

Permitting & Case Law: The Year in Review (2017)



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Vermont Supreme Court 2017 Decisions of Note



- *Atwood PUD* (Statement of Questions/Public Notice Requirements)
- *Langlois/Novicki* (Government Estoppel and Enforcement)
- *Hinesburg Hannaford* (Multiple Site Plan and Act 250 Issues)

In re Atwood PUD

2017 VT 16 (Mar. 17, 2017)

Scenario:

- Aug. 2014: Atwood applies for PUD in Jericho for 6-unit subdivision on 28 acres carved out of larger farm
- Hearing notice posted on tree along road next to larger parcel, but not on road closest to the proposed project site
- Hearing notice also published and mailed to abutters
- All neighbors participated in Sept. 25 hearing
- PUD approved on Oct. 27, 2014
- On appeal, single all-encompassing question, followed by amended statement raising several inter-related issues



In re Atwood PUD

2017 VT 16 (Mar. 17, 2017)

Court Rulings:

- With broad questions in amended statement, the Environmental Court is obligated either to decide them or to further clarify them on remand
- While various notice requirements are mandatory, a defect does not invalidate board action “where reasonable efforts are made to provide adequate posting and notice.” 24 V.S.A. § 4464(a)(5)
- Posted notice location not a problem since other notice procedures followed, actual notice provided, neighbors participated, and zoning officer approved location



In re Langlois/Novicki Variance Denial

2017 VT 76 (Aug. 25, 2017)

Scenario:

- Neighbors own homes on Maquam Shore
- 2014: Langlois approached contractor about building pergola on preexisting patio
- Bylaws allow one accessory structure <100 sq ft, 10 ft in height, and 5+ feet from lot lines
- Approached ZA/friend w/ sketch showing pergola over 10 ft high
- After reviewing bylaws, ZA said no permit needed
- \$33,000 spent on structure, within 1 ft of line, but no complaints
- After complaint, Selectboard required application, which was then denied, as was a request for variance – NOV followed



In re Langlois/Novicki Variance Denial

2017 VT 76 (Aug. 25, 2017)

Court Rulings:

- Can the town enforce after ZA twice indicated that no permit was required?
- Equitable estoppel: Other party must know know relevant facts; other party must intend conduct to be acted upon; claimant must be ignorant of true facts; and claimant must rely to his detriment
- Estoppel vs. gov't difficult to prove – 5th prong: Injustice from denying estoppel must outweigh negative impact on public policy if estoppel applied
- 3-2 decision: Majority believes \$33K investment based on ZA's comments and no complaint during construction = estoppel
- Dissent believes public's right to depend on the integrity of the process should have outweighed investment



In re Hinesburg Hannaford Act 250 Permit and Site Plan Approval

2017 VT 106 (Nov. 9, 2017)

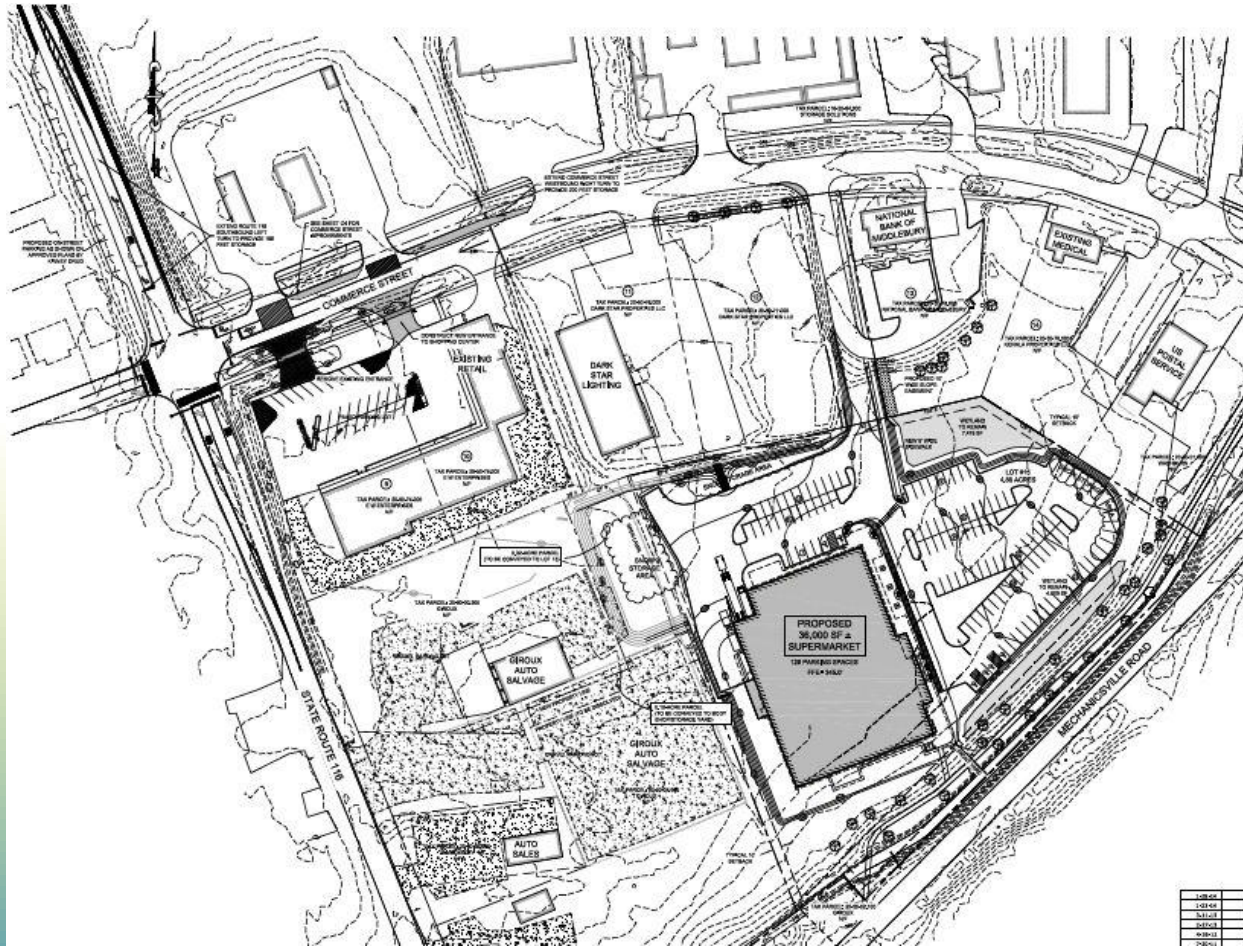
The Project:

- 2010: Hannaford files first town permit application for 36,000 s.f. grocery store/pharmacy
- Lot 15: Largest and last undeveloped lot in Hinesburg's Commerce Park
- Literally the only lot in town allowing for store of this size
- Unique design after community charrettes
- 8 combined appeals to Env'tl Court 2012-14 (zoning, Act 250, ANR)
- Stormwater design changes while pending before court to address abutters concerns regarding scope of drainage easement
- 2016: Favorable Env'tl Court decision, then only Act 250 and site plan approvals appealed to Vermont Supreme Court



In re Hinesburg Hannaford Act 250 Permit and Site Plan Approval

2017 VT 106 (Nov. 9, 2017)



In re Hinesburg Hannaford Act 250 Permit and Site Plan Approval

2017 VT 106 (Nov. 9, 2017)

Site Plan Scenario:

- 1987 subdivision approval for Commerce Park with lot, canal and brook setbacks on one sheet, but referenced nowhere else
- Multiple brook and lot setbacks occupied by other commercial buildings over the decades
- Setbacks never raised with respect to the other 14 lots within the commercial park
- Odd-shaped lot with access drive from Commerce Street, buildings between store and Commerce Street, industrial canal and sidewalk between store and Mechanicsville Road



In re Hinesburg Hannaford Act 250 Permit and Site Plan Approval

2017 VT 106 (Nov. 9, 2017)

Court Rulings on Site Plan:

- Setback lines sufficiently clear on approved plat to be enforceable
- Subdivision compliance is a condition of site plan approval
- Extrinsic evidence regarding noncompliance throughout Commerce Park irrelevant if plat expressly imposes setback
- Town zoning limits parking in “front yard,” defined as the area between the building and the street
- Appellants argued parking near doors and access is “front yard”
- Environmental Court ruled that zoning implements policy of less parking between street and building wall facing the street



In re Hinesburg Hannaford Act 250 Permit and Site Plan Approval

2017 VT 106 (Nov. 9, 2017)

Act 250 Scenario:

- Original Act 250 application in 1987 described park as including “primarily local small scale and start-up businesses”
- In the 1990s, the Town invested over \$100,000 to construct sidewalk on other side of canal from Mechanicsville Road
- Before trial, stormwater swale moved from existing drainage easement to Lot 15 – no ANR permit at time of Env'tl Court trial
- Rte 116/Mechanicsville Rd. intersection long failing – court required signal before project despite lack of VTrans approval
- Court required, then rescinded, post-development traffic study



In re Hinesburg Hannaford Act 250 Permit and Site Plan Approval

2017 VT 106 (Nov. 9, 2017)

Court Rulings on Act 250:

- Even if enforceable, “primarily small scale” expressly anticipated some bldgs that are small scale, especially on largest lot
- Under Criterion 9(K), project would not “materially interfere” with public use and enjoyment of canal sidewalk due to commercial context and landscaping
- Absent presumption, Hannaford failed to present evidence that complying w/ ANR regs results in design that “would likely work as intended” – requires remand
- Requiring signal w/out VTrans assent contrary to 10 V.S.A. § 6087(b) (Criterion 5 can support reas. conditions, but not denial of project)
- Remand to consider mitigation w/ VTrans (e.g., alternatives study)
- Remand to consider post-dev. traffic study that complies w/ Treetop



QUESTIONS?

SPEAKER



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