

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

**For Martin's Foods of South Burlington LLC
c/o Tyler Sterling and David White
Hannaford Supermarket – Site Plan Review
Tax Map 20-50-02.100**

Based on the public hearings 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. This matter came before the Hinesburg Development Review Board (DRB) on the application from Martin's Foods of South Burlington LLC, hereafter referred to as the “Applicant” or “Hannaford”, for a Site Plan approval for a 36,000 square foot Hannaford Supermarket to be located on lot #15 of the 1986 Commerce Park subdivision, which is a 4.86-acre undeveloped property in the Commercial (C) Zoning District. The Applicant also applied for a subdivision revision approval, which is being reviewed in conjunction with this site plan application.
2. The DRB reviewed the site plan application on April 17, 2018, May 15, 2018, June 5, 2018, August 7, 2018 and on September 4, 2018. The meeting was also continued, but not opened on July 3, 2018 at the request of the Applicant. Representatives for the Applicant attended the meetings on April 17, 2018, May 15, 2018, June 5, 2018 and on September 4, 2018. The property is owned by Trusts of Bernard Giroux, June Giroux, Victor Giroux and Ramona Giroux, who were not active participants in the hearing.
3. A group of residents represented by their counsel, James Dumont, Esq., called Responsible Growth Hinesburg (RGH), oppose this project and attended all five meetings. RGH submitted documents for the DRB to review and provided professionals that testified at the hearings. In addition, other members of the Public provided testimony and documents for the DRB to review.
4. The following members of the DRB were present for the site plan reviews on April 17, 2018 and May 15, 2018, constituting a quorum: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Jon Slason. The following members of the DRB were present for the site plan review on June 5, 2018, constituting a quorum: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples and John Lyman. The following members of the DRB were present for the site plan review on August 7, 2018, constituting a quorum: Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples and John Lyman. The following members of the DRB were present for the site plan review on September 4, 2018, constituting a quorum: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Jon Slason. The six regular members and one alternate member, who were part of this hearing process, reviewed all submissions and when absent reviewed the hearing on line prior to participating in the deliberations for this decision. See the official meeting minutes for a list of others present at the meetings.
5. Sarah Murphy and Jon Slason discussed their involvement in this hearing and reasons for which they would not be recusing themselves due to alleged conflicts of interest at the beginning of the April 17, 2018 hearing. David White, representing the Applicant, stated that the Applicant had no objection with Sarah Murphy and Jon Slason reviewing these applications as members of the

DRB. In response to a letter from Bill Moller received on August 19, 2018, David White at the September 4, 2018 meeting reiterated that the Applicant had no objection to Sarah Murphy reviewing these applications as a member of the DRB.

6. The application was received and deemed complete on January 29, 2018. Below are lists of application materials and other submittals from the Applicant, RGH and the Public. All of these application materials and submittals are contained in the document file (20-50-02.100) in the Hinesburg Planning & Zoning office.
7. The Applicant's submittals include 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. Legal opinion from Cristopher Roy, dated April 17, 2018.
 5. VT Agency of Transportation Letter of Intent, dated 5/8/14 with Extension, dated 5/9/17.
 6. Traffic Impact Assessment, prepared by Lamoureux & Dickinson, and dated 2/4/13.
 7. Memorandum re: Revised VT Route 116 Southbound Left-Turn Lane Design at Commerce Street, from Roger Dickinson, dated 8/5/13.
 8. VT Agency of Transportation Letter dated 10/31/13.
 9. Addendum to Traffic Impact Assessment, prepared by Lamoureux & Dickinson, and dated 5/11/15.
 10. Technical Memorandum re: VTrans Recess Order Response Letter, dated 5/13/15.
 11. Technical Memorandum re: RSG Memorandum – Traffic Engineering Peer Review, dated 5/18/15.
 12. VT DEC Authorization to Discharge, dated 6/1/17, with Response Summary.
 13. Sheet C1 "Existing Conditions", prepared by O'Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 3/11/13.
 14. Sheet C2 "Overall Plan", prepared by O'Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/29/15.
 15. Sheet C3 "30-Scale Site Plan", prepared by O'Leary-Burke Civil Associates PLC, and dated 2/22/11, last revised 6/29/15.
 16. Sheet C4 "Commerce Street Utility Plan", prepared by O'Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/29/15.
 17. Sheet C5 "Lot 15 Utility Plan", prepared by O'Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/29/15.
 18. Sheet C7 "Water & Sewer Details", prepared by O'Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 6/5/13.
 19. Sheet C8 "Road & Erosion Details", prepared by O'Leary-Burke Civil Associates PLC, and dated 11/9/10, last revised 3/11/13.
 20. Sheet C9 "VT 116/Charlotte Road Intersection Improvements", prepared by O'Leary-Burke Civil Associates PLC, and dated 6/21/13.
 21. Sheet L1 "Planting Plan", prepared by SE Group, and dated 11/9/10, last revised 7/6/15.
 22. Sheet L2 "Lighting Plan", prepared by SE Group, and dated 11/9/10, last revised 2/22/13.
 23. Sheet L3 "Landscape Details", prepared by SE Group, and dated 11/9/10, last revised 2/22/13.
 24. Sheet A-1 "Building Plan View", prepared by Bast & Rood Architects, and dated 4/26/12.
 25. Sheet A-2, No Title, prepared by Bast & Rood Architects, and dated 5/24/12.

