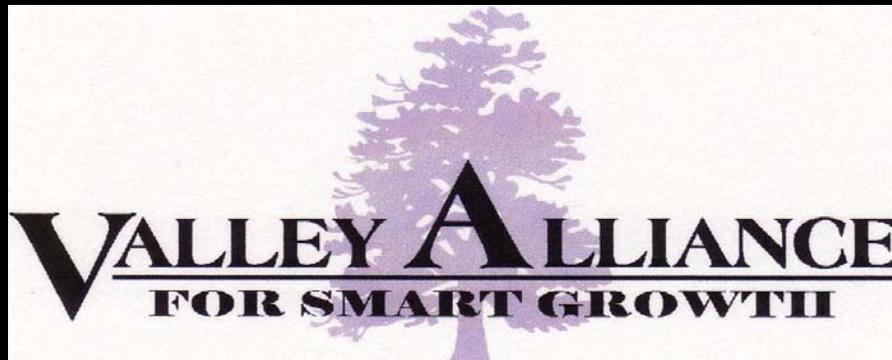


# Greening the Big-Box: Lessons Learned in Challenging Development

Dr. Caroly Shumway, Chairperson





The Valley Alliance for Smart Growth, an alliance of 524 North Smithfield and Woonsocket citizens and 65 small businesses, seeks *responsible development* – development that balances economic growth with the protection of our rural landscape, historic culture, and quality of life.



Photos courtesy of The N. Smithfield Land Trust

# Outline

- Problems with Big Box Development
- Brief History of Dowling Village and North Smithfield
- Environmental Concerns
- Approaches and Accomplishments
- Lessons Learned



# 30 FOOTBALL FIELDS OF RETAIL

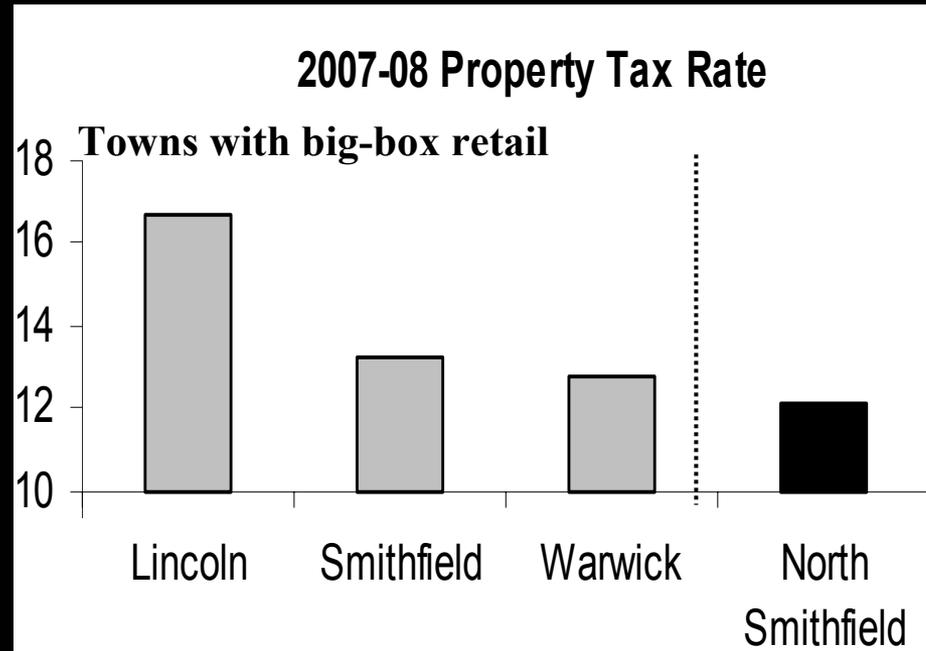


# PROBLEMS WITH BIG-BOX: ENVIRONMENTAL IMPACTS

- Increased runoff due to increased impervious coverage
- Impoverished streams; declining water quality
- Traffic impacts on air, water, human health
- Store violations of environmental regulations are common:
  - ◆ Lowes: From 2000-2005, Lowes was found guilty of stormwater violations in Georgia, 4 towns in MA, and NC.
  - ◆ Lowes: 2002: in Indiana, spilled floor stripping waste into retention pond in amounts toxic to humans; also dumped 12 bottles of pesticide into wetland, killing all wildlife.
  - ◆ Walmart: In 2005, paid \$1.5 million for environmental violations in 22 of their CT stores alone. State officials said this showed, “systematic disregard for the law.”

