

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

**For Martin's Foods of South Burlington, Inc. and Victor J. and Ramona A. Giroux
Trustees Site Plan for 36,000 SQ FT Retail Use
Parcel Number 20-50-02.100**

This matter came before the Hinesburg Development Review Board (DRB) on the Site Plan Application of Martin's Foods of South Burlington, Inc., for property currently owned by Victor J. and Ramona A. Giroux Trustees hereafter referred to as the Applicant, for a 36,000 ± square foot Supermarket use on Lot 15 on Commerce Street, located in the Commercial District within Hinesburg's Village Growth Area. The DRB 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 on which date the public hearing was closed. On August 29, the Board provided notice to the Applicant and the public that the hearing would be reopened. The hearing was reopened on September 8th and continued to October 2, 2012 and closed on that date. David White, from White and Burke Real Estate primarily represented the applicant with contributions from representatives of Martin Foods and various engineers, lawyers, etc. on their team.

Based on the above-mentioned public hearing and the documents contained in the "document" file for this proposal, the DRB enters the following Findings of Fact, Conclusions and Order.

FINDINGS OF FACT

- 1) The project, to construct a 36,000 ± square foot, Hannaford supermarket along with parking, stormwater treatment and other facilities is located in the Commercial District, Tax Map Number 20-50-02.100. The subject property was originally two separate lots, Lot # 15 of the original Commerce Park Subdivision, and the Commerce Street Extension lot, however they were found during the hearing process to be conjoined as one lot. The Commerce Street Extension portion is considered an access strip, and requires review and approval by the Development Review Board.
- 2) 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.
- 3) A combined Application was received on November 11, 2010, and was deemed complete on November 18, 2010. The proposed use is a permitted use in this district, subject to: Site Plan Review; review for accommodation of the Official Map; Conditional use for various operating activities outside of the hours of 6 am to 10 pm; and Sign Review for two illuminated signs. All were reviewed in the same hearing process but the Sign and Conditional Use have been addressed in separate decisions.

- 4) The DRB reviewed the proposal pursuant to the Zoning Regulations, Official Map and Town Plan in effect on November 18, 2010; which were the Zoning Ordinance adopted on October 12, 2009, the 2005 Town Plan and the 2009 Official Map.
- 5) The application included a variety of survey, engineering, and related documents. Some of these plans were revised or supplemented during the course of the review. All of these submissions are contained in the document file (20-50-02.100) in the Hinesburg Planning & Zoning office. This file also contains staff reports and correspondence from other parties that were discussed during the review and are part of the record.
 - a) Existing Conditions C1, 11/09/10 revised 4/26/12; Overall Plan, C2 11/09/10 revised 4/26/12; 30 Scale Site Plan, C3 revised 4/26/12; Commerce Street Utility Plan, 11/09/10 revised 4/26/12; Lot 15 Utility Plan, C5, 11/09/10, revised 4/26/12; Stormwater Plan C6, 11/09/10, revised 4/25/12; Stormwater Details, C7, 11/09/10, revised 4/25/12; Erosion Control Plan C8, 11/09/10, revised 4/26/12; Water and Sewer Details, C9, 11/09/10, revised 4/26/12; Road and Erosion Details, C10, 11/09/10, revised 4/26/12; Planting Plan, L1, 11/09/10, revised 4/26/12; Lighting Plan, L2, 11/09/10, revised 4/26/12; Landscape Details, L3, 11/09/10, revised 4/26/12; Building Plan View, A-1, 4/26/12, no revisions; and Proposed Revisions, A-2 5/24/12.
- 6) The following members of the DRB participated in the complete review process, Tom McGlenn, Ted Bloomhardt, Richard Jordan, Dennis Place, Greg Waples, and Zoë Wainer. George Munson served on the Board until March 2011, when he resigned, replaced by Kate Myhre who began participation at the September 20, 2011 meeting when a substantially revised proposal was presented for the first time. See the official meeting minutes for a list of others present at the meeting(s).
- 7) The January 4, 2011 public hearing was warned in the Burlington Free Press on December 19, 2010.
- 8) That hearing was closed on July 17, 2012 and during subsequent deliberations the DRB decided to reopen the Site Plan Review in order to obtain clarification of evidence important to rendering a decision. On August 29, the Board provided notice to the Applicant and the public that the hearing would be reopened. A public hearing was noticed for September 18th, continued to October 2, 2012 where they took evidence specifically relating the Official Map and then closed the hearing.
- 9) Stormwater Plan C-6 dated 4/25/12 indicated that the proposed lot coverage is 55.4%. However, this calculation is not accurate because it includes the sidewalk as coverage when it shouldn't be and it includes the access strip as lot area when it shouldn't be included.
- 10) The area of a structure is calculated based on the outline of the support structures for all parts of a structure, in this case calculated on the perimeter based on the supporting posts of the canopy or the walls if no canopy is present. Paved area under this canopy is not considered sidewalk, but rather part of the structure.
- 11) The Commerce Street Extension lot, which was conjoined to lot #15, now meets the definition of an Access Strip (a strip of land included as part of the lot) for lot # 15. Pursuant to 5.7.1 #3, Zoning Regulations, access strips do not count towards lot size and therefore do not count towards lot coverage calculations.