26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. Stormwater narrative, worksheets, modeling and plans contained in an electronic file titled "Complete Application 07082016".
33. Email and additional stormwater modeling from Paul O'Leary P.E. dated April 4, 2018.
34. Letter from Christopher Roy, of Down Rachlin & Martin PLLC dated April 17, 2018.
35. Memo with updates on traffic-related issues from Roger Dickinson, dated May 4, 2018, received May 9, 2018.
36. Construction General Permit (CGP) 3034-9020.A for erosion control dated October 24, 2016.
37. A plan, titled 'EPSC Stabilization Plan', by O'Leary-Burke Civil Associates, PLC, with plan sheet number E8, Job# 9066, dated 08-21-12 and with a revision date of 07-02-15.
38. Building elevation and 'leaf on' renderings provided by the Applicant in the May 15, 2018 meeting.
39. Leaf off renderings provided by the Applicant in the 2012 hearing, which are to be included in this hearing at the request of the Applicant.
40. Email dated July 25, 2018 from David White regarding the supplemental traffic analysis, proposed post construction traffic monitoring conditions, and proposed improvements to the VT Route 116, Mechanicsville Road intersection.
41. Supplemental traffic analysis by Roger Dickinson dated June 19, 2018.
42. Proposed post construction traffic monitoring conditions dated July 19, 2018.
43. Email dated July 25, 2018 from David White regarding concurrence between Hannaford, VTTrans, and the Hinesburg Select Board on proposed improvements to the VT Route 116, Mechanicsville Road intersection.
44. Memo dated July 25, 2018 from David White regarding the number of parking spaces proposed by Hannaford.
45. Letter dated June 13, 2018 from Paul O'Leary addressing compliance with stormwater regulations in section 5.27.2 of the Zoning Regulations.
46. LEED checklist for new retail construction.
47. A document dated May 21, 2012 outlining how the Hannaford building would meet the requirements of the Core Performance Guide (VT edition).
48. Landscaping cost estimate for the project dated April 26, 2012 by the SE Group.
49. Proposed easement deed for the Farmers Market area dated May 25, 2012.
50. Proposed easement deed for the Canal park area dated April 26, 2012.
51. Renderings of the proposed Hannaford building and site photos with the building simulation inserted into the photos. Renderings dated May 2012. Photos undated, but presented as part of the previous review (2011-2012), and re-presented at the June 5, 2018 DRB meeting.
52. Letter dated August 22, 2018 from Paul O'Leary addressing compliance with stormwater regulations in section 5.27.2 of the Zoning Regulations.

53. A memorandum from David White dated August 21, 2018 describing how Hannaford proposes to conform to the Hinesburg Official Map.
 54. A memorandum, an updated traffic impact assessment and corresponding appendices from Roger Dickenson dated August 21, 2018.
8. Submittals from RGH's attorney James Dumont and his experts include the following:
 1. Letter from James Dumont, Esq., dated February 16, 2018, which makes legal arguments about how the DRB review should proceed.
 2. Letter from James Dumont Esq., dated April 18, 2018.
 3. Written testimony from Anthony Stout, Planner at Lakeside Environmental Group for Attorney Dumont, received April 17, 2018.
 4. Content document and plan from Anthony Stout presented at the April 17, 2018 DRB meeting.
 5. Written testimony from Stephen Revell, Hydrogeologist for Attorney Dumont, received April 17, 2018.
 6. Edited O'Leary Burke plans and diagrams by Stephen Revell presented at the April 17, 2018 DRB meeting.
 7. Written testimony from Andres Torizzo, Civil Engineer at Watershed Consulting Associates for Attorney Dumont, received April 17, 2018.
 8. Content outline and support material form from Andres Torizzo presented at the April 17, 2018 DRB meeting.
 9. Letter from Andres Torizzo dated August 1, 2018 providing a review of the proposed stormwater system per the 2017 State standards.
 10. A memorandum from John Bruno and Michael Oman dated August 2, 2018 providing a review of the Applicant's traffic impact review.
 11. Letter from Anthony Torizzo, Hydrologist at Watershed Consulting Associates, dated September 4, 2018.
 12. A plan edited by Stephen Revell, showing the limits of hydrological soil groups in the project area.
 13. A memorandum from John Bruno and Michael Oman dated September 4, 2018 providing a review of the Applicant's traffic impact assessment dated August 21, 2018.
 9. Submittals from RGH members and other members of the Public include the following:
 1. Traffic report from VTrans, dated January 19, 2018 providing an opinion on the legal decisions from the court proceedings for Hannaford, and reviewing possible improvement options for the VT Route 116, Mechanicsville Road intersection.
 2. Letter from Joanna White dated May 8, 2018 concerned about the visibility of the proposed structure.
 3. Letter from Jean Kiedaisch dated May 8, 2018 concerned with the visibility and effect on the Canal that the proposed structure would have.
 4. Letter from Jean Kiedaisch dated May 11, 2018 concerned with conformance to the Official Map, compatibility with the surrounding area and more.
 5. A drawing provided by Jean Kiedaisch on May 11, 2018 showing comparative buildings.
 6. Email from Mary Beth Bowman received on May 14, 2018 stating concerns with the work done on this application.
 7. Letter of concern from Bob Thiefels received on May 14, 2018 expressing concerns regarding the size of the store, traffic, wetlands and more.
 8. Letter from George Dameron received on May 15, 2018 expressing traffic and pollution concerns.
 9. Letter from Heidi Simkins received on May 15, 2018 expressing traffic concerns.

