

DRI 89-M3 Tisbury Stop & Shop

MVC Staff Comments on Stop & Shop's Offers of January 16, 2014

In the latest written offers, there are several items for which Stop & Shop is no longer offering things they had previously offered in written documents or at public hearings, such as definitively preserving the house at 15 Cromwell Lane or excluding a drug store or bank as possible uses within the store. Also, for several of the offers, they have added a few words, such as "if possible", that would make it difficult or impossible to enforce these offers. For a few items, the working is for as long as Stop & Shop owns the building; these should be reworded to apply to future owners as well.

1. Wastewater, Groundwater, Flooding, and Risk from Other Natural Hazards

- 1.1 Stormwater Management: The applicant shall submit a final stormwater management plan for review and approval by the MVC Land Use Planning Committee prior to the issuance of a building permit. Any proposal to manage stormwater off premises shall be accompanied with an irrevocable agreement to this effect with the Town or other affected property owner. The stormwater plan shall include:
- narrative and calculations for impermeable areas,
 - volumes and rates of runoff,
 - proposed containment of rainwater runoff from the roof of the building,
 - clarification of how overflow will be handled in relation to the fact that the Town's Wastewater Treatment Plant is only authorized by EPA to take domestic wastewater,
 - use of green infrastructure technologies to infiltrate, evapo-transpire, capture, and re-use stormwater to maintain or restore natural hydrologies used to control stormwater.
- 1.2 Flooding Mitigation: The project shall incorporate the following measures to mitigate against damage from flooding.
- The project shall be designed to incorporate the flood zone designations of the applicable FEMA FIRM maps.
 - Within Zone AE, the project design shall:
 - Restrict construction exclusively to building access, parking or storage, and shall incorporate openings to allow water to move in and out.
 - Avoid having electrical or mechanical systems below elevation 10 feet above NAVD 88 unless they have been adequately protected from water damage and are directly related to elevator and/or sump pump operations.
 - Within the 500-year floodplain maps, breakaway walls (or other openings) and elevated electrical and mechanical systems shall be used to the greatest extent practical. Breakaway walls shall be utilized in the construction of the lower level lobby areas adjacent to Water Street. Elevator machine rooms shall be on the sales floor level of the store well above the flood impact zone. The lower level areas closest to Cromwell Lane, housing storage, administration offices, mechanical and electrical equipment shall be designed to withstand flood water loads and to resist the intrusion of flood waters. The garage area shall be designed to allow the intrusion of flood waters and have the appropriate relief areas for self-drainage after a storm event.

Stop & Shop proposes to use the old FEMA flood maps, which places about half of the building in the 500-year flood plain. Though it is still legal to use the old maps and in anticipation of upcoming sea-level rise, it would be more proactive to use the new maps, which would put the whole building in the 500-year flood plain. It would be useful to clarify what the difference would be and use the new maps if possible.

1.3 Risk from Other Natural Hazards

- Any emergency generators and fuel tanks shall be elevated 18", above the SLOSH predicted surge level of a Category 3 hurricane event. The emergency generator shall be placed on the roof and concealed from view by high parapet walls.
- The design of the building shall be upgraded to meet wind loads of 120mph, as recommended by FEMA's Coastal Construction Manual. The building shall be designed to meet the 8th Edition of the Massachusetts State Building Code and its amendments, which references the 2009 IBC and any local codes or ordinances that are applicable.

2. Open Space and Landscaping

2.1 Landscaping Plan: After the Town of Tisbury has made a final determination on the reconfiguration of the municipal Water Street Parking Lot, the applicant shall finalize a landscape plan and shall submit it for the review and approval of the MVC Land Use Planning Committee prior to carrying out any landscaping work and prior to the issuance of the Certificate of Occupancy. The landscaping plan shall show plant species, quantities, and locations, and include an implementation timetable.

