

Appendix F

Parking & Traffic

- Memorandum Of Understanding, April 7, 2008, between City of Augusta, Cony, LLC and Hannaford
- Summary Memorandum, June 23, 2006, Summary memo of proposed Flatiron Drive
- Cony Flatiron Building Parking Requirements from Barba Final Report
- Memo, July 21, 2006, Major Development Final Review

**MEMORANDUM OF
UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING, effective as of April 7, 2008, is by and among the **CITY OF AUGUSTA**, a municipal corporation formed under the laws of the State of Maine (the "City"), **CONY, LLC**, a Maine limited liability company ("Cony") and **HANNAFORD BROS CO.**, a Maine corporation ("Hannaford").

RECITALS:

A. City owned a parcel of land situated in the City of Augusta consisting of approximately eight acres and identified on the City of Augusta tax records as Lot 117 on Tax Map 38 and Lot 35 on Tax Map 42 and is bounded by Cony Street, Stone Street and Viles Street (the "Entire City Parcel"). The Entire City Parcel is presently improved by two structures. The first structure is commonly known as the "Flat Iron Building". The second structure is the former Cony High School facility.

B. City, as seller and Cony, as purchaser, entered into a Purchase and Sale Agreement with an Effective Date of June 29, 2004, as subsequently amended and extended (such Purchase and Sale Agreement, as amended and extended, is referred to herein as the "Purchase Agreement"), with respect to a portion of the Entire City Parcel, identified in the Purchase Agreement as the "Premises" and more particularly described therein. On or about the date hereof, the City has conveyed the Premises to Cony. The City has retained the remainder of the Entire City Parcel, situated westerly and adjacent to the Premises, identified in the Purchase Agreement as the "Flat Iron Parcel". On or about this date, Cony has entered into a long term Ground Lease with Hannaford, pursuant to which Cony has leased the Premises and other property to Hannaford. Hannaford intends to construct and operate a supermarket upon the Premises.

C. In anticipation of the possible future redevelopment of the Flat Iron Parcel, the City has recognized a potential need for additional parking and the parties have agreed that certain parking on the Premises be made available to the Flat Iron Parcel, to be generally situated adjacent to boundary between the Premises and Flat Iron Parcel, and which is identified on the plan attached hereto as **Exhibit A** as the "Shared Parking Area". The Shared Parking Area shall not include more than forty two (42) parking spaces and shall be accessible only from the Premises at the location depicted on the attached plan, or at such other location as Cony and Hannaford shall approve.

D. While Hannaford does not presently intend to construct the Shared Parking Area, Hannaford has agreed to either construct or permit the construction of said Shared Parking Area in the future, upon notification by the City, in accordance with the terms set forth herein.

E. Cony's execution of this Memorandum of Understanding is intended to evidence its approval of the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

1. **Plan and Proposed Use.** If the City determines that, in connection with future use of the Flat Iron Parcel, it shall require development of all or a portion of the Shared Parking Area, the City shall provide Hannaford and Cony with a written proposal for the redevelopment of the Flat Iron Parcel, which shall set forth the anticipated use or uses of said Parcel, together with proposed plans for the same, including without limitation traffic and parking plans. Hannaford and Cony shall have the right to review and comment on the proposal and plans.

2. **Obligation to Construct.** Hannaford shall be under no obligation to construct or permit construction of the Shared Parking Area, and Cony shall be under no obligation to convey easement rights for use of the same, unless and until the City affords Hannaford and Cony evidence that all necessary permits and approvals have been obtained for the proposed use and redevelopment of the Flat Iron Parcel, including the Shared Parking Area and access to the Shared Access Area, or, in the alternative, an opinion of counsel indicating that no permits or approvals are necessary for such proposed use and redevelopment. Hannaford, at its sole discretion, shall have the right to elect to either construct the Shared Parking Area or to permit the City, through its developer /contractor, to construct the same upon terms and conditions, and in accordance with plans acceptable to Hannaford.