10. Letter of concern from Bob Thiefels received on June 4, 2018 regarding traffic, the Canal setback and size of the store.
 11. Regulation list from Jean Kiedaisch received on June 5, 2018.
 12. Letter of concern from Jean Kiedaisch received on June 5, 2018 on interpretation of the regulations.
 13. Letter of concern from Peter Erb received on June 5, 2018 regarding stormwater treatment and wetland maintenance.
 14. Letter of concern from Mr. Stout received on June 5, 2018 regarding the Canal setback.
 15. Photos of Catherine Goldsmith's model of the project in H.O. scale
 16. Memorandum from the Planning Commission dated June 13, 2018 regarding conformance to the Hinesburg Official Map.
 17. Email of concern from Bob Thiefels received on August 1, 2018 and August 7, 2018, regarding traffic and the size of the store.
 18. Email from Nancy Dunlap received on August 1, 2018, in support of this application.
 19. Email from Matthew Lapierre received on August 1, 2018 stating his objection to this application.
 20. Letter from Meg Handler received on August 6, 2018 stating her concerns for this application not fitting into Hinesburg and not meeting traffic & stormwater regulations.
 21. Email from Carl Bohlen received on August 7, 2018 stating his concerns about the application regarding conformance to the official map, the completeness of the application, the size of store, traffic and stormwater.
 22. Email from Susan Schulman received on August 7, 2018 stating her concerns regarding traffic, stormwater, building size & character, noise, light and public use of land.
 23. Letter from Bill Moller received on August 19, 2018 questioning Sarah Murphy's decision not to recuse herself.
 24. Email from Becky Alford, received on September 3, 2018, in opposition to the application for not meeting official map, traffic and stormwater requirements.
 25. Email from Kenneth Brown, received on September 4, 2018, in opposition to the application for not meeting official map requirements.
 26. Letter from Jerrilyn Miller, dated September 4, 2018, objecting to the size of the proposed building.
 27. Letter from Catherine Goldsmith, dated September 4, 2018, stating various concerns that include conformance to the Official Map, traffic and stormwater.
10. David Rugh of Stitzel Page & Fletcher, PC, Attorneys at Law, per the Town's request, and after consultation with the Applicant's and RGH's attorneys, provided a legal opinion in a letter March 2, 2018 to Alex Weinhagen, Hinesburg Director of Planning and Zoning. The legal opinion stated 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 Vermont Supreme Court (VSC) decision, or that have changed. Specifically, the DRB should primarily focus on stormwater treatment and traffic control.
 3. The six related DRB and the Vermont Environmental Division (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.
11. David Rugh provided an updated legal opinion, on April 10, 2018, advising that all of the HZR's site plan standards should be considered and both applications should be reviewed to current

- regulations and be heard concurrently. The DRB decided at the May 5, 2018 meeting that it would conduct the review consistent with the updated legal opinion from Mr. Rugh.
12. Commerce Park received subdivision approval for fifteen lots in 1986. Hannaford is proposing to be located on lot #15 of this subdivision. The Applicant submitted applications for this development on November 11, 2010. The first of fifteen meetings began at the January 4, 2011 DRB meeting. DRB decisions on the proposed signs and the extended hours of operation 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 by the District #4 Environmental Commission 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.
 13. The Site Plan decision, the related decisions in 2014 for adjacent properties, and the Act 250 decision were appealed to the Environmental Division of the Vermont Superior Court (VEC), which issued decisions regarding the Hannaford application on April 12, 2016 and July 7, 2016. The VEC ruled in Hannaford's favor and essentially upheld the DRB's Site Plan approval with some modifications or revisions to the stormwater plan, to the proposed traffic mitigation, and with revisions to some of the DRB's conditions of approval. The VEC decisions on the Site Plan and the Act 250 permit were then appealed to the VSC by all parties (Hannaford, Town of Hinesburg, and Responsible Growth Hinesburg). The VSC reversed the VEC's decision and denied the Site Plan application, but also made certain rulings regarding the project to clarify certain legal issues for any future applications. The VSC decision compelled the Applicant to return for a new site plan review and required the Applicant to revise the 1986 subdivision approval, which is why the Applicant submitted the subdivision revision application to the DRB. The VSC remanded the Act 250 permit back to the VEC with instructions to take further testimony on several items – principally stormwater and required traffic mitigation.
 14. This project relies on both the purchase of a portion of lot # 20-50-02.200, a 0.32 acre lot to the West where the Automotion business is located, and the acquisition of easements on lot 20-50-04.00 which is where the Giroux storage yard is located, both in the adjacent Village District.
 15. The proposed use as a retail establishment is a permitted use per Section 3.8.4(1)(a) of the Hinesburg Zoning Regulations (HZR). Section 4.3 of the HZR requires Site Plan review for non-residential uses such as this application for a new grocery store. Placement of the structures is land development per the definition in Section 10.1 of the HZR and would require building permits per Section 4.1.1 of the HZR prior to construction.
 16. Vehicular 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. Pedestrian access is to be from proposed sidewalk adjacent to the vehicular access and from the Canal walk. The locations of these accesses are shown on the proposed plans.
 17. The Board observed that there was no delineated crosswalk for pedestrians to access the proposed store from the parking lot. The Applicant agreed to add cross hatch striping on the vehicular travel lane by the front entrance area.