# PROBLEMS WITH BIG-BOX: FISCAL IMPACT

The 3 RI towns with big-box have higher property taxes than North Smithfield



(Source: RI Economic Development Corporation:  
<http://www.riedc.com/data-and-publications/municipal-tax-rates>).

# LOSS OF SALES TO LOCAL BUSINESSES

After big-box stores came in, small businesses lost 47%-84% of their revenue. A 1996 study of 3 Iowa communities showed that 84% of all sales at the new Wal-Mart came at the expense of existing businesses within the same county (Muller and Humstone, National Trust for Historic Preservation, 1996).

- North Elba, NY- 68% loss
- St. Albans, VT – 76% loss  
Net decline in real and personal property values of \$1.4 million in the county.
- Iowa – 84% loss

Source: The HomeTown Advantage (2000)

# LOSS OF LOCAL BUSINESS & DEAD MALLS

Brookdale, MN's mall now approaches 50% vacancy.

Many cities now faced with dying malls and empty big-box stores.

300 vacant Wal-Mart's alone.

# JOB LOSSES, NOT GAINS

While jobs will be added, a significant number of jobs will be lost.

A 2007 study of 3094 counties that brought in a Wal-Mart showed a net loss of 150 retail jobs/county (Neumark et al., 2007).

Greenfield, MA: 177 jobs gained; 144 lost.

North Elba NY 134 jobs gained; 112 lost.

Source: Home Town Advantage (1999)

# Land Use Decisions

- Town's Comprehensive Plan sets vision for town
- Land zoning: If zone doesn't allow development, normally zone needs to be changed prior to requesting approval.
- Land Development Projects (LDPs) need Special Use Permit, reviewed by Zoning Board. LDPs require Site Plan Review, more extensive than ordinary planning review.
- Development projects have 3 phases, reviewed by Planning:
  - ◆ Master Plan
  - ◆ Preliminary Plan
  - ◆ Final Plan

# History of Dowling Village Project

## Planning Board

**July 1, 04-** Approves Dowling Village Master Plan for North Smithfield. Findings of fact note must go back to Master Plan stage if any changes made that will cause additional traffic impact.

## Town Council

**Oct 4, 04** – Votes to amend Comp Plan to eliminate inconsistencies in certain sections of Comp Plan as related to D. Village: specifically, adding retail to proposed mixed use area.

## Zoning Board

**Nov 9, 04** – Approves Special Use Permit (for LDP) and Variances for D Village.

Note: The project is therefore Development by Special Use Permit, not by Right.

## Planning Board

Feb. 2005 - Developer returns with new master plan that includes a 30 acre Woonsocket portion (MED zone). Valley Alliance forms.

Nov. 2005 – Unanimously rejects 30 acre Woonsocket/MED zone portion of project.

**2006-** Approves Phase 1 (4.5 acres). Condition that all phases must be reviewed in entirety.

**2009** – Planner leaves, hires environmental peer reviewer before departure.

**New Planner. Planning Board approves Phases II and III (retail phases).**

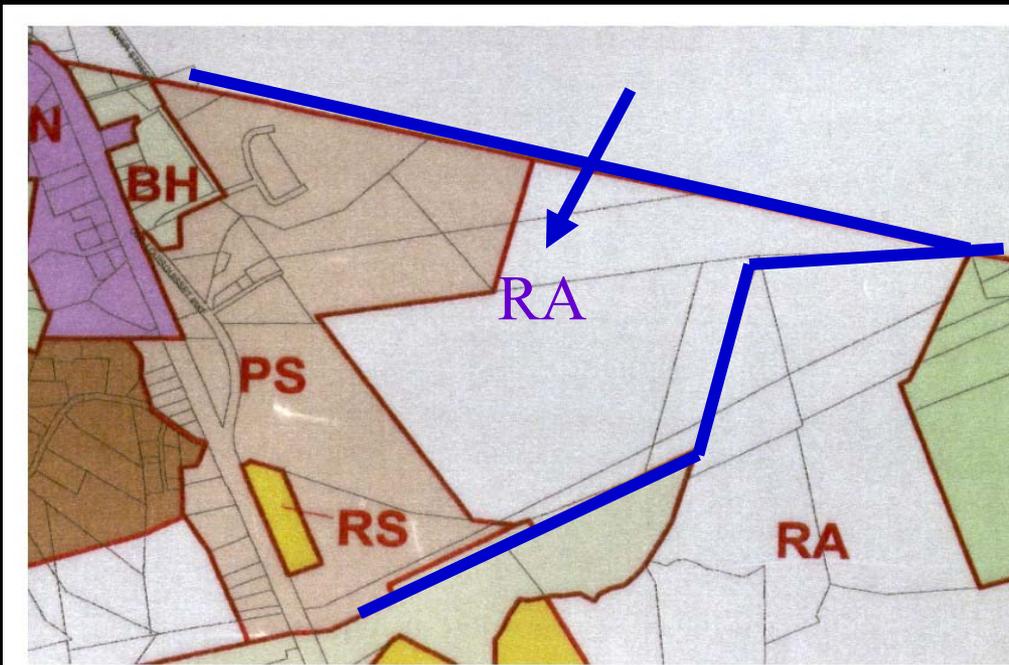
How did it violate our zoning ordinance?

