attention to the exterior design. Applicant originally proposed one of its standard prototype building designs. In response to objections to the design, Applicant submitted a revised design in July 2011. While many expressed appreciation for Applicant’s responsiveness, there continued to be objections. To address this, Applicant hired a local Hinesburg architectural firm to conduct a community design charrette to obtain local input into the design. While this is not a formal part of the permit review process, it indicates Applicant’s willingness to incorporate local architectural aesthetic and speaks to the question of “maximum compatibility” with the character of the neighborhood. Based on the input from the charrette, the local architectural firm developed a third design and what follows is based on review of that design with respect to conformance with the criterion.

It is important to understand what the criterion requires. There are two aspects to this review. First, the criterion requires “maximum compatibility”. On the one hand this is a strong standard expressing the intent that a proposed building be highly compatible. On the other hand it is ambiguous because “compatibility” is a subjective concept and there is no clear “bright line” to determine what is “maximum”. This requires some reasonable judgment on the part of the Board.

Second, the criterion requires that the standard to which the proposed building is compared is “adjacent property and the character of the neighborhood”. “Adjacent property” is clear – those that abut the applicant’s site. Determining the neighborhood requires some judgment.

Town staff in its staff memo on this topic argued that “neighborhood” for this project should be “what the structure directly relates to”, but not include properties such as NRG or the former Saputo plant that are not directly visible from Lot 15. On the other hand, Applicant researched definitions of “neighborhood” and found that typical definitions referred to an “area” or “district” with characteristics that distinguish it from other areas or districts. We agree.

The Board finds that the applicable “neighborhood” for this application is the area running generally from Saputo on the south to NRG on the north and from Saputo and Kinney Drugs on the west to Nestech and the Waitsfield and Champlain Valley Telecom building on the east. This neighborhood constitutes Hinesburg’s commercial core and has distinguishing characteristics that separate it from other areas in each direction. South of Saputo the Village largely consists of historic clapboard buildings that are smaller scale with a substantial percentage being residential. West of Saputo and Kinney Drugs are farm fields and the new Creekside residential neighborhood. North of NRG one finds largely open lands, until one reaches the commercial area at Ballard’s Corner. (Over time infill development may cause the Ballard’s Corner area to merge with the commercial neighborhood that is the subject of this discussion). Areas east of Nestech and the telecom building are predominantly residential. Thus a clear line can be drawn around the commercial core within which the Applicant’s project is located, making it a distinct commercial neighborhood.

To be approved, the Applicant’s proposed exterior building design must be deemed to have “maximum compatibility” with this commercial core neighborhood. Within this neighborhood and including the adjacent properties, one finds a remarkably diverse collection of buildings including NRG’s modern two story structure, Saputo’s bare-bones metal industrial design, a Quonset hut, two one-story shopping centers, a mini-storage, a few small clapboard residences, the new Kinney Drugs, the fire station and others. Some are two stories, yet most are single story. Some have flat roofs, others are gabled and there is the rounded Quonset hut. Some are brick or other masonry, others are clapboard or metal. Among these we find no consistent architectural themes.

Applicant’s third and final design, which is the subject of this review, is single story yet gives the appearance of being two story by using a wrap-around canopy to create a horizontal break and then including windows above. The windows provide natural lighting into the store. The building has a flat roof, yet gives the appearance of a hipped roof by wrapping the roof with a pitched roof that has the function of screening roof-top HVAC units and providing a place for solar voltaic panels. The building uses a mix of materials including a masonry base, with vertical board & batt siding above that and horizontal clapboards in the upper area above the canopy. The front entry is gabled. The canopy includes larger pavilions at the northeast and southeast corners to help address the entry drive and Mechanicsville Road respectively. Many of these elements are present in existing buildings in the neighborhood. Nothing about this design is out of keeping with other buildings on adjoining

lots or in the neighborhood. Moreover, the careful attention to architectural design has resulted in a proposed building that is more attractive than many others existing in the neighborhood.

Conclusion

The Board concludes that the size of the proposed store is allowed by the zoning ordinance and its design achieves maximum compatibility with the development on adjoining lots and the overall character of the commercial core neighborhood.

4. **Findings re: Adequacy of exterior lighting for safe circulation on the site without creating off-site glare and excess illumination** (4.3.4(4));

Hinesburg's zoning ordinance does not contain measurable standards for lighting levels, pole heights nor does it specify type of bulbs. Staff's December 29, 2010 memo suggested that the Applicant might look to the Outdoor Lighting Manual for Vermont Municipalities for guidance. This source recommends an average of 2.4 foot candles for parking lots. This is almost exactly what was included in Applicant's initial lighting proposal. Nonetheless there were concerns that this would be too bright. There were also concerns that the proposed pole heights were too tall and some recommended that the Applicant use LED bulbs rather than the initially proposed High Pressure Sodium bulbs. Despite there being no requirement in the zoning ordinance for any specific lighting levels, or for LED bulbs or specific pole heights, Applicant responded with a revised lighting plan that has an average 1.23 foot candle illumination level, uses LED bulbs and includes a maximum pole height of 20 feet.

