BCM Environmental & Land Law, PLLC
Solutions for Northern New England

VIA EMAIL July 14, 2020

Town of Northwood Planning Board
818 First NH Tpke.
Northwood, NH 03261
planner@northwoodnh.org
lsmith@northwoodnh.org

Re: Sullivan Major Site Plan Review, Tax Map 221 Lot 61, #19-12
Final Summary of Reasons for Denial

Dear Chair Strobel and Members of the Planning Board:

I write on behalf of Marcia and Brian Severance, as individuals and as Trustees of the Severance Family Trust. As you know, the Severances respectfully request that the Town of Northwood Planning Board (the "Board") deny Case # 19-12, application for Major Site Plan approval submitted by Michael Sullivan ("Applicant") for Tax Map 221 Lot 61 (known as 8 Bow Lake Road) ("Application").

Understanding that the Board has set July 14, 2020 as the deadline by which all written materials in response to the Applicant's materials must be submitted, this letter sets forward all of the remaining issues associated with the Application, as an amendment to my attached March 12, 2020 letter. Many outstanding issues are outlined in detail in the March 12, 2020 letter, including a lack of easement for the wellhead sanitary protective area, an inaccurate septic application to NHDES, impact on historic resources, the inappropriateness of the site for the drive-thru as proposed, and the issues with missing information, dangerous traffic, and alteration of character further discussed in this letter. Please make this letter a part of your record in this matter.

In summary, the Board has ample evidence upon which to defensibly base a decision to deny the Application and the Severances respectfully request that the Board do so.

1. Failure to Submit Revised Plans; Continuation of Insufficient Evidence

The Board set a deadline of July 6, 2020 for the Applicant to submit all final materials for the application. Instead of submitting revised plans, he submitted a letter from his lawyer. This illustrates a chronic problem with this application: insufficient credible information. For example, during the March 12, 2020 meeting, the Board denied the Applicant's request for a waiver from the requirement of adding sidewalks along Bow Lake Road. The plans, as current then and before the Board now, do not show sidewalks along Bow Lake Road. As such, they do not comply with the regulations requiring sidewalks after the waiver request was denied. Town Planner Burdin noted that the Applicant "cannot receive final approval for this application without complying with the provisions of Section IX.Q," the sidewalk requirement, in his July 13, 2020 Review Comments.

No revised plans have been provided since March 12, 2020 and the deadline of July 6, 2020 for provision of revised materials has passed. Over the course of this application and revision process,

members of the public and the Board have made numerous other repeated comments that should have led applicant to supply revised plans, but it did not. These include comments about site lighting, vegetative buffers, specific uses of existing buildings, width of Bow Lake Road and many other traffic considerations, and questions about the location and suitability of the septic system. Through repeated failures to provide revised plans, the Applicant has failed to provide the Board sufficient evidence upon which to base a determination that all legal requirements have been met. Therefore, the Board must deny the application.

Having known about the final deadline to submit any additional material for over four months and not having done so, the Applicant should not be afforded any additional time to now do so. It is not the Board's job to develop a list to instruct the Applicant how to prepare his plans so that they are approvable. It is the Applicant's job to provide approvable plans. This is especially so when the Applicant has participated in well over 25 hours of Board meetings during which the Board, the public, and Town staff provided input about the Application.

2. Comments of Applicant's Appraiser Irrelevant; Generally, Drive-Thrus Decrease Residential Values

Vern Gardner is the Applicant's appraiser. At the March 12, 2020 meeting of the Planning Board, Mr. Garner testified that the Board should not rely on the Severance's appraiser, Mark Correnti, because Mr. Correnti is a residential appraiser. That Mr. Correnti is a residential appraiser is accurate but, more importantly, it is also irrelevant. Mr. Correnti provided a report related to the value of only *residential* properties affected by drive-thru developments, concluding that drive-thrus decrease the value of residential properties. This is exactly the proper topic for a *residential* appraiser. Mr. Correnti did not appraise any commercial property.

Mr. Gardner also testified that Mr. Correnti's appraisal was not reliable because he did not visit the properties.[1] Again, it is correct that Mr. Correnti did not visit the properties, but it is also irrelevant. Mr. Correnti provided a study on the impact of drive-thrus on residential properties in general. Accordingly, no visit to the Severances' properties was necessary for such a study.

3. Substantial Alteration of the Character of the Area

The "character of the area" comes into play with regards to this application because the Town of Northwood has adopted two sections in its ordinances that not only allow but actually require the Planning Board to consider the effect of the drive-thru on character. Section V.B.(1)(a) of the Northwood Development Ordinance states "by its nature of design, or through the use of vegetative or topographical buffers, the use will not substantially alter the character of the area in which it is proposed to be sited." Section IX.J of the Site Plan Regulations concerns "Preservation of Natural and Historic Features." Both sections allow the Board to consider alteration of character of the area.

[1] Please note that Mr. Gardner provided a photo in his appraisal that shows that he trespassed on the Severances' property nearest to Route 4. The photo shows the back of the house, which cannot be photographed without being on the Severances' property. The Severances had not been requested to grant and had not granted permission for Mr. Garner to enter their property.

Here, the "area" includes the residential area of Bow Lake Road, because the entrance to the proposed drive-thru would be off Bow Lake Road, as correctly noted by Ms. Ogilvie in her comments and letters to the Board. If the Applicant wanted to be considered part of the area lining NH Route 4 to the east and west, it should have proposed an entrance to the property from NH Route 4, but it did not. (The fact that the Applicant may have opted to seek an entrance on Bow Lake Road because it believed no entrance from NH Route 4 would be allowed would be further evidence that the proposed drive-thru is not suitable for the proposed location.) With the entrance on Bow Lake Road, the effect on the Bow Lake Road residential neighborhood is much higher and must be carefully considered.

Turning to those considerations, first, none of the current uses along NH Route 4 are drive-thru establishments. The construction of a drive-thru in this area is a substantial alteration of the character of the area, and the Severances contend that such alteration is too substantial to be permitted.

Second, at the March 12, 2020 meeting, the Applicant and his attorney appeared to argue that filing for site plan was enough for the drive-thru to be fully permitted because he had met with the Code Enforcement Officer and the Code Enforcement Officer had allegedly told him that all the Applicant needed to do was file for Site Plan approval. This is not the case. The Site Plan Regulations include performance standards that must be met for any site plan to be approved. Without meeting all relevant regulations, including restrictions on altering the character of the area, this site plan application cannot be approved.