- 12) The Hinesburg Official Map shows that a future community facility is planned for the subject parcel. The subject parcel is one of five distinct areas for future community facilities in the village growth area. Possible community facilities are mentioned in note #3 on the Official Map, which include, but are not limited to: Town Green, Community Center, Fire/Police Station expansion, Farmers Market venue, Parks & Recreation areas, and Library relocation. Although the types of facilities envisioned are listed, the Official Map does not limit the future community facility on the subject parcel to a particular facility. The Applicant has proposed to accommodate the Official Map in two ways: 1) creation of a Farmers Market venue, including an easement to the Town for use of a portion of the site on a limited basis for this use; 2) creation of a linear park area (termed “Canal Park”) along the existing canal path, including an easement to the Town for use of this portion of the site. Specifics on the areas involved and allowances for public use are detailed on the Easement Plan (sheet E1), draft easement deeds for the Farmers Market and for the Canal Park, and in the Applicant’s testimony at the public hearings.
- 13) The Planning Commission submitted testimony on the Applicant’s project in a memorandum dated December 22, 2010. This memo indicated that the central location of the subject parcel was an extremely important factor in identifying it as an area for future community facilities. The memo says that all of the potential community facilities discussed to date, including those specifically noted on the Official Map, appear to require a substantial footprint on Lot 15. It goes on to say that the Hannaford proposal appears to preclude community facilities of any substantial size because the proposed supermarket use occupies such a large percentage of the site. The memo concludes with a recommendation that the DRB find the Hannaford application in conflict with the Official Map. The Planning Commission reaffirmed the original memo at a Planning Commission meeting on December 14, 2011 after the Commission discussed substantive revisions to the application related to the Applicant’s plans to create a farmers market and a linear park area along the existing canal path.
- 14) The Village Steering Committee submitted extensive testimony (written and oral) throughout the Hannaford review. The Village Steering Committee raised issues about the project’s compliance with the Official Map in written comments dated November 29, 2011 and testimony/presentation at the December 6, 2011 DRB meeting.
- 15) During times of larger stormwater runoff events, the adjacent Darkstar property has experienced flooding in the vicinity of their building. Also, some of the water running down the swale between lots 10 and 11 has been unable to pass through the culvert under Commerce Street and has diverted to the ditch which runs East and West in front of Firehouse Plaza. The applicant will reset that culvert to partially address these issues.
- 16) Findings for Site Plan Review Standard #1 (section 4.3.4, Zoning) - **safety of vehicular and pedestrian circulation on site and on the adjacent street network.**
 - a) The applicant has discussed and received agreement from VT Agency of Transportation (VTTrans) that the stopbar at the existing Lantmans Exit must be relocated, and that the configuration of the exit itself must be reconfigured to allow for synchronized traffic signalization. Changes to the Lantmans Property and possibly the Mead property may be needed for the proposed improvements. The applicant provided no evidence that they have the necessary landowner permission to make such improvements.

- b) The applicant has binding agreement with the owners of Firehouse Plaza to relocate the existing driveway further to the East to facilitate traffic movements on Commerce Street.
- c) The applicant proposes to locate a 36,000+/- square feet Hannaford Bros. supermarket on the subject site with vehicular access provided by way of a driveway to Commerce Street. 128 on-site parking spaces are proposed including 6 handicap spaces.
- d) A July 20, 2011 traffic impact assessment prepared by Lamoureux & Dickinson (L&D) indicates that the proposed project is expected to generate 386 PM peak hour vehicle trips and 132 AM peak hour vehicle trips. The study estimates that 139 of the project's peak PM hour trips will be from "pass-by" vehicles. Therefore, 247 of the project's peak PM hour trips will be newly created "primary" trips.
- e) The July 20, 2011 traffic impact assessment was premised on several assumptions that were later modified by the Applicant, including: 1) Lantmans supermarket traffic generation dropping from the existing 251 PM peak hour trips to 100 trips; 2) a new Route 116 southbound, left turn lane at the Lantmans entrance; 3) changing the Commerce Street approach to Route 116 to have a dedicated left turn lane; 4) Adjusting the Route 116 traffic signals to a longer cycle length (from 71 seconds to 89 seconds). The Applicant dropped these four assumptions/proposals pursuant to additional submittals. Updated data and commentary are included in a memo by Roger Dickinson (L&D) dated December 12, 2011; a memo by Roger Dickinson dated February 13, 2012; a PowerPoint presentation given at the February 21, 2012 DRB meeting; a memo from Roger Dickinson dated April 30, 2012.
- f) The traffic impact assessment and related submissions were subject to a peer review by a traffic engineer working for the Town (Rick Bryant). Various supplemental traffic memoranda were submitted to the Town to address the comments of the peer reviewer and others.
- g) Based on a compilation of the traffic data included in the various submissions, future (year 2017) PM peak hour traffic conditions were determined for intersections in the site vicinity. These include the "No-Build" scenario and the "Build" Scenario. The No-Build scenario includes an anticipated 3% background traffic growth on Route 116 (from 2010 to 2017), and anticipated new traffic from three other permitted projects (Champlain Oil, Hinesburg Village Center, Thistle Hill) that were not yet complete, and with no road or intersection improvements. The Build scenario includes the same traffic as the No-Build scenario with the Hannaford project traffic added, along with Hannaford's proposed road improvements/mitigation. These traffic and intersection conditions are described by location below.
 - i) **Route 116/Commerce Street/Farmall Road**-The Route 116/Commerce Street/Farmall Road intersection is under traffic signal control. The Applicant reported intersection condition data via simulation modeling in a PowerPoint presentation at the February 21, 2012 meeting. Under the No-Build scenario this intersection is predicted to operate at an overall Level Of Service (LOS) of C with an average delay of 22 seconds. Noteworthy approaches to this intersection include: VT 116 southbound (left turn) with a LOS of D, an average delay of 40 seconds, and a maximum queue length of 177'; VT 116 southbound (through and right turn) with a LOS of C, an average delay of 23 seconds, and a maximum queue length of 564'; Commerce Street (left turn and through) with an LOS of E, an average delay of 43 seconds, and a maximum queue length of 144'. Under Build scenario, the intersection

