

SUBDIVISION REVISION & SITE PLAN REVIEW

Applicant: Martin’s Foods of South Burlington LLC c/o Tyler Sterling and David White P.O. Box 1000 Hinesburg, VT 05461	Land Owners: Trusts of Bernard Giroux, June Giroux, Victor Giroux and Ramona Giroux 9318 VT Route 116 Hinesburg, VT 05461
Property Location, Tax Map # & Area: 138 Commerce Street 20-50-02.100 4.86 Acres	Surveyor/Engineer: O’Leary Burke Civil Associates PLC 1 Corporate Drive Suite #1 Essex Junction, VT 05452

BACKGROUND

APPLICATION

The Applicant is requesting approval for a revision to a subdivision of the approved building envelope for lot #15 of the 1986 Commerce Park subdivision and for site plan approval for a 36,000sf Hannaford supermarket (retail establishment) in the Commercial (C) Zoning District per Section 3.8.4(1a) of the Hinesburg Zoning Regulations (HZR). The use is a permitted use per the HZR, but requires Site Plan approval from the DRB per Section 4.3 of the HZR.

HISTORY

Commerce Park originally received subdivision approval for fifteen lots in 1986. Hannaford is proposed to be on lot #15 of this subdivision. Access to this lot is to utilize a 50-foot wide strip of land that also serves as a right-of-way for access to the National Bank of Middlebury. This access strip was referred to as Commerce Street Extension in the original subdivision approval. The Applicant submitted applications for this development on November 11, 2010. The first of fifteen hearings began at the January 4, 2011 DRB meeting. DRB decisions on the proposed signs and the extended hours were issued on August 30, 2012. These approvals were not appealed. The Site Plan approval, which included many conditions, was issued on November 6, 2012. An Act 250 application was submitted on March 26, 2013 and a decision issued on June 13, 2014. The DRB also issued four related decisions on May 16, 2014 for changes to adjacent properties (Aubuchon, Giroux/Automotion, etc.) that were required as a condition of the 2012 Site Plan approval.

The Site Plan decision, the related decisions of 2014 for adjacent properties, and the Act 250 decision were appealed to the Vermont Superior Court, Environmental Division (VEC), which issued decisions on April 12, 2016 and July 7, 2016. The VEC ruled in Hannaford’s favor in the related 2014 decisions, and rejected the appeals of both the Site Plan decision and the Act 250 decision. The VEC affirmed the DRB Site Plan approval with some revisions to the stormwater plan, to the proposed traffic mitigation, and with revisions to some of the DRB conditions. The VEC decisions on the Site Plan and the Act 250 permit were appealed to the Vermont Supreme Court (VSC) by all parties (Hannaford, Town of Hinesburg, and Responsible Growth Hinesburg). The VSC reversed the Site Plan approval, but at the same time the decision did make certain rulings regarding the project to clarify for any future application. The VSC decision compels the Applicant to return for a site plan approval and to revise the 1986 subdivision approval, which is why the Applicant has returned to the DRB. The VSC remanded the Act 250 appeal back to the VEC with instructions to take further testimony on several items – principally stormwater and

required traffic mitigation. The VEC trial is scheduled for May 23-25, but may be delayed based on a recent motion by Hannaford.

LEGAL OPINION

There is disagreement as to how to proceed with the site plan application. The Town requested a legal opinion from David Rugh of Stitzel Page & Fletcher, PC, Attorneys at Law. Mr. Rugh contacted and request legal opinions from the Applicant’s attorney and the attorney for Responsible Growth Hinesburg (RGH). Mr. Rugh’s written legal opinion is available for review both in the DRB packet on Dropbox and on the Town’s website. The legal opinion states the following:

1. The site plan application is to be reviewed to the current zoning regulations (effective 10/3/2016) and not the 2009 zoning regulations.
2. The DRB should only review the site plan application items not addressed in the VSC decision, or that have changed. Specifically, the DRB should only focus on stormwater treatment and traffic control.
3. The six related DRB and VEC decisions are still valid due to litigation. The time horizon for the expiration of these decisions will not begin until litigation on this project is complete.
4. Notice for the Site Plan Application should be the same as if it is a new application.

