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BEFORE THE CITY COUNCIL
FOR THE CITY OF YELM

IN RE: WAL-MART SUPERCENTER

FILE NO. SPR 05-0091-YL AND
APL 05-0203-YL

APPEAL OF THE HEARING
EXAMINER'S DECISION TO
APPROVE THE SITE PLAN FOR
WAL-MART BY YELM
COMMERCE GROUP, VALENTINE
FRYST, BILL NICHOLLS, AND
JAMES ZUKOWSKI

I. BACKGROUND

Yelm Commerce Group, Valentine Fryst, Bill Nicholls, and James Zukowski (hereinafter "YCG") respectfully submit this appeal of the City of Yelm's Hearing Examiner's decision to grant the Site Plan Approval for the Wal-Mart project. This appeal is submitted pursuant to City of Yelm Municipal Code. YMC 2.26.150. The Hearing Examiner's decision was issued November 1, 2005. The case number designated by the Hearing Examiner's Office is SPR-05-0091-YL-WAL-MART SUPERCENTER.

The project applicant in this case is PACLAND, Inc. ("PacLand"). The application was submitted on behalf of the property owner, Wal-Mart Stores, Inc. ("Wal-Mart") for a proposed new Wal-Mart store. For purposes of this appeal, the petitioners may be contacted

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1 through their attorney, David Bricklin of Bricklin Newman Dold, LLP, 1001 Fourth
2 Avenue, Suite 3303, Seattle, WA 98154, telephone (206) 264-8600, facsimile (206) 264-
3 9300, pursuant to YMC 2.26.150. An appeal fee of \$150 is submitted with this appeal.
4

5 The petitioners are the Yelm Commerce Group ("YCG") P.O. Box 1616, Yelm, WA
6 98597. The petitioners were the appellants in the proceedings below and members of the
7 YCG testified at the hearing before the Examiner.
8

9 After reviewing the Department of Community Development's Staff Report and
10 examining available information on file with the application, the Examiner conducted a
11 public hearing on the request from August 29 to September 1, 2005.
12

13 The Hearing Examiner issued a decision on November 1, 2005. The Hearing
14 Examiner's decision granted the request for Site Plan Approval, and upheld the MDNS
15 decision. The MDNS decision is not subject to review by the City Council. Only the Site
16 Plan Approval is subject to appeal here.

17 The City Council's review is based solely upon the evidence presented to the hearing
18 examiner, the Hearing Examiner's report, the notice of appeal and submissions by the
19 parties. YCC 2.26.160. The City Council may adopt, amend and adopt, reject, reverse,
20 and amend conclusions of law and the decision of the hearing examiner, or remand the
21 matter for further consideration.
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II. ARGUMENT

A. Site Plan Approval

The Examiner's decision approving the site plan should be reversed because Wal-Mart did not establish that it meets the requirements of all applicable City codes. YCC 17.84.020.C. In particular, the Examiner's decision is not supported by substantial evidence to support his conclusion that Wal-Mart met its burden of demonstrating that it had complied with the City's transportation concurrency requirements.¹

1. The project fails concurrency when the correct concurrency standard is applied

The Examiner's concurrency determination was flawed because it was based on the wrong concurrency standard for the State Routes passing through the City. The City's concurrency standards are not applicable to State roads inside Yelm's boundaries. State law is explicit that the LOS standards for state roads are set by the applicable Regional Transportation Planning Organization (RTPO). RCW 47.80.030.²

In this instance the Thurston Regional Planning Council (the applicable RTPO) has set the LOS for State roads in the southern part of Thurston County at LOS D. Testimony of Bernstein (Day 2, Tape 3B, 43:09). However the Examiner accepted the concurrency

¹ With respect to the site plan approval, Wal-Mart bore the burden of proof before the Hearing Examiner.

² There is an exception for major state routes (routes of statewide significance) in which case the LOS is set by the Washington State Department of Transportation and general concurrency rules do not apply. But the State Routes in Yelm do not fall within that special classification.

1 analysis that was based on an LOS standard of F. See, e.g., Testimony of Shea, Day 3, Tape
2 3A, 35:40. This is the wrong LOS standard for the State Routes, thus the concurrency
3 determination is flawed.
4

5 The applicable LOS standard is LOS D. The project does not satisfy this
6 concurrency requirement because several turning movements on intersections along SR 507
7 fall below LOS D. According to Wal-Mart's own transportation analysis (the "TIA"), the
8 following intersections do not pass concurrency:
9

No.	Intersection Name	LOS in 2006 with Project
6	West Yelm/Mountain View Road	E
8	West Yelm/Cullens Street	F
9	West Yelm/Longmeyer Street	E
10	West Yelm/Solberg Street	F
12	West Yelm/Edwards Street	F
13	West Yelm/Railroad Avenue	F
14	Yelm Ave/First St.	E
15	East Yelm/Second Street	F
16	East Yelm/Third Street	F
21	East Yelm/Plaza Drive SE	F
24	SR 507/Grove Road	F
25	SR 507/Old McKenna Road SE	F
26	SR 507/Vail Road SE	E

22
23 TIA, Table 6 (pp. 25-26).³
24

25 ³ Of the failing intersections, several of them would not have been failing but for the
26 project or decreased from LOS E to LOS F because of the project: Intersections No. 9, 10,
27 14, 24, 25, and 26.