Third, the Applicant now appears to argue that the fact that "commercial" uses are permitted by right in this area by the Town of Northwood Zoning Ordinance, the Planning Board has no authority to determine if this drive-thru, as designed, located, and appears, is consistent with the character of the area. Again, this is not the case. At best, this is an overstatement of the effect of a use being permitted by the zoning ordinance. Even if the category of use is permitted, the Planning Board has the power, indeed the obligation, under the Site Plan Regulations, to impose conditions, require changes to the plan, question the safety of the traffic pattern, and otherwise require an applicant to conform with the character of the area, and to deny applications that do not conform with the many legal requirements. In fact, if a Planning Board approved every site plan application simply because the proposed use was permitted by right, such decisions would not be sustained.

Lastly with respect to character of the area, the Applicant also ignores that while the proposed coffee shop building is approximately 640 square feet, the impacted area on the lot is much larger, including drive-thru lanes and parking. Further, while small, the drive-thru is so incongruous with the surrounding properties (that consist of historic Town office buildings, a church, residential homes, and a public, school property[2]) that it will stick out dramatically. "Acknowledg[ing] the present", as the Applicant advocates, does not require the Planning Board to approve anything and everything modern proposed by any applicant and allowed in a zoning district.

[2] The Applicant has repeatedly mischaracterized Coe-Brown Academy as a private school. As the Board knows, Coe-Brown serves as the public high school for Northwood and Strafford, and some students from Nottingham.

The Severances do not believe the Applicant's claim, that this proposal is for "well planned high-quality commercial development" – instead it is for a poorly-designed, unnecessary, drive-thru in the heart of historic Northwood.

4. Well Radius

In the Applicant's July 6, 2020 memo to the Planning Board, a large portion of the argument is dedicated to the Town's inability to regulate setbacks from wellheads. However, the Planning Board does have the ability to add conditions and otherwise examine issues like wellheads and the protective radius of a wellhead when it considers the feasibility, public health and safety, and practicality of approving an application that would require expansion of impervious surface in that wellhead radius. As far as the Severances are aware, NHDES was not informed of the proposed expansion of impervious roadway that may be required by the Town for the approval of the application. Sullivan received his permit from NHDES before the Town and Sullivan had further discussions about Bow Lake Road and reached the conclusion that additional width would be required. Therefore, NHDES did not have the full picture and granted its permit on outdated plans. It is unclear if Sullivan has provided the updated plans with further expansion of roadway to NHDES for their review.

5. Applicant, not Town, Must Pay Costs to Improve Roads; Safe Layout Not Proposed

An important question remains about the funding and authority to expand the turning lanes on and widths of Bow Lake Road and NH Route 4. The Planning Board cannot obligate the Town to spend money to improve a road. Under RSA 231:8, the Selectmen, not the Planning Board, can alter an existing highway upon petition. Further, betterment assessments under RSA 239:29 and RSA 231:30 are conducted by the governing body, not the Planning Board, and that body cannot delegate authority to the Planning Board.

The cost road improvements authorized under RSA 231:8 can be billed to the developer advantaged by such a change, the Applicant here. See RSA 231:23. Under that statute, "[w]henever a highway will be of special advantage to any individual" that individual can be made to pay for the "expenses of constructing and maintaining it." Id. Again, the Selectmen, not the Planning Board, are authorized to require the Applicant to pay all or some of the cost for the changes to the roads under these statutes. The Selectmen have not approved any alterations as required under RSA 231:8 and therefore have not had the chance to use RSA 231:23 to require the costs of any work on the roads be billed to the Applicant. These statutes allow the Town to have the person who benefits from the improvement bear the cost without impacting the other abutters or the tax-paying base as whole.

The Applicant has presented a letter to the Planning Board offering $52,000 toward the costs of improving the intersection of NH Route 4 and Bow Lake Road to accommodate the increased traffic directly resulting from the proposed drive-thru. The letter did not address the remaining approximately $348,000 that the applicant is asking the Planning Board to foist onto the Northwood property taxpayers. This is likely because such an adoption of cost that directly benefits one individual business would be unprecedented, unlawful, and inappropriate.

Further, under RSA 674:21, V(j), the Board has the ability to "requir[e] developers to pay an exaction for the cost of off-site improvement needs determined by the planning board to be necessary for the occupancy of any portion of a development." Here, the Board can require the Applicant to pay the cost of the off-site improvement to the roads necessary for the safe development of the drive-thru.

Because of the above statutes and other laws, the Planning Board does not have the authority to negotiate with an applicant to make improvements to Town infrastructure at any cost to the Town. The Planning Board has the power to, among other things, make it a condition of approval that the Applicant seek and obtain the approval of the Board of Selectmen and/or the NH Dept. of Transportation to upgrade the roads under the supervision of the Town engineer at the Applicant's cost, and that the Applicant pay for the full cost of improving the road with the work completed by the Town. See RSA 674:43 (Power to Review Site Plans); Morin v. Somersworth, 131 N.H. 253, 256 (1988). Importantly, any condition must require the Applicant get approval from the Board of Selectmen under RSA 231:8.

Finally with respect to traffic safety, when asked for its opinion on the application, the Town of Northwood Police Department's sole comment was serious concern with safety on NH Route 4. The Board's own engineers provide evidence that the layout the Applicant proposes worsens, not improves, safety concerns. Please also see the enclosed updated memo from Tepp, LLC which corroborates that the current layout is not the safest.

The Applicant has ignored these very valid safety concerns, pushing forward instead with the layout that the Planning Board's record demonstrates is less safe. While the Applicant is free to ignore these important safety concerns, of course, this Board should not.

Conclusion

The Severances appreciate the Board's action toward finality by setting deadlines for final submissions in an effort to decide the matter at its upcoming meeting on July 16, 2020. This is fair and appropriate given that the Board has already afforded the Applicant at least eight Board meetings with public hearings and preliminary Board meetings before that, spanning more than a year.

The Board has ample justifications and should deny the application now. The Board should be confident the record it has developed will support its decision if the Applicant were to appeal. The Severances respectfully request that the Planning Board deny the Application.