SUBMISSIONS

The Applicant has submitted the following:

1. Cover letter re: Renewed Site Plan Application of Martin’s Foods of South Burlington, LLC, dated 1/26/18 to Mitchel Cypes from David G. White.
2. Memorandum re: “Authorization to Submit and Execute Applications for Approvals”, from David G. White, dated 1/24/18, with attachments.
3. Application form for Site Plan Review, dated 1/26/18.
4. VT Agency of Transportation Letter of Intent, dated 5/8/14 with Extension, dated 5/9/17.
5. Traffic Impact Assessment, prepared by Lamoureux & Dickinson, and dated 2/4/13.
6. Memorandum re: Revised VT Route 116 Southbound Left-Turn Lane Design at Commerce Street, from Roger Dickinson, dated 8/5/13.
7. VT Agency of Transportation Letter dated 10/31/13.
8. Addendum to Traffic Impact Assessment, prepared by Lamoureux & Dickinson, and dated 5/11/15.
9. Technical Memorandum re: VTrans Recess Order Response Letter, dated 5/13/15.
10. Technical Memorandum re: RSG Memorandum – Traffic Engineering Peer Review, dated 5/18/15.
11. VT DEC Authorization to Discharge, dated 6/1/17, with Response Summary.
12. Sheet C1 “Existing Conditions”, prepared by O’Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 3/11/13.
13. Sheet C2 “Overall Plan”, prepared by O’Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/29/15.
14. Sheet C3 “30-Scale Site Plan”, prepared by O’Leary-Burke Civil Associates PLC, and dated 2/22/11, last revised 6/29/15.
15. Sheet C4 “Commerce Street Utility Plan”, prepared by O’Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/29/15.
16. Sheet C5 “Lot 15 Utility Plan”, prepared by O’Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/29/15.

17. Sheet C7 “Water & Sewer Details”, prepared by O’Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/5/13.
18. Sheet C8 “Road & Erosion Details”, prepared by O’Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 3/11/13.
19. Sheet C9 “VT 116/Charlotte Road Intersection Improvements”, prepared by O’Leary-Burke Civil Associates PLC, and dated 6/21/13.
20. Sheet L1 “Planting Plan”, prepared by SE Group, and dated 11/9/10, last revised 7/6/15.
21. Sheet L2 “Lighting Plan”, prepared by SE Group, and dated 11/9/10, last revised 2/22/13.
22. Sheet L3 “Landscape Details”, prepared by SE Group, and dated 11/9/10, last revised 2/22/13.
23. Sheet A-1 “Building Plan View”, prepared by Bast & Rood Architects, and dated 4/26/12.
24. Sheet A-2, No Title, prepared by Bast & Rood Architects, and dated 5/24/12.
25. Sheet S1 “50-Scale Overall Stormwater Management Plan”, prepared by O’Leary-Burke Civil Associates PLC, and dated 8/21/12, last revised 6/2/16.
26. Sheet S2 “30-Scale Lot 15 Stormwater Management Plan”, prepared by O’Leary-Burke Civil Associates PLC, and dated 8/21/12, last revised 6/2/16.
27. Sheet S3 “Lot 15 Stormwater Management Details & Specifications”, prepared by O’Leary-Burke Civil Associates PLC, and dated 8/21/12, last revised 6/2/16.
28. Sheet S4 “20-Scale Grass Channel Plan, Profile, and Cross Sections”, prepared by O’Leary-Burke Civil Associates PLC, and dated 8/21/12, last revised 6/2/16.
29. Sheet S5 “20-Scale Detention Basin Detail For S/N 001”, prepared by O’Leary-Burke Civil Associates PLC, and dated 8/21/12, last revised 6/2/15.
30. Sheet S6 “100-Scale Overall Stormwater Management Plan”, prepared by O’Leary-Burke Civil Associates PLC, and dated 8/21/12, last revised 6/2/16.

In addition the Applicant has provided the stormwater application forms, calculation forms, modeling and correspondences with State regulators for several submissions to the Vermont Agency of Natural Resources. The Applicant received a State stormwater permit, which is currently under appeal.

RGH has provided a letter from James Dumont, Esq., dated February 16, 2018, which makes legal arguments about how the DRB review should proceed.

Also included for review is a January 19, 2018 traffic report from V-Trans providing an opinion on the legal decisions from the court proceedings for Hannaford, and reviewing possible improvement options for the Route 116, Mechanicsville Road intersection.

REVIEW

INTRODUCTION – The review in this report will include a separate reviews of the subdivision revision application and the site plan application. According to the Town attorney’s opinion, items that were not appealed and are the same as proposed and approved in the VEC decision are settled items. Projects requiring multiple DRB approvals are typically heard concurrently. Any site plan approval would be contingent on the approval of the revised subdivision.