2.2 Escrow for Completion of Landscaping: If it is impossible to complete the landscaping before the issuance of the Certificate of Occupancy because of time-of-year restrictions, the applicant agrees to deposit funds in escrow, of a value and with terms approved by LUPC, for use in completing the landscaping according to the approved landscaping plan. The escrow funds shall be deposited before the issuance of the Certificate of Occupancy and, upon completion of the landscaping, any unused funds shall be returned to the applicant.

2.3 Maintenance of Landscape: All fertilizers shall be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping. All landscaping plans and maintenance shall conform to UMass Amherst Extension Center's Best Management Practices.

3. Night Lighting, Noise

3.1 Exterior lighting shall be limited to external sign illumination and emergency lights required by code, which are downward-shielded to prevent light spilling off the property. There shall be no flood lighting.

3.2 All exterior lighting – except for security lighting, which shall be on motion detectors – shall be on timers and shall be turned off during the day as well during the night from one hour after the store closes at night to one hour before it opens in the morning, within Corporate safety guidelines.

It is not clear what "Corporate safety guidelines" are or whether these words would constitute a loophole to the intent of the rest of the offer.

3.3 A final exterior lighting plan shall be submitted to and is subject to the approval of the MVC LUPC. It may be incorporated into the final landscaping plan.

3.4 There shall be no formal or informal activities on the property that exceed the Commonwealth of Massachusetts Department of Environmental Protection's Noise Control Regulation 310 CMR 7.1 0 at all boundaries of the property or that exceed the Town of Tisbury noise regulations.

3.5 Noise emanating from mechanical cooling or ventilation systems shall be controlled by sound baffling panels, similar to a Kinetics Noise Control tongue and groove sound

barrier wall panels.

- 3.6 Noise emanating from trucks backing up early in the morning shall be controlled by Stop & Shop staff under the supervision of the Store Manager with measures such as requiring that any trucks parked overnight back in so they can leave in the morning without backing up.

4. Energy, Green Building

- 4.1 LEED: The proposal shall be designed to accomplish LEED (Leadership in Energy & Environmental Design) certification and in accordance with the Town of Tisbury and Commonwealth of Massachusetts Stretch Code requirements, as required. The applicant is attempting to meet the LEED certified level of compliance with the USGBC 2009 LEED-NC for Retail v3.0, which equates to a minimum of 40 LEED scorecard points.

With the present wording – “attempting to meet” – it is not clear what the firm offer is. Is the offer to design the building to achieve a minimum of 40 LEED points?

- 4.2 Green Building Techniques: The applicant shall install green building and energy reduction techniques as required pursuant to LEED certification and the Stretch Energy Code.
- 4.3 Solar Roof: The applicant shall ensure that the portion of the roof indicated on the plans can accommodate solar hot water and/or photovoltaic panels either at the time of construction or in the future.

With other projects, the applicants have offered to rough in the mechanical and electrical mains at the time of construction. It could be more expensive and disruptive to do it later, which could result in the panels not being added.

- 4.4 Waste Management: The applicant shall install recycling bins at convenient locations inside and outside the building and maintain them regularly. All kitchen oils shall be recycled and given to a supplier of bio-diesel when feasible.

The words “when feasible” should be clarified. Perhaps it should say “when available” so they wouldn’t have to do it if there was no one on the Island that could take the kitchen oils, rather than Stop & Shop deciding what they think is feasible.

5. Traffic and Transportation

A key issue is whether the offered traffic and transportation mitigation is reasonable and adequate, given the potential impacts of the project. Priscilla Leclerc is preparing a memo that looks at how other entities have ascertained this.

- 5.1 Deliveries: The applicant shall schedule truck deliveries and waste removal to the best of their ability and in accordance with present practices, vendor schedules and Steamship of Authority vessel travel, between 7 a.m. and noon daily and shall normally keep the truck dock doors closed after noon. However, there may be occasional deliveries between noon and 9 p.m.

With this wording, the applicant is not offering any definitive restriction on time of delivery, which could presumably take place in the middle of the night. It is suggested that there be a definitive restriction on trucking at night, say between 9 p.m. and 7 a.m.