- is predicted to operate at an overall LOS of C with an average delay of 24 seconds. Under the Build scenario the three noteworthy approaches mentioned above are predicted to function as follows: VT 116 southbound (left turn) with a LOS of D, an average delay of 39 seconds, and a maximum queue length of 204'; VT 116 southbound (through and right turn) with a LOS of C, an average delay of 24 seconds, and a maximum queue length of 502'; Commerce Street (left turn and through) with an LOS of D, an average delay of 36 seconds, and a maximum queue length of 252'.
- ii) **Charlotte Road/Route 116**-The Charlotte Road/Route 116 intersection is under traffic signal control. The Applicant reported intersection condition data via simulation modeling in a PowerPoint presentation at the February 21, 2012 meeting. Under the No-Build scenario this intersection is predicted to operate at an overall LOS of E with an average delay of 58 seconds. Noteworthy approaches to this intersection include: VT 116 southbound with a LOS of E, an average delay of 71 seconds, and a maximum queue length of 1046'; Charlotte Road (left turn) with a LOS of D, an average delay of 38 seconds, and a maximum queue length of 100'. Under Build scenario, the intersection is predicted to operate at an overall LOS of D with an average delay of 35 seconds. Under the Build scenario the two noteworthy approaches mentioned above are predicted to function as follows: VT 116 southbound with a LOS of C, an average delay of 23 seconds, and a maximum queue length of 825'; Charlotte Road (left turn) with a LOS of D, an average delay of 54 seconds, and a maximum queue length of 101'. The Board requested LOS calculations for this intersection without the proposed Hannaford but with the proposed intersection improvement. Pursuant to the applicant's April 30, 2012 memo, simulation of the future levels of service at the Route 116/Charlotte Rd intersection with Hannaford's proposed mitigation, but without construction of the new Hannaford store, shows Level Of Service C with an overall delay of 27 sec/vehicle.
- iii) **Mechanicsville Road/Route 116**-The Mechanicsville Road/ Route 116 intersection provides stop-sign control on the Mechanicsville Road approach. The Applicant reported intersection condition data via simulation modeling in a December 12, 2011 memo from L&D (Roger Dickinson, Traffic Engineer). Under the No-Build scenario, the Mechanicsville Road approach to this intersection are predicted to operate at a LOS of D with an average delay of 38 seconds and a maximum queue length of 224'. Under the Build scenario, the Mechanicsville Road approach to this intersection are predicted to operate at a LOS of F with an average delay of 71 seconds and a maximum queue length of 318'. Existing traffic volume levels satisfy the Manual on Uniform Traffic Control Devices traffic signal warrant criteria for the Peak Hour warrant.
- iv) **Silver Street/Route 116**-The Silver Street/Route 116 intersection provides stop-sign control on the Silver Street approach. The Applicant reported intersection condition data in the July 20, 2011 L&D traffic impact assessment. Under the No-Build scenario, the Silver Street approach to this intersection are predicted to operate at a LOS of D with an average delay of 32 seconds and a maximum queue length of 122'. Under the Build scenario, the Silver Street approach to this intersection are predicted to operate at a LOS of E with an average delay of 40 seconds and a maximum queue length of 161'. The intersection was recently reconstructed and realigned by VTrans.

- v) **Shelburne Falls Road/CVU Road/Route 116**-The Shelburne Falls Road/CVU Road/Route 116 intersection is under traffic signal control. The Applicant reported intersection condition data in the July 20, 2011 L&D traffic impact assessment. Under the No-Build scenario this intersection is predicted to operate at an overall LOS of B with an average delay of 19 seconds. There is no change under Build scenario – i.e., the intersection is predicted to operate at an overall LOS of B with an average delay of 19 seconds. The VT Agency of Transportation (VTrans) is developing plans to reconstruct the intersection adding turn lanes to all of the approaches.
- vi) **Commerce Street/Mechanicsville Road**- The Commerce Street/Mechanicsville Road intersection provides stop-sign control on the Commerce Street and Thorn Bush Road approaches. The Applicant reported intersection condition data in the July 20, 2011 L&D traffic impact assessment. No significant changes were reported between the No-Build and the Build scenarios. Construction of the proposed supermarket project is likely to increase pedestrian travel demands between residences located along Thornbush Road on the east side of Mechanicsville Road, and the supermarket located on the west side of Mechanicsville Road.

17) Findings for Site Plan Review Standard #2 (section 4.3.4, Zoning) - **adequacy of circulation, parking and loading facilities with particular attention to safety. Provisions for refuse storage and disposal, snow removal, and emergency access shall also be addressed where applicable.**

- a) Fire Chief Al Barber has stated that access is not necessary to all sides of the structure and has indicated that additional Town fire vehicles will be not necessary to protect this structure.
- b) A dry hydrant leading to the canal has been included in the plans for this project.
- c) An approximate 45' X 90' area in the center of the area of the .32 area Giroux property to be added to lot 15 and dedicated to the Farmers Market has been indicated on the site plan as a snow storage area.

18) Findings for Site Plan Review Standard #3 (section 4.3.4, Zoning)- **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.**

- i) Structure Compatibility: The 36,000 square foot single floor structure has a wall height of 21'4" and a faux mansard roof extending an additional five feet higher on three sides. The structure incorporates a covered porch, second story windows, variation in the composition and color of the siding. The surrounding area has a wide range of architectural variation. The heights of large neighboring structures are: Darkstar 20' wall and total height, Tail Hook 17' wall height (28' total height), Nestech 24' wall and total height of front portion, and Firehouse Plaza 16' wall and total height. Hannaford's north building elevation is 165 feet long and the east (front) elevation is 244' long (220' without the canopies). Other large commercial neighboring structures include: Hinesburg Village Center front elevation is 229 feet long; Nestech side elevation is 250 feet long; Firehouse Plaza front elevation (facing Commerce Street) is 240 feet long.

- ii) Landscaping compatibility :
 - (1) The up to six foot high retaining walls on the north side of the property and Commerce Street Extension are extremely close to property lines and visible from neighboring offices and public streets. Retaining walls on the neighboring area of Mechanicsville road and Thistle Hill are dry laid stone construction.
 - (2) The landscaping plan contains new plantings and the retention of existing trees on property currently owned by the Giroux Trust, where the Giroux Body Shop Storage Yard lot is, and not yet under the control of the applicant. This area is also within the 30 foot easement area granted for the Commerce Park stormwater system and as well is extremely close to an existing fence that screens the lot.
 - (3) Shade trees are proposed for various areas, both on and off lot which are proposed to reach mature heights of 60 – 70 feet.

