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**TOWN COUNCIL APPEALS HEARING
TUESDAY, MAY 10, 2016
Town Hall Council Chambers
551 Hot Springs Blvd
5:00 p.m.**

- I. CALL APPEALS HEARING TO ORDER**
- II. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE**
- III. POSSIBLE EXECUTIVE SESSION**
 - a. For the Purpose of Receiving Legal Advice Regarding the Walmart Appeal Hearing, Pursuant to Colorado Revised Statute 24-6-402(4)(b).
- IV. APPEALS HEARING**
 - a. Introduction
 - 1) Planning Director's Appeals Hearing Staff Report
 - 2) Resolution 2016-06
 - b. Section 1- "Documents of Record" Associated with Notice of Appeal
 - 1) Notice of Appeal from Walmart Real Estate Business Trust
 - 2) Walmart Opening Brief - Original from April 16, 2015
 - 3) Planning Director's Final Determination regarding exterior lighting compliance
 - 4) LUDC Section 2.4.13, Appeals
 - 5) LUDC Section 6.11, Exterior Lighting
 - 6) Walmart's provided definitions of Glare
 - 7) Walmart lighting guidelines
 - c. Section 2- "Comments/Complaints" received prior to April 2, 2015 receipt of "Notice of Appeal"
 - 1) Written Complaints received prior to April 3, 2015
 - d. Section 3- "DRB May 22, 2012" Documents associated with Original DRB Public Hearing
 - 1) May 15, 2012 Correspondence from the Planning Director to Tasha Bolivar
 - 2) Walmart's responses to staff and Bohannon Huston's project comments, dated May 21, 2012
 - 3) Walmart illumination power point presentation, dated May 22, 2012
 - 4) Preliminary Lighting plans dated April 4, 2012

- e. Section 4- "DRB July 10, 2012" Documents associated with Original DRB Public Hearing
 - 1) Correspondence from Carl Schmidlein of Galloway responding to Town review comments dated June 21, 2012
 - 2) Amended Bohannon Huston review of re-submitted plans, dated July 3, 2012
 - 3) Walmart illumination power point presentation, dated July 10, 2012
 - 4) Revised Illumination Plan Dated June 12, 2012

- f. Section 5- "DRB August 21, 2012" Documents associated with Original DRB Public Hearings
 - 1) Walmart response to July 10, 2012 DRB meeting minutes
 - 2) Walmart illumination power point presentation, dated August 21, 2012
 - 3) The Edge LED Area Light fixture product information sheet
 - 4) Revised Illumination Plan Dated August 13, 2012

- g. Section 6- "DRB Final Approval" Associated Documents
 - 1) Resolution 2012-12, "Setting forth findings of fact and conclusions and approving the Walmart major Design Review Development Application"
 - 2) Galloway response to DRB Resolution 2012-012, dated April 11, 2013
 - 3) Site Plan Approval from the Town, dated May 08, 2013
 - 4) Final approved illumination plan, dated December 18, 2012

V. ADJOURNMENT

**Don Volger
Mayor**



AGENDA DOCUMENTATION

APPEALS HEARING

PAGOSA SPRINGS TOWN COUNCIL
MAY 10, 2016

FROM: JAMES DICKHOFF, PLANNING DIRECTOR

APPEALS HEARING:

WAL-MART REAL ESTATE BUSINESS TRUST IS APPEALING THE TOWN PLANNING DIRECTOR'S INTERPRETATION OF LAND USE DEVELOPMENT CODE SECTION 6.11. EXTERIOR LIGHTING, AND HIS FINAL DETERMINATION REGARDING THE NON-COMPLYING NATURE OF THE PARKING LOT LIGHTING AT THE WAL-MART DEVELOPMENT LOCATED AT 211 ASPEN VILLAGE DRIVE.

ACTION: TESTIMONY, DISCUSSION AND POSSIBLE ACTION



AGENDA DOCUMENTATION

APPEALS HEARING

PAGOSA SPRINGS TOWN COUNCIL
MAY 10, 2016

FROM: JAMES DICKHOFF, PLANNING DIRECTOR

PROJECT: APPEALS HEARING, WALMART REAL ESTATE BUSINESS TRUST IS APPEALING THE TOWN PLANNING DIRECTOR'S INTERPRETATION OF LAND USE DEVELOPMENT CODE SECTION 6.11. EXTERIOR LIGHTING, AND HIS FINAL DETERMINATION REGARDING THE NON-COMPLYING NATURE OF THE PARKING LOT LIGHTING AT THE WAL-MART DEVELOPMENT LOCATED AT 211 ASPEN VILLAGE DRIVE.

ACTION: TESTIMONY, DISCUSSION AND POSSIBLE ACTION

PURPOSE

Pursuant to the LUDC section 2.4.13.E, Walmart Real Estate Business Trust (the "Appellant"), through its Legal counsel, has submitted a "Notice of Appeal" appealing the Town Planning Director's interpretation of LUDC section 6.11.4 and his Final Determination regarding the non-complying nature of the parking lot lighting.

The Planning Director's determination being appealed by Walmart is the Interpretation of LUDC section 6.11.4 regarding the requirement to Conceal or Shield Light Sources from View, so as to minimize the potential for Light Beams, Diffusion and Glare from effecting Adjacent Properties. The Planning Director has identified the interior parking lot light sources are not compliant because such light sources are not shielded or concealed from view, resulting in unnecessary glare and diffusion onto existing adjacent residential and commercial properties.

It is important to note, that regardless of the TC's decision, discussions regarding an appropriate remedy for the lighting sources being concealed or shielded should not occur as part of the appeals hearing. If the TC determines the Director's interpretation is correct, then it is up to the APPELLANT (Walmart) to propose a remedy to the Planning Director.

It is recommended the Town Council make a determination on the Appeal, based on specific conditions as they relate to the LUDC section 6.11, Exterior Lighting.

On March 01, 2016 Town Council Approved Resolution 2016-06, "A Resolution and Order Regarding Procedures Governing the Appeal by Walmart Real Estate Business Trust, of the Administrative Decision of the Planning Department Director Regarding Parking Lot Lighting". The resolution set forth the procedures for conducting the Appeals Hearing.

Pursuant to LUDC section 6.11.C.1.a, the Board of Adjustments is the Appellate Decision Maker for **First Level of Appeal** regarding the Planning Director's final determination on the Walmart Exterior Lighting compliance issues.

Town Council is the Second Level of Appeal and the appellant has the right to file a **Judicial Appeal** of the Town Council's decision.

LUDC Section 2.4.13.G.3, Burden of Proof, "the Director's decision shall be presumed by the Board to be correct. Appellant has the burden of proof to show that a preponderance of the evidence before the Board supports the conclusion that the Director's Decision should be overturned. In considering whether Appellant has met this burden, the Board shall reverse, amend, or remand the Decision to the Director upon a finding that at least one of the grounds for appeal occurred, and the Decision(s) was materially affected thereby. The grounds for appeal that may be considered are the Director failed to properly interpret and apply the relevant provisions of the Town Code set forth in Section 6.11, LUDC.

LUDC 2.4.13.G.8. Decision. *Following the public hearing, the Appellate Decision-Maker or Town Council may, in whole or in part, affirm, reverse, or amend the decision being appealed based on the appeal criteria set forth in Section 2.4.13.H herein, and to that end the Appellate Decision-Maker or Town Council shall have all the powers of the Original Decision-Maker. The Appellate Decision-Maker may also remand the matter back to the Original Decision-Maker and the Town Council may remand the matter back to either the Original Decision-Maker or Appellate Decision-Maker, as deemed appropriate, for further proceedings consistent with the Land Use Code. The final decision shall be stated in writing in the body's minutes as well as in a written order to be delivered to the appellant and shall include specific findings of fact with specific reference to relevant standards as set forth in this Land Use Code.*

LUDC 2.4.13.H. Appeal Criteria, states *"The Appellate Decision-Maker or Town Council shall reverse, amend, or remand a decision upon a finding that the at least one of the grounds for appeal set forth in Section 2.4.13.D occurred, and that the final decision being appealed was materially affected thereby."*

POSSIBLE EXECUTIVE SESSION

The Town Council may decide to go into executive session for the purposes of receiving legal advice from the Town Attorney at any time the TC deems it necessary. The TC could decide to begin the hearing with an executive session for legal advice. Below is the formal motion for consideration:

"I motion the Town Council move into Executive Session, Pursuant to Colorado Revised Statute 24-6-402(4)(b) for the Purpose of Receiving Legal Advice Regarding the Walmart Appeal Hearing."

PUBLIC NOTICE

Public Notice for the MAY 10, 2016 Appeals Hearing was conducted as follows, ensuring a minimum 15-day notification period:

- 1) Posted on the subject property on April 25, 2016.
- 2) Posted at Town Hall on April 25, 2016.
- 3) Mailed to property owners within 300 feet of the subject property on April 25, 2016.
- 4) Published in the Pagosa Springs Sun Newspaper Too Late to Classify section on April 21, 2016.
- 5) Published in the Pagosa Springs Sun Newspaper Public Notice section on April 28, 2016.

BACKGROUND

On April 5, 2012, the Town received an application for Major Design Review for the then proposed Walmart development. The Design Review Board conducted 3 public hearings to consider the application on May 22, 2012, July 10, 2012 and August 21, 2012, resulting in the adoption of Resolution 2012-12, approving the proposed development plan. Walmart designated "Galloway" Planning, Architectural and Engineering firm as their representatives for the DRB application process. The Town then hired Bohannon Huston to conduct a third party planning review on behalf of the Town.

On August 21, 2012, the Design Review Board (DRB) conducted the third and last public hearing regarding the proposed Walmart development, and approved Resolution 2012-12, *"Setting forth findings of fact and conclusions and approving the Wal-Mart major Design Review Development Application"*.

On September 6, 2013, The Town issued a building permit for the development. Due to the challenges with the recently completed Tractor Supply Company Store parking lot lights, prior to the issuance of the WM building permit, the Town Planning Director discussed the proposed LED lighting Fixtures for the parking lot with Mr. Ryan James of Galloway, expressing concern over the visible light source issues the Town experienced at Tractor Supply. Mr. Ryan James expressed that the parking lot light fixtures designated would meet the Town's standards because of the new lighting technologies being used and the back shields that are used in the actual fixture. The Town Planning Director reminded Mr. Ryan James that the Town would inspect the lights for compliance with the LUDC visible light source regulations once installed.

In January 2015, The Planning Director conducted three physical site inspections, specifically to inspect the installed exterior parking lot lights. The Director inspected the installed lighting in accordance with the approved illumination plan, as to location number of pole/fixtures, height of poles and visible light source. During these inspections, the visible light source was determined to be non-complying with the Town's LUDC regarding visible light source.

On February 09, 2015 the Town Planning Director conducted follow-up site inspections with Jeff Pickard of Shames Construction and two Electricians from Bible Electric, to measure the off-site foot candle readings along the perimeter of the development. The Planning Director's findings indicated that for the most part, foot candle readings were consistent with the approved plans, however, there were a few locations that exceeded the approved plans and the Town's LUDC regulations. Based on this finding, it was later identified by Walmart's contractor(s) that some of the parking lot lighting fixtures were installed incorrectly.

On March 10, 2015, the Town Planning Director met Tasha Bolivar, Jim Galloway, Jeff Pickard, and the Walmart Electrician from Bible Electric on site to discuss the issues with the installed exterior parking lot lights as it related to the higher than allowed foot candles and the visibility of the light fixture light sources (light bulbs or LED boards). During that site visit, the Planning Director reviewed the concerns with the visible light source and discussed possible solutions with those in attendance. Jim Galloway and Tasha Bolivar had indicated they were proposing a different light fixture and that there were some of the same fixtures installed in New Mexico for physical examples. The Director received the New Mexico physical locations on June 2, 2015. The Planning Director continued to express concern over the visibility of the light source with the new proposed fixtures and asked for a few days to consider the issue further and draft a final determination regarding the parking lot lights compliance with the LUDC.

On March 23, 2015, the Town Planning Director issued his final determination of the exterior parking lot lights based on the interpretation of the LUDC. This determination is attached, and summarized, finds that there were a few locations the foot candle readings were above the approved levels and the interior parking lot lighting that the visibility of the light sources was non-complying with the LUDC. The Director included the Appeals process for the applicant's consideration in the final determination correspondence.

On April 3, 2015, pursuant to LUDC section 2.4.13.E, the Town Clerk received a "Notice of Appeal" from Walmart Real Estate Business Trust, requesting an Appeals Hearing regarding the Planning Director's final determination.

On April 16, 2015, pursuant to LUDC section 2.4.13.G.1, the Town Clerk received an opening brief from Walmart Real Estate Business Trust in support of an Appeal. This brief included a number of exhibits, which are all attached to his staff report.

On May 6, 2015, The Town Planning Director and Walmart agreed to a 90 day period to hold the Appeals Hearing after receipt of the "Notice of Appeal" instead of 60 days.

On June 30, 2015, The Board of Adjustments conducted the Appeals Hearing and unanimously *"approved to continue the Appeals Hearing to July 21, 2015 at 5:30 PM in the Town Hall to further consider the Appeal and, prior to that date, if not already done, all Board members should conduct an onsite visit."*

On July 21, 2015, The Board of Adjustments continued the Appeals Hearing with a motion carried by a vote of 3-2 (Members Martinez and Woodruff opposed) *"that the Board of Adjustments DENY the Walmart Appeal of the Planning Director's Determination, and find:*

- a. That the Director's interpretation of the intent of the Land Use Development Code, Section 6.11.4.A. and J. is correct regarding the requirements for concealing or shielding light sources so as to direct and confine all light beams to the subject property and away from nearby properties and the vision of passing motorist, and to minimize glare and unnecessary diffusion on adjacent properties;*
- b. That while the lighting design was anticipated to meet this standard, in operation it has failed, as light beams, glare and diffused light from the NE and SW corner parking lot perimeter lights and all interior parking lot lights are visible and do fall onto adjacent properties;*
- c. That reasonable steps are available to minimize such glare and unnecessary diffusion, including but not limited to alternate fixtures, installing modifications to current fixtures, and reducing pole height; and*
- d. That the Appellant is therefore in violation of Section 6.11.4.A, and J.; and*
- e. Direct staff to formalize the BOA's findings and determination as a "Written Order" for consideration of approval at the July 28, 2015 PC meeting."*

On July 30, 2015, pursuant to LUDC section 2.4.13.E, the Town Clerk received a "Notice of Appeal" from Walmart Real Estate Business Trust, requesting an Appeals Hearing regarding the Planning Directors final determination.

On August 28, 2015, the Planning Director, James Dickhoff and the Town Attorney, Bob Cole met with the Walmart design team and their attorney, to discuss solutions to the identified exterior lighting violation. A proposed process of developing and approving light modifications, was agreed to by all parties.

On October 22, 2015, Town Council approved extending the Appeals Hearing for 90 days, no later than January 26th unless an additional extension is approved, while they are working on a shielding solution for the parking lot lights.

On January 5, 2016, Town Council considered an additional 90 day appeals hearing extension, however, unanimously approved an extension till March 1, 2015.

On February 3, 2016, The Town Planning Director received an email correspondence from Tasha Bolivar of Galloway Architecture and Engineering, Wal-Mart's design Consultant, that included an attachment of a proposed shielding modification for specific existing parking light locations.

On February 8, 2016, the Planning Director provided a response correspondence regarding the above provided shielding plan with comments based on the proposal.

On February 25, 2016, the Planning Director James Dickhoff, Town Attorney Bob Cole and WM attorney Joey Lubinski conducted a phone conference call regarding the Appeal, request for Appeal and next steps for the design, testing, manufacturing and installation of a shielding device for the light fixtures determined to be in non-compliance with the Town Code, as interpreted by the Planning Director.

On February 28, 2016, the Planning Director received an email from Joey Lubinski that included a revised proposed exterior lighting shielding plan, for that was originally submitted on February 3, 2016

On March 7, 2016, The Planning Director provided a response correspondence to Walmart regarding the revised shielding plan submitted on February 28, 2016.

ORIGINAL "DESIGN REVIEW BOARD" APPLICATION REVIEW PROCESS

The Following was ADDRESSED During the original DRB review process in 2012

In preparation for the first DRB hearing on May 22, 2012, the Planning Director provided a correspondence dated May 15, 2012, to Tasha Bolivar of Galloway regarding the Town's comments regarding the proposed development and comments related to Bohannon Huston's Draft review of the Walmart development project as it relates to our LUDC. In that correspondence, item 24 states: *"Concern of light pollution from the surrounding properties has been expressed and is considerable. Though there is minimal footcandle illumination extending off site, the LUDC section 6.11.4.C. states "In no case shall exterior lighting add any footcandle illumination at any point off site."*

In the June 21, 2012 dated correspondence from Galloway, under #19, Walmart responds to the issue of A lights out policy as follows: *"Walmart Response: The light source proposed is LED or Light Emitting Diode. LED is considered a green and clean, energy efficient light source. In comparison to metal halide source lighting, LED is considered a more natural light and provides for more recognition of natural colors and definition of the site surroundings, which further enhances the safety of the customers. The levels of illumination have been provided on the site plan. To describe briefly, within the property line, the average is 1.42 footcandles with a maximum of 5.0. The foot-candle limit at all property lines is limited to less than 0.1 foot-candles. At any neighboring property, the foot-candle limit is 0.0. Wal-Mart is utilizing new technologies for back-light control and rotated optics to minimize light spillage and glare from the property. For additional details in regard to the proposed lighting plan, please refer to the tables provided on the Site Photometric Plan. The hours of illumination are proposed from dusk to dawn. Wal-Mart has not determined if outdoor site lights will be reduced or dimmed during any late night hours, or if the store operation will be limited to less than 24 hours."*

The DRB conducted the third DRB public hearing on August 21, 2012, approving **Resolution 2012-12**, *"Setting forth findings of fact and conclusions and approving the Wal-Mart major Design Review Development Application"*. Under findings of fact, Section 6.q states *"The Applicant submitted a modified lighting plan that prevents any foot-candle illumination at any point off site, which meets the requirements of Section 6.11.4.0 of the LUDC."* **Though the resolution indicated LUDC compliance with the foot-candle measurements, the visibility of light sources is a separate LUDC regulation.**

PLANNING DIRECTOR'S ANALYSIS

The specific identified violations of the exterior Walmart parking lot lights are:

- 1) The LED light sources (light bulbs or LED light boards) are not concealed or shielded to minimize diffusion on adjacent properties. Visible light sources are allowed with a 5-minute maximum motion detecting device.
- 2) Foot-Candle meter measurements indicate portions of the perimeter are higher than zero off-site. A foot-candle illumination plan has been approved by the DRB, however, a physical inspection is necessary to confirm compliance. Once the fixtures that Walmart identified as being installed incorrectly are corrected, A follow up physical inspection will be required to ensure compliance with the LUDC and approved foot-candle plan. This will be handled administratively, and is a separate issue from this Appeals Hearing.

PLEASE NOTE: It is important to note that the building wall mounted fixtures and the garden center lighting were not installed at the time of the above mentioned inspections. Although there are violations with some of these fixtures, these issues will be inspected administratively separate from this Appeals Hearing.

The Planning Director believes there are two general issues to consider at the Appeals Hearing:

- 1) Is the Town's Planning Directors interpretation of LUDC section 6.11 correct, regarding concealing or shielding visible light sources?
- 2) If the Planning Directors Interpretation of the lighting regulations is correct, are the installed exterior lights at Walmart compliant with LUDC section 6.11.4.?

LUDC 6.11.4. EXTERIOR LIGHTING DESIGN STANDARDS

The specific LUDC regulations interpreted by the Planning Director regarding the requirements to shield or conceal visible light sources are below:

LUDC 6.11.4. EXTERIOR LIGHTING DESIGN STANDARDS

Exterior lighting is not required except for purposes of public safety. However, if installed, all exterior lighting shall meet the following design standards:

- A. *All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding 90 degrees to minimize the potential for glare and unnecessary diffusion on adjacent property. For purposes of this provision, "cutoff angle" is defined as the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above from which no light is emitted.*
- B. *Parking lots and other background spaces shall be illuminated as unobtrusively as possible while meeting the functional needs of safe circulation and protection of people and property. Foreground spaces, such as building entrances and outside seating areas, shall utilize local lighting that defines the space without glare.*
- C. *In no case shall exterior lighting add any footcandle illumination at any point off-site.*
- D. *All outdoor light not necessary for security purposes shall be reduced, activated by motion sensor detectors, or turned off during non-operating hours.*
- J. *Any light used for illumination of signs, parking and security area, or for any purpose other than street lighting shall be arranged to direct and confine all light beams to the subject property and away from nearby properties and the vision of passing motorists.*
- L. *Visible light sources will be permitted with motion detecting devices so long as such lights, once activated, remain lit for no more than five minutes before deactivating.*

Historically Consistent Enforcement of Exterior Lighting Regulations

The Town Planning Department has been interpreting and administering the 2009 LUDC Exterior Lighting Regulations consistently since its adoption in February 2009. All projects, commercial and residential, are reviewed for compliance with the exterior lighting standards at the time of plan review and compliance is determined at the time the fixtures are installed and operational.

Concealing or shielding of light sources from view is specifically addressed at the time of the Planning Departments building permit plan review and physical inspection at the time of the final building permit inspection. Since 2009, a number of residential projects have been required to change their exterior lighting fixtures for compliance. In 2014, the

commercial Tractor Supply Development was required, after installation, to modify their lighting fixtures to ensure compliance with the shielding/concealing light sources LUDC regulations.

Light Fixtures

LED parking Lot light fixtures are fairly new to the industry and certainly new to Pagosa Springs, and the light output is much more visually intense than a traditional light bulb. Until the Tractor Supply store install LED Parking Lot Lights, the Town had not experienced the impacts of these newer light sources in exterior fixtures as it relates to impacts on neighboring properties, the intensity of the lights, and the limited (if any) options for shielding or concealing the visible light source from the lighting manufacturers.

The current fixtures do have a 90 degree cut off. The LUDC section 6.11.4.A. requires that fixtures have a “cut off angle not to exceed 90 degrees”, **however, a fixture with less than a 90-degree cutoff could result in compliance with the Town’s light source shielding/concealing regulation.**

As you drive through Town, you will notice many older lights have a cut off angle less than 90 degrees, resulting in a **recessed light bulb** (light source) up into the light fixture housing which provides shielding, concealing the light source.

Specific private corporation safety lighting standards are acceptable by the Town, as long as adjoining properties are not affected. The Planning Director suggests that safety and security lighting can be installed without affecting adjoining properties. Walmart does have provisions for more stringent lighting regulations as stated in their lighting guidelines, item #1 under “Initial site lighting layout photometric parameters” on page 4 of their document (Attachment A-8).

ATTACHMENTS

The following documents are labeled in coordination with your Appeals Hearing Binder tabs.

Introduction

- 1) Appeals Hearing Planning Director Staff Report
- 2) Resolution 2016-06

1- "Documents of Record" Associated with Notice of Appeal

- 1) LUDC section 2.4.13, Appeals
- 2) Notice of Appeal from Walmart Real Estate Business Trust
- 3) Walmart Opening Brief _Original from April 16, 2015
- 4) Planning Directors Final Determination regarding exterior lighting compliance
- 5) LUDC section 6.11, Exterior Lighting
- 6) Walmart's provided definitions of Glare
- 7) Walmart lighting guidelines

2- "Comments/Complaints" received prior to April 2, 2015 receipt of "Notice of Appeal".

- 1) Written Complaints received prior to April 3, 2015.

3- "DRB May 22, 2012" Documents associated with Original DRB Public Hearing

- 1) May 15, 2012 Correspondence from the Planning Director to Tasha Bolivar.
- 2) Walmart's responses to staff and Bohannon Huston's project comments, dated May 21, 2012.
- 3) Walmart illumination power point presentation, dated May 22, 2012.
- 4) Preliminary Lighting plans dated April 4, 2012

4- "DRB July 10, 2012" Documents associated with Original DRB Public Hearing

- 1) Revised Illumination Plan Dated June 12, 2012.
- 2) Correspondence from Carl Schmidlein of Galloway responding to Town review comments, dated June 21, 2012.
- 3) Amended Bohannon Huston review of re-submitted plans, dated July 3, 2012.
Walmart illumination power point presentation, dated July 10, 2012

5- "DRB August 21, 2012" Documents associated with Original DRB Public Hearings

- 1) Walmart response to July 10, 2012 DRB meeting minutes.
- 2) Walmart illumination power point presentation, dated August 21, 2012.
- 3) The Edge LED Area Light fixture product information sheet.
- 4) Revised Illumination Plan Dated August 13, 2012.

6- "DRB Final Approval" Associated Documents

- 1) Resolution 2012-12, "Setting forth findings of fact and conclusions and approving the Walmart major Design Review Development Application".
- 2) Galloway response to DRB Resolution 2012-012, dated April 11, 2013.
- 3) Site Plan Approval from the Town, dated May 08, 2013.
- 4) Final approved illumination plan, dated December 18, 2012.

ALTERNATIVE ACTIONS

The Planning Director Recommends the Town Council consider the facts and testimony as presented at the appeals hearing, for the determination on the appeal. At the TC's discretion, the TC may either, on its own motion or at the request of any party in interest, continue the appeals hearing to a fixed date, time and place. Below are alternate actions for the DRB's consideration.

The following 4 ALTERNATIVE ACTIONS are for the TC's consideration only, as the TC is not limited to these options.

1. "I move that the Town Council DENY the Walmart Appeal of the Planning Director's Determination, and find:
 - a. That the Director's interpretation of the intent of the Land Use Development Code, Section 6.11.4.A. and 6.11.4.J. is CORECT regarding the requirements for concealing or shielding light sources so as to direct and confine all light beams to the subject property and away from nearby properties and the vision of passing motorist, and to minimize glare and unnecessary diffusion on adjacent properties;
 - b. That while the lighting design was anticipated to meet this standard, in operation it has failed, as light beams, glare and diffused light from the NE and SW corner parking lot perimeter lights and all interior parking lot lights are visible and do fall onto adjacent properties;
 - c. That reasonable steps are available to minimize such glare and unnecessary diffusion, including but not limited to alternate fixtures, installing modifications to current fixtures, and reducing pole height; and
 - d. That the Appellant is therefore in violation of Section 6.11.4.A, and 6.11.4.J.; and
 - e. Direct staff to formalize the Town Council's findings and determination as a "Written Order" for consideration of approval at the April 21, 2016 Town Council meeting."

2. "I move that the Town Council APPROVE the Walmart Appeal of the Planning Director's Determination finding the Planning Director FAILED to properly interpret the intent of the Land Use Development Code regarding the requirement for screening or concealing visible light sources and that in design and operation the parking lot lighting is in compliance with Section 6.11.4 of the Land Use and Development Code, and further directs staff to formalize the Town Council's findings and determination as a "Written Order" for consideration of approval of such at the April 21, 2016 Town Council meeting."

3. "I move that the Town Council APPROVE the Walmart Appeal of the Planning Director's Determination, and find:
 - a. That the Director's interpretation of the intent of the Land Use Development Code, Section 6.11.4.A. and J. is CORRECT regarding the requirements for concealing or shielding light sources so as to direct and confine all light beams to the subject property and away from nearby properties and the vision of passing motorist, and to minimize glare and unnecessary diffusion on adjacent properties;
 - b. But further find that the lighting as designed and in operation meets such standards, as all reasonable steps have been taken to minimize such glare and unnecessary diffusion;
 - c. That the Applicant has complied with Section 6.11.4. of the Land Use Development Code; and
 - d. Direct staff to formalize the Town Council's findings and determination as a "Written Order" for consideration of approval of such at the April 21, 2016 Town Council meeting."

4. "I move that the Town Council continue the Appeals Hearing on (May 3, 2016) at 5:00pm in Town Hall to further consider the Appeal and a final determination."

**TOWN OF PAGOSA SPRINGS, COLORADO
TOWN COUNCIL**

RESOLUTION NO. 2016-06

**A RESOLUTION AND ORDER REGARDING PROCEDURES
GOVERNING THE APPEAL BY WAL-MART REAL ESTATE BUSINESS TRUST, OF
THE ADMINISTRATIVE DECISION OF THE TOWN PLANNING DEPARTMENT
DIRECTOR REGARDING PARKING LOT LIGHTING**

RECITALS

A. WHEREAS, on July 30, 2015, Wal-Mart Real Estate Business Trust (the "Appellant") submitted, pursuant to Section 2.4.13.G.1. of the Town of Pagosa Springs ("Town") Land Use and Development Code ("LUDC") a Notice of Appeal ("Notice") of the decisions contained in a letter dated March 23, 2015 ("Decision") of James Dickhoff, Town Planning Department Director ("Director"), that aspects of the parking lot lighting associated with the Appellant's 94,000 square-foot retail/grocery store (the "Project") located within the Town, are not in compliance with the LUDC (Appellant's appeal of the Decision being referred to as the "Appeal"); and

B. WHEREAS, the Director and the Appellant wish to stipulate to certain procedural aspects of this Appeal; and

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, as follows:

ORDER

1. Parties to the Appeal are the Appellant and the Director. Pursuant to the procedures set forth in Section 2.4.13, LUDC, no other parties-in-interest are Parties to this Appeal

2. The hearing on the Appeal will be heard pursuant to Section 2.4.13 of the LUDC.

3. The hearing will be held on Tuesday, March 01, 2016, at 5:00 p.m., before the Town Council, in the Town Board Chambers, Town Hall, 551 Hot Springs Blvd., Pagosa Springs, Colorado 81147.

4. The issues on Appeal are limited to the issues raised in the Notice, and as further supplemented and developed in Appellants' opening brief as set forth below. No additional issues will be heard by Town Council ("Board").

5. The Appeal will be considered based on the record before the Director at the time of the Decision, as set forth in Section 2.4.13.G.2., LUDC (the "Record"). Portions of the Record upon which the Appellant wishes the Board to consider have been designated as of June 24, 2015, and supplied in compliance with Section 2.4.13.G.6.b., LUDC, and the Parties stipulate that such portions of the Record are admissible. No new or additional evidence will be presented unless specifically requested by a Party and approved by the Board. The Record has been made available to the Parties. Any copies or reproduction of the Record shall be at the expense of the Party requesting the same. If requested, any oversized copies, copies of audio recordings, digital records, or other portions of the record not easily reproduced because of size or format shall be copied and provided pursuant to the Town's policy

regarding records requests under the Colorado Open Records Act, although such copies shall be made available as soon as possible.

6. Requests to present additional evidence outside the Record are discouraged, and will be decided in the discretion of the Board only upon a showing that such evidence could not have reasonably been presented to the Director, and is not repetitive of evidence already within the Record. Any request to present additional evidence shall be made at the time of the Hearing. Such request shall state the nature of the evidence desired to be introduced, and the reason such evidence was not introduced in proceedings before the Director, and include a copy of documents or summary of oral evidence which is the subject of the request. The Board shall consider arguments opposing the request and make a determination of whether the Record shall be supplemented with such additional evidence.

7. Members of the Board will be allowed to take judicial notice of their own observations of the current status of the Appellant's parking lot lighting for the Project. If either Party or the Board on its own initiative wishes the Board to jointly visit the Project to observe the lighting, neither Party will object to such site visit so long as precautions are observed to avoid ex parte communications with Board members.

8. Applicant filed its pre-hearing Appeal Brief on July 30, 2015. The Director did not file a response brief and the time for doing so pursuant to the LUDC has expired. There shall be no additional briefs filed in this Appeal.

9. At the hearing, the presentation order shall be as set for the in Section 2.4.13. G.6., LUDC, as follows:

- (a) The Director shall have 15 minutes to provide an overview of the original application.
- (b) Appellant will have a total of 30 minutes to present information in support of the appeal.
- (c) The Director will have 30 minutes in which to present a response to the appeal and Appellant's presentation, as well as a staff report that includes a written recommendation.
- (d) Appellant will together have 15 minutes to rebut the Director's presentation.
- (e) Thereafter, arguments will be closed and Board may ask questions of either or both Parties.

10. Pursuant to Section 2.4.13.G.3., LUDC, the Director's decision shall be presumed by the Board to be correct. Appellant has the burden of proof to show that a preponderance of the evidence before the Director supports the conclusion that the Director's Decision should be overturned. In considering whether Appellant has met this burden the Board shall reverse, amend, or remand the Decision to the Director upon a finding that at least one of the grounds for appeal occurred, and the Decisions was materially affected thereby. The grounds for appeal that may be considered are the Director failed to properly interpret and apply the relevant provisions of the Town Code set forth in Section 6.11, LUDC.

11. Only the Parties shall provide argument or respond to Board questions. Arguments, rebuttals and responses to Board questions may be given by the Parties directly or through those persons

or representatives that the Parties deem best qualified to present specific information or answer questions asked by Board.

12. At the conclusion of the Parties' arguments and Board questions and discussion, if any, Board may make a decision or take the matter under advisement until a future public meeting, the date and time of which shall be announced before moving to other Board business or temporarily adjourning the proceedings. The Board's decision on the Appeal shall be affirmed in writing, and served on the Parties by email and published on the Town's website as set forth in Section 2.4.13.G.9., LUDC.

ADOPTED AND ORDERED THIS 1st DAY OF MARCH, 2016 BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, BY A VOTE OF 6 IN FAVOR, 0 AGAINST.



TOWN OF PAGOSA SPRINGS
Town Council

By: _____

Don Volger, Mayor

Attest:

April Hessman, Town Clerk

The Following “Documents of Record” are associated with the Notice of Appeal received on July 30, 2016

- 1) Notice of Appeal From Wal-Mart Real Estate Business Trust**
- 2) Wal-Mart Opening Brief _Original Dated April 16, 2015**
- 3) Planning Directors Final Determination regarding exterior lighting compliance**
- 4) LUDC section 2.4.13**
- 5) LUDC section 6.11 Exterior Lighting**
- 6) Wal-Mart's provided definitions of Glare**
- 7) Wal-Mart lighting guidelines**

NOTICE OF APPEAL

Pursuant to Section 2.4.13 of the Pagosa Springs Land Use and Development Code (the “LUDC”), Wal-Mart Real Estate Business Trust (the “Appellant”) hereby submits this Notice of Appeal (this “Notice”).

Appellant. Appellant is the developer and owner of the real property and improvements subject to the Final Decision (defined below).

Final Decision. The “final decision” being appealed is set forth in the letter from Mr. James Dickhoff, Planning Department Director, Town of Pagosa Springs (the “Director”), to Ms. Donna Mizelle, Senior Project Manager, Wal-Mart Real Estate Business Trust, attached hereto as Exhibit 1 (the “Final Decision”). The Final Decision was appealed to the Board of Adjustment, which denied said initial appeal by a vote of 3-2 on July 21, 2015 (the “BOA Decision”). As of the date that this Notice of Appeal is submitted, a written resolution of the BOA Decision (or minutes of the July 21, 2015 hearing) has not been issued.

Date of Final Decision. The Final Decision is dated March 23, 2015, however it was not delivered to Appellant until March 25, 2015 (via email). The BOA Decision was issued on July 21, 2015.

Appellant Contact Information. As noted above, the Appellant is the developer and owner of the real property and improvements subject to the Final Decision. The Appellant’s contact information is as follows:

Wal-Mart Real Estate Business Trust
Attn: Ms. Donna Mizelle, Senior Project Manager
2001 SE 10th Street
Bentonville, Arkansas 72716
479.204.0325
donna.mizelle@wal-mart.com

Appellant requests that any correspondence or other materials sent to the Appellant regarding this appeal also be sent to:

Galloway
Attn: Ms. Tasha Bolivar, Sr. Site Development Coordinator
6162 S. Willow Drive, Suite 320
Greenwood Village, Colorado 80111
303.770.8884
tashabolivar@gallowayus.com
[Planning consultant for Appellant]

And:

Ballard Spahr LLP
Attn: Joseph Lubinski
1225 17th Street, Ste 2300
Denver, Colorado 80202
303.299.7359

lubinskij@ballardspahr.com
[Attorneys for Appellant]

Summary of Grounds for Appeal. Pursuant to Section 2.4.13.D of the LUDC, valid grounds for appeal of a “final decision” include an alleged failure of the decision-maker to properly interpret and apply relevant provisions of the LUDC. As discussed below, the Appellant believes such failure occurred in the issuance of the Final Decision.

Background. Appellant is the owner and developer of certain property within the Town of Pagosa Springs (the “Town”) identified as Lot 1, Block 3, Aspen Village (the “Property”). On April 5, 2012, Appellant submitted a Major Design Review Application (the “Application”) proposing the development of a retail/grocery store on the Property (the “Project”). Following extended and comprehensive review of the Application and Town staff, which resulted in multiple revisions to Appellant’s plans for the Project, multiple community meetings, and an extended public hearing in front of the Design Review Board, the Design Review Board approved the Project pursuant to Resolution No. 2012-12 (the “Approval Resolution”). The Approval Resolution was appealed by a member of the community and was upheld by the Town Council pursuant by Resolution No. 2012-17. Based on the Approval Resolution and in reliance on the findings and conclusions included therein, Appellant commenced construction of the Project in the summer of 2014 and has now substantially completed all elements of the Project.

Final Decision. As described in the Final Decision, the Director has undertaken various inspections of the Project. As part of those inspections, the Director has concluded that the parking lot lighting for the Project does not comply with various standards set forth in Section 6.11.4 of the LUDC. Though not expressly set forth in the Final Decision, the Town’s proposed remedy for these alleged non-compliance issues is for the Appellant to install shielding around the light source of the parking light structures on the Property so as to limit the “glare” emitted by such lights. Prior to issuance of the Final Decision, Appellant informed the Director that such resolution was not reasonable as such post-installation shielding would (a) create unsafe lighting conditions on the Property and (b) cause the manufacturer’s warranty on the lighting to be voided. The Final Decision was appealed to the Board of Adjustment pursuant to a Notice of Appeal received by the Town on April 2, 2015. The Board of Appeals held a hearing on the initial appeal of the Final Decision on June 30, 2015, which hearing was then continued to July 21, 2015. The BOA Decision was made on July 21, 2015.

Grounds for Appeal. As part of the Application, Appellant submitted a modified lighting plan for the Project that was thoroughly reviewed by Town staff. Appellant made many revisions to the lighting plan and other Project plans in response to comments and concerns raised by Town staff and Town consultants prior to the adoption of the Approval Resolution. Indeed, Bohannon Huston, Inc., the contract plan reviewer for the Town, made specific comments regarding the lighting plan that required revisions thereto prior to the adoption of the Approval Resolution. As a result, the Approval Resolution specifically found that “The Applicant submitted a modified lighting plan that prevents any foot-candle illumination at any point off site, which meets the requirements of Section 6.11.4.C of the LUDC” (Approval Resolution §6(q)) and more generally found that “... the Application has met all applicable requirements of the LUDC and Municipal Code.” (Approval Resolution §10). Moreover, the Approval Resolution set forth various post-approval conditions for the Project regarding, among other things, further review and approval of various plans. Notably, the Approval Resolution did not impose any further revisions or requirements pertaining to lighting of the Project.

Notwithstanding the foregoing, and despite Appellant’s reliance on the terms of the Approval Resolution, the Final Decision essentially disregards the Town’s prior approval of the lighting plan for the Project and seeks to impose a new interpretation of the standards and requirements of Section 6.11.4 of

the LUDC. Such a post-construction, de novo review and interpretation of the LUDC constitutes a failure to properly interpret and apply the LUDC. Such interpretation also sets an impossible standard for compliance as there is no objective, pre-construction/installation for a property owner to be assured that its proposed lighting is LUDC-compliant. Moreover, the alleged violations described in the Final Determination result from a fundamentally improper interpretation of the LUDC that, if accepted and imposed by the Town, would result not only in additional costs to the Appellant, but also the voiding of valuable warranties and, most importantly, the creation of a potentially unsafe parking lot as a result of the narrowing of the cast of light from each lighting source. The Town cannot and should not interpret the lighting limitation of its LUDC in such a fashion as to create unsafe, dimly lit parking areas in front of retail operations.

All of the foregoing will be more fully described and substantiated in the brief to be submitted by Appellant pursuant to Section 2.4.13.G.1.

Respectfully submitted this 30th day of July, 2015, to April Hessman, Town Clerk for the Town of Pagosa Springs, Colorado.

WAL-MART REAL ESTATE BUSINESS TRUST

By: 
Name: Robert Stoker
Title: V. P. of Real Estate

Exhibit 1

Final Decision

(See Attached)



551 Hot Springs Boulevard
Post Office Box 1859
Pagosa Springs, CO 81147
P: 970.264.4151
F: 970.264.4634

Town of Pagosa Springs
Building and Planning
Department

Date: March 23, 2015
To: Donna Mizelle
Re: Wal-Mart Store development in Pagosa Springs

Dear Donna,

This correspondence is in regards to the parking lot light inspections I have conducted, and determinations made as to compliance with the Town's exterior lighting regulations. Many of these issues were identified in previous correspondences dated January 27, 2015 and January 29, 2015, in addition to numerous phone conversations with you and/or Tasha Bolivar, Ryan James and Jim Galloway.

During the month of January 2015, I conducted three preliminary parking lot inspections, which were documented in correspondences dated January 27, 2015 and January 29, 2015. Additional parking lot lighting inspections were conducted on February 09 and March 10, 2015, which revealed the following conditions:

- a. The perimeter parking lot lights are compliant with the Town's Land Use Development Code (LUDC) exterior lighting standards in regards to Visual Light Source, with the exception of the SW corner light and the NE corner light (as noted in note c below).
- b. The interior parking lot lights, are not compliant with the LUDC in regards to Visual Light Source, as follows:
 - ~ Per LUDC section 6.11.4.A; All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding 90 degrees to minimize potential for glare and unnecessary diffusion on adjacent properties.
 - ~ Per LUDC section 6.11.4.D; All outdoor light not necessary for security purposes shall be reduced, activated by motion sensor detectors or turned off during non-operating hours.
 - ~ Per LUDC section 6.11.4.I; Visible Light sources will be permitted with motion detecting devices so long as such lights, once activated, remain lit for no more than five (5) minutes before deactivating.
- c. The foot-candle meter readings along the perimeter of the property indicate levels of .1 - .4 foot-candles with the exception of the NE and SW corner lights, which meter readings indicated a 1.4 foot-candle reading. These foot-candle readings exceed the Town approved Walmart photo metric plan submitted on May 09, 2013, and formally approved by the Town on August 21, 2012, and further exceed the LUDC limits for off-site foot-candle readings. With the exception of the SW and NE corner perimeter lights, it would appear the other foot-candle readings are the result of the visible light source glare being emitted from the interior parking lot lights.
 - ~ Per LUDC section 6.11.4.C; Exterior lighting standards which states: "In no case shall exterior lighting add any foot-candles illumination at any point off-site".

As far as the NE and SW corner lights, the SW corner light provides glare and illumination onto the Townhome properties on the south side of Aspen Village Drive. The NE light does provide substantial illumination across Aspen Village Drive onto the neighboring vacant lot. A remedy to these conditions is required.

- ~ Per LUDC section 6.11.4.A; All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding 90 degrees to minimize potential for glare and unnecessary diffusion on adjacent properties.

- d. The exterior wall mounted building lights were not functional during these inspections. These lights will be inspected at time of operation, though no issues are anticipated as these lighting fixtures are designed to provide down lighting only. The results of this future inspection are to be determined.

Since the January inspections, I was notified by Galloway that a few issues were discovered as the Wal-Mart design team looked further into the Town's concerns, which may have included, some LED boards were manufactured improperly, some lights may have been installed incorrectly, and a few light fixtures required rotation. During the March 10, 2015 inspection, it was revealed that these issues would be corrected and that I would be notified as soon as they were completed. Once these corrections are completed, an additional Foot Candle Reading and visible light source inspection will be required. Please notify the Town Planning Office for scheduling a re-inspection. I do appreciate the prompt response to correct the above items.

During the March 10, 2015 inspection, I met with Tasha Bolivar, Jim Galloway and Jeff Pickard on site to look at other LED light bar options. During that inspection, we looked at two additional kelvin rated LED light boards that were installed for comparison purposes. Two 4500 kelvin rated lights and two 3500 kelvin rated lights were installed among the existing 5500 kelvin lights.