All proposed lighting fixtures are "full cut-off" which eliminates glare unless one is almost directly under the light. Applicant's lighting plan includes photometric analysis which indicates that there will be no light "spillage" onto abutting properties. Applicant proposes to turn off all exterior lights within one hour after the store closes to customers each day with the exception of four security lights – two in front of the building and two in the rear.

Conclusion

The Board is satisfied that the proposed lighting will provide safe circulation for vehicles and pedestrians on site and will not create off-site glare or excess illumination.

5. **Findings re: Adequacy of sewer and water** (4.3.4(5));

The town has sufficient water and sewer capacity and adequate water pressure to support the proposed development project, so the proposed plans are adequate, subject to Applicant obtaining allocations from the Selectboard.

Conclusion

After reviewing the site plan and supporting data, the Board approves the proposed sewer and water systems, subject to obtaining allocations from the Selectboard.

6. **Findings re: Adequacy of drainage and grading plan, ensuring treatment and control of stormwater runoff, control of soil erosion during and after construction, and proper design solutions for steep slopes and poorly drained areas** (4.3.4(6));

Applicant's stormwater design evolved over the course of the review and it was the subject of considerable concern. Revised plans were submitted May 1, 2012 and supported by two memoranda from Applicant's civil engineer, one dated May 8, 2012, the other dated May 24, 2012. Further revised plans, Sheets C3 and C4 last revised 7/5/12, were submitted on 7/6/12. The major changes on these plans were 1) to move the existing drainage swale between Lot 15 and Lot 11 entirely onto Lot 15, and 2) to incorporate replacement of the existing culvert under Commerce Street with a new culvert to help alleviate existing problems with back-ups in that area. The Applicant also submitted an additional stormwater related memo, dated July 6, 2012, responding to various questions.

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The applicant faced challenges in designing a stormwater system for its project. First, the state stormwater rules have changed significantly since Commerce Park was originally permitted and now require both a higher level of stormwater retention and water quality treatment than before.

Secondly, there are pre-existing problems with Commerce Park's stormwater system due to an inadequate culvert under Commerce Street between Lots 10 and 11. In larger storm events this culvert can't handle the flows. Consequently water backs up causing some flooding on Lot 11 and eventually over-topping the western driveway serving Lot 10. Once overtopped the water flows into another drainage swale along the front of Lot 10 and eventually to Patrick Brook.

To address these challenges Applicant designed a stormwater system that includes on-site pre-treatment and storage. The flows leaving the site are split with the so-called "first flush" going into the existing swale between Lot 15 and Lots 11 and 12 for water quality treatment and the majority of the remaining flows being piped around the existing swales directly to the existing permitted stormwater pond located between Lots 2 & 3. This results in Lot 15 contributing less stormwater into the problem area between Lots 10 and 11 post-development than it does at present. This will help incrementally decrease the pre-existing problems in this area. Applicant also proposes to replace the existing culvert under Commerce Street with one that will reduce backups caused by the inadequacies of the existing culvert.

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The Applicant must obtain a Stormwater Discharge Permit from the State prior to construction, evidencing compliance of its design with all applicable requirements.

Applicant's project will obtain a construction period erosion control permit from the State of Vermont. There are no steep slopes on the site. There are some wetlands on the site, some of which the Applicant proposes to fill, others are to be retained. Applicant will have to obtain a permit from the US Army Corps of Engineers to impact these wetlands before it can proceed with its project.

Conclusion

Applicant's proposed stormwater system will improve Commerce Park's stormwater system and reduce pre-existing problems between Lots 10 and 11.

7. **Findings re:** *Consistency with the Town Plan in regards to the pattern of development, preservation of significant natural and cultural resources, and the location and nature of existing and planned roadways and other public facilities (4.3.4(7));*

Pattern of Development:

The 2005 Town Plan applies to this project. The Plan identifies Hinesburg's Village as "a focus for the manufacturing, commercial and agricultural economies of the Town" and "the social and economic center for Hinesburg." It goes on to credit "[t]he combination of residential and commercial in close proximity" with keeping "the Village alive throughout the day and some of the night" (Pg.17). On page 19, the Plan says The Village "helps frame the character of the Town by defining a compact built landscape that stands in contrast to the surrounding rural landscape. It is Hinesburg's primary growth center, where essential municipal infrastructure (e.g., sewer, water, sidewalks, etc.) are made available to both ensure the public's welfare and to provide for mixed uses at higher densities than the rest of town."

A supermarket, public park, and farmers' market add to the Village's focus on its commercial and agricultural economies, while mixing social and economic objectives to bring people to the Village and to keep it "alive throughout the day and some of the night." This building is located in the designated Village Growth Center and does not impinge on the surrounding rural landscape; the Plan specifically contemplates bringing to the Village elements that contrast with the surrounding rural landscape.