- 5.2 Travel Demand Management: The applicant shall institute the following travel demand management techniques for its employees.

- A Travel Demand Management Plan shall be submitted and is subject to the approval of the MVC LUPC and shall include at least the following measures.
 - The applicant shall encourage employees to avoid parking in public parking spaces in downtown Vineyard Haven, by providing free VTA passes and/or parking passes in the Tisbury Park-and-Ride.
 - The applicant shall work with the Town to ensure that all parking regulations are respected by Stop & Shop employees.
 - Unless restricted by union contracts or the law, the applicant shall discourage employees from parking in public parking spaces in downtown Vineyard Haven during the employee's working hours.

It would be preferable that employees be "required", rather than merely encouraged, to avoid parking in public parking spaces during working hours. Given the number of Stop & Shop employees and the anecdotal evidence that many employees park all day in prime parking spaces by moving their cars every couple of hours, it could free up a lot of spaces to make this a requirement. Stop & Shop made reference to union restrictions. It would be useful to clarify what they are and whether all employees, even temporary part-time workers, are unionized.

- As a leading employer in Tisbury, the applicant shall work with the Town on a program promoting use of the Park-and-Ride and free shuttle by all downtown employees.

5.3 Bicycling: The applicant shall provide and maintain bike racks within the parking garage and shall provide information about alternative means of transportation to customers and employees such as by posting signs indicating alternative means of transportation for customers and employees at several public and employee areas around the site.

5.4 Police Officer Control: Stop & Shop shall negotiate an equitable arrangement with the Town of Tisbury Board of Selectmen to assist the funding of placing a police officer control at the Five Corners intersection and on Water Street across from the Steamship Authority motor vehicle traffic exit, during peak periods between and including the Memorial Day and Columbus Day weekends. The purpose of this police officer control is to mitigate traffic and to facilitate the movement of VTA transportation through the Water Street and the Five Corners corridor. If, in the future, the Tisbury Board of Selectmen determines that the police officer control is not an effective way to manage traffic and reduce congestion, the applicant shall consult with the MVC and the Town to identify alternative means to reduce congestion.

Police officer control is proposed by Stop & Shop as the main mitigation for the additional traffic generated by the store expansion. They had previously offered to fund the entire cost of police officer control at Five Corners and possibly on Water Street, but that is no longer the case.

This offer is now stated as an arrangement exclusively between Stop & Shop and the Town Board of Selectmen, without MVC review. If the police officer control is not effective, it could simply be dropped with no replacement mitigation as long as the selectmen agree, again without MVC review or approval. It would be desirable that Stop & Shop quantify its minimal annual contribution to traffic mitigation (e.g. 100 days x 4 hours per day x the hourly wage x 2 locations), and offer that if it is decided that police officer control is to be ended, that Stop & Shop would continue to contribute at least an equivalent amount in whatever alternative solution is decided on. This could include bicycle improvements (e.g. SUP along Cromwell Lane and down to Beach Road), roadway improvements coming out of the Road Safety Audit, working with the VTA and SSA to upgrade and promote the Park & Ride Shuttle Bus to encourage some ferry pick-up and drop to take place at the Park & Ride instead of driving through Five Corners, a other road

improvements, etc.

- 5.5 Downtown Vineyard Haven Transportation and Parking Study: The applicant has agreed to contribute \$50,000 for a downtown Vineyard Haven Transportation and Parking Study. \$20,000 of this amount has been utilized as of this submission. The applicant shall provide all relevant data collected in the summer of 2013 and shall collaborate with the preparation of this study. The issues to be examined include: the management of public parking spaces, the possibility of increasing the number of parking spaces, the direction of street traffic, intersection control, improvements to public transit including the location of bus routes and the possibility of increasing the service and promotion of the free downtown shuttle linking the Park-and-Ride and the ferry terminal.

Since getting good traffic data has been such a problem and given the importance of being able to monitor the problem and the effectiveness of proposed solutions, MVC staff suggests that automatic traffic counters be installed on the five legs of Five Corners, to be funded by Stop & Shop. These can be installed under the pavement.