During my inspection, I was able to recognize a more amber colored light emission from the lower kelvin rated lights, however, I was unable to recognize a reduction in the visible light source from off-site locations, when comparing to the 5500 kelvin rated installed light bars, thereby not conforming to the LUDC.

It's my understanding that Mrs. Bolivar communicated to our town Manager, Greg Schulte, that any light panels lower than 3,500 kelvin would either violate Wal-Mart's internal safety lighting standards or not be consistent with national standards or best practices. If you have such documentation, please forward them to our attention for consideration, however, be aware that pursuant to the LUDC, light sources should not be visible from off-site and should not intrude onto adjacent properties.

As noted above, items "b" and "c" are not compliant with the LUDC. We would like to discuss possible remedies.

With all that said, you should be aware there is an appeals process you may proceed with if you believe I have made an incorrect exterior lighting compliance determination. That appeals process has been attached to this correspondence for your convenience. In full disclosure, the appeals process could take more than a month and we understand the urgency to meet the Grand Opening date of April 22nd.

With that in mind, we look forward to working with you to arrive at a solution and we are open to having a financial security bond posted in the event we need to issue a Temporary Certificate of Occupancy while this issue is resolved.

We appreciate all of your assistance during the final stages of the Pagosa Springs Walmart Store completion. Please contact me with any questions.

Thank You, Respectfully,


James Dickhoff

Town of Pagosa Springs
Planning Department Director
Po Box 1859
551 Hot Springs Blvd.
Pagosa Springs, Co. 81147
970-264-4151 x225

jdickhoff@pagosasprings.co.gov

2.4.13. APPEALS (as adopted pursuant to Ordinance 805)

A. Purpose

This Section sets forth the process for appealing final decisions made under this Land Use Code.

B. Definitions

1. *Appellant* shall mean a party-in-interest who has taken an appeal from the Original Decision-Maker to the Appellate Decision-Maker, or from the Appellate Decision-Maker to the Town Council by the timely filing of a notice of appeal.
2. *Appellate Decision-Maker* shall mean the board or commission to which a decision made under this Land Use Code has been appealed.
3. *Applicant* shall mean the person who or organization which submitted the original application to the Original Decision-Maker.
4. *Final decision* shall mean the action of the Director, or a board, commission, Town Council or other decision-maker by a vote of a majority of its members when no further rehearing is available before such board, commission, or other decision-maker; provided, however, that a recommendation to the Town Council from a board, commission or other decision-maker shall not be considered as a final decision of that board, commission, or other decision-maker.
5. *Original Decision-Maker* shall mean the Director or other administrator, Board, or commission that made an initial decision on an application pursuant to this Land Use Code.
6. *Party-in-interest* shall mean a person who or organization which has standing to appeal the final decision of the Original Decision-Maker or Appellate Decision-Maker. Such standing to appeal shall be limited to the following:
 - a. The applicant;
 - b. Any party holding a proprietary or possessory interest in the real or personal property which was the subject of the decision being appealed;
 - c. Any person to whom or organization to which the Town mailed notice of either the hearing of the Original Decision-Maker or the appeal hearing before the Appellate Decision-Maker; and

d. Any person who appeared and submitted testimony or evidence before the Original Decision-Maker's hearing or the appeal hearing before the Appellate Decision-Maker.

7. *Town Council* shall mean the Town Council of the Town of Pagosa Springs serving in its role as decision-maker for an appeal of the Appellate Decision-Maker's final decision.

C. **Appeals.** Appeals of land use decisions are available at each step of review and decision-making. Administrative decisions may be appealed to the appropriate board or the Planning Commission, and decisions of any board or the Planning Commission may be appealed to the Town Council, as further set forth in this Section 2.4.13.C.

1. **First Level of Appeal – Appeals of Administrative Decisions.**

a. **General.**

A denial by the Director of a permit or other approval sought pursuant to this Land Use Code may be appealed by the applicant to the Board of Adjustments, except that decisions regarding sign regulations and administrative design review may be appealed to the Design Review Board and decisions regarding minor subdivision final plat applications, conditional use permits, and floodplain development permits may be appealed to the Planning Commission.

b. **Appeals of Floodplain Administrator Decisions.**

Decisions of the Floodplain Administrator may be appealed by the applicant to the Planning Commission.

2. **Second Level of Appeal - Appeals to Town Council.**

Decisions made by the Board of Adjustments, the Design Review Board, the Planning Commission, or any other board or commission pursuant to this Land Use Code may be appealed to the Town Council by a party-in-interest.

3. **Judicial Appeals of Town Council Decisions.**

Any party-in-interest may appeal a final decision of the Town Council made pursuant to this Land Use Code to the court of jurisdiction.

D. **Grounds for Appeal.** The permissible grounds for appeal shall be limited to allegations that the Original or Appellate Decision-Maker committed one (1) or more of the following errors:

1. Failed to properly interpret and apply relevant provisions of the Town Code or Charter.
2. Failed to conduct a fair hearing in that:
 - a. The Original or Appellate Decision-Maker abused its discretion as contained in the Town Code or Charter;
 - b. The Original or Appellate Decision-Maker substantially ignored its formally established rules of procedure resulting in a denial of procedural due process; or
 - c. The Original or Appellate Decision-Maker based its decision on evidence which was substantially false or grossly misleading.

E. Notice of Appeal.

1. Appeals shall be made within ten (10) days of the final decision which is the subject of the appeal. All appeals shall be filed in writing with the Town Clerk and shall include the following:
 - a. If the appeal is filed by the applicant and the original application was filed by multiple individuals or entities, all of the original applicants must sign the appeal;
 - b. The final decision of the Original Decision-Maker; or if the appeal is to the Town Council, the final decision of both the Original Decision-Maker and Appellate Decision-Maker, and identifying which decision(s) is(are) the subject of the appeal;
 - c. The date(s) of such final decision(s);
 - d. The name, address, telephone number and relationship of each appellant to the subject of action of the Original Decision-Maker; or if the appeal is to the Town Council, the name, address, telephone number and relationship of each appellant to the subject of action of the Original Decision-Maker and Appellate Decision-Maker;
 - e. The grounds for the appeal, including specific allegations of error and a summary of the facts contained in the record on appeal which support those allegations;
 - f. In the case of an appeal alleging under Section 2.4.13.D.2.c. that the Original Decision-Maker or Appellate Decision-Maker based its decision on evidence that was substantially false or grossly misleading, references to the record in support of this allegation; and

2. **Record on Appeal.** Any appeal under this Section 2.4.13 shall be an appeal on the record of the hearing before the Original Decision-Maker, or the Appellate Decision-Maker if the appeal is before the Town Council. The record provided to the Appellate Decision-Maker or Town Council, as applicable, shall include the following:
 - a. All exhibits, including without limitation, all writings, drawings, maps, charts, graphs, photographs, and other tangible items received or viewed by the Original Decision-Maker and, if the appeal is before the Town Council, any items received or viewed by the Appellate Decision-Maker; and
 - b. A recording or verbatim transcript of such proceedings before the Original Decision-Maker, and if the appeal is before the Town Council, the Appellate Decision-Maker.
3. **Burden of Proof.** Any final decisions of the Original Decision-Maker and Appellate Decision-Maker shall be presumed to be correct. The appellant has the burden of proof to show that a preponderance of the evidence introduced before the Original Decision-Maker or Appellate Decision-Maker supports the conclusion that the decision should be overturned based on the criteria set forth in Section 2.4.13.H.
4. **Appeal Hearing.**
 - a. The Director shall schedule a public hearing on the appeal no later than sixty (60) days after the date the appeal was filed with the Town Clerk. The appeal hearing may be extended up to ninety (90) days after the filing of the appeal if agreed to by both the Director and the appellant.
 - b. Notice of the public hearing shall be published on the Town's official website no fewer than fifteen (15) days prior to the scheduled hearing date. Written notice of the appeal hearing shall also be mailed to the appellant, the applicant, and all property owners and mineral estate owners and lessees required to receive notice pursuant to Sections 2.3.6.D and E. All such notices shall meet the requirements of Section 2.3.6.A. of this Land Use Code.
5. **Pre-Hearing Procedures.**
 - a. **Procedural Issues.** Prior to the date of the appeal hearing, the Appellate Decision-Maker or Town Council, as applicable, may establish any procedural rules related to the appeal hearing, including but not limited to, the possible introduction or exclusion of certain evidence, the period of time to be allowed for presentation of arguments on the merits of the appeal and any concerns or objections related to the record on appeal. On its own

initiative or for good cause shown by any party to an appeal, the Appellate Decision-Maker or Town Council may order the modification of any procedural requirements of this Section 2.4.13 so long as such modification does not shorten a time period, or eliminate or reduce a party's ability to file a notice, brief, or appeal, or present or defend an appeal.

- b. **Consolidation of Multiple Appeals.** In the event of multiple appeals involving the same final decision, prior to the appeal hearing, the Appellate Decision-Maker or Town Council, as applicable, may consolidate the appeal or otherwise modify the procedures contained in Section 2.4.13.G.6 as necessary.

6. **Order of Proceedings at Appeal Hearing.** The order of the proceedings at the appeal hearing shall be as follows:

- a. **Director Overview.** The Director shall have fifteen (15) minutes to provide an overview of the original application.
- b. **Appellant Presentation.** The appellant shall have a total of thirty (30) minutes to present information in support of the appeal, subject to the determination of the Appellate Decision-Maker or Town Council as to relevance. Copies of all portions of the record that the appellant wishes the Appellate Decision-Maker or Town Council to consider must be submitted to the Director no fewer than five (5) working days before the public hearing.
- c. **Staff Report Presented.** The Director and Town staff shall have a total of thirty (30) minutes in which to present a response to the appeal and appellant's presentation, as well as a staff report that includes a written recommendation. This recommendation shall address each standard required to be considered by this Land Use Code applicable to the original application.
- d. **Appellant Response.** The appellant shall have a total of fifteen (15) minutes to rebut any presentation by the Town.
- e. **Questions.** Following the presentations and rebuttals, the arguments will be closed and the Appellate Decision-Maker or Town Council, as applicable, may ask questions of the Town staff, the appellant, and any parties-in-interest.

7. **Conduct of Public Hearing.**

- a. **Presentation Time Periods.** The time periods set forth in Section 2.4.13.G.6 herein may be extended by the Appellate Decision-Maker or Town Council, as applicable, based on the complexity of the issues raised in the notice of appeal, the length of the record on

means. A copy of the record of the appeal may be acquired by any person upon application to the Director and payment of a fee to cover the cost of duplication of the record.

b. The Record. The record of the appeal shall consist of the following:

- (1) The record of the Original Decision-Maker which was appealed;
- (2) Any supplemental evidence approved by the Appellate Decision-Maker or Town Council, including any exhibits, writings, drawings, maps, charts, graphs, photographs, and other tangible items received or viewed at the proceedings by the Appellate Decision-Maker, or the Town Council if the appeal is before the Town Council;
- (3) Any briefs submitted by the parties;
- (4) All minutes of the proceedings;
- (5) If appealed to the Town Council, the recording or a verbatim transcript of the proceedings before the Appellate Decision-Maker. The cost of the transcript shall be borne by the party appealing the decision.

H. Appeal Criteria.

The Appellate Decision-Maker or Town Council shall reverse, amend, or remand a decision upon a finding that the at least one of the grounds for appeal set forth in Section 2.4.13.D occurred, and that the final decision being appealed was materially affected thereby.

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Fax: 303.296.3956
lubinskij@ballardspahr.com

April 16, 2015

Via E-mail (ahessman@pagosasprings.co.gov)

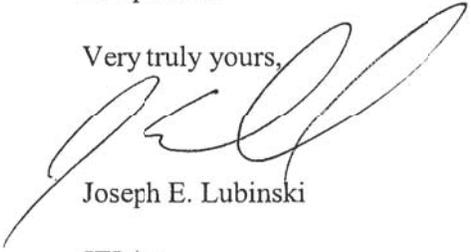
Ms. April Hessman
Town Clerk
Town of Pagosa Springs

Re: Walmart/Town of Pagosa Springs/Brief in Support of Appeal

Dear Ms. Hessman:

On behalf of Wal-Mart Real Estate Business Trust, the appellant, attached is our opening brief in connection with the appeal of the Town's March 25, 2015 determination regarding lighting compliance.

Very truly yours,



Joseph E. Lubinski

JEL/ee
Attachment

cc: Bob Cole (RCole@CCCFIRM.COM)

APPEAL BRIEF

Pursuant to Section 2.4.13.G.1 of the Pagosa Springs Land Use and Development Code (the “**LUDC**”), Wal-Mart Real Estate Business Trust (the “**Appellant**”), through its counsel, hereby submits this Opening Brief in connection with its appeal of the administrative decision issued by the Town of Pagosa Springs (the “**Town**”) Planning Department Director (the “**Director**”) more particularly described below.

Issue for Appeal. As set forth in Appellant’s Notice of Appeal dated April 2, 2015, the Appellant is appealing a post-construction change in interpretation of Section 6.11.4 of the LUDC. The administrative decision forming the basis for this appeal is set forth in a memorandum delivered March 25, 2015 to the Appellant by the Director, a copy of which is attached as Exhibit A.

Background – Application and Approval. On April 5, 2012, Appellant submitted a Major Design Review Development Application (the “**Application**”) proposing to develop certain property in the Town currently identified as Lot 1, Block 3, Aspen Village (the “**Property**”). As a “Major Design Review” application, the Application was required to include significant detail regarding the proposed development of the Property, including, without limitation, detailed information regarding the proposed parking lot lighting for the Property, so that the Town could evaluate the Application’s compliance with the various development standards of the LUDC. As with the other portions of the Application, the lighting plans and information contained in the Application were reviewed by Bohannan Huston, Inc., the Town’s hired consultant, the Town staff, including the Director, and the Design Review Board (the Town body charged with reviewing the Application). This review of the Application, specifically including the information and plans relating to lighting, included a detailed analysis by Bohannan Huston summarized in a report dated May 16, 2012, numerous revisions to the lighting plans by the Appellant at the direction of Town staff, and specific discussion with the Design Review Board at the public hearing initially held on May 22, 2012, and continued July 10, 2012 and August 21, 2012. At the continued public hearing on August 21, 2012, the Design Review Board passed Resolution No. 2012-12 approving the development plan for the Property as set forth in the Application (the “**Project**”) and, specifically, approving the lighting plan for the Project. In reliance on the validity of the approval of the Application, and after satisfying a number of post-approval conditions, the Appellant commenced construction of the Project in June 2014 and expects to complete all construction and open the retail store before the end of April 2015.

Lighting Plan Requirements and Submissions. Section 6.11 sets forth the exterior lighting requirements of the LUDC. A complete copy of Section 6.11 of the LUDC is attached hereto as Exhibit B. As a statement of purpose, Section 6.11.1 recites that “The general purpose of this Section is to require outdoor lighting that is adequate for safety and convenience; in scale with the activity to be illuminated and its surroundings; directed to the surface or activity to be illuminated; and designed to clearly render people and objects and contribute to a pleasant night environment.” (emphasis added) Pursuant to Section 6.11.2.C: “The submission of an exterior lighting plan is required prior to the approval of any subdivision or planned unit development, or site plan, or the issuance of a building permit, to promote a standard of illumination that is unified in design, color, intensity, and fixtures. The plan shall describe such things as the light source, level of illumination, hours of illumination, the orientation, and the effects the

illumination has on adjoining properties and roadways.” Section 6.11.4 then sets forth twelve design standards for exterior lighting, which, that section notes “is not required except for purposes of public safety.” Of the twelve standards, only the following standards appear to be at issue:

A. All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding ninety (90) degrees to minimize the potential for glare and unnecessary diffusion on adjacent property. For purposes of this provision, "cutoff angle" is defined as the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above from which no light is emitted.

C. In no case shall exterior lighting add any footcandle illumination at any point off-site.

D. All outdoor light not necessary for security purposes shall be reduced, activated by motion sensor detectors, or turned off during non-operating hours.

L. Visible light sources will be permitted with motion detecting devices so long as such lights, once activated, remain lit for no more than five (5) minutes before deactivating.

For reference, only “cutoff angle” is defined by the LUDC and other relevant terms such as “glare” are not defined under the LUDC.

As noted above, and as required by Section 6.11.2.C of the LUDC, as part of the Application the Appellant provided the Town with detailed lighting plans in order to demonstrate compliance with all of the lighting requirements of Section 6.11 of the LUDC. These plans were thoroughly reviewed by the Town and, indeed, the Town required the Appellant to make many revisions to these plans in order to demonstrate compliance with the Code. Lighting was also a key component of the continued public hearing in front of the Design Review Board, with the Appellant being specifically directed at the July 10, 2012 public hearing to make further refinements to the lighting plan. Section 10 of Resolution No. 2012-12 specifically states that “... the Application has met all requirements of the LUDC and Municipal Code” and of particular relevance to this Appeal states that “The Applicant submitted a modified lighting plan that prevents any foot-candle illumination at any point off site, which meets the requirements of Section 6.11.4.C of the LUDC” (Approval Resolution §6(q)). Moreover, it is relevant to note that the Approval Resolution set forth various post-approval conditions for the Project regarding, among other things, further review and approval of various design plans. Notably, the Approval Resolution did not impose any further revisions or requirements pertaining to lighting of the Project. Nonetheless, following the approval by the Design Review Board and prior to commencing construction on the Project, the Appellant submitted final construction plans to the Town. These final construction plans, which were consistent with the plans approved by the Design Review Board, were approved by Town staff and in reliance on the foregoing approvals the Appellant proceeded to construct the Project based on such plans.

Summary of Arguments for Reversal. Notwithstanding the approvals granted by the Design Review Board and the prior review of the lighting plans for the Project, the Town now contends that the lighting for the Project does not comply with the very same standards previously reviewed by the Design Review Board in 2012. This is despite the lighting for the Property having been constructed in material conformance with the approved plans.¹ Moreover, the Town's current interpretation of Section 6.11.4 cannot be satisfied by the Appellant without significant additional expense, increased risk and liability exposure, and compromised safety for vehicles and pedestrians using the parking lot at the Property.

Indeed, the Town's current interpretation of the LUDC lighting limitations is so extreme that there appear to be only two alternatives that would meet the Town's new interpretation: (a) removing all of the interior parking lot lighting (fixtures and poles) and replacing them with significantly more poles of shorter height, or (b) attaching "shielding" to the existing light fixtures that will void the manufacturer's warranty on the lights and create unsafe dark spots within the parking lot (as a result of the more narrow cast of light). To be clear, the current alleged nonconformities with the LUDC are not the result of changes to the lighting installed on the Property by the Appellant, but instead as a result of the Town electing to revisit the 2012 approvals and employ, it would seem, a new interpretation of the lighting requirements.

Subparts D and L of Section 6.11.4 Are Inapplicable. As noted above, the Town appears to argue that the current lighting on the Property does not comply with the requirements of Sections 6.11.4.D and L of the LUDC. This is an incorrect interpretation of the LUDC as those provisions relate only to "outdoor light not necessary for security purposes" and "motion detecting devices" on exterior lighting. As there is no exterior lighting on the Property other than lighting needed for security purposes, subpart D is inapplicable. As there are no lights with "motion detecting devices", subpart L is inapplicable. Because subparts D and L are inapplicable to the Property, the Director's noncompliance determination should be reversed.

Glare is Not Being Given a Reasonable Interpretation. In determining that the installed lighting is noncompliant, the Director appears to be interpreting Section 6.11.4 to prohibit any "glare" from the lights that may be observed from adjacent properties. Nothing in the LUDC requires that all "glare" be eliminated and, indeed, using common definitions of "glare" such elimination would be impossible. As Appellant understands the Director's determination, unsatisfactory "glare" exists at any time that the actual light source (in this case the LED diode) can be directly observed by looking at the light fixture. While "glare" is not a defined term under the LUDC, the Director must nonetheless be reasonable in applying a definition to this or any other term. To this point, most lighting ordinances, including the Archuleta County Code of Regulations and the Colorado Revised Statutes, each require that glare not only be direct light that can be seen/reflected into the eye, but also that such light result in some sort of visual

¹ The Appellant acknowledges that certain components of the lighting installed on the Property require correction so as to fully comply with the approved lighting plans. The Appellant is currently in the process of making the necessary replacements so as to ensure full conformance with the approved plans.

distraction. See Exhibit C for glare definitions otherwise used in the State of Colorado and under the Model Lighting Ordinance. In appearing to define impermissible glare as any light element that can be directly observed, the Director is unreasonably failing to also apply any sort of distraction standard as utilized under these other common definitions of the term.

As importantly, however, the Director also appears to be applying the provisions of Section 6.11.4 in such a way that mandates glare, however defined, not just be minimized (as actually required by the LUDC) but actually eliminated through the installation of lighting shields or reduction of pole heights. Nowhere does the LUDC contemplate such a drastic glare restriction. Instead, the LUDC simply requires that “the potential for glare and unnecessary diffusion on adjacent property” be minimized. The LUDC provides a de facto mechanism for satisfying this minimization requirement – by having the light source “concealed or shielded with luminaries with cut-offs with an angle not exceeding ninety (90) degrees.” The light fixtures approved in the lighting plan and currently installed on the Property provide exactly such a 90 degree cut-off. By using such a light fixture, the Appellant has by definition complied with the requirements of Section 6.11.4.A.

As such, the Town should reverse the Director’s determination of noncompliance because such determination is premised on a faulty interpretation of the LUDC’s requirements.

The LUDC Should Not be Interpreted to Mandate Unsafe Conditions. As noted above, Section 6.11.1 expressly provides that safety is the paramount purpose of exterior lighting within the Town and the introduction of Section 6.11.4 expressly provides that “exterior lighting is not required except for purposes of public safety.” (emphasis added) As applied to the Project, the Town’s current interpretation of the exterior lighting guidelines runs completely contrary to these safety considerations. Indeed, as previously expressed to the Director, implementation of the Town-preferred “shielding” of the existing lights will result in dark areas of the parking lot that result in the parking lot not meeting the Appellant’s own internal light safety guidelines, a copy of which are attached as Exhibit D. These internal guidelines are the result of the Appellant’s substantial retail experience and history with issues resulting from parking lots that are not adequately illuminated.

The Appellant has expended significant resources to try and address the Town’s new interpretation of the Code in a way that does not compromise vehicular and pedestrian safety. The Appellant has undertaken internal studies to evaluate whether the Town’s preferred “shielding” would meet the Appellant’s light safety guidelines and has concluded that such shielding would result in unsatisfactory dark spots in the parking lot that jeopardizes guest safety. The Appellant is not amenable to sacrificing the safety of its customers in the name of eliminating perceived “glare” from offsite locations, especially when such sacrifice requires deviation from plans thoroughly reviewed and approved by the Town. As noted above, the LUDC by its express terms shares the Appellant’s fundamental safety concern. On the basis of safety, the Town should reverse the Director’s determination of noncompliance.

The LUDC Should Not be Interpreted to Make Approvals Meaningless. The Appellant understands and appreciates the Town's need to ensure that developed property complies with the LUDC and other applicable law. Nonetheless, using such "compliance" arguments against a developer who has constructed its project in material compliance with the plans and specifications previously reviewed and approved by the Town rings hollow. As part of the Major Design Review process, the Town had (and exercised) the right to review, comment on, and require modifications to the various plans for the Project. The lighting plan was given particular scrutiny and the Design Review Board's specifically determined that the lighting plan as modified by the Appellant conformed to the requirements of Section 6.11 of the Code. The Town's compliance check should necessarily be limited to whether the Appellant built in material conformance with the approved plans. To suggest otherwise is to unfairly give the Town another "bite at the apple" to the very material detriment of the landowner. Regardless of how characterized, an applicant/developer is entitled to reasonably rely on the validity of its land use approvals. *Fueston v. Colorado Springs*, 713 P.2d 1323, 1325 (Colo. App. 1985). When a developer reasonably relies on these approvals by preparing and submitting final construction plans, paying for and obtaining necessary building and other permits, and then actually completing construction in material conformance with the approved plans, it is manifestly unjust for any municipality to effectively revoke those prior approvals by imposing new requirements not imposed at the time of the land use approval. The Appellant, and anyone else in the Town, should have the right to rely on the effectiveness of land use approvals. The Town should reverse the Director's determination of noncompliance because such determination, in addition to the other defects set forth above, was unreasonably untimely and effects a material hardship on the Appellant that could have easily been avoided had such issues or concerns been raised during the approval process or prior to commencement of construction.

Conclusion. The Appellant has constructed the Project in reliance on the approvals granted during the land use approval process and in material conformance with the lighting plans approved in connection therewith. It is manifestly unjust, and an improper interpretation of the LUDC on several fronts, for the Town to attempt to retroactively comment on the lighting plan for the Property after construction has been completed. The Town's current interpretation is unreasonable, creates an unsafe condition on the Property, and is contrary to established law regarding a developer's reasonable reliance on the validity of development entitlements. As such, the Appellant respectfully requests reversal of the Director's determination of noncompliance.

Exhibit A
Final Decision



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Town of Pagosa Springs
Building and Planning
Department

Date: March 23, 2015
To: Donna Mizelle
Re: Wal-Mart Store development in Pagosa Springs

Dear Donna,

This correspondence is in regards to the parking lot light inspections I have conducted, and determinations made as to compliance with the Town's exterior lighting regulations. Many of these issues were identified in previous correspondences dated January 27, 2015 and January 29, 2015, in addition to numerous phone conversations with you and/or Tasha Bolivar, Ryan James and Jim Galloway.

During the month of January 2015, I conducted three preliminary parking lot inspections, which were documented in correspondences dated January 27, 2015 and January 29, 2015. Additional parking lot lighting inspections were conducted on February 09 and March 10, 2015, which revealed the following conditions:

- a. The perimeter parking lot lights are compliant with the Town's Land Use Development Code (LUDC) exterior lighting standards in regards to Visual Light Source, with the exception of the SW corner light and the NE corner light (as noted in note c below).
- b. The interior parking lot lights, are not compliant with the LUDC in regards to Visual Light Source, as follows:
 - ~ Per LUDC section 6.11.4.A; All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding 90 degrees to minimize potential for glare and unnecessary diffusion on adjacent properties.
 - ~ Per LUDC section 6.11.4.D; All outdoor light not necessary for security purposes shall be reduced, activated by motion sensor detectors or turned off during non-operating hours.
 - ~ Per LUDC section 6.11.4.I; Visible Light sources will be permitted with motion detecting devices so long as such lights, once activated, remain lit for no more than five (5) minutes before deactivating.
- c. The foot-candle meter readings along the perimeter of the property indicate levels of .1 - .4 foot-candles with the exception of the NE and SW corner lights, which meter readings indicated a 1.4 foot-candle reading. These foot-candle readings exceed the Town approved Walmart photo metric plan submitted on May 09, 2013, and formally approved by the Town on August 21, 2012, and further exceed the LUDC limits for off-site foot-candle readings. With the exception of the SW and NE corner perimeter lights, it would appear the other foot-candle readings are the result of the visible light source glare being emitted from the interior parking lot lights.
 - ~ Per LUDC section 6.11.4.C; Exterior lighting standards which states: "In no case shall exterior lighting add any foot-candles illumination at any point off-site".

As far as the NE and SW corner lights, the SW corner light provides glare and illumination onto the Townhome properties on the south side of Aspen Village Drive. The NE light does provide substantial illumination across Aspen Village Drive onto the neighboring vacant lot. A remedy to these conditions is required.

~ Per LUDC section 6.11.4.A; All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding 90 degrees to minimize potential for glare and unnecessary diffusion on adjacent properties.

- d. The exterior wall mounted building lights were not functional during these inspections. These lights will be inspected at time of operation, though no issues are anticipated as these lighting fixtures are designed to provide down lighting only. The results of this future inspection are to be determined.

Since the January inspections, I was notified by Galloway that a few issues were discovered as the Wal-Mart design team looked further into the Town's concerns, which may have included, some LED boards were manufactured improperly, some lights may have been installed incorrectly, and a few light fixtures required rotation. During the March 10, 2015 inspection, it was revealed that these issues would be corrected and that I would be notified as soon as they were completed. Once these corrections are completed, an additional Foot Candle Reading and visible light source inspection will be required. Please notify the Town Planning Office for scheduling a re-inspection. I do appreciate the prompt response to correct the above items.

During the March 10, 2015 inspection, I met with Tasha Bolivar, Jim Galloway and Jeff Pickard on site to look at other LED light bar options. During that inspection, we looked at two additional kelvin rated LED light boards that were installed for comparison purposes. Two 4500 kelvin rated lights and two 3500 kelvin rated lights were installed among the existing 5500 kelvin lights.

During my inspection, I was able to recognize a more amber colored light emission from the lower kelvin rated lights, however, I was unable to recognize a reduction in the visible light source from off-site locations, when comparing to the 5500 kelvin rated installed light bars, thereby not conforming to the LUDC.

It's my understanding that Mrs. Bolivar communicated to our town Manager, Greg Schulte, that any light panels lower than 3,500 kelvin would either violate Wal-Mart's internal safety lighting standards or not be consistent with national standards or best practices. If you have such documentation, please forward them to our attention for consideration, however, be aware that pursuant to the LUDC, light sources should not be visible from off-site and should not intrude onto adjacent properties.

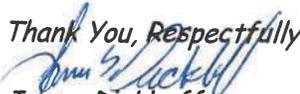
As noted above, items "b" and "c" are not compliant with the LUDC. We would like to discuss possible remedies.

With all that said, you should be aware there is an appeals process you may proceed with if you believe I have made an incorrect exterior lighting compliance determination. That appeals process has been attached to this correspondence for your convenience. In full disclosure, the appeals process could take more than a month and we understand the urgency to meet the Grand Opening date of April 22nd.

With that in mind, we look forward to working with you to arrive at a solution and we are open to having a financial security bond posted in the event we need to issue a Temporary Certificate of Occupancy while this issue is resolved.

We appreciate all of your assistance during the final stages of the Pagosa Springs Walmart Store completion. Please contact me with any questions.

Thank You, Respectfully,


James Dickhoff

Town of Pagosa Springs
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2.4.13. APPEALS (as adopted pursuant to Ordinance 805)

A. Purpose

This Section sets forth the process for appealing final decisions made under this Land Use Code.

B. Definitions

1. *Appellant* shall mean a party-in-interest who has taken an appeal from the Original Decision-Maker to the Appellate Decision-Maker, or from the Appellate Decision-Maker to the Town Council by the timely filing of a notice of appeal.
2. *Appellate Decision-Maker* shall mean the board or commission to which a decision made under this Land Use Code has been appealed.
3. *Applicant* shall mean the person who or organization which submitted the original application to the Original Decision-Maker.
4. *Final decision* shall mean the action of the Director, or a board, commission, Town Council or other decision-maker by a vote of a majority of its members when no further rehearing is available before such board, commission, or other decision-maker; provided, however, that a recommendation to the Town Council from a board, commission or other decision-maker shall not be considered as a final decision of that board, commission, or other decision-maker.
5. *Original Decision-Maker* shall mean the Director or other administrator, Board, or commission that made an initial decision on an application pursuant to this Land Use Code.
6. *Party-in-interest* shall mean a person who or organization which has standing to appeal the final decision of the Original Decision-Maker or Appellate Decision-Maker. Such standing to appeal shall be limited to the following:
 - a. The applicant;
 - b. Any party holding a proprietary or possessory interest in the real or personal property which was the subject of the decision being appealed;
 - c. Any person to whom or organization to which the Town mailed notice of either the hearing of the Original Decision-Maker or the appeal hearing before the Appellate Decision-Maker; and

d. Any person who appeared and submitted testimony or evidence before the Original Decision-Maker's hearing or the appeal hearing before the Appellate Decision-Maker.

7. *Town Council* shall mean the Town Council of the Town of Pagosa Springs serving in its role as decision-maker for an appeal of the Appellate Decision-Maker's final decision.

C. Appeals. Appeals of land use decisions are available at each step of review and decision-making. Administrative decisions may be appealed to the appropriate board or the Planning Commission, and decisions of any board or the Planning Commission may be appealed to the Town Council, as further set forth in this Section 2.4.13.C.

1. First Level of Appeal – Appeals of Administrative Decisions.

a. General.

A denial by the Director of a permit or other approval sought pursuant to this Land Use Code may be appealed by the applicant to the Board of Adjustments, except that decisions regarding sign regulations and administrative design review may be appealed to the Design Review Board and decisions regarding minor subdivision final plat applications, conditional use permits, and floodplain development permits may be appealed to the Planning Commission.

b. Appeals of Floodplain Administrator Decisions.

Decisions of the Floodplain Administrator may be appealed by the applicant to the Planning Commission.

2. Second Level of Appeal - Appeals to Town Council.

Decisions made by the Board of Adjustments, the Design Review Board, the Planning Commission, or any other board or commission pursuant to this Land Use Code may be appealed to the Town Council by a party-in-interest.

3. Judicial Appeals of Town Council Decisions.

Any party-in-interest may appeal a final decision of the Town Council made pursuant to this Land Use Code to the court of jurisdiction.

D. Grounds for Appeal. The permissible grounds for appeal shall be limited to allegations that the Original or Appellate Decision-Maker committed one (1) or more of the following errors:

1. Failed to properly interpret and apply relevant provisions of the Town Code or Charter.
2. Failed to conduct a fair hearing in that:
 - a. The Original or Appellate Decision-Maker abused its discretion as contained in the Town Code or Charter;
 - b. The Original or Appellate Decision-Maker substantially ignored its formally established rules of procedure resulting in a denial of procedural due process; or
 - c. The Original or Appellate Decision-Maker based its decision on evidence which was substantially false or grossly misleading.

E. Notice of Appeal.

1. Appeals shall be made within ten (10) days of the final decision which is the subject of the appeal. All appeals shall be filed in writing with the Town Clerk and shall include the following:
 - a. If the appeal is filed by the applicant and the original application was filed by multiple individuals or entities, all of the original applicants must sign the appeal;
 - b. The final decision of the Original Decision-Maker; or if the appeal is to the Town Council, the final decision of both the Original Decision-Maker and Appellate Decision-Maker, and identifying which decision(s) is(are) the subject of the appeal;
 - c. The date(s) of such final decision(s);
 - d. The name, address, telephone number and relationship of each appellant to the subject of action of the Original Decision-Maker; or if the appeal is to the Town Council, the name, address, telephone number and relationship of each appellant to the subject of action of the Original Decision-Maker and Appellate Decision-Maker;
 - e. The grounds for the appeal, including specific allegations of error and a summary of the facts contained in the record on appeal which support those allegations;
 - f. In the case of an appeal alleging under Section 2.4.13.D.2.c, that the Original Decision-Maker or Appellate Decision-Maker based its decision on evidence that was substantially false or grossly misleading, references to the record in support of this allegation; and

g. In the case of an appeal filed by more than one (1) appellant, the name, address and telephone number of one (1) such appellant who shall be authorized to receive, on behalf of all appellants, any notice required to be sent by the Town; and

h. Any other information required by the Town Clerk.

2. Review of Notice of Appeal. The Town Clerk shall review the notice of appeal for any defects in form or substance. The Town Clerk shall notify the appellant in writing of any such defect in the notice of appeal, which notice shall be mailed no more than seven (7) days from the date of filing of the notice of appeal.

3. Amended Notice of Appeal. If the Town Clerk discovers any defects in the notice of appeal, the appellant may file an amended notice of appeal within five (5) days of the date of the notice of default. An amended notice of appeal shall correct those defects identified by the Town Clerk and shall include all information required under Section 2.4.13.E.1 of this Land Use Code.

F. Cost of Appeal. The appellant shall pay a fee of \$100 at the time the notice of appeal is submitted.

G. Appeals Process

1. Briefs. The appellant and the Town shall have an opportunity to file briefs for consideration by the Appellate Decision-Maker, or Town Council, as applicable, as follows:

a. The appellant may file an opening brief no later than fourteen (14) days after filing the notice of appeal; or, within seven (7) days of filing an amended notice of appeal.

b. Town staff, on behalf of either the Original Decision-Maker or Appellate Decision-Maker, if the appeal is before the Town Council, may file a response brief no later than fourteen (14) days following the date that the appellant's opening brief is filed.

c. Appellant may file a reply brief within seven (7) days of the date the Town filed its response brief.

d. If the applicant is not the appellant, the applicant may request in writing permission from the Appellate Decision-Maker or Town Council to file a brief. Such request shall be granted if the Appellate Decision-Maker or Town Council believes the applicant's interest will be furthered. If such request is granted, the applicant shall file a response brief on the same schedule as the Town staff.

- 2. Record on Appeal.** Any appeal under this Section 2.4.13 shall be an appeal on the record of the hearing before the Original Decision-Maker, or the Appellate Decision-Maker if the appeal is before the Town Council. The record provided to the Appellate Decision-Maker or Town Council, as applicable, shall include the following:

 - a.** All exhibits, including without limitation, all writings, drawings, maps, charts, graphs, photographs, and other tangible items received or viewed by the Original Decision-Maker and, if the appeal is before the Town Council, any items received or viewed by the Appellate Decision-Maker; and
 - b.** A recording or verbatim transcript of such proceedings before the Original Decision-Maker, and if the appeal is before the Town Council, the Appellate Decision-Maker .
- 3. Burden of Proof.** Any final decisions of the Original Decision-Maker and Appellate Decision-Maker shall be presumed to be correct. The appellant has the burden of proof to show that a preponderance of the evidence introduced before the Original Decision-Maker or Appellate Decision-Maker supports the conclusion that the decision should be overturned based on the criteria set forth in Section 2.4.13.H.
- 4. Appeal Hearing.**

 - a.** The Director shall schedule a public hearing on the appeal no later than sixty (60) days after the date the appeal was filed with the Town Clerk. The appeal hearing may be extended up to ninety (90) days after the filing of the appeal if agreed to by both the Director and the appellant.
 - b.** Notice of the public hearing shall be published on the Town's official website no fewer than fifteen (15) days prior to the scheduled hearing date. Written notice of the appeal hearing shall also be mailed to the appellant, the applicant, and all property owners and mineral estate owners and lessees required to receive notice pursuant to Sections 2.3.6.D and E. All such notices shall meet the requirements of Section 2.3.6.A. of this Land Use Code.
- 5. Pre-Hearing Procedures.**

 - a. Procedural Issues.** Prior to the date of the appeal hearing, the Appellate Decision-Maker or Town Council, as applicable, may establish any procedural rules related to the appeal hearing, including but not limited to, the possible introduction or exclusion of certain evidence, the period of time to be allowed for presentation of arguments on the merits of the appeal and any concerns or objections related to the record on appeal. On its own

initiative or for good cause shown by any party to an appeal, the Appellate Decision-Maker or Town Council may order the modification of any procedural requirements of this Section 2.4.13 so long as such modification does not shorten a time period, or eliminate or reduce a party's ability to file a notice, brief, or appeal, or present or defend an appeal.

b. Consolidation of Multiple Appeals. In the event of multiple appeals involving the same final decision, prior to the appeal hearing, the Appellate Decision-Maker or Town Council, as applicable, may consolidate the appeal or otherwise modify the procedures contained in Section 2.4.13.G.6 as necessary.

6. Order of Proceedings at Appeal Hearing. The order of the proceedings at the appeal hearing shall be as follows:

a. Director Overview. The Director shall have fifteen (15) minutes to provide an overview of the original application.

b. Appellant Presentation. The appellant shall have a total of thirty (30) minutes to present information in support of the appeal, subject to the determination of the Appellate Decision-Maker or Town Council as to relevance. Copies of all portions of the record that the appellant wishes the Appellate Decision-Maker or Town Council to consider must be submitted to the Director no fewer than five (5) working days before the public hearing.

c. Staff Report Presented. The Director and Town staff shall have a total of thirty (30) minutes in which to present a response to the appeal and appellant's presentation, as well as a staff report that includes a written recommendation. This recommendation shall address each standard required to be considered by this Land Use Code applicable to the original application.

d. Appellant Response. The appellant shall have a total of fifteen (15) minutes to rebut any presentation by the Town.

e. Questions. Following the presentations and rebuttals, the arguments will be closed and the Appellate Decision-Maker or Town Council, as applicable, may ask questions of the Town staff, the appellant, and any parties-in-interest.

7. Conduct of Public Hearing.

a. Presentation Time Periods. The time periods set forth in Section 2.4.13.G.6 herein may be extended by the Appellate Decision-Maker or Town Council, as applicable, based on the complexity of the issues raised in the notice of appeal, the length of the record on

appeal, the potential impact that the determination of the appeal may have on the community at large and the number of parties-in-interest who wish to address the Appellate Decision-Maker or Town Council with regard to the merits of the appeal.

- b. Exclusion of New Evidence.** The Appellate Decision-Maker may exclude arguments based on testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious. The Appellate Decision-Maker or Town Council shall not consider arguments not raised in the notice of appeal and new evidence shall not be considered on appeal except upon a showing that such evidence could not have reasonably been presented to the Original Decision-Maker or, if the appeal is before the Town Council, the Original or Appellate Decision-Maker, and is not repetitive of evidence already within the record.
- c. Continuance of Public Hearing.** The Appellate Decision-Maker or Town Council, as applicable, may, either on its own motion or at the request of any party-in-interest, continue the appeal hearing to a fixed date, time and place. All continuances shall be granted at the discretion of the Appellate Decision-Maker or Town Council, as applicable.

8. Decision. Following the public hearing, the Appellate Decision-Maker or Town Council may, in whole or in part, affirm, reverse, or amend the decision being appealed based on the appeal criteria set forth in Section 2.4.13.H herein, and to that end the Appellate Decision-Maker or Town Council shall have all the powers of the Original Decision-Maker. The Appellate Decision-Maker may also remand the matter back to the Original Decision-Maker and the Town Council may remand the matter back to either the Original Decision-Maker or Appellate Decision-Maker, as deemed appropriate, for further proceedings consistent with the Land Use Code. The final decision shall be stated in writing in the body's minutes as well as in a written order to be delivered to the appellant and shall include specific findings of fact with specific reference to relevant standards as set forth in this Land Use Code.

9. Notification to Applicant. Notification of the Appellate Decision-Maker's or Town Council's final decision shall be provided by the Director to the parties in the appeal within ten (10) days of the decision and shall be published on the Town's official website for a period of not less than ten (10) days after the final decision.

10. Record of Appeal Proceedings.

- a. Record of Appeal Hearing.** The Appellate Decision-Maker or Town Council shall record the public hearing by any appropriate

means. A copy of the record of the appeal may be acquired by any person upon application to the Director and payment of a fee to cover the cost of duplication of the record.

b. The Record. The record of the appeal shall consist of the following:

- (1) The record of the Original Decision-Maker which was appealed;
- (2) Any supplemental evidence approved by the Appellate Decision-Maker or Town Council, including any exhibits, writings, drawings, maps, charts, graphs, photographs, and other tangible items received or viewed at the proceedings by the Appellate Decision-Maker, or the Town Council if the appeal is before the Town Council;
- (3) Any briefs submitted by the parties;
- (4) All minutes of the proceedings;
- (5) If appealed to the Town Council, the recording or a verbatim transcript of the proceedings before the Appellate Decision-Maker. The cost of the transcript shall be borne by the party appealing the decision.

H. Appeal Criteria.

The Appellate Decision-Maker or Town Council shall reverse, amend, or remand a decision upon a finding that the at least one of the grounds for appeal set forth in Section 2.4.13.D occurred, and that the final decision being appealed was materially affected thereby.

Exhibit B

LUDC

6.11 EXTERIOR LIGHTING

6.11.1 PURPOSE

The general purpose of this Section is to require outdoor lighting that is adequate for safety and convenience; in scale with the activity to be illuminated and its surroundings; directed to the surface or activity to be illuminated; and designed to clearly render people and objects and contribute to a pleasant night environment.

6.11.2 APPLICABILITY

A. General

All exterior lighting for any type of residential or nonresidential development shall comply with the standards of this Section, unless exempted in subsection D. below.

B. Existing Lighting

All lighting existing prior to the adoption of this Section shall be brought into compliance with this Section upon reconstruction or remodeling of more than a cumulative 50 percent of floor area of such building or facility.