3. **Cost of Construction.** Cost sharing with respect to construction of the Shared Parking Area shall be dependent upon the proposed use of the Flat Iron Parcel, as follows:

(a) **For Profit Use.** If more than 25% of the square footage of the building(s) situated on the Flat Iron Parcel is to be used and occupied by a "for profit" business or entity ("For Profit Use"), the cost of constructing the Shared Parking Area, including without limitation any amendments to existing permits or approvals, shall be borne by the City, except as set forth in subsection (c) below. If Hannaford elects to construct the Shared Parking Area, as set forth in Section 2 above, it shall submit monthly invoices to the City and the City shall make prompt payment of the same. Until such payment is made in full, the City shall have no right to use the Shared Parking Area.

(b) **Non-Profit Use.** As long as 75% or more of the square footage of the building(s) situated on the Flat Iron Parcel is to be used and occupied by a "not for profit" business or entity ("Non-Profit Use"), the cost of constructing the Shared Parking Area shall be borne by Hannaford, up to a maximum amount of \$80,000.00. Any cost in excess of \$80,000 shall be paid by the City. If Hannaford elects to construct the Shared Parking Area, as set forth in Section 2 above, it shall submit monthly invoices to the City for costs in excess of \$80,000 and the City shall make prompt payment of the same. Until such payment is made in full, the City shall have no right to use the Shared Parking Area. If within ten (10) years from completion of construction of the Shared Parking

Area more than 25% of the square footage of the buildings located on the Flat Iron Parcel is used or occupied by a "for profit" business or entity, the City shall reimburse Hannaford for the pro rata share of the "Depreciated Construction Costs" (as defined below) of said Shared Parking Area at the time such for profit use exceeds 25%, based on the percentage of the square footage of the building occupied by a "for profit" business entity. For purposes of this Agreement, the Depreciated Construction Costs shall mean the original construction cost paid by Hannaford, depreciated on a straight line basis over twenty (20) years, commencing on the date that the Shared Parking Area is placed in service. By way of example only, if the original construction cost is \$80,000 and in year twelve the "for profit" use of the Flat Iron Parcel increases to 40%, the City shall reimburse Hannaford in the amount of \$12,800 (\$80,000 cost, minus \$48,000, the Depreciated Construction Cost, multiplied by 40%, the "for profit" use).

(c) Hannaford Use. Hannaford shall always have the right to use the Shared Parking Area at any time, as long as Hannaford either has paid for the construction of the Shared Parking Area, up to a maximum of \$80,000, in the event such Shared Parking Area was constructed in connection with a "Not For Profit" use under Section 3(b) above, or has reimbursed the City for up to 50% of the cost incurred by the City in constructing the Shared Parking Area, up to a maximum amount of \$40,000.00, in the event that the Shared Parking Area was constructed by the City in connection with a "For Profit" use, as provided in Section (b) above. To obtain such reimbursement, the City shall provide Hannaford with invoices documenting the total cost of construction of the Shared Parking Area to the reasonable satisfaction of Hannaford.

4. Conveyance of Easement Rights. Upon completion of construction of the Shared Parking Area in accordance with the terms and conditions of any pertinent permits and approvals, Cony shall convey to the City by easement deed, the right and easement to use the Shared Parking Area and to access the Shared Parking Area from the Premises at the location depicted on the attached plan, or at such other location as Cony and Hannaford shall approve, and Hannaford shall join in as necessary, which easement shall be in the form attached hereto as **Exhibit B**. The easement deed shall reflect the terms and conditions set forth herein with respect to use of the Shared Parking Area and, in addition, shall be subject to the following:

(a) The easement deed shall be limited to use and access to the Shared Parking Area such that no overflow parking into other parking areas developed on the Premises shall be permitted.

(b) Use of the Shared Parking Area by the City shall not interfere with traffic circulation throughout the Premises. When events are held at the Flat Iron Parcel, the City shall use its best efforts to avoid any such interference.