Nearly half of the site is zoned RA (rural agricultural).

**Definition of RA zone:** “This district is established to allow limited, orderly growth...It is designed to permit some conservation objectives, many agricultural pursuits, and to allow the orderly transition from agriculture to low density residential use.”

Most of the rest is zoned PS (professional services).

**Definition of PS zone:** “This district is established to provide living and office space for persons in professional and related fields.”



N. Smithfield Zoning Map (2003)

In our legal opinion, the Special Use Permit violated our Zoning Ordinance because retail is not allowed in an RA or a PS zone. It is void as a matter of law  
As such, it is not subject to an appeal period.

	REA	RA	RS	District RU	PS	BN	BH
(3) Night club, tavern, lounge (principal sales - alcohol with no adult entertainment)	N	N	N	N	N	S	Y
(4) Night club, tavern, lounge (adult entertainment)	N	N	N	N	N	N	S
(5) Lunchroom or cafeteria (accessory use to a permitted use with no exterior advertising)	S	S	N	N	Y	Y	Y
(6) Theater or concert hall	N	N	N	N	N	Y	Y
(7) Indoor commercial recreation	N	N	N	N	N	S	S
<b>5.4.7. Retail business and service<sup>14</sup></b>							
(1) Barber, beautician, hairdresser <sup>3</sup>	N	N	N	N	S	Y	Y
(2) Personal services - reducing salon, health club, tanning salon, dietary services, etc.	N	N	N	N	Y	Y	Y
(3a) Neighborhood services - convenience store, drug store, shoe repair, laundry/dry cleaning pickup, etc.	N	N	N	N	N	Y	Y
(3b) Convenience store/drug store with lunch counter	N	N	N	N	N	S	S
(4) Specialty shops - photo studio, caterer, apparel, sporting goods, bakery and candy shops, etc. (includes sales, service, repair, manufacture and/or rental of goods involved in the above)	N	N	N	N	N	Y	Y
(4a) Adult Speciality Shops <sup>16</sup>	N	N	N	N	N	N	N
(5) Non-automotive engine repair excluding heavy equipment	N	N	N	N	N	S	S
(6) Automotive fueling area	N	N	N	N	N	S	S
(7a) Automotive light repair garage (excluding body work)	N	N	N	N	N	S	S
(7b) Automotive heavy repair garage (excluding body work)	N	N	N	N	N	S	S
(8) Automotive polishing shop <sup>6</sup>	N	N	N	N	N	N	N
(9) Automotive rental	N	N	N	N	N	Y	Y
(10) Automotive sales	N	N	N	N	N	S	S
(11) Self-service laundry <sup>6</sup>	N	N	N	N	N	N	N
(12) Dry cleaning processor	N	N	N	N	N	Y	Y
(13) Supermarket	N	N	N	N	N	N	N
(14) Hardware store	N	N	N	N	N	Y	Y
(15) Package store (alcoholic beverages)	N	N	N	N	N	Y	Y
(16) General merchandise, dept. store, furniture and household goods, (includes storage up to 30% of gross floor area)	N	N	N	N	N	Y	Y
(17) Mortuary, funeral home, crematorium <sup>7</sup>	N	N	N	N	N	Y	Y