C. Lighting Plan Requirement

The submission of an exterior lighting plan is required prior to the approval of any subdivision or planned unit development, or site plan, or the issuance of a building permit, to promote a standard of illumination that is unified in design, color, intensity, and fixtures. The plan shall describe such things as the light source, level of illumination, hours of illumination, the orientation, and the effects the illumination has on adjoining properties and roadways.

D. Exempt Lighting

The following types of lighting are exempt from the requirements of this Section.

1. Soffit or wall-mounted luminaires that are permanently attached to single-family residential dwellings, not to exceed the height of the eave.
2. Public street and right-of-way lighting.
3. Temporary decorative seasonal lighting provided that individual lamps have a light output of 200 lumens or less.
4. Temporary lighting for emergency or nighttime work and construction.
5. Temporary lighting for theatrical, television, and performance areas, or for special events authorized by the Town.
6. Lighting required and regulated by the Federal Aviation Administration.
7. Lighting for outdoor recreational uses such as ball diamonds, playing fields, tennis courts, and similar uses, provided that such uses comply with the following standards:
 - a. Maximum permitted light post height: 80 feet.
 - b. Maximum permitted illumination at the property line: two footcandles.
 - c. Limits on hours of illumination: Exterior lighting shall be extinguished no later than 11:00 pm. An exception may be granted by the Town Council at their discretion.
 - d.

6.11.3 GENERAL REVIEW STANDARD

If installed, all exterior lighting shall meet the functional security needs of the proposed land use without adversely affecting adjacent properties or the community. For purposes of this Section, properties that comply with the design standards of Section 6.11.4 shall be deemed to not adversely affect adjacent properties or the community.

6.11.4 DESIGN STANDARDS

Exterior lighting is not required except for purposes of public safety. However, if installed, all exterior lighting shall meet the following design standards:

- A. All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding 90 degrees to minimize the potential for glare and unnecessary diffusion on adjacent property. For purposes of this provision, "cutoff angle" is defined as the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above from which no light is emitted.
- B. Parking lots and other background spaces shall be illuminated as unobtrusively as possible while meeting the functional needs of safe circulation and protection of people and property. Foreground spaces, such as building entrances and outside seating areas, shall utilize local lighting that defines the space without glare.
- C. In no case shall exterior lighting add any footcandle illumination at any point off-site.
- D. All outdoor light not necessary for security purposes shall be reduced, activated by motion sensor detectors, or turned off during non-operating hours.
- E. Light fixtures used to illuminate flags, statues, or any other objects mounted on a pole, pedestal, or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.
- F. For upward-directed architectural, landscape, and decorative lighting, direct light emissions shall not be visible above the building roof line.
- G. No flickering or flashing lights shall be permitted.
- H. Street lighting and associated underground street lighting supply circuits shall be installed. The spacing shall be determined by a lighting professional for local streets.
- I. Arterial streets and commercial areas may have a higher level of lighting if determined by the Town Council to be appropriate.
- J. Any light used for illumination of signs, parking and security area, or for any purpose other than street lighting shall be arranged to direct and confine all light beams to the subject property and away from nearby properties and the vision of passing motorists.
- K. Internally illuminated signs are discouraged.
Visible light sources will be permitted with motion detecting devices so long as such lights, once activated, remain lit for no more than five minutes before deactivating.

Exhibit C

Definitions of Glare

Model Lighting Ordinance:

Glare - Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

Archuleta Land Use Regulations, Section 11.2.1:

Glare: Direct or reflected intense light striking the eye and dazzling or blinding the viewer

Colorado Revised Statutes, Section 24-82-901:

"Glare" means direct light emitting from a luminaire that causes reduced vision or momentary blindness.

Exhibit D
Appellant Lighting Guidelines



WALMART STORES, INC. * 2001 S. E. 10th Street * BENTONVILLE, AR 72712- 6489 * (479) 273-4000

SITE LIGHTING DESIGN AND COORDINATION CRITERIA

Overview and Introduction:

This criteria document defines the roles, responsibilities and processes involved in the design of the site lighting for Walmart projects by the CEC. The site lighting is considered both a customer safety and a sustainable energy reduction function. An optimized site lighting plan shall be developed for the site first, with the landscaping and other site utilities developed around the optimized pole locations. With this in mind, the CEC will assume sole responsibility for the site lighting design on Walmart projects to be in harmony with these criteria. The CEC will use the Walmart Site Lighting Vendor (SLV) for photometric analysis and proper application of their lighting product in accordance with these criteria. When additional expertise is required, the CEC shall contract with a qualified Lighting Design Professional to develop the site lighting design, sign and seal site designs for jurisdictions and assist with jurisdictional appeals. The Civil Engineering Consultant (CEC) shall have professional design responsibility for the work product. Even though the CEC may hire a Lighting Design Professional, this document will only refer to the CEC as the responsible party.

Minimum Pre-Qualification for CEC Contracted Lighting Design Professional

- Documented or certified training on lighting modeling software utilizing radiosity and/or raytracing methodology to calculate horizontal and vertical illumination. However, for consistency and file sharing, AGI32 will be the format Walmart will use for design and photometric files and required for SLV qualification training.
- 3 years experience designing parking lot / site lighting utilizing the above modeling software.
- 3 years experience with reviewing and applying site lighting code criteria to site lighting design.
- Ability to model obstructions as objects within the parking lot, including trees per the type of tree scheduled by the landscaping architect.

Qualification Requirements for CEC Contracted Lighting Design Professional

- Walmart LED site lighting designs will require the *Individual Site Designer* to be qualified by the current SLV.
- This will be a two step qualification process.
 - Classroom Training: Educate lighting professionals (SLDP) on LED site lighting design for Walmart sites. Deep dive on specification, product capability best practices for optimizing design and managing tradeoffs and challenging ordinances.
 - Active Site Design Completion: Lighting professionals (SLDP) completes a Walmart site and submits to SLV for review/approval. Qualification Certificate granted.

- Walmart will publish the list of Qualified SLDP's for the CEC to select for site lighting design and coordination.

Walmart Design Review:

The Walmart Design Dept may select a Site Lighting Design Consultant (SLDC) to be used for the site lighting design critique and determine the CEC site lighting design is in accordance with these criteria for sustainable site lighting. It is important that the CEC keep all documents required in The Civil Engineering Distribution List of Plans and Reports (Preliminary Design Progress Documents and 2 Week Prior to Design Civil folders) updated with the latest version of the required documentation for use by the SLDC reviews. The appropriate Walmart Architectural Dept Contacts for clarification or comments on this document are listed below.

The Walmart Design Architectural Dept Contacts:

Ralph Williams (~~Ralph.williams@wal-mart.com~~) John.Davidson@walmart.com
Phone: 479-273-4279/479-204-0762
Technical Criteria Contact

Tom Richards (~~Tom.Richards@wal-mart.com~~) Tom.Richards@walmart.com
Phone: 479-204-0218
Engineering Team Leader/Manager

Definition of Roles and Responsibilities:

Civil Engineering Consultant (CEC)

1. Site Lighting Design: The CEC shall design the site lighting plan and provide a site lighting photometric plan in accordance with these Design Parameters utilizing photometric (.ies) files provided on the Design Collective folder or from the appropriate SLV. Photometric templates only shall not be used as the basis for the site lighting design.
2. Schedule: It is the responsibility of the CEC to maintain the project schedule.
3. Local/County Zoning Ordinances: The CEC will determine the existing zoning and zoning restrictions that will impact the project design. The CEC will also determine any lighting ordinances that will impact the project design. For all site designs, the CEC will properly document all zoning and lighting ordinance and records of negotiations. This includes, but is not limited to, parking lot pole height restrictions, lamp source restrictions, specific photometric restrictions or other factors that impact the site lighting design.

Should it be determined it is in Walmart's best interest to challenge any existing zoning ordinances, the CEC will submit required documents to process a change of existing

zoning. The CEC shall not negotiate site lighting design parameters in direct conflict with these site lighting design criteria without the specific consent Walmart PM (Project Manager) and Engineering Team Leader/Manager or Design Dept Contact.

4. Civil Engineering Distribution List of Plans and Reports: CEC shall upload the required documents in a timely manner to the EDDS Lighting Folders in both preliminary and design civil phases of project
5. Landscaping: The CEC will design an optimized Initial Site Lighting Plan prior to the development of the Landscape Plan. Consider existing landscaping materials or site conditions and improvements to remain as part of the Initial Site Lighting Plan. This optimized Initial Site Lighting Plan is to be used to develop the Landscape Plan, with the understanding that pole locations shown in the optimized Initial Site Lighting Plan take precedence and that the landscaping is to be designed to minimize interference with the site lighting performance. Should constraints require modification to the site lighting design to facilitate the landscaping design, all parties will work together cooperatively to optimize the design.
6. Coordination: The CEC has sole responsibility for the coordination of all site elements including utilities, landscaping, and site lighting. The CEC coordinate with the assigned SLV from the Lighting Bid Award Document on the Design Collective.
7. Site Construction Bid Documents: The CEC will provide an electronic scaled AutoCAD drawing of the Site Lighting Plan, with poles and fixtures identified and located, to incorporate into the Site Construction Bid Documents. To maximize the construction document clarity, the Site Construction Bid Documents will not include site lighting design information, but will only include information required by the General Contractor for construction and fixture installation purposes. This will include as a minimum:
 - a. Complete Site Lighting Plan with pole locations and fixture heads (without point by point photometric information).
 - b. Site Lighting Plan shall include the Fixture Schedule, enlarged fixture symbols and font for each fixture assembly notation and specific SLV catalog information that provides the contractor installation information on proper reflector and shielding orientation.
8. Site Lighting Circuiting Plan: The site lighting layout developed by the CEC will be used to create the Site Lighting Circuiting Plan to be included in the Building Construction Document set, which indicates the wire, conduit and circuiting information for the site lighting. The CEC shall provide the Site Lighting Plan to the Architect of Record (AOR) for the building construction documents. The AOR will then provide this to the MEP EOR for their use in developing the Site Lighting Circuiting Plan.

Site Lighting Vendor (SLV)

1. SLV Provided design information: Photometric IES files and specification sheets are available in the design collective. Specification sheets will indicate the Walmart catalog

number, input watts, and LED driver power factor. These will be used by the CEC in the development of the Site Lighting Design.

2. The SLV will provide (when requested by the CEC for jurisdictional submittals) the proper certification information (LM79 and LM80 data and methodology for LED luminaires) to support Lamp Lumen Depreciation (LLD) used in the Light Loss Factor (LLF) used in preparing site photometrics.
3. For projects with special zoning and/or lighting ordinance requirements, the SLV will assist the CEC in researching an alternative light fixture that meets the local/county requirements while maintaining Walmart's design objectives and criteria.
4. The SLV is responsible for reviewing the final site lighting layout and site lighting fixture schedule for accuracy. The SLV will alert the CEC, Walmart PM and Engineering Team Leader/Manager of any issues with either the layout or the fixture schedule within three days of receipt of document. There will be a maximum of 3 reviews per site. If there is not a proper design after the 3rd review, the CEC will have to outsource to another certified SLDP. The review process is not a design tool.

Reference Documents:

1. Joint IDA-IES Model Lighting Ordinance (latest edition)
<http://www.darksky.org/mc/page.do?sitePageId=84399>
2. IESNA TM-15-11 Luminaire Classification System for Outdoor Luminaires (available for purchase at <http://webstore.ansi.org/RecordDetail.aspx?sku=IESNA+TM-15-011>)
3. IESNA RP-20-98 Lighting for Parking Facilities
4. IESNA G-1-03 Guideline for Security Lighting for People, Property, Public Spaces
5. Walmart Site Development Guidelines (available in Design Collective Folder)
6. Civil Specifications – Section 16525 (available in Design Collective Folder)
7. Plan Requirements Checklist (available in Design Collective)

Design Parameters:

The initial site lighting layout is developed around appropriate illumination levels and uniformity ratios. The final design compliance is based on lumens per square foot and the glare/light pollution potential.

Initial Site Lighting Layout Photometric Parameters

1. If the requirements of the local or county ordinances are more stringent, and cannot be negotiated by variance, those values must be used. This should be brought to the attention of Walmart's PM and Architectural Dept Contacts. The CEC may deviate from the Walmart guidelines if such guidelines do not permit the CEC to develop civil plans in accordance with applicable codes. However, these deviations are acceptable only when the CEC has applied for a variance from the applicable authority, such variance has

been rejected by the governing authority after diligent pursuit by the CEC and the CEC uploads evidence of such rejection to the EDDS Lighting Folder, EOM and Enviance.

2. Any projects with national crime indexes greater than 300 trigger different site lighting requirements. This guidance is provided in IESNA G-1-03 Guideline for Security Lighting for People, Property, Public Spaces and is a Supplement to RP-20.
3. For expansion and takeover projects the change and use of LED lighting is to be considered on a case by case basis. This is primarily dependent on extent of planned changes to existing lighting and fixtures. Do not mix the type of lighting sources in any Walmart defined property area on any site. WM PM will provide site specific direction regarding changes in type of area lighting for these specific projects.
4. Existing poles shall not be reused on WM sites unless the existing fixtures will remain and the pole is not modified. If new fixtures are being added or when replacing existing fixtures, new poles shall be specified. Replacement of existing pole bases is not required unless for other reasons (example: taller poles warranting review of existing base embedment depth) than replacement of the pole. The bolt diameter of the existing pole base shall be determined and presented to vendors for these materials. Field modification of poles including drilling, cutting, welding, and use of cutting torches, is not allowed unless designed and completion is field verified by a structural engineer.
5. The use of LED lighting for WM projects in shopping centers is to be evaluated on a site specific basis generally considering the adjacency and intensity of other lighting. Where HID and LED sources are being considered in adjacent uses, lighting levels other than minimums presented as design lighting levels in this document may be appropriate. WM PM will provide site specific direction regarding lighting for these projects.
6. For HID metal halide designs, Walmart prefers to utilize 1000 watt pulse-start luminaires for 28 foot and higher mounting heights and 400 watt pulse-start luminaires for 28 foot mounting heights or lower. If other HID lamp types or wattages are deemed absolutely necessary to meet the local requirements, the CEC shall contact the Walmart PM or Design Dept Contact for design direction prior to beginning site design. Fixture mounting heights below 28 ft (25 ft poles and 3 ft bases) are considered detrimental to a proper site lighting design and will be used only as approved exceptions by the Walmart PM.
7. LED and HID Luminaire Mounting Height Guidance: Most efficient heights are between 38 and 42 ft total mounting height (35 ft – 39 ft pole and 3 ft base). These luminaire mounting heights are preferred for Supercenter, Sam's Club's and Division 1 store sites to optimize the site. For small format locations, such as Walmart Neighborhood Markets and Express sites, the recommended height is 28 ft (25 ft pole and 3 ft base). Fixture mounting heights below 28 ft (25 ft poles and 3 ft bases) are considered detrimental to a proper site lighting design and will be used only as approved exceptions by the Walmart PM.
8. Generate photometric analysis using latest version of AGI32 software. Analysis to include calculation zones listed below. See Appendix 'A' for Diagram of Site Lighting Calculation Zones.
9. Site Lighting Calculation Zones:

The site is to be divided into the following lighting area calculation zones. The intended illumination requirements are listed for each area calculation zone. The calculated values are to be based on calculations at finished grade (unless noted otherwise) and should fall +/- 5% of the criteria values. Lighting values may fall off toward the edge of the pavement. In accordance with IES RP-20, the CEC shall assure the absolute minimum maintained foot-candle for the Main Parking Zone is above 0.5 fc. All other zones absolute minimum maintained fc shall be 0.2 fc (minimum shall not apply to rear drive zone).

a. Parking Lot Zone:

- 1) Main Parking Area: Group(s) of parking spots comprising the majority of the site. Zone starts from the edge of the front aisle zone and extends to the edge of pavement or other defined calculation zone.
- 2) LED Maintained Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 0.75 fc.
 - b) Minimum Horizontal Average : 2.0 fc
 - c) *Minimum Vertical Illuminance: 0.40 fc.
 - d) Uniformity Maximum/Minimum: 5:1
- 3) HID Maintained Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 1.0 fc.
 - b) Minimum Horizontal Average : 2.5 fc
 - c) *Minimum Vertical Illuminance: 0.40 fc.
 - d) Uniformity Maximum/Minimum: 5:1

* Vertical illuminance is calculated at the center of Main Parking Area at 5' above parking surface. Plane should be perpendicular to the pole diagonal and calculated both sides (looking in and out).

b. Limited Parking Zone:

- 1) Limited Parking Areas: Group(s) of parking spots along the side of the building or not contiguous with the main parking area, where high average light levels can provide offensive glare or reflection off building surfaces and be difficult to limit trespass onto surrounding properties. This zone is not specifically defined and is used to allow best design practice.
- 2) LED Minimum Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 0.75 fc.
 - b) Uniformity Maximum/Minimum: 10:1
- 3) HID Minimum Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 1.0 fc.
 - b) Uniformity Maximum/Minimum: 10:1

c. Front Aisle Zone:

- 1) Driving/walking area from the sidewalk through the nearest set of drive lanes. The area extends the length of the sidewalk on the front façade of the building. Bus loading zones on property shall also follow the minimum horizontal illuminance criteria. This calculation zone is not required for Walmart formats (Express, etc.) 15K and smaller. This area will be considered as part of the Parking Lot Zone calculation zone.
- 2) LED Maintained Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 1.50 fc.
 - b) Minimum Average Illuminance: 2.75 fc
 - c) Uniformity Maximum/Minimum: 5:1
- 3) HID Maintained Illuminance requirements:

- a) Minimum Horizontal Illuminance: 3.0 fc.
 - b) Minimum Average Illuminance: 5.0 fc
 - c) Uniformity Maximum/Minimum: 5:1
- d. Lighting at Front of Building:
- 1) The front aisle calculation zone poles and luminaires will be located in the front drive aisle islands. Coordinate the exact pole base location to avoid conflict with walkways or other pedestrian requirements. Maintain this alignment across the entire building face. The light pole locations shall be every other parking row (+/- 120 ft between pole locations) in the front drive aisle islands.
 - 2) Always provide a site lighting luminaire oriented toward the front façade of the building on the front drive aisle poles. This luminaire is intended to provide façade lighting and dawn to dusk security lighting for front sidewalk and building entrances. There is no additional facade or drive aisle photometric requirement beyond that required by front aisle calculation zone photometric requirements.
 - 3) The site lighting luminaire oriented toward the front façade of the building shall be required to be on dusk to dawn security lighting electrical circuit.
- e. Entry Drive Zone:
- 1) Roadway for entering and leaving the parking lot. The zone starts at the end of the public road and ends where the main parking zone starts. Crosswalks and intersections shall be coordinated with light poles locations to provide the highest illumination levels in these zones.
 - 2) LED Maintained Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 0.40 fc.
 - b) Uniformity Maximum/Minimum: 10:1
 - 3) HID Maintained Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 1.0 fc.
 - b) Uniformity Maximum/Minimum: 10:1
- f. DSD Loading Door, Bale/Pallet Storage, Organics Storage area, and Loading Dock Zone:
- 1) Specific areas where loading and unloading for the building occur. Building mounted lighting (not part of site lighting design) will be also be used to increase the illuminance levels close to building.
 - 2) Loading Dock Truckwell (shown as "bale and pallet storage" on Appendix A) will have a minimum of two pole mounted luminaires at the far end of the stemwall away from the dock doors. No grids are to be calculated inside truckwell.
 - 3) DSD door to Bale/Pallet and Organics Storage area
 - 4) HID and LED Illuminance requirements:
 - a) Minimum Horizontal Illuminance: 0.40 fc.
 - b) Uniformity Maximum/Minimum: 10:1
- g. Rear Drive Zone:
- 1) Roadway behind the building, where customer parking does not occur, and extends from the façade of the building to the boundary of the paved area. This area shall be illuminated to Site specific illuminance levels as required by the Walmart PM. CEC shall request specific levels for site design prior to

starting the design. The 0.2 minimum presented in section 8.0 is not applicable for this area and no lighting is prototypical.

- h. Drives adjacent to outlots
 - 1) The light pole bases along drives that are adjacent to any outlots are to be located on the parking lot side of the drive. This allows for maximum flexibility in location of ingress/egress drives to access the outlot.

10. Spill Light Control (Light Trespass):

- a. Vertical illuminance shall be less than 0.80 fc at any point 5 feet above finished grade along the site boundary (normal to the boundary and facing the site). Notes on site photometric will describe when spill light is considered beneficial by the CEC and SLDP, and shielding is not required, such as adjoining roads, commercial parking lots, driveways or easements.
- b. Beneficial light is light that falls outside the property boundary and contributes to intentionally illuminated areas outside that boundary (such as roads, commercial parking lots, driveways and easements, etc.) in a manner beneficial to the intentionally illuminated area. Light that falls outside the property boundary onto residential or other sensitive areas such as parks or other areas with more stringent lighting restrictions is considered trespass light. See Appendix "C" for examples.

11. Light Loss Factors: Luminaire Light Loss factors are determined by the SLV and approved by Walmart during the Bid process. The SLV will provide, during the Bid process, the proper certification information (LM79 and LM80 data and methodology for LED luminaires) to support the LLF used in preparing site photometrics. In extreme cases where luminaires are required by jurisdictions that are without supporting materials, the fixture default Light Loss factors below will be used.

- a. For LED luminaires:
 - 1) Lamp Lumen Depreciation (LLD): 0.70
 - 2) Luminaire Dirt Depreciation (LDD): 0.90
- b. For HID Metal Halide luminaries:
 - 1) Fixture LLF: 0.75

12. The "Direct-only Calculation Method" is preferred as the standard basis for calculation of exterior lighting on all Walmart and Sam's Club projects.

13. If the SLDP prefers to use the "Full Radiosity Calculation Method", use 30% reflectance values for buildings and asphalt pavements, 35% for concrete pavements, and 24% for trees in modeling software packages for consistency unless well defined values are more appropriate as determined on a site specific based by the SLDP. All reflectance values are required to be noted on the photometric plan.

14. The mature size of the trees at 10 year growth shall be modeled as objects into the photometric plan to account for any shadowing caused by landscaping obstructions unless well defined values are more appropriate on a site specific basis as determined by the SLDP. If accent or landscape lighting is desired or required, the CEC will coordinate this work also. Walmart will maintain the Collective Site Landscape Obstruction Modeling file for use on all Walmart Photometric Site Plans. CEC or SLDP

is to determine which landscape object from the Walmart library is to be used, size of the object and location of the objections within the site. Should constraints require modification to the site lighting design to facilitate the landscaping design, all parties will work together cooperatively to optimize the design. CEC shall request the file from the Walmart Architectural Dept contact for use in modeling landscape obstructions. CEC should only create models when existing Walmart model is not defined. All landscape models created for Walmart sites shall be appropriately named, included in the modeling file, and sent back to the Walmart Architectural Dept Contact. Consider the use of coniferous plant materials instead of deciduous materials where locally appropriate in native settings.

15. The point-by-point photometric plan of horizontal illuminance will use a 10 foot by 10 foot grid. The calculation points for the Zonal Summary Chart need to use two decimal places. The Photometric plan view should be displayed to one decimal point for clarity.
16. The point-by-point photometric will show the vertical illuminance value at 5'-0" above finished grade every 10 feet along the property line aimed normal to the property line towards the site interior. Unless requested to include these points by the jurisdictions, exclude points on the site boundary that provide beneficial lighting for adjacent parking lots or a boundary that cross entry drives defined as the endpoints of the curb radius at the street.
17. Building mounted wall packs are NOT to be included in final site lighting plans that are compliant with the values presented in this guideline. A stand alone photometric site lighting plan compliant with this guideline is required. Where required by municipality or AHJ (Authority Having Jurisdiction), a second lighting plan including building mounted wall pack for that submittal shall be prepared. It is understood and known that presented lighting levels in that plan will exceed the values presented in this document.
18. Building mounted wall packs can be considered in special cases where perimeter lighting isn't viable. If these are used, it is critical to maintain coordination of the architectural building plans and site civil lighting plan throughout the design through completion of OTB and construction documents.
19. Where decorative fixtures are required, attempt to minimize use to entry drives and associated walkways where visibility to adjacent highways and streets is maximized. If possible, use prototype lighting materials in the main parking lot and other areas on site.

Where these lights are required are required as part of the final lighting plan, attempt to use fixtures supplied by the site specific WM Site Lighting Vendor.

Where decorative lighting poles and fixtures are used in the lighting plan, and they are not provided by the site specific WM Site Lighting Vendor, the project general contractor must be directed to provide and install them. The associated special conditions, architectural spec section 1640, Owner Furnished Products and specification section 16525 must be modified to reflect this change and the GC will provide the lighting package (or portions of the lighting package if both WM prototype and decorative fixtures are combined in the final lighting plan). Be very specific in specifying decorative fixtures and poles. Do not propose and "or equal" material in the specifications and do not consider any contractor proposed alternates.

The CEC is responsible to design and provide light base construction details for each of the decorative fixtures and poles.

Final Design Compliance

Once the site lighting initial design is completed, the final photometric plan shall be reviewed to insure it is in compliance with Walmart Allowed Lumen Total (WALT). WALT is based on the joint IES and IDA Model Lighting Ordinance (MLO). As the MLO is updated so will this document.

1. Lumens per Square Foot Allowance:

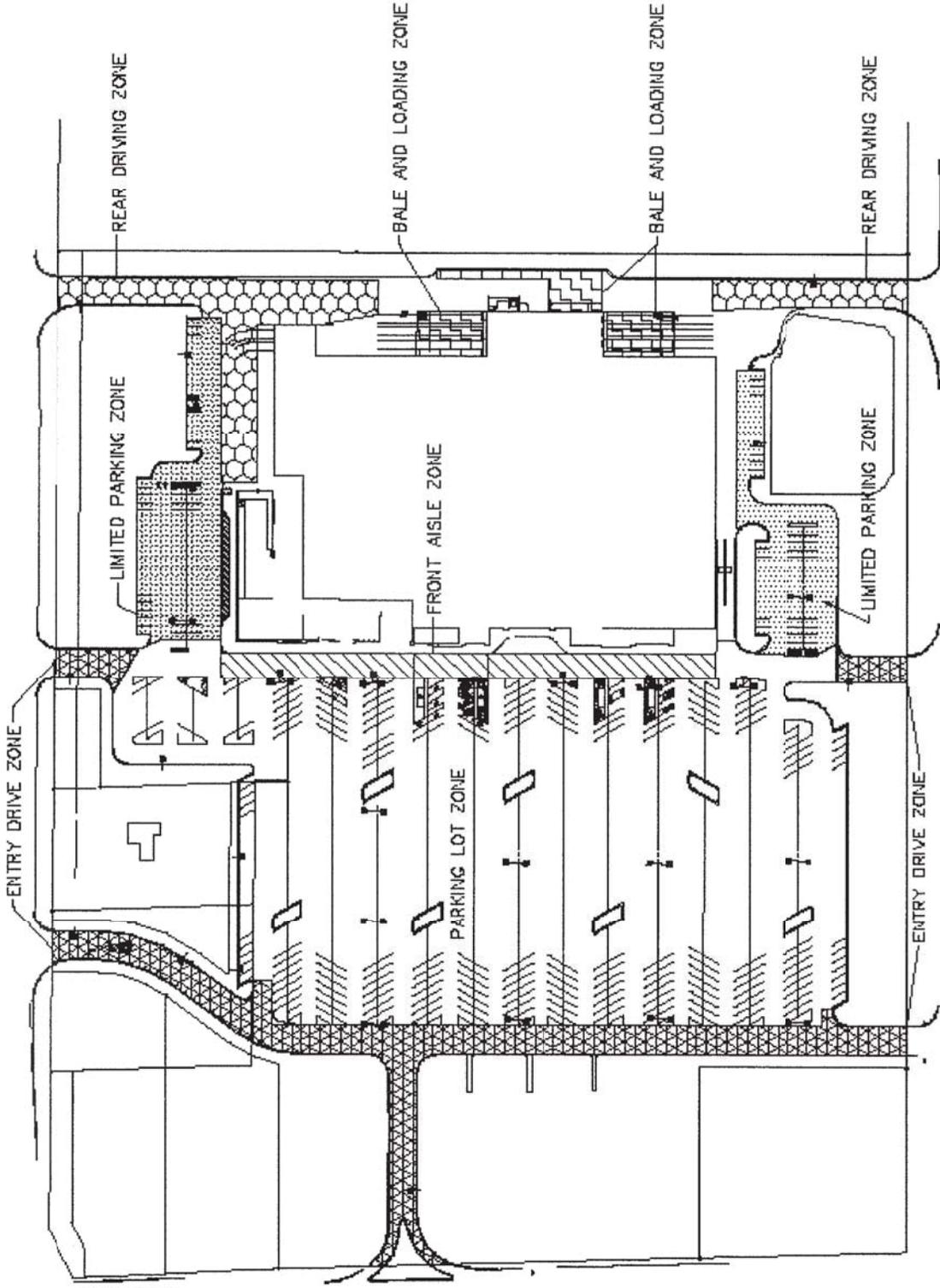
- a. WALT establishes maximum allowable initial light source lumens per square foot of hardscape.
 - 1) The SLV will calculate the parking lot square footage excluding the following:
 - a) Building Footprint
 - b) Canopies (Pharmacy, TLE, Environmental Cage, etc.)
 - c) Sidewalk surrounding building
 - d) Garden center Shade Cloth
 - e) Garden Center Outside Sales
 - f) Compactor Shed
 - g) Compressor House
- b. A total of 600 square feet (sf) may be added to the actual site hardscape area for each intersection of site drives and public streets or road.
- c. 5.0 initial light source lumens per square foot of hardscape are the maximum allowed.
- d. Because LED Fixture performance is based on absolute photometry, the fixture's listed initial output lumens shall be increased by a factor of 1.4 to represent the initial light source lumens for the purposes of these calculations.
- e. If the requirements of the local or county ordinances are more stringent, those ordinances must be used.

2. Light Pollution/Glare Potential:

- a. The lighting will be classified according to latest edition of IESNA TM-15 Luminaire Classification System for Outdoor Luminaires. The former classifications of full cut-off, semi cut-off, etc. will not be used.
- b. The new classifications deal with **Backlight**, **Uplight**, and **Glare (BUG)**. See Appendix 'B' for additional information on BUG ratings.
- c. B-U-G Allowable Ratings (versus pole base distance from property line)
 - 1) Allowed Backlight Ratings:
 - a) Greater than 2 mounting heights from property line: **B5**
 - b) 1 to 2 mounting heights from property line with backlight towards property line: **B4**

1. Site plan with photometric point by point calculations of horizontal illuminance at grade within property lines (10 foot x10 foot grid). Point by point calculations will be set up in parking lot zones listed in Initial Site Lighting Layout Photometric Parameters.
2. Photometric point by point of the vertical illuminance at 5 feet above finished grade along property line (10 foot spacing) with meter points aimed normal to the property line and towards the site interior.
3. Provide chart to demonstrate compliance with WALT. See Appendix 'C' for example. Appendix 'C' will be a separate attachment to this document.
4. Provide Luminaire Schedule of parking lot luminaires. See Appendix 'C' for example. Schedule to include the following:
 - a. Luminaire Symbol
 - b. Quantity
 - c. Luminaire Label
 - d. Luminaire Arrangement (i.e., single, twin, back-back)
 - e. Catalog Description including Pole
 - f. Arrangement Watts
 - g. LLF
 - h. Arrangement Lumens
 - i. B-U-G
5. Provide photometric summary of illuminance levels in parking lot zones listed in Initial Site Lighting Layout Photometric Parameters. See Appendix 'C' for example. Photometric Summary to include the following:
 - a. Site Lighting Calculation Zone Label
 - b. Average foot-candle level
 - c. Maximum foot-candle level
 - d. Minimum foot-candle level
 - e. Maximum-to-minimum ratio (Uniformity)
6. By special request from Walmart PM, provide photometric analysis of proposed DAY 1 initial illuminance values of lighting installation using the following LLF values:
 - a. 1.0 LLD
 - b. 1.0 LDD

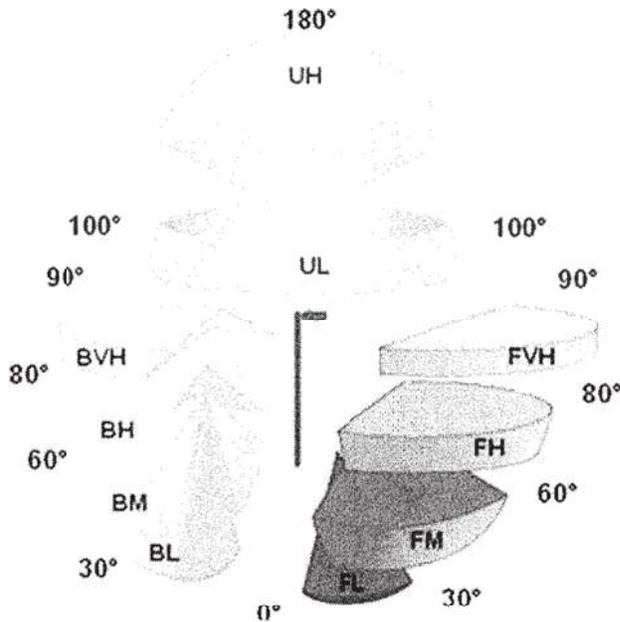
APPENDIX 'A' SITE LIGHTING ZONES



APPENDIX 'B'

B-U-G Ratings:

The criteria deals with the amount of light emitted from a fixture at various secondary solid angles. See diagram (from <http://www.ecofitlighting.com/ecofit-durastreet-iesna-classifications.html>) below depicting the various angles to review.



Backlight as inferred by the name deals with the light in back of the fixture. The backlight can cause light trespass on adjacent properties. In keeping with Walmart's 'Good Neighbor Policy', this should be kept to a minimum.

Uplight is a big factor in sky glow and is typically a waste of energy.

Glare deals with both the forward light as well as the backlight. Glare can cause visual problems as well as being an annoyance factor. Glare can be caused by both the forward as well as the back lighting at the higher angles and should be avoided.

The amount of lumens available in each of the secondary solid angles in the forward light, backlight, and uplight determine the B-U-G ratings. Most manufacturers will have the information in their photometric file indicating the lumen values in each range or at least a percentage of lumens available. See below for Photometric Examples 'A' and 'B'.

1. With example '1', the rating is clear and the SLDC can proceed.
2. With Example '2', the SLDC needs to determine the BUG rating based on the amount of lumens in each angle group. The Backlight Rating is determined using Table A-1 located in Addendum A for IESNA TM-15-07: Backlight, Uplight, and Glare (BUG)

Ratings. The Uplight Rating is determined using Table A-2 in Addendum A. Table A-3 deals with Glare Ratings. Basically, you find the lowest category rating that each angle meets and select the worst case scenario. The Addendum includes a "BUG" Rating Example that clarifies how to determine the rating.

PHOTOMETRIC REPORT EXAMPLE '1' (only a portion of ies file)

[MORE] COMMENT: SCALED TO RATED LUMENS FROM AVERAGED PVP DATA
 [_ABSOLUTELUMENS] 12298.7
 [_LCS] F:1.6-16.2-31.2-0.9; B:1.6-16.2-31.2-0.9; U:0.0-0.0
 [**_BUG**] **B4 U2 G2**
 [_SUPPLYVOLTAGE] 277 VAC
 [_AVERAGEDFILES] 0
 TILT=NONE

PHOTOMETRIC REPORT EXAMPLE '2' (only a portion of ies file)

		PERCENT OF LUMENS FIXTURE
FORWARD LIGHT	6049	81.4
FL (0- 30)		8.2
FM (30- 60)		38.7
FH (60- 80)		32.6
FVH(80- 90)		2.0
BACK LIGHT	1383	18.6
BL (0- 30)		2.8
BM (30- 60)		7.4
BH (60- 80)		7.8
BVH(80- 90)		0.7
UPLIGHT	0.0	0.0
UL (90-100)		0.0
UH (100-180)		0.0
TRAPPED LIGHT	0.0	0.0
TOTAL FLUX	7432.	100.0

**The Following pages are comments / complaints received prior to July 30, 2015,
when the Town received the “Notice of Appeal”
from Wal-Mart Real Estate Business Trust
for Town Council’s determination.**

Greg Schulte
City Manager, Pagosa Springs
Post Office Box 1859
Pagosa Springs, Colorado 81147

March 26, 2015



Dear Mr. Schulte:

Homeowners near the new Walmart have observed that the lights recently installed in the Walmart parking lot do not comply with the Lighting Ordinance as it is outlined in the Town of Pagosa Springs Municipal Code Section 21.5.5 Lighting, #1 Design Standard (a) and (b) which states:

(a) Any light used for illumination of signs, parking and security area, or for any purpose other than street lighting shall be arranged to direct and confine all light beams to the subject property and away from nearby properties and the vision of passing motorists.

(b) Light sources (bulbs) must be concealed or shielded in order to minimize light and glare on adjoining properties.

Additional information concerning exterior lighting regulations was found on the city web site:

6.11.4. DESIGN STANDARDS

Exterior lighting is not required except for purposes of public safety. However, if installed, all exterior lighting shall meet the following design standards:

- A. All light sources shall be concealed or shielded with luminaries with cut-offs with an angle not exceeding ninety (90) degrees to minimize the potential for glare and unnecessary diffusion on adjacent property. For purposes of this provision, "cutoff angle" is defined as the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above from which no light is emitted.
- B. Parking lots and other background spaces shall be illuminated as unobtrusively as possible while meeting the functional needs of safe circulation and protection of people and property. Foreground spaces, such as building entrances and outside seating areas, shall utilize local lighting that defines the space without glare.
- C. In no case shall exterior lighting add any footcandle illumination at any point off-site
- J. Any light used for illumination of signs, parking and security area or for any purpose other than street lighting shall be arranged to direct and confine all light beams to the subject property and away from nearby properties and the vision of passing motorists.

As residents who live near the new Walmart, we have observed the following:

1. The lights that have been installed in the front parking lot of Walmart shine over the building directly into the second story bedroom windows of Units H, I, and J of 20 Timberline located behind the store.
2. All bulbs can be seen from from the street and from homes near Walmart.
3. Homes in the area no longer have a clear view of the stars because of light pollution.

The following home owners ask that Walmart make the necessary modifications to the lights surrounding their new store so that lighting is "arranged to direct and confine all light beams to the subject property and away from nearby properties." It is also requested that the lights are "concealed or shielded in order to minimize light and glare on adjoining properties", thereby complying with item C of 6.11.4 of the city's design standards for lighting.

Name:

James L. Bushwald
 Keith M. Bushwald
 Nancy Hall
 Gary Hall


 Frederick A. Jzy

Thyllis Meyer

 David Meyer

Address:

20 Timberline Unit J Pagosa Springs
 mailing address - 703 Richmond Ln. Keller, TX 76248

20 H Timberline
 Pagosa Springs, CO
 Mailing address:
 7320 Wexford Ct.
 N. Richland Hills, TX 76182

20 Timberline, Unit I
 mail to: 418 Cool Pines Dr.
 Pagosa Spgs CO 81147

20 Timberline Dr. Unit G
 PO Box 3995
 Pagosa Spgs CO 81147



James Dickhoff <jdickhoff@pagosasprings.co.gov>

The Walmart Lighting Appeal

1 message

Jerry Joan Jessen <jerryjoanjessen@gmail.com>

Wed, Jul 1, 2015 at 10:06 AM

Reply-To: jerryjoanjessen@gmail.com

To: James Dickhoff <jdickhoff@pagosasprings.co.gov>, Greg Schulte <gschulte@pagosasprings.co.gov>

Following is my preliminary understanding of the situation. I am considering our next steps because the situation is intolerable for us and even more so for the 4 houses adjacent to Walmart (including Cameron's and Janes). We hope that the Commissioners and the Council consider the bottom line that Walmart provided lighting technology and design having a significant impact on adjacent residences and didn't take the opportunity to mitigate the impacts on the residences even though Walmart knew there would be significant impact.

From the meeting:

-The intent of Pagosa's land use code clearly states Pagosa's focus on lighting is to limit the adverse impacts of light to neighboring properties to the maximum extent. The code also provides additional requirements for buildings bordering Residences.

-Pagosa's Land Use Development Code does not allow for variances in new construction with the exception of sign size variance.

-It is clear that Walmart lighting does not comply with the code in a number of areas.

-Walmart chose to build on a lot that was almost too small, very close to existing residences, in the center of town, across from a beautiful lake in a rural community.

-Walmart has internal procedures allowing them to develop a lighting design meeting the intent of Pagosa's land use development code but they chose instead to use a design which focused mainly on having an abundance of light with a token compliance with their understanding of the metrics in the code.

-Rather than using the flexibility within their corporate procedures to develop a lighting plan to meet the needs of the community and the requirements of the special situations encountered in building the Pagosa Walmart, they chose instead to use their boilerplate lighting plan and minimally tweak it.

-The Town contacted Walmart prior to start of construction to indicate there might be problems with Walmart's lighting design based on Pagosa's clearer understanding of LED lighting gained through the Tractor Supply project. Prior to this Pagosa had very limited experience with and understanding of LED lighting. At that time Walmart had the opportunity to redesign the lighting to ensure it complied with Pagosa's Land Use Development Code, Pagosa's desires to limit the adverse impacts of LED lighting, and site specific concerns and issues.

Joan Jessen



James Dickhoff <jdickhoff@pagosasprings.co.gov>

Photos of Walmart Light Shed batch 1 of 3

1 message

Jerry Joan Jessen <jerryjoanjessen@gmail.com>

Thu, Jul 2, 2015 at 10:49 AM

Reply-To: jerryjoanjessen@gmail.com

To: James Dickhoff <jdickhoff@pagosasprings.co.gov>, Greg Schulte <gschulte@pagosasprings.co.gov>

Dear James and Greg,

I am sending 3 batches of photos all taken on June 30, 2015 around 10:00 pm during a rain storm.

This batch of 4 photos shows the light shed mainly to the North and east of Walmart. My camera wasn't able to capture the lower level light shed to the North, and East of our property.

Joan Jessen

4 attachments



LightShedNorth1.JPG
3919K



LightShedNorth2.JPG
3871K



LightShedNorth3.JPG
4118K



LightShedNorth4.JPG
4372K



James Dickhoff <jdickhoff@pagosasprings.co.gov>

Photos of Walmart Light Shed batch 2 of 3 Cottages

1 message

Jerry Joan Jessen <jerryjoanjessen@gmail.com>

Thu, Jul 2, 2015 at 10:59 AM

Reply-To: jerryjoanjessen@gmail.com

To: James Dickhoff <jdickhoff@pagosasprings.co.gov>, Greg Schulte <gschulte@pagosasprings.co.gov>

Dear James and Greg,

This batch of photos taken June 30, 2015, approximately 10:00PM from our front porch and shows light reflection and shed in the cottages.

I am most concerned about the light reflecting into the cottages as it directly impacts all of the individuals living in the cottages.

Joan Jessen

5 attachments



LightShedCottages1.JPG
2064K



LightShedCottages2.JPG
1919K



LightShedCottages3.JPG
3083K

LightShedCottages4.JPG
1632K



LightShedCottages5.JPG
1835K



James Dickhoff <jdickhoff@pagosasprings.co.gov>

Walmart lights

1 message

Jerry Joan Jessen <jerryjoanjessen@gmail.com>

Fri, Jul 3, 2015 at 1:17 PM

Reply-To: jerryjoanjessen@gmail.com

To: James Dickhoff <jdickhoff@pagosasprings.co.gov>, Greg Schulte <gschulte@pagosasprings.co.gov>

James and Greg,

Sorry to piecemeal my comments but I keep thinking of other important information.

I hope the Commissioners have read and are familiar with the Land Use Development Code.

Please ensure the commissioners are aware that under 1.4.2. Compliance required Paragraph C. "A permit or approval issued in violation of this Land Use Code is void."

The LUDC states:

1.4.2. COMPLIANCE REQUIRED

C.