Preservation of significant natural and cultural resources:

The 2005 Town Plan indicates no significant natural or cultural resources on or near the project site, so the proposal complies with this standard.

Location and nature of existing and planned roadways and other public facilities:

The 2005 Town Plan does not contemplate planned roadways or public facilities that would be affected by the project. The Official Map does contemplate them on this site however the Official Map is not part of the Town Plan and thus cannot be looked to with respect to this particular criterion. (See Section 14 below for a discussion of conformance with the Official Map).

Conclusion

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The Board finds that bringing a supermarket to Lot 15 would help fulfill the vision expressed in the 2005 Town Plan, without jeopardizing any natural or cultural resources. Moreover, the Town Plan is a stand-alone document; conformance with the Town Plan is determined only by the language within the four corners of the Town Plan document. Thus, we are not tasked with reviewing the Official Map to determine conformance with the 2005 Town Plan, but rather must review the 2005 Town Plan to determine conformance thereto.

8. **Findings re:** *Proper planning and design in regard to hazardous wastes and avoidance of runoff* (4.3.4(8)).

Hazardous Wastes

This project will not generate any hazardous wastes. As is typical in a supermarket, relatively small quantities of batteries, cleaning fluids, fuel, pesticides, and similar typical hazardous household products will be stored and sold on site. Each product has instructions for clean-up and store employees are trained for their proper removal and containment in case of leaks or spills.

Avoidance of Runoff

See Section 6 above for discussion of run-off.

Conclusion

Applicant's representation of its planning in regard to properly disposing of hazardous waste and avoiding runoff satisfies the Board.

9. **Findings re: Conformance with design standards as stated in Sections 5.23 and 5.6, where they apply.**

Section 5.23 is not applicable to this project in the Commercial District. With respect to Section 5.6, this project meets or exceeds all the Design Standards for Commercial and Industrial Uses, as follows.

- a. **New Streets:** *“All newly constructed streets will be paved and be constructed according to Town Road Standards, which are in effect at the time that the street is constructed. All newly constructed streets in the Village and Commercial districts shall have sidewalks at least 5 ft. wide and street trees as specified in the Subdivision Regulations which are in effect at the time the street is constructed. The Development Review Board may require sidewalks and street trees as part of site plan approval or subdivision approval in other districts.”* (5.6.1)

Applicant proposes no newly constructed streets.

Conclusion: Applicant’s proposal conforms to the above regulation.

- b. **Road Cuts:** *“Any parcel of land in commercial and industrial districts in single ownership on November 7, 1972, shall be served by no more than one (1) road-cut. (The present access to the former Giroux Building Supply, Inc. property shall not be included in the foregoing calculation.) Additional curb cuts may be allowed by the Development Review Board for a lot in single ownership that obtains site plan approval for the entire parcel of land”* (5.6.2)

Applicant proposes no additional curb cuts.

Conclusion: Applicant’s proposal conforms to the above regulation.

- c. **Parking and loading areas:** *“Parking and loading areas for any new structures shall be located in the side or rear yards of the structure. Where sufficient screening is provided, and with Development Review Board approval, up to 20% of the total number of parking spaces may be located in the front yard of the structure. If more than one structure is served by the parking area, the parking area may be located in the front yard of half of the structures”.* (5.6.3)

The front yard of Applicant’s project is located between Mechanicsville Road and Applicant’s proposed building. Applicant proposes no parking spaces in the front yard.

The loading area is located in the structure’s side yard.

Conclusion: Applicant’s proposal conforms to the above regulation.

- d. **Exterior lighting:** *“All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector/refractor areas from view from points beyond the perimeter of the area to be illuminated.”* (5.6.4)

All proposed exterior lighting fixtures are so-called “full cutoff” types which conceal light sources and reflector/refractor areas from view unless one is nearly beneath them. Applicant’s lighting plan has an average 1.23 foot candle illumination level, uses low energy LED bulbs and includes a reduced lighting pole height of 20 feet. See Section 4 for a detailed discussion of these proposed improvements.

Conclusion: Applicant’s proposal conforms to the above regulation.

- e. **Landscaping:** *In addition to generally improving the appearance of a site, plantings, fencing and other landscape features shall be designed to serve a clear function such as: screening between incompatible uses or structures; visually screening expanses of pavement or large un-broken building facades; providing shade in summer for roads, parking lots and buildings; defining street edges and other public spaces; giving visual emphasis to entryways; providing privacy; controlling erosion, and/or to filter, absorb and slow storm water runoff.* (5.6.5)

The proposed landscaping complies with the Landscaping Plan & Standards from Zoning (Sec. 4.3.8). The plantings are designed to create an attractive streetscape and buffer views of the site as seen from Mechanicsville Road, Route 116 and Commerce Street. The pedestrian sidewalk along the canal has an existing row of trees on each side, which are being kept and supplemented in areas where there are gaps in the rows. There are trees in and around the parking lots to both screen the lots and provide shade for parked vehicles. Trees are also being planted directly in front of the proposed building. New street trees will be planted along the western side of the access drive. Collectively these trees screen and shade the parking, soften the building façade, define the street edge and create a sense of arrival.

