



Town of Northborough

Planning Board

63 Main Street

Northborough, Massachusetts 01532-1994

(508) 393-5019 Office (508) 393-6996 Fax

planning@town.northborough.ma.us

Approved 8-15-06

Planning Board June 6, 2006 Meeting Minutes

Members Present: Rick Leif, George Pember, Don Hewey, Bob Rosenberg, Michelle Gillespie

Others Present: Kathy Joubert, Town Planner; Bill Farnsworth, Zoning Enforcement Officer/Inspector of Buildings; Fred Litchfield, Town Engineer, John Twohig, Goulston & Storrs, Joseph Penney, Stop & Shop, Chris Regnier, Goulston & Storrs, Rob Nagi, VHB, Douglas Prentiss, JNEI, Dan Maier, Jeffrey Watkins, Ralph Stevens, Helen Grille, Carrie Grasso, Claude Guerlain, Janina Sadlowski, Brian Smith, Tom Lowe, Paul Gallagher, Paul Shattuck, Kelly Moran, Arthur Banks, Lori Giannotti, Carolyn Harrington, Becca Zieminski, Leslie Harrison, Megan Mierswa, Gertrude Merkel, Bruce Merritt, Erin Ransdan, Fran Habib, Stephanie Sullivan, Henry R. Charest, Jr., Cheryl Bellemore, Barbara C. Gends, Rae Carlsen, John A. Kane, Teresa Palenchar, Karen Gallagher, Richard Kane

Chairman Leif called the meeting to order at 7:00 pm.

Continued Site Plan Review and Special Permit Public Hearing for Stop & Shop at 77 Main Street

Applicant: Stop & Shop Supermarket Company

Engineer: VHB, Inc

Date Filed: June 15, 2005

John Twohig from Goulston & Storrs stated they feel at this stage they have submitted the bulk of the information requested. Questions remained on four or five issues and requests were made for follow-up information. The Board received two letters, one that was procedural in nature as to their approach for tonight's meeting.

The second letter, with several attachments, addressed the following issues:

- Regarding traffic mitigation, the comment was made that what was shown in their slide presentation was not the same as what was listed on their submitted letter. Mr. Twohig explained that the information was the same;

however the order of the slides presented was different than the order the information was presented in the letter. The mitigation commitment was to address Stop & Shop and also existing traffic issues. An explanatory letter was included for the Board.

- Regarding flood control, Ken Staffier from VHB looked at it. There is a small area of the driveway in the floodplain. They are maintaining flood control in that area and will be improving the condition.
- There was a question of a fence being moved near the senior housing and a request that some revisions be made to the landscape plan. Those changes have been made.
- Fire access and truck access: They received information from the Fire Chief regarding turning movements for their trucks. It works and it was the same truck requested by the Chief that they ran the template on.
- Issues raised with the Police Chief were addressed at a meeting with their engineer and asset protection manager for the site. No particular issues arose from the meeting.

Staff comments raised:

- Sidewalk mitigation: Exhibit A shows a continuing commitment to sidewalk mitigation. Stop and Shop, as a private developer, would not do the work.
- The T-intersection on Pierce and Hudson Streets: There are some limitations on doing this and Rob Nagi has made suggestions on some improvements that could be made there.
- Main Street and the driveway: The proposal is for a traffic light and, if not approved, they would have to come back to the board. But right now, they still offer it as their condition.

Chris Regnier distributed a summary of their commitments included in their proposal for the Board to have in one place. Mr. Twohig stated they may have missed a few, but the bulk of them are in the summary.

Mr. Leif recommended the Board read this and come back to the next meeting to address them. He did not want to do it tonight.

Mr. Leif asked Mr. Twohig about an extension of the decision deadline into July.

Mr. Twohig stated that, at this point, they have extended the discussion to June 30, 2006 and rather than make a commitment upfront, they will wait until the end of the meeting.

Ms. Saint Andre stated if another extension is not agreed upon by the applicant, the Board's decision should be filed with the Town Clerk by June 30th.

Mr. Leif addressed the Floodplain District issue. He stated, based on one of Ms. Saint Andre's letter to the Board, the Floodplain District is in effect and, if the Zoning Enforcement Officer had advised otherwise, then it would be in error. He asked Ms. Saint Andre that, if Mr. Farnsworth made a statement that is different from her interpretation of the zoning, does his interpretation override the zoning or, is in fact, the Floodplain District still in effect?

Ms. Saint Andre stated in her opinion the Floodplain zoning is still in effect. Actual determination is made by the Zoning Enforcement Officer. Any appeal of the Zoning Enforcement Officer's determination could be done through the Zoning Board of Appeals. Any decision of the Zoning Board of Appeals could be appealed by the Court, and the judge could make the decision if it got that far. Her role is to look at the Zoning Bylaw, render an opinion as to what she thinks is the correct interpretation and give that advice to the town. She is not a decision maker for the town, whether she's advising the Planning Board, Board of Selectmen or Zoning Board of Appeals. It's the town officials who make that decision. In this case it is the Zoning Enforcement Officer, in her opinion, who makes the actual ruling.