- 5.6 Water Street Signage and Striping: The applicant shall fund the Town's updating of the signage and striping on Water Street.
- 5.7 Road Safety Audit: The applicant shall fund a Road Safety Audit of Five Corners, from the balance of the funds stated in 5.5 above.

MassDOT provides Road Safety Audits at no cost to the Town. The MVC can arrange this. It would be preferable that the Stop & Shop funding go entirely to the Transportation and Parking Study, or to actual road improvements.

- 5.8 Parking Management Plan: A Parking Management Plan shall be submitted to and is subject to the approval of the MVC LUPC. It shall provide that the Stop & Shop parking garage shall be managed by Stop & Shop and policed by the Town with the same policies as the Town lot with respect to time limits, access, and fines. The lot Stop & Shop garage shall be closed when the store is closed. The Town shall get the fines revenues from any ticketing within the Stop & Shop garage.

6. Scenic Values

- 6.1 Building Design: Final architectural plans and details, to be substantially the same as the plan approved by the Commission, shall be submitted for the review and approval of the MVC Land Use Planning Committee before a Building Permit is issued.

7. Character and Identity

- 7.1 Historic Preservation: The applicant shall delay demolition of the structure at 15 Cromwell Lane until September 1, 2014 and shall contact the CCC Historic Preservation Specialist, for assistance during the delay period. In the event there is no interest in saving this Structure, after September 1, 2014 the building shall be demolished.

This is a substantial change from the earlier offer, which was to make sure that the house would be moved and preserved. It is unlikely that any third party would assume the full cost of relocating the house, so this offer would likely mean that the historic house would be demolished. If Stop & Shop was obliged to preserve it, they would have the incentive to contribute to the cost, such as by paying for the move and putting it on new foundations.

- 7.2 Archeology: The applicant shall comply with all recommendations resulting from the Preliminary Archeological Survey and any other studies or further work recommended by the Massachusetts Historical Commission. The applicant shall conduct a Phase 1 study as suggested from the PAL Report, and from the results of that study, shall then determine

appropriate additional steps as necessary.

It would be preferable that there be a commitment to carry out the recommendations of the archeological study, not just pay for a report and then have the prerogative of ignoring its recommendations.

8. **Economy and Employment**

8.1 **Uses:** Stop & Shop shall be used as a grocery supermarket.

At the public hearing, Stop & Shop testified that there would be no pharmacy, bank, or other retail outlet in the store. This commitment is not included in the offers.

8.2 **Public Restrooms:** The applicant shall install and maintain the restrooms shown on the plans next to the truck dock, which shall be open to the public when the store is open, in order to provide an important amenity to shoppers and visitors in the vicinity of Main Street.

8.3 **Employees during Construction:** The applicant shall disburse all employees to other stores, both on and off the Island of Martha's Vineyard as necessary and as accepted by such employees.

9. **Low-Income, Moderate-Income, and Workforce Housing**

9.1 **Affordable Housing Contribution:** The applicant shall make a financial contribution of \$50,500 pursuant to the calculation defined under the Martha's Vineyard Commission Affordable Housing Policy to the Town of Tisbury Housing Trust before the issuance of the Certificate of Occupancy. The applicant is committed to further affordable housing contributions, that shall be determined after the resolution on the 15 Cromwell house. Additional affordable housing measures shall be submitted to and are subject to the approval of the LUPC and the applicant understands and accepts that the issuance a building permit shall be conditioned on final approval and acceptance of the total Affordable Housing Contribution by the LUPC.

The calculation of the affordable housing contribution was based on the enclosed floor space. The Commission's policy is that it be based on gross floor area, which the MVC's Affordable Housing Planner's interprets to mean the entire floor space including the garage, which would result in a one-time contribution of \$89,000. Also, given the large number of employees and their need for housing, she recommends an annual financial contribution similar to the Vineyard Golf Courses contribution of \$25,000.