- 19) Findings for Site Plan Review Standard #4 (section 4.3.4, Zoning) **Adequacy of exterior lighting for safe circulation on the site without creating off-site glare and excess illumination.**
 - a) Four fixture C lights, Plan L2, are proposed for the structure, all identified as “wide throw”. Two fixtures, near the north east corner, are located above the canopy.
 - b) Overnight lighting levels inside the store will be only 25% of the illumination used when the store is open for business to customers.

- 20) Findings for Site Plan Review Standard #5 (section 4.3.4, Zoning) **Adequacy of sewer and water.**
 - a) The project will utilize Town Water and Sewer and will have to receive allocations and have the specific plans reviewed and accepted by the Town Sewer and Water Department. No substantive issues were raised by Department staff and there appears to be adequate sewer treatment and water capacity in the Town system.

- 21) Findings for Site Plan Review Standard #6 (section 4.3.4, Zoning) **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.**
 - a) The grading plan has created steep banks directly adjacent to wetlands which should not be disturbed.
 - b) The impervious area of this application is approximately four times greater than that anticipated in the original State Stormwater permit issued for Commerce Park lot #15.
 - c) The stormwater treatment plan utilizes ADS water quality units to pretreat the first flush (the water carrying the bulk of pollutants) of stormwater, which is then released to existing grass lined swales for further treatment required by State regulations.
 - d) Hinesburg regulations permit review for Stormwater events beyond those regulated by the State, and the Applicant has designed the system such that the stormwater from up to 100 year events will have less flow through the existing swales than now occurs pre-development. This is achieved utilizing underground storage chambers to provide storage up to a ten year storm event and for events larger than that an 18 inch pipe will carry the majority of the stormwater flow beyond the first flush directly to the Lot 2 and 3 (between the Mobile Station and Tailhook) detention and treatment area. The Hannaford parking area within the curbing will provide further capacity for extreme events. The area

- between lot #2 and #3 is the approved stormwater discharge area for lot # 15 as well as other portions of the Commerce Park Subdivision.
- e) The Stormwater detention and treatment area between lots 2 and 3 was not designed to accept the increased stormwater flow that will issue from lot 15 and no assessment has been made of the impact resulting from the increased stormwater flow from lot # 15.
 - f) Water currently ponds in the swale between Lots 10 and 11 of Commerce Park.
 - g) The retaining wall detail contains a requirement for a drain pipe that extends to daylight.
 - h) The stormwater system will require major disruption of Commerce Street, with the potential of uneven pavement, settling etc. While culverts beneath Town roads normally become the property of the town, in this case it is an intrinsic component of the project's stormwater system, and not a culvert handling runoff from the Town road system.
 - i) The project proposes to utilize asphalt "Cape Cod Curbing" which will also be used as a component of the storm water retention plan.
- 22) Findings for Site Plan Review Standard #7 (section 4.3.4, Zoning) **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.**
- a) This facility will provide a useful service adjacent to the village core and within the village growth area that is walking distance for many residents. It does not contribute to sprawl.
 - b) It is a high density development.
 - c) The Hannaford structure is a design specifically created for Hinesburg.
- 23) Findings for Site Plan Review Standard #8 (section 4.3.4, Zoning) **Proper planning and design in regard to hazardous wastes and avoidance of runoff.**
- a) 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.
- 24) Findings for Site Plan Review Standard #9 (section 4.3.4, Zoning) **Conformance with Design standards for commercial and industrial uses as stated in sections 5.6, where they apply.**
- a) The project will have paved streets, five foot wide sidewalks and appropriate street trees.
 - b) The parking and loading areas are in side and rear yards of the structure and appropriately set back from boundary lines.
 - c) There will be no unscreened outside storage of supplies or equipment.
 - d) The landscaping is intended to serve as screening between different uses, to visually screen expanses of pavement or large un-broken building facades; to provide shade in summer for roads, parking lots and buildings and to define street edges and other public spaces.
 - e) The exterior lighting will 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.

- 25) Findings for the landscaping requirements of Site Plan, section 4.3.8.
- a) The latest landscaping budget, dated April 26, 2012 has an estimated total of \$109,705 which represents the costs of the landscaping required by the DRB to address the landscaping standards, regardless of the minimum planting cost calculation.
 - b) The last submission from the applicant, July 2011, stated that the estimated construction cost would be \$7,250,000 which per the formula contained in this section of the zoning would require a landscaping investment of at least \$80,000.
 - c) The plans were revised in 2012 and this cost is not reflected in the 2011 estimate.
 - d) Many of the proposed plantings will be planted on, or on the steep banks of, a constructed, compacted, platform of fill. Some trees are in islands surrounded by pavement or in the vicinity of the underground stormwater treatment system.
 - e) Landscape details, sheet L3 dated 4/26/12 require that the surrounding soil should not exceed 80% compaction and drainage will be required if compacted soils are present. .
- 26) Section 3.8.4 of the zoning specifically requires all sales and storage of goods to be indoors.

