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

- I. **CALL APPEALS HEARING TO ORDER** – Mayor Volger, Council Member Bunning, Council Member Egan, Council Member Schanzenbaker, Attorney Bob Cole
- 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)** – Attorney Bob Cole explained the Town Council has adopted Resolution 2016-06 setting out the format of the Wal-Mart hearing. The appellant is Wal-Mart and the Director is the Planning Director James Dickhoff. He explained the two parties will be presenting information on the record and the town council is to refer only to the items to consider and presume the Director’s decision is correct and the Appellant must prove at least one basis or ground of the Director’s decision to be incorrect. Only the Director and Appellant are able to participate in the discussion, no public comment or other persons will be able to give input. If a decision of the Town Council is made tonight it will be reduced to writing and adopted at the May 26th meeting.
- IV. **APPEALS HEARING**
 - a. **Introduction** - Pursuant to the LUDC section 2.4.13.E, Walmart Real Estate Business Trust, 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. Resolution 2016-06 sets out the order in which the Director and Appellant will present their case.
 - 1) **Appeals Hearing** - The Director made it clear the Galloway Team had been very professional in dealing with the appeal. He said while dealing with the new Tractor Supply Store and the light compliance issues with this new development, he reached out to Galloway based on the experience with the Tractor Supply to make them aware of issues. He made visual inspections of the parking lot. He said the backfields on the exterior perimeter of the development work very well, but that the interior lights gave off too many foot candles that went off the property. He met with Galloway and made some site inspections to Albuquerque and Denver for possible light alterations, however found the changes would not be accepted with the Town’s code. The Directors interpretation of LUDC section 6.11.4 a & j 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 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.

Mr. Joseph Lubinski, Attorney with Ballard Spahr, said the store was approved through a major design review including detailed designs and lighting environment along with poles and light fixtures. He said there is an objective measure of foot-candles and the plans were approved in the LUDC not on the specifics of the LUDC. He said the as-constructed provisions complied with the approved plans design. He said the lighting does comply with the expressed terms of the LUDC. The light sources in the light fixtures are not diffused to restrict from entering outside property. He said the interpretation of the light including the cut-off angle not exceeding 90 degrees is the basis of minimizing the diffusion and glare, but does not eliminate the glare. He said a post approval of approved designs is difficult for contractors to conform to. He said the lighting in the code needs to compliment the component of safety and security avoiding dark spots in a parking lot.

The Director said the original application presentation to the design review board included a power point that spoke to reducing glare and the new lighting technology that directed light beams and reduced the need to light shields. The new LED lights that the Tractor Supply had used and the non-compliance issues. He said they had reached out to Galloway prior to breaking ground in order to meet the standards. He said there is a final inspection to confirm the lights comply with the code. He said visual light source is not subjective, if the light source can be seen it is not compliant. He said the Town have enforced the light code since 2007 and the only difference with the Tractor Supply and Wal-Mart used the LED board. The intensity of the light is a different beast than that which the Director has experienced before. He said the public safety code has provision that refer to the illumination of the lighting standards. He said Wal-Mart has not provided an explanation of any limit of safety that would occur by shielding the lights.

Mr. Lubinski said the Town had not seen the new LED technology and should provide a code amendment not a remodeling of a project. He said the light shielding that was presented as a quick fix would voided the warranty. Ms. Tonya Bolivar said there are no shielding on the current interior lights, there are eyelids to focus the light on the exterior lights. She said the fixtures that are at there at 80 to 65 degrees and therefore meet the code. She said the foot-candle code is used to measure and was designed using the foot candles as required. She said during the design process the lights are laid out to overlap and create uniformity and safety for the customers. Mr. Jim Galloway said their team worked with the Town's representative from Bohannon Huston and the lighting manufacturer Creed to confirm the lights comply with the Town code and Wal-Mart's requirements.

Council Member Schanzenbaker asked why there was a delay in coming to the hearing. Mr. Lubinski said the team has worked to come to a solution. The Director said he understood that Galloway was working on a solution. Council Member Egan said that prior to Tractor Supply being established there were no other LED boards installed in Town. The Director said that Tractor Supply was the first and the lights were slimmer with a smaller housing. He said after the design approval and issuance of building permit to Wal-Mart the Director spoke to Galloway about the lights at Tractor Supply. Mayor Volger asked if the non-conforming lights were corrected. Mr. Lubinski said the specific discrepancies were corrected after installation. The Director has not made any additional inspections after any discrepancies were corrected. The Director said the foot-candles off the property are in compliance with the exception of the southwest corner and northeast corner. The Appellant agrees there are rotation issues that were corrected and looked at the issues on March 10th and Kelvin intensity of the lights were corrected to comply with the approved design. The Director said that just seeing your shadow doesn't violate the foot-candle, the visible light source or glare would create the shadow. Mr.

Galloway agreed, Ms. Bolivar said a light meter is used to measure the foot-candles and not a shadow. Mr. Galloway said the bud rating approved by the site plan and third party review. He said there is not necessarily an objective glare rating and the measurement is from the industry standard. The individual standards that a person would use for glare rating is not measured necessarily. Ms. Bolivar said the BUG (backlight, up-light, and glare) report shows there would be no light coming out between 80 to 90 degrees and these fixtures have no lumens coming out at 80 degrees. Mr. Galloway said most of the fixtures used were G2 glare standards. The Director said the lighting criteria written Wal-Mart standards read that glare should be considered. Council Member Bunning said the code was followed and plans were approved and reviewed by the Town's expert. He said there should be consideration to amend the code for the lights, but that asking for a contractor to go through the planning and then changing the plans afterward is not appropriate. Council Member Egan said the first experience with LED's allows the Town to go back to change the lighting standards. Council Member Schanzenbaker said the as-built needs to be complied with along with the design standards. Council Member Bunning said the Town should have known what the new lighting application would cause. He said what was agreed upon in design review and what was installed is the same but the Appellant indicates they have corrected some of the errors. Mayor Volger agrees with amending the code for this type of lighting and the qualification of the code was established during design. Council Member Egan moved that Town Council deny the Wal-Mart appeal of the Planning Director's determination and find that the Director's interpretation of the intent of the LUDC Section 6.11.4a and 6.11.4.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; 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; 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 that the Appellant is therefore in violation of Section 6.11.4.a and 6.11.4.j and direct staff to formalize the Town Council's finding and determination as a written order for consideration of approval at the May 26, 2016 Town Council meeting, Council Member Schanzenbaker seconded, motion failed with two nays (Council Member Bunning and Mayor Volger). Attorney Cole said the burden is on the applicant to prove the Director's findings were incorrect and three of the four of the council to agree with the Appellant. Therefore, the Directors decision stands. The attorney will draft written findings and the council's decision and brought to the full council at the May 26th meeting. Only the Council Members who were at this hearing can vote to approve the written findings. He said the code requires the Town Council find the Directors decision is wrong and overturn it. Council Member Bunning moved to table making a final decision, pending a hearing by the whole board on a date to be set, Council Member Egan seconded, motion carried with one nay (Council Member Schanzenbaker).

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 – Upon motion duly made, the meeting adjourned at 6:57pm.

**Don Volger
Mayor**