Conclusion: Applicant’s proposal conforms to the above regulation.

- f. **Sidewalks and Trails:** *“At the discretion of the Development Review Board, sidewalks a minimum of five (5) feet wide, bike lanes or trails may be required for projects in the Commercial, Industrial and Village Districts where, in the judgment of the Development Review Board, these facilities are necessary to improve public safety, reduce vehicular traffic, provide access to services or otherwise promote continuity within the zoning district.”* (5.6.7)

Applicant has committed to improving Hinesburg’s pedestrian network. See Section One (1) for a detailed discussion of the proposed improvements.

Conclusion: Applicant’s proposal conforms to the above regulation.

- g. **Roof Materials:** *“Highly reflective and lighter roof colors designed for building energy savings shall be allowed.”* (5.6.9)

The building will use off-white roofing materials to reflect light and conserve energy.

Conclusion: Applicant's proposal conforms to the above regulation.

10. **Findings re: Off-Street Parking Standards**

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"The DRB shall have the authority to determine the necessary amount of parking... based on the specific use, predicted parking needs, public and shared parking availability and other factors...." (5.5.4)

The zoning ordinance has a *guideline* for parking for retail uses of 1 space per 400 square feet of floor area. For Applicant's 36,000 square foot facility, this equates to 90 parking spaces. Applicant originally proposed 144 parking spaces (1 per 250 sq ft), later reduced to 128 spaces (1 per 282 sq ft). Applicant provided evidence that typically supermarkets require between 4 and 5 spaces per 1,000 sq ft (between 1 per 250 and 1 per 200 sq ft). However, based on Applicant's considerable experience building and operating supermarkets, Applicant represented that 128 spaces will be sufficient.

Conclusion: Based on national standards and Applicant's extensive experience the Board concludes that Applicant's project requires more than the 90 spaces suggested by the guidelines in the ordinance and that 128 spaces are adequate.

11. **Findings re: Conformance with Performance Standards**

- a. **Re:** *Unreasonable noises are not permitted. A determination of "unreasonable" shall include factors such as intensity, duration, and frequency (i.e., how often it occurs). No noise other than noises that would be part of the normal coming and going by occupants shall be discernible at property lines during the following hours:*

Commercial and Industrial Districts: *before 6:00 a.m. or after 10:00 p.m. on weekdays, or before 7:00 a.m. or after 9:00 p.m. on weekends and holidays.... The Development Review Board may permit noises at other times, as a conditional use if it finds that reasonable steps have been taken to accommodate adjoining property owners, and if it finds that it is reasonable to permit noise at other times.... (5.12.1)*

In addition to removing the drive-through and relocating the service area from the building's southwest corner to its northwest corner, Applicant withdrew its request to be open for business to customers after 10pm and for overnight deliveries.

The Board finds the applicant's proposed project conforms to the noise standard.

- b. **Re:** *No vibration shall be measurable at the outer boundaries of the parcel (5.12.2)*

No aspect of this project is expected to create vibrations beyond what is typical for ordinary and normal retail enterprises. The Board foresees no issues under this criterion.

- c. **Re:** *No odors shall be discernible at the outer boundaries of the parcel* (5.12.3)

Nothing about his project is expected to cause odors. The rubbish will be contained within a fully enclosed compactor accessed by a chute from the inside. The Board foresees no issues under this criterion.

- d. **Re:** *No fire, explosive, or safety hazard shall be permitted which significantly endangers other property owners or which results in a significantly increased burden on municipal facilities.* (5.12.4)

The project does not involve any fire or explosives activity or other known safety hazard. The Board foresees no issues under this criterion.

- e. **Re:** *"Smoke emissions shall no exceed number two (2) on the Ringleman Chart."* (5.12.5)

This retail store will not produce material smoke emissions. The Board foresees no issues under this criterion.

- f. **Re:** *"No dust or fly ash shall exceed two-tenths (.2) grain per cubic foot of flue gas at a stack temperature of five hundred degrees Fahrenheit."* (5.12.6)

No aspect of this project will exceed this standard. The Board foresees no issues under this criterion.

- g. **Re:** *No noxious gases shall be discernible at the outer boundaries of the parcel.* (5.12.7)

This project will not produce noxious gases. The Board foresees no issues under this criterion.

- h. **Re:** *No glare or heat shall be discernible beyond the outer boundaries of the parcel.* (5.12.8)

This project will not produce and glare or heat discernible beyond the property boundaries. The Board foresees no issues under this criterion.