CONCLUSIONS

- 1) The Applicant's Farmers Market proposal is a creative attempt to accommodate the Official Map. The Official Map clearly identifies a Farmers Market venue as one of the future community facilities envisioned for the subject property. The proposed Farmers Market area shown on the easement plan is a relatively small portion of the overall property. However, it does constitute a substantial area for a Farmers Market use, especially given the market's current location at the United Church, and the Applicant's proposal to allow the market exclusive use (during market hours) of the parking lot north of the proposed supermarket. Accommodation of this community use is also bolstered by the Applicant's proposal to provide water, electricity, restrooms, and space for an accessory structure/shed for storage of market equipment. The Applicant testified that they will allow improvements (e.g., picnic tables, benches, etc.) and public use of the greenspace portion of the Farmers Market easement area outside of the limited days and times outlined for just the Farmers Market use. This helps ensure that the area in question can serve as a true community facility, and not just an enhanced retail venue for only five hours a week over the course of just 17 weeks a year.
- 2) The Board respects the Official Map testimony and compliance issues raised by several interested parties, especially the Village Steering Committee (VSC) and the Planning Commission (PC). The PC and the VSC were responsible for developing the Official Map, which was first adopted by the Selectboard in May 2009 as part of a comprehensive set of village growth area regulation revisions. The Board concedes that most of the potential community facilities specifically noted on the Official Map (and discussed during the creation of the Official Map) would appear to require a substantial footprint on the property. However, the list of future community facilities in note #3 on the Official Map is clearly not an exhaustive list. More importantly, a Farmers Market is specifically listed as a potential community facility. As noted above, the Farmers Market arrangement proposed by the Applicant does not constitute a conventional community facility. In reality, it represents a public/private partnership, especially the shared infrastructure (e.g., parking and access), with both advantages and disadvantages compared to a stand-alone municipal use. With that said, it does in fact constitute a community facility of a type that is expressly mentioned on the

Official Map. The Board cannot concur with the Official Map compliance issues raised by the PC and VSC without clearer guidance from the regulation itself (i.e., Official Map) as to what was specifically envisioned for this particular location.

- 3) The draft easement deed language ensures that this community facility will in fact be accommodated as required by the Official Map. As noted in VSA Title 24, Chapter 117, Section 4421, the Official Map intended to, "... provide the opportunity for the community to acquire land identified for public improvements..." The Applicant's easement offer accommodates this community facility, while leaving to the Selectboard, the decision as to whether it is actually utilized. In order for this creative solution to be considered a viable accommodation of the Official Map, certain specific aspects of the proposed easement were revised and clarified during the review process, especially at the final hearing on October 2, 2012. The following details some of the issues that the Applicant addressed to enable the Board to find that the proposed Farmers Market area/allowance in fact accommodates the Official Map:
 - a) The easement is granted to the Town in perpetuity. It includes an allowance for the Applicant to terminate the easement if the Farmers Market does not operate in the easement area for five consecutive years. This effectively ensures that the mapped community facility can persist as long as the community still finds it necessary.
 - b) The easement language comports with the Applicant's testimony at the public hearings that the Farmers Market area would be available for other public uses (see Condition #1 of easement language) beyond the days and hours of the Farmers Market. This allowance includes incidental use of the overall easement area – i.e., parking lot and green space. It also allows for the use of the overall easement area for more significant town functions with coordination and written consent of the Applicant. The easement stipulates that consent for town functions on the green space area shall not be unreasonably withheld, but that consent for town functions utilizing the parking lot may be withheld for safety or business operational reasons.
 - c) The easement language does not contain highly specific provisions regarding hours, dates, types and percentages of products sold, etc. These terms and conditions are contained in a separate document that is referenced in the easement, and may be modified from time to time without the need to renegotiate the underlying easement itself. This allows the Applicant and the Town to negotiate and potentially disagree about changes to the terms and conditions without jeopardizing the basic easement.
 - d) The easement language gives the Applicant limited power to terminate the easement, and only under very specific provisions – i.e., lack of use as mentioned above, or the creation of unreasonable health and safety risks.
- 4) The Applicant's Canal Park proposal in no way addresses or accommodates the community facilities identified on the Official Map for this property. The existing canal path already constitutes a well-traveled public facility for pedestrian and bicycle use, within a defined easement area. The proposed Canal Park area between that path and the supermarket and parking lot is small and linear, making the creation of future community facilities difficult. Portions of this area are also extremely limited by wetlands which would limit or prevent the uses envisioned on the Official Map. Furthermore, the Applicant has proposed substantial

landscaping in the Canal Park area in order to comply with the landscaping and screening provisions outlined in section 4.3 (Zoning). In particular, the landscaping near the south face of the building serves an important function given the building's close proximity to adjacent residential uses, the canal path, and Mechanicsville Road. Of the entire Canal Park area, this portion contains the most usable land; however, its use for future community facilities identified on the Official Map is minimal due to the proposed and necessary landscaping.

- 5) Pursuant to section 5.7.1 #3, the fifty foot wide access strip (Commerce Street Extension) is an appropriate access to this lot.
- 6) Lot coverage must be under the 60% maximum. A zoning permit cannot be issued if the lot coverage doesn't comply with the regulations.
- 7) Conclusions for Site Plan Review Standard #1 (section 4.3.4, Zoning) - **safety of vehicular and pedestrian circulation on site and on the adjacent street network.**
 - a) **Route 116/Commerce Street/Farmall Road**
 - i) Longer queues are anticipated for the southbound left-turn lane if percentage of site traffic approaching from the north is greater than the traffic impact assessment predicts. If the position of the left-hand turn lane stop bar has to be moved to facilitate truck turning radius, the length of the stacking lane may become limited by the width of route 116 at the Patrick Brook Culvert.
 - b) **Charlotte Road/Route 116**
 - i) Eliminating the split phasing will enhance the efficiency of the signal operation to help mitigate the impact of the proposed project.
 - c) **Mechanicsville Road/Route 116**
 - i) The addition of traffic generated by the Hannaford project will exacerbate the existing traffic volume levels which already satisfy Manual on Uniform Traffic Control Devices traffic signal warrant criteria for the Peak Hour warrant.
 - ii) Signalization of this intersection may not be the best solution and other options should also be investigated.
 - d) **Shelburne Falls Road/CVU Road/Route 116**
 - i) There is no change in the Level of Service; therefore, this project does not require any improvements or mitigation at this intersection. Clearly, there are problems with this intersection, but VTrans is pursuing an improvement plan.
 - e) **Silver Street/Route 116**
 - i) Although the Level of Service will decline from D to E during the PM peak hour due to this project, the actual change in the seconds of delay (32 seconds to 40 seconds) is not substantial enough to warrant improvements or mitigation. This intersection was improved by VTrans in the last few years, and appears to be functioning safely, even with some delays at the peak hours.
 - f) **Commerce Street/Mechanicsville Road-**
 - i) The improvements at this intersection as the result of the municipal sidewalk project (currently under construction) will provide the necessary sidewalks and crosswalks.
- 8) Conclusions for Site Plan Review Standard #2 (section 4.3.4, Zoning) - **adequacy of circulation, parking and loading facilities with particular attention to safety. Provisions for refuse storage and disposal, snow removal, and emergency access shall also be addressed where applicable.**