Mr. Leif stated Stop & Shop presented a memo from their engineer that states, in his opinion, that the project is in conformance with the necessary sections of the bylaw. However, nothing's been presented to Mr. Litchfield and Ms. Joubert to demonstrate that the requirements of the district have been satisfied. Stop & Shop has stated that a small portion of the driveway is in the Floodplain District and there won't be any problem. If the Floodplain District were in effect there should be more than just a statement to say there won't be a problem. There is still an insufficiency of information provided. If the Building Inspector's determination is in effect, then it renders it moot. However, if the zoning is in effect, the Board is missing some important information.

Ms. Saint Andre stated that, she believes, the applicant is referring to Section 7-12-020 A(3) of the Zoning Bylaw which contains a provision for certification by a registered professional engineer that the encroachment shall not result in an increase in the flood levels. That may be what the applicant's statement was intended to be.

Mr. Twohig responded, stating that on the flood control they have a ruling from the Zoning Enforcement Officer that the Floodplain is not applicable. They agree with that. However, they did show the floodplain on their plans and they do review the issue of the elevation and the impacts in the Stormwater Report. And further, a professional engineer has addressed the very specific criteria that is referenced in the section with respect to flood control. It doesn't apply. They have analyzed it, and, even though it doesn't apply, they have provided certification from their engineer. They have provided more than is necessary on the floodplain issue.

Ms. Joubert stated, speaking not only for her, but also for Mr. Farnsworth and Mr. Litchfield, they have met on this several times when Stop & Shop first approached the town about applying. The three of them are in agreement that this section of the bylaw is no longer in effect. There is no local floodplain district in the town of Northborough. What they rely on is the FEMA maps, a federal floodplain map. Mr. Farnsworth addresses this issue with every applicant that comes in and Mr. Litchfield, as the Conservation Commission agent, works with the Commission regarding any kind of filing involving work within the wetlands and floodplain issues. Mr. Farnsworth states in his letter that the floodplain district has not been in effect since 1979. There was once a local floodplain district, but it was removed at Town Meeting and they now rely on the federal maps.

Mr. Leif stated that, with the proximity of the project to the river and with the location of the floodplain, he wants to verify that someone has done the work to make the staff feel comfortable with what they have presented as to the way the project will be built. He wants someone on the town's side to verify they have looked at the plan and the submission.

Ms. Joubert stated that they have reviewed the plan and it's their opinion that it is a small portion of the driveway that is in the floodplain. The Conservation Commission will be the board that is reviewing all of this work in accordance with the Rivers Act and the state and local Wetland Regulations. Mr. Farnsworth will also review it as the Zoning Enforcement Officer.

Mr. Farnsworth stated any review of his is a two-part procedure. Every project that has ever come through his department for building permits gets reviewed for floodplain issues under a provision in the state building code and federal mandates. He explained he gets audited by the flood insurance rate map people and the district person for the state to make sure they are compliant. As this project moves on and a building permit application comes in, there will be a review of the site plan for provision for a floodplain or flood zone, or however it

is designated. Part of this review is also done by the Town Engineer. This is done before any building permit can be issued. This is the standard procedure that has been followed for every application and the standard procedure for several recent projects that have been approved by the Planning Board, and they will continue to be under review during construction. He stands by his determination that he wrote on June 23, 2005 and that is that the floodplain zoning portion is not applicable to this project because it comes under the federal insurance rate maps and state building code. In fact, the zoning bylaw refers back to the state building code, which has the same safeguards for any floodplain or flood control projects.

Mr. Leif stated his concern is that the staff is comfortable with what has been submitted by the applicant and that, should the project go forward, there will be no problems with this down the road.

Mr. Farnsworth stated that the staff has reviewed it and the Board has the letter that he wrote and signed. He is the staff person who is responsible for that determination. He did not do it on his own. He had consultations with Kathy Joubert, the Town Planner and Fred Litchfield, the Town Engineer. Professional town staff have reviewed it and that is the statement in his letter of June 23, 2005.

Mr. Hewey stated the flood insurance rate maps are referenced in the Floodplain District portion of the bylaw, so he doesn't know how there can be a determination that that part of the bylaw is no longer in effect. In addition, he stated that since that letter from last June, there have been a number of changes in the layout of the parking field and the road layout and they have no information that he can find as to where the setbacks are from the river or the floodplain. The floodplain overlay they submitted does not match what the project looks like now. Some of this is under the purview of other boards, which they have chosen not to file with, but if they are asking the Board to make a decision on this, they need more information.

