Town of Hinesburg
Planning & Zoning Department
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MEMORANDUM

TO: Selectboard

CC: Town Administrator

FROM: Alex Weinhagen, Director of Planning & Zoning

DATE: January 14, 2013

RE: Hannaford Project Update – Environmental Court Appeals & Act 250 Review

The Hannaford supermarket project received three approvals from the Development Review Board (DRB) in 2012. Two minor decisions (sign approval and conditional use approval for extended hours) were granted on August 30, 2012, and the major decision (site plan approval) was granted on November 6, 2012. The Selectboard will be involved going forward. What follows is an update on where the project is headed on the permitting front.

Environmental Court Appeals

A group of interested residents (Responsible Growth Hinesburg or RGH) appealed both the DRB's conditional use approval and the site plan approval. Hannaford filed its own cross appeal challenging several key tenets of both Hinesburg's regulations and the DRB site plan decision. The Hannaford cross appeal also challenges several specific conditions contained in the site plan approval. These appeals will be heard by the VT Superior Court, Environmental Division, which is commonly referred to as the Environmental Court. The Town Attorney (Bud Allen) has entered an appearance with the Court on behalf of the Town to assure that the Town is represented. He indicates that there is a general agreement amongst the various parties (RGH and Hannaford) that the Court hold off on any action (e.g., mediation, trial, etc.) until after the Act 250 review of the Hannaford project. So for now, we are in a holding pattern with regard to these Environmental Court appeals.

Based on the RGH appeals, both the Town Attorney and I felt that the Town would largely play the role of observer. The Town's interest in these two appeals would primarily be to ensure that the DRB's conditions on the approval be respected in any settlement or ruling in favor of Hannaford. There would certainly be a cost to the Town, but we hoped it could be minimized. All that changed when Hannaford filed their cross appeal, which challenges key conditions of the DRB decision. The Hannaford appeal even goes beyond that to challenge the relevancy and applicability of our Official Map, and several sections of our Zoning Regulations. This has the potential to increase the Town's legal costs substantially, although it is impossible to say how much the resulting cost will be.

Act 250 Review

Hannaford is still in the process of developing its Act 250 materials, and has not yet submitted an application. The Act 250 application process includes getting feedback from the Town on the provision of key public services via the "Municipal Impact Questionnaire". This questionnaire asks if the municipality has the capacity to provide services (e.g., fire protection, police protection, road maintenance, etc.) without "unreasonable burdens". Hannaford has requested that the Town complete

this form, and Joe has scheduled discussion on this at your January 28 meeting. I am in the process of getting feedback from each department, and will submit a summary memo to you ahead of that meeting. Hannaford will also be requesting several project related permits/allocations from the Selectboard at the January 28 meeting – e.g., buried utility permit and maintenance agreement for stormwater pipes under Commerce Street, water and wastewater extension permit, wastewater allocation.

The Town's involvement in the Act 250 review process need not be limited simply to the Municipal Impact Questionnaire. Both the Selectboard and the Planning Commission are automatically allowed to participate as interested parties, if desired. I think it is in the Town's interest for the Selectboard to participate in the Act 250 review – if for no other reason than to simply ensure that the issues with which the DRB grappled are properly addressed. As you know, this project was thoroughly reviewed over two years by the DRB; however, the resulting approvals were not cut and dry. In other words, the DRB felt that there were impacts and compliance issues in several areas that required conditions on the approval. Conditions related to Route 116 intersection improvements, future traffic monitoring, and the posting of related bonds. Conditions related to stormwater control, lighting, landscaping, etc.

As noted above, Hannaford's cross appeal of the DRB decision calls into question several of these conditions. Given that the result of that Environmental Court process is uncertain, the Selectboard could help ensure that the community's interests are respected by raising these issues as part of the Act 250 review process. Beyond the Act 250 review, I also strongly recommend that the Town establish lines of communication with appropriate VT Agency of Transportation (VTrans) staff immediately. We need to make sure that VTrans includes the Town in discussions they are having with Hannaford about proposed improvements to the Route 116 corridor. We need to make sure that VTrans understands the Town's concerns, and that all VTrans permits squarely place the cost and responsibility for improvements with Hannaford. This includes the immediate improvements recommended by Hannaford's traffic engineers, as well as future improvements that may be needed if post-construction monitoring demonstrates that more changes/fixes are needed to deal with Hannaford's impacts.

I'm happy to coordinate the Town's participation in the Act 250 process, as well as the Town's communication with VTrans and other State permitting agencies. However, I can't speak for the Town in these venues until you discuss the matter and authorize me to speak on the Selectboard's behalf.