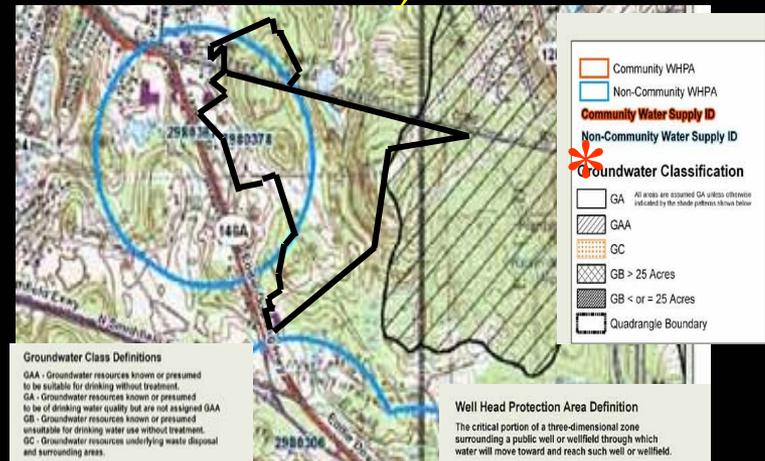
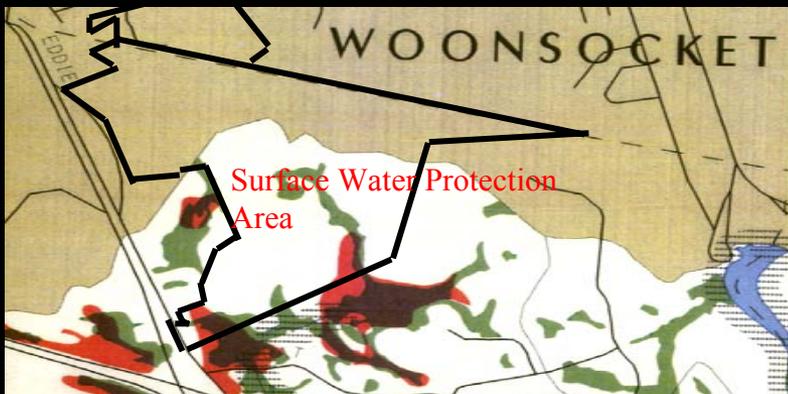
Source: N. Smithfield  
Zoning Ordinance  
(1999), pg. 16.