Mr. Twohig responded that they are not asking the Board to make a decision on that point. The setback from the river is shown in great detail on the site plan. The conditions with respect to the driveway on the site plan are better conditions than they are today because, at some points now, the impervious cover is 3 - 4 feet from the edge of the river. They have provided, though it is not required, a certification of the floodplain, a detailed stormwater report, and the detailed site plan which shows all the setbacks. All that information is in their materials. The detailed site plans are the large sets.

Mr. Leif asked Ms. Joubert if she has had any comments from the Fire Chief as to his discussions with the applicant regarding fire access movement. She stated she has not heard from him, but will check with him on it.

Mr. Leif asked Chief Leahy if he is satisfied with what he discussed with Stop & Shop.

Chief Leahy stated he met on Tuesday, May 30th with Rob Nagi and Stop & Shop's Asset Protection Coordinator, and it was a good dialog. The meeting was initiated by Rob Nagi, and although they didn't change each other's mind about anything, he appreciated that the meeting was held.

Mr. Leif asked Ms. Joubert if there was any comments on the Pierce Street/Hudson Street intersection and signalization of the main site driveway.

Ms. Joubert stated that Kara Buzanoski, Acting DPW Director, will be meeting with Rob Nagi regarding the Pierce Street/Hudson Street intersection. There is a monument, a telephone pole and a fire hydrant that will need to be worked with at that site.

Mr. Leif stated he would like to discuss the letter from Town Counsel of October 3, 2005 that covered the responsibilities of the issues in the purview of the Planning Board for a Site Plan Review for a use allowed by right. He summarized Ms. Saint Andre's letter by stating that she states in the majority of circumstances, when a use is allowed as of right, the Board has the ability to approve, or work with the applicant and approve with conditions. However she goes on to say there are, under the narrowest of circumstances, incidences in which the Board may disapprove a site plan. He asked Ms. Saint Andre to discuss what aspects of the plan that may be intrusive on the public may not be able to be mitigated.

Ms. Saint Andre stated, with a site plan review that is not a special permit, the use has been allowed by the zoning bylaw. Referring to her letter, she states that the site plan approval involves no special permission or dispensation. It is a way of collecting comments from various authorities. It has to do with the regulation of a permitted use, not the prohibition. She referred to a part of her letter that referred to a section of the bylaw that states they could deny the site plan if information requested of the applicant had not been submitted, because the bylaw requires that all town standards are met. She explained that the zoning bylaw is narrow in that it gives the Board very little ability to disapprove the site plan if the use is permitted. She advised the board to keep in mind the case law and the narrow wording of the bylaw.

Mr. Leif stated it's been clear that, on site plan work, it's typically approval or approval with conditions. There's been a lot of discussion about the location of the project and its impact on the community. Is siting the project there in the best interest of the community given the fact it does conform with the bylaw? He asked the Board if they feel there is significant information that has not been submitted by applicant – either not submitted at all or submitted improperly.

Mr. Pember asked Mr. Prentiss about the safety of the intersection at the site driveway. The traffic engineer has told the Board it meets all State safety regulations. Does this meet state standards based upon what the applicant has prepared and presented to the Board?

Mr. Prentiss stated that they technically meet standards. It is documented historically that there will be accidents when a new traffic light is installed because people aren't used to the signal being there.

Ms. Gillespie stated in April and May the Board asked the applicant to bring them plans showing no signal at the site driveway on Main Street. They have not done so and Mr. Twohig has stated the Board has the plan they are presenting before them, and that is with the signal. Ms. Gillespie also stated they had asked the applicant to show them a plan that included a light at Maple Street, and that has not been submitted either.

Mr. Pember asked Ms. Gillespie if she feels that she would rather have the light at Maple Street than the light at the site driveway if Mass Highway were to make them choose between the two.

Ms. Gillespie stated she would rather have the light at Maple Street.

Mr. Rosenberg stated that, at the March meeting, he raised the question of how each of the possible turn directions was going to be handled and raised the question of what it means to the driveways across the street from the intersection. Their response was that there were issues there that still need to be addressed and he believes they have not been addressed. They needed some kind of explanation as to how the twelve turning directions were going to be addressed.

Mr. Twohig stated they did address them and Mr. Nagi will explain it again. As to Maple Street, their proposal is a traffic light at their main drive. They looked at Maple Street and feel it is a potentially unsafe condition and they are not going to present it. They are not asking the Board to approve it in the alternative of Maple Street vs. their main driveway. They are presenting the signal at their main driveway to the Board. In the event that Mass Highway does not approve

it, they would have to come back to the Board with a new plan. They recognize the risk. Maple Street is not their proposal. They are not obligated to present Maple Street or any other situation that is not part of their proposal.

Mr. Nagi stated the signalization at the main site drive will include the driveways across the street. The minimal amount of traffic coming out of that driveway can be easily handled by the signal. Mass Highway will require them to meet all state and federal guidelines when they design the signal.