No permit or approval may be issued under this Land Use Code unless all structures and uses of land and structures to be authorized by the permit or approval conform to this Land Use Code, regulations promulgated under this Land Use Code, and the terms and conditions of other applicable permits and approvals issued under this Land Use Code. **A permit or approval issued in violation of this Land Use Code is void.**

Joan Jessen

Landowner less than 300 feet

25 Alderwood Court

Pagosa Springs, CO 81147



James Dickhoff <jdickhoff@pagosasprings.co.gov>

Photos of Walmart Light Shed batch 3 of 3 Light reflection on Porch and Tundra

1 message

Jerry Joan Jessen <jerryjoanjessen@gmail.com>

Thu, Jul 2, 2015 at 11:13 AM

Reply-To: jerryjoanjessen@gmail.com

To: James Dickhoff <jdickhoff@pagosasprings.co.gov>, Greg Schulte <gschulte@pagosasprings.co.gov>

Hi James and Greg,

This 3rd batch of photos shows the light reflecting off our porch and Tundra. I do not understand how the walmart light is dispersing but it is reflected off of all of the surfaces near Walmart.

All of the photos were taken during a rain storm. The cloud cover prevented moonlight and light from the stars. There was periodic lightning to the north-west.

Thank you for being our advocate and trying to ensure that our concerns are addressed.

It is our understanding that the garden center is being addressed separately.

I believe with this submittal that I have submitted all of our concerns and are waiting to see how things will be resolved.

Joan Jessen
25 Alderwood Court
Pagosa Springs, Colorado 81147
[970-946-8684](tel:970-946-8684)

2 attachments



Light on Porch 1.JPG
3865K



ReflectionTundra.JPG
3471K



James Dickhoff <jdickhoff@pagosasprings.co.gov>

Process Flawed to make maximum use of opportunities to avoid litigation

1 message

Jerry Joan Jessen <jerryjoanjessen@gmail.com>

Sat, Jul 4, 2015 at 9:52 AM

Reply-To: jerryjoanjessen@gmail.com

To: Greg Schulte <gschulte@pagosasprings.co.gov>, James Dickhoff <jdickhoff@pagosasprings.co.gov>

James and Greg,

I just realized that you are missing critical steps if the goal is to resolve things at the lowest level without going to litigation. I believe that the Commissioners do not have the information required to make the best decision. If you do not have all of the information on the table, the Council will be making the decision on different information. The goal should be for the Council to consider whether the Commissioners decision was correct based on a thorough analysis of all information available.

1. Each party presents their case.
2. Each party responds to all of the information presented.
3. The Commissioners provide questions to all parties where they need additional information to make an informed decision.
4. The Commissioners make their decision.

The best alternative is to have all information on the table before the Commissioners present their decision.

Thank you for considering my opinions.

Joan Jessen



James Dickhoff <jdickhoff@pagosasprings.co.gov>

Tonight's Walmart Lighting Meeting

1 message

keith.buchwald <keith.buchwald@verizon.net>

Tue, Jul 21, 2015 at 1:50 PM

To: jdickhoff@pagosasprings.co.gov

Greetings James,

I have a vacation townhouse at 20J Timberline in Pagosa Springs, which is the furthest south unit. I permanently reside in Keller, TX.

Having attended the first appeals hearing of the Walmart lighting waiver I'd like to say thank you for presenting Walmart's non-compliance in a thorough and professional manner. Well done! It is however very disappointing to see three people reject the motion to require Walmart's compliance with the night sky ordinance.

The Walmart lights have destroyed the night sky for all who live adjacent. The lights light up my 2nd story bedroom like daylight, shining over the top of the building. My property value appraisal dropped \$5,000.00 after the lights were put into service. The lights are too tall, too bright, and unshielded. It was stated in the meeting that Walmart has a safety standard for parking lot lighting design. I have attached three pictures of our local Walmart in Keller, TX, that are 20' tall, less intense, and shielded in order to protect adjacent residential properties. This Walmart is only ~5 years old, and have a safe establishment. I hope you can use this information and these pictures in tonight's meeting to dispel any claim that Walmart cannot comply with the night sky standard.

If Pagosa Springs allows Walmart's waiver all new businesses will use this as the new lighting standard because Walmart got away with it. Walmart does not care about the night sky ordinance; they care only about making money.

It makes more sense to me that Walmart spend money on correcting the lighting than legal fees to defend it, which by the way will continue. The residents of Pagosa Springs are not going to roll over on this issue.

Please see attached. Good luck in tonight's meeting.

Keith Buchwald

703 Richmond Lane
Keller, TX 76248
817-371-4325

3 attachments

WalmartKeller3.jpg
46K



WalmartKeller2.jpg
126K



WalmartKeller1.jpg
102K

June 13, 2015 email to Gregg Schulte and James Dickhoff from Joan and Jerry Jessen.

Hi Jim and Greg,

Just giving you a heads up, I sent a letter to the Editor to the Pagosa Sun to be published this coming Thursday on the Walmart lighting (copy forwarded with this email). After I sent the letter, I read this Thursdays edition of the Pagosa Sun.

Everyone I talk to is really upset about the Walmart lights. Everyone said that Pagosa has dark sky requirements so they are having a hard time understanding what happened with the Walmart lights.

There are things Walmart could do to minimize the impact of lights on neighboring houses and the surrounding area. It is crazy that Walmart installed such tall lights and so many lights. The lights need to be shielded. Walmart could turn off some of the lights or use lower watt bulbs.. It would be great if Walmart could reduce the height of the lights. Walmart needs to put something across the top of the garden center to prevent the bright glare from the lights in the Garden Center.

One of the things that upsets me the most is that our neighbors bedrooms are right next to the bright glare of lights from the loading dock.

The ground to the North of our house glows. We took a walk in the dark recently up toward Alpha and the Walmart lights shine brightly through the countryside. There is no way to avoid seeing Walmart lights from our house but they could be substantially less obtrusive and still provide sufficient light.

The Land Use Development code clearly indicates that Walmart needs to prevent impact of lighting to bordering residences.

My husband talked to the store Manager and he is very responsive to our concerns but does not have control over the lighting.

Joan Jessen

Do you value the beautiful night skies in Pagosa. Not everyone in the world can look up at night and see brilliant stars. The more light pollution the less brilliant the night skies. If you want the town Government to know that the beautiful night skies are important to you please go to the town meeting on June 30, at 5:30 PM at the community center to discuss the Walmart Lights for the following reasons:

1. You can see the Walmart lights (parking lot, the garden center and the loading area) for a radius of at least 2 miles in all directions of Walmart. The lights are on 24 hours a day.
2. Walmart has chosen to build in one of the most visible and beautiful locations in the town of Pagosa, on highway 160 across from Pagosa Lake.
3. The property owners in the Cottages, Enclaves, Alpha, Pagosa Lakes and in other parts of Pagosa were here before Walmart was built.
4. The town needs to protect the rights of all property owners equally without regard for financial status, or whether they are vocal, or whether they come to town meetings, or whether they are a large business with lots of money and power.

5. The people of Pagosa Springs moved here because of the natural beauty of the area including the night skies and their hopes are that everyone works together to preserve this beauty for the existing inhabitants, future inhabitants, and visitors passing through Pagosa.
6. The intent of the law needs to be considered. In the case of the land use development code one of the intents of the code is to preserve the night skies for the benefit of the people of Pagosa who value the night skies.
7. Property owners need to comply with the municipal code. The code is the law. The land use development code is part of the municipal code.
8. When building new from a blank slate the municipal code does not have provision for variances except for sign size variances.
9. If the town employees who are responsible for the review of projects are doing their job, the job of the Commissioners and Town Council should be minimal and mainly focused on issues where the law is not clear.
10. People who live in Pagosa should not have to go to town meetings to ensure that the town is looking after their interests. If the town is doing their job, the people in Pagosa will not feel concerned that things will be ok and compelled to come to public meetings.
11. The Government needs to ensure that the Municipal Code including the Land Use Development Code (LUDC) reflects and protects the interests and values of the people who live in Pagosa Springs and if necessary the LUDC should be modified to more clearly state and protect these interests.

I am a property owner in the town of Pagosa Springs, Colorado.

Joan Jessen, 25 Alderwood Court, Pagosa Springs, Colorado [970-946-8684](tel:970-946-8684)

June 14, 2015 email to Gregg Schulte and James Dickhoff from Joan and Jerry Jessen.

Flagstaff is similar to Pagosa. But they are proactively addressing the night sky issues. Following is an article which may provide ideas on actions that could be taken. Walmart should look at Pagosa as an opportunity to improve their lighting design to be less polluting and more user friendly to towns and neighbors where they locate. Walmart could benefit the whole country if they made true efforts to improve their lighting program through partnership with communities. Having far more lights than needed, providing bright lights that don't appear to be shielded, using the white spectrum rather than the yellow, and ignoring the culture and desires of local communities indicates that Walmart is not truly committed to having a good lighting program.

<http://www.flagstaffdarkskies.org/led-lighting-dark-skies/>

Rather than being adversaries Walmart should have the goal to partner with local communities.

June 15, 2015 email to Gregg Schulte and James Dickhoff from Joan and Jerry Jessen.

Greg and Jim,

Following are our concerns about Walmart's lights in case we do not receive any other opportunity to voice our concerns.

There are so many people adversely impacted by Walmart's lights. The intensely bright glow adversely impacts neighboring property owners. Even on cloudy days there is enough light on the North and West side of our property that we can see all of the details of our property without the assistance of a flashlight.

We are very concerned about the impact of Walmart's lights on our Neighbors in the cottages, especially Cameron and Jane who are on a missionary trip to Haiti and are unable to represent their concerns at the neighborhood meeting.

The Walmart lights are not adequately shielded. The lights should not have exceeded the height of the building. There are three times as many lights as needed to provide adequate lighting. Lights are much brighter than needed. Yellow light would be more user friendly. It appears Walmart may have copied a lighting scheme from other projects with no thought about the Pagosa's needs and requirements.

Although it is necessary to have enough light, too much is bad. LED light is especially bad. Outdoor lighting glares, infiltrates the skies and countryside with light pollution, the glare makes it difficult to see and is distracting to drivers. Too much light may adversely impact people's health and sleep. Too much light adversely impacts wildlife in many ways we may not yet be aware of. Many people in Pagosa love the beautiful night skies. Individuals living in light polluted areas do not understand how brilliant stars are in a dark night sky. Using more lights than what is needed is destructive to the environment through wasted energy and lights made of hazardous material eventually needing disposal.

With creativity, compassion, and empathy there are many ways Walmart lighting engineers could provide user friendly lighting positively impact the way people perceive Walmart.

Gerald and Joan Jessen, 25 Alderwood Court, Pagosa Springs, Colorado [970-946-8684](tel:970-946-8684).

June 1, 2015, Rusty 30 W McCabe Creek, owner in Townhomes, 1-512-761-0377

Exterior Flood Lights on the south side of the Townhomes

**The Following “Documents of Record” are from the
original Application Submittal and the Design Review Board Public Hearing on
May 22, 2012**

Documents Relative to the DRB Public Hearing on May 22, 2012

- 1) May 15, 2012 Correspondence from the Planning Director to Tasha Bolivar.**
- 2) Wal-Marts responses to staff and Bohannan Huston’s project comments, dated May 21, 2012.**
- 3) Wal-Mart illumination power point presentation, dated May 22, 2012.**
- 4) Preliminary Lighting plans dated April 4, 2012**



551 Hot Springs Boulevard
Post Office Box 1859
Pagosa Springs, CO 81147
P: 970.264.4151
F: 970.264.4634

**Town of Pagosa Springs
Planning Department**

Date: May 15, 2012
To: Tasha Bolivar, Galloway
5300 DTC Parkway, Suite 100
Greenwood Village, Co. 80111
Re: Comments regarding Bohannon Huston review of Wal-Mart Design
"Major Review Development Application".

Hello Tasha,

Below are my comments related to the DRAFT comments provided to the Town by Bohannon Huston, referenced per item number on their report and additional items needing clarification or attention. Galloway should be prepared to address and answer the items in the Bohannon Huston report, and town Staff comments below, at the May 22, 2012 5:15pm Public Hearing. We can certainly discuss these items in preparation for that Public Hearing.

- 1) Applicant should provide record of and written summary of both of the Pre-Application Conferences;
 - ~ November 3, 2011 Pre-Application Conference held with Town Staff and Galloway
 - ~ January 5, 2012 Pre-Application Conference held with the Town, County and Utility providers.
- 2) Please provide a written summary of the Open House conducted on March 08, 2012.
- 3) The land use application was signed by Michael A. Allan. Provide written notarized documentation authorizing and designating this individual as an Authorized Agent on behalf of the property owner/applicant.
- 4) Posting of sign was completed by Town Staff on May 7, 2012. A photo will be included in the Town Staff report for the May 22, 2012 public hearing.
- 5) Provide evidence that Mineral Estate Owners and Lessees were notified within 30 days of the public hearing. A copy of the parties notified and addresses, certificates of mailing and notification letters would be a sufficient. Town Staff did place a public notice in the May 10th issue of the Sun correcting the public hearing as originally noticed in the Mineral Estate Owners and Lessees public notices mailed.
- 6) Is this entire area planned for outdoor sales area? Please address this item.
- 7) Hard to imagine 50% of any of the street frontages being occupied by a building wall. Town Staff supports not complying to this requirement, due to project site.
- 8) Clarify this dimension. Can the 35'-4" be reduced to below 35' ?
- 9) Provide an analysis of this condition.
- 10) Provide your analysis regarding the wide driveway entrances. Is there an opportunity to reduce these widths and still accommodate truck access, turning and backing ? 50' and 75' opening appear to be larger than needed. The 75 foot opening along Aspen Village Drive provides a full un-screened view of the loading dock area from the existing adjacent residential development. Consideration of moving, removing or reducing the width should be considered for LUDC screening criteria. This criteria is also addressed in LUDC section 6.6.6.A & B.
- 11) Provide for on-site collection of (storm waters) runoff.
- 12) Pedestrian circulation including gathering and sitting areas appear to be insufficient. For consideration:
 - ~ Sidewalks could be provided (centered) to access both Handicap parking rows from front of building.
 - ~ Internal Pedestrian crosswalk stripping to the east of from walk would provide a clear pedestrian route.
 - ~ The front of the store can be considered a natural gathering area and additional seating areas in front of the store could be considered to comply with the LUDC section 6.6.5.B.1.
 - ~ Please address the question regarding the raised sidewalk/walkway in BH review.
- 13) Ice is a major concern for pedestrians on north sides of buildings in Pagosa. the entrance to this store will be shaded most of the winter. How will this ice be handled by Wal-Mart. For consideration, heated sidewalks would be appropriate and would reduce liability and safety issues .
- 14) The building lacks architectural features on the west, south and east sides and corners of the facade. Please address this LUDC criteria.

- 15) The building lacks architectural features and facade modulation on the west, south and east sides of the facade. Please address this LUDC criteria. For consideration, instead of facade treatments, consider column bases off set from the building with timbers supporting gable end features on all 4 sides of the building. These gables could extend above the proposed roofline and be (at the peak) higher than 35'. This design element could provide a building character that is consistent with the surrounding area.
 - 16) See #15 above.
 - 17) LUDC section 6.7.5.C.3. states that service and utility entrances, mechanical support facilities and unimproved building sides shall not be located within view of neighboring residences or visible from hwy right of way. This could be a difficult lot to accomplish this requirement as it is stated. Additional screening and consideration of amending the service access opening widths along Aspen Village Drive could assist with complying with the intent of the LUDC.
 - 18) Provide adjustment to parking calculations to include all outdoor sales areas. If this area addressed is not an outdoor sales area as described in # 6, please provide this clarification.
 - 19) Provide additional clarification, calculations considerations for this concern
 - 20) Provide additional clarification, calculations considerations for this concern and as it relates to LUDC section 6.9.4.C (at least 10% of the total area of the parking lot shall be used for landscaping and/or aesthetic treatment). Additional interior trees could provide needed shade during summer months reducing temperatures emitting from pavement.
Please verify these Approximate calculations for landscaping requirements per LUDC section 6.9.4.C:
~ Parking Lot = approx 183,000 sq ft. (10% landscape requirement = 18,3000 sq ft).
~ Landscaping in and adjacent to parking lot = approx 57,750 sq ft.
 - 21) Provide additional clarification, calculations considerations for this concern and as it relates to LUDC section 6.9.4.C. Additional interior trees could provide needed shade during summer months reducing temperatures emitting from pavement.
 - 22) Reference # 12 above.
 - 23) Provide a statement confirming the obligations of the owner/leaseholder of maintaining landscaping elements.
 - 24) Concern of light pollution from the surrounding properties has been expressed and is considerable. Though there is minimal footcandle illumination extending off site, the LUDC section 6.11.4.C. states "In no case shall exterior lighting add any footcandle illumination at any point off site.
 - 25) Wall Signs in sign zone 2 are limited to 100 square feet in size per sign.
 - 26) One freestanding is allowed per property and is limited to 100 sq feet per side and 20 foot tall. Monument signs are preferred over pole signs.
- B. Generally, CDOT received the access permit application on May 14th. CDOT reserves 14 days to determine the application completeness, and then an additional 45 days to review plans and provide a determination. Ultimately any approval will be conditioned on the approval of this permit and the proposed traffic modifications. As mentioned in the BH report, there is concern that this one project will take an inequitable amount of the allowed traffic for the Aspen Village PUD development. this will need to be addressed and demonstrate that negative impacts to the remaining development build out can be mitigated.
- B-1. Consider alternate options for consideration.
- B-3. Alpha Drive Design and Engineering plans consistent with the LUDC and approval is required with an engineers cost estimate. A performance Bond will be required for the Alpha Drive improvements. Specific Road and Sidewalk Design elements of this roadway should be discussed further with input from the traffic study and CDOT access Permit.
- B-3.3. There may be a legitimate consideration to allow this driveway off set, as it relates to residents in the Cottages Residential Development accessing Aspen Village Drive at a location not associated with the Wal-Mart Access which may reduce potential conflicts since most traffic will not proceed SW of the second access point that is NW of the Cottages access.
- C. Ton Staff agrees with all BH comments regarding Drainage Study.
- D. Submission and approval from the Corp will be a condition of any approval.
- E. Town staff agrees with all BH comments. All utility provider conditions must be met as a condition of approval.
- F. Town agrees with BH comments.

Feel Free to contact me with questions. *Thank You, Respectfully, James Dickhoff*
Planning Department Director, Town of Pagosa Springs
Po Box 1859, 551 Hot Springs Blvd.
970-264-4151 x225, jdickhoff@centurytel.net

May 21, 2012

**TOWN STAFF COMMENTS ARE HIGHLIGHTED IN YELLOW FOLLOWING BOHANNAN
HUSTON ANALYSIS OF EACH ITEM.**

**WAL-MART TEAM RESPONSES ARE HIGHLIGHTED IN BLUE FOLLOWING BOHANNAN
HUSTON ANALYSIS AND TOWN COMMENTS.**

1. **Article 2, Subsection 2.3.1, Paragraph E (Page 11)** requires the applicant to provide a record of the Pre-Application Conference to accompany the submittal. This document was not included with the package reviewed.

This information has been included with this response letter.

2. **Article 2, Subsection 2.3.2, Paragraph E (Page 12)** requires the applicant to provide a written summary of the neighborhood meeting to accompany the submittal. This document was not included with the package reviewed.

The applicant has supplied this information on May 15, 2012.

A copy of this document has been included with this response letter.

3. **Article 2, Subsection 2.3.3, Paragraph D (Page 12)** requires written notarized documentation from the property owner authorizing the filing of the submittal, if the owner is not the party making the submittal. The Land Use Permit Application was signed by Mr. Michael A. Allan but it is unclear if he is representing the property owner and/or has authority to sign on their behalf.

The land use application was signed by Michael A. Allan. Provide written notarized documentation authorizing and designating this individual as an Authorized Agent on behalf of the property owner/applicant.

Michael Allan is the Director of Project Design & Management within the Wal-Mart organization. Proof of Mr. Allan's position and delegation of authority within Wal-Mart has been included with this response letter. As a part of the 1st submittal, authorization letters from both property owners (Echo Bay T-68, LLC & Pagosa Partners I, Inc.) were provided that designated both Wal-Mart and Galloway and Company, Inc. as authorized representatives to submit the necessary applications on the owner's behalf as it applies to the proposed Wal-Mart Supercenter development. Additional copies of these authorization letters have been included with this response letter for reference.

4. **Article 2, Subsection 2.3.7, Paragraph E (Page 16)** requires the posting of a sign at the property at least 15 days prior to the public hearing date. Evidence of this sign posting was not included with the package reviewed.

Posting of the sign was completed by Town Staff on May 7, 2012. It is our understanding that a photo has been included in the Town Staff report.

5. **Article 2, Subsection 2.3.7, Paragraph F (Page 16)** requires that notice be provided to mineral estate owners and lessees, not less than 30 days prior to the initial public hearing. Evidence of this notification was not included with the package reviewed.

Provide evidence that Mineral Estate Owners and Lessees were notified within 30 days of the public hearing. A copy of the parties notified and addresses, certificates of mailing and notification letters is sufficient. Town Staff did place a public notice in the May 10th issue of the Sun correcting the public hearing date, originally noticed as May 8, 2012, in the Mineral Estate Owners and Lessees public notices mailed.

This information has been included with this response letter.

6. **Article 4, Subsection 4.3.4, Paragraph C, 2, b (Page 95)** limits the area allowed for outdoor display or sales to one quarter of the length of the store front. Plan Sheet 2, keyed note 54 indicates that approximately 297' of the 432' store front (inclusive of the seasonal/garden center) will be utilized for outdoor sales/display, which equals approximately 69% of store frontage.

Is this entire area planned as an outdoor sales area? Applicant should address this item.

The outdoor display and sales area along the proposed store front can be reduced in size to comply.

7. **Article 5, Table 5.1.2 (Page 100)** states that "at least 50 percent of the primary street frontage must be occupied by a building wall." Because of the building orientation and the curvilinear alignment of Aspen Village Drive, a strict interpretation of this requirement is difficult to achieve. A visual analysis of the Site Plan however, appears to indicate this requirement has not been met.

Hard to imagine 50% of any of the street frontages being occupied by a building wall. Town Staff supports not complying to this requirement, due to the specifics of and size of the project site.

Agreed.

8. **Article 5, Table 5.1.2 (Page 100)** limits the building height to 35'. Colored Elevation Sheet 1 indicates that a portion of the front façade will have a height of 35'-4" but Exterior Elevation Sheet A-2 indicates the same portion will be 34'-8". A clarification is needed.

Applicant shall Clarify this dimension. Can the 35'-4" be reduced to below 35' ?

The proposed building height is 34'8" to the top of masonry and 35'0" to the top of the cornice.

This will be corrected upon resubmittal.

9. **Article 6, Subsection 6.6.3, Paragraph B, 3, I, (v) (Page 124)**: discusses clear site distance requirements. Based on the graphic symbol locations of the landscape material depicted on Sheet 6, some of the "moonshine yarrow" plants will exceed the 2.5' height limitation at the north side of the middle entrance from Alpha Drive.

Applicant has been asked to Provide an analysis of this condition.

The height of the "moonshine yarrow" plant has been verified with two local nurseries and the maximum mature height estimate has been reduced to 2'. This will be corrected on the landscape plan upon resubmittal.

10. **Article 6, Subsection 6.6.4, Paragraph C, 11 (Page 132)** limits the width of commercial driveways to 30'. Two driveways providing access to the rear service area of the building from Aspen Village Drive are noted as being 50' and 75' wide.

Applicant shall provide analysis regarding the wide driveway entrances. Is there an opportunity to reduce these widths and still accommodate truck access, turning and backing ? 50' and 75' opening appear to be larger than needed. Both of these Driveway Entrance openings along Aspen Village Drive provide a full un-screened view of the loading dock and service areas from the existing adjacent residential developments. Consideration of moving, removing or reducing the width should be considered for LUDC screening criteria. This criteria is also addressed in LUDC section 6.6.6.A & B.

A truck route exhibit has been included with this response letter to show the projected truck turning movements in and out of the access points along Aspen Village Drive. Based on this analysis the entrance widths have been reduced to 40' and 50'.

11. **Article 6, Subsection 6.6.4, Paragraph C, 16 (Page 132)** restricts (storm water) runoff from draining from a driveway onto the Town roadway. Sheet 3 indicates that the center driveway accessing Alpha Drive will allow for the discharge of storm water flows into this Street. Other driveways will also allow for a minimal discharge of storm water flow to enter Alpha Drive

and Aspen Village Drive. See also Section C of this report for Additional Drainage Study/Hydrology review comments.

Applicant shall provide evidence of accommodating on-site collection of (storm waters) runoff.

A new inlet can be added to the north side of the center access point along Alpha Dr. to capture the flows indicated.

12. **Article 6, Subsections and Paragraphs 6.6.5, B, 1, 6.6.6, B, 9, 6.7.3, A, 5, and 6.7.7, C, 1 (Pages 133, 134, 150)** discuss pedestrian circulation requirements and notes that “the pedestrian circulation system shall include gathering/sitting areas, and provide benches, landscaping, and other street furniture where appropriate.” The internal pedestrian circulation system is very limited, providing a minimally defined east-west connection to/from both Aspen Village Drive and Alpha Drive to the store front and no pedestrian access in a north-south direction where shoppers will walk from their vehicle to the store entry. The east-west walkway does not indicate a crosswalk at the northeast corner of the building. The Site Plan (Sheet 2) shows a striped area along the front of the store which indicates the area for outdoor sales/display. It is not clear if this is intended to be a raised sidewalk/pedestrian walkway or if it is asphalt that is flush with the drive aisle which is adjacent to it. Clarification is needed in this area. The only area provided for pedestrian seating and gathering is located to the north and east of the building, and a significant distance from the store entry. No other pedestrian amenities are provided.

Pedestrian circulation including gathering and sitting areas appear to be insufficient. For consideration:

~ Sidewalks should be considered to provide (centered) access to both Handicap parking rows from front of building.

~ Internal Pedestrian crosswalk striping to the east of from walk will provide a clear pedestrian route.

~ The front of the store can be considered a natural gathering area and additional eating areas in front of the store could be considered to comply with the LUDC section 6.6.5.B.1.

~ Please address the question regarding the raised sidewalk/walkway in BH review.

Pedestrian routes from the handicapped parking spaces to the front of the building can be striped to create walkways as requested.

Crosswalk striping can be added along the east-west pedestrian route as indicated.

The five planters along the front of the store have seating areas on two of the four sides for pedestrian gathering. Additionally, there are benches provided under the colonnade area to the east of the store entrance.

The walkway along the entire front of the store is flush with the adjacent front drive aisle.

13. **Article 6, Subsection 6.7.3, Paragraph A, 2 (Page 136)** discusses building orientation noting that “local climatic conditions shall be considered when orienting buildings” and further notes that “north facing facades are especially susceptible to winter snow and ice accumulation, and entries may require special treatment.” It should be noted that the building is oriented with the entrance on the north side of the building.

Ice is a major concern for pedestrians on north sides of buildings in Pagosa. The pedestrian entrance to this store will be shaded most of the winter. How will this ice be handled by Wal-Mart. For consideration, heated sidewalks would be appropriate and would substantially reduce liability, maintenance and safety concerns.

Typically the Wal-Mart store operators are in charge of keeping their walkways and store fronts clear of snow and ice throughout the winter. Wal-Mart is aware of the winter conditions in Pagosa Springs and has been researching the heated sidewalk/pavement options available. At this time no decision has been made to add a heated element to the walkways.

14. **Article 6, Subsection 6.7.3, Paragraph A, 4 (Page 137)** states that “buildings located on street corners shall recognize the importance of their location....” and provides architectural suggestions on ways to accomplish this requirement. The southwest corner of the building is located near the intersection of Alpha Drive and Aspen Village Drive. This building corner is architecturally unassuming and does not attempt to address this requirement.

The building lacks architectural features on the west, south and east sides and corners of the exterior building facade. Please address this LUDC criteria. See #15 below.

Response to this comment will be included in a separate letter to be provided by the project architect.

15. **Article 6, Subsection 6.7.3, Paragraph B, 1, c (Page 138)** discusses building massing and form and states that “Façade modulation shall be utilized to reduce the apparent bulk of a large building, where applicable.” The front of the building has been designed with features that result in this modulation but the other 3 facades have minimal design elements resulting in a relatively plain appearance.

The building lacks exterior architectural features and facade modulation on the west, south and east sides of the facade. Please address this LUDC criteria. For consideration, instead of facade treatments, consider column bases off set from the building with timbers supporting gable end features on all 4 sides of the building. These gables could extend above the proposed roofline and be (at the peak) higher than 35'. This design element could provide a building character that is consistent with Pagosa Springs and the surrounding area.

Response to this comment will be included in a separate letter to be provided by the project architect.

16. **Article 6, Subsection 6.7.3, Paragraph B, 1, d (Page 138)** discusses building massing and form and states that “large, unbroken expanses and long continuous rooflines shall be avoided.” Except for the front building elevation, minimal roofline height change and/or configuration is incorporated into the building.

See #15 above.

Response to this comment will be included in a separate letter to be provided by the project architect.

17. **Article 6, Subsection 6.7.5, Paragraph C, 3 (Page 140)** states that “back sides” of buildings shall not be located within view of neighboring residences. The back of the building faces existing residential development. The applicant has provided screening in this area to help alleviate this situation.

LUDC section 6.7.5.C.3. states that service and utility entrances, mechanical support facilities and unimproved building sides shall not be located within view of neighboring residences or visible from hwy right of way. This could be a difficult lot to accomplish this requirement as it is stated. Additional screening and consideration of amending the service access opening widths along Aspen Village Drive could assist with complying with the intent of the LUDC.

Response to this comment will be included in a separate letter to be provided by the project architect.

18. **Article 6, Subsection 6.9.3, Paragraph B, Table 6.9-2 (Page 157)** notes the off street parking requirements for outdoor sales and display. Keyed note 54 on Sheet 2 of the submittal drawings indicates that areas in front of the store will be utilized for this purpose but this square footage and resulting parking requirement is not incorporated into the Parking Requirements Chart on the same page.

Town Staff recommends the applicant provide adjustment to parking calculations to include all outdoor sales areas. If this area addressed is not an outdoor sales area as described in # 6, please provide this clarification.

Based on the area allowed (as indicated in comment #6 above) for outdoor sales and display along the front of the proposed store, this area would yield 2 additional required parking spaces. This addition can be added to the parking requirement chart. Please note that Wal-Mart will still meet the parking requirement based on the current site plan layout.

19. **Article 6, Subsection 6.9.4, Paragraph B, 4 (Page 161)** states that “required parking shall be broken into component parking lots, avoiding large, unrelieved expanses of paving.” The parking area is designed with minimal interior landscape islands and no other feature to address this requirement.

Provide additional clarification, calculations and considerations for this concern.

Based on discussions with Town staff, it is our understanding that scenic views from the store and parking area should try to be preserved by intermittently placing landscaping in the interior parking area and along the north property boundary. One additional tree has been added to each of the five parking islands to add to the interior landscaping without cluttering the parking lot with numerous islands that would block the scenic views for customers.

20. **Article 6, Subsection 6.9.4, Paragraph C (Page 161)** requires areas that provide parking for more than ten vehicles to also provide at least ten percent of the total area of the parking lot for landscaping and/or aesthetic treatment. Most of the landscape provided is around the perimeter of the parking lot. Depending on the interpretation of this requirement, the internal site design may not achieve this 10% total.

Additional interior trees will provide shade during summer months reducing temperatures emitting from pavement surfaces. The application includes

~ Parking Lot = approx 183,000 sq ft. (10% landscape requirement = 18,3000 sq ft).

~ Landscaping in parking lot = approx 9,000 sq ft.

~ Landscaping around perimeter of parking lot = approx 48,750 sq ft.

Parking lot area boundaries have been added to the Landscape Plan. These areas are calculated and reflected in the Landscape Data Chart on Sheet 6. The revised area calculation of parking lot area is 148,941 SF. 10% of the total parking lot area is 14,895 SF. We are providing 15,703 SF (10.5%) of parking lot landscaping.

21. **Article 6, Subsection 6.9.4, Paragraph C, 1 (Page 161)** requires a minimum of one tree “generally planted in landscape islands” for every 5 parking spaces to be located “within the parking area/lot.” The overall site has more than the required minimum number of trees but the majority are located around the perimeter and not within the parking area and/or in landscape islands.

Provide additional clarification, calculations considerations for this concern and as it relates to LUDC section 6.9.4.C. Additional interior trees will provide shade during summer months reducing temperatures emitting from pavement surfaces and provide for the considerations noted in #20 above.

Based on discussions with Town staff, it is our understanding that scenic views from the store and parking area should try to be preserved by intermittently placing landscaping in the interior parking area and along the north property boundary.

We have provided additional trees of similar size and shape to the five middle islands to provide more over-story shading. We focused the majority of our site trees required to areas outside potential snow storage areas as well as providing a strong residential buffering.

22. **Article 6, Subsection 6.9.4, Paragraph F (Page 161)** requires circulation for parking areas to be designed to facilitate the safe movement of vehicles without posing a danger to pedestrians. Because the site design includes minimal pedestrian access ways, this requirement may not be met.

Reference # 12 above.

Pedestrian routes from the handicapped parking spaces to the front of the building can be striped to create walkways as requested.

Crosswalk striping can be added along the east west pedestrian route as indicated.

The five planters along the front of the store have seating areas on two of the four sides for pedestrian gathering. Additionally, there are benches provided under the colonnade area to the east of the store entrance.

The walkway along the entire front of the store is flush with the adjacent front drive aisle.

23. **Article 6, Subsection 6.10.3, Paragraph C (Page 166)** requires the landscaping to be watered and maintained by the property owner/leaseholder as necessary to preserve the intent of the approved Landscape Plan. Maintenance and warranty notes are included on the Landscape Plan Sheet but refer to the obligations of the contractor and do not address similar responsibilities of the owner/leaseholder.

Provide a statement confirming the obligations of the owner/leaseholder of maintaining landscaping elements.

A note will be added to the Landscape Plan that states, "After the landscape contractor's warranty period, the owner/leaseholder shall take over the responsibility of the landscaping and irrigation maintenance as necessary to preserve the intent of the approved landscape plan."

24. **Article 6, Subsection 6.11.4, Paragraph C (Page 170)** states that "in no case shall exterior lighting add any foot-candle illumination at any point off site." Although minimal, some illumination will occur off site as shown on Sheet 5 of the submittal.

Concern of light pollution from the surrounding properties has been expressed and is considerable. Though there is minimal footcandle illumination extending off site, the LUDC section 6.11.4.C. states "In no case shall exterior lighting add any footcandle illumination at any point off site". The applicant should address the areas where the Footcandle Illumination exceeds zero footcandles and provide a solution.

Revisions can be made to the light fixture locations to reduce the amount of footcandles extending off-site as indicated in the Design Review Board presentation by the Wal-Mart team. However, the result is well below Wal-Mart's lighting standards (which are considered to be in compliance with the Model Lighting Ordinance as sponsored by the International Dark-Sky Association and the Illuminating Engineering Society of North America) and may create dark entrance ways into the site which is less than ideal for both Wal-Mart and their customers.

25. **Article 6, Subsection 6.12.4, Paragraph A, 1, b (Page 174)** states that wall mounted signs shall be restricted in size to "...up to a maximum of 100 square feet, in total." The "Wal-Mart" sign on the front elevation is noted as being 298 square feet.

Wall Signs in sign zone 2 are limited to 100 square feet in size per sign. A separate Town Sign Permit Application and complete sign details are required.

Wal-Mart intends to submit a signage variance to allow for the proposed signage.

26. **Article 6, Subsection 6.12.4, Paragraph A,1, b and Paragraph A, 2 (Page 175)** discussed height and size limitations for freestanding signs. Keyed note 47 on Sheet 2 indicates that a monument sign will be located near the northeast entrance to the site from Aspen Village Drive. No detail or size and height information is provided so it cannot be determined if the requirements of these paragraphs are conformed to.

There is a monument sign proposed to be located at Alpha Drive and Hwy 160. One freestanding/monument sign is allowed per property and is limited to 100 square feet per side and a maximum of 20 foot tall. Staff recommends an upgrade to the Alpha Drive sign to provide consistency with the Aspen Village monument signs at Aspen Village Drive and Boulder Drive. A separate Town Sign Permit Application and complete sign details are required. Additional signage details can be provided at a later time, along with a signage variance to allow for the proposed signage.

A. TRAFFIC IMPACT ANALYSIS/CDOT REVIEW COMMENTS

This review is based on the April 2012 Aspen Village Retail traffic study prepared for Galloway & Company by Kimley-Horn and Associates, and the April 4, 2012 Site Plan (Sheet 2), US Highway 160 (US 160) Improvements (Sheet 7), and Aspen Village Drive Improvements (Sheet 8), prepared by Galloway & Company and provided to BHI.

The traffic study appears to follow general practice and the criteria established by the Colorado Department of Transportation (CDOT) and the recommendations follow the criteria established in the CDOT State Highway Access Code (SHAC). However, the study does not provide an updated trip generation estimate for the entire PUD development. As the proposed superstore generates almost as many daily trips as the entire previous development did, an update would be helpful to get a broader understanding of the new proposal and how it impacts the remainder of the project.

Town Staff concurs with this assessment.

Traffic volumes from the full development of Aspen Village outside of the proposed development were included in the report. The traffic volumes for the remainder of the Aspen Village PUD Development were taken from the previous Aspen Village Traffic Impact Study prepared by HDR for Russell Engineering, Inc. dated September, 2004.

1. STATE HIGHWAY ACCESS CODE (SHAC)

The improvements to US 160 (Sheet 7) and Aspen Village Drive (Sheet 8) also appear to follow CDOT SHAC criteria for deceleration lane lengths, transition tapers and redirect tapers. The eastbound redirect taper on US 160 west of Aspen Village Drive appears to be closer to 35:1, as opposed to the required 45:1, but the adjustment reflects the constraints due to the proximity of the downstream Boulder Drive intersection.

Town Staff concurs with this assessment.

CDOT is currently reviewing the proposed plans and we will continue to coordinate with them on required improvements along Highway 160. Once CDOT comments are received, we will coordinate with Town staff.

OPTIONS TO CONSIDER

The proposed solution is considered reasonable given the physical constraints. As the US 160 Access Management Plan identified US 160 as a four-lane facility in the future (two lanes in each direction), an alternative improvement to US 160 would be to construct a eastbound auxiliary lane from Aspen Village to Boulder Drive. In this scenario, in the future CDOT would only have to remove the pork chop islands, and possibly construct the right turn lanes, to achieve two eastbound lanes from Alpha to Boulder. This improvement would be in addition to lengthening the westbound left turn lane onto Aspen Village from US 160.

Town Staff concurs with this assessment.

CDOT has received Access Permit Applications for both Alpha Drive / Highway 160 and Aspen Village Drive / Highway 160 intersections. With these applications, CDOT was provided with the April 2012 Aspen Village Retail traffic study prepared by Kimley-Horn and Associates and the Highway 160 improvement plans. CDOT review comments will be forthcoming once a review has been completed.

2. STATE HIGHWAY ACCESS CODE

No change to the typical section is proposed for Aspen Village Drive, other than driveway access, and extension of the left turn lane at US 160. The extension design follows CDOT criteria and enhances the development circulation by providing an approximately 80-foot southbound turn lane from Aspen Village Drive onto Cornerstone Drive.

Town Staff concurs with this assessment.

As stated, a separate turn lane east onto Cornerstone Drive is proposed.

3. LAND USE DEVELOPMENT CODE

1. **Article 6, Subsection 6.6.3, Paragraph B,2 (page 122) and Article 6, Subsection 6.6.3, Table 6.6-2 (Page 126):** Based on the volumes provided in the traffic study Figures 11 and 12, Alpha Drive is a minor collector road and Aspen Village Drive is a major collector road, per the criteria in the above article. However, as mentioned above, supporting

information is not provided in the traffic study in sufficient detail to verify future traffic volumes from the entire PUD parcel.

Alpha Drive is proposed to be paved with curb and gutter on the west side, abutting the property. Table 6.6-2 states curb and gutter is required on collector streets, suggesting it is required on both sides of the proposed roadway. If so, curb and gutter should be proposed on the west side of Alpha Drive as well. At a minimum a shoulder should be provided outside the bike lane.

The Site Plan, Sheet 2, proposes two 19-foot driving lanes and two 3-foot-bike lanes on Alpha Drive. The bike lanes conform to the criteria in Table 6.6-2. Table 6.6-2 establishes a minimum of 11-foot driving lanes, so the 19-foot lane satisfies the criteria.

OPTIONS TO CONSIDER

The proposed 19' wide lane may cause higher speeds on the road than desired. An alternative section could be to provide two 12-foot driving lanes with a painted 14-foot continuous left turn lane. This would allow through traffic to pass left turning vehicles entering the site without encroaching into the bike lane.

Town Staff concurs with this assessment and also recommends two 12' driving lanes and a 14' center left hand turn lane instead of two 19' drive lanes on Alpha Drive. Curb and Gutter shall be provided on both sides of Alpha Drive.

Further coordination with town staff will be required on this issue. We believe that the proposed striping is sufficient for the Wal-Mart development. We discussed the proposed striping with town staff and our understanding was that the more extensive striping was not desired due to additional maintenance and re-striping required once Alpha Drive has been annexed by the Town.

2. **Article, 6, Subsection 6.6.5, Paragraph B, 2 &3 (Page 133):** The Site Plan also indicates a six-foot sidewalk on the east side of Alpha Drive, but has no corresponding sidewalk on the west side of the road. Paragraph B,2 (page 133), says "sidewalks shall be a minimum of five feet wide along one side and eight feet wide along the other side of collector street." As the existing sidewalk on Aspen Village Drive is six feet, it is considered appropriate for this project to match the existing sidewalk along the project frontage on Alpha Drive with the existing sidewalk width on Aspen Village Drive.

3.

OPTIONS TO CONSIDER

This code section implies a minimum five-foot sidewalk is required on the west side of Alpha Drive. This would allow pedestrians to proceed on Alpha Drive without crossing the site entrances and entering and exiting traffic. Providing a sidewalk on the west side will require a different typical section on Alpha as it does not appear to have sufficient right-of-way to construct the west sidewalk and maintain the proposed section described above, as it appears the proposed sidewalk on the east side is set back four feet from the right-of-way line. To maintain the four-foot east setback for the sidewalk and the continuous left turn as discussed above would require two 11-foot lanes and a 12-foot continuous left turn lane, or two 17-foot driving lanes. Correspondingly, if the east sidewalk was set at the right-of-way line, would allow the two 12-foot driving lanes and the 14-foot continuous left as described above. Also, no striping plan for Alpha Drive was provided, however it appears the bike lane is striped accordingly. If not, appropriate bike lane striping should be provided on Alpha Drive.

Due to the limited ROW 60 width of Alpha Drive Town Staff recommends considering allowing 6 foot sidewalks on both sides of the street, but, only requiring the applicant to provide the east side 6' sidewalk since the applicant is proposing improving Alpha Drive to the Alpha Rock Ridge boundary line. The 60' width allows for 6' sidewalk, 2' curb/gutter, 3' bike lane, 12' travel lane, 14' turn lane, 12'travel lane, 3' bike lane, 2' curb/gutter and 6' sidewalk. Details for the proposed street lights shall be provided by applicant to the Town for review to ensure consistency with existing Aspen Village street lighting and spacing. Further coordination with town staff will be required on this issue.

4. **Article 6, Subsection 6.6.3, Paragraph B, 3, I (Page 124):** The second site driveway south of US 160 on Aspen Village Drive is approximately 95 feet north of the existing Aspen Park Circle intersection. This code section requires “road entering a roadway from opposite sides of the road shall either be directly across from each other or offset by at least 125 feet from centerline to centerline or sight distance requirements, whichever is greater.”

OPTIONS TO CONSIDER

One solution would be to move the driveway south to align with Aspen Park Circle. Town Staff recommends considering a few additional options: There maybe possible benefit to the residents in the Cottage Residential Development (Tanglewood Lane) by maintaining the applicants proposed off set of these intersections. Though the 95' separation is not consistent with the LUDC, there may be benefits to the

residents of not having to enter Aspen Village Drive at one of the developments busier entrances.