# Environmental Concerns

## BOOTH POND BIODIVERSITY (21 acres of wetlands on site)

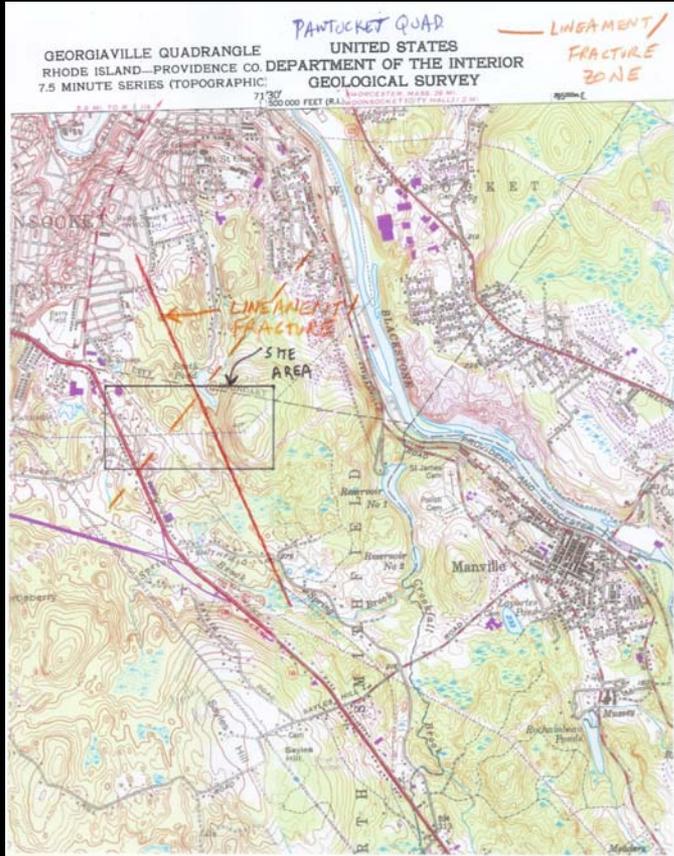


## DRINKING WATER (GA and GAA classification)



# Environmental concerns continued

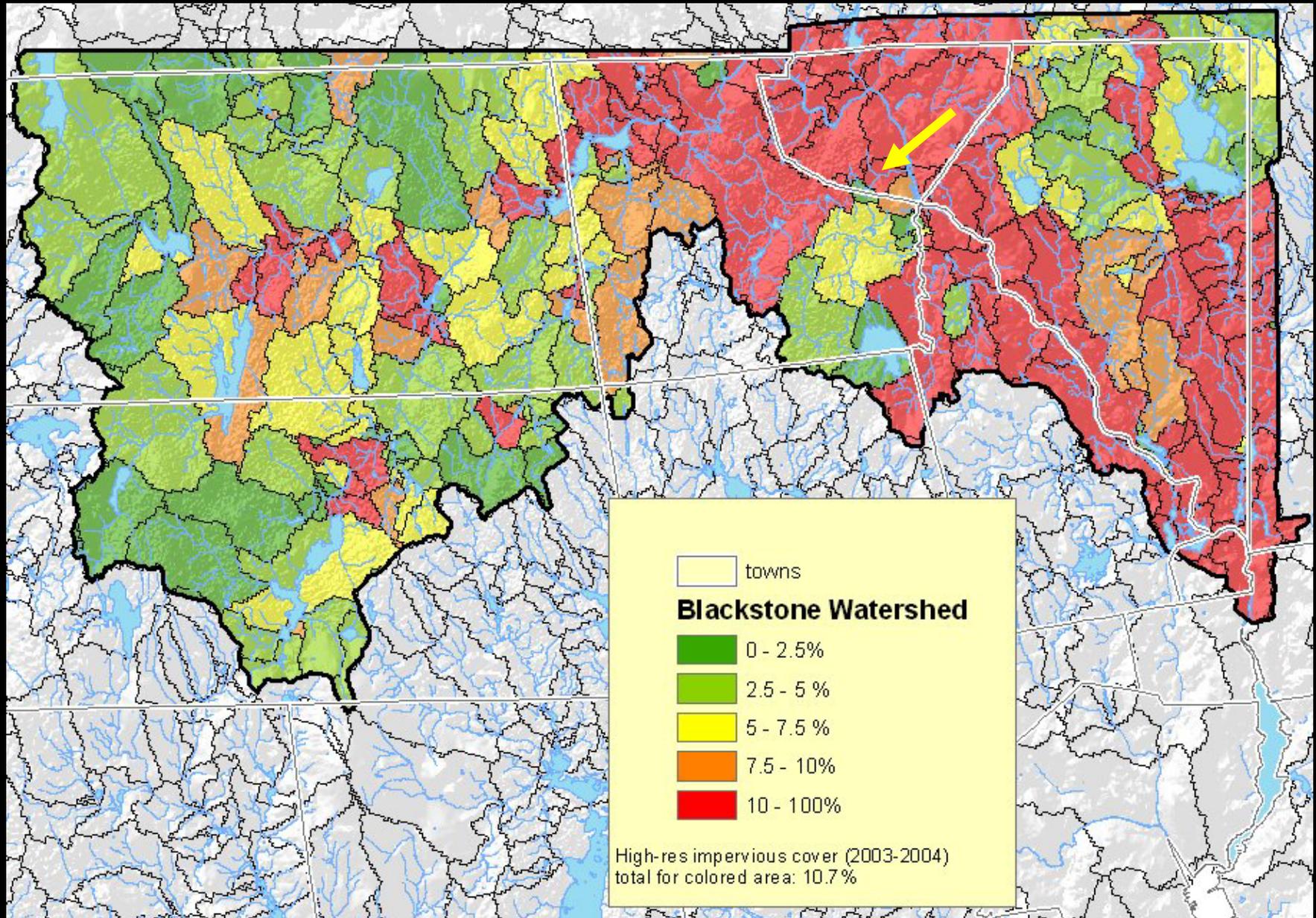
## Contamination of bedrock aquifer



- **Sprawl in a rural and historic region:** The project was the largest proposed retail development in RI at the time.
- **Impact to the Blackstone River,** already impaired in this stretch for macroinvertebrate diversity and pollution (lead, mercury, phosphate)
- **Environmental violations** by two of the proposed stores: Lowes and Walmart
- **Pollution (atmospheric and water) and health issues** from doubling of traffic

