

FRANK & FINGER, P.C.

ATTORNEYS AT LAW

P.O. BOX 1477
EVERGREEN, COLORADO 80437-1477

PHONE (303) 674-6955

FAX (303) 674-6684

December 4, 2006

City of Littleton
Planning Commission
2255 W. Berry Ave.
Littleton, Colorado 80165

Re: *Walmart Rezoning Application*

Dear Commissioners:

I was very recently retained by the group, Littleton Against Wal-Mart ("LAW"), to assess the applications pending before the City of Littleton Planning Commission (the "PC"). Limited time permitting, I have performed a cursory review of the subject file. As you are well aware, the Applicant, Walmart, has three pending matters before the PC: (1) the rezoning application; (2) the site development plan application (the "SDP"); and, (3) the plat request. It is my understanding that the plat request will not be considered until the Applicant gains approval or denial on its rezoning application. LAW's collective concerns are as follows.

A. Notice of the public hearing has not been adequately provided.

Upon review of the applicable materials, it is quite clear that notice of the December 4th hearing is inadequate and inconsistent with the Littleton Municipal Code. Littleton Municipal Code Section 10-1-9(c) requires the following concerning notice of a public hearing:

- (c) Each sign shall be at least three feet by four feet (3'X4') in size, and *erected in a conspicuous location along each public street abutting the subject property*. The bottom of said sign(s) shall be at least four feet (4') above ground level. Letters shall be at least one inch (1") in height, *or large enough to be legible from the nearest public street*. Signs shall read as follows:..... (emphasis added).

Here, there is no conspicuous placement along S. Santa Fe Blvd. or on Briarwood, as the two signs on the northeast and southeast corners of the subject property are placed at an angle that can not be clearly viewed from either "public street." More importantly, the signs are not legible from either S. Santa Fe Blvd. or Briarwood, as they are behind a ditch and a fence, and are placed far enough away from the public streets that they cannot be read by anyone reasonable passerby. See enclosed

CD-Rom. Such violates the above-referenced ordinance and should counsel hesitation on behalf of the PC in making a final decision this evening, as an appeal/injunction will certainly follow.

As such, LAW requests that the PC forego any final decision on the Applicant's rezoning request unless and until notice of the public hearing is properly administered. In fact, LAW formally requests that all such final decisions/hearings be continued until after January 1, 2007 in order to provide the citizens of Littleton an opportunity to fully review the Walmart applications and to become fully educated on the proposed commercial development. Failure to provide such additional time will have the effect of precluding such citizens from the requisite due process, as any appeals or review process will need to be acted upon during this solemn and reflective time of year. In short, there should be no hurry to proceed with this application, as caution is warranted under these conditions.

B. The application should be denied for failure to comply with the Littleton Municipal Code.

Upon review of the Applicant's public file, it is apparent that the subject application cannot stand muster under the Littleton Municipal Code. Code Sections 2-9-1, 3-17-1, 10-1-2, 10-1-9, 10-2-23, 11-3-1, and 11-7-1 stress the importance of the Littleton Comprehensive Plan (the "COMPLAN") and the policies set forth therein. In fact, all of these Sections require that the City Council and the PC specifically apply the guidelines of the COMPLAN in assessing an application pending before them. Further, Code Section 10-12-1 *requires* compliance with the COMPLAN, unless the "applicant demonstrates that the requested rezone is justified because of changed or changing conditions in the particular area, or in the city in general." Code Section 10-12-1.

The application pending before the PC fails to comport with the COMPLAN for the following reasons:

- (1) The COMPLAN unequivocally sets forth a goal of "[d]evelop[ing] Littleton's economic independence and reemphasiz[ing] downtown as Littleton's economic and social center. See COMPLAN, Community-Wide Goal 2. The proposed Walmart Supercenter will serve to vitiate the vibrance and economic vitality of downtown Littleton. The market entry effects of a large scale format retailer, such as Walmart, on Littleton's downtown will be devastating, as it will drive business away from downtown and have a depressive effect on the same. See *Market Entry Effects of Large Format Retailers: A Stakeholder Analysis*, Stephen J. Arnold, International Journal of Retail and Distribution Management, May 2000, V28, I4/5, pp. 139-154. The economic benefits of the Walmart Supercenter will be lost with declining business downtown and any municipal subsidies considered.