Another option may include moving both entrances to Wal-Mart from Aspen Village Drive further north (by 25-30 feet each) to accommodate the 125' off set from Tanglewood Lane.

We concur with Town Staff that leaving the entrance offset from Tanglewood Lane approximately 95' would enable residents from Tanglewood Lane to exit west on Aspen Village Drive as the majority of vehicles exiting the property from this location would likely be turning left onto Aspen Village Drive.

B. DRAINAGE STUDY/HYDROLOGY REVIEW COMMENTS

The following documents were included as a part of the review:

- Wal-Mart Supercenter Grading Plan
- Drainage Study for Aspen Village, Russell Engineering, June 10, 2004
- Phase I Drainage Study Revision for Aspen Village, Russell Engineering, September 14, 2004
- Phase I Drainage Report for Aspen Village Commercial Development – Proposed Wal-Mart Supercenter, Galloway February 29, 2012 with included Drainage Plan Sheet 1.

1. **Article 6, Subsection 6.3.1, Paragraph A (Page 113):** Final review by building code official required, for conformance to the adopted building code.

2. **Article 6, Subsection 6.3.1, Paragraph B (Page 113):** Neither an Erosion Control Plan nor a Stormwater Management Plan/Report SWMP has been included for review. A stormwater discharge permit will be required by the State of Colorado prior to construction. **The Town will require the Erosion Control Plan and Stormwater Management Plan/Report as part of the Building Plan Permit submission for approval.** Acknowledged. We understand that we will have to obtain a Colorado stormwater discharge permit for construction activities. We will provide the stormwater management plan and erosion & sedimentation control plans for review during the building plan review process.

3. **Article 6, Subsection 6.3.2, Paragraph A, 1, (Page 114):** A discharge structure upgrade to the existing Pond A control is proposed by the applicant. However, it is unclear if the downstream infrastructure (US160 24" culvert) can accommodate the proposed increase in

discharge, how this increase in discharge (4.71cfs) has been calculated, and if this increase conforms to the development standard. The Drainage Study for Aspen Village sized Pond A based on a 15cfs release, as not to exceed capacity of the US160 24" culvert. It is unclear how the increased release rate corresponds to the historic discharge. Please clarify the drainage report by including calculations to support the discharge assumptions, calculations of historic basin parameters used in the analysis, and a comparison to proposed conditions. Upon review of the *Phase I Drainage Study Revision* by Russell Engineering, Inc. (dated September 14, 2004), it is our understanding that the new detention pond (referenced in the *Phase I Drainage Study Revision*) will release at a rate of 4.71 cfs for the 100-year storm event (refer to the calculations in Appendix C of the *Phase I Drainage Study Revision*), which will eventually flow to the proposed detention pond on the Wal-Mart property. It appears that this discharge of 4.71 cfs was previously included in Detention Pond D, which would've discharged to the west of Highway 160 (see original *Drainage Study for Aspen Village* by Russell Engineering, Inc. [dated June 10, 2004]). Rather than detain this runoff a second time, we planned to pass this water through the pond on the Wal-Mart property, and therefore, the orifice would need to be sized to allow for this. The proposed Wal-Mart development would still be in compliance with previously approved drainage studies by only releasing at a rate of 15 cfs. The 4.71 cfs is simply an existing run-on condition that we are proposing to pass through. Please let us know if our understanding is incorrect.

4. **Article 6, Subsection 6.3.2, Paragraph A, 2, (Page 114):** Review of submitted items indicates compliance to standard.
5. **Article 6, Subsection 6.3.2, Paragraph A, 3, (Page 114):** Review of submitted items indicates compliance to standard.
6. **Article 6, Subsection 6.3.2, Paragraph A, 4, (Page 114):** Review of submitted items indicates compliance to standard.
7. **Article 6, Subsection 6.3.2, Paragraph A, 5, (Page 114):** No waivers are specified by the applicant.
8. **Article 6, Subsection 6.3.2, Paragraph B, 1, (Page 115):** Relating to Item A.1., please provide further information on the effects of the detention Pond within Basin OS-1 of the Aspen Village Study Revision and the outlet. Please refer to our response to drainage comment #3 above.
9. **Article 6, Subsection 6.3.2, Paragraph B, 2, (Page 115):** Review of submitted items indicates compliance to standard.

10. **Article 6, Subsection 6.3.2, Paragraph B, 3, (Page 115):** A stormwater detention system is provided to limit runoff to 100-year conditions, within an adjacent off-site parcel as a regional detention area. However, it is unclear if the proposed facility has adequate capacity for the increase in flows from the development. See further comments in 13 below.

The proposed detention pond has adequate capacity to detain the increase in runoff from the proposed development. As indicated in the pond sizing calculations and Section H of the drainage report, 5.63 acre-feet is required to detain the 100-year storm event (while releasing at historic rates). Civil 3D was used to calculate the as-built pond volume (see pond sizing calculations in Appendix) which resulted in 9,405 cubic yards (or 5.83 acre-feet). This assumes a freeboard of 8 inches.

11. **Article 6, Subsection 6.3.2, Paragraph B, 4, (Page 115):** Please clarify discrepancy as to the maximum inlet ponding depth in the 100-year event (6-inches vs. 12-inches). Discrepancy in the 100-year inlet ponding depth is acknowledged. The maximum inlet ponding depth is 12 inches for the 100-year storm event. The proposed storm sewer infrastructure (piping and inlets) is designed to handle the 10-year storm event with less than 6 inches of ponding at the inlets. We will correct this discrepancy in the drainage report.

12. **Article 6, Subsection 6.3.2, Paragraph C, 1, (Page 116):** Review of submitted items indicates compliance to standard.

13. **Article 6, Subsection 6.3.2, Paragraph C, 2, (Page 116):** It is unclear if the proposed Pond A facilities have adequate capacity for the increase in stormwater flows from the site. Specifically, clarification and calculation is needed to demonstrate that the Pond A tributary area is 61.91 Acres as specified, and that this area has a composite imperviousness of 39.6%. Upon review of the original *Drainage Study for Aspen Village* and consultation with Russell Engineering, Inc., our understanding is that the area tributary to Pond A is 61.91 acres at 39.6% imperviousness based on the following basins and areas:

- Wal-Mart property: 15.6 acres, I = 78.5%

- Basin OS-1 6.38 acres, I = 0% (now routed to pond referenced in Drainage Study Revision)

- Basin OS-2: 11.68 acres, I = 0%

- Basin OS-3: 8.00 acres, I = 0%

- Basin OS-5: 10.60 acres, I = 0%

- Basin P9: 13.80 acres, I = 73.5%

- Basin P12: 1.49 acres, I = 95%

- Basin OS-1 (from new Wal-Mart Development): 0.74 acres, I = 94%

Please let us know if our understanding is incorrect.

14. **Article 6, Subsection 6.3.2, Paragraph C, 3 (Page 116):** A two stage release structure is specified with the design per the standard; however, further explanation is necessary to demonstrate if the downstream facilities can accommodate the stated release rate (see A.1). Please refer to our response to comment #3 above.

15. **Article 6, Subsection 6.3.2, Paragraph D, a (Page 116):** Drainage design plans have been submitted to comply with this regulation, and are currently under review.

16. **Article 6, Subsection 6.3.2, Paragraph D, b (Page 116):** Drainage plans will be required for review to obtain a building permit.

17. **Article 6, Subsection 6.3.3 (Page 116):** Review of submitted items indicates compliance to standard.

OTHER ISSUES

A land survey plat should be requested and reviewed for the lot combination, cul-de-sac vacation, and any easement dedications. Coordination with local utility companies will be required to insure existing utilities are removed/relocated as necessary.

Stormwater Quality – The Drainage Study for Aspen Village indicates that a stormwater quality pretreatment of developed runoff with a “Vortech or Other Approved Pretreatment System” is required prior to release into the Detention Pond. A SNOUT / BIO-SKIRT combination is proposed by the applicant. It is unclear if the proposed treatment combination of the SNOUT / BIO-SKIRT will provide water quality to the levels of the specified Vortech treatment device. Please submit documentation to confirm that the level of treatment provided by the SNOUT / BIO-SKIRT combination is commensurate to that of the Vortech treatment device.

Town Staff concurs with this analysis. Plats for Lot Consolidation and Vacation of ROW are required to meet Town's Plat standards. Applicant will work with all Utility providers regarding vacation of Utility easements with in the Aspen Park Circle. We plan to coordinate with local utility companies to insure existing utilities are removed/relocated as necessary. With regard to the proposed SNOUT device, we can provide information from the manufacturer pertaining to the water quality improvements.

C. CORP OF ENGINEER REVIEW COMMENTS

Wetland Permitting – The Corp of Engineers was contacted to verify the applicant coordination of wetland permitting and mitigation. Following is a statement from the Corp regarding this project: *“Ongoing coordination with the Corps of Engineers will be critical to project development, specifically with regard to the relocation expectation for the wetlands.”*

Application approval will be contingent on the applicant meeting the Army Corps of Engineers requirements for the wetland area.

An 404 Individual Permit Application was submitted to the USACE on 5/21/12. A cursory review by USACE will occur with a 30 day public comment period. Once the public comment period has been completed, USACE will provide comments as necessary for response.

D. UTILITIES REVIEW COMMENTS

- Submittal Items Reviewed: Wal-Mart Supercenter Utility Plan Sheet 4.

1. **Article 6, Subsection 6.3.4, Paragraph A, (Page 116):** Please provide a “Will Serve” letter from the Pagosa Area Water and Sanitation District (District); based on the planned development use versus the type of development initially planned (confirm that the sanitary sewer flows from the development correspond to previous planning). At permit stage, coordinate final design with the regulations and standards of the District. Final design plans will require a “prepared by” sign/stamp by a registered professional engineer. The proposed lift station may also require coordination with the Colorado Department of Public Health and Environment, Water Quality Control Division for Application for Site Location Approval for Construction of New Lift Station.

Applicant is required to meet the PAWSD district standards.

We will work with Pagosa Area Water and Sanitation District to obtain a “Will Serve” letter. We will also work with the District and Colorado Department of Public Health and Environment as required to ensure that the Wal-Mart development is in compliance with their regulations and standards.

2. **Article 6, Subsection 6.3.4, Paragraph B, (Page 117):** It is unclear if the on-site sanitary sewer service collection system, or the proposed lift station, will be conveyed to the District; or if the developer will maintain ownership and assume all operations and maintenance responsibilities of these facilities in the future. Details of the station operation, maintenance, and funding of this responsibility warrant investigation at this stage.

Applicant is required to meet the PAWSD district standards.

Our understanding is that the PAWSD will assume operations and maintenance responsibilities, and therefore, we've provided an easement for these facilities.

3. **Article 6, Subsection 6.3.4, Paragraph C, (Page 117):** Review of submitted items indicates compliance to standard.

4. **Article 6, Subsection 6.3.4, Paragraph D, (Page 117):** Review of submitted items indicates compliance to standard.

5. **Article 6, Subsection 6.3.4, Paragraph E, (Page 117):** Not proposed with this development, does not apply.

6. **Article 6, Subsection 6.3.4, Paragraph F, (Page 117):** Not proposed with this development, does not apply.

7. **Article 6, Subsection 6.3.5, Paragraph A, (Page 117):** Review of submitted items indicates compliance to standard. Final design plans will require a "prepared by" sign/stamp by a registered professional engineer.

Applicant is required to meet the PAWSD district standards.

Acknowledged. We will provide signed "prepared by" stamps on the final design plans.

8. **Article 6, Subsection 6.3.5, Paragraph B, (Page 117)**

Water Supply Adequacy –Please provide a "will serve" letter from the Pagosa Area Water and Sanitation District (District) indicating that the proposed development can be serviced with water supply. Final design plans will require a "Prepared By" sign/stamp by a Colorado Registered Professional Engineer.

Applicant is required to meet the PAWSD district standards. Applicants Town development application approval will be contingent on meeting all utility provider requirements and standards.

We will work with Pagosa Area Water and Sanitation District to obtain a "Will Serve" letter. We will also work with the District to ensure that the Wal-Mart development is in compliance with their regulations and standards. We will provide signed "prepared by" stamps on the final design plans.

9. **Article 6, Subsection 6.3.6, Paragraph B, (Page 117):** Provide documentation of Fire Hydrant layout approval by the fire district according to the adopted fire code.

The Pagosa Area Fire District and PAWSD will review and approve placement of required fire hydrants for the proposed development.

We will provide documentation of the fire hydrant layout approval by the fire district when available.

E. SENSITIVE AREA/COLORADO DIVISION OF WILDLIFE MANAGEMENT REVIEW
COMMENTS

Coordination with the Colorado Division of Wildlife is also important. It is likely that a pre-construction bird survey will be necessary due to the potential for migratory birds on the property and the relocation of wetlands and removal of trees.

An assessment from the CDOW will be required as part of the wetland application with the Army Corps of Engineers. Inclusion of the CDOW assessment for the development site area is hereby requested.

We will coordinate with the CDOW regarding the need for this survey.



Pagosa Springs, CO

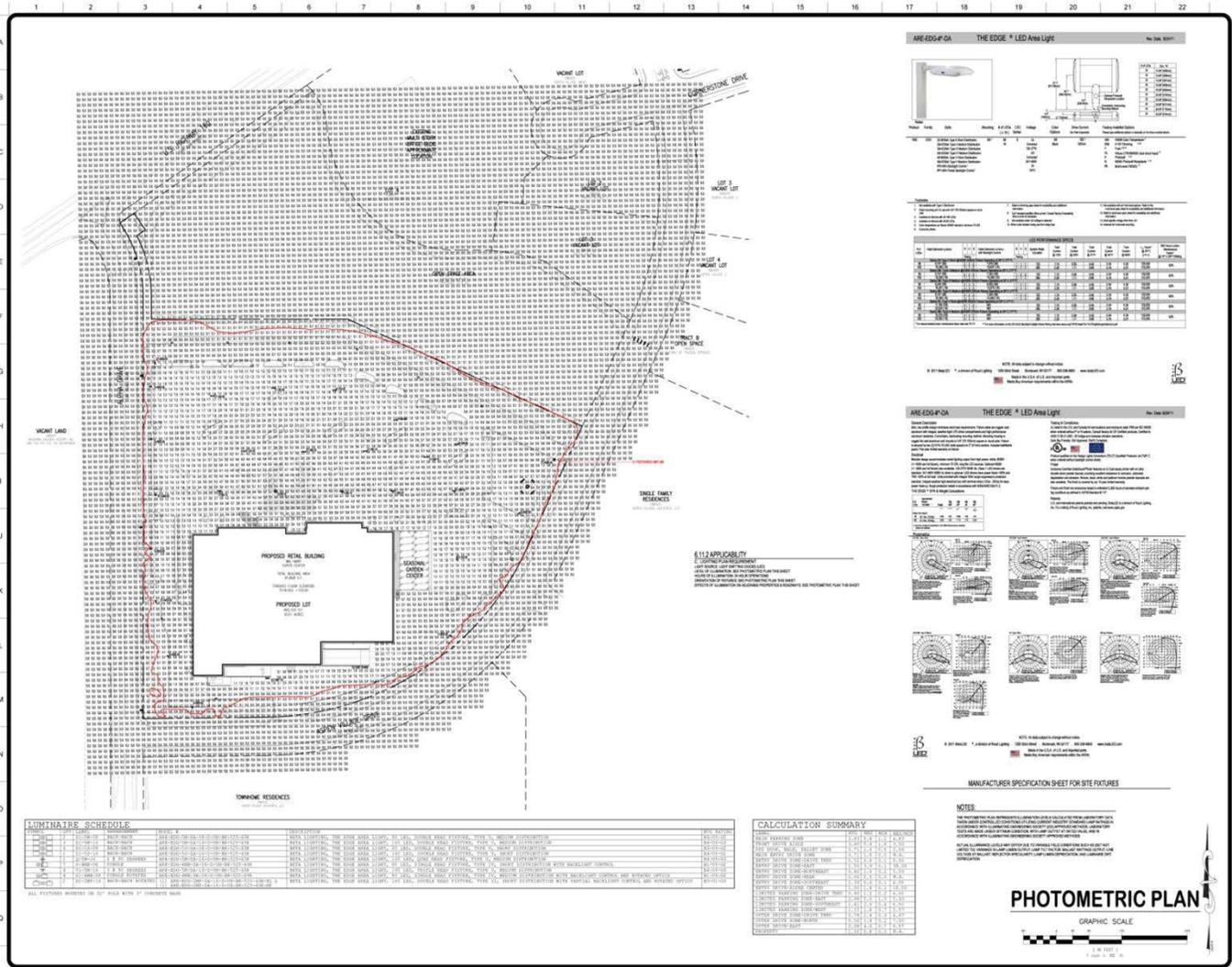


Planning Commission – Aspen Village Circle ROW Vacation
May 22, 2012

NOTE: ONLY PAGES FROM POWER POINT PRESENTATION RELATING TO LIGHTING INCLUDED.



Lighting Plan – Updated



REVISIONS	BY

Galloway
 Lighting Design
 10000 E. 1st Avenue, Suite 100
 Denver, CO 80231
 Phone: 303.751.1111
 Fax: 303.751.1112
 www.gallowaylighting.com

WAL-MART SUPERCENTER
 U.S. HIGHWAY 160 & ALPHA DRIVE
 PAGOSA SPRINGS, COLORADO
 WAL-MART STORES, INC.
 BENTONVILLE, AR

WAL-MART SUPERCENTER
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 WAL-MART STORES, INC.
 BENTONVILLE, AR

DATE	BY	REVISION



Wal-Mart Lighting



A New Way of Thinking about Lighting Ordinances

Walmart's LED Site Lighting Design Criteria is based on the Department Of Energy's Commercial Building Energy Alliances (CBEA) LED site lighting design criteria and Model Lighting Ordinance recommendations for retail environment

Model Lighting Ordinance (MLO) was released in June 2011 to promote responsible outdoor lighting practices

MLO Co-Sponsored by:

- **Illuminating Engineering Society of North America (IESNA)**
 - Considered the technical Lighting Authority throughout North America
 - IESNA authors industry accepted set of recommended practices for exterior applications
 - Recommended Practices are developed through technical committees, comprised of hundreds of qualified individuals from the lighting and user communities, via consensus-based lighting recommendations.
- **International Dark-Sky Association (IDA)**
 - A non-profit organization that strives to reduce light pollution and cut down on energy usage
 - Publish educational materials to inform people of the harms of light pollution





In order to be a “good neighbor”, all site lighting designs/ordinances need to consider the following:

- **Light Trespass**

Light that falls beyond the property it is intended to illuminate.

- **Skyglow**

The brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Skyglow is caused by light directed or reflected upwards or sideways and reduces one’s ability to view the night sky.

- **Glare**

Lighting entering the eye directly from a luminaire or indirectly from reflective surfaces that causes visual discomfort or reduces visibility.

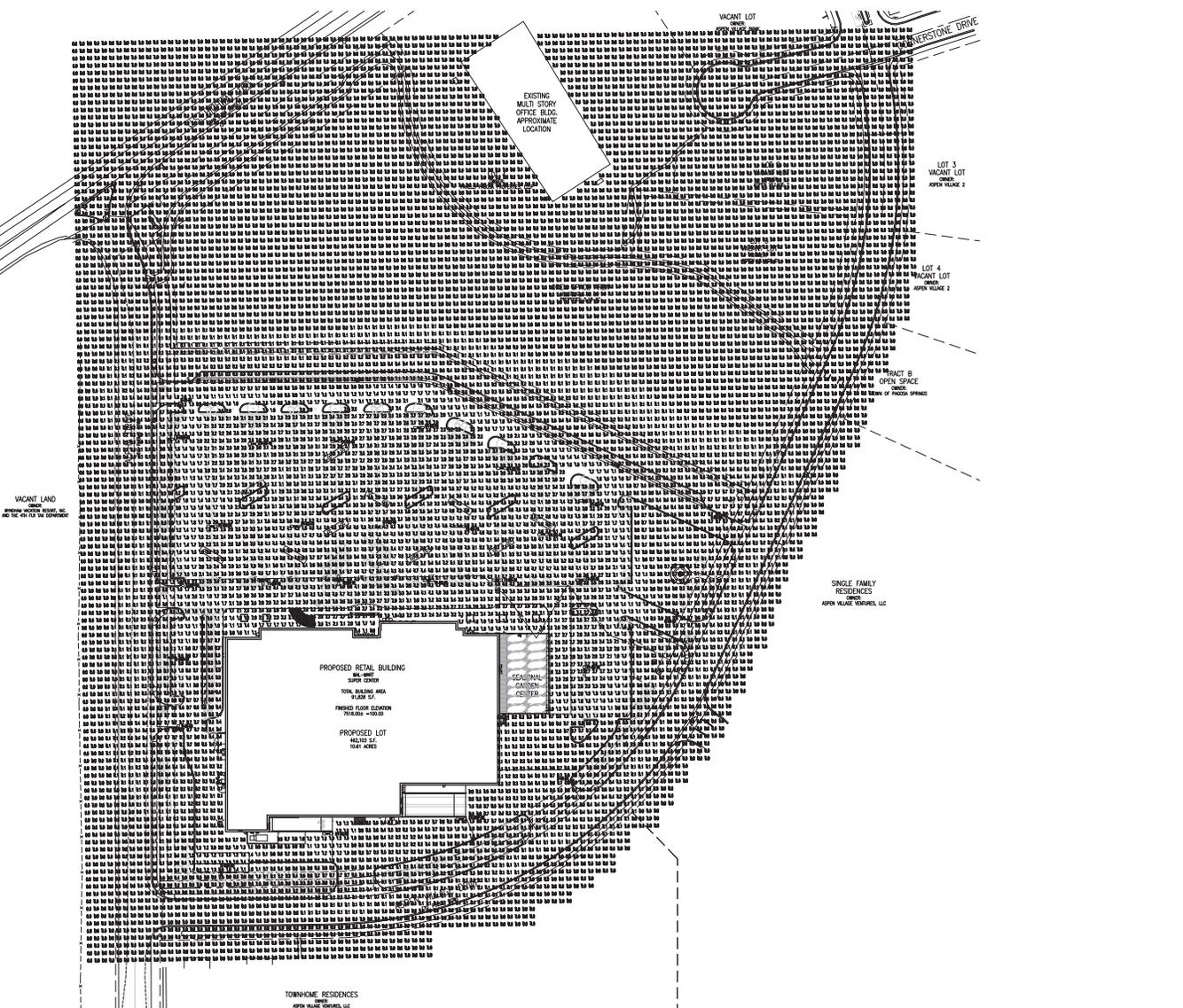


Being a Good Neighbor

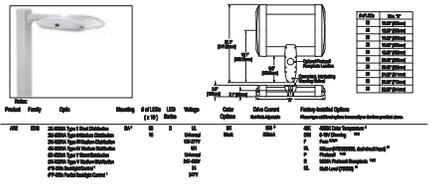
By making every Walmart site lighting design meet these standards

- The light trespass that falls on unintended areas is limited
- The skyglow that negatively affects the visibility of the night sky is reduced
- The off-site glare that decreases visibility is minimized





ARE-EDG-#DA THE EDGE LED Area Light Rev. Date: 08/01

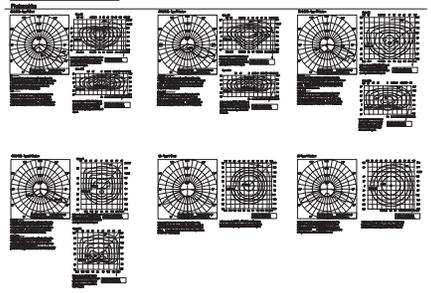


Notes:

1. All calculations are based on the following assumptions:
2. All calculations are based on the following assumptions:
3. All calculations are based on the following assumptions:
4. All calculations are based on the following assumptions:
5. All calculations are based on the following assumptions:
6. All calculations are based on the following assumptions:
7. All calculations are based on the following assumptions:
8. All calculations are based on the following assumptions:
9. All calculations are based on the following assumptions:
10. All calculations are based on the following assumptions:

Area	Area (sq ft)								
1	100	100	100	100	100	100	100	100	100
2	100	100	100	100	100	100	100	100	100
3	100	100	100	100	100	100	100	100	100
4	100	100	100	100	100	100	100	100	100
5	100	100	100	100	100	100	100	100	100
6	100	100	100	100	100	100	100	100	100
7	100	100	100	100	100	100	100	100	100
8	100	100	100	100	100	100	100	100	100
9	100	100	100	100	100	100	100	100	100
10	100	100	100	100	100	100	100	100	100

ARE-EDG-#DA THE EDGE LED Area Light Rev. Date: 08/01



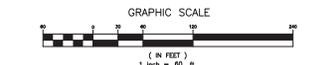
LUMINAIRE SCHEDULE

NO.	TYPE	DESCRIPTION	MODEL #	DESCRIPTION	BEAM RAYING
1	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
2	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
3	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
4	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
5	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
6	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
7	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
8	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
9	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA
10	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA	ARE-EDG-#DA

CALCULATION SUMMARY

ZONE	AREA	PER	MAX. HGT.
1	100	100	100
2	100	100	100
3	100	100	100
4	100	100	100
5	100	100	100
6	100	100	100
7	100	100	100
8	100	100	100
9	100	100	100
10	100	100	100

PHOTOMETRIC PLAN



REVISIONS BY

NO.	DATE	BY

Galloway
LIGHTING CONSULTANTS
10000 E. WILSON AVENUE
DENVER, CO 80231
TEL: 303.751.1000
WWW.GALLOWAYLIGHTING.COM

WAL-MART SUPERCENTER
U.S. HIGHWAY 160 & ALPHA DRIVE
PAGOSA SPRINGS, COLORADO
WAL-MART STORES, INC.
BENTONVILLE, AR

DRAWN BY
CHECKED BY
DATE
APRIL 4, 2012
SCALE
1" = 40' FT.
SHEET
5

**The Following “Documents of Record” are from the
original Design Review Board Public Hearing on July 10, 2012**

Documents Relative to the DRB Public Hearing on July 10, 2012

- 1) Revised Illumination Plan Dated June 12, 2012**
- 2) Correspondence from Carl Schmidlein of Galloway responding to Town review comments, dated June 21, 2012.**
- 3) Amended Bohannon Huston review of re-submitted plans, dated July 3, 2012.**
- 4) Wal-Mart illumination power point presentation, dated July 10, 2012.**

June 21, 2012

Mr. James Dickhoff
Town of Pagosa Springs
Planning Department Director
Po Box 1859
551 Hot Springs Blvd.
Pagosa Springs, CO 81147

Re: 2nd Resubmittal to Town Comments and May 22, 2012 Design Review Board Public Hearing Continuance Conditions for the Wal-Mart Site Plan Review Application

Dear Mr. Dickhoff:

Please find below and attached our resubmittal package addressing the comments received by Staff and from the Design Review Board Public Hearing Comments of May 22, 2012 received June 4, 2012 and the additional Landscape Review Comments received June 15, 2012. To facilitate your review, we have included the original comments in *italicized font*, and have provided our responses in **bold**.

Preparation for July 10, 2012 Design Review Board Public Hearing

Commissioner Woodruff moved to continue the Wal-Mart Major Design Review Public Hearing on Tuesday July 10, 2012 at 5:15pm in the Community Center, to receive additional presentations and public comment regarding the following identified items;

- 1) *Evidence of Mineral Estate Owners and Lessees notifications as per LUDC section 2.3.7.F.*

Provide evidence the public notices were re-mailed for the July 10th public hearing. How about the vacation public hearing ??

Response: Supplemental Mineral Rights Owners notifications were sent on June 1, 2012 by certified mail and an additional Supplemental Update was sent by FedEx on June 14, 2012. Copies of these notification and the mail receipts were forwarded to the Town on June 14, 2012.

- 2) *Screening and Buffering from adjacent properties per LUDC section 6.10.4.*

Would prefer removing one truck entrance at back of store, to provide better screening.

Response: One of the primary access locations from the customer parking lot to Aspen Village Drive has been removed. As a result of the removal of one of these access locations, the easterly truck access was shifted further to the east, to further allow for screening of the easternmost truck dock area from the single family residential located across Aspen Village Drive. Additional trees and shrubs have been provided in this area to further screen this area.

- 3) *Pedestrian circulation and gathering/sitting areas per LUDC sections; 6.6.5.B.1, 6.6.6.B.9., 6.7.3.A.5., 6.7.7.C.1. and 6.9.4.F.*

Provide more center pedestrian routes internally in Parking Lot.

Response: Pedestrian circulation and gathering/sitting areas have been provided along the front of the store and in front of the planters. Adequate and convenient circulation has been provided to both Aspen Village Drive and Alpha Drive. A community gathering and sitting area has also been provided to the east of the front parking field in the large landscaping area. An additional pedestrian route and raised concrete sidewalk has been provided in the parking field along one of the primary parking rows in front of the store entrance, as requested.

- 4) *North facing entrance and ice accumulation considerations per LUDC section 6.7.3.A.2. Provide assessment of viable options for maintaining snow and ice build up.*

Response: Wal-Mart has reviewed different options for the removal and maintenance of snow and ice along the north facing façade of the store. Among these options were manual snow shoveling and regular plowing, heat-mat type systems consisting of either electric coil or geothermal tubing, and review of snow storage opportunities within the site. Based on the research and options considered, Wal-Mart has determined it is economically unfeasible to install such a heat-mat type system in this front store area. Wal-Mart has researched other north-facing stores in similar Colorado mountain climate areas, and is comfortable that their regular procedure of snow removal using a combination of snow shoveling, and small ATV-type snowblades and snowplows contracted through a local snow removal provider will be adequate for snow removal maintenance. The store manager will be responsible for regular and on-going maintenance of the snow removal operations of the store.

- 5) *Exterior building elevation compliance with maximum height of building and rooftop equipment, per LUDC table 5.1.2.*

Provide details of building and equipment height. Is equipment out of view or screened on roof?

Response: The building elevations will be submitted by separate cover directly from the architect.

- 6) *Architectural features and building modulation for compliance with LUDC sections 6.7.3.A.4, 6.7.3.B.1.c & d.*

Provide optional exterior facade designs.

Response: The building elevations will be submitted by separate cover directly from the architect.

- 7) *Parking area layout and design per LUDC section 6.9.4.B.4.*

Would suggest more broken up spaces of pavement.

Response: Four additional landscaping islands with two trees in each island have been installed along the front of the store in the main front field parking area, and a

pedestrian sidewalk has been provided along one of the main parking rows directly in front of the primary entrance to the building.

8) *Parking lot landscaping per LUDC section 6.9.4.C. with local climate and screening consideration for species, quantities and sizing.*

Would suggest more landscaping in Parking lot.

Consider Long rows of landscaping from store front heading north.

Incorporate pedestrian walkway(s) on at least one parking row length, prefer two like Durango. This will provide those that are looking for safer access a safer route to and from store.

Response: Four additional landscape islands have been provided directly in front field parking area. This provides for a total of nine parking lot landscaping islands within the interior of the front field parking area. The total combined landscaped area within the front parking field is 22.4% which substantially exceeds the code requirement of 10 percent. Additionally, the total number of trees provided within this area is 78 trees, whereas 76 trees are required per Section 6.9.4.C. A total of 125 trees have been proposed across the site. Based on the additional landscaping comments, the proposed tree calipers and evergreen tree heights are proposed as 2.5" caliper, and eight to twelve foot evergreen trees, which all exceeds the LUDC requirements of 1.5" and 6 foot height. A pedestrian walkway has been provided within one of the parking rows directly in front of the store entrance. Please further reference the revised Landscaping Plan for the detailed breakout of location, species, calculation tables, and sizing.

9) *Alignment of Aspen Village Drive entrance in relation to the Tanglewood Lane intersection entrance per LUDC section 6.6.3.B.3.I.*

Provide options for improvements to this alignment.

Response: The entrance previously located just north of the Tanglewood access across Aspen Village Drive has been removed. The truck egress and access location located further south of Tanglewood has been shifted, but the minimum 125' separation distance has been maintained in accordance with 6.6.3.B.3.I.

10) *Alpha Drive road specification and engineering Plans with engineers estimate for construction cost as set forth in LUDC article 6 and section 6 of the LUDC user manual.*

** Archuleta County will petition the Town to annex Alpha Drive.*

** Once Annexed, the town will require the applicant provide improvements to Town Standards, with the addition of a center turn lane to accommodate pass through traffic heading towards Alpha Rock Ridge subdivision.*

** Town approved Engineering plans are required.*

** west side curb/gutter/sidewalk can be omitted for consideration. The bar ditch may require redesign or*

Response: Comments noted. Plans have been updated accordingly.

11) *Performance Bond for 100% of the engineers estimated construction costs for the Alpha Drive Road construction.*

A performance Bond will be required prior to Building Permit Application Approval.

Response: Comment noted.

12) Site Drainage compliance per LUDC section 6.3.2 in compliance with site drainage plan technical standards as set forth in section 6 of the LUDC user manual with specifics as it relates to discharges into the wetlands and drainage from the garden center area.

Provide detailed specifications of proposed water quality device, not just suspension but filtering capabilities.

Provide approval of the water quality device from USACE / PAWSD / State / EPA / Ect... Paul/Mark west, please comment.

Response: The applicant has proposed two water quality devices that will filter proposed developed flows from the site prior to entering into an underground detention chamber system. The proposed devices are the Downstream Defender product produced by Advanced Drainage Systems, Inc. The Downstream Defender reflects a 80% TSS removal rate based on the 110 micron particle size, versus the Vortech system, which also removes at an 80% rate, but at a larger particle size of 125 microns. The Downstream Defender also provides an added benefit of some phosphorus removal. The underground detention chamber system will limit developed release rates from the site in accordance per the Approved Master Drainage Report. The underground detention chamber system will also include multiple isolator rows that offer additional total suspended solids rate removals and an additional 49% phosphorous removal. The combination of these two systems working in unison well exceeds LUDC requirements and the recommended rate removal identified in the approved Master Drainage Report. Flows from the underground detention chamber system will release into the open space detention pond and wetlands area.

13) Army Corps of Engineers Permit Application, supporting Documents and issued approved permit.

Provide verification of permit received and any comments available from Kara Hilledge. Possible Bond for USACE permit

Response: Verification of the receipt of the 404 Permit Application by the Army Corps of Engineers has been forwarded at this time. Public posting occurred on May 31, 2012 and the public comment period ends on June 30, 2012. No comments have been received as of the date of this resubmittal letter.

14) CDOT Access Permit Approval and supporting documents.

Provide verification of permit received and any comments available from Jim Horn. Paul/Mark West Comments, AV Drive capacity and capability to handle future build out of Aspen Village development. Cornerstone Drive intersection capacity ?

Bond for CDOT access improvements?

Lighted intersection at Alpha Drive or double turn lane west bound Hwy 160 onto Aspen Village Drive ?

Bond for future improvements if traffic flow prohibits flow of traffic to other businesses in AV ?

Use Durango as an example, Traffic Circle at Cornerstone Drive ?

Response: Comments were received from CDOT on June 14, 2012. The traffic study is currently being revised to address comments received from Jim Horn and CDOT with respect to Highway 160. We anticipate this report being revised and resubmitted in advance of the Design Review Board meeting date of July 10, 2012. Regarding the analysis of Cornerstone Drive intersection with Aspen Village Drive, please find the attached Analysis Letter from the Traffic Engineer addressing these comments. Providing acceptance from the Town of the recommendations made in this Analysis Letter, plan revisions will be reflected into the design drawings.

15) Approval of Site Assessment from the Colorado Department of Wildlife or supporting documentation.

Provide environmental assessment results/documentation.

Response: A Migratory Bird and Raptor Survey has been completed by SME Environmental and has been attached to this resubmittal for your reference and review. The findings in the survey indicated the lack of existing nests within the survey area, and impacts to migratory birds and/or raptors due to the proposed action would likely be negligible.

16) Application for sign variance and sign application.

Signs will be considered once the application is received. The Variance process can be separate from the Major Design Review Process.

Response: Comment noted. It is anticipated that the Sign Variance application will be submitted under separate application, following Design Review Board consideration of the Site Plan application.

17) Receipt of reimbursement of applicants application review and processing costs.

Provide Proof of payment of requested reimbursable fees.

Paul, please provide current billing statement.

Response: The Reimbursement Request was received June 20, 2012. A check request has been submitted to Wal-Mart for reimbursement of these fees and will be forwarded upon receipt. Processing is estimated at one to two weeks.

18) Detailed look at height and look of the landscaping plan and the buffer zone and truck entrances and exits.

Cameron Parker will provide written landscaping recommendations by June 8th.

Provide Landscape species and sizing Changes.

Response: Written Landscaping Recommendations were received on June 14, 2012. These comments and the responses have been provided later in this resubmittal letter. The attached landscaping plans have also been updated to reflect these comments and the responses.

19) And discussion regarding the lights out requirements in LUDC 6.11.2.d.7.c

The Lights out requirement in the LUDC, section 6.11.2.d.7.c, is specific to outdoor recreational uses.

Further address section 6.11.2.C, lighting plan requirements;

~ Describe details of proposed LED light source, quality of light produced compared to other lighting options.

~ Level of illumination.

~ Effects on neighboring properties.

~ Hours of Illumination

~ If open 24 hours, what reduction of lights 10pm - 6am ?

Response: The light source proposed is LED or Light Emitting Diode. LED is considered a green and clean, energy efficient light source. In comparison to metal halide source lighting, LED is considered a more natural light and provides for more recognition of natural colors and definition of the site surroundings, which further enhances the safety of the customers. The levels of illumination have been provided on the site plan. To describe briefly, within the property line, the average is 1.42 foot-candles with a maximum of 5.0. The foot-candle limit at all property lines is limited to less than 0.1 foot-candles. At any neighboring property, the foot-candle limit is 0.0. Wal-Mart is utilizing new technologies for back-light control and rotated optics to minimize light spillage and glare from the property. For additional details in regard to the proposed lighting plan, please refer to the tables provided on the Site Photometric Plan. The hours of illumination are proposed from dusk to dawn. Wal-Mart has not determined if outdoor site lights will be reduced or dimmed during any late night hours, or if the store operation will be limited to less than 24 hours.

In Addition to the above contingencies, the following should be presented for the public benefit:

1) *Landscape species and sizing Changes – Response: This has been provided on the attached landscape plan and can be elaborated on during the upcoming DRB hearing.*

2) *Proof of receipt reimbursement of fees associated with processing application. – Response: The Reimbursement Request was received June 20, 2012. A check request has been submitted to Wal-Mart for reimbursement of these fees and will be forwarded upon receipt. Processing is estimated at one to two weeks.*

3) *Town to Pagosa Lakes Trail contribution Specifics on Trail thru open space.*

Can we obtain a 20 feet easement with small bump outs for interpretive signage, shade and seating.

How much is Wal-Mart contributing to the trail construction?

Response: A 20' easement width has been provided for the proposed Town to Lakes Trail in the Open Space Tract A area. Wal-Mart has agreed to make a contribution toward the construction of the Town to Lakes Trail, although the exact amount is to be determined.

4) *Garden Center Water Quality Catch basin details and PAWSD approval for dumping into sewer system. Should roofing garden center be considered.*

Provide cross sections showing drainage within contained garden center.

Provide details of catch basin and filtering system with approval from PAWSD.

Response: The Garden Center Area has been designed to surface drain in an outwardly manner or east from the store toward the side parking field which will then drain into the proposed inlet. Similar to the rest of the developed lot, surface drainage will be captured into storm sewer inlets and filtered through the Downstream Defender storm water quality device, before then entering into the underground chamber detention system that will include several isolator rows which further filters the developed flows from the site. The uncovered Garden Center area will be limited to plants and flowers, and they will not be fertilized in any way onsite. Plants and flowers are brought to the site from outside suppliers and simply displayed and watered in the area underneath the shade canopies. Any fertilizer or related outdoor use chemicals will be sealed in bags or containers and kept in a protected weather-covered area within the Garden Center area, or stored inside the store. There are no drains proposed within the Garden Center area. Regarding the filtering capability of the previously mentioned water quality devices, the Downstream Defender will remove some phosphorus, while the Isolator rows of the underground detention chamber system provide an additional 49% phosphorous removal. Additional details of these devices and supporting information will be included in the drainage report.

5) *Application for sign permit and variance*

Submit Application for Sign Permit and Variance request.

Response: Comment noted. It is anticipated that the Sign Variance application will be submitted under separate application, following Design Review Board consideration of the Site Plan application.

6) *Alpha Drive details:*

Applicant will improve Alpha Drive from Hwy 160 to Alpha Rock Ridge boundary line.

County will petition Town to annex Alpha Drive prior to proposed improvements

Town will require Alpha Drive improvements adhere to town standards, at a minimum.

The center turn lane is not a code requirement, but the applicant will provide.

Curb, Gutter and Sidewalk on east side only. Bar-ditch to remain as is on west side.

west side improvement will occur once the west side property is developed.

Response: Comments noted. Plans have been updated accordingly.

7) *PC Resolution certifying adequate public noticing.*

Town Staff will present a resolution at July 10th meeting.

Response: Comment noted.

8) *TC Resolution certifying adequate public noticing, or incorporated in vacation ordinance.*

Town Staff will include into Ordinance, findings of facts.

Response: Comment noted.

9) *Contingent on subsequent documentation*

Response: Comment noted.

10) USACE permit approval as contingency for lot consolidation and Boundary line adjustment recordation and building permit CO.

Response: Comment noted.

10.a.) Drainage into wet land from parking lot.
Provide details of water quality structure and approval of such structure from the USACE, EPA, State Environmental agency, ect...

Response: Further detail and explanation will be provided in the drainage report.

11) CDOT access permit approval as contingency for building permit issuance.

Response: Comment noted.

12) Seek additional comments from EPA, State environmental agency,

Response: Comment noted.

13) Alpha Drive Street Lighting.
Current fixtures are very high maintenance.
Are bases same as Aspen Village light bases?

Response: Wal-Mart is willing to consider installation of an alternate light fixture, if the Town has a preferred alternative. It is our understanding that this may be forthcoming from the Town.

14) PAWSD Storm Water Quality approval?

Response: Proposed water quality devices and systems will be submitted to PAWSD for review and acceptance.

15) Fire Department approval of Hydrant placement required at Building Permit submission.
FD recommends one more hydrant at the north Alpha Drive Entrance on south side corner.

Response: An additional fire hydrant has been added per the Fire Department request, and we are awaiting written acceptance confirmation from the fire department.

16) As part of Building Permit, Final Approved Drainage Plan,

Response: The revised Drainage Report will be submitted by separate cover from this resubmittal package.

17) PAWSD Water Modeling status? Required at building permit submission.

Response: Comment noted.

18) *Cargo Containers: Are there plans to utilize Cargo Containers ??*

Response: There are no plans to utilize cargo containers onsite.

Wal-Mart Landscaping Ideas

1. *8' screen wall around south side of property (towards east). Wall typ. of proposed screen wall to South – Response: One of the primary access locations from the customer parking lot to Aspen Village Drive has been removed. As a result of the removal of one of these access locations, the easterly truck access was shifted further to the east, to further allow for screening of the easternmost truck dock area from the single family residential located across Aspen Village Drive. Additional trees and shrubs have been provided in this area to further screen this area.*
2. *Addition parking lot landscape islands/trees with center rows. Response: Done. Four additional islands have been provided in the parking field area and a center sidewalk has been provided in the parking row directly in front of the store entrance.*
3. *Landscaping:*
 - A. *Native grass/wildflower mix (yarrow-white), flax, Mexican hat around Northern boundary. Response: Done. Please reference revised landscape plan.*
 - B. *Kentucky bluegrass sod on southwest landscape bed and east side landscape area/pocket park. Response: Done. Please reference revised landscape plan.*
- A. *Landscape areas on mid west side and south mid island to be mulched w/organic mulch/shredded cedar mulch. Response: Done. Please reference revised landscape plan.*
4. *No stone mulch at all, it heats up too much in parking areas / compaction. Response: All stone mulch has been removed and replaced with double*

shredded mulch. Additional shrubs have been added on the west side landscaping islands to protect the mulch beds.