(c) The City shall advise all tenants or occupants of the Flat Iron Parcel of the restrictions set forth in subsection (a) and (b) above, and they shall be expressly set forth in any lease agreement for space within any building situated on the Flat Iron Parcel.

5. Maintenance.

(a) During any period of time that the Flat Iron Parcel is owned by the City, the provisions of Section 5(b) shall apply with respect to maintenance. During any period of time that the Flat Iron Parcel is not owned by the City, the provisions of Section 5(c) shall apply with respect to maintenance.

(b) For any period of time that Hannaford is using the Shared Parking Area as provided in Section 3(c) above, Hannaford shall be responsible, at its expense, for snow plowing the Shared Parking Area and the City shall be responsible, at its expense, for all other repair and maintenance. For any period of time that Hannaford is not using the Shared Parking Area as provided in Section 3(c) above, the City shall be solely responsible for the cost to repair and maintain the Shared Parking Area, including without limitation, snow removal, as necessary. As used herein, "repair and maintain" shall mean undertaking the work necessary to preserve and keep the Shared Parking Area in as nearly as possible its condition as when first constructed or as subsequently improved by Hannaford or the City, and consistent with the level of repair and maintenance of the parking fields on Premises.

(c) For any period of time that Hannaford is using the Shared Parking Area as provided in Section 3(c) above, Hannaford and the then owner of the Flat Iron Parcel shall share equally in the cost to repair and maintain the Shared Parking Area, including without limitation, snow removal, as necessary. For any period of time that Hannaford is not using the Shared Parking Area as provided in Section 3(c) above, the then owner of the Flat Iron Parcel shall be solely responsible for the cost to repair and maintain the Shared Parking Area, including without limitation, snow removal, as necessary. Regardless of which party is responsible for the costs, Hannaford shall have the sole right, at its sole discretion, to perform all such repairs and maintenance, and to bill the owner of the Flat Iron Parcel for its share of such costs, calculated as provided in this Section 5(c). As used herein, "repair and maintain" shall mean undertaking the work necessary to preserve and keep the Shared Parking Area in as nearly as possible its condition as when first constructed or as subsequently improved by Hannaford or the City, and consistent with the level of repair and maintenance of the parking fields on Premises.

6. Insurance.

(a) Subject to the provisions of Section 6(b) below, if the Shared Parking Area is constructed, the owner of the Flat Iron Parcel shall maintain liability insurance covering the Shared Parking Area. Such insurance shall be in an amount of not less than THREE MILLION DOLLARS (\$3,000,000.000) and shall name Cony and Hannaford, or their successors and assigns, as additional insureds. Such policies shall contain a provision that such insurance shall not be invalidated against Cony or Hannaford as a result of any act or negligence of any other insured or any person acting by or through such other party. Such policies may not be cancelled nor may such

coverage be substantially changed without giving at least ten (10) days' prior written notice to all insureds and each holder of the first mortgage listed as a holder of such first mortgage in such policy. The owner of the Flat Iron Parcel shall provide evidence of such insurance to Cony and Hannaford upon request.

(b) Notwithstanding the provisions of Section 6(a) above, so long as the owner of the Flat Iron Parcel is the City, the City shall not be obligated to satisfy the requirements of Section 6(a); provided, however, that the City shall obligate its tenants to comply with the provisions of said Section. Cony and Hannaford shall have the right to deny use of the Shared Parking Area to any tenant of the Flat Iron Parcel that has not satisfied the obligations under Section 6(a) and provide evidence of such insurance to Grantor and Hannaford upon request.