SUBDIVISION REVISION REVIEW – The Applicant is requesting a subdivision revision to the 15 lot Commerce Park 1986 subdivision approval to reflect the minimum setbacks required in our current zoning. Section 7.7.1 of the Hinesburg Subdivision Regulations (HSR) requires a warned hearing for changes to a recorded subdivision that meets the definition of a re-subdivision. The proposed change to the building envelope does meet the definition of a re-subdivision per Article 9 of the HSR.

The original 1986 subdivision, which is recorded on map slide 108, had 15 lots, which the proposed development is to be on lot #15. Though not dimensioned on the plans, the setbacks shown on the recorded survey shows “building setback limits” of 30 feet on the side and rear, 75 feet from the centerline of Commerce Street, and 75 feet from the Canal. These were the required minimum setbacks in the zoning regulations at the time of 1986 approval. The June 3, 1996 zoning regulations reduced the setbacks to 10-feet from the side and rear property lines and 40-feet from the centerline of Commerce Street. The May 25, 2009 Zoning Regulations changed the front yard setback to 10-feet from the front property line and reduced the stream setback for the Canal to 25-feet.

There appears to be precedent for the Applicant’s request. The Town granted approval for single developments on two adjoining lots for the Mobile Gas Station, Fire House Plaza (now Aubuchon Plaza) and for Storage Solutions, without a subdivision revision. In addition, the development for a bank and a medical clinic in this subdivision were approved with the current setbacks. The Commercial Park subdivision plus the post office property, is the entire Commercial Zoning District in this area of Town. Changing the setbacks for this district is virtually the same as changing the setbacks for the subdivision. The Applicant’s request to change the building envelope to match current setbacks seems reasonable and consistent with the planning and design standards in Article 5 & 6 of the Subdivision Regulations.

A review of the minutes for the original subdivision’s sketch plan hearing, the two preliminary plat hearings and the three final plat hearings found no mention for the reasoning for the building setback limits. As such an approval of the proposed subdivision revision would not appear to conflict with the 1986 subdivision approval.

SITE PLAN REVIEW - STORMWATER (Sections 4.3.4 #6 & 5.27, Zoning) – The Applicant is proposing to provide stormwater treatment using underground storage and expanding existing grass channels and above ground storage areas. A stormwater permit was issued by the State on June 1, 2017 (permit #3034-9015.A), but is under appeal. This appeal is scheduled to be heard by the VEC in late May as part of the VEC trial for the Act 250 permit appeal, which was remanded to the VEC by the VSC. The Applicant has provided to the Town their State stormwater submissions, which are numerous. Here are some comments:

1. The State stormwater management manual was revised in July 2017. The project was designed to comply with the previous version of the State stormwater management manual, and its State permit was issued pursuant to the previous version of the manual. Pursuant to section 5.27.2 (1) of the HZR, the Applicant’s engineer must provide a certification that the plan conforms to the latest version of the manual.
2. Water quality treatment is to be provided by retention in grass channel 1. However, a portion of the stormwater discharge from the water quality storm event, according to the modeling, avoids the grass channel and discharges to CB14. I asked the Applicant’s