- a) The proposed plans are adequate for circulation, parking and loading, and as well as refuse and emergency access.
 - b) The easement to be granted to the Town for use of the Farmers Market area allows the area to be used at other times when the Farmers Market is not in operation. Snow storage in this location will interfere with possible winter activities.
- 9) Conclusions for Site Plan Review Standard #3 (section 4.3.4, Zoning)- **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.**
- a) Unlike the Village and Village NW zoning districts that limit retail uses to no more than 20,000 square feet, the Commercial zoning district has no such size cap. As such, building size alone is not a dispositive test for compliance with compatibility.
 - b) As a Hinesburg-specific Hannaford supermarket building design, the structure helps contribute to Hinesburg’s unique sense of place.
 - c) The proposed structure is maximally compatible with adjacent property and the character of the neighborhood due to features described in Finding #18. Clearly the supermarket is a large structure. However, its design elements, placement on the lot, significant distance from surrounding public roads, and the associated site plan elements (e.g., landscaping) all combine to make this large structure fit in with the surrounding area.
 - d) The retaining walls on the north and near the Commerce Street Extension should be less industrial in nature than those proposed, and better reflect others in the neighborhood.
 - e) The landscaping proposed for the Giroux Trust lot, 20-50-04 (where the Giroux storage yard is located), cannot be installed and maintained without an easement allowing for this, and confirmation that it can be granted within the existing 30’ wide drainage easement to the Commerce Park Association.
 - f) It is the intention of this decision to insure that the proposed shade trees will, in fact have appropriate planting soils and locations so that they can reach their mature heights.
 - g) The proposed shade trees will require a considerable area of appropriate soil if they are to reach healthy maturity. Large shade trees are proposed to be located on the steep banks surrounding the constructed soil platform for this project. The trees on the steep banks will require special planting methods and maintenance as well as adequate soils to enable them to reach a healthy mature height.
- 10) Conclusions for Site Plan Review Standard #4 (section 4.3.4, Zoning) **Adequacy of exterior lighting for safe circulation on the site without creating off-site glare and excess illumination.**
- a) The two “c” lights located near the NE portion of the structure, being located above the canopy and having to be downcast per the regulations, serve no necessary function.
- 11) Conclusions for Site Plan Review Standard #6 (section 4.3.4, Zoning) **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.**
- a) The reinstallation of the culvert under Commerce Street, and proper design and reconfiguration of the swale between Lots 10 and 11 may help reduce the ponding.

- b) Per Finding # 21 (e) there is the possibility that the stormwater detention area between Lot 2 and 3 will be unable to accommodate the increased stormwater flows resulting from this project and will cause water to back up and erosion to occur.
- c) The stormwater plan is designed to meet the State of Vermont water quality treatment standards and to contribute less stormwater into the problem area between Lots 10 and 11 post-development than it does at present.
- d) If the curbing is not maintained as a continuous perimeter around the impervious surfaces it will not retain and direct the stormwater as planned.

12) Conclusions for Site Plan Review Standard #7 (section 4.3.4, Zoning)

- a) The Town Plan envisions a vibrant and densely developed village growth area. This vision is further fleshed out in the purpose statement for the village growth area contained in section 3.1 of the Zoning Regulations. A supermarket is a key use within any community. This proposal is for a supermarket in one of the most central locations of the village growth area – especially as the village grows and expands to the north per the Town Plan future land use map. As such, this project helps encourage a vibrant mix of activities in a compact, pedestrian-oriented village that is recognizable as the Town's social and economic center. This development clearly brings value to the community. Furthermore, it provides public spaces to serve as focal points and gathering spaces. It creates a new Farmers Market venue for community use, and bolsters the existing Canal path with additional landscaping and pedestrian connections to the new retail use. The project encourages pedestrian use, and even completes a missing sidewalk segment on an adjacent portion of Commerce Street that has been missing for years. For all these reasons, the store will be a reason for the wider Hinesburg community to spend even more time in the village area. For all these reasons, the project is consistent with the Town Plan vision and the purpose of the village growth area and Commercial zoning district.

13) Conclusions for Site Plan Review Standard #9 (section 4.3.4, Zoning)

- a) The project conforms to the commercial and design standards.

14) Conclusions for the landscaping requirements of Site Plan, section 4.3.8

- a) The estimated landscaping budget is approximately 33% above the required minimum for the 2011 estimated construction costs. While the construction costs for the revised 2012 plans will increase, the landscaping plan is adequate for the project, and the landscaping budget will probably remain above the required minimum.
- b) For trees to reach the healthy mature height of the landscaping plan sufficient area and proper planting medium shall be provided. The compaction of the area surrounding trees shall be controlled by the applicant per their specifications.

- 15) This project relies on adjacent Giroux family property. Specifically, a 0.32 acre lot to the West where the Automotion business is located, that is not part of lot 15. Adding this to lot 15 will require a revision to the Commerce Park subdivision. Furthermore, the adjacent property in question is also subject to its own subdivision and site plan approvals, which will also need to be revised. Therefore, 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.

ORDER

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB gives site plan, approval to Martin's Foods of South Burlington, Inc. and Victor J. and Ramona A. Giroux Trustees for the project described above, subject to the conditions listed below.

