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Wal-Mart rezoning overturned

Mar. 19, 2002

The Cullman City Council has scheduled a public hearing for April 15 to consider rezoning the site of the new Wal-Mart Supercenter from R-1 residential to B-2 business.

The council originally rezoned the property from residential to general business on April 10, 2000, but a new Alabama Court of Civil Appeals ruling invalidated the earlier ordinance.

The appeals court found "procedural flaws" in the rezoning," Cullman attorney Tim Culpepper, who represents Wal-Mart, wrote in a letter to council members. That's why the store wants the land rezoned from R-1 to B-2 with certain conditions to be, he said.

Included among those conditions:

- * A permanent ban on vehicles entering or leaving the property to and from Swafford Road.
- * Property developed consistent with the site plan previously approved by the city.
- * A six- to eight-foot berm with trees along the southern boundary of the property.
- * A retention pond along the southern boundary to prevent any adverse surface water impact on the nearby residential property.
- * Directional exterior lighting on the property directed away from the residential neighborhoods.

All of these conditions had been agreed to by Wal-Mart.

The Alabama Court of Civil Appeals ruling, dated March 8, was the result of an appeal filed last fall on behalf of plaintiff Danny Speakman. He and a group of property owners adjacent to and near the Wal-Mart site on Cherokee Avenue and Swafford Road asked the appeals court to overturn a July 2001 summary judgment by Cullman County Circuit Court Judge Frank Brunner in favor of Wal-Mart and the city of Cullman .

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

In their appeal, the plaintiffs argued that the rezoning request to the Cullman Planning Commission failed to include the current use of the adjoining parcels of property.

"Wal-Mart admits that the request fails to meet this requirement, however, it argues that the omission was harmless because, it says, the plaintiffs were not prejudiced by the omission," the ruling states. "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."

The judges also ruled that the Planning Commission violated rules saying 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 planning commission decided not to make a recommendation to the council on the proposed ordinance. The purpose of requiring a recommendation from the planning commission is to give the council the advantage of the commission's knowledge on land-use planning. The commission should have adopted or rejected the amendment rather than forgo its duty and decline to make a recommendation, the court ruled.

The court further ruled that the city failed to publish the "amended" ordinance before it was adopted in its final form.

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.

The council held the first reading of the new rezoning ordinance Monday night. A second reading is planned during a special meeting of the council on April 15.

In other action Monday, the council:

- * Approved a permit for a Meet the Candidates fund-raising event to be hosted by Daystar. The event, which is scheduled for 4:30 to 7:30 p.m. May 3, will start with a parade from the courthouse to the Cullman Area Chamber of Commerce.
- * Approved a permit request for the annual Day in the Park, hosted by the Cullman City Parks and Recreation Foundation May 4.
- * Approved the allocation of \$50,000 to the Cullman Parks & Recreation Department to help cover the cost of repairing the roof on the old armory building on Sportsman Lake Road. Kraft & Associates, the lone bidder on the project, presented a bid of \$75,489. That bid was later negotiated down to \$67,000, which is some \$17,000 over the \$50,000 budgeted for the project. The park board has agreed to come up with the difference.
- * Approved the requesting of bids for a road boring machine for the water department.
- * Approved the requesting of bids on a one-ton crew chassis truck with a service utility bed for the water department.
- * Approved the requesting of bids for a mosquito fogger for the sanitation department.
- * Approved the requesting of bids for a new fire truck at an estimated cost of \$300,000 to \$310,000.
- * Concurred in a Planning Commission recommendation to deny a request by Tania Baker to vacate an easement for an unopened section of Avenue G between two lots she owns on 14th Street Southeast. It was the opinion of the commission that vacating the easement would cut off access to the property located south of Baker.
- * Concurred in a planning commission recommendation to grant a request by Danny McAfee to vacate an easement on property located at the corner of Clark Street and First Avenue Northeast. That will enable McAfee to construct a porch along the north side of a planned development which will house retail shops and a housing complex.
- * Approved a low bid of \$51,034 submitted by Holt Specialty Equipment of Eagleville, Tenn. for containers for the sanitation department.
- * Rejected all bids for a vehicle for Cullman Risk Management. The city had budgeted \$15,000 for the vehicle and the lowest bid received was \$21,153.80.

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