Mr. Rosenberg stated he has heard what Mass Highway will require of them, but the design is not complete, so what reassurances does the Board have. He doesn't want any baseless reassurances and wants the design to address these issues.

Mr. Nagi stated they haven't gone to the 100% design level to fully permit and make the signal operational. A lot of technical details will be worked out with Mass Highway. The signal layout in front of the board will meet all the standards and is not baseless. It will serve the driveway across the street in an adequate manner.

Mr. Leif asked for Mr. Prentiss' input.

Mr. Prentiss stated they have a conceptual design right now. As the project moves forward, all the details will come into play with Mass Highway's District #3 office. He agrees with their traffic engineer that the traffic coming out from across the street will be minimal. On a preliminary basis, it certainly can work.

Mr. Rosenberg stated that he can only extrapolate from what Mr. Nagi said that this involves a proposal that the neighbors move their driveways, that they eliminate a part of the sidewalk on Summer Street and that emergency vehicles are going to have to deal somehow with not being able to make a left hand turn onto Summer Street under Option 2.

Mr. Prentiss stated there are a whole set of issues that go together and there are issues with Option 2 at Summer Street as far as town staff is concerned. Added to that, he and town staff have meet with Mass Highway and they said they would not approve a signal at that location right now. However, as they move on and the applicant works with Mass Highway, they may change their mind.

Mr. Hewey, referring to Ms. Saint Andre's letter, stated he realizes this is an allowed use by right, but asked how the applicant's use by right of that parcel gives them the right to force those changes on the abutters across the street or on Summer Street.

Ms. Saint Andre stated they have the right to impose reasonable conditions that protect the public interest. That is different than denying the project.

Mr. Leif questioned that, if the amount of work that has to be done is going to significantly impact the lifestyle or quality of life of the abutting neighbors, does the Board make the case that the amount of work that has to be done is so great it is not reasonable? Does that start to build a case that there may not be reasonable conditions? Can they say that, looking out for the larger interests of the town, they don't think it's reasonable to make all those changes? If that's the way they feel, he thinks they can vote that. His consensus of what the board feels is concern about something of that size going to that location and what needs to be done to make it fit.

Ms. Saint Andre stated this is an example of a permitted use that is going to have an impact on the neighborhood. There are genuine concerns. What she has to look at is, if the Board determines the issues are so egregious that no set of conditions can address those concerns, and they vote to deny it, the applicant would have the right to appeal. In court, she would have to present evidence to support the Board's decision. This is not a case, like an appeal of a variance or special permit, where the court would lean towards support of the Board, but rather it's almost the opposite situation. The court will ask why the Board is not allowing the applicant to locate the store there, when the Town's bylaw says they can put it there. It would be an awfully extraordinary situation for their denial to be upheld. It's not impossible, but they would have a lot more "wiggle room" if they imposed conditions, rather than if they denied the site plan. They don't have to be conditions that the applicant agrees with, either. If they didn't like it, they would appeal. If it's a reasonable condition, she could defend it.

Mr. Leif read a statement he had prepared as follows:

"After listening to all the information presented by all parties at the hearings that have been held to date and reviewing all the documentation submitted related to the impacts on traffic and plans to mitigate these impacts from the project proposed by the applicant, I am concerned that the town will be negatively impacted by the additional traffic that this project will bring to the center of Northboro.

The applicant, through its traffic engineering consultant, has provided a significant amount of information which estimates the amount of traffic which the proposed project will create, the impacts that the traffic will have on existing road conditions in the center of town, and a plan to mitigate these impacts. An independent traffic engineer, contracted by

the town has reviewed this information and made suggestions for certain improvements beyond what was presented by the applicant, which the applicant has agreed to implement. I believe that, although all this information has been provided following accepted traffic engineering practices and has been done to the best abilities of all involved, situations can exist which will render these estimates inaccurate, and as a result the actual volume of traffic or traffic patterns that may result from completion of this project would be different than estimated, with negative consequences to the town.

First, the process of estimation is not an exact science, and through human error or problems with the process, software, or hardware used to complete the estimates, the actual results of a project can differ from what was originally estimated. I was professionally involved in project management for over 30 years and have seen the wide variations that real results can have from original estimates. I do not mean to suggest that the applicant or its consultant have done anything to intentionally distort the projected impacts on traffic from this project, only that reality and estimates often do not match. Indeed, I think that we all would agree that the actual traffic that will be generated by this project and that the actual effect that the proposed mitigation will have on this traffic will differ to some degree from what has been presented.

Second, the actual business experience of the store, once opened, may differ from the assumptions made when the projections were developed. If the store is more successful than anticipated, increased traffic will result, and impacts beyond what were anticipated will occur.