Sincerely,

Amy Manzelli

cc: Clients

BCM Environmental & Land Law, PLLC
Solutions for Northern New England

March 12, 2020

VIA EMAIL
Town of Northwood Planning Board
818 First NH Tpke.
Northwood, NH 03261
planner@northwoodnh.org
lsmith@northwoodnh.org

Re: Sullivan Major Site Plan Review, Tax Map 221 Lot 61, #19-12
Variance for Road Setback Required & Summary of Reasons for Denial

Dear Chair Strobel and Members of the Planning Board:

I write on behalf of Marcia and Brian Severance, as individuals and as Trustees of the Severance Family Trust. As you know, the Severances have respectfully requested that the Town of Northwood Planning Board (the "Board") deny Case # 19-12, application for Major Site Plan approval submitted by Michael Sullivan ("Applicant") for Tax Map 221 Lot 61 (known as 8 Bow Lake Road) ("Application"). Over the pendency of this application, I have submitted several letters and additional materials to support the Board denying the Application.

Understanding that the Board has set March 12, 2020 as the deadline by which all written materials associated with this Application must be submitted by the Applicant and anyone else, this letter sets forward all of the issues associated with the Application, both new issues and a summary of issues raised previously. Please make this letter a part of your record in this matter.

In summary, the Board has ample evidence upon which to defensibly base a decision to deny the Application and the Severances respectfully request that the Board do so.

Specifically, the Application should be denied for the following eight reasons. Notably, the nature of these problems is that they cannot be solved by changes to the site plan, rather, they are inherent due to the use proposed and the characteristics of the site.

1. **Variance**: The proposed use requires a variance because it would not comply with the 20-foot setback required from the road to the existing residence.

2. **Encroachment**: The Sanitary Protective Area required by NHDES's approval of the well is 100-feet in radius, which encroaches onto the Severances' property and the Severances do not agree to grant an easement for this purpose.

3. **Septic**: The septic application to NHDES that Mr. Sullivan submitted is not approvable, in part because the 100-foot radius encroaches onto private property not owned or controlled by Mr. Sullivan, and therefore NHDES has requested further information from Mr. Sullivan.

4. **Historic Impacts**: Imposition of an artificially lighted, commercial drive-thru operation creating excessive traffic on and around a small lot would irreparably degrade the historic character of the area and its many historic resources.

5. **Alter Character**: Because of those same reasons, the impact to property values, and other reasons, the proposed use would substantially alter the character of the area.

6. **Missing Info**: As identified recently by CMA and in this letter, the Applicant still has not provided all of the information required by Town of Northwood law. Because of this, the Applicant has put the Board in the position of not having sufficient information with which to evaluate many aspects of the Application.

7. **Inappropriate Site**: Due to the size, location, and layout of the lot, the proposed use cannot meet site requirements.

8. **Dangerous Traffic**: The traffic generated by the proposed use would exacerbate already unsafe conditions.

Each of these reasons alone provides the Board sufficient basis to deny the Application. Taken collectively, these problems with the Application strongly demonstrate that denial is the correct decision.

1. Additional Asphalt on Bow Lake Road

a. Setback Infringement Requires Variance

The Applicant needs a variance from the Town of Northwood Zoning Ordinance section on road setbacks in order to include additional expansion of the asphalt on Bow Lake Road toward the existing residential structure on the Applicant's lot.

Under the Town of Northwood Zoning Ordinance, Section IV.B.(4) "Setbacks", "[s]tructures shall be set back from property lines in conformance with the minimum and maximum setback requirements set forth in this section." The Section further states "[m]inimum setbacks from roads, waterbodies, and other property boundaries are specified in Table IV-1, the Dimensions Table." Town of Northwood Zoning Ordinance Section IV.B.(4)(b). Under Table IV-1, the "[m]inimum road setback" is twenty (20) feet. Importantly, this is not the setback from the property line, it is the setback from the road itself.

Here, the Applicant is proposing to add additional asphalt to the east side of Bow Lake Road to extend the turn lanes farther up the road from NH Route 4. On the most recent documented proposal (displayed to the Board by the Applicant at the Board's most recent meeting on this matter on February 13, 2020) an additional 250 square feet of asphalt is proposed on the Applicant's side of the road. This includes several feet of depth toward the residential house on the Applicant's property. The additional asphalt infringes into the road setback between Bow Lake Road and the existing residential house. It is

not clear from the submitted plan whether or not the house is already nonconforming with respect to the road setback. The house lies between 10.43 and 12 feet from the property line at the house's corners. The additional distance to the road would have to be more than 8 to 9.57 feet for the house to be conforming, which it does not appear to be.

If the house is already nonconforming with respect to the road setback, the additional asphalt would be an expansion of an existing nonconforming use that would require a variance from the road setback requirement of Table IV-1. If the house is currently conforming, it appears from the submitted plans that the additional asphalt would infringe into the setback. If it does, it would require a variance from Table IV-1. Either way, it appears from the plans that the current proposal would require a variance.

Further, during discussions at the February 13, 2020 meeting, the Applicant expressed that it now plans to extend the turning lanes even farther up Bow Lake Road. Although we understand no plans have been submitted to depict this, this can only exacerbate the issue of the nonconformance with the road setback from the house. The more northerly corner of the house is the closest to the existing road. Consequently, the farther up Bow Lake Road that the expanded section continues, the greater the infringement will be.

b. Flawed Sanitary Protective Radius for Existing Well

In order to convert the use of the existing well from private residential to a transient, non-community well, the Applicant will need approval from NHDES. Drinking water rules require that wells be located 50 feet from road surfaces to protect the water from road deicing chemicals. Env-Dw 406.11(c).

On February 27, 2020, the Applicant received from NHDES the necessary approval to use the well for this proposed mixed residential and commercial use, but that approval requires a 100-foot radius for the sanitary protection area (SPA) based on gallons per day usage of the well for the proposed use. According to the letter, the SPA "shall be maintained FREE of fuels, pesticides, and other potential contamination sources other than the following: Existing parking areas and driveways; Road right-of way (Bow Lake Road)." The Applicant must have control, either through ownership or easement (or other options that do not apply here), over the whole 100-foot SPA radius to make sure these restrictions are complied with.