7. Use Restrictions.

(a) Notwithstanding anything contained herein to the contrary, except as provided in Section 7(b) below, if any portion of the Flat Iron Parcel is to include or incorporate any one or more of the "Excluded Uses" (as defined below), Hannaford shall be under no obligation to construct or to permit the construction of the Shared Parking Area and the City, and its successors and assigns shall have no rights or easements hereunder. If following completion of the Shared Parking Area, all or any portion of the Flat Iron Parcel is used for any one of the Excluded Uses, the City, its successors and assigns, and their employees, tenants, guests, licensees and invitees shall have no right to use the Shared Parking Area. The term "Excluded Uses" shall include any one or more of the following uses, whether as a separate store or structure or within a larger store or structure, except as provided in subsection (b) below: (i) the operation of a supermarket, warehouse supermarket, combination food and drugstore, combination food and department or general merchandise store, so-called "supercenter", or wholesale club, food store or grocery store, bakery or delicatessen; (ii) the sale of food or food products (whether fresh, refrigerated, frozen, processed or prepared) intended for consumption away from the premises on which they are sold, including, without limitation, canned goods, groceries, fruit, vegetables, produce, seafood, meat, poultry, dairy products, bakery products, prepared meals, soups and salads, grocery items, or any one or combination of the foregoing, (iii) the operation of a convenience store, (iv) the operation of a pet food store, (v) the operation of a drugstore, a pharmacy or a store primarily engaged in the sale of health and beauty aids (for the purposes hereof, a "pharmacy" shall mean any store, or department or counter within a store, which sells prescription medicines or drugs or any items requiring the presence of a registered pharmacist); or (vi) any combination of the foregoing. :

(b) Notwithstanding the foregoing, the following shall not be "Excluded Uses" for purpose of this Section:

(i) incidental amounts of soft drinks, fruit drinks, milk in single service containers, ice cream in single service containers, candy, cookies, confections, potato and corn chips and similar snacks may be sold on any portion

of the Flat Iron Parcel, provided such items are sold as incidental to the principal business conducted at said Flat Iron Parcel; and

(ii) incidental amounts of sales of food and food products that are intermittent and are by or for the benefit of non-profit organizations; provided such items are sold as incidental to the principal business conducted at said Flat Iron Parcel. By way of illustration only, the incidental and intermittent sale of girl scout cookies for the benefit of Girls Scouts of America, or a local chapter would be allowed and would not be deemed to be an "Excluded Use"; and

(iii) incidental amounts of sale of food and drink "to go" in conjunction with an on-site sit down restaurant; provided that such items are sold as incidental to the principal business of such restaurant.

8. Notices. All notices and other communications required or permitted shall be in writing and shall be given by Certified Mail or nationally recognized overnight delivery service. Any such notice shall be deemed to be delivered, whether actually received or not, upon the earlier of (a) actual receipt or (b) deposit in a regularly maintained receptacle for United States mail, postage prepaid, or with a nationally recognized overnight delivery service, postage prepaid or billed to shipper, addressed as follows:

If intended to the City:

City Manager
City of Augusta
City Center
16 Cony Street
Augusta, Maine 04330

If intended to Cony:

c/o The Boulos Company
One Canal Plaza
Portland, Maine 04101
Attn: C. Anthony McDonald

If intended to Hannaford:

Hannaford Bros. Co.
145 Pleasant Hill Road
Scarborough, Maine 04074
Attn: Real Estate Department
(If sent by overnight mail)

Hannaford Bros. Co.
P.O. Box 1000
Portland, Maine 04101
Attn: Real Estate Department
(If sent by U.S. Mail)

Either party shall have the right to change the address to which its future notices are sent by giving notice to the other parties as provided above, which notice shall be effective only upon actual receipt.

9. Miscellaneous.

(a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(b) The Exhibits attached are hereby incorporated herein by reference.

(c) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maine.

(d) Either party may record this Memorandum of Understanding in the Kennebec County Registry of Deeds.

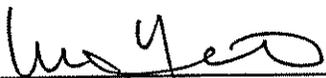
(e) This Agreement may be executed in one or more counterpart signature pages, which when taken together shall constitute one complete original instrument.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the undersigned have each caused this Memorandum of Understanding to be executed by its respective duly authorized representative, as of the date set forth across from their respective signature, to be effective for all purposes as of the date set forth in the introductory paragraph above.