Third, the applicant could choose at some point in the future to take actions at other stores that are in close proximity to the proposed project that would have traffic impacts at the proposed location that are not anticipated in the current estimates. The Shrewsbury store on Rte 9 and the two stores in Westboro are those in close proximity. Closing any of these three stores or significantly changing the business model at any of these three stores will impact the traffic beyond what is estimated.

Fourth, the applicant could choose at some point in the future to change or add to the services currently planned to be provided at the proposed store which would increase the traffic to the store. It is not uncommon today to see partnerships developing between retailers to co-locate operations at one site. The applicant is already doing this and other partnerships are possible in the future. Again, these impacts are not (and probably cannot be) included in the current estimates.

There are probably other situations that could arise, but it is reasonable to assume that some combination of the four just mentioned will occur over time. When these situations will arise and how much each will impact the traffic through the center of Northboro is not known at this time, so estimates cannot be prepared or mitigation proposed.

The impact of traffic beyond what Main Street in the center of Northboro can handle is clear, because it is already in evidence today. Side streets through residential neighborhoods are used to bypass and avoid traffic congestion in the center of town. These streets were not built to handle significant through traffic and they do not have the potential to be improved to the point where this through traffic can be effectively managed. Due to the nature of these roads, they cannot be widened, and the town has limited ability to install sidewalks on them. Increasing traffic volume on these streets will only lead to increased safety problems for the residents who live on them and a real decrease in the value of the quality of life for these residents. Certain streets currently show this type of stress (River, St. James, and Summer are good examples). If the mitigation as proposed does not work as projected or if traffic volumes increase beyond what is estimated for any of the reasons described above, the use of residential side streets as bypasses and cut-throughs will increase. East Main St. to Allen St to Hudson St and possibly from there up to Rice and over Whitney is a real possibility. Another is Brigham to South. The fact is, only the imaginations of the drivers will limit what streets end up being used for a purpose that was never anticipated and a purpose that the street is ill suited to handle. These situations cannot be accurately predicted and they cannot effectively be mitigated. Main Street in the center of Northboro has a limited ability to be improved to handle increased traffic volume and no ability to be improved beyond what the applicant has proposed for mitigation. If the estimates provided by the applicant prove to be incorrect or if future situations arise which increase the traffic beyond what has been estimated, residential neighborhoods in Northboro will then be subjected to safety and quality of life issues that cannot be avoided or mitigated. There is no place else for the traffic overflow to go and no way to deal with it when it gets there.

I am very concerned about the impact of traffic generated by this project on Hudson Street and particularly at the intersection of Hudson St and Allen St and the narrow underpass for the aqueduct just south of the intersection. Records indicate that this is a higher than normal accident location, the ability to see oncoming traffic in both directions passing

under the aqueduct is limited, and due to the narrowness on the underpass, vehicles frequently cross over the center of the road when going under the aqueduct. Sending more traffic through this intersection is not reasonable. The applicant's proposed signage and line painting on the road will not effectively mitigate this situation. Widening of the underpass is not possible. The traffic volumes currently estimated for the project indicate an increase of traffic through this area. If the estimate proves to be understated, this area will see additional increased through traffic and possible cut-through or bypass traffic using Allen St and East Main St. Lack of effective mitigation will cause an existing problem area to worsen.

I am very concerned about the proposed entrance to the store on Main St. The applicant has indicated the need for a traffic light at this intersection, a left turn lane to store east bound traffic waiting to enter, and changes to the intersection of Main St. and Summer St. In preliminary discussions, Mass Highway has not indicated agreement for a traffic light at the store entrance. The Town Planner, Engineer, and DPW director have advised the Planning Board against a traffic light at the entrance to the store. Separately, the Police chief has advised the planning board against a traffic light at the entrance to the store. In total these opinions have covered concerns with the impact a traffic light will have on the traffic flow on Main St and on safety concerns due to the topography where the light will be located. I agree with these concerns. I also feel that lack of a traffic light at the Main St entrance with resulting left turn prohibitions in and out of the entrance will send unmanageable increased traffic to Hudson St (see paragraph above) and will increase the traffic volume west of the proposed site with another set of unplanned and unmanageable consequences.

Ultimately, I am concerned that a significant mitigation proposal has been presented by the applicant in recognition that a major traffic issue already exists in this part of Town and that the proposed project will impact this situation. I am concerned that the proposed store would be located in place that is in the center of the current traffic congestion and would be located in a place that offers no reasonable "Plan B" if the proposed mitigation is insufficient or the estimates prove to be inaccurate. I am concerned that residential neighborhoods will bear the consequences of any unanticipated events and that there is no ability to effectively provide mitigation when these events occur. At some other location, with less proximity to these types of neighborhoods, and which offers some reasonable way to deal with the unanticipated traffic impacts caused by the inevitable difference between the estimates

presented and the reality that will occur, this project could be allowed to proceed. At this location, the town is being asked to assume an unreasonable amount of risk with no reasonable way to deal with the negative consequences of unanticipated traffic impacts that can arise. Under these circumstances, I feel that the project does not adequately address its traffic impacts, and at the proposed location, cannot adequately address them."