**Bedrock expert Covell:** *It's not a matter of 'if' contamination (of our groundwater) will occur, but 'when'.*

# Impervious cover in the Blackstone River watershed



# BOOTH POND WATERSHED



Approximate Location of:

- Proposed Land of Disturbance
- Proposed Buildings
- Proposed Accessway
- Proposed Stormwater Basins
- Site Boundary
- Streams
- Watershed Boundary - Booth Pond
- Watershed Boundaries
- Surface Water Protection Area



Source: **MRD** • Aerial Orthophotograph 2004

Dowling Village Environmental Assessment  
North Smithfield, Rhode Island

**MA** **MASON & ASSOCIATES, INC.**  
Environmental Consulting & Program  
771 Providence Plaza, North Smithfield, Rhode Island 02897

**PROPOSED CONDITIONS**

Project No. 001204	Figure 3
--------------------	----------

# VALLEY ALLIANCE APPROACHES

- Legal Challenges:
  - ◆ 2 lawsuits in Superior Court
  - ◆ 2 Appeals to Zoning Board of Review
- Expert Testimony at Planning Board (environmental (biological, geological, hydrological), fiscal, traffic)
- Other Testimony at Planning Board (BRWC, other towns' experience)
- Coordination of Citizen Testimony at Planning Board
- Negotiations with Developer
- Efforts at DEM
  - ◆ Letters re: Freshwater Wetlands Permit and Revision to Permit
  - ◆ Petition seeking Individual RIPDES permit
- Lobbying at the State House
- Catalyzing Buy Local Initiative
- Petitions
- Outreach: Letters to the Editor; Guest editorials; Radio/Television, Pamphlets

# TIPPING POINTS

- MED Zone creation and local businesses
- Town hiring of Horsley Witten for environmental peer review
- VASG petition to DEM for individual RIPDES permit
- New planner
- Economic downturn and length of time for approval led to increased willingness on developer's part to negotiate

# MESSAGE OF EMPOWERMENT

**As the Planning Board, you must reject development proposals that are inconsistent with your Comp Plan and Zoning Ordinance.**

**We urge you to reject this Master Plan expansion now.**

- In Sept., 2005, the Cumberland RI Zoning Board rejected a proposal to build Highland Hills.

**The primary basis for denial was the inconsistency with the Comp Plan.**

- In April, 2000, the Talbot County MD Planning Commission rejected a proposal to build a 131,000 square foot Home Depot near the city line of Easton.

**The primary basis for denial involved a potential increase in traffic.**

- In May, 2000, Queen Anne's County Commissioners MD prevented the development of a 28 acres property called Kent Commons. **The commissioners stressed that traffic generated by the development would affect public safety.**



**WE ARE NOT THE OPPOSITION. WE LIVE HERE.** We are citizens, like you, of North Smithfield and Woonsocket, and we represent the majority opinion in our community (Visioning Study, 2001).

The Valley Alliance for Smart Growth, an alliance of 524 North Smithfield and Woonsocket citizens and 65 small businesses, seeks *responsible development* – development that balances economic growth with the protection of our rural landscape, historic culture, and quality of life.