18. The Applicant proposed to have 128 on-site parking spaces, six of which are ADA accessible, as shown on the plans. Table 2 in Section 5.5 of the HZR recommends one parking space for every 400 square feet of retail floor area, which equates to 90 parking spaces for the proposed 36,000 square foot retail store.
19. Loading Facilities are provided on the northwest corner of the proposed building as shown on the proposed plans. Refuse storage and disposal is proposed to be provided on the west side or back or rear side of the Hannaford building near the northwest corner. This includes a storage box, a compactor and a container that is accessible to trucks removing the items.
20. The Applicant's Engineer testified that the area proposed for snow storage on the east end of the site located over 15 proposed parking spaces is sufficient.
21. Staff reports reference the following statement from the original review: "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 not be necessary to protect this structure" and "a dry hydrant leading to the Canal has been included in the plans for this project." No new evidence was submitted in this review.
22. The Applicant has submitted a landscaping plan, which is the same plan that was submitted for the November 7, 2012 DRB approval. Some of the landscaping is located on adjacent properties. The Applicant per Order #4 of the November 7, 2012 decision, was required to get easements to place and maintain the off-property landscaping. The Applicant confirmed they plan to obtain the required easements to place and maintain the proposed landscaping.
23. The proposed 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 for the proposed project. This amount is greater than the \$80,000 of landscaping investment that would be required for the \$7,250,000 project per Section 4.3.8 of the HZR. Many of the proposed plantings will be planted on compacted fill, on islands surrounded by pavement, and/or in the vicinity of the underground stormwater treatment system. Landscape details on the plans require that the surrounding soil not exceed 80% compaction and drainage shall be required if compacted soils are present.
24. The proposed structures have the required setback distances per Section 2.4 of the HZR. The parking areas have the required setback distance per Section 5.6.3 of the HZR. The 1986 subdivision showed building setback limits, which matched the required setback distances at the time of approval. The Applicant has applied for a subdivision revision to reduce the setbacks required in the 1986 subdivision approval to the HZR's current setback requirements.
25. The Applicant received DRB approval for both extended hours and a sign on August 30, 2011, which was not appealed nor contested in this hearing.
26. The Applicant has submitted building elevations for this application. Concerns from RGH and the Public have been raised regarding the comparative wall heights and overall size dimensions when compared to other structures in Commerce Park.
27. A lighting plan was submitted for review. It appears to be a similar plan that was reviewed for the November 7, 2012 DRB approval, which was updated per the requirements of Order #6 of the

- approval. Order #6 required that two 'C' lights shown be eliminated and the other two lights be adjusted to be downcasting. The previous decision required all lights to be downcasting.
28. The property, lot #15, is located within the municipal water and sewer district. The Applicant previously received a water and sewer allocation from the Town. The Applicant obtained State Wastewater System and Potable Water Supply permit WW-4-4018 on August 7, 2013.
 29. This project will not generate any hazardous wastes. As is typical in a supermarket, however, 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.
 30. Section 5.23.2(2) of the Hinesburg Zoning Regulations (HZR) requires submittal of a LEED scorecard as part of site plan review, even if LEED certification is not being sought. Hannaford submitted the score card for this application.
 31. The proposed project includes retaining walls, which would require engineering certification.
 32. Section 5.23.2(3) of the HZR requires that building meet the Core Performance requirements for the building envelope, mechanical system (i.e., heating, ventilation, air conditioning), and interior lighting. The Core Performance requirements exceed the minimum standards outlined in the VT Commercial Building Energy Standards (CBES). Demonstration of compliance is not necessary during site plan review. It is simply a requirement that the Zoning Administrator must enforce. With that said, Hannaford submitted an outline review of how they would meet the Core Performance requirements.
 33. RGH argues that the proposed development requires a master plan per Section 3.1.1 of the HZR that would include the subject property and adjacent properties owned by some of the landowners of the subject property.
 34. The Applicant testified its belief that the proposed project is compatible with the adjacent properties and with the character of the neighborhood. The Applicant points out that the proposed building conforms to the 35-foot building height requirement, and is smaller than both the Cheese Plant building and NRG building. The Applicant notes that unlike adjacent zoning districts, there is no size limit for retail uses in the Commercial Zoning District. The Applicant contends that existing buildings in the surrounding area have a wide variety of sizes and forms.
 35. RGH contends that the project is not compatible with the surrounding area because the proposed Hannaford building is larger than any other building in the Commercial Zoning District, and the building's size and/or mass will impact the view at various vantage points, especially when viewed from the Canal pathway.
 36. The Applicant proposes to raise the height of the site 2 to 7 feet in elevation.
 37. RGH raised concerns about impact of the project to substantial wetland areas on the site. These wetlands have been deemed Class III wetlands by the State of Vermont, which means a State wetland permit is not necessary for the project's proposed impacts. RGH contends that lowering of the water table will eliminate the wetlands shown on the plans, including the wetland areas to