Mr. Leif asked the Board if they feel the comments in his statement are the makings of a case for denying the project, and if not, what else they think would need to be included. His concern is they don't have any back-off position if something unexpected happens. If something happens that can't be changed, they're stuck, and they're going to see the residential neighborhoods turned into cut-throughs. He feels they have a case to be made, whether it would win or lose.

Mr. Rosenberg stated he thought Mr. Leif stated the traffic issues very well. He's not sure of the scope of their authority in this matter. The Commonwealth of Massachusetts law defines zoning variance processes, the zoning process, the special permit process, so it's referenced in state law. His understanding is that site plan review has very little reference in state law and that it is referenced rarely as only a series of precedents that have been established by judges in court cases. As a set of rules for the Planning Board to apply, it is only what the town's zoning bylaw says it is. The Town's zoning in addressing the site plan review process stated they shall either approve or approve with conditions.

Ms. Saint Andres responded that that is what it says. Site plan review is not provided for in state law, but at some point towns started doing it and setting a frame work for how the site plan approval process works. The way this land is zoned, it's a permitted use and the purpose of site plan review is to review the project and mitigate the impact. The site plan review process sets forth the information they are required to submit and if they don't submit it, the Board doesn't have to approve. But other than that, it is very difficult, especially given the way the bylaw reads.

Ms. Gillespie asked Ms. Saint Andre if the state bylaw oversees the local. What does the judge look at?

Ms. Saint Andre replied the court will look first at the town's bylaw, in light of case-law precedent that has come before.

Ms. Gillespie stated a board may lawfully reject a plan that fails to produce the required information. All officials in town said they don't want the light at the

store. Is the fact that Stop & Shop has not given the Board this information, and have said they will not give them the information, grounds for dismissal? Also, regarding Mr. Leif's letter, how specific do they have to get with the courts to show intrusiveness on the neighborhood?

Ms. Saint Andre stated first, the bylaw says the Planning Board has the authority to deny any application which does not supply the information required under the site plan approval. The board should be specific. Also they can deny if the applicant does not present an impact study. Regarding submittal of a plan without a signal, the applicant has submitted what they consider to be their site plan. The Board can ask the applicant for anything, but if it's not something that is covered under the bylaw there may not be grounds for denial. They Planning Board would have to go through the bylaw to determine what is required. As far as traffic, it is always better to be specific in a denial and back it up with facts. She said it will be difficult.

Comment: I reworded it to make what Barbara said more clear.

Mr. Leif stated he does not see that there would be a reason to deny the site plan because they did not submit required information. They could play the traffic situation, which is the single most contentious part of the whole project or they could say it doesn't seem to be in their purview to deny it, but they could condition it.

Mr. Twohig stated that, they did add a condition, that specifically addressed the traffic in post-opening. They realize the amount of traffic issues here. The traffic study numbers are conservative. They have stated they are willing to come back, under many circumstances, to address traffic or other issues. They are willing to expand on that condition to allow them to come back for further discussion and review.

Mr. Leif stated he remembered that and believes that would be a minimum condition. But as he thought it through, he wondered what else could be done besides what has already been proposed. He doesn't see where anything would help Hudson Street and is concerned about the side streets. Could anything be done by the applicant aside from saying they would like to do something? He's not sure there's a whole lot that could be done and his basis of concern is, do they subject the town to the risk without having a Plan B? He hasn't heard what other members feel about this, but the Board needs to work in the direction of making a decision. If there's nothing else that can be done about the traffic situation, the board needs to work towards a decision.

Mr. Hewey stated that he feels that if it was injurious to the town, if no other mitigation would alter it, then that would fall in the narrow criteria from Ms. Saint Andre's October letter. He went back to uses by right on the property, but not

off the property, and the permanent impact to the neighborhood. That is not theirs by right. Because of this, he feels that it is in their purview to deny. They can't take that away from the people who live on Summer Street – they have rights. How can they mitigate the aqueduct? It can't be moved. He doesn't believe it's by right on their property to take away the sidewalk on Main Street as part of the alterations.

Ms. Saint Andre stated that not taking away the sidewalk is a condition they could impose. It doesn't have to be approved as-is.

Mr. Leif stated that would have other unintended consequences. It could make a bad situation worse. There are no plusses here. They need the width for the street.

Ms. Saint Andre stated she is not sure where this is going. They don't own Main Street or Route 20. That is all subject to a number of authorities. If it is approved with the signal, then if they don't received approval, they have to come back to the Board. They're not going to be able to build the store without the lights.