CITY OF AUGUSTA

Date: April 7, 2008

By: 
Its: City Manager
Name: William BRIDGER

HANNAFORD BROS. CO.

Date: April 8, 2008

By: 
Its: Vice President
Name: W. R. Miller

CONY, LLC

Date: _____, 2008

By: _____
Its: _____
Name: _____

IN WITNESS WHEREOF, the undersigned have each caused this Memorandum of Understanding to be executed by its respective duly authorized representative, as of the date set forth across from their respective signature, to be effective for all purposes as of the date set forth in the introductory paragraph above.

CITY OF AUGUSTA

Date: _____, 2008

By: _____
Its:
Name:

HANNAFORD BROS. CO.

Date: _____, 2008

By: _____
Its:
Name:

CONY, LLC

Date: April 4, 2008

By: 
Its: Member
Name: C. Anthony McDonald

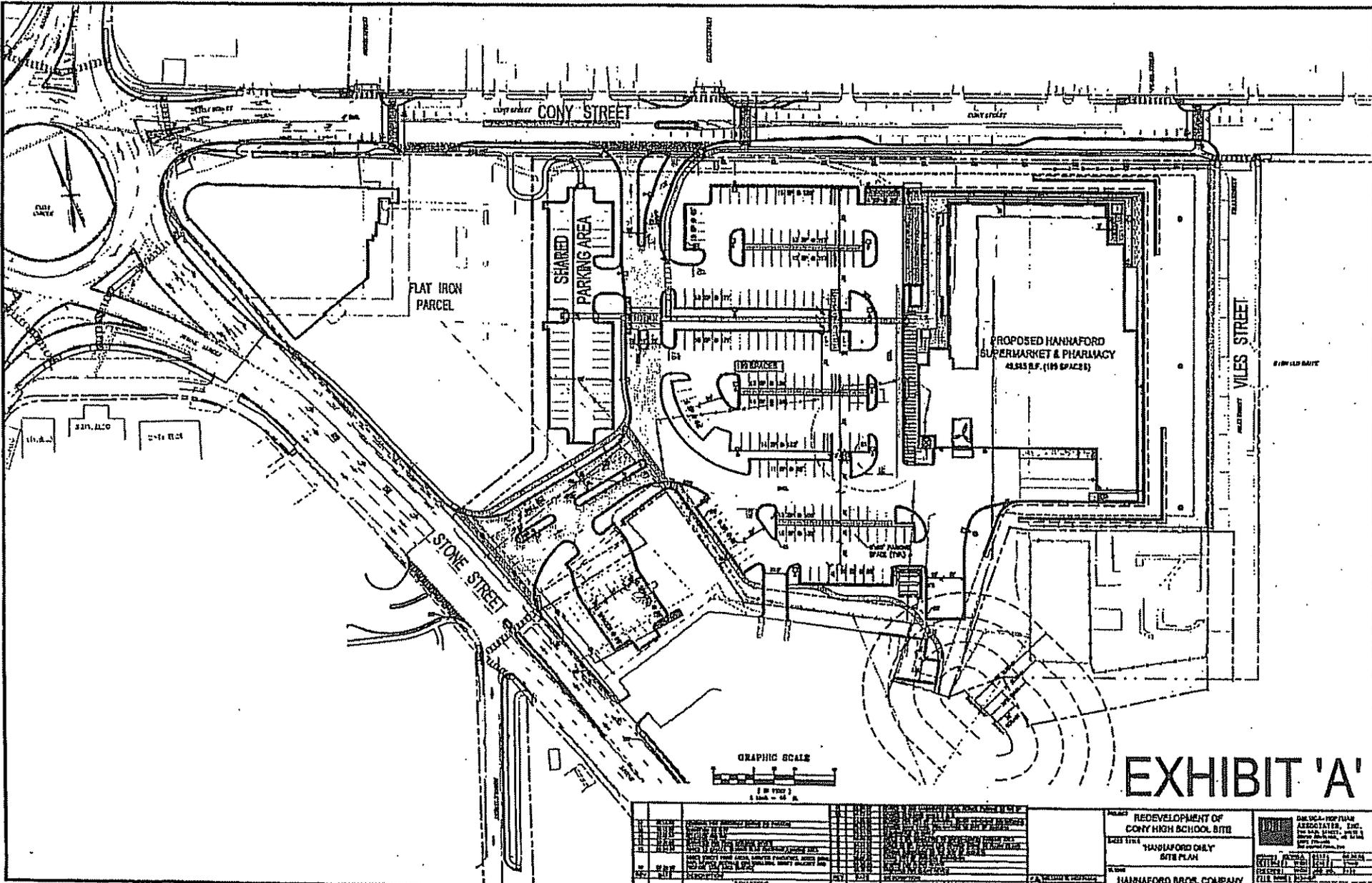


EXHIBIT 'A'

REDEVELOPMENT OF CONY HIGH SCHOOL SITE HANAFORD ONLY SITE PLAN		HANAFORD BROS. COMPANY 12111 C-41
PREPARED BY: HANAFORD BROS. COMPANY DATE: 11/11/11 SCALE: AS SHOWN SHEET NO.: 1 OF 1		

Maine
Traffic
Resources

25 Vine Street Gardiner, ME 04345
(207) 582-5252 FAX (207) 582-1677
E-mail: mainetrafficresources@verizon.net

SUMMARY MEMORANDUM

TO: Mr. Michael Duguay
Director of City Services and Economic Development
City of Augusta
16 Cony Street
Augusta, ME 04330

DATE: June 23, 2006

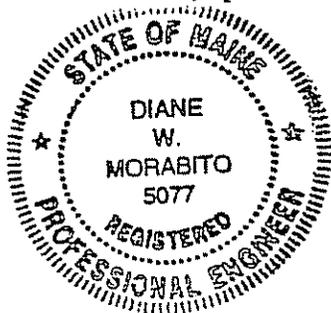
RE: Evaluation of Flatiron Drive on Cony Street

The purpose of this memorandum is to summarize an evaluation of the proposed drive on Cony Street to serve the new parking lot for the Flatiron building, which is being retained by the City of Augusta. It is understood that a question was raised at June Planning Board meeting regarding the possibility of connecting the Flatiron parking lot directly to the Hannaford lot.