- be retained, and may affect the Canal itself. The level of water in the Canal is determined by manmade structures at each end of the Canal.
38. The Official Map indicates that future community facilities are planned for the subject property. To conform to the Official Map requirements the Applicant is proposing to convey easements to the Town for a farmer's market on the northwesterly corner of the site and for a Canal park along the site's southerly boundary. The farmer's market easement language limits the market to a 3½-hour period, one day a week, between Monday and Thursday, for four months between June and the end of September. The easement also limits the vendors to 25 and requires the vendors to register with the manager of the Hannaford store. Limitations of the number of vendors selling certain products are also detailed. In addition to these restrictions, the maximum term of the easement is limited to 35 years (an initial 5-year term and six, 5-year renewal terms), and the easement could be revoked by the Grantor at its own discretion. For the Canal Park, the easement language would require the Town to place and maintain a portion of the proposed landscaping the Applicant has proposed in its landscaping plan to conform to Section 4.3 of the HZR.
 39. The Planning Commission submitted a memo dated June 13, 2018, where it states that the proposed pedestrian access, connectivity to other public spaces, incompatible surrounding uses, and small area are all factors that make the proposed farmers market venue provided through the proposed easement problematic.
 40. The Applicant received a State Construction General Permit (CGP) 3034-9020 on October 24, 2016. Proposed erosion control is shown on the submitted plans.
 41. The proposed impervious surfaces in the project area is 2.69 acres. Since the new impervious area is greater than 1-acre, a State stormwater permit is required. Since the proposed new impervious area is greater than 10,000 square feet, a stormwater plan and review is required per Section 5.27.2 of the HZR.
 42. The applicant received approval for State Stormwater permit, 3034-9015, on April 10, 2014 for the proposed development. An amended permit, 3034-9015.A, was approved on June 1, 2017. This amended permit has been appealed to the VEC. RGH testified that the Applicant was required to amend their State stormwater approval because the required improvements involved work that was outside the drainage easement areas.
 43. Section 5.27.2(1) of the HZR requires conformance with the five provisions from the latest version of the Vermont Stormwater Management Manual (VSMM). The latest version became effective on July 1, 2017. Permits 3034-9015 and 3034-9015.A were approved per the requirements of the April 2002 VSMM. The Applicant's Civil Engineer testified that the Applicant's design may meet the requirements of the 2017 VSMM, but this would require the State's approval of the proposed ADS water quality chamber devices for water quality treatment.
 44. To conform to the water quality and channel protection treatment standards the Applicant's Civil Engineer proposed using a grass channel. Town Staff questioned why some of the stormwater discharge shown in the modeling for this treatment was not flowing to the grass channel. The Applicant's Civil Engineer provided modeling to show a small adjustment could satisfy this concern. RGH's Civil Engineer testified that grass channels are no longer an acceptable water quality treatment practice per the 2017 standards. He also questioned whether the grass channel could be modified to meet the 2017 standards due to the high water table.

45. RGH's Civil Engineer testified that ADS water quality chamber devices do not remove the required amount of phosphorus, which is why the ADS system is not approved by the 2017 VSMM for providing water quality treatment.
46. The Applicant's Civil Engineer testified that the majority of the site soils has hydrologic soil group (HSG) rating of 'D', and that soil borings indicate subsurface clay soils. RGH's Civil Engineer disagreed and testified that the soils have been identified as silty sand and sand, which provide conditions that are favorable for infiltration.
47. The Applicant's Civil Engineer testified that the peak post-development stormwater discharge for the 10-year storm event is less than the corresponding pre-development discharge exiting the Hannaford site, which in the Engineer's opinion is how the stormwater treatment system should be evaluated. But, the post-development peak discharges for the 10-year storm event is greater than the pre-development peak discharge at the culvert that discharges to Patrick Brook. The Applicant's Civil Engineer testified that this is due to the proposed replacement of the culvert under Commerce Street with a wider culvert.
48. The Applicant's application for State stormwater permits stated an exemption from review for the 100-year storm event. The Applicant's stormwater modeling shows an increase in the peak discharge for a 100-year storm event at both the site discharge point and when the community system discharges to Patrick Brook. Section 5.27.2(3) of the HZR requires that the stormwater system be designed so that off-site (downstream) drainage areas will not be overwhelmed during larger storm events up to the 100-year storm event. Modeling submitted by the Applicant shows that the drainage channel between the Dark Star and Aubuchon buildings will flood during the 100-year storm event. RGH's Civil Engineer testified that the culvert on VT Route 116 for Patrick Brook, which is downstream of this project, has been deemed deficient to pass a peak discharge for the 100-year storm event.
49. Staff noted that a portion of the storage area in the proposed underground stormwater storage chambers is located at a lower elevation than the invert pipes that discharge the stormwater. The Applicant's stormwater modeling assumes this portion of the storage chamber is empty prior to a storm event. The Applicant's Civil Engineer did not explain how the storage volume below the inverts would discharge stormwater. RGH's Hydrologist testified that there is a strong probability of a high groundwater table in the area that the storage chambers are to be placed. In addition these chambers are to be placed up to seven feet below the existing elevation of the site. Since there may be a high groundwater table and the proposed chambers are being placed below the existing grade, RGH's Hydrologist opined that it is unlikely that stormwater in these storage areas would infiltrate into the ground. The Applicant's Civil Engineer did not show in their modeling and testimony the effect from groundwater on the underground stormwater storage chamber system.
50. The Applicant's Civil Engineer proposes that this project conforms to the Low Impact Development (LID) standard in Section 5.27.2(5) of the HZR by having underground stormwater storage, which is a method of conformance listed in the City of South Burlington's publication 'Low Impact Development Guidance Manual' per the LID definition listed in Article 10 in the HZR. The manual recommends that for conformance to this standard that the soil have an infiltration rate of 0.5 in/hr and that the storage chambers be at least three feet above the water table.