The Applicant submitted a plan dated March 9, 2020 to NHDES that shows the well, along with the 100-foot SPA radius. Notably, this plan makes very clear that the 100-foot radius SPA encroaches into the Severances' property. The Severances will not grant an easement to the Applicant. Further, neither the records supporting the well approval, nor the March 9 plan depict the proposal for additional asphalt to be added to the eastern edge of Bow Lake Road. By letter dated March 11, 2019, I have made NHDES aware the Severances will not grant an easement and of the Applicant's representation to the Board that it will add asphalt to the eastern edge of Bow Lake Road and that such addition is not depicted in any plans the Applicant submitted to NHDES.

2. Other Issues

a. Impact to Historic Value of Area

The Town of Northwood values its historic resources and has enacted numerous legal protections. (Town of Northwood Zoning Ordinance, Sections VIII(1)(b); X.A.(12); Town of Northwood Site Plan Regulations, Sections II(A); IX(B); IX(B)(2)(b); IX(H)(3); IX(J). The proposed use does not satisfy these legal requirements. The primary issue is that the imposition of an artificially lighted, commercial drive-thru operation on a small lot would irreparably degrade the historic character of the area and its many historic resources (as listed in my letter to you dated August 6, 2019). This is further addressed in Carol Ogilvie's two letters to the Board, outlining the age of the surrounding buildings and homes and the nature of the area around the property involved in this proposal.

b. Substantial Alteration of the Character of the Area

The proposed use does not satisfy the requirement to not substantially alter the character of the area. (See uncontested expert evidence and testimony by Carol Ogilvie; see also my letter to you dated August 6, 2019.) The proposed fence does not suffice. It will not hide the commercial character of the site or protect anyone from light, odor, and sound generated from the proposed use. Ms. Ogilvie also submitted an updated report on February 7, 2020, showing the "area" as she defines it around the property, and offering further comments on the effects of lighting, noise, traffic, on that area. (Ogilvie Letter, dated Feb. 7, 2020.)

In addition, the proposed development will reduce the value of surrounding properties by between 3% and 12%. (See market analysis by NH Certified Appraiser Mark Correnti, submitted November 22, 2019.) Mr. Correnti's analysis is the only one in this matter that actually considered the proposed use. Mr. Correnti also submitted a review of the Applicant's appraisal of surrounding properties, including many critiques of its vagueness, purported completeness, and detail. (See FairMarket Advisors, LLC Review, dated Feb. 11, 2020.) Mr. Correnti also prepared a letter dated March 9, 2020, enclosed with this letter, that responds to materials the Applicant submitted since Feb. 11, 2020. In it, Mr. Correnti corrects the Applicant's assertion that Mr. Correnti valued individual properties. Instead, and as appropriate, Mr. Correnti performed a market analysis of the impact of drive-thru coffee shops on single-family residential property values. Mr. Correnti also explains that it is impossible to value a specific property "before and after" with a single value, and, most importantly, reiterates that even with the further materials the Applicant submitted, the Applicant's so-called appraisals of the proposed use do not actually consider the proposed use.

c. Insufficient Information

CMA Engineers reviewed the Application and reported, on February 18, 2020, that deficiencies still remain, some of them significant, such as not complying with reduction in stormwater peak flow. CMA also identifies issues with compliance with Town regulations for stormwater management, issues with missing measurements and information, and missing detail about landscaping. Paramount

amongst these identified deficiencies is the lack of landscaping detail, which details are not only required by law but have been requested by CMA twice.

Further, in addition to what CMA has noted, the Applicant still has not met its burden of proof by providing sufficient, credible information, for at least the following requirements:

1. Section V-B.1 – regarding not substantially altering the character of the area
2. Section V-B.6 – regarding written assurance from public utilities
3. Section V-B.8 – regarding copies of applications to DES for septic and well
4. Section VII-A(5)(j) – regarding details of septic
5. Section IX-B(1) – regarding the protection and perpetuation of areas of historical and cultural value
6. Section IX-B(2) – regarding compatibility with surrounding properties
7. Section IX-C(1) – regarding safe and suitable access (which cannot be achieved while also putting in the required buffer)
8. Section IX-E(1) – regarding adequate provision for water supply
9. Section IX-F(1) – regarding adequate provisions for sanitary sewage disposal facilities
10. Sections IX-K.1(3)(a) and (4)(b) – regarding the landscaped buffer
11. Section IX-M(1) – regarding nighttime lighting being contained on site
12. Section IX-M(2) – regarding no light causing glare or other safety problems on an adjacent street or property
13. Section IX-P – regarding providing information about noise.

d. Site Unable to Meet Requirements

The site is unsuitable for this proposed development. First, any buffer that could satisfy the buffering requirement would likely make it even more unsafe for vehicular traffic and pedestrians. (See Town of Northwood Site Plan Regulations Section IX-K.1(4)(a).) Second, the limit of outdoor light required to prevent off-site disturbance, nuisance, or hazard, etc. would likely make the site unsafe. (See Town of Northwood Site Plan Regulations Section IX-M.)

e. Dangerous Traffic

Especially given the Northwood Police Department's "serious concerns", input the Board received from its third party reviewer, CMA, and from TEPP LLC, it is difficult to see how the Board could decide to allow this project without requiring an adequate right-turn lane be added on Route 4 westbound and that the existing turn lanes on Bow Lake Road be elongated substantially. (See TEPP LLC Memorandum, dated Feb. 13, 2020.) Because of the serious and well-documented traffic safety concerns, the Board should deny the Application.

Conclusion

The Severances appreciate the Board's action toward finality on this Application by setting a deadline of March 12, 2020 for submissions, public comment, and Applicant presentations. This is fair and appropriate given that the Board has already afforded the Applicant at least eight Board meetings with public hearings and preliminary Board meetings before that, spanning almost an entire year.

The Board has ample justifications and should deny the application now. The Board should be confident the record it has developed will support its decision if the Applicant were to appeal.

The Severances respectfully request that the Planning Board deny the Application.

Sincerely,

Amy Manzelli

cc: Clients

FairMarket

FairMarket Advisors, LLC
Real Estate Appraisal and Consulting
PO Box 276 Hollis, NH 03049

Amy Manzelli, Esq.
BCM Environmental & Land Law, PLLC
3 Maple St
Concord, NH 03301

March 9, 2020

Atty. Manzelli,

I have reviewed submitted materials by the applicant since my last memorandum to you dated February 11, 2020.

There seems to be some confusion of what a residential appraisal is and what a residential appraiser can do. I would like to clarify for you what I have done and what has been submitted to you.