5. *Irrigation:*

A. *Irrigate turf areas/native grass areas with rotor heads, including Northern section of property to ensure proper establishment of native grasses.* **Response: Agreed, done. This has been noted on the Irrigation Concept listed on the landscaping drawings but will be further noted on the Irrigation Design Drawings when prepared during the CD process.**

B. *Run drip/netafin to all landscape beds.* **Response: Agreed and will be complied with.**

6. *Tree sizes: Conifers:*

25% 12'

25% 8'

50% 10'

Deciduous:

2.5" Caliper as minimum.

Response: All coniferous trees have been revised to the heights listed above and deciduous trees have been revised to 2.5" caliper size. Please reference the landscaping plan.

7. *Overstory/canopy trees:*

A. *No cottonwoods.* – **Response: Understood. This has been revised to Honeylocust (shademaster) as requested.**

B. *Try larger shade trees, ex. Honeylocust (Shademaster), Ash (Fallgold), Purple Robe Locust, Autumn Blaze Maple.* **Response – see above.**

8. *Ornamental deciduous trees:*

A. *Chokecherry, good. Japanese Tree Lilac, good.*

B. *Add Ginnala Maple, Spring Snow Crab, Radiant Crab.*

Response: Comment noted and landscape plan has been modified appropriately to provide for a mix of trees listed.

9. *Evergreens:*
- A. *No Engleman Spruce.* **Response: Comment noted and Engleman has been removed. Removed spruce trees have been replaced with deciduous trees to comply with comment below.**
 - B. *Reduce total conifers by 30%, add deciduous in its place.* **Previous mix of trees were 58% evergreen versus 42% deciduous trees. Resultant ratio after revisions to plans: 51 evergreen to 74 deciduous or 40%/60%, which meets the reduction of 30%.**
10. *Deciduous shrubs – Add more shrubs in landscape beds. Add: Dark Knight Blue Mist, Woods Rose.* **Response: This has been completed in the westerly beds. Sumacs and spruce and mugo pines have also been added.**
11. *Evergreen shrubs:*
- A. *Keep White Bud Mugo only.* **Response: In addition to the White Bud Mugo Pine, Slowmound mugo pines and globe spruce have also been proposed.**
 - B. *No Junipers on site.* **Response: Understood and revised.**
12. *Ornamental perennials/grasses – double quantity 900-1200: Plant heavy in parking lot islands (Ornamental Grasses and perennials in lieu of evergreen shrubs) -* **Response. Ok, this has been completed and provided for in the parking lot areas.**
- A. *Columbines- use sparingly, no yellow yarrow.*
 - B. *Red yarrow, Russian Sage, Rocky Mt. Penstemon, Cranesbill Geranium, Orange / yellow Daylily, Candy Tuff, Shasta Daisy, Blue Lupine, Walker Low Catmint, Salvia, Gallardia, Basket of Gold, Mexican Hat, Black Eyed Susans.* **Response: These species have been incorporated into the design, but not all.**
13. *Place a 6' mulch ring with steel edging around all trees in turf areas.* **Response: Done. Please see attached plans.**

14. *On tree planning specs, follow greenco tree planting recommendations, not on plan. Response - Ok, this will be added to plan.*
15. *Tree wrap on all canopy trees in parking lot for 1st 3 years, tree wrap removed in spring (May 21st). - Response - Ok, this will be added to plan.*
16. *Additional seating/landscape planters @ entry/elongated planters with benches. Response – Eight benches total have been added to plans along front of store and in front of planters.*
17. *Provide (2) -4” sched. 40 sleeves under roads on Aspen Village Blvd if not in agreement to item # 21. Response – Intentions are that Wal-Mart will be withdrawn from Association. As a result, these sleeves would not be installed.*
18. *Pedestrian gathering area and trees, shade structure, possible play structure / boulder pile for kids. Response: The community gathering area has been provided to the east of the main parking field. This will include shade trees, benches and small boulders.*
19. *Consider draining parking lots into landscape islands, then it filters through to water cleaning system. Curb less islands/openings. look up “Turning Drains into Sponges and Water Scarcity into Water Abundance” by Brad Lancaster. Response: Wal-Mart appreciates this idea, but not in this type of application and type of use. Based on the customer use within the parking lot area, this type of system would produce increased maintenance and repair to the landscaping islands. We also feel that conveyance of the water into the wetland and detention pond area needs to be a primary focus for wetland creation and establishment.*
20. *Possible abandonment of one service entry (west). Response: One entry from Aspen Village Drive has been removed and the easterly truck access has been shifted to further screen the easterly truck dock area from the single family residential area.*

21. *Ask Wal-Mart take over the existing boulevard and trees responsibilities that abut the Walmart property.as per their request to withdraw from the Aspen Village association. The new area granted to Walmart will be landscape by Walmart to create continuity the the Proposed Walmart Landscape plan. Response: Wal-Mart has requested to be withdrawn from the Association. Should this occur, Wal-Mart would prefer to take over maintenance and irrigation of the adjacent area next to Aspen Village Drive.*

Please let us know if you have any additional questions, or require additional information. We look forward to hearing from you regarding these revisions.

Sincerely,
Galloway & Company, Inc.

Carl T. Schmidlein, P.E., CPESC, LEED AP
Principal

**PAGOSA SPRINGS WAL-MART
LAND USE DEVELOPMENT PROJECT REVIEW
AMENDED TO ADDRESS RE-SUBMITTED PLANS AND DOCUMENTS
JULY 2012**

**PREPARED FOR:
Town of Pagosa Springs**

**PREPARED BY:

Bohannon Huston, Inc.
7500 Jefferson St NE
Courtyard One
Albuquerque, NM 87109**

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APPENDIX

APPENDIX A – PAGES FROM TOWN OF PAGOSA SPRINGS LAND USE AND
DEVELOPMENT CODE

The following comments are based on a Bohannon Huston, Inc. (BHI), May 2012 review of the submittal documents for the proposed Wal-Mart to be built in the Aspen Village Planned Unit Development (PUD) south of the intersection of Highway 160 at Alpha Drive.

The following documents were included as a part of the review:

- Drawing Sheets 1 thru 8, dated April 4, 2012, prepared by Galloway Planning, Architecture, Engineering.
- Colored Exterior Elevation drawing Sheet 1 dated February 23, 2012, prepared by BRR Architecture.
- Exterior Elevation drawing Sheet A-2 dated April 3, 2012, prepared by BRR Architecture.
- Snow Storage Exhibit drawing dated April 4, 2012, prepared by Galloway Planning, Architecture, Engineering.
- General Development Information document describing the project.
- Land Use Application.
- Approval Certificate dated March 12, 2012 from the Aspen Village Association, Inc. Design Review Committee.
- Title Report with an effective date of March 7, 2012 prepared by Colorado Land Title Company, LLC.
- Major Design Review checklist.
- Agreement for Payment of Land Use Application Fees executed February 13, 2012 by Dan C, Sanders Jr. and Michael Church.
- Property Ownership document dated March 22, 2012 listing property owners within a 300' radius of the project site.
- Drainage Study for Aspen Village dated June 10, 2004, prepared by Russell Engineering, Inc.
- Phase I Drainage Study Revision for Aspen Village, dated September 14, 2004, prepared by Russell Engineering, Inc.
- Phase 1 Drainage Report titled "Aspen Village Commercial Development Proposed Wal-Mart Supercenter" dated February 29, 2012, prepared by Galloway Planning, Architecture, Engineering.
- Traffic Study dated April 2012, prepared by Kimley-Horn and Associates.

Comments in red and in Tahoma font respond to the applicants 2nd submittal.

A. LAND USE DEVELOPMENT CODE REVIEW COMMENTS

The following comments refer to the Town of Pagosa Springs Land Use Development Code adopted February 2009 and updated on January 01, 2011. The numbering sequence corresponds to the Articles and paragraphs of said document, where applicable. In many cases, this document allows for the interpretation of conformance by the designer, reviewer, and/or Town staff. As such, these comments outline the findings of the review team and describe issues which are not necessarily violations but are instead, observations of plan and document features that may need modification or adjustment. Articles and Subsections not listed were reviewed and compared to the submittal documents and found to be in conformance with the Code. Attached to this document is an Appendix with the specific paragraphs referenced herein highlighted:

1. **Article 2, Subsection 2.3.1, Paragraph E (Page 11)** requires the applicant to provide a record of the Pre-Application Conference to accompany the submittal. This document was not included with the package reviewed.

During the May 22, 2012 meeting prior to the Public Hearing, these issues were noted as having been provided to the Town.

2. **Article 2, Subsection 2.3.2, Paragraph E (Page 12)** requires the applicant to provide a written summary of the neighborhood meeting to accompany the submittal. This document was not included with the package reviewed.

During the May 22, 2012 meeting prior to the Public Hearing, these issues were noted as having been provided to the Town.

3. **Article 2, Subsection 2.3.3, Paragraph D (Page 12)** requires written notarized documentation from the property owner authorizing the filing of the submittal, if the owner is not the party making the submittal. The Land Use Permit Application was signed by Mr. Michael A. Allan but it is unclear if he is representing the property owner and/or has authority to sign on their behalf.

During the May 22, 2012 meeting prior to the Public Hearing, these issues were noted as having been provided to the Town.

4. **Article 2, Subsection 2.3.7, Paragraph E (Page 16)** requires the posting of a sign at the property at least 15 days prior to the public hearing date. Evidence of this sign posting was not included with the package reviewed.

During the May 22, 2012 meeting prior to the Public Hearing, these issues were noted as having been provided to the Town.

5. **Article 2, Subsection 2.3.7, Paragraph F (Page 16)** requires that notice be provided to mineral estate owners and lessees, not less than 30 days prior to the initial public hearing. Evidence of this notification was not included with the package reviewed.

The Galloway June 21, 2012 written response notes notification mailed and receipts sent to Town.

6. **Article 4, Subsection 4.3.4, Paragraph C, 2, b (Page 95)** limits the area allowed for outdoor display or sales to one quarter of the length of the store front. Plan Sheet 2, keyed note 54 indicates that approximately 297' of the 432' store front (inclusive of the seasonal/garden center) will be utilized for outdoor sales/display, which equals approximately 69% of store frontage.

Plan sheet 2 revised –Area for outdoor sales now has been reduced to approximately 88' at NE corner of store. (Approx. 20.5%)

7. **Article 5, Table 5.1.2 (Page 100)** states that “at least 50 percent of the primary street frontage must be occupied by a building wall.” Because of the building orientation and the curvilinear alignment of Aspen Village Drive, a strict interpretation of this requirement is difficult to achieve. A visual analysis of the Site Plan however, appears to indicate this requirement has not been met.

N/A per Town Staff comments and the May 22, 2012 meeting due to intent of this ordinance language to be applied to urban/town center development.

8. **Article 5, Table 5.1.2 (Page 100)** limits the building height to 35'. Colored Elevation Sheet 1 indicates that a portion of the front façade will have a height of 35'-4" but Exterior Elevation Sheet A-2 indicates the same portion will be 34'-8". A clarification is needed.

Latest building elevations specify a building height which is 31' maximum. Building now conforms (Sheets 9 and 10)

9. **Article 6, Subsection 6.6.3, Paragraph B, 3, I, (v) (Page 124)**: discusses clear site distance requirements. Based on the graphic symbol locations of the landscape material depicted on Sheet 6, some of the “moonshine yarrow” plants will exceed the 2.5' height limitation at the north side of the middle entrance from Alpha Drive.

All Plant material in clear site triangle conforms to 2.5' height restriction. (Sheet 6)

10. **Article 6, Subsection 6.6.4, Paragraph C, 11 (Page 132)** limits the width of commercial driveways to 30'. Two driveways providing access to the rear service area of the building from Aspen Village Drive are noted as being 50' and 75' wide.

Driveway widths at rear of store = 40' and 50' for truck service areas. Driveway entry at NE corner of site = 37'. Each exceeds the 30' maximum width. Delivery truck maneuvering requires these widths at the rear of the store. (Sheet 2)

11. **Article 6, Subsection 6.6.4, Paragraph C, 16 (Page 132)** restricts (storm water) runoff from draining from a driveway onto the Town roadway. Sheet 3 indicates that the center driveway accessing Alpha Drive will allow for the discharge of storm water flows into this Street. Other driveways will also allow for a minimal discharge of storm water flow to enter Alpha Drive and Aspen Village Drive. See also Section C of this report for Additional Drainage Study/Hydrology review comments.

Plan sheet 3 has been adjusted. Only insignificant quantities of storm water flows will leave the site and enter public roadways.

12. **Article 6, Subsections and Paragraphs 6.6.5, B, 1, 6.6.6, B, 9, 6.7.3, A, 5, and 6.7.7, C, 1 (Pages 133, 134, 150)** discuss pedestrian circulation requirements and notes that "the pedestrian circulation system shall include gathering/sitting areas, and provide benches, landscaping, and other street furniture where appropriate." The internal pedestrian circulation system is very limited, providing a minimally defined east-west connection to/from both Aspen Village Drive and Alpha Drive to the store front and no pedestrian access in a north-south direction where shoppers will walk from their vehicle to the store entry. The east-west walkway does not indicate a crosswalk at the northeast corner of the building. The Site Plan (Sheet 2) shows a striped area along the front of the store which indicates the area for outdoor sales/display. It is not clear if this is intended to be a raised sidewalk/pedestrian walkway or if it is asphalt that is flush with the drive aisle which is adjacent to it. Clarification is needed in this area. The only area provided for pedestrian seating and gathering is located to the north and east of the building, and a significant distance from the store entry. No other pedestrian amenities are provided.

Pedestrian circulation and gathering areas have been added. Sheet 2 indicates a new north/south pedestrian walkway leading to the front of the store. The June 21, 2012 Galloway response letter also states that gathering and sitting areas have been provided along the front of the store and in front of the planters. Symbols on Sheet 2 appear to show

these seating areas but are not noted as such. Crosswalk symbols have been added to logical locations where pedestrians will cross vehicular ways. Note: The area in front of the store remains flush with the asphalt drive surface, as opposed to being raised.

13. **Article 6, Subsection 6.7.3, Paragraph A, 2 (Page 136)** discusses building orientation noting that “local climatic conditions shall be considered when orienting buildings” and further notes that “north facing facades are especially susceptible to winter snow and ice accumulation, and entries may require special treatment.” It should be noted that the building is oriented with the entrance on the north side of the building.

No change is proposed to address the issue of building orientation and local climatic conditions. The June 21, 2012 Galloway response letter discusses this issue and notes that Wal-Mart is “comfortable that their regular procedure of snow removal using a combination of snow shoveling and small ATV snowblades and snow plows contracted through a local snow removal provider will be adequate...”

14. **Article 6, Subsection 6.7.3, Paragraph A, 4 (Page 137)** states that “buildings located on street corners shall recognize the importance of their location.....” and provides architectural suggestions on ways to accomplish this requirement. The southwest corner of the building is located near the intersection of Alpha Drive and Aspen Village Drive. This building corner is architecturally unassuming and does not attempt to address this requirement.

The provided colored exterior elevations have been revised. Color accent walls have been added to each elevation and parapet height has been adjusted to add interest to the building. It was suggested at the May 22, 2012 hearing, and in the staff comments in the May 16, 2012 report that consideration be given to adding additional heavy timber truss/pitched roof elements to the south, east, and west elevations. This was not included in the latest plans. Pitched roof accents have been added to the west façade near the intersection of Aspen Village Drive and Alpha Drive, improving the building appearance at this intersection.

15. **Article 6, Subsection 6.7.3, Paragraph B, 1, c (Page 138)** discusses building massing and form and states that “Façade modulation shall be utilized to reduce the apparent bulk of a large building, where applicable.” The front of the building has been

designed with features that result in this modulation but the other 3 facades have minimal design elements resulting in a relatively plain appearance.

Building massing and articulation has been improved by the addition of building color and parapet height changes. Other adjustments have also been incorporated, including lowering the overall building height which also has the appearance of raising the height of the entry/roof feature, and adding the pitched roof accent to the west façade, incorporating additional building modulation, and adding more stucco finish areas.

16. **Article 6, Subsection 6.7.3, Paragraph B, 1, d (Page 138)** discusses building massing and form and states that “large, unbroken expanses and long continuous rooflines shall be avoided.” Except for the front building elevation, minimal roofline height change and/or configuration is incorporated into the building.

See comment in items 14 and 15 above.

17. **Article 6, Subsection 6.7.5, Paragraph C, 3 (Page 140)** states that “back sides” of buildings shall not be located within view of neighboring residences. The back of the building faces existing residential development. The applicant has provided screening in this area to help alleviate this situation.

While the building service area/rear of the building still faces residential developments, the plans have been adjusted to:

- a) Narrow and shift the vehicular entry drives (Sheet 2)*
- b) Increase berming length between and adjacent to vehicular entries (Sheet 3)*
- c) Add additional screening vegetation in the area*

Each of these changes will result in less visual impact to the adjacent residential development of the rear of the store.

18. **Article 6, Subsection 6.9.3, Paragraph B, Table 6.9-2 (Page 157)** notes the off street parking requirements for outdoor sales and display. Keyed note 54 on Sheet 2 of the submittal drawings indicates that areas in front of the store will be utilized for this purpose but this square footage and resulting parking requirement is not incorporated into the Parking Requirements Chart on the same page.

This parking requirement chart on Sheet 2 has been updated to address the outdoor display and sales area.

19. **Article 6, Subsection 6.9.4, Paragraph B, 4 (Page 161)** states that “required parking shall be broken into component parking lots, avoiding large, unrelieved expanses of paving.” The parking area is designed with minimal interior landscape islands and no other feature to address this requirement.

Additional parking area landscape islands have been added to the project. (Sheet 2 and 6) A new pedestrian N-S walkway has been added to one of the parking rows, further breaking up the parking field.

20. **Article 6, Subsection 6.9.4, Paragraph C (Page 161)** requires areas that provide parking for more than ten vehicles to also provide at least ten percent of the total area of the parking lot for landscaping and/or aesthetic treatment. Most of the landscape provided is around the perimeter of the parking lot. Depending on the interpretation of this requirement, the internal site design may not achieve this 10% total.

The June 21, 2012 Galloway response letter states that “the total combined landscape area within the front parking field is 22.4 % ...” It would be beneficial to see an exhibit which shows how this percentage was calculated.

21. **Article 6, Subsection 6.9.4, Paragraph C, 1 (Page 161)** requires a minimum of one tree “generally planted in landscape islands” for every 5 parking spaces to be located “within the parking area/lot.” The overall site has more than the required minimum number of trees but the majority are located around the perimeter and not within the parking area and/or in landscape islands.

Related to #20 above. 375 parking spaces / 5 = 75 trees required. As discussed above, it would be beneficial to see an exhibit showing how this quantity was calculated and in what locations.

22. **Article 6, Subsection 6.9.4, Paragraph F (Page 161)** requires circulation for parking areas to be designed to facilitate the safe movement of vehicles without posing a danger to pedestrians. Because the site design includes minimal pedestrian access ways, this requirement may not be met.

Modifications to the Plan (Sheet 2) as discussed above in Paragraph 12 have improved the pedestrian circulation, and possible conflict with vehicular traffic.

23. **Article 6, Subsection 6.10.3, Paragraph C (Page 166)** requires the landscaping to be watered and maintained by the property owner/leaseholder as necessary to preserve the intent of the approved Landscape Plan. Maintenance and warranty notes are included

on the Landscape Plan Sheet but refer to the obligations of the contractor and do not address similar responsibilities of the owner/leaseholder.

A note has been added to Sheet 6 (Upper left corner) addressing this issue.

24. **Article 6, Subsection 6.11.4, Paragraph C (Page 170)** states that “in no case shall exterior lighting add any foot-candle illumination at any point off site.” Although minimal, some illumination will occur off site as shown on Sheet 5 of the submittal.

The photometric plan (Sheet 5) depicts areas where a 0.1 foot candle level of lighting occurs off of the site in some locations and in close proximity to the site, within adjacent roadway or open space areas. No light level spills onto properties owned by others in the vicinity of the site. The June 21, 2012 Galloway response letter discusses this issue in more detail, describing the lighting types and technologies used.

25. **Article 6, Subsection 6.12.4, Paragraph A, 1, b (Page 174)** states that wall mounted signs shall be restricted in size to “...up to a maximum of 100 square feet, in total.” The “Wal-Mart” sign on the front elevation is noted as being 298 square feet.

The wall mounted signage is still depicted exceeding the 100 square foot maximum. The June 21, 2012 Galloway response letter acknowledges this, noting that, “It is anticipated that the sign variance application will be submitted under separate cover.”

26. **Article 6, Subsection 6.12.4, Paragraph A,1, b and Paragraph A, 2 (Page 175)** discussed height and size limitations for freestanding signs. Keyed note 47 on Sheet 2 indicates that a monument sign will be located near the northeast entrance to the site from Aspen Village Drive. No detail or size and height information is provided so it cannot be determined if the requirements of these paragraphs are conformed to.

Related to Paragraph 25, and will need to be a part of the sign variance request.

B. TRAFFIC IMPACT ANALYSIS/CDOT REVIEW COMMENTS

This review is based on the April 2012 Aspen Village Retail traffic study prepared for Galloway & Company by Kimley-Horn and Associates, and the April 4, 2012 Site Plan (Sheet 2), US Highway 160 (US 160) Improvements (Sheet 7), and Aspen Village Drive Improvements (Sheet 8), prepared by Galloway & Company and provided to BHI.

The traffic study appears to follow general practice and the criteria established by the Colorado Department of Transportation (CDOT) and the recommendations follow the criteria established in the CDOT State Highway Access Code (SHAC). However, the study does not provide an updated trip generation estimate for the entire PUD development. As the proposed superstore generates almost as many daily trips as the entire previous development did, an update would be helpful to get a broader understanding of the new proposal and how it impacts the remainder of the project.

The updated traffic impact analysis of July 2, 2012 provides this detail.

1. STATE HIGHWAY ACCESS CODE (SHAC)

The improvements to US 160 (Sheet 7) and Aspen Village Drive (Sheet 8) also appear to follow CDOT SHAC criteria for deceleration lane lengths, transition tapers and redirect tapers. The eastbound redirect taper on US 160 west of Aspen Village Drive appears to be closer to 35:1, as opposed to the required 45:1, but the adjustment reflects the constraints due to the proximity of the downstream Boulder Drive intersection.

No changes requested in submittal.

OPTIONS TO CONSIDER

The proposed solution is considered reasonable given the physical constraints. As the US 160 Access Management Plan identified US 160 as a four-lane facility in the future (two lanes in each direction), an alternative improvement to US 160 would be to construct an eastbound auxiliary lane from Aspen Village to Boulder Drive. In this scenario, in the future CDOT would only have to remove the pork chop islands, and possibly construct the right turn lanes, to achieve two eastbound lanes from Alpha to Boulder. This improvement would be in addition to lengthening the westbound left turn lane onto Aspen Village from US 160.

The July 2, 2012 revised traffic impact analysis indicates the developer has agreed to construct the eastbound auxiliary lane.

2. STATE HIGHWAY ACCESS CODE

No change to the typical section is proposed for Aspen Village Drive, other than driveway access, and extension of the left turn lane at US 160. The extension design follows CDOT criteria and enhances the development circulation by providing an approximately 80-foot southbound turn lane from Aspen Village Drive onto Cornerstone Drive.

3. LAND USE DEVELOPMENT CODE

1. **Article 6, Subsection 6.6.3, Paragraph B,2 (page 122) and Article 6, Subsection 6.6.3, Table 6.6-2 (Page 126):** Based on the volumes provided in the traffic study Figures 11 and 12, Alpha Drive is a minor collector road and Aspen Village Drive is a major collector road, per the criteria in the above article. However, as mentioned above, supporting information is not provided in the traffic study in sufficient detail to verify future traffic volumes from the entire PUD parcel.

This information has been provided in the July 2, 2012 traffic study update.

Alpha Drive is proposed to be paved with curb and gutter on the west side, abutting the property. Table 6.6-2 states curb and gutter is required on collector streets, suggesting it is required on both sides of the proposed roadway. If so, curb and gutter should be proposed on the west side of Alpha Drive as well. At a minimum a shoulder should be provided outside the bike lane.

The Town has indicated curb and gutter is not required on the west side of Alpha Drive.

The Site Plan, Sheet 2, proposes two 19-foot driving lanes and two 3-foot-bike lanes on Alpha Drive. The bike lanes conform to the criteria in Table 6.6-2. Table 6.6-2 establishes a minimum of 11-foot driving lanes, so the 19-foot lane satisfies the criteria.

OPTIONS TO CONSIDER

The proposed 19' wide lane may cause higher speeds on the road than desired. An alternative section could be to provide two 12-foot driving lanes with a painted 14-foot continuous left turn lane. This would allow through traffic to pass left turning vehicles entering the site without encroaching into the bike lane.

Although a striping plan for Alpha Drive has not been provided to Bohannon Huston, Inc. for review, the revised Site Plan, Sheet 2, does show two driving lanes and a continuous left turn lane.

2. **Article, 6, Subsection 6.6.5, Paragraph B, 2 (Page 133):** The Site Plan also indicates a six-foot sidewalk on the east side of Alpha Drive, but has no corresponding sidewalk on the west side of the road. Paragraph B,2 (page 133), says "sidewalks shall be a minimum of five feet wide along one side and eight feet wide along the other side of collector street." As the existing sidewalk on Aspen Village Drive is six feet, it is considered

appropriate for this project to match the existing sidewalk along the project frontage on Alpha Drive with the existing sidewalk width on Aspen Village Drive.

The Town has indicated sidewalk on the west side of Alpha Drive will not be required.

OPTIONS TO CONSIDER

This code section implies a minimum five-foot sidewalk is required on the west side of Alpha Drive. This would allow pedestrians to proceed on Alpha Drive without crossing the site entrances and entering and exiting traffic. Providing a sidewalk on the west side will require a different typical section on Alpha as it does not appear to have sufficient right-of-way to construct the west sidewalk and maintain the proposed section described above, as it appears the proposed sidewalk on the east side is set back four feet from the right-of-way line. To maintain the four-foot east setback for the sidewalk and the continuous left turn as discussed above would require two 11-foot lanes and a 12-foot continuous left turn lane, or two 17-foot driving lanes. Correspondingly, if the east sidewalk was set at the right-of-way line, would allow the two 12-foot driving lanes and the 14-foot continuous left as described above. Also, no striping plan for Alpha Drive was provided, however it appears the bike lane is striped accordingly. If not, appropriate bike lane striping should be provided on Alpha Drive.

A continuous left turn lane is now shown on Alpha Drive in the Site Plan on Sheet 2.

3. **Article 6, Subsection 6.6.3, Paragraph B, 3, I (Page 124):** The second site driveway south of US 160 on Aspen Village Drive is approximately 95 feet north of the existing Aspen Park Circle intersection. This code section requires “road entering a roadway from opposite sides of the road shall either be directly across from each other or offset by at least 125 feet from centerline to centerline or sight distance requirements, whichever is greater.”

OPTIONS TO CONSIDER

One solution would be to move the driveway south to align with Aspen Park Circle.

The entrance located just north of the Tanglewood access has been removed.

ASPEN VILLAGE DRIVE AND CORNERSTONE DRIVE INTERSECTION

It should be noted that analysis of the Aspen Village Drive and Cornerstone Drive has not been included in the review materials provided to Bohannon Huston, Inc. however the June 21, 2012 response letter from Galloway to Town Planning indicates an analysis has been performed.

C. DRAINAGE STUDY/HYDROLOGY REVIEW COMMENTS

The following documents were included as a part of the review:

- Wal-Mart Supercenter Grading Plan
- Drainage Study for Aspen Village, Russell Engineering, June 10, 2004
- Phase I Drainage Study Revision for Aspen Village, Russell Engineering, September 14, 2004
- Phase I Drainage Report for Aspen Village Commercial Development – Proposed Wal-Mart Supercenter, Galloway February 29, 2012 with included Drainage Plan Sheet 1.

1. **Article 6, Subsection 6.3.1, Paragraph A (Page 113):** Final review by building code official required, for conformance to the adopted building code.

2. **Article 6, Subsection 6.3.1, Paragraph B (Page 113):** Neither an Erosion Control Plan nor a Stormwater Management Plan/Report SWMP has been included for review. A stormwater discharge permit will be required by the State of Colorado prior to construction.

3. **Article 6, Subsection 6.3.2, Paragraph A, 1, (Page 114):** A discharge structure upgrade to the existing Pond A control is proposed by the applicant. However, it is unclear if the downstream infrastructure (US160 24" culvert) can accommodate the proposed increase in discharge, how this increase in discharge (4.71cfs) has been calculated, and if this increase conforms to the development standard. The Drainage Study for Aspen Village sized Pond A based on a 15cfs release, as not to exceed capacity of the US160 24" culvert. It is unclear how the increased release rate corresponds to the historic discharge. Please clarify the drainage report by including calculations to support the discharge assumptions, calculations of historic basin parameters used in the analysis, and a comparison to proposed conditions.

4. **Article 6, Subsection 6.3.2, Paragraph A, 2, (Page 114):** Review of submitted items indicates compliance to standard.
5. **Article 6, Subsection 6.3.2, Paragraph A, 3, (Page 114):** Review of submitted items indicates compliance to standard.
6. **Article 6, Subsection 6.3.2, Paragraph A, 4, (Page 114):** Review of submitted items indicates compliance to standard.
7. **Article 6, Subsection 6.3.2, Paragraph A, 5, (Page 114):** No waivers are specified by the applicant.
8. **Article 6, Subsection 6.3.2, Paragraph B, 1, (Page 115):** Relating to Item A.1., please provide further information on the effects of the detention Pond within Basin OS-1 of the Aspen Village Study Revision and the outlet.
9. **Article 6, Subsection 6.3.2, Paragraph B, 2, (Page 115):** Review of submitted items indicates compliance to standard.
10. **Article 6, Subsection 6.3.2, Paragraph B, 3, (Page 115):** A stormwater detention system is provided to limit runoff to 100-year conditions, within an adjacent off-site parcel as a regional detention area. However, it is unclear if the proposed facility has adequate capacity for the increase in flows from the development. See further comments in 13 below.
11. **Article 6, Subsection 6.3.2, Paragraph B, 4, (Page 115):** Please clarify discrepancy as to the maximum inlet ponding depth in the 100-year event (6-inches vs. 12-inches).
12. **Article 6, Subsection 6.3.2, Paragraph C, 1, (Page 116):** Review of submitted items indicates compliance to standard.
13. **Article 6, Subsection 6.3.2, Paragraph C, 2, (Page 116):** It is unclear if the proposed Pond A facilities have adequate capacity for the increase in stormwater flows from the site. Specifically, clarification and calculation is needed to demonstrate that the Pond A tributary area is 61.91 Acres as specified, and that this area has a composite imperviousness of 39.6%.
14. **Article 6, Subsection 6.3.2, Paragraph C, 3 (Page 116):** A two stage release structure is specified with the design per the standard; however, further explanation is necessary to demonstrate if the downstream facilities can accommodate the stated release rate (see A.1).

15. **Article 6, Subsection 6.3.2, Paragraph D, a (Page 116):** Drainage design plans have been submitted to comply with this regulation, and are currently under review.

16. **Article 6, Subsection 6.3.2, Paragraph D, b (Page 116):** Drainage plans will be required for review to obtain a building permit.

17. **Article 6, Subsection 6.3.3 (Page 116):** Review of submitted items indicates compliance to standard.

OTHER ISSUES

A land survey plat should be requested and reviewed for the lot combination, cul-de-sac vacation, and any easement dedications. Coordination with local utility companies will be required to insure existing utilities are removed/relocated as necessary.

Stormwater Quality – The Drainage Study for Aspen Village indicates that a stormwater quality pretreatment of developed runoff with a “Vortech or Other Approved Pretreatment System” is required prior to release into the Detention Pond. A SNOUT / BIO-SKIRT combination is proposed by the applicant. It is unclear if the proposed treatment combination of the SNOUT / BIO-SKIRT will provide water quality to the levels of the specified Vortech treatment device. Please submit documentation to confirm that the level of treatment provided by the SNOUT / BIO-SKIRT combination is commensurate to that of the Vortech treatment device.

D. CORP OF ENGINEER REVIEW COMMENTS

Wetland Permitting – The Corp of Engineers was contacted to verify the applicant coordination of wetland permitting and mitigation. Following is a statement from the Corp regarding this project: *“Ongoing coordination with the Corps of Engineers will be critical to project development, specifically with regard to the relocation expectation for the wetlands.”*

E. UTILITIES REVIEW COMMENTS

- Submittal Items Reviewed: Wal-Mart Supercenter Utility Plan Sheet 4.

1. **Article 6, Subsection 6.3.4, Paragraph A, (Page 116):** Please provide a “Will Serve” letter from the Pagosa Area Water and Sanitation District (District); based on the planned development use versus the type of development initially planned (confirm that the sanitary sewer flows from the development correspond to previous planning). At permit

stage, coordinate final design with the regulations and standards of the District. Final design plans will require a “prepared by” sign/stamp by a registered professional engineer. The proposed lift station may also require coordination with the Colorado Department of Public Health and Environment, Water Quality Control Division for Application for Site Location Approval for Construction of New Lift Station.

2. **Article 6, Subsection 6.3.4, Paragraph B, (Page 117):** It is unclear if the on-site sanitary sewer service collection system, or the proposed lift station, will be conveyed to the District; or if the developer will maintain ownership and assume all operations and maintenance responsibilities of these facilities in the future. Details of the station operation, maintenance, and funding of this responsibility warrant investigation at this stage.

3. **Article 6, Subsection 6.3.4, Paragraph C, (Page 117):** Review of submitted items indicates compliance to standard.

4. **Article 6, Subsection 6.3.4, Paragraph D, (Page 117):** Review of submitted items indicates compliance to standard.

5. **Article 6, Subsection 6.3.4, Paragraph E, (Page 117):** Not proposed with this development, does not apply.

6. **Article 6, Subsection 6.3.4, Paragraph F, (Page 117):** Not proposed with this development, does not apply.

7. **Article 6, Subsection 6.3.5, Paragraph A, (Page 117):** Review of submitted items indicates compliance to standard. Final design plans will require a “prepared by” sign/stamp by a registered professional engineer.

8. **Article 6, Subsection 6.3.5, Paragraph B, (Page 117)**

Water Supply Adequacy –Please provide a “will serve” letter from the Pagosa Area Water and Sanitation District (District) indicating that the proposed development can be serviced with water supply. Final design plans will require a “Prepared By” sign/stamp by a Colorado Registered Professional Engineer.

9. **Article 6, Subsection 6.3.6, Paragraph B, (Page 117):** Provide documentation of Fire Hydrant layout approval by the fire district according to the adopted fire code.

F. SENSITIVE AREA/COLORADO DIVISION OF WILDLIFE MANAGEMENT REVIEW
COMMENTS

Coordination with the Colorado Division of Wildlife is also important. It is likely that a pre-construction bird survey will be necessary due to the potential for migratory birds on the property and the relocation of wetlands and removal of trees.

To date, Bohannon Huston, Inc. has not received any documentation on coordination efforts with the Colorado Division of Wildlife (CDOW). Two reports, completed by SME Environmental Consultants, summarizing the migratory bird survey and the Pagosa Skyrocket survey (dated June 2012) have been reviewed. No concerns have been identified with either of the biological reports; however, no documentation has been provided indicating that they have been submitted to, or approved by, the CDOW or the USACE.

**Appendix A –
Pages from Town of Pagosa Springs
Land Use and Development Code**

PAGOSA SPRINGS, CO



DESIGN REVIEW BOARD
JULY 10, 2012

NOTE: ONLY PAGES FROM POWER POINT PRESENTATION RELATING TO LIGHTING INCLUDED.

PLEASE SEE PAGE NUMBERS AT BOTTOM-RIGHT OF EACH PAGE FOR CONTEXT.



Comment #19: Wal-Mart Lighting



A New Way of Thinking about Lighting Ordinances

Walmart's LED Site Lighting Design Criteria is based on the Department Of Energy's Commercial Building Energy Alliances (CBEA) LED site lighting design criteria and Model Lighting Ordinance recommendations for retail environment

Model Lighting Ordinance (MLO) was released in June 2011 to promote responsible outdoor lighting practices

MLO Co-Sponsored by:

- **Illuminating Engineering Society of North America (IESNA)**
 - Considered the technical Lighting Authority throughout North America
 - IESNA authors industry accepted set of recommended practices for exterior applications
 - Recommended Practices are developed through technical committees, comprised of hundreds of qualified individuals from the lighting and user communities, via consensus-based lighting recommendations.
- **International Dark-Sky Association (IDA)**
 - A non-profit organization that strives to reduce light pollution and cut down on energy usage
 - Publish educational materials to inform people of the harms of light pollution



In order to be a “good neighbor”, all site lighting designs/ordinances need to consider the following:

- **Light Trespass**

Light that falls beyond the property it is intended to illuminate.

- **Skyglow**

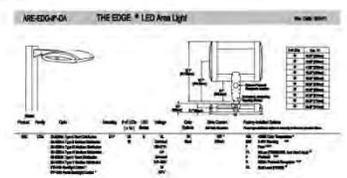
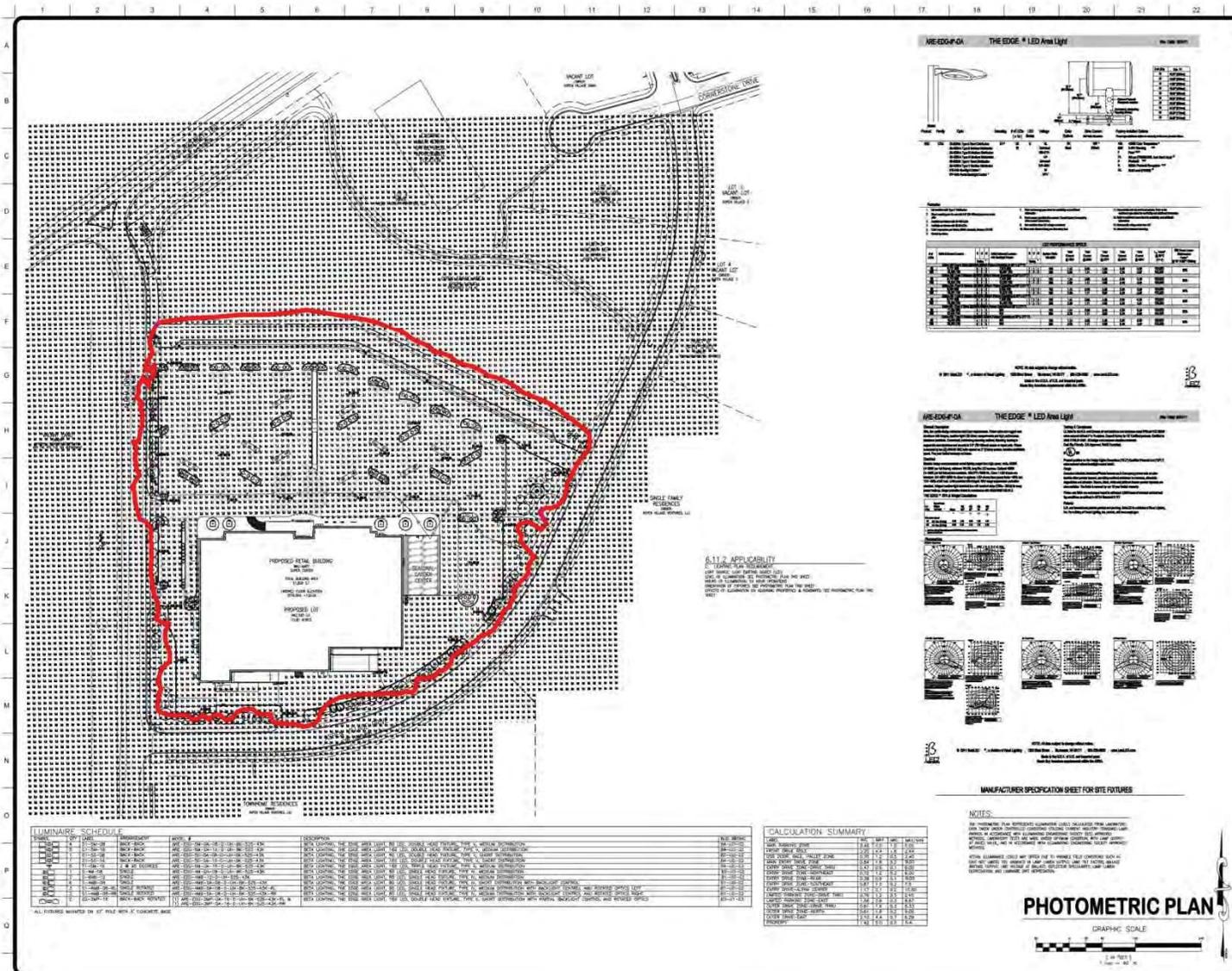
The brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Skyglow is caused by light directed or reflected upwards or sideways and reduces one’s ability to view the night sky.

- **Glare**

Lighting entering the eye directly from a luminaires or indirectly from reflective surfaces that causes visual discomfort or reduces visibility.



Lighting Plan – Updated

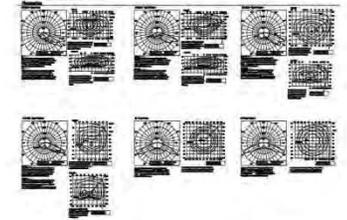


Item	Description	Quantity	Unit	Notes
ME-EDGE-01	LED Area Light	1	EA	

NOTES:
 1. ALL FIXTURES SHALL BE INSTALLED AS SHOWN UNLESS OTHERWISE NOTED.
 2. ALL FIXTURES SHALL BE INSTALLED AT THE HEIGHTS SHOWN UNLESS OTHERWISE NOTED.
 3. ALL FIXTURES SHALL BE INSTALLED AS SHOWN UNLESS OTHERWISE NOTED.

ME-EDGE-01 THE EDGE LED Area Light

Item	Description	Quantity	Unit	Notes
ME-EDGE-01	LED Area Light	1	EA	

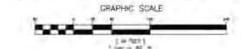


NOTES:
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 2. ALL FIXTURES SHALL BE INSTALLED AT THE HEIGHTS SHOWN UNLESS OTHERWISE NOTED.
 3. ALL FIXTURES SHALL BE INSTALLED AS SHOWN UNLESS OTHERWISE NOTED.

MANUFACTURER SPECIFICATION SHEET FOR SITE FIXTURES

NOTES:
 1. ALL FIXTURES SHALL BE INSTALLED AS SHOWN UNLESS OTHERWISE NOTED.
 2. ALL FIXTURES SHALL BE INSTALLED AT THE HEIGHTS SHOWN UNLESS OTHERWISE NOTED.
 3. ALL FIXTURES SHALL BE INSTALLED AS SHOWN UNLESS OTHERWISE NOTED.

PHOTOMETRIC PLAN



LUMINAIRE SCHEDULE

Item	Description	Quantity	Unit	Notes
ME-EDGE-01	LED Area Light	1	EA	

CALCULATION SUMMARY

Item	Description	Quantity	Unit	Notes
ME-EDGE-01	LED Area Light	1	EA	

REVISIONS BY

No.	Description	By	Date

Galloway

ARCHITECTS

1000 N. GARDEN AVENUE, SUITE 100
 BENTONVILLE, AR 72716
 TEL: 479.271.1100
 FAX: 479.271.1101
 WWW.GALLOWAYARCHITECTS.COM

WAL-MART SUPERCENTER
 U.S. HIGHWAY 160 & ALPHA DRIVE
 PAGOSA SPRINGS, COLORADO
 WAL-MART STORES, INC.
 BENTONVILLE, AR

DATE: 08/11/2011
 TIME: 10:00 AM
 DRAWING NO.: 11-0000-0000-0000
 SHEET NO.: 5

Pagosa Springs City Market



Data collected: June 20, 2012
at 9:55 P.M.

Conditions: Clear Night

Site Light Information:

Avg: 1.81 fc

Low: 0.6

High: 4.3

- Metal halide site lights.
- Approximately 30 ft. in height.
- Approximately 3 ft. tall concrete bollards on base.