- i. **Re:** *Industrial wastes shall be so deposited, stored, and transmitted from parcels as to not be objectionable to adjacent properties nor create a public nuisance. No*

wastes shall be discharged into any water course nor into any wastewater disposal system beyond its property capacity. All local, state, and federal regulations and standards shall be complied with. (5.12.9)

This project does not involve any industrial wastes nor any wastes discharged into any water course. The project will use municipal waste water treatment and will not involve any on-site wastewater treatment. The Board foresees no issues under this criterion.

Conclusion

The Board is satisfied with Applicant's proposal with respect to Section 5.12 Performance Standards.

12. Findings re: Signs

Applicant proposes a freestanding sign to be located near the intersection of its entry drive with Commerce Street and a wall mounted sign above the store's main entrance. Both signs are internally illuminated. The freestanding sign is two-sided with each side being 2 feet by 7 ft 3.5 inches, for a total of 14.6 square feet. The wall mounted sign is 13 feet 6 inches by 7 feet 4.75 inches, for a total of 99.84 square feet. Both are within the maximum areas allowed by the ordinance of 16 square feet for the freestanding sign and 100 square feet for the wall mounted sign. The freestanding sign, including its base, stands 4 feet 6 inches tall, which is within the maximum of 15 feet allowed by the ordinance.

- a. **Re: Illumination.** *All illuminated signs, whether internally lit or lighted from external sources, require Development Review Board approval. No sign may have any neon, flashing, intermittent, or moving lights, moving parts, or fluorescent paint. Internally illuminated signs with dark lettering on light backgrounds are not preferred, but may be permitted with the approval of the Development Review Board. Signs with internal illumination shall not be lit when the premises are not open for business. Signs, which are illuminated from external sources, may be lighted when the premises are not open if so approved by the Development Review Board.*
(5.4.5(1))

The freestanding sign will be lit by fluorescent tubes. The sign cabinet is opaque, with only the lettering and Hannaford logo being illuminated from the internal source.

The wall mounted sign will be lit by LEDs installed within the cabinet sign and the individual channel letters.

No neon, flashing, intermittent or moving lights or moving parts or fluorescent paint is proposed. The signs have dark lettering but only the lettering itself and the logo are

proposed to be lit. The backgrounds will be opaque and not lit. The Applicant states that the signs will be turned off when the store is closed to customers.

The Board is satisfied that the lighting for the signs is not excessive and complies with the lighting restrictions.

- b. **Re: Lighting not to cause a hazard.** Lighting is permitted only in cases where the fixture has been shielded to prevent any beam or ray of light from causing a hazard to a moving vehicle on a public or private road, or to interfere with the use or enjoyment of neighboring property. (5.4.5(2))

The Board foresees no issues with this standard.

- c. **Re: No interference with driver's view.** *No sign may interfere with or prevent the driver of a motor vehicle from having a clear and unobstructed view of official traffic control signals, and of approaching, entering, or emerging traffic.* (5.4.5(3))

The freestanding sign is located approximately 30 feet from the edge of curb on Commerce Street, which is sufficient for a vehicle exiting the Applicant's driveway to have clear view of any approaching vehicles.

- d. **Re: No interference with traffic.** *No sign shall be situated so as to interfere with pedestrian or vehicular traffic.* (5.4.5(4))

The freestanding sign is located in a green belt and does not interfere with vehicular or pedestrian traffic.

Staff argued that because Lot 12 which abuts the entry drive to the west is undeveloped, the Applicant's freestanding sign should be located in a manner allowing a sidewalk on the west side of the drive in the future, should Lot 12 be developed. However, unlike the Bank of Middlebury on the east side of the entry drive, Lot 12 has no rights whatsoever to the entry drive. The Board has no authority to compel the Applicant to provide an easement to Lot 12 for it to construct a sidewalk along the entry drive. Moreover, should Lot 12 be developed and desire a sidewalk along its eastern side, such a walk can be constructed on Lot 12 itself.

- e. **Re: No imitation of official sign.** *No sign may interfere with or imitate or appear to be an official sign or signal.* (5.4.5(5))

The Board foresees no issues with this standard.

- f. **Re: Signs on natural features.** *No sign may be maintained on natural features, or*

trees, or on utility poles, unless specifically authorized by the Development Review Board. This section shall not apply to signs referred to in the table at Sections 5.4.1(3)(b), 5.4.1(3)(c), 5.4.1(3)(f), and 5.4.1(3)(l), and non-commercial signs of those listed in Section 5.4.1(3)(a), although this paragraph shall not be construed as encouraging placement of such signs on natural features; placement of signs on utility poles may be prohibited by the utility company. (5.4.5(6))

No signs are proposed to be attached on natural features or utility poles.

- g. **Re: Advertising businesses in other towns.** *No sign shall be erected or maintained within the Town of Hinesburg unless the business or occupation it advertises is legally carried on within the boundary limits of the Town of Hinesburg. (5.4.5(7))*

The Board foresees no issues with this standard.

