



Town of Pagosa Springs
Planning Commission, Board of Adjustments & Design Review Board
Appeals Hearing
July 21, 2015
Town Hall, Council Chambers, 551 Hot Springs Boulevard, Pagosa Springs, Colorado 81147

I. **Call to Order / Roll Call:** Planning Commission/ Board of Adjustments Chair Ron Maez called the hearing to order at 5:30 PM. Commissioners Kathie Lattin, Peter Adams, Heidi Martinez and Natalie Woodruff were present. Also present were Planning Director James Dickhoff, Associate Planner Margaret Gallegos, Town Attorney Bob Cole (by telephone), Walmart representatives Joey Lubinski (by video conference) and Tasha Bolivar, Ed Fincher and five persons.

II. **Board of Adjustments**

A. **Appeals Hearing Continuation - Walmart Real Estate Business Trust 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 Walmart development located at 211 Aspen Village Drive, with possible Executive Session Pursuant to C.R.S. 24-6-402(4)(b) for the Purpose of Receiving Legal Advice regarding the Walmart Appeal Hearing.** The Appeals Hearing was continued from the June 30, 2015 meeting in which the Board unanimously voted to continue the Appeals Hearing to further consider the Appeal and, prior to that date, if not already done, all Board members should conduct an onsite visit. All Board members noted, and confirmed, that they reviewed the lighting, as requested.

Planning Director Dickhoff requested that the Board approve an additional exhibit so that he can present cut sheets for the light and light bar cover. Walmart Attorney Lubinski noted that they did not pertain to the interpretation and should not be introduced. **Motion by Member Woodruff, seconded by Member Martinez and unanimously carried not to include the cut sheets as an additional exhibit because the hearing is on the Director's interpretation only.**

Mr. Lubinski noted that his firm reviewed the Planning Department staff report presented for this meeting along with the June 30, 2015 minutes and they were fine with all - no additional commentary or revisions submitted.

Planning Director Dickhoff noted that the meeting is to consider the appeal for interpretation. He also noted that June 30, 2015 Appeals Hearing minutes were provided to the Board for its review but are not on agenda for approval, it can be handled at next meeting.

Chair Maez opened the floor to Board members for comments and/or question. Member Woodruff asked if the light placement and numbers were installed as approved and if they used the exact fixtures, as approved. Director Dickhoff responded that the number of lights and placement were installed as approved.

Member Adams requested additional information about the Planning Director's conversation with Ryan James, Civil Engineer of Galloway. Planning Director Dickhoff stated that his conversation with Ryan James was about the off-site glare that he experienced with Tractor Supply Company. They talked about a number of different remedies from installing flex and diffusers in both clear and amber colors. They also talked about the heights of after-market side



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shields - various sizes, setting adjustments, and his review and compliance after installed. It appeared that Brian James was aware of the issues with Tractor Supply and Dickhoff stated that he was comfortable with Mr. James response for compliance. The intent of the conversation was that LED parking lights are new to area and Pagosa and because the Tractor Supply Company lights were LED – intensity of light output, he wanted to give a head-up about issues. The discussion took place between May and June 2013 before the Walmart permit was issued. The Tractor Supply lighting permit was issued with LED vs. standard box lighting – issues and challenges were remedies. Tractor Supply made great effort to resolve the lighting issues by reduced light intensity, attached light deflector, corrected the light output, and minimized the neighbor effect.

Member Adams asked Ms. Bolivar if Ryan James made her aware of conversation and his conclusion that the plans were approved to meet the Code. Ms. Bolivar responded that she had no idea about Tractor Supply issues to be the same. She commented that, after the Walmart building permit was issued, all lighting fixtures were ordered, manufactured to the plans and shipped to the site to meet the Code.

Member Adams asked if the lighting issues were discussed before the building permit was issued to Walmart. Planning Director Dickhoff responded confirmed that they talked before the permit was issued.

Member Lattin noted that in the Land Use Development Code, Section 6.11.4(a) the reasons to minimize the glare toward the neighbors – they were not aware of output. She commented that the Colorado Department of Transportation (CDOT) uses similar lights to Walmart but utilize one at each intersection. She stated that the Walmart lights are glaring; she is not agreeing with Planning Director’s interpretation that the glare is extreme. In closing, she noted that other light bulb is visible in other areas of the Town even though they are not the same as Walmart lights.

