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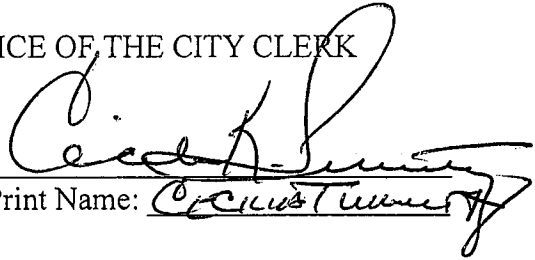
RECEIVED of Giffin, Winning, Cohen & Bodewes, P.C. the original of the attached "Petition of Cobblestone Development Company and Wal-Mart Stores, Inc. to The City Council Of The City Of Springfield, Illinois, Appealing the Vote of the Regional Planning Commission on September 20, 2006, Which Vote Allegedly Failed to Approve Petitioners' Request to Approve Petitioners' Revised Preliminary Plan and Access Variances Pursuant to Section 153.157(L) of the Springfield Subdivision Regulations".

This 19th day of October, 2006.

OFFICE OF THE CITY CLERK

By:

Print Name:


Cecelia Turner

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PETITION OF COBBLESTONE DEVELOPMENT COMPANY AND WAL-MART STORES, INC. TO THE CITY COUNCIL OF THE CITY OF SPRINGFIELD, ILLINOIS, APPEALING THE VOTE OF THE REGIONAL PLANNING COMMISSION ON SEPTEMBER 20, 2006, WHICH VOTE ALLEGEDLY FAILED TO APPROVE PETITIONERS' REQUEST TO APPROVE PETITIONERS' REVISED PRELIMINARY PLAN AND ACCESS VARIANCES PURSUANT TO SECTION 153.157(L) OF THE SPRINGFIELD SUBDIVISION REGULATIONS.

TO: THE HONORABLE MAYOR TIM DAVLIN
THE HONORABLE FRANK EDWARDS, ALDERMAN
THE HONORABLE FRANK MCNEIL, ALDERMAN
THE HONORABLE FRANK KUNZ, ALDERMAN
THE HONORABLE CHARLES REDPATH, ALDERMAN
THE HONORABLE JOE BARTOLOMUCCI, ALDERMAN
THE HONORABLE MARK MAHONEY, ALDERMAN
THE HONORABLE JUDY YEAGER, ALDERMAN
THE HONORABLE IRV SMITH, ALDERMAN
THE HONORABLE THOMAS SELINGER, ALDERMAN
THE HONORABLE BRUCE STROM, ALDERMAN

RECITALS

Pursuant to Sections 153.123(b) and 153.202 of the Subdivision Regulations of the Springfield Code, Petitioners COBBLESTONE DEVELOPMENT COMPANY ("CDC") and WAL-MART STORES, INC. ("Wal-Mart") (collectively, the "Petitioners") hereby appeal the vote of the Regional Planning Commission (the "RPC") on September 20, 2006, which vote allegedly failed to approve Petitioners' request to approve the Revised Preliminary Plan and access variances pursuant to Section 153.157(L) of the Springfield Subdivision Regulations.

CDC is the owner of certain property located within the Cobblestone Estates, and Wal-Mart is the contract purchaser of said property. The property includes the proposed 25th Addition in Cobblestone Estates, as well as lots 9-13 (also designated on the Cobblestone Preliminary Plan as Lots 436-440) of the 4th Addition in Cobblestone Estates (the "Subject Property"). Petitioners requested that the RPC approve access variances pursuant to Section 153.157(L) of the Springfield Subdivision Regulations. The purpose of the request was to allow vehicular access to the proposed Wal-Mart site at the locations depicted on the Revised Preliminary Plan, which had been approved by the City of Springfield Department of Public Works and the Illinois Department of Transportation as a part of the traffic impact study approved in April, 2006. Wal-Mart requested that the RPC take into consideration the "Proposed Wal-Mart Off-Site

Improvements" set forth on Exhibit A attached to Petitioners' letter to the RPC dated August 28, 2006.

On September 7, 2006, the Land Subdivision Committee of the RPC considered Petitioners' request to approve the Revised Preliminary Plan and access variances pursuant to Section 153.157(L) of the Springfield Subdivision Regulations and voted unanimously to recommend approval to the RPC. The decision of the Land Subdivision Committee is clear and compelling evidence that Petitioners' request met all technical requirements of the Subdivision Regulations.

