

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

RESOLUTION NO. 2012-15

**A RESOLUTION AND ORDER REGARDING PROCEDURES
GOVERNING THE APPEAL OF RESOLUTION NO. 2012-12
OF THE TOWN OF PAGOSA SPRINGS DESIGN REVIEW BOARD**

RECITALS

A. 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 within the Town of Pagosa Springs (“Town”); and

B. WHEREAS, on August 21, 2012, the Town Design Review Board (“DRB”) approved Resolution No. 2012-12, A Resolution Setting Forth Findings of Fact and Conclusions and Approving the Wal-Mart Major Design Review Development Application (the “Resolution”); and

C. WHEREAS, pursuant to Section 2.4.13 of the LUDC, “Appeals,” any aggrieved person of interest may appeal the decision of the DRB to the Town Council (“Council”); and

D. WHEREAS, on August 31, 2012, Steven Rader and Vivian Rader (collectively, the “Appellants”) jointly submitted a Notice of Appeal of the DRB’s approval of the Resolution pursuant to Section 2.4.13 of the Town of Pagosa Springs Land Use Development Code (“LUDC”); and

E. WHEREAS, Section 2.4.13 of the LUDC does not set forth specific procedures governing the appeal before the Council;

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

ORDER

1. Parties to the Appeal are the Appellants and the DRB. Applicant is not initially a Party to the Appeal, but is the real party in interest, and thus shall be copied on all briefs, orders, and correspondence and documents exchanged between the Parties. Parties shall file one (1) paper copy with the Town Planning Department of all documents filed in this appeal. Parties shall also serve on the other Parties and the Applicant by email one electronic copy of all documents filed in this appeal, except that any document

that is larger than 8 ½ inches by 14 inches need not be served by email if it is also filed with the Planning Department by paper copy.

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

3. The hearing on Appellants' Notice of Appeal will be held on Tuesday, October 23, 2012 at 12 o'clock noon, before the Town Council at the Pagosa Spring Community Center at 451 Hot Springs Blvd., Pagosa Springs, Colorado 81147.

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

5. The hearing will be based on the record presented to the DRB, unless presentation of additional evidence is specifically requested by a Party and approved by the Council. The record presented to the DRB shall be made available for review by Appellants at the Pagosa Springs Town Hall during normal business hours, upon 24 hours written notice, which can be presented by email, to the Town Clerk. Any copies or reproduction of the record shall be at the expense of the Party requesting the same. Appellants may utilize their own copier to copy portions of the record and save copying charges from the Town of Pagosa Springs, so long as such copying is done at the Town Hall and the record is not removed therefrom. The Town of Pagosa Springs can implement reasonable requirements to ensure the integrity of the record while being copied by Appellants. 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 before the DRB are discouraged, and will be decided in the discretion of the Town Council only upon a showing that such evidence could not have reasonably been presented to the DRB, and is not repetitive of evidence already within the record. Any request to present additional evidence shall be filed with the Town Clerk no later than October 15, 2012. 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 DRB, and include a copy of documents or summary of oral evidence which is the subject of the request. Council shall consider and determine any such request at the October 23rd, 2012, hearing, as an initial matter. Any Party opposing such request shall be prepared to argue such opposition at such time, and present any rebuttal evidence at such hearing, if Council grants the request.

7. The pre-hearing briefing schedule shall be as follows:

(a) Appellants may each or jointly file and serve an opening brief no later than 5:00 p.m. on October 5, 2012.

(b) Town staff, on behalf of the DRB, may file and serve a response no later than 5 p.m. on October 11, 2012.

(c) Appellants may each or jointly file and serve a reply brief no later than 5 p.m. on October 16, 2012.

(d) Town staff shall provide Applicants Notices of Appeal and all briefs to the Council no later Wednesday, October 17, 2012.

8. At the hearing, the presentation order shall be as follows:

(a) Appellants will together have a total of 30 minutes to make a direct argument to the Council.

(b) Town staff, on behalf of the DRB, will have 30 minutes in which to present a rebuttal argument to the Council.

(c) Appellants will together be given a total of 15 minutes for surrebuttal.

(d) Thereafter, arguments will be closed and Council may ask questions of either or both parties.

9. Only parties shall provide argument or respond to Council questions. Arguments, rebuttals and responses to Council 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 Council.

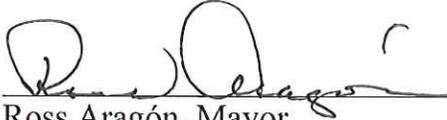
10. In determining whether to affirm, reverse, or amend the decision of the DRB either in whole or in part, the Council will consider the approval criteria considered by the DRB pursuant to Section 2.4.6.D.1.b of the LUDC as well as the appeal criteria set forth in Section 2.4.13.D of the LUDC.

11. At the conclusion of the Parties' arguments and Council questions and discussion, if any, Council 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 Council business or temporarily adjourning the proceedings. Council's decision on the Appeal shall be affirmed in writing, and served on the Parties and Applicant by email. Copies shall also be filed with the Town Clerk and placed in the record of the proceedings. Any Party may request a paper copy of the Council's decision from the

Town Clerk. The Council's decision shall be deemed final upon transmittal of written order by email to the Parties and the Applicant.

ADOPTED AND ORDERED THIS 27th DAY OF SEPTEMBER, 2012 BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, BY A VOTE OF 7 IN FAVOR, 0 AGAINST.

TOWN OF PAGOSA SPRINGS

By: 

Ross Aragón, Mayor

Attest:




April Hessman, Town Clerk