Mr. Leif stated it would be a help, but any condition of approval from the Board would most likely indicate to the State that the Board approves the project and that would be a false reading that could be used to attempt to gain approval from the State to get the traffic light.

Ms. Gillespie stated that the problem with the light at the store is that Hudson Street/Main Street and Maple Street/Main Street are the two most dangerous intersections. If the Board approved a signal at the site drive, they won't get the light at Maple Street and that is the biggest concern. If Mass Highway sees that project, and sees that Stop & Shop is giving the town 1 million dollars for the project, and bought their light, then they don't get their light at Maple Street. Mass Highway may consider it, and approve it, but her concern is that they would not approve the Maple Street light if the site drive signal is approved.

Ms. Saint Andre stated they could condition it with a Maple Street light. She stated she can't tell the Board what they want to hear. She has to work with the bylaw. It's not an easy task. The bylaw says what it says. They can only deny it if there is not a set of conditions that can address their concerns. They can go that route and see if that is helpful.

Mr. Pember stated that reading the bylaw, and as much as he doesn't like it, they have to meet the standards of the bylaw. Their charge as the Planning Board is to interpret what's in front of them, not what they want it to say. Town Counsel is saying its going to be very difficult for them to come up with

something she can defend. He doesn't believe this project can work without a traffic light because it will throw traffic onto the side streets. Use that as a starting point. They have hired a traffic expert who says this meets standards. He's uncomfortable with turning it down, based upon town counsel's statements, reiterated a number of times, that they have to have a good reason to deny, but Mr. Prentiss says they don't have a good reason.

Mr. Leif agrees they have to go by the bylaw. Their engineers have made assumptions on traffic improvements and he's not going to dispute it, but the basis of his concerns is that, if for any reason, when things happen to change those assumptions, traffic volumes change, there isn't an ability to react. Things could degrade. They could write conditions and come back to the table and review and discuss and could find there is nothing to be done and the impact to the surrounding neighborhoods can't be stopped. Is it enough of a case for the town to bring forward or do they implement conditions? He asked them to think about the environment and streets the store is going into. How much improvement can realistically be done? On Route 9 or 495 there is a larger window. Route 20 is too small for that. If Plan A fails, what is Plan B? Feeling that way, he has a hard time saying they should go ahead with this. He has no problem with supermarkets or Stop & Shop, but has a hard time with this project in this location.

Mr. Rosenberg stated that the traffic light at the Main Street driveway isn't a workable traffic solution and if they need to address traffic they need to brainstorm what that would mean without the traffic light. Staff has provided a set of conditions that begin to address that. It would be a sow's ear when it's done, but the traffic light at the main site entrance would destroy the traffic flow on Main Street. If they need to talk about conditions, they need to brainstorm what set of steps would have to be taken in order to have this large volume of vehicles access the site without a signal. A signal would degrade the traffic situation on Main Street. If we don't have a light at Main Street, it's going to push traffic to Hudson Street. And what happens to the side streets? Regardless of the traffic light out front, the traffic that was expected to be coming down Hudson Street, will access it anyway. Significant changes would have to be made there to address impact on those streets. However, he stated he feels they are obliged by the zoning bylaw to issue a set of conditions.

Mr. Rosenberg also stated the signage plan doesn't meet the sign bylaw and the landscaping issues need to be looked at again, and see what is the specific site plan they would be writing conditions for. There are topics he is uncomfortable with – the groundwater special permit and the floodplain use, but that is not necessarily within the scope of what the applicant has applied for now. He wants to acknowledge them as issues.

Mr. Pember asked Mr. Rosenberg that if the applicant is willing to go the Zoning Board of Appeals (ZBA) to get a variance for their signage, is he suggesting that they would not accept something from the ZBA?

Mr. Rosenberg stated they don't need to accept it and can't restrain them, but he wanted to go on record as saying that in reviewing the site plan, the signage plan doesn't meet the bylaw and it should meet the signage bylaw. If the applicant wants to go to the ZBA and ask for a variance, that's the next step that wouldn't have anything to do with the Planning Board.

Mr. Pember stated they could go on record as saying the signage doesn't meet the bylaw and the applicant needs to go to the ZBA for a variance.

Mr. Hewey stated they could say it should meet the bylaw.

Ms. Saint Andre stated they have the right to impose reasonable conditions as long as it is a part of the site plan review approval.

Mr. Pember stated site plan review approval doesn't require them to meet the bylaw, but just that they have to show it on their plan.

Ms. Saint Andre stated she is not sure what the issue is with signage and why it's important for site plan approval, but if there's some impact to mitigate, they can condition it. Whatever the issue, they need to address that specific issue.

Mr. Farnsworth stated that, regarding signs, they require a building permit. If they don't meet the requirements, they need to get a variance from the ZBA before they can get a permit.

Mr. Hewey asked Mr. Farnsworth if he agrees that the signage does not meet the zoning on Route 20.