On September 20, 2006, the RPC considered Petitioners' request to approve the Revised Preliminary Plan and access variances and voted six (6) in favor, five (5) opposed, and four (4) abstaining. Although participants at the meeting assumed that the RPC vote had resulted in a favorable determination with regard to Petitioner's request, the States' Attorney advised the RPC a few days later that the motion to approve the Revised Preliminary Plan and access variances failed for lack of sufficient affirmative votes based upon the number of members present.

Pursuant to Section 153.123(b) of the Subdivision Regulations, the RPC must specify the grounds for its disapproval in writing and identify the manner in which the preliminary plan fails to comply with the subdivision regulations. The RPC has not done so, and Petitioners have not been able to present counterarguments to refute any alleged failure to comply with the Subdivision Regulations. Furthermore, Petitioners have not had an opportunity to amend the disapproved Revised Preliminary Plan to conform it to the findings of the RPC, as provided in Section 153.123(b). In addition, Section 153.202 provides that the petition for review of an adverse commission decision shall point out the parts of the commission's decision to which the subdivider objects. Petitioners are unable to comply with the requirements in Section 153.202 because there is no written decision. Accordingly, Petitioners have been clearly prejudiced by the failure of the RPC to comply with the requirements of the Subdivision Regulations in the Springfield Code.

Petitioners further assert that they have been significantly prejudiced by the failure of the RPC to provide a written decision stating the noncompliance found. During the hearing before the RPC, opponents presented arguments relating to alleged off-site impacts that would occur if the property were developed as proposed by Petitioners. Petitioners assert that these arguments relate to zoning issues, not subdivision regulations. Nevertheless, to the extent that these arguments influenced or directly caused certain members of the RPC to vote against Petitioners' request, Petitioners have the right pursuant to Section 153.123(b) to be informed of such factors influencing the votes of certain members of the RPC and to respond to them. Furthermore, Section 153.112(b)(7) clearly states that if it is determined by the RPC that major off-site impacts will result from development, the subdivider must agree to mitigate the portion of the impact caused by the subdivision. Again, in failing to provide Petitioners with a written decision as required by Section 153.112(b)(7), the RPC has seriously prejudiced Petitioners, who has had no opportunity to present mitigation plans to counter any alleged negative impacts caused by development.

ARGUMENT

THE REQUIREMENTS OF SECTION 153.201 (VARIATION OF SUBDIVISION REQUIREMENTS) HAVE BEEN SATISFIED.

Petitioners seek to amend the Revised Preliminary Plan to remove Yucan Drive and request a variance allowing four access points from the proposed Wal-Mart site to major and minor arterials in accordance with the recommendations, directions, and approvals of both the Illinois Department of Transportation and the City Engineer of the City of Springfield. There are no zoning issues to decide in this case because the project is in full compliance with all zoning requirements.

Petitioners' request for variances complies with Section 153.201 of the Springfield Subdivision Regulations. Section 153.201 requires the following:

i. The intent of the chapter is maintained.

Section 153.103 sets forth the purposes and goals of the Subdivision Regulations of the Springfield City Code. Because the Revised Preliminary Plan, including the requested access variances, conforms to the requirements of the Illinois Department of Transportation, the Springfield City Engineer, and the Springfield Traffic Engineer, the Revised Preliminary Plan, including the requested access variances, satisfies the purposes and goals of the chapter. Furthermore, though arguably not required, Petitioners are prepared to present evidence to the City Council that the following areas conform to the intent of the chapter:

- (a) Traffic;
- (b) Drainage;
- (c) Noise; and
- (d) Any other relevant factors.

As the City Council is aware, this appeal involves subdivision regulations, not zoning issues, and the Council must consider only whether the project meets technical subdivision requirements. The project fully complies with all requirements under the zoning regulations.

ii. Extraordinary circumstances of topography, land ownership, adjacent development, or other circumstances not provided for in the chapter exist.

The property depicted on the Revised Preliminary Plan is part of a larger subdivision, which was approved by the City Council in 1993. The subdivision consists of a mix of single family, multi-family, duplex, and commercial lots. The City Council initially classified the property depicted on the Revised Preliminary Plan as I-1 Light

Industrial District. In January, 2002, the City Council changed the zoning classification of the 25th Addition from I-1 to B-1 Highway Business Service District.