- (2) COMPLAN, Community-Wide Goal 4 requires the City to “[a]cquire and maintain sufficient park, recreation land, open space and trails to maintain a proper balance between developed and recreational land use and to make recreational opportunities easily available to all residents.” By allowing the proposed Walmart Supercenter, the City is effectively cutting off views and access to the nearby park, and tipping the balance between developed and recreational land uses along the fragile South Platte watershed.
- (3) COMPLAN, Community-Wide Goal 5 requires the City to Preserve existing neighborhood values while encouraging any new development to make the most efficient use of land, resulting in the highest possible standard of living and the best use of natural resources. In developing a 180,000 square foot commercial center, the Applicant’s request fails to preserve the long held neighborhood values of residential and small-scale agricultural use. It changes the face of the neighborhood entirely.
- (4) COMPLAN, Urban Design, Policy 4, stresses that the “City should strengthen the identity of entrances into Littleton.” The subject location is widely perceived as an entrance to the City of Littleton from the south and a large-scale commercial center will neither provide Littleton with identity, nor signify an welcoming invitation to the City.
- (5) COMPLAN, Central Area Neighborhood, Goal 4 requires the City to “[e]ncourage the retention of the historic and ‘small town’ character of Main Street.” Again, the effect Walmart will likely have on downtown Littleton will be devastating both economically and aesthetically. *See Market Entry Effects of Large Format Retailers: A Stakeholder Analysis*, Stephen J. Arnold, *supra*.
- (6) COMPLAN, Central Area Neighborhood, Transportation, Policy 1 provides that “all alternatives be examined to reduce traffic congestion in the Central Area.” The introduction of a large scale super center will not serve this policy.
- (7) COMPLAN, Central Area Neighborhood, Land Use, Subneighborhood No. 1, Policy 1 states that:

“the detailed activity center plan make specific recommendations on the future zoning and development of land now affected by the floodplain. Further, that all areas within the subneighborhood be re-examined, and specific zoning recommendations be made, so that

future development will protect and enhance the river environment, and the rest of the neighborhood.

The addition of the Walmart Supercenter will neither protect, nor enhance, the river environment, as it will be located within 50-60 feet from the river and tremendous flood plain issues must first be considered.

- (8) COMPLAN, South Santa Fe Corridor, Urban Design Goals and Policies, Policy No. 1, requires that the City “[p]reserve and protect the prominent and historic view corridors of the foothills/mountains and the South Platte River...” The proposed development will directly and unequivocally block views of the foothills/mountains and access to the Platte River. In particular, the proposed twenty-five foot light towers and ten-foot perimeter walls of the proposed development will directly violate this policy. Moreover, the building footprint will prevent access to the Platter River by citizens, pedestrians, bikers, etc.
- (9) COMPLAN, South Santa Fe Corridor, Urban Design Goals and Policies, Policy No. 2, requires that the “City Building entrances and orientation should address the South Platte River, South Santa Fe Drive and the Rio Grande Street frontage to maintain and improve the visual quality of all corridors.” Upon close review of the Applicant’s materials, it is apparent that the proposed development will not adhere to this policy, as the building orientation will necessarily decrease visual quality by blocking views and access, as set forth above.
- (10) COMPLAN, South Santa Fe Corridor, Open Space and Natural Features Goals and Policies.
 - (a) **Policy 6:** Promote a broad range of public and private open space amenities within the corridor including plazas, pocket parks, pedestrian walkways, and river connections.