I am a certified residential appraiser. An appraisal is an opinion of value regarding a property as of a certain date. I have not conducted an appraisal of any property with regards to the application before the Northwood Planning Board. I have completed a market study investigating the potential impact that the proposed commercial improvements may have on adjacent residential property values. This study does not value the coffee shop, it does not value any particular property in Northwood. It is a market analysis measuring the marketability upon single family residences that are in close proximity to coffee shops.

The applicant contends that an appraiser with residential credentials is not qualified to complete such an assignment because a coffee shop is a commercial property. This is categorically incorrect.

It is incumbent upon any and all residential appraisers to measure external influences upon a residential property, including commercial influences. Consider for example:

A residential appraiser will value a house that has mountain views. The residential appraiser is valuing the house, not the mountains.
A residential appraiser will value a house that is proximate to a power plant. The residential appraiser is valuing the house, not the power plant.

These items are called external influences. They impact residential values. Residential appraisers are required to use accepted methodology to measure the effect of external influences upon residential values.

On February 11th I wrote to you that based on the single appraisal that the applicant provided, it was not possible to arrive at a conclusion of a “before and after” with one single value. Since that time a second appraisal of 5 Bow Lake Rd has materialized. I would submit to you that the same conclusion remains; it is not possible to arrive at a conclusion that there is, or is not an adverse impact to 5 Bow Lake Rd using either appraisal for one very simple fact; neither appraisal takes into effect a coffee shop being built next to it.

Both appraisals of 5 Bow Lake Rd clearly identify that it is located on a busy road. I would not disagree. The traffic on 1st NH Tpke exists in the before state appraisal submitted by the applicant, the after state appraisal, and it also existed the day the house was built in 2001. The question before the Northwood Land Use Boards is not "*is 1st NH Tpke a busy road*", it is "*Will the construction of the proposed commercial improvements diminish the value of surrounding properties?* The FairMarket Advisors marketability study dated November 20, 2019 specifically addresses this question. That study also includes residential sales on busy roads.

Conclusion

It is incumbent upon a residential appraiser to measure any external influence upon a single-family residence. Even if that external influence is a commercial property. State licensing requirements not only allow this, but also require that analysis be done.

The FairMarket Advisors reported dated November 20, 2019 is a marketability study which measures the effect of coffee shops in close proximity to single-family residences. It is not a commercial appraisal. It does not place a value on the coffee shop.

The applicant's before and after appraisals do not mention, identify, or consider the proposed building of a coffee shop at 8 Bow Lake Rd. The only external influence mentioned in the before and after appraisals is that 5 Bow Lake Rd is located on a busy road.

Sincerely,

Mark Correnti, SRA
New Hampshire Certified Residential Appraiser, NHCR-460
Managing Member
FairMarket Advisors, LLC

TEPP LLC TRANSPORTATION ENGINEERING, PLANNING AND POLICY

MEMORANDUM

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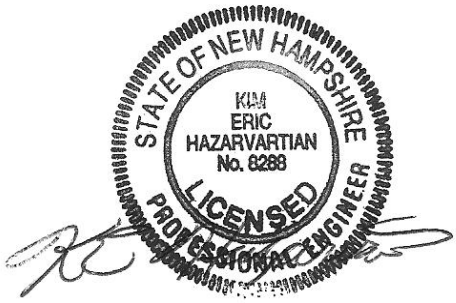
800 Turnpike Street, Suite 300, North Andover, Massachusetts 01845 USA
Phone (603) 212-9133 and Fax (603) 226-4108
Email tepp@teppllc.com and Web www.teppllc.com

Ref: 1504

Subject: Transportation-Engineering Review
8 Bow Lake Road
Northwood, New Hampshire

From: Kim Eric Hazarvartian, Ph.D., P.E., P.T.O.E.
Principal

Date: July 14, 2020



INTRODUCTION

BCM Environmental & Land Law, PLLC, has retained TEPP LLC to prepare this transportation-engineering review of the proposed major site plan at 8 Bow Lake Road in the Town of Northwood, New Hampshire. This review considered:

- Stephen G. Pernaw & Company, Inc., *Traffic Impact Assessment, Proposed Drive-Thru Coffee Shop, Northwood, New Hampshire* (Concord, New Hampshire, October 22, 2019), hereinafter SGP TIA
- CMA Engineers letter regarding Aroma Joe's review, November 18, 2019, hereinafter CMA letter
- New Hampshire Department of Transportation Bureau of Highway Design memorandum regarding Aroma Joe's review, December 12, 2019, hereinafter NHDOT memorandum
- Stephen G. Pernaw & Company, Inc., letter regarding proposed drive-thru coffee shop, Northwood, New Hampshire, January 16, 2020, hereinafter SGP letter
- N.H. Land Consultants, Proposed Site Plan for a Drive Thru Coffee Shop, 8 Bow Lake Road, Northwood, New Hampshire 03261, revised March 12, 2020, hereinafter N.H. Land Consultants plan

TEPP LLC concludes, regarding the First New Hampshire Turnpike/Bow Lake Road intersection, that:

- the CMA letter and the NHDOT memorandum correctly stated that traffic volumes indicate a right-turn lane on the First New Hampshire Turnpike westbound approach
- the N.H. Land Consultants plan shows no right-turn lane proposed
- the CMA letter and the NHDOT memorandum correctly stated that calculated queues on the Bow Lake Road southbound approach exceed length of the existing turn lanes

- calculated queues vehicles on the Bow Lake Road southbound approach exceed length of the existing turn lanes
- increasing the proposed length of the turn lanes, beyond the length shown by the NH Land Consultants plan, may provide for calculated queues
- increasing the proposed width of the turn lanes, beyond that shown by the NH Land Consultants plan may provide for traffic safety, traffic operations and snow conditions

RIGHT-TURN TREATMENT ON FIRST NEW HAMPSHIRE TURNPIKE

CMA letter page 2 states:

> Under existing conditions, a right turn lane is warranted on Route 4 at Bow Lake Road. This project estimates it will add 20% more traffic to this movement, exacerbating the needs for a right turn lane on Route 4.

NHDOT memorandum page 2 states:

> The TIA does not address the need for a westbound right turn lane on US 4 at the Bow Lake Road intersection. Per NCHRP 457 guidance, a right turn lane is warranted in both the AM and PM peak hours for the existing (No Build) traffic volumes; however, the proposed development exacerbates the need for a right turn lane by adding 22 and 7 vehicles to the right turn movement in the AM and PM peak hours respectively, a 20% and 10% increase in the design year (2030).