- h. **Re: Off premises signs.** *No sign will be allowed off the premises which the sign advertises or serves, unless specifically authorized by the Development Review Board or as allowed in Section 5.4.1(3)(h) and 5.4.1(3)(l). Under no circumstances will such approval be given unless the premises advertised are within the neighborhood of the location of the sign, and the location of the sign is appropriate and necessary in order to identify the location of the premises advertised. State law may also prohibit off-premises signs. (5.4.5(8))*

The zoning administrator ruled that the entry drive parcel has merged with Lot 15 by operation of law. Both proposed signs are on-premise.

- i. **Re: Setbacks.** *No sign may be closer to a side or rear lot line than the minimum building side-yard or rear-yard setbacks for accessory structures set forth in Section 2.5 of this Regulation, unless specifically authorized by the Development Review Board. (5.4.5(9))*

The Applicant's proposed freestanding sign is located approximately 5 feet from the side yard. The minimum side yard setback is 10 feet. The proposed sign is located within a greenbelt approximately 15 feet wide. Therefore the applicant could relocate the sign to meet the 10 foot setback and still be 5 feet from the driveway pavement. However, standard 5.4.5(11), below, requires that signs be 15 feet from the traveled way of a street. Under the zoning ordinance's definition of "street", as a shared right-of-way (it is shared by the abutting Bank of Middlebury) the entry drive is a street, thus triggering the 15 foot offset requirement. Clearly the Applicant can't achieve both.

The Board finds that the Applicant's proposed location is a reasonable compromise

between the minimum side yard setback and the minimum setback from the traveled way and causes no hardship to any other party and does not create a safety hazard. The Board has the explicit authority to approve this location and does so.

- j. **Re: No signs within or over a right-of-way.** *No sign is permitted within a right-of-way or over a right-of-way, unless specifically authorized by the Development Review Board. This section does not apply to the signs referred to in the table at Section 5.4.1(3)(h), if approval for a sign over a right-of-way is obtained from the appropriate entity with jurisdiction over the road. Signs along Route 116 are required to be a minimum distance from the centerline of the highway in accordance with state statutes. (5.4.5(10))*

The Applicant's entry drive is shared with the Bank of Middlebury. While the drive is part of Applicant's lot, the bank has an easement over it giving them access to their lot. The Applicant has proposed its freestanding sign be located within the bank's right-of-way. It is proposed to be located on the west side of the right-of-way, opposite from the side on which the bank is located. The principle purpose of the restriction of signs within a right-of-way is to ensure that signs do not interfere with the functioning of the right-of-way, preventing reasonable access to the property of the beneficiary of the right-of-way. The Board finds that Applicant's proposed sign is located in a manner that will not interfere with the bank's use of the right-of-way and approves the location.

- k. **Re: Setbacks from streets.** *No sign, other than a sandwich board or portable sign, may be closer than 15 feet to the traveled portion of a street. Under extraordinary circumstances, the Development Review Board may permit a sign to be closer than 15 feet. (5.4.5(11))*

The Applicant's freestanding sign is proposed to be located approximately 10 feet from the traveled portion of its driveway, which qualifies as a street under the definition of street contained in the ordinance.

Per the discussion above under standard 5.4.5(9) the Board approves this location.

- l. **Re: Maintenance of signs.** *All signs shall be kept properly painted and well-maintained, whether or not a permit is required for the sign. (5.4.5(12))*

Applicant has assured the Board that it will keep its signs well maintained.

Conclusion

The Board concludes that the Applicant's two signs are in conformance with the ordinance and approves both as proposed.

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13. Findings re: Conditional Use Approval for Business Hours

No commercial or industrial use shall operate outside the hours of 6:00 a.m. to 10:00 p.m. without the conditional use approval of the Development Review Board. (4.3.6)

Applicant's original application included a request for Conditional Use Approval for three activities that would have extended beyond these hours: 1) approval to be open to customers for one extra hour, between 10:00 p.m. and 11:00 p.m., 2) approval to have deliveries occur outside the hours of 6 am to 10 pm and, 3) approval to have employees inside the store overnight conducting internal operations such as cleaning, stocking shelves and similar activities after the store is closed to the public. Community members' concerns about these late hours led Applicant to withdraw requests 1 and 2.

In its July 2011 Application, Applicant requested that the Board determine whether request #3 constitutes "operating" as intended by Section 4.3.6. The Board finds that request #3 constitutes a request to extend operating hours beyond the 6:00 a.m. to 10:00 a.m. timeframe, and thus Applicant must obtain conditional use approval.

Applicant's conditional use request includes: a) After closing to the public at 10 pm, there may be up to 10 customer service employees who will depart shortly thereafter. b) A night crew of not more than 10 people will be present overnight consisting of a floor maintenance crew every night and a stocking crew to stock shelves. c) Up to 10 day staff may arrive shortly before the store opens at 6 am.

Regarding staff vehicles on site after 10 pm, there may be up to 10 customer service employees in the store until shortly after closing to the public at 10 pm, this presumably could represent as many as 10 staff vehicles on site until soon after the store closes. With up to 10 night staff there could be up to 10 vehicles on site overnight until shortly before 6 am when day-shift customer service employees begin to arrive.