Meeting Stated Environmental and Energy Goals and Complying with Changing Regulatory Environment

Regulatory Environment

- Lighting Power Density (LPD)
- Light Levels
- Uplight- Sky glow
- Trespass Light- New Metric
- Glare- On Site and Off Site



Collectively Referred to As Some Type of Dark Sky, Green or Sustainable Ordinance

Governing Bodies



Benefits of LED Lighting

- ✓ Environmentally Friendly
- ✓ Reduced Maintenance Cycles
- ✓ Sustainable-Eliminate Lead, Mercury and has a Reduced Waste Stream
- ✓ Energy Efficient
- ✓ Excellent Area Lighting Technology – Improves distribution, greater visual acuity, better vertical illumination for safety
- ✓ Reduces Glare and Light Trespass
- ✓ Provides a variety of ranges in LED-unit increments opposed to HID fixtures which have wide gaps



LED Lights & Health Concerns



A NEMA Lighting Systems Division Document
LSD 55-2010

Outdoor Lighting and Human/Animal Factors:



Discussions about possible health implications of exposure to light at night run the gamut, but given the available research, should any changes be made to currently recommended lighting practices?

Light at Night: The Latest Science

BACKGROUND

Our understanding of the visual and non-visual effects of light on humans remains incomplete. The

“Light at Night: The Latest Science,” published by the U.S. Department of Energy as part of the Solid-State Lighting Program.

“Outdoor Lighting and Human/Animal Factors: An Industry Opinion,” a NEMA Lighting Systems Division Document (LSD 55-2010).

The opinions expressed by the companies of the Association. The outdoor lamps, vintage lamps, light

“Light at Night and Human Health,” published by the U.S. Department of Energy as part of the Building Technologies Program.

“Effects of Exterior Lighting on Human Health,” the IES (Illuminating Engineering Society of North America) Position Statement (PS-03-10)

* Quantity. Research indicates that circadian sensitivity is not accurately modeled by the photopic or scotopic functions. Also, since the amount of optical radiation reaching the retina depends on pupil size, simple measurements of optical radiation “at the eye” may be inadequate.

optical radiation signals into neural signals for vision and for other body functions.

Spectral opponency – The mechanism by which sensitivity to one wavelength is reduced (a sub-additive response) when the visual system is exposed to additional wavelengths.

radiation, a metric unit of measurement based on the photopic luminous efficiency function are not

radiation on circadian, neuroendocrine, and neurobehavioral responses in field applications. At present there is inadequate documentation of what constitutes typical exposures to optical radiation in exterior settings after sunset that would constitute real-world normative data.

* Light is defined as optical radiation entering the eye that provides visual sensation in humans. Optical radiation, however, is increasingly related to a range of ocular circadian, neuroendocrine, neurobehavioral, and therapeutic responses in humans. For the sake of clarity, “optical radiation” is used in this position statement when referring to biological responses other than visual. “Light” is reserved to describe optical radiation that has been evaluated with respect to its ability to stimulate the visual system.



LIGHTING EXHIBITS

“The Intention”
Reducing Light Trespass,
Skyglow & Off Site Glare

“The Unintended Result”
Reducing Light Trespass,
Skyglow & Off Site Glare

Addressing Light Trespass
An Image Comparison



“**Light at Night: The Latest Science,**” published by the U.S. Department of Energy as part of the Solid-State Lighting Program.



“**Light at Night and Human Health,**” published by the U.S. Department of Energy as part of the Building Technologies Program.



“**Outdoor Lighting and Human/Animal Factors: An Industry Opinion,**” a NEMA Lighting Systems Division Document (LSD 55-2010).

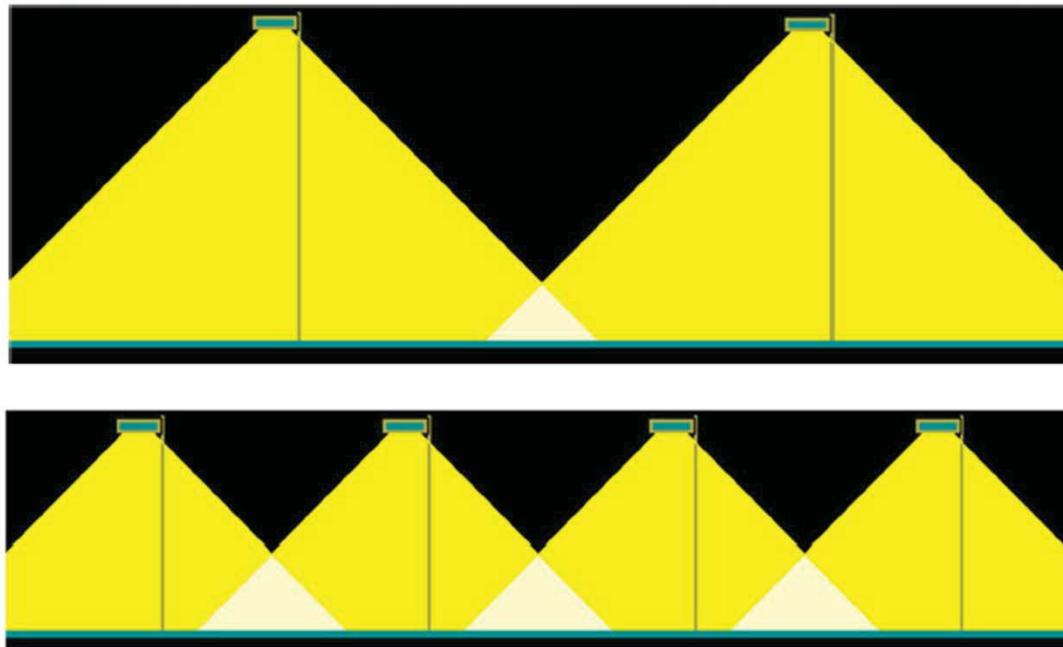


“**Effects of Exterior Lighting on Human Health,**” the IES (Illuminating Engineering Society of North America) Position Statement (PS-03-10)

Some municipalities adopt lighting design standards or ordinances that include restriction on the pole heights

The Intention:

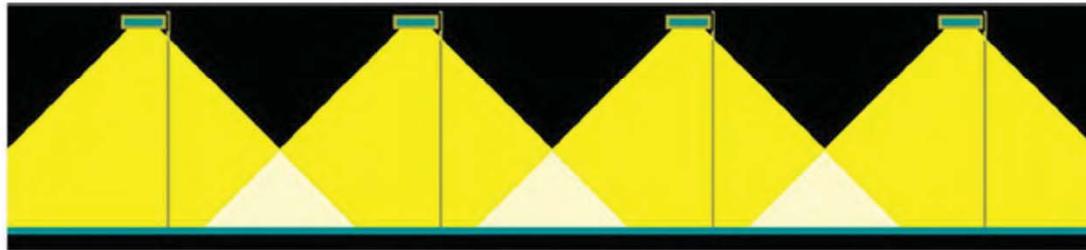
- To reduce the spread of light from high luminaires into surrounding areas (Light Trespass)
- Or to reduce the visual impact of light poles during the day



The Unintended Result:

In order to avoid darkspots and achieve uniform lighting, you can either

1. Decrease pole spacing which adds more poles, negatively affecting cost, efficiency and skyglow.



2. Use lights with wider angles of distribution, which can result in increased off-site glare and light trespass



#3: LEDs address light trespass control more efficiently



Distinct light line with good illumination on the asphalt and building



LED is a great solution for tight local ordinances and trespass control

Questions



**The Following “Documents of Record” are from the
original Design Review Board Public Hearing on August 21, 2012**

Documents Relative to the DRB Public Hearing on August 21, 2012

- 1) Wal-Mart response to July 10, 2012 DRB meeting minutes.**
- 2) Wal-Mart illumination power point presentation, dated August 21, 2012.**
- 3) The Edge LED Area Light fixture product information sheet.**
- 4) Revised Illumination Plan Dated August 13, 2012**

**Responses to the July 10, 2012
Design Review Board
Meeting Minutes**

The following eight items were identified at the July 10, 2012 Design Review Board meeting as items needing additional information. Wal-Mart's response follows each item.

- 1) Looking into options to better address the north facing entrance of the building for snow and ice removal.
Response: Wal-Mart has investigated the potential use of an underground snow melt system at the proposed location. Wal-Mart concluded from their findings that they are not interested in this type of system at the Pagosa Springs site. Wal-Mart has provided a copy of their snow removal guidelines to the Town and feels confident in their snow removal procedures that are in practice across the country.

- 2) Clarify the Alpha Drive ownership details.
Response: On August 7, 2012 the Archuleta County Board of County Commissioners voted to grant a Quit Claim Deed to the Town of Pagosa Springs for any and all of the County's rights, title and interest to Alpha Drive.

- 3) Conduct a neighborhood meeting to include commercial and residential property owners within 300 feet (per the LUDC)
Response: Wal-Mart team members attended the "Public Forum" meeting held by the Town of Pagosa Springs Town Council on February 16, 2012 and proceeded to exceed the requirements of the Town of Pagosa Springs LUDC by holding a neighborhood meeting in the form of an open house for the public on March 8, 2012. It was estimated that 200+ people attended each of these community meetings. Comment cards were available for the public to provide feedback at each meeting. There were a total of 125 comment cards submitted for the February 16, 2012 meeting and a total of 297 comment cards submitted for the March 8, 2012 meeting. Notices for these two meetings were completed by Town of Pagosa Springs staff by way of postings at the proposed site as well as newspaper notification in the Pagosa Springs Sun newspaper.

Per section 2.3.2.B of the Pagosa Springs LUDC, "A neighborhood meeting is recommended, but not mandatory, for any development proposal that will be subject to Planning Commission review."

- Although Wal-Mart was not required to hold a neighborhood meeting per the LUDC, Wal-Mart has complied with the recommendation above by holding the March 8, 2012 open house neighborhood meeting.

Per section 2.3.2.C of the Pagosa Springs LUDC, "An applicant holding a neighborhood meeting is encouraged to provide mailed and posted notice of the meeting in the same manner that would be required for public hearings on the application pursuant to Step 6 of the Common Development Review Procedures (Section 2.3.6)."

- Although Wal-Mart was not required to provide notification of a neighborhood meeting per the LUDC, postings at the site and newspaper postings were completed for both the February 16, 2012 and March 8, 2012 meetings.

Per section 2.3.2.E of the Pagosa Springs LUDC, "If a neighborhood meeting is held, the applicant shall prepare and submit a written summary of the meeting with the associated application. The written summary shall be included in the complete application submittal.

- A summary of both the February 16, 2012 "Public Forum" meeting and the March 8, 2012 neighborhood open house have been provided to the Town as part of the Wal-Mart application in compliance with the LUDC requirement listed above.

- 4) Hold a meeting with the Community Development Corporation for consideration of a community benefits agreement.
Response: Wal-Mart's representative Josh Phair intends to meet with the Community Development Corporation on August 21, 2012. Confirmation of this meeting is pending at this time. Based on the approval criteria for Major Design Review as found in section 2.4.6.D, Wal-Mart's potential community benefits agreement will be discussed separately from the current application as it does not apply to the approval criteria for the Wal-Mart application.
- 5) The consideration to include a certain percentage of local contractors in the construction project.
Response: Although Wal-Mart cannot require the use of local contractors, Wal-Mart will encourage the use of local sub-contractors by their General Contractor during the construction bidding process. Any local sub-contractors interested in working on the Wal-Mart project are encouraged to submit bids and potentially work together or team up to meet the requirements of the construction scope and timeline.
- 6) Confirm the legal transfer of the open space parcel.
Response: Wal-Mart's land use attorneys have provided copies of all documents requested by the Town's attorney including the Aspen Village Master Association, Inc. Design Review Committee approval letters.
- 7) The possible installation of a six-foot screen wall along the southeast side of the development.
Response: A six-foot screen wall has been added along the southeast portion of the development as requested.
- 8) Look at options to revise truck access points including moving the southeast access to line up with Tanglewood Drive intersection, may include removal of the south entrance on Aspen Village Drive and possible access from the southern access on Alpha Drive to the development.
Response: Wal-Mart's design team has analyzed the alternative access locations as requested and believes the current access locations as shown on the site plan meet the requirements of the LUDC and provide for safe travel for customers, truck drivers and neighboring residents. Wal-Mart's delivery trucks will use the adjacent public ROWs of Aspen Village Drive and Alpha Drive for access to the propose Wal-Mart site rather than a route through the Wal-Mart parking lot area. This allows for the safest route and avoids any potential pedestrian and delivery truck conflicts while meeting all requirements within the LUDC.



PAGOSA SPRINGS, CO



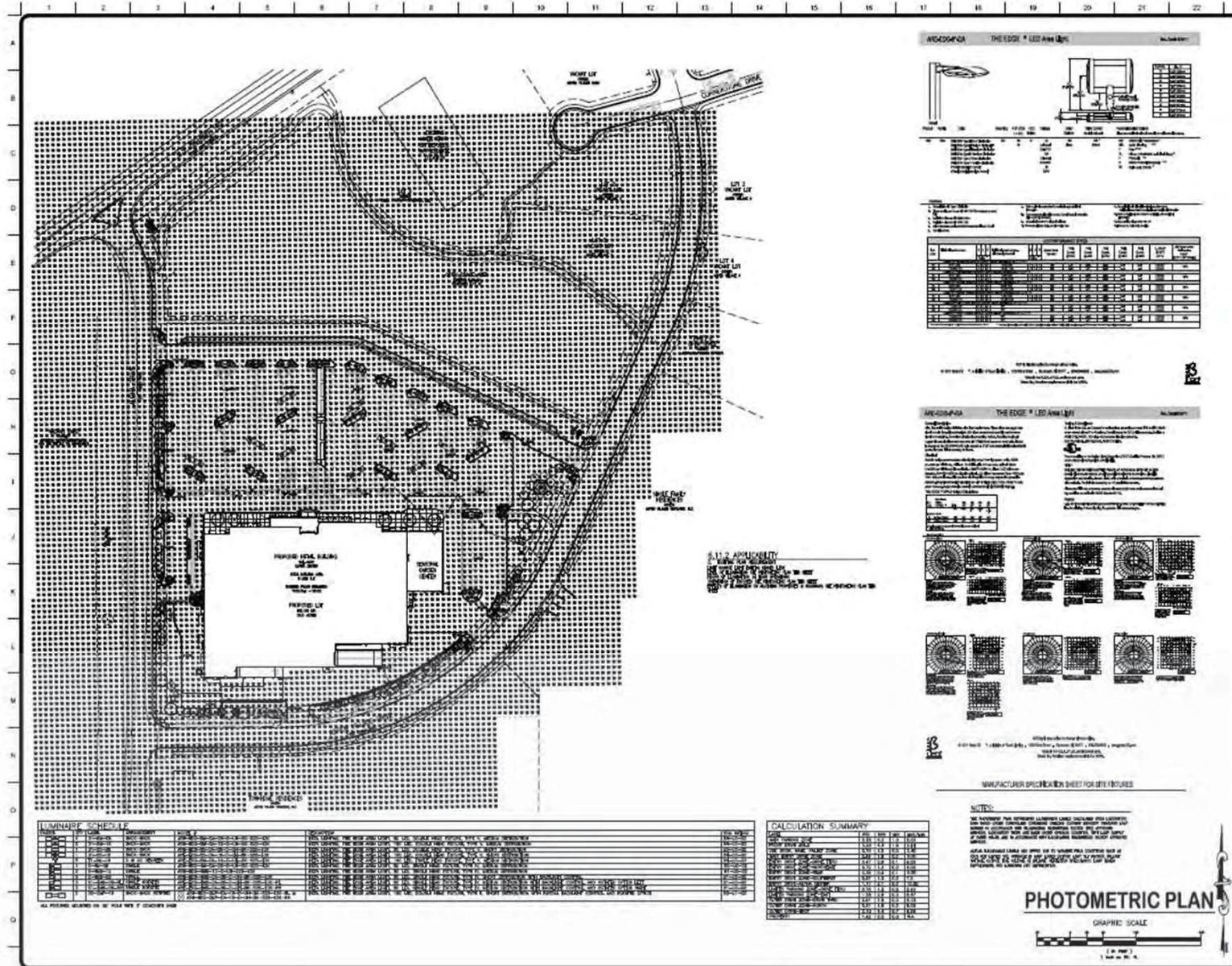
DESIGN REVIEW BOARD
AUGUST 21, 2012

NOTE: ONLY PAGES FROM POWER POINT PRESENTATION RELATING TO LIGHTING INCLUDED.

PLEASE SEE PAGE NUMBERS AT BOTTOM-RIGHT OF EACH PAGE FOR CONTEXT.

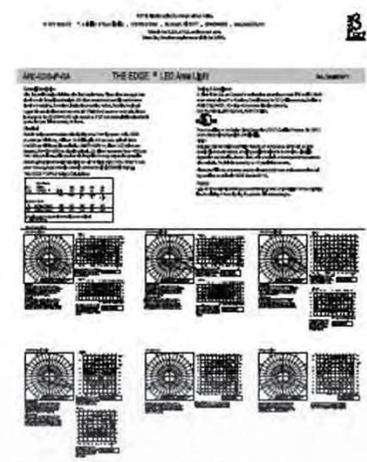


Photometric Plan



MEASUREMENT THE EDGE * LED Area Light

Item	Description	Quantity	Unit	Notes
1	LED Area Light	10	EA	
2	LED Area Light	10	EA	
3	LED Area Light	10	EA	
4	LED Area Light	10	EA	
5	LED Area Light	10	EA	
6	LED Area Light	10	EA	
7	LED Area Light	10	EA	
8	LED Area Light	10	EA	
9	LED Area Light	10	EA	
10	LED Area Light	10	EA	



LUMINAIRE SCHEDULE

Item	Description	Quantity	Unit	Notes
1	LED Area Light	10	EA	
2	LED Area Light	10	EA	
3	LED Area Light	10	EA	
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7	LED Area Light	10	EA	
8	LED Area Light	10	EA	
9	LED Area Light	10	EA	
10	LED Area Light	10	EA	

CALCULATION SUMMARY

Item	Description	Quantity	Unit	Notes
1	LED Area Light	10	EA	
2	LED Area Light	10	EA	
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6	LED Area Light	10	EA	
7	LED Area Light	10	EA	
8	LED Area Light	10	EA	
9	LED Area Light	10	EA	
10	LED Area Light	10	EA	

PHOTOMETRIC PLAN

GRAPHIC SCALE

REVISIONS

NO.	DESCRIPTION	DATE	BY

Galloway

Lighting Design & Consulting

1000 S. Galloway Blvd.
Bentonville, AR 72716
Phone: 479-271-1111
Fax: 479-271-1112
www.gallowaylighting.com

WAL-MART SUPERCENTER
U.S. HIGHWAY 160 & ALPHA DRIVE
PAGOSA SPRINGS, COLORADO
WAL-MART STORES, INC.
BENTONVILLE, AR

5



Outdoor Living

Wal-Mart Lighting

Walmart 





A New Way of Thinking about Lighting Ordinances

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Light that falls beyond the property it is intended to illuminate.

- **Skyglow**

The brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Skyglow is caused by light directed or reflected upwards or sideways and reduces one’s ability to view the night sky.

- **Glare**

Lighting entering the eye directly from a luminaires or indirectly from reflective surfaces that causes visual discomfort or reduces visibility.

Pagosa Springs City Market



Data collected: June 20, 2012
at 9:55 P.M.

Conditions: Clear Night

Site Light Information:

Avg: 1.81 fc

Low: 0.6

High: 4.3

- Metal halide site lights.
- Approximately 30 ft. in height.
- Approximately 3 ft. tall concrete bollards on base.

Meeting Stated Environmental and Energy Goals and Complying with Changing Regulatory Environment

Regulatory Environment

- Lighting Power Density (LPD)
- Light Levels
- Uplight- Sky glow
- Trespass Light- New Metric
- Glare- On Site and Off Site



Collectively Referred to As Some Type of Dark Sky, Green or Sustainable Ordinance

Governing Bodies





Benefits of LED Lighting

- ✓ Reduces Greenhouse Gases
- ✓ Supplied by 100% Renewable Energy
- ✓ Creates Zero Waste
- ✓ Reduced Maintenance Cycles
- ✓ Sustainable-Eliminate Lead, Mercury and has a Reduced Waste Stream
- ✓ Energy Efficient
- ✓ Excellent Area Lighting Technology – Improves distribution, greater visual acuity, better vertical illumination for safety
- ✓ Reduces Glare and Light Trespass
- ✓ Provides a variety of ranges in LED-unit increments opposed to HID fixtures which have wide gaps

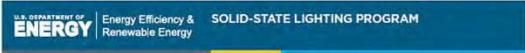


LED Lights & Health Concerns



A NEMA Lighting Systems Division Document
LSD 55-2010

Outdoor Lighting and Human/Animal Factors:



Discussions about possible health implications of exposure to light at night run the gamut, but given the available research, should any changes be made to currently recommended lighting practices?

Light at Night: The Latest Science

BACKGROUND

Our understanding of the visual and non-visual effects of light on humans remains incomplete. The

“Light at Night: The Latest Science,” published by the U.S. Department of Energy as part of the Solid-State Lighting Program.

“Outdoor Lighting and Human/Animal Factors: An Industry Opinion,” a NEMA Lighting Systems Division Document (LSD 55-2010).

The opinions expressed by the companies of the Association. The outdoor lamps, vintage lamps, light

“Light at Night and Human Health,” published by the U.S. Department of Energy as part of the Building Technologies Program.

“Effects of Exterior Lighting on Human Health,” the IES (Illuminating Engineering Society of North America) Position Statement (PS-03-10)

* Quantity. Research indicates that circadian sensitivity is not accurately modeled by the photopic or scotopic functions. Also, since the amount of optical radiation reaching the retina depends on pupil size, simple measurements of optical radiation “at the eye” may be inadequate.

optical radiation signals into neural signals for vision and for other body functions.

Spectral opponency – The mechanism by which sensitivity to one wavelength is reduced (a sub-additive response) when the visual system is exposed to additional wavelengths.

radiation” has created discussion about the many research concerning human health, the literature. This is due in part to the complexity of light, the diversity of results to be generalized, and finite research hypotheses. In 2008, the Illuminating Engineering Society published *Light and Human Health: An Overview of the Circadian, Neuroendocrine, and Neurobehavioral Responses* (IES Position Statement PS-03-10) to describe the known relationships between optical radiation and human health.

radiation” is defined as optical radiation entering the eye that provides visual sensation in humans. Optical radiation, however, is increasingly related to a range of ocular circadian, neuroendocrine, neurobehavioral, and therapeutic responses in humans. For the sake of clarity, “optical radiation” is used in this position statement when referring to biological responses other than visual. “Light” is reserved to describe optical radiation that has been evaluated with respect to its ability to stimulate the visual system.



LIGHTING EXHIBITS

“The Intention”
Reducing Light Trespass,
Skyglow & Off Site Glare

“The Unintended Result”
Reducing Light Trespass,
Skyglow & Off Site Glare

Addressing Light Trespass
An Image Comparison



“**Light at Night: The Latest Science,**” published by the U.S. Department of Energy as part of the Solid-State Lighting Program.



“**Light at Night and Human Health,**” published by the U.S. Department of Energy as part of the Building Technologies Program.



“**Outdoor Lighting and Human/Animal Factors: An Industry Opinion,**” a NEMA Lighting Systems Division Document (LSD 55-2010).

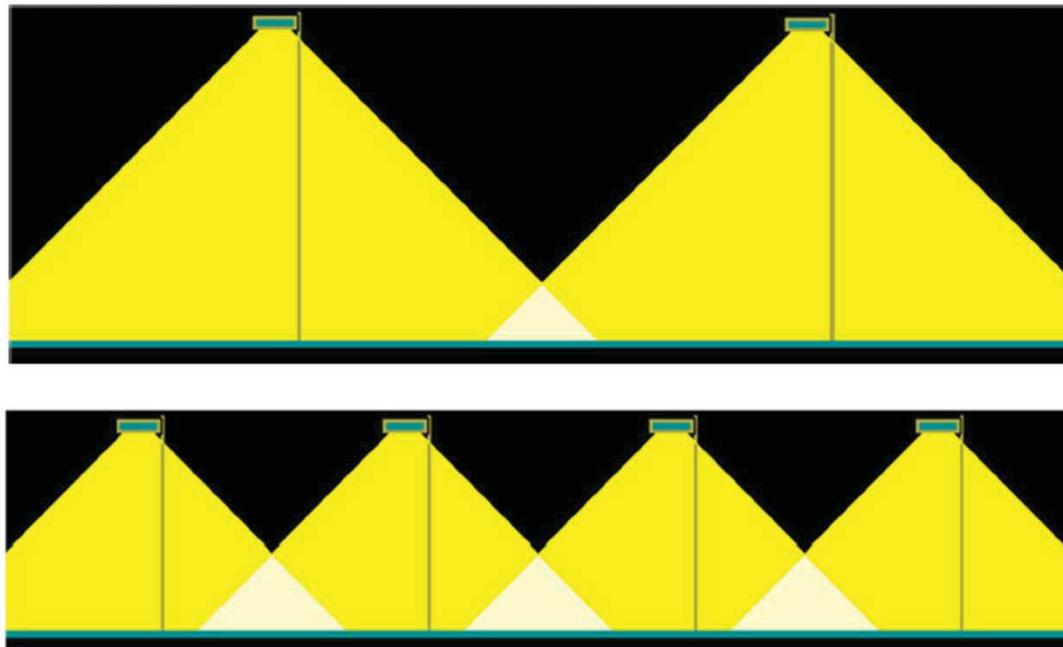


“**Effects of Exterior Lighting on Human Health,**” the IES (Illuminating Engineering Society of North America) Position Statement (PS-03-10)

Some municipalities adopt lighting design standards or ordinances that include restriction on the pole heights

The Intention:

- To reduce the spread of light from high luminaires into surrounding areas (Light Trespass)
- Or to reduce the visual impact of light poles during the day



The Unintended Result:

In order to avoid darkspots and achieve uniform lighting, you can either

1. Decrease pole spacing which adds more poles, negatively affecting cost, efficiency and skyglow.



2. Use lights with wider angles of distribution, which can result in increased off-site glare and light trespass



#3: LEDs address light trespass control more efficiently

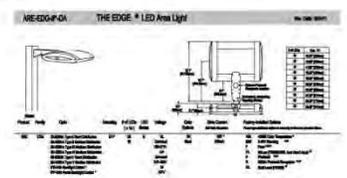
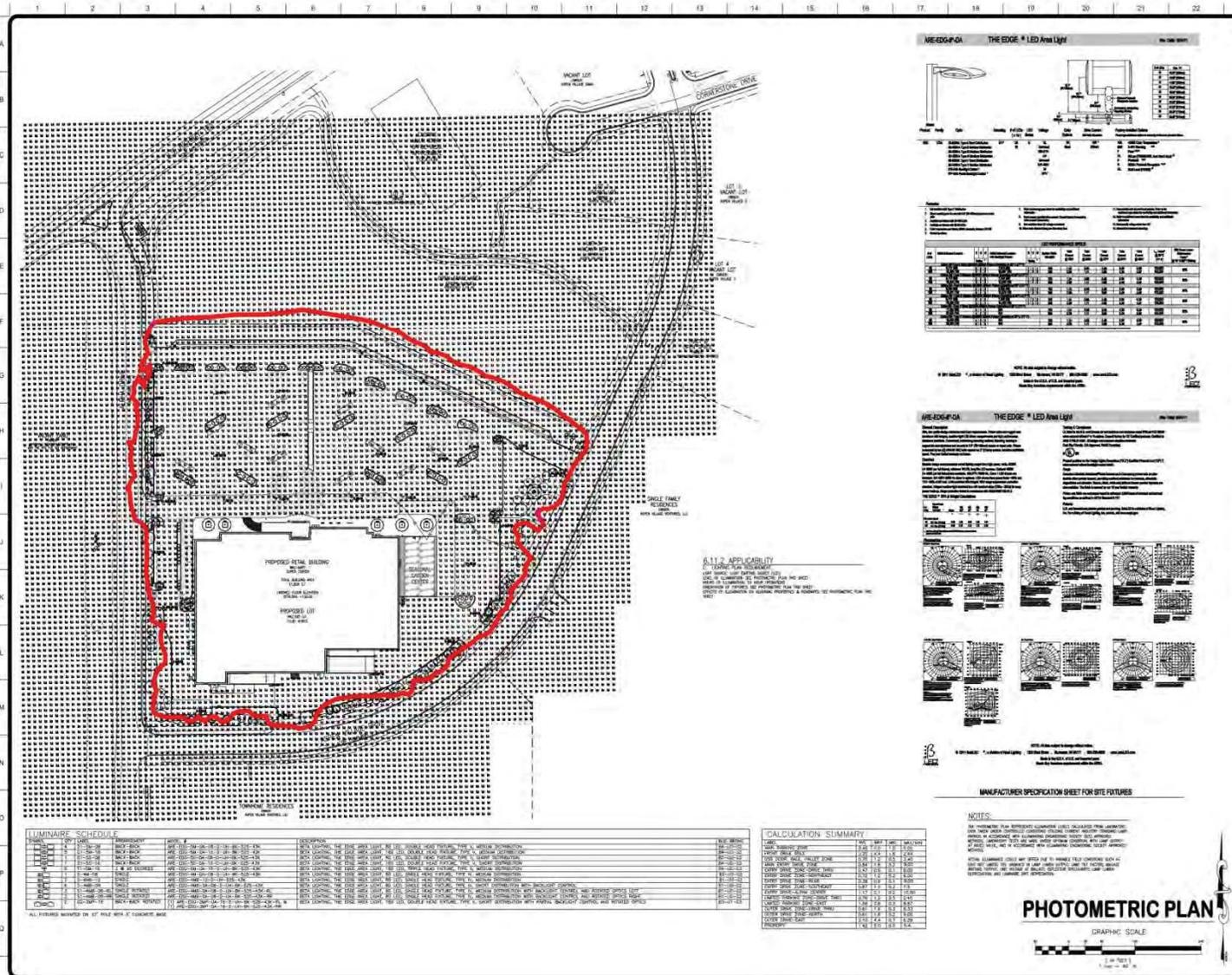


Distinct light line with good illumination on the asphalt and building



LED is a great solution for tight local ordinances and trespass control

Lighting Plan – Updated

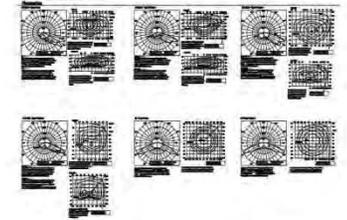


Item	Description	Quantity	Notes
1	THE EDGE - LED Area Light	100	
2	Street Light Pole	100	
3	Street Light Foundation	100	

MANUFACTURER SPECIFICATION SHEET FOR SITE FIXTURES

THE EDGE - LED Area Light

Technical specifications and notes for the lighting fixture, including mounting height, beam spread, and luminaire details.



MANUFACTURER SPECIFICATION SHEET FOR SITE FIXTURES

NOTES:

1. ALL FIXTURES SHALL BE INSTALLED AT THE HEIGHTS AND BEAM SPREADS SHOWN ON THIS PLAN.

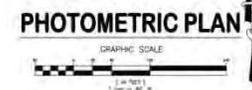
2. ALL FIXTURES SHALL BE INSTALLED AT THE HEIGHTS AND BEAM SPREADS SHOWN ON THIS PLAN.

LUMINAIRE SCHEDULE

Item	Description	Quantity	Notes
1	THE EDGE - LED Area Light	100	
2	Street Light Pole	100	
3	Street Light Foundation	100	

CALCULATION SUMMARY

Item	Description	Quantity	Notes
1	THE EDGE - LED Area Light	100	
2	Street Light Pole	100	
3	Street Light Foundation	100	



REVISIONS BY

No.	By	Date	Description

Galloway

ARCHITECTURAL & ENGINEERING

1000 N. GARDEN AVENUE, SUITE 100
BENTONVILLE, AR 72716
PH: 479.271.1100
WWW.GALLOWAY-AR.COM

WAL-MART SUPERCENTER
U.S. HIGHWAY 160 & ALPHA DRIVE
PAGOSA SPRINGS, COLORADO
WAL-MART STORES, INC.
BENTONVILLE, AR

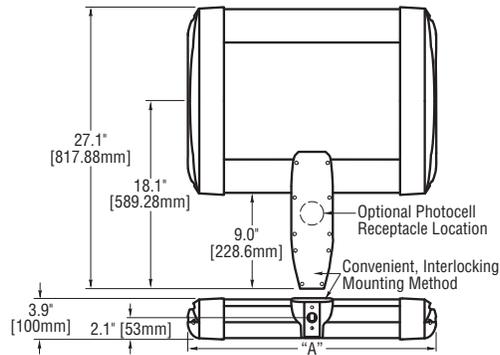
DATE: 08/11/2011
TIME: 10:00 AM
SCALE: AS SHOWN
SHEET: 5



BetaLED Catalog #: ARE - EDG - 5M - DA - - D - - - - -



Notes:



# of LEDs	Dim. "A"
20	12.06" [306mm]
40	12.06" [306mm]
60	14.06" [357mm]
80	16.06" [408mm]
100	18.06" [459mm]
120	20.06" [510mm]
140	22.06" [560mm]
160	24.06" [611mm]
200	28.06" [713mm]
240	32.06" [814mm]

Product	Family	Optic	Mounting	# of LEDs (x 10)	LED Series	Voltage	Color Options	Drive Current Not Field Adjustable	Factory-Installed Options Please type additional options in manually on the lines provided above.
ARE	EDG	5M ¹	DA ²	<input type="checkbox"/> 02 <input type="checkbox"/> 04 <input type="checkbox"/> 06 <input type="checkbox"/> 08 <input type="checkbox"/> 10 <input type="checkbox"/> 12 <input type="checkbox"/> 14 <input type="checkbox"/> 16 <input type="checkbox"/> 20 <input type="checkbox"/> 24	D	<input type="checkbox"/> UL Universal 120–277V <input type="checkbox"/> UH Universal 347–480V <input type="checkbox"/> 34 347V	<input type="checkbox"/> SV Silver <input type="checkbox"/> BK Black <input type="checkbox"/> BZ Bronze <input type="checkbox"/> PB Platinum Bronze <input type="checkbox"/> WH White	<input type="checkbox"/> 350 350mA <input type="checkbox"/> 525 ³ 525mA <input type="checkbox"/> 700 ⁴ 700mA	<input type="checkbox"/> 43K 4300K Color Temperature ⁵ <input type="checkbox"/> DIM 0–10V Dimming ^{6,7,8} <input type="checkbox"/> F Fuse ^{9,10,11} <input type="checkbox"/> HL Hi/Low (175/350/525, dual circuit input) ¹² <input type="checkbox"/> P Photocell ^{11,13} <input type="checkbox"/> R NEMA Photocell Receptacle ^{11,13} <input type="checkbox"/> ML Multi-Level (75/525) ¹²

Footnotes

- IESNA Type V Medium distribution
- Direct mounting arm for use with 3–6" (76–152mm) square or round pole
- Available on fixtures with 20–160 LEDs
- Available on fixtures with 20–60 LEDs
- Color temperature per fixture; 6000K standard; minimum 70 CRI
- Control by others
- Refer to dimming spec sheet for availability and additional information
- Can't exceed specified drive current. Consult factory if exceeding drive current is necessary
- Not available when UH voltage is selected
- When code dictates fusing use time delay fuse
- Not available with all multi-level options. Refer to the multi-level spec sheet for availability and additional information
- Refer to multi-level spec sheet for availability and additional information
- Must specify voltage other than UH
- Intended for horizontal mounting

LED PERFORMANCE SPECS

# of LEDs	Initial Delivered Lumens – Type V Medium @ 6000K	B U G		Initial Delivered Lumens – Type V Medium @ 4300K	B U G		System Watts 120–480V	Total Current @ 120V	Total Current @ 230V	Total Current @ 277V	Total Current @ 347V	Total Current @ 480V	L ₇₀ Hours* @ 25° C (77° F)	50K Hours Lumen Maintenance Factor* @ 15° C (59° F)
		Rating**			Rating**									
350mA Fixture Operating at 25° C (77° F)														
20	2,013 (02)	1	1	1	1	1	26	0.20	0.11	0.10	0.09	0.07	>150,000	93%
40	4,025 (04)	2	1	1	2	1	47	0.40	0.21	0.19	0.15	0.12	>150,000	
60	5,960 (06)	3	2	1	3	2	68	0.58	0.30	0.26	0.20	0.16	>150,000	
80	7,946 (08)	3	2	2	3	2	90	0.77	0.38	0.34	0.26	0.20	>150,000	
100	9,908 (10)	4	3	2	3	3	111	0.95	0.47	0.42	0.32	0.24	>150,000	
120	11,889 (12)	4	3	2	4	3	132	1.15	0.56	0.50	0.38	0.28	>150,000	
140	13,808 (14)	4	3	2	4	3	157	1.34	0.67	0.61	0.47	0.35	149,000	
160	15,781 (16)	4	3	2	4	3	179	1.54	0.76	0.68	0.53	0.39	149,000	
200	19,726 (20)	4	3	2	4	3	221	1.92	0.95	0.84	0.65	0.48	149,000	
240	23,671 (24)	5	3	3	5	3	264	2.30	1.12	1.00	0.77	0.56	149,000	
525mA Fixture Operating at 25° C (77° F)														
20	2,818 (02)	2	1	1	2	1	37	0.31	0.17	0.16	0.12	0.10	136,000	92%
40	5,635 (04)	3	2	1	3	2	70	0.57	0.29	0.26	0.21	0.16	136,000	
60	8,344 (06)	3	2	2	3	2	102	0.87	0.44	0.39	0.30	0.22	129,000	
80	11,125 (08)	4	3	2	4	3	133	1.14	0.56	0.49	0.39	0.29	129,000	
100	13,871 (10)	4	3	2	4	3	172	1.47	0.75	0.67	0.51	0.38	128,000	
120	16,645 (12)	4	3	2	4	3	204	1.76	0.88	0.78	0.60	0.44	128,000	
140	19,331 (14)	4	3	2	4	3	233	2.01	0.99	0.87	0.69	0.51	123,000	
160	22,092 (16)	5	3	3	5	3	265	2.29	1.11	0.98	0.78	0.57	123,000	
700mA Fixture Operating at 25° C (77° F)														
20	3,441 (02)	2	1	1	2	1	50	0.42	0.22	0.20	0.15	0.12	111,000	90%
40	6,883 (04)	3	2	1	3	2	93	0.79	0.40	0.35	0.27	0.20	111,000	
60	10,191 (06)	4	3	2	3	3	137	1.18	0.59	0.51	0.39	0.29	111,000	

* For recommended lumen maintenance factor data see TD-13 ** For more information on the IES BUG (Backlight-Uplight-Glare) Rating visit www.iesna.org/PDF/Erratas/TM-15-07BugRatingsAddendum.pdf

NOTE: All data subject to change without notice.



General Description

Slim, low profile design minimizes wind load requirements. Fixture sides are rugged cast aluminum with integral, weather-tight LED driver compartments and high performance aluminum heatsinks. Convenient, interlocking mounting method. Mounting housing is rugged die cast aluminum and mounts to 3–6" (76–152mm) square or round pole. Fixture is secured by two (2) 5/16-18 UNC bolts spaced on 2" (51mm) centers. Includes leaf/debris guard. Five year limited warranty on fixture.

Electrical

Modular design accommodates varied lighting output from high power, white, 6000K (+/- 500K per full fixture), minimum 70 CRI, long life LED sources. Optional 4300K (+/- 300K per full fixture) also available. 120–277V 50/60 Hz, Class 1 LED drivers are standard. 347–480V 50/60 Hz driver is optional. LED drivers have power factor >90% and THD <20% at full load. Units provided with integral 10kV surge suppression protection standard. Integral weather-tight electrical box with terminal strips (12Ga - 20Ga) for easy power hook-up. Surge protection tested in accordance with IEEE/ANSI C62.41.2.

Testing & Compliance

UL listed in the U.S. and Canada for wet locations and enclosure rated IP66 per IEC 60529 when ordered without P or R options. Consult factory for CE Certified products. Certified to ANSI C136.31-2001, 3G bridge and overpass vibration standards. Dark Sky Friendly. IDA Approved. RoHS Compliant.



Product qualified on the Design Lights Consortium ("DLC") Qualified Products List ("QPL") when ordered without backlight control shield.

Finish

Exclusive Colorfast DeltaGuard® finish features an E-Coat epoxy primer with an ultra-durable silver powder topcoat, providing excellent resistance to corrosion, ultraviolet degradation and abrasion. Bronze, black, white and platinum bronze powder topcoats are also available. The finish is covered by our 10 year limited warranty.

Fixture and finish are endurance tested to withstand 5,000 hours of elevated ambient salt fog conditions as defined in ASTM Standard B 117.

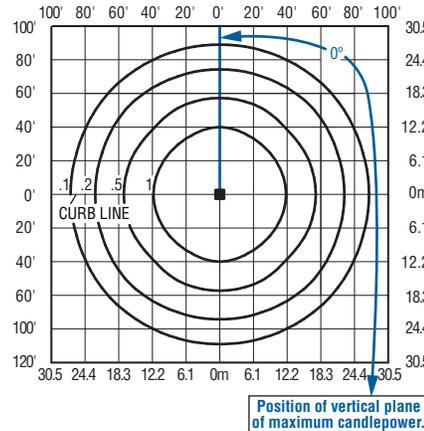
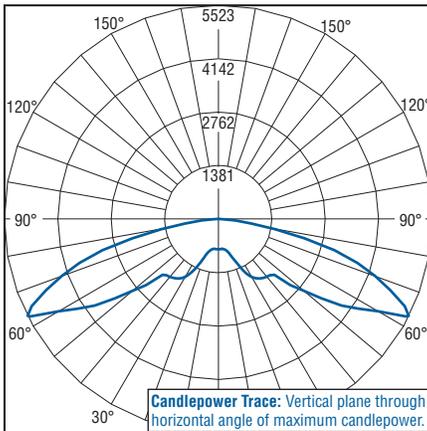
Patents

U.S. and international patents granted and pending. BetaLED is a division of Ruud Lighting, Inc. For a listing of Ruud Lighting, Inc. patents, visit www.uspto.gov.

Field-Installed Accessories



Photometrics



Independent Testing Laboratories certified test. Report No. ITL68282. Candlepower trace of 4300K, 120 LED Type V Medium area luminaire with 16,029 initial delivered lumens operating at 525mA. All published luminaire photometric testing performed to IESNA LM-79-08 standards.

Isofootcandle plot of 4300K, 120 LED Type V Medium area luminaire at 25' (7.6m) A.F.G. Luminaire with 15,341 initial delivered lumens operating at 525mA. Initial FC at grade.

THE EDGE® EPA & Weight Calculations

# of LEDs	Approximate Weight 120–480V ¹	Approximate Weight				
		Single	2@ 180°	2@ 90°	3@ 90°	4@ 90°
Fixed Arm Mount						
20	21.0 lbs. (9.5kg)	0.60	1.20	0.87	1.47	1.75
40	23.7 lbs. (10.8g)	0.60	1.20	0.87	1.47	1.75
60	27.0 lbs. (12.3kg)	0.60	1.20	0.92	1.51	1.83
80	28.1 lbs. (12.8kg)	0.60	1.20	0.96	1.55	1.91
100	32.3 lbs. (14.7kg)	0.60	1.20	1.00	1.60	2.00
120	33.5 lbs. (15.2kg)	0.60	1.20	1.04	1.64	2.08
140	36.9 lbs. (16.7kg)	0.60	1.20	1.08	1.68	2.16
160	41.4 lbs. (18.8kg)	0.60	1.20	1.12	1.72	2.24
200	43.3 lbs. (19.6kg)	0.61	1.21	n/a ²	n/a ²	n/a ²
240	47.8 lbs. (21.7kg)	0.69	1.38	n/a ²	n/a ²	n/a ²

1. Add 5 lbs. (2.3kg) for transformer in 347–480V fixtures when multi-level options are selected.
 2. For applications requiring 200 or more LEDs at 90 degrees refer to the [DL mount](#) version of our spec sheet.

NOTE: All data subject to change without notice.