Photos courtesy of The N. Smithfield Land Trust

It comes down to **VALUES WE HOLD *PRICELESS***

....community

.....a clean environment for our families

.....quality of life

.....a rural and historic landscape

.....clean drinking water

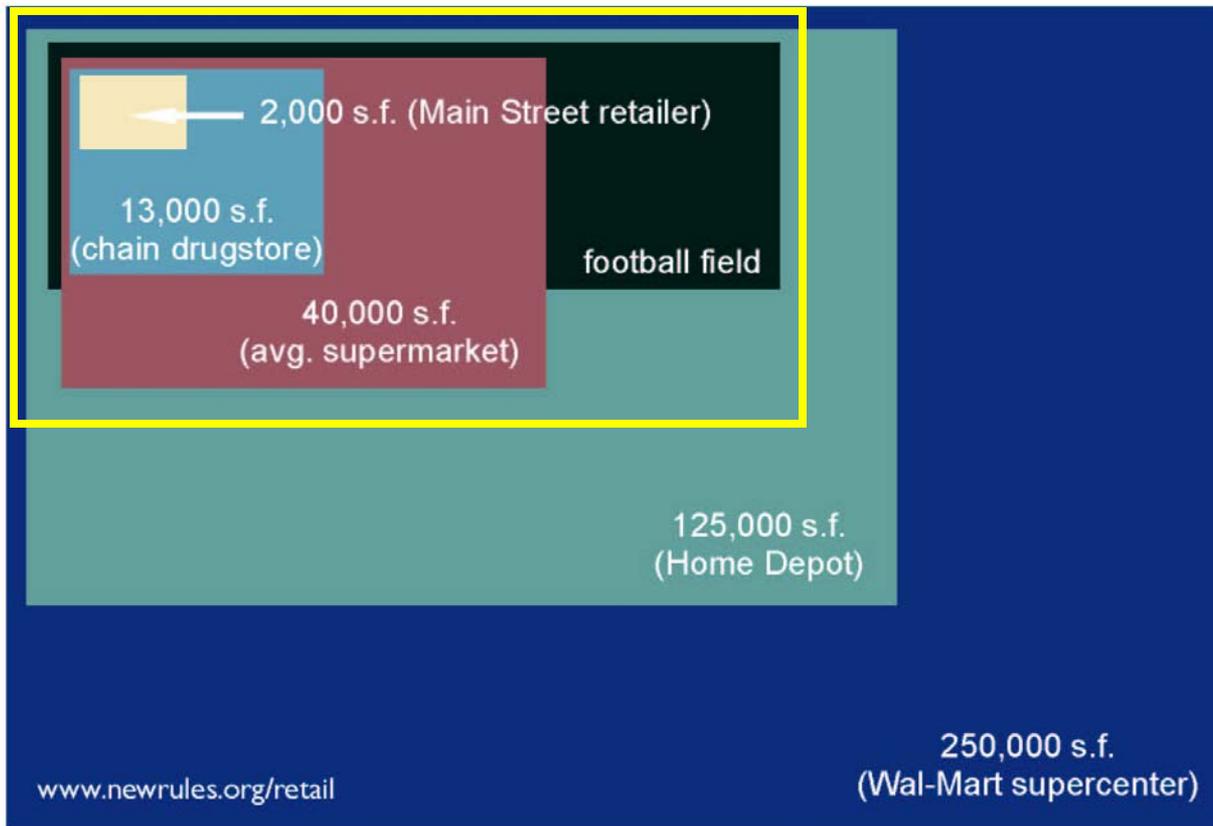
.....good-quality jobs

**IT IS YOUR RESPONSIBILITY TO UPHOLD  
THESE VALUES BY YOUR DECISIONS**

# MESSAGE OF SIZE

## Dowling Village = 8 Slatersville Plazas

### How Big is Too Big?



## FACTS ABOUT DOWLING VILLAGE THEY DON'T WANT YOU TO KNOW

- ***It's not a done deal***. The 580,000 square feet of stores has yet to have had an environmental and traffic Site Plan Review by the town. Such a review is required before a Special Use Permit is granted. At the Master Plan stage, the project obtained a waiver on this review, with the promise that it would be done at the Preliminary Plan phase. Both phases could be rejected completely by the Planning Board with evidence of environmental or traffic problems. There is considerable evidence.
- ***Towns with excessive retail do not have lower property taxes***. Due to increased infrastructure costs due to big-box retail development, property taxes are higher in the RI towns with increased development, as noted in a 2006 Providence Journal editorial, and as confirmed nationwide. Property tax rates in 2007-2008 show that Warwick, Lincoln, and Smithfield all have higher property taxes than North Smithfield! The numbers are: Lincoln \$16.72; Smithfield: \$13.23; Warwick: \$12.75; North Smithfield \$12.16. (Source: RI Economic Development Corporation: <http://www.riedc.com/data-and-publications/municipal-tax-rates>).
- ***Towns with excessive retail do not have better schools***. In RI, Warwick has the most retail along the big-box heavy route 2. Yet Warwick schools are worse than North Smithfield's. Warwick had a lower graduation rate, lower reading and math test scores for 11th graders, and roughly similar writing test scores (36 vs 38%) compared to North Smithfield (for NECAP test scores 2007). Smithfield, with Smithfield Crossings, is no better than North Smithfield. (Source: RI Dept. of Education: <http://www.ride.ri.gov/Assessment/Results.aspx>)
- ***The town's immediate fiscal problems will not be solved with Dowling Village***. Even if Dowling Village was built, we would not see much tax revenue until build-out, projected for 2016. The Valley Alliance advocates office, light industrial, and small-scale retail as our best revenue options.
- ***Our state's budget problems are not helped with big-box***. The book, "The Big Box Swindle," describes an outrageous loophole, "the Geoffrey Loophole," that lets retail chains get away with not paying their share of state income tax. The chains set up subsidiaries in Delaware or Michigan, which do not tax profits from trademarks, or Nevada, which does not tax corporate income. The companies pay their subsidiaries large fees, and deduct the fees as business expenses elsewhere. The consequences are unfair to small businesses and taxpayers alike. RI's Division of Taxation estimates the state would obtain an additional \$8 million in tax revenue per year if this tax loophole was closed!