51. The Applicant testified that they were not applying for a new State stormwater permit under the standards of the 2017 VSMM.
52. The project will have paved streets, five-foot-wide sidewalks and appropriate street trees along the access drive that is shared with the National Bank of Middlebury.
53. The parking and loading areas are in side and rear yards of the structure and appropriately set back from the boundary lines.
54. There will be no unscreened outside storage of supplies or equipment.
55. The Applicant's Traffic Engineer submitted a traffic impact analysis (TIA) based upon the 8th edition of the Institute of Transportation Engineers (ITE) publication Trip Generation. This analysis, which was the basis of the Applicant's traffic modeling, calculates a peak hour demand of 386 vehicle trip ends per hour (vte/hr). The Applicant claims that this estimate of traffic generation is conservative because the data in the 9th and 10th editions of the ITE Trip Generation Manual project predict lower average rates.
56. RGH's Traffic Engineers have countered that the Applicant has undercounted the trip generation and existing data for its future modeling. They point out that the Applicant's modeling of the current condition does not match the current queue lengths. They also contend that the Applicant wants the proposed Hannaford to be a regional store and will generate much more traffic than shown. The Applicant's Traffic Engineer disagrees stating that the traffic count for Lantman's Market used by RGH as a comparison was a one-time measurement, which by itself would not meet the appropriate professional standards.
57. The Applicant has proposed the following improvements and actions in order to mitigate Hannaford's anticipated traffic impacts:
 1. VT Route 116 / Charlotte Road Intersection
 - Modify the eastbound/westbound signal phasing from split phasing to concurrent phasing, accompanied by signal timing adjustments to increase the VT Route 116 green time.
 - Relocate the sidewalk and the stop bar at Lantman's exit to improve sight distances and reduce signal lost time.
 2. VT Route 116 / Commerce Street / Farmall Drive Intersection:
 - Increase the available storage length of the southbound VT Route 116 left-turn lane at Commerce Street from 75 feet to 185 feet.
 - Increase the available storage length of the westbound Commerce St right-turn lane from 75 feet to 270 feet.
 - Relocate Aubuchon Hardware's existing western-most curb cut to increase the distance between it and VT Route 116.
 - Install a "DO NOT BLOCK INTERSECTION" sign and corresponding pavement markings on Commerce Street at Jolley Mobil's existing curb cuts
 - Widen the shoulder on the south side of Commerce Street where Aubuchon's access is presently located to permit traffic entering Commerce Street to bypass a vehicle that might be waiting to turn left into Jolley Mobil's westerly curb cut.
 - Relocate the stop bar for the westbound left/through lane from Commerce Street back approximately 25 feet to accommodate southbound left-turning trucks from VT Route 116.
 - Adjust the existing signal timing to add a weekend peak period timing.

3. New Pedestrian Connections:
 - Sidewalk extension along Commerce Street Extension,
 - Infill sidewalk on Commerce Street along Lot 12, and
 - New sidewalk between the site and the Canal Path.
4. VT Route 116 / Mechanicsville Road Intersection:
 - Hannaford originally offered to mitigate future traffic impacts at this intersection by the payment of a \$25,000 impact fee towards signalizing this intersection, should traffic signals be installed within five years of the opening of the new Hannaford supermarket. Based on more recent discussions with the Town of Hinesburg and the Vermont Agency of Transportation (VTrans), the preferred alternative is now to prohibit left-turns from Mechanicsville Rd onto VT Route 116 during the weekday afternoon peak period (Option #8 in the January 19, 2018 traffic report from VTrans). Hannaford is willing to implement that alternative instead of paying the originally proposed impact fee.
5. Delivery Times:
 - Deliveries by vehicles WB-62 in size or larger arriving from the south shall at all times be prohibited from entering via the VT Route 116, Commerce Street intersection, and shall instead arrive by making a right turn onto Mechanicsville Road and then left onto Commerce Street.
 - Deliveries by vehicles WB-62 in size or larger arriving from the north shall be prohibited between the hours of 7 am to 9 am and 3 pm to 6 pm on weekdays.
6. Travel Demand Management:
 - The proposed site design will include a bicycle rack and connections to nearby bicycle paths and routes.
 - The proposed site design also includes new sidewalks on-site and external connections to the Town's existing sidewalk network and to nearby retail/services (including nearby stores, a bank and the post office).
 - Modified work schedules with varying, overlapping schedules that typically bracket peak periods in order to provide adequate staffing during those periods
7. Traffic Monitoring Study:
 - Hannaford is willing to perform a post-opening traffic monitoring study to identify whether unreasonable traffic congestion or safety conditions have resulted from its proposed supermarket. The following outlines the scope of the traffic monitoring study; as currently proposed by the Applicant, the Town of Hinesburg and VTrans:
 - A. Traffic Monitoring Study Standards
 1. Traffic Congestion. Levels of Service, delay and queue lengths at the following intersections shall be better than or within five percent (5%) of those predicted in the Applicant's February 4, 2013 TIA as amended by its May 11, 2015 Addendum to the Traffic Impact Assessment for a Hannaford Supermarket and by this TIA dated August 21, 2018, excluding any additional traffic generated by any other new development:
 - a. VT Route 116 & CVU/Falls Road
 - b. VT Route 116 & Commerce Street
 - c. VT Route 116 & Mechanicsville Road
 - d. VT Route 116 & Charlotte Road
 - e. Mechanicsville Road & Commerce Street
 - f. VT Route 116 & Silver Street
 2. Storage Capacity. The storage capacity of the 185-foot length of the left turn lane from VT Route 116 southbound to Commerce Street during the Design Hour Volume (DHV), as defined in the *Vermont Agency of Transportation's*