TEPP LLC notes that traffic volumes in the SGP TIA indicate a right-turn lane per the Transportation Research Board (TRB).[1] Analysis is attached.

The existing condition does not include a full marked right-turn lane. A right-turn lane improves traffic safety and operations by:

- separating faster through traffic from slower right-turn traffic
- reducing the potential for rear-end collisions
- making the intentions of right-turn drivers more clear to drivers waiting on the Bow Lake Road approach

TURN-LANE LENGTH ON BOW LAKE ROAD

CMA letter pages 1 and 2 state:

[1] TRB, *National Cooperative Highway Research Program Report 457, Evaluating Intersection Improvements: An Engineering Study Guide* (Washington, DC, 2001), pages 22 to 23.

> In the AM Peak hour, the study [(SGP TIA)] estimates this project will increase traffic by 30% on the Bow Lake Road approach to Route 4. With this increased traffic, the expected queues (175') on Bow Lake Road for vehicles turning onto Route 4 exceed the turn lane lengths (80') at the intersection. This situation will cause cars waiting to turn left to block cars trying to turn right. To alleviate this situation, the storage length in the turn lanes would need to be increased by widening Bow Lake Road further (~100') to the northeast.

NHDOT memorandum page 2 states:

> In the Synchro model, it appears that the Bow Lake Road approach is coded as a two lane approach, but it does not code the very short length of the lane separation. In reality, the left turn queue will eventually block access to the right turn lane, resulting in queues and delays that are longer than those reported in Table 3 of the TIA. This issue may be offset by the issue noted in the bullet above.

SGP TIA page 18 and SGP memorandum page 4 both indicate queues of up to 9 vehicles, or about 225 feet (ft), of vehicles turning left from Bow Lake Road. TEPP LLC notes that this would:

- block access to the right-turn lane
- increase delays
- compound queuing

N.H. LAND CONSULTANTS PLAN

TURN-LANE LENGTH ON BOW LAKE ROAD

Plan sheet 13 of 23 shows a proposal for two southbound lanes on the Bow Lake Road approach to First New Hampshire Turnpike. The lane markings appear to begin at station 1 + 13.46 and end at station 3 +12.99, giving a length of 1 + 99.53 stations, or nearly 200 feet. Two hundred feet indicates 9 vehicles at slightly over 22 ft per vehicle. A lane length of 225 ft may provide for 9 vehicles, at 25 ft per vehicle.

TURN-LANE WIDTH ON BOW LAKE ROAD

Plan sheet 13 of 23 shows the two southbound lanes each having width of 10 ft, or a total of 20 ft. An increase in lane width, to a total of 24 ft, may provide for traffic safety, traffic operations and snow conditions.

FIRST NEW HAMPSHIRE TURNPIKE

Plan sheet 13 of 23 shows a 10-ft-wide strip of land along the site frontage "to be dedicated to the potential future expansion of" First New Hampshire Turnpike. The plan sheet did not show other potential changes to First New Hampshire Turnpike.

CONCLUSION

TEPP LLC concludes, regarding the First New Hampshire Turnpike/Bow Lake Road intersection, that:

- the CMA letter and the NHDOT memorandum correctly stated that traffic volumes indicate a right-turn lane on the First New Hampshire Turnpike westbound approach
- the N.H. Land Consultants plan shows no right-turn lane proposed
- the CMA letter and the NHDOT memorandum correctly stated that calculated queues on the Bow Lake Road southbound approach exceed length of the existing turn lanes
- calculated queues vehicles on the Bow Lake Road southbound approach exceed length of the existing turn lanes
- increasing the proposed length of the turn lanes, beyond the length shown by the NH Land Consultants plan, may provide for calculated queues
- increasing the proposed width of the turn lanes, beyond that shown by the NH Land Consultants plan may provide for traffic safety, traffic operations and snow conditions

attachments

Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	840
Right-turn volume, veh/h:	94

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	17
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

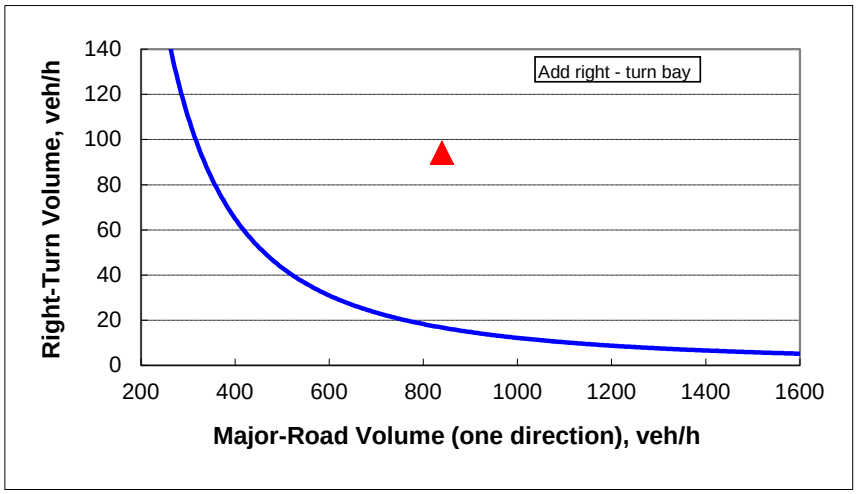


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	883
Right-turn volume, veh/h:	99

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	15
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

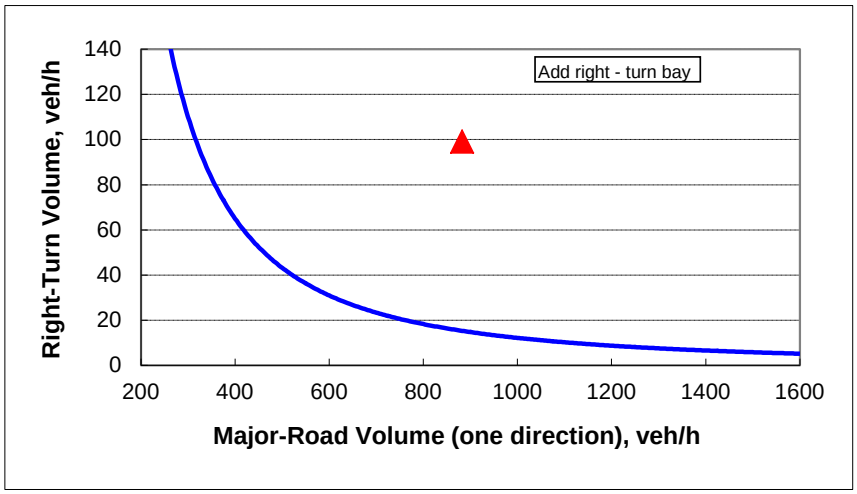


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	975
Right-turn volume, veh/h:	109