# Accomplishments

## ■ **REDUCED PROJECT SIZE**

2005: convinced the Planning Board to cut the project by 30 acres and 247,000 square feet. Stopped the MED zone.

2006: negotiated with the developer to cut an additional 5% of retail square feet (from 613,000 to 580,000).

## ■ **EXPANDED BUFFER AROUND BOOTH POND**

2006: negotiated to expand the buffer around Booth Pond area from 50 to over 100 feet.

2007: N. Smithfield Land Trust wrote and received open space grant to protect 42 acres east of Booth Pond.

2009/10: negotiated to add 5.45 acres around Booth Pond and reduce impervious cover from over 30% to 7%.

## ■ **PUSHED FOR COMPREHENSIVE ENVIRONMENTAL REVIEW**

2007: convinced the town and state Dept. of Environmental Management to require a comprehensive environmental review of the entire project, not review by phases.

## ■ **IMPROVED STORMWATER MANAGEMENT**

2009: *The site has the most advanced stormwater design for big boxes in the state.* Both the developer and the state's Dept. of Environmental Management have acknowledged that the revisions would not have occurred without our efforts.

2009: Pushed for pollution offsets for the Blackstone River and Crookfall Brook.

2009: permanently changed the way the State reviews big-box developments and pollution in stormwater.

## ■ **PROTECTED WOONSOCKET/NORTH SMITHFIELD'S DRINKING WATER**

2009: worked with developer's engineers on water quality monitoring plan, which is part of DEM's revised freshwater wetlands permit.

# Stormwater revisions

- Rain gardens
- Micropool detention basins
- Underground infiltration basin by Booth Pond
- Underground detention basins
- Balanced hydrology for 1” storms, including rooftop runoff



# LESSONS LEARNED: FOR PLANNERS

- Train Planning Board and Zoning Board members to fully understand ordinances and rights (e.g., difference between development by right, development by special use permit; site development review)
- Projects can be rejected at the Master Plan Stage; ensure your Planning Board knows this!
- Stand up to lawsuit proliferation by developers' attorneys. Back up arguments with expert testimony.
- Work with adjoining town planners (e.g., watershed map, conservation area, economics).
- Be proactive:
  - ◆ Establish retail size limits (40,000 sq ft = supermarket size)
  - ◆ Require project be analyzed comprehensively from the start, not in phases!
  - ◆ Establish ordinance for full impact analysis (environmental, fiscal, traffic) at Master Plan
  - ◆ Ensure no loopholes in Land Development Project Ordinance, Mixed Use designations; no conflict LDP or Mixed Use with use table

# LESSONS LEARNED: FOR ENVIRONMENTAL GROUPS

- Don't put all your eggs in one basket. Try different approaches at different times and at same time.
- Know town and state environmental laws.
- Consider which messages have greatest resonance with citizens.
- Get multiple environmental experts; use to influence both town and state environmental officials. **Ensure experts are prepared to present and justify specific recommendations at the hearings!**
- Get town to hire its own peer reviewers, or, ideally, conduct an independent analysis.
- Find environmental allies.
- Ensure traffic expert estimates traffic for discount superstores, if present, not as a shopping center! This is a favorite trick of developers – to use shopping center numbers which suggest shared trips. Shoppers generally do not make shared trips if they are visiting a discount superstore, such as a Super WalMart.
- Use different lawyers for different aspects.
- Vote and work to get the town council you want.

# FUTURE EFFORTS

- Towns need to ensure limits to Land Development Projects
- Need state-wide 100ft buffer requirement
- State needs to provide incentives and disincentives to towns to ensure progress towards Land Use 2025
- Larger nonprofits need to help small nonprofits fight these battles. This is where the battle for community and wildlife is won and lost.
- Need state challenge to RI case law supporting “scintilla of evidence”
- State of RI should insist on combined reporting for big box.