

# ANDERSON & KREIGER LLP

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ACHESON H. CALLAGHAN  
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April 10, 2003

cc: BOS  
G. RHODES  
D. ABBT  
F. WIDMAYER

**By Facsimile 978-264-9630**  
**and Regular Mail**

Don P. Johnson  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

CHRISTINE - PLEASE PLACE THIS  
ON NEXT AGENDA - SELECTMEN'S  
BUSINESS - FOR VOTE NOTED BELOW.

Dear Don: (Brookside Mall)

I enclose a copy of a short memo from VHB outlining the steps they will take on behalf of the owner to get approval of the traffic light at this site. That was one of the things promised in connection with the settlement of this matter. I do not think it contains anything ~~Dave and DPW~~ do not know, but it represents a commitment to move the process along as quickly as possible.

DON

In addition, I would like you to put on the agenda for the Board a vote to waive the condition in the permit about payment of the \$40,000. This is the simplest and cleanest way to handle the return of that money now held in escrow. The vote does *not* require any hearing but should say:

Move to Waive Condition 2.9 of Site Plan Special Permit No.'s 07/26/00-372 revised and 08/25/00-373 revised, such funds to be released from escrow upon dismissal of *Farm Hill Mill Limited Partnership v. Board of Appeals of Acton, et al*, Middlesex Superior Court No. 02-3050.

Very truly yours,

*Mike/sy*  
Acheson H. Callaghan

Enclosures

c: Gary Rhodes (by email w/out enclosures and fax w/enclosures)

AHC:sy  
act/gen/djohnson088@brookside2.wpd

## D'Agostine, Levine, Parra &amp; Netburn,

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Of Counsel  
Joan R. Yudkin

April 8, 2003

Acheson H. Callaghan Jr., Esquire  
Anderson & Kreiger, LLP  
47 Thorndike Street  
Cambridge, Massachusetts 02141

RE: *Farm Hill Mall Limited Partnership v. Cara Voutselas et al. as they are and constitute the Board of Appeals of the Town of Acton, and Gary Rhodes, as he is the Building Commissioner of the Town of Acton, and William Shupert et al. as they are the members of and constitute the Board of Selectmen of the Town of Acton, and Town of Acton, a municipal corporation in and within the County of Middlesex and Commonwealth of Massachusetts*  
Middlesex Superior Court Case No. 02-3050

Dear Mike:

Enclosed please find a memo from VHB dated April 8, 2003, relative to the traffic signalization procedure. If you have any questions or comments, please advise. Otherwise, could we complete the settlement of this matter as we discussed and as set forth in my letter of April 1, 2003, to Doug.

Very truly yours,

D'AGOSTINE, LEVINE, PARRA & NETBURN, P.C.

By:   
Louis N. Levine  
e-mail: llevine@dlpnlaw.com

LNL/jlc

cc: Douglas H. Wilkins, Esq.  
Ross Hamlin  
Letter/Callaghan

**Transportation  
Land Development  
Environmental  
Services**



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**Memorandum**

To: Louis N. Levine, Esq.  
D'Agostine, Levine, Parra & Netburn, P.C.  
268 Main Street  
Acton, MA 01720-6223

Date: April 8, 2003

Project No.: 07799

From: Patrick T. Dunford, P.E.  
Senior Traffic Engineer

Re: Traffic Signalization Procedure  
Brookside Shops  
Acton, Massachusetts

As requested, Vanasse Hangen Brustlin, Inc. (VHB) is providing the following summary of the process for signalizing the site driveway to the above-mentioned driveway. The primary site driveway is located on Route 2A/119 (Great Road), which is under state jurisdiction. Accordingly, a signal can only be installed at this location with MassHighway approval.

As a condition of approval, both locally and by MassHighway, traffic-monitoring programs were required following the site opening. The local monitoring will be focused solely on the westerly driveway on Route 2A/119 (Great Road). The state traffic monitoring is intended for use in determining if the primary easterly site driveway needs to be signalized. The scope and schedule for the MassHighway traffic counting is summarized as follows:

**MassHighway Section 61 Finding – February 26, 2001**

The Section 61 Finding is the official documentation of the mitigation commitments that resulted from the Massachusetts Environmental Policy Act (MEPA) process. For the site driveway intersection, the Section 61 Finding specifies that, "When signalization becomes warranted and approved by MassHighway, the proponent will signalize this intersection". This document further specifies that this determination will be made based on the results of the Traffic Monitoring Program. The monitoring program will consist of daily traffic counts of entering and exiting site traffic over a seven-day period. The monitoring will be conducted in four intervals, starting six months after the site opening, and continuing every six months for two years total. The counts will be incorporated into a Traffic Signal Warrant Analysis to be provided to the MassHighway District 3 office to make their determination.

**Count Schedule**

- Site occupancy (over 90+ percent full): March 2003
- 1<sup>st</sup> interval: September 2003
- 2<sup>nd</sup> interval: March 2004
- 3<sup>rd</sup> interval: September 2004
- 4<sup>th</sup> interval: March 2005

The first tenant of the site (Staples) opened for business in December 2002, and additional tenants have been moving in through the start of the year. As of the start of March, all of the site tenants were open for business with the exception of two spaces totaling approximately 4,900 sf of space. Because this represents well below a ten-percent vacancy, the site can be considered to be fully occupied for the

Date: April 8, 2003  
Project No.: 07799

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purpose of traffic monitoring. Furthermore, the remaining tenants will likely be open for business before the first counting interval in September.

As noted above, the first scheduled traffic counting at this site is not scheduled until September 2003. Traffic counts are not conducted immediately after the opening of a retail site, as the results will not represent typical conditions at the site. The standard practice is to wait for the initial activity associated with the opening (sales, interest in new shopping opportunities, etc.) to subside before monitoring traffic. Accordingly, MassHighway likely will not want to base signalization on the results conducted any sooner than six months after opening. In addition to the scheduled traffic counting, input from Town officials, along with records of any recent accident history could help persuade the state that a signal is needed at this location.

Within a reasonable time period following the first interval of traffic counting, VHB will conduct the necessary Traffic Signal Warrant Analysis. The counts and accompanying analysis will be summarized in a brief technical memorandum and forwarded to the MassHighway District 3 office for review. A copy of the report will also be provided to the Town of Acton Board of Selectmen. VHB is available to meet with both the Town of Acton and/or MassHighway to discuss the results of the Traffic Signal Warrant Analysis as needed. This process will be repeated for each of the four scheduled intervals of traffic monitoring. If MassHighway determines a signal is warranted at any point during this process, VHB will proceed with the signal design plans soon thereafter.

Cc: Ross Hamlin  
Dave Greenberg - VHB  
Project File