The proposed grade in the vicinity of the connector on the Hannaford lot is at elevation 115. The existing elevation on the Flatiron parcel is approximately 105 at the connector location, resulting in a 10' difference. The resulting grade on the connector drive would be excessive at close to 20 % and not feasible for a commercial drive.

In terms of traffic permitting, the existing Cony high school trips are being retained by the Flatiron building. The high school currently generates 134 trips during the PM peak hour of the adjacent street system. These 134 trips were assigned to the proposed drive on Cony Street to determine projected operations. The 134 trips were assumed to all be "new trips" and were added to the projected 2008 full build volumes with the new Hannaford store fully occupied. This is considered "worst case" because many of the measured Cony Street trips were actually generated by the high school trips, which were not deducted from the volumes, resulting in a double counting of some trips. A level of service analysis shows that the proposed Cony Street drive, serving the Flatiron parking lot, would operate at LOS "C" with no capacity concerns during the PM peak hour analysis period.

A connector drive between the two lots is not recommended because the grade would be excessive and because acceptable operations will be provided at the Flatiron drive. If you or the Planning Board have any questions regarding our conclusions please do not hesitate to contact me.



Sincerely,

Diane W. Morabito

Diane W. Morabito, P.E. PTOE

Cony FlatIron Building Parking Requirements

Effective square footage of the Cony FlatIron Building has been determined to be approximately 35,000 square feet. This is in part due to the extraction of space for a boiler and mechanical room (two stories), elevators, stairs, bulk heads and the provision that the auditorium would be preserved regardless of the intended reuse.