- Engineer, why wouldn't the entire WQ storm event go for WQ treatment? He agreed to modify the system by changing an orifice in CB15 to make sure that the entire WQ discharge goes to grass channel 1. He said updated modeling will be provided.
3. Information on the underground sediment removal system, which usually acts as a forebay and helps with the WQ requirement, was not provided. The Applicant's Engineer explained that the State does not accept these systems as providing water quality treatment.
 4. The sediment removal system for POI-A does not have the bypass shown in the detail. I raised the concern with the Applicant's Engineer that this system without the bypass would be overloaded that could back up stormwater runoff to the parking lot or push sediment in the treatment structure to the underground storage. The Applicant's Engineer stated to me that the treatment structure could accommodate the discharge generated from the roof and parking areas without a discharge for the 10-year storm event. In a larger storm events, this may be a concern.
 5. The recharge requirement is also to be satisfied using grass channel 1. I asked the Applicant's Engineer how is the standard satisfied if a portion of the discharge that is supposed to go to grass channel 1 instead discharges to CB14? He explained that the modification described in comment one will address this concern.
 6. Several modeling submissions have been provided. Channel protection is to be provided by the underground storage system. The retention time of 658 minutes for POI-B is less than the required 720 minutes in these submissions. In some submissions the same is true for POI-A. Similarly, to comments 1 and 4, The Applicant's Engineer stated to me that the orifice change in CB15 should remedy this concern.
 7. Several modeling submissions have been provided. The following is typical of these models, using the one model used in the 'complete application'. The pre-development and post-development end point is a 'pond' called P1. The peak post-development discharge for a 10-year storm event of 5.61cfs is significantly higher than the 1.40cfs modeled in the pre-development 10-year storm event. The peak post-development discharge for a 100-year storm event of 16.18cfs is significantly higher than the 3.24cfs modeled in the pre-development 100-year storm event. In the application correspondence with the State, the Applicant's Engineer stated that the peak discharge from this project will enter Patrick Brook at a different time than the peak discharge of Patrick Brook and would not increase the discharge above Patrick Brook's current peak. In addition they have widened the channels between the proposed development and Patrick Brook to reduce the amount of flooding to surrounding properties. I did not see the information confirming the offset peak discharges in the submittal. The Applicant's Engineer explained to me that the original design did not have to satisfy Section 5.27.2(3) of the HZR that requires an applicant to demonstrate that larger storms will not overwhelm downstream areas due to the proposed development and that they were mostly concerned with the Dark Star property. Since Section 5.27.2(3) does not require smaller discharges, but rather demonstrating larger storms could be accommodated, the updated modeling should show lower elevations in the downstream areas compared to the existing. This requirement has not been fully satisfied.
 8. The Applicant has proposed to expand grass channels between their development and Patrick Brook. The post development discharge between lots #2 and #3 is higher than the predevelopment discharge, which does not conform to Section 5.27.2(3). The updates to the design with new modeling needs to show conformance.
 9. The modeling utilizes the voids in the stone surrounding the underground storage units. The Applicant's Engineer explained to me that there are no bottoms to these structures and

- that they sit on the stone beds. I raised concern about the water in the stone freezing. The Applicant's Engineer believes that the depth of the stone will keep the water in the stone from freezing. I am not convinced that the water will not occasionally freeze lessening the amount of available underground stormwater storage.
10. Some of the voids in the stone use for stormwater storage are 6-inches below the lowest outlet invert. The stormwater modeling assumes that the voids are empty at the beginning of a storm event. This also would reduce the amount of available underground stormwater storage.
 11. The bottom elevation of the storage units in 'Pond DD1' and 'Pond DD2' is 337.25'. The existing ground elevation for the storage units in 'Pond DD1' ranges from about 337.6 to 339.4 and for 'Pond DD2' ranges from about 339.5 to about 341.7. It has been noted that the area has a high water table. It seems that the system will most likely be in groundwater, which would also reduce the amount of available underground stormwater storage.
 12. The lowest elevation of pond '1P' is 332.0 feet. Our GIS mapping shows that the elevation of Patrick Brook in that area has an elevation of 332 feet. Will this pond completely drain? Will there often be groundwater filling up this pond? In a 100-year storm event, the peak elevation for the pond is 335.74. The top of bank elevation for the pond is 335.75. It seems to me that should there be groundwater constantly in the pond, then this pond will flood, which would question the accuracy of the maps showing the post-development 100-year flood conditions. The Applicant's Engineer told me that the State required them to use information from a prior design by others in their analysis, which this was a part of.
 13. The peak stormwater elevation in pond 18PE2 for the 10-year and 100-year storm events are higher than that in Reach 'GC3'. Would backflow from Pond 18PE2 to GC3 result in the flooding of GC3?
 14. Is there a maintenance plan to ensure that a final approved system will be maintained as required in Section 5.27.2(4) of the HZR? Generally a State permit requires an inspection every year and a certification every three years. The water quality chamber, which will limit the amount of sediment that gets into the underground storage chambers, will need to be cleaned out periodically.
 15. The Applicant has not provided any of the LID approaches being implemented as required by Section 5.27.2(5) of the HZR. Some of their design could possibly qualify for conformance. The Applicant should review this section and the definition for LID in the HZR, and describe how they conform to this standard or propose a way in which they can conform to this standard.
 16. There are several ways in which the available underground storage appears to have been reduced. The Applicant should propose ways to compensate for this reduction and provide updated designs and modeling to show conformance with the HZR

SITE PLAN REVIEW - TRAFFIC (Sections 4.3.4 #1, Zoning)–Since the 2012 DRB approval very little has changed with regard to traffic mitigation measures between Hannaford's 2018 site plan application and Hannaford's 2012 approval by the DRB. With that said, an updated traffic impact assessment (TIA) was provided, along with several other related memos and updates:

- Technical memo, response to RSG comments – 5/18/2015
- Technical memo, response to VTrans comments – 5/13/2015
- Traffic impact assessment addendum – 5/11/2015

- VTrans LOI extension – 5/8/2014
- VTrans letter – 10/31/2013
- Dickinson speed limit change memo – 8/5/2013
- Traffic impact assessment – 2/4/2013

The most significant changes include:

Overall

1. Agreed to conduct post construction traffic monitoring studies at all intersections studied, and to work with VTrans to resolve any safety or congestion issues caused by Hannaford traffic.
2. Stipulated that larger delivery vehicles (WB-62 or larger) arriving from the north will be prohibited during peak traffic hours – i.e., weekdays 7am-9am and 3pm-6pm. Also stipulated that larger delivery vehicles arriving from the south will be prohibited from entering via the Route 116, Commerce Street intersection, and shall instead arrive via Mechanicsville Road and Commerce Street.

Route 116, Commerce Street Intersection

3. Route 116 south, left turn lane storage length increased to 185' from 175' (existing is 75') – per 7/2/2013 recommendation by Select Board traffic consultant (RSG).
4. Commerce Street westbound, stop bar for through/left turn lane set back 25' - per 7/2/2013 recommendation by Select Board traffic consultant (RSG).
5. Commerce Street westbound, right turn lane storage length increased to 270' from 200' (existing is 25').
6. Adjust signal timing to add a weekend peak period timing plan – per 7/2/2013 recommendation by Select Board traffic consultant (RSG).

Route 116, Mechanicsville Road Intersection

7. Contribute \$25,000 toward signaling the Route 116, Mechanicsville Road intersection, and only if a traffic signal is installed within five years of Hannaford opening. This instead of bearing full responsibility for whatever improvements the Town and VTrans deem necessary based on post construction traffic monitoring studies – per the DRB 2012 decision, Order 1d.

The Select Board made it very clear in the Town's appeal to the VT Supreme Court that a post construction traffic study was necessary, that a variety of improvement options for the Route 116, Mechanicsville Road intersection should be evaluated, and that input from VTrans was necessary. The Town and VTrans are working collaboratively to identify potential improvement options for this intersection as part of the Hannaford Act 250 permit appeal. VTrans composed a 12-page summary, dated 1/19/2018, which is included for your review, which discusses VTrans current opinions regarding proposed improvements to Route 116 in Hinesburg. Both the Town and VTrans feel that signalization of the Mechanicsville Road and Route 116 intersection is not the best choice, and that other improvements should be explored.

Additional development has occurred in proximity to the project that could impact the Hannaford traffic study, which is dated February 4, 2013, and is based on 2012 traffic count data. For

example: complete build out of the Thistle Hill and Hinesburg Center projects, increased occupancy of the Hinesburg Village Center commercial plaza on Mechanicsville Road, increased occupancy of the Aubuchon Hardware commercial plaza. Staff recommends that the Applicant's traffic engineer review trip generation from these additional developments, and provide an opinion on whether it makes a substantive difference in the engineer's various recommendations.

RECOMENDATIONS

The Town attorney provided a legal opinion, which the DRB can evaluate, which limits the review of this project to the following three items for review.

1. Subdivision Revision - The request to amend the subdivision revision appears reasonable based on the regulations and the history of the Commerce Park subdivision development.
2. Stormwater – Several concerns have been raised regarding the design's and modeling's conformance to the regulations. The available underground storage shown in the design and modeling appears to be less than shown due to probable groundwater infiltration and that some of the storage is below invert elevations to empty the storage structures. Additional irregularities were found in the modeling. Some of the requirements of the current regulations have not been satisfied. The Applicant's Engineer has offered to update the plans and modeling to conform to the regulations and address the concerns raised in this report.
3. Traffic Control - With two exceptions, the Applicant appears to have stipulated to addressing most of the traffic improvement measures discussed in the original DRB approval along with additional measures sought by the Town through the appeal process. The principal remaining issues are: 1) the Applicant's responsibility for making improvements at the Route 116, Mechanicsville Road intersection – as determined by the Town and VTrans; 2) the Applicant's responsibility for making further improvements to Route 116 if deemed necessary by post construction traffic monitoring – particularly any widening of Route 116 north of the Commerce Street intersection to accommodate longer southbound turn lanes.

Respectfully submitted,

Mitchel Cypes, P.E., Hinesburg Development Review Coordinator
Alex Weinhagen, Hinesburg Director of Planning and Zoning
Cc: Applicants