- Traffic Impact Study Guidelines* as generally the 30th highest hourly volume of the year, shall be adequate to accommodate Project-related traffic queuing in that lane. Storage capacity is adequate if the 95th percentile queue length during the DHV based on background traffic, traffic from other development projects included in the 2013 TIA as amended by Addendum dated May 11, 2015, the Technical Memorandum dated June 18, 2018, and this TIA dated August 21, 2018; and traffic from the Project (collectively, "Total Traffic Volumes"), does not exceed the 185-foot storage length of the left-turn lane.
3. Traffic Safety. The Project shall not cause a negative impact on traffic safety. A negative impact on traffic safety shall include:
 - a. A crash rate increase of 20% or more in any locations experiencing five or more crashes per year prior to the date the Project opens to the public.
 - b. A crash rate increase of 50% or more at those locations experiencing fewer than five crashes per year prior to the date the Project opens to the public.
- B. Traffic Monitoring Study Protocol
1. Traffic Study: The Applicant shall conduct a traffic monitoring study 12 to 18 months after the Project is open to the public, to verify compliance with permit conditions related to traffic congestion, storage capacity, and safety (the "Traffic Study"). This study shall examine total traffic volumes, account for improvements scheduled for the Vermont Route 116/CVU intersection planned for 2019, and identify the Project's impacts. Traffic added by projects permitted after the TIA, and not included in this application shall be excluded from the analysis of the Project's impacts. This study shall use standard industry practices and shall be performed during the school year when school is in session and not during school vacation days.
 - a. The Traffic Study shall include "before" and "after" weekday PM peak period turning movement counts at the intersections identified in the Traffic Congestion Standard (#1).
 - b. The "before" and "after" turning movement counts shall be scheduled to be as close as reasonably practicable within the timetable outlined above. The turning movement counts shall be adjusted to the DHV. The "before" and "after" turning movement counts shall also include field observations of actual peak hour maximum queue lengths and delays at the following locations:
 - i. VT Route 116 southbound left turns at Commerce Street, and
 - ii. Mechanicsville Road westbound left turns at VT Route 116.
 - c. The Traffic Study will examine the Project's weekday PM peak hour trip generation and the Project's PM peak hour trip distribution entering and exiting the Applicant's driveway and at both ends of Commerce Street.
 - d. The Traffic Study will also examine levels of service, delays, and maximum queue lengths at each intersection identified in the Traffic Congestion Standard (#1).
 - e. Safety. The Traffic Study will assess the Project's traffic safety impacts by examining "before" and "after" crash records for a two-year period (from 12 months before the Project is open to the public to 12 months after the date the Project opens to the public) to verify that the Project is not causing a negative impact on traffic safety, as described in the Traffic Safety Standard (#3).

- f. Report. Within 60 days of completion of the Traffic Study, the Applicant shall finalize a written report detailing the monitoring observations, data, analyses and results of the Traffic Study (the "Report").
 - g. Notice and service. The Applicant shall file copies of the Report with the District #4 Environmental Commission and the Town of Hinesburg Development Review Board ("DRB") and shall serve copies on the Vermont Agency of Transportation, the Natural Resources Board, and all parties in this matter with party status under Act 250 Criterion 5 or 9(K), or who were interested persons in the DRB proceeding. The Applicant shall file and serve the Report within five days of the reporting deadline noted in Paragraph (f), above.
 - h. Resolution. If the Traffic Study determines that the Project has failed to meet any applicable permit condition, then the Applicant shall file a complete Act 250 Land Use Permit amendment application and municipal site plan amendment application proposing appropriate mitigation measures within 60 days of the date on which the Report is filed and served. This 60-day period may be extended to a maximum period of 90 days if the Applicant is engaged in good faith discussions with relevant state and local agencies regarding proposed mitigation measures. This condition, Condition 4(h), shall not affect the finality or validity of any applicable permit or permit condition, nor the enforcement authority of the Natural Resources Board or the Town of Hinesburg.
58. A bike rack is proposed on the southeast corner of the proposed building.
59. RGH raised concerns regarding trucks being able to make the turn on to Commerce Street from VT Route 116. The Applicant did not provide truck turning data in their application. The Applicant noted that the intersection design will be approved by VTrans.

CONCLUSIONS

- 1. The proposed use of a supermarket is a permissible and allowed use in the Commercial Zoning District per Section 3.8.4(1)(a) of the HZR.
- 2. The proposed vehicular and pedestrian access and egress to the property, with the addition of striped delineated crosswalks described in Findings of Fact #17, and the ability for emergency services to access the property and all its structures and uses, conforms to the on-site circulation standard of Section 4.3.4(1) of the HZR.
- 3. The number of proposed parking spaces, the proposed lane widths, location of loading facilities and the designated location and times to access the loading facilities as shown on the plans and accompanying documents conforms to the requirements of Section 4.3.4(2) of the HZR.
- 4. The Applicant has demonstrated conformance with the requirements of Section 4.3.4(2) of the HZR with locations for refuse storage and disposal and snow removal shown on its plans and in its application materials.