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	13
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

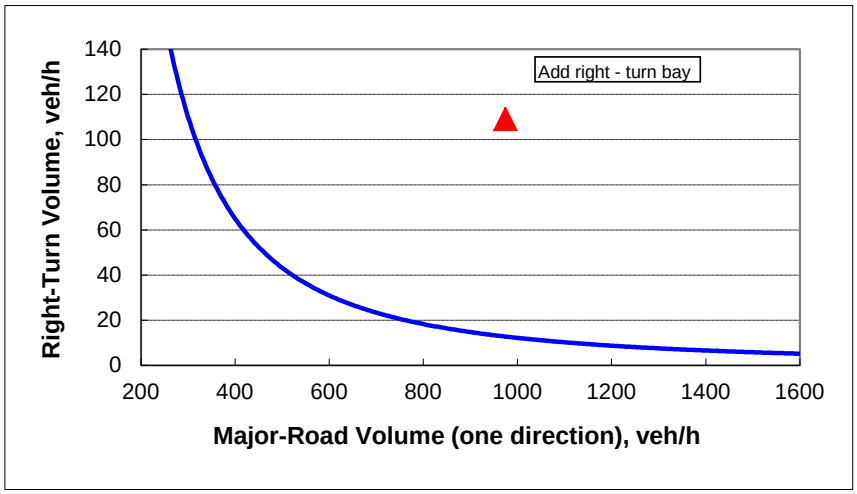


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	886
Right-turn volume, veh/h:	121

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	15
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

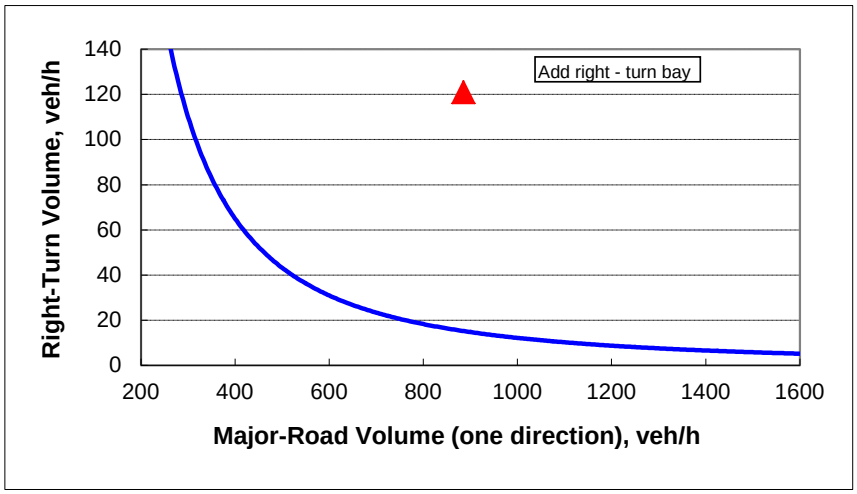


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	978
Right-turn volume, veh/h:	131

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	13
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

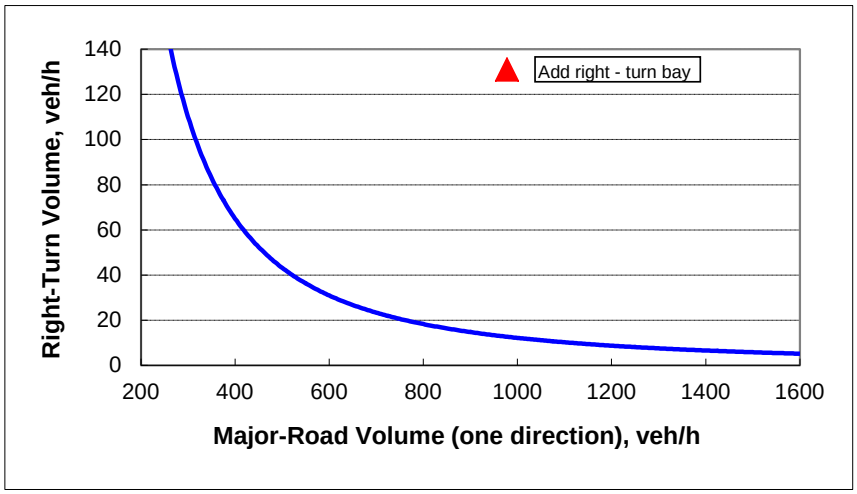


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	749
Right-turn volume, veh/h:	62

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	21
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

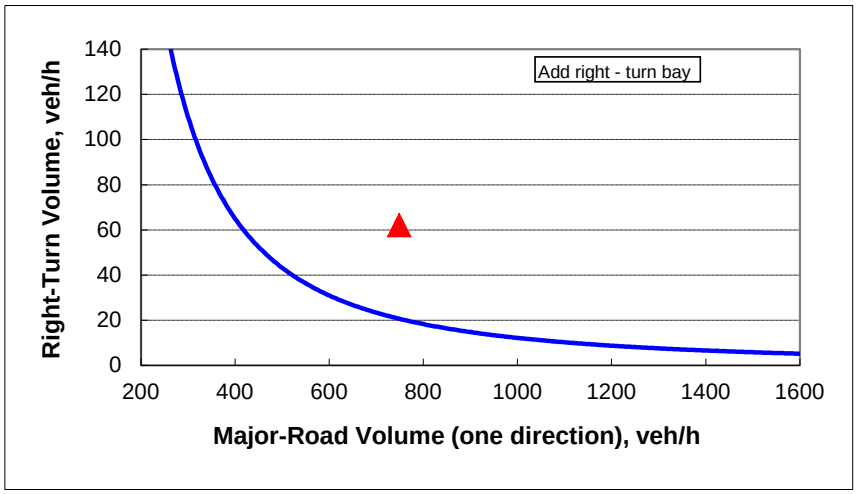


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	787
Right-turn volume, veh/h:	65