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Made in the U.S.A. of U.S. and imported parts.
 Meets Buy American requirements within the [ARRA](#).



**The Following “Documents of Record” are from the
Design Review Board Application
Final Approvals.**

Documents relative to Final DRB and Town Approvals:

- 1) Resolution 2012-12, “Setting forth findings of fact and conclusions and approving the Wal-Mart major Design Review Development Application”.
- 2) Galloway response to DRB Resolution 2012-012, dated April 11, 2013.
- 3) Site Plan Approval from the Town, dated May 08, 2013.
- 4) Final approved illumination plan, dated December 18, 2012.

**TOWN OF PAGOSA SPRINGS, COLORADO
DESIGN REVIEW BOARD**

RESOLUTION NO. 2012-12

**A RESOLUTION SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS
AND APPROVING THE WAL-MART MAJOR DESIGN REVIEW
DEVELOPMENT APPLICATION**

RECITALS

WHEREAS, on April 5, 2012, Wal-Mart (the "Applicant") submitted a Major Design Review Development Application (the "Application") for development of a 94,000 square-foot retail/grocery store (the "Project") proposed to be located in Phase 4 of the Aspen Village Commercial Development for Block 3, Lots 1, 2,3,4,5 and 6; and

WHEREAS, the Application was submitted in conjunction with Wal-Mart's application for Vacation of Public Right-of-Way for Aspen Park Circle, and an application for Lot Consolidation and Boundary Line Adjustment; and

WHEREAS, pursuant to Section 2.4.6.D.1 of the Land Use Development Code ("LUDC"), the Design Review Board considered the Application at a public hearing held on May 22, 2012, at which lengthy testimony was provided by Town staff, the Applicant and members of the public, and at the continued public hearing on July 10, 2012, and at the continued public hearing on August 21, 2012; and

WHEREAS, a review dated May 16, 2012, of the Application was prepared by Bohannon Huston, Inc., contract plan reviewer for the Town, and the Town Staff (the "Bohannon Report"), which noted the following requirements of the LUDC that need to be addressed by the Applicant:

1. Section 2.3.1.E requires the Applicant to provide a record of the Pre-Application Conference;
2. Section 2.3.2.E requires the Applicant to provide a written summary of the neighborhood meeting;
3. Section 2.3.3.D requires written notarized documentation if the Applicant is not the landowner;
4. Section 4.3.4.C.2.b limits the area allowed for outdoor display or sales to $\frac{1}{4}$ of the length of the store front;

5. Table 5.1.2 requires that “at least 50 percent of the primary street must be occupied by a building wall;”
6. Table 5.1.2 limits the height of the building to 35 feet;
7. Section 6.6.3.B.3.v establishes site distance requirements for road intersections;
8. Section 6.6.4.C.11 limits the width of commercial driveways to 30 feet;
9. Article 6.6.4.C.16 prohibits stormwater runoff from draining onto a Town road from a private driveway;
10. Sections 6.6.5.B.1, 6.6.5.B.9, 6.7.3.A.5 and 6.7.7.C.1 set forth requirements for gathering/sitting areas, benches, landscaping, and other street furniture;
11. Section 6.7.3.A.2 requires the Applicant to consider local climate conditions when orienting buildings;
12. Section 6.7.3.A.4 provides architectural suggestions for buildings located on street corners;
13. Section 6.7.3.B.1.c requires façade modulation for large buildings;
14. Section 6.7.3.B.1.d prohibits large, unbroken expanses, and long continuous rooflines;
15. Section 6.7.5.C.3 prohibits the rear of buildings from being located within view of neighboring residences;
16. Off-street parking requirements for buildings that will have outdoor sales and displays are set forth in Table 6.9-2;
17. Section 6.9.4 establishes parking lot design and landscaping requirements;
18. Section 6.10.3 requires the landscaping to be watered and maintained by the property owner or leaseholder;
19. Section 6.11.4.C prohibits exterior lighting from adding any foot-candle illumination to any location off-site;
20. Section 6.12.4.A.1 restricts the size of signs;

21. Section 6.6.3.B.2 and Table 6.6-2 require curbs and gutters to be constructed on both minor and major collector streets;
22. Section 6.6.5.B.2 requires sidewalks along both sides of streets and Section 6.6.4.B.3 sets the width requirements for sidewalks;
23. Section 6.6.3.B.3.1 requires that “roads entering a roadway from opposite sides of the road shall either be directly across from each other or offset by at least 125 feet from centerline to centerline or sight distance requirements, whichever is greater;”
24. Section 6.6.3.1.A requires excavation and grading to comply with the Building Code;
25. Pursuant to Section 6.3.1.B, the Applicant must submit an erosion control plan and obtain a stormwater discharge permit from the State;
26. Section 6.3.2 addresses site drainage requirements;
27. Requirements for the sanitary sewer system are set forth in Section 6.3.4;
28. Requirements for potable water are set forth in Section 6.3.5;
29. Section 6.3.6 requires that fire hydrants must be installed in compliance with the Fire Code;
30. The Applicant must provide plats for the Lot Consolidation Boundary Line Adjustment and Vacation of Public Right-of-Way;
31. Wetland permitting and mitigation with the Army Corps of Engineers are required due to the nature of the land; and

WHEREAS, during the public hearing, public comments expressed concerns, including whether the Application met the screening and buffering requirements of Section 6.10.4 of the LUDC; and

WHEREAS, at the May 22, 2012 hearing the Design Review Board made numerous comments on landscaping of the Project.

NOW THEREFORE, BE IT RESOLVED BY THE DESIGN REVIEW BOARD OF THE TOWN OF PAGOSA SPRINGS, COLORADO, as follows:

The Design Review Board hereby sets forth its findings of fact and conclusions based thereon with respect to the Major Design Review Development Application submitted by Wal-Mart for the Project, based on the evidence contained in the official record associated with the Application, the official records of the Town of Pagosa Springs, Colorado, and the evidence produced at the public hearing held on the 22nd day of May, 2012 and continued to the 10th of July, 2012 and continued to the 21st of August, 2012:

FINDINGS OF FACT

1. On the 22nd day of May, 2012, the Design Review Board held a public hearing pursuant to Section 2.4.6.D, Figure 2.4-12, and Section 2.3.7 of the LUDC, to review the Application.

2. Notice of the Application and the May 22, 2012 public hearing, as required by Section 2.3.6 of the LUDC, was provided as follows:

(a) Public Notice was published in the Sun Newspaper, a newspaper of general circulation in the Town, on May 3, 2012, which was at least 15 days prior to the scheduled hearing.

(b) Written notice of the hearing was mailed to the record owners of land immediately adjacent to the property, property owners within 300 feet of the subject property, and any other person who made a written request for such notice, on April 26, 2012, which was no less than 15 days prior to the public hearing.

(c) Public Notice was physically posted on May 7, 2012 at the southeast corner of Alpha Drive and Aspen Village Drive and the southwest corner of Aspen Village Drive and Aspen Park Circle, and remained on the property for a period of at least 15 days prior to the public hearing, which posting was witnessed by Planning Commissioner Cameron Parker.

(d) On April 4, 2012, the Applicant provided written notice to all mineral estate owners of the public hearings before the Planning Commission and Design Review Board to be held on May 8, 2012. Although no public hearing on the Application was scheduled for the May 8th meeting, no mineral estate owners or lessees appeared at the May 8, 2012 meeting, where an agenda item was included to announce receipt of the Application. Town Staff published a corrected Public Notice in the Sun Newspaper on May 10, 2012, clarifying the public hearing date as May 22, 2012;

(e) Public notice was posted at Town Hall on April 30, 2012.

3. Notice of the public hearing continued to July 10, 2012 was provided as follows:

(a) Public Notice was published in the Sun Newspaper, a newspaper of general circulation in the Town, on June 14 and 21, 2012, which was at least 15 days prior to the scheduled hearing.

(b) On June 6, 2012, Public Notice was physically posted at the northeast corner of Alpha Drive and Highway 160, the northwest corner of Aspen Village Drive and Aspen Park Circle, and at the southeast corner of Alpha Drive and Aspen Village Drive, and such notice remained on the property for a period of at least 15 days prior to the public hearing. The posting was witnessed by Pagosa Springs Police Officer Tony Kopp.

(c) Written notice was mailed to the record owners of land immediately adjacent to the property, property owners within 300 feet of the subject property, and any other person who made a written request for such notice, on June 1, 2012, which was no less than 15 days prior to the public hearing.

(d) On June 1, 2012, the Applicant notified mineral estate owners and lessees of the Town Council's consideration of an ordinance vacating Aspen Park Circle. The notice incorrectly identified July 2, 2012 as the date of the first reading. The Applicant corrected such notice by sending a corrected notice via Federal Express to the sole mineral owner who is not under contract to sell real property to the Applicant.

(e) Public notice was posted at Town Hall on June 1, 2012.

4. Notice of the public hearing continued to August 21, 2012 was provided as follows:

(a) Public Notice was published in the Sun Newspaper, a newspaper of general circulation in the Town, on July 26 and August 02, 2012, which was at least 15 days prior to the scheduled hearing.

(b) On July 24, 2012, Public Notice was physically posted at the northeast corner of Alpha Drive and Highway 160, the northwest corner of Aspen Village Drive and Aspen Park Circle, and at the southeast corner of Alpha Drive and Aspen Village Drive, and such notice remained on the property for a period of at least 15 days prior to the public hearing. The posting was witnessed by Pagosa Springs Police Officer Tony Kopp.

(c) Written notice was mailed to the record owners of land immediately adjacent to the property, property owners within 300 feet of the subject property, and any other person who made a written request for such notice, on July 26, 2012, which was no less than 15 days prior to the public hearing.

(d) On July 20, 2012, the Applicant notified mineral estate owners and lessees of the Design Review Board's consideration of the applicants "Major Design Review " Application

(e) Public notice was posted at Town Hall on July 20, 2012.

5. Pursuant to Section 2.3.7.G of the Land Use Development Code, "minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements...[and] failure of a party to receive written notice shall not invalidate subsequent action." The Design Review Board finds and determines that the written notices of the Application provided constructive notice of the Application and the public hearings, that the Town staff and Applicant took affirmative steps to provide corrected notice to mineral estate owners or lessees, that none of the mineral estate owners or lessees were injured by any defects in the notices, and that all notices substantially complied with the requirements of the LUDC.

6. The Design Review Board hereby finds and determines that the issues raised in the Bohannon Report have been addressed to the satisfaction of the Design Review Board, as follows:

(a) Pursuant to Section 2.3.1.E of the LUDC, Pre-Application Conferences were held on November 3, 2011, and January 5, 2012, and the Applicant has provided a record of the Pre-Application Conferences.

(b) A community open house was conducted on March 8, 2012, following notice in the March 1st and 8th issues of the Pagosa Sun Newspaper. Additionally, a Town Council public input work session was conducted on February 16, 2012 following notice in the February 9, 2012 issue of the Pagosa Sun Newspaper. Additional public notification was provided of both the March 8, 2012 Open House and February 16, 2012 Input Work Session via: public service announcements on KWUF radio, Posted at Town Hall and bulk emailed to those that have signed up for electronic notifications. The Applicant has provided written summaries of such meetings. The notice and format of these meetings were sufficient to satisfy the intent and requirements of Section 2.3.2.E, of the LUDC calling for a neighborhood meeting.

(c) As required by Section 2.3.3.D of the LUDC, a written notarized document authorizing and designating Michael A. Allan as the individual authorized to file the Application has been submitted.

(d) In compliance with Section 4.3.4.C.2.b of the LUDC, the Applicant has reduced the total area allowed for outdoor displays or sales to ¼ of the length of the store front.

(e) The Bohannan report noted that Table 5.1.2 of the LUDC requires "at least 50 percent of the primary street [to] be occupied by a building wall." However, this requirement applies only to commercial structures that have frontage on Highways 160 or 84. The Project does not include a building with frontage on either Highways 160 or 84 and thus this requirement does not apply.

(f) The Applicant has reduced the building height to 31 feet to comply with Table 5.1.2 of the LUDC. In addition, the height of any rooftop equipment will be restricted so that the combined height of the building and rooftop equipment does not exceed 35 feet.

(g) The Applicant has reduced the height of the landscaping material along relevant portions of Alpha Drive to under two feet in height in order to meet the site distance requirements of Section 6.3.B.3.l(v) of the LUDC.

(h) Section 6.6.4.C.11 limits the width of commercial driveways to 30 feet, "except as increased by permissible radii" and Section 6.6.4.C.9 requires "entrances and exits [to] be located and constructed so that vehicles approaching or using them will have adequate visibility in both directions along the roadway to maneuver safely and without interfering with roadway." Reduction of the driveways that access the rear service area of the building from Aspen Village Parkway to 30 feet in width would result in inadequate visibility and an unsafe intersection. As such, the 30 foot limit of Section 6.6.4.C.11 is not applicable and the Applicant is allowed to increase the driveway width beyond 30 feet as necessary for safe maneuverability and adequate visibility.

(i) The Project will include an underground water storage structure to accommodate stormwater storage for 100 year storm events as well as a water quality device that will filter developed flows from the site prior to entering the underground storage structure. These structures meet the site drainage plan technical standards set forth in Section 6.3.2 of the LUDC and the requirement of Section 6.6.4.C.16 of the LUDC to accommodate on-site collection of stormwater runoff.

(j) Pursuant to Sections 6.6.5.B.1, 6.6.5.B.9, 6.7.3.A.5 and 6.7.7.C.1, "the pedestrian circulation system shall include gathering/sitting areas, and provide benches, landscaping, and other street furniture where appropriate." Applicant has amended the Application to add a north-south pedestrian walkway to the center of the parking aisle, which will provide safe access to parking spaces, as well as a pedestrian walkway from the entrance of the store heading east towards Village Drive. The front entrance of the store will be marked with yellow painted bollards to separate the vehicle drive lane from the pedestrian area. In addition, gathering and sitting areas have been provided along the front of the store and to the east of the front parking lot. Two bike racks for a total of 18 bikes are included in the design plan.

(k) Section 6.7.3.A.2 requires developers to consider local climate conditions when orienting buildings, but does not impose specific design requirements. The Applicant researched heated design systems and determined the options to be economically unfeasible. Instead, Applicant has supplied a Store Manual Procedure/Policy for snow and ice removal that includes frequency of clearing snow and ice and implementation of snow removal procedures using a combination of snow shoveling and small ATV-type snowblades and snowplows contracted through a local snow removal provider. The Applicant will also be required to install snow anchors to protect pedestrians from snow shedding onto pedestrian areas at the entrance from roofs above.

(l) The Applicant has designed additional architectural features and façade modulation on the west, south, and east sides of the façade in order to meet the suggested architectural designs listed in Sections 6.7.3.A.4, 6.7.3.B.1.c and d, and 6.7.3.B.1 of the LUDC. Those features include the addition of a number of shade trellis features around the building, the addition of a cornice, color variations that provide façade differentiation, and the addition of stucco on all four sides of the building to add textures and reduce the amount of exposed blocks on the building. Diagonal cables have also been removed from the entrance and replaced with heavy timber cords.

(m) The Bohannon Report noted that Section 6.7.5.C.3 prohibits the rear of a building from being located within view of neighboring residences. However, this standard applies only to properties located within an MU-TC zone district, and does not apply to the Project, which is zoned MU-C.

(n) The Applicant has provided a sufficient number of parking spots to meet the parking requirements for outdoor sales areas set forth in Table 6.9-2 of the LUDC.

(o) The Applicant has included nine landscape islands with trees within the parking lot, and a pedestrian walkway in the center parking aisle. The total number of trees within the parking lot is 78, and the total number of parking spaces is 380, which meets the requirement of 1 tree per 5 parking spaces. The Applicant has met the requirements of Section 6.9.4 of the LUDC.

(p) The Applicant has provided a statement on the landscape plan sheet confirming the obligations of the owner to maintain landscaping elements, as required by Section 6.10.3 of the LUDC.

(q) The Applicant submitted a modified lighting plan that prevents any foot-candle illumination at any point off site, which meets the requirements of Section 6.11.4.C of the LUDC.

(r) The Applicant will seek variances for signs, if any, that exceed the 100 square foot limit set forth in Section 6.12.4.A of the LUDC. Any such applications for sign variances will be considered on their merits if and when submitted, and may be denied.

(s) Building Code Official review and approval of site excavation and grading will be required prior to the issuance of building permits for the Project.

(t) Fire hydrant installation review and approval by the Pagosa Fire Protection District will be required prior to the issuance of building permits for the Project.

(u) The Town engineer, Town Streets supervisor and a third party engineer have determined that the west side of Alpha Drive can be designed without curb, gutter, or sidewalk improvements at this time. The west side of Alpha Drive will be designed with an engineered water collection drainage swale at this time, and curb, gutter and sidewalk installation will be constructed at the time of development along the west side of Alpha Drive. The Applicant will construct Alpha Drive to include a shared center turn lane, in order to better accommodate pass-by traffic heading south of the Project. The Applicant will submit engineered plans to the Town with building permit application and complete road construction prior to Building Certificate of Occupancy. Prior to the issuance of a building permit for the Project, the Applicant will provide a performance bond for 100% of the estimated construction costs, and will provide a 3-year warranty for the road improvement in the amount of 25% of the cost of the full road improvements. Also prior to the issuance of a building permit for the Project, the Applicant will enter into a Developer's Improvement Agreement with the Town for the construction of Alpha Drive improvement. The Design Review Board finds that the Applicant has met the road design and construction requirement of Section 6.6 of the LUDC.

(v) To meet the requirements of Section 6.6.3.B.3.1, the Applicant has removed one entrance along Aspen Village Drive. The remaining truck egress and access location south of Tanglewood Lane has been shifted and is a minimum of 125 feet from Tanglewood Lane.

(w) The Applicant will be required to show compliance with the water and wastewater requirements of Sections 6.3.4 and 6.3.5 of the LUDC prior to issuance of building permits for the Project. Applicant has received and provided to the Design Review Board a letter from the Pagosa Area Water and Sanitation District that it is able to provide water service to the Project.

(x) Applicant has applied for, and is required to obtain prior to issuance of a building permit for the Project, a permit from the Army Corps of Engineers. As part of the permit application, the SME Environmental has completed a Migratory Bird and Raptor Survey, which recommends that the proposed Project area be inspected by a

qualified wildlife biologist three days prior to vegetation removal during the general migratory bird nesting season, and Applicant will be required to provide proof compliance with of such inspection requirement.

(y) Applicant has applied for an access permit from the Colorado Department of Transportation (“CDOT”), and is currently revising the traffic study based on CDOT’s comments. Applicant will be required to obtain an access permit from CDOT prior to issuance of a building permit for the Project.

7. The Applicant has amended the Application to add additional screening and buffering of the loading areas and rooftop equipment that meets the requirements of Sections 6.10.4.C.2 and 6.10.4.D of the LUDC. Specifically, Applicant has moved the eastern truck entrance further to the northeast and has reduced the opening width from 75 feet to 50 feet, reduced the opening width of the west truck entrance from 50 feet to 40 feet, increased landscaping, and reduced the unscreened view corridor of the rear of the building from surrounding properties and existing uses. Applicant has designed the building with parapet walls and will provide screening of rooftop equipment and will need to demonstrate vantage point views from around the outside of the Project area to demonstrate compliance with LUDC sec 6.10.4 regarding rooftop equipment screening.

8. The Design Review Board made numerous comments and suggestions on landscaping of the Project that have been addressed by the Applicant on the design plans and as noted in the July 10, 2012 Staff Report. The Design Review Board finds that the landscape modifications are acceptable.

9. As set forth herein and additionally supported by the record in this matter, the Design Review Board hereby finds and determines that the Application meets the criteria set forth in Section 2.4.6.D.1.b of the LUDC to approve a Major Design Review, as follows:

(a) The development plan is consistent with the intent of the Comprehensive Plan and all other adopted Town plans.

(b) As set forth above and further determined by the Design Review Board, the development plan complies with all applicable development and design standards set forth in the LUDC, including but not limited to the provisions in Article 3, *Zoning Districts*, Article 4, *Use Regulations*, Article 5, *Dimensional Requirements*, and Article 6, *Development and Design Standards*.

(c) The development plan will not substantially alter the basic character of the surrounding area or jeopardize the development or redevelopment potential of the area. The area upon which the Project will be constructed is zoned Mixed Use – Commercial, which allows the proposed retail/grocery store as a use by right; the Project proposes a retail/grocery store. The density of retail/grocery store uses is consistent with

the zoning and the existing subdivision plat. The Project development plans provide attractive and effective landscaping and aesthetic design features consistent with the architecture of the surrounding area which screen and blend the proposed building with the surrounding uses.

(d) The development plan is consistent with any previously approved subdivision plat, planned development, or any other precedent plan or land use approval as applicable. The Project development plans maintain separation from existing residential uses while providing retail and grocery store uses within walking proximity, and provide significant pedestrian and vehicular connectivity with the other properties within the subdivision and the Town.

10. The listing of specific sections of the LUDC herein is not exclusive of other requirements of the LUDC and Municipal Code and the Design Review Board finds that the Application has met all applicable requirements of the LUDC and Municipal Code.

CONCLUSIONS

1. The Design Review Board has thoroughly reviewed the Application, the documents contained in the record in this matter, the evidence and testimony provided at the public hearings held on May 22, 2012, July 10, 2012 and August 21, 2012 and concludes that the Application meets the requirements of the Land Use and Development Code, and hereby approves the Application with the following conditions:

(a) Design plans submitted at the time of building permit application shall be consistent with the design plans dated August 13, 2012, and as contemplated under option B of section 8 of the Planning Commission staff report of August 21, 2012 as shown on Exhibit A to this resolution and required amendments to the design plans and additionally must evidence the following:

(i) A combined height of the building and rooftop equipment that does not exceed 35 feet;

(ii) Rooftop equipment visibility details and evidence that rooftop equipment has been adequately screened;

(iii) All measures taken to accommodate adequate separation of vehicle parking and pedestrian walkways in the center parking aisle;

(iv) Pedestrian sitting areas in the front of the store;

(v) All measures taken to accommodate adequate separation of pedestrian area from vehicle drive lanes at the front entrance to the store;

(vi) Snow roof anchors to prevent snow from shedding from the roof onto pedestrian walkways;

(vii) Color samples that have been approved by Town Staff to ensure consistency with proposed building elevation renderings;

(viii) A 6 foot tall screening wall to be included in the design plans along the south portion of the building, between the palette storage enclosure and the west side of the truck exit adjacent to the garden center.

(b) Prior to issuance of any building permit for the Project, Applicant shall comply with the following:

(i) Submit engineering plans for Alpha Drive improvements with an engineers' estimate of construction costs, enter into a Developer's Improvement Agreement with the Town, and submit financial security collateral for 100% of the engineers' estimated costs of the Alpha Drive improvements; and

(ii) Submit and receive approval from Town staff for final site drainage plans that comply with Section 6.3.2 of the LUDC; and

(iii) Submit proof of a permit and approval from the Army Corps of Engineers for wetland permitting and mitigation; and

(iv) Submit proof of a permit from the Colorado Department of Transportation and approval from CDOT of the traffic plan; and

(v) Provide evidence of compliance with the requirement of the SME Environmental Migratory Bird and Raptor Survey to engage a qualified wildlife biologist to inspect the Project site three days prior to vegetation removal as recommended in the SME Environmental Migratory Bird and Raptor Survey; and

(vi) Provide and have approved a plat that shows the Lot Consolidation, Boundary Line Adjustment, and Vacation of Public Right-of-Way; and

(vii) Obtain approval from the Building Code Official for the excavation and grading plans for the Project site; and

(viii) Obtain a stormwater discharge permit from the State; and

(ix) Obtain approval from the Pagosa Fire Protection District for the Applicant's plan for fire hydrant installation.

(c) Prior to the issuance of a certificate of occupancy for the Project, Applicant shall comply with the following:

(i) Complete the Alpha Drive public road improvement in compliance with the plans approved by the Town and provide warranty security in the amount of 25% of the construction cost, for a warranty period of three years; and

(ii) Provide verification and documentation in its store operating manual that fertilizer, Pesticides, Insecticides and Herbicide products are prohibited from being stored in an unprotected and uncovered outside garden center area, so as to prevent contamination from entering the wetlands and downstream Pinion Lake; and

(iii) All road improvements required by the CDOT-approved traffic plan shall be constructed and approved by CDOT and the Town; and

(iv) Show compliance with the water and wastewater requirements of Sections 6.3.4 and 6.3.5 of the LUDC to the satisfaction of the Pagosa Area Water and Sanitation District, and

(d) Applicant shall submit an application for a sign variance for any proposed exceptions to Town's Code related to signs prior to constructing or erecting any such signs. Any such applications for sign variances will be considered on their merits if and when submitted, and may be denied; and

(e) Applicant shall submit payment of all outstanding reimbursable expenses to the Town as agreed to, in the executed and signed "Agreement for Payment of Land Use Application Fees" associated with the Major Design Review Application.

ADOPTED BY THE DESIGN REVIEW BOARD OF THE TOWN OF PAGOSA SPRINGS, BY A VOTE OF 3 IN FAVOR, 1 AGAINST, ON THE 21st DAY OF AUGUST, 2012.

TOWN OF PAGOSA SPRINGS DESIGN
REVIEW BOARD

By: *Stephanie Feltner*

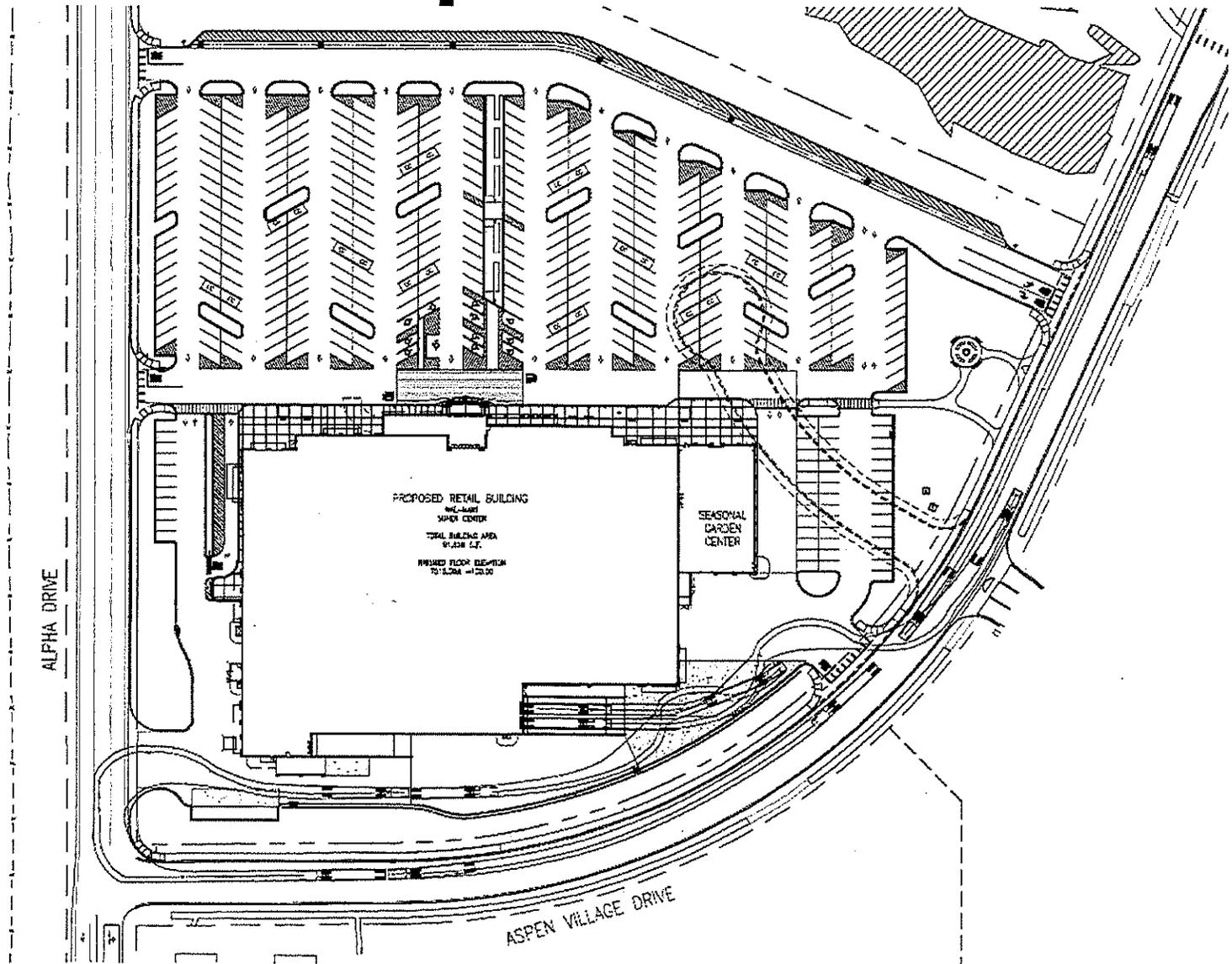
Attest:

April Hessman, Town Clerk





Option B



April 11, 2013

Mr. James Dickhoff
Town of Pagosa Springs
Planning Department Director
PO Box 1859
551 Hot Springs Blvd.
Pagosa Springs, CO 81147

Re: Plan Review comments for Re-Submitted Site Plans to ensure Inclusion of Design Review Board requirements outlined in DRB Resolution No. 2012-12

Dear Mr. Dickhoff,

Please find below and attached our resubmittal package addressing the comments received from the Design Review Board Resolution included from Resolution No. 2012-12 dated March 3, 2013 received March 7, 2013. To facilitate your review, we have included the original comments in *italicized font*, and have provided our own responses in **bold**.

- 1) *The DRB required a minimum of 19 bicycle rack spaces. On sheet #2, please include after reference #16 “Proposed ____ space bike rack, two each total”.*

Note #60 has been amended to read “Proposed 9 space bike rack, two each total”.

- 2) *On Sheet #2, a double yellow drive lane is missing from the Garden Center entrance from Aspen Village Drive.*

A 20-foot long double yellow drive lane has been added to the southern entrance from Aspen Village Drive.

- 3) *Applicant shall coordinate with all utility providers for the removal/relocation of all proposed existing installed public/private utility infrastructure.*

Understood. We will coordinate with all utility providers as necessary.

- 4) *The Town supports the evaluation and Removal/Replacement of existing trees along Aspen Village Drive noted on sheet #6, however, the applicant shall coordinate this effort with the Aspen Village Masters association as this area and the existing trees are owned by them. The existing irrigation system shall also be repaired if damaged as part of the replanting process.*

Understood. We will coordinate this effort with the Aspen Village Masters association and repair any damage caused to the existing irrigation system.

- 5) *On sheet #7, is there a street sign proposed to be relocated that is not on sheet #7, see reference #4.*

The street sign to be relocated is on sheet #8. Reference #4 has been removed from sheet #7.

- 6) *On sheet #7, there is a small landscaping void area along the Aspen Village Drive just south of the single truck dock. Is there a reason this is left open? This is the location of the former truck entrance that was removed and looks as though landscaping was not added.*

Is this referencing sheet #6? The landscaping area just south of the truck dock on sheet #6 is left void to accommodate the water line connections.

- 7) *Town staff has inquired about detaching the sidewalk from the Alpha Drive curb, as a means to handle winter snow clearing from the sidewalk. Sidewalk maintenance is the responsibility of the adjoining property owner, and separating the sidewalk may provide easier removal of snow and ice after road plowing operations have occurred. This is not a requirement, just a recommendation.*
We have considered this option and have decided to leave the sidewalk as is adjacent to Alpha Drive.

Please let us know if you have any additional questions or require additional information. We look forward to hearing from you regarding these revisions.

Sincerely,
Galloway & Company, Inc.

Carl T. Schmittlein, P.E., CPESC, LEED AP
Principal



551 Hot Springs Boulevard
Post Office Box 1859
Pagosa Springs, CO 81147
P: 970.264.4151
F: 970.264.4634

**Town of Pagosa Springs
Planning Department**

Site Plan APPROVAL

Date: May 08, 2013

To: Carl Schmidlein and Tasha Bolivar of Galloway
5300 DTC Parkway, Suite 100, Greenwood Village, Co. 80111

Re: Plan Review comments for Re-Submitted Site Plans to ensure inclusion of Design Review Board requirements outlined in DRB Resolution No. 2012-12.

Hello Tasha and Carl,

We appreciate your patience with our review process of your Revised Site Plans submitted on April 11, 2013, addressing our Plan Review Comments correspondence dated 03.03.2013, ensuring compliance with Design Review Boards conditions of approval stated in Resolution No. 2012-12, under the conclusions section.

Your revised Development Site Plans and Civil Drawings have addressed and corrected our requests and are hereby **APPROVED** as submitted on the plan sheets dated December 18, 2012 and revised sheets dated April 11, 2013.

Please feel free to call with any questions regarding this approval correspondence.

Thank You, Respectfully,

James Dickhoff

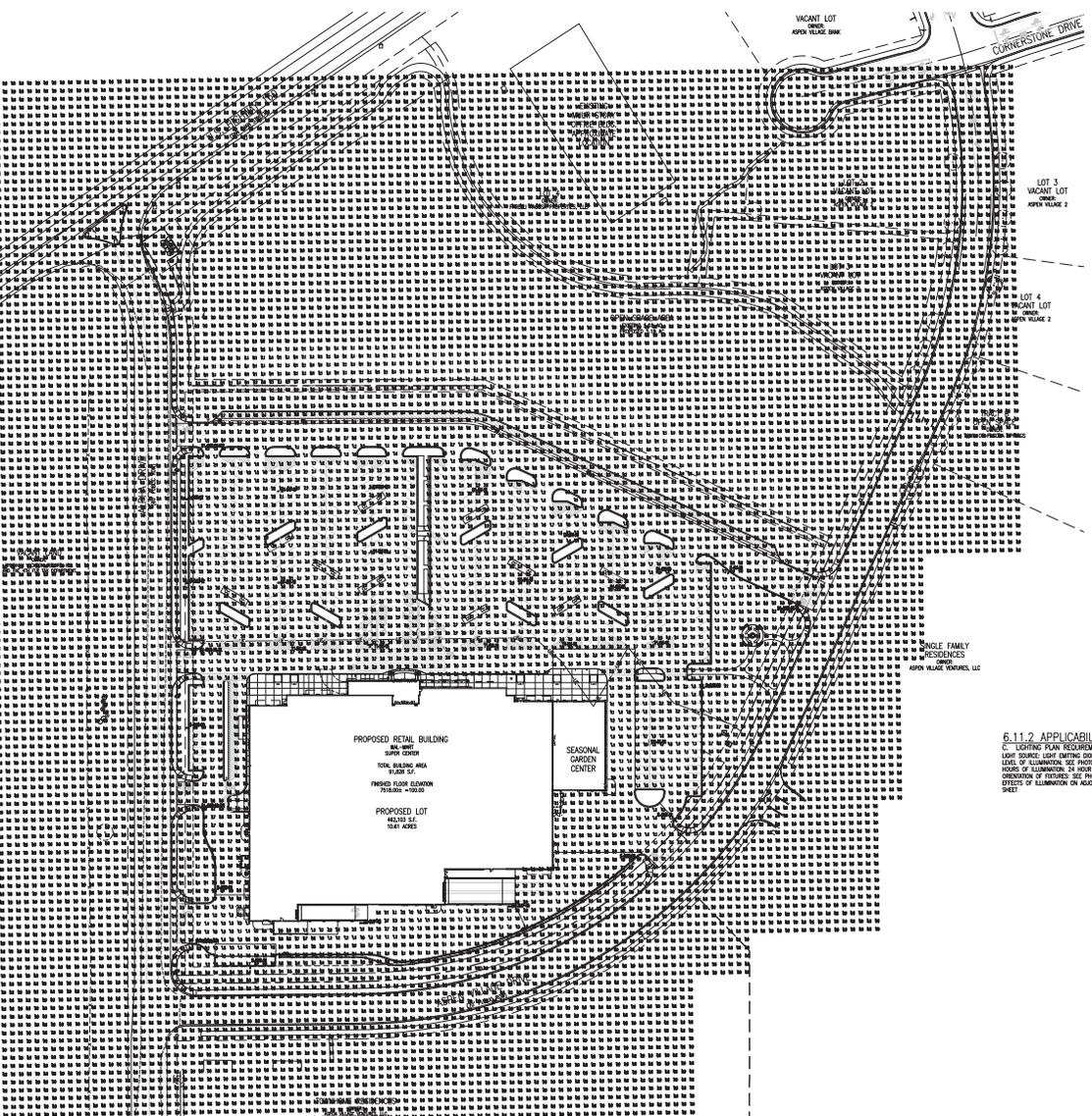
Town of Pagosa Springs

Planning Department Director

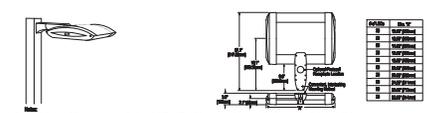
Po Box 1859, 551 Hot Springs Blvd.

970-264-4151 x225

jdickhoff@centurytel.net



ARE-EDG-#P-DA THE EDGE LED Area Light Rev. Date: 03/01



Item	Qty	Notes
ARE-EDG-#P-DA	1	See Notes

LED PERFORMANCE TABLE

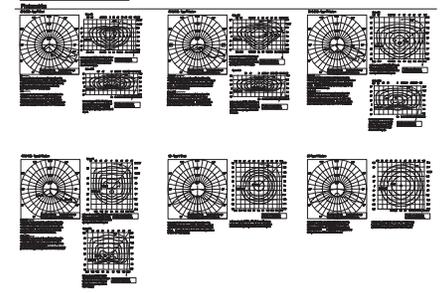
Item	Wattage	Beam Angle	Foot Candles	Beam Diameter	Beam Spread	Beam Length	Beam Area	Beam Volume	Beam Density
ARE-EDG-#P-DA	100W	120°	100	10.0'	10.0'	10.0'	100.0	1000.0	10.0

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ARE-EDG-#P-DA THE EDGE LED Area Light Rev. Date: 03/01

Notes:

1. All dimensions are in feet unless otherwise noted.
2. All dimensions are in feet unless otherwise noted.
3. All dimensions are in feet unless otherwise noted.
4. All dimensions are in feet unless otherwise noted.
5. All dimensions are in feet unless otherwise noted.



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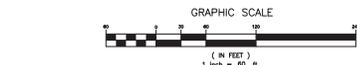
MANUFACTURER SPECIFICATION SHEET FOR SITE FIXTURES

NOTES:

THE PHOTOMETRIC PLAN REPRESENTS ILLUMINATION LEVELS CALCULATED FROM LABORATORY DATA. THESE VALUES CONTROLLED CONDITIONS (CLEAN, EXISTING HOUSING, SHOWN LAMP) AND ARE NOT TO BE USED AS A BASIS FOR DESIGNING LIGHTING SYSTEMS. ACTUAL ILLUMINATION LEVELS WILL VARY DUE TO VARIOUS FIELD CONDITIONS SUCH AS: REFLECTANCE, SURFACE FINISH, LAMP LUMEN OUTPUT, LAMP LIFE, MOUNTING HEIGHT, MOUNTING METHOD, MOUNTING ANGLE, MOUNTING LOCATION, MOUNTING ORIENTATION, AND LAMP LIFE DEPENDENT.

ACTUAL ILLUMINATION LEVELS MAY VARY DUE TO VARIOUS FIELD CONDITIONS SUCH AS: REFLECTANCE, SURFACE FINISH, LAMP LUMEN OUTPUT, LAMP LIFE, MOUNTING HEIGHT, MOUNTING METHOD, MOUNTING ANGLE, MOUNTING LOCATION, MOUNTING ORIENTATION, AND LAMP LIFE DEPENDENT.

PHOTOMETRIC PLAN



LUMINAIRE SCHEDULE

ROW	TYPE	SPACING	MODEL #	DESCRIPTION	FEET RATING
1	4	01-50-08	BACK-BACK	ARE-EDG-50-DA-08-01-01-BK-515-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, DOUBLE HEAD PORTABLE, TYPE V, MEDIUM DISTRIBUTION
2	1	01-50-16	BACK-BACK	ARE-EDG-50-DA-16-01-01-BK-515-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 160 LED, DOUBLE HEAD PORTABLE, TYPE V, MEDIUM DISTRIBUTION
3	1	01-50-08	BACK-BACK	ARE-EDG-50-DA-08-01-01-BK-515-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, DOUBLE HEAD PORTABLE, TYPE V, SHARP DISTRIBUTION
4	1	01-50-16	BACK-BACK	ARE-EDG-50-DA-16-01-01-BK-515-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 160 LED, DOUBLE HEAD PORTABLE, TYPE V, SHARP DISTRIBUTION
5	1	11-50-16	3 & 90 DEGREES	ARE-EDG-50-DA-16-01-01-BK-515-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 160 LED, TRIPLE HEAD PORTABLE, TYPE V, MEDIUM DISTRIBUTION
6	2	3-40S-12	SINGLE	ARE-EDG-40S-12-01-01-SS-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, MEDIUM DISTRIBUTION
7	2	3-40S-12	SINGLE	ARE-EDG-40S-12-01-01-SS-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, SHARP DISTRIBUTION WITH BRIGHTNESS CONTROL
8	2	3-40S-12	SINGLE	ARE-EDG-40S-12-01-01-SS-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, SHARP DISTRIBUTION WITH BRIGHTNESS CONTROL AND ROTATED OPTICS LEFT
9	2	3-40S-12	SINGLE	ARE-EDG-40S-12-01-01-SS-43K	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, MEDIUM DISTRIBUTION WITH BRIGHTNESS CONTROL AND ROTATED OPTICS RIGHT
10	3	01-40S-08-88	SINGLE ROTATED	ARE-EDG-40S-08-88-01-01-BK-515-43K-R	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, MEDIUM DISTRIBUTION WITH BRIGHTNESS CONTROL AND ROTATED OPTICS RIGHT
11	3	01-40S-08-88	SINGLE ROTATED	ARE-EDG-40S-08-88-01-01-BK-515-43K-R	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, SHARP DISTRIBUTION WITH BRIGHTNESS CONTROL AND ROTATED OPTICS RIGHT
12	3	01-40S-08-88	SINGLE ROTATED	ARE-EDG-40S-08-88-01-01-BK-515-43K-R	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, SHARP DISTRIBUTION WITH BRIGHTNESS CONTROL AND ROTATED OPTICS RIGHT
13	3	01-40S-08-88	SINGLE ROTATED	ARE-EDG-40S-08-88-01-01-BK-515-43K-R	BETA LIGHTING, THE EDGE AREA LIGHT, 80 LED, SINGLE HEAD PORTABLE, TYPE V, SHARP DISTRIBUTION WITH BRIGHTNESS CONTROL AND ROTATED OPTICS RIGHT

CALCULATION SUMMARY

ZONE	WATT	MAX. MIN.	MAX. AVERAGE
MAIN PARKING ZONE	2,45	6.0	6.00
FRONT DRIVE AREA	2,14	4.4	4.28
SHOP DOOR, ENTRY WALKER ZONE	2,83	1.1	0.7
MAIN ENTRY DRIVE ZONE	0,66	1.8	0.70
ENTRY DRIVE ZONE-NORTHWEST	0,64	0.8	0.50
ENTRY DRIVE ZONE-SOUTHWEST	0,76	1.3	0.50
ENTRY DRIVE ZONE-SOUTHEAST	1,08	1.4	0.50
LIGHTING PARKING ZONE-DRIVE THRU	0,79	1.8	0.53
LIGHTING PARKING ZONE-EAST	1,57	1.2	0.4
OUTER DRIVE ZONE-THRU	2,11	4.4	0.73
OUTER DRIVE-EAST	1,42	5.0	0.4

REVISIONS BY

Galloway
LIGHTING CONSULTANTS
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Fort Lauderdale, FL 33304
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WAL-MART SUPERCENTER
U.S. HIGHWAY 160 & ALPHA DRIVE
PAGOSA SPRINGS, COLORADO
WAL-MART STORES, INC.
BENTONVILLE, AR

DESIGN BY
CHECKED BY
DATE
SCALE
1" = 40'
NOVEMBER 16, 2011
SHEET
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