Member Martinez asked Ms. Bolivar about the angle of the installed shielding. She replied it was at an eighty (80) degree- angle.

Member Adams addressed and discussed the LUDC; specifically, Section 6.11.4, Subsections A and J as follows: 1) Subsection A - “all light sources shall be concealed or shielded...to minimize the potential for glare and unnecessary diffusion on adjacent property”. Member Adams commented that, as he stood on the sidewalk and turned his back toward Walmart, he could see three shadows and the light illuminated the residences across street thereby creating unnecessary diffusion. 2) Subsection J – “lighting arranged to direct and confine all light beams to the subject property and away from nearby properties”. Member Adams stated that Walmart is violating Code and concluded that it is very clear cut and that Walmart installed permitted per the plans but are not in compliance with the performance code. Walmart was made aware about the Tractor Supply lighting issues.



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Member Adams also commented that within the provided exhibits, provided before the June 30, 2015 meeting and Exhibit C, which was provided for this meeting: Tab A-8 – page 4, #3, outlines projects with special ordinances and research was needed to meet the local county requirements. The lighting can be more stringent but cannot be negated by variance, must be used. Page 5 was evaluated for site specific basis. Walmart's Project Manager (PM) will provide site specific for these projects. Page 8, 10b, lights outside residential areas, more stringent will be considered trespass light. Page 10, 1-d, more stringent ordinances used. Appendix C is Walmart's criteria, shielding values added. Seven (7) notations were made on the exhibit that refer to shielding - spill light b1 shield side, 2 higher shields to meet b1 rating. Spill light exceeds in area. Solutions are to add several more poles, leave as is note to shield internal fixtures. Several areas also referenced shielding and light spillage.

Member Martinez questioned when Appendix C was submitted. Mr. Lubinski stated that it was art of appeal brief supplement and is used by Walmart for guidelines and was introduced/submitted per the last meeting. He said that the guidelines are Walmart's internal procedures. Unsure of time guidelines.

Member Adams stated that not enough attention was given to the LUDC and Tractor Supply – he agrees with Planning Director Dickhoff's evaluation with interpretation. As stated in the LUDC, the Board must presume that the Planning Director is correct unless he is proven incorrect.

Chair Maez commented that he has concerns with the pre-approval of lighting that includes LED and the LUDC needs to be revised to be specific.

Chair Maez closed the deliberations.

Motion made by Member Adams, Seconded by Member Lattin and motion carried by a vote of 3-2 (Members Martinez and Woodruff opposed) that the Board of Adjustments DENY the Wal-Mart 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;**



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- 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."

Chair Maez noted that there is an Appeal process if anyone is interested in submitting a "Notice of Appeal" regarding the BOA decision, to contact the Town Clerk.

Chair Maez opened the floor to closing/final comments: Member Woodruff explained that she is not in disagree with interpretation of Code but she feels that the onus lies with Town with hired a third party consultant that assured them that the plan met the Code with no changes to the placement number and fixtures. In closing, she commented that Walmart and town should to work together.

Member Lattin agreed with Member Woodruff, an interpretation is needed – glaring light resolution can be made, Tractor Supply changes to the Code, task staff to review LED and other issues. Two year discussion for signs and should be addressed in Code.

Member Martinez noted that a definition for "glare" is needed in LUDC.

Member Adams, thanked Ms. Bolivar and Mr. Lubinski and stated that he supports Walmart and its contributions to the community.

Member Maez commented that the Board would get with staff to determine LED and resolve between Walmart and Town of Pagosa Springs. He also echoed Member Adams comment; it is great to have Walmart in Pagosa Springs.

Mr. Lubinski had no additions but stated that the decision was not easy and appreciated the Board's thought, time and consideration. Ms. Bolivar appreciated the Board.

Planning Director Dickhoff appreciated the Board's time, decision and commitment. Town Attorney Cole, no additions.

The meeting adjourned at 6:06 PM.



Ron Maez, Chair
Planning Commission/Board of Adjustments