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Judge rules in favor of Wal-Mart

July 3, 2001

Cullman County Circuit Court Judge Frank Brunner ruled Monday in favor of Wal-Mart Stores East Inc. and the City of Cullman regarding the proposed site of a Wal-Mart Supercenter in Cullman.

The action prompted an attorney for plaintiffs to recommend the ruling be appealed to the Alabama Supreme Court.

Brunner's ruling followed last week's hearing on motions for summary judgment filed by attorneys on behalf of Wal-Mart and the city.

Attempts to reach local attorneys Tim Culpepper, representing Wal-Mart; and S. Wayne Fuller, representing the city of Cullman, were unsuccessful.

"The court finds that there is no genuine issue of material fact in dispute and that the defendants are entitled to a judgment in their favor as a matter of law," Brunner said in his ruling.

Residents opposed to the rezoning of property on Swafford Road and Cherokee Avenue for the construction of a Wal-Mart Supercenter filed suit in May 2000 seeing an injunction prohibiting Wal-Mart from altering the property.

The Cullman City Council, in March of last year, voted to rezone the property from residential to business, a decision the suit claims was "arbitrary and capricious, was not fairly debatable and did not promote the health, safety, morals and general welfare of the citizens of the city."

The suit also claims the decision to pass the ordinance was made without the benefit of scientific or expert evidence concerning traffic flow and volume, population growth, housing needs, surface water drainage and other matters.

In their oral arguments last Culpepper and Fuller stated that the development will not result in dangerous traffic or flooding and that proper rezoning procedures were followed and the public was given the opportunity to be heard by the city council.

In his judgment, Brunner ruled:

n That all procedural aspects of rezoning the subject property were complied with by the city.

n That the question of rezoning the subject property was fairly debatable and the court cannot substitute its opinion for that of the City Council.

n That the City Council rezoned the property with conditions

being placed on Wal-Mart Stores including a permanent ban on vehicles existing to and from Swafford Road; development consistent with the site plan; six- to eight-foot berm with trees along the southern border; a retention pond to prevent surface water impact; and exterior lighting directed away from the nearby residential neighborhoods.

n That the city may amend the terms and conditions imposed as it sees fit.

n That the city ordinance rezoning the property is valid.

Danny Speakman, who filed the suit seeking to reverse the rezoning, said the ruling wasn't unexpected.

"One of the contentions of the suit is that the conditions agreed to by Wal-Mart regarding access to Swafford Road, drainage, lighting and so forth isn't enforceable the way the present ordinance is worded. In his judgment, Judge Brunner didn't address this and that's a major concern of ours," Speakman said. "Say several years from now Wal-Mart decides to move on and Target, Home Depot or some other store decides to locate there. The way we read the ordinance there is nothing to prohibit them for seeking access to Swafford Road and basically redoing the site plan to suit themselves."

Speakman wants to pursue all legal options.

"This is definitely not the end of it," Speakman said.

The plaintiffs' attorney, Frank Galloway of Birmingham, said one option he favors is an appeal to the Alabama Supreme Court.

"According to state law we have 42 days in which to consider an appeal. I'll have a better idea of what we may or may not do after I've spoken with my clients," Galloway said.

Cullman Mayor Don Green, who as a city councilman cast the lone dissenting vote on rezoning the property last year, said he understands the feelings of opposing residents.

"The people have some concerns about several pollution problems, including traffic, drainage, lighting and so forth and that's understandable, but it should also be noted that Wal-Mart has addressed each one of these concerns and hopefully that will make for a more desirable situation for everyone concerned," Green said.

Green said the city plans to develop Olive Street from the Pepsi-Cola warehouse so motorists will have an additional access point to the property. Everything else, from road sites to the site plan itself have been approved.

"All Wal-Mart was waiting on was a judgment in their favor," Green said, suggesting construction might begin quickly.