- 1) The applicant shall provide funds to the Town to fully or partially offset the costs of future roadway improvements necessitated by the proposed project and construct certain roadway improvements at off-site intersections as described below. Prior to issuance of a building permit, the Applicant shall demonstrate to the Zoning Administrator that all necessary permits and landowner permissions are in place to allow the necessary roadway improvements.
 - a) **Route 116/Commerce Street/Farmall Drive**
 - i) Prior to receiving a certificate of occupancy the applicant shall reconstruct the Route 116/Commerce Street/Farmall Road intersection to accommodate anticipated 95th percentile vehicle queues on the Commerce Street approach and in the Route 116 southbound left-turn lane. Minimum turn lane lengths on Commerce Street include 200 feet of storage for both the westbound left/through lane and westbound right-turn lane and 175 feet of storage for the Route 116 southbound left-turn lane. Construction plans shall be made available for review and comment by the Town during the design process and shall comply with applicable Town and/or VTrans standards particularly with respect to lane widths, transition tapers and shoulder widths. The design shall also consider potential changes that may be made to the intersection as part of the Route 116 repaving project planned by VTrans. These plans may include a minor widening of Commerce Street and relocation of the stop bar for the southbound left-turn lane to better accommodate trucks turning into and out of Commerce Street.

The applicant shall insure the completion of further improvements to Route 116 at Commerce Street and provide a future traffic monitoring program to determine if further improvements are in fact warranted. Specifically, the applicant shall:

- (1) Prior to receiving a certificate of occupancy, the applicant shall develop conceptual design plans and a construction cost estimate for the extension of the southbound left-turn lane on Route 116 at Commerce Street to a length of 250 feet. The estimate should include permitting and design services associated with the project including the widening of the culvert at Patrick Brook if appropriate.
- (2) Prior to receiving a certificate of occupancy the applicant shall post an interest bearing bond payable to the Town of Hinesburg to cover 120 percent of the estimated cost of the Route 116 left-turn lane extension.
- (3) Within two years following the issuance of a certificate of occupancy the applicant shall fund a Town commissioned update of the traffic evaluation of the Route 116/Commerce Street intersection. The specific scope and date of the study shall be first approved by the Town. The study will specifically consider the actual peak period(s) left-turn volumes on Route 116 southbound and the adequacy the left-turn lane to accommodate the peak hour 95th percentile queue.
- (4) Depending on the outcome of the follow-up study, the applicant may be required, at the sole discretion of the Town, to complete the design and permitting of the

left-turn extension and, subject to approval by VTrans, construct the extended left turn lane. Alternatively, should the study identify more appropriate mitigation actions for this intersection, the applicant may be required to construct these improvements provided that their value is less than or equal to the value of the bond. Construction shall be completed as soon as reasonably practical upon receiving direction from the Town.

- (5) Upon completion of the construction to the satisfaction of VTrans, the Town will release the bond to the applicant. Alternatively, upon review of the follow-up study the Town may determine that no further action is required at the intersection and/or culvert and release the bond to the applicant. The Town will reach a decision to either require further mitigation or release the bond within three months of completion of the follow-up study.
- b) Before a certificate of occupancy can be issued all construction related to the relocation of the Firehouse Plaza entrance must be certified by a professional engineer that it has been constructed according to all approved plans.
- c) **Charlotte Road/Route 116**
- i) Prior to receiving a certificate of occupancy the applicant shall reconstruct the Charlotte Road/Route 116 intersection and retime the existing traffic signal system to mitigate anticipated project-related congestion impacts at this location. Specifically, the Lantman's market exit driveway and the Route 116 sidewalk that meets the driveway shall be reconstructed to allow the stop bar on the Lantman's (westbound) approach to be brought forward. The traffic signal operation shall also be modified to eliminate the existing exclusive phases for the eastbound and westbound intersection approaches. These two approaches shall operate concurrently and signal timings shall be adjusted to allow for efficient operation under this condition. Construction plans shall be made available for review and comment by the Town during the design process and shall comply with applicable Town and/or VTrans standards particularly with respect to sidewalk grades, driveway sight lines and signal head visibility.
- d) **Mechanicsville Road/Route 116**
- The applicant shall insure the installation of a traffic signal or other improvements on Route 116 at Mechanicsville Road if, after project construction, the Town chooses to pursue installation of a signal at this location. Specifically, the applicant shall:
- i) Prior to receiving a certificate of occupancy, the applicant shall develop conceptual design plans and a construction cost estimate for the installation of a traffic signal or other appropriate related improvements on Route 116 at Mechanicsville Road. The estimate should include permitting and design services associated with the project.
- ii) Prior to receiving a certificate of occupancy the applicant shall post an interest bearing bond payable to the Town of Hinesburg to cover 120 percent of the estimated cost of the traffic signal and related improvements.
- iii) Within two years following the issuance of a Certificate of Occupancy, the applicant may be required, at the sole discretion of the Town, to fund a traffic signal warrant study of the Route 116/Mechanicsville Road intersection.
- iv) Depending on the outcome the warrant study, the applicant may be required, at the sole discretion of the Town, to complete the design and permitting of the signal installation and related improvements and, subject to approval by VTrans, construct