USE	SPACES REQUIRED	SPACES NEEDED AT FLATIRON
Retail	5 per 1,000 square feet	175 spaces
Professional Office	3 per 1,000 square feet	105 spaces
Hotel	1 per room + 1 per 3 empl.	75 spaces(70 room) 70+5=75
Restaurant	14 per 1,000 square feet	112 spaces (8,000 sf.)

City of Augusta Maine

MEMO

Date: 7/21/06
To: Paul Harris, Planning Board Chair
Cc: Michael Duguay, Director of Development
From: Lionel Cayer, City Engineer *L.C.*
RE: Cony LLC & Hannaford Bros major development final review

I have completed my final review of the site and traffic issues for the proposed new Hannaford Store on Cony and Stone Streets here in Augusta. I am happy to report that the project appears to meet the performance standards of the City of Augusta Land Use Ordinance.

It is my understanding that a final M.D.O.T. traffic movement permit will be issued prior to your meeting on July 25th. Two very significant off-site traffic mitigation projects will be listed as requirements of the traffic permit. The first is a new traffic intersection and traffic light with associated turn lanes at the major site entrance on Stone Street. The new signals at this location must conform to the City of Augusta standards for new traffic signal equipment, which includes video vehicle detection and battery power backup in the event of a power failure. This standard also requires that the signals be installed on mast arms, which improve the visual and aesthetic features of the intersection design. These requirements are important for the operability, management, and overall lower maintenance costs of this new equipment by the City of Augusta. } ?

The second off-site mitigation project is the re-design and reconfiguration of the Cony Traffic Circle. The traveling public should experience a very noticeable difference as they drive through the reconstructed traffic circle. I am confident that the best possible solution has been engineered for the Cony Circle.

The Planning Board asked me to review the entrance options into the future parking lot for the Flat Iron building and also the possibility of making Pearl and Gannett Streets one-way. The grade of the Flat Iron parking lot is ten feet lower than the entrance grade. An adequate connection is not possible for the lower parking lot for the Flat Iron building. The parking lot has unrestricted access to Cony Street. The upper parking lot that is proposed as shared between the new store and the Flat Iron site is located 180 feet from the flat iron building and has access to both Stone Street and Cony Street.

The concern that was raised during the last public hearing regarding the potential for cut thru traffic from this development on Pearl and Gannett streets was addressed in the traffic study that was done for this development. I have attached that section of the traffic study for your review. I concur with the conclusion that the time it takes to travel through a neighborhood street with six stop signs is much longer than staying on the collector and minor arterial routes. The change from a two-way to a one-way street would have a significant impact upon the residents who live on the street. If it was requested by a majority of the residents of a street, the City Council has the authority to make a change at any time; therefore it is my recommendation to the Planning Board that a condition not be placed on this project involving the change of any neighborhood street to one-way.

Neighborhood Traffic Impact

Concern has been expressed about an increase in traffic in adjacent neighborhoods due to the proposed new Hannaford store. Numerous studies have determined that motorists will generally travel the quickest and shortest routes to reach their destinations. Various routes through the adjacent neighborhood to the north were evaluated through travel time and delay runs. These runs were conducted during the afternoon period under peak summer conditions, when congestion is at its worst in Maine, when neighborhood cut-throughs would be most likely. Six alternative routes were evaluated, which are graphically described in the attached diagrams along with their lengths. Each route was traveled five times in each direction and the run times were averaged.

The travel time and delay results are summarized for each option in the tables in the appendix, which list each option, individual run times and average times. The results indicate that the quickest route is along Bangor Street, through the eastside rotary, to the site. This is primarily due to the large number of stop locations within the neighborhood, which are also shown on the diagrams, which were placed many years ago to discourage traffic in the neighborhood. Based upon the results of the travel time runs motorists would not be expected to leave the primary state routes and cut through the neighborhood to reach the Hannaford store. The only customers coming to the store through the neighborhood would be those motorists which were already on the neighborhood streets, namely neighborhood residents.