9.2 **Replacement of Existing On-Site Housing:** If the 15 Cromwell house is unable to be relocated, the applicant shall replace the residential unit off site with a dwelling unit or units of equivalent size and bedroom count, permanently deed restricted to be affordable to a family earning under 80% of Area Median Income, before the issuance of the Certificate of Occupancy. The monitoring of this shall be done by the Dukes County Regional Housing Authority.

9.3 **Workforce Housing:** Stop & Shop shall provide during their ownership at least 15 housing units for at least 65 - 75 employees of both Stop & Shop stores on Martha's Vineyard, either permanent year-round housing or temporary housing as employees transition to moving to Martha's Vineyard.

Though not the same as affordable housing, the provision of workforce housing for a large number of employees has and would continue to have a positive impact on housing needs on the Island. It is not clear what temporary transitional is, or whether some of this housing is to temporarily house off-Island employees during the summer,

after which they leave the Island. At any rate, it is recommended that a monitoring mechanism be offered or conditioned.

10 **Construction Process**

10.1 **Construction Management Plan:** A complete Construction Management Plan shall be submitted for the review and approval of the Martha's Vineyard Commission Land Use Planning Committee after the Town determines its position with respect to the Water Street Parking Lot and before issuance of a building permit. If a satisfactory agreement can be made with the Town allowing Stop & Shop to use part of the Town lot for construction staging, the Construction Management Plan will likely include the following key points.

- Approx. 33% of the lot shall be cordoned off with fencing need for construction staging. Norton Lane shall be rerouted to northern side of the lot for the duration of the project or until reconstruction of the lot commences. Full access to Water Street shall be maintained.
- Demolition shall commence with the removal of the Chinese Restaurant (possibly in spring 2014) and continue north removing the existing store in the early fall.
- Subcontractors, trailers, materials and equipment shall be stored off site at a location to be determined.
- A full construction management plan shall be submitted to the building commissioner prior to issuance of a building permit.

It would be desirable that the applicant clarify the use of Island contractors, sub-contractors, suppliers, trade (plumbers, electricians, etc.) and professional services in the construction process.

11 **Agreements with the Town of Tisbury**

11.1 The applicant shall work with the Town of Tisbury and the MVC to create a binding agreement between the parties, which involves issues related to the Stop & Shop store that involve ongoing commitments from the Town of Tisbury, including but not limited to the following.

- That the Town shall maintain Norton Lane extension between Main Street and Water Street open to vehicular and pedestrian traffic, thereby ensuring that Stop & Shop has vehicular, pedestrian, and bicycle access to the store's truck dock, garage, and pedestrian entrances.
- That the Town shall provide police officer control of Five Corners.

This should clarify Stop & Shop funding of this effort.

- That the Town shall construct, or allow Stop & Shop to construct, the Water Street sidewalk in front of the store substantially as shown on the plans approved the MVC, and to maintain, or have Stop & Shop maintain, the street trees located there.
- That the Town shall work with the MVC to carry out a Transportation and Parking Plan of Downtown Vineyard Haven.
- That the Town shall work with the applicant and the MVC to finalize any future redesign of the Water Street Municipal parking lot and final landscape plan associated therewith.
- That the Parking Garage shall be managed by Stop and Shop and policed by the Town as described in offer 5.8. .
- That the Town shall allow part of the Water Street to be used for construction staging, to be detailed in the Construction Management Plan described in offer.

It is important for the Commission that those offers involving the Town be agreed to by the Town. Since the possible project approval depends on these offers remaining in place for

the duration of the project, there has to be a binding mechanism to make sure they are not changed by a future Board of Selectmen. The Executive Director discussed this with MVC Counsel, who suggested a tri-partite agreement linking all three parties. He has also been in discussion with the Tisbury Town Administrator. The next step is probably getting the three lawyers to discuss how best to achieve this.

12 Modifications to this Decision

- 12.1 Required MVC Approval: The applicant shall not alter the design or use of the premises from the approved plan, uses, and operating conditions without the approval of the Martha's Vineyard Commission.