- the signal and related improvements. Alternatively, should the study identify more appropriate mitigation actions for this intersection, the applicant may be required to construct these improvements provided that their value is less than or equal to the value of the bond. Construction shall be completed as soon as reasonably practical upon receiving direction from the Town.
- v) Upon completion of the construction to the satisfaction of VTrans, the Town will release the bond to the applicant. Alternatively, within three years upon completion of the warrant study, the Town may determine that no further action is required at the intersection and release the bond to the applicant.
- 2) Before a building permit is issued the lot coverage shall be recalculated based in the submitted plans of the structure and the area of lot 15. If the project does not comply with the maximum 60% coverage the applicant shall return to the Development Review Board with a plan to comply.
 - 3) The retaining walls on the north side of the property and extending to include where they taper down along Commerce Street Extension shall be either constructed with or faced with stone.
 - 4) Before a building permit is issued, an easement shall be obtained for the Giroux Trust lot, 20-50-04 (which is where the Giroux storage yard is located) allowing the proposed off lot landscaping on the plan titled Planting Plan L1 last revised 4/6/12 to be controlled by the applicant. Evidence shall also be submitted that this easement complies with any conditions of State Storm water permits for the swale that is within the necessary landscaping easement area.
 - 5) Before a building permit is issued the proposed planting specifications shall be revised and certified by a licensed professional that they are sufficient to support fully mature trees of the species specified. Specifically that there is sufficient soil of an appropriate composition to nurture and support them, that those in the proximity of the western boundary are a sufficient distance from the fence on the Giroux property to thrive and be maintained, and that they will remain stable and protected from trunk rot where planted on the steep banks.
 - 6) The two “c” lights near the NE corner of the structure shall be eliminated, and the plans revised accordingly. The two C lights near the loading areas, while labeled “wide throw” shall be downcast and not have the source visible from the property boundary.
 - 7) If erosion or overflow issues of any kind occur in the stormwater discharge area between Lot #2 and #3 that impact infrastructure, abutting properties or Patrick Brook, the applicant shall return to the DRB to address them.
 - 8) If ponding occurs in the swale between Lots 10 and 11 beyond what should be expected in a swale designed and constructed for storm water treatment, i.e. more than two days, the applicant shall be responsible for correcting the problem.
 - 9) Before a zoning permit can be issued, the minimum landscaping budget shall be recalculated based on the construction costs of the project that is being applied for. If the minimum landscaping budget, calculated according to the formula contained in section 4.3.8 (2d) has not been met the applicant shall return to the DRB with revised landscaping plans.
 - 10) No snow storage is permitted on the non-pavement areas designated for the farmers market.

- 11) All proposed improvements per the submitted plans shall be installed, inspected, and certified by a qualified professional to be as proposed, or with modifications approved by the Zoning Administrator (or if necessary, the DRB) before any Certificate of Occupancy can be issued. It should be noted that installed traffic mitigation measures may be re-evaluated based on post development surveys and other mitigation may be necessary and the responsibility of the applicant.
- 12) The Cape Cod curbing, which is an intrinsic part of the stormwater control system shall be maintained as an impervious barrier except where indicated on the approved plans, and shall be immediately repaired if breached.
- 13) Before a zoning permit is issued for this project, evidence shall be submitted to the Zoning Administrator that an agreement has been reached with the Selectboard for the responsibility for the maintenance of the road and stormwater infrastructure beneath it.
- 14) The dry hydrant shall be installed and approved by the Hinesburg Fire Department before a Certificate of Occupancy can be issued.
- 15) 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.
- 16) Before any surface is covered within the drip line of the proposed trees, when mature, a Civil engineer shall submit evidence establishing:
 - a) That the fill placed within the root zone of the mature height of the proposed trees (the mature tree drip line) does not exceed 80% compaction.
 - b) That backfill mix meeting specifications 02916 Soil preparation from L3 Landscape Details has been installed in an area three times the diameter of the root ball of the tree.
- 17) Before a CO can be issued, a certified landscape professional shall submit evidence that:
 - a) The trees have been installed to the submitted planting specifications.
 - b) Trees planted on slopes have been protected in a manner that will keep uphill soil from covering the root flare.
- 18) All sales and the storage of goods shall be indoors.
- 19) Camper vehicles shall not remain in the parking lot overnight.
- 20) Delivery Trucks shall not idle while waiting or while they unload.
- 21) A Civil Engineer shall review the design for the retaining walls which shows drainage pipes below grade and either present evidence that they are not necessary or if they are, submit a revised plan to the Zoning Administrator for approval indicating how that area will be drained.
- 22) The hours of construction shall be 7am to 6pm Monday through Saturday.
- 23) Pounding for support piling may take place only from 8am to 4pm, Monday through Saturday, and not on holidays.

- 24) The Applicant shall obtain approval from the Selectboard for all work in the Commerce Park right of way (e.g., stormwater system, Firehouse Plaza driveway relocation, various signage and striping etc.) prior to the issuance of a zoning permit.
- 25) Town water and/or wastewater connection permits shall be obtained prior to the issuance of a zoning permit (application forms available from the Town Administrator). Furthermore, the proposed water and/or wastewater systems shall comply with Town of Hinesburg's Water and Sewer Ordinances.
- 26) The fifty foot wide access strip (Commerce Street Extension) is approved for access to this lot.
- 27) Regardless of submitted plans, all exterior lighting shall be installed or shielded in such a manner as to be downcasting and to conceal light sources and reflector/refractor areas from view from points beyond the lot.
- 28) The areas exposed during construction shall be treated in a manner consistent with the procedures contained in the Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites.
- 29) This project shall be completed, operated, and maintained as set forth in the plans and exhibits as approved by the DRB and on file in the Town Office, and in accordance with the conditions of this approval. Minor deviations may be made from these plans if in conformance with the intent of this decision, and with the approval of the Zoning Administrator (ZA). The ZA shall determine whether such deviations are indeed minor, or whether they are more significant and require a formal revision to this DRB decision.

Development Review Board

November 6, 2012
Date Approved

Board Members participating in this decision: Tom McGlenn, Zoë Wainer, Dennis Place, Ted Bloomhardt, Greg Waples, Richard Jordan, Kate Myhre

Vote to approve: 4-3 with Tom McGlenn, Dennis Place, Richard Jordan and Kate Myhre voting to approve and Zoë Wainer, Ted Bloomhardt and Greg Waples dissenting (see November 6, 2012 meeting minutes).

30-day Appeal Period:

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 4465b 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 Superior Court - Environmental Division. A copy of the notice of appeal should also be mailed to the Hinesburg Planning & Zoning Department at 10632 Route 116, Hinesburg, VT 05461. Please contact the Court for more information on filing requirements, fees, and current mailing address.

State Permits: It is the obligation of the Applicant or permittee to identify, apply for, and obtain required state permits for this project prior to any construction. The VT Agency of Natural Resources provides assistance. Please contact the regional Permit Specialist at 878-5676 (111 West St, Essex Jct., VT 05452) for more information.