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Wal-Mart mum on possible appeal

Mar. 20, 2002

A local attorney representing Wal-Mart Stores East, L.P., declined comment when asked if he plans to appeal a recent Alabama Court of Civil Appeals ruling which invalidates the April 10, 2000 rezoning of the Wal-Mart property on Cherokee Avenue Southwest from residential to business.

Tim Culpepper Tuesday repeated the comments he made in a letter to members of the Cullman City Council in which he requested that the council take the necessary steps to rezone a 25.57-acre tract of property on Cherokee Avenue Southwest/Alabama Highway 69 and Swafford Road.

The property is the construction site for Cullman's new Wal-Mart Supercenter, which is expected to open next month.

"Wal-Mart Stores East, L.P., currently owns property near the intersection of Cherokee Avenue and Swafford Road in the city of Cullman. The property was previously rezoned from R-1 residential to B-2 business, however, the Alabama Court of Civil Appeals has found procedural flaws which invalidate the rezoning," Culpepper wrote in his letter to council members. "Therefore, Wal-Mart Stores East, L.P., hereby requests that said property be rezoned from R-1 to B-2 with certain conditions to be included in the rezoning ordinance."

Included among those conditions is the prohibition of vehicular access to the property from Swafford Road, a provision that the property be developed consistent with the site plan previously presented to and approved by the city, the erection of a six to eight foot high berm with trees along the southern boundary of the property, construction of a detention pond to guard against local flooding, and the positioning of exterior lighting directed away from nearby residential neighborhoods.

These conditions have been agreed to previously by Wal-Mart and were a part of the original rezoning ordinance in April 2000.

The Alabama Court of Civil Appeals ruling on March 8 was the result of an appeal filed last fall on behalf of plaintiff Danny Speakman and a group of property owners adjacent to and near the Wal-Mart site on Cherokee Avenue.

The group appealed to the state Supreme Court asking that it overturn a summary judgement by Cullman County Circuit Court Judge Frank Brunner in favor of Wal-Mart and the city of Cullman on July 2, 2001.

The Supreme Court referred the case to the Court of Civil Appeals.

In its opinion, the court noted the following:

n On April 20, 2000, the city published a notice that it had granted the rezoning request, entitled "Ordinance 1372." The notice did not contain the conditions the council imposed.

n The failure to include the current uses of the surrounding property in the request does not strictly comply with the mandates of the Cullman Zoning Ordinance.

n The Cullman Planning Commission violated Statute 110.3(a) which provides that "before taking such action as it may deem advisable, the City Council shall consider the planning commission's written recommendation on each proposed zoning amendment." The commission should have adopted or rejected the amendment rather than forego its duty and decline to make a recommendation.

n The city failed to publish the "amended" ordinance before it adopted the final form with the added conditions, and therefore, the ordinance is invalid.

n Based on the foregoing, the judgment of the trial court is reversed and the case is remanded for proceedings consistent with this opinion.

Because the defendants in the case, namely Wal-Mart and the city of Cullman, have 14 days from the date of the Court of Civil Appeals opinion (March 8) to ask for reconsideration of the court's ruling, the matter will not officially revert back to Judge Brunner until after Friday.

"Hypothetically, if the defendants do not request reconsideration within the 14-day appellate period, the case will officially be remanded back to this court," Brunner said. "At that time I would set a hearing as soon as possible, but I cannot give you a timetable on that at this time."

Judge Brunner said Tuesday he has a copy of the Court of Civil Appeals ruling in his office at the courthouse, "but I have not yet read it all, and I have no comment on the court's opinion at this time."

Property owners opposed to the rezoning of the Wal-Mart property originally filed a civil suit in May 2000 seeking an injunction prohibiting Wal-Mart from altering the property. To date, no injunction has been approved by the court.

The City Council held the first reading of the new rezoning ordinance Monday night. A public hearing on the rezoning request has been set for 7 p.m. April 15, following which a second reading of the ordinance is planned. At that time the council may vote on the ordinance.

Meanwhile, the Cullman Planning Commission is expected to take up the rezoning request at its next meeting at 6 p.m. on April 1. This time, the commission is expected to make a recommendation to the City Council.

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