Sections 4.2.2(1)-(7): *"The Development Review Board shall ensure that the proposed conditional use shall not adversely affect: . . ."*

a. *The capacity of existing or planned community facilities (4.2.2(1))*

No aspect of having up to 10 employees working inside the store overnight will adversely affect the capacity of existing or planned community facilities. There is

ample water and sewer capacity and no other community facilities are known to be directly affected in any manner by a small overnight shift.

- b. *The character of the area affected, and the essential character of the neighborhood or district in which the property is located (4.2.2(2))*

This project is a commercial use located within a Commercial District. The immediate area or neighborhood is mixed use, dominated by commercial uses. Nothing about having a small number of employees in the store overnight will adversely affect the character of the neighborhood or district.

- c. *Traffic on the roads and highways in the vicinity (4.2.2(3))*

The modest numbers of vehicles associated with the small number of employees between 10 pm and 6 am will have a negligible impact on traffic during these hours when comparatively little traffic is on the roads.

- d. *The Town Plan and Regulations in effect (4.2.2(4))*

Nothing about having a few employees inside the store overnight will adversely affect the town plan or regulations.

- e. *The proposed conditional use shall not adversely affect utilization of renewable energy resources (4.2.2(5))*

The proposal to have up to 10 employees inside the store will have no adverse impact on utilization of renewable energy resources.

- f. *The appropriate use or development of adjacent property (4.2.2(6))*

The proposal to have up to 10 employees inside the store overnight will not adversely affect appropriate use or development of adjacent properties. These will be internal functions with very little traffic and no material impact on adjacent properties.

- g. *The public welfare in any other manner (4.2.2(7))*

The proposal to have up to 10 employees inside the store overnight will not adversely affect the public welfare in any manner whatsoever.

Conclusion

The Board concludes that the Applicant's request to have up to 10 employees inside the store between the hours of 10 pm and 6 am and to have shifts departing and arriving shortly after 10 pm and before 6 am respectively, complies with the Conditional Use criteria and is approved.

14. Findings re: Official Map

The Town of Hinesburg adopted an Official Map which became effective on May 25, 2009. An Official Map regulates land development by identifying existing and future municipal improvements that must be accommodated by development proposals. Hinesburg's Official Map identifies seven properties as locations for "Future Community Facilities". One of the seven identified sites is Lot 15 of Commerce Park on which Applicant now proposes to build its supermarket. The map states "Future community facilities for the areas shown include, but are not limited to: Town Green, Community Center, Fire/Police Station expansion, Farmer's Market venue, Parks & Recreation areas, Library relocation". The map fails to specify which community facilities go on which of the seven identified sites. The 2005 Town Plan provides no guidance regarding which use is intended for which site. The 2008-2014 Capital Budget suggests several of these uses should be on one or another of the other six sites designated on the Official Map for Future Community Facilities. No use is specified for Lot 15.

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The Applicant initially took the position that because no specific facility had been designated for Lot 15, it was not required to accommodate any of them. However, in its amended submittal, filed in July 2011 and without waiving its prior objection, Applicant newly proposed to accommodate two facilities. Applicant offered a "pocket park" and offered to host the Hinesburg farmer's market. In subsequent filings and hearings Applicant further amended these proposals to even better accommodate the identified community facilities.

Applicant expanded its offer of a "pocket park" into an area extending the full width of Lot 15's frontage along Mechanicsville Road, totaling just under one acre. Applicant calls this "Canal Park". Applicant offered that the Town may design the park in this area as it sees fit, subject to Applicant's review and approval of the design and use. If the Town elects to accept this offer, in lieu of Applicant installing the pocket park and the landscaping shown in the area of Canal Park on Applicant's plans, Applicant has offered to give the town \$28,820 to pay for the Town's design in this area. Applicant provided a proposed draft permanent easement deed for "Canal Park".

Applicant also expanded its offer to host the farmer's market by offering to purchase additional land (approximately 75 ft by 185 ft) from the abutting Quonset hut property to provide a green area so that those vendors that prefer to set up on a grassy area have a place

to do so next to those that prefer to set up on a paved area. Applicant further amended its initial proposal such that the easement for the farmer's market is being offered to the town as a community facility as requested to enable the Town better control of the facility, rather than being offered directly to the operator of the farmer's market. Applicant's offer includes the installation of improvements and services including a water spigot and electric outlet for use of the market, providing a location for the market to have a shed in which it can store its supplies and allowing farmer's market vendors and patrons to park anywhere in Applicant's parking lot and use Applicant's indoor bathrooms.