5. The Applicant has submitted plans and documents for landscaping and screening that conform to the standards of Sections 4.3.4(3) and 4.3.8 of the HZR. This conformance is conditioned on obtaining the off property easements and the landowner being responsible for placing and maintaining all the proposed landscaping.
6. The conformance with required setbacks is dependent on the Applicant obtaining the subdivision revision approval, which the Applicant has applied for. With the subdivision revision approval, the application conforms to Sections 4.3.4(3), 2.4 and 2.5.3 of the HZR.
7. The proposed extended hours of operation were previously approved by the DRB on August 30, 2012 for conformance to Section 4.3.4(3) of the HZR. This approval was not appealed and has become final.
8. Comparisons to the NRG and Cheese-plant buildings are not appropriate for this application because these buildings are not in the same neighborhood as the subject property. They are not proximate, and they are in completely different zoning districts. The view of any single side of the proposed structure is comparable to existing structures in Commerce Park. From the perspective of a pedestrian or driver on the adjacent sidewalk and street network, the view will be of a large building, but not one that is out of character with existing structures in Commerce Park. The project achieves maximum compatibility with adjacent properties and the character of the neighborhood pursuant to Section 4.3.4(3) of the HZR due to a variety of factors: the large building setback from Mechanicsville Road and Commerce Street; there is landscaping planned on all sides of the project site and on the interior of the site; the Applicant's architect designed the building to break up primary facades with the lower canopy roof line and added façade design elements including differentiated building materials, colors, and patterns.
9. The proposed lighting as shown and described on the plans and other documents is in conformance with Sections 4.3.4(4) and 5.29 of the HZR.
10. The Applicant has obtained the required Town and State water and sewer approvals for conformance to Section 4.3.4(5) of the HZR.
11. The overall site is relatively flat. For the placement of some of the proposed parking, road access and sidewalk areas, steep slopes are created, which are to be stabilized with retaining walls. Conformance to the grading standard of Section 4.3.4(6) would require a condition that all the proposed retaining walls as shown on the plan shall be certified as adequate by an appropriate licensed professional prior the issuance of a certificate of occupancy.
12. As described in Findings of Facts #41 through #51, the Applicant's proposed stormwater treatment system does not conform to the latest version of the VSMM for the five provisions as required in Sections 4.3.4(6) and 5.27.2(1) of the HZR. This conclusion is a reason for denial.
13. The Applicant also has not located soils well suited for infiltration, and does not utilize such soils, as required in Section 5.27.2(2) of the HZR. This conclusion is a reason for denial.
14. The use of the underground stormwater treatment does not satisfy Low Impact Development (LID) standard required in Section 5.27.2(5) of the HZR because the Applicant did not prove that the infiltration rate of the soil and depth to groundwater were adequate. This conclusion is a reason for denial.

15. The stormwater discharge from the proposed development would overwhelm a downstream drainage channel and a culvert. Because of this the proposed development is not in conformance with Section 5.27.2(3) of the HZR, as it does not improve upon the off-site pre-development drainage conditions. This conclusion is a reason for denial.
16. The Applicant has obtained State Construction General Permit (CGP) 3034-9020 on October 24, 2016 for conformance of the control of soil erosion during and after construction portion of Section 4.3.4(6) of the HZR
17. The project meets the master plan requirement in Section 3.1.1 of the HZR because the entire lot #15 property is being developed. Adjacent properties in common ownership, but that are not part of the same original subdivision approval need not be included in the design of the property.
18. The Official Map requires that the project accommodate future community facilities. Conformance to Section 3.1.1 of the HZR and the conformance to the Town Plan portion of Section 4.3.4(7) of the HZR also require conformance to the Town's Official Map. The Canal Park easement proposed by the Applicant is for an extremely constrained area, large portions of which are unsuitable for community use due to wetlands. The portion of the easement outside of the wetland area (southern portion near the Canal pedestrian bridge) is designed to provide landscaping and screening necessary for the Hannaford building. The requirement in the proposed easement that the Town place and maintain all of the landscaping in the easement area is unacceptable, as this landscaping must remain the Applicant's responsibility to ensure compliance with its site plan. For these reasons the proposed Canal Park does not constitute a community facility, and does not accommodate the Official Map.
19. A farmer's market could be a community facility of the type that is expressly mentioned on the Official Map. However, the proposed easement deed does not grant the farmer's market use in perpetuity, thereby not accommodating the mapped public facility. In addition, the proposed easement greatly limits the times, vendors and range of use as described in Finding of Fact #38. For these reasons the proposed farmer's market use and this application does not conform to Sections 3.1.1 and 4.3.4(7) of the HZR. This conclusion is a reason for denial.
20. As described in Findings of Fact #29, this application conforms to the proper planning and design in regard to hazardous wastes requirement of Section 4.3.4(8).
21. The submittals described in Findings of Fact #32 show conformance to the Core Performance requirements of Section 5.23.2(3) of the HZR.
22. The Applicant's traffic generation calculations are reasonable and appear to be conservative given lower estimates for the proposed use in more current versions of the ITE Trip Generation Manual.
23. The proposed traffic improvements described in Findings of Fact #57 do not adequately address pedestrian safety on the adjacent street network as required in Section 4.3.4(1) of the HZR. This conclusion is a reason for denial. Given concerns about traffic queuing, and increase in delay at certain intersections, additional pedestrian safety measures are necessary at the following locations: Addition of rapid flasher crosswalk beacons on Mechanicsville Road at the Commerce Street intersection, and on VT Route 116 at the crosswalk near the Hinesburg Community School. New Crosswalks are also needed on Commerce Street near the proposed Hannaford entrance, and on VT Route 116 at the Mechanicsville Road intersection. To address pedestrian safety new rapid flashers for the existing crosswalks located on Mechanicsville Road near the Canal bridge

and on VT Route 116 near the Community School, and rapid flashers with a new crosswalk to cross Commerce Street opposite the Commerce Street Extension/Hannaford entrance are required to adequately address pedestrian safety.

24. The proposed traffic studies described in Findings of Fact #57 do not adequately address the projected increase in traffic delays for the Silver Street, VT Route 116 intersection. The Applicant should be required to contribute its fair share (based on the amount of peak hour project-related traffic at that intersection) to a study of potential improvements to this intersection by escrowing funds for a study to be completed by the Town within two years of the issuance of a certificate of occupancy for the Hannaford . This conclusion is a reason for denial.

ORDER

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB denies the proposed site plan application.

Development Review Board

October 17, 2018
Date

Board Members participating in this decision: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Jon Slason.

Vote: 4-3, with Dennis Place, Dick Jordan and John Lyman voting 'No'.

30-day Appeal Period:

An "interested person", who has participated in this proceeding, may appeal this decision to the Vermont Superior Court, Environmental Division 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 VT 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.