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1 Consequently, the project flunks concurrency and the Site Plan Approval must be
2 reversed.

3 2. The project fails concurrency even if the City's LOS standards are
4 employed

5 Even if the City's concurrency standard is used, the project fails those LOS
6 standards, too. The City's LOS standards are found in its Comprehensive Transportation
7 Plan. The LOS standard for "all commercial and light industrial zones" is LOS D. Yelm
8 Comprehensive Transportation Plan (Jul. 2001) at 2. The City makes an exception and
9 allows LOS F in the urban core under limited conditions. Those conditions do not apply
10 here. According to the Yelm Comprehensive Transportation Plan:

11 In the urban core, LOS F is recognized as an acceptable level
12 of service where mitigation to create traffic diversions,
13 bypasses, and alternate routes and modes of transportation are
14 authorized and being planned, **funded and implemented.**
15

16 Id. at 3 (emphasis supplied). There was no evidence provided by Wal-Mart or the City at
17 the hearing that there are any "traffic diversions, bypasses, alternate routes or alternate
18 modes of transportation" that are being "planned, funded and implemented" that would
19 mitigate the current traffic congestion on Yelm Avenue. Certainly, there is evidence that
20 the bypass is being "planned" and is partially funded. But there is no evidence of full
21 funding or that the bypass is being "implemented." Certainly, there is no evidence that the
22 bypass will be in operation within six years. See RCW 36.70A.070(6)(b). Thus, even
23 under the City's LOS standards, the result would be the same as under the LOS D standard
24 established by the Thurston Regional Planning Council.
25
26

1 Finally, the description of the City's LOS standard fails to specify what method is
2 to be used to calculate LOS. As acknowledged by testimony (see, e.g., testimony of
3 Arbruster, Day 3, Tape 2A, 25:30) multiple methods are available to calculate LOS. The
4 Examiner's (and staff's) use of only one available method ignored congestion along Yelm
5 Avenue that would result in LOS E or F at various additional intersections as well as along
6 the length of Yelm Avenue itself (using the "urban street LOS" method). The use of only
7 one LOS determination method is arbitrary and lacks any support in the record.
8

9
10 B. Ongoing SEPA Compliance

11 If the Council remands this matter because of the concurrency issues discussed
12 above, the Council should consider also directing the City staff to re-examine its SEPA
13 decision. The City's SEPA "Responsible Official" has continuing authority and
14 responsibility to re-evaluate environmental issues and the threshold determination. See,
15 e.g., WAC 197-11-340(3). A threshold determination based upon inadequate or incorrect
16 information or analysis may be vacated at any time.
17

18 At Wal-Mart's and the City's urging the Examiner imposed the wrong standard on
19 YCG for SEPA review. It was not YCG's burden to prove with certainty the magnitude of
20 impacts that will result from Wal-Mart's project. Assessing impacts with greater certainty
21 is the job of the applicant via an EIS. The YCG met its burden by demonstrating that the
22 City failed to collect the information it needed to make a threshold determination and that
23 the information presented to the Examiner demonstrated that there may be significant
24 adverse environmental impacts.
25
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1 The City staff did not meet its duty to "independently evaluate" Wal-Mart's
2 information and the evidence before the Examiner demonstrated the need for an EIS.
3 Therefore, if the Council remands the concurrency issue, it also should request the
4 Responsible Official to re-examine the threshold determination in light of the issues raised
5 at the hearing.
6

7 III. CONCLUSION

8 For the foregoing reasons, the YCG respectfully requests that the Council deny the
9 Site Plan Approval in this matter.
10

11 Dated this 28th day of November, 2005.

12 Respectfully submitted,

13 BRICKLIN NEWMAN DOLD, LLP

14
15
16 By: 

17 David A. Bricklin
18 WSBA No. 7583
19 Attorneys for Yelm Commerce Group,
20 Valentine Fryst, Bill Nicholls, and
21 James Zukowski

22 YELM COMMERCE GROUP

23 By: 

24 Gregory May

25 YCG\Yelm City Council Appeal

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