Conclusion

The Applicant has vested rights in the regulations as they existed on the day Applicant filed a complete application. The Board finds that as of that date, no specific community facility was designated for Lot 15. The Board has no authority to impose regulation that did not exist as of the date the Applicant vested in the rules, thus the Board cannot require the Applicant to accommodate any specific use, since none was specified in any officially adopted regulatory document. Nonetheless, the Board rejects Applicant's assertion that this frees the Applicant from having to accommodate any community facility. Several different community facilities are identified on the Official Map. Because no single use was specified the Board finds that Applicant is free to choose which listed community facility it would accommodate, and the Applicant has offered to accommodate two different community facilities. The Board concludes that Applicant's offer of easements to the Town for both a "Canal Park" and the farmer's market, and its offer to make improvements and offer services to the farmer's market and to contribute to the park's costs, fully satisfy the Applicant's obligation to "accommodate" the community facilities identified on the Official Map.

ORDER

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg Board gives site plan and conditional use approval to the proposed 36,000 square foot retail store and associated changes to Lot #15, subject to the conditions listed below.

1. Prior to obtaining a zoning permit for its project, the Applicant shall:
 - a. Obtain water and sewer allocations from the Town Selectboard.
 - b. Obtain approval from the Selectboard for all work in the Town right of way.
 - c. Negotiate final versions of the easements for "Canal Park" and the farmer's market with the town attorney, which shall have substantially the same terms as the draft easements reviewed by the Board.

- d. Obtain subdivision approval required to add the approximately 75 ft x 185 ft parcel to Lot 15.
 - e. Obtain amended site plan approval for the Quonset hut lot (Tax parcel ID #20-50-02.200) to reflect the smaller lot.
 - f. Obtain amended site plan approval for relocation of the driveway of Firehouse Plaza (Tax parcel ID #s 20-50-75.000 and 20-50-75.000).
2. The Board approves Applicant's proposal to provide the Town \$28,820 toward construction of "Canal Park" in lieu of installing the landscaping and "pocket park" shown on its plans in the area of "Canal Park". In the event the Selectboard fails to accept the easement for "Canal Park" prior to the time when Applicant obtains a zoning permit, Applicant shall install the landscaping and pocket park as shown and shall have no obligation to offer the easement to the Town or to provide the funding to the town.
3. Prior to opening its store Applicant shall:
- a. At the intersection of Route 116 & Commerce St., widen and lengthen the existing Commerce St westbound lanes approaching Route 116 as shown on Applicant's plans.
 - b. At the intersection of Route 116 & Commerce St., lengthen the existing Route 116 southbound left-turn lane approaching Commerce St. as shown on its plans.
 - c. Relocate the existing western curbcut for Firehouse Plaza's as shown on Applicant's plans.
 - d. Paint hatch marks on the pavement in front of Mobil's western curb cut and provide signage to discourage vehicles from blocking the curb cut.
 - e. At the intersection of Route 116 and Charlotte Rd, obtain final approval from VTrans for and change the signal phasing to eliminate the existing east bound/west bound split phasing.
 - f. Relocate the sidewalk in front of Lantman's closer to Route 116 as conceptually shown on slide 7 of the PDF of the Powerpoint presentation made to the Board on February 21, 2012, subject to obtaining approval of the Selectboard of the work to be done within the Town right of way.
4. Follow-up traffic study:
- a. Applicant shall conduct a follow-up traffic study between 6 and 12 months after its store opens. The first step will be to count PM peak hour trips. If it is found that the store generates trips that are 20% or more below the estimate of 389 trips used in Applicant's traffic study (311 or fewer trips), no further study will be done. If the trips are found to be above this, then the next step will be to do intersection counts and trip distribution analysis of Hannaford's trips. If turning movements are 20% or

more higher than predicted, then the Applicant will return to the Board to review whether further mitigation is warranted

- b. At the same time as the foregoing study, Applicant shall analyze whether south bound left turn movements at Route 116/Commerce St. intersection are higher than predicted in Applicant's traffic study. If so, and if those left turns extend beyond the capacity of the south-bound left turn lane such that they block through traffic on Route 116 more than 3 minutes during normal PM peak hour conditions, then Applicant shall return to the Board to re-assess the need to further lengthen the south-bound left turn lane and widen Patrick Brook culvert.
5. In the event the intersection of Mechanicsville Road and Route 116 is signalized within five years of the opening of Applicant's store, Applicant shall pay \$25,000 to the Town toward the cost of such signalization.
 6. Applicant and its successors shall have perpetual responsibility to maintain its stormwater pipe being constructed under Commerce Street and for any repairs to the street required as a result of the pipe being there.

Vote to approve:

30-day Appeal Period:

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An "interested person," who has participated in this proceeding, may appeal this decision to the Vermont Environmental Court within 30 days of the date this decision was signed. Participation shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. See V.S.A. Title 24, Chapter 117, Section 4465(b) for clarification on who qualifies as an "interested person."

Notice of the appeal, along with applicable fees, should be sent by certified mail to the Vermont Environmental Court. A copy of the notice of appeal should also be mailed to the Hinesburg Planning & Zoning Department at PO Box 133, Hinesburg, VT 05461. Please contact the VT Environmental court for more information on filing requirement, fees, and current mailing address.