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	19
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

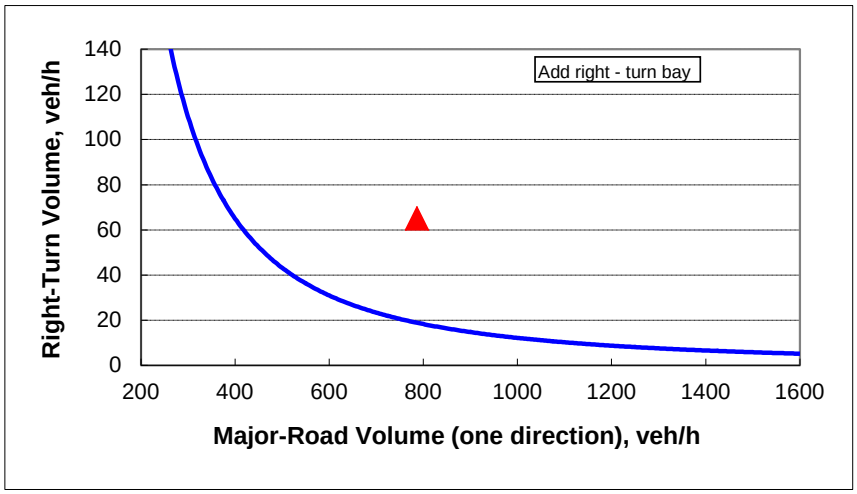


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	870
Right-turn volume, veh/h:	72

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	16
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

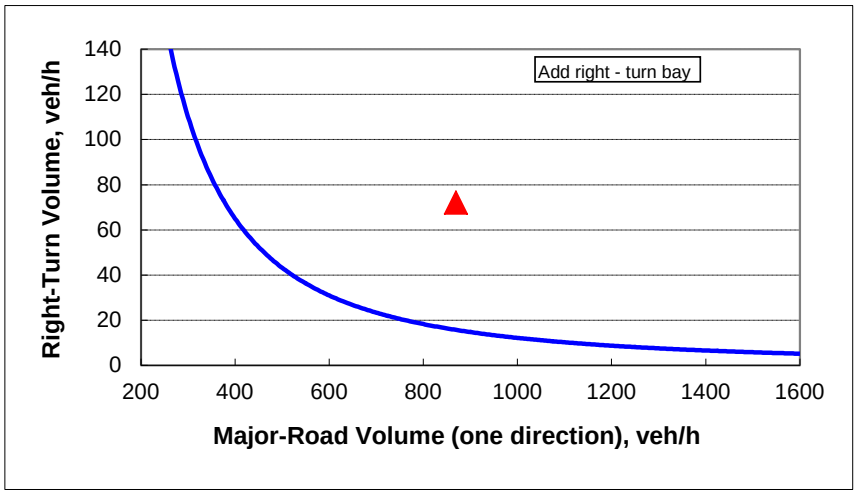


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	788
Right-turn volume, veh/h:	72

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	19
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.	

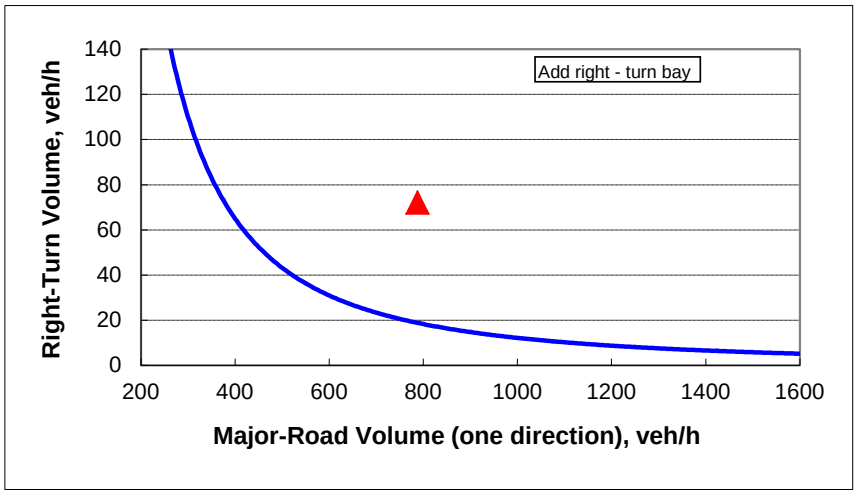
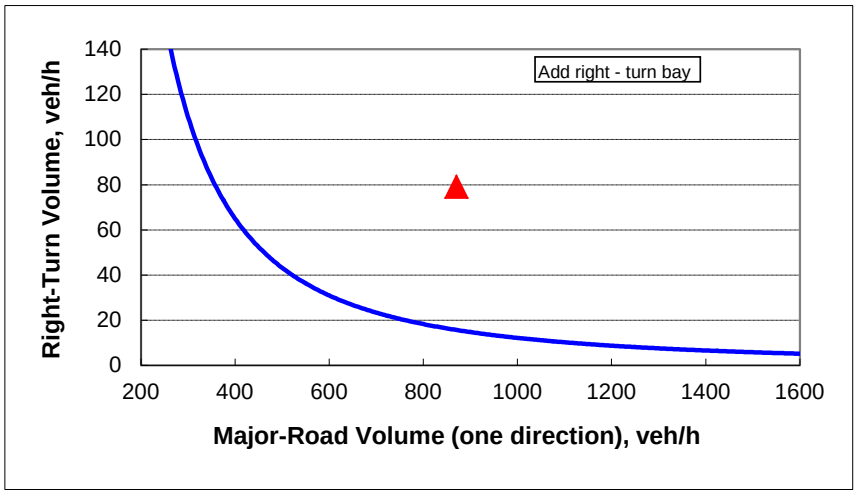


Figure 2 - 6. Guideline for determining the need for a major-road right-turn bay at a two-way stop-controlled intersection.

INPUT

Roadway geometry:	2-lane roadw ay
Variable	Value
Major-road speed, mph:	45
Major-road volume (one direction), veh/h:	871
Right-turn volume, veh/h:	79

OUTPUT

Variable	Value
Limiting right-turn volume, veh/h:	16
Guidance for determining the need for a major-road right-turn bay for a 2-lane roadway:	
Add right-turn bay.