At the meeting of the RPC held on September 20, 2006, the Acting Director of the Regional Planning Commission, Susan Poludniak, stated that many commercial developments in Springfield have similar access variances. Accordingly, it is apparent that in practice such variances are commonly approved by the City Council and that the access variances requested in this case are not unusual and should be approved.

iii. The extraordinary circumstances will result in a hardship, not merely an inconvenience.

a. Loss of Wal-Mart as a purchaser of the property

CDC has entered into a binding contract with Wal-Mart in which Wal-Mart has agreed to purchase the Subject Property conditional upon certain provisions, including (i) Yucan Drive is removed from the Revised Preliminary Plan and (ii) a variance approving the access points already sanctioned by the Illinois Department of Transportation and the Springfield City Engineer is granted. Unless the City Council approves the removal of Yucan Drive and the grant of access variances, Wal-Mart will have no access points, and Yucan Drive, which has not been constructed, will continue to bisect the property. Wal-Mart will not purchase the property, and CDC will sustain significant damages that cannot be recouped from other purchasers.

b. Loss of infrastructure which Wal-Mart will fund and build if the store is constructed

Section 153.145.1 of the Springfield City Code does not apply to the property. Enactment of Section 153.145.1 occurred after the approval of CDC's preliminary plan. Accordingly, if the City Council does not approve the Revised Preliminary Plan and the access variances, Wal-Mart will not purchase the property or construct the upgraded infrastructure. The City of Springfield will be financially responsible for any future improvements. According to engineering opinions, the cost of the infrastructure to be constructed by Wal-Mart is approximately four million dollars (\$4,000,000).

If the contract with Wal-Mart is lost, it is likely that any future alternative purchasers or tenants would be too small to consider installing significant public infrastructure that they have no obligation to construct. If the City of Springfield does not have the

funds to replace the infrastructure that Wal-Mart would construct if it opens a store on the property, CDC's ability to sell the property would be substantially diminished, and CDC would sustain devastating loss and hardship.

iv. The circumstances upon which the request for variance is based are not common to most other tracts of land.

Access points to arterial roadways for similar commercial sites are commonly required and granted in Springfield according to the Acting Director of the Regional Planning Commission, Susan Poludniak. The Subject Property consists of 28.5 acres. Sizable tracts with flat topography on major arterial roadways are very rare in the City of Springfield. Objectors have demanded that Wal-Mart move further west near the interstate interchange, but such a move, even if possible, would mean that Springfield School District 186 would lose significant tax proceeds from the proposed development. Furthermore, Wal-Mart's willingness to construct approximately four million dollars (\$4,000,000) of public infrastructure improvement if the store is opened will provide significant financial benefits to the City of Springfield. In addition, much of the site-generated traffic from the residential areas north of Wabash would still use Archer Elevator Road and Meadowbrook Road to gain access to sites farther west.

v. The circumstances upon which the request for variance is based are not the result of the subdivider's affirmative act or failure to act.

In 1993, the City of Springfield classified the 25th Addition as I-1 Light Industrial District and the Fourth Addition as S-2. Lots were then sold as single family residences, commercial uses, and attached homes within the remainder. The 25th Addition was later down-zoned to B-1 Highway Business Service District. Landowners who purchased lots for single-family residences knew or had the opportunity to know at the time of purchase that Petitioners' property was zoned first for light industrial use and later for commercial use.

CDC designed its subdivision with the intent that large commercial development would occupy Petitioners' property. CDC planned for commercial development on Petitioners' property by not allowing any residence to front on or have direct access to adjoining designated arterial streets on Hedley, Archer, Meadowbrook, and Iles. CDC responsibly prepared for

commercial development of Petitioners' property from the time the subdivision was first proposed.

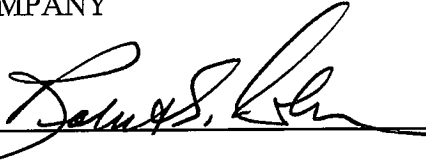
- vi. **The purpose of a variation is not based exclusively on the desire to eliminate development costs at the expense of the public improvement standards as outlined in this chapter.**

A major purpose of the variation is to save the City approximately four million dollars (\$4,000,000) in public fund expenditures for road improvements tax revenues and to utilize Wal-Mart's funds instead of municipal funds. If the City Council fails to approve the requested access variances, it will be up to the City to pay for and construct the needed public infrastructure improvements.

Furthermore, the project will result in substantial additional sales and property tax revenues for the City of Springfield, which will significantly benefit the municipality and the taxpayers.

[Signature Page to Follow]

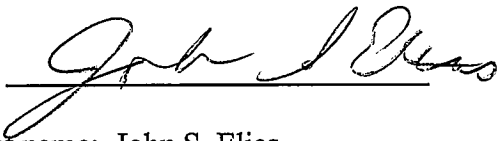
COBBLESTONE DEVELOPMENT
COMPANY

By: 

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Its: Attorney

WAL-MART STORES, INC.

By: 

Print name: John S. Elias

Its: Attorney for Wal-Mart Stores, Inc.

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