Mr. Farnsworth replied he has not reviewed it at this time, but will review the final plans that are presented to him. The plans could change many times, so he will wait until the building permit application comes in.

Ms. Saint Andre stated the site plan review approval does include visual amenities, which could cover the sign situation.

Ms. Gillespie stated that if conditioned, one condition would be that they would need to come to the Design Review Board. Also, if conditioned, she stated she

doesn't feel comfortable with the \$25,000 for the sidewalk. The town doesn't have the manpower to do the work and \$25,000 is not sufficient.

Ms. Joubert stated that figure came from staff. Kara Buzanoski was a part of it. When Ms. Joubert asked her about it, Ms. Buzanoski stated it is true the town will be in a situation where they will not be building as many sidewalks as they have in the past. They may go out to bid for sidewalk construction. The question becomes where there are other areas in town that need sidewalks but also, if the sidewalk can happen logistically. There are right-of-way and utility pole issues. It would be cost-prohibited to all. Ms. Buzanoski will review this again with Rob Nagi from VHB.

Mr. Pember asked if the \$25,000 figure is to incorporate the design work and construction on River Street.

Ms. Joubert stated it is, and it is limited to River Street. The DPW and the Board may want to explore asking them to put a design together to see if it is even possible to put a sidewalk from Main Street at Hudson Street down to the store. It may be broken up by sidewalks now because they don't have the proper right-of-way width.

Mr. Leif stated they will need to schedule a meeting before the June 26th meeting. He asked Mr. Rosenberg if he wanted to address the groundwater issue now or at a later meeting.

Mr. Rosenberg stated it is probably out of their scope, but feels the Groundwater Advisory Committee will require a permit. The applicant has applied and withdrawn, the Board did not agree to the withdrawal, but regardless, they have not seen it. It is hardly a topic for the board, but he feels they should not be able to receive a building permit until they have address the groundwater issue.

Mr. Farnsworth stated he will review the building permit application for full zoning compliance. If it doesn't meet full zoning compliance, a building permit won't be issued. If it is determined to be in full zoning compliance, a building permit will be issued. That is standard procedure for a special permit, site plan approval, or anything else. If its in compliance, it will receive a building permit. That is standard, normal procedure.

Mr. Leif suggested the board review the information presented by the applicant, and think about what they want to do for the next meeting. They need to come prepared and have the conditions as complete as they can. If they can't do it by the end of June, they need to extend the discussion to July.

Ms. Joubert stated she will be on vacation for two weeks in June and will not be available to work on the decision. The traffic engineer will also be away. The June 19th meeting is scheduled for the Melican Middle School at 7:00 pm and on June 26th, the meeting will be held in Conference Room B in the Town Hall @ 6:30 pm.

Ms. Joubert stated whichever way they are going, they need to put a draft decision together before they vote, with either conditions for an approval or reasons for a denial. They'll need to review it and vote on it.

Regarding the next meeting on June 19th, Mr. Leif stated the Board needs to figure out what they want to do at the start of the meeting and work on it the rest of the meeting.

Mr. Hewey stated that if they take the narrow route, they need reasons. If they go with conditions Stop & Shop is not looking for, he asked how that process would work.

Ms. Saint Andre stated there is always a right of appeal.

Mr. Rosenberg stated he would like the board to ask the applicant to request an extension. The premise that in two meetings they are going to come to a conclusion, is counter-productive.

Mr. Penney stated they have two meetings scheduled to do what they have to do and he doesn't understand why they're asking now for an extension for two more meetings.

Mr. Rosenberg stated they have been making meetings to accommodate Stop & Shop all along, and the July meeting may be full by now, so they would have to go into August.

Ms. Joubert reiterated she will not be here in June. She reviewed the upcoming schedule in July, with meetings planned on the 11th and the 26th. They don't have a meeting scheduled in August yet. There is one application for June 26th.

Mr. Litchfield noted he will not be attending the Planning Board meeting on Monday, June 19th meeting.

Mr. Twohig stated they have a bylaw that says they may approve or approve with conditions. Every word has meaning, it was passed at Town Meeting. It amazes him that there could be the discussion of a denial because they don't have the authority. The standard of denial is so high - it says there must be no

reasonable solution – completely intractable - it can't be done. He would recommend to Mr. Penney and Stop & Shop that it be extended, but with an understanding that this is an allowed use and the bylaw only allows approval or approval with conditions. "Shall" is not "may" – "shall" is "shall". He stated they will extend to at least July 22nd and may have to look at that again.

Mr. Rosenberg moved to continue the discussion to June 19, 2006 at the Melican Middle School Library at 7:00 pm. Mr. Pember seconded the motion and the vote was unanimous.

The meeting adjourned at 10:00 pm.

Respectfully submitted,

Debbie Grampietro, Secretary
Planning & Engineering