The SDP shows no such consideration. Moreover, commercial zoning would render this Policy meaningless.
 - (b) **Policy 7:** Provide additional access points and parking areas for the Platte River trail at locations north of South Platte Park.

The SDP shows no such consideration. Moreover, commercial zoning would render this Policy meaningless.

- (c) **Policy 9:** Develop a landscaped river edge along the east side of the South Platte River, north of South Platte Park to protect the esthetic and visual appearance of the river corridor, utilizing the following techniques:
- ▶ Provide a substantial landscape buffer along the South Platte River Corridor.
 - ▶ Buildings should be set back appropriate to their height and use.

The SDP shows no such consideration. Moreover, commercial zoning would render this Policy meaningless.

- (11) COMPLAN, South Santa Fe Corridor, Land Use Goals and Policies, Goal A, Policy 4 states that the City shall “[c]oncentrate major retail and office development at the four arterial connections along South Santa Fe Drive: C-470/County Line Road, Mineral Avenue, Bowles Avenue, and Belleview Avenue.” Here, a 180,000 square foot retail establishment is most certainly considered “major retail.” Yet, it is not being located per this Policy.
- (12) COMPLAN, South Santa Fe Corridor, Economic Goals and Policies, Policy 3 provides that the City shall “[d]iscourage strip commercial development along South Santa Fe Drive that diminishes the value of interior land parcels.” Because of the inconsistent adjoining land uses (residential), the lack of transition from residential to commercial zoning, and the nature of a large scale retailer, the interior land parcels, which are overwhelmingly residential, will see a decrease in value directly related to the establishment of the Walmart Supercenter and the future strip development that will follow. *See Market Entry Effects of Large Format Retailers: A Stakeholder Analysis*, Stephen J. Arnold, *supra*.

With that said, LAW has significant concerns with the Applicant’s ability to comply with the COMPLAN. Thus, at a minimum, the PC should require the Applicant to demonstrate compliance with these provisions prior to taking action on the application. Code Section 10-8-4 provide the PC with an express mechanism by which to do so. Specifically, Section 10-8-4(A)(5) permits the PC to request additional materials of the Applicant to demonstrate compliance with the “Code, and with the comprehensive plan.” As such, LAW formally requests that the PC insist upon the same and suspend all further proceedings on this application unless and until these standards are satisfied by the Applicant.

City of Littleton
Planning Commission
December 4, 2006
Page 6

It is essential that the Applicant comply with the COMPLAN and its various requirements. Yet, the Code allows deviation from these standards if the "applicant demonstrates that the requested rezone is justified because of changed or changing conditions in the particular area, or in the city in general." Code Section 10-12-1. Neither the PC, nor the Applicant have provided evidence of such changed conditions to justify deviation from the COMPLAN. As such, the exceptions do not apply.

In conclusion, for failure to satisfy the COMPLAN, the Applicant's request for rezoning should be denied.

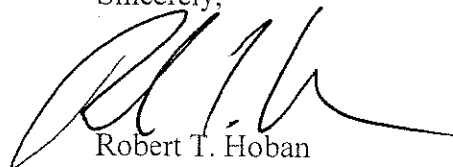
C. The Applicant's submittal is inconsistent with the *South Platte River Corridor Development Design Objectives*.

In December, 2000, the City of Littleton adopted the *South Platte River Corridor Development Design Objectives*, in which it identified the desired character of new development within the South Platte River Corridor. The subject property is located within that Corridor. Said *Design Objectives* specifically identify various mixed-use development configurations (similar to the Belmar development) and the sort of development proposed by the Applicants is entirely inconsistent with this document.

At a minimum, the Applicant's design represents bad planning, as the pure large-scale commercial use proposed will have a drastic effect on downtown Littleton and the surrounding community. Without adequate transitioning between residential and pure commercial uses, the proposed development violates all fundamental principles of municipal planning, as articulated in the *Design Objectives* referenced above. Such is inconsistent with City objectives and should be closely examined.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Robert T. Hoban